



Sixth Annual Market Monitoring Working Document

March 2018



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List of country abbreviations and contributors

Country	Country abbreviation	Participating regulatory bodies
Austria	AT	Schiene-Control GmbH
Belgium	BE	Regulatory Body for Railway Transport and for Brussels Airport Operations
Bulgaria	BG	Railway Administration Executive Agency
Croatia	HR	HAKOM
Denmark	DK	Jernbanenaevnet
Estonia	EE	Estonian Competition Authority
Finland	FI	Finnish Transport Safety Agency
France	FR	Autorité de Régulation des Activités Ferroviaires et Routières
Germany	DE	Bundesnetzagentur
Greece	GR	Regulatory Authority for Railways
Hungary	HU	National Transport Authority
Italy	IT	Autorità di Regolazione dei Trasporti
Kosovo	KS	Railway Regulatory Authority
Latvia	LV	State Railway Administration
Lithuania	LT	Communications Regulatory Authority of the Republic of Lithuania
Luxembourg	LU	Institut Luxembourgeois de Régulation
Netherlands	NL	Autoriteit Consument & Markt
Norway	NO	Statens jernbanetilsyn
Poland	PL	Urząd Transportu Kolejowego
Portugal	PT	AMT - Autoridade da Mobilidade e dos Transportes
FYR Macedonia	MK	Macedonian Railway Regulatory Agency
Romania	RO	Consiliul Național de Supraveghere din Domeniul Feroviar
Slovakia	SI	Railway Regulatory Authority of the Slovak Republic
Slovenia	SK	AKOS
Spain	ES	Comisión Nacional de los Mercados y la Competencia
Sweden	SE	Transportstyrelsen
Switzerland	CH	Schiedskommission im Eisenbahnverkehr
United Kingdom	UK	Office of Rail and Road

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Introduction



Participating countries

AT - Austria
BE - Belgium
BG - Bulgaria
HR - Croatia
DK - Denmark
EE - Estonia
FI - Finland
FR - France
DE - Germany
GR - Greece
HU - Hungary
IT - Italy
KS - Kosovo
LV - Latvia



LT - Lithuania
LU - Luxembourg
MK - FYR Macedonia
NL - Netherlands
NO - Norway
PL - Poland
PT - Portugal
RO - Romania
SK - Slovakia
SI - Slovenia
ES - Spain
SE - Sweden
CH - Switzerland
UK - United Kingdom

1. Introduction

This working document complements the Sixth IRG-Rail Market Monitoring Report¹ by providing details about national data and contexts. The aim of this document is to precise developments in the monitored countries and to provide information on a more detailed level, on each of the topics presented in the main report: network characteristics (part 2), track access charges paid by railways undertakings for the minimum package (part 3), market players and global rail traffic (part 4), rail freight (part 5) and passenger (part 6) markets and finally, the quality of rail passenger services (part 7). Additionally, the working document also includes an update about rules for market entry in the monitored countries (part 8) as presented in the Fifth Market Monitoring Report, since four additional countries have provided data on this subject². At last, the working document also includes an abstract of important regulatory decisions taken (part 9), or for which consequences appeared, in 2016. All data provided in figures and tables are available in the Excel annex of the report.³

The working document can be read as a separate report or just in parts for anyone seeking more detailed or country specific information than what is provided in the main report.

¹ <https://irg-rail.eu/irg/documents/market-monitoring/186,2018.html>

² Namely Lithuania, FYR Macedonia, Portugal and Romania.

³ <https://irg-rail.eu/irg/documents/market-monitoring/186,2018.html>

02

Network characteristics of the railway market



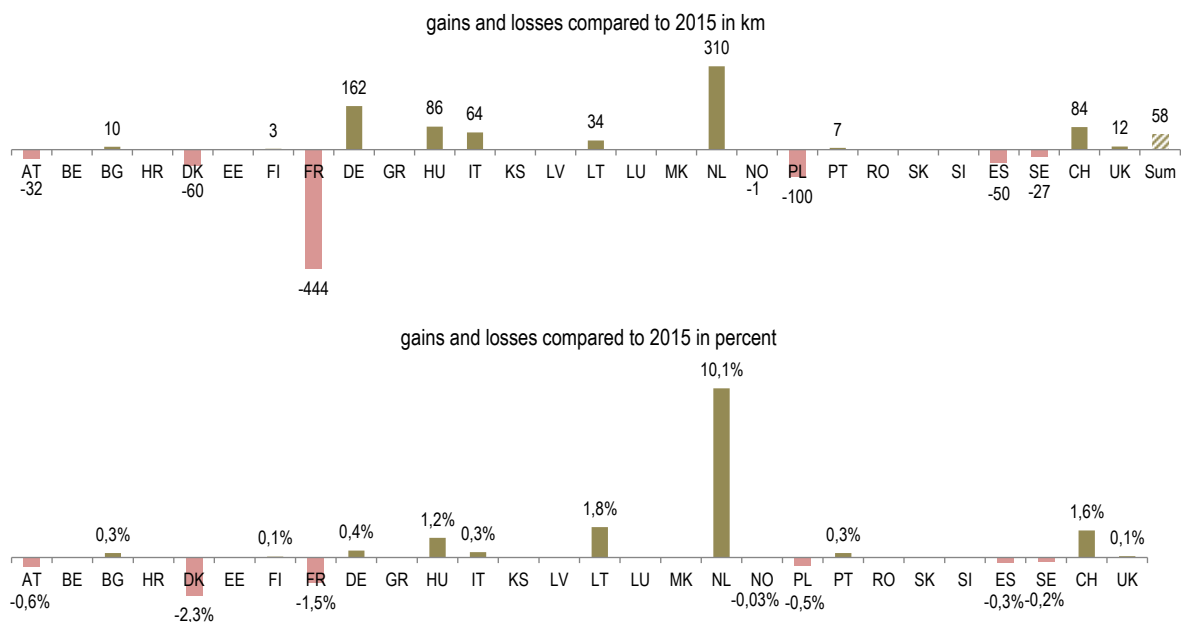
2. Network characteristics of the railway market

2.1. Network structure

2.1.1. Evolution of rail route length

Different national trends can be observed in terms of evolution of network length between 2015 and 2016.⁴ The largest increase in kilometres of lines was observed in the Netherlands (+310 km), followed by Germany (+162 km). On the other hand, the largest decrease was observed in France (-444 km), followed by Poland (-100 km). When considering the changes in relation to the size of the railway network, the biggest development occurred in the Netherlands, with an increase of more than 10% of the route length. In total, the route length in the 28 countries participating in this report was nearly stable and has grown slightly by 58 km compared to the previous year (Figure 1).

Figure 1 – Evolution of total route length between 2015 and 2016⁵



The evolution in network size can partly be explained by the construction of new routes or the decommissioning of existing routes. This is the case in France, for instance, where some railway lines closed down between 2015 and 2016, stopped serving the regular traffic or got converted into sidings (-487 km). On the other hand, a new section of a high-speed line came into service in 2016 (+123 km). In Poland, the main infrastructure manager decommissioned 81 km of railway lines that were not or only scarcely used or in bad technical condition. In addition, further industrial freight lines operated by small infrastructure managers were also decommissioned in 2016.

However, the construction or decommissioning of some routes is not the only explanation of the reported changes. They can also be explained by the adjustment of the longitudinal

⁴ Total route length in 2016 per country is available in Figure 1 of the Report.

⁵ Only positive and negative changes in the total route length have been reported here. The network size of the others countries remains unchanged.

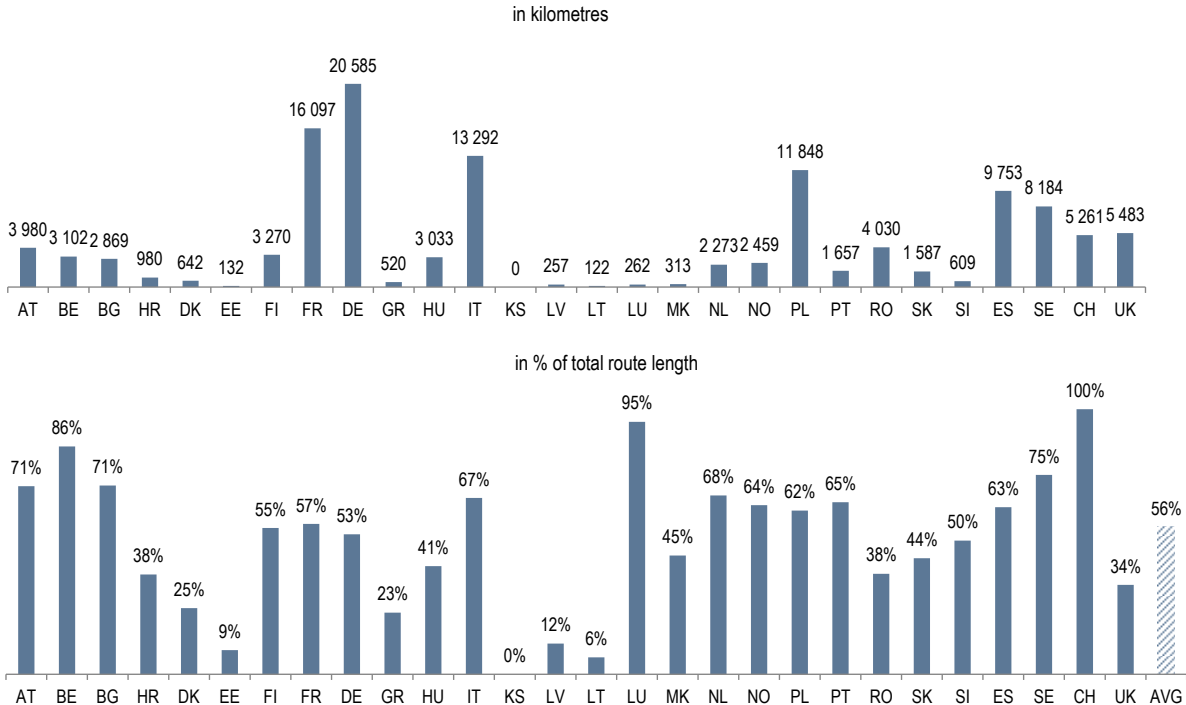
profiles of the railway tracks, as it is the case, for example, in Lithuania. The same applies to Hungary, where the methodology of the main infrastructure manager for registering the length of the infrastructure was modified in 2016. The scope was extended to include the lines maintained for prospective operations. In France, there have also been various adjustments regarding the route length, in particular for port areas, which made the data more reliable but led to a decline of the total railway infrastructure by 80 km. In the Netherlands the increase of route length is partially due to adjustments in the measurement in terms of track and route length. In addition, the provided data did not comprise the “Betuwelijn” line before.

The increase in Germany is due to the implementation of the Railway Regulation Act (ERegG) which entered into force in September 2016. The new legislation has provided the regulatory body with comprehensive powers to request data and thus led to a higher response rate from the market.

2.1.2. Network electrification

The national levels of electrification differ significantly (Figure 2) across countries from no electrification in Kosovo to a fully electrified network in Switzerland. The proportion of electrified tracks as such is not a relevant quality indicator of the condition of the railway network. However, the electrification of the railway network may increase the capacity on a route and the existence of sufficient electrified alternative routes can contribute to making the railway network less vulnerable in case of disruptions.

Figure 2 – Electrified route length in 2016

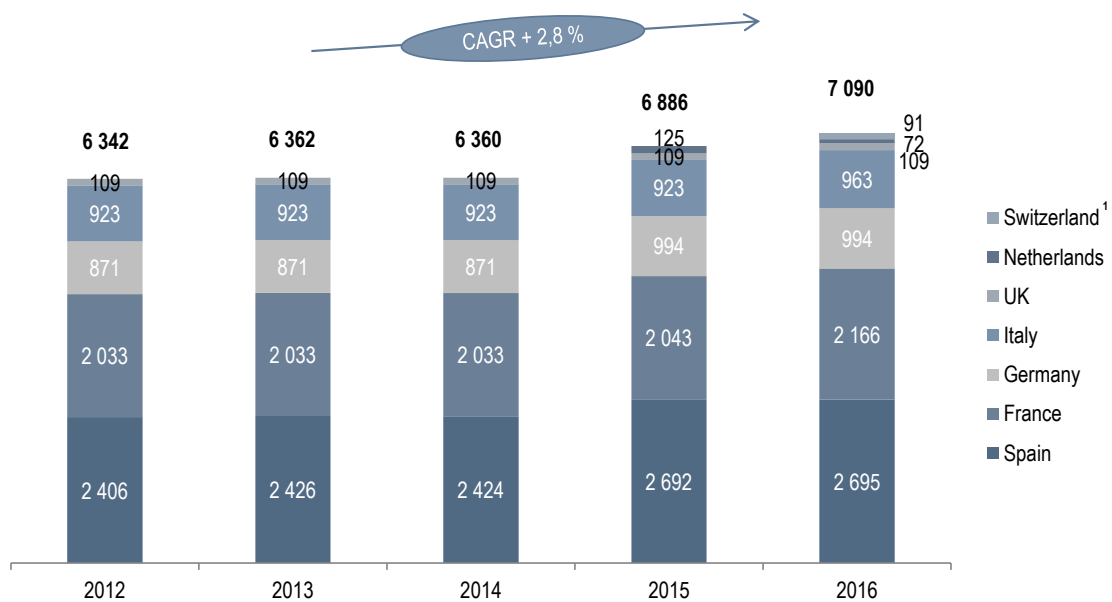


2.1.3. High-speed route length

The on-going development of the European railway network is also reflected in the expansion of high-speed railway lines and infrastructure. In 2016, the Netherlands, the United Kingdom, Italy, Germany, France, Spain and Switzerland (Figure 3)⁶ reported high-speed lines as defined in the Commission’s Implementing Regulation (EU) 2015/1100.⁷ The longest high-speed lines are still in Spain with 2 695 km in 2016 (17% of the total route length) followed by France with 2 166 km in 2016 (8%), Germany with 994 km (2.5%) and Italy with 963 km (5%).

Since 2012, the total high-speed route length has increased by 2.8% on average every year. In 2016, new high-speed lines started operating in France, Italy, Switzerland and Spain. In Italy, on the high-speed line from Milan to Verona the track between Treviglio and Brescia (39.6 km) was inaugurated in 2016. In France, the second section between Baudrecourt and Vendenheim (123 km) of the high-speed line “LGV Est” from Paris to Strasbourg entered into service in July 2016. In Switzerland the Gotthard base tunnel, the world’s longest and deepest rail tunnel, was inaugurated in June 2016.

Figure 3 – High-speed route length (in km) in 2016⁸



¹ on swiss high-speed-tunnel-tracks trains run at max. 200 km/h due to capacity issues

2.1.4. Main infrastructure manager share

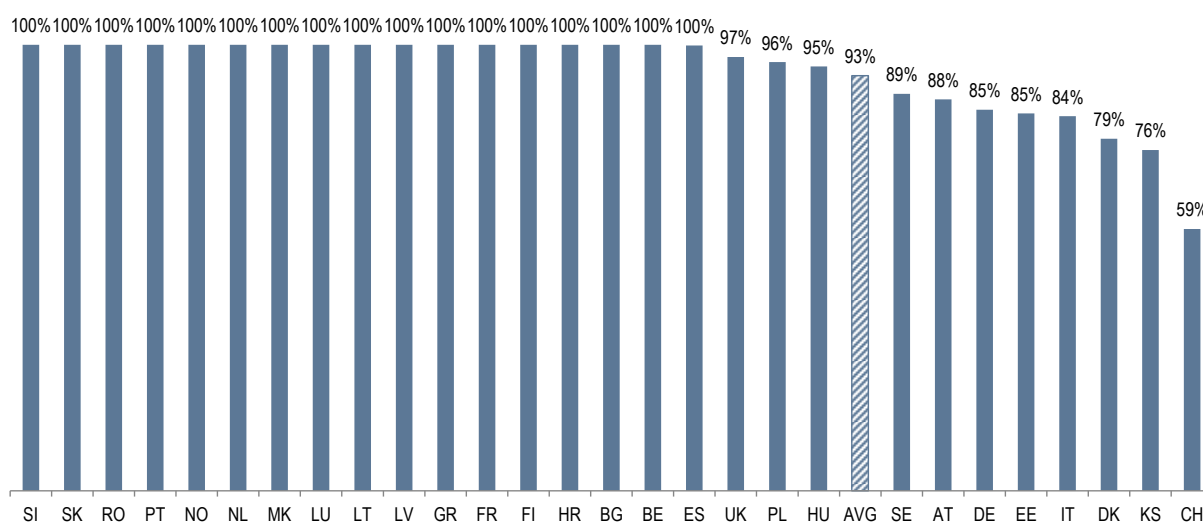
The main infrastructure managers contribute to the major share of the total route length (93% in 2016); their share has only decreased marginally since 2012. In 11 countries there is more than one infrastructure manager. The highest network share of other infrastructure managers can be found in Switzerland, Kosovo and Denmark (Figure 4).

⁶ High-speed lines also exist in Belgium, but the precise route length was not submitted to IRG-Rail.

⁷ Rail passenger services provided by high-speed rolling stock, including tilting trains, that travel at least 200 km/h for at least part of the service; the use of high-speed infrastructure is not always necessary.

⁸ 7 countries included, Belgium is missing.

Figure 4 – Main infrastructure manager’s share of route length in 2016



2.2. Network usage intensity

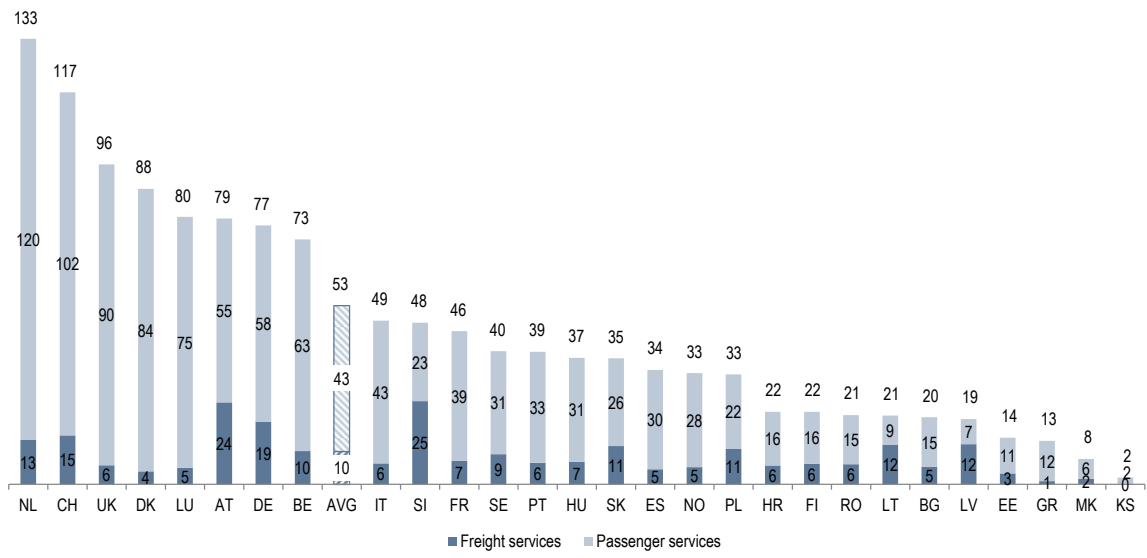
The number of trains running per route kilometre per day characterizes the usage intensity of the railway network and is an indicator for the occupancy of the network (Figure 5). However, it does not identify the level of congestion, since some lines may be highly used and some may not. For instance in France, 80% of passenger train movements are concentrated on 27% of the rail network.⁹ It is worth noting that this indicator does not take into account whether there are single or multitrack lines. Indeed, single tracks may limit the possible network usage.

The European railway network is predominantly used by passenger transport services. On average, more than four times as many passenger trains operate per day per route kilometre as freight trains. Latvia, Lithuania and Slovenia are the only countries in which freight transport services play a bigger role.

With regard to passenger trains, the Netherlands has the highest intensity of network usage with 120 trains per day per route kilometre. A high proportion of the population in the Netherlands travels and commutes by train. In the freight sector, Slovenia has the highest network usage with 25 freight trains per day per route kilometre, closely followed by Austria with 24 trains. This may be explained by the fact that these two countries are major transit countries for cross border freight traffic. Compared to 2015, the global network usage intensity on average increased slightly.

⁹ <http://www.arafer.fr/wp-content/uploads/2018/01/bilan-ferroviaire-2015-2016-version-anglaise.pdf>

Figure 5 – Network usage intensity (trains per day per route km) in 2016



03

Track access charges (TAC)
paid by railway
undertakings for the
minimum access package



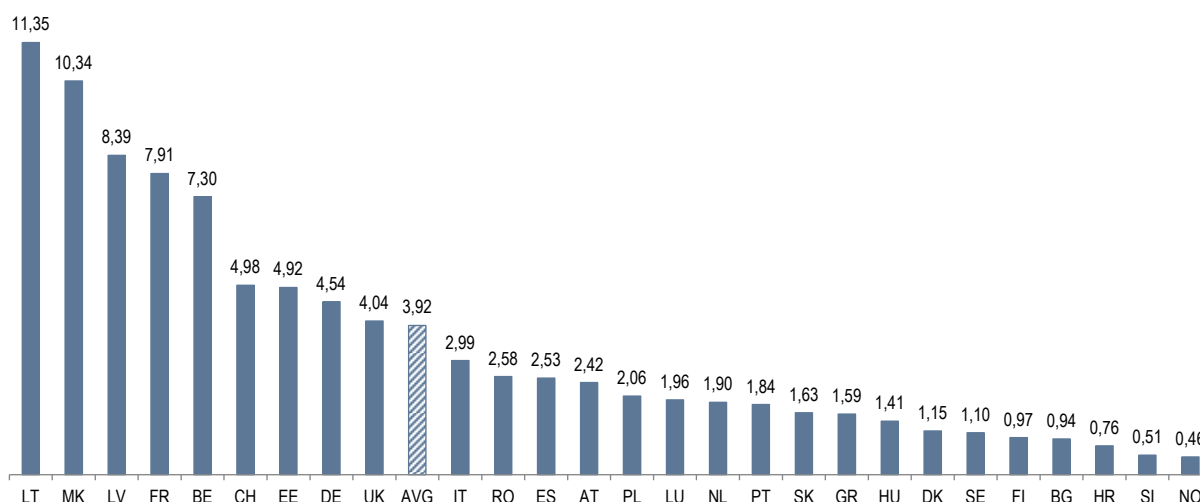
3. Track access charges paid by railway undertakings for the minimum access package

It is important to note that, for each country, charges for specific types of trains (such as heavy or light trains) and/or specific lines (high-speed versus conventional, main lines versus regional lines) can be very different in terms of the average track access charges. The overview of national track access charges (TAC) in Figure 6 does not allow drawing of any clear comparison of track access charges among the monitored markets. For example, TAC for passenger trains also include station usage in some countries.

It is also worth noting that many Member States have yet to implement the charging principles for the minimum access package set out in Directive 2012/34/EU and that some countries have only done so recently.

In Norway the relative low TAC was because there were no infrastructure charges in Norway in 2016, except for heavy transport and on the line from Oslo to Oslo Airport.^{10 11}

Figure 6 – Track access charges (in euro per train.km) from RUs for total services in 2016



In 2016, 87% of TAC were paid by passenger operators (Figure 7). On average, TAC per train.km were € 4.13 for passenger services and € 2.78 for freight services (Figure 8). In only six countries, FYR Macedonia, Finland, Latvia, Estonia, Lithuania and Slovenia, are TAC mainly derived from freight services.

Slovenia had the lowest level of TAC paid by passenger service (1%). This is because passenger trains that operate under PSO in Slovenia are exempted from paying TAC and only the 2 % of the trains that operate commercial services have to pay TAC.

¹⁰ In Norway, heavy transport was in 2016 defined as freight transport with axle load above 25 tonnes, meaning that the heavy transport charges was in practice only levied on one line, the line in the northern Norway from Narvik to the Swedish border where iron ore is being transported from Sweden to Norway (Kiruna – Narvik).

¹¹ For more details about national practices, see the IRG-Rail working paper “Updated review of charging practices for the minimum access package in Europe”, version 4, d.d. 24 November 2017.

Figure 7 – Track access charges share (in %) from passenger and freight RUs in 2016

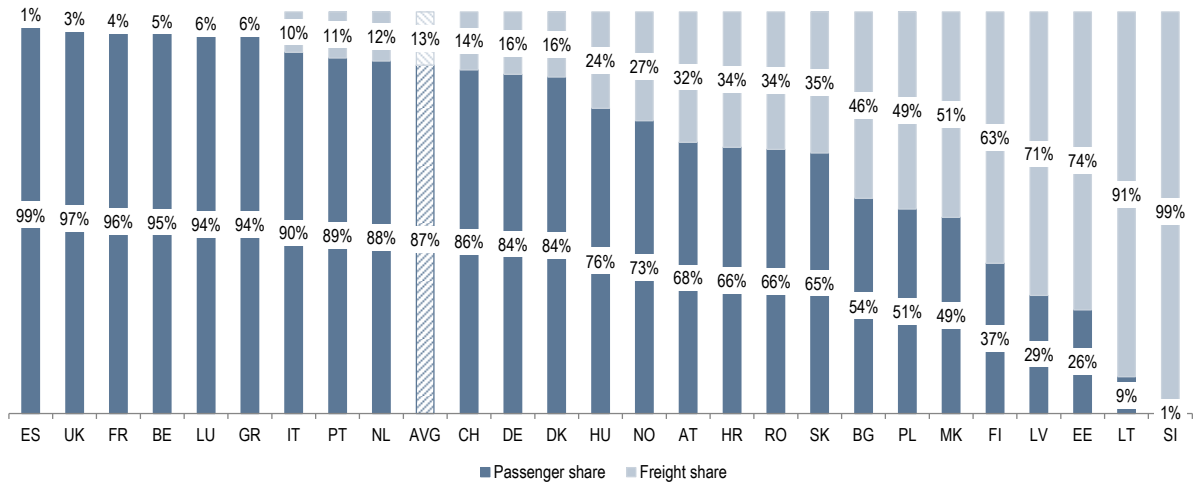
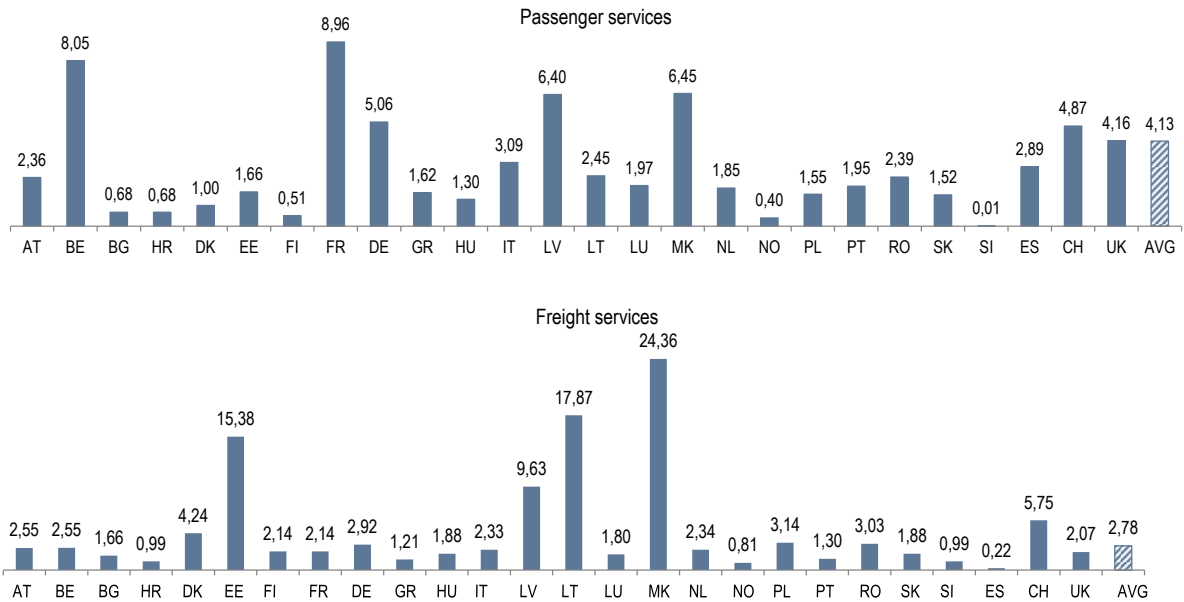
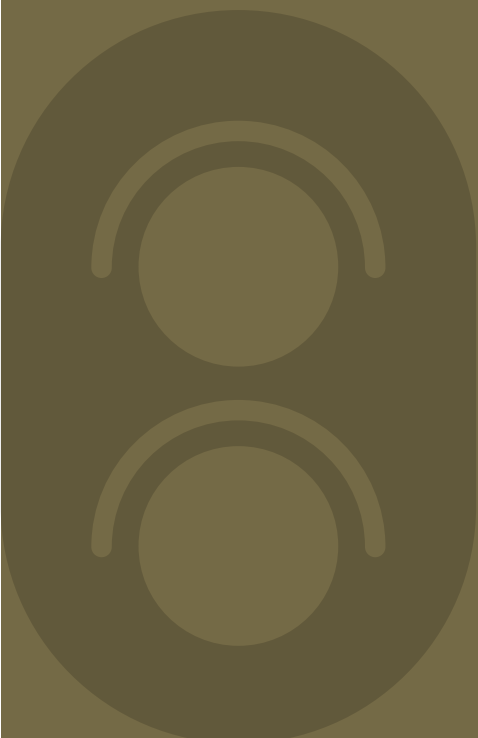


Figure 8 – Track access charges (in euro per train.km) from RUs per services in 2016



04

Market players and global rail traffic

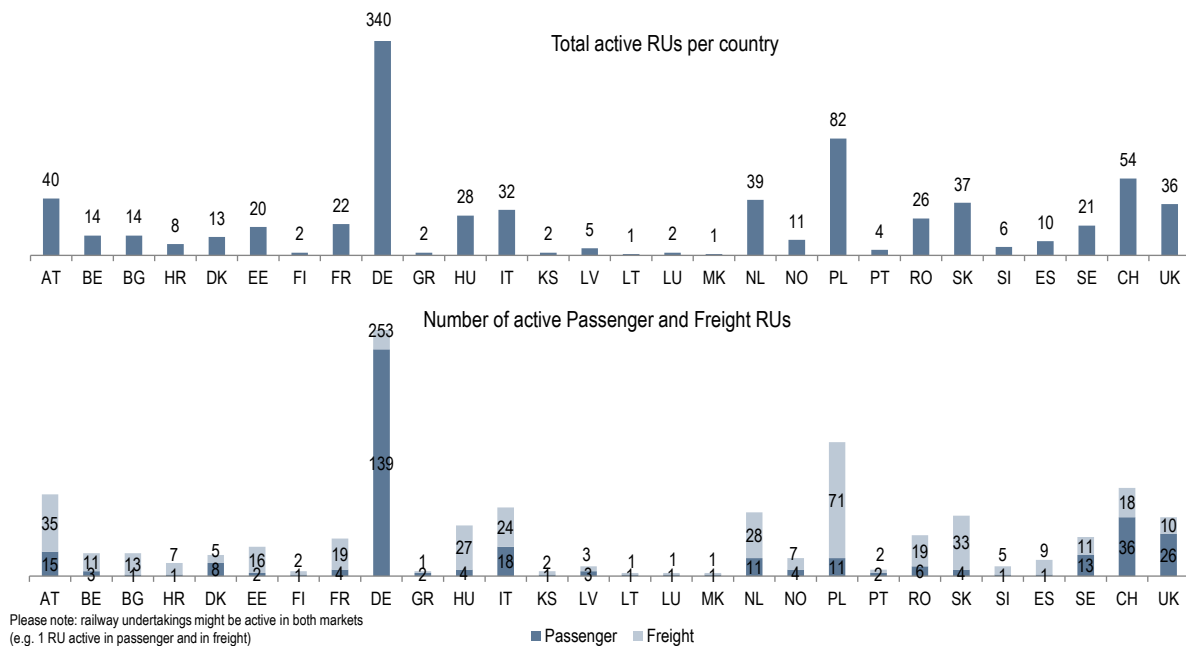


4. Market players and global rail traffic

4.1. Market Players

The number of active railway undertakings varies significantly across IRG-Rail countries (Figure 9). The number of market players generally depends on historical national conditions and on the level of market entry in each country.¹²

Figure 9 – Number of active railway undertakings (total and per services) in 2016

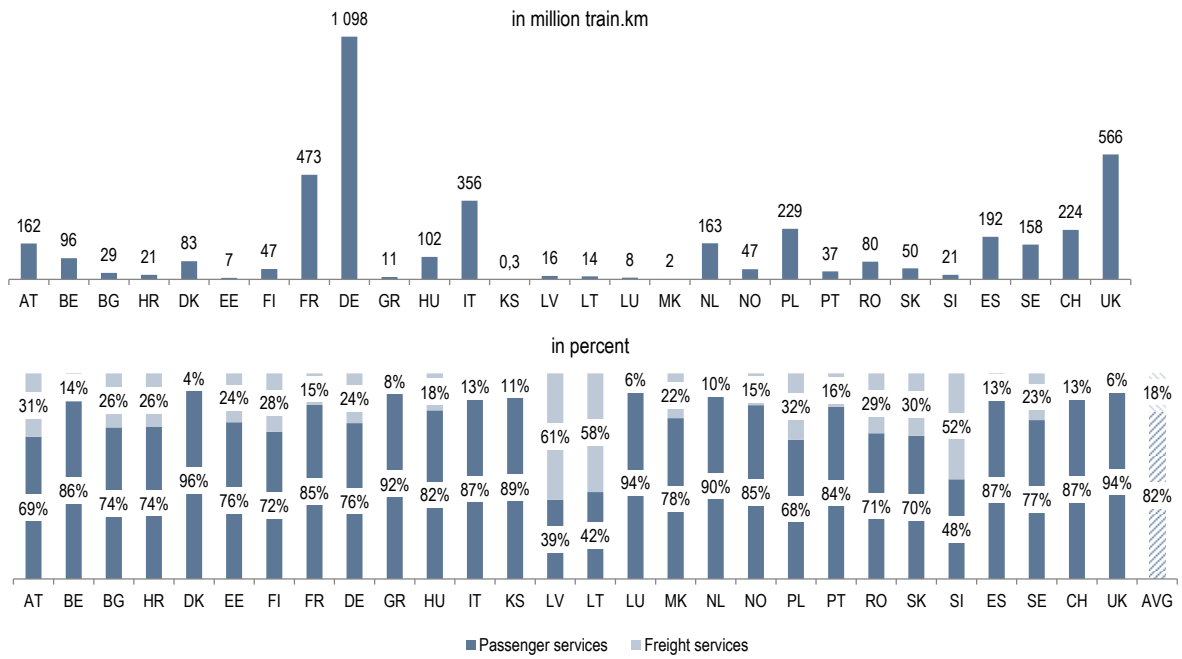


4.2. Total rail traffic

In 2016, the total number of train.km in the 28 countries was 4.29 billion. On average, the share of passenger traffic was 82%, with large disparities across countries (Figure 10). Germany is by far the country with the highest number of train.km – almost 1 100 million train.km – which represents 25% of the monitored rail market. Germany is followed by the United Kingdom which performs 13% of the total and France which performs 11%. These three countries make up for about half of the total number of train.km in the monitored countries.

¹² See the fifth IRG-Rail Market Monitoring report for further details about the number and type of market players in each country as well as an assessment of the level of market entry: <https://irg-rail.eu/irg/documents/market-monitoring/135,2017.html>

Figure 10 – Rail traffic (in millions train.km) and the breakdown between passenger and freight services (in %, based on train.km) in 2016



05

The rail freight market

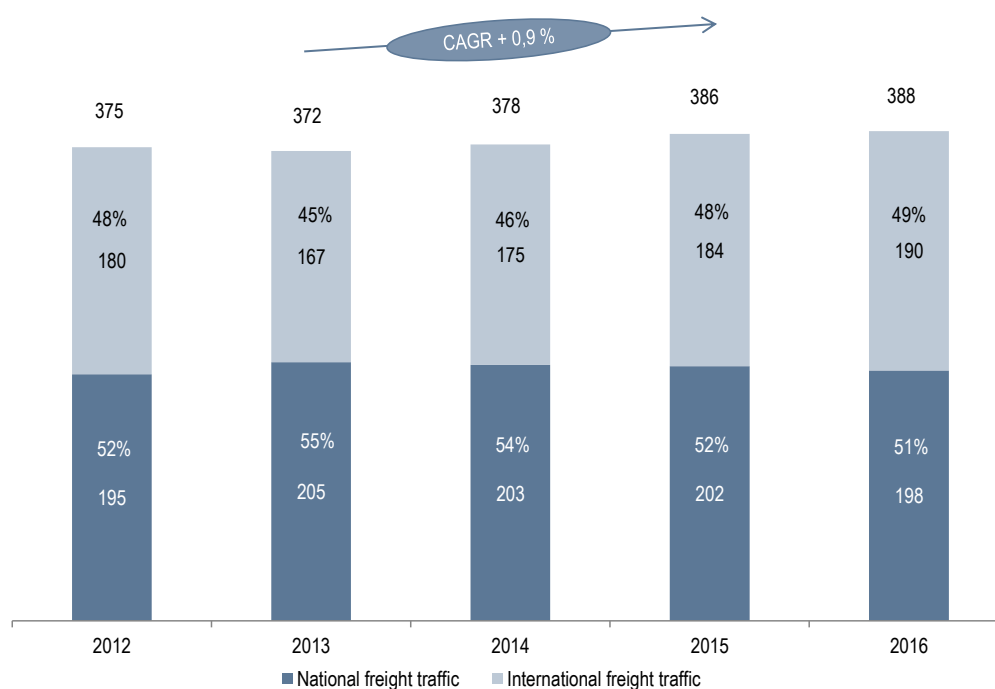


5. The rail freight market

5.1. The rail freight market size

The demand for international freight services has been steadily increasing since 2013 reaching a level in 2016 which was 5.5% higher than in 2012 (Figure 11). The growth was led by Germany with international traffic in 2016 being 11% higher than in 2012. Global national net tonne.km decreased between 2013 and 2016 by around 3.5%. This trend has led to an increase in the share of international traffic compared to national traffic in the last 4 years.

Figure 11 – National and international freight traffic (in net tonne.km) from 2012 to 2016¹³



The total demand in 2016 was 422 billion of net tonne.km (28 countries observed). The German, Polish and French rail freight markets were the largest: together, they represent almost 50% of the total demand (in tonne.km) in the 28 countries. A decrease in net tonne.km was observed compared to 2015 in 12 countries, while the demand of freight services increased in 14 countries and remained constant in 2 countries (Figure 12).

On average, rail freight traffic was almost stable (+1.1%) between 2015 and 2016. The average growth masks large disparities across participating countries: from -20.2% in FYR Macedonia to +11.7% in Finland. There are various potential explanations for these changes such as developments in the organisation of freight transport in some countries, including the competition from road transport and also external impacts such as the economic crisis or bad weather conditions.

¹³ 21 countries are included (Belgium, Estonia, Luxembourg, Norway, Slovakia, Kosovo and Switzerland are missing).

As explained below, changes in the organisation of freight transport impacted negatively on rail freight traffic in the United Kingdom, France, the Baltic countries, Bulgaria and in FYR Macedonia whilst in Finland, Slovenia, and Sweden rail freight transport grew.

In the United Kingdom, freight train.km declined by 9% in 2016 and by 17% since 2012 while net tonne.km declined by 12% in 2016 and 21% since 2012. The fall is almost exclusively due to a reduction in coal transport as coal-fired power stations have been closed in order to meet targets for reductions in greenhouse gas emission. In 2015, there were 29.4 million tonnes of coal transported and in 2016 this fell to 12.2 million. In France, there was also a drop in the transport of metal ores and other mining products (-13%), as well as manufactured products (-2.4%). This led to a total decrease of rail freight transport across the monitored countries of 5% in tonne.km and 6% in tonnes. Combined transport was more heavily impacted than conventional transport. Rail freight traffic in Baltic countries has been decreasing steadily in the last years, principally because of the sanctions between the EU and Russia. In addition, Russia is using more and more its own ports for import and export transport activities. In Latvia both freight train.km and tonne.km decreased by 16% in 2016, which amounts to a decline of 26% and 27% respectively since 2012. In Estonia, freight train.km decreased by 25% between 2015 and 2016 and by 60% in the last 10 years. In Bulgaria, a decrease of 6% between 2012 and 2016 in demand of freight transport was due to strong competition from road transport.

In 2016, the biggest decrease in tonne.km was observed in FYR Macedonia (-20% since 2015, -47.5% since 2012). Freight train.km also fell by a similar amount (-21% since 2015, -46% since 2012). Between 2015 and 2016 there was a decrease in transit in the corridor between Greece and the rest of EU, which constitutes 90% of freight rail traffic in FYR Macedonia.

The biggest increase in tonne.km in 2016 took place in Finland. Freight traffic in this country returned to the level seen prior to 2015, when rail traffic plummeted. This is mainly due to the recovery of Russian import and transit traffic and more competitive prices of railways. In Slovenia freight train.km increased by 12% and tonne.km by 4%, continuing the growth trend observed in earlier years, fuelled by growing transshipment of goods in the port of Koper. In Sweden the growth of 4% in net tonne.km can, to a major extent, be explained by an increase in iron ore transports.

While in some countries such as Italy, the market is continuing its recovery after the economic crisis of 2008-2010, other countries such as Greece continue to be affected. In Greece, tonne.km decreased by 14% and train.km by 5% in 2016, which is the continuation of the decline in 2015. As well as the economic crisis, there are some other contributing factors such as infrastructure modernisation projects and the refugee crisis resulting in a 2.5 month interruption in traffic on the section of Thessaloniki - Idomeni railway.

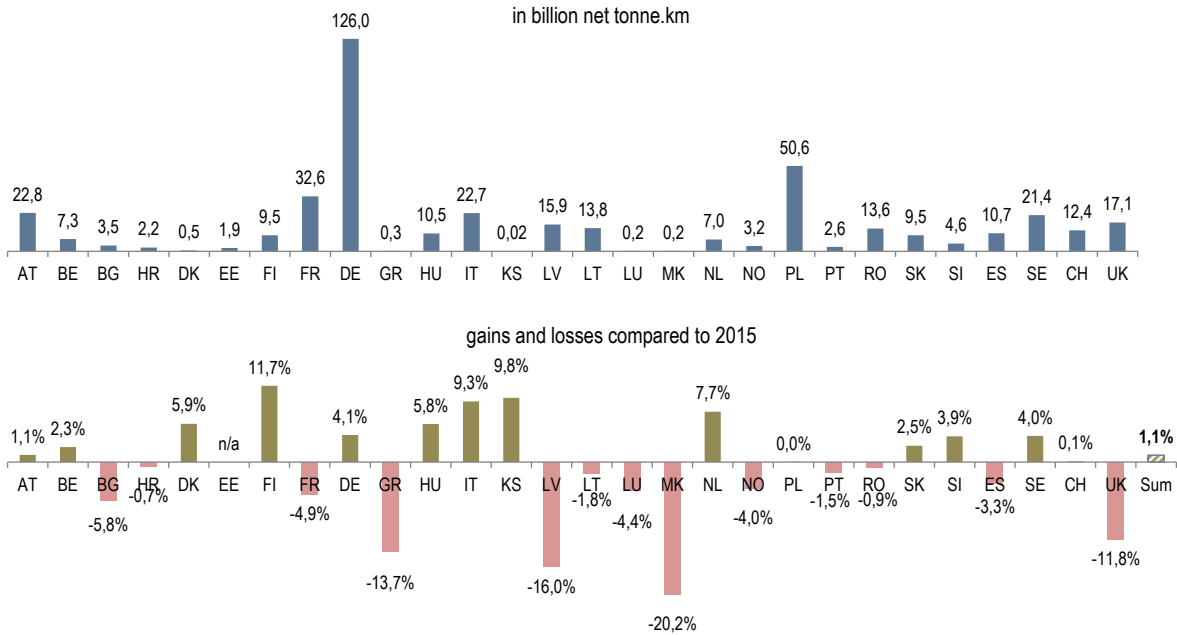
In France, poor weather conditions caused a drop in cereal production activities. Rail transport of agricultural and food products, which accounted for 13% of rail freight transport (tonne km) in France in 2016, fell sharply by 24% compared to the previous year.

In Norway freight train.km decreased by 5.4% and tonne.km by 4% from 2015, continuing the downward trend since 2012. This can partly be explained by the fact that Cargolink AS, the second largest freight operator in 2015, left the market in March 2016, and did not supply

data for 2016. There was also a train drivers' strike during October 2016 that affected both the passenger and freight market.

In Denmark, tonne.km in 2016 increased by 6% and freight train.km by 8.5%. The 40% growth in tonne.km since 2012 represents the largest relative increase in all IRG-Rail countries. It is driven by growth in international rail freight traffic, which has increased by 69% since 2012. In March 2014 the Danish infrastructure manager cancelled the charge per tonne. As a result, operators have been inclined to load trains as they are charged per train.km.

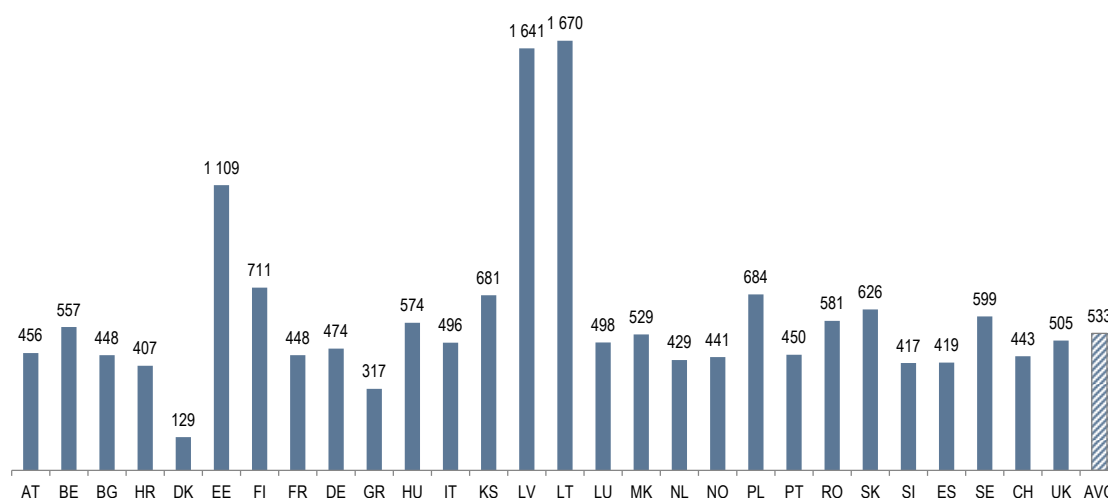
Figure 12 – Rail freight traffic (in billion net tonne.km) in 2016¹⁴ and its evolution compared to 2015



The heaviest trains can be found in Baltic countries (Figure 13). Since the gauge of their infrastructure is in general wide (1520 mm), wagons can be loaded with up to 60 tonnes, while the 1435 mm gauge in place in most of Europe only allows loads up to 30 tonnes. . The average load in IRG-Rail countries is 533 tonnes per train.

¹⁴ Methodological changes and incomplete data are behind some evolutions in freight rail transport, notably in Germany and in Denmark. In Germany more railway undertakings provided data for 2016 than for 2015.

Figure 13 – Freight traffic load (tonne.km per train.km) in 2016



5.2. Market shares of freight railway undertakings

Generally, high market shares for any one individual market participant in a market can potentially be a sign of weak competition in the market. Additionally, high market shares for incumbents can indicate incumbent's competitive advantage and high barriers for new entrants. Figure 14 and Figure 15 present the market shares of domestic incumbents and new entrants (including foreign incumbents and non-incumbent railway undertakings), both in net tonne.km and freight train.km.

There are several countries where the only operator on the rail freight market is the domestic incumbent. This is the case of Greece, Kosovo, Lithuania, Luxembourg and FYR Macedonia. In Finland, the incumbent has almost 100% of the market. Conversely, there are several competing freight operators in many countries. In Portugal, the company Takargo Rail was formed in September 2006 to take a leading role in the process of liberalisation of the rail freight market. In January 2016, the incumbent freight operator CP Carga was sold to the Swiss non-incumbent multinational operator MSC Rail and since then has been operating under the name Medway. Therefore, there is no longer any freight incumbent on the Portuguese market.

The foreign incumbent in the Netherlands is DB cargo. Even though DB cargo is owned by the Deutsche Bahn, it still operates under the Dutch flag. Around one third of the market now belongs to foreign incumbents (Captrain is also owned by SNCF) and two thirds to non-incumbents.

The United Kingdom has the third most open freight market, both in tonne.km and train.km, with market shares of new entrants of more than 90%. The rail freight market in the UK was one of the earliest to be liberalised, in 1993. However, almost half of the market is operated by a foreign incumbent, DB Cargo UK.

In Bulgaria, non-incumbents account for around half of the freight market. The opening of the freight market has led to an increase in domestic competition in the sector, which also led to a reduction in the price of freight transport. Private rail operators attracted customers, which had previously used the services of the incumbent. At the same time, some of the customers,

who were formerly consignors of the incumbent, applied for and obtained a freight licence, as a result of which they began to carry their own freight. Moreover, other main consignors of the incumbent have ceased their business activity, as a result of which its market share decreased.

In Italy, Trenitalia Cargo (now Mercitalia Rail) has just over half the market; non-incumbents account for almost one third in terms of tonne.km and foreign incumbents from surrounding countries have a market share of 17%. Similar proportions can be observed on the German freight market, which was one of the earliest to be liberalised and has the highest number of new entrants.

In Hungary the share of non-incumbents is more than 40%. Most of them run block trains, mainly in international traffic. The incumbent continues to perform single-load traffic, the profitability of which is much lower and constitutes less and less share of traffic volume. There have been also some market developments in recent years; non-incumbents gained some significant new transport orders (new Mercedes factory), while the incumbent had to cope with the decrease in traffic to and from Ukraine due to the war situation in that country.

It is also interesting to note that the shareholders of many of the major non-incumbents are companies that are active in the international (railway and non-railway) markets, so their participation in international transport has been growing. Non-incumbents also take part in the transportation of material to sites of big infrastructure constructions (highways, railways) financed by state and EU funds.

Among new entrants, non-incumbents dominate in terms of tonne.km in most countries. However, foreign incumbents dominate in Slovenia and have significant market shares in Germany, Italy, Austria, Spain and Poland.

Figure 14 – Market shares of freight railway undertakings (based on net tonne.km) in 2016

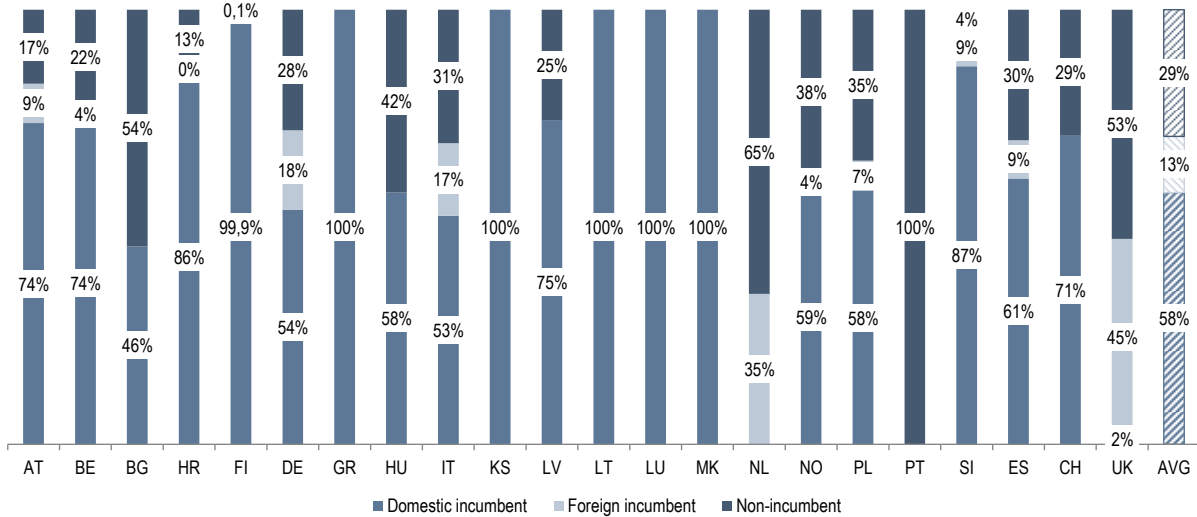
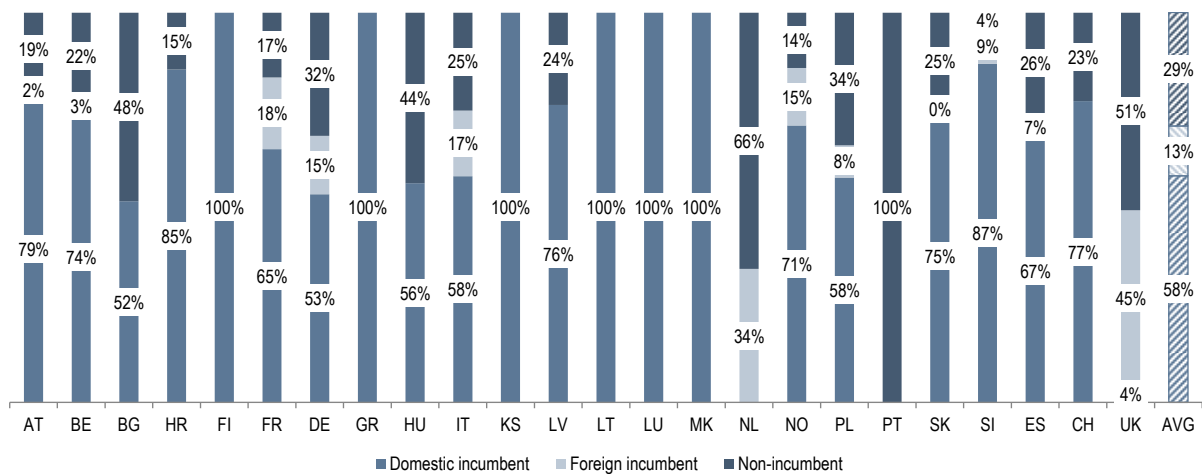


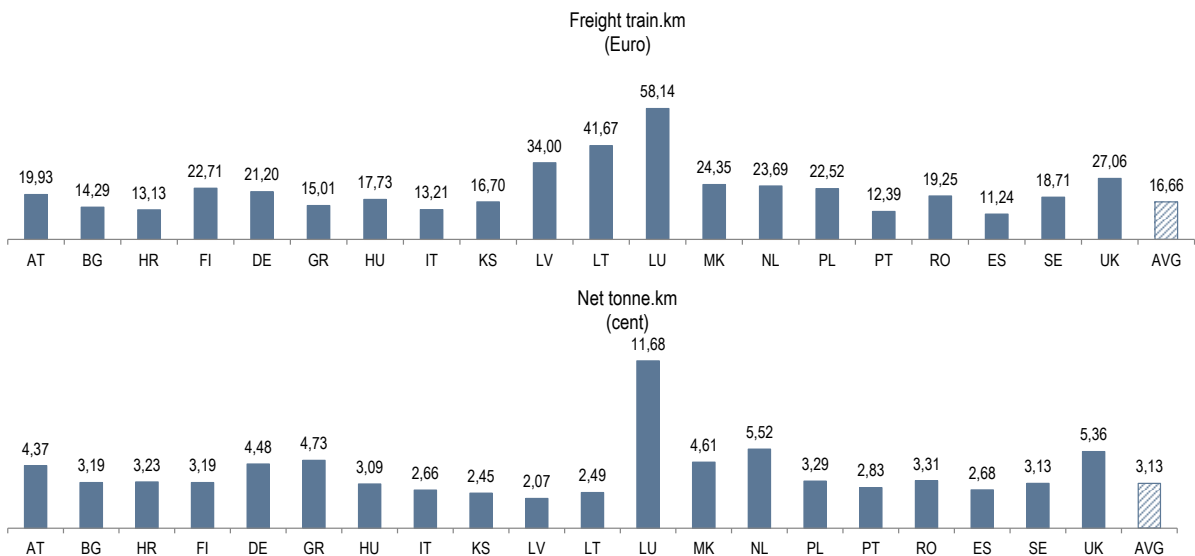
Figure 15 – Market shares of freight railway undertakings (based on train.km) in 2016



5.3. Revenues of freight railway undertakings

Figure 16 presents unit revenues for countries per train.km and tonne.km. Compared to 2015, there have been large decreases in the total revenues for freight undertakings in Kosovo (-68%), Croatia (-38%), the United Kingdom (-31%), Latvia (-20%) and Greece (-14%).

Figure 16 – Freight operators' revenues per train.km and net tonne.km in 2016



06

The rail passenger market



6. The rail passenger market

6.1. The rail passenger market size

The figures below show the share of service types across the monitored countries in terms of passenger kilometres. The rail market is dominated by national/domestic traffic (95.2%). Around two thirds of the total traffic is performed by PSO services.

Figure 17 – Global share of national and international passenger traffic (in passenger.km) in 2016¹⁵

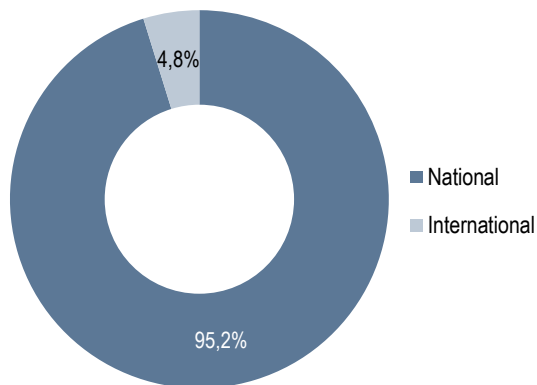
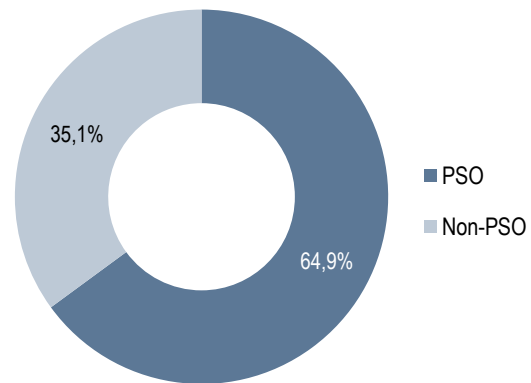
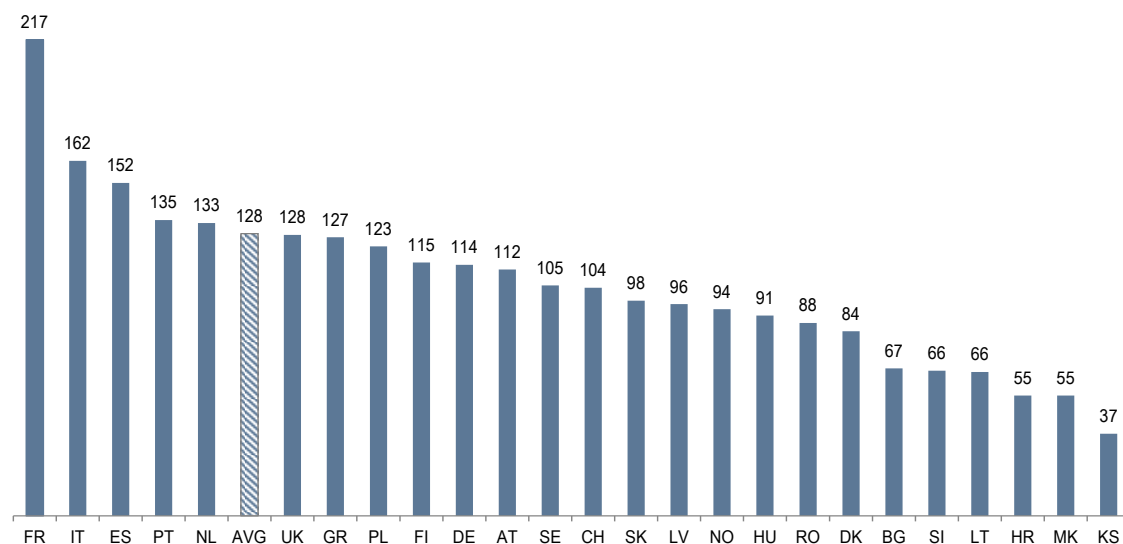


Figure 18 – Global share of PSO and non-PSO passenger traffic (in passenger.km) in 2016¹⁶



Combining the data on the demand side (passenger.km) with the supply side (train.km), an average of 128 passenger.km per train.km was observed in 2016 (Figure 19). France, Italy and Spain showed the highest values in 2016.

Figure 19 – Passenger.km per train km in 2016



Germany, the United Kingdom and France account for 75% of the monitored total passenger number (Figure 20).¹⁷ Germany also had the biggest passenger market in terms of passenger.km.

¹⁵ Belgium, Estonia, Luxembourg, Slovakia and Switzerland are missing.

¹⁶ Belgium, Denmark, Estonia, Kosovo, Luxembourg, Norway, Slovakia and Switzerland are missing.

¹⁷ The number of passengers was an optional data and was not available in all country.

Figure 20 – Passenger traffic in number of passenger and passenger.km in 2016

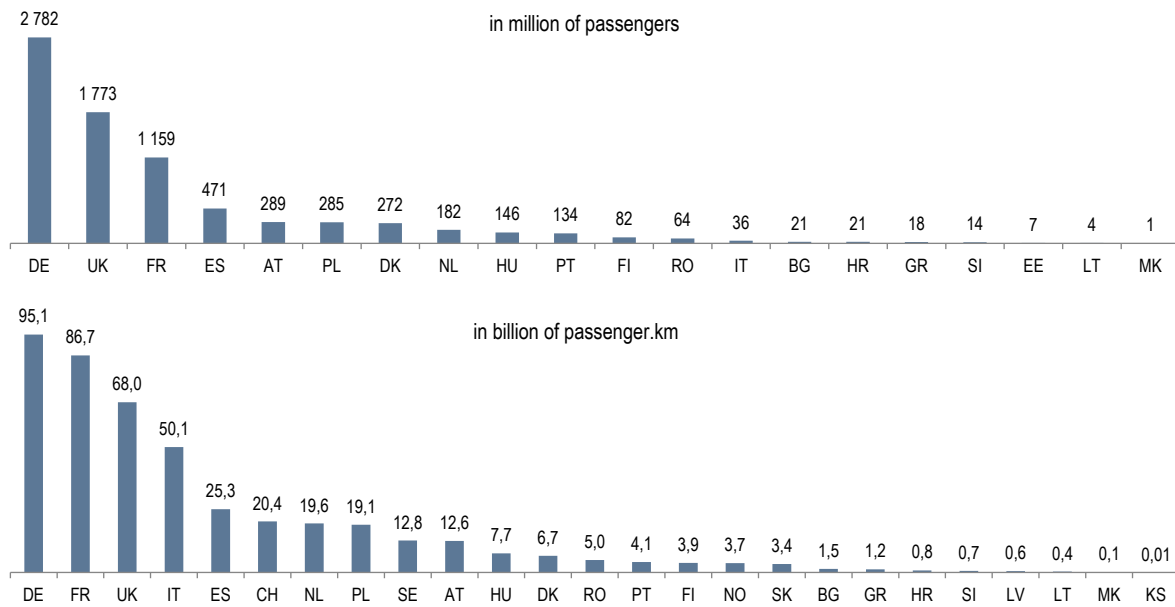
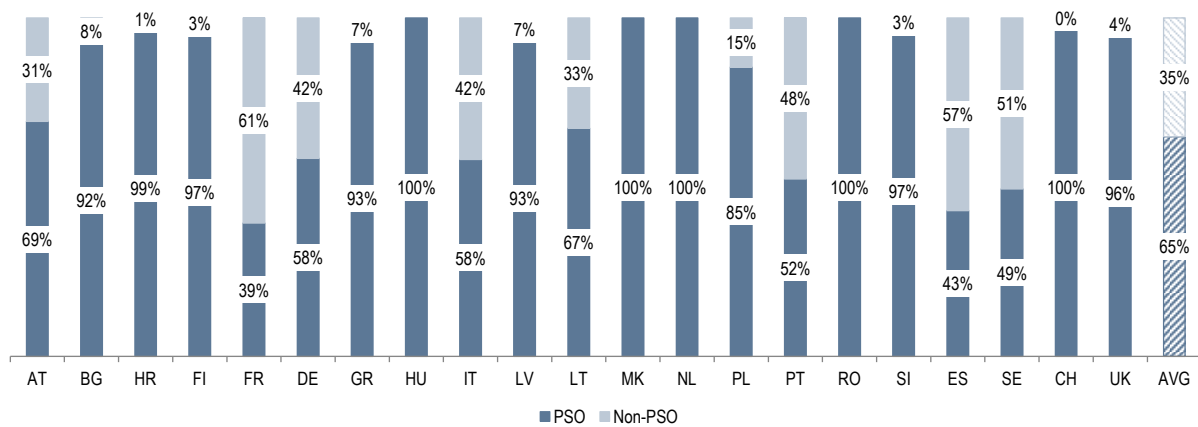


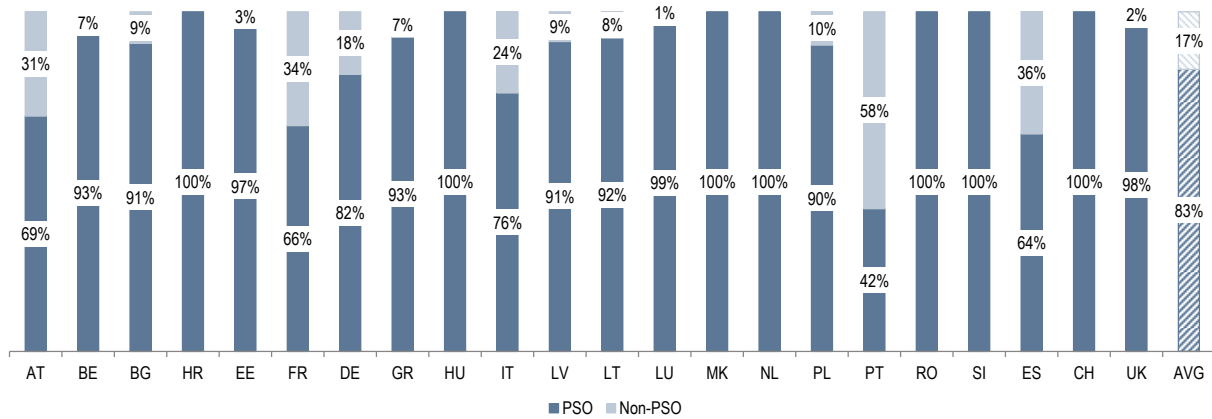
Figure 21 and Figure 22 show the break-down of passenger.km and train.km into PSO and non-PSO among 21 countries.¹⁸ The overall proportion of PSO traffic across the monitored countries is 65% (Figure 18), however there are some countries with almost exclusively PSO traffic. For example Croatia, Finland, Hungary, Netherlands, Romania, Slovenia and Switzerland all have PSO shares of traffic of more than 97%.

Figure 21 – Share of PSO and non-PSO (in passenger.km) in 2016



¹⁸ In Portugal, the PSO traffic information is including only the suburban traffic.

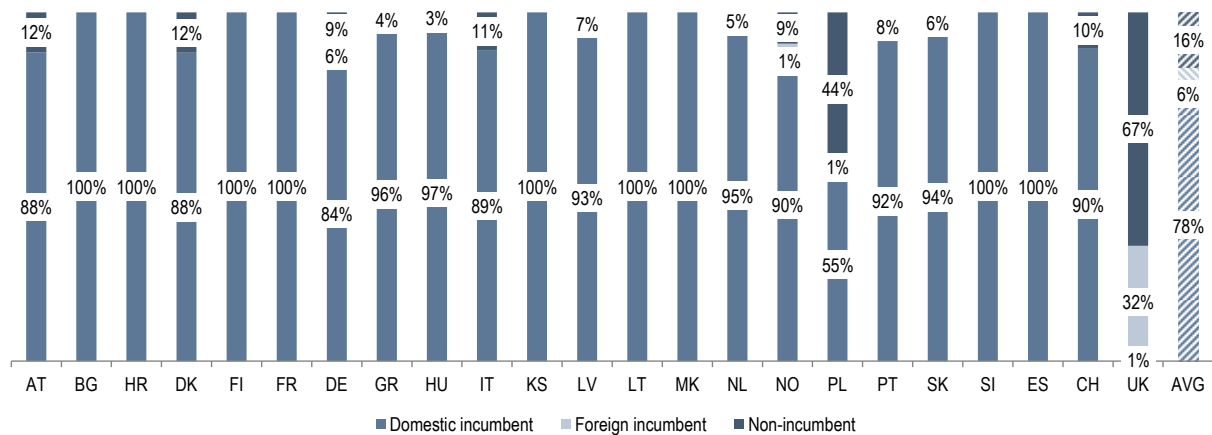
Figure 22 – Share of PSO and non-PSO (in train.km) in 2016



6.2. Market shares of passenger railway undertakings

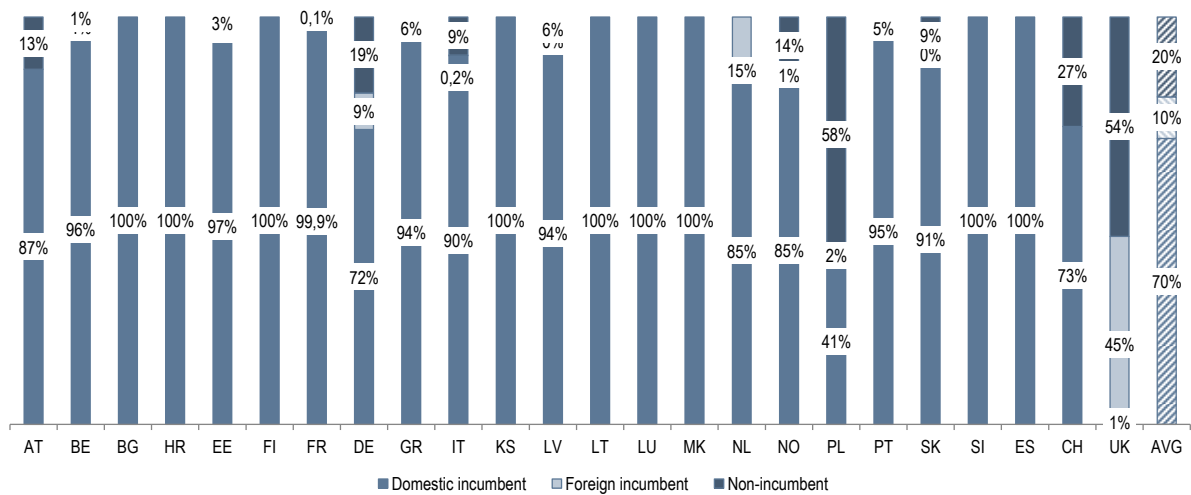
The market shares in passenger.km show that in most countries domestic incumbents account for more than 85% of the market. However, the Polish market is shared almost equally between the domestic incumbent and other undertakings.¹⁹ In the United Kingdom, non-incumbent railway undertakings account for almost all of the market (99%).

Figure 23 – Market shares of passenger railway undertakings (based on passenger.km) in 2016



¹⁹ In Poland, high market share of new entrants is due to the fact that regional services are on the one hand operated by new regional companies formed by regional authorities (22% of whole market share) and on the other hand by Przewozy Regionalne (also 22%), a company that stems from the incumbent but was municipalised by regional authorities in 2008 and ceased to have ownership relations with the incumbent.

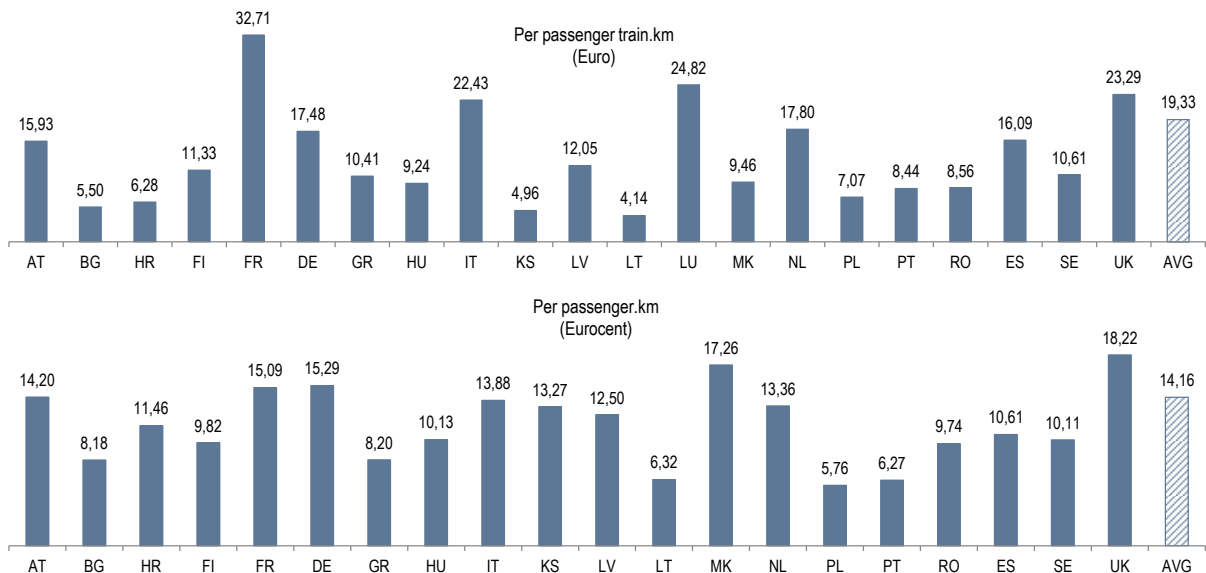
Figure 24 – Market shares of passenger railway undertakings (based on train.km) in 2016



6.3. Economic performance indicators of passenger railway undertakings

Figure 25 shows the unit revenues for passenger railway undertakings (total revenue divided by passenger.km and train.km). On average, railways undertakings levied 19.33 euros per passenger.km and 14.16 eurocents per train.km in 2016. The highest unit revenues were observed in France with 32.71 euros per passenger.km and in the United Kingdom with 18.22 eurocents per train.km.

Figure 25 – Passenger operators' revenues per train.km and passenger.km in 2016



On average, 28% of unit revenues (in passenger.km) came from public compensations in 2016. Taking into account only revenues from fares, the highest unit revenues are found in the United Kingdom.

Figure 26 – Passenger operators' revenues per passenger.km (fares and compensations) in 2016

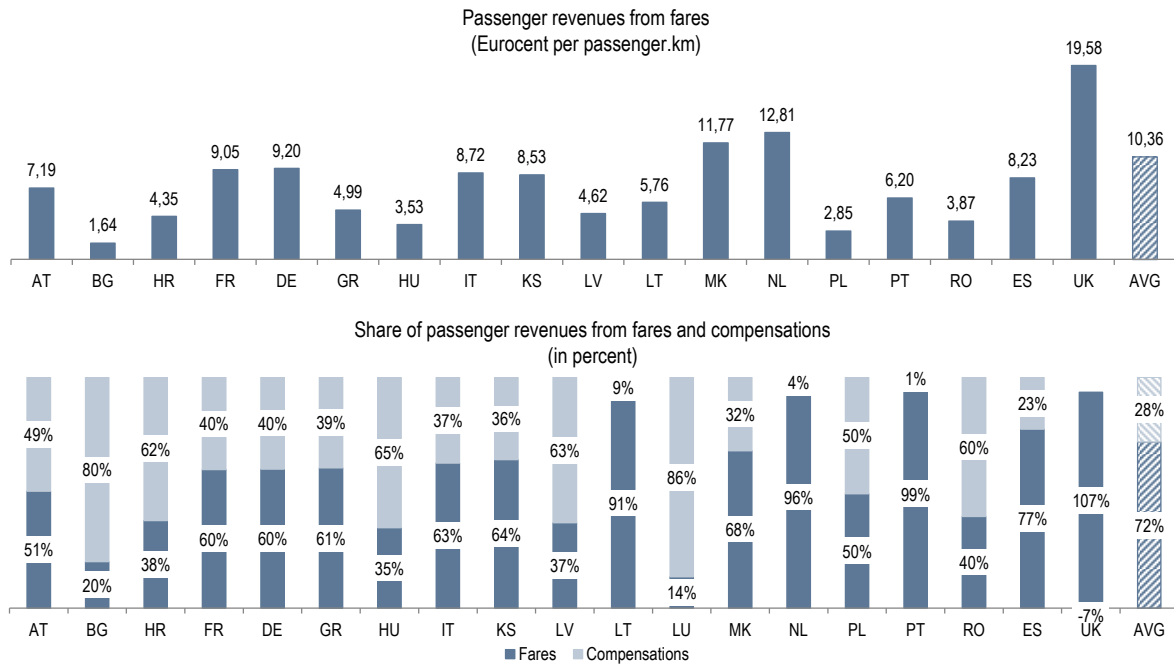
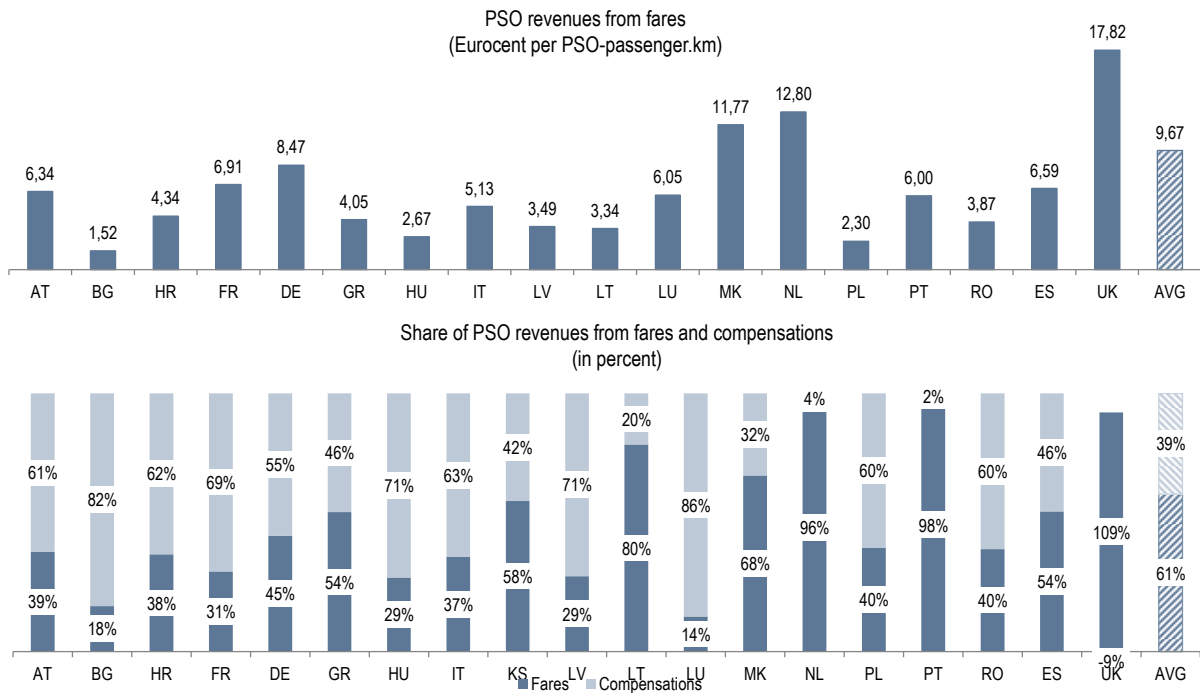


Figure 27 shows that on average 39% of PSO revenues arise from ticket sale.

Figure 27 – Passenger operators' PSO revenues per passenger.km in 2016



07

The quality of passenger rail services



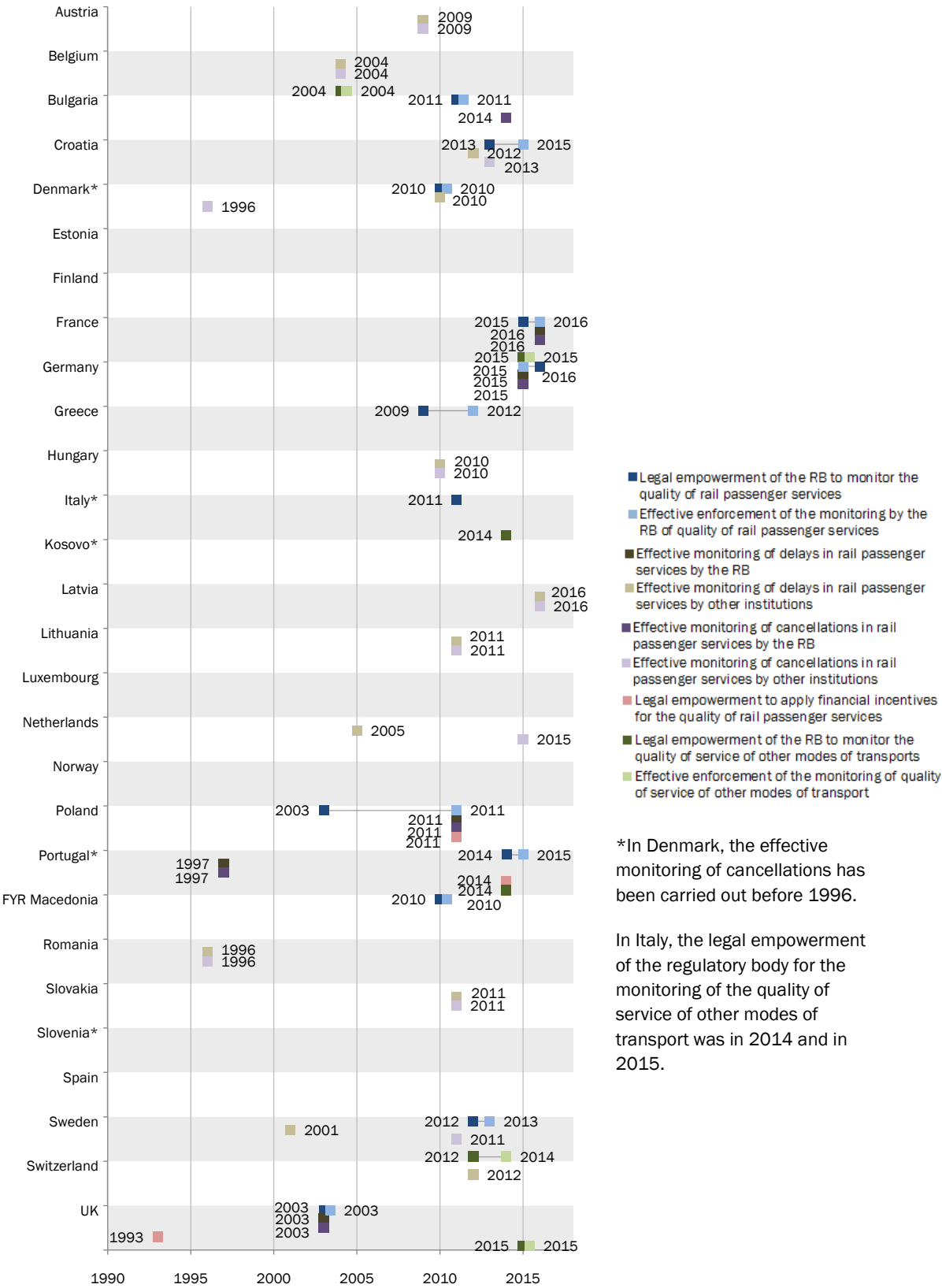
7. The quality of rail passenger services

7.1. National monitoring powers

Regulatory bodies in Europe have different responsibilities in terms of monitoring the quality of rail transport services. Figure 28 shows a timeline of when legal powers were given to the regulatory bodies in our sample, and also the enforcement of these monitoring powers.

Other institutions also monitor the quality of rail services in some countries. For instance, in Denmark, the institution “Ankenævnet for Bus, Tog og Metro” is responsible for handling individual conflicts between railway undertakings and passengers of busses, trains and metro services. In Norway, the public institution “Transportklagenemda” deals with complaints from passengers of trains, busses, boats/ferries, trams, metros and airplanes.

Figure 28 – Timeline of powers given to regulatory bodies and enforcement of these powers by regulatory bodies²⁰



*In Denmark, the effective monitoring of cancellations has been carried out before 1996.

In Italy, the legal empowerment of the regulatory body for the monitoring of the quality of service of other modes of transport was in 2014 and in 2015.

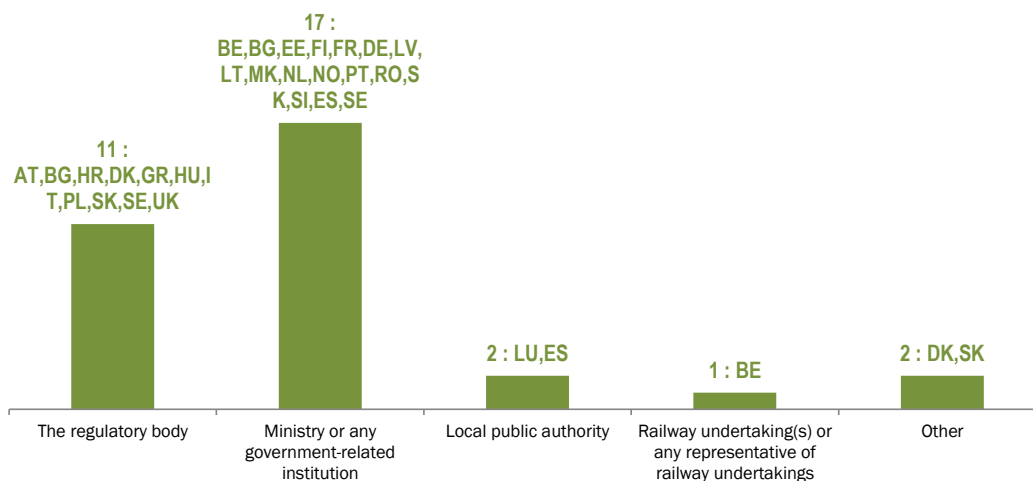
²⁰ This figure shows in priority the agenda of legal powers given to regulatory bodies. The figure also provides the agenda of powers given to other national institutions but only in cases where the regulatory bodies has no power in the field of quality of service.

7.2. Regulation (EC) 1371/2007 on consumer protection and passenger rights

Regulation (EC) 1371/2007 aims at establishing rights and obligations for rail passenger service users in order to improve the efficiency and attractiveness of rail transport for passengers. Member States must designate an independent body or bodies in charge of the enforcement of the Regulation. Passengers can submit a complaint to any of these bodies if they feel that their rights have not been respected. Member States must also set up effective, proportionate and dissuasive sanctions for infringements of the Regulation. Finally, a Member State can opt to grant an exemption from most articles of the Regulation to domestic rail passenger services for a maximum period of five years, which may be renewed twice. It may also exempt urban, suburban and regional rail passenger services from this Regulation.²¹

Figure 29 shows which institutions have been designated as the national enforcement body of this regulation. Note that several institutions may have been designated in a same country²².

Figure 29 – National enforcement body in charge of consumer protection and passenger rights in 2016²³



Countries involved : 26

²¹ https://ec.europa.eu/transport/sites/transport/files/themes/passengers/rail/doc/summary_table.pdf

²² In Norway, the national safety authority for railways (NSA) and the regulatory body are part of the same institution, The Norwegian Railway Authority (SJT). In the organizational structure of SJT, the responsibility for supervision of Regulation (EC) No 1371/2007 is placed with the NSA. The NSA does however not handle complaints in accordance with Regulation (EC) No 1371/2007, this responsibility is placed with another governmental institution, Transportklagenemda.

²³ In Slovakia, the regulatory body and the Ministry carry out regular inspections in trains and in stations. However, another institution, the “Slovak trade inspection” is in charge of solving complaints from passengers. In Denmark, the institution „Ankenævnet for Bus, Tog og Metro” is dealing with individual conflicts between railway undertakings and passengers of bus, train and metro.

7.3. Main indicators of quality of service monitored

Table 1 lists the main indicators of quality of rail services that are monitored by the regulatory bodies or other institutions in each country and Table 2 details the “other” main indicators monitored.

Table 1 - Main indicators monitored for the quality of rail passenger services in 2016

Countries	Delays		Cancellations		Number of complaints		Response time for complaints		Information for passengers		Satisfaction of passengers		Level of comfort		Other		Total	
	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions	By the RB	By other institutions
AT		✓		✓		✓						✓		✓			0	4
BE		✓		✓		✓											0	3
BG		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓				4	6
HR		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				4	6
DK		✓		✓							✓				✓		0	4
EE																	0	0
FI		✓		✓								✓					0	3
FR	✓	✓	✓	✓								✓			✓	✓	2	4
DE	✓	✓	✓	✓											✓		2	2
GR					✓		✓										2	0
HU		✓		✓		✓		✓		✓			✓				0	6
IT		✓		✓		✓		✓		✓		✓				✓	0	6
LV		✓		✓													0	2
LT		✓		✓		✓				✓		✓					0	5
LU																	0	0
MK	✓								✓		✓		✓		✓		3	0
NL				✓												✓	0	1
NO		✓		✓		✓						✓					0	4
PL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	6	6
PT	✓	✓	✓	✓	✓												3	2
RO		✓		✓		✓		✓		✓			✓				2	5
SK		✓		✓		✓		✓				✓		✓		✓	0	5
SI		✓		✓		✓		✓		✓		✓		✓		✓	0	6
ES		✓		✓		✓		✓		✓		✓		✓		✓	0	6
SE		✓		✓					✓	✓		✓	✓				1	4
CH		✓										✓					0	2
UK	✓		✓		✓		✓				✓	✓			✓		5	1
Total	6	21	6	21	6	12	5	8	3	10	6	17	4	9	5	8		

Table 2 – Examples of other indicators monitored for the quality of rail passenger services in 2016

« Other » indicators monitored by the RB

DK	Not specified
FR	- Reasons explaining delays and cancellations, for each train - In case of cancellation, establishment of a substitute road service - Number of passengers compensated for delays higher than 30mn and amount of compensations
DE	Refunds to passengers
MK	Information about passenger rights
PL	Safety, cleanliness
RO	Safety, cleanliness of trains, comfort in stations, services offered in stations.

« Other » indicators monitored by other institutions

IT	Services for people with disabilities and people with reduced mobility
NL	Not specified
PL	- Tickets distribution - Services for people with disabilities and people with reduced mobility - Availability of seats - Food services
RO	- Satisfaction of passengers - Services reliability
SK	Services for people with disabilities and people with reduced mobility
SI	Services in passenger stations, cleanness of trains
ES	- Tickets distribution - Comfort in the station - Club rooms
UK	- Level of crowding on services - Satisfaction of passengers

7.4. Heterogeneity of definitions of quality of service

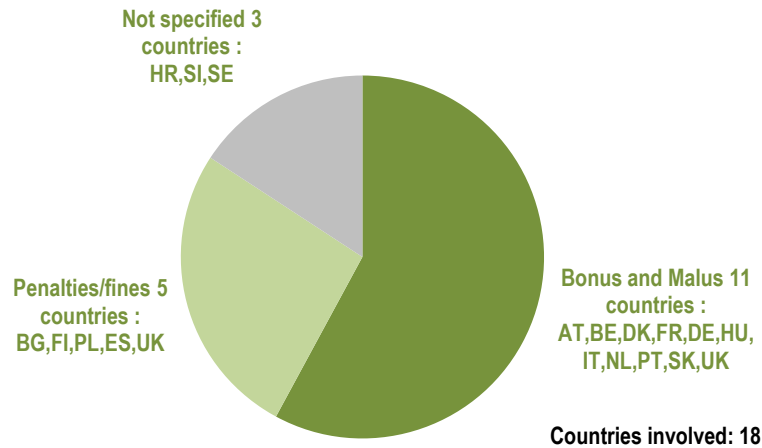
Among countries where both the regulatory body and other institutions monitor common indicators, there are 9 countries in which different definitions are applied by different organisations (Austria, Denmark, Finland, France, Germany, the Netherlands, Portugal, Spain and Sweden).

For instance, the indicators of delays and cancellations are equivalent in Finland but it is not the case for the assessment of passengers' satisfaction. In France, in 2017, the regulatory body decided to adopt different definitions of delays than those used by the Ministry. The regulatory body also started to collect delays between each passenger station and each train instead of delays at final station only and per type of traffic, and the calculation threshold was reduced from 5mn59 to 5mn00. In addition, the regulatory body started to get data on any scheduled trains cancelled before departure rather than on trains cancelled after 4pm the day before departure only. The objective was to better reflect the actual experience of passengers. In Germany and Sweden, each institution is free to set its own indicators.

7.5. Financial incentives

The level of quality of rail services has financial consequences for railway undertakings in 18 countries.

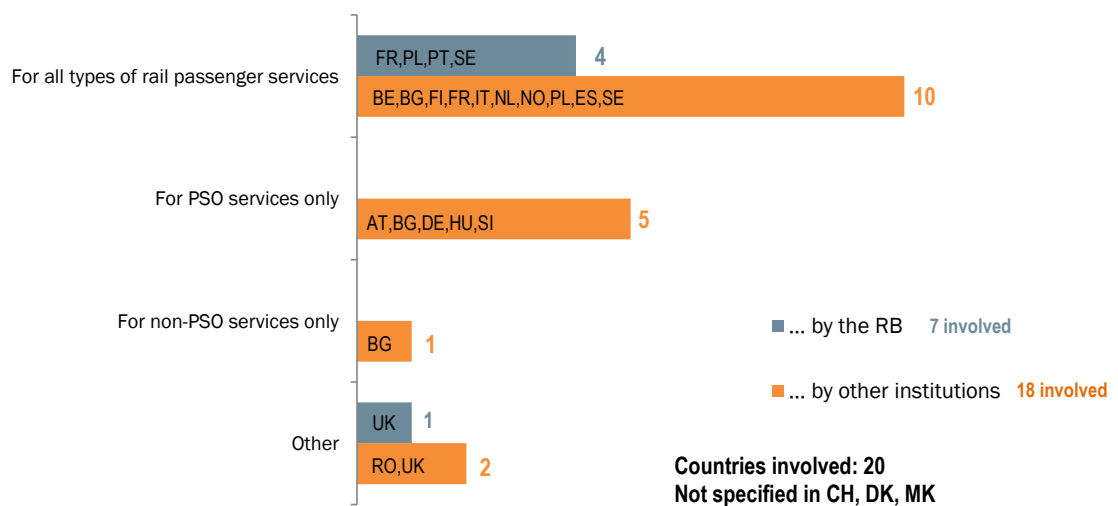
Figure 30 – Type of financial incentives applied in 2016



7.6. Publication of indicators of quality of service

All types of rail passenger services are covered in the publication of quality indicators in most countries (Figure 31). However, in 5 countries, only PSO services are included and in Bulgaria, only non-PSO services are covered by the statistics published. Note that in the United Kingdom, indicators are published for the mainline railway network (for PSO and non-PSO services).

Figure 31 – Scope of rail services included in publications in 2016



7.7. Expected changes in the calculation of delays and cancellations

Three regulatory bodies expect changes in the monitoring of punctuality of rail passenger services (France, Portugal and the United Kingdom) and the regulatory body from the United Kingdom also expects changes concerning the monitoring of cancellations.

In France, the regulatory body plans to publish in 2018 its first report based on revised definitions and threshold as described in part 7.4. In Portugal, the contract between the Infrastructure Manager and the Railway Undertakings, that regulates the performance scheme was valid for three years and should be renewed after its expiry (in 2015). In this context, although the monitoring and the calculation of delays are still carried out, penalties are no longer applied and no financial incentives are enforced for the time being. A new performance regime is currently in development by the infrastructure manager to meet the requirements established in Decree-law 217/2015 which transposed Directive 2012/34/EU. This new performance scheme was expected to be approved in 2017 and to be implemented in 2018, however has not yet been approved. Finally, in the United Kingdom the stakeholders in the rail industry have been collaboratively working on developing new performance measures, which may be used as official performance metrics in the future. In addition, the regulatory body and the wider industry are moving towards route based regulation. The main infrastructure has been divided into 8 distinct routes and future monitoring is likely to be less focussed on measures of rail operator performance.

7.8. Collection and publication of delays and cancellations

Table 3 and Table 4 respectively show the frequency of collection and publication of delays and cancellations per country, by the regulatory body or any other institutions. Information is given in priority for collection and publication made by regulatory bodies. However, the information corresponds to what is done by other institutions in countries where the regulatory body has no power in the field of quality of service.

Table 3 – Frequency of collection and publication of delays in 2016²⁴

Countries	Collection							Publication						
	Annually	Quarterly	Monthly	Weekly	Daily	Other	Not specified	Annually	Quarterly	Monthly	Weekly	Daily	Other	Not specified
AT					✓					✓				
BE			✓		✓				✓					
BG	✓				✓			✓						
HR			✓											✓
DK	✓							✓						
EE														
FI					✓					✓				
FR						✓								
DE	✓													✓
GR														
HU					✓					✓				
IT							✓							✓
LV	✓													
LT			✓					✓						
LU														
MK							✓							✓
NL					✓							✓		
NO					✓					✓				
PL		✓							✓					
PT					✓							✓		
RO					✓			✓						
SK	✓							✓						
SI	✓							✓						
ES					✓			✓						
SE						✓				✓				
CH			✓					✓						
UK						✓							✓	
Total	5	1	4	0	9	3	3	8	2	5	0	2	1	5

²⁴ In France, both for delays and cancellations, the first publication was made in 2017.

Table 4 – Frequency of collection and publication of cancellation rates in 2016

Countries	Collection							Publication						
	Annually	Quarterly	Monthly	Weekly	Daily	Other	Not specified	Annually	Quarterly	Monthly	Weekly	Daily	Other	Not specified
AT					✓			✓						
BE			✓						✓					
BG	✓							✓						
HR			✓											
DK			✓							✓				
EE														
FI					✓									✓
FR						✓								
DE	✓													✓
GR														
HU					✓			✓						
IT							✓							
LV	✓													
LT			✓					✓						
LU														
MK														✓
NL					✓							✓		
NO					✓									✓
PL		✓							✓					
PT					✓							✓		
RO					✓			✓						
SK	✓													
SI			✓					✓						
ES					✓			✓						
SE						✓			✓					
CH														✓
UK						✓							✓	
Total	4	1	5	0	8	3	1	7	3	1	0	2	1	5

7.9. Calculation of rates of delays and cancellations

7.9.1. Calculation of delays

There are various national practices in terms of calculation of delays.

In Italy, there are different thresholds used to consider a train as being delayed. The threshold first depends on the type of service (non-PSO, PSO long-distance and PSO regional services). For PSO regional services, the threshold also depends on the regional authority. In France, there are different thresholds based on the duration of the journey, from 5mn59 at arrival for trips under 1h30 to 15mn59 for trips longer than 3h00. In Spain, the thresholds are different according to the type of service, from 3mn00 for non-PSO high-speed services and PSO regional/high-speed medium distance to 10mn00 for some other non-PSO long-distance services.

The measurement point of delays also differs across countries. For instance, in the Netherlands delays are measured by the infrastructure manager along 40 points on the network. In Poland, since 2016 the regulatory body has taken into account delays on arrival at some selected intermediate stations, in addition to those at end stations. In Lithuania, delays of at least 30 minutes are calculated at arrival of the train to the final railway station or departure from the Lithuanian state border when the train leaves the territory of the Republic of Lithuania later than established in the official timetable.

Table 5 – Measurement point of delays

Country	Between each station	At the final station	At departure	Other
AT	✓			
BE		✓		
BG		✓		
HR	✓	✓		
DK	✓			
FI	✓			
FR		✓		
HU		✓	✓	
IT		✓		
LT				✓
NL			✓	✓
NO		✓		✓
PL		✓		✓
PT	✓			
SI	✓			
ES	✓			
SE	✓			
CH		✓		
UK		✓		
LV		✓		
RO		✓		

7.9.2. Calculation of cancellations

The same variety of approaches can also be observed on measuring cancellations. In France, the official statistics from the Ministry cover only “last minute cancellations”. The regulatory body decided in 2016 to start collecting both last minute and any scheduled train cancellations. The two statistics were published for the first time by the regulatory body in November 2017. In Austria, only unplanned cancellations without bus substitution are taken into account. In Lithuania, cancellations cover first scheduled trains that do not leave the

original train station and then any trains that do not reach the final station or the state border for international services. Exceptions apply in the case where the railway undertaking does not use its own line or train path on its own initiative and when passengers arrive at their destination using another mode of transport (service substitution).

7.10. Statistics of delays and cancellations

Table 6 provides the evolution of delay and cancellation payment rates in each country between 2014 and 2016. All the data collected from 2010 to 2016 can be found as an Excel document in the annex of the report.

Table 6 - Evolution of the quality of service between 2014 and 2016

Country	Rate of delay			Cancellation rate		
	Rail passenger services	Regional rail services	Long-distance rail services	Rail passenger services	Regional rail services	Long-distance rail services
AT	→ 1%	→ 1%	→ 0%			
BE	↓ -3%			→ 1%		
BG	↑ 2%	→ 2%	↑ 7%	→ 1%	→ 1%	→ 0%
HR	↓ -5%	↓ -3%	↓ -16%	→ 1%		
DK		→ 1%	↑ 5%		→ 0%	→ 0%
FI		→ 0%	↑ 2%	→ 1%	→ 1%	→ 1%
FR *			→ 2%			→ -1%
HU	↓ -13%	↓ -15%	↓ -12%	→ 0%	→ 0%	→ -1%
LT	→ 0%	→ 0%		→ -1%	→ -1%	
MK	↑ 4%					
NL	→ 1%	→ 1%		→ 0%	→ 0%	→ 0%
NO		→ 1%	→ -1%			
PL	→ 0%	↓ -7%	→ 0%	→ 0%	→ 0%	→ 0%
PT	↓ -2%	→ 1%	↓ -5%	→ -1%	→ 0%	→ 0%
SK				→ 0%	→ 0%	→ -1%
SI				→ 0%		
ES	→ 1%	↑ 4%	↓ -3%	→ 0%	→ 0%	→ 0%
SE	→ 0%	→ 0%	→ 0%	→ 0%	→ 0%	→ -1%
CH	→ -1%					
UK	→ 2%	↑ 2%	→ -1%	→ 1%	→ 1%	→ 0%

* For high-speed services

7.11. Expected role of regulatory bodies

11 regulatory bodies consider they need more powers to monitor the quality of rail passenger services. Among them, 5 regulatory bodies are not currently legally empowered to monitor this aspect of rail services.

In particular, the Belgian regulatory body considers it is necessary to monitor the efficiency of the sector in the framework of the fourth railway package, the quality of rail services being one crucial element of their efficiency. The regulatory body from Romania considers that the National Railway Supervision Council needs improvements of the legal framework to change the current situation, while the regulatory body has only the possibility to consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market regarding the quality of rail services.

The other 6 regulatory bodies already have some powers in this field. However, the French regulatory body underlines the regulatory body's decisions to collect data from railway undertakings on the quality of services have been contested and disputed (internal and judicial appeals) by a professional union. The complainant argued that the regulatory body over-interpreted the Code of Transport articles on the type of information that can be collected. These articles state that the regulatory body can notably collect information concerning the characteristics of transport services. The regulatory body considers the quality of service as a crucial characteristic of transport services. Therefore, the term "quality of service" should be explicitly mentioned in the related articles. The decision of the Council of State is expected in 2018.

For the Greek regulatory body, it is necessary to avoid exempting domestic services as provided by Regulation (EC) 1371/2007 on rail passengers' rights and obligation to help improving the efficiency of the sector. The need to further monitor the quality of rail services is also underlined by the regulatory body from FYR Macedonia and from Portugal. The Portuguese regulatory body specifies that a stronger and unified focus of the rail sector on tackling overcrowding on trains is necessary and could help keeping costs down. Allowing the creation of a powerful and consumer-focused regulatory body, this will contribute to ensure an improvement in the efficiency of the sector.

In addition, 5 regulatory bodies, which already have some powers to monitor the quality of rail services, consider they need more powers to implement financial incentives linked to the quality of service. In France, the regulatory body considers it is relevant to provide a national authority such as the sectorial regulatory body with powers to implement financial incentives for the quality of rail passenger services. No national authority has been provided with such powers in France so far in the transport sector. To date, as only public local authorities can enforce bonus/malus in the framework of regional PSO contracts, these results in the lack of any unified approach, making it impossible to compare the quality of passenger services performed by the monopoly incumbent in different regions. According to the Portuguese regulatory body, giving the regulatory body stronger powers will ensure that railway undertakings deliver what passengers want. The regulatory body would have the opportunity to introduce tougher and more effective penalties for failures to deliver quality of services, including powers to block bonuses of senior management where appropriate.

08

Level of market entry



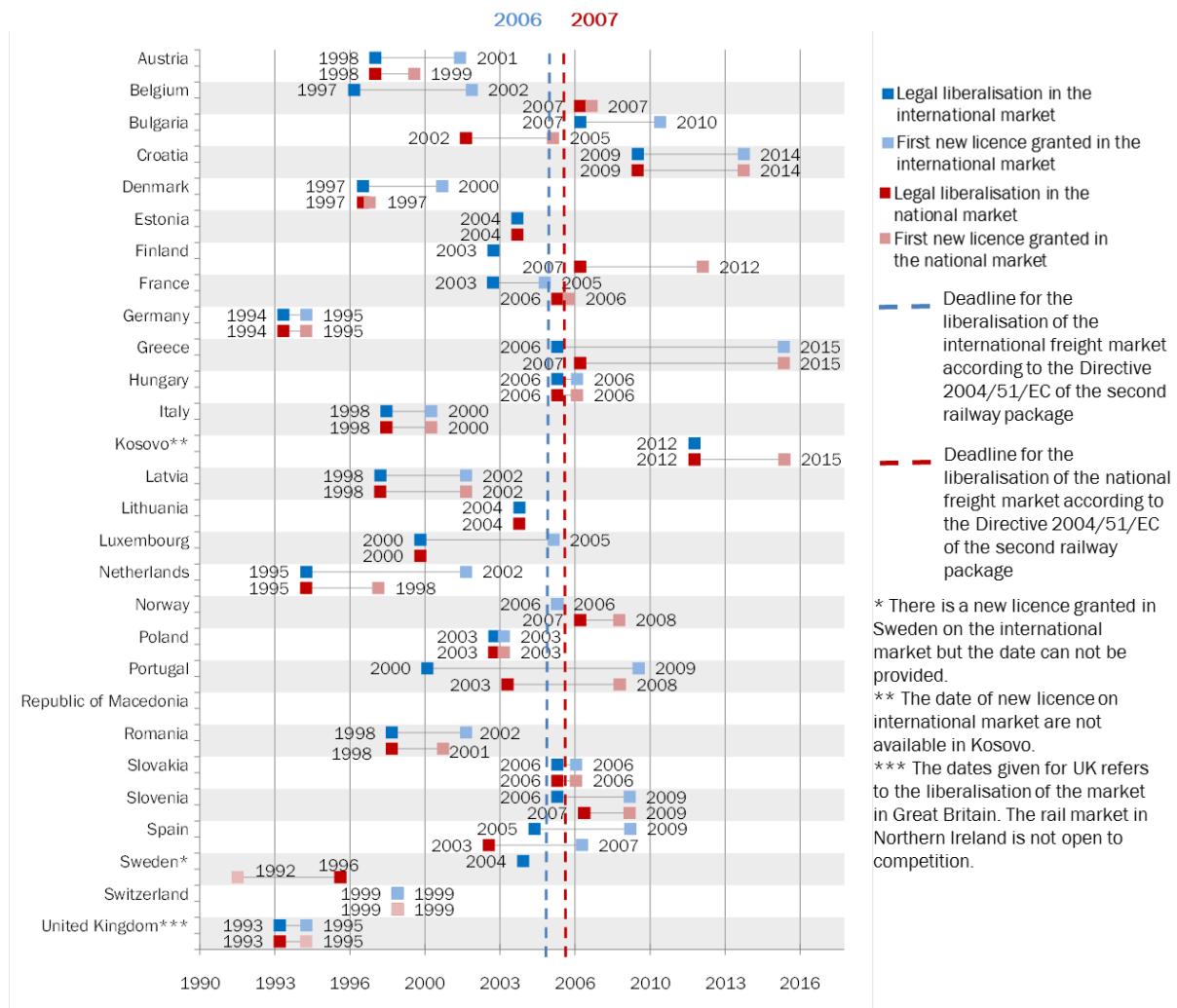
8. Level of market entry

The Fifth IRG-Rail Market Monitoring Report²⁵ focused on the level of market entry and provided an overview of national rules for market entry. Since then, four additional countries²⁶ have been added to the sixth report and this section has been updated accordingly.

8.1. Liberalisation of passenger and freight rail market

Figure 32 and Figure 33 show the date of liberalisation respectively in the freight and the passenger markets. More details are available in the Fifth Market Monitoring Report. Concerning the freight market, in Greece, a new entrant obtained a licence but is not yet active. In FYR Macedonia, freight markets (both international and national) are not open to competition, and therefore there are no new entrants.

Figure 32 –Legal liberalisation of freight market and first new licence



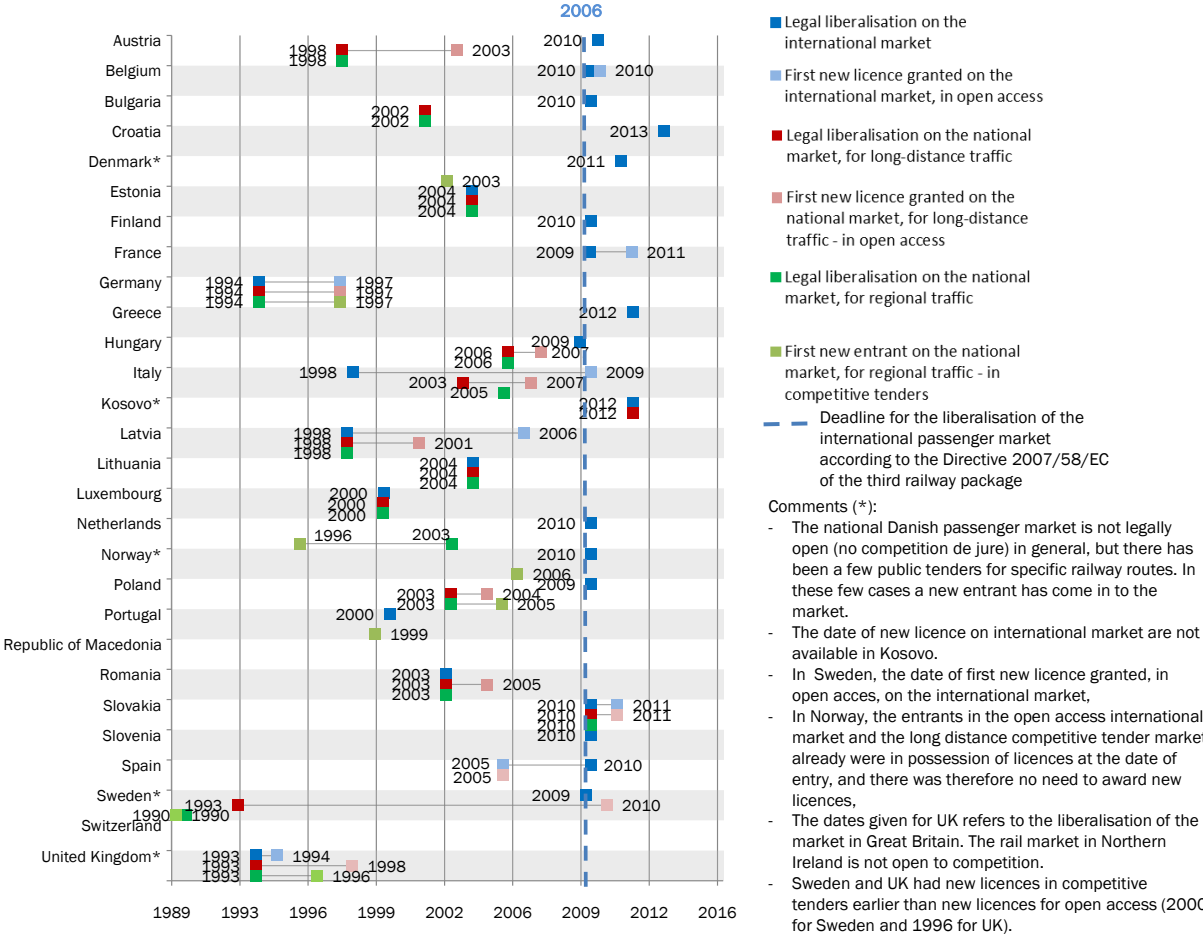
Regarding the passenger market, on 22 June 1999, the Portuguese State entered into a concession contract for the operation of the suburban rail passenger rail service in the North-South Railway Hub with the Fertagus-Travessia do Tejo Concessionaire, Transportes, S.A..

²⁵ <https://irg-rail.eu/irg/documents/market-monitoring/135,2017.html>

²⁶ Namely Lithuania, FYR Macedonia, Portugal and Romania.

To date, the market has not been liberalized. Only the concession of a new line has been granted to a company other than the incumbent operator. The market will be liberalized in 2020 for domestic traffic.

Figure 33 –Legal liberalisation of passenger market and first new licence



8.2. Details on rules for passenger market entry

The following charts provide details regarding the rules for market entry in PSO and non-PSO (or open-access) services. Figure 34 shows, for both national (on the left) and international (on the right) markets, whether they were liberalised de jure and/or de facto. Figure 35 shows whether the regulatory body can limit open-access on its passenger market. The Danish domestic market is not legally open (there is no competition de jure), but there have been a few public tenders for specific railway routes, which has created the possibility for a new entrant to come into the market. That explains that there is no competition (de jure) in general, but a new entrant has come into the market.

Figure 34 – Competition in the market – Non-PSO rules for rail passenger transportation in 2016

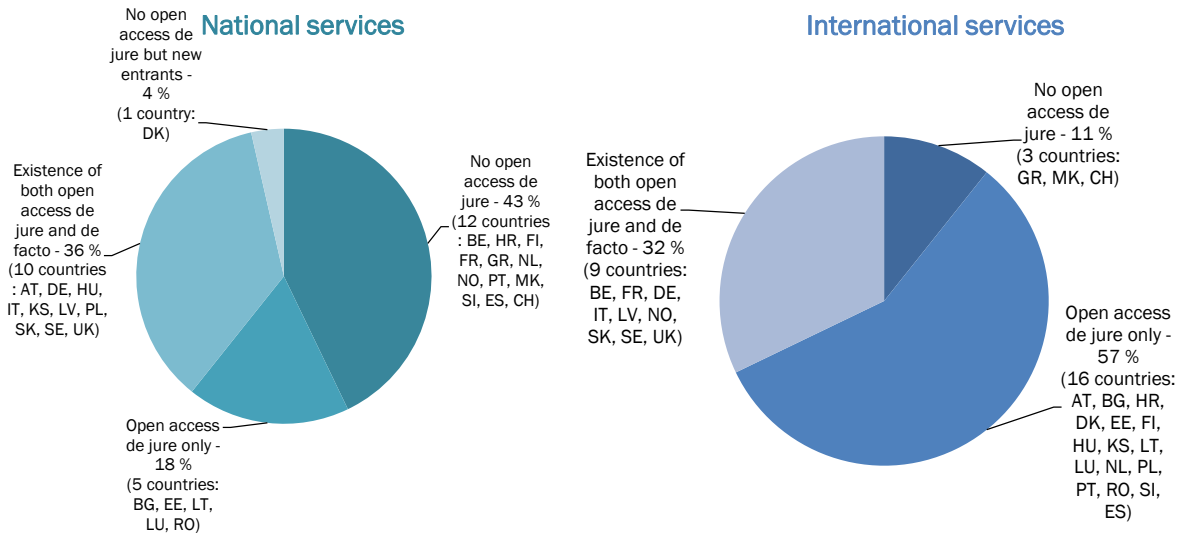


Figure 35 – Possibilities for regulatory bodies to limit open-access in the passenger market

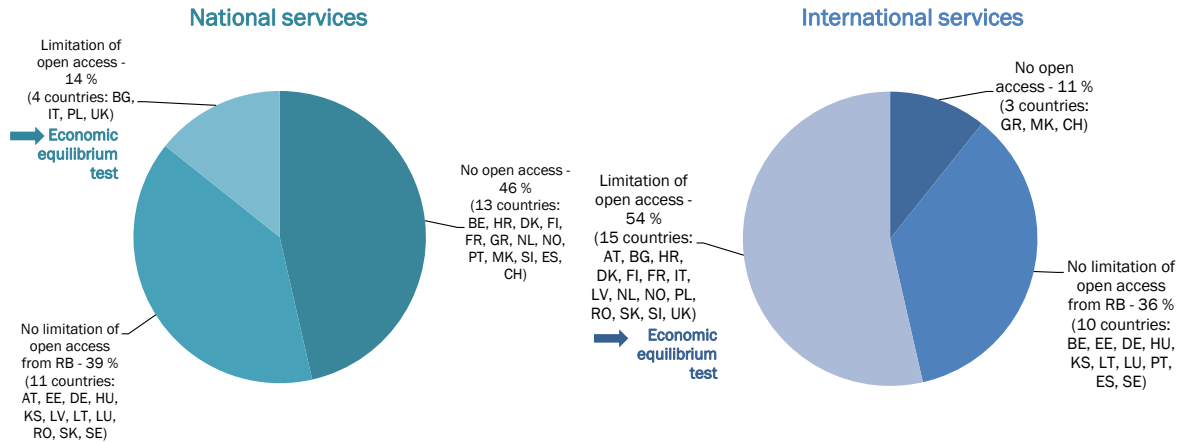


Figure 36 indicates which types of awarding processes are applied, in the national PSO passenger market (for both long-distance and regional services). Figure 37 provides the identity of contracting authorities for PSO services and Figure 38 points the role of the regulatory bodies in the awarding process.

Figure 36 – Competition for the market – PSO awarding rules for passenger transportation

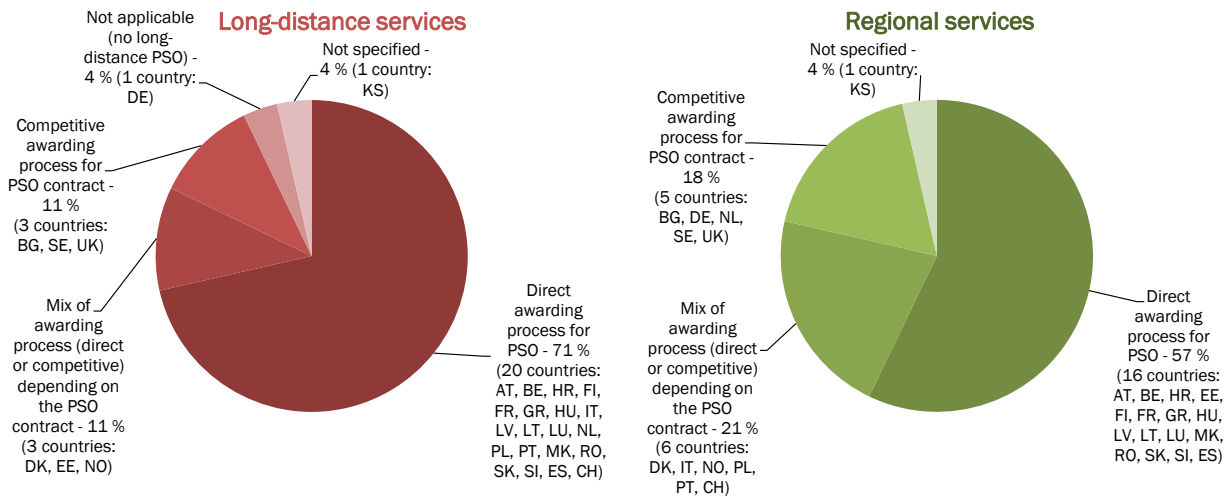


Figure 37 – Identity of contracting authorities for PSO services

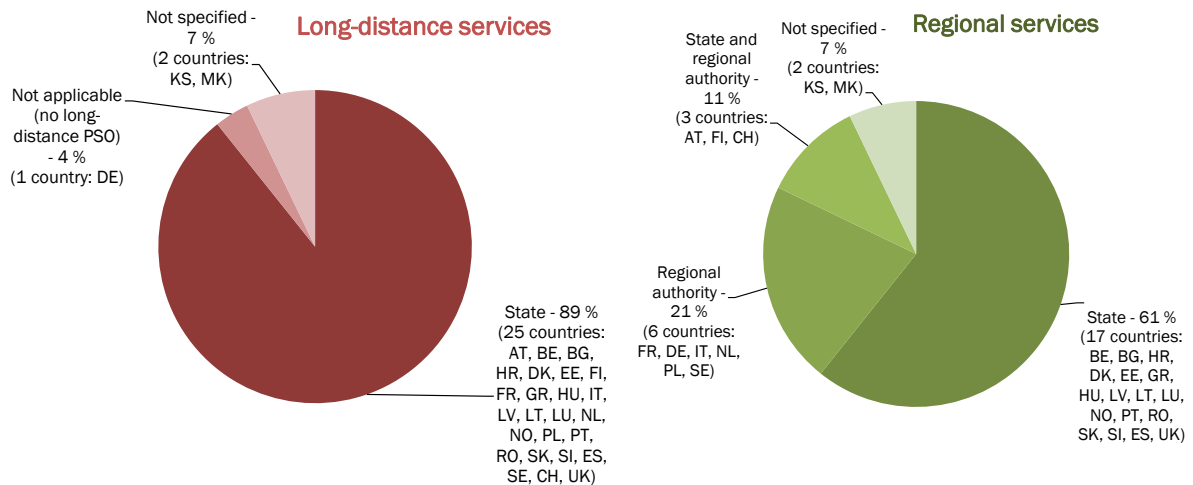
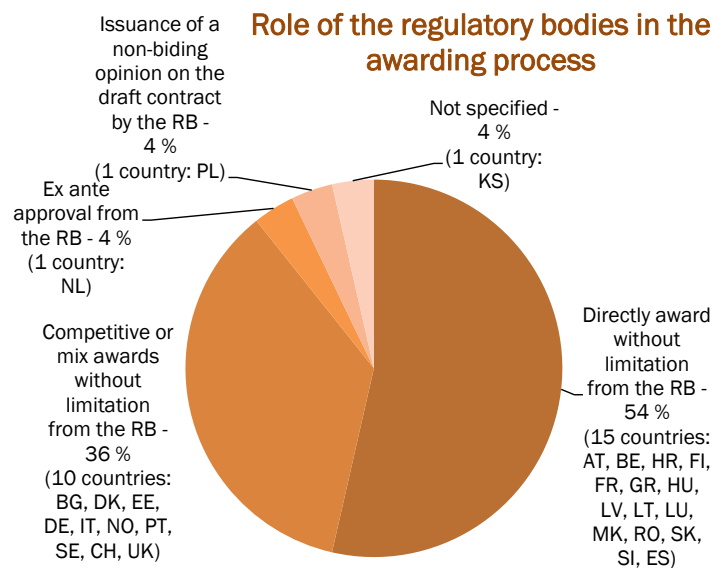
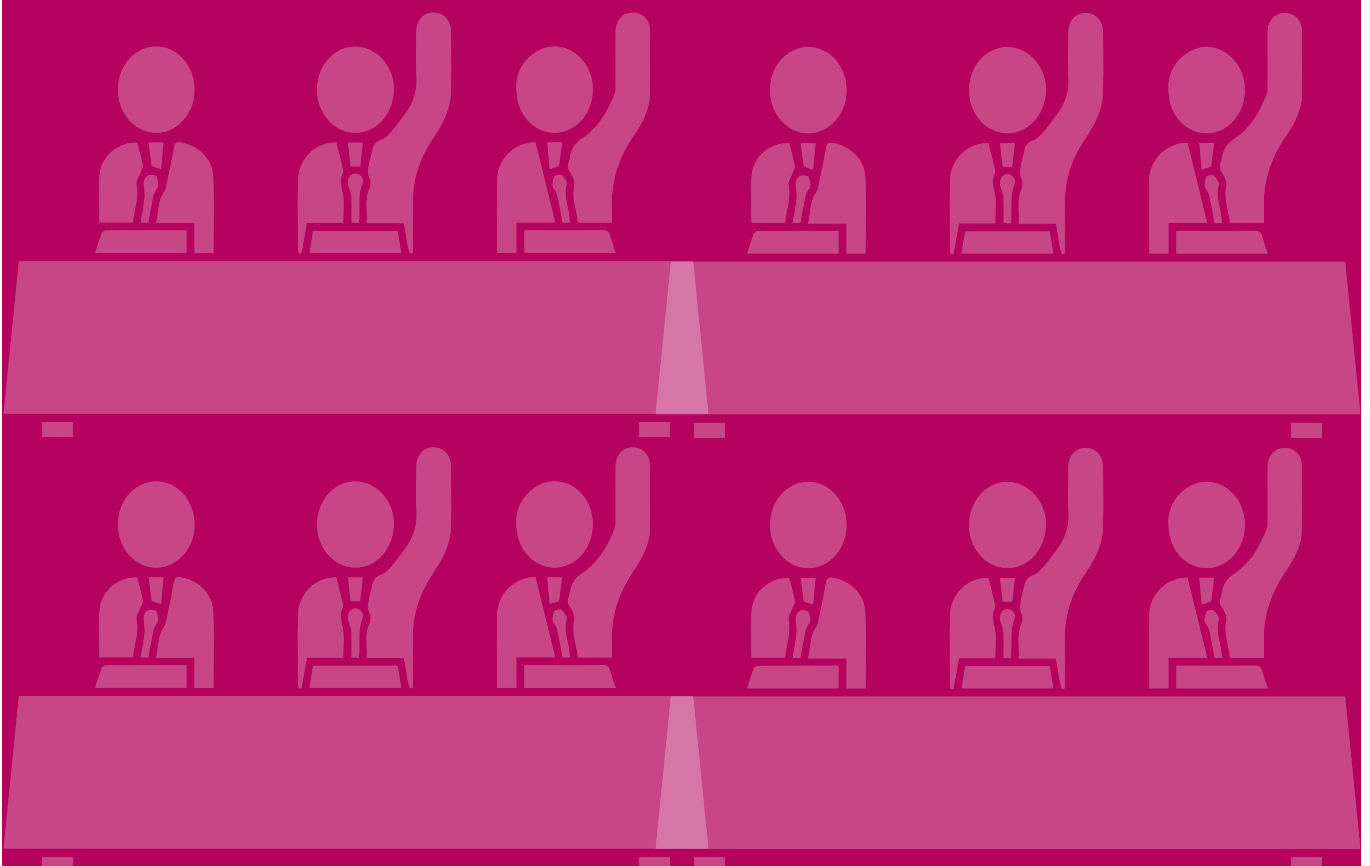


Figure 38 – Role of regulatory bodies in the awarding process in the passenger sector



Abstract of regulatory decisions in 2016



9. Abstract of regulatory decisions in 2016

This section summarizes some decisions made by the regulatory bodies in 2016 or for which consequences appeared in 2016.



Austria

- Decision taken in June 2016, an appeal is pending.

Decision of the Schienen-Control Commission on the traction current network usage model 2016

Since 1 January 2016 railway undertakings in Austria have been free to select their own choice of energy supplier. Four railway undertakings have exercised this right. ÖBB-Infrastruktur continues to provide the network for the transmission of electricity. The network operator ensures that the feed-in power from all energy suppliers is converted from 50 hertz to 16.7 hertz and transmitted via the traction current network to the traction vehicle. To ensure fair competition in this sector, the Schienen-Control Commission examined the conditions for transmitting, converting and distributing the electricity as well as related network costs for 2016.

Some of the network tariffs for conversion and transmission were declared invalid by a decision made on 10 June 2016, and therefore a reduction in tariffs was imposed. The background of the tariff reduction was excessive costs in the network sector, which did not correspond to the applicable cost basis as set out in § 69b Railway Act, whereupon the decision was imposed by the Schienen-Control Commission on the network operator.

- Decision taken in December 2016. An appeal was made at Federal Administrative Court and the original decision was rejected by the court. The regulatory body has ordered to revise the decision.

Approval of mark-ups on infrastructure charges

ÖBB-Infrastruktur applied for the approval of mark-ups on infrastructure charges in accordance with §67d Railway Act for the 2018 working timetable. . In accordance with § 67d para. 1 Railway Act, infrastructure mark-ups may be levied when the purpose is to cover all costs incurred by an infrastructure manager. Any mark-ups imposed must be established based on efficient, transparent and non-discriminatory principles, ensuring optimal competitiveness of each of the rail market segments. Before imposing mark-ups, the railway infrastructure company must examine the extent to which the mark-ups are relevant to certain market segments. Since ÖBB-Infrastruktur was able to prove these prerequisites in its application, the Schienen-Control Commission approved the surcharges.



Belgium

- Decision taken in April 2016
- Decision on a dispute regarding the allocation of the number of minutes of delay in the framework of the performance regime. Decision taken in May 2016

The Regulatory Body determined the deadline within which the operator of passenger stations should respond to requests from railway undertakings for access to and service at these stations. In the framework of Belgian legislation, the Regulatory Body has the task to determine the reasonable time frame within which service providers should respond to requests for access to and service in these services.

- Decision taken in October 2016

Decision on access for new international passenger service: Eurostar is granted access to the rail

network.



Croatia

→ Decision taken in January 2016

A railway undertaking appealed regarding the use of a private industrial siding owned by HŽ Cargo. HŽ Cargo allowed the usage of the facility but set a very high price based on a monthly usage. The railway undertaking claimed that the charge for the access to use the sidings was too high and that it was being discriminated against.

HAKOM rejected the complaint as unfounded, because the railway undertaking had failed to prove discrimination. Since this was an industrial siding HAKOM was not authorized to review the charges for use.

→ Decision taken in April 2016

A railway undertaking appealed against the Croatian infrastructure manager on the I. Amendments of Network Statement 2017. The complaint related to the criteria for determining non-usage of allocated train paths, waiting time for freight wagons for loading/unloading, assembling and disassembling of trains, train path equivalent in freight transport (pick-up goods trains, circuit-working trains and industrial trains), charges for assembling and disassembling of trains and changing of train composition in freight transport where two employees (a train dispatcher and switchman) are involved in setting up the shunting routes. The appeal was handled by HAKOM who determined that the complaint against the Network Statement 2017 was unfounded, therefore the complaint was dismissed.

→ Two decisions taken in August 2016

A railway undertaking appealed against II. Amendments of Network Statement 2017, claiming that an infrastructure manager cannot determine that access to a marshalling is only allowed in a station within a railway junction and that a railway junction was not defined. The undertaking also argued against the provision that "if in a railway junction there is a marshalling yard, marshalling of freight trains can be allowed only in that station". The undertaking claimed that such conditions are not acceptable or professionally based. HAKOM rejected the complaint as unfounded.

The infrastructure manager prescribed technical and technological requirements and reasonably decided that shunting of freight trains would only be allowed in Zagreb marshalling yards as a service facility for specific purposes. The infrastructure manager took into account the population density around the station, which was a condition laid down in the Instructions HŽI 40 preceding II. Amendments to the network statement 2017. The latter stated that a "station which is allowing shunting freight trains should, if possible, be as far as possible from densely populated parts of the town or city center". This is the case at the Zagreb marshalling yard located at edge of New Zagreb and not near residential buildings in contrast to Zagreb Western Railway station, which is located in the city center right next to residential buildings.

Moreover, a railway undertaking appealed against the Croatian infrastructure manager (HŽ Infrastruktura d.o.o.) on the I. amendments of Network Statement 2017, complaining against the Infrastructure manager's decision that marshalling is allowed only in 13 stations. The undertaking argued that all relevant criteria were not defined and that some other stations could be on the list. In particular it was disputed that, according to the defined criteria, marshalling could not be done in Zagreb Zapadni kolodvor, but only in Zagreb Ranžirni kolodvor (Marshalling Yard). The appeal was upheld because all the relevant criteria for the decision of the infrastructure manager had not been defined, although they had influenced the decision making. HAKOM annulled part 3.6.3. of the Network Statement 2017 and the infrastructure manager was obliged to define all relevant criteria for

the list of stations in which marshalling is allowed. The complaint was fully adopted.



Denmark

→ Decision taken in June 2016

Investigation of the 2016 charging scheme of the main infrastructure manager, Banedanmark

The background for this case was an earlier case in which the Danish Rail Regulatory Body partially repealed the 2013 charging scheme of Banedanmark due to violation of the requirements regarding charges based on marginal cost calculations. Banedanmark subsequently reformed the charging scheme in order to comply with the requirements. This resulted in a new charging scheme being introduced from January 2016. The Danish Rail Regulatory Body carried out a review of this new charging scheme in 2016, which found that Banedanmark had provided the necessary documentation in order to show that the train.km charge (DKK 4.80 per train.km) was fixed in accordance with correct calculations of direct costs. The Regulatory Body stated that the rate could be indexed (price adjusted) every year for a period of 4 years until 2020 by using the national government price and income index. After which the rate was to be re-set based on a new calculation of marginal costs.

→ Decision taken in September 2016

Requirements concerning documentation of charges for using freight terminals

Carlsberg Danmark A/S filed a complaint regarding 2014 charges for lifting trailers and containers at the freight terminals in Hoeje Taastrup and Taulov. The complaint took a long time to process, mainly because of the lack of cooperation from the terminal operator (DB Cargo) who refused to deliver the requested documentation.

In 2015 the Danish Railway Act was reformed and one of the important improvements concerned measures allowing the Danish Rail Regulatory Body to impose penalty payments in order to enforce decisions and requests for information. This provision was used to issue heavy penalty payments to DB Cargo. However in order to avoid the penalties DB Cargo finally submitted most of the required documentation in January 2015 and April 2016. The regulatory body issued a draft decision to the parties for comment by 1 June 2016. Carlsberg withdrew the complaint on 15 August 2016 as a result of a settlement between Carlsberg and DB Cargo. However, the Regulatory Body chose to finish the case by issuing an advisory statement in order to clarify a number of questions concerning how the terminal operator has to be able to provide documentation to justify how the charges are fixed.



France

→ Two decisions taken in February 2016

ARAFER issued an unfavourable opinion on the 2017 charges for rail passenger train services. 2017 will be a year of transition, SNCF Réseau, the French infrastructure manager, is planning to revise its charging scale by 2018 at the request of the regulator in order to comply with European rules. While the network statement included a number of unjustified modifications, ARAFER stated that the infrastructure manager should limit itself to a simple update of existing charges, or to crucial additions, such as the pricing for the new sections of Bretagne-Pays de la Loire and Sud Europe Atlantique high speed lines. Following an updated pricing proposal ARAFER approved the charges applicable for 2017, which fell by 0.9%. ARAFER issued recommendations to SNCF Réseau, not only to signal concerns about the progress of the reform but also to provide guidance to SNCF Réseau and the State.

Moreover, the Auvergne Rhône-Alpes Region lodged an appeal before ARAFER in July 2015 against SNCF Réseau, the French infrastructure manager, relating to the implementation of the first step of the capacity allocation procedure referred to in the Network Statement (NS). The Region believed it

had been unfairly treated through the allocation process resulting in (i) extending the journey time of 8 minutes on the TER Lyon – Chambéry line, (ii) a delay of twenty minutes on the TER Chambéry - Bourg Saint Maurice and Chambéry - Modane lines and (iii) the cancellation of several stops on the TER line between Saint-André-le-Gaz and Grenoble, within a context of dense traffic around the “Lyon node” and in particular the single-track constrained section between Saint-André-le-Gaz and Chambéry.

While scheduling the 2015 working timetable SNCF Réseau had systematized stops at Lyon Saint-Exupéry on the TGV line between Paris and Grenoble in the working timetable at the request of the “Voyages” branch of SNCF Mobilités (1 stop every hour instead of 1 stop every 2 hours). The final working timetable was constructed on this basis, resulting in a reorganization of certain train paths allocated to the regional trains operated by the Auvergne Rhône-Alpes Region.

The Region challenged this solution and asked for a return to the level of service guaranteed by the 2014 working timetable in both 2016 and 2017. The Region's request was in line with the public transport authorities wish to gain more transparency on the allocation process, including the initial consultation leading to the establishment of the working timetable. ARAFER did not accept the Region's request to re-establish the 2014 level of service and ordered SNCF Réseau to initiate a dialogue with all the applicants on improving the procedure for setting up the working timetable contained in the network statement. In particular, parties were asked to define criterion for assessing conflicted demands for the same path in the event of an unresolved conflict and to improve transparency and fair treatment of all the applicants.

➔ Decision taken in May 2016

ARAFER gave SNCF formal notice to stop operating fuel supply stations. The aim of the decision was to ensure compliance with the 4 August 2014 French rail reform Act, which established the facilities allocated to the three companies of the new French public rail group. There are 75 diesel distribution stations on the French rail network, which are now allocated to the public railway undertaking SNCF Mobilités but which are in practice operated by SNCF Combustible. Located in the parent company of the public rail group (SNCF), this service is in charge of the technical and pricing conditions of access to fuel supply installations but at the same time it delegates the management of their operation under agreements signed with SNCF Mobilités' services.

ARAFER has observed that the attachment of SNCF Combustible to SNCF is an infringement of the French Transport code as it prohibits the parent company from performing activities which fall within the responsibilities of SNCF Réseau and SNCF Mobilités. SNCF is now obliged to make other arrangements regarding SNCF Combustible. There are several options available, some of which will preserve the benefits of combined management in the public rail group. To ensure that the necessary reorganization is conducted under appropriate conditions, ARAFER elected to give SNCF an extra period of time up until 30 June 2017 to achieve compliance with the law.

➔ Decision taken in December 2016

Under the French law, accounting rules that are used by the railway undertakings to establish their separated accounts have to be approved by ARAFER. In a decision of April 2015 ARAFER rejected this document and asked SNCF Mobilités to produce before the end of 2015 new rules integrating all the accounting separations required by the law (freight, passenger activities including activities partially financed by public funds and service facility management). ARAFER received the new rules at the end of 2015, describing the financial relationships between all the separated activities.

ARAFER rejected these new rules in December 2016 as SNCF Mobilités did not provide all the information required ensuring the absence of discrimination and cross subsidies between the separated activities and the details of the accounting separation did not meet the requirements of the French law. ARAFER asked SNCF Mobilités once more to produce new rules and worked to publish

new guidelines on this subject for the operators.



Germany

Background information

In Germany the Rail Regulation Act (Eisenbahnregulierungsgesetz - ERegG) entered into force on 2 September 2016. By this, Directive 2012/34/EU was transposed into national law. The Bundesnetzagentur set up a ruling chamber for railways to implement the new rules. Decisions by the ruling chamber are taken in quasi-judicial proceedings, giving due consideration to all relevant aspects. This generally involves organising a public hearing with the participation of all market players. The introduction of the ruling chamber proceedings made it necessary to reorganise administrative procedures within the Bundesnetzagentur.

Quality improvement and incentive system

For around two years, the Bundesnetzagentur has been receiving a growing number of complaints about major quality-related problems with the management of transport services provided by DB Netz AG and its undertakings. The incentive system introduced by DB Netz AG with the 2009/2010 working timetable envisaged access beneficiaries selecting trains whose punctuality would be used as a benchmark for an incentive payment over the course of the year. As such, either the railway undertaking or the infrastructure manager was held accountable for delays, depending on who caused them.

The Bundesnetzagentur, DB Netz AG, regional transport authorities and railway undertakings initiated a dialogue in early 2016 on how to implement the specifications. The core aspects of implementation relate to involving access beneficiaries in developing the incentive system and in monitoring any actual and sustainable impact. The ongoing dialogue has revealed that the level of current incentive payments has had little or no impact on the punctuality of selected services. The amounts are too low to encourage the railway undertakings to adopt a certain code of conduct. It was also evident that a large number of transport services are not eligible for the incentive payment. While the discussions were underway, DB Netz AG submitted a slightly modified incentive system, which the Bundesnetzagentur will take a decision on under the price approval procedure in connection with the 2018 network statement.

Conflicts over the use of service facilities

DB Netz AG notified the Bundesnetzagentur of its intention to reject nine requests for use of service facilities for the 2017 working timetable.

➔ Decision taken in September 2016 (case number: BK10-16-0001 Z)

In one case, DB Netz AG was going to reject a request for use of service facilities because no contract had been concluded for the use of train paths. Priority is given to the use of a service facility that is essential for the use of an agreed train path. The Bundesnetzagentur objected to the envisaged rejection on the grounds that the unsuccessful party requesting access had actually concluded a contract with DB Netz AG while the review was being carried out by the Bundesnetzagentur.

➔ Decision taken in December 2016 (case number: BK10-16-0015 Z)

In another lawsuit, a railway undertaking requested access to a track for train formation within a station. Due to conflicting requests for this service facility, DB Netz AG initiated a highest bidder procedure. The bid of this railway undertaking in the procedure was submitted belatedly by the delivery agent. DB Netz AG intended to reject this request for access. The concerned railway

undertaking filed an application for restitution in integrum so that his bid would be taken into account for the highest bidder procedure. However, the Bundesnetzagentur refused to do so as a highest bid procedure generally rules out restoration of the status quo.

Network statement

→ Decision taken in November 2016 (case number: BK10-16-0009 Z)

DB Netz AG and DB RegioNetz Infrastruktur GmbH notified the Bundesnetzagentur for the first time, in accordance with the provisions set forth in the new Rail Regulation Act, of their intention to amend their network statements. The Bundesnetzagentur had six weeks to review the intended amendments, and exercised its right of refusal on three issues.

First, the undertakings were planning to limit their liability for damages in cases involving simple negligence to damages ensuing from "substantial violation of an important contractual obligation". The Bundesnetzagentur considered this to be a breach of the transparency requirement because neither the undertakings' policy nor the law or case law indicates unequivocally what service obligations represent important contractual obligations.

Furthermore, DB Netz AG and DB RegioNetz Infrastruktur GmbH were only willing to accept liability for material damages resulting from negligence. This amendment was deemed to be unreasonable because the clause did not offer reciprocity with regard to access beneficiaries and did not offer any explanation that could justify the deviation from the statutory concept.

The third clause that was rejected involved a regulation governing the acceptance period for train path requests regarding non-scheduled train services. The two undertakings wanted to set an acceptance period of 24 hours rather than the statutory acceptance period of one working day.

Trimodal terminals

According to previous and current law, freight terminals belong to service facilities that are subject to regulation. In the Bundesnetzagentur's opinion, they include service facilities catering for the transport of cargo by rail, road and water (trimodal terminals). A number of operators of trimodal container terminals object to the classification of the service facilities they operate as part of the rail infrastructure. In the judicial dispute with Duisburg Intermodal Terminal GmbH focusing on the regulatory classification of trimodal terminals, the Higher Administrative Court of North Rhine-Westphalia confirmed the Bundesnetzagentur's view. In particular, it dismissed the plaintiff's view that the regulatory classification of terminals depends on which mode of transport the service facility caters for primarily.

Charges levied for use of tracks at short notice

At the request of one railway undertaking, the Bundesnetzagentur reviewed DB Netz AG's rules for short-notice requests for use of sidings and the allocation of sidings by dispatchers during regular operations. In cases where this occurred, DB Netz AG asked railway undertakings to issue retroactive notification of the usage. If they failed to do so, DB Netz AG imposed a penalty, sometimes amounting to one-month's charge for use of the track.

During the proceedings, DB Netz AG said it was willing to amend this rule. In future, it will not impose any penalties on access beneficiaries requesting track usage at short notice. If a track is allocated by a dispatcher without prior notification, users failing to issue retroactive notification will initially receive a written warning. Only if access beneficiaries repeatedly fail to meet their obligations will DB Netz AG impose a penalty.



Italy

- Decision taken in November 2015 and implemented in 2016

Principles and criteria for determination of charges for access to the railway infrastructure (Decision No. 96/2015)

The criteria for determining charges for access to railway infrastructures which were established by the Authority with Decision No. 96/2015 on the basis of the principles contained in the Recast Directive were implemented in 2016.

- Decision taken in June 2016

Decision No. 72/2016 provided for the implementation of the methods of application of the measures set out in Annex 1 to Decision No. 96/2015 (measures about principles and criteria for determination of charges for access and use of the railway infrastructure).

- Decision taken in July 2016

The 2016-2021 charging scheme for the Minimum Access Package on the national railway infrastructure entered into force. Compliance with the regulatory model was approved by Decision No 96/2015 and later amendments thereof (Decision No. 75/2016).



Kosovo

- Decision taken in November 2016

2017 Network Statement

Based on Law 04/L-063 for Kosovo Railways, Article 61.3 (determination of tariffs for railway services), Administrative Instruction No. 02/2013 (calculation of direct charges for maintenance of railway infrastructure) and according to Administrative Instruction No. 03/2013 (setting and collecting the fees Defining Access to Railway Infrastructure), RRA analyzed the draft of the Network Statement for 2017, and in particular chapter 6 relating to the charging system and the overall level of payments for the use of services provided by the Infrastructure Manager. The regulatory body recommended that tariffs for railway services be non-discriminatory, comparable to neighbouring countries and based on direct costs of the infrastructure manager. In addition, the regulatory body recommended the charging system should be in compliance with developments in rail sector in Kosovo.

- Decision taken in 2016

After receiving a complaint from a private operator for access to maintenance facilities of the state incumbent, the regulatory body issued a recommendation for offering such services.



The Netherlands

- Decision taken in April 2016

The ACM published a modified Policy Rule on the international rail passenger market which regulates open access for international rail passenger services. Implementation of the Recast-directive (2012/34/EU) and the subsequent Implementing Regulation on new rail passenger services (869/2014) made the previous policy rule on international rail passenger transport partially obsolete.

Modification mainly concerns an increase of the scope of trains, considered to have an international purpose. Also for an existing public service contract (PSC) to be considered as compromised, ACM applies the same threshold of 1.7 % for regional as well as national PSCs.



Norway

→ Decision taken in October 2016

The freight railway undertaking LKAB Malmtrafik AB, transporting iron ore from Kiruna in Sweden to Narvik in Norway, filed a complaint in November 2015 against the charges levied by the infrastructure manager. The charging system in place at the time implied that freight trains with permitted axle load above 25 tonnes would be levied a charge, whereas freight trains with permitted axle load below 25 tonnes did not have to pay any charge. LKAB complained that the company had to pay charges for all their transports, regardless of whether the actual axle load was above 25 tonnes, since the permitted axle load was above 25 tonnes. When the LKAB-trains leave from the port in Narvik, heading back to the mines in Kiruna, the freight wagons are empty and the actual axle load is then lower than 25 tonnes.

In its decision, the regulatory body found that infrastructure charges related to permitted axle load of 25 tonnes were discriminatory and contravening the Norwegian regulation implementing directive 2001/14/EC. According to the decision, the infrastructure manager had to refund LKAB infrastructure charges. The infrastructure manager had to calculate the amount to be refunded and decide whether parts of the claim were obsolete within three months from the entry into force of the decision. This resulted in LKAB being paid back approximately 3 million euros from the infrastructure manager Bane NOR SF.



Poland

→ Decisions taken in 2016 or in 2015 with effective implementation in 2016/2017

26 decisions were made on requests to grant Open Access to the railway infrastructure in Poland, covering 4 Railway Undertakings. In this respect 22 decisions were made granting the Open Access and 4 decisions refusing to grant the Open Access.

8 decisions were made replacing contracts on access to railway infrastructure.



Portugal

→ Decision taken in the very beginning of 2017

Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (a private passenger railway undertaking) against the 2nd Amendment to the Network Statement of 2015 and against the 1st Amendment to the Network Statement of 2016.

The appeal was limited to reaffirming the arguments presented in previous appeals against the Network Statements of 2015 and 2016. AMT dismissed the appeal, having found that it was not sufficiently and validly grounded. Decision taken in in the very beginning of 2017.

Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (a private passenger railway undertaking) against the Network Statement of 2015, 2016 and 2017.

Fertagus - Travessia do Tejo, Transportes, S.A. ("Fertagus") appealed against the Network Statement of 2016 based on different grounds, including the illegality of Regulation IMTT 630/2011 (concerning the method for calculating railway infrastructure charges) due to procedural reasons relating to its adoption, lack of access to detailed reasoning behind the charges, incorrect methodology and other alleged irregularities. The appeal related to 2015 and 2016 was addressed to AMT but it was submitted in the first place to the IMT – Instituto da Mobilidade e dos Transportes (former body in charge of deciding appeals) because at the time of submission AMT had not yet begun activity. The case was transferred to AMT at a later stage. After considering all arguments presented by the parties, AMT dismissed the appeal. In particular, AMT found that it lacked legal powers to assess the

claim concerning the legality of Regulation IMTT 630/2011 (in Portugal that power belongs to the Administrative Courts) and that the remaining claims of Fertagus were unfounded and in some cases not sufficiently grounded.²⁷



Slovenia

→ Decision taken in April 2016

In the beginning of 2016 there were many delayed trains in the direction of Port terminal Koper. In order to establish the reasons for the delays, the Regulatory Body started an ex-officio investigation. The Regulatory Body organized several meetings with infrastructure managers and railway undertakings operating on this railway line and analysed the delays to find out if particular undertakings were unfairly treated by the infrastructure managers or service facilities operators. On the basis of discussions and analysis no discrimination was established, as it was found that the main reason for delays was periodical congestion, due to construction works on the main railway line between Divača and Koper. Due to this fact a final decision was not needed and the situation normalized in second half of February.



Spain

→ Decision taken in November 2016

Decision taken in order to analyze the proposed charges according to those criteria established in the RECAST Directive.



Sweden

→ Two decision taken in December 2016

There was a dispute between MTR Express and the Swedish Transport Administration (the infrastructure manager) regarding capacity. A decision by the regulatory body concluded that the Swedish Transport Administration had not taken into account the financial effects for MTR of denying them capacity at a certain time.

There was a dispute between Green Cargo and the Swedish Transport Administration. Another railway undertaking had been awarded ad-hoc capacity in a way that would mean it would interfere with capacity that had already been awarded to Green Cargo. The regulatory body concluded that the Swedish Transport Administration had acted against the law and revoked the decision.



Switzerland

→ Decision taken in October 2016

In its decree dated 22 December 2015, RACO identified several contraventions of the law by Trasse Schweiz, and ordered measures to be taken to avoid this in future. Trasse Schweiz appealed to the Federal Administrative Court against this decree; the appeal was dismissed in a ruling dated 11 October 2016 and RACO's decree confirmed.

In the train path allocation case concerning PostMail trains, RACO determined that Trasse Schweiz (path allocation body) had not performed the train path allocation process for mail transport in accordance with the law (see page 6 of the Report of activities 2016). The appeal submitted by Trasse Schweiz was turned down by the Federal Administrative Court (A-654/2016, dated 11.10.2016), which confirmed RACO's competence and decision-making powers as part of proactive market surveillance:

- RACO's competences are not restricted to on-going train path allocation. The Federal Administrative Court states that it corresponds to "the spirit and purpose of proactive market

²⁷ Decisions are available at <http://www.amt-autoridade.pt/decisões/>.

surveillance to be able to identify when non-discriminatory access to the network is in jeopardy, and not have to wait until it has been breached.” (A-654/2016, E.8.3.5).

- RACO is also empowered to decree future measures to be taken, “insofar as the procedure which has been reprimanded could recur” (A-654/2016, E.4.3.2).
- RACO may therefore examine every procedure “likely to prevent non-discriminatory access to the network” (A-654/2016, E.4.3.1).

➔ Decision taken in October 2016

The regulatory body dealt with an energy price case and examined the flat-rate tariff for energy applied to long-distance freight trains in the list of services (see page 8 of the Report of activities 2016). RACO was able to reach a partial agreement between infrastructure managers and railway undertakings, putting the following measures in place:

- Effective from 2017, infrastructure managers are reducing the flat-rate energy tariff for train category 6, “Long-distance freight trains”, by about 25% from 22.6 to 16.8 Wh/Btkm.
- From 2016, each undertaking can measure the amount of electricity it consumes, and pay only for the actual amount of power used.



The United Kingdom

➔ Three decisions taken in March 2016

Network Rail Infrastructure Limited vs Hull Trains Company Limited In September 2015.

Hull Trains appealed to ORR against Network Rail's refusal to agree their application for a new track access contract for its London King's Cross to Hull and Beverley services for a term of ten years from the current expiry in December 2019. Hull Trains' justification for the length of the contract was that it needed to secure the rights for a further ten years in order to enable investment in a fleet of new class 802 bi-mode trains to operate its services. The contract contained the necessary access rights for Hull Trains to continue to operate its existing services. The main area of disagreement was that Network Rail was unable to agree to the duration of the new contract; stating that "ORR has yet to make its decision concerning the allocation of capacity on the East Coast Mainline and Network Rail would not wish to agree any rights which might constrain this decision". Despite the appeal procedure, parties were keen to continue discussions in order to reach agreement on as many of the outstanding issues as possible. In addition to the statutory consultation, ORR received further representations from various parties until January 2016, and the final version of the contract was submitted for ORR's consideration by Network Rail on 25 February 2016. After assessing Hull Trains' investment appraisal and considering the costs, benefits and timescale, ORR acknowledged that Hull Trains was making a substantial investment in new rolling-stock to the benefit of passengers and agreed that a contract length of ten years was reasonably necessary to support this investment. As the new trains were not expected to be delivered until December 2019, and as Hull Trains was unable to begin benefiting from its proposed investment until then, it was appropriate that the duration of the access rights proposed should be considered from that date.

Network Rail Infrastructure Limited vs First Transpennine Limited (FTPE).

On 5 September 2015, ORR received an appeal from FTPE for Network Rail's refusal to agree the extension of its track access contract for ten years to 2026. The proposed application explained that FTPE had been instructed by the Secretary of State for Transport to enter into negotiations to secure a Track Access Contract to commence at the end of its existing TAC and to continue for 10 years to 2026. The proposal was intended to protect the current base level of services in the North of England for the incoming new franchisee and did not include any increase in either quantum or specification of rights. Although Network Rail largely supported the application on the terms sought by FTPE, there were a number of elements that it did not support. In particular, the duration of the rights and the inclusion of a schedule that would provide for obligations and arrangements in respect of the

prospective ETCS programme of works. At that time Network Rail was willing to offer a twelve month extension. The Transpennine franchise was awarded to FTPE on 9 December 2015, and it was against this back-drop that the parties continued their discussions and reached agreement on all points of contention. ORR approved the access contract to 2024. ORR also decided that it would not support Network Rail's proposal to include an ETCS schedule in track access contracts as this was such a huge project with very significant associated costs. ORR was not satisfied that there was a consensus in the industry on how the costs would be dealt with and Network Rail had not consulted on a template schedule.

Decision on improvements needed to help passengers get compensation for train delays

ORR published its decision on the super complaint lodged with ORR by Which (consumer organisation) about train companies, highlighting that passengers were being doubly disadvantaged by train delays. Specifically, the claims process passengers had to follow for compensation was neither clear nor straightforward. In its decision, ORR recommended a package of measures to deliver rapid results for consumers (a co-ordinated, national promotional campaign by the train companies to increase passenger awareness of compensation available, clearer, plain English forms, website information, better training to support staff in providing information on compensation, a review of consistency between train company franchise agreements to ensure compensation is promoted more prominently and more often at the time of delay and a clearer license condition for train companies so that explaining compensation is considered and enforced as a key element of good passenger information).

➔ Two decisions taken in May 2016

Rail regulator approves future new passenger services on the East Coast Main Line

In 2014 and 2015 ORR received complaints about competing applications from three train operators seeking to introduce new train services on the ECML. In May 2016, ORR approved applications from Virgin Trains East Coast and FirstGroup for new train services travelling on the East Coast Main Line (ECML) between London and Edinburgh. These services would be introduced in stages over the coming years, in some cases once Network Rail had completed a programme of work to increase track capacity. ORR carried out extensive consultation and analysis of the competing applications, looking at the benefits they would bring to passengers, the effect on public funds, the benefits of competition, and whether they would make best use of the capacity on the route. The result was that the applications from Virgin Trains East Coast and from FirstGroup were approved. The applications from the Great North Eastern Railway Company Limited (GNER) were rejected.

Heathrow Spur Charging

ORR published a decision regarding the Heathrow Spur charging framework. This decision is currently under judicial review. Heathrow Airport Limited (HAL) owns and operates the Heathrow Spur, which is a stretch of railway infrastructure linking Heathrow Airport to the Great Western Main Line to Paddington. When Crossrail services begin in 2018, Crossrail trains will access the Heathrow Spur to take passengers to and from Heathrow Airport. HAL intends to charge the Crossrail train operator for that access. Our decision related to HAL's ability to levy a charge to recover the historical costs of constructing the Heathrow Spur itself and the interpretation of the provision stating that charges for such construction costs can only be levied on train operators if the project could not have gone ahead without them. The judicial review is ongoing. Hearings took place in February. Parties are now awaiting the Court's judgment.