

## #EUYearofRail



# Transport Architecture and Regulation

## Regulating Sector's Performance

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Chair of Portuguese Mobility and Transport Authority

# AMT – Authority for Mobility and Transport

- **Rail Regulatory Independent Body in Portugal**

- ✓ First independent economic regulator within the Ecosystem for Mobility and Transport.
- ✓ Competencies in relation to all transport modes (except aviation).
- ✓ Created in the sequence of the measures of the TROIKA Memorandum of Understanding (MoU).
  - *“Measure 5.15.v. - Reform the transport and infrastructures’ regulatory framework to improve the effectiveness, efficiency and independence of the entities regulating the transport sector”.*
  - *“Measure 5.17.i. “Ensure that the rail regulator enjoys the independence required under the EU rail Directives (...)”.*
- ✓ MoU emphasized specifically the independence of the Rail Regulator.

- **Law 67/2013, as of 28<sup>th</sup> August – Framework Law for Regulatory Bodies**

- ✓ Creation of AMT.
- ✓ Restructuration of IMT (Institute for Mobility and Transport), as the licensing entity and National Safety Authority (rail).

- **AMT’s Statutes approved by Decree-Law 78/2014, as of 14<sup>th</sup> May**

- ✓ Beginning of activity in July, 2015.

# AMT – Authority for Mobility and Transport

## • Main Horizontal Assignments

- ✓ Ensure the compliance of national, EU and international legal framework on regulation, supervision and advocacy and enforcement of competition.
- ✓ Promotion of a progressive adjustment of the legal framework for the regulated sectors, in the context of sustainable development, efficient use of resources and quality of services.
- ✓ Issuing *ex-ante* binding legal opinions on concession and public service contracts regarding the regulated sectors.
- ✓ Advocacy and enforcement of competition for mobility and transport, in cooperation with the Authority for Competition, as well as user rights regarding prices, services and associated quality.
- ✓ Regulation of the access to infrastructure, assuring that is open, equitable and non-discriminatory, including the definition of rules and priorities for capacity allocation.
- ✓ Definition of general rules and principles on tariff policy and concessions for public transport and infrastructures, as well as for public service obligations, assuring equality, proportionality, and finance sustainability.
- ✓ Monitoring of mobility markets and regulated entities, and assessment of service levels.
- ✓ Assessment and decision of users' complaints.

# AMT – Authority for Mobility and Transport

## • Main Assignments (Railway Market)

- ✓ Definition of rules and criteria on tariff setting of rail infrastructure use and homologation of tariffs proposed by the infrastructure manager, namely assuring that they are non-discriminatory and in compliance with the rules and principles established in the EU and national legal instruments, particularly in what concerns to the Single European Railway Area.
- ✓ Supervision and compliance analysis within the legal framework, applicable to concession and public service contracts, namely the infrastructure manager, rail operators and service facilities operators.
- ✓ Definition or approval of mandatory infrastructure and operator's performance regimes, mainly regarding reliability and punctuality, as well as related monitoring systems, and applying penalties in case of non-compliance.
- ✓ Act as an appeal body for the Network Statement issues, as well as assessment and decision of complaints of operators regarding infrastructure managers, namely in what concerns to tariffs, access to infrastructure and capacity allocation.
- ✓ Provide a bi-annual consultation to the rail market, namely to the users of infrastructure, passenger, and freight rail services.

# AMT and the Rail Regulatory Framework

**Directive 91/440/EEC**, the backbone of EU's railway regulatory framework

✓ Beginning of the European Single Market for Railways

## Objectives:

- Management Independence of Railway Companies from the State
  - Separation between the provision of Railway Management Services and the provision of Railway Transport Services
  - Improvement of the financial structure of State-owned (or State-controlled) railway companies
  - Granting of access rights for railway infrastructure to international groups of railway companies and railway companies that international freight transport.
- ✓ Directive 91/440/EEC was repealed by **Directive 2012/34/UE** that establishes the Single European Railway Area
- ✓ These principles were then progressively implemented by the EU "Railway Packages"

# AMT and the Rail Regulatory Framework

- **First Railway Package (2001)**
  - ✓ Nondiscriminatory access to the trans-European network.
  - ✓ Opening the market for the provision of international railway freight transport services.
- **Second Railway Package (2004)**
  - ✓ Competitive opening of the European railway market (domestic and international railway freight transport).
- **Third Railway Package (2007) and Recast of the First Railway Package (2012)**
  - ✓ Opening of international railway passenger transport market for competition.
- **Fourth Railway Package (2016) (Includes a “Market Pillar” and a “Technical Pillar”)**
  - ✓ **Market Pillar:**
    - ❑ Completes the process of gradual market opening started with the First Railway Package, with the opening of the domestic railway passenger transport market .
    - ❑ Rules improving the governance of railway infrastructure and preventing discrimination.
    - ❑ Principle of mandatory tendering for Public Service Contracts in railway passenger transport services with exclusive rights and/or financially compensated Public Service Obligations.

# AMT – Authority for Mobility and Transport

## • Main Interventions – Economic Equilibrium Test (Commission Implementing Regulation (EU) 2018/1795)

- ✓ Issue of AMT's Regulation 910/2019, on the procedures and criteria adopted by AMT to assess if the economic equilibrium of a PSC would be compromised by a new rail passenger service.
  - ❑ Framed by article 14 (1) of Commission Implementing Regulation (EU) 2018/1795:
    - “The methodology used by the regulatory body to perform the test shall be clear, transparent and non-discriminatory and shall be published on its website”.*
  - ❑ The Economic Equilibrium Test (EET) of a PSC should be regarded as compromised if the proposed new service would have substantial negative impact:
    - ❖ Level of profit for the Public Service Operator.
    - ❖ The operation would imply a substantial increase in net costs for the competent authority (Transport Authority).
- ✓ In 2021 a new operator – B-Rail – notified AMT of its intention to operate a new rail passenger transport service (starting in 2023).
- ✓ CP (Internal Operator) required AMT an EET regarding B-Rail's notification.

# AMT – Authority for Mobility and Transport

## • Main Interventions – Public Service Obligations (PSO) and Public Service Contracts (PSC)

- ✓ Issue of (favourable) *ex-ante* legal binding opinions for PSC for Public Passengers Rail Transport Market
  - ❑ PSC between the State and the Internal Operator CP – Comboios de Portugal, E.P.E., defining the PSO and its financial compensations (2019):
    - ❖ 10-year duration (2020-2030), with possibility of renewal for an additional 5-year period.
    - ❖ PSO with financial compensations for Urban, Regional and Long Distance (Inter-Cities) Rail Passenger Transport Services, covering the all Portuguese mainland territory.
    - ❖ Tariffs subject to PSO, in the general rules comprising reduced tariffs.
    - ❖ Alfa Pendular Services (fast, high-quality long-distance services) included in the PSC, but not subject to financial compensation.
  - ❑ Extension of the FERTAGUS concession, granted by a previous public tendering procedure, for the provision of Urban and Suburban Public Passengers Rail Transport connecting Lisbon with the Southbank of Tagus River Surroundings:
    - ❖ PSO are not financially compensated and regards to quality, regularity and punctuality of rail transport services.
    - ❖ Period extension ranging from 2019 until 2024.



# AMT – Authority for Mobility and Transport

- **Main Interventions – Public Service Obligations (PSO) and Public Service Contracts (PSC)**
  - ✓ Supervision of the existent 2 PSC for Public Passengers Rail Transport (CP and FERTAGUS).
  - ✓ Evaluation of the final amounts of the PSO financial compensations.
    - ❑ Particular evaluation of specific compensations granted to Public Passenger Transport Operators regarding to the requirements for the provision of essential services during the Covid-19 Pandemic:
      - ❖ Exploitation deficits financed due to specific obligations, established by Transport Authorities, in the framework of special public health measures during Pandemic periods (2020 and 2021).

# AMT – Authority for Mobility and Transport

## • Main Interventions – Public Service Obligations (PSO) and Public Service Contracts (PSC)

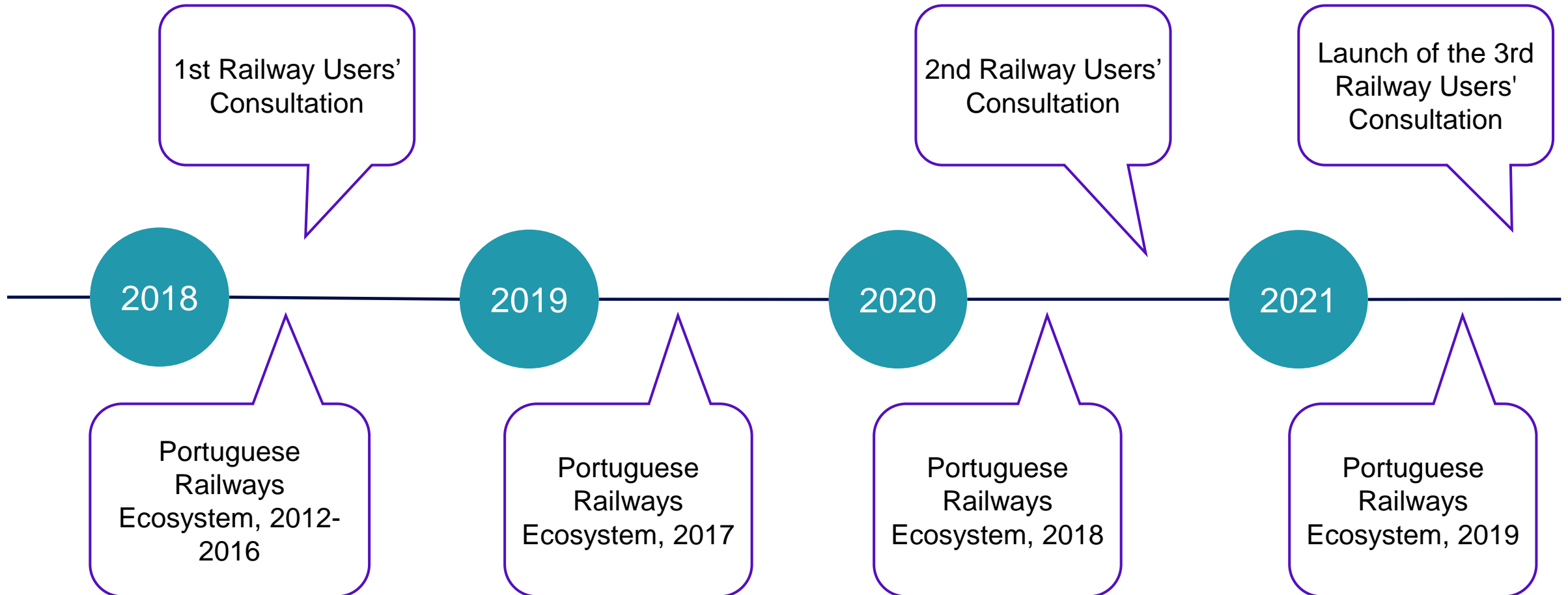
- ✓ Issue of *ex-ante* legal binding opinions for the Framework Contract between the State and the Infrastructure Railways Manager (IP – Infraestruturas de Portugal, S.A.) for rail infrastructure management PSO, including its financial compensations:
  - ❑ Signed in 2016, for the period 2016-2020, but extended until the end of 2021, due to uncertainties regarding to the impact of Covid-19 Pandemic in the rail sector.
  - ❑ Includes 13 yearly performance goals raging the infrastructure management PSO:
    - ❖ Capacity management.
    - ❖ Command and control of circulation.
    - ❖ Rail infrastructure maintenance.
    - ❖ Promotion, coordination, development and control of all activities related to the rail infrastructure.
  - ❑ AMT follow the execution of the contract and issued recommendations:
    - ❖ Reformulation of the methodology applied to access the average global deviation, linked to the penalty clause for the non-achievement of the contract performance goals.
    - ❖ Adjustment of some contract goals, in order to get real deviations referred to the initial contract goals (minimizing the influence of yearly interim results).

# AMT – Authority for Mobility and Transport

## • Main Interventions – Rail Network Statement and Infrastructure Charges

- ✓ Annual validation of the Network Statement (should be carried out annually, with a 2-year advance):
  - ❑ Characteristics of the infrastructure available to railway companies, as well as the conditions for accessing it.
  - ❑ Charges and charging principles.
  - ❑ Principles and criteria for allocating capacity.
  - ❑ Information regarding requests for license granting.
  - ❑ Information regarding dispute resolution procedures.
  - ❑ Information regarding access to service facilities.
  - ❑ Model of a framework agreement to be signed by the infrastructure manager and the applicant for infrastructure access.
- ✓ One key issue is the approval of charges/tariffs:
  - ❑ Infrastructure manager financing.
  - ❑ Railways companies costs and competitiveness.

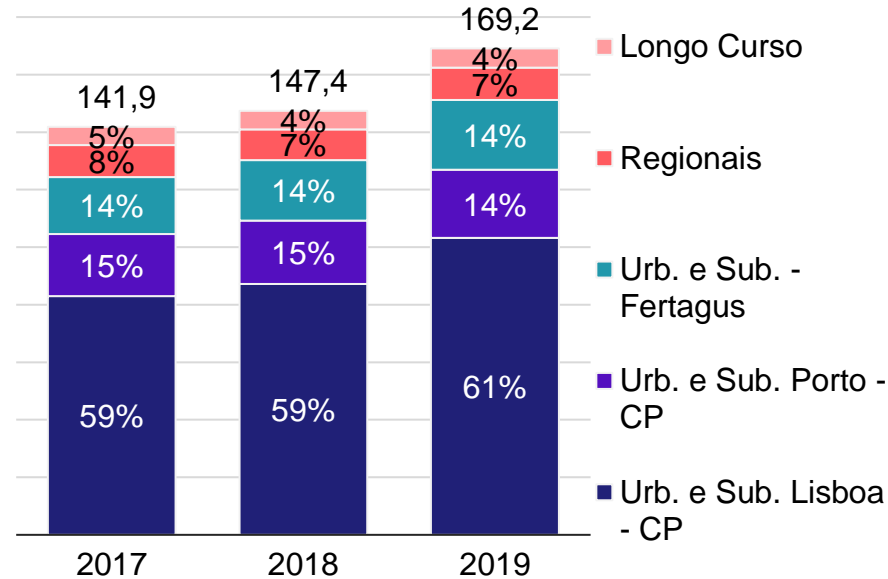
## Rail Sector Knowledge



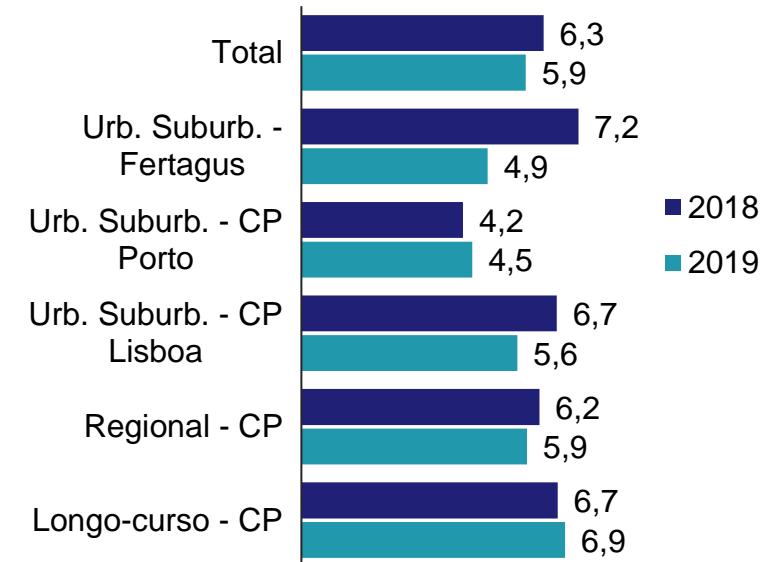
# Rail Sector Knowledge – Passenger market

- The collection of operational data (supply/demand/occupancy) allows the Regulator to assess the quality of service, understand the indicators of competition in the railway market, know the levels of modal shift, the impact of mobility on territorial and social cohesion and the effects of public policies;
- Conduct systematic control of the factors that compose the prices;
- Identify the situations that justify the imposition of public service obligations, and the contracting of passenger public transport services.

Passengers (in millions)



Passenger operators' revenues per passenger-km (in Eurocent)

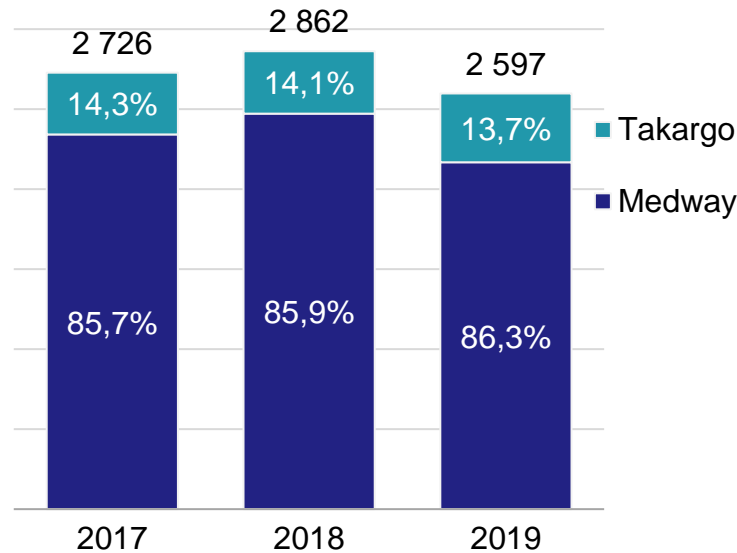


- Decrease in prices (-7% in passenger operators' revenues per passenger-km)
- Growth in demand (+30% in passenger-km)

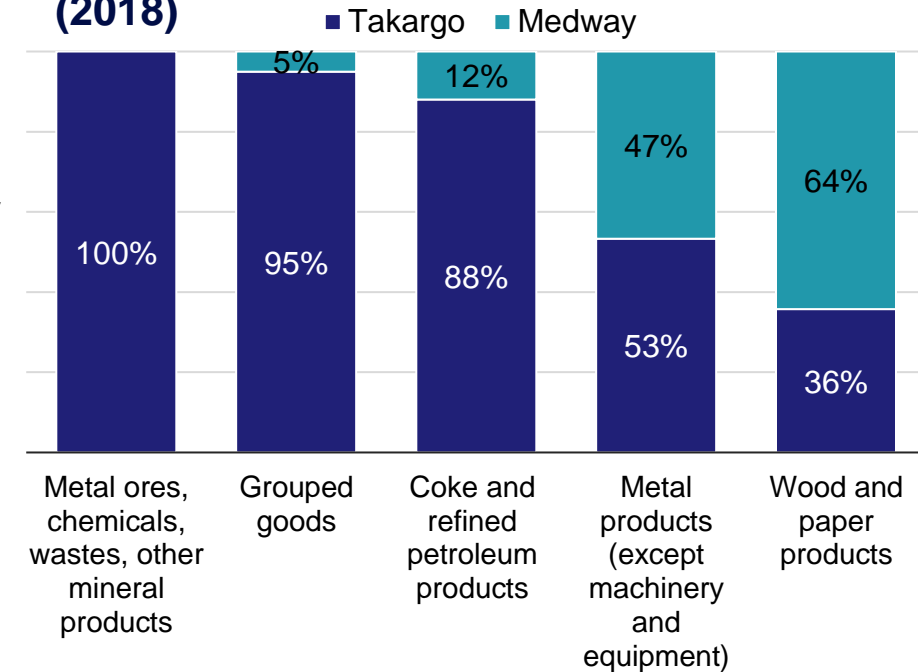
## Rail Sector Knowledge – Freight market

- The monitoring of freight indicators allows the Regulator to monitor competition, namely in which markets anti-competitive practices may exist.
- It also enables an analysis of modal shift in rail freight transport.

**Tonne-km (in millions)**



**Market share per group of goods (2018)**

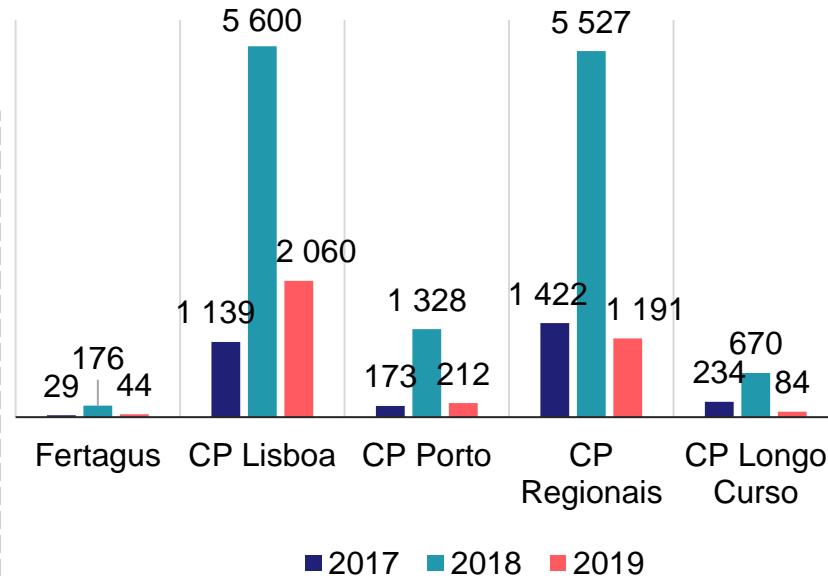


- Market share of 86% for Medway, 95% in containers
- High growth in the use of containers (from 25% in 2015 to 54% in 2019)

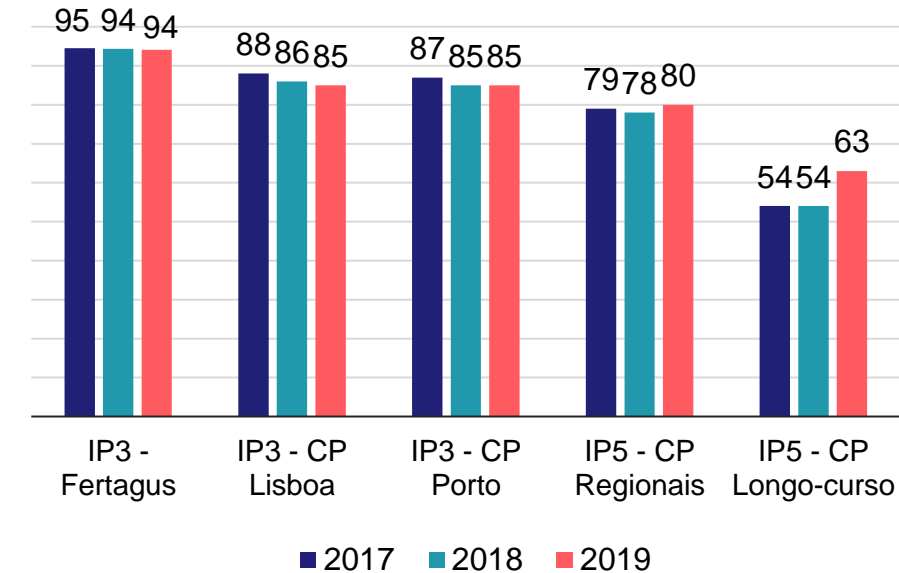
## Rail Sector Knowledge – Quality of rail service

- To ensure and monitor the defence of user's rights and interests regarding prices, services and quality;
- Promoting proper standards of quality of the services provided to the consumers/users and citizens in general;
- To define or approve infrastructure and operator performance regimes, particularly in terms of reliability and punctuality and the corresponding monitoring systems.

**Nr. suppressed passenger trains**



**Punctuality indices of 3 and 5 min, in %**

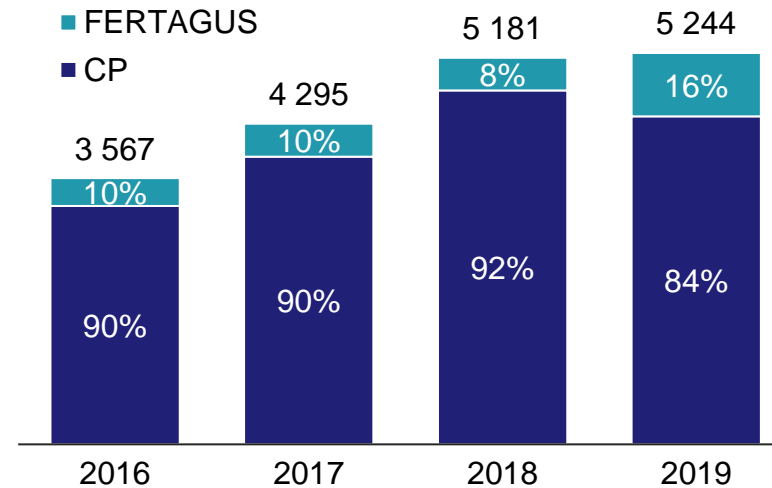


- High number of trains cancelled in 2018
- Inspection of the company CP - Comboios de Portugal (2018)

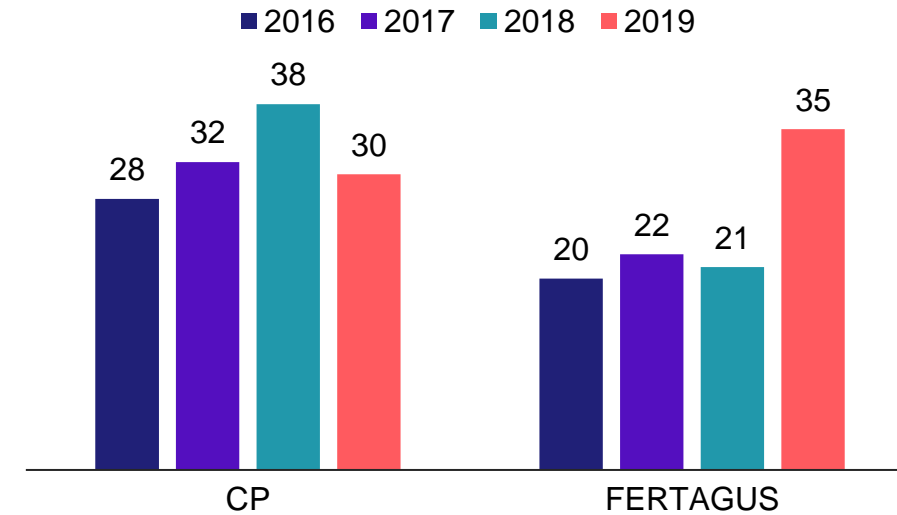
## Rail Sector Knowledge – Complaints

- Taking note and replying to the complaints from users or consumers and take the necessary steps, pursuant to the law;
- Inspecting the records of complaints and publish reports about these complaints, the operators with the highest number and the results of its actions.

**Nr. of complaints**



**Number of complaints per million passengers**



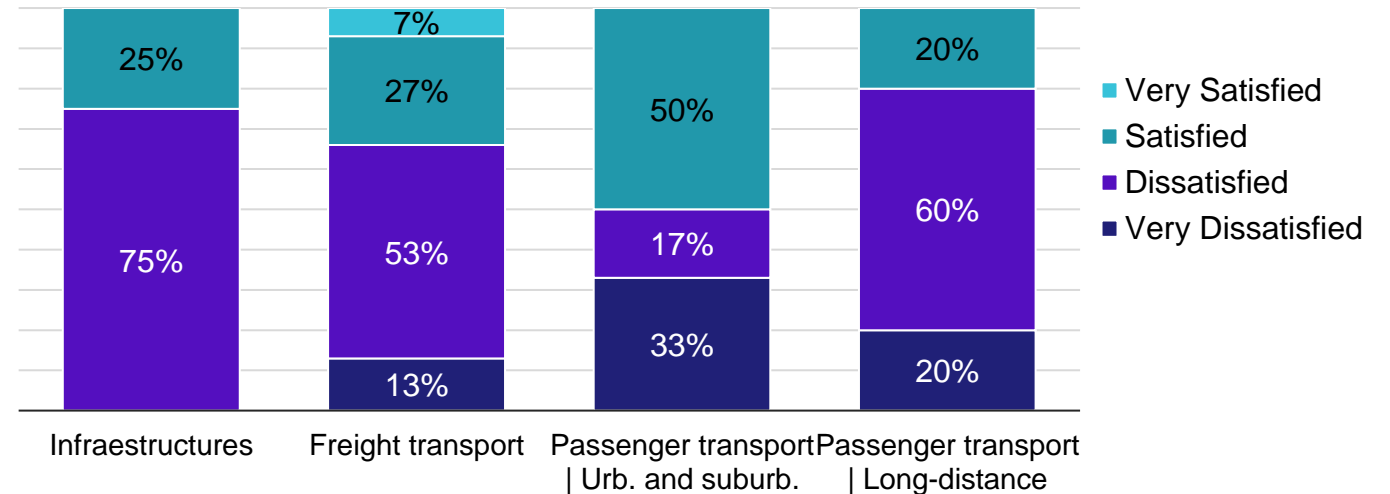
- Increase of complaints in Fertagus
- Impact of the increase in the number of passengers and the introduction of the Electronic Complaints Book



## Rail Sector Knowledge – Consultation of the users of the railway market, 2019

- Consultation, every two years, of the representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.

### Overall satisfaction



- Infrestructures** (+) allocation of railway (-) railway tracks
- Freight transport** (+) punctuality (-) prices
- Passenger transport** (+) prices (-) reduced mobility

# Future Perspectives

- **A performant rail sector is mandatory to achieve a real sustainable Ecosystem for Mobility and Transport**
  - ✓ Reaching the objectives of the United Nations Agenda 2030 for Sustainable Development and the European Green Deal
    - ❑ Adoption of an environmentally friendly investment approach, based on stable, clear and predictable regulatory framework with long-term, clear and transparent rules and procedures.
    - ❑ Diffusion of competitive markets for mobility, as one of the best incentives to attract sustained and high-value investment:
      - ❖ Prevention of competitive restrictions (like cartelization and abuse of dominant position).
      - ❖ Careful attention to competitive distortions induced by policy measures and regulations.
      - ❖ Promotion and maintenance of the level of the playing field, both between service and infrastructure operators.
  - ✓ Greening mobility must be the new license for the transport sector to grow
    - ❑ Reduction of 90% of transport sector's emissions by 2050
      - ❖ Doubling the high-speed rail traffic till 2030 and tripling it by 2050.
      - ❖ Doubling the rail freight traffic till 2050, with an interim target of 50% increase by 2030.

# Future Perspectives

- **Importance of the National Rail Plan (presently under development in Portugal)**

- ✓ A key tool to stabilize the rail sector planning in the medium and long term.
- ✓ AMT's perspective regarding the National Rail Plan attention (opinion already issued):
  - ❑ Compliance with EU and national regulatory and policy instruments.
  - ❑ Take into account different socio-economic dimensions of mobility, essentially, but not exclusively, focused on rail and its contribution to cohesion and maximizing the potential of the national territory.
  - ❑ Establish the National Rail Plan as a Sectorial Plan within the framework provided by the General Base Law for Public Policy on Soil, Spatial Planning and Urban Planning.
  - ❑ Ensure the integration of the Plan with the National Investment Programme 2030, as well as a full compliance with the Trans-European Transport Network Regulation requirements:
    - ❖ Core Network in 2030.
    - ❖ Comprehensive Network in 2050.
  - ❑ Take into account the rail passengers rights and the conditions of access to the railway infrastructure, which, since 2019, has been liberalized, as well as tariff and performance improvement regime issues, always based on transparency and non-discriminatory principles, while ensuring greater competitiveness for the different segments of the rail market

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Thank You for your attention!

Ana Paula Vitorino