

Public consultation on international passenger transport services Involving domestic services - *Answers Bundesnetzagentur* -

Question 1:

How do you understand the regulatory framework? Does the draft presented below appear to respect the spirit of Directive 2007/58/EC and/or national texts (Transport Code and Decree No. 2010-932)?

Answer:

BNetzA can evaluate the conformity of the draft to the Directive's spirit and the regulatory framework but not to the national French texts, as it hasn't the knowledge about them.

The proceeding stated in the Articles 2 till 9 seems to be in line with the Directive. The criteria named in Article 4 include much more information than the core set of information which is written down in 3.8 of the Principle Purpose Paper of IRG-Rail.

Question 2:

Do you think the procedures are clear, complete and compatible with your operations?

Answer:

The procedures seem to be clear. As to their compatibility to procedures of railway undertakings we cannot contribute own experiences.

The time lapses are planned very well. But they have to be coordinated with the time limits of path request. It doesn't make sense to reserve/request paths for services where no access right exists.

The time limit within Article 19 is now two month. It should be changed to six weeks to comply with Recast rules.

Question 3:

Is it desirable to fix a deadline by which the applying railway undertaking must refer a case to the Authority?

Answer:

Within the Directive no time limits are fixed.

The applying railway undertaking should refer its case early enough before request the path at the infrastructure manager. The regulatory body needs enough time for its validation and after the decision the path request of the railway undertaking has to be in time too. Therefore, it is in the applying railway undertakings own interest to refer the case as early as possible.

Further notice: Within the English version the word "lodge" is unclear. It may be changed to "apply" or "request".

The draft is supposed to force the applying railway undertaking to send the request together with the information package. In this context, the wording of article 13 suggests the request of an applying railway undertaking to be mandatory even if it isn't.

Question 4:

Is a fixed time-scale like that described above desirable? Do you think the one-month deadline is sufficient?

Answer:

Such a timeline is desirable to hinder requests of other railway undertakings after a longer time. The applying railway undertaking needs legal certainty, which is not given if a competing railway undertaking, has at every time the right to ask for the principle purpose test.

The time limit of one month is adequate. The regulatory body publishes the information about the new service on its website and access is easily possible. Today there are also systems to inform the competing railway undertaking automatically about new cases.

But it has to be taken into account that it also needs to be possible to work out the question of endangerment of the Economic Equilibrium during this time.

Question 5:

Do you think the approach chosen in Articles 25 and 26 is appropriate?

Are the threshold conditions suggested in Article 25 sufficient? Do you think the criteria set out in Article 26 are appropriate? What other, if any, criteria should be taken into consideration?

Should the criteria be organised in order of priority?

Answer:

The thresholds stated in Art. 25 are quite high. The German law demands at least 50% passengers to be transported between stations in different member states. This threshold is already very high, especially when there are many attractive stops on one side of the border. In this case the portion of cross-border transportation could easily sink below 50%. Even a train from Amsterdam to Frankfurt am Main i.e. might not reach this threshold. Choosing a lower threshold (around 25 or 30%) might be advisable.

In case of the parameters a) and c) it is unclear how the number of passengers and the turn-overs for trains which do not drive at the time of assessment are calculated. How will the forecast be done? Who has to make it? Are the appraisals of the applying railway undertaking sufficient?

Operability of Directive 2007/58/EC attends thresholds or objective criteria somehow. In this regard, it should be taken into account that the COM is opposed to thresholds. Static thresholds are seen as measures to build barriers for market entry.

However, it would have been desirable to agree a common understanding of the implementation of Directive 2007/58/EC in the IRG-Rail Working Group beforehand. As stated in 3.30 of the IRG-Rail Principle Purpose Paper, the group recommends a qualitative and quantitative assessment rather than strictly applying thresholds. Additional criteria should be taken into account in cases where the national legislation envisages quantified thresholds strictly.

In Annex 4 of the IRG-Rail Principle Purpose Paper you did not mention any thresholds in the categories passenger numbers, length of the longest service and proportion of turnover. Thus, the non-usage of thresholds, which would be in line with the IRG-Rail Principle Purpose Paper, seems to be possible.

In general, the criteria in Article 26 seem to be appropriate and are a good mix. But the usage of these criteria in connection with the criteria named in article 25 would have been more appropriate. Further, it is unclear, how many of the eight conditions need to be fulfilled.

Question 6:

What do you think is an appropriate period of validity of the Authority's decision and what monitoring measures would you suggest?

Answer:

Since the normal path allocation is valid for one working timetable period, the Principle Purpose test could have the same validity. It would have to be renewed prior to every working timetable period. The advantage of this option is the regular review on the access right; disadvantages are the time and effort involved.

This option might be problematic for new entrants, though. To implement new services is a long term project. The number of passengers, maybe in particular the cross-border ones, probably won't be that high after starting the new service. An existing product is easier to market than a future product.

Trains which were ordered by a railway undertaking especially to offer cross-border services and which have to fulfil special technical requirements don't amortize themselves before 20 or 30 years. Therefore, from an economic point of view even longer time periods of validity are sensible (10 years or more).

Questions 7 – 11

Answer:

We pass to answer questions related to the Economic Equilibrium as this instrument is not implemented into German law. We have no experiences with it.