

IRG-Rail Position
on the Fourth Railway Package
(political pillar)

Jacques PROST – IRG-Rail Chair 2014

Florence School of Regulation



@IRGRail - <https://twitter.com/irgrail>

<http://www.irg-rail.eu/>



1. IRG-Rail
2. 4th Railway Package – overall position
3. Background: EP negotiations - First Reading
4. "Governance" proposal
5. "PSO" proposal
6. Next steps

- Independent Regulators' Group – Rail
- Founded in 2011 with 15 members – now 23 European countries (and growing) – currently chaired by Luxembourg regulatory body
- Objectives:
 - Share best practice
 - Develop harmonised regulatory principles and practices
 - Speak with a single voice at the European level
- Working groups that focus on:
 - Legislative developments
 - Charging
 - Access
 - Market monitoring

4th Railway Package - Overall position

- IRG-Rail welcomes the Commission's legislative proposal and in particular its focus on market opening
- IRG-Rail fully supports the creation of a liberalised domestic passenger market



- IRG-Rail points out that market opening can only be successful
 - with some key framework conditions in place (e.g. ensuring independence of IM; competitive tendering; requirements concerning rolling stock; appropriate tasks, resources and competences of regulatory bodies (RB'S);
 - when being subject to strong regulatory oversight;
 - Implementation of earlier railway packages shows that details must be worked out thoughtfully



18 June 2013 – Rapporteurs' draft reports, in particular

- **Said El Khadraoui** on Directive 2012/34
 - less strong approach for „unbundling“
 - less strong chinese walls but stronger regulatory oversight
 - new „balance“ between market opening and PSCs
 - Mandatory through ticketing
 - European Regulator
- **Mathieu Grosch** on Regulation 1370/2007
 - Competitive tendering as a rule
 - Detailed requirements for public transport plans
 - New role for RBs

26 Nov 2013 – Voting on amendments in TRAN-Committee

26 Feb 2014 – EP's First Reading – Main elements

- Concerning Directive 2012/34 „Governance Proposal“:
 - deleting of unification of all functions of IM
 - complete watering down of Chinese walls
 - weakening of RB's planned role
- Concerning Regulation 1370/2007 „PSO proposal“:
 - postponing competitive tendering to 2023;
 - introducing additional exceptions for direct awarding

- IRG-Rail fully supports market opening; Strongly welcomes EP's endorsement of the opening of the domestic passenger services in all Member States;
- Some European Parliament amendments positive (e.g.: requirements concerning open access, flexibility, Cooperation Agreements (CAs) must be transparent, non-discriminatory, non-exclusive and subject to strong regulatory oversight);

Governance proposal – Major concerns

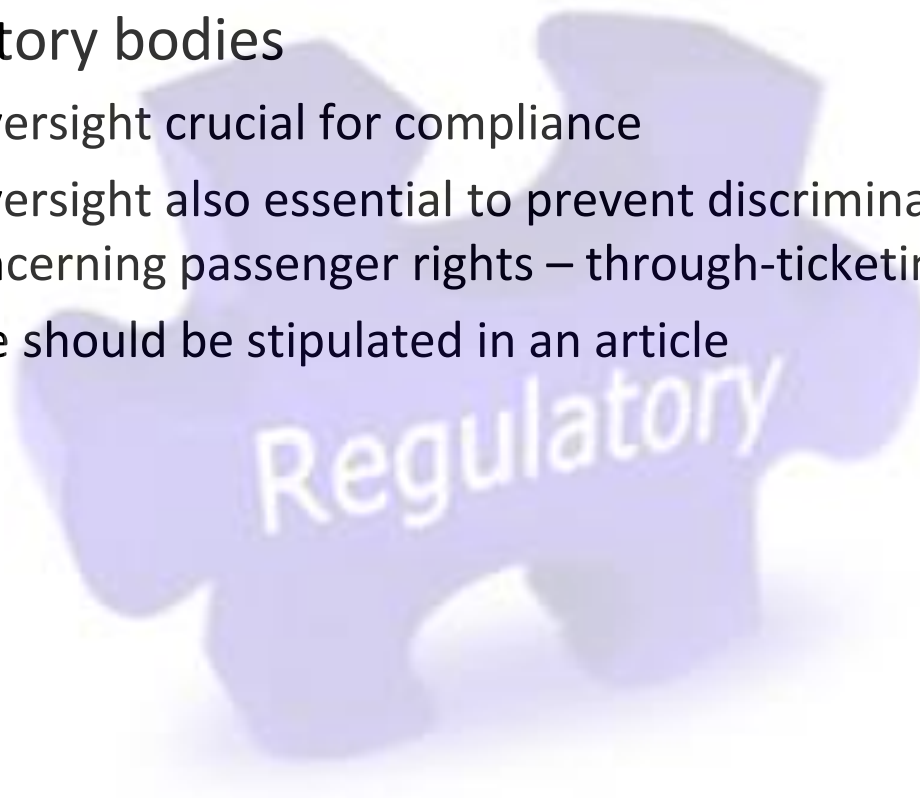
But some major concerns with EP amendments



- Infrastructure Governance
- Adopted text fails to ensure
 - independence of IM in the exercise of its core functions
 - financial transparency within vertically integrated structures
- IRG Rail regrets narrowing of IM's essential functions to capacity allocation and charging
- Concerning Cooperation agreements, requirements should apply to all CAs foreseen by EP; subcontracting within the vertically integrated undertaking

- Chinese Walls
- Major Concerns about watering down „Chinese Walls“ within vertically integrated undertaking deleting COM's proposals on
 - raising funds on the capital markets
 - prohibition to be a member of the supervisory or management boards of IM and at the same time of other legal entities
 - separate location of IM, protection of access to Information Systems and limitation of contacts with other legal entities
 - prohibition to hold any interest or receive financial benefit from another legal entity for members of the supervisory or management boards and senior staff members

- Role of Regulatory bodies
 - Regulatory oversight crucial for compliance
 - Regulatory oversight also essential to prevent discrimination with regard to new rules concerning passenger rights – through-ticketing scheme
 - Oversight role should be stipulated in an article



- IRG-Rail fully endorses the Commission's introduction of a mandatory implementation of competitive tendering for Public Service Contracts (PSC) as a general rule, without additional exemptions and without further delay
- Competitive tendering is crucial to ensure fair competition and a level playing field. Competition is not an end in itself but provides measure and guarantee of efficiency in use of public funds and performance
- According to current negotiations in the Council Working Group it is likely that "compromise solutions" will remain subject of an on-going negotiation process

- **Delay from 2019 to 2023**
 - IRG Rail opposes postponing competitive tendering to 2023
- **Reciprocity**
 - EP proposes that until end of transition period (2023) possibility to exclude from tendering procedures operators if benefit from home market protection and Public Service Contract higher value than 50% of market share.
- IRG Rail recommends that any exclusion should be time limited to reasonable transition period to avoid limiting effective competition in rail sector and delaying market opening

Additional exceptions hindering progress

- Competitive tendering should be a general rule; direct awarding (only) permitted in exceptional circumstances (e.g. substantial technical specificity; emergency measures; bankruptcy of a railway undertaking)
- IRG Rail opposes increasing possibilities for direct award of Public Service Contract
- Any exceptions must be justified and transparent and not hinder market opening
- Role of Regulatory body needs to be clarified
- Ex-officio assurance of compliance is necessary

- **Concerning public transport plans:**
 - IRG-Rail welcomes Member State's discretion on scope; welcomes simplification and flexibility in level of details to be in the Plans and focus on quality, social and safety standards;
 - IRG-Rail regrets that compliance of assessment and procedure of Plans no longer at RB's initiative but only at request of an interested party or following a complaint;
- **Concerning public funding of PSC:**
 - IRG Rail stress importance of full transparency in allocation of public funds
- **Concerning availability of Rolling Stock:**
 - IRG-Rail welcomes proposal facilitating access to suitable rolling stock; importance of sufficient requirements of financing for rolling stock

- IRG will further focus on main elements concerning Dir. 2012/34 and Reg. 1370/2007 which have been identified as key issues in the on-going negotiation process, such as the role of regulators, competitive tendering and the availability of rolling stock
- IRG-Rail will continue to contribute to the discussion and give its input to the on-going negotiation process.

