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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

on the implementation of the first railway package

{SEC(2006) 530}

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1. INTRODUCTION: FROM THE FIRST TO THE THIRD RAILWAY PACKAGE, THE GRADUAL CREATION OF A EUROPEAN RAILWAY AREA

The railways were the first of the modern modes of transport. Their success during the 19th century and the first half of the 20th century was unprecedented, but they fell into decline as motor cars and commercial aviation became increasingly popular and successful. In order to halt this decline the European Community has adopted a number of legislative measures aimed at reviving the railways by gradually creating a “railway area” which is integrated at a European level. However, the slow rate at which the Member States and their national undertakings have adapted to the European dimension means that the railway sector has declined further in most of the Member States except those which were aware of the need for proactive and courageous measures. The first Member States to reform their national railway industry are today also the ones which perform best (in terms of traffic in particular) and have modernised to a degree which augurs well for the future.

In 1996¹, the White Paper on the railways highlighted the need to reform the sector more fully to give it a chance of success in the European internal market. The **first railway package** presented by the Commission in 1998 focused on the shortcomings of Directive 91/440/EEC² and was based on the consensus reached by the decision-makers following their analysis of the 1996 White Paper. Comprising three Directives, it enables any railway undertaking which has been licensed in accordance with Community criteria to have access to railway infrastructure on fair, non-discriminatory terms to offer pan-European services, starting with international freight services on the trans-European rail freight network. Its adoption at the end of 2000, following a difficult conciliation procedure between the European Parliament and the Council, and publication on 15 March 2001 for transposition in the Member States by 15 March 2003 signalled the desire of both national and European policymakers to overhaul the regulatory framework for the industry from top to bottom to ensure its integration into the European area and to enable it to face up to the competition from other transport modes on the best possible terms.

The September 2001 White Paper on European transport policy, which was based on the decisions set out in the first railway package, clearly advocated continuing with the creation of a European railway area, which the **second railway package** proposed by the Commission in January 2002, and adopted in April 2004, defined in greater detail with more extensive opening up of the freight market, a Directive on railway safety, a Regulation establishing a European Railway Agency and other measures to speed up interoperability between the national networks. The adoption of this package, which includes the total opening up of the freight market as from 2007 in a European Union by then of 25 or even 27 Member States, was evidence of the same wish on the part of the decision-makers to continue with the creation of a European railway area. Even more indicative of this desire was the demand of the European Parliament to have a **third railway package** on the table before approving the second package, which led the Commission to put forward new proposals in March 2004, this time aimed at opening up the international passenger transport market by 2010, the certification of on-board staff and passenger rights. The European Parliament endorsed these proposals in September 2005 and political agreement was reached in the Council on

¹ White Paper - A strategy for revitalising the Community's railways - COM(96) 421, 30.7.1996.

² The full references for the Community railways legislation are given in Annex 1 (i.e. Annex 1 to the working document).

5 December 2005, making it likely that agreement, albeit difficult to achieve, will be reached on the package during the first few months of 2007. It will then be possible to say that the European regulatory framework for the railway sector is complete, though this does not rule out the possibility of adjustments being made in future to some of the provisions which have already been adopted in the light of any difficulties which arise during the transposition in the Member States.

This report by the Commission is concerned solely with the implementation of the first railway package, which applies in full at the present time, and its impact on the stakeholders concerned and the market, bearing in mind that the aim of creating a genuine European railway area over time is because this is the only way of revitalising the sector as part of the European transport system and this is a necessary contribution to the Lisbon Strategy. Developing today the competitiveness of the sector through market opening means supporting future investment, and thereby ensuring the growth and employment which the Lisbon Strategy aims at. In addition, by contributing to the development of environmentally friendly transport, the Community deliberately opts for the development of sustainable transport.

This report is based on the information available to the Commission, the discussions held with the Member States within various specialised committees and working parties and a number of studies which can be found on the Commission's website. Furthermore, the European stakeholders concerned and their representative organisations have expressed comments on the present situation. These are summarised in Annex 3 to the working document.

2. TRANSPOSITION PERFORMED BY THE MEMBER STATES BUT CONSOLIDATION STILL NEEDED

The first railway package consists of three Directives of the European Parliament and the Council (2001/12/EC, 2001/13/EC and 2001/14/EC), which are closely interlinked and which were due to be transposed by the 15 Member States no later than 15 March 2003 and by the 8 new Member States which have a railway system by 1 May 2004, the date of their accession to the European Union. The Commission has examined the main aspects of the reform for which it provides an overall evaluation of the transposition situation, the details being given in the Annex:

- The **separation of accounts** for activities relating to the supply of transport services and activities relating to railway infrastructure management, with an additional distinction being made, inter alia, in the case of the accounts for the supply of transport services, between those related to passenger transport and those concerning the transportation of goods (Annex 4). Cross-subsidisation between activities must be avoided. A large number of Member States have undertaken a thorough restructuring of their national railway undertakings. These reform processes have not been completed in all cases and the accounts do not yet reflect the new obligations. The 2005 accounts published in 2006 should correspond to the requirements of the Directives.
- **Separation between essential functions**, these being capacity allocation, charging, licensing and the monitoring of public service obligations as regards transport activities (Annexes 5 and 6): the Commission will examine, on the basis of clear and transparent criteria, whether the infrastructure manager acts neutrally in allocating capacity and charging for infrastructure use, in particular where the separation of functions is not guaranteed by means of institutional separation. Access to (rail and services) infrastructure

must be transparent and non-discriminatory, and work still remains to be done in this area in many of the Member States.

- An **independent regulatory body** is essential to monitor the railway market and to act as an agency to settle disputes between the infrastructure operator and the railway undertaking(s) (Annex 7). This body must have human, financial and administrative resources on a sufficient scale to enable it to play an active part in the operation of the market, which is not the case everywhere.
- **The granting of infrastructure access rights**, including access rights to the necessary services, on a fair and non-discriminatory basis to all railway undertakings which wish to offer international freight services on the trans-European rail freight network as from 15 March 2003 (Annexes 2 and 8). The Commission encourages the gradual introduction of standard contracts between the infrastructure manager and the railway undertaking(s) (use contracts and framework contracts) to facilitate access. Enabling authorised candidates (e.g. freight forwarders, and the competent authorities for public transport service contracts) to have access to infrastructure is a regulatory option for Member States which see a need to provide rail customers with an additional way of obtaining a better transport service.
- **The introduction of a charging system** based on the marginal cost principle with increases being possible under certain circumstances (Annex 8). It is essential that distortions of competition due to differences in charging levels between transport modes and within the railway industry itself are corrected. To attain the objectives of the first railway package, it is important to avoid cross-funding between freight trains and passenger trains through the infrastructure charging system.
- **Harmonised conditions for the granting of licences for railway undertakings** which are valid throughout the Community (Annex 9). While the costs and periods of time involved in obtaining these licences may vary from one Member States to another, greater transparency regarding the conditions to be met by railway undertakings to obtain a licence is needed.

On 1 January 2006, 24 out of 25 Member States had formally transposed the Directives of the first railway package into their national legislation. Luxemburg has formally committed to implement it during the first half of this year. Details regarding transposition and the national measures are given in Annex 1 to the working document. The delays in transposition which prompted the Commission to launch infringement procedures for failure to transmit the national implementing measures have had repercussions on the ability of the actors to assert themselves on the European stage due to the resulting uncertainty surrounding the national regulatory situation. At the moment, the Directives are still having an unequal effect in practice from one Member State to another, and have not led to the arrival of new entrants in all the Member States. Where appropriate, the Commission will launch infringement procedures if transposition is incomplete or has not been done properly: it is in fact necessary to ensure that the implementation is done in the spirit of Community legislation as well as to the letter.

3. THE DEVELOPMENT OF THE RAILWAY MARKET AND ITS PLACE IN THE TRANSPORT SYSTEM

3.1. The market for the transportation of goods by rail

The main focus of the reform going on in the Community has been rail freight, the constant decline of which was considered to be unjustified given the intrinsic advantages offered by the Community rail transport area, namely a substantial increase in transport distances and an increase in the exchange of goods within the European area, given that road transport has reached saturation point, in particular in the Alps and the Pyrenees. The first measures taken regarding the opening up of the market therefore concerned international freight services, and the success of these measures largely depends on the rate at which each Member State has opened up its market to this type of services. Some Member States had opened up their market before 15 March 2003, while others did not open their market until 2005. Details regarding the opening up of the market in the Member States are given in Annex 2. Despite the differences, the rail freight market has displayed new-found dynamism thanks in particular to the gradual opening up of the market as clearly set out in the first two railway packages and the impact of the restructuring of the incumbent undertakings.

When analysing the development of the EU market, account must be taken of the fact that the railways in EU-15 saw a substantial decline in their market share between 1970 and 2000 before the situation stabilised, and the new Member States saw a very sharp drop as from 1990 which is only now starting to bottom out. Consolidated figures for EU-25 have been drawn up as from 1995 and these show that the volume transported (expressed in tonne-kilometres) increased by 6% between 1995 and 2004, i.e. about 0.6% a year. However, the volume transported in 2002 was exactly the same as in 1995 and the increase of 6% is concentrated over the period 2003-2004, with 2004 showing an increase of 4% over 2003. With regard to market shares and for EU-25 as a whole, it is clear that the performance in terms of volume is not brilliant. Taking all transport modes together, including maritime transport, the share of the railways was 10% in 2004 as compared with 12.1% in 1995, while the figure for the roads increased during the same period from 42.1% to 44%, and that for the maritime sector from 38.2% to 39%. As regards the shares per transport mode for inland transport alone, the railways fell from 19.5% in 1995 to 16.4% in 2004, while the figure for roads increased from 68.1% to 72.3%, with inland waterways and pipelines falling slightly.

The railways' share of the freight market has been stabilising since 2001 in EU-25 and the best performance, disregarding the Baltic States which benefit from their very special geographical location and the kind of goods transported, can be seen in Member States which were first to start reforming their railway industry in anticipation of the Community Directives and the opening up of the market.

In terms of annual turnover, the rail freight market is currently evaluated at almost € 15 billion, with an estimated loss of € 800 million in 2004. The return is clearly inadequate because prices are dictated by competition from the roads, and the railways' production costs are still too high.

These figures are set out, together with a detailed analysis, in Annexes 10 and 11.

3.2. The market for the transportation of passengers by rail

This sector is presently not influenced by the Community measures aimed at opening up the market. Provided it is adopted, the third railway package should, according to the Commission's proposal, lead to the opening up of the market in international passenger services with cabotage in 2010. The considerable pace of development of high-speed services should certainly be noted. These now represent one-quarter of rail passenger traffic in EU-15, and this share is likely to grow further over the next ten years with the planned opening of numerous high-speed lines as part of the trans-European transport network in Italy, Spain, France and Germany, and the completion of the Paris-Brussels-Cologne-Amsterdam-London network.

For the evaluation of the first railway package which is the subject of this report, it should be stressed that the proper implementation of the provisions of both the first and the second packages is a *sine qua non* for the successful opening up of the market in international passenger services. The experience gained in managing the access of a number of different operators to the infrastructure will also benefit passenger transport as there will be an increase in the range of services provided. In terms of figures, rail passenger transport in EU-25 rose from 319 billion passenger-kilometres in 1995 to 350 billion in 2004, an increase of 10%, or about 1% a year, as compared with an annual increase of 2% for the roads and 5% for aviation. The modal share of the railways fell from 6.3% to 5.9% during the same period. This drop is in fact due to the much steeper decline in traffic in the new Member States where there is a new-found infatuation with private cars and a lack of investment in the railways. These figures are set out, together with a detailed analysis, in Annex 12.

4. THE DEVELOPMENT OF RAILWAY SAFETY

4.1. A very favourable situation

Safety is the hallmark of the railways. The public's intolerance of railway accidents, as compared with their relative tolerance of road accidents, is a key factor when analysing the industry.

Published statistics on railway accidents are still very patchy pending the full implementation of Community provisions on rail statistics and the safety of the railways. The establishment of common safety indicators, the creation of national safety agencies coordinated by the European Railway Agency and the production of regular reports by the Agency on how safety develops will in future provide a clearer overview of the situation with regard to the safety of the railways in the Community.

The figures available show that the number of passengers killed or injured in railway accidents is constantly falling while traffic continues to increase. The same trend can be seen for accidents at level crossings, which are the most common by far, more often than not due to the undisciplined behaviour of road users.

The opening up of the freight market has not had any impact on the safety of the railway system and the Member States which are currently most opened up to competition have not seen any deterioration in their safety levels.

The statistics are given, together with a detailed analysis, in Annex 13.

4.2. The question of safety certificates

The first railway package requires every railway undertaking to obtain a safety certificate for every Member State through which it wishes its trains to pass. The requirements for granting this certificate were not defined in any detail in Directives 2001/12/EC and 2001/14/EC, as a result of which each Member States has introduced its own procedures and requirements which are not particularly compatible with the harmonised approach which Directive 2004/49/EC on railway safety intended to establish with the support of the European Railway Agency. The present situation is described in a detailed study carried out by IVE³.

There are two major problems in this respect which should be mentioned:

- The problem of the **certification of rolling stock**, mainly traction units, which is the subject of long, arbitrary and costly procedures which are out of kilter with the requirement of creating an internal market in railway equipment. The Commission plans to resolve this problem, in particular as regards existing rolling stock which is recognised in one or more Member States but not in others. An approach to facilitate the mutual recognition of such equipment is being developed and will be presented to the industry and the safety authorities during the course of 2006.
- The problem of the **certification of staff**: the Directive on the certification of on-board staff is part of the third package which is still being negotiated between the European Parliament and the Council. Once it has been adopted and transposed, it will regulate issues which are currently in abeyance. However, the agreement reached by the social partners (Community of European Railways, CER, and European Transport Workers Federation, ETF) on 27 January 2004 on a European licence for train drivers working on cross-border routes is already making international operations easier. In general terms, fair and non-discriminatory access to training centres which are open to any applicant to become a train driver is still essential for the proper functioning of the railway market which is being developed. The European Railway Agency is in particular responsible for defining the terms of accreditation of these centres and therefore to facilitate their role as a service provider in the European railway area.

5. THE DEVELOPMENT OF WORKING CONDITIONS AND EMPLOYMENT IN THE RAILWAY SECTOR

5.1. The development of employment

The long decline in rail traffic and the restructuring of undertakings which followed have led to a sharp reduction in employment in the rail industry, with the number of jobs falling from 1.8 million in 1970 to about 770 000 in 2000 in EU-15 though the rate of decline has slowed down considerably in the last few years (760 000 in 2004). For EU-25, the number of jobs in the railway industry (national undertakings, new operators and infrastructure managers) therefore accounted for just under 1 200 000 jobs.

³ IVE Safety Certification Study: Acceptance Criteria & Assessment Methodologies for Safety Certificates Delivered in Accordance with Directive 2001/14/EC, Article 32, June 2005 (http://europa.eu.int/comm/transport/rail/research/studies_en.htm).

One effect of the ongoing regulatory reform has also been to distribute employment in a different way instead of being concentrated in a single overall entity as it used to be. The current statistics do not readily reflect all the effects of the reform and the dispersion of jobs.

The productivity of the railways can still be improved substantially in the new Member States and in a large number of the EU-15 Member States, but it seems that employment should be able to stabilise in the industry over the next few years, especially if traffic stabilises at the present level. The situation differs considerably from one Member State to another according to the degree of restructuring which has been achieved. The United Kingdom, Germany, Sweden, Italy, Spain and Estonia have already made enormous restructuring efforts. Other Member States, in particular some of the new Member States, still have a great deal of effort to make to improve their productivity.

More details are given in Annex 14.

5.2. Working conditions in the railway sector

Most employment in the railway sector is currently still concentrated within the incumbent undertakings, whether they are still integrated or organised along different lines. In general terms, employees in incumbents have preserved their status and have not seen any deterioration in their conditions of employment, even though restructuring has introduced greater flexibility. Most of the employees' trades unions believe that it is the process of opening up the market which is leading to this sometimes painful restructuring and do not accept the need for restructuring simply to ensure the survival of the railways.

The application of the agreement concluded by the CER and the ETF in January 2004 concerning certain aspects regarding the deployment of mobile workers performing cross-border interoperability services was made compulsory throughout the industry by Council Directive 2005/47/EC of 18 July 2005, in accordance with Article 139 of the Treaty. Minimum standards are therefore laid down with regard to working conditions, such as daily and weekly rest times, breaks and driving times. The working conditions which apply to the incumbents now generally apply to the new, competing rail freight companies, which have expressed some discontent with these requirements which, in their view, reduce the flexibility of their organisations. When the necessary requirements are met, the new railway companies will be able to play a full part in the European social dialogue during which these issues are discussed.

The sector is still being restructured, which could mean that sometimes there are negative consequences both for the staff in place and the attractiveness of the sector. For example, there seems to be a dangerous shortage of qualified staff. The incumbents have reduced the number of apprenticeships in an effort to reduce costs, while the qualifications required are not provided by vocational training. In the light of this, it will be necessary to develop training networks at European level for employment in the railway industry in order to create a genuine employment market for railway companies and infrastructure managers. In this way, it will be possible to increase productivity by modernising the organisation of work and investing in training while taking account of the quality of jobs, a key element in the Lisbon Strategy.

6. CONCLUSIONS: FURTHER WORK STILL NEEDED

The railway industry, which has been in permanent decline since 1970, has managed since 2001 to stabilise the volumes transported and, in some Member States, to recover market shares from the roads. The fall in employment has also been halted. The aim of the 2001 White Paper was to achieve the 1998 market share by 2010: this objective is still within the industry's reach if it continues to direct its efforts firmly towards internationalisation and endeavours continually to meet the needs of the economy and society. The distance we have come is already impressive. The changes which have been started must now be completed in order to put the finishing touches to a European railway area which will serve European mobility and competitiveness. The railway industry, which offers more advantages over long distances compared with road transport, will benefit from the increase in the size of the market which will cover the entire continent.

The Commission believes that the implementation of the first railway package by the Member States is well under way but that more needs to be done with regard to several aspects in order to ensure that its effects are complete. The Commission will ensure this by using all of its powers.

It believes that the **Member States** should direct their efforts towards:

- completing the restructuring of the incumbents while ensuring the separation of accounts and the separation of essential tasks such as the allocation of capacity and charging;
- the establishment of principles for rail infrastructure charging which take account of the way in which other transport modes are priced and forms part of a genuine transport strategy which will boost fair competition between modes and sustainable development;
- the creation of the administrative capability which is required for the proper operation of the regulatory body and the national safety authority, while ensuring that these bodies are genuinely independent;
- contractualisation of the State's financial relations with the infrastructure manager for the funding of maintenance and modernisation of the railway infrastructure, in the context of the establishment of a performance-based system;
- clarification of the financial ties between the national and regional transport authorities and the railway undertakings by concluding public service contracts which are duly published;
- the prohibition of cross-subsidisation between freight and passenger transport operations to maintain the ability of rail freight to be competitive;
- the creation of transparent requirements for access to training centres and safety certificates.

The Commission recommends that **infrastructure managers** pay attention to:

- improving the content and visibility of the network statement which must be clear and complete and cover all the services required for access to the infrastructure;
- setting charges based on the real costs engendered by rail traffic;

- cooperating at European level on the granting of international paths and establishing harmonised conditions for infrastructure access based on standard contracts.

The **incumbent railway undertakings**, whose long-term management must be ensured, should continue with their restructuring in order to adapt to the new European context while complying with competition rules.

In conformity with the transport policy which has been followed since the 2001 White Paper and its current evaluation, the Commission will continue to place rail at the centre of its transport policy. It will closely observe the market situation and will take all action necessary to correct undesired situations, starting infringement procedures or proposing amendments to existing Directives if they prove to have persistent shortcomings. In line with the commitment given by the Commission in 2005, guidelines on State aid in the railway sector are being prepared in order to increase transparency.



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COMMISSION STAFF WORKING DOCUMENT

Annexes
to the Communication on the implementation of the railway infrastructure package
Directives ('First Railway Package')

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Introduction

This Communication is in response to the request of the European co-legislators, in other words the European Parliament and the Council, in Article 10(8) of Directive 91/440/EC, as amended by Directive 2004/51/EC¹ in the context of the second railway package

The request is as follows :

“By 1 January 2006, the Commission shall submit to the European Parliament, the European Economic and Social Committee, the Committee of the Regions and the Council a report on the implementation of this Directive.

This report shall address:

- implementation of this Directive in the Member States and the effective working of the various bodies involved,
- market development, in particular international traffic trends, activities and market share of all market actors, including new entrants,
- impact on the overall transport sector, in particular as regards modal shift,
- impact on the level of safety in each Member State,
- working conditions in the sector, for each Member State.

If necessary, it shall be accompanied by suitable proposals or recommendations on continuing Community action to develop the railway market and the legal framework governing it.”

The development of rail transport in the EU has been addressed in several policy documents adopted by the Commission since the beginning of the nineties², which have been discussed in the above mentioned Communication. This Commission Staff Working Document contains the annexes referred to in the Communication. It contains an overview of the relevant EU legislation and the measures adopted in each Member State to comply with the provisions of the rail infrastructure package (‘the first package’, Annex 1). The annex provides an overview of the access rights to the railway infrastructure under the applicable EU legislation. The railway industry (railway undertakings, infrastructure managers and shippers) and the social partners have provided their views on the implementation of the first package in several policy documents. A summary of the main points is included in Annex 3. The separation of accounts and the independence of essential functions are addressed respectively in Annexes 4, 5 and 6. The latter analyses the advantages and disadvantages of the (dis-)integration of essential infrastructure management functions. This analysis also covers other network industries, such as the energy and telecommunication sectors. The role and function of the

¹ Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways - OJ L 164, 30.4.2004, p. 164. A corrigendum was published in OJ L 220, 21.6.2004, p. 58.

² COM(96) 421, 30.7.1996; COM(1998) 222; COM(2001) 370, 12.9.2001; COM(2002) 18, 23.1.2002; COM(2004) 140, 3.3.2004.

Regulatory Bodies, as foreseen by Article 30 of Directive 2001/14/EC are summarized in Annex 7. The issue of charging for the use of railway infrastructure is discussed in Annex 8. The number of new railway undertakings is a useful indicator for market opening: issues in relation to the award of licences to new railway undertakings and market entry barriers are discussed in Annex 9. Annex 10 contains an analysis of the performance of railway undertakings and in particular the financial situation of the railway undertakings. Annexes 11 and 12 provide an overview of the developments in freight and passenger transport in the European Union. The development of railway safety is addressed in Annex 13 and Annex 14 discusses the development of employment in the railway sector before and after the introduction of railway restructuring.

ANNEX

List of Annexes

- (1) Annex 1 Applicable EU legislation on the railway sector and national transposition measures for the 1st railway infrastructure package (directives 2001/12/EC, 2001/13/EC and 2001/14/EC).
- (2) Annex 2 Rail transport in the EU - Open access rights in the Member States as of 1.2.2006.
- (3) Annex 3 Observations and Comments made by stakeholders on the implementation of the 1st infrastructure package.
- (4) Annex 4 Separation of accounts.
- (5) Annex 5 Independence of the essential functions for ensuring non-discriminatory access to the rail infrastructure
- (6) Annex 6 Unbundling Infrastructure and Operations in Network Industries: The case of the railway sector.
- (7) Annex 7 Regulatory Bodies.
- (8) Annex 8 Charging in the rail sector.
- (9) Annex 9 Licensing of railway undertakings.
- (10) Annex 10 Analysis of the Performance of Railway Undertakings.
- (11) Annex 11 Freight Transport Statistics.
- (12) Annex 12 Passenger Transport Statistics.
- (13) Annex 13 Railway Safety.
- (14) Annex 14 Employment and Working conditions.

ANNEX 1

Applicable EU Legislation in the Railway Sector and national Transpositions Measures for the first Railway Package Directives

1. MARKET AND INFRASTRUCTURE ACCESS

Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, [OJ L 237, 24.8.1991, p. 25](#)³, modified by:

- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, [OJ L 75, 15.3.2001, p. 1](#)
- Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways, [OJ L 164, 30.4.2004, p. 164](#), rectified by:
- Corrigendum to Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways, [OJ L 220, 21.6.2004, p. 58](#)

Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, [OJ L 143, 27.6.1995, p. 70](#)⁴, modified by:

- Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, [OJ L 75, 15.3.2001, p. 26](#)
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), [OJ L 164, 30.4.2004, p. 44](#), **corrected by:**
- Corrigendum to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), [OJ L 220, 21.6.2004, p. 16](#)

³ Included in the codification programme of the LS.

⁴ Included in the codification programme of the LS – codified proposal COM(2004) 232 – examination within the legislative authority foreseen for February 2005.

Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, [OJ L 75, 15.3.2001, p. 29](#), **modified by:**

- Commission Decision 2002/844/EC of 23 October 2002 amending Directive 2001/14/EC in respect of the date for changing the working timetable for rail transport (Text with EEA relevance), [OJ L 289, 26.10.2002, p. 30](#)
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), [OJ L 164, 30.4.2004, p. 44](#), **corrected by:**
- Corrigendum to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), [OJ L 220, 21.6.2004, p. 16](#)

2. INTEROPERABILITY

Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, [OJ L 235, 17.9.1996, p. 6](#)

2.1. Implementing decisions:

- Commission Decision 1999/569/EC of 28 July 1999 on the basic parameters for the command-and-control and signalling subsystem relating to the trans-European high-speed rail system (Text with EEA relevance), [OJ L 216, 14.8.1999, p. 23](#)
- Commission Decision 2001/260/EC of 21 March 2001 on the basic parameters of the command-control and signalling subsystem of the trans-European high-speed rail system referred to as "ERTMS characteristics" in Annex II(3) to Directive 96/48/EC (Text with EEA relevance), [OJ L 93, 3.4.2001, p. 53](#)
- Commission Decision 2002/730/EC of 30 May 2002 concerning the technical specification for interoperability relating to the maintenance subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.9.2002, p. 1](#)
- Commission Decision 2002/731/EC of 30 May 2002 concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Council Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.9.2002, p. 37](#), **Annex A modified by:**
- Commission Decision 2004/447/EC of 29 April 2004 modifying Annex A to Decision 2002/731/EC of 30 May 2002 and establishing the main characteristics

of Class A system (ERTMS) of the control-command and signalling subsystem of the trans-European conventional rail system referred to in Directive 2001/16/EC of the European Parliament and of the Council, [OJ L 155, 30.4.2004, p. 69](#), **corrected by:**

- Corrigendum to Commission Decision 2004/447/EC of 29 April 2004 modifying Annex A to Decision 2002/731/EC of 30 May 2002 and establishing the main characteristics of Class A system (ERTMS) of the control-command and signalling subsystem of the trans-European conventional rail system referred to in Directive 2001/16/EC of the European Parliament and of the Council, [OJ L 193, 1.6.2004, p. 53](#)
- Commission Decision 2002/732/EC of 30 May 2002 concerning the technical specification for interoperability relating to the infrastructure subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Council Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.9.2002, p. 143](#)
- Commission Decision 2002/733/EC of 30 May 2002 concerning the technical specification for interoperability relating to the energy subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.2.2002, p. 280](#)
- Commission Decision 2002/734/EC of 30 May 2002 concerning the technical specification for interoperability relating to the operation subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Council Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.9.2002, p. 370](#)
- Commission Decision 2002/735/EC of 30 May 2002 concerning the technical specification for interoperability relating to the rolling stock subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Directive 96/48/EC (Text with EEA relevance), [OJ L 245, 12.9.2002, p. 402](#)

Directive 96/48/EC modified by:

- Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, [OJ L 164, 30.4.2004, p. 114](#), **corrected by:**
- Corrigendum to Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, [OJ L 220, 21.6.2004, p. 40](#)

Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system, [OJ L 110, 20.4.2001, p. 1](#)

2.2. Implementing decisions:

- Commission Decision 2004/446/EC of 29 April 2004 specifying the basic parameters of the Noise, Freight Wagons and Telematic applications for freight Technical Specifications for Interoperability referred to in Directive 2001/16/EC, [OJ L 155, 30.4.2004, p. 1](#), **corrected by:**
- Corrigendum to Commission Decision 2004/446/EC of 29 April 2004 specifying the basic parameters of the Noise, Freight Wagons and Telematic applications for freight Technical Specifications for Interoperability referred to in Directive 2001/16/EC, [OJ L 193, 1.6.2004, p. 1](#)
- Commission Decision 2004/447/EC of 29 April 2004 modifying Annex A to Decision 2002/731/EC of 30 May 2002 and establishing the main characteristics of Class A system (ERTMS) of the control-command and signalling subsystem of the trans-European conventional rail system referred to in Directive 2001/16/EC of the European Parliament and of the Council, [OJ L 155, 30.4.2004, p. 69](#), **corrected by:**
- Corrigendum to Commission Decision 2004/447/EC of 29 April 2004 modifying Annex A to Decision 2002/731/EC of 30 May 2002 and establishing the main characteristics of Class A system (ERTMS) of the control-command and signalling subsystem of the trans-European conventional rail system referred to in Directive 2001/16/EC of the European Parliament and of the Council, [OJ L 193, 1.6.2004, p. 53](#)
- Commission Regulation (EC) No 62/2006 of 23 December 2005 concerning the technical specification for interoperability relating to the telematic applications for freight subsystem of the trans-European conventional rail system, [OJ L 13, 18.1.2006, p. 1](#)
- Commission Decision 2006/66/EC of 23 December 2005 concerning the technical specification for interoperability relating to the subsystem "rolling stock – noise" of the trans-European conventional rail, [OJ L 37, 8.2.2006, p. 1](#)

Directive 2001/16/EC modified by:

- Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, [OJ L 164, 30.4.2004, p. 114](#), rectified by:
- Corrigendum to Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, [OJ L 220, 21.6.2004, p. 40](#)

3. EUROPEAN RAILWAY AGENCY

Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation), [OJ L 164, 30.4.2004, p. 1](#), **corrected by:**

- Corrigendum to Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European railway agency (Agency Regulation), [OJ L 220, 21.6.2004, p. 3](#)

4. NATIONAL TRANSPOSITION MEASURES

All the Member States except Luxemburg, have implemented the directives of the infrastructure package. The Commission had to launch several infringement procedures for non-notification, 5 of which lead to a ruling by the Court of Justice.

An overview of the national measures is given below, including references to national websites where the full texts can be viewed. This table can also be found on the following website, which is updated at regular intervals:

http://europa.eu.int/comm/transport/rail/countries/be/mne_en.htm

An overview of the Court rulings is given at the end of this annex.

MS	Measures Communicated?	Related Legislation
BE	Yes	<p>Loi du 22/3/2002 portant modification de la loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques, Moniteur belge du 26/3/2002, p. 12554;</p> <p>Arrêté ministériel du 26 mars 1999 portant approbation des normes et règles afférentes à la sécurité de l'infrastructure ferroviaire et à son utilisation, Moniteur belge du 15 avril 1999, p. 12342 - 12381;</p> <p>Arrêté royal No. 98-3469 du 11/12/1998, relatif à la licence d'entreprise ferroviaire et à l'utilisation de l'infrastructure ferroviaire, moniteur belge du 24/12/1998, p. 40872;</p> <p>Arrêté royal No. 99-795 du 11/12/1998, relatif à la licence d'entreprise ferroviaire et à l'utilisation de l'infrastructure ferroviaire - Addendum, moniteur belge du 20/03/1999, p. 9183;</p> <p>Arrêté ministériel No. 99-901 du 23/3/1999 fixant les modalités d'attribution des capacités d'infrastructure ferroviaire, moniteur belge du 31/3/1999, p. 10402;</p> <p>Arrêté royal relatif aux conditions d'utilisation de l'infrastructure ferroviaire du 12 mars 2003, Moniteur belge du 14 mars 2003, 3ème édition, p. 12536-12580, modifié par l'arrêté royal du 11 juin 2004, Moniteur belge du 15 juin 2004, p. 44415 - 44424;</p> <p>Arrêté ministériel du 14 mars 2003 portant exécution de l'article 100 de l'AR du 12 mars 2003 relatif aux conditions d'utilisation de l'infrastructure</p>

MS	Measures Communicated?	Related Legislation
		<p>ferroviaire et à son utilisation, Moniteur belge du 12 juin 2003, édition 2, p. 31811;</p> <p>Arrêté royal du 17 novembre 2003 portant exécution des chapitres III, V, et VI de l'arrêté royal du 12 mars 2003 relatif aux conditions d'utilisation de l'infrastructure ferroviaire, Moniteur belge du 2 décembre 2003, p. 57466 - 57478;</p> <p>Arrêté royal du 7 septembre 2003 portant attribution de la qualité d'officier de polic judiciaire aux fonctionnaires et agents de l'Administration qui est compétente pour le transport ferroviaire, Moniteur belge du 2 octobre 2003, p. 48268 - 48270;</p> <p>Mise à jour du 15 septembre 2003 de l'inventaire des règlements visés aux articles 4 et 6 de l'arrêté royal du 12 mars 2003 relatif aux conditions d'utilisation de l'infrastructure ferroviaire exécutant les directives 2001/12/CE, 2001/13/CE et 2001/14/CE du 26 février 2001, Moniteur belge du 15 décembre 2003, p. 59151;</p> <p>Arrêté ministériel du 19 février 2004 portant approbation du document de référence du réseau, Moniteur belge du 27 février 2004, Ed. 3, p. 11392. Le Document de référence réseau est publié par l'office ferroviaire et disponible en FR et NL sur: http://www.railaccess.be;</p> <p>Arrêté royal du 14 juin 2004 portant réforme des structures de gestion de l'infrastructure ferroviaire, Moniteur belge du 24 juin 2004, p. 51791 - 51801;</p> <p>Arrêté royal du 19 octobre 2004 portant certaines mesures de réorganisation de la Société Nationale des Chemins de fer belges, Moniteur belge du 20 octobre 2004, p. 72961 - 72977;</p> <p>Arrêté royal du 19 octobre 2004 réglant le fonctionnement du Fonds de l'Infrastructure ferroviaire, Moniteur belge du 20 octobre 2004, p. 72990 - 72992;</p> <p>Arrêté royal du 19 octobre 2004 relatif aux conditions d'entretien et de gestion par Infrabel de l'infrastructure ferroviaire détenue par le Fonds de l'Infrastructure ferroviaire, Moniteur belge du 20 octobre 2004, p. 72992 - 73005;</p> <p>Arrêté royal du 19 octobre 2004 établissant les statuts de la Nouvelle SNCB, Moniteur belge du 20 octobre 2004, p. 72977 - 72990;</p> <p>Arrêté royal du 25 octobre 2004 créant le Service de Régulation du transport ferroviaire et fixant sa composition ainsi que le statut applicable à ses membres, Moniteur belge du 5 novembre 2004, p. 75096 - 75097;</p> <p>Site internet du Ministère de la Justice avec la législation belge consolidée en vigueur: http://194.7.188.126/justice/index_fr.htm ou: http://www.staatsblad.be/index_fr.htm</p> <p>Wet houdende wijziging van de wet van 21/03/1991 betreffende de hervorming van sommige economische overheidsbedrijven, Belgisch Staatsblad van 26/03/2002, p. 12554;</p>

MS	Measures Communicated?	Related Legislation
		<p>Koninklijk besluit Nr. 98-3469 van 11/12/1998, betreffende de vergunning van spoorwegonderneming en het gebruik van de spoorweginfrastructuur, Belgisch staatsblad 24/12/1998, p. 40872;</p> <p>Koninklijk besluit Nr. 99-795 van 11/12/1998, betreffende de vergunning van spoorwegonderneming en het gebruik van de spoorweginfrastructuur. - Addendum, Belgisch staatsblad 20/03/1999, p. 9183;</p> <p>Ministerieel besluit Nr. 99-901 van 23/03/1999 tot vaststelling van de modaliteiten voor de toewijzing van de spoorweginfrastructuurcapaciteit, Belgisch staatsblad 31/3/1999, p 10402.</p> <p>Ministerieel besluit van 26 maart 1999 houdende goedkeuring van de normen en voorschriften inzake de veiligheid van de spoorweginfrastructuur en haar gebruik, Belgisch staatsblad van 15 april 1999, p. 12342 - 12381;</p> <p>Koninklijk besluit betreffende de voorwaarden voor het gebruik van de spoorweginfrastructuur d.d. 12 maart 2003, Belgisch Staatsblad van 14 maart 2003, derde editie, pp. 12536-12580, gewijzigd bij Koninklijk Besluit van 11 juni 2004, Belgisch Staatsblad van 15 juni 2004, p. 44415 - 44424;</p> <p>Ministerieel besluit ter uitvoering van artikel 100 van het koninklijk besluit van 12 maart 2003 betreffende de voorwaarden voor het gebruik van de spoorweginfrastructuur, Belgisch Staatsblad van 12 juni 2003, editie 2, blz. 31811;</p> <p>Koninklijk besluit van 17 november 2003 houdende de uitvoering van de hoofdstukken III, V en VI van het koninklijk besluit van 12 maart 2003 betreffende de voorwaarden voor het gebruik van de spoorweginfrastructuur, Belgisch Staatsblad van 2 december 2003, p. 57466 - 57478;</p> <p>Koninklijk besluit van 7 september 2003 tot toekenning van de hoedanigheid van officier van gerechtelijke politie aan ambtenaren en agenten van het Bestuur dat voor het spoorvervoer bevoegd is, Belgisch staatsblad van 2 oktober 2003, p. 48268 - 48270;</p> <p>Bijwerking van 15 september 2003 van de inventaris van de reglementen bedoeld in de artikelen 4 en 6 van het koninklijk besluit van 12 maart 2003 betreffende de voorwaarden voor het gebruik van de spoorweginfrastructuur tot uitvoering van de richtlijnen 2001/12/EG, 2001/13/EG en 2001/14/EG van 26 februari 2001, Belgisch Staatsblad van 15 december 2003, p. 59151;</p> <p>Ministerieel besluit van 17 februari 2004 houdende goedkeuring van de netverklaring, Belgisch Staatsblad van 27 februari 2004, Ed. 3, p. 11392. De netverklaring is gepubliceerd door de Spoordienst en beschikbaar in NL en FR op: http://www.railaccess.be;</p> <p>Koninklijk besluit van 14 juni 2004 tot hervorming van de beheersstructuren van de spoorweginfrastructuur, Belgisch staatsblad van 24 juni 2004, p. 51791 - 51801;</p>

MS	Measures Communicated?	Related Legislation
		<p>Koninklijk besluit van 19 oktober 2004 houdende sommige maatregelen voor de reorganisatie van de Nationale Maatschappij der Belgische Spoorwegen, Belgisch staatsblad van 20 oktober 2004, p. 72961 - 72977;</p> <p>Koninklijk besluit van 19 oktober 2004 tot regeling van de werking van het Fonds voor Spoorweginfrastructuur, Belgisch staatsblad van 20 oktober 2004, p. 72990 - 72992;</p> <p>Koninklijk besluit van 19 oktober 2004 tot vaststelling van de voorwaarden van onderhoud en beheer door Infrabel van de spoorweginfrastructuur in het bezit van het Fonds voor Spoorweginfrastructuur, Belgisch staatsblad van 20 oktober 2004, p. 72992 - 73005;</p> <p>Koninklijk besluit van 19 oktober 2004 tot vaststelling van de statuten van Nieuwe NMBS, Belgisch staatsblad van 20 oktober 2004, p. 72977 - 72990;</p> <p>Koninklijk besluit van 25 oktober 2004 tot oprichting van de Dienst Regulering van het Spoorwegvervoer en tot vaststelling van zijn samenstelling en het statuut dat van toepassing is op zijn leden, Belgisch Staatsblad van 5 november 2004, p. 75096 - 75097</p>
CZ	Yes	<p>Act No. 266/1994 Coll., on rail systems, as amended by the Act No. 103/2004 Coll., which came into force on 1 May 2004, (promulgated in the volume No. 32/2004 Coll.) and has been promulgated as a full text and has been published under the No. 301/2004 Coll. (volume No. 98/2004 Coll.) – available in CS and EN</p> <p>Applicable legislation to the Act on rail systems.</p> <p>Act No. 77/2002 Coll., on Czech Railways, joint stock company, the Railway Infrastructure Administration, state organisation, the amendment to Act No. 266/1994 Coll., on rail systems, as last amended, and to Act No. 77/1997 Coll., on the state enterprise, as last amended by the Constitutional Court ruling, published under No. 83/2003, and as amended by Act. No. 179/2003 Coll. and Act No. 293/2004 Coll. - available in CS and EN.</p> <p>Applicable legislation to the Act on Czech Railways</p> <p>Decree of the Ministry of Transport No. 352/2004 Coll., on the interoperability of the trans-European rail systems, which has come into force on 1 July 2004, (promulgated in the volume No. 114/2004 Coll.) - available in CS only</p> <p>Act No. 22/1997 Coll., on the technical requirements for products and on amendments to some acts, as last amended – available in CS only</p> <p>Decree of the Ministry of Transport No. 351/2004 Coll., on the services supplied by the rail system operator to the railway undertaking, which has come into force on 1 July 2004, (promulgated in the volume No. 114/2004 Coll.) – available in CS only</p> <p>Web page of the Ministry of Transport with the list of applicable consolidated legislation:</p>

MS	Measures Communicated?	Related Legislation
		<p>http://www.mdcz.cz/text/oblasti/legislat/zakvyh/legis-prehl-draha.rtf</p> <p>Web page of the Railway Infrastructure Administration, s.o. with the actual version of the Network statement CS and EN</p> <p>Web page of the Railway Authority: http://www.du-praha.cz</p>
CY	No	Cyprus does not have railways. Legislation will apply once railways will be build in Cyprus.
DK	Yes	<p>Lov om ændring af lov om jernbanevirksomhed m.v. om den selvstændige offentlige virksomhed DSB og om DSB S-tog A/S, lov om jernbanesikkerhed m.v. og lov om ekspropriationer under ministeriel for offentlige arbejder. ref: Lovforslag n° 100 af 04/12/2002 (Law on changes of the law on railway undertakings etc., law on the independent public undertaking DSB and DSB S-Tog A/S, law on railway safety, etc. law on the expropriation under the Ministry of Public Works), as adopted by the Danish Folketing on 12 March 2003, published in Folketinget 2002-03, nr. L100</p>
DE	Yes	<p>Drittes Gesetz zur Änderung eisenbahnrechtlicher Vorschriften, Vom 27. April 2005, Bundesgesetzblatt Jahrgang 2005 Teil I Nr. 24, ausgegeben zu Bonn am 29. April 2005.</p> <p>Verordnung zum Erlass und zur Änderung eisenbahnrechtlicher Vorschriften, vom 3. Juni 2005, Bundesgesetzblatt Jahrgang 2005, Teil I, Nr. 32, ausgegeben zu Bonn am 13. Juni 2005.</p>
EE	Yes	<p>RAUDTEESEADUS, Vastu võetud 19. novembril 2003. a, RK, RTL, 17.12.2003, 79, 530; Raudteeinfrastruktuuri ja raudteeliikluse korralduse ning raudteeveeremi nõuetele vastavuse kontrollimise aruannete vormid. Majandus- ja kommunikatsiooniministri 24. märtsi 2004. a määrus nr 49, MKM, RTL, 29.03.2004, 30, 513; Raudtee-ettevõtja tulude ja kulude arvestuste esitamise kord ja tähtajad, Majandus- ja kommunikatsiooniministri 6. aprilli 2004. a määrus nr 63, MKM, RTL, 16.04.2004, 40, 665.</p> <p>Railways act and Explanatory Memorandum, available in EN.</p>
EL	Yes	<p>Harmonisation of the Greek legislation with directives 91/440/EEC and 95/18/EC as amended by Directives 2001/12/EC and 2001/13/EC, respectively Directive 2001/14/EC on the development of the community's railways; the licensing of railway undertaking and capacity allocation, capacity charging and safety certification as well as the suppression of presidential decrees 324/1996, 76/1998 et 180/1998, published in the Greek Official Journal of 7 March 2005 (Provisional English translation).</p>
ES	Yes	<p>Ley 39/2003 de 17 noviembre 2003 del Sector Ferroviario, BOE 276, p. 40532;</p> <p>Real Decreto 2387/2004, de 30 de diciembre, por el que se aprueba el Reglamento del Sector Ferroviario, BOE 315, 31-12-2004, p. 42719;</p> <p>REAL DECRETO 2395/2004, de 30 de diciembre, por el que se aprueba el Estatuto de la entidad pública empresarial Administrador de</p>

MS	Measures Communicated?	Related Legislation
		<p>Infraestructuras Ferroviarias, BOE 315, 31-12-2004, p. 42797;</p> <p>REAL DECRETO 2396/2004, de 30 de diciembre, por el que se aprueba el Estatuto de la entidad pública empresarial Renfe-Operadora, BOE 315, 31-12-2004, p. 42785;</p> <p>ORDEN FOM/897/2005, de 7 de abril, relativa a la declaración sobre la red y al procedimiento de adjudicación de capacidad de infraestructura ferroviaria.</p>
FR	Yes	<p>Décret n° 2003-194 du 7 mars 2003 relatif à l'utilisation du réseau ferré national, JO n° 57 du 8 mars 2003 page 4063. Arrêté du 6 mai 2003 fixant les modalités de délivrance, de suspension temporaire et de retrait des licences d'entreprises ferroviaires, JO n° 114 du 17 mai 2003, p. 8497; et Arrêté du 6 mai 2003 fixant les modalités de fonctionnement de la mission de contrôle des activités ferroviaires, JO n° 114 du 17 mai 2003, p. 8496.</p>
IE	Yes	<p>European Communities (Access to Railway Infrastructure) Regulations 2003, Statutory Instruments 536/2003; European Communities (Licensing of Railway Undertakings) Regulations 2003, Statutory Instruments 537/2003, signed on 3 November 2003. Statutory Instruments (S.I.) 2003. European Communities (Allocation of Railway Infrastructure Capacity and the levying of charges for the use of Railway Infrastructure and Safety Certification) Regulations, 643/2004, July 2004, Statutory Instruments (S.I.) 2004.</p>
IT	Yes	<p>Decreto legislativo 8 luglio 2003, n. 188. Attuazione delle direttive 2001/12/CE, 2001/13/CE e 2001/14/CE in materia ferroviaria. Gazzetta Ufficiale della Repubblica Italiana, 24 luglio 2003. The Network Statement 2003 (only available in Italian) has been published on the site of the Italian infrastructure manager RFI.</p>
IE	Yes	<p>European Communities (Interoperability of the Trans-European High-Speed Rail System) Regulations 2002, ref: S.I. nl. 118 of 2002, 28 March 2002.</p>
IT	Yes	<p>Decreto legislativo 24 maggio 2001, no. 299, ref: GURI di 21/7/2001</p>
LU	No	<p>Règlement grand-ducal du 24 octobre 2003 sur les conditions de délivrance et de validité des certificats de sécurité pour les entreprises ferroviaires, Memorial A, no. 160 du 4 novembre 2003, p. 3172; Règlement grand-ducal du 24 octobre 2003 sur les conditions de délivrance et de validité des licences des entreprises ferroviaires, Memorial A, no. 160 du 4 novembre 2003, p. 3174. Directive 2001/14 has been implemented with a Grand Duchy Regulation of 31 March 2003, defining the application modalities for charges to be levied for the use of the railway infrastructure in Luxemburg, published in the Official Journal of the Grand Duchy of Luxemburg, A series, no. 45, p. 704-708.</p>
LV	Yes	<p>Dzelzceļa likums, Latvijas Vēstnesis, 102/105, 19/4/1998; Ministru kabineta 1998.gada 29.decembra noteikumi nr.489 "Dzelzceļa infrastruktūras (sliežu ceļu) valsts reģistrācijas un uzskaites kārtība", Latvijas Vēstnesis, 388/399, 30/12/1998; Ministru kabineta 1999.gada 15.jūnija noteikumi nr.211 "Dzelzceļa tehniskās inspekcijas nolikums",</p>

MS	Measures Communicated?	Related Legislation
		<p>Latvijas Vēstnesis, 198/199, 18/6/1999; Ministru kabineta 1999.gada 23. marta noteikumi Nr. 111 "Dzelzceļa administrācijas nolikums", Latvijas Vēstnesis, Latvijas Vēstnesis, 26/3/1999.</p>
LT	Yes	<p>Lietuvos Respublikos susisiekimio ministro 2003 m. sausio 21 d. įsakymas Nr. 3-36 Dėl Lietuvos Respublikos susisiekimio ministerijos 1996 m. spalio 30 d. įsakymo Nr. 330 „Dėl valstybinės geležinkelio inspekcijos prie susisiekimio ministerijos nuostatų patvirtinimo“ pakeitimo, Valstybės žinios, 12, 31/1/2003;</p> <p>Lietuvos Respublikos geležinkelių eismo saugos įstatymas Nr. IX-1905, Valstybės žinios, 4, 7/1/2004;</p> <p>Geležinkelio transporto kodekso 3, 14, 19, 20, 22, 32, 33, 34, 35, 38, 51, 57, 58, 62, 63, 64, 65, 68, 69 straipsnių pakeitimo ir papildymo ĮSTATYMAS Nr. IX-1504, Valstybės žinios, 74, 24/7/2002;</p> <p>Lietuvos Respublikos Geležinkelio transporto kodeksas Nr. I-1361, Valstybės žinios, 59, 22/6/2996;</p> <p>Lietuvos Respublikos susisiekimio ministro 2002 m. gegužės 16 d. įsakymas Nr. 3-223 Dėl Lietuvos Respublikos susisiekimio ministerijos 1996 m. spalio 30 d. įsakymo Nr. 330 „Dėl Valstybinės geležinkelių inspekcijos nuostatų“ dalinio pakeitimo, Valstybės žinios, 52, 24/5/2002;</p> <p>Lietuvos Respublikos geležinkelių transporto sektoriaus reformos įstatymas Nr. IX-2104, Valstybės žinios, 61, 27/4/2004;</p> <p>Lietuvos Respublikos geležinkelių transporto kodekso patvirtinimo, išgaliojimo ir taikymo įstatymas Nr. IX-2152, Valstybės žinios, 72, 30/4/2004.</p> <p>Lietuvos Respublikos susisiekimio ministerijos įsakymas Nr. 20 Dėl geležinkelio transporto ūkinės veiklos licencijavimo tvarkos, Valstybės žinios, 10, 30/1/1998.</p> <p>Lietuvos Respublikos geležinkelių eismo saugos įstatymas Nr. IX-1905, Valstybės žinios, 4, 7/1/2004.</p> <p>Lietuvos Respublikos Transporto veiklos pagrindų įstatymas Nr. IX-747 (nauja redakcija), Valstybės žinios, 29, 20/3/2002.</p> <p>Lietuvos Respublikos susisiekimio ministro 2003 m. sausio 23 d. įsakymas Nr. 3-37 „Dėl geležinkelio įmonių ir geležinkelio valdytojo saugos sertifikavimo taisyklių patvirtinimo“, Valstybės žinios, 13, 5/2/2003.</p>
HU	Yes	<p>1993. évi XCV. törvény a vasútról, Magyar Közlöny, 165, 12/11/1993, 10361-10366;</p> <p>A gazdasági és közlekedési miniszter 67/2003. (X. 21.) GKM rendelete az országos közforgalmú vasúti pálya kapacitásának elosztásáról, Magyar Közlöny, 121, 21/10/2003, 9014-9018;</p>

MS	Measures Communicated?	Related Legislation
		<p>2001. évi CIX. törvény a közlekedéssel összefüggő egyes törvények módosításáról, Magyar Közlöny, 153, 11455-11461;</p> <p>A gazdasági és közlekedési miniszter, valamint a pénzügyminiszter 66/2003. (X. 21.) GKM—PM együttes rendelete a vasúti pályahasználati díjról és képzésének elveiről, Magyar Közlöny, 121, 21/10/2003, 9011-9014;</p> <p>A gazdasági és közlekedési miniszter 48/2004. (IV. 22.) GKM rendelete az országos közforgalmú vasúti pálya kapacitásának elosztásáról szóló 67/2003. (X. 21.) GKM rendelet és a nagysebességű vasúti rendszerek kölcsönös átjárhatóságáról szóló 9/2002. (II. 6.) KöViM rendelet módosításáról, Magyar Közlöny, 2004/52, 4916-4917;</p> <p>A gazdasági és közlekedési miniszter 51/2004. (IV. 22.) GKM rendelete a vasútbiztonsági tanúsítványról, Magyar Közlöny, 2004/52, 4926-4928;</p> <p>A gazdasági és közlekedési miniszter, valamint a pénzügyminiszter 72/2004. (IV. 28.) GKM—PM együttes rendelete a vasúti pályahasználati díjról és képzésének elveiről szóló 66/2003. (X. 21.) GKM—PM együttes rendelet módosításáról, Magyar Közlöny, 2004/58, 6073-6074;</p> <p>A közlekedési és vízügyi miniszter 15/2002. (II. 27.) KöViM rendelete a vasútállatok működésének engedélyezéséről, Magyar Közlöny, 27, 27/2/2002, 1679-1682.</p> <p>Act XCV of 1993 on the Railway (Promulgated: 12 November 1993; Joint Decree 66/2003 (X. 21.) GKM-PM of the Minister of Economy and Transport and the Minister of Finance on the levying of charges for the use of railway tracks and the establishment principles of such charges; Decree 67/2003 (X. 21.) GKM of the Minister of Economy and Transport on the allocation of the national public railway track capacity.</p>
MT	No	Malta does not have railways. Legislation will apply once railways will be built in Malta.
NL	Yes	<p>Wet van 23 april 2003, houdende nieuwe algemene regels over de aanleg, het beheer, de toegankelijkheid en het gebruik van spoorwegen alsmede over het verkeer over spoorwegen (Sporwegwet), Staatsblad 2003, no. 264. The Network Statement 2005 has been published by ProRail, the Dutch Infrastructure Manager.</p> <p>Regeling keuring spoorvoertuigen (Rules examination of railway carriages); Regeling hoofdspoorweginfrastructuur (Rules main railway infrastructure); Regeling spoorwegpersoneel (Rules railway staff); Regeling spoorverkeer (Rules railway traffic); Regeling eisen keuringsinstanties Spoorwegwet (Rules requirements railway certification institutes railway act); Regeling veiligheidsattest hoofdspoorwegen (Rules safety certificate main railway network); Aanwijzing spoorwegen als locaalspoorweg (Determination railways as local railways), Staatscourant 2004, no. 248;</p> <p>Besluit van 3 december 2004, houdende keuring en certificering van spoorvoertuigen (Besluit keuring spoorvoertuigen), Staatsblad 2004, no.</p>

MS	Measures Communicated?	Related Legislation
		<p>660 (Decision on the approval and certification of railway rolling stock);</p> <p>Besluit van 3 december 2004, houdende nadere regels over de bedrijfsvergunning en het veiligheidsattest voor spoorwegondernemingen die gebruikmaken van hoofdspoorwegen (Besluit bedrijfsvergunning en veiligheidsattest hoofdspoorwegen), Staatsblad 2004, no. 661 (Decision on the licence and the safety certificate for railway undertakings using the main railway network);</p> <p>Besluit van 3 december 2004, houdende regels met betrekking tot het veilig en ongestoord gebruik van hoofdspoorwegen (Besluit spoorverkeer), Staatsblad 2004, no. 662 (Decision on rules for the safe and undisturbed use of the main rail network);</p> <p>Besluit van 3 december 2004, houdende aanpassing van een aantal algemene maatregelen van bestuur in verband met de invoering van de Spoorwegwet, Staatsblad 2004, no. 663 (Decision modifying a number of implementation decisions in relation to the implementation of the Railways Act);</p> <p>Besluit van 3 december 2004, houdende vaststelling van voorschriften met betrekking tot de bekwaamheid en geschiktheid van spoorwegpersoneel (Besluit spoorwegpersoneel), Staatsblad 2004, no. 664 (Decision on requirements in relation to the competence and aptitude of railway staff);</p> <p>Besluit van 3 december 2004, houdende bepalingen met betrekking tot de spoorweginfrastructuur (Besluit infrastructuur), Staatsblad 2004, no. 665 (Decision on the railway infrastructure);</p> <p>Aanpassingsbesluit Concessiewet, Staatsblad 2004, no. 666 (Decision amending Concession Act);</p> <p>Besluit van 3 december 2004, houdende regels over de verdeling van de capaciteit van de hoofdspoorweg-infrastructuur (Besluit capaciteitsverdeling hoofdspoorweginfrastructuur), Staatsblad 2004, no. 667 (Decision on the allocation of capacity on the main railway infrastructure);</p> <p>Besluit van 20 december 2004, houdende aanwijzing van hoofdspoorwegen, alsmede houdende intrekking van enkele op grond de Locaalspoor- en Tramwegwet genomen besluiten (Besluit aanwijzing hoofdspoorwegen), Staatsblad 2004, no. 722 (Decision on the determination of the main railway network);</p> <p>Koninklijk besluit tot inwerkingtreding van de Spoorwegwet, Staatsblad 2004, no. 723 (Royal decree allowing the entry into force of the Railway Act);</p> <p>Koninklijk besluit tot inwerkingtreding van de Concessiewet personenvervoer per trein, Staatsblad 2004, no. 740 (Royal decree allowing the entry into force of the Concession Act Passenger Transport by train);</p> <p>Besluit van 20 december 2004, houdende vaststelling van het tijdstip van inwerkingtreding van bepalingen van de Spoorwegwet (Staatsblad 2003, no. 264) en van daarmee samenhangende regelgeving, alsmede houdende</p>

MS	Measures Communicated?	Related Legislation
		<p>intrekking van een aantal wettelijke voorschriften, Staatsblad 2004, no. 741 (Decision on the entry into force of the Railways Act 2003 as well as implementation measures);</p> <p>Koninklijk besluit hoofdrailnet, Staatsblad 2004, no. 742 (Royal decree Main Rail Network).</p>
AT	Yes	<p>Schienenverkehrsmarkt-Regulierungsgesetz, BGBl. Nr. 166/1999 vom 19. August 1999, s. 1305; Bundesbahnstrukturgesetz 2003, BGBl. Nr. 138/2003 vom 30. Dezember 2003, s. 1883. Bundesgesetz, mit dem das Eisenbahngesetz 1957 geändert wird, BGBl. Nr. 38/2004 vom 30. April 2004, s. 1.</p>
PL	Yes	<p>Ustawa z dnia 19 listopada 1999 r.- Prawo działalności gospodarczej, 19/11/1999, Dziennik Ustaw, 17/12/1999;</p> <p>Ustawa z dnia 8 września 2000 r. o komercjalizacji, restrukturyzacji i prywatyzacji przedsiębiorstwa państwowego "Polskie Koleje Państwowe", 8/9/2000, Dziennik Ustaw, 2000/84/948, 12/10/2002;</p> <p>Ustawa z 29 września 1994 o rachunkowości, 29/4/2992, Dziennik Ustaw, 2002/76/694, 17/6/2002;</p> <p>Ustawa z dnia 26 listopada 1998 r. o finansach publicznych, 26/11/1998, Dziennik Ustaw, 2003/15/148, 3/2/2003;</p> <p>Ustawa z dnia 20 kwietnia 2004 r. o zmianie ustawy o transporcie kolejowym, 20/4/2004; Dziennik Ustaw, 2004/92/883, 30/4/2004;</p> <p>Ustawa z dnia 28 marca 2003 o transporcie kolejowym, 28/3/2003, Dziennik Ustaw, 2003/86/789, 17/05/2003;</p> <p>Ustawa z dnia 27 lipca 2002 r. o warunkach dopuszczalności i nadzorowaniu pomocy publicznej dla przedsiębiorców, 27/7/2002, Dziennik Ustaw, 2002/141/1177, 5/09/2002;</p> <p>Ustawa z dnia 20 kwietnia 2004 r. o zmianie i uchyleniu niektórych ustaw w związku z uzyskaniem przez Rzeczpospolitą Polską członkostwa w Unii Europejskiej, 20/4/2004, Dziennik Ustaw, 2004/96/959, 30/04/2004;</p> <p>Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji (tekst jednolity), 16/3/2000, Dziennik Ustaw, 1/09/2003;</p> <p>Ustawa z dnia 15 grudnia 2000r. o ochronie konkurencji i konsumentów, 15/12/2000, Dziennik Ustaw, 2004/86, 17/05/2003;</p> <p>Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, 30/8/2002, Dziennik Ustaw, 2002/153/1270, 20/09/2002;</p> <p>Rozporządzenie Ministra Infrastruktury z dnia 28 czerwca 2003 r. w sprawie trybu składania i rozpatrywania wniosków o udzielenie licencji na prowadzenie działalności gospodarczej polegającej na wykonywaniu przewozów kolejowych osób lub rzeczy albo na udostępnianiu pojazdów trakcyjnych oraz wzoru licencji, 28/6/2003, Dziennik Ustaw,</p>

MS	Measures Communicated?	Related Legislation
		<p>2003/137/1309, 6/08/2003;</p> <p>Ustawa z dnia 26.06.1974 r. - Kodeks pracy, 26/6/1974, Dziennik Ustaw, 16/02/1998 (part A; part B);</p> <p>Ustawa z dnia 14 czerwca 1960 r. - Kodeks postępowania administracyjnego, 14/6/1960, Dziennik Ustaw, 17/11/2000;</p> <p>Rozporządzenie Ministra Infrastruktury z dnia 23 września 2003 r. w sprawie świadectw bezpieczeństwa, 23/9/2003, Dziennik Ustaw, 2003/176/1719, 10/10/2003.</p>
PT	Yes	<p>Decreto-Lei no. 270/2003: Define as condições de prestação dos serviços de transporte ferroviário por caminho de ferro e de gestão da infra-estrutura ferroviária, transpondo para a ordem jurídica nacional as Directivas n.os 2001/12/CE, 2001/13/CE e 2001/14/CE, do Parlamento Europeu, de 26 de Fevereiro, published in the Diário da República, I-A Série, No. 250, 28 October 2003. The Network Statement 2004 has been published by REFER, the Infrastructure Manager in Portugal.</p>
FI	Yes	<p>Rautatielaki 198/2003, 7/032003; Valtioneuvoston asetus rautatieliikenteen harjoittajille tarjottavista palveluista (206/2003), 13/03/2003; Valtioneuvoston asetus rautatieliikenteen aikataulukaudesta ja ratakapasiteetin hakemisesta (207/2003), 13/03/2003.</p> <p>Järnvägslag 198/2003, 7 March 2003, Statsrådets förordning om tjänster som skall tillhandahållas järnvägsoperatörer (206/2003), 13/03/2003; Statsrådets förordning om tågplanperioder och ansökan om bankapaciteit (207/2003), 13/03/2003.</p> <p>Railway Act 198/2003, 7/03/2003; Government decree 206/2003 on services to be provided to rail operators, 13/03/2003; Government decree 207/2003 on railway scheduling periods and applications for track capacity, 13/03/2003.</p>
SI	Yes	<p>Zakon o preoblikovanju in privatizaciji javnega podjetja Slovenske železnice, d.d.23/2/2003, Uradni list RS, 26/2003, 13/03/2003, p. 3220-3222;</p> <p>Uredba o dodeljevanju vlakovnih poti in uporabnini na javni železniški infrastrukturi, d.d. 29/3/2001, Uradni list RS, 26/2001, 12/04/2001, p. 2777-2781;</p> <p>Uredba o nadomestilu dela stroškov za prevoze, raziskave in naložbe prevoznikom, ki opravljajo določene prevozne storitve v železniškem prometu, d.d. 9/11/2000, Uradni list RS, 108/2000, 24/11/2000, p. 11250-11252;</p> <p>Zakon o železniškem prometu - uradno prečiščeno besedilo, d.d. 15/7/2003, Uradni list RS, 83/2003, 22/08/2003, p. 12180-12194;</p> <p>Uredba o postopku za ugotavljanje izpolnjevanja pogojev za izdajo licence za opravljanje prevoznih storitev v železniškem prometu, njen odvzem ali podaljšanje in postopek obveščanja tujih licenčnih organov, d.d. 19/4/2001, Uradni list RS, 34/2001, 10/05/2001, p. 3960-3962;</p>

MS	Measures Communicated?	Related Legislation
		<p>Uredba o kriterijih za ugotavljanje izpolnjevanja pogojev za pridobitev varnostnega spričevala in o postopku za izdajo varnostnega spričevala, d.d. 19/1/2001, Uradni list RS, 4/2001, 19/01/2001, p. 462-467;</p> <p>Uredba o spremembi uredbe o dodeljevanju vlakovnih poti in uporabni na javni železniški infrastrukturi, d.d. 8/11/2001, Uradni list RS, 91/2001, 16/11/2001, p. 8983;</p> <p>Zakon o spremembah in dopolnitvah zakona o železniškem prometu, d.d. 29/11/2002, Uradni list RS, 110/2002, 18/12/2002, p. 13164-13170;</p> <p>Zakon o železniškem prometu, d.d. 2/11/1999, Uradni list RS, 92/1999, 12/11/1999, p. 13631-13640;</p>
SK	Yes	<p>ZÁKON 164/1996, NÁRODNEJ RADY SLOVENSKEJ REPUBLIKY, zo 17. mája 1996 o dráhach a o zmene zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov (Provisional English translation);</p> <p>ZÁKON 58/1997, zo 6. februára 1997, ktorým sa mení a dopĺňa zákon č. 135/1961 Zb. o pozemných komunikáciách (cestný zákon) v znení neskorších predpisov, zákon Národnej rady Slovenskej republiky č. 164/1996 Z. z. o dráhach a o zmene zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov, zákon Národnej rady Slovenskej republiky č. 168/1996 Z. z. o cestnej doprave a zákon Národnej rady Slovenskej republiky č. 222/1996 Z. z. o organizácii miestnej štátnej správy a o zmene a doplnení niektorých zákonov;</p> <p>ZÁKON 260/2001, zo 14. júna 2001, ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 164/1996 Z. z. o dráhach a o zmene zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení zákona č. 58/1997 Z. z.;</p> <p>ZÁKON 416/2001, z 20. septembra 2001 o prechode niektorých pôsobností z orgánov štátnej správy na obce a na vyššie územné celky;</p> <p>ZÁKON 725/2004, z 2. decembra 2004 o podmienkach prevádzky vozidiel v premávke na pozemných komunikáciách a o zmene a doplnení niektorých zákonov;</p> <p>ZÁKON 109/2005, z 9. februára 2005, ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 164/1996 Z. z. o dráhach a o zmene zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení neskorších predpisov a o zmene zákona č. 725/2004 Z. z. o podmienkach prevádzky vozidiel v premávke na pozemných komunikáciách a o zmene a doplnení niektorých zákonov (Provisional English translation).</p>
SE	Yes	<p>Järnvägslag (2004:519) (Railway Act) of 3 June 2004; Järnvägsförordning (2004:526) (Railway Regulation) of 3 June 2004; Förordning (2004:527) med instruktion för Järnvägsstyrelsen (Regulation with instructions for the Rail Agency) of 3 June 2006; Lag (1992:1119) om teknisk kontroll (Act on technical control) of 3 December 1992; Förordning (2005:894) om teknisk</p>

MS	Measures Communicated?	Related Legislation
		kontroll (on technical control)of 1 December 2005.
UK	Yes	The Railways Infrastructure (Access and Management) Regulations 2005, Statutory Instruments 2005, No. 3049 and The Railway (Licensing of Railway Undertakings) Regulations 2005, Statutory Instruments 2005 No. 3050 .

5. OVERVIEW OF THE COURT RULINGS IN RELATION TO THE INFRASTRUCTURE PACKAGE DIRECTIVES:

[C-2003/550](#): Commission vs. Greece: non-notification implementation measures for Directives 2001/12, 2001/13 and 2001/14, Ruling of 4 December 2004;

[C-2003/482](#): Commission vs. Ireland: non-notification implementation measures for Directives 2001/12, 2001/13 and 2001/14, Ruling of 18 November 2004;

[C-2003/483](#): Commission vs. the United Kingdom: non-notification implementation measures for Directives 2001/12, 2001/13 and 2001/14, Ruling of 7 October 2004;

[C-2003/477](#): Commission vs. Germany: non-notification implementation measures for Directives 2001/12, 2001/13 and 2001/14, Ruling of 21 October 2004;

[C-2003/481](#): Commission vs. Luxemburg: non-notification implementation measures for Directives 2001/12 and 2001/14, Ruling of 30 September 2004.

ANNEX 2

Rail Transport in the EU: Open Access Rights in the Member States by 1 February 2006

The table below summarises information about open access rights for rail transport services in Member States based on information (e.g. notifications from Member States, studies, etc.) that the Commission had obtained as of 1 February 2006.

Country	Open access to all EU railway undertakings for international rail freight services (on TERFN) <i>Required by "1st EU rail package" since 15 March 2003 and 1 May 2004 for the New Member States.</i>	Open access to all EU railway undertakings for all kinds of rail freight services <i>Required by "2nd EU rail package" from January 2007 onward</i>	Open access to domestic railway undertakings for rail freight services <i>Based on national legislation</i>	Open access to domestic undertakings for rail passenger services (to be distinguished from access for public service provision) <i>Based on national legislation</i>
BE	YES since March 2003	YES from January 2007	NO	NO
CZ	YES since May 2004	YES since May 2004	YES since 2000	YES since 2000
DK	YES since 2003	YES from January 2007	YES since January 1999	YES since January 1999
DE	YES since January 2006	YES from January 2007	YES since 1994	YES since 1994
EE	YES since April 2004	YES from January 2007	YES since 1999	YES since 1999
EL	YES since May 2005	NO	NO	NO
ES	YES since January 2005	YES from January 2007	YES since January 2005	NO
FR	YES since March 2003	YES from April 2006	NO	NO
IE	YES since November 2003	YES from January 2007	NO	NO
IT	YES since March 2003	YES since 2000 ⁵	YES since 2000	YES since 2000
LV	YES since May 2004	NO	YES since 1998	YES since 1998

⁵ Only on basis of reciprocity.

LT	YES since May 2004	NO	YES since 1996	YES since 1996
LU	YES since March 2003	YES from January 2007	NO	NO
HU	YES since May 2004 ⁶	YES from January 2007	YES since May 2004	NO
NL	YES since January 2005	YES since January 2005	YES since 1998	NO
AT	YES since May 2004	YES from January 2007	YES since 1998	YES since 1998
PL	YES since May 2004 ⁷	YES from January 2007	YES since June 2003	YES since June 2003
PT	YES since November 2003	NO	YES since June 2003	NO
SI	YES since May 2004	NO	YES since 2003	YES since 2003
SK	YES since January 2006	YES from January 2007	YES since January 1994	YES since January 1994
FI	YES since March 2003	NO	NO	NO
SE	YES since July 2004	YES since January 2006 ⁸	YES since 1996	NO
UK	YES since November 2005	YES from January 2007	YES since 1994	YES since 1994

⁶ Open access rights restricted during transitional period until 31.12.2006 limited to 20% of available capacity for international rail freight traffic.

⁷ Open access rights restricted during transitional period until 31.12.2006 limited to 20% of available capacity for international rail freight traffic.

⁸ Only on basis of reciprocity.

ANNEX 3

Observations and Comments made by the Stakeholders on the Implementation of the Infrastructure Package

Introduction

This annex aims to give an overview on the observations of the actors, expressed mainly by their organisations at European level concerning the reform of rail freight market and in particular the implementation of first railway package. This overview has been prepared by the Commission's services, under their own responsibility. The precise comments of the organisations may be found at the Commission's dedicated website⁹: Comments and observations are included from the Community of European Railway and Infrastructure Companies (CER), the European Rail Freight Association (ERFA), the Association of European Rail Infrastructure Managers (EIM), the European Transport Workers' Federation (ETF) and the European Rail Freight Customers Platform (ERFCP).

These organisations represent different actors of the rail market with diverging and sometimes conflicting interests and they foster different expectations from the market opening process. The CER for example mainly represents the historical, integrated railway undertakings, the infrastructure managers, while ERFA is an association of the new entrant freight operators. The EIM represents the infrastructure managers, which are institutionally separated from railway undertakings. The ETF, as a representative of the trade unions, particularly focuses on the socio-economic aspects of the rail reform, such as the development of employment. Within each organisation there can be conflicting interests. An incumbent that wants to extend its activities in another Member State can be faced with an incumbent, member of the same organisation, which has now become a competitor on a particular market segment with conflicting interests.

In order to gather information on the stakeholders' views, the European Commission organised several meetings on the railway reform process and the rail market developments. These meetings have been held within the framework of the regulatory and advisory committees as foreseen by Directives 2001/12/EC and 2001/14/EC. Furthermore, documents and position papers on the railway reform in the EU issued by stakeholders provided a valuable input to the evaluation of the impact of the implementation of the directives. Finally, the Commission managed several studies to provide a stakeholder analysis of different aspects of the railway reform process, which yielded a wealth of information, such as the Railimplement¹⁰ report.

Progress achieved

A consensus on the objectives of the railway reform emerges in so far as all stakeholders agree on the necessity of maintaining and increasing the market share of rail transport in Europe. However, this consensus is hard to identify when it comes to the means to achieve this objective. Stakeholders expressed the view that in general the reforms initiated by the first

⁹ See: http://europa.eu.int/comm/transport/rail/index_en.html

¹⁰ See: http://europa.eu.int/comm/transport/rail/research/studies_en.html

railway package are far reaching, positive and necessary to achieve the aims of the EU rail policy. CER has stated the positive effect of rail reform in terms of increasing productivity, as well.

However, it has also been emphasized by the stakeholders that the process is far from complete and much needs to be done in the future to achieve the objectives set out by the directives of the infrastructure package and the Commission's policy papers.

Although *de jure* implementation of the first railway package has occurred in most of the Member States, stakeholders consider that much remains to be done in several countries.

The institutional set-up of the rail sector in some Member States has been criticised. ERFA, EIM and ERFCP have underlined that full independence of essential functions of the infrastructure managers is not guaranteed in some Member States even where the accounts or some essential functions are separated from the historical railway undertakings. However, CER believes that no clear view emerges on what could be considered the 'best' model for the organisation of the railway undertakings and infrastructure managers (integrated or separated). ERFA, EIM and ERFCP have also highlighted the lack of independence and the shortage of financial means and staffing of the Regulatory Bodies as an obstacle to the functioning of the market.

New operators have specifically expressed their concern about national procedures for licensing and safety certification as being sometimes non-transparent, arbitrary, too complex, lengthy and expensive, which constitute a serious barrier to market entry. In addition, due to different implementation of the directives of the first railway package, these procedures are not harmonised between the Member States thus making cross-border activities complicated and difficult. Moreover, stakeholders have mentioned that traditional state railways concluded agreements on acceptance of rolling stock for cross-border traffic, which do not include the new operators. Consequently, the latter are faced with an additional administrative burden that raises their costs.

Infrastructure charging and the financial situation of rail companies

Infrastructure charging has been a common concern to all stakeholders. One of the major problems is the huge variance in the methods used to calculate these charges. As a consequence of this, charges differ significantly between Member States. In general, it can be said that while charges are at relatively low level in the old Member States, they are very high in the new Members from Central and Eastern Europe. This results in a major disadvantage for rail transport competing with other transport modes. Furthermore, CER has highlighted that track access charges do not cover the costs of asset replacement, despite the high level of charges in CEEC.

The main concern of the new operators is a discriminatory and unclear charging policy, favoured by integrated rail companies that can influence the actual allocation and charging procedures.

As regards inter-modal competition, the implementation of the principle of internalisation of external costs in charging schemes of other transport modes, in particular roads, has been supported by the stakeholders since it could provide economic advantage for rail freight transport and possibly increase its attractiveness for the customers.

The financial situation of rail companies is diverse in Europe. Historic debts of state railways have been treated differently across Europe. The CER has expressed its concern about the growing debt of state railways of Central-Eastern Europe, in particular. Since this problem is related to state owned companies, Member States should continue to comply with the provisions on debt restructuring as set out in the amended directive 91/440/EC.

Market Access

Discriminatory access to essential facilities such as marshalling yards, fuelling and terminals has been a major concern of the new entrant rail operators. It is due to the fact that incumbents used their influential position as facility owner or operator to decide upon the parties and the conditions of the access. This has caused a serious market entry barrier and prevented new operators from providing a high-quality service to their customers.

ERFA, EIM and ERFCP have emphasized that new entrants face severe difficulties in entering and operating in the market because incumbents still have a strong control of the market, which is aimed at keeping a large market share.

New operators have the impression that the public authorities in some countries were not able or willing to provide appropriate assistance to the new operators since many incumbents are still publicly owned. Within this context, the important role of a strong market regulator independent from the state was stressed by the new operators.

CER has emphasized that increasing the rail share of the freight market and the service quality requires significant investments in the modernisation of the network in both Western and Central Eastern Europe. In the latter, the length of infrastructure should be reduced and substantially modernised. In Western Europe, investments in the renewal of the network are necessary to remove significant bottlenecks.

Employment and Working Conditions

Regarding the working conditions and employment, ETF has presented serious concerns about the considerable reduction in employment in the railway sector. ETF has stated that in the last 10 years railway employment significantly declined. According to its survey, 10 lost jobs are replaced by 1 only, new job. Female employment has been traditionally low in the rail sector (6% to 20 % in EU-15) while in the new member states this level is considerably higher (30% or even more). Redundancies in the new Member States have resulted in an over proportional reduction of the female labour force. According to ETF, employment reduction has resulted in extended working hours and overtime, as well as increasing stress for the railway staff in many parts of the railway sector.

ETF has also drawn attention to differences in salaries that are perceived between the old work contracts and the new contracts for similar activities. The change in contract has created competition on the basis of staff costs and deteriorated working conditions, which is counter productive for staff motivation and quality of services. It should be noted however that these findings are based mainly on individual cases rather than on extensive and systematic research. Comparative studies or data on working conditions in the railway sector are not available at the EU level. Some stakeholders have expressed fears that the emergence of new railway undertakings might have a negative impact on wage levels and on compliance with national legislation in relation to working conditions. ERFA observed that the new railway undertakings are faced with real competition for train drivers, thus forcing them to offer

wages and working conditions that are competitive and attractive compared to the pay levels available with the incumbents.

In general, trade unions and employers in the rail sector agree on the need to co-operate to strengthen the development of railways, however, not all of them support the liberalisation process of the rail market. They aim to maintain fair working conditions and reciprocity in the sector.

The social dialogue in the railway sector set up at European level contributes significantly to the integration of European railways. In this respect, ETF considers that the agreement between CER and ETF on certain aspects of working conditions of mobile workers is an encouraging example. ERFA, however, deplores not being recognised yet as a member of the Social Dialogue Committee; it declared to endeavour providing the necessary evidence to obtain access to this committee.

In summary, the great majority of stakeholders support the implementation and enforcement of the first railway package. According to them, it provides a good framework to integrate the rail freight market and to increase the market share of rail freight among the transport modes. Reform is beneficial and needs to be implemented forcefully so that significant results in the market development could be achieved in medium to long term. Representatives of private market actors emphasize the need for more competition on the market that is often restricted by incumbents. Member States need to enforce their own transport policy so that fair and non-discriminative competition is ensured on the rail market for all actors.

ANNEX 4

Separation of Accounts

The separation of accounts, which is the prerequisite for determining the costs of transport activities and of infrastructure management activities, for ensuring an effective infrastructure charging system and for ruling out cross-subsidisation, depends first and foremost on the legal structure chosen by the Member States for their national railway undertaking, which this issue chiefly concerns. If the structure chosen is based on individual entities which are either completely separate or are brought together in a holding company, accounts are drawn up for each individual legal entity. This is basically the case for many national undertakings in the Member States. However, the structural changes that have been made are too recent (eg in Belgium, Poland and Spain) for it to be possible to identify the financial outturn for each type of activity precisely. Some Member States (eg the Czech Republic, Greece, Hungary, Latvia and Slovenia) are either in the throes of structural change or are still at the planning stage. A study has been carried out relating to the accounts published in 2005. Further information on this matter can be found below. The Commission will endeavour to ensure that the accounts comply fully with the requirements of Directive 2001/12/EC and will not hesitate to initiate infringement procedures should such a step prove necessary.

The principle of separation the accounts of the infrastructure manager and railway undertakings was introduced in the railway legislation as early as in 1991. Directive 91/440/EEC, as adopted in 1991 already provided for the separation of accounts in its articles 4-6. Article 4 provided that railway undertakings should have independent status, which required that assets, budgets and accounts were separate from those of the State. Furthermore, Article 6 provided that the accounts for business relating to transport services and those for business relating to the management of railway infrastructure were kept separate. Aid paid to one of these two areas of activity may not be transferred to the other.

Directive 2001/12/EC amending the above mentioned Directive 91/440/EEC has gone further by requiring that separate profit and loss accounts and balance sheets are kept and published for business relating to transport services of railway undertakings as well as for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity may not be transferred to the other.

Moreover, it has introduced a new paragraph in Article 9 that ensures that railway undertakings keep and publish profit and loss and either balance sheets or annual statement of assets and liabilities for business relating to rail freight transport services. Funds paid for activities relating to passenger transport services as public-service remits must be shown separately and may not be transferred to activities relating to other transport services or any other business.

The proper implementation of the principle of accounts separation has been of great importance in the process of restructuring of the railway sector. It aims to enhance the transparency of the financial management of railway undertakings. It concerns not only the separate accounting of different rail businesses but also the public funding provided for these businesses. In particular, the separation of funding for public service contracts and ensuing obligations (PSO funding) from all other forms of funding, as well as the prohibition of cross-

subsidy between different rail businesses have major significance. The separation of accounts requires railway undertakings to have a clear and precise system to illustrate revenues and costs of railway undertakings and infrastructure managers. Moreover, it helps ensure that railway undertakings provide efficient and appropriate services at the lowest possible cost for the quality of service required in the railway market as required by Article 5 of Directive 91/440/EEC.

The Commission has requested external consultants to assess the financial situation of the railway undertakings and the infrastructure managers during the nineties (1996 and 1997/8), as well as in 2003¹¹ and 2005. The results of these surveys clearly show that the financial reporting of the railway infrastructure managers started to comply gradually with the requirements of the amended Directive 91/440/EEC. The latest survey on the financial accounts of railway undertakings evaluated the financial accounts of both railway undertakings and infrastructure managers of 2003/2004 having a yearly turnover of more than 50 million Euro and includes undertakings from the EU-25 as well as Norway and Switzerland. Comparing the findings of the different surveys is difficult as a result of the enlargement in 2004, as well as the restructuring of the sector itself: new organisations have been created from integrated railway undertakings, whereas other activities have simply been outsourced. The main findings of the latest survey ('FARU') are reported below. This first snapshot should not lead to firm conclusions at this stage. It just shows the need to perform an in-depth examination of the situation on the basis of the 2005 accounts.

Separation of accounts

In most Member States, Directive 91/440/EEC as amended by Directive 2001/12/EC, had been implemented by the end of 2005. Member States have initiated a reform process in order to restructure the railway sector thus allowing them to comply with the requirements of the railway directives and to allow the sector to develop rail transport as a competitive mode of transport. As in this study the most recent figures available were from 2004 and in some cases 2003, the situation in 2005 could not be studied in full detail. It should therefore be kept in mind that the data are often referring to previous years rather than the current situation and do not necessarily reflect the current situation, in particular where a restructuring has taken place recently, such as in Spain, Austria, Belgium or Greece. The study showed that 51 out of 95 railway undertakings and infrastructure managers studied have separate accounts in place for passenger and freight transport and/or infrastructure management. It should be observed though that in case a railway undertaking is only active in one particular domain, such as freight transport, the requirement of account separation only becomes relevant if it receives subsidies or state aids to perform its tasks.

Cross subsidies

Cross subsidies occur when the yield from profitable activities is used to fund loss making activities. This can be observed in situations where yields from profitable freight transport are used to fund unprofitable passenger services as for example occurs in the new Member States. It should be noted that most of the annual accounts do not provide sufficient information to

¹¹ Study of the financing of and public budget contributions to railways, carried out by NERA, London, UK. This study incorporated the data of studies carried out in 1996 and 1997/8 by Mercer Management Consulting. The studies carried out by NERA and Mercer (no. 19) can be found at the following internet website: http://europa.eu.int/comm/transport/rail/research/studies_en.html

make any statements regarding cross subsidies. In most cases, it is not likely that cross subsidies will be reported in a transparent way: an in-depth audit of the books will be required to track these cross subsidies. In very few cases cross subsidies could be found in the annual report or other sources of information about the company or the situation in the country.

Public support

According to the yearly survey carried out by the Commission, Member States report providing between 30 and 35 billion Euros every year to the rail transport sector in the EU15. It is assumed though that this amount must be higher (around 50 billion Euros), as not all the financial transfers are reported in the annual survey. Most of this support is used to fund infrastructure investments, though a significant part is used for public service contracts or obligations in the passenger transport sector and as state aid to allow the restructuring of loss-making freight transport undertakings. Only 33 out of 95 railway undertakings studied provide detailed information on amounts of public support received and the nature of this support. This is only 35% of the companies included in this survey. It should be observed that in some cases, public support is provided to railway undertakings to allow the railway undertaking to comply with commitments in relation to social security schemes or retirement schemes, and that they act, as such as social security executive agencies. This is the case in Belgium and France, where the incumbents receive funds to pay the retirement benefits to its former employees.

A few undertakings fail to provide information on the public support they received. In many cases these are commercial freight transport undertakings that do not generally receive any public support. In other cases (16 railway undertakings), it is known through other sources (press reports; communications) or it could be generally expected (e.g.: conclusion of public service contracts) that the company received public support in 2004 but no mention was made of it.

For a large number of railway undertakings either the amount of public support has been specified but the nature of the support was not explained, or the nature of the support was summarized but no amounts have been published. This limited transparency was the case for 31 railway undertakings out of 95 companies subject to this study, equalling 33% of all undertakings studied.

ANNEX 5

Independence of Essential Functions for Ensuring Non-Discriminatory Access to the Rail Infrastructure

While there are no particular problems concerning the licensing of railway undertakings by independent bodies in accordance with Directive 2001/13/EC, more difficult questions arise in connection with the capacity allocation and charging which are key factors in opening up the market.

Directives 2001/12/EC and 2001/14/EC specify that these functions must be performed independently of the railway undertaking so as to ensure fair and non-discriminatory access to the infrastructure. The Directives do not formally require institutional separation between the activities of infrastructure manager and railway undertaking, but this separation seems to be the best way of ensuring fair and non-discriminatory treatment for all railway undertakings wishing to gain access to the infrastructure. There is a long-running debate in railway circles between the integrated railway undertaking model (often taking the form of a holding company in the Member States which advocate this model) and vertical separation (entailing total separation between infrastructure management and transport activities). The pros and cons of each structure are discussed in Annex 6.

To the Commission's way of thinking, the fundamental issue is the question of ensuring that the infrastructure manager is impartial when it comes to allocating capacity and charging for infrastructure use. Access to European railway infrastructure (meaning both the track and the services vital to the smooth operation of trains) must be transparent and non-discriminatory vis-à-vis any railway undertaking holding the requisite licence and safety certificates, irrespective of its nationality. The party which regulates infrastructure use is in possession of all the information, including sensitive commercial information, about the users. If the infrastructure manager is part of a group that is managed in a unified fashion and includes one or more railway undertakings, this group has, *de facto*, a competitive advantage over competing railway undertakings. Unless it takes appropriate measures, there is a high risk of collusion. Moreover, there could be a temptation for this group to manage the infrastructure according to its own interests, for example by not making it interoperable for neighbouring railway undertakings or by developing the network according to its own needs rather than those of competing railway undertakings.

If this independence is not guaranteed by means of institutional separation into two separate legal entities which do not belong to the same holding company, clear and transparent criteria such as organisational separation and the independence of the management bodies must be ensured. The Commission intends to make a thorough analysis of each situation with the cooperation of the Member States concerned. On this basis, it may in addition take individual measures or propose amendments to the Directives concerned, e.g. by introducing criteria concerning independence.

Criteria for the Commission’s assessment of the independence of infrastructure management functions

The Directives 91/440/EEC, as amended by Directive 2001/12/EC as well as in Directive 2001/14/EC require a legal, organisational and decision making independence. In assessing the independence requirements for essential infrastructure management functions such as the allocation of train paths and the setting of rail infrastructure charges laid down in the directives, the Commission faces three basic variants of the corporate structure for the infrastructure manager:

- A legally, organisationally and institutionally independent rail infrastructure manager;
- An integrated rail infrastructure manager working alongside an independent capacity allocation and charging body. This option may include the variant of a fully independent infrastructure manager which delegates particular tasks (e.g. daily traffic management, infrastructure maintenance works) to the (incumbent) railway undertaking and
- A legally and organisationally independent infrastructure manager which is part of a railway holding structure or any other structure controlled by a railway undertaking.

A fourth variant is where the infrastructure manager in charge of allocating capacity and a railway undertaking are still integrated. This variant is not compatible with Community legislation. Some Member States such as Ireland, the UK for Northern Ireland and Greece have derogation in this respect.

The table below provides an overview on the current corporate structures of the rail infrastructure managers in European countries.

Category	Member States
Fully legally, organisationally and institutionally independent infrastructure manager undertaking capacity allocation	Great Britain, Finland, Denmark, Netherlands, Norway, Spain, Sweden, Portugal, Slovakia, Lithuania
Independent infrastructure manager allocating capacity having delegated certain infrastructure management functions (e.g. traffic management, maintenance) to one of the train operating companies/ Integrated infrastructure manager working alongside an independent body in charge of capacity allocation	Czech Republic, Estonia, France, Hungary, Slovenia, Luxembourg
Legally (but not institutionally) independent infrastructure manager undertaking capacity allocation owned by a holding company which also owns one of the operators	Austria, Belgium, Germany, Italy, Latvia, Poland, Greece
Infrastructure manager in charge of	Ireland, Northern Ireland

allocating capacity and railway undertaking still integrated	
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The Commission services will carry out a case-by-case analysis of the way in which essential infrastructure functions are managed, as notified by the Member States. To demonstrate independence, the absence of a conflict of interest and to assess the compliance with EU legislation, several criteria should be used such as:

- Compliance with the independence requirements should be monitored by an independent authority or third party. This role could for instance fall to an independent rail regulatory body. Competitors should have the possibility to complain about any breach of those independence requirements;
- Statutory and/or contractual independence provisions in the relationship between the controlling structure/holding and the entity entrusted with essential functions, between the entity entrusted with essential functions and other (rail service providing) companies of the group, or other entities which are controlled by the holding, including in particular the shareholders' meeting of the entity entrusted with essential functions;
- The board members of the holding and/or of other companies of the holding should not be in the board of the entity entrusted with essential functions;
- The board members of the entity entrusted with essential functions and senior staff members dealing with essential functions should, for a reasonable number of years, be barred from accepting any senior position with the holding or with other entities under its control after they leave the essential functions entity.
- The management board of the entity entrusted with essential functions must be appointed under clear conditions and legal commitments to ensure the full independence of its decision making. It should be appointed and dismissed under the control of an independent public authority, such as a rail regulatory body.
- The entity entrusted with essential functions should have its own staff and be located in separate premises or with protected access. Access to the information systems has to be protected to ensure independence of essential functions. The internal rule or staff contracts should clearly limit the contacts with the holding and other companies under its control to the official communications connected with the exercise of the essential functions.

ANNEX 6

Unbundling Infrastructure and Operations in Network Industries: The Case of the Railway Sector

1. Characteristic features of network industries

Railway, electricity and telecommunication sectors, as network industries, possess some important features which strongly determine their organizational structure. Network industries deliver products and services to final consumers via a “network infrastructure” which is built by different elements linking upstream supply with consumers downstream. The main defining characteristics of these kinds of industries are the very high fixed costs of developing their infrastructure, decreasing average costs by increasing output as well as the existence of advantages which arise from the conjoint production of different goods inside one firm¹². The duplication of the system is extremely expensive and economically inefficient thus network industries normally have features of natural monopolies. Moreover, before the investment in infrastructure, retailers and users fully depend on decisions of the firm willing to invest in the network facilities. Once the network is established, investors are dependent on the network operators and retailers who may wish to set lower prices for the access to the network¹³. In such cases, there is a strong incentive for both sides to vertically integrate¹⁴. Finally, network industries usually provide essential services and have certain non-economic obligations set by governments, due to the high importance of continuity of supply of their services.

All the reasons mentioned above are often seen as justification for governmental interference in network industries, further exacerbated by the fact that in many EU Member States they are generally large vertically integrated and publicly owned organizations¹⁵. However, it should be borne in mind that network industries have often both competitive and non-competitive segments. The *non-competitive* segments in the railway, electricity, gas and telecommunications industry include respectively: track and signalling infrastructure, high-voltage transmission and local electricity distribution, high-pressure transmission of gas, local residential telephony and local loop. Potentially *competitive* segments in these industries include: operation of trains and maintenance facilities, electricity generation and supply, gas production, supply and storage as well as long-distance telephony, mobile telecommunications and value added services¹⁶. Stimulating the competitive segments has the potential to result in large operational gains¹⁷. As shown later, this aim may be achieved through the separation of infrastructure and operations in the industries concerned.

¹² Cp. European Central Bank (2005), p. 19; Mulder/Shestalo/Lijesen (2005), p. 19.

¹³ Cp. Mulder/Shestalo/Lijesen (2005), pp. 20, 22.

¹⁴ Cp. Mulder/Shestalo/Lijesen (2005), p. 22.

¹⁵ Cp. European Central Bank (2005), pp. 19-20.

¹⁶ Cp. Gonenc/Maher/Nicoletti, Giuseppe (2000), p. 65.

¹⁷ Cp. Mulder/Shestalo/Lijesen (2005), p. 23.

2. Regulatory provisions on the separation of infrastructure and operations in the electricity and the telecommunication sector

In the *electricity sector* unbundling of transmission and distribution systems and a gradual opening of national markets has been introduced with the EU Directives 96/92/EC and 2003/54/EC. In particular Directive 2003/54/EC aims to achieve, by July 2007 at the latest: legal unbundling of transmission system operators and distribution system operators from the rest of the industry (legal unbundling means, as a minimum, independence of the organization and its decision making processes without the obligation to separate the ownership of assets)¹⁸, free entry to generation, monitoring of supply competition, full market opening, promotion of renewable sources, strengthening the role of the regulator and introducing a single European market¹⁹.

In the *telecommunication sector* separation between infrastructure and operations takes the form of unbundling the local loop. A *local loop* refers to the infrastructure allowing the delivery of retail telecommunications services²⁰. The EC Regulation on Local Loop Unbundling (EC/2887/2000) which came into force on the 2nd of January 2001 requires incumbent operators throughout Europe to offer unbundled access to their local loops on reasonable request. The Regulation also requires the incumbents to offer shared access and sub-loop unbundling. In the case of the shared use of the copper line consumers can acquire data services from an operator while retaining the voice services of the incumbent. Some operators may choose to offer data services only, so through line sharing consumers can retain their service for voice calls while getting higher bandwidth services from another operator without needing to install a second line. Sub-loop unbundling means that operators other than incumbent firms can interconnect with the local access network at a point between the incumbent's site and the end user.

3. Unbundling the infrastructure from the operations in the railway sector

3.1. European Directives on rail infrastructure unbundling

Vertical separation in the railway sector is the separation of track infrastructure from operational transport services. The infrastructure remains under the control of a regulated public or private monopolist, and one or more railway firms are able to operate rail services²¹.

The European legislation on rail infrastructure unbundling does not explicitly require splitting infrastructure and operations into separate business entities. The EU Directives 91/440/EEC, 95/18/EC and 95/19/EC emphasize solely the necessity for separate accounting of infrastructure and operations. Directive 2001/12/EC goes further in requiring railways to keep separate accounts for passenger and freight services. Other requirements set by these Directives include the independency of the infrastructure manager from any railway

¹⁸ Cp. Art.15 (1) of the Directive 2003/54/EC: “Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. These rules shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.”

¹⁹ Cp. Jamasb/Pollitt (2005), p. 6.

²⁰ Ibid., p. 6.

²¹ Cp. Arendt (2005), p. 25.

undertakings, the non-discriminatory access to the infrastructure for operators, and the obligation for infrastructure managers to publish Network Statements with concise information on their networks and its technical characteristics²².

There are two methods for achieving the required minimum separation set by the Directives on rail infrastructure unbundling: *ownership* separation and *organizational* separation. In the first case the infrastructure manager and the railway operator are autonomous entities with separate ownership, balance sheets and staff. This method has been implemented in the UK. In the case of organizational unbundling, separate business units are created with a large degree of operational freedom either operating as part of the railway operator (like e.g. in Belgium or Italy) or organized within a holding company framework (e.g. Germany)²³.

3.2. Advantages of vertical separation in the rail sector

The most important advantages of vertical separation in the railway sector are an increase in transparency, in cost efficiency, in neutrality, in the competition level and in reliability as well as better possibilities to privatize commercial activities.

Transparency: The combination of separation and publication of the Network Statement ensures greater transparency of the capacity and the terms and conditions of the infrastructure manager²⁴. It enables the comparison of infrastructure costs across different modes of transport²⁵, improves the informational position of the regulator enabling him to set tariffs and incentives more appropriately²⁶ and decreases the risk of cross-subsidization and the problems of asymmetric information²⁷. This, in turn, allows the determination of the true costs of running a railway business and creates fair conditions for potential entrants. However, one has to consider that due to the large number of interfaces involved between the infrastructure and railway operations, a precise allocation of costs cannot always be made. This means that a certain degree of cross subsidization of services and routes will occur despite of the account separation²⁸.

Cost Efficiency: Separation allows specialization on core activities and a better customization of goods and services offered²⁹. Moreover, one of the reasons for separating the infrastructure from operations is the reduction of unit costs which will decrease with the increase in traffic carried by a rail line. The costs of allowing a new operator to use an existing line are far lower than the costs of building its own infrastructure by the operator³⁰.

Neutrality: A non-discriminatory third-party access to networks can only be realized when there is a true separation between the companies operating on the network and those responsible for charging for access to the network infrastructure³¹. Despite the existence of laws requiring neutrality towards all operators, this may not be possible if the charging body

²² Cp. Di Pietrantonio/Pelkmans (2004), p. 22.

²³ Cp. Profillidis (2001), pp. 19-23.

²⁴ Cp. Evans (2003).

²⁵ Cp. Profillidis (2001), pp. 19-23.

²⁶ Cp. Mulder/Shestalova/Lijesen (2005), p. 48.

²⁷ Cp. Di Pietrantonio/Pelkmans (2004), p. 13; Mulder/Shestalova/Lijesen (2005), p. 48.

²⁸ Cp. Di Pietrantonio/Pelkmans (2004), pp. 16-18.

²⁹ Cp. Evans (2003).

³⁰ Cp. Cargo Coordinating Forum (2000); Thompson (1997).

³¹ Cp. Mulder/Shestalova/Lijesen (2005), p. 22.

is an integrated railway company, as they may be able to give preferential treatment to their internal train operations³². Moreover, vertical separation may additionally reduce the incentives of infrastructure owners to restrict access to rival firms in the downstream markets.

Competition: Clear and separate responsibilities of infrastructure managers and transport operators are essential to increase the level of competition in rail transport³³. Competitive pressures, in turn, ensure that railway operators take the necessary rationalization measures and bring about innovation and development in this sector³⁴. Respectively, ownership of infrastructure and operations does not provide any incentives to promote free competition because monopolistic tendencies do not favour entry of other railway operators to the same infrastructure³⁵.

Reliability: Increased independency of network management and financing ensures that decisions are taken in the best interests of the network. Moreover, as mentioned earlier, transparency established by unbundling enables the regulator to better create proper incentives to networks³⁶ which stimulates their development and leads to an increase in the quality of services offered.

Finally, **unbundling encourages the privatization of commercial activities:** Ownership unbundling separates network and commercial activities paving the way for privatization of commercial parts of the industry. Privatization of the competitive segments of the sector, in turn, generally increases their efficiency³⁷.

3.3. Disadvantages of vertical separation in the rail sector

The negative effects which may be triggered by the separation of infrastructure and operations in the railway sector include the existence of transitional costs, the loss of economies of scope, the risk of double marginalization, coordination problems, as well as the possible negative effects on the quality, safety and reliability of rail services and on the level of competition.

Transitional costs: Changing the existing industry structure involves costs of restructuring companies' offices, renegotiating the existing contracts of integrated companies with other parties and introducing changes in personnel and housing. There arise also legal costs connected to the implementation of a higher degree of unbundling and costs of the introduction of a new process and program management.³⁸ However, in the specific context of the EU (where integrated incumbents are usually less efficient), the restructuring costs are expected to be offset by the reduction of costs for operating railway services which would follow liberalization and introduction of competition into this sector.

³² Cp. Evans (2003).

³³ Cp. Cargo Coordinating Forum (2000);Thompson (1997);Evans (2003);Gomez-Ibanez (2004), pp. 4-5.

³⁴ Cp. Cargo Coordinating Forum (2000).

³⁵ Cp. Profillidis (2001), pp.19-23; Di Pietrantonio/Pelkmans (2004), pp. 20-21.

³⁶ Cp. Mulder/Shestalova/Lijesen (2005), p.83.

³⁷ Ibid., p. 88.

³⁸ Mulder/Shestalova/Lijesen (2005), pp. 69-70.

Loss of the economies of scope: Separation of infrastructure and operations leads to the loss of advantages which arise from the integrated performance of different activities within one railway company³⁹.

Increased risk of insufficient investments in infrastructure: Under vertical integration the incentives to invest in infrastructure are generally greater than in the case of separation. As the network owner has to share gains from its investments with other parties in the business chain, it generally invests less than an integrated firm would⁴⁰. However, this could be avoided by stricter state/regulatory control or contracts with the infrastructure manager. In the UK example (which is often quoted as an example) the mistaken perception is that a relatively high number of accidents were a consequence of the activities of the privatised infrastructure manager. Although there were a number of high profile accidents, there is no evidence to suggest that the high profile accidents were a direct result of having an infrastructure manager in the private sector and indeed, the long term safety trend has been one of the improvements..

Double marginalization: Vertical integration diminishes incentives for double marginalization. Under the condition of separation, companies are faced with more inelastic demand thus they may demand higher prices than a vertically integrated monopolist⁴¹. However, if unbundling is done with the aim of introducing competition downstream, double marginalization usually does not occur because the downstream operator is not able to set a profit maximizing (monopolist) price.

Coordination problems: Settlement of conflicts may prove to be relatively more complicated in a separated environment. A large number of complex interfaces exist in the railway sector. As decisions often require mutual involvement and have to be taken rapidly, vertical separation of entities operating infrastructure and train services increases the transaction costs of decision making⁴². In the context of several railway undertakings with separate contractual arrangements with the infrastructure manager, solving problems may involve identifying the contractual terms of operation; this may result in time delays. One has to keep in mind, however, that in the EU context co-ordination problems would exist even in the case of full integration. The reason for this is that multiple railway undertakings must coordinate their access to the European network with infrastructure managers from other countries. In an integrated company decisions concerning access to the network are taken more easily and quickly in accordance with a clearly defined hierarchical procedure⁴³. The lack of standardized services in the railway sector additionally increases the coordination costs through negotiations⁴⁴. However, the possible increase in prices for services due to the lack of standardisation would probably be more than balanced by price reduction resulting from the increased competition in the sector.

Lower level of quality and safety of the rail service: The quality and safety of rail services depend heavily on close coordination of infrastructure and train operations. Separation and the resulting increased level of competition lead to a larger number of actors involved in the

³⁹ Ibid., p. 71.

⁴⁰ Ibid., p. 45.

⁴¹ Cp. Cournot (1927).

⁴² Cp. Arendt (2005), p. 26.

⁴³ Cp. European Conference of Ministers of Transport (1996), p. 2; Pfund (2003), p. 32.

⁴⁴ Cp. Arendt (2005), p. 26.

sector and thus to a larger number of interfaces where mistakes may occur⁴⁵. However, as operators seek access to other European markets in the framework of the internal rail market opening, with or without separation a large number of interfaces would appear anyway.

Possible negative impact on competition: In some cases the separation of infrastructure and operations may also have a negative impact on the level of competition in network industries. Unbundled commercial firms can become less strong financially and, as a consequence, more prone to the risk of mergers and takeovers which may reduce the number of rivals and thus the level of competition⁴⁶. Furthermore, if the scale of operation and market demand are not large enough so as to allow for cost recovery and profitable operations, competition may lead to inefficient entries. In this case both the incumbent and the entrant will suffer from the establishment of a new firm. Such a situation is most likely to occur in regional, suburban and urban services which are usually better served by a single operator under a concession regime or public service obligations⁴⁷. One has to bear in mind, however, the specific EU-context of large, traditional, state-owned incumbents. Private newcomers, in spite of their smaller size, may have cost advantages in relation to the state undertakings because of their leaner structure as well as greater efficiency and independency of political factors. Moreover, by discussing the need to increase competition in the rail sector, it shouldn't be forgotten that rail already faces an intense inter-sector rivalry from alternative modes of transport, locations and products⁴⁸.

Possible negative impact on the reliability of rail services: The reliability of rail services may in some cases be negatively affected by the increased risk of the opportunistic behaviour of actors involved in the sector and by insufficient investments in the infrastructure⁴⁹. Moreover, problems may arise which do not have a clear identification of the respective responsibilities of infrastructure managers and operators⁵⁰. However, as was mentioned earlier in this paper, the competitive pressure on the operators generated through separation will most probably force them to offer better and more reliable services. This reliability gain is expected to more than balance the negative impacts of the possible opportunistic behaviour and/or the insufficient investments in the infrastructure.

3.4. Infrastructure unbundling from the perspective of the single European market for rail services

An efficient operation of international rail services and the optimization of infrastructure use across Europe requires close co-operation on the side of infrastructure managers, especially in the field of international allocation of train paths and in the area of infrastructure charging. The current structure of the national railway markets is detrimental to the development of such co-operation because railway undertakings are still in a position to control the infrastructure management, at least in the model of organizational separation and vertical integration. The creation of the Rail Net Europe in 2003 in Vienna, gathering together infrastructure managers, was a first step towards a European-wide cooperation leading to the offering of international paths for railway undertakings. The question is, however, whether

⁴⁵ Cp. Gomez-Ibanez (2004), pp. 1-2.

⁴⁶ Cp. Mulder/Shestalova/Lijesen (2005), p. 54.

⁴⁷ Cp. Di Pietrantonio/Pelkmans (2004), p. 29.

⁴⁸ Cp. Gomez-Ibanez (2004), p. 1.

⁴⁹ Cp. Mulder/Shestalova/Lijesen (2005), p. 83.

⁵⁰ Cp. European Conference of Ministers of Transport (1996), p. 2.

grand father rights are still taken into account in this process. The more the incumbent railway undertaking is close to the infrastructure manager, the more such risk exists.

The fact that some infrastructure managers form an integral part of national railway undertakings threatens also the Europe-wide non-discriminatory access to rail related services and facilities, such as terminals, catenaries, refuelling and maintenance facilities. In the case of heavily used services particularly, there are concerns regarding the preference shown by service providers towards the railway undertakings operated by themselves. Transparency and separation of functions are therefore vital to ensure an equal treatment of the incumbent and the independent railway undertakings as regards access to the rail infrastructure and to service facilities in order to optimize their use at a European level⁵¹.

4. Closing words

One has to keep in mind that the overview of advantages and disadvantages of vertical separation in the European network industries presented in this paper is of highly qualitative nature mainly based on theoretical reasoning and expert judgments. As evidence from Member States is insufficient, it is hard to quantify the extent of the potential benefits and costs arising from the extensive regulatory reforms. Moreover, these kinds of changes have strongly differing effects across a short- and a long-term time horizon. However, from the arguments above it can be concluded that as changing ownership within an industry may have far-reaching consequences, a thorough analysis of costs and benefits of such measures is critical. Vertical separation of infrastructure and operations brings many benefits into the network industries, such as an increase in transparency, cost efficiency, neutrality, competition and reliability as well as better possibilities to privatize commercial activities. Theoretically, it may also trigger some negative effects, like transitional costs, loss of economies of scope, risk of double marginalization and coordination problems. In a fully functioning and competitive market at which we are aiming, the question of discrimination and its link to vertical separation or integration would be less important. However, the challenge being faced is about how to get from the current various national situations to a mature European market. It is the task of the policy maker to make the appropriate regulatory provisions and to monitor their implementation at a national level in order to ensure progress is being made towards open and functioning markets.

⁵¹ Cp. Scherp (2002).

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ANNEX 7

Independent Regulatory Bodies

A national regulatory body is provided for in Article 30 of Directive 2001/14/EC, and these bodies are responsible in each Member State for guaranteeing that there is fair and non-discriminatory access to the infrastructure. They must be independent of all the parties concerned, but may be attached to the Transport Ministries.

All the Member States are gradually establishing such bodies, but the various national approaches differ markedly. In some cases, it may be considered that, while a body has been formally set up, it is not operational and does not have enough human, administrative and financial resources to be able to play an active role in the operation of the market. However, it is essential that this body should have credibility with the market actors given that, when a railway undertaking encounters a problem concerning access to infrastructure or to ancillary services, it is important to it that the regulatory body is able to intervene to resolve the problem in question.

The Commission is concerned about the structural weakness of some national bodies. The fact that a body may be attached to the Ministry of Transport could, in practice, undermine its independence if the Ministry of Transport is also responsible for the incumbent undertaking. In this connection, Member States such as Germany and Spain, which have set up regulatory bodies that are independent of the Ministry of Transport where the latter is responsible for the national railway undertaking, should be commended.

Where the Commission considers that a regulatory body is unable to play its assigned role, it will bring this to the attention of the Member State concerned and will, where appropriate, take the measures provided for in the Treaty. The Commission would also like to see ever closer cooperation between the national regulatory bodies with a view to developing common approaches with regard to best practice at European level. It welcomes the cooperation between the bodies concerned with the Rotterdam/Genoa corridor as an example of good practice that should be emulated elsewhere in Europe. An assessment of the performance and capabilities of the existing regulatory authorities is set out below.

Objective of the Regulatory Bodies

The objective of the Regulatory Body is to ensure fair and non-discriminatory access to the rail network and to services. Its competences and functions are laid down in Articles 30 and 31 of Directive 2001/14/EC as well as Article 10 (7) of Directive 91/440/EEC (as modified by Directive 2001/12/EC)⁵².

⁵² From 30 April 2006 Article 30(2) of Directive 2004/49/EC.

Main tasks

The Regulatory Body shall be an **appeal body** in relation to decisions taken by an infrastructure manager or a railway undertaking regarding discriminatory access conditions, in particular regarding the network statement, criteria contained within the network statement; the allocation process and its results; the charging scheme and the level or structure of infrastructure fees. Any applicant or interested party may lodge a complaint with the Regulatory Body if it feels that it has been treated unjustly, has been subject to discrimination or injured in any other way.

The Regulatory Body shall **ensure** that the charges set by the infrastructure manager are non-discriminatory. It shall supervise any negotiation between an applicant and an infrastructure manager on the level of charges and intervene if necessary.

The Regulatory Body shall **monitor** the competition in the rail services market. In its monitoring function it shall decide on complaints or on its own initiative on appropriate measures to correct undesirable developments.

The Regulatory Body shall have the right to **request relevant information** from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

Stakeholder views

The Commission has invited stakeholders to submit their observations on the way the Regulatory Bodies have been set up in the Member States, as well as on their day-to-day functioning. These discussions took place within the framework of a working group created under the Regulatory and Advisory Committee foreseen by Directive 2001/14/EC. The stakeholders that submitted the comments reported below are the Community of European Railways and Infrastructure Managers (CER); the European Infrastructure Managers (EIM) and the European Rail Freight Association (ERFA). The main difficulties they observed in the current functioning of the Regulatory Bodies in the Member States can be summarized as follows:

- Regulatory Bodies do not monitor the market and tend to turn to the incumbent for advice;
- Regulatory Bodies are not given clear guidelines and lack the appropriate and required competence to carry out their assignments;
- regulatory Bodies are often short of resources and can therefore not fulfil their tasks;
- they have no, or an insufficient, information policy – they are “invisible” and hence not possible to contact;
- the division of tasks of the Regulatory Body between several institutional entities complicates rather than facilitates their functioning: parts of the regulatory functions can be found in a Ministry, whereas other parts can be found in an authority that is not part of the Ministry;

- procedures are lengthy and time-consuming: it requires a long time before decisions and rulings are made;
- decisions and rulings given by the Regulatory Bodies should be made public.

Credibility

The Regulatory Bodies have a key role to play in ensuring a well functioning rail services market. The only way in which they can tackle this role is when they are given sufficient resources in terms of staffing and budget and when the institutional setting is clear.

The situation when it comes to Regulatory Bodies staffing varies significantly from Member State to Member State. The Commission has obtained from the Member States information on the number of staff employed by the Regulatory Bodies. However, in several Member States, this figure includes staff working on technical matters, issuing licenses or safety certificates or on regulatory functions for other network industries. This makes it difficult to assess how many resources are available for the regulatory functions foreseen by Directive 2001/14/EC, and whether these human resources are sufficient to allow the Regulatory Bodies to comply with the requirements under the Directive.

In all Member States, with the exception of Luxemburg and Ireland the Regulatory Body has been set up. Ireland has derogation in this respect until 15 March 2008 according to Article 30(3) of Directive 2001/14/EC. This derogation also applies to Greece, where the Ministry of Transport and Communications has been appointed as Regulatory Body. As far as Luxemburg is concerned, the draft proposals for implementing the infrastructure package directives foresees this function to be allocated to the Minister of Transport, who can delegate it to a Committee of three independent experts examining the submitted complaints.

In Belgium the Regulatory Body is expected to be operational on 1 March 2006 due to difficulties in recruiting. Before that date, complaints are handled by the Ministry of Transport.

Next step in assessing credibility

The need for credible and independent rail regulatory bodies is of outmost importance for the well functioning of the railway market and this must be strongly stressed. The Commission will continue to monitor the Regulatory Bodies and will assess their strength. The next step in this process will be to ask the Member States to make an in-depth assessment of their Regulatory Bodies. The activities of the National Competition Authorities in the field of railways shall be evaluated as well as the degree of co-operation and information exchange between National Competition Authorities and Regulatory Bodies with a view to come to a co-ordinated approach on regulatory and competition issues.

Based on the findings the Commission envisages making a case by case evaluation of the functioning of the Regulatory Bodies. When assessing the regulatory Bodies criteria such as the following ones shall be used:

- Regulatory Bodies must be in a position to monitor competition in the market and to independently and efficiently make decisions on measures to correct undesirable developments in the rail services markets. They must be able to take decisions themselves and, notwithstanding the requirements of judicial review of their

decisions, they should not be confined to only propose measures to be taken by other state institutions;

- the independence required for the regulation of competition on the rail services markets includes that the Regulatory bodies must have a budget over which it is entitled to decide, and which allows it to recruit a sufficient number of competent staff in order to perform monitoring tasks and the investigation of all complaints brought before it within two months from receipt of all information (Directive 2001/14/EC, Article 30 (5));
- the Regulatory Bodies must have the power to request the information necessary to carry out its functions from any market player involved, and to enforce these requests (Directive 2001/14/EC, Article 30 (4));
- the Regulatory Bodies must be sufficiently accessible for the market players. They should publish regular reports about their decisions in order to create transparency in the market on the criteria for their decisions.

ANNEX 8

Infrastructure Charging and Ensuring Non-Discriminatory Access to Infrastructure and Services in the Rail Sector

Application of the infrastructure charging principles

Directive 2001/14/EC establishes marginal cost pricing as the general principle, which presupposes that charges are related to the cost directly attributable to operating the rail service. However, in certain conditions the Directive makes provision for mark-ups which may go so far as to result in total coverage of infrastructure costs

The application of these various provisions by the infrastructure managers in the different Member States results in very different charging systems and levels. The text underneath this box contains a detailed analysis of the situation. The charging levels depend in fact on the financial support which each Member State gives to the infrastructure manager. This support is substantial in the old Member States but modest in the new ones. This brings about situations that are harmful for the development of rail transport as a whole, since it results in very high charges for freight trains so as to reduce the charges for passenger trains with a view to providing compensation for public service obligations not financed by the public authorities which impose them. The first question that comes to mind is whether this is in accordance with the requirements of the Directive, in particular the requirement that charging should be based on the costs actually incurred. Secondly, cross-subsidisation is a threat to the competitiveness of rail freight transport compared with the alternatives, in particular road haulage.

The agreement reached by the Council and the European Parliament on the eurovignette in 2006 goes some of the way towards providing a response to this question of intermodal competition. It is desirable that the Member States which determine the principles underlying rail infrastructure charging should take road infrastructure charging into account, particularly along the main European freight corridors, so as to avoid intolerable distortions of competition. In some Member States, such as Poland, rail pricing is very high while road pricing is virtually non-existent, thus distorting competition.

To avoid distortion, the Member States concerned are asked to give clear, multiannual commitments regarding the financing of infrastructure, and the transport authorities are requested to conclude public service contracts with the railway undertakings on which they impose public service obligations.

To guarantee efficient use of rail infrastructure, the Member States should, in addition, introduce a performance enhancement scheme to encourage railway undertakings and infrastructure managers to minimise traffic disturbances. The Commission has established that a large number of Member States have not yet introduced such a scheme. A European approach guaranteeing the smooth operation of a scheme of this kind on a European scale should be devised and implemented as quickly as possible.

The Commission applies the following set of set criteria for checking the conformity of charging systems with Community legislation:

- The infrastructure manager must have a cost accounting system.
- The regulatory body must be able to verify whether the charges are related to the cost directly incurred as a result of operating a train service (Directive 2001/14/EC, Art 7.3).
- The cost information must allow assessing the cost-relatedness of mark-ups charged in addition to the mentioned cost of operation. The Regulatory Body must also verify whether the level of charges including the mark-ups is such that the different segments of the rail market can bear it.
- Discounts granted on charges must be cost related (Directive 2001/14/EC Art. 9). To prevent discrimination, charges for equivalent uses have to be comparable and comparable services have to be charged accordingly (Directive 2001/14/EC Art. 8.3).
- Negotiations on the charges between the infrastructure manager and railway undertakings, where such negotiations are allowed and take place, have to be supervised by the Regulatory Body as required under Directive 2001/14/EC Art. 30.3.
- The Member State must fix conditions to ensure that accounts of the infrastructure manager are balanced in terms of income and expenditure over a reasonable period of time according to Directive 2001/14/EC, Art. 6.1. The financing of the infrastructure manager must be consistent with his tasks and there must be a business plan to ensure the financial balance (Directive 91/440/EC Articles 7.3 and 7.4).

Granting access rights for infrastructure and ancillary services

Directive 2001/14/EC contains specific requirements concerning infrastructure managers. The role of the network statement provided for in Article 3 of the Directive the main purpose of which is to describe the infrastructure which is available to railway undertakings is vital to enable any railway undertaking to know under what technical and financial conditions it can use a given infrastructure. This statement now exists in each Member State with a rail infrastructure. In this connection, the cooperation efforts of the infrastructure managers within the RailNetEurope organisation should be underlined. The work that they have done has resulted in the harmonisation of the information contained in this document. The Commission encourages this kind of cooperation since the introduction of computer tools relating to the infrastructure that is accessible and the user charges, together with a one-stop facility for granting international train paths is the first manifestation of truly integrated European rail infrastructure management. This cooperation should continue independently of the user railway undertakings, while allowing them to express their wishes as clients.

Considering the different clauses included in contracts in the individual Member States, it would seem that the use of standard contracts between infrastructure managers and railway undertakings, both for the infrastructure use contracts and for the framework contracts being drawn up, is becoming a necessity Europe-wide. The same applies to the definition of the performance schemes to be implemented by the infrastructure managers to enable the railway undertakings to offer high-quality services.

The access of the railway undertakings to ancillary services such as energy supply and access to terminals and marshalling yards should be guaranteed under open and non-discriminatory

conditions. The “last mile” issue, which is a recurring feature of grid/network-based industries, is currently being examined in greater detail.

This annex aims to present an analysis of the situation of rail infrastructure charges in the EU. The annex sets out the role of RailNetEurope (RNE) which is an organisation of infrastructure managers who, amongst other activities, make available pricing information for international train paths. This is followed by a section on charging for rail services. Without fair pricing for rail services, including ancillary services, competition on the track cannot become a reality, and therefore a section also deals with this.

The annex concludes with a summary of problems as identified and proposes measures how to overcome them. The findings are based, *inter alia*, on a stakeholder consultation on railway charging that took place in June 2005. Experts of railway associations, railway undertakings, infrastructure managers, transport ministries, railway administrations and the Commission gave their valuable input.

What is the state of play?

Directive 2001/14/EC requires Member States to establish a charging framework for the use of the infrastructure while respecting the management independence as provided for in the amended Directive 91/440/EEC. Infrastructure charging for other transport modes also exists, such as certain sections of the road infrastructure in several Member States (‘tolls’ ‘Maut’ or ‘Péages’). The charging schemes introduced for rail transport are based on the marginal cost principle⁵³: the charges have to be set at the cost that is directly incurred as a result of operating the train service. Mark-ups may be levied in case of a congested infrastructure or to take account of the cost of the environmental effects caused by the operation of the train. Member States may even decide to set charges at levels which allow the infrastructure managers to obtain full recovery of all costs associated with the use of and investments made on the infrastructure. This level of charging can only be applied if the market can bear this and must be done on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimum competitiveness in particular of international rail freight.

Charging for the use of infrastructure has been introduced in order to ensure fair, intermodal competition between rail and road, particularly by taking appropriate account of the different external effects caused by the transport modes, such as environmental pollution and noise. Appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators will result in an optimal balance of different transport modes.

The charges in the Member States vary considerably, as illustrated in figure below. The charge for a 1000 ton train was found to be less than 1 € per train-kilometre in the Netherlands, Belgium and France in 2004. Infrastructure managers in Poland and Slovakia levied more than 5 € per train-kilometre. Track access charges in the Baltic States were higher, however the situation there is fundamentally different and hard to compare.

Similar divergences exist for passenger trains, where France and UK charge more than 3 € per train-kilometre, while several other infrastructure managers fixed charges are less than 1 € per train kilometre.

⁵³ Article 7 of Directive 2001/14/EC.

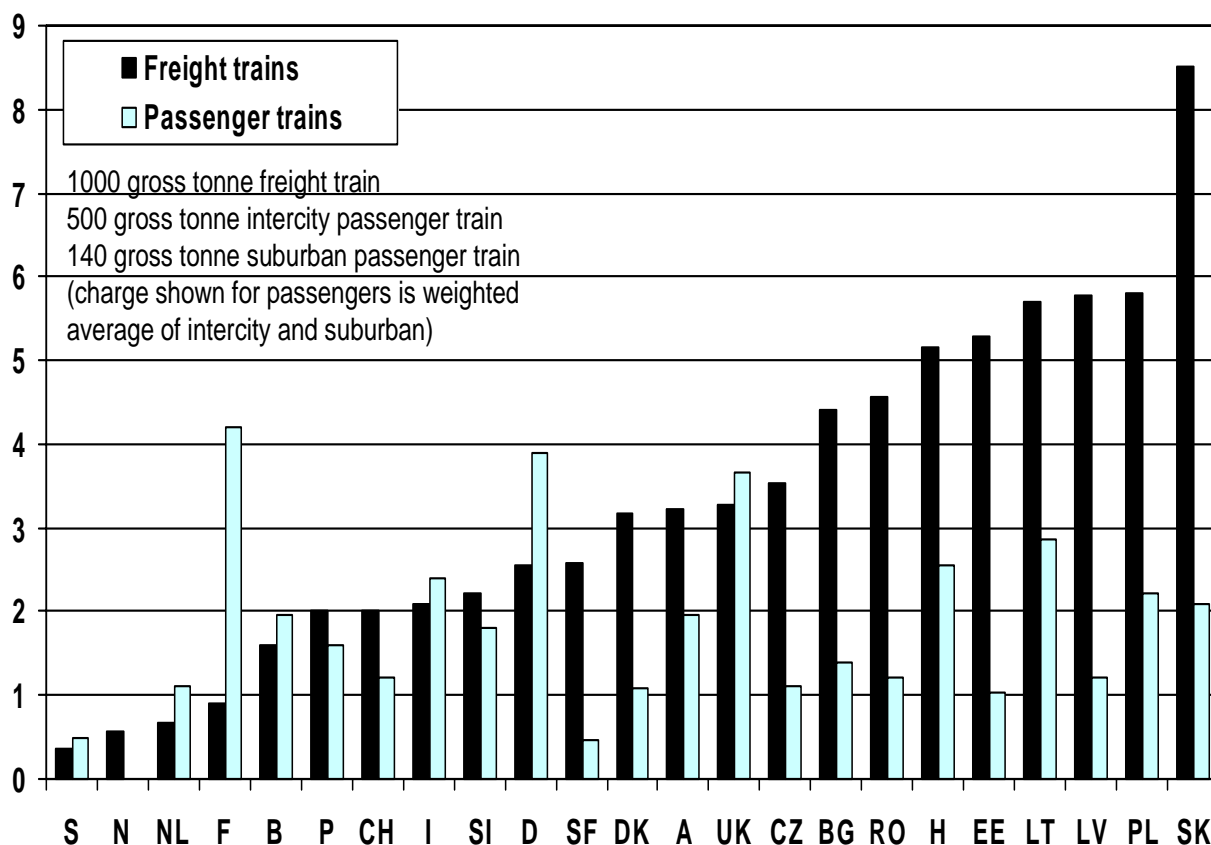


Figure 8.1: Average Access Charges (2004, €/ train-km, excluding cost of electric traction). Baltic freight trains are much larger than elsewhere. Baltic access charges are not directly comparable with those in other countries and have been adjusted here. In Estonia, for example, a typical 3145 tonne train is charged €11 per train-km.

Source ECMT, 2005

When analysing the share of infrastructure expenses recovered from infrastructure charges, a large spread of cost recovery rates were found: Whilst for Finland and Sweden they are below 20%, they are at, or well above, 60% in Hungary, the Czech Republic and Poland.

The quality of the networks, even though difficult to compare in quantitative terms, have similar problems: Infrastructure managers in the new Member States have not been in a position to keep it to previous standards, and this contrasts with the level of charges raised in these countries.

Despite the great progress already achieved, some problems in today's charging regimes remain:

Charges must not discriminate between railway undertakings and should be transparent. Discriminatory elements were removed, often under pressure of the courts, such as in the case of Germany, or they are being removed soon, like in case of RFF's 'droit d'accès'. However, in comparison to the provision of electricity, the situation for services provided by the infrastructure manager is less transparent and disparate. The Commission will examine access to additional services and its price level at a later stage.

The Member States determine the main charging principles on the basis of Directive 2001/14/EC, but it is up to the infrastructure manager to set the charges. Many infrastructure managers still have difficulties establishing their role as independent business units, in light of their traditional function and role within the (integrated) railway undertakings. Due to tighter budgets, the Member States are less and less willing to make financial contributions to their infrastructure manager, whereas Directive 2001/14/EC requires the accounts of the infrastructure manager to be in balance.

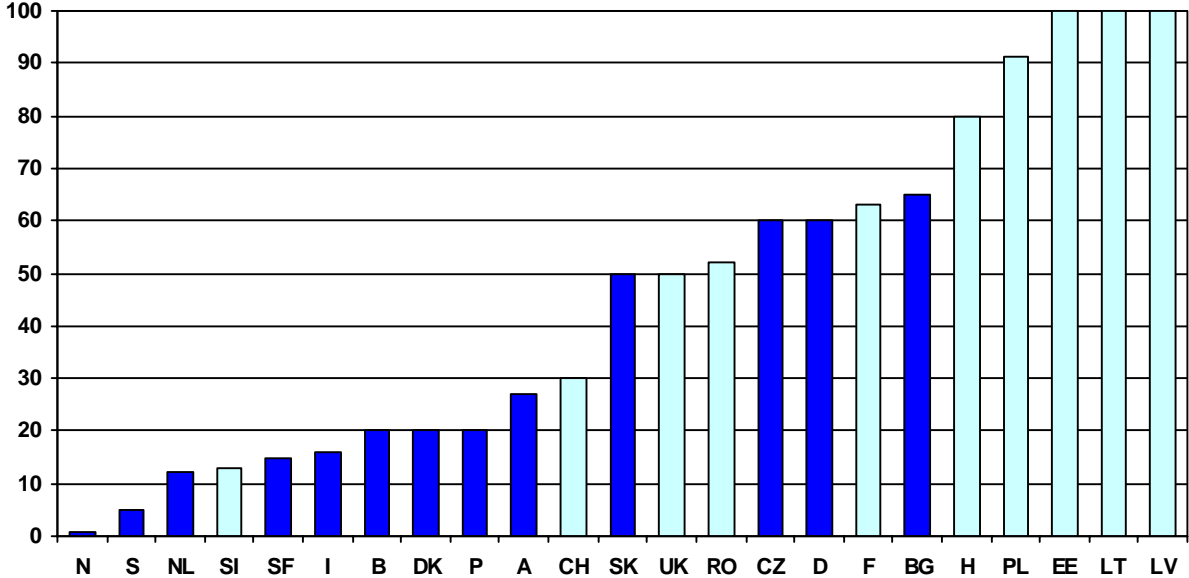


Figure 8.2: Target Percent of Total Cost Covered by Infrastructure Charges in 2004, Source ECMT 2005

The consequences of a reduction in revenues and the resultant quality of the infrastructure are often not recognised. At the same time, infrastructure managers are reluctant to claim their rights and resist the demands of the state, which is their only shareholder. As a result, access charges are used as a vehicle to cross-subsidise between freight to passenger transport.

Where the infrastructure manager is not independent from a railway undertaking the state must designate a charging body. However the administrative capacity of these charging bodies may not always allow them to fully assume the role.

The performance of infrastructure managers is difficult to assess, and they are more than reluctant to reveal quantitative information. Where data exists, such as in case of a UIC study, it is anonymous. Moreover, balancing accounts and increasing efficiency are both recognised in EU law, but still they are difficult to reconcile.

Each Member State must create a Regulatory Body under the terms of Article 30 of Directive 2001/14/EC. This Regulatory Body must determine whether charges are calculated according to the rules decided under national legislation, and it acts as an appeal body in case a railway undertaking feels the charging regime applied by the infrastructure manager is not compliant with those rules.

As a minimum, the charges have to cover the costs of operation. On the other hand, an upper limit of the charging cost must be respected when setting the mark-ups. Many infrastructure managers find it difficult to calculate these costs, or they fail to reach agreement with their

regulatory bodies on the charging principles. This applies to both setting the costs of operation as the lower bound and for full cost as upper bound. In the latter case, asset valuation impacts sharply on the level of charges, due to the long lifetime of rail assets, and it thus a source of conflicts.

Costs of constructing new railway lines and of upgrading existing lines are mostly funded by the Member States. Some exceptions though exist, such as the Öresund link or the Channel tunnel. The latter apply heavy charges and its capacity is not fully used as a consequence: traffic bypasses them using other lines or other modes.

Generally, infrastructure managers do not include external cost in their charges. Directive 2001/14/EC only allows charging for external costs if competing transport modes do the same. In the meantime, only a few infrastructure managers make use of the option to differentiate charges according to different external costs. Where trains use Diesel traction, several Member States charge fuel tax. However, given the potential to reduce noise, e.g. by means of different brake systems for freight wagons or exhaust treatment for Diesel engines, there is room to create incentives for a more environmentally friendly rail system.

RailNetEurope

To streamline and facilitate the acquisition of access to international paths the Trans European Network, and to ease the transition to liberalised railway services the European rail infrastructure managers have formed RailNetEurope (RNE⁵⁴) to standardise the way they deal with customers. RNE includes infrastructure managers from all the EU Member States, except the Baltic States, Ireland and Northern Ireland, and it includes infrastructure managers of Switzerland and Norway. The main goal is to reduce the information barriers for potential new entrants.

The European Infrastructure Charging Information System (EICIS) provides an initial estimate of the price of an international train path, including charges across 16 national networks, including station and shunting fees. It is RNE's aim to extend this system across all the networks of the EU Member States. It is updated regularly and operates 24 hours a day. Although a user account is required to access this system, it is easily accessed. The use of the EICIS system shows step-by-step the process required to find and calculate access charges. The system allows the operator to estimate point-to-point access charges for trains of different characteristics, including en route shunting charges, to see the chosen route in graphical form, and to vary input assumptions to test more efficient means of operation.

Charging for services

Charges are also levied for the use of such services as terminals, shunting and stabling. However, several Member States have not published the charges for access to ancillary services. Great Britain has a system of charges negotiated in the market place, with the Office of Rail Regulation intervening in the charging principles through the use of its competition powers. A regulation on depot access contracts exists, but this had not lead to any investigations in relation to the charging for ancillary services. In Italy, the charges are not defined and the infrastructure manager is awaiting a Ministerial Decree to establish the

⁵⁴ See: <http://www.railneteuropa.com/cont/index.aspx>.

charging structure. Other EU Member States have implemented the Directives but have not proceeded to publish the charging information.

EU Member States such as France, Hungary and Portugal have a higher degree of cost-reflection in their charges, as access is based on the terminals that a train operator wishes to use and is usually grouped into categories of terminals. Switzerland and Germany (as well as Austria, regardless of the similarity in the actual charges) have a very detailed charging structure with charges relating to shunting, access to terminals and marshalling yards. In order to ensure non-discrimination, it would be necessary to require providers of these ancillary services to establish a consistent manner in which they calculate charges and ensure that it follows cost-reflective principles.

Stakeholders have expressed mixed views when asked about charging for ancillary services. A number of new entrants complained that charging for ancillary services was discriminatory and not transparent. Some incumbent operators were also unhappy about the charging structure, while some mentioned that they were awaiting national legislation to define the requirements and as a result were using earlier charging systems which did not allow efficient cost recovery. In 2006, the Commission has launched a study project on rail related services including their pricing regimes in view of assessing the situation and possibly prepare future actions in this field.

What is the way forward in rail charging?

The high level of charges for freight trains particularly in the new Member States make it difficult to set up new transport services on rail. This holds not only for domestic services, but also services using the network of those countries. Where competing modes do not pay their cost of infrastructure use, railways will not be able to recover theirs because of the distorted competition. The problem is the most urgent in some of the new Member States (not including the three Baltic States). There, investments in road infrastructure are much higher than in rail. At the same time, the track access charges are used to cross subsidise passenger transport to the detriment of rail freight. Moreover, the high track access charges for freight hinder the entry of new railway undertakings. As a result, the benefit of the current high modal share of rail is spoiled; this will impact negatively on the rail transport within the old Member States.

Evidence shows that the cost recovery rates of infrastructure managers are low in rich countries, and high in poorer ones. Rich countries can afford to subsidise their railways, while infrastructure managers in less wealthier countries depend to a large extent on track access charges to recover their expenditures. In a vicious circle, infrastructure managers are forced to postpone necessary maintenance measures, or are forced to raise charges even more in order to stabilise revenues. Thus, decreasing traffic levels in rail lead infrastructure managers to increase track access charges per train to be able to maintain their cost recovery level. Consequently, a downward spiral is triggered where infrastructure managers are not able to cut costs fast enough. A way out could be that national transport plans correspond better with EU infrastructure priorities.

There are mixed views in the rail sector on the importance of the charging structure. New entrant railways undertakings emphasise the need to harmonise the structure of calculating infrastructure costs, as this contributes to predictability and continuity of charges. For them, it is essential to create **transparency and comparability of infrastructure cost structures** in

order to avoid discrimination. Harmonising the structures can be a step towards a convergence of the levels of track access charges. The Commission will continue to support this process by launching research into approaches aimed at determining common structure of costs.

Charging schemes must be predictable and stable over several years. Disruptions from one time table period to another should be avoided. Railways can only be developed on the basis of medium to long term business plans. Therefore, continuity and predictability of track access charges are crucial. Railway undertakings have to make long term investments and, at the same time, they have to offer services at stable prices to shippers. Frequent changes of calculations, involving changes to the levels of charges, are detrimental to business models and markets. The tool of framework contracts, as foreseen in the directive, could be used more frequently to provide stability.

Common rules for state funding of infrastructure and pricing for all modes of transport are a key prerequisite to equal competition between modes. Track access charges alone have a limited effect if no common rules for state funding and infrastructure pricing are applied across competing modes or market segments. For Example, when infrastructure cost recovery rates for road haulage are low, rail freight will have difficulties in competing with road, given that track access charges account for 5 to 25 % of rail freight transport prices.

Public service contracts in the form of transport concessions are used to finance passenger services. When a line is exclusively kept and maintained for that service, state contributions should permit full cost recovery. Such an approach would reveal the true cost of the service and avoid cross subsidising such services from main lines with competitive usage. Setting aside public service contracts, main lines with high levels of usage can potentially achieve much higher rates of cost recovery than regional lines. The Commission has adopted a modified proposal for a regulation on public service contracts⁵⁵, so that a clear basis for concessions is laid.

As mentioned above, infrastructure managers should not levy mark-ups on marginal cost based charges where the market cannot bear it. Along international corridors, freight will be shifted from rail to road, if the relevant infrastructure managers levy mark-ups without taking account of the other transport modes. In this context, corridor analyses are needed to limit the mark-ups according to the competitiveness of rail with regards to other modes, mainly road and inland waterways. Infrastructure managers in a corridor should join and negotiate the mark ups to be levied. As an example, the Swiss state allows an infrastructure manager on the transalpine corridor to charge less than marginal costs and subsequently compensates the reduced revenues. The financial contribution has been made though under the condition that the other infrastructure managers on that corridor do not skim off the differential by raising the track access charges. The role of the infrastructure manager in shifting more freight from road to rail was underlined. Infrastructure managers should be a commercial entity with incentives to sell infrastructure slots. The **Commission is to steer such corridor analysis** in the 6th Framework Programme for research with involvement of infrastructure managers (e.g. through the projects TREND and REORIENT).

To cover the gap between income from track access charges and the investments necessary to maintain their network, most **infrastructure managers depend on state contributions**. This

⁵⁵ Revised proposal for a Regulation of the European Parliament and of the Council on public passenger transport services by rail and by road - COM(2005) 319, 20.7.2005.

is a source of instability, as the available funds depend each year, on discretionary decisions of the state on its annual budget. It is therefore recommended to conclude contracts over several years based on mutual commitments: the state committing itself to stable financial contributions and infrastructure managers committing themselves to maintaining their network at predefined quality levels. The latter assumes agreed performance indicators, an independent monitoring and sanctions in case of failure to comply. In spite of doubts as to whether states would be willing to commit themselves to long term contributions or infrastructure managers having the courage to make offences against their own shareholders public, such contracts are generally seen as an important instrument for stability of the sector. The regulatory bodies are in the best situation to monitor and assess the infrastructure quality, but it is also understood that their administrative capacity needs to be reinforced, in particular by the acquisition of more expertise. In addition, negotiating such contracts will lead both sides to develop different alternatives corresponding to different levels of funding and thus create transparency about the impact of different financing scenarios. In fact such contracts are already in existence or are being negotiated in Sweden, Switzerland, Austria, Belgium, the Netherlands, and Germany. There is also experience in the UK, which could serve as a best practice model.

ANNEX 9

Licensing of Railway Undertakings

Generally speaking, the Member States are not having problems applying Directive 2001/13/EC, which amends Directive 1995/18/EC on the licensing of railway undertakings. However, the costs and the time involved in obtaining licences vary considerably from one Member State to another. Similarly, non-harmonised insurance requirements may cause difficulties. However, a detailed analysis of the situation carried out with the Member States and the players concerned, the conclusions of which are set out in the text below, show that this is not where the obstacles to entry to the rail market lie.

For the EU as a whole, there are 626 valid licences at present (including over half, 334, in Germany, 70 in Poland, 54 in the UK and 39 in Italy, but only 4 in France, 3 in Spain, and 1 each in Finland, Slovenia, Lithuania and Luxembourg).

The present annex sets out the current situation of licensing, including coverage against liabilities from the risks arising from train operations. The last part of the annex describes the main existing problems and makes suggestions as to how they can be mitigated.

State of play

Directive 95/18/EC, as amended, requires in its Article 5 that railway undertakings shall demonstrate to the issuing authorities in the Member States that they can comply with “the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability” as further defined in Articles 6-9 of Directive 95/18/EC. In the majority of states the Ministry of Transport or the regulatory body issues the licence. Most licensing bodies require confirmation of the applicant’s financial well-being, staff capacity, service delivery capability and approach to safety and proof of possession of civil liability and insurance cover. Luxembourg requires that all railway undertakings obtain EN ISO 9001 quality certification within 3 years from the issue date of the licence.

The Commission adopted recommendation 2004/358/EC in April 2004 on the use of a common European format for railway licences. Member States have now started to notify the Commission by making use of this format. The Commission publishes the notifications on the Rail Transport and Interoperability website⁵⁶. A summary table with the state of play concerning the received notifications is given below. A survey revealed that the format satisfies the needs of both the issuing countries and any other authorities interested in the license. A publication on the web site was considered important and an additional publication in the EU Official Journal not considered necessary.

⁵⁶ See for an example of the UK: http://europa.eu.int/comm/transport/rail/countries/uk/licence_en.htm

	Until 2003	April 2004	July 2004	December 2004	April 2005	July 2005	Nov 2005	April 2006
BE	4	5	5	5	4	4	4	4
CZ	-	-	9	9	14	15	16	18
DK	19	16	11	11	12	12	12	12
DE	296	303	312	312	321	321	334	338
EE	-	-	0	0	21	21	24	23
EL	0	0	0	0	0	0	0	0
ES	0	0	0	0	0	0	0	4
FR	1	2	3	3	3	3	4	5
IE	0	0	0	0	0	0	0	0
IT	28	33	40	40	36	36	40	39
LV	-	-	9	9	8	8	8	8
LT	-	-	1	1	1	1	1	1
LU	0	0	1	1	1	1	1	1
HU	-	-	5	5	6	6	6	8
NL	3	3	4	4	4	4	12	16
AT	1	2	2	2	2	2	14	14
PL	-	-	0	0	0	50	63	70
PT	0	0	0	0	0	0	0	0
SI	-	-	1	1	1	1	1	1
SK	-	-	0	0	0	0	0	0
FI	1	1	1	1	1	1	1	1
SE	6	4	6	6	9	9	11	14
UK	2	2	2	2	2	2	2	55
Total	361	371	412	412	446	497	554	632

Table 9.1: Development of the number of notified and valid licences. Source: Commission data base

The table shows a steady increase in the number of notified and valid licences. Information on notified licences has been processed until 12 April 2006. The number of withdrawn licences up to 12 April 2006 is 54, which is not included in the figures mentioned above.

Many licensing bodies distinguish between licences granted for passenger and freight transport. In most cases, the licences are of unlimited validity, subject to re-examination every 3-5 years, whereas the fee for the award of licences varies considerably. In some states a licence is free but in most cases there is a fixed one-off charge which can vary considerably, from nothing in Norway to approximately €46,000 in Slovakia. In other cases there is an annual fee. In Portugal, passenger operating licences cost more than freight operating ones.

The availability of information and documentation relating to the licensing procedure varies. Some licensing authorities have transparent processes and publish all the necessary information, including delivering and certification costs, in two languages. Others are less transparent, delivering information only in one language and not publishing cost data. Many states publish the information on the internet.

Member States require railway undertakings to be insured or have equivalent arrangements but procedures are not uniform. In some cases a bank guarantee or a deposit may be provided in lieu of insurance, or railway undertakings with sufficient financial resources are permitted to self-insure. In some Member States cover levels are not specified and are determined by the licensing body on a case-by-case basis. This may be efficient if the worst-case risk varies between railway undertakings, although the way in which the assessment would be made was not always made clear. Where cover levels are specified they vary by a factor of 500 to 1, from €227 million in the United Kingdom to €443,000 in Latvia, although the United Kingdom makes provision for a risk assessment which may result in a lower figure. Railway undertakings providing international services need to meet the minimum insurance requirements of each network. For this reason, Sweden, Denmark and Norway have established approximately the same minimum insurance, which should facilitate cross-border operations between the countries.

Stakeholders were concerned at the different requirements for insurance in different states. In some states they reported difficulties in obtaining cover, or very high premiums where cover was offered. Stakeholders also reported that incumbent operators have few problems obtaining insurance as a result of both their track record and their ownership structure. Some incumbent operators are covered by the same insurance policy as the parent or holding company. However some, but not all, new entrants have also obtained cover for their rail activities on the policy of their parent company.

The problems and what can be done to overcome them

Several problems in relation to the insurance regime for railway undertakings were identified:

- lack of risk exposure data and risk analysis;

- high premiums for new railway undertakings due to the absence of long standing safety records;
- time consuming and non-transparent licensing process;
- imperfections of the insurance market: insurers are not always willing to sell cover in countries other than their place of establishment, which might be due to an absence or insufficient cross-border trade in this sector;
- insurance given on a company basis rather than a vehicle basis, which distinguishes rail from road and air transport;
- obligation to take out coverage of damage as a result of terrorist attacks and shock- effects in the wake of major accidents or terrorist attacks;
- unlimited liability: liability of railway undertakings is not limited by law. At the same time, however, railway undertakings are unable to find insurance cover for unlimited liability;
- state ownership, which can involve an implicit government guarantee and is reflected in highly favourable credit ratings (AAA in some cases) of incumbents. This, in turn, can lead to more favourable insurance conditions than those imposed on private operators. This may have the effect of distorting the market for railway services and therefore raises questions under competition law;
- performance regimes exposing railway undertakings to high risks resulting from delays and accidents caused to trains of other companies or the infrastructure manager losing money due to temporary closure of the line. Such risks can be implicit in performance regimes and/or track access contracts. Railway undertakings in the UK experienced this after the Hatfield accident and subsequently performance regimes and track access contracts were changed to reduce such risks;
- a small number of re-insurers.

The following recommendations can be made to ease and speed up administrative procedures for issuing licences as well as in relation to the insurance regime applicable to railway undertakings:

- licensing bodies should publish a clear list of what is required to obtain a licence and ideally a specimen complete licence application;
- licensing bodies shall be required to publish a schedule of fees or, where these are not fixed, details of how they would be calculated;
- Member States which do not have the required resources and structures to set up an independent licensing body could envisage nominating licensing body of another Member State as their licensing body. This would however require an amendment of existing Community legislation;

- risks will depend on the monetary values, e.g. GDP levels, or the cost of repairing damage resulting from an accident. This could be reflected in differentials in the minimum insurance amounts. Insuring existing high risks and not seeking to reduce them is a second best solution. It is often better to **systematically reduce risk and to negotiate lower premiums**, than to just transfer risk to an insurer at a high price;
- **pools** of railway undertakings can potentially lower cost of insurance for railway undertakings. The EU and Member States can facilitate their creation;
- the procedures to **verify** whether a railway undertaking is insured or disposes of adequate coverage should be clear, in particular as to railway undertakings that operate under an EU licence awarded outside the Member States where it operates;
- **state guarantees should be made public**. They are, in any event, required to be formally notified to the Commission under the State aid rules;
- where Members States specify a fixed level of required cover there should also be a mechanism that requires the level to be **revisited periodically** to ensure that the level of required cover remains adequate;
- where a Member State has defined a minimum level of cover for all licensed operations, consideration should be given to ensuring that independent assessments will be allowed to ensure that **non-standard operations** that have a different risk profile can be accommodated;
- in all cases licence holders should be required to ‘maintain’ the validity of their agreed insurance arrangements throughout the duration of their licence term. This will prevent a licence being granted and insurance arrangements agreed and then the licensed body allowing the arrangements to lapse.

ANNEX 10

Analysis of the Performance of Railway Undertakings

The amended Directive 91/440/EEC requires in the first paragraph of its Article 5 that “Member States shall take the necessary measures to enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required. Railway undertakings shall be managed according to the principles which apply to commercial companies; this shall also apply to their public services obligations imposed by the State and to public services contracts which they conclude with the competent authorities of the Member State.” In order to adjust their activities to the market, the second paragraph of Article 5 provides that railway undertakings shall determine their business plans (including their investment and financing programmes), which shall be designed to achieve the undertakings' financial equilibrium and the other technical, commercial and financial management objectives.

In order to assess to what extent Member States have complied with these requirements and to what extent railway undertakings have managed to develop into undertakings “managed according to the same principle that apply to commercial undertakings”, several studies have been carried out at the request of the Commission, covering such topics as the level of public contributions provided to the railway sector; the administrative and institutional framework of the railway sector or the separation of financial accounts. The selection of these topics already indicates what the Commission understands to fall under these principles: transparency of accounts; the possibility to assess the financial situation of the railway undertaking on the basis of financial and performance data and information on staff numbers. Finding data to define financial and performance indicators for railway undertakings and infrastructure managers turned out to be very difficult: data is not available and, in the case where it is available, it is not comparable between Member States and/or railway undertakings. Moreover, the definition of some of the indicators, in particular staff costs and labour productivity, generated a lengthy discussion on the cost items to be included.

Railway undertakings tend to earmark many of their financial and performance data as confidential as they assume this is commercially sensitive information. However, transparency in accounting and performance is nowadays an important principle that applies to commercial undertakings, in particular to those that aim to obtain a quote on stock-exchanges.

The indicators mentioned below have been used to assess the performance of railway undertakings in the EU-25. The indicators have been selected on the basis of the availability of data for a large number of railway undertakings and years. Even though not all the data are fully comparable between Member States or railway undertakings, the elaboration of time-series for the incumbents in particular allows to determine developments over the years within a Member State or a given railway undertaking. The data have been collected under several studies carried out for the Commission in 1997, 1999, 2003 and 2005⁵⁷.

⁵⁷ An overview of the studies carried out in this respect can be found at:
http://europa.eu.int/comm/transport/rail/research/studies_en.html.

- Viability ratio: this ratio is the quotient of total operating income from passenger and/or freight traffic and the total expenditures (total operating income/total operating expenses).
- Total commercial traffic revenue per passenger, tonne, passenger-km and/or tonne-km (traffic receipts/traffic units).
- Asset intensity (total liabilities/total operating costs).
- Debt as a proportion of total liabilities (total debt/total liabilities).
- Debt equity ratio (total debt/total equity).
- Debt service (net financial payments/total operating expenses).
- Return on equity (net results/total equity).
- Cost per staff member: this index is measured by dividing total annual staff costs by the number of employees.
- Staff costs as a proportion of operating costs: this index is measured by dividing the staff costs used in the previous indicator by the total operating costs, which include staff costs, material purchases and external charges, infrastructure levies and depreciation and provisions costs, but which do not include interest payments on debts.

In many cases, the information available is insufficient to be able to calculate all the performance indicators for all railway undertakings and infrastructure managers. However, the data available allow to draw some conclusions on the performance of railway undertakings and infrastructure managers.

Viability ratio

A company with a viability ratio of over 1.0 has a higher operating income than operating costs, which means that the operations in principle are generating profits. This is an important indicator to show the capacity of an undertaking to yield profits and to sustain in the market, in particular measured over several years. The financial viability of EU railways is improving. In 1980, the consolidated viability ratio for the EU-15 was 58 per cent and it remained less than 60 per cent from 1990 to 1994. In 1995, the ratio had risen to 61 per cent, and reached 71 to 72 per cent in the years 1999 to 2001. The most recent data (2003-2004) show that 54 (corresponding to 57%) of the undertakings studied managed to have a viability of more than 1.00. The viability ratio itself for the EU-25 (including NO and CH) has risen to 99%. It should be noted that the results vary strongly: from 48% for the lowest scoring 5% railway undertakings to 123% for the highest scoring 5%.

It is difficult to determine a desirable viability ratio for any particular rail system, or for the European rail network as a whole, since this will depend on the level of public support provided for the performance of public service obligations in each country. However, the increase in the viability ratio indicates an improving financial position among the railways.

Asset Intensity

This indicator is defined as the amount of capital required per unit of operating costs. This indicator is far more relevant for the infrastructure managers than for railway undertakings due to the huge investments and sunken costs in the railway infrastructure. In a steady state situation, the depreciation charge should be sufficient to cover investments in asset replacements (assuming depreciation is based on replacement costs). However, in the situation where the asset base is growing, which is the case after large investments in the infrastructure for example, the funds needed to cover investments in asset replacements will be increasing. A railway undertaking or infrastructure manager has to fund these by increased profits on their income statement or it needs to be funded by additions to the balance sheet through government contributions or an increase in the overall debt. This indicator rose from 3.3 in 1995 to 3.6 in 2001, but is likely to be higher as large investments have been carried out via special purpose companies or concessions to the private sector (such as GIF/ADIF in Spain, the CTRL in the UK and the HSL Zuid consortium in the Netherlands). In 2003-2004, this indicator was 2.22. The growth in asset intensity varies per Member State and is strongly influenced by the size of the assets that are imputed to the railway undertaking or the infrastructure manager. In 2003-2004, the lowest scoring 5% of undertakings studied had an asset intensity of 0, whereas the highest scoring 5% had an asset intensity of 11.21.

Return on equity

Return on equity refers to the results of operations in relation to the total equity of the undertaking. For investors, this indicator allows an assessment of the capacity that an undertaking has to yield results with their available financial resources. In 2001, this indicator was still negative (-0.03), whereas the latest figures (2003-2004) show an increase to 0.08. A strong variance could be observed for this indicator as well, where the lowest scoring 5% had a return on equity of -0.46, whereas the highest scoring 5% managed to obtain 1.08. This indicator is sometimes used as a target to be achieved: in 1995, the Dutch government set a target for NS on a 10% return on equity (which the company did not achieve). The indicator must be used with care, as high returns on equity can be achieved if the total equity is relative small, as was the case with several of the UK train operating companies. The latter achieved an average of 26% (or 1.26 ratio) between 1996 and 1999, but on a very low equity. Twenty-three undertakings have a negative return on equity. There are also seven undertakings that have an equity capital that is lower than the losses brought forward, resulting in a positive return on the equity parameter.

In total, there are therefore 30 undertakings that have a negative return on equity, against 37 undertakings with a positive return on equity.

Debt equity ratio

This ratio is a measure of a company's financial leverage and is obtained by dividing long-term debt and equity capital. It indicates what proportion of equity and debt the company is using to finance its assets. A debt-equity ratio of less than 1.0 indicates that the assets are predominantly financed by equity, whereas a high debt equity ratio gives an indication of the fact that the undertaking used a large proportion of debt in relation to its equity to finance assets. Asset intensive undertakings will have a higher debt-equity ratio than undertakings with little assets. The increase in earnings from the investments shall be compared to the costs (interests) arising to finance the debt of the undertaking. This ratio varied strongly per

undertaking: some of them having a ratio of up to 684 (ProRail), whereas others had a negative ratio (Eurostar, NMBS).

Cost per staff member and staff costs

In 1995, the average annual staff costs were € 41.155,- for the EU-15 plus NO and CH and € 40.245,- for the EU-15 (at prices of 2001). In 2001, these figures rose to € 41.468,- respectively € 40.523. This represents an increase of less than 1%. Data for 2003-2004 collected within the framework of the studies mentioned above hardly allow assessing the development of costs per staff member as too many data are missing and due to a lack of standardisation in the data. As shown in annex 14, staff numbers have decreased significantly in the EU since 1970, but the decline has now come to a standstill and staff numbers are relatively stable, at least according to the available statistics. It should be noted that several activities have been outsourced by the incumbents, such as rolling stock maintenance or catering services. Overall, the share of total production costs accounted for by total staff costs (i.e. direct labour cost plus indirect cost such as social benefits and retirement benefits) has fallen by 10 percentage points, from 54 per cent in 1995 to 44 per cent in 2001 reflecting the reduction in staff over the period. This figure fell to 31% in 2004 for the EU-25, though the latter figure is based on a group of railway undertakings that was not the same as the railway undertakings reviewed in 2001 and some of the results were those of 2003 due to the lack of more recent data.

The Rail Freight Transport Market

Prospects in terms of traffic

A country-by-country analysis clearly indicates that the Member States which were the first to reform their railways by introducing competition in the rail freight transport sector recorded the biggest increases in volume (tkm) between 1995 and 2004: the UK (70%), Germany (24%), Netherlands (67%), Sweden (8%), and Austria (36%). In 2005, the volume of traffic rose by 5% in Germany compared with 2004. France had the worst result, with a 6% fall compared with 1995 and a 17% drop compared with 2000. Volumes stagnated in Italy and Spain over the same period. Turning to the new Member States, the Baltic countries recorded extraordinary scores, with Estonia almost tripling the volume transported between 1995 and 2004, Latvia doubling its score and Lithuania showing a growth of 61%. By contrast, the Czech, Slovak and Polish results were disappointing, with falls of 33%, 30% and 29% respectively. The figures for Hungary remained stable over the period.

Analysing the share of this volume handled by the incumbent undertaking, it emerges that, in the United Kingdom, EWS accounted for 70% and three other undertakings shared the remainder; in Germany, Railion still accounted for 85% of the volume in 2005, the remaining 15 % being shared among twenty or so undertakings, the main ones being Rail4Chem, SBB, Trenitalia/TXLogistics, and HGK; in the Netherlands, Railion Nederland accounted for 85% of the volume and 6 other undertakings shared the rest.

Prospects in terms of business strategy

The prospect of competition first of all prompted a fairly defensive reaction from the incumbents before they finally became aware of the fresh opportunities offered by the new regulatory system. Some of the incumbent undertakings are entering into new cooperation arrangements with other incumbents or with new entrants so as to organise their transport activities more efficiently at European level and guarantee their clients a better quality of service. Deutsche Bahn, with its freight subsidiary, Railion, was the first to go for European coverage by offering pan-European freight services. By pursuing an acquisitions policy in the Netherlands, Denmark, Switzerland and Italy, Railion is becoming a truly European player with clearly identifiable ambitions. Trenitalia, a subsidiary of FS, has also moved on to the German market by buying up TX Logistics which was the main private German operator. EWS, the main UK freight operator, has recently starting operating freight services across France and will shortly be operating in Belgium and Germany. The Swiss railways have set up their own subsidiaries in Italy and Germany. However, other incumbents are continuing to prefer bilateral cooperation agreements such as those between SNCF and its neighbours. Rail Cargo Austria, the freight subsidy of ÖBB, has big ambitions in central Europe where Slovakia's intention to privatise the cargo branch of its incumbent operator by April 2006 should be noted.

Alongside the operations involving the incumbents, mention should be made of the arrival, since 2000, of new rail freight undertakings with private and public capital which intend to make the most of the opportunities offered by the opening up of the market. Mention can be made of Rail4Chem and its new alliance with four other (Italian, Czech, Austrian and

Spanish) undertakings under the name European Bulls which has made significant progress first on the German market and then on the European market. Many of these undertakings are profitable, but this has not prevented some new entrants from failing.

Increased punctuality for freight trains, real-time freight monitoring and general system reliability are essential preconditions for winning more freight back to the railways. The introduction of intramodal competition and a truly commercial approach on the part of the incumbents and the new entrants are eagerly awaited by the consignors. In this context, the individual wagon-load segment remains the most difficult area in which to make a profit. Individual wagon-load transport, which represents about half the rail freight traffic market in Europe, suffers from high fixed costs. Railway undertakings are gradually establishing a new *modus operandi* for the individual wagon-load segment by integrating it into a wider logistics chain on a European scale and taking steps to reduce the operating costs in this segment of the market. As they are aware of the erosion of the comparative advantages of road transport (higher fuel costs, congestion, infrastructure pricing), consignors are ready to turn once again to the railways.

In conclusion, a trend towards the consolidation of the market is emerging, together with new initiatives and a degree of dynamism generated by the opening up of the market.

Freight transport by rail is generally measured by multiplying the weight of the freight by the distance over which it has been transported. A freight train containing 1 000 tonnes of coals, which is moved over a distance of 500 km, results in a 'production' of 0.5 million tonne-kilometres. The general trend is that the decline in freight transport by rail has come to a standstill, and the trend has clearly reversed in several Member States. It is also interesting to observe that international transport accounts for almost half of the freight transport carried by rail.

Figure 11.1 clearly shows a decrease in rail transport since 1970, but also underlines the turnaround that occurred since 2003 when freight traffic started to increase again in the entire EU-25. Moreover, several Member States managed to stop the decline at an earlier stage which often coincided with the introduction of restructuring measures to revitalise the rail freight sector. A closer look at the freight transport figures per Member State (table 11.1) reveals that traffic increased particularly in those countries which had opened their markets for international as well as national rail freight traffic.

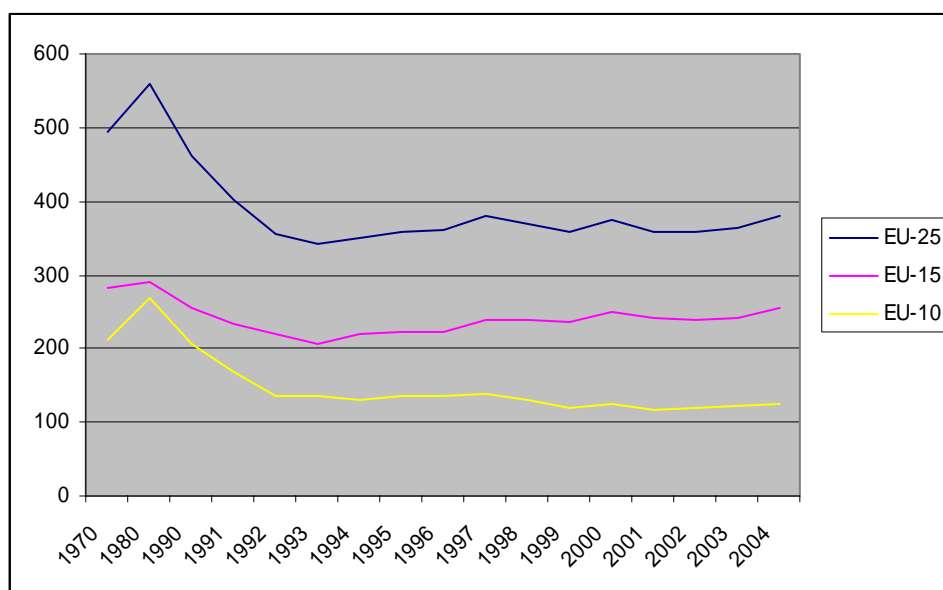


Figure 11.1: Freight transport by rail (in billion tkm) for EU-25, EU-15 and EU-10, 1970-2004. Source: Eurostat, UIC, DG TREN estimates, national statistics. Data for the UK refer to Great-Britain only. The data for the Czech Republic and Slovakia before 1993 have been added to the total for EU-25.

	1970	1980	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
BE	7.88	8.04	8.37	8.20	8.36	7.60	8.10	7.3	7.2	7.5	7.6	7.4	7.7	7.1	7.3	7.3	7.7
CZ						25.20	22.80	22.6	22.3	21.0	18.7	16.7	17.5	16.9	15.8	15.9	15.1
DK	1.70	1.62	1.73	1.86	1.87	1.80	2.01	2.0	1.8	2.0	2.1	1.9	2.0	2.1	1.9	2.0	2.1
DE	113.00	121.30	101.70	81.79	71.98	66.30	70.55	69.5	70.0	73.9	74.2	71.9	77.5	76.2	76.3	78.5	86.4
EE	5.70	6.50	6.98	6.50	3.40	4.20	3.60	3.8	4.2	5.1	6.1	7.3	8.1	8.6	9.7	9.7	10.5
EL	0.69	0.81	0.61	0.56	0.53	0.50	0.31	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.3	0.5	0.6
ES	9.74	11.28	11.15	10.46	9.21	7.84	9.09	11.0	11.1	12.5	11.3	11.5	11.6	11.7	11.6	11.7	11.4
FR	67.59	68.82	50.67	51.48	49.54	45.03	48.75	48.1	49.5	53.9	54.0	53.4	55.3	50.3	50.0	46.8	45.1
IE	0.55	0.64	0.59	0.60	0.63	0.58	0.57	0.6	0.6	0.5	0.5	0.5	0.5	0.5	0.4	0.4	0.4
IT	18.07	18.38	19.36	19.96	19.27	18.12	20.43	21.7	21.0	22.9	22.5	21.5	22.8	21.8	20.7	20.3	21.0
CY	-	-	-	-	-	-	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
LV	15.52	17.59	18.54	16.70	10.12	9.85	9.52	9.8	12.4	14.0	13.0	12.2	13.3	14.2	15.0	18.0	18.6
LT	13.57	18.24	19.26	17.70	11.34	9.90	8.00	7.2	8.1	8.6	8.3	7.8	8.9	7.7	9.8	11.5	11.6
LU	0.76	0.67	0.62	0.62	0.60	0.61	0.65	0.5	0.5	0.6	0.6	0.6	0.6	0.6	0.6	0.5	0.6
HU	19.82	24.40	16.80	11.90	10.00	7.70	7.70	8.4	7.6	8.1	8.2	8.5	8.8	7.7	7.8	7.6	8.3
MT	-	-	-	-	-	-	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NL	3.72	3.47	3.07	3.04	2.76	2.68	2.83	3.1	3.1	3.4	3.8	4.0	4.5	4.3	4.0	4.7	5.2
AT	9.87	11.00	12.16	12.32	11.57	11.24	12.42	13.2	13.3	14.2	14.7	15.0	16.6	16.9	17.1	16.9	17.9
PL	98.00	132.40	81.60	65.20	57.80	63.20	64.70	68.2	67.4	67.7	60.9	55.1	54.0	47.7	46.6	47.4	47.9
PT	0.78	1.00	1.46	1.66	1.77	1.67	1.64	2.0	1.9	2.2	2.0	2.2	2.2	2.1	2.2	2.1	2.3
SI	3.30	3.80	4.21	3.20	2.57	2.26	2.50	3.1	2.6	2.9	2.9	2.8	2.9	2.8	3.1	3.3	3.5
SK						14.20	12.20	13.8	12.0	12.4	11.8	9.9	11.2	10.9	10.4	10.1	9.7
FI	6.27	8.34	8.36	7.63	7.85	9.26	9.95	9.6	8.8	9.9	9.9	9.8	10.1	9.9	9.7	10.0	10.1
SE	17.31	16.65	19.10	18.82	19.20	18.58	19.07	19.4	18.8	19.2	19.2	19.1	19.5	19.0	19.2	20.2	20.9
UK	24.55	17.82	16.00	15.30	15.50	13.80	13.00	13.3	15.1	16.9	17.3	18.2	18.1	19.4	18.7	18.7	22.6
EU25	494.3	559.0	461.7	401.3	355.7	342.1	350.4	358.5	359.8	379.6	369.6	357.7	374.2	358.7	358.0	363.9	379.4
EU15	282.5	289.8	254.9	234.3	220.6	205.6	219.3	221.6	223.2	239.8	239.8	237.4	249.4	242.2	239.9	240.6	254.3
NMS	211.8	269.1	206.8	167.0	135.0	136.5	131.0	136.9	136.6	139.8	129.8	120.3	124.7	116.5	118.2	123.4	125.2
I-25	100.0	113.1	93.4	81.2	72.0	69.2	70.9	72.5	72.8	76.8	74.8	72.4	75.7	72.6	72.4	73.6	76.8
I-15	100.0	102.6	90.2	82.9	78.1	72.8	77.6	78.4	79.0	84.9	84.9	84.0	88.3	85.7	84.9	85.2	90.0
I-8	100.0	127.1	97.6	78.8	63.8	64.5	61.9	64.6	64.5	66.0	61.3	56.8	58.9	55.0	55.8	58.2	59.1

Table 11.1: Freight transport by rail (in billion tkm), per Member State and per year, 1970-2004.

Source: Eurostat, UIC, DG TREN estimates, national statistics. Data for the UK refer to Great-Britain only. The data for the Czech Republic and Slovakia before 1993 have been added to the total for EU25. I-25: index for EU25; I-15: index for EU15; I-8: index for the new Member States, except Cyprus and Malta.

Figure 11.2 reveals that the turnaround in rail transport was stronger in the EU-15 than in the EU-10 (for detailed statistics per Member State see table 11.2). Indices have been calculated for two different base years as the data for the time series from 1970 were not always

available for this period, and was due to a break in the series for several Member States. The average annual growth is calculated on the geometrical mean, and shows a modest improvement of performance in several Member States since 2000.

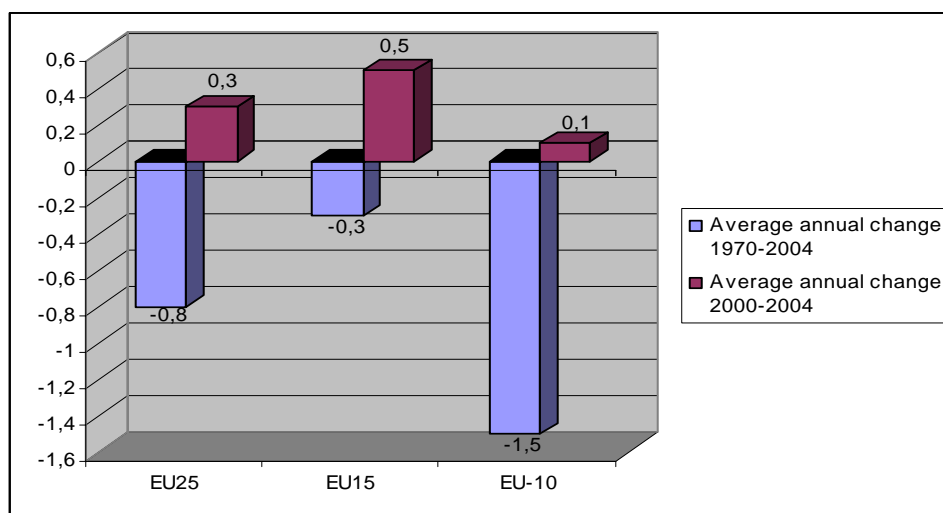


Figure 11.2: Freight transport by rail: average annual change 1970-2004 and 2000-2004 for EU-25, EU-15 and EU-10. Source: Eurostat, UIC, DG TREN estimates, national statistics

	04/03	Index 1970=100	Index 2000=100	Average annual change 1970-2004	Average annual change 2000-2004
BE	5,5	97,7	100,2	-0,1	0,1
CZ	-4,9	-	86,3	-	-3,6
DK	5,9	123,6	103,9	0,6	0,9
DE	10,1	76,5	111,5	-0,8	2,8
EE	8,5	184,0	129,4	1,8	6,7
EL	29,4	85,8	138,2	-0,5	8,4
ES	-3,2	116,7	97,9	0,5	-0,5
FR	-3,7	66,8	81,6	-1,2	-5,0
IE	0,3	73,2	81,3	-0,9	-5,1
IT	3,7	116,5	92,2	0,4	-2,0
CY	-	-	-	-	-
LV	3,7	120,0	139,9	0,5	8,8
LT	1,6	85,8	130,5	-0,5	6,9
LU	13,0	77,7	93,8	-0,7	-1,6
HU	9,2	41,9	94,4	-2,5	-1,4
MT	-	-	-	-	-
NL	11,1	140,6	115,5	1,0	3,7

AT	6,3	181,7	108,0	1,8	1,9
PL	1,0	48,8	88,7	-2,1	-3,0
PT	10,1	294,1	104,5	3,2	1,1
SI	5,9	105,0	121,3	0,1	4,9
SK	-4,3	-	86,1	-	-3,7
FI	0,6	161,2	100,0	1,4	0,0
SE	3,4	120,5	107,1	0,5	1,7
UK	20,4	91,9	124,6	-0,2	5,7
EU25	4,3	76,8	101,4	-0,8	0,3
EU15	5,7	90,0	101,9	-0,3	0,5
NMS	1,5	59,1	100,4	-1,5	0,1

Table 11.2: Freight transport by rail: average annual change 1970-2004 and 2000-2004, per Member State. Source: Eurostat, UIC, DG TREN estimates, national statistics. Please note that the average annual change 1970-2004 could not be provided for the Czech Republic and Slovakia for data are only available for these countries since 1993.

Figure 11.3 provides a graphical overview of the development of rail freight. Freight growth since 1993 is split according to newly opened, developed open and not opened markets.

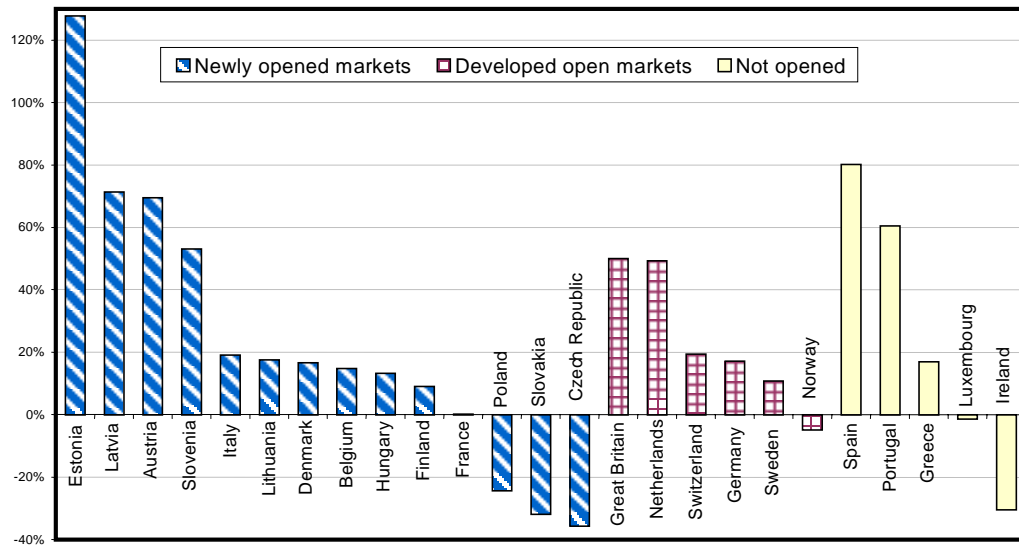


Figure 11.3: Development of rail freight according to the degree of market opening 1993-2004. Source: Statistical pocketbook 2004, UIC data and Steer Davies Gleave Consortium analysis based on changes in tonne-km

An interesting development can be observed when the increase of freight transport is compared to the degree of market opening per Member State, as shown in the figure below (11.4).

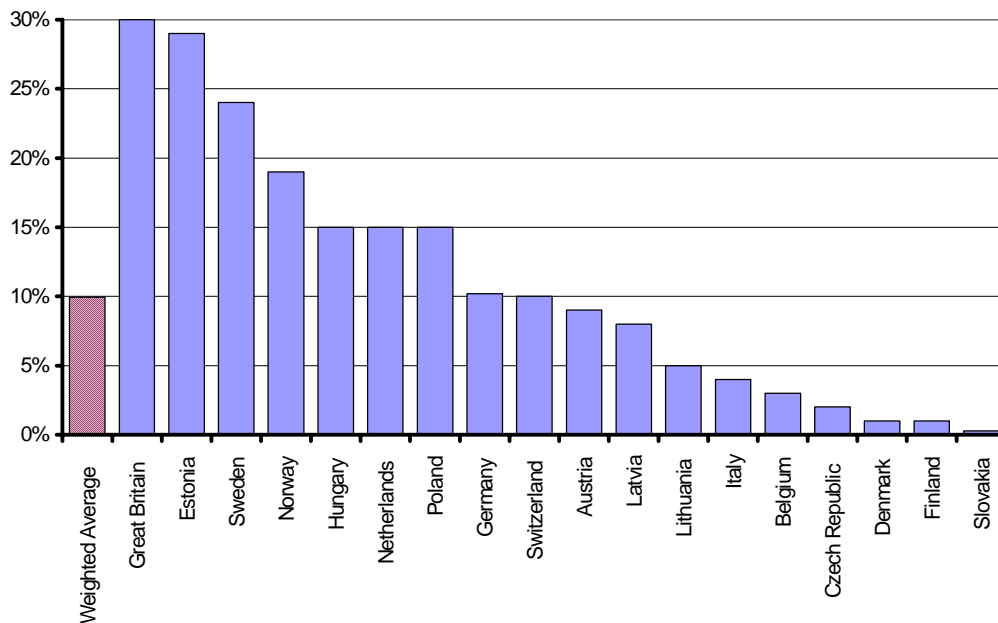


Figure 11.4: Market share (tonne-km) not held by largest railway operator. Source: Steer Davies Gleave Consortium analysis from country reports. The networks of France, Greece, Ireland, Luxembourg, Northern Ireland, Portugal, Slovenia and Spain still had a single freight operator in 2004.

Figures 11.3 and 11.4 indicate that market opening is an important factor contributing to a positive performance on rail freight markets: Member States that have effectively opened their rail freight market to competition have seen an increase in rail freight transport over the

last ten years. Of course, other factors come into play as well, such as regional trade pattern. For instance, in the Baltic countries rail traffic performance fares very well due to the dynamic transit traffic of oil and steel products from Russia.

Figure 11.5 and table 11.3 provide data on the modal share of rail transport in the land transport respectively for the EU-25, EU-15 and EU-10 as well as per Member State. They show that the relative decline of rail transport has levelled off since 2002. A modest increase of the modal share in the EU-15 can be observed since 2003.

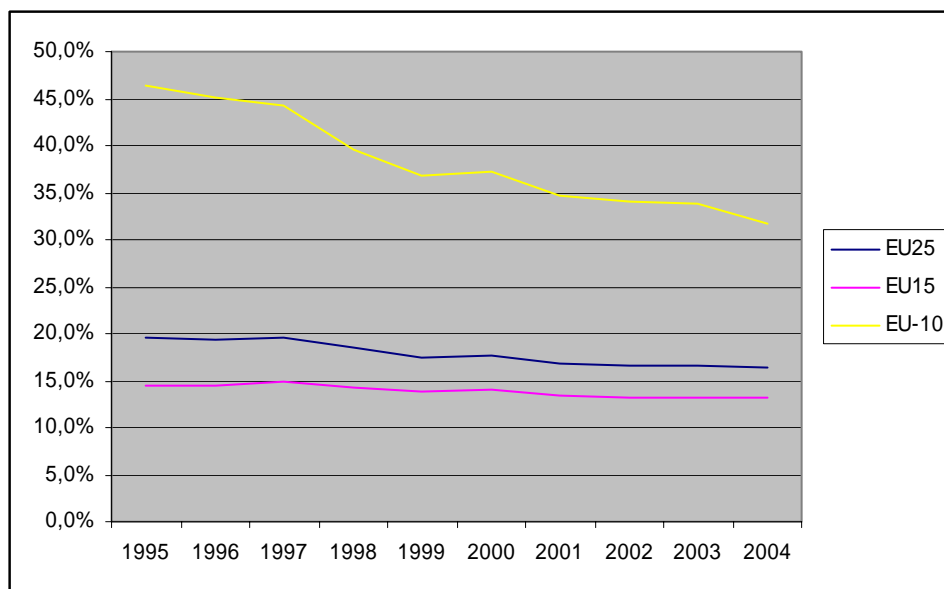


Figure 11.5: Freight transport by rail: Modal share of rail transport (in land transport modes) for EU-25, EU-15 and EU-10, 1995-2004. Source: Eurostat, UIC, DG TREN estimates and national statistics

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
BE	12,2	12,9	12,8	13,5	14,0	11,4	10,2	10,4	10,8	11,7
CZ	39,3	40,0	38,5	33,6	29,6	30,6	29,0	25,6	24,5	23,8
DK	7,2	6,6	7,3	7,5	6,6	6,6	7,2	6,4	6,6	6,8
DE	18,0	18,3	18,7	18,1	16,8	17,6	17,1	17,3	17,7	18,4
EE	71,3	68,9	64,8	61,6	64,7	67,3	67,2	68,8	67,1	67,3
EL	2,2	2,1	1,7	1,6	1,5	1,9	1,7	1,5	2,0	2,6
ES	9,2	9,3	9,7	7,9	7,5	6,9	6,5	5,7	5,5	4,7
FR	18,9	19,2	20,4	19,8	18,6	19,1	17,6	17,6	16,7	15,6
IE	9,9	8,3	6,9	5,4	4,9	3,8	4,0	2,9	2,5	2,3
IT	10,5	10,2	10,8	10,5	10,3	10,5	9,9	9,2	9,2	9,2
CY	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
LV	57,7	60,0	59,0	54,9	54,4	54,2	52,4	57,1	64,3	62,1
LT	49,9	55,5	52,5	49,0	43,1	44,3	37,2	38,5	40,9	40,2

LU	8,3	12,2	10,6	9,7	8,4	7,3	6,1	5,4	5,0	5,6
HU	30,5	27,6	28,3	24,9	26,1	26,8	23,8	24,2	23,4	22,9
MT	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
NL	2,8	2,7	2,8	2,9	3,0	3,4	3,3	3,1	3,6	3,9
AT	27,2	26,5	26,8	26,5	25,5	26,9	26,0	25,8	25,4	26,8
PL	51,0	48,1	46,0	40,6	37,7	35,9	32,4	31,3	30,0	27,1
PT	6,9	5,2	5,9	5,3	5,4	5,3	5,0	5,2	5,0	5,3
SI	48,2	42,1	42,6	43,3	39,9	35,0	28,7	31,8	31,7	27,8
SK	44,3	40,7	42,3	38,0	32,8	41,7	42,5	40,1	36,9	33,4
FI	28,1	26,0	27,6	25,9	24,7	24,0	24,4	23,2	24,5	23,8
SE	38,0	36,1	35,3	36,5	36,5	35,3	35,7	34,4	35,5	36,1
UK	7,1	7,8	8,6	8,6	9,3	9,3	10,0	9,6	9,5	11,2
EU25	19,5	19,4	19,6	18,5	17,5	17,7	16,8	16,5	16,5	16,4
EU15	14,4	14,4	14,8	14,3	13,8	14,0	13,4	13,1	13,1	13,2
NMS	46,4	45,2	44,2	39,5	36,9	37,3	34,7	34,1	33,8	31,8

Table 11.3: Freight transport by rail: Modal share rail transport (land transport modes) per Member State and per year, 1995-2004. Source: Eurostat, UIC, DG TREN estimates and national statistics

Figure 11.6 and table 11.4 illustrate the importance of international and transit traffic. It should be noted that the amended Directive 91/440/EEC foresaw market opening for international traffic over the Trans-European Rail Freight Network from 15 March 2003. Access to the network for domestic rail freight transport including cabotage traffic will be open from 1 January 2007.

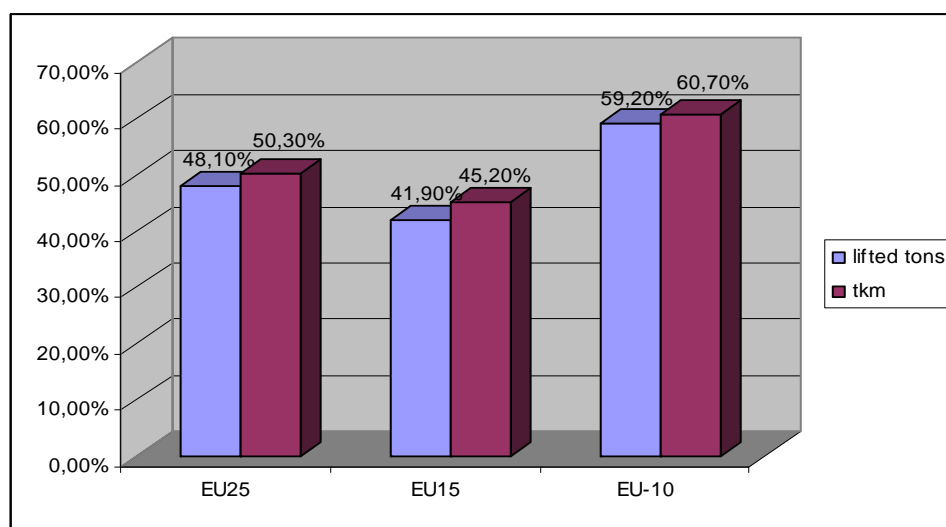


Figure 11.6: Share of international and transit transport by rail in 2004 for EU-25, EU-15 and EU-10. Source: Eurostat

	Lifted tonnes, 1000	%	tkm (million)	%
BE	58454	60	7691	72,5
CZ	88843	55,2	15092	59,4
DK	7711	-	1985	82,7
DE	310260	35,5	86409	53,8
EE	65647	65,2	10488	93,4
EL	2968	66,4	592	56,9
ES	25747	19,2	11365	18,3
FR	117415	36,7	45121	40,9
IE	2140	0,2	399	0,3
IT	75479	59,8	21047	45,5
CY	-	-	-	-
LV	55901	87	18618	88,1
LT	45555	74,1	11637	75,8
LU	16826	86,2	593	86,5
HU	45567	68	8311	79,5
MT	-	-	-	-
NL	30401	82	5225	78,1
AT	85589	75	17928	76,5
PL	163626	33	47871	29,9
PT	9559	11,1	2282	15,4
SI	17876	77,5	3466	78,6
SK	49756	85,4	9675	86,3
FI	42663	38,5	10105	28,8
SE	60157	39,8	20856	37,7
UK	118561	15,5	22552	5,8
EU25	1496701	48,1	379308	50,3
EU15	963930	41,9	254150	45,2
NMS	532771	59,2	125158	60,7

Table 11.4: Share of international and transit transport by rail in 2004, by Member State. Source: Eurostat. Information on the amount of lifted tonnes in international traffic was not available for Denmark.

Consolidated figures (in tkm) for 2005 are not available yet. However, provisional figures for the first 9 months of 2005 with estimates for Belgium, Spain, Italy, Austria, Sweden and the UK show a slight decrease (-0.9%) in the EU-25 and an even slighter decrease in the old Member States of -0.8%. Final figures might slightly improve this, but the overall picture seems to be that, in absolute terms, freight transport by rail is stabilising. Freight transport increased by more than 4% in Belgium, Germany, Estonia, Greece, Latvia, Lithuania and the UK, whereas it declined by more than 4% in Denmark, Spain, Luxemburg, Poland, Portugal, Slovakia and Finland. Interestingly, the type of commodities transported by rail that increased were solid mineral fuels (coal), petroleum products (oil) and the miscellaneous category (including container transport).

The performance of rail freight transport in Europe in terms of quality of service still leaves much to be desired. According to the available data, an indicator of punctuality of combined transport trains on major European corridors compiled by UIRR, the level service quality is still not competitive compared to alternative modes such as road haulage. For example, in 2005 only 60% of international combined transport trains arrived on time (i.e. having a delay of not more than 30 minutes). There has been an improvement since 2001 (when 43% of the trains were on time) which is likely to be due to increasing rail freight market opening and more commercial behaviour of the railway undertakings. However, the level of service quality of 2005 has not improved since the indicator is available (1999) which calls for enhanced efforts of the rail freight operators.

ANNEX 12

The Rail Passenger Transport Market

The volume of passengers carried by rail rose for EU-25 from 319 billion passenger-kilometres in 1995 to 350 billion passenger-kilometres in 2004, an increase of 10%, or around 1% per annum, compared with a year-on-year increase of 2% for road transport and 5% for aviation. In the old Member States, mention should be made of the remarkable growth in traffic between 1995 and 2004 in the UK (44%) and in France (34%), where high-speed services account for 56% of the rail traffic. However, encouraging improvements were also recorded in Belgium, Denmark, Spain and Sweden (28%, 25%, 14% and 41% respectively between 1995 and 2004). In the new Member States, the only increase during this period was in Hungary (25%); the volume of traffic fell in all the other Member States. In Germany, the increase in traffic in 2005 is estimated at 3.5% compared with 2004.

The rail passenger transport market is developing slowly, but there are encouraging signs. The factors involved in success and failure have been identified and the necessary corrective measures will have to be made in the next few years: continuation of the restructuring process, more investment, simplification of procedures, conclusion of public service contracts, greater protection for passenger rights and introduction of performance schemes, etc.

The market opening provided for by the infrastructure package directives only applies to freight transport. The directives have not changed the framework for passenger transport. Directive 91/440/EEC already provided for a modest market opening allowing international groupings of railway undertakings to carry out international passenger transport by rail. The share of international passenger transport by rail though is modest compared to freight, and does not exceed 5-10%. Furthermore, passenger transport and in particular regional transport is mostly carried out under public service contracts agreed between railway undertakings and public authorities. Competition for passenger transport is organised, in some cases, through the tendering of public service contracts to carry out passenger transport, combined with an exclusive right to operate services on a part or a whole network and/or financial compensation for the public service obligations. This competition 'for the tracks' is not regulated under the infrastructure package directives, whereas the competition 'on the tracks', i.e. competition between railway undertakings for international rail passenger services on a network, has been proposed as part of the third railway package⁵⁸.

Figure 12.1 shows a gradual increase in passenger transport by rail between 1995 and 2004, even though the new Member States witnessed a significant decline of passenger transport flows. The following table 12.1 provides more detailed information on the volumes of passenger transport separately for each EU-country.

⁵⁸ Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways - COM(2004) 139, 3.3.2004.

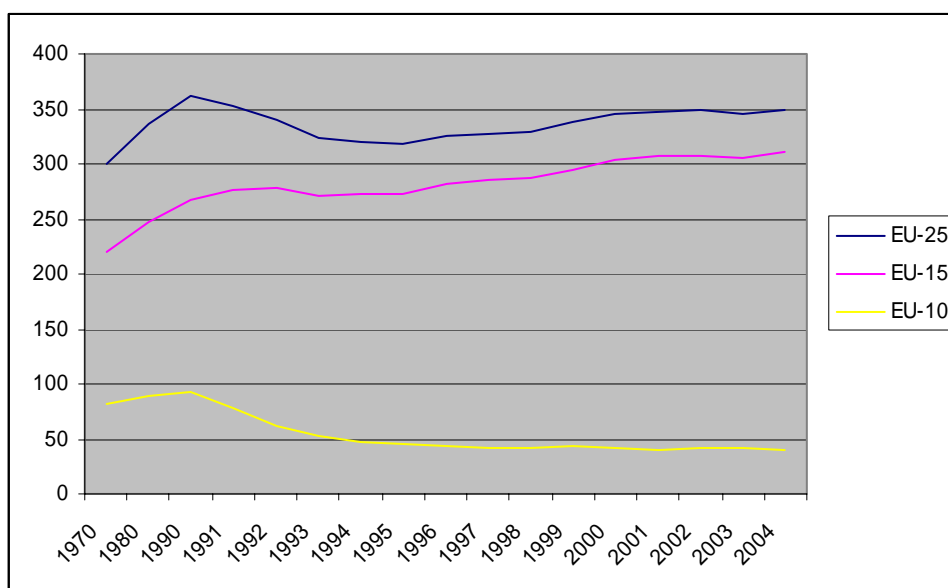


Figure 12.1: Passenger transport by rail (in billion pkm) for EU-25, EU-15 and EU-10, 1970-2004. Source: Eurostat, UIC, national administrations, DG TREN estimates.

	1970	1980	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
BE	7,57	6,96	6,54	6,77	6,80	6,69	6,64	6,8	6,8	7,0	7,1	7,4	7,8	8,0	8,3	8,3	8,7
CZ						8,55	8,48	8,0	8,1	7,7	7,0	7,0	7,3	7,3	6,6	6,5	6,6
DK	3,90	3,80	4,86	4,71	4,60	4,73	4,84	4,8	4,7	5,0	5,4	5,1	5,3	5,5	5,8	5,9	6,0
DE	62,40	62,50	61,06	67,31	67,55	69,32	72,51	75,0	76,0	73,9	72,4	73,6	74,0	74,0	71,4	69,0	71,7
EE	1,23	1,55	1,51		0,95	0,72	0,54	0,4	0,3	0,3	0,2	0,2	0,3	0,2	0,2	0,2	0,2
EL	1,53	1,46	1,98	2,00	2,00	1,73	1,60	1,6	1,8	1,9	1,6	1,6	1,9	1,7	1,8	1,8	1,7
ES	14,01	14,83	15,48	15,02	17,70	16,50	16,08	16,6	16,9	17,9	18,9	19,7	20,2	20,8	19,5	21,0	19,0
FR	40,98	54,26	63,76	62,08	62,65	58,19	58,68	55,3	59,5	61,6	64,2	66,3	69,9	71,5	73,2	72,2	74,3
IE	0,76	1,03	1,23	1,29	1,23	1,27	1,26	1,3	1,3	1,4	1,4	1,5	1,4	1,5	1,6	1,6	1,6
IT	32,61	39,59	44,71	45,07	44,41	42,72	43,38	43,9	44,8	43,6	41,4	43,4	47,1	46,7	46,0	46,1	45,7
CY	-	-	-	-	-	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
LV	3,82	4,77	5,37	3,93	3,66	2,36	1,79	1,3	1,1	1,2	1,1	1,0	0,7	0,7	0,7	0,8	0,8
LT	2,13	3,26	3,64	3,23	2,74	2,70	1,57	1,1	1,0	0,8	0,8	0,7	0,6	0,5	0,5	0,4	0,4
LU	0,26	0,25	0,21	0,22	0,26	0,26	0,29	0,3	0,3	0,3	0,3	0,3	0,3	0,3	0,4	0,4	0,3
HU	15,17	13,71	11,40	9,86	9,18	8,43	8,51	8,4	8,6	8,7	8,9	9,5	9,7	10,0	10,5	10,4	10,5
MT	-	-	-	-	-	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
NL	8,01	8,91	11,06	15,20	15,35	15,25	14,44	14,0	14,1	14,4	14,9	14,3	14,7	14,4	14,3	13,8	13,5
AT	6,44	7,59	8,73	9,21	9,56	9,34	9,20	9,6	9,7	8,1	8,0	8,0	8,2	8,2	8,3	8,2	8,3
PL	36,89	46,33	50,37	40,12	28,72	24,74	21,76	21,0	19,8	19,9	20,6	21,5	19,7	18,2	20,7	19,6	18,2
PT	3,55	6,08	5,66	5,69	5,69	5,40	5,11	4,8	4,5	4,6	4,6	4,3	3,7	3,7	3,7	3,6	3,7
SI	1,50	1,44	1,43	0,81	0,55	0,57	0,59	0,6	0,6	0,6	0,6	0,6	0,7	0,7	0,7	0,8	0,8
SK						4,57	4,54	4,2	3,8	3,1	3,1	3,0	2,9	2,8	2,7	2,3	2,2
FI	2,16	3,22	3,33	3,23	3,06	3,01	3,04	3,2	3,3	3,4	3,4	3,4	3,4	3,3	3,3	3,3	3,3
SE	4,64	7,00	6,35	5,75	5,59	5,99	6,06	6,3	6,3	7,0	7,2	7,6	8,2	8,6	9,1	9,1	8,9
UK	30,60	30,40	33,19	32,70	31,90	30,60	29,00	30,2	32,3	34,9	36,5	38,7	38,4	39,3	39,9	40,9	43,5
EU25	300,6	336,9	361,3	353,6	340,7	323,6	319,9	318,6	325,5	327,1	329,4	338,7	346,3	348,1	349,2	346,3	349,9
EU15	219,4	247,9	268,1	276,2	278,3	271,0	272,1	273,6	282,2	284,9	287,1	295,2	304,4	307,6	306,5	305,3	310,1
NMS	81,2	89,1	93,1	77,3	62,4	52,6	47,8	45,0	43,3	42,2	42,3	43,5	41,9	40,5	42,7	41,0	39,8
I-25	100,0	112,1	120,2	117,6	113,4	107,7	106,4	106,0	108,3	108,8	109,6	112,7	115,2	115,8	116,2	115,2	116,4
I-15	100,0	113,0	122,2	125,9	126,9	123,5	124,0	124,7	128,6	129,8	130,8	134,5	138,8	140,2	139,7	139,2	141,4
I-8	100,0	109,7	114,7	95,3	76,8	64,8	58,8	55,4	53,3	52,0	52,1	53,6	51,6	49,8	52,6	50,5	49,0

Table 12.1: Passenger transport by rail (in billion pkm), per Member State and per year, 1970-2004. Source: Eurostat, UIC, national administrations, DG TREN estimates.

Figures 12.2 and 12.3 as well as tables 12.2 and 12.3 depict average annual changes in the volumes of rail passenger transport between 1970-2004 and 2000-2004 as well as the modal share of rail in the land transport modes between 1995-2003 for EU-25, EU-15, EU-10 and per Member State. It becomes evident that the volume of rail passenger transport is slowly rising in the old member States (EU-15) whereas it is decreasing in the new Member States (EU-10) although at a lower rate in the most recent years. The modal share of rail passenger

transport (in land transport modes) is slowly dropping in the EU-25 whereas it remains rather stable in the old Member States.

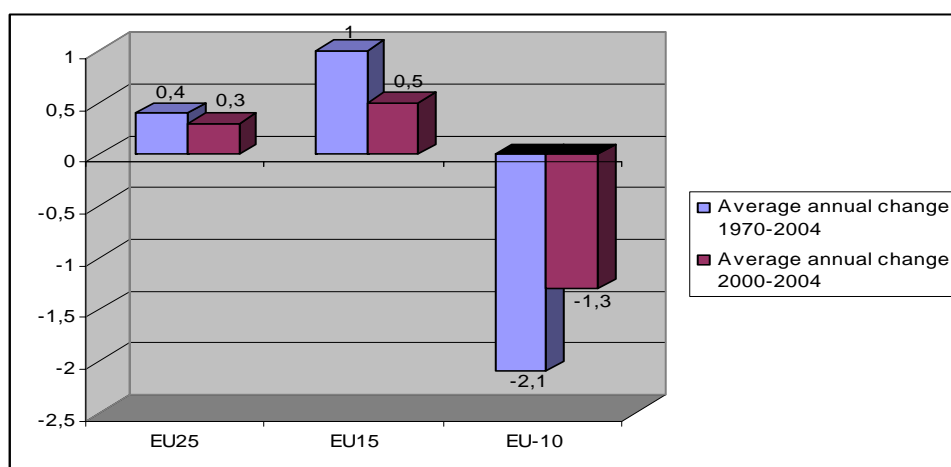


Figure 12.2: Passenger transport by rail: Average annual change 1970-2004 and 2000-2004 for EU-25, EU-15 and EU-10. Source: Eurostat, UIC, DG TREN estimates, national sources.

	Growth %, 04/03	Index 1970=100	Index 2000=100	Average annual growth since 1970	Average annual growth since 2000
BE	4,9	114,6	111,8	0,4	2,8
CZ	1,6	-	90,2	-	-2,5
DK	2,6	155,1	113,7	1,3	3,3
DE	3,9	114,9	96,9	0,4	-0,8
EE	6,0	15,7	73,4	-5,3	-7,4
EL	-7,7	110,9	90,0	0,3	-2,6
ES	-9,5	135,7	94,4	0,9	-1,4
FR	2,9	181,3	106,3	1,8	1,5
IE	-1,2	209,5	113,9	2,2	3,3
IT	-0,9	140,1	96,9	1,0	-0,8
CY	-	-	-	-	-
LV	6,4	21,2	113,4	-4,5	3,2
LT	2,5	20,8	72,5	-4,5	-7,7
LU	-24,0	103,9	80,1	0,1	-5,4
HU	1,3	69,5	108,7	-1,1	2,1
MT	-	-	-	-	-
NL	-2,9	167,9	91,7	1,5	-2,1
AT	0,6	128,8	101,1	0,7	0,3

PL	-7,3	49,4	92,4	-2,1	-2,0
PT	3,0	104,1	100,6	0,1	0,1
SI	-1,7	50,9	108,4	-2,0	2,0
SK	-3,8	-	77,6	-	-6,1
FI	0,2	155,1	98,2	1,3	-0,4
SE	-2,0	192,1	108,3	1,9	2,0
UK	6,2	142,0	113,2	1,0	3,1
EU25	1,0	116,4	101,0	0,4	0,3
EU15	1,6	141,4	101,9	1,0	0,5
NMS	-3,0	49,0	95,0	-2,1	-1,3

Table 12.2: Passenger transport by rail: Average annual change per Member State, 1970-2004 and 2000-2004. Source: Eurostat, UIC, DG TREN estimates, national sources. Data for the Czech Republic and Slovakia were only available since 1993.

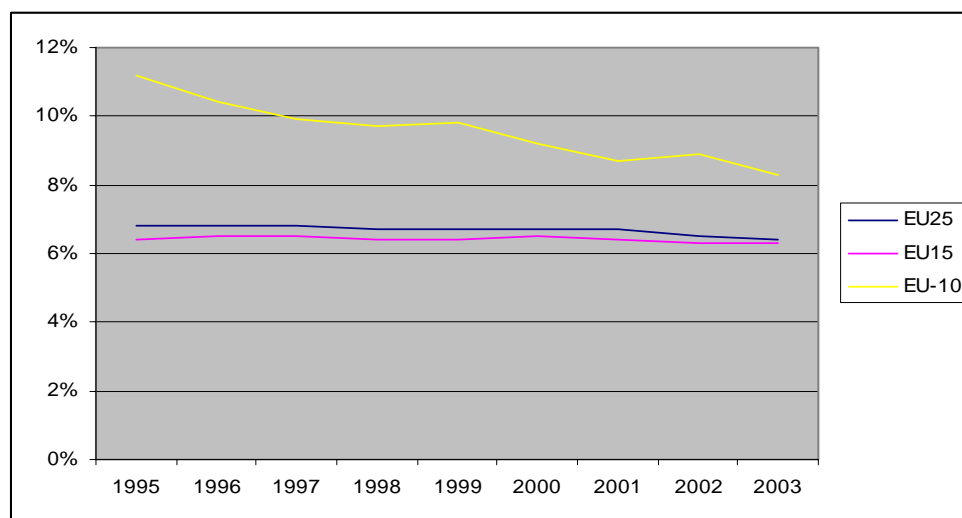


Figure 12.3: Passenger transport by rail: modal share (land transport modes) for EU-25, EU-15 and EU-10, 1995-2003. Source: Eurostat, UIC, DG TREN estimates, national sources.

	1995	1996	1997	1998	1999	2000	2001	2002	2003
BE	5,7	5,6	5,6	5,6	5,7	6,1	6,2	6,2	6,2
CZ	9,8	9,7	9,3	8,4	8,1	8,2	8,2	7,3	7,1
DK	6,9	6,6	6,8	7,4	7,0	7,2	7,6	7,7	7,9
DE	7,7	7,8	7,6	7,4	7,3	7,5	7,3	7,0	6,9
EE	4,4	3,1	2,5	2,1	2,1	2,2	1,6	1,5	1,5
EL	1,9	2,1	2,1	1,7	1,6	1,9	1,6	1,6	1,6

ES	5,3	5,2	5,4	5,4	5,3	5,4	5,4	4,7	5,0
FR	7,4	7,8	8,0	8,1	8,1	8,5	8,4	8,5	8,4
IE	4,4	4,1	4,1	4,0	3,8	3,4	3,5	3,7	3,5
IT	5,8	5,8	5,6	5,2	5,4	5,4	5,4	5,3	5,4
CY	-	-	-	-	-	-	-	-	-
LV	17,5	13,6	13,2	12,4	10,3	7,6	7,4	7,5	7,3
LT	9,1	7,4	6,3	5,6	5,0	3,8	3,1	2,6	2,1
LU	4,9	4,7	4,8	4,8	5,0	4,9	4,9	5,0	4,8
HU	11,7	11,7	11,7	11,9	12,5	12,6	13,0	13,5	13,3
MT	-	-	-	-	-	-	-	-	-
NL	9,0	9,0	9,0	9,2	8,7	8,9	8,7	8,5	8,2
AT	9,8	9,7	8,2	7,9	7,7	7,9	8,0	7,9	7,7
PL	12,7	11,3	10,8	10,5	10,9	9,8	8,8	9,5	8,6
PT	6,2	5,5	5,2	5,0	4,4	3,6	3,5	3,4	3,2
SI	4,2	4,0	4,1	4,8	4,8	5,4	5,6	6,2	6,2
SK	12,4	11,3	9,5	9,7	9,1	8,1	7,9	7,4	6,5
FI	5,2	5,2	5,3	5,2	5,1	5,1	4,8	4,8	4,7
SE	6,1	6,1	6,6	6,8	6,9	7,4	7,6	7,9	7,9
UK	4,3	4,6	4,9	5,0	5,3	5,2	5,2	5,2	5,3
EU25	6,8	6,8	6,8	6,7	6,7	6,7	6,7	6,5	6,4
EU15	6,4	6,5	6,5	6,4	6,4	6,5	6,4	6,3	6,3
NMS	11,2	10,4	9,9	9,7	9,8	9,2	8,7	8,9	8,3

Table 12.3 : Passenger transport by rail: modal share (land transport modes), per Member State and per year, 1995-2003. Source: Eurostat, UIC, DG TREN estimates, national sources, “-“: not available.

Consolidated figures for 2005 are not available yet, though provisional figures for the first 9 months of 2005 show a firm increase in transported passengers of 6.5% in EU-25 and even 7.5% in EU-15. Transport volume, expressed in passenger-kilometres increased by 3.9% in EU-25 and 4.5% in EU-15. Passenger transport increased in all the Member States, except for Estonia, Lithuania, Austria, Poland and Slovakia. The number of passengers increased by more than 10% in Greece, Spain, Ireland, Latvia and the United Kingdom.

ANNEX 13

Railway Safety and Community Legislation

1. THE SAFETY LEVEL OF THE EUROPEAN RAIL SYSTEM

Safety performance of the rail transport mode in Europe is generally very good, in particular in comparison with its main competitor, road transport. Introduction of centralised traffic control, automatic train protection systems, more crashworthy vehicles and modern safety management has reduced fatality rates substantially during the last 30 years. The number of passengers killed in accidents average on around 100 a year in the EU Member States and total fatalities (mainly trespassers and car occupants on level crossings) are about 800-900, while on the other hand more than 40 000 people are killed on the roads each year.

Railway accidents happen however and whenever they occur they reveal weaknesses in safety and illustrate further risk reduction potentials. The high impact on public opinion of multiple-fatality rail crashes is evident and pictures from the accident scenes of Eschede (Germany 1998) and Ladbroke Grove (Paddington Station, United Kingdom 1999) remind us of the possible catastrophic consequences of human errors or technical failures in rail transport. In a society where such accidents are less and less tolerated efforts should be made to further reduce risks without endangering the competitiveness of the rail mode. With the emerging single market for rail transport services and supply of railway equipment such efforts need to be co-ordinated and harmonised on the European level.

Table 13.1 below clearly shows the safety record of railways.

Number of railway passengers killed in accidents involving railways

	1970	1980	1990	1996	1997	1998	1999	2000	2001	2002	2003
BE	3	4	0	6	1	3	3	3	10	0	4
CZ	-	-	-	2	-	-	-	1	0	4	2
DK	7	3	1	0	-	-	2	3	0	2	0
DE	151	74	50	25	28	114	28	38	13	26	23
EE	-	-	-	-	-	-	-	-	-	-	-
EL	1	1	0	0	2	-	1	20	4	4	-
ES	17	17	4	0	20	1	-	0	0	3	16
FR	54	33	30	14	22	14	12	15	11	24	7
IE	0	16	1	0	1	-	-	2	2	1	-
IT	41	48	9	14	16	16	21	8	9	17	9

CY	-	-	-	-	-	-	-	-	-	-	-
LV	-	-	-	-	-	-	-	-	-	-	-
LT	-	-	-	-	-	-	-	-	-	-	-
LU	0	1	0	0	-	-	-	0	0	0	0
HU	-	-	33	11	-	-	-	11	11	12	9
MT	-	-	-	-	-	-	-	-	-	-	-
NL	10	8	2	1	-	-	1	-	0	0	0
AT	26	9	6	3	1	4	8	4	3	13	7
PL	20		21	0	-	-	-	20	0	16	11
PT	19	29	22	10	14	8	8	2	11	8	15
SI	-	-	-	0	-	-	-	0	0	1	1
SK	-	-	-	0	-	-	-	0	0	2	2
FI	5	4	0	3	1	10	1	2	2	0	0
SE	6	25	3	0	2	-	-	0	0	0	-
UK	41	46	37	17	26	16	37	20	10	23	10
EU25											
EU15	381	318	165	93	134	186	122	117	75	121	91

Table 13.1 Railway Fatalities. Source: Statistical Pocket book DGTREN-EUROSTAT on the basis of Data provided by the International Union of Railways (UIC). “-“: Not Available. Please note that Cyprus and Malta do not have railways.

Public and workforce safety issues have given rise to governmental oversight of the safety performance of all transport modes. Rail is a mode in which a significant degree of regulation is required at a technical level. The complexities of the interfaces that are inherent to the mode, notably in the track-train interface, make it one of the most complex transport modes in which to regulate safety.

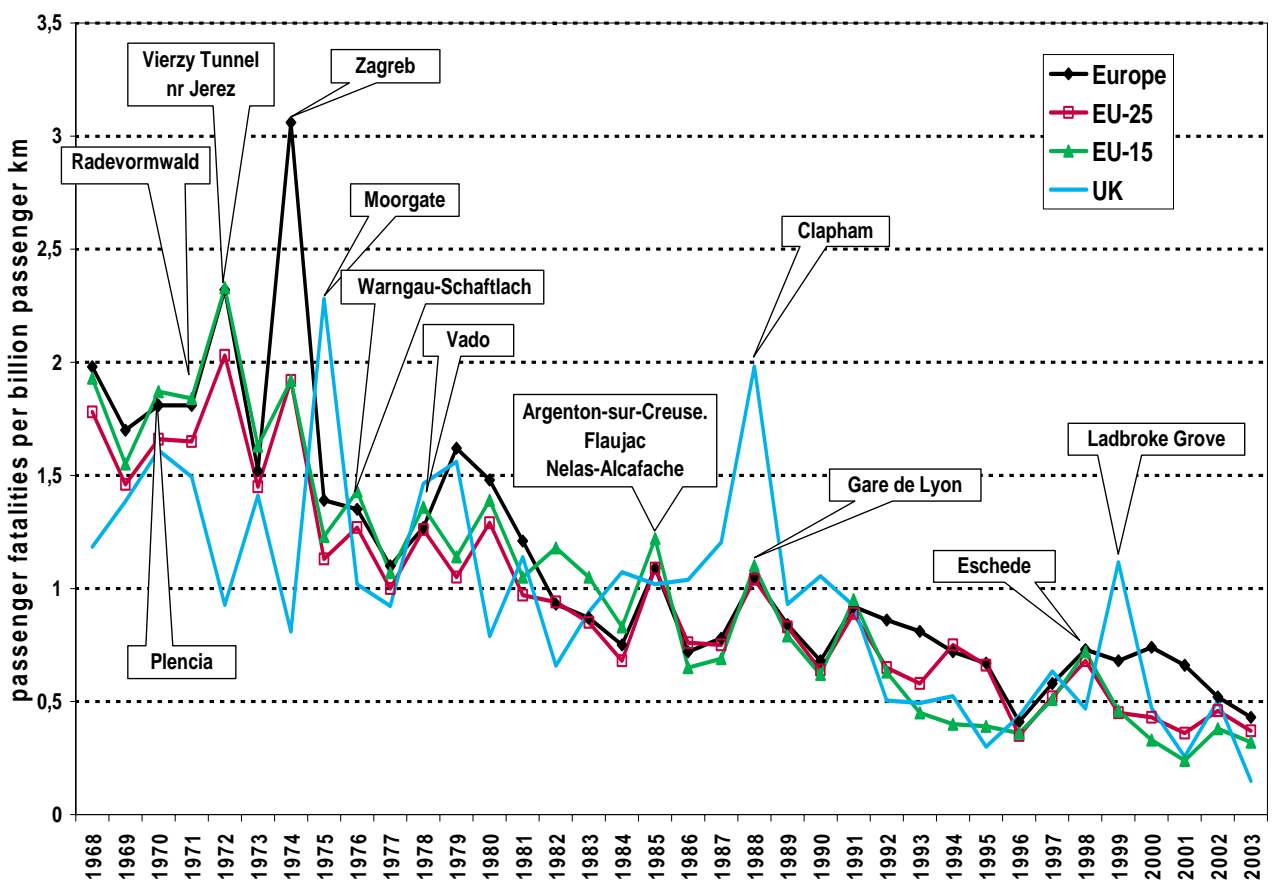
It is important that transport safety issues are assessed as a whole: the attainment of ever higher levels of safety, irrespective of cost, is an understandable objective demanded by the public; however, when this results in traffic being priced off one transport mode and forced to use inherently less safe modes, perverse outcomes result. This can be a particular problem for rail since it must maintain its competitiveness with road; otherwise traffic is lost to road, an inherently less safe mode. There can be a legitimate tension between the objective of enhancing safety and that of improving the competitiveness of the mode by reducing costs (including those of measures intended to increase safety); both options can deliver overall safety benefits, since the improvement of competitiveness of the rail mode would allow a modal shift from inherently less safe modes towards the safe rail mode, thus reducing the overall number of transport victims.

2. THE SAFETY OF LIBERALISED RAILWAYS

It is important that the emerging single market for rail transport services and supply of railway equipment does not negatively impact the safety of European railways. Efforts to maintain the safety level need to be co-ordinated and harmonised on a European level.

The privatisation of UK railways, initiated in 1993 and completed in 1997, is a useful example of the impact of liberalisation on safety.

The graph 13.1 below demonstrates that the level of railway safety in the UK has improved steadily both before, during and after the market opening and restructuring of the rail sector launched in the mid-nineties. This can be compared to the improvements in safety seen elsewhere in Europe.



Sources: UIC for European figures, TSGB and HMRI 'Annual Report for UK Railways', Semmens P. (1994) 'Railway Disasters of the World'

Graph 13.1 Passenger fatalities per billion passenger km 1968-2003 in Europe

The Swedish passenger rail market, in which deregulation was initiated in 1988, maintains a high level of safety. Tendering and competition for service on the Swedish railways has been possible since 1989. The figure 13.2 below, collected from 1986, clearly indicate no detrimental effect on railway safety.

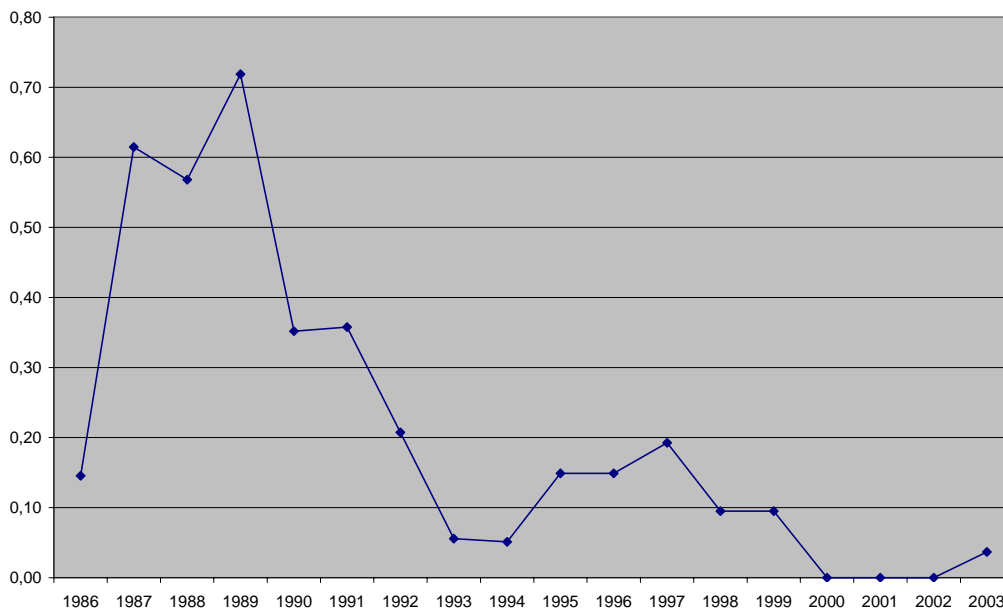


Figure 13.2 Lethal accidents in rail passenger transport per billion pkm in Sweden (3 year average) 1986-2003. Source : SIKA for number of passenger fatalities for the period 1991 – 2003 and passenger km for the period 1984 – 2003, and SJ:s publication “Säkerhetstjänsten” and “Trafiksäkerheten” for number of passenger fatalities for the period 1984 – 1990.

In the Netherlands, the liberalisation of the railways commenced in 1995 and the market became fully open in 2005. According to rail safety statistics from the Netherlands (see figure 13.3), passenger fatalities remain low.

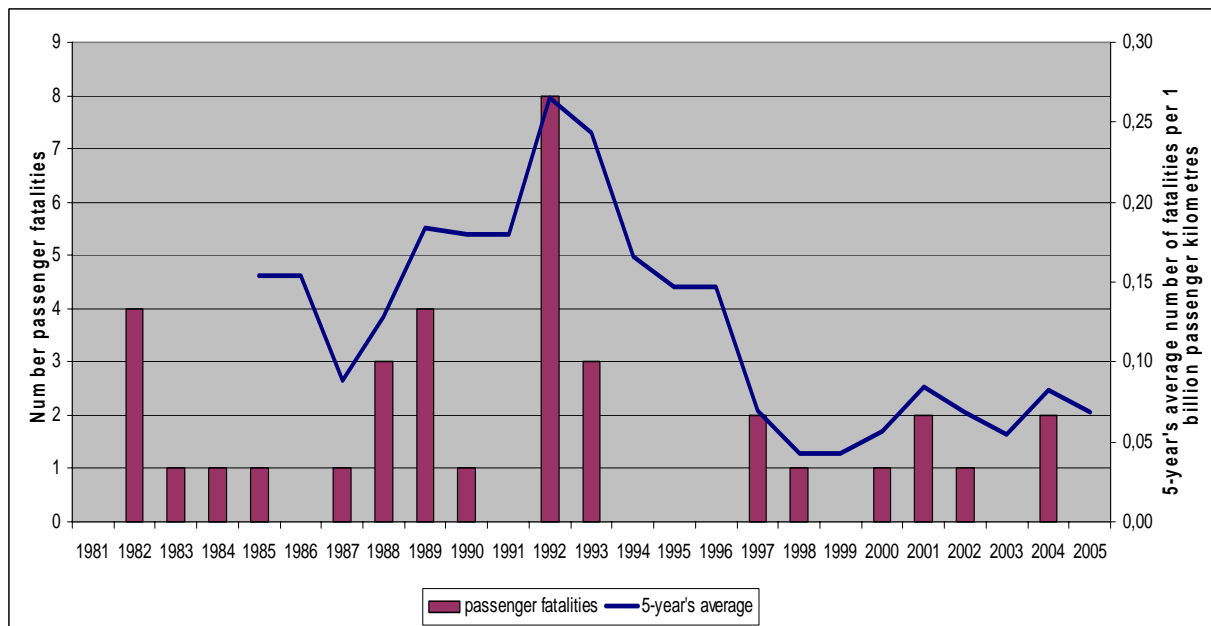


Figure 13.3 Rail passenger fatalities and 5 years average number of fatalities par billion pkm in the Netherlands 1981-2005. Source : Dutch Railways Inspectorate (IVW)

It is important that the trend of high levels of safety in the railways is maintained after liberalisation. Rail safety statistics will be collected by Eurostat in accordance with Regulation (EEC) No 91/2003, as amended by Regulation (EC) No 1192/2003. In addition, the European Railway Agency will draw on the data collected by Eurostat and, by working with the national safety and accident investigation bodies, produce a report on railway safety performance every two years. The first of these reports will be available in 2007.

3. THE COMMUNITY REGULATORY FRAMEWORK

The establishment of a single market for railway transport services made it necessary to create a regulatory framework for market opening as well as technical and regulatory harmonisation at EU level. To succeed the single market project it is necessary to remove the “technical” barriers to the development of trans-European transport whilst maintaining an optimum safety level. The directives on railway interoperability (Directives 96/49/EC and 2001/16/EC) have made it possible to adopt Technical Specifications for Interoperability (TSIs) for the various railway subsystems, whose implementation facilitates providing pan-European railway services.

The second railway package⁵⁹ defined the Community legislative framework for railway safety in accordance with the requirements imposed by the definition of an interoperable network, both from a technical viewpoint and that of staff running interoperable services. In April 2004, Directive 2004/49/EC (the “Safety Directive”), on safety of the Community’s railways amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity, rail infrastructure charging and safety certification, was adopted as part of this legislative package.

The Safety Directive establishes a common regulatory framework for the transparent management of railway safety in an open market, establishes the requirements for national safety authorities and accident investigation authorities, and clarifies the roles and responsibilities of principle actors, and makes provisions for the development of a harmonised approach to safety. Regulation (EC) No 881/2004 adopted as part of the second package established the European Railway Agency which in conjunction with the Safety Directive establishes the mechanism for delivering the technical solutions required for a harmonised approach to European railway safety.

At European level, the safety directive delegates a number of powers to the Commission to be assisted by a regulatory Committee of the Member States. The European Railway Agency established in Valenciennes (France), which takes advantage of the expert input from the railway industry, the railway undertakings as well as the national safety authorities and investigation bodies, will have to deliver to the Commission opinions and recommendations which will then be transformed into legal measures to be adopted by the Commission after having received an official opinion of the competent regulatory Committee.

⁵⁹ Communication from the Commission to the Council and the European Parliament: “Towards an integrated European railway area” - COM(2002)18, 23.1.2002; see also: http://europa.eu.int/comm/transport/rail_archive/package/new_en.htm

At national level, the safety directive requires each Member State to set up a national safety authority and an independent accident investigation body. The cooperation of these bodies will be steered by the European Railway Agency.

4. CURRENT ACTIVITIES IN THE AREA OF SAFETY

4.1. Implementation of the Safety Directive

4.1.1. National Transposition

Member states are in the process of drafting new legislation and setting up both the safety authority and the accident investigating body. No major problems are foreseen with the timely national implementation of the directive and the Commission will continue to monitor the progress being made.

An early observation is that different models for the set up of the Safety Authorities are emerging; some are closely linked to the state, others are completely independent. The competency and number of staff within the Authorities also varies in each Member State. It is unclear at this stage what impact this will have on the successful implementation of the provisions of the Directive; the Commission will monitor this issue through the Committee and the Agency.

4.1.2. Notification of Safety Rules

With regards to the notification of national safety rules foreseen in Article 8 of the safety directive, four phases of notification are envisaged:

- The first notification by all Member States of their existing binding national safety rule by April 2005;
- Member States have to establish and publish all rules and shall make a full notification by 30 April 2006, by which time the directive shall be implemented in all Member States;
- Before the adoption of the Common Safety Targets (CSTs) due by April 2009, Member States shall notify any new, or changes to, binding national safety rules;
- After the adoption of the CSTs, Member States shall keep notifying any new, or changes to, binding national safety rules. In addition, they shall submit drafts for evaluation under the conditions described in Article 8(6).

Guidance on the notification of these rules has been provided by the Commission to Member States. The majority of Member States have notified their national safety rules with the exception of Belgium, Germany, Spain, Greece, Italy, Greece, Luxembourg, Slovakia and Sweden. The Commission will continue to carefully monitor this situation with the intention that all Member States notify the rules mentioned above within the foreseen deadlines.

4.1.3. The European Rail Agency

The European Rail Agency is now largely operational and has commenced its work. Its initial deliverables, as identified under the first Agency work programme for 2005 will be completed

and a work programme for 2006 has been approved by its Board in early 2006. Mandates for the development of CSTs, Common Safety Methods (CSMs) and harmonized requirements for safety certification have been notified to the Agency early 2006.

Current works deal with collecting statistics according to Common Safety Indicators as identified in the safety Directive, defining a procedure for collecting and classifying national safety rules, preparing a 5-years work plan for developing CSTs and CSMs, harmonizing requirements for safety certification, preparing a data base of all documents related to safety such as, for example, authorisation of placing in service, safety certificates, national safety rules.

4.2. Safety certification of railway undertakings

In December 2003 a Consortium led by Ingenieurgesellschaft für Verkehrs- und Eisenbahnwesen mbH (IVE) in association with Pegasus Transconsult Ltd (PTC) was appointed by the Directorate-General for Energy and Transport of the European Commission (the Commission) to undertake a study into *Acceptance criteria and assessment methodologies for safety certificates delivered in accordance with Directive 2001/14/EC, Article 32*. The study's purpose was to investigate implementation of Article 32 of Directive 2001/14/EC and the system for providing safety certification of railway undertakings, their staff and their rolling stock in the context of the changing structure of the railway industry.

The study was undertaken during a period of rapid change, with the adoption of the *Safety Directive* and a number of states introduced new procedures. However the findings and recommendations proved valuable in understanding the difficulties that need to be overcome to successfully implement a transparent and open safety regulatory regime.

4.2.1. Key Findings

At the time of the study some states had not fully transposed Directive 2001/14/EC. However by September 2004, thirteen Member States⁶⁰ had notified transposition of Directive 2001/14/EC. Six other Member States⁶¹ told the Consortium that they too had transposed the Directive. In addition, Norway has transposed the Directive although Switzerland has not. Many of the remaining states have systems that comply with the substance of Article 32 of the Directive but are not formally in line with it.

The study was able to identify the main difficulties in the transposition of Article 32 of Directive 2001/14/EC. Where states had transposed the Directive, not all had set up the bodies and procedures required for a proper assessment process. However, where the bodies and processes had been set up, the processes did not always appear to have the rigour which might be expected. In fact only a limited number of states appear to be wholly compliant with the requirements of the infrastructure package. It should be noted that where a railway undertaking is prevented from being able to operate by this failure has a right to claim damages.

⁶⁰ Belgium, the Czech Republic, Denmark, Estonia, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland.

⁶¹ Ireland, Latvia, Lithuania, Poland, Slovakia and Sweden.

New or foreign railway undertakings have found it difficult to obtain the safety certification required to operate on the national network. In some cases these difficulties are due to lack of established national systems and institutions and in other cases it is due to administrative difficulties. A lack of transparency in the processes aggravates this problem and in this way Community policy is being frustrated. Nevertheless, the situation is changing and some states having just transposed the law are still developing procedures and setting up certification bodies and therefore it is expected that current difficulties will start to be resolved. There is a need for continued monitoring of the progress in this area. Further action is also needed to ensure that sufficient information is equally available to all railway undertakings for the certification process and that all undertakings meet the same safety standards that they do. This reassurance should be provided by transparent procedures, competently and impartially administrated.

In terms of the process itself the study identified that the level of detail that the certification body needs to provide at the outset is a function of how mechanistic its processes are. Where a highly mechanistic process is in place (i.e. one where applicants have to demonstrate compliance to a set of precise requirements) these will need to be set out in detail. If on the other hand the applicant has to demonstrate compliance with a broader set of targets and has genuine freedom in how it achieves this, then much less guidance will be required, although the targets to be met must be clearly stated.

The competency of certification bodies was also assessed and the study concluded that it is important for staff within these bodies to maintain technical competency, without endangering their neutral position. This may be achieved through the international exchange of staff to provide a variety of experience without compromising industry knowledge or professional integrity.

Different arrangements for the corporate location of the safety certification body were identified and the study considered that this issue requires careful consideration. The co-location of safety regulation with the “regulatory body” for example runs the risk of compromising any appeal process; conversely co-location within the infrastructure manager may not be appropriate particularly where the infrastructure manager has any organisational links to an incumbent railway undertaking. Four options for the location of the certification body were considered to be suitable:

- establishment as a completely independent body;
- attachment to the national infrastructure manager, but only where there are no organisational or corporate links to any railway undertaking;
- attachment to an existing governmental or quasi-governmental body charged with safety regulation;
- as a function of the national transport ministry, but only where this is entirely independent of the overall management of any state owned railway undertaking.

In each case, the appeals process would need to be through an entirely separate and independent body, such as the rail regulator or the courts.

Just as the assessment process must be transparent, so too must the appeals process. In the many of states this has been clearly achieved but the solution adopted in many states where the use of the Ministry, an organisation with a political head, as an appeals body runs the risk of a lack of transparency.

4.2.2. *Recommendations*

The study made detailed recommendations concerning:

- monitoring the implementation of national legislation to ensure that transposition is followed by the creation of proper institutions and procedures for certification, with a suitable level of independence;
- urgent harmonisation in the safety certification of particular areas (linguistic competence, health and fitness, staff and their competence). These are areas where harmonisation may be achieved and provide substantial benefits to achieving a common approach;
- improving transparency at all levels of the certification process and how this may be achieved through the publication of documentation.

The provisions of the Safety Directive will in many areas resolve the issues raised by the study; for example Member States are required to establish safety authorities responsible for granting safety certification, the national rules required and to publish in a transparent manner the applicable procedures and information required. The European Rail Agency will be responsible for the development and monitoring of a harmonised approach to safety and its regulation.

However, specific recommendations from the study identified the need to rapidly develop a harmonised approach in order to support opening of the market. To this end the Commission established a Safety Certification Working Group who evaluated in 2005 the key problem areas and provide proposals on how they will be dealt with. With regards to the safety certification of railway undertaking, the group concluded that detailed harmonisation of safety certification procedures should be dealt with by the European Rail Agency. With regards to cross acceptance, the group developed a framework for the cross acceptance of national rules related to rolling stock authorisation.

5. CONCLUSION

The safety statistics of liberalised railways (such as Sweden, the UK and the Netherlands) indicate that market opening does not negatively impact safety. However it is important that this trend of high levels of safety in the railways is maintained across the European railways, and safety performance should be closely monitored. To this end rail safety statistics will be collected by Eurostat in accordance with Regulation (EEC) No 91/2003, as amended by Regulation (EC) No 1192/2003 and the European Railway Agency will draw on this data to produce a report on railway safety performance every two years. The first of these reports will be available in 2007.

The transposition of the Safety Directive is now underway in Member States and no major problems are foreseen with the timely national implementation of the directive. The Commission will continue to monitor the progress of the implementation and evaluate the

measures being introduced by the Member States in order to ensure that the recommendations identified in the study by IVE, particularly regarding transparency and independence, are achieved.

With regards to the notification of national rules, the majority of Member States have notified with the exception of Belgium, Germany, Spain, Greece, Italy, Greece, Luxembourg, Slovakia and Sweden. The Commission will continue to monitor this situation to ensure that all Member States notify as required. The Agency is now mobilised and has commenced its activities. The Committee established under the Safety Directive has adopted mandates for the work of the Agency. Its initial deliverables, as identified under the first Agency work programme for 2005 are scheduled for completion and a work programme for 2006 is under development.

With regards to the safety certification of railway undertaking, detailed harmonisation of safety certification procedures shall be dealt with by the European Rail Agency. The Commission's Safety Certification Working Group has established high level principles relating to the harmonisation of criteria in order to support the work of the Agency.

A task force of the Safety Certification Working Group is examining the issue of cross acceptance of national rules related to rolling stock authorisation. This work became available as a first draft at the end of 2005. During 2006 the Commission will evaluate the next steps to be taken in order to facilitate the European cross acceptance of rolling stock. Various options for implementing the proposed framework will need to be considered, such as the need for legislative changes to the existing directives, the effectiveness of voluntary agreements between Member States, and the role of the key actors such as national safety authorities and the European Rail Agency.

ANNEX 14

Employment and Working Conditions

An overall picture of the employment levels in the railway sector is difficult to provide due to the absence of coherent data and the lack of harmonised definitions for categories employed in the railway sector. The financial restructuring of the railway undertakings, as requested under the terms of Directive 91/440/EEC, required Member States to take the necessary measures to enable railway undertakings to adjust their activities to an open market and provide efficient and appropriate services at the lowest possible cost against the required⁶² quality of service. Furthermore, it mandated that railway undertakings be managed according to the principles which apply to commercial companies, including the activities in relation to public service contracts. These requirements have had a considerable impact on the level of employment within the incumbent railways: railway undertakings in the 15 old Member States for example employed almost 1.8 million staff (including the new Bundesländer in Germany) in 1970⁶³. This figure dropped to 1.3 million in 1990 at the beginning of the restructuring process of the railways. In 1995, employment decreased to around 980 000 in 1995 and to 770 000 in 2000. An estimate of the current employment levels in the railway sector in the enlarged European Union is given in table 14.1 below (2005 figures, unless mentioned otherwise).

Member State	National Railway Undertakings	Infrastructure Managers	New entrant operators	Total
BE – Belgium*	25000	14500	35	39535
CZ- Czech Republic**	78500	-	-	78500
DK – Denmark*	8750	2500	1000	12250
DE – Germany*	180500	45000	15000	240500
EE – Estonia*	3900	-	-	3900
EL – Greece*	8800	-	-	8800
ES – Spain	33000	9000	3200	45200
FR – France*	177000	600	-	177600
IE – Ireland	5500	-	-	5500
IT – Italy*	56000	35750	10250	102000

⁶² Articles 4 and 5 of Directive 91/440/EEC, as amended.

⁶³ These include: SNCB; DSB; DB (including DR); CH; RENFE; SNCF; CIE; FS; CFL; NS; ÖBB; CP; VR; SJ and the UK operators.

LU – Luxemburg*	3200	-	-	3200
LV – Latvia	20300	-	-	20300
LT – Lithuania	11500	-	-	11500
HU – Hungary	52000	-	2000	54000
NL – Netherlands*	25500	1500	500	27500
AT – Austria	47125	-	1000	48125
PL – Poland*	138000	-	-	138000
PT – Portugal*	2300	4500	-	6800
SI – Slovenia	8050	-	-	8050
SK – Slovakia	13000	-	-	13000
FI – Finland	10475	100	-	10575
SE – Sweden	3275	6600	9000	18875
UK – United Kingdom	-	30000	100000	130000
Total	893405	150050	141985	1185440

Table 14.1: Employment in the European railway sector by country. *: 2004; **: 2003. NA: Not available. Sources: Report on Employment and working conditions in the European railway transport sector, European Foundation for the improvement of Living and Working Conditions⁶⁴; UIC statistics; annual reports railway undertakings and infrastructure managers. UK figures are estimates due to a different classification of jobs, “-”: Not available.

The table shows that at least 1.1 million persons are employed in the railway sector in the European Union (EU-25). For the incumbent operators in the old Member States, this figure was around 760 000 in 2004, thus showing only a small decline compared to the approximately 770 000 employed in 2000.

This table is based on the data made available by the railway undertakings (incumbents and new entrant operators) and infrastructure managers. It does not include employment in the supply industry (manufacturing and maintenance of rolling stock and railway equipment) or construction and maintenance of railway infrastructure, and outsourced activities that were not considered to belong to the core-activities of rail transport undertakings. Furthermore, it does not include new ‘white collar’ employment in administrations and institutions created as a result of the railway reform process.

⁶⁴ See: Dublin foundation report on: http://europa.eu.int/comm/transport/rail/research/studies_en.html

The restructuring of the railway undertakings resulted in significant job losses within the, incumbent railway undertakings. However it should be noted that the reduction of employment levels within the sector had started long before the first reform measures at the EU level were adopted, and this is clearly shown by the reduction of 0.5 million jobs between 1970 and 1990, as mentioned above. The reduction in employment continued after the beginning of the restructuring in the early nineties but its pace has slowed down considerably during the last 2-3 years. Job losses in the incumbent railway undertakings have partly been compensated for by the creation of new jobs in new railway undertakings.

As far as the working conditions are concerned, it appears that jobs within the railway sector, as in many other sectors, have evolved into more specialised jobs and have therefore become more heterogeneous. Railway technology has evolved and required different types of qualified railway staff. For example a driver of a steam locomotive needs other qualifications than a driver of an ERTMS equipped high-speed passenger train; salespersons nowadays are assumed to have more linguistic and ICT-skills than 25 years ago. Furthermore, more specialisations occurred in the rail transport sector, which has led to a differentiation in working conditions. Depending on the prevailing level for collective bargaining, conditions offered by new entrants sometimes differ quite substantially from the ones provided by the (former) incumbents. However, data on wage levels of train drivers indicate that market opening (i.e. markets with many new entrants) has not led to a deterioration of wages, even though this category may not be representative for the employment conditions within the new entrants. However the emerging competition between railway undertakings may lead to changes in working conditions within the incumbents: a higher degree of flexibility is required from the staff; this has had consequences on working time and the organisation of work.

The increasing number of actors within the railway market has led to a shortage in some sectors for skilled workers and specialists. Locomotive drivers are sometimes hard to find as they require extensive training and need to maintain their knowledge of routes and networks on a permanent basis. According to the survey previously mentioned, earnings for some of these categories have increased considerably since market opening, and are even higher than comparable jobs in other industries.

Job mobility within the sector is difficult to quantify, though new railway undertakings sometimes had difficulties recruiting staff, in particular locomotive drivers. Most of the locomotive drivers are employed by the incumbents and they have often invested significant amounts in the training of their drivers. Train driver licences are owned by the incumbents, and drivers sometimes had difficulties having their qualifications and professional experience recognised once they left the incumbent. This problem will be addressed under train drivers licence proposal⁶⁵ submitted within the framework of the third railway package.

A problem that is likely to occur in the near future is the lack of sufficiently trained staff having the appropriate skills for the posts offered by railway undertakings operating under new market situations. The number of apprenticeships in the incumbents has declined as a result of the restructuring processes: internal training programmes and vocational training has been reduced or even entirely abandoned in order to cut costs. New operators often lack the

⁶⁵ Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network - COM(2004) 142, 3.3.2004; see also: http://europa.eu.int/comm/transport/rail/package2003/new_en.html

means to set up complete training programmes for the different jobs in the railway sector as the costs for training are high and job mobility of the staff is not an incentive for railway undertakings to invest large amounts in training. This underlines the necessity to set up training programmes and facilities for the railway sector as a whole in order to create a real and non-discriminatory sectoral labour market.

The ageing of the labour force in the railway sector is likely to have an impact on the mobility within the sector in the coming years as well. Most railway staff in Belgium for example are aged between 40 and 55 years: it is expected that 40% of the staff of the national operator will retire between now and in 10 years time. This phenomenon is not restricted to Belgium alone as the structure of the age pyramid of many railway undertakings is similar to the one of the SNCB.

A comparative study on industrial relations in the rail sector was carried out in 2000⁶⁶. Even though many changes have taken place since that time, the overall situation has remained stable in terms of labour representation and collective bargaining structure. Collective bargaining has widely contributed to the changes at railway undertaking level: without (tacit) agreement of the main trade unions, restructuring of the railway sector would not have been possible. This often involved an increase in industrial action, but collective relations between trade unions and employers were not disrupted, and could even be put forward as one of the factors allowing for finding shared solutions to implement a difficult shift from highly regulated and publicly financed transport operations to self-sustaining and competitive railway undertakings. The present representation and collective bargaining structures are still in transition and are likely to undergo further changes as the reform process continues. Only when the market structure stabilises, will it be possible to fully assess the impact of the restructuring on industrial relations in the rail sector. For the time being, it is possible to assert that industrial relations have shown the capacity to cope with the challenges of sector reform and restructuring.

⁶⁶ EIRO thematic feature: “Industrial relations in the railway sector” (European Foundation for the Improvement of Living and Working Conditions, 2005, EF/05/78/EN). See: <http://www.eiro.eurofound.eu.int/thematicfeature13.html>