

## **Memorandum of Cooperation between the members Rail Regulatory Bodies of IRG-Rail**

### **Preamble**

Article 57 of Directive 2012/34/EU establishing a single European railway area stipulates that regulatory bodies shall cooperate and may establish working arrangements accordingly.

International cooperation between the regulatory bodies of IRG-Rail builds the basis for IRG-Rail's work since its establishment in 2011.

Cooperation is in the regulatory bodies' common interest as well as in the public's interest in order to enhance the effective functioning of the internal railway market through cooperation on monitoring the activities of market participants, promoting competition and supporting better services for passengers and freight users.

The objective of cooperation between regulatory bodies has been strengthened under the Fourth Railway Package, in particular through the amendments to article 57 of Directive No 2012/34/EU as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016.<sup>1</sup>

This Memorandum aims at complementing the founding Memorandum of Understanding of the IRG-Rail. It specifies general cooperation principles between the regulatory bodies of IRG-Rail in the light of article 2 of the founding IRG-Rail Memorandum of Understanding with regard to the need for a consistent approach by its Members to the European regulatory framework for railways and the development of the European internal Market in railways. It also aims at meeting the new cooperation requirements of the Fourth Railway Package.

The purpose of this Memorandum is to set out guidance for this cooperation as part of a coordinated and efficient approach to regulation.

This Memorandum contains two sets of procedures. Part II describes the procedure for the general exchange of information as well as general provisions applicable to any case of cooperation. Part III foresees a detailed cooperation mechanism for cases within the scope of article 57(3a) of Directive No 2012/34/EU.

This Memorandum also complements other present and future arrangements on cooperation between regulatory bodies by providing alternative procedures where

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<sup>1</sup> Introduction of Article 57(3) and Article 57(8) second sentence linking Article 57(8) to Article 57(3a)

arrangements are unclear. It does not overrule existing agreements (for example rail freight corridor cooperation agreements). In this context, regulatory bodies shall endeavour to reviewing existing non-binding arrangements - where appropriate - in order to ensure consistency with this Memorandum.

By signing this Memorandum, regulatory bodies agree to cooperate in accordance with its principles and procedures and their national legislation.

The provisions of this Memorandum are without prejudice to any national decisions to be taken by those national regulatory bodies. National regulatory bodies remain fully independent and competent within their jurisdiction.

The provisions of this Memorandum are not legally binding on the parties. They may not give rise to any legal claim on behalf of any party or third parties in the course of their practical implementation by regulatory bodies.

## **Part I – Scope and objectives for cooperation**

### Article 1 – Scope

This Memorandum shall apply:

- a. to cases of exchange of information between regulatory bodies as described in the first sentence of article 57(1), article 57(2), and article 57(3) of Directive No 2012/34/EU as amended (hereinafter referred to as “general exchange of information”) and
- b. to cases concerning an international service where two or more regulatory bodies need to cooperate in preparing their respective decisions in order to bring about a resolution of the matter according to article 57(3a) of Directive No 2012/34/EU.

### Article 2 – Objectives

The purpose of this Memorandum of Cooperation is:

- a. to enhance the general cooperation between the regulatory bodies in order to share knowledge on matters of mutual interest, to provide mutual assistance in their tasks and to develop synergies through active information exchange and to set out guidance for such cooperation in practice, as described in the first sentence of article 57(1), article 57(2), and article 57(3) of Directive No 2012/34/EU; and
- b. to provide a cooperation mechanism for cases where the drafting of the respective decisions of two or more regulatory bodies needs further cooperation in order to

bring about a resolution of the matter concerning an international service as described in article 57(3a) of Directive No 2012/34/EU.

## **Part II – Cooperation principles amongst regulatory bodies**

### Article 3 – General Exchange of Information and Mutual Assistance

Regulatory bodies shall endeavour to share available information about their work, decision-making principles and practice, according to the first sentence of article 57(1) as well as article 57(2) of Directive No 2012/34/EU. They agree to exchange information on the main elements of their procedures, on problems of interpreting transposed Union railway law and implementation of EU and domestic railway law as well as providing mutual assistance in their monitoring of tasks, handling of complaints or investigations.

### Article 4 – Contact Point

- (1) Each regulatory body shall nominate at least one contact point (name, email address and phone number) to which other regulatory bodies can address their requests for information or cooperation.
- (2) The contact point shall be responsible for circulating the requests to the relevant units within its regulatory body as well as transmitting the answers to the requesting regulatory body(ies).
- (3) The contact details of the contact point shall be made available to IRG-Rail members on the IRG-Rail website.

### Article 5 – Procedure for the General Exchange of Information and Mutual Assistance

- (1) Requests for information from one regulatory body to another shall be addressed to the contact point of the respective regulatory body.
- (2) A request for information from one regulatory body to another shall be promptly acknowledged in writing. It shall be considered and dealt with as quickly as possible where necessary to meet a deadline set down in legislation and no later than two months after receipt of the request, unless a later date is agreed by the regulatory bodies concerned.
- (3) While preparing its answer the receiving regulatory body may, where necessary, request additional information from relevant national stakeholders and consult with other relevant national authorities in its jurisdiction in line with its national legislation.

Article 6 – Cooperation relating to an International Train Path

- (1) The regulatory body concerned shall consult the regulatory bodies of the country(ies) through which the international train path runs, according to article 57(3) of Directive No 2012/34/EU:
  - in the case of a complaint or an own-initiative investigation on access issues relating to an international train path;
  - in the case of a complaint or an own-initiative investigation on charging issues relating to an international train path;
  - in the framework of monitoring competition on the market related to international rail transport services.
- (2) As part of the consultation foreseen in paragraph 1 the regulatory body shall contact all relevant contact points before taking the decision on the complaint or on the own-initiative investigation in order to:
  - inform them about the subject of the consultation and
  - request all necessary information.
- (3) While preparing its answer the consulted regulatory body shall, where necessary, request additional information from relevant national stakeholders in line with article 57(4) of Directive No 2012/34/EU and may consult with other relevant national authorities in its jurisdiction.

Article 7 – Confidentiality

- (1) Any information exchanged and received by virtue of the application of the provisions of this Memorandum is subject to conditions of confidentiality as provided in European and domestic legislation. The regulatory bodies shall respect each other's confidentiality policy and shall make each other aware of that policy, where applicable.
- (2) Sharing of information shall safeguard the legitimate rights of third parties, including their intellectual property rights. Regulatory bodies may decide not to disclose certain information (e.g. related to commercial confidentiality) when sharing their information and/or draft decisions with each other.
- (3) Unauthorised use and processing of data provided by a third party to another party shall not be allowed. The regulatory bodies shall ensure that all persons dealing with, or having access to, such information are bound by the obligation of confidentiality.

#### Article 8 – Language Arrangements

When cooperating according to the provisions of this Memorandum regulatory bodies shall exchange information or correspond with each other in English unless they agree on any other suitable arrangement.

#### Article 9 – Conformity with Laws

The activities under this Memorandum shall be carried out in accordance with European law as well as applicable domestic legislation, as appropriate.

### **Part III – Cooperation mechanism according to Article 57(3a) of Directive No 2012/34/EU**

#### Article 10 – Scope of the Cooperation Mechanism

The cooperation mechanism under article 57(3a) of Directive No 2012/34/EU shall apply to cases that require decisions from at least two regulatory bodies that need to be coordinated in order to solve a cross border issue concerning an international service. It shall not apply to cases where a matter concerns solely the territory of one IRG-Rail member and thus can be effectively solved by the decision of the regulatory body concerned.

#### Article 11 – Start of the Cooperation Mechanism

- (1) The regulatory body may start the cooperation procedure when it considers the requirements set out in Article 10 to be fulfilled. It can act either on its own initiative or after receiving a complaint.
- (2) The regulatory body shall inform the other regulatory bodies concerned through their contact points that it intends to start the cooperation mechanism. It shall share the necessary information in order to jointly determine whether the case meets the requirements of Article 10. The regulatory bodies shall endeavour to come to a conclusion whether or not the case meets the requirements of Article 10 within one month after the request of the initiating regulatory body or a longer timeframe as agreed by the regulatory bodies concerned.

- (3) Once the regulatory bodies involved agree that the requirements of Article 10 are met, they shall start the procedure set out in Article 12. This should be done within a reasonable timeframe, no longer than 10 calendar days.

#### Article 12 – Cooperation Mechanism

- (1) The regulatory bodies involved shall inform their respective relevant national stakeholders and, if necessary, ask them to provide any comments within a reasonable timeframe as agreed by the regulatory bodies concerned and in accordance with domestic legislation. Such stakeholders might include railway undertakings, infrastructure managers, service facility operators or any other stakeholders with a legitimate interest in the issue. Without undue delay, the regulatory bodies involved shall exchange with each other in the form of a written summary the information and comments received from their respective stakeholders.
- (2) The regulatory bodies involved shall collaborate closely in order to bring about a resolution of the matter, based on the information received and taking into account the comments from stakeholders. Regulatory bodies shall make every effort to find a solution by coordinating their respective decisions with a view to avoiding legal uncertainty and ensuring the smooth operation of international rail services. They shall cooperate accordingly while respecting the independence of each regulatory body, in particular their independent decision-making and the discretionary powers set by the European and domestic framework.
- (3) Each regulatory body involved shall take due account of the resolution of the matter identified when drafting its respective decision independently. If the regulatory bodies are unable to agree on the resolution of the matter, the dispute resolution mechanism of article 13 shall be started.
- (4) Before adopting independently their respective decisions, in accordance with and where permissible under domestic legislation, the regulatory bodies concerned shall exchange their draft decision(s) (or a summary of it) giving the other regulatory bodies involved the opportunity to comment within 10 calendar days or a shorter or longer
- (5) timeframe where necessary to meet a deadline set down in legislation or where agreed by the regulatory bodies concerned.
- (6) Where necessary, regulatory bodies will align the publication date of their decisions.

#### Article 13 – Resolution of disputes

- (1) If, pursuant to the cooperation mechanism set out in article 12, the regulatory bodies are unable to agree on the resolution of the matter in their respective decision the

- chairs/heads/ruling chamber of the regulatory bodies involved shall consult each other on the reasons why.
- (2) Without prejudice to their respective national legislation, functions and duties, the heads/chairs/ruling chamber shall in their considerations have regard to the benefits of coordinated decisions with the aim of identifying a resolution of the matter.
  - (3) If however they are unable to reach an agreement on the resolution of the matter, they shall set out how any risks associated with the regulatory bodies taking un-coordinated decisions are to be managed.
  - (4) The chairs/heads/ruling chamber shall complete their consultations within 10 calendar days, or any other timescale if needed to meet a deadline set down in legislation.

#### **PART IV –Variation, entry into force**

##### Article 14 – Amendments to the Memorandum

- (1) This Memorandum may be amended by the mutual written consent of the regulatory bodies at any time.
- (2) The signing regulatory bodies shall review this Memorandum two years after its entry into force to decide whether its provisions should be amended based on the practical experience of regulatory bodies.
- (3) In order to facilitate the amendment procedure regulatory bodies shall regularly inform the Plenary Assembly on the application of this Memorandum.

##### Article 15 – Consent procedure

Members of IRG-Rail consent to this Memorandum of Cooperation by signature.

##### Article 16 – Entry into force

This Memorandum enters into force upon signature by the regulatory bodies.

Torino, 16 November 2018

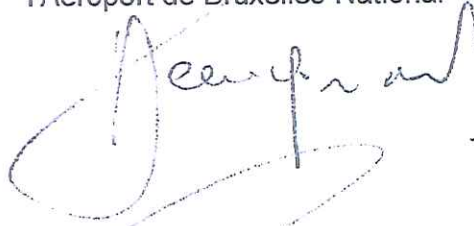
Names of IRG-Rail Members

**List of regulatory bodies**

Schiene Control GmbH



Service de Régulation du Transport  
ferroviaire et de l'Exploitation de  
l'Aéroport de Bruxelles-National



Railway Administration Executive  
Agency - IAJA



HAKOM



UPDI



Jernbanenaevnet



Konkurensiamet



Finnish Transport Safety Agency -  
TRAFI



ARPZ (FYROM)



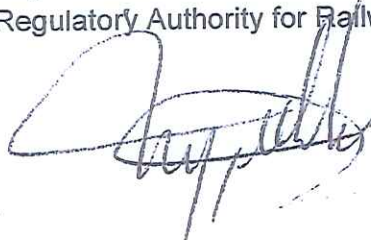
Autorité de Régulation des Activités  
Ferroviaires et Routières - ARAFER



Bundesnetzagentur - BNetzA



Regulatory Authority for Railways (EL)





Regulatory Body - NKH



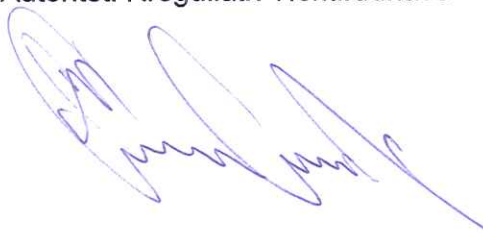
Commission for Railway Regulation



Autorita di Regolazione dei Trasporti  
- ART



Autoriteti Rregullativ Hekurudhave



Valsts Dzelzcela Administracija



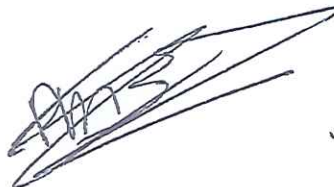
RRT



Institut Luxembourgeois de Régulation  
- ILR



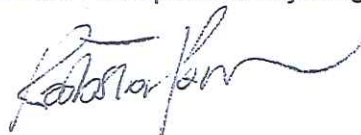
Autoriteit Consument & Markt - ACM



Statens jernbanetilsyn



Urząd Transportu Kolejowego - UTK



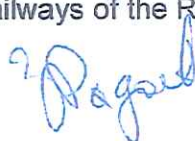
Autoridade da Mobilidade e dos  
Transportes – AMT



Consiliul de supraveghere din  
domeniul feroviar



Дирекција за железнице/Directorate  
for Railways of the Republic of Serbia



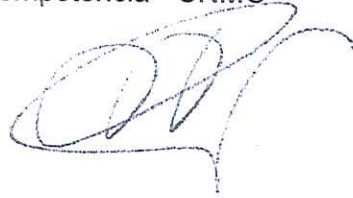
Dopravný úrad/Transport Authority



AKOS



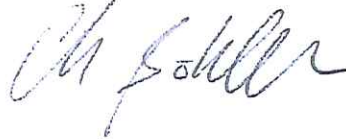
Comision Nacional de los Mercados y  
la Competencia - CNMC



Transportstyrelsen



Schiedskommission im  
Eisenbahnverkehr



Office of Rail and Road - ORR

