

## Input Paper

# HOW CAN RAIL IMPROVE THE EFFICIENCY OF ITS OWN CHARGING REGIME TO LIMIT COMPETITIVE DISTORTIONS?

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Effective implementation of existing EU rules would already be an important step forward in improving **TRANSPARENCY, EFFICIENCY** and **CONSISTENCY** of charges.

- Is this happening?
- EU court of Auditors report (published May 2016) highlighted implementation as a problem in the rail sector, also in the areas of the calculation of track access charges and separation of accounts.

**Key Question: Existing EU rules on track access charges – are they implemented?**

### **1. What incentives are in place for Infrastructure Managers to reduce their costs and ensure efficiency of track access charges?**

- Member States are obliged to reduce the costs of providing infrastructure and the level of access charges (*“Recast” Directive 2012/34/EC Article 30, paragraph 1 + Annex V*)
- In addition, “Remedial measures” should be taken if this is not happening: it is a breach of contractual obligations between service provider and the contracting authority (*“Recast” Directive 2012/34/EC Annex V*)

**IMPLEMENTATION?**

By 16<sup>th</sup> June 2015

What impact has this provision had on track access charges?

What best practice can be shared to effectively reduce charges for rail?

## 2. What rules are in place to limit the charges paid by rail companies?

Improved transparency and consistency of rail charging schemes via new guidance on the definition of direct cost and greater role of regulatory bodies in oversight (EC Implementing Act 2015/909)

- “Infrastructure manager shall regularly update the method of calculation of direct costs taking into account, inter alia, the best international practice.”
- “The Infrastructure Manager shall submit its method of calculation of direct costs to the regulatory bodies no later than 3 July 2017”

**IMPLEMENTATION?** What best practice can be shared? How can we speed up or ensure that 2017 deadline is met?

## 3. How to ensure effective Regulatory Body oversight?

- Regulatory bodies have a major role to play in monitoring charges and ensuring effective competition. But:

EU Court of Auditors report, Recommendation 1

*“The Commission and the Member States should ensure that the national regulatory bodies possess, and can actually exercise, the necessary powers, independence and resources to carry out the tasks assigned to them, in particular to prevent, together with competition authorities, anti-competitive practices being committed by infrastructure managers and incumbent railway undertakings.”*

**IMPLEMENTATION?** How to improve support for regulatory bodies in executing their important role in overseeing charges?

## 4. How to improve transparency in charges and remove competitive distortions?

- Obligation in EU legislation to keep separate financial accounts within integrated structures separate since 1991 Directive.
- But implementation problem.

- Hence revisions in 2001 Directive, Recast and now 4<sup>th</sup> Rail Package.
- One of the consequences of failed separation is that money for infrastructure (including track access charges) can be used to cross-subsidise the holding's passenger or freight operations, creating competitive distortions for other rail companies.

**IMPLEMENTATION?** Is the obligation to keep separate accounts effectively implemented in Member States?

On-going ECJ cases against Austria and Germany for lack of financial transparency and suspicion of cross-subsidisation.

Not all Member States publish their accounts in line with the legal requirements, so impossible to check how track access charges are being used!

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