

Information regarding intended significant changes to the charging schemes for mark-ups in the 2020 track access charge model

(Status, 1st March 2019 on the basis of the not yet legally binding decision of the SCK of 18.2.2019 on GZ SCK-18-030; for the potentially applicable earlier version of 7.9.2018 see page 3 and below)

1. Pending proceedings affecting mark-ups for the 2018 and 2019 working timetable periods

On 9 September 2016, ÖBB-Infrastruktur AG informed railway undertakings active in Austria about the intended 2018 track access charge model by public notice in accordance with § 67d, Section 7 EisbG.

This notice declared ÖBB-Infrastruktur AG's intention of introducing an adapted track access charge model which would take effect for the 2018 working timetable period (10 December 2017). ÖBB-Infrastruktur AG also expressly indicated that

“the following information reflects the current planning status of the track access charge model. Changes may in particular result due to pending decisions from the Railway Control Commission or the bmvit.” (Emphasis added)

There are currently no legally binding decisions regarding the amount for mark-ups for the 2018 and 2019 working timetable periods. As previously indicated in 2016, this could make changes to the track access charge model necessary.

2. Intended procedure for the 2020 working timetable period

At the moment, the approval procedure effecting mark-ups in the 2020 working timetable period is pending. Together with the requested decision from the Railway Control Commission (Schienen-Control Kommission - SCK) for the 2020 working timetable period, the imminently expected decisions in the first instance regarding the amount of mark-ups for the 2018 and 2019 working timetable periods may thus have an impact on the intended track access charge model for the 2020 working timetable period. In particular, changes to the market segmentation, the amount of the costs directly incurred as a result of operating the train service, or the mark-ups for each individual RU may arise.

Consequently, ÖBB-Infrastruktur AG expressly reserves the right to make changes (including interim changes) regarding the actual amount of the track access charge for each market segment on the basis of decisions made by the SCK and entities verifying these decisions. In particular, changes to the amount of the costs directly incurred as a result of operating the train service (“direct costs”) or the mark-ups may also be necessary as a result of these decisions.

With this in mind, ÖBB-Infrastruktur AG intends to proceed as follows:

On the basis of the free choice of method incumbent upon it alone, ÖBB-Infrastruktur AG intends in principle to use the **same track access charge model** for the 2020 working timetable period (with effect from 15 December 2019) as for the two preceding years (cf. 2018 NS or 2019 NS or § 3 a.). As a planned innovation for the 2020 working timetable period, this would now be based on data (e.g. price elasticity of end customer-demand; proportion of RUs' totals costs made up by the track access charge) obtained from an up-to-date primary analysis of the Austrian rail market.

3. Presentation of the track access charges

The charges are presented in the same way as they were published in the 2020 Network Statement, i.e. in €/train-kilometres (train-kilometre components – consisting of direct costs and mark-ups) and €/gross-tonne kilometres (gross-tonne-kilometre components – consisting of direct costs).

a. 2020 track access charge based on the current request for approval of mark-ups

The track access charges described below are based on the ÖBB-Infrastruktur AG's request submitted to the SCK on 7 September 2018 for approval of mark-ups.

Market segments	Unit	Direct costs excl. 20% VAT	Mark-ups excl. 20% VAT	Charge in € excl. 20% VAT
Train-kilometre components				(z)
Commercial passenger traffic	Train-km	0.687	0.687	1.374
Public service long-distance passenger traffic	Train-km	0.687	0.564	1.251
Short-distance traffic high	Train-km	0.806	1.261	2.067
Short-distance traffic low	Train-km	0.806	1.206	2.012
Freight traffic manipulated	Train-km	0.754	-	0.754
Freight traffic non-manipulated	Train-km	0.754	-	0.754
Service train ¹	Train-km	0.754	-	0.754
Gross-tonne-kilometre components				(btk)
Commercial passenger traffic	Gt-km	0.001929	-	0.001929
Public service long-distance passenger traffic	Gt-km	0.001929	-	0.001929
Short-distance traffic high	Gt-km	0.002954	-	0.002954
Short-distance traffic low	Gt-km	0.002954	-	0.002954
Freight traffic manipulated	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated	Gt-km	0.001662	-	0.001662
Service train ²	Gt-km	0.001662	-	0.001662

¹ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

Reference to the above information in the version of the not yet legally binding decision of the SCK of 18.2.2019 in proceedings SCK-18-030:

In the competition monitoring trial regarding SCK-18-030, the SCK issued a decision on 18 February 2019 in which it declared the wording of the "Information on planned significant changes in the charging regulations for market mark-ups in the track access charge model 2020 as a function of the outcome of the pending approval procedures for mark-ups in the track access charge models 2018 and 2019" ("Market information" as of 7 September 2018) published in accordance with § 67d (7) EisbG null and void and ordered ÖBB-Infrastruktur AG to remove some of the wording. ÖBB-Infrastruktur AG has therefore adapted the market information published on 7 September 2018 and removed the wording declared invalid from the above market information (as of 1 March 2019) (see pages 1 and 2 above).

It should be noted that the declaration of invalidity of the formulations referred to by SCK's decision including the order to remove them is not yet legally binding and ÖBB-Infrastruktur AG has appealed against it. In the opinion of ÖBB-Infrastruktur AG, the entire content of the market information published on 7.9.2018 is legally compliant and may therefore be invoked.

Entities authorised to apply for infrastructure capacity take note that, as a result of a final (legally binding) decision by an appellate court, SCK may declare invalid formulations, which ÖBB-Infrastruktur AG has removed, to be permissible with retroactive effect. In this case, ÖBB-Infrastruktur AG will refer to the market information as of 7.9.2018 (also retroactively). For reasons of transparency, this is therefore reproduced below, but with a grey background to the formulations declared invalid by decision of 18.2.2019 regarding GZ SCK-18-030.

The following is expressly stated: According to an official ruling in the above-mentioned decision, ÖBB-Infrastruktur AG **does not** currently refer to the gray text below when referring to those entitled to apply for infrastructure capacity.

² Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

Information regarding intended significant changes to the charging schemes for mark-ups in the 2020 track access charge model subject to the outcome of the pending approval procedure for mark-ups for the 2018 and 2019 track access charge models

(Status at 7 September 2018)

1. Pending proceedings affecting mark-ups for the 2018 and 2019 working timetable periods

On 9 September 2016, ÖBB-Infrastruktur AG informed railway undertakings active in Austria about the intended 2018 track access charge model by public notice in accordance with § 67d, Section 7 EisbG.

This notice declared ÖBB-Infrastruktur AG's intention of introducing an adapted track access charge model which would take effect for the 2018 working timetable period (10 December 2017). ÖBB-Infrastruktur AG also expressly indicated that

“the following information reflects the current planning status of the track access charge model. Changes may in particular result due to pending decisions from the Railway Control Commission or the bmvit.” (Emphasis added)

There are currently no legally binding decisions regarding the amount for mark-ups for the 2018 and 2019 working timetable periods. As previously indicated in 2016, this could make changes to the track access charge model necessary.

2. Intended procedure for the 2020 working timetable period

At the moment, the approval procedure effecting mark-ups in the 2020 working timetable period is pending. Together with the requested decision from the Railway Control Commission (Schienen-Control Kommission - SCK) for the 2020 working timetable period, the imminently expected decisions in the first instance regarding the amount of mark-ups for the 2018 and 2019 working timetable periods may thus have an impact on the intended track access charge model for the 2020 working timetable period. In particular, changes to the market segmentation, the amount of the costs directly incurred as a result of operating the train service, or the mark-ups for each individual RU and in each direction may arise.

Consequently, ÖBB-Infrastruktur AG expressly reserves the right to make changes (including interim changes) regarding the actual amount of the track access charge in both directions for each market segment on the basis of decisions made by the SCK and entities verifying these decisions. In particular, changes to the amount of the costs directly incurred as a result of operating the train service (“direct costs”) or the mark-ups (in each case in both directions) may also be necessary as a result of these decisions.

With this in mind, ÖBB-Infrastruktur AG intends to proceed as follows:

On the basis of the free choice of method incumbent upon it alone, ÖBB-Infrastruktur AG intends in principle to use the **same track access charge model** for the 2020 working timetable period (with effect from 15 December 2019) as for the two preceding years (cf. 2018 NS or 2019 NS or § 3 a.). As a planned innovation for the 2020 working timetable period, this would now be based on data (e.g. price elasticity of end customer-demand; *proportion of RUs' totals costs made up by the track access charge*) obtained from an up-to-date primary analysis of the Austrian rail market.

However, in the event that the imminently expected assessments in the first instance regarding the approval procedure affecting mark-ups for 2018 and 2019 stipulate deviations from the requested track access charge model, ÖBB-Infrastruktur AG intends to check whether it would also be necessary to adapt the track access charge model for the 2020 working timetable period in line with the decision, as part of the free choice of method incumbent upon it alone, and to implement any adaptation required. The same procedure is intended in the event that decisions made during the legal process are stipulated that in turn effect changes.

Although the outcome of the approval procedure for 2018 and 2019 mark-ups cannot be predicted as the relevant SCK proceedings are still ongoing (or dependent upon the decisions made during the legal process), ÖBB-Infrastruktur AG has, on the basis of the "Expert assessment of ÖBB-Infrastruktur AG's request for the approval of mark-ups acc. to § 67d, Section 6 EISbG" by the expert Dr Götz ("Götz expert assessment"; currently available in the pending proceedings), identified different models for calculating mark-ups. Additional alternative models could arise from the fact that, in the opinion of ÖBB-Infrastruktur AG, the SCK is calculating the direct costs in a different way, which could then result in changes to the mark-ups in order to fulfil the mandatory revenue targets specified by the bmvt.

*On this basis, ÖBB-Infrastruktur AG is reluctant to estimate the actual amount of the track access charge for each market segment that will ultimately need to be offset due to the relevant landmark decisions of the SCK. In the event that none of the model variants for 2018, 2019 and 2020 currently underpinning ÖBB-Infrastruktur AG's requests is followed, **serious deviations** in the actual amount for each market segment may result.*

*In order to provide railway undertakings with the **maximum possible planning security** under these conditions, ÖBB-Infrastruktur AG has calculated alternative models based on the Götz expert assessment that could potentially be considered based on current knowledge, and is presenting them in this document (see § 3).*

*It is expressly stated that ÖBB-Infrastruktur AG is **explicitly countering** all possible changes to its requested model in the ongoing proceedings. As it may yet be necessary, following the result of the check of the expected assessments for 2018 and 2019, to change the 2020 track access charge model in line with the alternative models presented in more detail below (or similarly structured), the railway undertakings are **strongly advised** to apply the "prudent person" principle and, from among the track access charges presented below (see § 3 a. to d.), **to identify the least favourable to them and to base their planning for the 2020 working timetable period accordingly.***

It is expressly indicated that the following information reflects the current planning status of the track access charge model and the previously identified alternatives. Changes may in particular result due to pending decisions from the SCK.

3. Presentation of the track access charges in the different model variants

The charges are presented in the same way as they were published in the 2020 Network Statement, i.e. in €/train-kilometres (train-kilometre components – consisting of direct costs and mark-ups) and €/gross-tonne kilometres (gross-tonne-kilometre components – consisting of direct costs). The following market segments and direct cost amounts described under a. to d. represent the current planning status and consequently changes may yet arise due to the pending regulatory decisions.

a. 2020 track access charge based on the current request for approval of mark-ups

The track access charges described below are based on the ÖBB-Infrastruktur AG's request submitted to the SCK on 7 September 2018 for approval of mark-ups.

Market segments	Unit	Direct costs excl. 20% VAT	Mark-ups excl. 20% VAT	Charge in € excl. 20% VAT
Train-kilometre components				(z)
Commercial passenger traffic	Train-km	0.687	0.687	1.374
Public service long-distance passenger traffic	Train-km	0.687	0.564	1.251
Short-distance traffic high	Train-km	0.806	1.261	2.067
Short-distance traffic low	Train-km	0.806	1.206	2.012
Freight traffic manipulated	Train-km	0.754	-	0.754
Freight traffic non-manipulated	Train-km	0.754	-	0.754
Service train ³	Train-km	0.754	-	0.754
Gross-tonne-kilometre components				(btk)
Commercial passenger traffic	Gt-km	0.001929	-	0.001929
Public service long-distance passenger traffic	Gt-km	0.001929	-	0.001929
Short-distance traffic high	Gt-km	0.002954	-	0.002954
Short-distance traffic low	Gt-km	0.002954	-	0.002954
Freight traffic manipulated	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated	Gt-km	0.001662	-	0.001662
Service train ⁴	Gt-km	0.001662	-	0.001662

³ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

⁴ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

b. Model I of the Götz expert assessment⁵ for the 2020 working timetable period

In Model I of the Götz expert assessment, the market segment “Freight traffic manipulated” needed to be split into “Freight traffic manipulated – combined traffic” and “Freight traffic manipulated – single wagonload traffic”, as in this model the track access charges for “Freight traffic manipulated” as a whole were not determined in the amount of the direct costs.

Market segments	Unit	Direct costs excl. 20% VAT	Mark-ups excl. 20% VAT	Charge in € excl. 20% VAT
Train-kilometre components (z)				
Commercial passenger traffic	Train-km	0.687	0.700	1.387
Public service long-distance passenger traffic	Train-km	0.687	0.755	1.442
Short-distance traffic high	Train-km	0.806	1.123	1.929
Short-distance traffic low	Train-km	0.806	0.673	1.479
Freight traffic manipulated - CT	Train-km	0.754	0.577	1.331
Freight traffic non-manipulated - SWT	Train-km	0.754	0.325	1.079
Freight traffic non-manipulated	Train-km	0.754	1.073	1.827
Service train ⁶	Train-km	0.754	-	0.754
Gross-tonne-kilometre components (btk)				
Commercial passenger traffic	Gt-km	0.001929	-	0.001929
Public service long-distance passenger traffic	Gt-km	0.001929	-	0.001929
Short-distance traffic high	Gt-km	0.002954	-	0.002954
Short-distance traffic low	Gt-km	0.002954	-	0.002954
Freight traffic manipulated - CT	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated - SWT	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated	Gt-km	0.001662	-	0.001662
Service train ⁷	Gt-km	0.001662	-	0.001662

⁵ Page 77ff of the Götz expert assessment

⁶ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

⁷ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

c. Model II of the Götz expert assessment⁸ for the 2020 working timetable period

In Model II of the Götz expert assessment, due to the limited load capacity and in accordance with the letter from the bmvit⁹ of 16 March 2018, no mark-ups were determined for the market segment “Freight traffic manipulated” (consisting of “Combined traffic” and “Single wagonload traffic”).¹⁰

Market segments	Unit	Direct costs excl. 20% VAT	Mark-ups excl. 20% VAT	Charge in € excl. 20% VAT
Train-kilometre components				(z)
Commercial passenger traffic	Train-km	0.687	0.784	1.471
Public service long-distance passenger traffic	Train-km	0.687	0.845	1.532
Short-distance traffic high	Train-km	0.806	1.282	2.088
Short-distance traffic low	Train-km	0.806	0.758	1.564
Freight traffic manipulated	Train-km	0.754	-	0.754
Freight traffic non-manipulated	Train-km	0.754	1.079	1.833
Service train ¹¹	Train-km	0.754	-	0.754
Gross-tonne-kilometre components				(btk)
Commercial passenger traffic	Gt-km	0.001929	-	0.001929
Public service long-distance passenger traffic	Gt-km	0.001929	-	0.001929
Short-distance traffic high	Gt-km	0.002954	-	0.002954
Short-distance traffic low	Gt-km	0.002954	-	0.002954
Freight traffic manipulated	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated	Gt-km	0.001662	-	0.001662
Service train ¹²	Gt-km	0.001662	-	0.001662

⁸ Page 94f of the Götz expert assessment

⁹ Request from the SCK for administrative assistance regarding the proceedings SCK-16-012 and SCK-17-009 to the bmvit

¹⁰ This applies subject to a contrary decision in the pending proceedings, which could conclude that either “Combined traffic” or “Single wagonload traffic” is viable and thus mark-ups for one of these two traffic types must be determined. In this case, the mark-ups for this traffic would be higher than according to Model I of the Götz expert assessment (see b.)

¹¹ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

¹² Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

d. Model III in the Götz expert assessment¹³ for the 2020 working timetable period

In Model III of the Götz expert assessment, due to the limited load capacity and in accordance with the letter from the bmvit¹⁴ of 16 March 2018, no mark-ups were determined for the market segment “Freight traffic manipulated” (consisting of “Combined traffic” and “Single wagonload traffic”).¹⁵

Market segments	Unit	Direct costs excl. 20% VAT	Mark-ups excl. 20% VAT	Charge in € excl. 20% VAT
Train-kilometre components				(z)
Commercial passenger traffic	Train-km	0.687	0.782	1.469
Public service long-distance passenger traffic	Train-km	0.687	0.843	1.530
Short-distance traffic high	Train-km	0.806	1.279	2.085
Short-distance traffic low	Train-km	0.806	0.757	1.563
Freight traffic manipulated	Train-km	0.754	-	0.754
Freight traffic non-manipulated	Train-km	0.754	1.079	1.833
Service train ¹⁶	Train-km	0.754	-	0.754
Gross-tonne-kilometre components				(btk)
Commercial passenger traffic	Gt-km	0.001929	-	0.001929
Public service long-distance passenger traffic	Gt-km	0.001929	-	0.001929
Short-distance traffic high	Gt-km	0.002954	-	0.002954
Short-distance traffic low	Gt-km	0.002954	-	0.002954
Freight traffic manipulated	Gt-km	0.001662	-	0.001662
Freight traffic non-manipulated	Gt-km	0.001662	-	0.001662
Service train ¹⁷	Gt-km	0.001662	-	0.001662

¹³ Page 96f of the Götz expert assessment

¹⁴ Request from the SCK for administrative assistance regarding the proceedings SCK-16-012 and SCK-17-009 to the bmvit

¹⁵ This applies subject to a contrary decision in the pending proceedings, which could conclude that either “Combined traffic” or “Single wagonload traffic” is viable and thus mark-ups for one of these two traffic types must be determined. In this case, the mark-ups for this traffic would be higher than according to Model I of the Götz expert assessment (see b.)

¹⁶ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

¹⁷ Service trains (empty passenger trains and trainsets composed of multiple traction units) do not represent a separate market segment.

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