

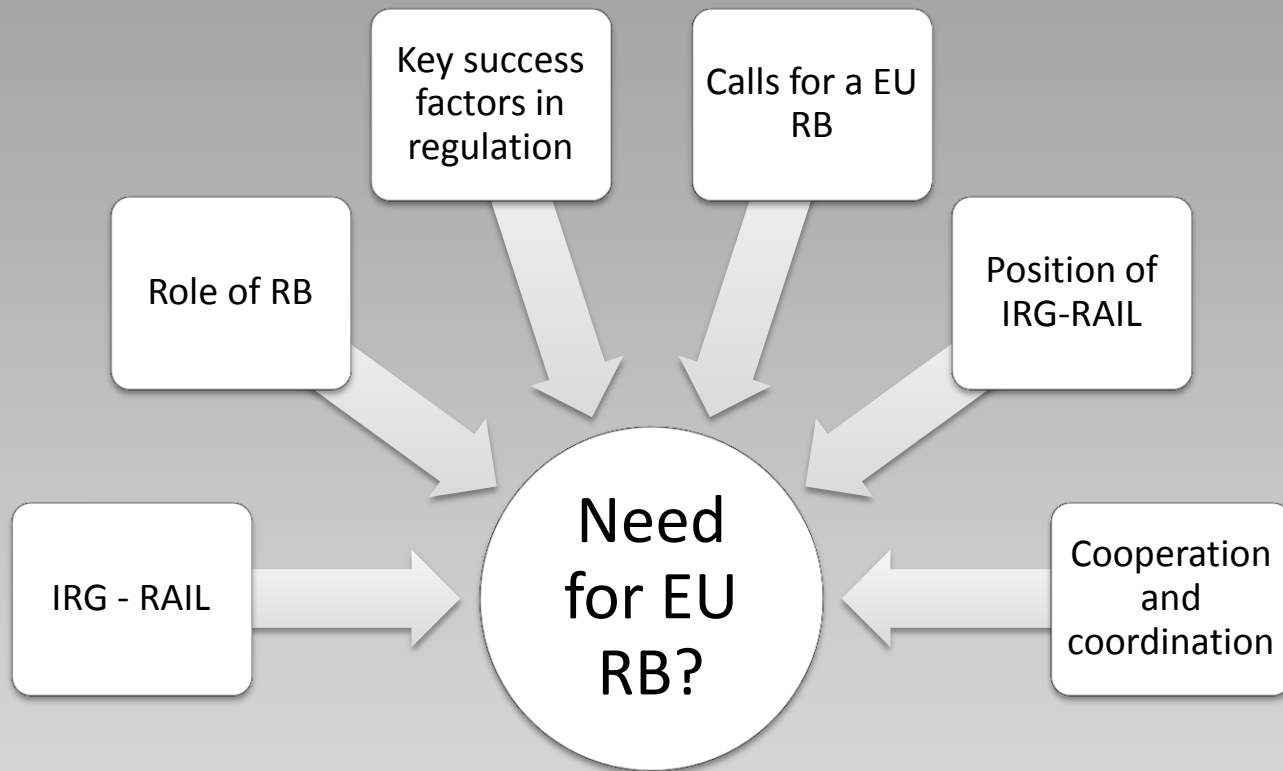
Do we need a European Regulator?

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- **Independent Regulators' Group – Rail**
- Founded in 2011, from 22 European countries (and growing)
- Objectives:
 - Develop a consistent approach to the EU regulatory framework
 - Promote sustainable and effective competition in the EU railway sector
 - Promote the development of a true EU internal market in railways
 - Develop harmonised regulatory principles and best practices
 - Speak with a single voice at the European level
- Working groups that focus on:
 - Charging
 - Access
 - Market monitoring
 - Legislative developments

Role and mission of the NRA - RB

- Regulatory bodies mandatory since First Railway Package (2001)
- But powers, independence and responsibilities not clearly defined or strengthened until Recast (2012)
- It is the RB's role to make the market work:
 - Efficiency of infrastructure management
 - Fair access to infrastructure and facilities
 - Non-discriminatory framework conditions (ticketing, rolling stock)
 - Transparency of financial flows and decision-making
 - Balance between PSO and open-access
 - Alignment of incentives: performance regime, charging, cooperation agreements
- RB oversees the correct application of the rules set out in the EU legal texts and the different national laws
- RB acts as appeal body in case of unfair treatment or discrimination
- RB can decide and take action on complaints to remedy the situation
- RB can carry out or initiate audits
- RB publishes statistical indicators
- RB may impose sanctions

- National markets vary, and the NRA will have to reflect this in its decisions
- Not a case of 'one size fits all' – consider market specifications (recital 79)
- But there are universal – institutional pre-conditions for effective regulation...
 - **Independence**
 - **Adequate competency and resources (Financial and staff)**
 - **Clear powers, including on own initiative**
 - **Appeal of decisions only by the national courts**
- ...and universal principles that a regulator should respect
 - **Accountability**
 - **Transparency**
 - **Consultation**
 - **Proportionality**
- ...to allow legal certainty of its decisions and actions

Calls for a European Regulatory Body

- Market opening has been slower than expected
 - Still largely dominated by incumbent operators
 - Infrastructure governance: potential for distortion / discrimination
 - Barriers to entry: ticketing, rolling stock, direct award
- A more international framework for rail
 - Freight corridors
 - TEN-T network
- Coordination of EU-level regulators in other sectors (telecommunication, energy, aviation, postal services)
- During negotiations on Recast and 4th Package, some MEPs have called for a “European Regulatory Body”

- EU-level regulation is neither useful or necessary.
- Regulatory oversight is best at the national level
 - Markets vary widely in their size, structure & development
 - Danger of 'lowest common denominator' regulation, hindering a single market rather than enhancing it
 - National regulators are closer to the market and end-user
 - 'On-site' regulation: requires local knowledge and expertise
 - Additional layer of bureaucracy and delay
- Principle of subsidiarity as set out in the Treaties
- European regulator would always rely on knowledge of national regulatory bodies

- Commission: national regulatory bodies are a prerequisite for efficiency and non-discriminatory market opening.
- But a European regulator is likely to weaken and undermine the development of strong, independent and well-resourced RBs.
- National RBs need the chance to prove themselves
 - Many created recently
 - Many markets in early stages of opening
 - Where national RBs are established, results are tangible
 - RB with competencies for other sectors (synergies)

- There is a clear need for coordination, cooperation, and consistency – particularly on cross-border issues
- This can be achieved through the established framework
 - Regulatory Bodies have a formal, statutory duty of cooperation
 - ENRRB - European Network of Rail Regulatory Bodies: liaison with Commission on secondary legislation
 - Bilateral / multilateral cooperation on individual cases (eg: Channel Tunnel)
 - IRG-Rail: success in agreeing areas of responsibility, and common regulatory solutions (eg: capacity allocation on freight corridors, market monitoring, economic equilibrium for cabotage)
 - Cooperation among RB on the different freight corridors (regulation 913/2010 – some cooperation agreements have been signed)

- Common objective – a single, efficient and competitive European market for rail services.
- But a European regulator would be counter-productive in this respect
- Preconditions and principles of effective regulation...
 - Independence
 - Adequate competency and resource
 - Clear powers, including on own initiative
 - Appeal by national courts
 - Accountability
 - Transparency
 - Consultation
 - Proportionality
- ...can be best guaranteed by National Regulatory Bodies