



Brussels, 25.3.2015  
COM(2015) 140 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**on cooperation between regulatory bodies under Article 63(2) of Directive 2012/34/EU**

# **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

## **on cooperation between regulatory bodies under Article 63(2) of Directive 2012/34/EU**

### **1. INTRODUCTION**

On 21 November 2012, the European Parliament and the Council adopted Directive 2012/34/EU establishing a single European railway area (recast)<sup>1</sup>.

Directive 2012/34/EU has taken over from Directive 2001/14/EC<sup>2</sup> the obligation for Member States to establish regulatory bodies responsible for monitoring the competitive situation in the rail services market, with a view to preventing discrimination against applicants and ensuring the proper functioning of the single European railway area.

Articles 55 and 56 of Directive 2012/34/EU have further strengthened the independence requirements for regulatory bodies and extended their responsibilities and powers. Article 57 has defined structures and rules for cooperation between regulatory bodies and with the Commission at European level, to increase coherence in decision making across the EU.

Directive 2012/34/EU has created a European network of rail regulatory bodies (the network) that convenes at regular intervals. The network provides a platform for regulatory bodies to exchange information about their work, decision-making principles and practices, the main issues of procedures and problems of interpreting transposed Union railway law. The network's activities should also serve as a basis for adoption of a number of implementing acts under this Directive<sup>3</sup>.

The network provides a formalized structure for cooperation on a wide range of activities, and replaces the working group of regulatory bodies that had previously been set up to ensure cooperation between regulators. Under Article 57(1) of Directive 2012/34/EU, the Commission is a member of the network, and coordinates and supports its work.

In addition to cooperation within the network, Article 57(2) of Directive 2012/34/EU requires regulatory bodies to assist each other in market monitoring tasks and to cooperate on handling complaints and investigations, including by setting up specific working arrangements. To ensure such cooperation, Article 57(3) requires that a regulatory body that is handling a case concerning access to or charging for international train paths consults the regulatory bodies of all Member States through which the train path runs, and requests all information it needs before making a decision on the case. At the same time, Article 57(4) requires all regulatory bodies consulted to provide the information requested.

Moreover, to ensure effective enforcement, Directive 2012/34/EU requires regulatory bodies to transfer information on complaints received and on own initiative investigations to the regulatory body responsible for taking measures regarding the parties concerned (Article 57(5)).

---

<sup>1</sup> OJ L 343, 14.12.2012, p. 32.

<sup>2</sup> Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, OJ L 75, 15.3.2001, p. 29.

<sup>3</sup> Articles 11(4), 12(5), 13(9) and 42(8) of Directive 2012/34/EU require implementing acts to be based on the experience of regulatory bodies and the activities of the network.

Regulatory bodies may request that the Commission participates in all cooperation activities and facilitates them (Article 57(7)).

Regulation 2010/913/EU establishing a European rail network for competitive freight<sup>4</sup> (the Corridor Regulation) sets out specific cooperation requirements for regulatory bodies with regard to monitoring competition in rail freight corridors. Similarly to the provisions on cooperation between regulatory bodies set out under Directive 2012/34/EU, Article 20 of the Corridor Regulation also includes mandatory consultation mechanisms and rules on the provision and transfer of information on cases concerning rail freight corridors. These rules are of particular importance in the context of monitoring the activities of the Corridor One-Stop Shop<sup>5</sup> (e.g. the allocation of international pre-arranged train paths).

In addition to the cooperation mechanisms described above, Directive 2012/34/EU includes a specific obligation for the Commission to support the exchange of information between members of the network of regulatory bodies. The Commission may develop electronic tools to do this (Article 57(1)).

Article 57(8) of Directive 2012/34/EU requires regulatory bodies to develop common decision-making principles and practices and makes it possible for the Commission to adopt implementing acts setting out such common principles and practices.

The obligation to set up a regulatory body and to participate in the cooperation activities of regulatory bodies does not apply to Cyprus and Malta, as long as there is no railway system within their territory (Article 64(2)).

According to Article 63(2) of Directive 2012/34/EU, in the light of the experience acquired through the network of regulatory bodies, the Commission is required to submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions a report on cooperation between regulatory bodies. According to the same provision, the Commission should, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, in particular for international services. To this end, legislative measures should also be considered, if appropriate.

The Commission hereby submits its report to the Institutions and bodies mentioned in order to fulfil this obligation.

The present report shows that there has been regular cooperation between regulatory bodies since the entry into force of the recast, mainly as regards exchanging information on decision-making practices and market monitoring. However, cooperation on concrete cases has remained limited with only a small number of cases concerning international services and requiring consultation and exchange of information between regulators having been brought to the attention of regulatory bodies so far. The report assesses these developments and identifies areas in which cooperation between regulators should be improved.

## **2. COOPERATION BETWEEN REGULATORY BODIES**

Although Directive 2012/34/EU, including its provisions on the responsibilities and organisational set-up of regulatory bodies, is to be transposed only by 16 June 2015, the

---

<sup>4</sup> Regulation 2010/913/EU of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight, OJ L 276, 20.10.2010, p. 22.

<sup>5</sup> Article 13 of Regulation 2010/913/EU requires that for each rail freight corridor a joint body should be designated or set up for applicants to request and receive answers, in a single place and single operation, regarding the infrastructure capacity for freight trains crossing at least one border and the freight corridor. This body is called 'one-stop shop'.

provisions on cooperation between regulatory bodies, which do not require transposition, were implemented immediately after the Directive's entry into force.

### **Network of regulatory bodies**

The first meeting of the European network of rail regulatory bodies took place on 13 and 14 March 2013 in Brussels. Since its creation, the network has met on a regular basis, i.e. three times a year, with two meetings taking place in Brussels and one in a Member State. The meetings in March and November 2013 and 2014 were held in Brussels. The meeting in July 2013 was hosted by the French regulatory body in Le Mans and the meeting in July 2014 by the German regulatory body in Bonn.

With the exception of Lithuania and Ireland,<sup>6</sup> the regulatory bodies of all Member States obliged to establish independent regulators have regularly participated in the network's meetings. Moreover, regulatory bodies from Switzerland, Norway and the former Yugoslav Republic of Macedonia have attended the meetings as observers.

#### *General observations*

The exchange of information between the regulatory bodies in the network has shown that regulators' level of activity remains very diverse and depends on a number of factors, including the size of the country, the number of cases handled and the regulatory body's experience, administrative capacity and degree of independence. Some regulators already have substantial experience (e.g. Austria, Denmark, France, Germany, Netherlands, United Kingdom) while others have only handled a few or no cases (e.g. Finland, Greece, Lithuania, Luxemburg). In some Member States, this is the result of a low degree of competition in national markets, the existence of only a few or no potential complainants, or regulators not being well staffed or sufficiently independent in their decision-making yet.

In addition, the scope of responsibilities entrusted to regulatory bodies still varies across the EU, in some Member States covering already a wide range of areas and enforcement powers as envisaged under Directive 2012/34/EU, while remaining restricted in other Member States.

Despite these remaining differences, the sharing of best practices and discussions within the network has encouraged less-experienced regulatory bodies to make increasing use of their powers both in handling complaints and monitoring the competitive situation of the market on own initiative.

#### *Main issues discussed in the network*

Regulatory bodies mostly exchanged information about their functions, experience in decision making and enforcement, market developments, market monitoring activities and implementation of EU law in their respective Member States. Topics discussed included investigations and decisions concerning in particular access to railway infrastructure, service facilities and rail-related services and charging.

Discussions in the network made it possible to identify the areas in which regulatory bodies have faced challenges in interpreting and applying Directive 2012/34/EU. This particularly concerns areas in which Directive 2012/34/EU has modified or complemented the existing regulatory framework or provided the Commission with a mandate to adopt implementing acts to harmonise the implementation. These include verification of charges for use of infrastructure, in particular calculation of direct costs for the minimum access package

---

<sup>6</sup> Ireland was granted an exemption from the obligation to establish an independent regulatory body until 15 March 2013 under Article 59(1)(b) of Directive 2012/34/EU. Despite the derogation not having been renewed, Ireland has not yet participated in cooperation between regulatory bodies as is required under Article 57 of Directive 2012/34/EU.

(Article 31(3)) and application of mark-ups, or questions related to rights of access and charging for use of service facilities (in particular station charges) and rail-related services.

#### *Role of the Commission*

The Commission has facilitated cooperation between regulatory bodies by organising and chairing network meetings. During these meetings, Commission representatives have explained Commission policy proposals, presented judgments of the European Court of Justice concerning transposition and implementation of the first railway package, and provided recommendations on how to apply Directive 2012/34/EU.

To take account of the views of the regulatory bodies, the Commission also informed the network about various implementing measures under Directive 2012/34/EU, including on:

- new rail passenger services (test on principal purpose under Article 10(3) and economic equilibrium of public service contracts under Article 11(2));
- modalities for calculation of the cost that is directly incurred as a result of operating the train service (Article 31(3));
- procedure and criteria concerning framework agreements (Article 42(8));
- rail market monitoring (Article 15(6));
- differentiation of infrastructure charges to give incentives to equip trains with the European Train Control System (Article 32(4));
- modalities for the application of the charging for the cost of noise effects (Article 31(5));
- criteria for applicants for rail infrastructure capacity (Article 41(3));
- certain aspects of the procedure on licensing of railway undertakings (Article 17(5));
- procedure and criteria for rail-related services (Article 13(9)).

In addition, the Commission organised specific subgroup meetings of the network and joint working group meetings between the network and the Committee set up under Article 62 of Directive 2012/34/EU (SERAC), to discuss the content of certain implementing measures with regulatory bodies in detail.

The Commission has also set up a mechanism to support the members of the network in exchanging detailed information about their work, decision-making principles and practices, and issues related to procedures and problems in interpreting transposed EU law. Each regulatory body completes a questionnaire three times a year, ahead of the network meetings. These questionnaires are shared among all regulatory bodies and main issues reported in the questionnaire are discussed in the network meetings.

#### **Cooperation in the context of Rail freight corridors**

In the context of establishing rail freight corridors, regulatory bodies have worked together to develop systems and working arrangements for handling cases referring to corridor issues, in particular complaints concerning international pre-arranged paths allocated by the corridor one-stop shop under Article 13 of the Corridor Regulation.

Cooperation agreements concluded by regulatory bodies along a rail freight corridor to meet the cooperation requirements under Article 20 of the Corridor Regulation define a single regulatory body responsible for handling complaints against decisions made by the corridor

one-stop shop. The agreements also include arrangements for exchanging information and mutual assistance in decision-making on corridor-related cases.

For the ‘Rhine-Alpine’, ‘North Sea-Mediterranean’, ‘Atlantic’, ‘Mediterranean’ and ‘Orient/East-Med’ rail freight corridors, which became operational in November 2013, regulatory bodies have already signed such cooperation agreements<sup>7</sup>. Agreements for the ‘Scandinavian-Mediterranean’, ‘Baltic-Adriatic’ and ‘North Sea-Baltic’ corridors, which will only become operational in November 2015, are being prepared.

Many regulatory bodies are in regular contact with their counterparts along the corridor to exchange information and discuss questions related to corridors issues, including monitoring of the corridor one-stop shop, the framework for capacity allocation, and the corridor information document, or to jointly investigate applications for international pre-arranged paths handled by the corridor one-stop shop.

In order to address cross-corridor cooperation needs and topics of common interest for the regulatory bodies of different corridors, regular discussions are held during meetings of the network of regulatory bodies and in the SERAC working group meetings on rail freight corridors, which are organised twice a year and bring together representatives of regulatory bodies, Member States, infrastructure managers and other stakeholders. Issues discussed include: questions concerning the offer of pre-arranged paths (e.g. the possibility to include terminal capacity or to define flexible pre-arranged paths); development of a common framework for capacity allocation for all corridors; performance monitoring; implementation plans; distribution of responsibilities between the corridor one-stop shop and national infrastructure managers; and the responsibilities of regulatory bodies.

### **Bilateral cooperation and consultation**

There have only been a few cases in which regulatory bodies have worked together on handling complaints and own-initiative investigations and exchanged information as envisaged under Article 57(3), (4) and (5) of Directive 2012/34/EU so far.

These include cases of consultation in the context of performance of an economic equilibrium and principle purpose test concerning a path request for an international passenger service and joint investigations on allocation of international train paths performed by regulatory bodies of neighboring Member States.

Irrespective of the cooperation needs in specific cases, some regulatory bodies organised bilateral meetings to discuss questions concerning the implementation of Directive 2012/34/EU, organisation, the financing and powers of regulatory bodies, and to exchange experiences in decision making.

### **Other forms of cooperation**

In addition to the different forms of cooperation envisaged under Directive 2012/34/EU, the regulatory bodies of 21 Member States and four third countries are currently also working together in the framework of IRG-Rail (‘Independent Regulators’ Group – Rail’), which is a private initiative of regulators that does not have any official role under the Directive.

Members of the group have exchanged on certain aspects related to their responsibilities and published a number of documents, including a review of charging practices and market monitoring reports comparing the competitive situation in rail markets in different Member

---

<sup>7</sup> These cooperation agreements have been published under the following addresses <http://bit.ly/1vX0wSH> (RFC Rhine-Alpine), <http://bit.ly/1Lbkqec> (RFC North Sea-Med.), <http://bit.ly/17gsg9p> (RFC Atlantic), <http://bit.ly/1AFOyXK> (RFC Mediterranean) and <http://bit.ly/1AQOBYF> (RFC Orient/East-Med).

States. They also developed a set of common indicators to harmonise market-monitoring activities<sup>8</sup>.

### **3. FURTHER DEVELOPMENTS**

The analysis in this report shows that regulatory bodies have worked closely together in certain areas, such as the exchange of best practices and information on decision-making experience through the network (as envisaged under Article 57(1) of Directive 2012/34/EU). However, cooperation on specific cases as required under Article 57(2) to (6) has only taken place in a small number of cases.

One of the reasons for this is that very few cases with a cross-border dimension, such as complaints concerning international train paths, have been brought to the attention of regulatory bodies. This is related to the number of operators requesting international train paths remaining limited, given that a considerable number of international train services are still being operated in cooperation of national railway undertakings. An increase in cases with a cross-border dimension and requiring stronger cooperation between regulatory bodies is expected as a result of the establishment of rail freight corridors, which became operational at the end of 2013 with allocation of international pre-arranged paths being performed by the corridor one-stop shops for the first time in 2014, and further development of the single European railway area.

Recent developments at rail freight corridor-level show that applicants are increasingly requesting capacity on different corridors; this development indicates that there is a growing need for regulators to cooperate not only along one corridor, but also across different corridors in e.g. monitoring path allocation decisions by corridor one-stop shops of different corridors.

When analysing the level of cooperation between regulatory bodies and the effectiveness of related provisions under Directive 2012/34/EU, consideration also needs to be given to the fact that during the period of transposition of this Directive (deadline: 16 June 2015), the legal framework in Member States has remained diverse as regards the scope of regulatory bodies' responsibilities and progress in implementing EU law in areas such as e.g. charging or access to service facilities.

After Directive 2012/34/EU is transposed and all regulatory bodies are entrusted with the comprehensive range of responsibilities defined under Article 56, the level of activity is expected to increase for many regulatory bodies. Implementing acts (to be) adopted under this Directive will create harmonised rules in key areas in which difficulties in implementing the Directive were identified also at the level of the network of regulatory bodies.

More harmonisation in the legal framework across Member States and in the scope of regulatory bodies' responsibilities should also facilitate the development of regulatory bodies' common decision-making principles and practices, as required under Article 57(8) of Directive 2012/34/EU. Implementing acts setting out such common principles and practices should contribute to further harmonise the implementation of this Directive across Member States and to ensure coherence in regulatory bodies' decision making in areas such as issues of charging other than the modalities for calculation of direct cost that apply to the minimum access package.

The Commission is currently developing an application ('electronic tool') that will enable regulators to share information on decisions, pending cases and other questions related to their functions in an electronic forum and make coordination easier (as envisaged under

---

<sup>8</sup> Further information on these documents can be found at <http://www.irg-rail.eu/public-documents/>.

Article 57(1) of Directive 2012/34/EU). This application should be made available to regulators in 2015.

Regular cooperation and exchange of best practices within the network of regulatory bodies is also expected to contribute to the development of frameworks for information sharing and cooperation with national safety and licensing authorities, which is mandatory for all regulatory bodies under Article 56(3) of Directive 2012/34/EU.

In the area of market monitoring there is some overlap between Commission reporting obligations under the Directive and regulatory bodies' monitoring activities, in particular in the framework of IRG Rail. Increased cooperation between regulatory bodies and the Commission in this field may help to converge approaches and facilitate harmonisation of reporting and monitoring activities. This includes work on aligned definitions, common indicators and cooperation on data collection.

#### **4. CONCLUSION**

Article 63(2) of Directive 2012/34/EU requires the Commission to propose, if appropriate, complementary measures to ensure a more integrated oversight of the European rail market, in particular for international services.

In its legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/34/EU<sup>9</sup>, the European Parliament adopted an amendment to Article 57 of the Directive, requiring the Commission to adopt a legislative proposal to replace the network of regulatory bodies by a European regulatory body dealing with cross-border issues and appeals against decisions of national regulatory bodies by 31 December 2019.

The analysis in this report shows that regulatory bodies have worked closely together on sharing information about their work, best practices and decision making, in particular in the context of the European network of rail regulatory bodies, and in certain cases on their own initiative. At the same time, there is a number of areas in which coordination between regulatory bodies needs to be further improved. The existing legal framework provides for a range of possibilities for improvement, such as the adoption of implementing acts setting out common decision-making principles and practices or the development of an electronic tool for exchanging information and discussion on cases handled by regulatory bodies.

Since only a limited number of cases with a cross-border dimension have been brought to the attention of regulatory bodies so far, there is not yet sufficient evidence for the effectiveness of existing cooperation arrangements set up by regulatory bodies and the rules of Article 57 of Directive 2012/34/EU. However, recent developments, in particular at corridor level where more and more paths are crossing several corridors, indicate that more integrated and effective regulatory oversight may be required as the implementation of rail freight corridors and development of the single European Railway area progress further. The Commission will therefore continue to monitor the developments as regards cooperation between regulatory bodies and, where appropriate, assess the need for measures to reinforce integrated regulatory oversight.

---

<sup>9</sup> European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (COM(2013)0029).