

Summary of 2023

Development of the Austrian railway market

In rail passenger transport, the performance indicators rose again in 2023. Thus, continuing the growth trend of the years prior to 2020. In rail freight transport, the transported net tons decreased by six percent. The transport performance (gross or net ton-kilometers) decreased by approximately five percent each.

The increase in passengers led to a new all-time high in passenger kilometers traveled. Compared to the previous year, the number of passengers rose by more than 12 percent. On average, each passenger travelled 44.3 kilometers, which is also a record. This increase was partly driven by high fuel prices, expanded parking management in urban centers, and the introduction of the Climate Ticket.

This development was significantly influenced by expansions in long-distance services, including the extension of the Westbahn service between Vienna and Tyrol (with the extension to Bregenz starting in December 2023). ÖBB-Personenverkehr also strengthened its long-distance connections between Austria's urban centers. In regional transport, improvements were implemented in almost all federal states, primarily through more frequent train intervals, longer operating hours, and additional services on weekends. Overall, these measures led to a record supply of over 132 million passenger train kilometers.

In rail freight transport, market data shows a decline in both net and gross ton-kilometers (by 5.2 and 5.0 percent, respectively). Transported net tons also decreased by 6.7 percent. This was mainly due to the difficult economic situation, reduced industrial production, high energy prices, and route closures due to construction works. In 2023, the largest market share in net ton-kilometers by company group was held by the ÖBB Group (Rail Cargo Austria) with 57.6 percent, representing a decrease of 3.2 percentage points compared to the previous year. The second largest group consisted of privately owned railways (e.g., Lokomotion, Ecco-Rail, CargoServ) with a market share of 25.8 percent.

The number of railway companies in Austria totaled 88 at the end of 2023. Compared to 2022, new additions included the freight companies BUDAMAR West (DE), Retrack (DE), Smart Rail Traction (DE), Train log (DE), and Graf Railservice (AT). Additionally, Schiene Oberösterreich (AT) was added as a new infrastructure operator. Overall, 66 companies were authorized to operate trains on the ÖBB network during the reporting year. Four of these belong to the ÖBB Group, ten others are predominantly owned by foreign incumbents (market-dominating companies) through direct or indirect shareholdings. 41 companies are privately owned (with 50 percent or more shares), while the remaining eleven are owned by public institutions.

Market participants overall rated the railway transport market in Austria positively in a survey conducted by the Schienen-Control. Training facilities, track allocation, and language proficiency of railway personnel received particularly high ratings. However, there is still room for improvement in competition from other modes of transport, inconsistent EU regulations on safety certification, and regulatory requirements in the personnel sector. Overall, the domestic market performed better than the international market. There was notable improvement in operational standards, while the availability and cost of services were rated lower compared to the previous year.

Legislative Developments

The Federal Minister for Climate Protection, Environment, Energy, Mobility, Innovation, and Technology issued two ordinances in the reporting year based on the 1957 Railway Act. Firstly, the "SchiCKomm Meeting Fee Ordinance 2023" was enacted to regulate the meeting fees of the Schienen-Control Commission, including necessary adjustments. Secondly, the "Railway Crossing Ordinance 2012" underwent comprehensive amendments. This ordinance addresses the securing of railway crossings and the conduct of road users. The changes specify how railway crossings should be secured in accordance with technological advancements and traffic needs. Additionally, they regulate behavior when approaching, crossing, and observing traffic signs at railway crossings.

Key Decisions of the Schienen-Control Kommission

Reporting of Train-Data

In November 2023, the railway infrastructure operator informed railway companies about changes to the Rail Network Utilization Conditions (SNNB) for 2024, including mandatory reporting of train data. The change would have limited the manual submission of train data via email in freight transport to the end of March 2024, while it was intended to be available for the entire network timetable period in passenger transport. Following complaints from five freight transport companies to the Schienen-Control Commission, issues were raised regarding late and incomplete communication, as well as insufficient lead time. Criticism also focused on increased staff workload and the establishment of a system deviating from TAF TSI standards. Railway companies demanded the continuation of email reporting.

After intervention by the Schienen-Control Commission, the infrastructure operator agreed to maintain email reporting for freight transport until the timetable change in 2024, leading to the cessation of the complaint procedures.

Traction Current Charges

The Schienen-Control Commission has initiated competition monitoring procedures regarding the published network charges for the transmission of railway traction current for the years 2021, 2022, 2023, and 2024. As part of these procedures, the Commission is reviewing the tariffs set by the infrastructure operator.

Approval of Markups on infrastructure fees

The Schienen-Control Commission is conducting several procedures concerning the approval of supplements to track access charges or the examination of costs directly incurred due to train operations. If track access charges and other revenues from the operation of railway infrastructure are insufficient to fully cover costs, the railway infrastructure company may apply markups. In the ongoing procedures, the Schienen-Control Commission is examining the relevance of markups for specific market segments, the full cost amount, and costs directly incurred due to train operations. Furthermore, the Commission is reviewing whether the market segments set by the railway infrastructure company are lawful, whether the model for determining the viability of market segments is suitable, and whether it is being correctly applied.

Allocation of train-paths

In the reporting year, the Schienen-Control Commission dealt with a complaint from a railway undertaking (EVU) that had ordered train paths for summer 2023 via a diversion route instead of its usual route, where construction work was planned on both lines for the relevant period. Following a hearing before the Schienen-Control Commission and subsequent discussions, train paths were arranged for the complaining EVU, which it accepted.

New Passenger Services Announced

In 2023, several railway companies informed the Schienen-Control Commission about planned new passenger services. The notifications submitted to the Commission in 2023 included services on the following routes:

- Wien–Innsbruck
- Wien–București/Timișoara
- Budapest–Nürnberg
- Innsbruck–München
- Wien–Bregenz
- Wien–Stuttgart
- München–Bologna
- Wien–Brno
- Hegyeshalom–Passau
- Wien–Hegyeshalom

Further

The additional procedures included complaints regarding the infra DOAS product, terminal access fees, passenger information at railway stations, dispute resolution in rail network usage conditions, and priority rules.

Decisions of BVwG and VwGH

In 2023, the Federal Administrative Court (BVwG) decided on two cases brought by the Schienen-Control Commission, while the Administrative Court (VwGH) decided on one case.

The Schienen-Control Commission conducted a competition oversight procedure regarding station charges imposed by the largest station operator, following an application from a railway company. In a partial decision on January 12, 2021, the Commission rejected requests to invalidate the so-called platform edge factor and station charges under Section 74 of the Railway Act for the product catalogs Network Access Stations 2012 to 2015 (up to November 26, 2015). The applying railway company lodged a complaint against this partial decision with the Federal Administrative Court (BVwG). On March 3, 2021, the Schienen-Control Commission, as the respondent authority, submitted the administrative files to the BVwG in response to this complaint. Following a request for deadline extension by the Schienen-Control Commission, the BVwG issued its findings on August 28, 2023. The BVwG overturned certain points of the partial decision from January 12, 2021, and referred the matter—specifically the overturned points and in adherence to the legal opinion of the BVwG—back to the Schienen-Control Commission for a new decision. Regarding the decision in the form of a resolution issued by the BVwG on August 28, 2023, the Schienen-Control Commission submitted an extraordinary appeal to the

Administrative Court (VwGH) on October 10, 2023. The station operator also filed an extraordinary appeal. A decision was still pending as of December 31, 2023.

On October 4, 2023, the Administrative Court (VwGH) ruled on a case concerning a ticket sales office at a railway station. The Schienen-Control Commission had granted a railway company the use of the sales office through a substitute decision following its complaint. One of the disputes between the railway company and the station operator concerned access rights. The VwGH stated that the Schienen-Control Commission can include provisions in a substitute decision that anticipate future developments, such as the use of sales offices by other or multiple railway companies.

On May 17, 2023, the Federal Administrative Court (BVwG) ruled on a case regarding the conditions for the use of ticket sales offices at railway stations. The Schienen-Control Commission had declared provisions of these usage conditions invalid under Section 74 (1) Z 5 of the Railway Act (EisbG), stating they violated provisions of the EisbG and/or the General Civil Code (ABGB). The BVwG affirmed the competence of the Schienen-Control Commission to review civil law provisions as part of competition oversight. Furthermore, it affirmed that the transfer of maintenance obligations and the exclusion of liability in the contract in question violated civil law provisions. Both the Schienen-Control Commission and the station operator filed appeals against this decision to the Administrative Court (VwGH). The Schienen-Control Commission primarily argued in its appeal that the BVwG's interpretation of Section 74 (1) Z 5 of the EisbG deprived this legal norm of any practical application. According to the BVwG's interpretation, unlawful contents of rail network usage conditions, contracts, and documents would not be declared invalid due to their civil law nullity.