

**Independent Regulators' Group – Rail**

**IRG-Rail**

19 May 2020

**European rail regulators contribute to the recovery from the COVID-19 crisis**

***Railways have continued to transport both essential goods and passengers during the COVID-19 crisis, but the sector has been hit hard and recovering will require unprecedented efforts***

1. The recent COVID-19 crisis has significantly impacted the EU transport system and is likely to continue to do so for several years. In a context where public authorities and economic actors are under pressure and make decisions in an uncertain and difficult environment, IRG-Rail would like, through this statement, to highlight some issues that have to be considered in the framework of a recovery from the COVID-19 crisis.
2. The virus has led to the closing of borders and has caused a global decline in the demand for transport and travel as customers' needs have changed. The Single European Railway Market faces an unprecedented challenge. The long-term implications of the crisis for the public transport systems and shared-mobility operators are still uncertain. The current situation tends to indicate that all rail markets are likely to be affected, and in particular those services which would benefit from the liberalization of the rail market.
3. Rail services have provided, and continue to provide, crucial transport services delivering passengers and goods alike. Although anti-COVID-19 measures have restricted travel throughout Europe, in comparison with other modes of transport, trains have kept running, bringing passengers and goods to their destinations in a highly reliable fashion. This also includes emergency transport of COVID-19 patients. This and other examples have proven the railway sector's willingness and ability to adapt to new and challenging situations. In addition, trains have helped delivering essential goods both within Member States and across borders, acting as the backbone of an otherwise heavily battered logistics sector and economy as a whole.
4. In this regard, IRG-Rail appreciates that the Commission has directly addressed infrastructure managers so that, already in the emergency period, they would encourage the use of available capacity and facilitate – under safe conditions for the workers involved

– freight transport by rail. This is a crucial segment for the transit of essential goods, including across borders.

5. Many rail regulatory bodies are taking a pragmatic and flexible approach to regulation while ensuring it does not impact competition negatively. In some cases, they are also adapting data collection to provide all players and decision-makers with a realistic and robust view on the consequences of the outbreak on the rail markets, and more generally on the public transport markets. With regard to this, the rail regulatory bodies emphasise the importance of a pro-active approach and offer their support and expertise in the assessment of recovery measures.

***In supporting such efforts we are committed to regulatory cooperation across borders and to the coordination and consistency of administrative processes – unilateral restrictions to rail markets should be only temporary in nature***

6. IRG-Rail can also learn from actions taken by various actors during this crisis, such as the stakeholders of Rail Freight Corridors, who have improved their coordination to ensure in particular the transportation of food products. Cross-border issues need deep and ambitious cooperation of all involved stakeholders. With this in mind, IRG-Rail continues to work at strengthening the coordination and the cooperation between rail regulatory bodies.
7. IRG-Rail observes that since the beginning of the crisis, measures to address the pandemic have mainly been taken by Member States unilaterally. In this context, the lack of coordinated cross-border measures may have a negative impact on the ongoing pursuit of the Single Market. IRG-Rail is therefore calling for better coordination between Member States in working towards the recovery of the rail sector.
8. IRG-Rail is aware of the measures adopted by the EU Commission to steer national governments' support measures, and of its commitment to facilitate their practical implementation. On 29 April 2020, the European Commission adopted a package of measures in order to facilitate transport flows, focused essentially on practical and administrative issues. IRG-Rail supports this initiative, which appears crucial in this period of uncertainty. However, IRG-Rail would like to stress that those temporary measures should indeed be considered as an exceptional regime in the context of the construction of the Single European Railway Market. Meanwhile, some Member States have implemented restrictions on movement of people and goods. Here again IRG-Rail is calling for these restrictions to be as limited as the public health goals allow.

**As regulators we will continue to monitor the markets and uphold the principles of proportionality and non-discrimination, striking a balance between emergency measures and the need to safeguard fair competition in rail markets as well as a level playing field across transport modes**

9. IRG-Rail wishes to highlight the risk of distortion of competition on the railway market. National measures such as bailouts and other forms of state aid could provide unfair advantages to some players or sectors of transport. IRG-Rail acknowledges the need for the recent massive rescue plans adopted by many governments. However, to be cost-effective and fair, plans should consider all parties, including vulnerable ones, and should not create windfall gains for only some. It is important to assess the risks and take into account circumstances such as:
  - the presence of numerous state-owned companies;
  - the numerous commitments made at European and national levels to achieve sustainability and climate changes;
  - the necessity to have a multi-modal approach on transport issues.
10. IRG-Rail further welcomes that the Commission has explicitly identified as a risk to be avoided the possibility that emergency measures may jeopardise – once the pandemic is over – the achievement of the benefits expected from the opening of markets, the interoperability of systems and the full application of the principles of transparency and non-discrimination. In the rail sector, the latter are associated *inter alia* with the independence of infrastructure managers from transport operators where they are both part of an integrated group (e.g. through the separation of the so-called “essential functions”).
11. IRG-Rail also acknowledges positively that the EU and individual Member States are striving to support railways to survive the pandemic when passenger and transport volumes vanish, while agreeing that any form of over-compensation of public aid is to be avoided. This emergency situation should not lead to measures that permanently alter the structure of markets, possibly encouraging a return of monopolistic concentrations. Where necessary, state aid should be equally accessible to all railways, not just the state owned incumbents. While the European Commission formally takes a position on the state aid requests, Regulatory Bodies are available to provide advice to States in that regard, in the context of their power to monitor the competitive situation in the rail services markets<sup>1</sup>.
12. Over recent years the railway sector has seen steady growth, albeit slower than hoped for. It is crucial that this positive trend is not stifled in reaction to the crisis. There is a risk that aid measures distort the competition between the different modes of transport. It would lead to a playing field tilted in favour of the other competing transport sectors, if the sustainable and low-emission railway sector is not assured proper aid measures. In this

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<sup>1</sup> Article 56.2 of Directive 2012/34/EU of 21 November 2012 of the European Parliament and of the Council establishing a single European railway area.

context, the loss of revenue and the public added cost of the outbreak could be the cause of massive cuts in rail investment. IRG-Rail supports maintaining efficient levels of rail investment, which allows the further development of a well performing and sustainable rail network.

***Rail services are a key element of a sustainable recovery – we will continue to promote clear frameworks for infrastructure investment and rail operations that match Europe-wide economic and green objectives***

13. On 11 December 2019, the European Commission published a Communication “The European Green Deal” stating the Commission’s commitment to tackling the climate and environment-related challenges. In this framework, IRG-Rail considers that challenges presented by the climate crisis still need to be met during and after the pandemic and a reliable infrastructure and strong competitors in the railway market will be necessary to tackle them.
14. Many stakeholders have outlined and stated the necessity for the coming years to strengthen the rail sector in order to ensure the development of sustainable, safe and efficient rail connections. Considering the role of rail in the European Green Deal, IRG-Rail would welcome a European strategy with tangible goals and progressive objectives. IRG-Rail points out that after the last Green Deal communication, the strategic plan for a sustainable mobility will need to reflect a more efficient use of the railway infrastructure. Efficient actions have to be taken to mitigate the consequences of the COVID-19 outbreak. The impact of the pandemic on the companies’ future business is likely to depend on the measures legislators and the public authorities will adopt for the post-emergency period. It will also depend on the effectiveness of the operational solutions that companies develop to ensure safe mobility and how they meet customers’ expectations.

“Extraordinary times require extraordinary action”.

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