

Overview of the year 2020

The effects of the COVID-19 pandemic clearly made themselves felt in 2020, not least in the railway sector. The key performance indicators for rail passenger transport fell sharply, thus putting a sudden end to the gratifying growth trend of recent years. Rail freight was also affected, albeit to a lesser degree. Single-digit declines were recorded in both volume (net tonnage transported) and transport performance (net/gross ton-kilometres). However, the competition saw growth in all three areas.

Developments on the railway market

The number of passenger-kilometres travelled fell by some 45 percent, due above all to the sharp drop in passenger numbers. Since most mobility services were maintained at least at reduced levels, the train-kilometres travelled only declined by a relatively moderate six percent. However, long-distance travel in particular was suspended for lengthy periods of time. The average distance travelled in 2020 consequently fell to 38.6 kilometres.

The net ton-kilometres and gross ton-kilometres travelled in the rail freight sector were significantly lower than the previous year (minus seven and minus 7.4 percent respectively), as was the net tonnage transported (minus 7.4 percent). The competition was able to compensate to some small degree for the declining figures reported by Rail Cargo Austria. This meant that its market share in all three segments continued to grow, reaching 36.7 percent (volume) and around 33 percent (transport performance) respectively.

At the end of 2020, there were 77 railway undertakings in Austria. The rail freight undertakings Captrain Italia, CER Hungary and DB Cargo Czechia, the Austrian undertaking FRACHTbahn, the three German undertakings Helrom, Holzlogistik and Güterbahn, and Raildox, RM Lines from the Czech Republic, Siemens Mobility Austria, and the Swiss company Widmer Rail Services have all entered the market since 2019. In addition, the Vienna-based Austrian railway undertaking twentyone acquired a safety authorisation for passenger and freight transport following a hiatus of several years. In contrast, the German undertaking Retrack had its safety authorisation withdrawn after it became evident that it had not operated any trains in Austria. In all, 59 companies were authorised to run trains on ÖBB tracks. These included four undertakings in the ÖBB group and eleven undertakings in which foreign incumbents had direct or indirect holdings (dominant undertakings). The private sector continued its exponential growth in 2020, with the number of undertakings rising to 33.

Developments on the European market

April 2021 saw the publication of the ninth market monitoring report by the Independent Regulators' Group-Rail (IRG-Rail), which focused on general developments in rail transport during 2019. A total of 30 countries provided statistical analyses for this purpose. The current report focuses on a study of the effects of the COVID-19 pandemic on the European rail sector during the first half of 2020 and outlines the most important measures taken by each country to deal with this exceptional situation.

In 2019, Austria again led the European Union in terms of railway use. With 1,507 kilometres per capita and year (five kilometres more than 2018), Austria was once again ahead of France (1,442 kilometres) and Sweden (1,415 kilometres).

Amendments to the Railway Act

BGBI (Federal Law Gazette) I 2020/143 specified amendments to the Railway Act (EisbG) and Accident Prevention Act (UUG) designed above all to implement the Interoperability Directive and the Railway Safety Directive. Amendments that fall within the Schienen-Control Kommission's sphere of competence include the requirement that a railway infrastructure manager must consult all parties involved before issuing a network statement. Moreover, allocation bodies must determine whether it is necessary to include infrastructure capacity reserves (train path reserves) in the timetable in order to accommodate ad hoc requests. The Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology is authorised to issue a decree specifying the environmental effects for which the infrastructure fees must be modified. This legislation came into force on 23 December 2020.

Regulation (EU) 2020/1429 establishing measures for a sustainable rail market in view of the COVID-19 outbreak

Regulation (EU) 2020/1429 establishing measures for a sustainable rail market in view of the COVID-19 outbreak came into force on 13 October 2020. It authorises member states to allow infrastructure operators to reduce, waive or defer the payment of charges for the minimum access package. Moreover, the member states may also authorise infrastructure operators not to levy reservation charges on any unused capacity (train paths) and to review market mark-ups for the purpose of reducing them where applicable. The initial reference period for the Regulation was March to December 2020. Commission Delegated Regulation (EU) 2020/2180 of 18 December 2020 extended the reference period to 30 June 2021.

Key areas of the Schienen-Control Kommission's work

Station fees

During a procedure regarding station fees for the years 2012 to 2015, the Schienen-Control Kommission found that the fees were generally determined in accordance with the principles set out in the Railway Act; however the costs of park-and-ride and bike-and-ride services were not taken into account.

Last-mile services

The Schienen-Control Kommission is conducting a competition monitoring procedure relating to last-mile services. Any service facility operator which moves rolling stock to and from shunting stations and train marshalling yards and which operates shunting facilities is obliged to render this additional service for all railway undertakings that request it and to refrain from any type of discrimination.¹

The last-mile services monitored by the Schienen-Control Kommission encompass the marshalling and collection of rolling stock by shunting, particularly to/from sidings and loading tracks. According to section 58b par. 2 l. 4 EisbG, the marshalling of rolling stock includes moving it to and from shunting stations and train marshalling yards as well as operating shunting facilities.

¹ Section 58b par. 2 l. 4 EisbG. Operators of service facilities are defined as entities which operate one or more service facilities or render one or more services for railway undertakings (section 62a par. 1 EisbG).

Requests for exemption from the application of EU Implementing Regulation 2017/2177 for operators of service facilities

Commission Implementing Regulation (EU) 2017/2177², which came into force on 1 June 2019, regulates the procedural details and criteria to be applied to access to service facilities. It also stipulates an obligation for operators to disclose information on service facilities and the rail-related services rendered therein.

According to Art. 2 of the EU Implementing Regulation, operators of service facilities may obtain exemption from the application of the Implementing Regulation by submitting a request to the Schienen-Control Kommission as the competent regulatory body.

However, exemptions can only be granted if the service facilities or the services they offer are of no strategic importance for the railway market, if they are operated or rendered in a competitive setting with a large number of comparable competitors, or if the exercise of the Regulation would negatively impact the functioning of the service facilities market.

In 2020, the Schienen-Control Kommission received two applications requesting exemptions from the Implementing Regulation. After reviewing each individual case, the regulatory body granted an exemption from the application of these provisions in one case. The exemption was granted under obligation to provide annual information.

Traction current

The Schienen-Control Kommission initiated a competitor monitoring procedure to perform an in-depth review of the traction current tariffs published for the years 2019 and 2020. This is in line with decisions made in the years that followed the opening of the Austrian traction current market in 2016, since ÖBB-Infrastruktur also largely relied on the previous years' tariffs when creating its charging model. These procedures were decided on 19 April 2021.

Approval of mark-ups on infrastructure fees

The Schienen-Control Kommission has opened several procedures in response to applications from a railway infrastructure manager to approve mark-ups on infrastructure fees. The Schienen-Control Kommission is examining the full costs and the costs incurred directly through operating the trains as well as the market segments defined by the railway infrastructure managers and the model used to determine their viability.

The Schienen-Control Kommission approved mark-ups for the 2018 and 2019 timetable periods; however, these were lower than the amounts initially requested. The Schienen-Control Kommission rejected applications submitted by one railway undertaking particularly to have permission for the mark-ups denied. Both the infrastructure manager and the railway undertaking appealed to the Federal Administrative Court to have the decision overturned.

Announcement of new transport services

In 2020, the railway undertakings notified the Schienen-Control Kommission of plans to implement several new passenger services. A consistent two-hourly service is to be operated on the Munich-Bregenz-Lindau route, while the service from Vienna to Budapest is to be increased from every two hours to every hour. New night trains were also announced, including a service from Vienna to Warsaw via Bratislava with a through carriage to Przemyśl, a night connection with car transport from Bratislava to Split via Vienna, and a connection between Vienna and Amsterdam.

² Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services, OJ L 2017/307, 1.

Refusal of train path requests

One allocation body refused a railway undertaking's request for the allocation of train paths in the 2021 timetable. The railway undertaking had requested a high-frequency passenger service on a branch line. The infrastructure manager found that the increased frequency constituted a change to the railway system of the type described in Commission Implementing Regulation (EU) 402/2013³ and performed a risk analysis. The risk analysis concluded that the service expansion would increase the overall risk. Based on the result of the risk analysis, it was decided that the service could only be increased if – unlike before – there were no more crossings. This means that trains may not meet at a railway station or travel past each other. The service would have to be split, i.e. the trains from both directions would have to terminate at the railway station and travel back in opposite directions. Splitting the service would require the passengers to change trains before continuing their journey.

The railway undertaking accepted the solution of splitting the service. The competition monitoring procedure was therefore closed.

Decisions by the Federal Administrative Court, Supreme Administrative Court and Constitutional Court

During 2020, the Federal Administrative Court (BVwG), the Supreme Administrative Court (VwGH) and the Constitutional Court (VfGH) made a number of decisions on procedures initiated by the Schienen-Control Kommission. The BVwG confirmed both decisions made by the Schienen-Control Kommission. In one decision, the Schienen-Control Kommission declared that the publication of several variants on infrastructure fees was invalid. The other decision involved a contract concluded by a railway station operator and a railway undertaking regarding the use of ticket offices and declared that a provision which precluded the termination of the contract for parts of the area was invalid.

The VwGH dismissed an extraordinary appeal by a railway infrastructure manager against a ruling passed by the BVwG. The BVwG had annulled a decision by the Schienen-Control Kommission denying the unlawfulness of charging fees for infrastructure usage and referred the matter back to the authority for a new hearing and decision. The VwGH had previously overturned a ruling by the BVwG confirming this decision. In its extraordinary appeal, the infrastructure manager posited that the BVwG had given the Schienen-Control Kommission legal guidelines that conflicted with the VwGH's previous ruling. However, the VwGH denied such a derogation of its case law.

The VfGH had previously refused to address a complaint by the infrastructure manager which alleged that section 67 par. 1 EISbG was unconstitutional.

³ Commission Implementing Regulation (EU) 402/2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No. 352/2009.