

**FINAL REPORT
COUNTRY MONOGRAPHS**

**EUROPEAN RAILWAYS ADMINISTRATIONS
INSTITUTIONS AND LEGISLATION (ERAIL)**

PART A & PART B

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1 INTRODUCTION

ERAIL has the objective to provide a comprehensive and in-depth overview of the administrative and institutional framework put into place to implement and monitor the Railway Acquis in the domain of Railways in the Member States of the EU and other European countries. Country monographs have been established that allow for the evaluation of the institutional organisation of the railways in the light of the effective implementation of the Railway Acquis. The study covers both the formal transposition of the Railway Acquis and the material implementation of the principles that underlie the Railway Acquis as it becomes evident from the actual organisation of the railways. The material implementation will allow for the identification of shortcomings in the (implementation of the) Railway Acquis.

The consortium is led by NEA Transport research and training (NEA) and consists furthermore of:

- Organisation Gestion Marketing s.a. (OGM)
- Transport Studies Unit, University of Oxford (TSU)
- TINA Vienna Transport Strategies Gesm.b.H. (TINA)
- Erasmus University Rotterdam (EUR)
- TIS.PT – Consultores em Transportes, Inovação e Sistemas, SA, Portugal (TIS).

We have split the organisation of the project in 4 tasks:

1. scenario analysis and preparation of a standard template for the Monograph
2. production of ERAIL country Monographs
3. horizontal comparisons
4. updates (as integrated part of 1-3).

Task 1 covered the preparatory work. The preparatory work consisted of the preparation of a standard template for the Monograph that gives guidance to the research activities at the national level. Task 2 – production of the ERAIL country Monographs - is the core of the study representing approximately 80% of the person time dedicated to this study. ERAIL country Monographs – consisting of various legal, institutional and organisational information – are produced for 29 countries. Task 3 includes a horizontal analysis of administrative and NGO structures present at the national level. Task 4 ensures the necessary updates of the information in Tasks 1-3. Updates are due to amongst others development of the EU Railway Acquis and comments received on the reports submitted.

This document is the Draft Final Report of Tasks 2, 3 and 4 – production of ERAIL country monographs, horizontal comparisons and updates. This includes 29 country monographs covering the current EU Member States and other European countries. For all countries significant changes are underway regarding the structure of the railway industry in accordance with EC legislation. In particular, substantial changes are occurring for the new EU Member States and applicant countries (Romania and Bulgaria) to adjust their rail legislation to the

Acquis. This change process influences the content of the country monographs. Indeed, the level of detail of information in the monographs depended on country specific characteristics.

For all EU Member States and other European countries very detailed and comprehensive information has been presented in the country monographs. As part of the process of updating the country monographs emphasis has been put to give more detailed information for those countries. In this report emphasis has been given to the measures of the 2nd Railway Package that has been adopted in April 2004. Directive 2004/51 must be implemented by the Member States by 31 December 2005 at the latest to allow for a full market opening of the freight international market by 1 January 2006 and the domestic market by 1 January 2007.

The structure of the Draft Final Report is as follows:

- **Part A** contains a cover note. The cover note includes: (1) overview of recent European Railway legislation, (2) brief assessment of the extent of implementation in the 29 countries, (3) country comparisons concerning the organisation of various public tasks in relation to the Railway Acquis, railway undertakings, NGO's and rail accidents, (4) sustainability of the ERAIL network and (5) conclusions. The conclusions will focus on consideration to the differences between transposition in law and implementation in practice as well as discussion of barriers to market access.
- **Part B** includes summary pages for each of the 29 countries setting out the implementation of EU directives, pending national legislation, SWOT on practice behind regulatory framework position of main actors and other characteristics. Each summary page includes country-specific examples of differences between transposition in law and implementation in practice.
- **Part C** is composed of the country monographs split into two groups: (1) EU Member States, (2) Other European Countries. The country group "Accession Countries" has been removed following the EU accession on May 1st 2004. The group applicant countries (Bulgaria and Romania) have been merged with the group other Western Countries (Iceland, Liechtenstein, Norway and Switzerland) to the group "other European countries".

Given the volume of Part C (approximately 1000 pages) it is submitted in a separate document.

Annex A of this report includes a list of abbreviations.

PART A – COVER NOTE

2 EUROPEAN RAILWAY LEGISLATION

Since 1991 significant legislation affecting railways has been introduced in order to revitalise the railways and enhance their competitiveness. In the first half of the Nineties the following were introduced:

1. Regulation 1893/91/EEC amending regulation 1191/69/EEC concerning public service obligations;
2. Directive 91/440/EEC on the development of the Community's railways;
3. Directive 95/18/EC on the licensing of Railway Undertakings; and
4. Directive 95/19/EC on allocation of railway infrastructure capacity and the charging of infrastructure fees.

Whilst they are all important it is the three Directives that have had the biggest impact on the European rail industry to date. The first Directive to be issued was Council Directive 91/440/EEC. This grants the right of access to railway infrastructure to undertakings wishing to provide international combined services and to associations of railway undertakings wishing to offer international services between the countries in which they are established. The four key elements of this Directive were:

1. Management independence of railway undertakings;
2. Separation of accounts for infrastructure management and transport operations;
3. Improvement of the financial situation, in particular the debt restructuring and
4. Access to railway infrastructure.

The underlying aim of the Directive was to liberalise the rail market, in particular for freight traffic, by opening it up to competition through the concept of 'open access' and to reduce the financial burden on state governments by restructuring financial debt.

Subsequently, the Directives mentioned above have been amended within the so-called "Rail Infrastructure Package or First Railway Package", which should have been implemented into national law by 15 March 2003 (it should be noticed though that Directive 2001/14/EC replaced Directive 95/19):

- **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.** This Directive requires the Member States to adapt their legislation to enable the extension of access rights for international freight services to the national section of the Trans European Rail Freight Network (TERFN). As of 15 March 2008, the entire European Rail Network will be open to international freight services. The Directive also specifies that independent organisational entities must be specified for transport operations and infrastructure management. Essential functions, such as rail

capacity allocation, infrastructure charging and licensing be separated from transport operations to enable new rail operators fair access to the rail market. Railway undertakings are also required to set up separate accounts for passenger and freight operations.

- **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** defines the conditions under which railway undertakings can obtain licenses to run rail freight services over the TERFN. In particular, it establishes that a license issued by one Member State's Licensing authority will be valid throughout the EU. The Directive sets the framework for the financial, economic and safety conditions to which railway undertakings must comply to obtain a license. Member States must notify the Commission of all issued railway licenses. The Commission will inform the Member States of the licenses issued in other Member States. An operator does not only need a license, but will also require a safety certificate for its rolling stock and staff as well as the attribution of capacity (trains paths) to effectively run train on the network.
- **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** replaced Directive 95/19/EC and applies to the entire rail network. It sets the framework conditions for the allocation and charging of capacity. The Directive specifies that the infrastructure manager should develop and publish a network statement with information about the technical nature and limitations of the network, access conditions, rules on capacity allocation as well as the tariff structure and the priority rules to be applied in case of conflicting demands. The directive also provides for network capacity analyses in order to identify bottlenecks in the network, as well as concrete plans to improve the quality and capacity of the network. Member States shall also establish a regulatory body independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. The body will be responsible for various regulatory functions, including complaints and appeals from applicants as well as ensuring that infrastructure charges are set in accordance with the Directive and are non-discriminatory. Provisions regarding safety certification for railway undertakings and rolling stock are also included in the Directive.

These Directives have not yet been transposed in all Member States and the Commission launched in March 2005 further legal steps against Germany, Greece, Luxembourg and the United Kingdom (further details given in Section 5.2). Subsequently, both Greece and Germany have notified the EC about implementation measures.

An initial measure towards ensuring interoperability of trans-European rail networks was taken by the Council in 1996 when it adopted Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system. The aim of this Directive is to achieve the interoperability of the European high-speed train network at the various stages of its design, construction, gradual placing in service and operation.

Subsequently, the Council adopted 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. The objective of this Directive is to achieve the interoperability of the trans-European conventional rail system at the various stages of its design, construction, putting into service, upgrading, renewal, operation and maintenance of the parts of this system put into service after the date of entry into force of this Directive. Directive 2001/16/EC is structured similarly and linked closely to Directive 96/48/EC.

For both directives, the core instrument for achieving interoperability is preparation and adoption of Technical Specifications for Interoperability (TSIs). Article 5 (in both Directives) specifies what the TSIs should cover and Article 6 sets out the procedures to develop and adopt the TSIs. TSI's will be elaborated by the European Railway Agency, though its formal adoption will be done by the Commission, after agreement in the Regulatory Committee foreseen by the interoperability Directives. TSIs have now been adopted for the high-speed rail system and published in the Official Journal of the European Union. The first set of TSIs for the conventional rail system is under development. The formal adoption and publication of these TSIs is expected to take place during the second half of 2005, though agreement has been reached on several of the TSIs within the Regulatory Committee.

Another important instrument for achieving and maintaining interoperability is common rules for assessing conformity to the TSIs. These relate both to interoperability constituents and subsystems.

Following the EC Transport White Paper "European transport policy for 2010: time to decide" from 2001 where the Commission highlighted the need to revitalise railways to achieve sustainable development, the so-called 2nd railway package was proposed by the Commission in January 2002, COM(2002) 18 Final. The railway package contained two main parts:

- Five new proposals for legislation to achieve more integration of the railway area
- Future action to improve quality of rail services and make the railway market more dynamic.

The five proposals for specific legislation comprised:

- Developing a common approach to rail safety (proposal for a Safety Directive, COM(2002)21)
- Enhancing the interoperability principles (proposal amending the existing directives (Directives 96/48/EC and 2001/16/EC)) (COM(2002)22)
- Establishing a European Railway Agency with regard to safety and interoperability (proposal for a regulation) (COM(2002)23)

- Joining the Intergovernmental Organisation for International Carriage by Rail (OTIF) (Recommendation for a Council Decision) (COM(2002)24)
- Extending and speeding up opening of the rail freight market (proposal amending Directive 91/440/EEC, as amended by Directive 2001/12/EC) (COM(2002)25)

The Council of Transport Ministers reached a political agreement on all the legislative proposals of the second railway package in March 2003. Formal adoption of the measures took place on 29 April 2004, and the texts were published on 30 April 2004. A corrigendum of the texts was published on 21 June 2004, OJ L 220.

- **Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation).** The main role of the Agency will be to provide technical support for the interoperability and safety work. Its remit will consist of: (1) development of common safety standards and design and management of a system for monitoring safety performance; (2) management in the long-term of the system for elaborating, establishing, registering and monitoring the technical specifications for interoperability. The Regulation has entered into force, and the the Agency has started its activities in in Lille/Valenciennes (France). An executive director has been appointed in October 2004, work programme for 2005 agreed and staff recruitment has started.
- **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).** The purpose of this Directive is to develop a common European approach to rail safety and improved access to the market for rail transport services. This Directive requires the establishment in each Member State of a safety authority with a common minimum set of tasks including certification of railway undertakings and authorisation of infrastructure managing companies. The safety authority has to inform the Railway Agency of the safety certificates it issues, modifies, amends or withdraws. The Directive introduces a mechanism for adopting common safety targets. Common safety indicators are specified which will provide a means of monitoring and measuring progress on safety. The Directive also calls for (Article 8) Member States to establish and publish binding national safety rules. Finally, it provides for the establishment of independent bodies in each Member State to investigate accidents and incidents. The Directive must be implemented by the Member States by 30 April 2006 at the latest.
- **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.**

The amendment addresses those adaptations to the interoperability directives made necessary by the other legislative measures in the 2nd Railway Package as well as ensuring consistency of scope between the network on which there will be open access and that subject to interoperability rules, with a progressive extension of the field of application to the whole European network. The Directive must be implemented by the Member States by 30 April 2006 at the latest.

- **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.** This Directive extends infrastructure access rights to freight services within a Member State and accelerates market opening. Directive 2001/12 foresaw full market opening for international freight transport by 15 March 2008. This has been changed to 1 January 2006, whereas market opening for domestic freight transport by rail (including cabotage) is now foreseen for 1 January 2007. The Directive must be implemented by the Member States by 31 December 2005 at the latest.

The European Commission adopted the 3rd Railway Package on the 3rd March 2004 (COM(2004)140). The Package consists of a Communication, four legislative measures and a Working Document containing an extended impact assessment for the gradual opening up of the market for international passenger services. In particular, it is proposed that from 1 January 2010, railway undertakings that have a license and the required safety certificates should be able to operate international passenger services in the Community. The other proposed legislative measures include: a regulation to protect the rights of passengers using international services, a directive on the certification of locomotive drivers and a regulation aiming to introduce minimum quality clauses in contracts between railway undertakings and their customers. The Council and Parliament agreed in April 2004 to start quickly the examination of the 3rd Railway Package. Subsequently, reactions from various stakeholders to the 3rd Railway Package have been put forward. The European Parliament has started discussing the legislative proposals. The Committee of the Regions adopted on the 17.11.04 unanimously its opinion on the Package. Subsequently, the Economic and Social Committee adopted its opinions on the package on the 09.02.05 while the Committee on Transport and Tourism of the European Parliament adopted its reports regarding the Directives in the package on the 19.04.05. The Council has already adopted 'general orientation' on one of the legislative proposals, the train drivers licence Directive. The Council can only adopt its common position on the proposals after the European Parliament has adopted the (amended) proposals in first reading

Currently, the amended proposal for the revision of regulation 1191/69/EEC concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterways is being considered (COM(2002) 107) (the original proposal was put forward in July 2000, (COM(2000) 7). The proposal includes provisions for introduction of public tendering for railway services in those cases where railway undertakings are compensated financially for public service obligations or are awarded time-limited exclusive

rights. In relation to this, the European Court of Justice's ruling on the Altmark case (24 July 2003) is of importance. This case concerned the qualification of financial compensation by national authorities of costs incurred for the operation of public service obligations. Briefly, the Altmark ruling says that financial compensation of public service obligations does not constitute state aid provided the PSO meet four conditions rendering such compensation more transparent. Provided the four conditions are met, the Court excludes these measures from the scrutiny of the European Commission.

Detailed information about the Railway Acquis, railway policy and quantitative information about railways in the European Union is available from the European Commission DG TREN's website: http://europa.eu.int/comm/transport/rail/index_en.htm.

3 ASPECTS IN EUROPEAN COUNTRIES

This chapter presents the results of the horizontal analysis we made on the basis of the Monographs (see part C and for the summaries part B). We have included this information in tables that allow for easy comparison per country.

The sections in 3.1 are introductions to the table overview presented in section 3.2. The latter gives a compact overview of the transposed Rail Infrastructure Package. Per topic a country overview is given, including an overview of the type of organisations responsible for implementing along with details of the procedures. A small table is added to each topic describing the relevant organisations in the EU Countries, EFTA countries (Iceland, Norway, Switzerland and Liechtenstein), Romania and Bulgaria. Where possible this topic is complemented with a table giving some additional information of how it works in practice.

Sections 3.3 to 3.5 present the situation regarding train operating companies, Non Governmental Organisations (NGOs) and rail accident statistics. These topics are less suitable for inclusion in a horizontal table overview.

3.1 Organisation of Public Tasks

Below, information about the organisation of public tasks relating to the implementation of the Railway Acquis can be found. This information has been extracted from the 29 Country Monographs. As such, examination of how the relevant public tasks are organised is crucial to determine whether the arrangements put in place satisfy the requirements in the Railway Acquis.

The following elements are covered using a similar categorisation as the country monograph template:

Separation, licensing and charging

- Safety regulation
- Licensing
- Track access
- Setting of infrastructure charges
- Developing the capacity allocation framework
- Appeal to decisions related to charging and capacity allocation

Interoperability and safety

- Authorisation of (sub)systems
- Notified bodies

State aid, competition and public service obligations

- Competition issues
- Evaluation of annual PSO claims/economic disadvantages

Statistics

- Collection of financial data from railway undertakings
- Collection of financial data from infrastructure managers
- National contribution to Community statistics on rail transport to Eurostat

3.1.1 Safety regulation

The key provision in Dir 2001/12/EC regarding safety regulation (Article 7) requires that Member States shall ensure safety standards and rules are laid down, rolling stock and railway undertakings are certified accordingly and accidents investigated. Furthermore, these tasks shall be undertaken by entities that do not provide rail transport services themselves and are independent of bodies that do so in order to ensure equitable and non-discriminatory access to the infrastructure.

Table 1 provides information about organisations responsible for safety regulating tasks. It distinguishes between: (1) certification of rolling stock and railway undertakings and (2) investigation of accidents respectively. Table 2 provides information about which type of organisations are responsible for safety regulation and investigation of accidents. Table 3 shows which railway undertakings have safety certificates.

The first table demonstrates that safety regulation is organised in a number of different ways across the European countries: In general, certification of rolling stock and railway undertakings respectively are organised within the same organisation. However, it is important to emphasise the specifics concerning new rolling stock and in-use rolling stock. In the case of the former, new rolling stock, which would be authorised under the Interoperability directives, Notified Bodies may be involved followed by final authorisation by the Supervisory Authority. A safety authority/ Regulator is likely to have a more substantial role in the case of in-use rolling stock. A number of countries have organised safety certification and accident investigation within one organisation. These countries include: Germany, Greece, Ireland, Portugal, Estonia and Romania. The type of organisation varies though:

- In Greece, the infrastructure division of the Greek Railway Company is responsible for all safety regulating tasks, although this will change over the next 6-8 months following the Presidential Decree of 7th March 2005 that transposed the 1st Railway Infrastructure Package.

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- Other countries have set up special inspectorates to be in charge of safety regulation (e.g. Ireland). In the case of Ireland the Railway Inspectorate is currently part of the Department of Transport, prior to the implementation of the Railway Safety Bill.
- Another model is safety regulation being the responsibility of a general railway (regulatory) authority (e.g. Estonia, Germany and Portugal)

For the United Kingdom (which until recently followed the integrated safety organisation model with the Health and Safety Executive responsible for both certification and accident investigation) changes are being implemented in 2005 where responsibility for safety certification will be transferred to the Office of Rail Regulation, while investigation of accidents has been transferred to the Rail Accident Investigation Branch (RAIB) in June 2005.

It should be noticed that in both Denmark and Sweden integrated organisations were until the first half of 2004 responsible for all safety related tasks.

Safety certification is the responsibility of:

- Ministry of transport (e.g. Austria, Belgium, France, Switzerland)
- Infrastructure Manager (e.g. Finland, and Italy)
- Rail safety body (e.g. Netherlands, United Kingdom, Norway, Spain and Poland)
- Other railway authority (e.g. Denmark, Germany, Portugal, Sweden, Estonia, Slovenia, Romania)

The most common structure is that either a rail safety authority or a general railway authority has the responsibility (18 out of 27 countries). These organisations are in the majority of cases administratively placed under a Ministry of Transport.

An important question concerns the extent to which the organisations assigned the task of safety certification are fully independent. In particular, a concern could be that safety certification bodies linked to a Ministry of Transport may not be fully independent of railway undertakings that are state owned creating the possibility of conflict of interest between regulatory responsibility and ownership responsibilities. These issues are considered further in the on-going EC funded RAILIMPLEMENT Study.

Apart from variation regarding the organisation responsible for safety certification other differences exist regarding the duration of safety certificates for railway undertakings, the cost and time of obtaining a safety certificate.

As for the duration of safety certificates it is in most cases indeterminate with re-examination every 3 to 5 years. Although in some countries the safety certificate is valid for 5 years. The procedure for calculating the costs for obtaining a safety certificate varies between Member States, in most cases it is fixed although in some countries it is dependent on parameters such as track and train length condition, amount of time required for inspection. The fixed costs varies

according to the RAILIMPLEMENT study from €7 in the Czech Republic to €30,000 in Italy. The time for obtaining a safety certificate is on average 2 to 2.5 months with the minimum being 1 month and the maximum 10 months (although for Belgium and France the time for obtaining the safety certificate is longer: 1.5 and 2 years).

Table 1 *Safety Regulation*

	Certification of rolling stock and railway undertakings	Investigation of accidents
Belgique/België (Belgium)	The Minister of Transport and Mobility issues the safety certificate, however all the technical advice on the applications is done by the Belgian infrastructure manager (INFRABEL).	After each accident the Regulatory Service for Transport by Railway and experts working on its behalf immediately perform an investigation and send the respective report to the Minister and the delegate and to the infrastructure manager (INFRABEL). In case of disturbances INFRABEL takes all necessary measures to re-establish the situation. INFRABEL establishes an intervention plan and acts accordingly.
Česká Republika (Czech Republic)	Rail Authority responsible for issuing carrier certificates and railway vehicle type approval (+ approvals of changes in the railway vehicle, representing a deviation from the approved type).	Rail Safety Inspection is responsible for investigation of accidents. It identifies defects endangering the safety of railway operations or railway services, their causes and persons responsible, in compliance with the relative legal regulations, for their occurrence or duration. It requires their originators to eliminate and remedy any identified defects, their causes and harmful consequences and imposes measures for their elimination and remedy.
Danmark (Denmark)	National Rail Authority (since July 2004). Previously, the task was undertaken by the Railway Inspectorate.	Accident Investigation Board for Civil Aviation and Railways (since July 2004). Previously, the task was undertaken by the Railway Inspectorate. The Accident Investigation Board determines the extent and form of the investigations required. It has the power to get access to any information of relevance for the investigation and can question any person that may have information of importance for the investigation.
Deutschland (Germany)	Federal Railway Administration – Eisenbahn-Bundesamt (EBA). EBA checks the technical elements of the railways on a periodical basis according to EBO/ESBO/ESO regulations.	Federal Railway Administration – Eisenbahn-Bundesamt (EBA) investigates the facts and circumstances at the place of the accident and ensures that any relevant data will not be destroyed during the period in which the investigation takes place;

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	Certification of rolling stock and railway undertakings	Investigation of accidents
Eesti (Estonia)	The Estonian Railway Authority is responsible for issuing safety certificates to railway undertakings and for approving the conformity of rail vehicles with the established requirements at any time.	The Estonian Railway Authority organizes investigations of railway accidents. In case of a big accident, a special state crisis commission will be formed (police, ministry, ERA, operators). According to the new law, the Ministry of Transportation and more precisely, the new Railway Inspectorate will conduct the accident investigation. ERA will mainly play the role of technical expert and may be invited to assist in the investigation of the accident.
Ellas (Greece)	The "Technical Exploitation" department of the Hellenic Railways Organisation – OSE S.A issues all the necessary documents that certify the safety specifications for all types of rolling stock that enter the Greek territory and run on the network of OSE. This will change during 2005 following the Presidential Decree of March 2005.	Hellenic Railways Organisation – OSE S.A. OSE is by law responsible for investigation of all railway accidents. This will change during 2005 following the Presidential Decree of March 2005.
España (Spain)	ADAF, the certification authority, acting on behalf of the Ministry of Development, is responsible for certification of rolling stock and railway undertakings. In the future it is expected to be transferred to a specialised body – a rail regulator.	Ministry of Development (MdF) is responsible for investigating any accident that resulted in casualties.
France (France)	The Ministry issues the certificate based on a judgement of the RFF. The provision that RFF develops its opinion on a technical report established by the SNCF has been abolished by a 'décret' of 10 February 2005.	SNCF on behalf of RFF. There must be information exchange between SNCF, RFF and the Ministry. In case of high or imminent risk for the safety, SNCF can on behalf of RFF, decide to precautionary immobilise a convoy. In this case SNCF immediately informs the RFF and the Ministry.
Ireland (Ireland)	Railway Inspectorate. At the moment no approval required but changes will be implemented once the Railway Safety Bill has been adopted.	Current situation: Railway Inspectorate investigates railway accidents as directed by the Minister of Transport. Future situation: The Railway Incident Investigation Unit, which will be functionally independent of the Commission. The Unit will investigate all serious railway accidents. The Unit may, as part of its investigation of a railway accident, investigate the role and decisions of the Commission, as safety regulator, leading up to the incident.
Italia (Italy)	Rete Ferroviaria Italiana SpA – RFI (Italian Infrastructure Manager) (CESIFER part of the Technical Directorate) issues safety certificates to railway undertakings.	Ministry of Transport and RFI both constitute a special Commission in case of accidents.
Latvija (Latvia)	Railway Technical Inspection is responsible for safety certification. A safety certificate shall be issued to carriers that meet those safety requirements, which deal with carrier personnel, the rolling stock to be utilized and the internal structure of the undertaking.	Technical Railway Inspection is responsible for investigation of accidents. The Cabinet though determines the procedures for investigating railway traffic accidents that takes place.

	Certification of rolling stock and railway undertakings	Investigation of accidents
Lietuva (Lithuania)	A commission led by the State Railway Inspectorate. An operator or infrastructure manager must adopt a yearly Traffic Safety Plan.	Investigation of rail accidents is done by a special commission that will be formed under the order of the Minister of Transport. A representative of the State Railway Inspectorate must be included in the commission in case of a railway accident.
Luxembourg (Luxembourg)	Ministry of Transport; the applicant railway undertaking submits a written application together with all supporting documents required by the Grand-Duchy Regulation of October 24, 2003 to the member of government having railway matters under his/her responsibilities.	CFL (operator) investigates accidents. A Special Investigation Commission is created to find out the causes of the accident. The Special Investigation Commission has a right to access the place of an accident and all the stakeholders involved in an incident. Investigators and the experts are appointed by the minister according to procedures' adopted by the Grand-Duchy Regulation of 6 June 2003.
Magyarország (Hungary)	The Central Inspectorate for Transport provides railway undertakings with safety certificate and infrastructure managers with safety authorisation based on their application and attached documents.	Detailed reports are being made within the organisation of the railway companies and sent to the police. For all accidents with injuries or significant material damage, investigation procedure is carried out by the police.
Nederland (Netherlands)	Transport Inspectorate, division Rail. The IVW decides in 13 weeks after applying if the certificate is to be issued.	Dutch Transport Safety Board (RVTV) is an independent organization created for investigation of transport accidents and incidents. The RVTV's aim is to find the accident cause, not to put blame on any party. RVTV employees have the authority to investigate accidents, with special research authority.
Österreich (Austria)	Ministry of Transport – Operation means and railway equipment unit for rolling stock Infrastructure manager for general safety conditions and safety certification	Ministry of Transport – Technique and safety unit in co-operation with the concerned railway operators. In future: "Verkehrssicherheitsbehörde" (transport safety authority) that is functionally independent from the ministry (in terms of the new safety and security guidelines of the Second Railway package).
Polska (Poland)	Railway Transport Office. The rolling stock and railway undertakings must comply with specific technical regulations (that are in accordance with such regulations of EU) in order to be issued a safety certificate.	Railway Transport Office. The Minister of Infrastructure will define the detailed rules of reporting about catastrophes and railway accidents, as well as the rules and the mode of post-accidental commission, aiming at reduction of consequences of above mentioned disasters and railway accidents.
Portugal (Portugal)	The Railway Regulator (INTF) issues certificates and guards the compliance of the Train Operating Companies.	INTF is responsible for accident investigation whenever considered necessary or when requested by the relevant Ministry.
Slovenija (Slovenia)	Newly established Public Agency for Rail Transport will be responsible for safety certification.	The Slovenian Railway System is under reorganisation and the public railway infrastructure manager (Public Agency for Rail Transport), authorised manager and the carrier must cooperate in investigation of accidents.

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	Certification of rolling stock and railway undertakings	Investigation of accidents
Slovenská Republika (Slovakia)	State Railway Administration; foreign rolling stock must be in accordance with conditions given in ŽSR regulations	Investigation of accidental cases is the task of the railway operator ŽSR. Within an agreement between ŽSR and the transport operator duties and procedures in case of accident are specified.
Suomi/Finland (Finland)	RHK – the Finish Rail Administrator (Infrastructure Manager)	Accident Investigation Board (AIB). The AIB is located within the Ministry of Justice. The AIB investigates all major accidents (rail, aviation, maritime) and incidents. The purpose of the investigation of accidents is to improve safety and to prevent future accidents.
Sverige (Sweden)	The Swedish Rail Agency is responsible for the issuing of safety standards to railway undertakings. Rolling stock must be approved by the Swedish Rail Agency before being used on the network.	Swedish Rail Agency. Accidents involving personal injury, property losses of at least SEK one million and incidents that could lead to equivalent damage must be reported to the Swedish Rail Agency..
United Kingdom (United Kingdom)	The Health and Safety Executive accepts safety cases from the infrastructure manager and the railway undertakings. Railway Safety and Standards Board assesses the railway undertakings' safety cases. Network Rail issues safety certificates for rolling stock (an authorisation from HSE). It is expected that during 2005 HSE's railway safety tasks will be transferred to the Office of Rail Regulation.	A new body, the Rail Accident Investigation Branch (RAIB), part of the Department for Transport is the main entity responsible for accident investigations since 13 June 2005. RAIB took over responsibility for accident investigations from the Health and Safety Executive.
Bългария (Bulgaria)	The Directorate General Railway Inspectorate at the Executive Agency Railway Administration is responsible for issuing the certificate of safety of the railway undertakings, through the State Railway Inspection, after the assessment of all the required conditions by the private Railway Transport Technological Institute, which is the body licensed to issue the certificate of safety of the rolling stock.	In case of an accident, an ad-hoc Committee is established, with members from the Executive Agency Railway Administration of the Ministry, the railway operators and the infrastructure company.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	The Railway Inspectorate is the responsible body for the safety certification of railway undertakings. Rolling stock also has to be approved by the Inspectorate.	Accident Investigation Board, a separate administrative body subject to the authority of the Ministry of Transport and Communications. There are discussions to expand this commission with road and possibly sea transport accidents.
România (Romania)	The Romanian Railway Authority (AFER) is the technical special body of the Ministry of Public Works, Transport and Housing, issuing safety certificates for new railway undertakings and authorises the use of rolling stock.	Romanian Railway Authority. AFER elaborates evidence and statistics of railway accidents and events on the basis of reports.

	Certification of rolling stock and railway undertakings	Investigation of accidents
Schweiz/Suisse (Switzerland)	Federal Office of Transport (part of the Ministry of Transport). The railway undertakings are responsible for the safety of exploitation of railway installations and rolling stock. They have to draw up the necessary prescriptions that ensure a safe exploitation and present it to the Federal Office of Transport to get certified.	Service for Investigations (Service d'Enquete). A Service of Investigation is set up in case of accidents to examine from a technical viewpoint the reasons and circumstances of railway accidents and incidents that could have led to an accident. The Confederation (government) regulates the modalities, especially the composition of the Service of investigation, the procedure and the publication of the results.

Responsibility for investigation of accidents also highlighted significant variation between the countries. In a number of countries (5) rail safety authorities have the responsibility for accidents investigation. This is for example the case in Ireland, Netherlands, Sweden, Norway, Czech Republic and Latvia. In some cases the responsibility for accident investigations rests with railway (regulatory) authorities (7).

However, the most common structure for accident investigation is “other” as shown in Table 2. This covers two main forms: (1) those cases where the operator is responsible for accident investigation, e.g. Greece (in the process of being changed), France, Hungary, Slovakia, Luxembourg and Spain; (2) cases where a special commission are set up (e.g. Italy, Switzerland, Bulgaria, Lithuania) or general transport accident investigation commissions (recently introduced in Finland and Denmark).

Table 2 *Overview of organisation responsible for safety regulation*

	Certification of rolling stock and railway undertakings		Investigation of accidents
Infrastructure manager (2)	IT, FI	Infrastructure manager (0)	
Rail safety authority (8)	LV, LT, ES, HU, NL, UK, BG, NO	Rail safety authority (5)	CZ, LV, NL, SE, NO
Railway authority (10)	CZ, DK, DE, EE, PL, PT, SI, SK, SE, RO	Railway authority (7)	BE, DE, EE, PL, PT, RO, SK
Ministry of Transport (6)	BE, FR, IE, LU, AT, CH	Ministry of Transport (4)	IE, AT, ES, UK
Other (1)	EL	Other (11)	DK, EL, FR, IT, LT, LU, HU, SI, FI, BG, CH
Total	27	Total	27

Note safety certification: Iceland and Liechtenstein were not allocated on a category.

Note re. Investigation of accidents: Iceland and Liechtenstein were not allocated on a category.

As part of the analysis data were also collected regarding whether railway undertakings are required to have safety certificates in order to be allowed to operate (Table 3). For the vast majority of countries railway undertakings do hold safety certificates. The exceptions according to the information collected are: Ireland, Switzerland (in case of smaller operators), Latvia (in case of LDZ cargo) and the United Kingdom (safety cases are used).

Table 3 *Safety certificates for railway undertakings*

	Safety certificates		Safety certificates
Belgique/België (Belgium)	All railway undertakings have safety certificates	Österreich (Austria)	A safety certificate is mandatory for access to the network
Česká Republika (Czech Republic)	All railway undertakings have safety certificates	Polska (Poland)	All railway undertakings have safety certificates
Danmark (Denmark)	All railway undertakings have safety certificates	Portugal (Portugal)	All operators possess safety certificate
Deutschland (Germany)	All railway undertakings have safety certificates (although EBA as yet do not require a safety certificate)	Slovenija (Slovenia)	Main operator has safety certificate
Eesti (Estonia)	All railway undertakings have safety certificates	Slovenská Republika (Slovakia)	ZSSK (main operator) has a safety certificate
Ellas (Greece)	OSE S.A has a safety certificate	Suomi/Finland (Finland)	VR Ltd (only licensed operator) has a safety certificate.
España (Spain)	All railway undertakings have safety certificates	Sverige (Sweden)	All railway undertakings have safety certificates
France (France)	Two safety certificates have been issued in France.	United Kingdom (United Kingdom)	All railway undertakings have safety cases [Northern Ireland]: a system of safety cases is being introduced similar to the framework in Great Britain
Ireland (Ireland)	No requirement for the safety certification of the heavy rail rolling stock and no requirement for the safety certification of the railway undertakings apart from those provided under Directives 2001/12/EC and 2001/13/EC. This situation will change once the independent railway safety regulator (the Railway Safety Commission) has been established following the enactment of the Railway Safety Bill 2001.	Bălgarija (Bulgaria)	Bulgarian State Railways EAD has a safety certificate
Italia (Italy)	All railway undertakings have safety certificates	Ísland (Iceland)	n.a

	Safety certificates		Safety certificates
Latvija (Latvia)	All operating companies have safety certificates, except LDZ cargo	Liechtenstein (Liechtenstein)	n.a
Lietuva (Lithuania)	LG does not have a safety certificate.	Norge (Norway)	All railway undertakings have safety certificates
Luxembourg (Luxembourg)	CFL does have a safety certificate	România (Romania)	Yes
Magyarország (Hungary)	No decisions on safety certificates have been taken yet.	Schweiz/Suisse (Switzerland)	Largest operators do have safety certificates
Nederland (Netherlands)	All operators have safety certificates		

3.1.2 Licensing

The task of licensing railway undertakings relates to Directive 95/18 as amended by Directive 2001/13/EC. Our analysis shows a high degree of variation between the countries regarding how the licensing procedures are specified:

- Often, though, the Ministry of Transport is allocated this task (e.g. Austria, Belgium, Finland, France, Ireland, Italy, Spain, Switzerland, Bulgaria, Lithuania, Poland). In total 10 EU /EFTA countries and 3 new member states/ candidate countries are using this model
- In other cases, railway regulatory authorities are responsible for licensing (e.g. Denmark, Germany, Portugal, Sweden, United Kingdom, Czech Republic, Estonia, Latvia and Romania).
- A few countries have allocated the licensing responsibility to transport safety bodies (e.g. Hungary, Netherlands and Norway)
- In Greece, until this year, the infrastructure division of the national railway company (OSE) had the responsibility. This has changed by the Presidential Decree of 7 March 2005 which transposed Directives 2001/12/EC, 2001/13//EC and 2001/14/EC, where the responsibility for licensing was transferred to the Ministry of Transport and Communications.

Of importance for access to the railway network across Europe it should be noted that the licensing process has not reached the same level among the EU Member States. The system in Great Britain has specified licensing arrangements for all main players in the industry, while other Member States have implemented the required legislation though without setting up the process for actually licensing railway undertakings. Also problems in terms of entry barriers in certain countries where railway undertakings from other countries require further authorisation (Italy, Hungary and Luxembourg).

The spectrum of experience with applying licensing regimes in the countries covered is wide, ranging from the situation in Greece, where the issuing authority has never faced an application

to the situation in some of the EU countries where the procedure has been applied for a number of railway undertakings, e.g. the situation in the UK, Sweden and Denmark. The licensing bodies and regimes are described in Table 4, with a summary in Table 5.

Table 4 *Licensing*

	Responsible body	Licensing regime
Belgique/België (Belgium)	The Minister of Transport and Mobility. The Minister can ask the judgement of any expert in railway matters, provided the expert has no conflicts of interest	A railway undertaking with a legal entity in Belgium and that does not dispose of a license has to request it from the Minister. The request must specify the type of services (conventional passenger, high-speed passenger, freight and combined). The Minister has to respond within 90 days from the receipt of documents. The license is re-examined every five years by the Minister. Annual fee of an operating license is €2500 which is valid for 5 years.
Česká Republika (Czech Republic)	Rail Authority	The Rail Authority deals with licensing and safety certification. It shall decide on granting a license within 60 days from the delivery of the application for granting a license. The license costs approx. €650. A license is usually valid for the entire network and for passenger and freight transport at the same time. Licenses are valid for various time periods, depending on the decision of the Rail Authority (usually indefinitely). Review takes place every five years. No specific requirements are in place as to the sum of insurance coverage or paid up capital..
Danmark (Denmark)	National Rail Authority from July 2004.	Railway undertakings should apply for licenses to the National Rail Authority. The Authority will then issue a license if specified requirements are fulfilled. An operator does not only need a license, but will also require the attribution of capacity, to effectively run trains on the network.
Deutschland (Germany)	Federal Railway Administration (EBA) issues licenses for DB operators and railway operators seated in another country. Other railway companies are licensed by the competent authorities of the Länder (state authorities)	EBA grants admission to the profession for railway operators as well as railway infrastructure companies. Requirements for admission are reliability, financial capability and professional competence. A decision regarding the issuing of a license for a railway company can be made within 14 days following the application. The costs of licensing depend on the time effort within the EBA. The term of validity of this admission is 15 years for the operators and 50 years for the infrastructure companies or until the companies do not fulfil one of the requirements.

	Responsible body	Licensing regime
Eesti (Estonia)	Estonian Railway Authority	<p>The Railway Administration decides on the issue of an operating license or refusal to issue an operating license within one month after the submission of the application; a license costs €3480. Operating licenses shall be issued for an unspecified term.</p> <p>A number of requirements have to be fulfilled in order to be granted a license, including: applicant not declared bankrupt or committed a crime or offence; sufficient professional knowledge to ensure safe operation of the railway undertaking; operational requirements; previous operational licenses not revoked within the last 3 years.; liability insurance.</p>
Ellas (Greece)	Ministry of Transport and Communications	<p>Presidential Decree of 7 March 2005 transposed the 1st Railway Infrastructure Package. Railway undertakings which are or will be established in Greece are obliged to obtain a license from the Ministry of Transport and Communications. A license shall be valid throughout the territory of the Community. Decisions on licenses are to be taken within 3 months from the submission of the required documentation. Greece recognises licenses issued by licensing authorities in other Member States that conform to the requirements of the EC Directives. There is no time limit to the validity of the license.</p>
España (Spain)	Ministry of Development, Directorate- General of Railways and Road Transport (MdF)	<p>Licenses for passenger transport, freight transport or both. In case of denial, the deprived party can appeal to the State Department of Infrastructure and Transport whose ruling is final. Railway undertakings will only be allowed to run those services explicitly recognised in their licences. Cost associated to a request for a licence will be €10,000. For extensions, renewals or revisions the price will be €5000.</p>
France (France)	Ministry of Transport	<p>Applicants submit a document that specifies that the applicant fulfils the defined conditions to the Ministry. The document has to be in the French language. The Minister of Transport issues licenses after having created a committee formed of three members, which task is to verify that the railway undertaking conforms for the issues of a license. Licenses are issued free of charge within 3 months after all the relevant documents are made available to the Ministry. The license is valid for both passenger and freight transport. The Ministry re-examines the license every four years. A license holder has to reapply if: (1) modification of the legal situation (e.g. merger), (2) services are interrupted for six months or are not taken up within six months, (3) license holder intends to offer other services than those for which the license is valid.</p>

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	Responsible body	Licensing regime
Ireland (Ireland)	Minister, Department of Transport	After considering an application, the Minister shall issue a licence to the applicant railway undertaking if he or she is satisfied that the undertaking will be able, at all times during the currency of the licence, to meet: (1) the requirement of good repute, (2) the requirements relating to financial fitness, professional competence and cover for civil liability. The decision of the Minister to grant a licence can take up to 3 months from the date of receipt of all relevant information. The cost associated with the issuing of the licence or with reviewing a licence is determined by the Minister of Transport but these are not yet published. No finite period of validity for the licence is specified but the Minister can impose conditions and can call it for review in the event of change in the licensee's situation.
Italia (Italy)	Ministry of Infrastructure and Transport (MIT)	Once a railway undertaking possesses all the required documents (solvability, professional competence, record of stability, proof of good state of rolling stock maintenance) they can apply for a licence from MIT provided they have the required personnel and a liability insurance for any damages. Within three months of the application, MIT shall issue the licence. If it decides to deny the licence, it must issue a written explanation within the same period. The licence must indicate what type of railway service the railway undertakings will provide. Cost of a licence is €3000. The licence has an unlimited validity period. A railway undertaking who has obtained a licence also requires an authorisation certificate in order to allow the undertaking to operate on the network.
Latvija (Latvia)	Public Services Regulatory Commission (Public Utility Commission) (passenger traffic) State Railway Administration (cargo traffic)	Operating licences are issued for five years and are issued within 30 days. Operators who have submitted request to one of the mentioned organisations, who can ensure the basic conditions to perform train traffic and the participation of railway specialists, who have perfect reputation and a stable financial position can receive an operating licence. Mere possession of a carrier licence for the conduct of carriage by rail does not give right of access to the railway infrastructure. A carrier licence shall be issued for a period of five years.
Lietuva (Lithuania)	State Railway Inspectorate	The railway undertaking submits application to SRI which will be analysed and given (dis)approval within 30 days. Duration of licence is unlimited. If the operator was inactive for 6 months after issuing the licence it will be withdrawn. The following types of licences are available: licence of the carriage of passengers and luggage by railway transport in the territory of the Republic of Lithuania; licence for the carriage of passengers and luggage by railway transport in international routes; licence for the carriage of freight by railway transport in international routes; licence for the carriage of freight by railway in the territory of the Republic of Lithuania.
Luxembourg (Luxembourg)	Member of Government having railway matters under his/her responsibilities	The applicant railway undertaking submits a written application together with all supporting documents required. The Minister of Transport issues licences after having created a committee formed of three members, which task is to verify that the railway undertaking conforms for the issue of a licence. In order to obtain a

	Responsible body	Licensing regime
		licence a railway undertaking needs to have its operational administrative and financial headquarters in the principality and to have the technical and financial requirements, which will be verified by the Ministry. Also the railway undertaking needs to provide an audited certificate of the most recent EN ISO 9001 within three months after its receiving of the licence. Cost of licence is €4000 per year and it takes 3 months to be issued. There is only 1 operator with a license in Luxembourg (CFL). Directive not implemented.
Magyarország (Hungary)	Central Inspectorate for Transport (Railway Inspectorate)	Standard procedure defined by Act on Public Administrative Proceedings with a modified deadline (90 days instead of 30). Assessment based on goodwill, adequate financial basis, professional suitability. As is the case in some other Member States, Hungary has a reciprocity clause in its licensing policy and will only grant licenses to foreign railway undertakings if the country of origin of the undertaking requesting a license also has an open market.
Nederland (Netherlands)	Ministry of Transport	The operator has to have a “good name”, financial capacity, professional knowledge and insurance. Two categories of licenses are available: one for public passenger transport and one for all the rest. National licenses exist. The Ministry of Transport (IVW) has to decide in 13 weeks.
Österreich (Austria)	Ministry of Transport, Innovation and Technology – Unit “Vollzug”	To gain a license for running trains in Austria a railway company has to fulfil: the railway company must be located in Austria; a liability insurance or equivalent is necessary; operational prerequisites like certificated vehicles, personnel, adequate organisation; reliability of railway operations. The time taken to obtain a license is 10 months and the costs associated with licensing are €5,000.
Polska (Poland)	Minister of Transport	The applicant for the license to run the railway line should (infrastructure manager): (1) have legal title to operate the railway line using particular technologies, (2) employ personnel having relevant professional qualifications, (3) have a guarantee of adequate performance for the economic activity (financial capability), (4) The applicant for the license to perform railway services should: (1) use rail vehicle satisfying relevant conditions specified in technical regulations, (2) employ personnel having relevant professional qualifications, (3) have a guarantee of adequate performance for the economic activity covered by the application. The duration of the license is unlimited. The licence costs €1750.
Portugal (Portugal)	The Railway Regulator, INTF	A railway undertaking should request a license and it will be answered by INTF within 90 days. If not the request is considered denied. A license is valid for 5 years, and can be extended by the same period. If the railway undertaking is inactive for more than 6 months, the license may be withdrawn (unless the company was founded less than a year before). There are 8 types of licences 4 for passenger transport and 4 for freight transport. The licence for operating passenger transport costs between 37,500 and

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	Responsible body	Licensing regime
		75,000€. For freight the costs are between 25000 and 50000€.
Slovenija (Slovenia)	Newly established Public Agency for Rail Transport responsible for licensing of railway undertakings.	The railway undertaking has to prove its financial stability, its technical competences, and it has suitably qualified personnel. It also needs to have adequate insurance. A licence is valid for as long as the carrier fulfils the conditions and requirements in the relevant legislation. Currently, the only railway undertaking is the incumbent and no other railway undertakings have applied for licences. Time to issue licence between 4 and 6 months.
Slovenská Republika (Slovakia)	State Railway Administration	ŽSR comments on the application of the future operator for a licence from the view of technical norms and regulations of ŽSR. The licence itself is issued by State Railway Administration. The State Railway Authority shall decide on the licence to be granted within 60 days. Depending on the requirements of the railway undertaking, the licence can be granted for the entire network or for a specific route or can also be refused if there are already capacity bottlenecks. The fees amount to approximately €370. Unused licences are not revoked. As a general rule, they are reviewed every five years.
Suomi/Finland (Finland)	Ministry of Transport and Communications (MoTC)	The MoTC issues an operating license for the operation of rail traffic to applicants established in Finland. The Ministry reviews the operating license and its conditions every five years. An operating license issued in one state belonging to the European Economic Area is valid throughout the territory of the EEA. This role will be transferred to a safety authority to be created in September 2006.
Sverige (Sweden)	Swedish Rail Agency	A Swedish rail company is required to have a permit in order to operate domestic rail traffic and a license in order to operate rail traffic in some other EC state. It takes a maximum of 3 months to obtain a licence in Sweden.
United Kingdom (United Kingdom)	Office of Rail Regulation (previously of Office of the Rail Regulator). It is also open for the Secretary of State to issue license. Operators of international services require licenses granted by the International Rail Regulator	The Railways Act 1993 makes it an offence to be the operator of a railway asset without license or a license exemption. There are five different license templates reflecting the different categories of railway asset: <ul style="list-style-type: none"> - network license; passenger license; non-passenger license; station license; light maintenance depot license ORR will not grant a license to a railway operator without accepted safety case or an exemption being place. All licenses require that the operators enter into certain legally binding arrangements such as: insurance against third party liability; participation in approved claims allocation and handling arrangements; participation in British Transport Police Agreement; Participation in arrangements for through-ticketing, telephone enquiry bureaux, settlement and conditions of carriage; arrangement for handling complaints. Licenses are normally determinable on a long period of notice, such as 10 years. [Northern Ireland]: Licensing only for services under 95/18.
Bългария (Bulgaria)	The Executive Agency Railway Administration within the Ministry	The Minister determines the licensing procedures. The license does not have an explicit duration, but it must be

	Responsible body	Licensing regime
	of Transport and Communications is responsible for licensing new railway undertakings	reviewed every five years. The Law does not make any distinction for application for a license in terms of nationality.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	Ministry of Transport and Communications	The rail network (approx. 9km) is operated by the Austrian Federal Railways based on a license from 13 June 1977.
Norge (Norway)	Railway Inspectorate	The railway inspectorate issues licences. The duration of a licence depends on the companies' applications. The Railway Inspectorate prepares the application for the licence which is then approved by the Ministry. They are valid up to the date requested by companies as long as they fulfil the obligations set by the Ministry of Transport and Communications. The lead time for obtaining an operating licence is not longer than 3 months. No charges apply.
România (Romania)	The Romanian Railway Authority (AFER) is the technical special body of the Ministry of Public Works, Transport and Housing, issuing licenses for new railway undertakings.	The applicant operator must fulfil certain requirements such as to have registered the proper rolling stock, trained personnel, financial capacity, and in general, to be able to prove that it can operate efficiently, with safety, respecting all economic and social rules.
Schweiz/Suisse (Switzerland)	Confederation – for licenses to construct and exploit railway infrastructure Federal Office of Transport – for rights to use the railway infrastructure of another railway undertaking	The authorisation to use the infrastructure of another railway undertaking is issued under the following conditions: <ul style="list-style-type: none"> - the applicant is organised in a way that guarantees the well functioning and the safety of operations - necessary qualifications of staff re. safety - rolling stock fulfil safety requirements - sufficient financial capacities - labour rights and labour conditions respected - safety measures respected The authorisation is granted for a maximum of 10 years and can be renewed.

Source: ERAIL information; RAILIMPLEMENT

Table 5 *Overview of organisation responsible for licensing*

	EU15, EFTA	New EU members and candidate states
Infrastructure manager	-	-
Rail safety authority	NL, NO (2)	HU (1)
Ministry of Transport	BE, EL, ES, FR, IE, IT, LU, AT, FI, CH, LN (11)	LT, PL, BG (3)
Other Railway Regulatory authority	DK, DE, PT, SE, UK (5)	CZ, EE, LV, SI, SK, RO (6)
Total	18	10

Note: No data entry for Iceland.

3.1.3 Track access

Provisions concerning track access are set out in Directive 2001/14/EC. In particular, Article 13 specifies that infrastructure capacity shall be allocated by an infrastructure manager.

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In general, responsibility for track access is with an infrastructure manager. A total of 8 EU/EFTA countries and 8 new member states / candidate countries have allocated responsibility to the infrastructure manager. These include Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Portugal, Spain, Sweden, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania and Poland.

In some cases the task is allocated to the Ministry of Transport, e.g. Norway and Liechtenstein. The Ministry of Transport is only given this task for one of the candidate countries (Romania).

In some cases responsibility for track access is given to an infrastructure division within a national rail company (e.g. Greece, Luxembourg and Austria). In the United Kingdom, the Office of Rail Regulation has to approve all track access agreements between railway undertakings and the infrastructure manager in order to be valid. In Switzerland track access is the responsibility of railway undertakings as rail companies are in general vertically integrated.

The procedures for track access contain in many cases priority rules in case of overlapping demands for capacity (e.g. the case of Belgium, Denmark, France, Sweden, Norway). Key characteristics include transparent and non-discriminatory frameworks.

A description of the track access bodies and procedures is given in Table 6 and a summary in Table 7.

Table 6 *Track Access*

	Responsible body	Procedures
Belgique/België (Belgium)	Infrastructure Manager (INFRABEL)	As a prerequisite for the allocation of capacity, Railway Undertakings need to hold a Licence for operation on the network and a Safety Certificate. A request for capacity has to be introduced to Infrabel, the infrastructure manager, using a specific form sheet that is attached to the Network Statement (Document de Reference du Reseau). Infrabel establishes a contract under private law with the Railway Undertaking based on the Network Statement which sets out the applicable framework. The contract can either refer to a one-off allocation of capacity or a framework agreement.
Česká Republika (Czech Republic)	Rail authority	Procedures are specified in accordance with the relevant EC Directives (2001/12)
Danmark (Denmark)	Danish National Railway Agency (Market Division)	As far as possible accommodate for applications for capacity put forward by rail undertakings. In case the overall capacity on congested infrastructure is not used for public service traffic the allocation is undertaken according to the following ranking: <ul style="list-style-type: none"> - new applicants for the specific path (1/2 of available capacity not used for public service traffic) - new traffic provided under public service contracts - freight traffic using international freight corridors - fifth priority is given to other traffic

	Responsible body	Procedures
Deutschland (Germany)	The infrastructure managers (DB Netz and DB StUS (stations))	Access is given to railway undertakings licensed according to the national law of an EU member state or a member state to the EEA as long as the reciprocity for access to rail infrastructure of those railway undertakings is guaranteed for railway undertakings settled down in Germany. Access rights go further than required by EC Law.
Eesti (Estonia)	Infrastructure Manager	Rail transport undertakings have the right to use railways designated for public use for the provision of rail transport services without discrimination. A rail transport undertaking and the infrastructure manager shall agree on the details for access, in particular on the time and duration of use, user fee and other conditions of use. Such agreements shall be entered in writing. Foreign railways are allowed to use the infrastructure in Estonia if they establish a subsidiary in the country or conclude an agreement with an owner of infrastructure.
Ellas (Greece)	OSE	OSE provides the access rights to any enterprise that has the right to make rail business in Greece. The system will change during the next 8 months where a entity to be established by OSE will be the infrastructure manager.
España (Spain)	ADIF	The Spanish railway network is split between general infrastructure, port/airport infrastructure and private infrastructure. ADIF must provide access to the general infrastructure to any licensed RU. If infrastructure of the latter two categories is not considered to serve the general interest, it will be subject to regulations of its owner It is forbidden for a RU to enter a legal process regarding capacity allocation. If it does so nonetheless, its license will be revoked.
France (France)	Infrastructure manager, RFF	To get access rail undertakings have to be holder of a license, security certificate and hand in a formal request to RFF. RFF examines the demands. In case of incompatible demands, RFF can propose alternative tracks. In case of several requests for the same slot of infrastructure, the RFF studies all possibilities that will allow conciliating the different demands. If RFF finds it impossible to respond favourably to all requests on a track or section of a track it declares the section for saturated and informs the Ministry of Transport. The allocation of infrastructure has to be ensured on an equal and non-discriminatory basis.
Ireland (Ireland)	Infrastructure Manager (Irish Rail)	Irish Rail, as Infrastructure Manager, is responsible for the management of track access to international groupings or railway undertakings within the scope of Directive 2001/12/EC
Italia (Italy)	Infrastructure Manager (RFI)	The utilisation of railway infrastructure is allowed on the condition that the railway company shows possession of a license (and safety certificate) issued by the relevant authority in Italy or another EU Member State for exploitation of freight and passenger services. In case of mergers all parties must have the required licenses.

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	Responsible body	Procedures
Latvija (Latvia)	Now Infrastructure Manager (LDZ), but later specially designated body (RTI or LRA)	Before being allowed to use railway infrastructure the operator must sign a contract with the railway infrastructure manager and obtain a safety certificate. The Latvian Railway Law allows foreign railway operators to use the national rail infrastructure. Foreign operators are bound by the same rules for acquiring track access as do national operators.
Lietuva (Lithuania)	In future this function will be delegated to the newly established IM.	A railway operator will have access to tracks provided it has a license to operate and a safety certificate and provided it has signed a public transport contract with a railway infrastructure manager.
Luxembourg (Luxembourg)	Société Nationale des Chemins de Fer Luxembourgeois (CFL) (Infrastructure division of CFL)	Applicants for capacity submit a request to the infrastructure manager (CLF on behalf of the Government). Requests can either be introduced directly or through a One-Stop-Shop (OSS). Requests can be introduced in French, German or English by mail, fax or e-mail.
Magyarország (Hungary)	Railway Capacity Allocation Company	Before preparing the Network Statement the Office for Railway Capacity Allocation is negotiating with interested parties
Nederland (Netherlands)	Transport Inspectorate, division Rail (IVW) Infrastructure Manager, ProRail	The operator has to get an access permission in order to enter the network of the administrator. This task is delegated to IVW. Following assessment incl. safety consideration and issue of a safety certificate the operator has to get an access agreement from the infrastructure manager. This is an agreement under private law.
Österreich (Austria)	The operator of the infrastructure mainly Austrian Federal Railways (ÖBB) - the Network Division	The procedures follow the provisions in the Austrian Railway Act and Directive 2001/14/EC (Chapter III – article 13-29)
Polska (Poland)	Infrastructure Manager (PLK)	Since October 1 st , 2001, JSC PKL that has been established on the basis of the former Directorate of Railway Infrastructure has taken over the task of regulating the track access. The contracts between JSC PKL and railway operators are based on typical commercial contracts of civil law nature.
Portugal (Portugal)	The Infrastructure Manager, REFER	Free track access is currently limited to internationally operating train companies only. FERTAGUS (a private operator) operates under a special 30-year concession.
Slovenija (Slovenia)	Newly established Public Agency for Rail Transport will be responsible for track access	Procedure will be available after reorganization
Slovenská Republika (Slovakia)	Infrastructure Manager (ZSR)	IM evaluates the technical compatibility of a new entrant and provides track access.
Suomi/Finland (Finland)	Infrastructure manager, RHK	Access can be given to the state-owned rail network (within an access agreement with RHK): <ol style="list-style-type: none"> 1. Railway undertakings and international groupings of railway undertakings for services in international rail traffic between states in the EEA 2. Rail transport operating subsidiary of the Finnish State Railways for services in domestic freight and passenger traffic and between Finland and Russia. Other undertakings or associations may use individual traffic operating points on the rail network for their services under certain requirements and that an agreement has been made with RHK.

	Responsible body	Procedures
Sverige (Sweden)	Banverket	In order to operate rail traffic on the railway network that is administered by Banverket, the railway undertaking must enter into an agreement with Banverket. This agreement is referred to as a Track Access Agreement.
United Kingdom (United Kingdom)	Network Rail Office of Rail Regulation (previously Office of the Rail Regulator)	Anyone seeking access to the rail network to operate trains needs to enter into contract with the relevant facility owner. For the national rail network the facility owner is Network Rail. The Office of Rail Regulation has an approval and appeals right of track access agreements between Network Rail and railway undertakings. [Northern Ireland]: Track access only under 91/440/EEC
Bългария (Bulgaria)	State Railway Infrastructure Company	It provides access to all the railway companies that – according to the existing laws- have a license and a safety certificate. If the required access or the required slot is not provided then the applicant railway undertaking must appeal to the State Railway Infrastructure Company.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	Ministry of Transport and Communications	The rail network (approx. 9km) is operated by the Austrian Federal Railways based on a license from 13 June 1977.
Norge (Norway)	Ministry of Transport and Communications	Ministry of Transport and Communications provides access to the national railway network in accordance with chapter 2 of the Authorisation Regulations.
România (Romania)	Ministry of Public Works, Transport and Housing	The Ministry has the following duties: (1) to ensure to all users free access, without discriminations, (2) to set rail infrastructure charges to be approved by the Government, (3) to conclude for the State contracts with CFR, and national and/or commercial entities that perform railway transport, (4) grant on the basis of reciprocity access to foreign users, (5) establish rules for granting, suspending or withdrawing of licenses and authorisations.
Schweiz/Suisse (Switzerland)	The railway undertakings concerned agree in a convention the modalities of track access and charging	Switzerland decided not to separate infrastructure management and operations. Railway undertakings have to grant access to other railway undertakings on a non-discriminatory base.

Table 7 *Overview of organisation responsible for track access*

	EU15/EFTA countries	new member/candidate countries
Infrastructure manager	BE, DK, DE, ES, FR, IE, IT, PT, FI, SE (10)	EE, LV, HU, PL, SK, BG, LT (7)
Division of national railway company	EL, LU, AT (3)	-
Ministry of Transport	LI, NO (2)	RO (1)
Other regulatory body	-	CZ, SI (2)
Other	NL, UK, CH (3)	-
Total	18	10

Note: No data entry for Iceland.

3.1.4 Setting of infrastructure charges

The setting of infrastructure charges concerns two issues: (1) the organisation responsible for setting the charges; (2) the principles for the charges. For both issues Directive 2001/14/EC include provisions:

Article 4 of Directive 2001/14 requires Member States to establish a charging framework while respecting the management independence set out in Article 4 of Directive 91/440/EEC. Furthermore, the determination of the charge for the use of infrastructure and the collection of the charge shall be performed by the infrastructure manager, provided the infrastructure manager is independent of any railway undertaking. If the infrastructure manager is not independent of any railway undertaking, then the determination of the charges shall be performed by a charging body that is.

As for the principles for infrastructure charging Articles 7 (principles), 8 (exceptions) and 9 (discounts) of Directive 2001/14/EC provide the details. In particular, charges should “be set at the cost that is directly incurred as a result of operating the train service”. Furthermore, it provides for: (1) cost reflecting scarcity allowed; (2) charges to cover environmental costs allowed; (3) Mark-ups can be allowed; (4) higher charges to cover costs of investment projects; (5) Comparable charges to prevent discrimination; (6) discounts may be allowed. Therefore, although the principle of marginal cost pricing is promoted in the Directive, the allowance for mark-ups to achieve full cost recovery implies deviation from this principle.

Table 8 shows which organisation is responsible for setting of infrastructure charges and the details of the pricing principles, with Table 9 giving a summarised overview. Table 10 shows the existence of infrastructure charging framework and where to find it on the internet (if available).

The setting of infrastructure charges is allocated to different bodies across Europe. However, the Ministry of Transport or other Government Departments/Parliament is in general responsible for this task. The Ministry of Transport decides on the infrastructure charges in Denmark, Finland, France, Italy, Netherlands, Sweden, Norway, Slovakia, Bulgaria and Romania. In Belgium, the Government is responsible for this decision together with involvement of the infrastructure manager, while in Czech Republic the responsibility is allocated to the Ministry of Finance.

In some other countries the setting infrastructure charges is the responsibility of the infrastructure division of the national railway company, e.g. Greece, Ireland and Luxembourg. In Greece, a new entity will be established by OSE as the infrastructure manager during the next 6-8 months.

There are a few countries where direct responsibility for setting infrastructure charges has been given to the infrastructure manager. These include Germany, Lithuania, Austria and Poland. In

the United Kingdom, Portugal, Estonia, Latvia and Slovenia regulatory authorities are determining the charging framework.

A main difference between EU15 and EFTA countries on the one hand and new member / candidate countries is that in the former it is more often the Ministry of Transport with the responsibility for setting infrastructure charges, whereas among the new member states/ candidate countries the organisation most commonly responsible for setting the charges is other regulatory bodies (e.g. the case of Estonia, Latvia and Slovenia).

Table 8 *Setting of Infrastructure Charges*

	Responsible Body	Details of pricing principles
Belgique/België (Belgium)	Infrastructure Manager (INFRABEL) The Government	A variable charge per train km is applied to all traffic (freight and passenger) in the same way. Charges for both freight and passenger trains are differentiated by: quality of train path/ service, speed of train, time of day, weight of train, length of train path. The charging fee is composed of 2 terms: track fee for the access and the use of tracks, installation fee for access and use of platform tracks and some arrival and departure tracks.
Česká Republika (Czech Republic)	Ministry of Finance (proposed by track operator –Czech Railways joint stock company)	The following charges are levied: a variable charge per train km – applied at different rates to both passenger and freight trains; a variable charge per gross ton km – applied at different rates to both passenger and freight trains. No fixed access charge.
Danmark (Denmark)	Ministry of Transport	Railway undertakings pay a capacity charge, a kilometre fee and a charge for passage of the Great Belt and the Sound fixed links (in addition there are environmental subsidies towards freight transport paid by the National Rail Authority as a subsidy per tonne-kilometre). Updated on an annual basis
Deutschland (Germany)	DB Netz AG (track infrastructure manager) and DB StUS (stations)	The following kinds of charges are being levied: variable charge per train km; variable charge per net TKM for freight traffic; an axle load component for freight traffic; a ‘tilting’ component for passenger traffic; A train path reservation fee. From 2005 it is envisaged that freight traffic will switch from having a variable component based on net TKM to one based on gross TKM. Charges for both freight and passenger trains are differentiated by: ability to pay; quality of train path/ service; speed of train; type of train. Only freight charges differentiate by weight of train.
Eesti (Estonia)	Estonian Railway Authority	A fixed access charge (independent of traffic intensity) based on ordered train-kilometres; a variable charge per gross train-km operated (gross-tonne-kilometres include also the weight of locomotives). The dominant type of user (usually freight) pays all of the fixed infrastructure costs.
Ellas (Greece)	Infrastructure division of the national rail company OSE is currently the responsible authority to set infrastructure charges	In accordance with the Presidential Decree of March 2005 the infrastructure manager will establish rules and criteria for the fee for using the infrastructure

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	Responsible Body	Details of pricing principles
España (Spain)	ADIF	Levies are to be paid for the following services: Tariff A: Access charge for the right of usage, covering general costs; Tariff B: Reserving capacity, for the availability of the requested stretch of line, calculated per km of line, type of line, time of the day; Tariff C: For actually using the requested capacity -calculated per km of line, type of line, time of the day; Tariff D: The traffic produced on the railway infrastructure (price calculated as a function of the economic value that the train traffic represents, such as seat-km, tonne-km or TEU-km); Another set of tariffs applies to services related to the use of platforms and station terminals, payable by anyone who uses such services and financially benefits from them
France (France)	Ministry of Transport	A fixed charge (independent of traffic intensity) applied to all traffic in the same way; a train path reservation fee (per path kilometre reserved) applied differently to both passenger and freight trains; a charge for reserving stops at passenger stations (per stop reserved (applied to passenger trains only); a charge for additional services (applied differently to both passenger and freight trains); a variable charge per train km (applied differently to both passenger and freight trains. Variable charges for both freight and passenger trains are differentiated by: time of day, type of train and itinerary. Freight, but not passenger, charges are differentiated by: quality of train path/ service and speed of train.
Ireland (Ireland)	Infrastructure division of the national rail company Irish Rail	Directive 2001/14 has recently been transposed (with certain derogations applying). No formal charging has as yet been established.
Italia (Italy)	Ministry of Infrastructure and Transport, MIT at the suggestion of the infrastructure manager, RFI	A fixed access charge (independent of traffic intensity) applied to all traffic; a train path reservation fee (part of the fixed access charge); a variable charge per train km; a variable charge per train minute spent at nodes. The fixed access charge is differentiated only by quality of track.
Latvija (Latvia)	Public Services Regulatory Commission (PUC) Infrastructure managers	The only kind of charge levied is a variable charge per train km. This is applied differently to both passenger and freight trains.
Lietuva (Lithuania)	Infrastructure Manager - LG	Existing legislation specifies that charges are based on exploitation costs. A legal act is under preparation determining the basis for access charges to depend on (anticipated): transportation volume, axle load, speed of transportation, time of day, and the intensity of traffic.
Luxembourg (Luxembourg)	Infrastructure manager, i.e. CFL	There are 3 main components of a charge: administrative charge, a charge associated with the cost incurred when the infrastructure is used and a charge reflecting the scarcity of the capacity being used.
Magyarország (Hungary)	Railway Capacity Allocating Office	A train path reservation fee (applied at different rates to both passenger and freight); a variable charge per train km (applied at different rates to both passenger and freight trains). Charges for both freight and passenger trains are differentiated by quality of train path/ service and type of train. Additional charges may be levied for capacity constrained sections and for extra services (electricity, stations, marshalling yards etc.).
Nederland (Netherlands)	Ministry of Transport	The following types of charges are levied: a variable charge per train km (applied differently to both passenger and freight trains); a charge per station stop applied to passenger trains only. No fixed component of the charge. Charges are differentiated by market segment and by type of station.

	Responsible Body	Details of pricing principles
Österreich (Austria)	Infrastructure Manager	The following kinds of charges are being levied: a variable charge per train km (applied to all traffic in the same but varying by line according to willingness to pay; a variable charge per gross tonne km (applied to all traffic in the same way). In addition charges for "additional services" such as access to stations and shunting. Freight, but not passenger, charges are differentiated by type of train (linked with ability to pay). Neither freight nor passenger train charges are differentiated by speed of train or weight of wagons.
Polska (Poland)	Infrastructure Manager (PLK) with supervision from Railway Transport Office (RTO)	A train path reservation fee (applied to all traffic in the same way; a variable charge per train km (applied differently to both freight and passenger trains according to km actually run, taking into account the gross weight of freight trains).
Portugal (Portugal)	The Railway Regulator, INTF Infrastructure manager, REFER	The only kind of charge levied in Portugal is a variable charge per train km. This is applied differently to both passenger and freight trains. Charges are differentiated by market segment or network section. Charges are based on the average cost per path given the capacity of the network.
Slovenija (Slovenia)	Newly established Public Agency for Rail Transport will be responsible for it	Charges are levied as a variable charge per train km (applied differently to both freight and passenger traffic). The variable charges for both freight and passenger trains are differentiated by: quality of train path/ service, type of train.
Slovenská Republika (Slovakia)	Ministry of Transport Posts and Telecommunication	The train path price depends on the train path length (quantity discount), the route category, the gross weight of the train and a coefficient of the train type (supplements for out-of-gauge, the need for timetable modifications etc.).
Suomi/Finland (Finland)	Ministry of Transport and Communications	Only one kind of charge is levied as a variable charge per gross tonne km applied to both passenger and freight trains. Charges are differentiated only by gross weight. Freight, but not passenger, charges are differentiated by ability to pay and type of train.
Sverige (Sweden)	Government decides on track charges; Banverket is the authority responsible for billing them	The following kinds of charges are levied: variable charge per gross ton km for both freight and passenger traffic; marshalling charge per shunted truck for freight traffic; accidents per train km charges for both freight and passenger traffic; information to passengers per gtkm.
United Kingdom (United Kingdom)	Office of Rail Regulation (previously termed the Office of the Rail Regulator)	The following kinds of charges are being levied: fixed access charge for passenger trains independent of traffic intensity; variable charges per train km for passenger traffic; variable charges per gross tonne km for freight traffic. Variable charges are differentiated by: speed of train, time of day, weight of train, type of train, vertical forces applied to the infrastructure. [Northern Ireland]: Infrastructure charges under Dir. 95/19/EC are being set by Northern Ireland Railways as infrastructure manager.
Bälgarija (Bulgaria)	Council of Ministers based on a proposal from the Executive Agency Railway Administration of the Ministry	The infrastructure charges shall include the charge for reserving railway infrastructure capacity and the charge for utilising the railway infrastructure. The charge for utilizing the railway infrastructure shall include charges for using the railway track, the electrical installations, the catenary network and facilities and the traffic management and security systems.
Island (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	Ministry of Transport and Communications	The infrastructure charges are determined on the basis of marginal cost pricing principles including external costs (pollution, noise and accidents). However, also the non-discriminatory taxation between modes is taken into account.

	Responsible Body	Details of pricing principles
România (Romania)	Ministry of Public Works, Transport and Housing has the duty to set rail infrastructure charges to be approved by the Government	A fixed access charge (independent of traffic intensity), train path reservation fee; a variable charge per gross ton km; a charge for electric current based on measured usage. The variable charges for both freight and passenger trains differentiated by: ability to pay, quality of train path/ service; speed of train; weight of train. The fixed charge differentiated by: ability to pay, quality of train path/ service, train km planned and actual.
Schweiz/Suisse (Switzerland)	Railway undertakings	Variable charge per train km to cover operation costs; variable charge per gross ton km to cover wear and tear costs; charge for stops in traffic nodes applied differently to large and small nodes. Charge for train path cancellations, discount for low noise rolling stock. Freight train charges are currently subsidised but this is being phased out.

Source: ECMT (2005) Railway Reform and Charges for the Use of Infrastructure

Table 9 Overview of organisation responsible for setting of infrastructure charges

	EU15/EFTA countries	new member / candidate countries
Infrastructure manager	DE, ES, AT (3)	LT, PL, SK (3)
Ministry of Transport	DK, FR, IT, NL, FI, SE, NO (7)	SK, RO (2)
Other regulatory body	PT, UK (2)	EE, LV, HU, SI (4)
Other	BE, EL, IE, LU, CH (5)	CZ, BG (2)
Total	17	10

Note: No data entry for Iceland and Liechtenstein.

A recent study into charging practices among European countries suggested that there are basically four different approaches for the of infrastructure charges (ECMT (2005) Railway Reform and Charges for the Use of Infrastructure):

- Charges based on marginal social costs (**MC**), where the marginal costs represents the additional cost imposed on society as a whole form a marginal addition to train kilometres. This model is adopted in Netherlands and Portugal.
- Departures from pure marginal social cost pricing (adopted due to perceived budgetary problems) may be referred to as marginal cost pricing with mark-ups (**MC+**). A large number of countries mainly among the EU15/EFTA countries use this model: Austria, Bulgaria, Denmark, Finland, France, Sweden, Switzerland and United Kingdom
- The third approach starts from the concept of the infrastructure manager as a commercial organisation required to recover the costs incurred. Those costs not funded by the state are shared out among the infrastructure users. This approach to charging is referred to as full cost recovery after receipt of grants (**FC-**). This model is only used among three Western European countries (Belgium, Germany and Italy)
- The full cost recovery model (**FC**) is adopted in a number of CEEC countries: Estonia, Hungary, Latvia, Poland, Romania, Slovenia.

Table 10 shows where to find the infrastructure charging framework (included in the network statement) in case it is published online. According to Table 10 most countries have introduced infrastructure charging frameworks. Among the EU15/EFTA countries 15 countries have specified the framework for infrastructure charging. The two countries missing from the list are Greece and Ireland. In the case of Greece new legislation (March 2005) provides the basis for developing the infrastructure charging framework. For the new member states/ candidate countries infrastructure charging systems have been introduced in all countries except Slovenia where these are under preparation.

Table 10 Existence of infrastructure charging framework

	Infrastructure charging framework		Infrastructure charging framework
Belgique/België (Belgium)	http://www.railaccess.be/	Österreich (Austria)	http://193.81.167.162/
Česká Republika (Czech Republic)	www.szdc.cz/english/prohlaseni_en1.htm	Polska (Poland)	http://www.plk-sa.pl/en/pliki/regulaminudtras/2004_2005/E_04-05_Rw.1.6.pdf
Danmark (Denmark)	www.banestyrelsen.dk	Portugal (Portugal)	http://www.intf.pt/Uploads/{E2AB5B4D-34E8-4E39-B9BD-AF0B185C8089}.pdf
Deutschland (Germany)	http://www.bahn.de/konzern/netz/produkte/die_bahn_trassen_2001_preise_2003.shtml	Slovenija (Slovenia)	Prepared but not published yet (June 2005)
Eesti (Estonia)	http://europa.eu.int/comm/transport/rail/countries/ee/doc/ee-ns-en-1.pdf	Slovenská Republika (Slovakia)	http://www.zsr.sk/english/index.html
Ellas (Greece)	OSE is currently the responsible authority to set infrastructure charges. This will change in accordance with Presidential Decree of March 2005	Suomi/Finland (Finland)	www.rhk.fi/english/index.html
España (Spain)	Infrastructure charging framework principles available from www.juridicas.com	Sverige (Sweden)	www.banverket.se/templates/StandardTtH_3633.asp
France (France)	http://www.rff.fr/pages/docref/autre/accueil.asp?lg=en	United Kingdom (United Kingdom)	www.rail-reg.gov.uk
Ireland (Ireland)	No formal infrastructure charging framework established.	Bългария (Bulgaria)	http://www.mtc.government.bg/en/About_Ministry/Administrative_Services/rail_tariff.htm
Italia (Italy)	www.rfi.it/pedaggio2000/DocumentiDecreto/Decreto.asp	Ísland (Iceland)	n.a.
Latvija (Latvia)	http://www.ldz.lv	Liechtenstein (Liechtenstein)	See Austria
Lietuva (Lithuania)	The charging framework is set by the rules on levying of charges for the public railway infrastructure approved by resolution No. 610 from May 2004. It will be published in the network	Norge (Norway)	http://www.jernbaneverket.no/marked/Network_Statement/

	Infrastructure charging framework		Infrastructure charging framework
	statement once completed.		
Luxembourg (Luxembourg)	http://railinfra.lu or by fax requesting a CD-ROM at a price of 40 EUR.	România (Romania)	National Company 'Railway Infrastructure' publishes the infrastructure charging framework but it is not online
Magyarország (Hungary)	The Network Statement has to be published in the Official Journal of the Ministry of Economy and Transport four months before the deadline given for applications. No on-line version as yet.	Schweiz/Suisse (Switzerland)	http://mct.sbb.ch/mct/en/infrastruktur_onestopshop_leistung_rne-ns.pdf (German only)
Nederland (Netherlands)	http://www.prorail.nl/ProRail/English/Network+Statement.htm		

3.1.5 Developing capacity allocation framework

Provisions concerning capacity allocation framework are set out in Directive 2001/14/EC. In particular, Article 14 require that Member States establish a framework for the allocation of infrastructure capacity while respecting the management independence specified in Dir. 91/440/EEC.

Table 11 provides information about the responsible body developing the capacity allocation framework and the procedures in place. The detailed information is then summarised in Table 12 showing the type of organisation responsible in the different countries. Finally, Table 13 gives an overview concerning whether the country has a network statement and if available where to find it on the internet.

In most cases this tasks is the responsibility of the infrastructure manager: Austria, Denmark, Spain, Finland, France, Germany, Ireland, Netherlands, Sweden, Norway, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Slovakia and Romania.

However, there are exceptions, e.g. in the United Kingdom the Office of Rail Regulation (previously termed the Office of the Rail Regulator) is responsible for primary capacity allocation and the infrastructure manager (Network Rail) is only responsible for secondary capacity allocation (through the timetabling process).

In Greece and Luxembourg this tasks is facilitated by the infrastructure division of the national railway company (OSE S.A. and CFL respectively). In Greece, the recent Presidential Decree implies that a new entity will be established to be responsible for infrastructure management.

For Belgium the Government is responsible for the capacity allocation framework until the new infrastructure manager is set up during 2005.

Comment on the table: it might be better to indicate if the framework corresponds to what is requested by the directive (A Yes/No reply) as well as the place where the information can be found (ie: the Network Statement), and add any additional provisions adopted in each MS that are relevant to mention. I.e.: compare the information given for BE and CZ.

Table 11 *Developing Capacity Allocation Framework*

	Responsible Body	Procedures
Belgique/België (Belgium)	Infrastructure Manager (INFRABEL)	Requests for capacity have to be introduced to the Infrastructure Manager. The Infrastructure Manager establishes the timetable for the allocation of capacities ('horaire de service'). If it turns out to be impossible to reply positively to all requests or if requests will not be able to be satisfied in the near future, the IM declares the respective infrastructure 'saturated'. The IM immediately establishes an analysis of the capacity, determining the restrictions of capacity and the reasons for this saturation, and proposes methods and measures that will allow to satisfy the request in the near future. If the railway infrastructure has been declared 'saturated', the Infrastructure Manager allocates the capacities according to priority rules established in Section 3 of the Royal Law of 9 December 2004, regarding the execution of chapters VIII and IX of the Royal Law of 12 March 2003: A ranking for different types of trains is defined for specific types of infrastructure. If this does not allow to clearly allocate the capacity, the request that implies the highest amount of revenue for the Infrastructure Manager will have priority.
Česká Republika (Czech Republic)	Railway Infrastructure Administration	The procedures are described within the Network statement and in the Act on rail systems.
Danmark (Denmark)	Danish National Railway Agency	For those paths with conflicting requests DNRA initiates negotiations with the railway undertakings concerned. Subsequently, DNRA prepares after six months a capacity analysis to determine the causes for the excess demand for capacity and possible short and long-term measures that can alleviate the problems. The capacity analysis is after no more than six months taken forward into a capacity improvement plan which on the basis of a socio-economic analysis identifies the measures to be taken forward to enhance infrastructure capacity, incl. a time plan for the implementation of the measures. The capacity improvement plan is developed in consultation with the railway undertakings. Prior to the publication of the capacity improvement plan it has to be approved by the Ministry of Transport. The capacity allocation framework developed by the Danish National Railway Agency should be consistent with the sector planning/traffic planning specified by The National Rail Authority.

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	Responsible Body	Procedures
Deutschland (Germany)	DB Netz, DB StUS (infrastructure companies) Regulated by EBA	Regular interval local and regional (public service) train services do not participate in bidding in the case of a conflict over train paths.
Eesti (Estonia)	Railway infrastructure managers & Railway inspectorate	Infrastructure capacity should be distributed by the IM first towards public utility transport services, thereafter to other rail transport undertakings on the basis of a public competition. The Government shall establish the conditions and procedure for public competitions.
Ellas (Greece)	Currently, OSE, although the responsibility will be transferred to new entity to be established by OSE	New framework for allocation of infrastructure capacity introduced by the Presidential Decree of March 2005
España (Spain)	ADIF and Min. of Development	The IM is responsible for developing a network statement. This network statement must contain all relevant information about general norms, terms, procedures and criteria that apply in relation to the allocation of capacity and charges and principles of charging that apply to the different services. Finally, it will contain any other information relevant to make a request of infrastructure capacity.
France (France)	The infrastructure manager, RFF	Official request must be submitted to RFF. Réseau Ferré de France proposes, in reply to a request : for all transport services : - a ready-made path from the structured train diagram set in place by Réseau Ferré de France ; - a tailor-made path in other cases. for international freight services: a "catalogue path". This catalogue is intended to facilitate the allocation of capacity to long-distance international freight transport. Feasibility studies meetings between stakeholders and path request discussions can be held.
Ireland (Ireland)	Infrastructure Manager (Irish Rail)	The infrastructure manager shall allocate infrastructure capacity: (a) on the basis of the draft timetable; (b) on a fair and non-discriminatory basis; (c) and subject to the conditions set out in the Regulations S.I. No. 643 of 2004.
Italia (Italy)	Infrastructure Manager (RFI)	RFI gives priority to: - services that satisfy mobility needs of citizens - high speed services - services with clock-face timetable - services allowing to realise a coherent national service Ministry of Infrastructure and Transport can grant special rights to railway undertakings providing services that are indispensable for guaranteeing a good level of public transport, an efficient use of railway infrastructure or for financing new infrastructure.
Latvija (Latvia)	JSC Latvian Railway (IM) is responsible for allocating capacity to the carriers.	The Minister for Transport has the right to confer priority to services within public service obligations. However, in reality the rail infrastructure capacity has no limits in Latvia.
Lietuva (Lithuania)	Allocating public railway infrastructure capabilities is delegated to the SRI, until the set up of a separate organisation	Draft Government resolution on regulations for the allocation of capacity is still under preparation. It is expected that the reorganised State Railway Inspectorate will undertake the monitoring of capacity allocation to ensure non-discriminatory basis.

	Responsible Body	Procedures
Luxembourg (Luxembourg)	Infrastructure manager, CFL (Service Gestion Réseau)	The relative importance attributed to those rules has to be determined according to the priority attributed to different categories of trains: 1. passenger trains, in the framework of public service of national and cross-border passenger traffic 2. international passenger trains 3. international freight trains, 4 passenger trains other than 1. and 2., 5. freight collecting trains, 6. other trains. : The infrastructure manager assembles all requests for capacity and reserves capacity for the construction of preliminary tracks. The infrastructure manager establishes a 'project d'horaire de service'.
Magyarország (Hungary)	Railway Capacity Allocation Company	Before preparing the Network Statement the Railway Capacity Allocation Company is negotiating with interested parties (infrastructure managers, railway undertakings, organisations of EU member states for capacity allocation). Allocation deadlines defined in the Decree in accordance with Directive 2001/13.
Nederland (Netherlands)	ProRail (Infrastructure manager)	Procedures used are stated in the Network Statement The following interest must be considered in the decision making process: Maintaining the guaranteed minimum capacities per market segment; Efficient use of the railway infrastructure; The economic interest of the applicants; Minimising travelling times by public transport passenger transport; The allocation of capacity to requests from companies for the first time requesting capacity for freight transport by rail.
Österreich (Austria)	Infrastructure Manager	Procedures used are stated in the Network Statement. Priorities are as follows: (1) Public service transports; (2) Regular-interval services; (3) Other train paths
Polska (Poland)	Infrastructure Manager (PLK)	The Minister of Transport is mandated to issue a decree concerning rules for capacity allocation, and the form and contents of the request for railway line allocation and procedures for processing. PKL is in charge of administrating the capacity allocation.
Portugal (Portugal)	REFER	The infrastructure manager shall perform the capacity allocation processes, ensuring that infrastructure capacity is allocated on a fair and non-discriminatory basis and in accordance with the applicable legislation.
Slovenija (Slovenia)	Newly established Public Agency for Rail Transport will be responsible for it	Procedure will be available after reorganization
Slovenská Republika (Slovakia)	IM ZSR	Each new operator while applying for a licence has to include his request for required infrastructure capacity as well. The given capacity is adjusted by availability. The communication between IM and operators is done in written form.
Suomi/Finland (Finland)	RHK (Traffic System Department)	If there are several applications for the same capacity the priority order is as follows: 1. synergetic (trains forming a transport system) passenger traffic entity; 2a. Express train traffic; 2b. transport for the processing industry; 3a. local and other passenger traffic; 3b. other regular freight traffic; 4. freight traffic not requiring strict transport times; 5. other traffic.

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	Responsible Body	Procedures
Sverige (Sweden)	Banverket Traffic Government/Swedish Rail Agency	Banverket is responsible for the allocation of capacity in collaboration with other infrastructure managers and applicants. The government and/or the Swedish Rail Agency issue instructions on capacity allocation in line with the Railway Act (2004:519).
United Kingdom (United Kingdom)	Network Rail Office of Rail Regulation	Primary allocation of capacity is the responsibility of the Office of Rail Regulation, which is exercised through approval of Track Access Agreements between Train Operators and Network Rail. Secondary allocation of capacity is the responsibility of Network Rail and is exercised through the time-tabling process. [Northern Ireland]: Derogation applies for UK with respect to Northern Ireland until 15 March 2008.
Bългария (Bulgaria)	State Railway Infrastructure Company	The calculation of the capacity is made according to the international (UIC) standards.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	Jernbaneverket (Norwegian Railway Administration)	An application for train paths must be submitted to the infrastructure manager. The infrastructure manager is responsible for making the capacity assessments taking into account the safety rules set by the Inspectorate. Allocation has to be fair and non-discriminatory. Operators apply for a set of paths each year.
România (Romania)	CFR S.A.	The relevant services of CFR S.A. calculate the capacity for all sections of the network for better planning of railway business. The calculation of the capacity is made according to international standards.
Schweiz/Suisse (Switzerland)	Individual IMs	There is a network access law. Within the boundaries of this law the infrastructure managers are free to allocate capacity on their own infrastructure. By law passenger trains will have priority.

Table 12 Overview of organisation responsible for capacity allocation framework

	EU15/EFTA countries	new member / candidate countries
Infrastructure manager	BE, DK, DE, ES, FR, IE, IT, NL, AT, PT, FI, SE, NO (13)	CZ, EE, LV, HU, PL, SK, BG, RO (7)
Ministry of Transport		-
Other regulatory body	UK (1)	LT, SI (2)
Other	EL, LU, CH (3)	-
Total	17	10

Note: No data entry for Iceland and Liechtenstein.. In the case of Slovenia information only given regarding future situation.

As part of the analysis, information has also been collected regarding the extent to which network statements exist in the 29 countries (see Table 13). For EU15/EFTA countries 14 countries have by June 2005 produced network statements (out of a possible 17). The three countries for which a network statement is not yet available are: Greece, Spain and Ireland (as well as Northern Ireland, derogation applies until 15 March 2008).

In the case of the new member / candidate countries 7 countries have already produced and published network statements: Czech Republic, Estonia, Latvia, Hungary, Poland, Romania and Slovakia. In the case of Hungary and Romania no on-line version of the network is though available as yet. For Slovenia a network statement is prepared but has not yet been published. For the other countries (Lithuania and Bulgaria) network statements are under preparation.

Table 13 Existence of network statement

	Network statement		Network statement
Belgique/België (Belgium)	http://www.railaccess.be/	Österreich (Austria)	http://193.81.167.162/
Česká Republika (Czech Republic)	www.szdc.cz/english/prohlase ni_en1.htm	Polska (Poland)	http://www.plk-sa.pl/en/pliki/regulaminudtras/2004_2005/E_04-05_Rw.1.6.pdf
Danmark (Denmark)	http://www.bane.dk/db/filarki v/925/NR2005.pdf	Portugal (Portugal)	http://www.refer.pt/pt/exploracao.php?id=779&idold=531 or http://www.refer.pt/fotos/anexo_42.pdf
Deutschland (Germany)	www.db-netz.de	Slovenija (Slovenia)	The Network Statement has been prepared but not published yet
Eesti (Estonia)	http://europa.eu.int/comm/transport/rail/countries/ee/doc/	Slovenská Republika (Slovakia)	http://www.zsr.sk/english/index.html

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	Network statement		Network statement
Ellas (Greece)	No	Suomi/Finland (Finland)	http://www.rhk.fi/english/index.html
España (Spain)	Currently under development	Sverige (Sweden)	www.banverket.se under the heading "Market".
France (France)	www.rff.fr	United Kingdom (United Kingdom)	www.networkrail.co.uk/operations/networkstatement/
Ireland (Ireland)	No	Bългария (Bulgaria)	In the process of being prepared
Italia (Italy)	http://www.rfi.it/netstat/NetStat/general_information.htm	Ísland (Iceland)	n.a.
Latvija (Latvia)	Network statement is available at LDZ homepage http://www.ldz.lv	Liechtenstein (Liechtenstein)	See Austria
Lietuva (Lithuania)	A Network Statement is under preparation.	Norge (Norway)	http://www.jernbaneverket.no/arked/Network_Statement/
Luxembourg (Luxembourg)	http://railinfra.lu or by fax requesting a CD-ROM at a price of 40 EUR.	România (Romania)	National Company 'Railway Infrastructure' publishes it but it is not online
Magyarország (Hungary)	The Network Statement has to be published in the Official Journal of the Ministry of Economy and Transport four months before the deadline given for applications	Schweiz/Suisse (Switzerland)	SBB has a 2005 network statement on their website: http://mct.sbb.ch/mct/en/infrast_ruktur_onestopshop_leistung_rene-ns.pdf (German only)
Nederland (Netherlands)	http://www.prorail.nl/ProRail/English/Network+Statement.htm		

3.1.6 Appeals to decisions related to charging and capacity allocation: Regulatory Bodies

The main provisions concerning appeals to decisions related to charging and capacity allocation are included in Dir. 2001/14/EC, Article 30 which requires Member States to establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. Furthermore, Article 30.2 requires that an applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking. Decisions covered are the following: network statement, criteria contained within it, the allocation process and its result, the charging scheme, level or structure of infrastructure fees which it is, or may be, required to pay, safety certificate, enforcement and monitoring of the safety standards and rules.

A number of different organisations are responsible for this aspect. In some cases it is general appeals boards (e.g. Belgium, Switzerland). In a number of cases, the appeals function is allocated to either special railway appeal boards (e.g. Denmark, France, Austria) or transport/rail regulatory bodies (Germany, United Kingdom, Spain, Portugal, Norway). Also in some cases the Ministry of Transport (or other government department) is the organisation responsible for this task (e.g. Spain, Italy and Finland).

A number of countries have outlined complex procedures involving several appeals entities, e.g. the situation in Czech Republic where the appeal is considered initially by the Ministry of Transport and then eventually general courts. Similar arrangements are in place in Romania and Bulgaria.

The main difference between EU15/EFTA countries and the new member states/ candidate countries is that dedicated railway/transport appeals boards are more common in the EU15/EFTA countries, while for the CEEC countries this task is in relative more cases allocated to the Ministry of Transport or other regulatory bodies.

Another difference between EU15/EFTA countries and the new member states/ candidate countries is that the latter category of countries more often have not specified in detail the current situation regarding appeals for charging or capacity decisions. For Lithuania limited information is available concerning current situation. In the case of Slovenia information was only given regarding future situation.

The responsible organisations and relevant procedures regarding appeals to decisions related to charging and capacity allocation are described in Table 14 with a short overview in Table 15.

An important question to consider is the extent to which the chosen regulatory bodies ensure independence such that equal and non-discriminatory access to the railway network is ensured. In particular, there can be doubt concerning whether a Ministry of Transport as the regulatory body is sufficient in those cases where the Ministry of Transport also has a role as owner of railway undertakings.

Table 14 *Appeals to Decisions Related to Charging and Capacity Allocation*

	Responsible organisation	Procedures
Belgique/België (Belgium)	Conseil de la Concurrence (Competition Council)	An applicant or a railway undertaking can address the Competition Council if it considers being a victim of an unfair treatment or of discrimination as a result of decisions taken by the infrastructure manager or of the Minister of Transport. This right does not relate to contractual rights and obligations. The Competition Council has to respond within two months of receiving a complaint.
Česká Republika (Czech Republic)	Ministry of Transport (and evt. Court)	The Ministry of Transport is the appeal authority in administrative procedures concerning issues regulated by this Act against a decision by the Rail Authority, Rail Safety Inspection and municipalities.
Danmark (Denmark)	Railways Appeals Board	The Railways Appeals Board is the administrative authority regarding complaints with respect to licenses, competition issues, access to training, capacity allocation and charging. The Board's decisions cannot be appealed to other administrative authorities, except decisions regarding prices and payments can be appealed to the Competition Complaints Board.
Deutschland (Germany)	Federal Railway Administration (EBA) Federal Cartel Office (BkartA)	If EBA suspects the procedures, charge schemes or other commercial conditions of rail infrastructure companies as discriminating, it investigates and can finally forbid such practices, as it happened already in the past. Concerning discrimination by commercial conditions of track-pricing also the BKartA can investigate and array modifications. Basis is the Act Against Restraints of Competition (GWB) i.e. the provisions concerning the abuse of dominant positions. Decisions by EBA and BKartA can be reviewed by the courts
Eesti (Estonia)	Competition Board or the Minister of Economic Affairs and Communications	If an applicant is of opinion that it has been treated in a discriminatory or otherwise unfair manner by the railway infrastructure undertaking, the applicant has the right to file a complaint with the Competition Board or the Minister of Economic Affairs and Communications. If agreement is not reached the railway undertaking has the right of recourse to the court.
Ellas (Greece)	Ministry of Transport and Communications	An applicant will according to the Presidential Decree of March 2005 have the right to appeal if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved.

	Responsible organisation	Procedures
España (Spain)	Railway Regulation Committee	The Railway Regulation Committee is the regulatory authority (incl. appeals) for the railways in Spain. It is integrated in the Ministry of Development. At the moment there is no competition in the Spanish rail market and therefore, the Railway Regulation Committee has not started performing regulatory duties incl. appeals.
France (France)	Mission de Contrôle des activités ferroviaires – body directly attached to the Ministry of Transport	This Arbitration group consists of one member of the State Council, a member of the Court of Auditors, and a member of the General Council of Bridges and Roads. If the complaint has been filed the group has to reply within one month. State administrations and public companies have to provide all information that the Control Group considers necessary for the examination of the complaints.
Ireland (Ireland)	Appeals Panel	An appeal shall be made by delivering a written notice of appeal to the infrastructure manager no later than 21 days after the railway undertaking or the international grouping, as the case may be, is notified of the decision being appealed. On receiving a notice of appeal the infrastructure manager shall refer the appeal to an appeal panel consisting of three members appointed as follows: (a) one member appointed by the infrastructure manager; (b) one member appointed by the appellant; (c) a Senior Counsel agreed by the two other members.
Italia (Italy)	Ministry of Infrastructure and Transport (MIT)	TOC's and international transport consortia have the option to appeal against the Infrastructure Manager's (RFI) decisions on matters of capacity allocation or charging. Within two months after the date of receiving all the necessary information concerning an appeal, MIT must issue its ruling.
Latvija (Latvia)	Latvian State Railway Administration (LSRA) Public Utilities Commission (PUC)	LSRA is responsible for appeals regarding capacity allocation, while PUC for appeals regarding charging. LSRA will try and mediate between conflicting parties. A decision of the State Railway Administration may be appealed to the Court
Lietuva (Lithuania)	Ministry of Transport and Communication	The Ministry of Transport and Communications has been appointed as regulatory body in August 2004. Until August 2004 the regulatory functions (incl. appeals) were performed by the State Railway Inspectorate. It will return to the Inspectorate after the establishment of the state undertaking for administration of public infrastructure.
Luxembourg (Luxembourg)	Now Ministry of Transport until the establishment of Organisme de Contrôle	Not yet defined because directive is not implemented and the Organisme de Contrôle does not exist. (June 2005).

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	Responsible organisation	Procedures
Magyarország (Hungary)	Decisive Committee for Infrastructure Usage (placed within the General Inspectorate for Transport)	Standard procedure defined by Act on Public Administrative Proceedings with a modified deadline (60 days instead of 30). The Chief Inspectorate for Transport has been notified as the regulatory body as set out in Art. 30 of Dir. 2001/14/EC.
Nederland (Netherlands)	NMa Office of Transport Regulation from 2005 onwards	Any stakeholder can complain to the NMa Office of Transport Regulation. The NMa Office of Transport Regulation handles the complaint within 2 months. When complaint is granted, the NMa Office of Transport Regulation can put a penalty in case of non-compliance.
Österreich (Austria)	Rail Monitoring Commission (SCK)	The SCK must hear both the appellant and the infrastructure manager in question, and issues an official ruling within two months of receipt of the appeal. If the appeal is upheld, the official ruling replaces the contract governing the allocation of train paths.
Polska (Poland)	President of RTO and district court – Court of Competition and Consumers Protection	Appeals can be handled differently depending on the nature of the complaint. The administrative procedure is used when the President of the RTO issues the decision concerning railway safety (e.g. break of safety regulations concerning signalling and railway traffic). Such decisions are executed immediately because the railway safety requires it. A mixed procedure involves appealing the (administrative) decision to the Court of Competition and Consumers Protection
Portugal (Portugal)	The Railway Regulator, INTF	Any undertaking may submit a claim against the infrastructure manager concerning decisions on charging and / or capacity allocation. INTF acts as an appeal body on charging matters or any matters concerning non-equitative or discriminatory capacity allocation. INTF's decisions are binding, subject to appeal to the national courts.
Slovenija (Slovenia)	Ministry of Transport will be responsible for this task	Procedure will be available after reorganization
Slovenská Republika (Slovakia)	State Railway Authority (SDÚ)	SDÚ assumes currently the regulatory functions in terms of Directive 2001/14, although it is not in line with the provisions of the Directive in terms of its remit and powers. A new regulatory body will be created to be responsible for regulation including appeals.
Suomi/Finland (Finland)	The Ministry of Transport and Communications	A decision taken by RHK may be appealed against by filing a claim for rectification to the regulatory body, Ministry of Transport and Communications.
Sverige (Sweden)	Swedish Rail Agency	The Swedish Rail Agency shall exercise supervision and consider disputes in accordance with the Railway Act (2004:519) and the Railway Ordinance (2004:526).

	Responsible organisation	Procedures
United Kingdom (United Kingdom)	Office of Rail Regulation	The Office of Rail Regulation is the appeal body for certain classes of dispute in the railway industry, including in matters of the allocation of capacity and charging. The tribunal of first instance, from which appeals to the Regulator come, is the Timetabling Sub-Committee of the Access Dispute Resolution Committee. [Northern Ireland]: Appeals panel in accordance with Dir. 95/19/EC.
Bългария (Bulgaria)	SRIC Executive Agency Railway Administration National Courts.	The starting point for the process is an appeal against SRIC (the infrastructure manager). Next step is the EA RA and then National Courts.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	The Norwegian Railway Inspectorate	Appeal body with respect to infrastructure manager's decision on charging and capacity allocation. Appeals shall be decided on within two months (after all necessary information has been produced).
România (Romania)	CFRF S.A Ministry of Transport and Housing National Courts	The first appeal must be launched against CFRF S.A. Then, against the Ministry of Public Works, Transport and Housing and then to National Courts
Schweiz/Suisse (Switzerland)	Commission d'arbitrage:	Railway undertakings concerned agree on a convention concerning the forms of access to the network and on charging. If an agreement cannot be reached, the Commission d'arbitrage decides.

Table 15 *Overview of organisation responsible for appeals re charging and capacity allocation*

	EU15/EFTA countries	new member / candidate countries
General appeals board	BE, CH (2)	-
Railway (or transport) appeals board	DK, FR, IE, NL, AT (5)	HU (1)
Ministry of Transport	EL, IT, LU, FI (4)	CZ, LT, SI (3)
Other Regulatory Body	DE, ES, PT, SE, UK, NO (6)	EE, LV, PL, SK (4)
Other		BG, RO (2)
Total	17	10

Note: No data entry for Iceland and Liechtenstein. In the case of Slovenia information was only given regarding future situation.

3.1.7 Separation of infrastructure and operations, independence of infrastructure management, funding of infrastructure manager

Requirements from the EC concerning separation of infrastructure and operations were initially included in Directive 91/440 where the principle of accounting separation was introduced.

Subsequently, Directive 2001/12/EC provided that independent organisational entities must be specified for transport operations and infrastructure management. The Directive allows Member States that this separation can be achieved through either the organisation of distinct divisions within a single undertaking (the holding company model) or that the infrastructure shall be managed by a separate entity. Furthermore, Member States shall take measures to ensure that the functions determining equitable and non-discriminatory access to infrastructure are assigned to bodies that do not themselves provide any rail services.

Table 16 gives an overview concerning whether separation between the Infrastructure Manager and the operators is in place, the independence of infrastructure management and to what extent the Infrastructure Manager is funded with public funding. As for the organisation of infrastructure and operations we consider two options: vertical separation (denoted with **S** in the table) and vertical integration (denoted **I** in the table). S, vertical separation, concerns the situation where the infrastructure manager is not allowed to operate services on that infrastructure. I, vertical integration refers to where the infrastructure manager is allowed to operate services on that infrastructure (this category includes holding company structures).

A majority of countries (14) have adopted vertical separation as the basis for the industry structure (out of a possible 27). It should be noted that for the remaining 13 countries 9 countries are using the holding company structure, whereas Ireland, Estonia, Greece and Slovenia have not introduced this level of separation. In the case of Greece this is though changing, following the Presidential Decree from March 2005.

The highest level of independence regarding the capacity allocation function is achieved when the body responsible for this task is independent not only from operations but also from the infrastructure manager (e.g. Lithuania and Hungary).

Table 16 also highlights the significant variation among the Member States concerning the percentage of subsidies of the infrastructure manager's income. The subsidy proportion varies from 0% (e.g. Estonia, Latvia and Lithuania) to 100% (e.g. Greece, Ireland and Norway). Other countries have subsidy levels at intermediate levels.

Table 16 *Industry structure, structure of capacity allocation and %-subsidies of IM income*

	Industry structure	Structure of capacity allocation	% subsidies of IM income
Belgique/België (Belgium)	I	Within IM (under holding company)	~80% (ECMT, 2005)
Česká Republika (Czech Republic)	S	Within IM (completely separated)	100% (2002)
Danmark (Denmark)	S	Within IM (completely separated)	68% (2001)
Deutschland (Germany)	I	Within IM (under holding company)	40%
Eesti (Estonia)	I freight	Within IM (not fully separated)	0%
Ellas (Greece)	I	Currently still integrated (will become separate within IM)	100% (2002)
España (Spain)	S	Within IM (completely separated)	85% (2003)
France (France)	S	Within IM (in cooperation with the incumbent operator)	30%
Ireland (Ireland)	I	Within IM (not fully separated)	100% 2002 (regarding income relating to infrastructure)
Italia (Italy)	I	Within IM (under holding company)	49% (2003)
Latvija (Latvia)	I	Within IM (under holding company)	0%
Lietuva (Lithuania)	I	Full independent body	0% (only subsidies through concessionary fares)
Luxembourg (Luxembourg)	I	Within IM (under holding company)	15% (2002)
Magyarország (Hungary)	I	Full independent body	-20% (ECMT, 2005)
Nederland (Netherlands)	S	Within IM (completely separated)	88% (2004)
Österreich (Austria)	I	Within IM (under holding company)	72%
Polska (Poland)	I	Within IM (under holding company)	~8%(ECMT, 2005)
Portugal (Portugal)	S	Within IM (completely separated)	57%

	Industry structure	Structure of capacity allocation	% subsidies of IM income
Slovenija (Slovenia)	S	Within IM (not fully separated and in cooperation with an independent body)	~88% (ECMT, 2005)
Slovenská Republika (Slovakia)	S	Within IM (completely separated)	42%
Suomi/Finland (Finland)	S	Within IM (completely separated)	81% (2001)
Sverige (Sweden)	S	Within IM (completely separated)	69% (2002)
United Kingdom (United Kingdom)	S [Northern Ireland]: no separation of infrastructure and operations	Within IM (completely separated) [Northern Ireland]: Within IM (not fully separated)	35% (2002/03)
Bългария (Bulgaria)	S	Within IM (completely separated)	~35% (ECMT, 2005)
Ísland (Iceland)	n.a.	n.a.	n.a.
Liechtenstein (Liechtenstein)	n.a.	n.a.	n.a.
Norge (Norway)	S	Within IM (completely separated)	100% (2001)
România (Romania)	I	Ministry of Transport	n.a.
Schweiz/Suisse (Switzerland)	I	Within IM (under holding company)	~80% (ECMT, 2005)

Sources: ECMT (2005) Railway reform and charges for the use of infrastructure; RAILIMPLEMENT Interim Report; ERAIL information.

3.1.8 Authorisation of (sub)systems

Authorisation of (sub)systems refers to tasks under the Interoperability Directives 96/48 (high-speed) and 2001/16 (conventional rail systems). In particular, in the case of Directive 96/48/EC (Article 14) each Member State shall authorize the placing in service of those structural subsystems constituting the trans-European high-speed rail system which are located in its territory or operated by railway undertakings established there. Furthermore, Member States shall take all necessary steps to ensure that these subsystems may be placed in service only if they are designed, constructed and installed and/or operated in such a way as not to hinder satisfaction of the essential requirements concerning them when integrated into the trans-European high-speed rail system.

The provisions in the case of Directive 2001/16/EC are similar, where Article 14 specifies that Each Member State shall authorise the putting into service of those structural subsystems constituting the trans-European conventional rail system which are located or operated in its territory. Member States shall take all appropriate steps to ensure that these subsystems may be put into service only if they are designed, constructed and installed in such a way as to meet the essential requirements concerning them when integrated into the trans-European conventional rail system. In particular, they shall check the compatibility of these subsystems with the system into which they are being integrated.

As of June 2005 almost all EU15/EFTA countries (13) have implemented 96/48 (the two countries without full transposition are Finland and the Netherlands), while 8 countries have fully transposed 2001/16. A total of five of the new EU member states/ candidate countries have transposed these two directives (Czech Republic, Hungary, Poland, Slovakia and Bulgaria), while the others are all in the process of doing so.

Limited information concerning authorisation of subsystems is primarily the result of cases where the transposition is still in the process of completion or only recently being completed. Lack of information on this aspect concerns among the EU15/EFTA countries France and Netherlands. For the group of new member / candidate countries information is lacking for Estonia (in terms of no information about organisation) Latvia and Poland (in these cases information is lacking concerning the procedures put in place). For Poland the interoperability directives have both been transposed but specification of certain procedures is not in place, while for Latvia, the relevant organisation is specified but the interoperability directives have not yet been transposed.

Among the EU15/EFTA countries, the responsible organisation is most often the Ministry of Transport (e.g. the case of Austria, Belgium, Spain, Ireland). In several countries authorisation is the responsibility of rail (regulatory) authorities (Denmark, Germany, Sweden and Portugal). In Norway the responsibility has been allocated to a rail safety authority. Two countries have allocated the responsibility to the infrastructure manager (Finland and Italy). In the United Kingdom the responsible organisation is the Health and Safety Executive (although this will change during 2005). In the case of Greece, the national railway company (OSE) is responsible for this task.

For the new member / candidate countries this task (8 out of 10 countries) where specified is allocated to a rail (regulatory) authority (e.g. Romania), Ministry of Transport (Slovenia, Slovakia, Bulgaria) or rail safety organisation (e.g. in Hungary the Central Inspectorate for Transport or in Lithuania). In the case of Czech Republic both a rail authority together with the Ministry of Transport is involved in the task.

The responsible organisations and relevant procedures regarding authorisation of (sub)systems are shown in Table 17 with a short overview given in Table 18.

Table 17 *Authorisation of (Sub) Systems*

	Responsible organisation	Procedures
Belgique/België (Belgium)	Ministry of Communications and Infrastructure (Administration of Transport Growth Railway Service Department)	Applicants hand in the request for authorisation and a technical report that contains all the necessary documents relating to the characteristics of the subsystem. It should also contain all the elements relating to the conditions and operational limits, with the instructions of maintenance, continuous or periodic monitoring, adjustment and maintenance.
Česká Republika (Czech Republic)	Rail Authority and Ministry of Transport	The Rail Authority is regulating the conditions for the construction of railways, and for installations on such railways, the conditions for the operation of railways, the railway transport operation, as well as the pertinent rights and duties of natural and legal persons and the execution of state administration and state supervision in matters of railways.
Danmark (Denmark)	National Rail Authority (from July 2004).	The basis for approval is that the manufacturer/constructor identifies the risks and hazards connected with the subsystems. On this basis an assessment of safety requirements will be undertaken. These safety requirements are taken forward to specify a Safety Case. The Safety Case forms the basis for approval. This approval may require a so-called independent assessor. For large projects and/or projects covered by a TSI the approval is not sufficient for putting them into service. In these cases an authorisation is required.
Deutschland (Germany)	Federal Railway Administration (EBA)	The authorisation has to be requested on paper, submitting the EC test statement according to art. 18 of the EC Directive in connection with the Annexes V and VI and if required the EC equality and usability statements according to art. 13 in connection with Annex IV.
Eesti (Estonia)	Not available (Directives not fully transposed yet)	Not available
Ellas (Greece)	OSE (Hellenic Railways Organisation). It should be noticed that Dir. 2001/16/EC has not yet been transposed.	Internal consultation
España (Spain)	State Department of Infrastructure	The State Department of Infrastructure authorises the use of the integral subsystems of structural character of the (high-speed) railway system that are implemented in Spain or that are used by Spanish railway companies. To this end, the State Department of Infrastructure will adopt the necessary measures so that these subsystems only can enter service if they are approved, built and installed and/or explored, fulfilling the relevant requirements and integrated in the (high-speed) railway system.

	Responsible organisation	Procedures
France (France)	Minister of Transport. It should be noticed that Dir. 2001/16/EC has not yet been transposed.	Minister of Transport authorises subsystems in France. An applicant has to submit a safety report for the subsystem which includes "EC Verification Declaration". The Minister can issue a provisional authorisation if the project conditions require so, specifying safety and operational requirements.
Ireland (Ireland)	Minister of Transport	When seeking the authorisation the person intending to place the structural subsystem into service shall provide the Minister with the conformity certificate, a copy of the verification declaration relating to that subsystem, and the technical file. The Minister shall grant an authorisation where the structural subsystem or part of a structural subsystem meets the essential requirements and complies with this Regulation.
Italia (Italy)	RFI (Infrastructure Manager)	RFI authorises the use and sale of subsystems only if they meet the requirements as specified in the Annex III of legislative decree 2004/268
Latvija (Latvia)	Railway Technical Inspection (Interoperability Directives not implemented yet)	Interoperability Directives not implemented yet
Lietuva (Lithuania)	State Railway Inspection for rolling stock Ministry of Transport and Communications or its authorized institution for infrastructure	Not yet specified
Luxembourg (Luxembourg)	Minister having railway matters under his/her responsibilities. Currently requests have to be addressed to CLF, Service Gestion Réseau – Division Planification	The request submitted for this purpose must be accompanied by a technical certificate The infrastructure manager or the railway undertaking which proposes the setting up of a subsystem must certify that all suitable measurements were taken so that these subsystems, satisfy the essential requirements when integrating these into the European conventional rail systems.
Magyarország (Hungary)	Central Inspectorate for Transport	Authorisation is carried out by the Central Inspectorate for Transport on the basis of EC declaration and other documents submitted by the applicant.
Nederland (Netherlands)	According to Article 12 of the Spoorwegwet 2002, the Ministry of Transport should draw a special regulation. This is in the process of being undertaken	According to Article 12 of the Spoorwegwet 2002, the Ministry of Transport should draw a special regulation. This is in the process of being undertaken
Österreich (Austria)	Ministry of Transport, Innovation and Technology – Units "Vollzug" and "Betriebsmittel Schienenbahnen"	Before the issuing of the license the applicant for the subsystem has to obtain a "EC declaration of verification". This declaration is issued by the Notified Bodies.
Polska (Poland)	President of Railway Transport Office (supervisory) with the Centre of Certification	Poland has implemented the directives 96/48 and 2001/13 by changing the Law on Railway Transport (the amendment of 20th April 2004). However, there is lack of executive regulations.
Portugal (Portugal)	INTF, the Railway Regulator	For certification of a (sub)system the applicant (or its authorised representative) will invite a Notified Body to carry out the EC procedure for the assessment of conformity or suitability. If all EC requirements are met, the Notified Body grants an EC declaration of verification, which must be accompanied by all relevant documents.
Slovenija (Slovenia)	Ministry of Transport / Ministry of Environment, Spatial Planning and Energy	Procedure will be available after reorganization 2005

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	Responsible organisation	Procedures
Slovenská Republika (Slovakia)	Ministry of Transport Posts and Telecommunications	According to Slovak legislation essential changes in technical devices has to be approved by the State railway administration.
Suomi/Finland (Finland)	The Finnish Rail Administration (infrastructure manager) - RHK	For putting a subsystem into service on the state-owned rail network, an authorisation is required from the Finnish Rail Administration. If the subsystem is upgraded or renewed after the authorisation has been granted RHK shall be notified thereof. If the subsystem has been essentially upgraded or renewed, a new application for authorisation shall be submitted to RHK before putting the subsystem again into service.
Sverige (Sweden)	Swedish Rail Agency	Not available yet.
United Kingdom (United Kingdom)	Health and Safety Executive	HSE will give authorisation for a subsystem to be placed in service, based on information contained in the technical file, the certificate of conformity and the verification declaration accompanying an application from a contracting entity. The task is expected to be transferred to the ORR during 2005.
Bългария (Bulgaria)	Ministry of Transport and Communication through the Executive Agency Railway Administration.	The structural subsystems of the railway system may be put into operation only if they are designed, constructed and installed in such a manner as to satisfy the essential requirements for technical and operational compatibility. The entity subject of assessment provides all the necessary documents to the notified body, which is responsible for the production checks and/or exploitation.
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	Railway Inspectorate	For putting a subsystem into service on the state-owned rail network, an authorization is required from the Railway Inspectorate
România (Romania)	The Romanian Railway Authority (AFER)	The Romanian Railway Authority (AFER) is in charge of auditing and certification of (sub) systems
Schweiz/Suisse (Switzerland)	Federal Office of Transport (it should be noticed that Switzerland has not yet transposed Dir. 2001/16/EC)	Railway undertakings are responsible for the safety of operations of railway installations and vehicles. They have to draw up the prescriptions necessary to an operation and present it to the Federal Office of Transport.

Table 18 Overview of organisation responsible for authorization of (sub)systems

	EU15/EFTA countries	new member / candidate countries
Infrastructure manager	IT, FI (2)	
General safety authority	UK (1)	
Rail safety authority	NO (1)	LV, LT, HU (3)
Ministry of Transport	BE, ES, IE, AT, CH (5)	SI, SK, BG (3)
Other regulatory body	DK, DE, PT, SE (4)	CZ, RO (2)

Other	EL, LU (2)	PL (1)
Not available	FR, NL (2)	EE (1)
Total	17	10

Note: No data entry for Iceland and Liechtenstein

3.1.9 Notified Bodies

Provisions concerning Notified Bodies refer to the Interoperability directives 96/48/EC (trans-European high-speed rail system) and 2001/16/EC (trans-European conventional rail systems). In particular, in both directives notified bodies “*means the bodies which are responsible for assessing the conformity or suitability for use of the interoperability constituents or for appraising the "EC" procedure for verification of the subsystems*”. According to Article 20.1 (in both directives) Member States are required to notify the Commission and the other Member States of the bodies responsible for carrying out the procedure for the assessment of conformity or suitability for use referred to in Article 13 and the checking procedure referred to in Article 18, indicating each body's area of responsibility.

Table 19 shows which organisation approves notified bodies and who controls them. In most EU15/ EFTA countries, the responsibility for approving Notified Bodies rests with the Ministry of Transport (e.g. Belgium, Denmark, Spain, Ireland, Italy, Finland, Norway and the Netherlands) or another Ministry (e.g. the situation in Austria, where the task is allocated to the Federal Ministry of Economy and Labour). In the case of Portugal, this responsibility has been transferred to the Railway Regulator, INTF. In the United Kingdom, Notified Bodies are approved by the Strategic Rail Authority (this will change in 2005 where the task will be transferred to the Department for Transport). For Sweden the Swedish Board for Accreditation and Conformity Assessment (SWEDAC) is approving Notified Bodies.

For new member / candidate countries in six cases out of 10 possible (Czech Republic, Hungary, Poland, Slovakia, Slovenia and Bulgaria) has the body responsible for approval of Notified Bodies been specified. Three of these countries has allocated the responsibility to a Ministry of Transport (Hungary, Slovakia and Slovenia) while the other three countries (Czech Republic, Poland and Bulgaria) used different models (usually with several organisations being involved such as national accreditation agencies and transport ministries). Information for Estonia, Latvia, Lithuania and Romania is not available yet because the legal basis is not completed.

As part of the analysis information about whether Notified Bodies to date has been approved in the countries were collected (Table 21). Among the EU15/EFTA countries notified bodies have been approved in Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland and UK and Norway. The largest number of notified bodies has been approved in the United Kingdom (10). However, among the new member states/ candidate countries only in Czech Republic has there been an example of approval of Notified Bodies.

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In some cases only limited information is available concerning the procedures used for approval of notified bodies. This is the case of Czech Republic, Greece, Austria, Poland, Slovenia and Norway. In general this is reflecting that these countries only recently have transposed the interoperability directives (or still in the process of doing so).

For further details concerning a list of Notified Bodies established in the EU Member States under Directive 96/48 see

<http://europa.eu.int/comm/enterprise/newapproach/legislation/nb/en96-48-ec.pdf>

Table 19 *Notified Bodies*

	Approval of Notified Bodies	Assessment/Control of Notified Bodies
Belgique/België (Belgium)	Ministry of Communications and Infrastructure.	Minister approves Notified Bodies.
Česká Republika (Czech Republic)	Czech Office for Standards, Metrology and Testing (UNMZ)	Czech Inspection Office, Rail Authority
Danmark (Denmark)	Ministry of Transport	Ministry of Transport
Deutschland (Germany)	Federal Railway Administration (EBA)	Federal Railway Administration (EBA)
Eesti (Estonia)	Not implemented yet	Not implemented yet
Ellas (Greece)	The Ministry of Transport and Communication is responsible for appointing Notified Bodies	The Ministry of Transport and Communications
España (Spain)	State Department of Infrastructure	State Department of Infrastructure
France (France)	Ministry of Transport Agence De Certification Ferroviaire (Certifer) 154, Boulevard Harpignies F-59300 Valenciennes France It should be noticed that Dir. 2001/16 is not fully transposed as yet	Ministry of Transport Agence De Certification Ferroviaire (Certifer) 154, Boulevard Harpignies F-59300 Valenciennes France
Ireland (Ireland)	Minister of Transport. However, in the future (once the Railway Safety Bill 2001 has been adopted), a notified body might be approved by the Department of Transport, Public Transport Regulatory Reform Division in consultation with the Railway Safety Commission.	Minister of Transport. In the future this task may be undertaken by Department of Transport, Public Transport Regulatory Reform Division in consultation with the Railway Safety Commission
Italia (Italy)	Ministry of Infrastructure and Transport	Ministry of Infrastructure and Transport:
Latvija (Latvia)	Not implemented yet	Not implemented yet
Lietuva (Lithuania)	Not implemented yet	Not implemented yet
Luxembourg (Luxembourg)	Minister of Transport	Minister of Transport
Magyarország (Hungary)	Ministry of Economy and Transport;	Central Inspectorate for Transport.
Nederland (Netherlands)	Ministry of Transport	Ministry of Transport
Österreich (Austria)	Federal Ministry of Economy and Labour is responsible for approval of Notified Bodies.	Federal Ministry of Economy and Labour is responsible for assessing whether a Notified Body still fulfils the requirements for accreditation.
Polska (Poland)	President of the Railway Transport Office (supervisory) and the Polish Centre of Certification	President of the Railway Transport Office (supervisory) and the Polish Centre of Certification
Portugal (Portugal)	The Railway Regulator, INTF. INTF must check that applicants fulfil the criteria as laid down in national law and European Norms.	The Railway Regulator, INTF. INTF must constantly check the Notified Body's compliance with the criteria of DL 93/2000.
Slovenija (Slovenia)	The Slovenian Railway System is under reorganisation and the Ministry of Transport will be responsible for approval of Notified Bodies	The Slovenian Railway System is under reorganisation and the Ministry of Transport will be responsible for approval of Notified Bodies
Slovenská Republika (Slovakia)	Ministry of Transport Posts and Telecommunication	Ministry of Transport Posts and Telecommunication
Suomi/Finland (Finland)	The Finnish Ministry of Transport and Communication is responsible for appointing Notified Bodies.	The Ministry of Transport and Communications.

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	Approval of Notified Bodies	Assessment/Control of Notified Bodies
Sverige (Sweden)	Swedish Board for Accreditation and Conformity Assessment (SWEDAC) is responsible for appointing notified bodies. The assessment is done in close co-operation with the regulatory authority in the specific area.	Swedish Board for Accreditation and Conformity Assessment (SWEDAC)
United Kingdom (United Kingdom)	The Strategic Rail Authority appoints Notified Bodies supported by advice from the United Kingdom Accreditation Service (UKAS). The tasks of the SRA will be transferred to the Department for Transport during 2005.	The Strategic Rail Authority is responsible for assessment of Notified Bodies to ensure that they satisfy the relevant criteria included in the Regulations. The tasks of the SRA will be transferred to the Department for Transport during 2005.
Bългария (Bulgaria)	Ministry of Transport and Communications, Executive Agency Railway Administration National, Accreditation Agency	Ministry of Transport and Communications, Executive Agency Railway Administration National, Accreditation Agency
Ísland (Iceland)	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria
Norge (Norway)	Ministry of Transport and Communications	Ministry of Transport and Communications
România (Romania)	Legislation regarding interoperability directives not implemented yet	Legislation regarding interoperability directives not implemented yet
Schweiz/Suisse (Switzerland)	Federal Office of Transport. It should be noticed that Dir. 2001/16/EC is not yet transposed	Federal Office of Transport. It should be noticed that Dir. 2001/16/EC is not yet transposed

Table 20 Overview of organisation responsible for Notified Bodies

	EU15/ EFTA countries	New Member States/ Candidate Countries
Ministry of Transport	BE, DK, EL, ES, IE, IT, LU, NL, FI, NO (10)	HU, SI, SK (3)
Other regulatory body	DE, PT (2)	-
Other	AT, SE, UK (3)	CZ, PL, BG (3)
Not available	FR, CH (2)	EE, LV, LT, RO (4)
Total	17	10

Note: No data entry for Iceland and Liechtenstein. The information concerning Slovenia refers to future periods.

Note: The information for France and Switzerland is not available regarding Dir. 2001/16/EC, but exists with respect to Dir. 96/48.

Table 21 Existence of Notified Bodies

	Notified Bodies		Notified Bodies
Belgique/België (Belgium)	N	Österreich (Austria)	Y (2)

	Notified Bodies		Notified Bodies
Česká Republika (Czech Republic)	Y	Polska (Poland)	N
Danmark (Denmark)	Y (1)	Portugal (Portugal)	Y
Deutschland (Germany)	Y (1)	Slovenija (Slovenia)	N
Eesti (Estonia)	N	Slovenská Republika (Slovakia)	N
Ellas (Greece)	N	Suomi/Finland (Finland)	Y (1)
España (Spain)	Y (1)	Sverige (Sweden)	N (A notified body from Norway is currently being used)
France (France)	Y (1)	United Kingdom (United Kingdom)	Y (10)
Ireland (Ireland)	N	Bългария (Bulgaria)	N
Italia (Italy)	Y (2)	Ísland (Iceland)	n.a.
Latvija (Latvia)	N	Liechtenstein (Liechtenstein)	See Austria
Lietuva (Lithuania)	N	Norge (Norway)	Y (1)
Luxembourg (Luxembourg)	Y (1)	România (Romania)	N
Magyarország (Hungary)	N	Schweiz/Suisse (Switzerland)	N
Nederland (Netherlands)	Y (4)		

Note 1: Notified Bodies as established under Dir. 96/48/EC and 2001/16/EC

Note 2: In brackets is shown the number of Notified Bodies (where this information is available)

3.1.10 Regulation of competition

Regulatory provisions competition within the railway industry is mainly specified in the following three Regulations/ Directives:

Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway provides the main starting point for regulatory procedures for rail transport, including Prohibition of restrictive practices subject to the provisions (Article 2)

Directive 2001/12/EC specifies that the (independent) regulatory body established in accordance with Article 30 of Directive 2001/14/EC shall monitor the competition in the rail services markets, including the rail freight transport market (Article 10)

Council Regulation (EC) no. 1/2003 on the implementation of the rules of competition laid down in Articles 81 and 82 substantially replaces, but does not repeal the transport sector Regulation of 1017/68. Main provisions include powers of enforcement, powers of investigation reactively or pro-actively, powers to make decisions regarding infringements, powers to impose penalties subject to limits.

Table 22 shows the relevant authorities and procedures for competition issues, with Table 23 giving an overview. Three functions of the regulation of competition are considered: (1) monitoring competition; (2) enforcement of competition, (3) complaint handling related to competition. The reason for this division is that general (national) competition authorities may have involvement in all three areas (with reference to Regulation No. 1/2003), whereas railway authorities usual focus on monitoring and possibly complaint handling issues (as specified in Directive 2001/12/EC and 2001/14/EC respectively). It should be noticed that the complaint handling procedures represent a subset of the wider issues concerning enforcement.

In most countries (both EU15/EFTA and new member / candidate countries) competition issues are dealt with by the general competition authorities. This is the case for both the monitoring and enforcement of competition. 15 countries have allocated responsibility for monitoring competition to general competition authorities, while 21 countries have allocated the task of enforcement of competition to the general competition authority. Among the countries using this model are: Czech Republic, Denmark, Germany, Estonia, France, Lithuania, Luxembourg, Hungary, the Netherlands, and Romania.

In some countries these tasks have been allocated to the rail (transport) regulatory authority (or Ministry of Transport) with involvement of general competition authorities. For example, this is the case for Belgium, Greece and United Kingdom. In Greece, the Ministry of Transport and Communications along with the Hellenic Competition Authority is responsible for monitoring and enforcing competition. In the UK the Office of Fair Trading is exercising its powers concurrently with the Office of Rail Regulation.

For a few countries the organisation responsible for tasks relating to competition has not been identified. In the EU15/EFTA countries this is the case of Italy. For new member / candidate countries this concerns Slovakia and Slovenia. In the case of Slovenia the body to be responsible for regulation of competition will be defined following the reorganisation of the railways. For Slovakia a regulatory body will be established in 2006.

Table 22 *Competition issues*

	Monitoring competition	Enforcement of competition	Complaint handling related to competition
Belgique/België (Belgium)	Competition Council	Competition Council An applicant or a railway undertaking can address the Competition Council if it considers being a victim of unfair treatment or of discrimination as a result of decisions taken by the infrastructure manager or by the Minister of Transport.	Competition Council An applicant or a railway undertaking can address the Competition Council if it considers being a victim of an unfair treatment or of discrimination as a result of decisions taken by the infrastructure manager or by the Minister of Transport.
Česká Republika (Czech Republic)	Office for the Protection of Competition	Office for the Protection of Competition	Office for the Protection of Competition
Danmark (Denmark)	Danish Competition Authority: general examination of competition in various sectors Ministry of Transport: responsible for monitoring of the railway sector	Danish Competition Authority & Ministry of Transport: to ensure equal and non-discriminatory access for railway undertakings to the railway network.	Railways Appeals Board: the administrative authority regarding complaints with respect to licenses, competition issues, access to training for rail staff, capacity allocation and charging.
Deutschland (Germany)	Federal Cartel Office (BKartA) monitors the situation in the market in order to enforce the ban on cartels, exercise merger control, and control abusive practices	Federal Cartel Office (BKartA), Federal Railway Administration (EBA) and Federal Land. The BKartA is responsible for enforcement only if the restrictive effect on competition extends beyond the territory of one Federal Land. If this is not the case the relevant competition authority of that Land will proceed.	EBA is concerned with technical issues BkartA deals with commercial issues. Firms prohibited from merging have recourse to the courts if they disagree with the Bundeskartellamt's competition assessment. The courts may possibly rule differently from the Bundeskartellamt. However, like the Bundeskartellamt, the courts decide on competition grounds alone. Non-competition-based arguments may be advanced by firms when seeking authorisation for a concentration from the Federal Minister of Economics and Technology
Eesti (Estonia)	Estonian Competition Board	Estonian Competition Board	Estonian Competition Board
Ellas (Greece)	Ministry of Transport and Communications Hellenic Competition Authority	Ministry of Transport and Communications Hellenic Competition Authority	Ministry of Transport and Communications Hellenic Competition Authority
España (Spain)	Rail Regulator (to be established in 2005)	Not applicable	Not applicable

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	Monitoring competition	Enforcement of competition	Complaint handling related to competition
France (France)	The 'Mission de Contrôle des activités ferroviaires' (railway activity inspection department) generally monitors the market. As it is the body that handles complaints of applicants it has direct access to those aspects of competition on the railway market. General Department for Competition, Consumer Issues and prevention of fraud, on behalf of the Ministry of Economy, of Finances and of Industry, plays an essential role with regard to monitoring of economic stakeholders, companies, consumers and local elected bodies. From March 2005 European Commission also monitors state aid provision to SNCF freight division via yearly audits performed by external company.	The 'Mission de Contrôle des activités ferroviaires' generally monitors the market. As it is the body that handles complaints of applicants it has direct access to those aspects of competition on the railway market. General Department for Competition, Consumer Issues and prevention of fraud, on behalf of the Ministry of Economy, Finances and of Industry, plays an essential role with regard to monitoring of economic stakeholders, companies, consumers and local elected bodies.	Mission de Contrôle des activités ferroviaires (railway activity inspection department): has a general mission to observe access conditions to the railway network. It also handles complaints related to competition.
Ireland (Ireland)	The Competition Authority & Minister of Transport/body designated by the Minister	The Competition Authority	The Competition Authority & Minister of Transport/body designated by the Minister
Italia (Italy)	Not applicable	Not applicable	Ministry of Infrastructure and Transport: in case of a dispute, an arbitration court will be formed, composed of five members (one from the Ministry of Transport, one from Finance Ministry, 2 from the plaintiff and one from the State Council).
Latvija (Latvia)	The Competition Council shall: monitor competition to avoid abuse of dominant position, unfair competition and agreements by market participants	Public Utility Commission (PUC) in co-operation with the Competition Council and Latvian State Railway Administration. PUC will intervene directly in the service provision process only where competition is limited.	The Competition Council conducts investigations of possible violations of the Competition Law, conducts market assessments and prepares Competition Council opinions regarding compliance with the Competition Law.
Lietuva (Lithuania)	The Competition Council will undertake monitoring of competition between railway operators (at the moment there is only 1 operator in the market).	The Competition Council is implementing the State's competition policy and supervises compliance with the Competition Law	The Competition Council will investigate, consider infringements of the Competition Law and impose penalties on the defaulters.
Luxembourg (Luxembourg)	Competition Council	Competition Council. However CFL have not been under any scrutiny yet.	Competition council will deal with disputes, however precise procedures are not available yet because directive is not implemented for the railway market.

	Monitoring competition	Enforcement of competition	Complaint handling related to competition
Magyarország (Hungary)	Service Section of the Office of Economic Competition (GVH)	Service Section of the Office of Economic Competition (GVH)	Service Section of the Office of Economic Competition (GVH)
Nederland (Netherlands)	Netherlands Competition Authority. The Authority can prevent subscription to procurement procedures of operators with too large market shares	Netherlands Competition Authority enforces competition and has the right to give penalties	Netherlands Competition Authority is handling competition complaints.
Österreich (Austria)	Ministry of Transport (Finance and controlling division). Also monitoring tasks are being undertaken by Rail Monitoring (Schienen-Control GmbH)	Competition authorities within the Federal Ministry of Economy and Labour.	Competition authorities within the Federal Ministry of Economy and Labour. Also SCG and SCK have responsibilities regarding complaint handling.
Polska (Poland)	Railway Transport Office and Office for Competition and Consumer Protection	Railway Transport Office	President of the Railway Transport Office and Court of Competition and Consumer Protection
Portugal (Portugal)	The Railway Regulator, INTF. INTF must co-operate with bodies that defend competition, and “identify suspicious behaviour”.	Competition Authority, on behalf of the Ministry of Economy) INTF	Competition Authority, on behalf of the Ministry of Economy)
Slovenija (Slovenia)	Special Office within the Ministry of Economy – Competition Protection Office	Not available prior to railway reorganisation	Special Office within the Ministry of Economy – Competition Protection Office
Slovenská Republika (Slovakia)	Regulatory body will be established in 2006	Regulatory body will be established in 2006n.a.	Regulatory body will be established in 2006n.a.
Suomi/Finland (Finland)	Competition issues are dealt with by the Finnish Competition Authority (Kilpailuvirasto) According to the new Railway Act (198/2003) MoTC is the Regulatory Body. As a Regulatory Body the MoTC is responsible for certain competition issues.	The Finnish Competition Authority	The Finnish Competition Authority
Sverige (Sweden)	The Swedish Competition Authority is the central public authority for competition matters. The Swedish Rail Agency shall monitor that the market for rail services, including the market for rail transport, functions efficiently from the perspective of competition and notify anomalies to the Swedish Competition Authority.	The Swedish Competition Authority has the responsibility to take action against anti-competitive practices, including agreements and abuses of dominant positions.	The Swedish Competition Authority is responsible for complaints regarding competition matters

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	Monitoring competition	Enforcement of competition	Complaint handling related to competition
United Kingdom (United Kingdom)	Office of Rail Regulation has a duty to promote competition in the interests of customers Office of Fair Trading is the overall competition authority in the UK. OFT is exercising its powers concurrently with the ORR.	Office of Rail Regulation has a duty to promote competition in the interests of customers Office of Fair Trading is the overall competition authority in the UK. OFT is exercising its powers concurrently with the ORR.	Office of Rail Regulation Office of Fair Trading
Bългария (Bulgaria)	MoTC (Executive Agency Railway Administration), SRIC.	Commission on Protection of Competition (CPC)	MoTC (Executive Agency Railway Administration), SRIC, Commission on Protection of Competition.
Ísland (Iceland)	Not applicable	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria	See Austria
Norge (Norway)	The Norwegian Competition Authority. Authority shall according to the Competition Act survey competition in the various markets. However, the Ministry of Transport and Communications has the regulatory responsibility within the Railway Act.	The Norwegian Competition Authority: authorisation to intervene in businesses that abuse market power, or in other ways reduce competition in the market.	The Norwegian Competition Authority
România (Romania)	Competition Council	Competition Council	Competition Council
Schweiz/Suisse (Switzerland)	Federal Office of Transport	Competition Council	Federal Office of Transport handles complaints regarding competition in the railway market

Table 23 *Overview of organisation responsible for competition issues*

	Monitoring competition issues		Enforcement of competition
General competition authority (15)	BE, DK, DE, FR, LU, NL, NO, CZ, EE, LV, LT, HU, PL, RO, SI	General competition authority (21)	BE, DK, DE, FR, IE, LU, NL, AT, PT, FI, SE, NO, CZ, EE, LV, LT, HU, PL, BG, RO, CH
Transport/rail authority (10)	EL, ES, IE, AT, PT, FI, SE, UK, CH, BG	Transport/rail authority (2)	EL, UK
Not available (2)	IT, SK	Not available (4)	ES, IT, SI, SK
Total	27	Total	27

Note: No data entry for Iceland and Liechtenstein

3.1.11 Evaluation of PSO claims

The main provisions concerning public service obligations in the railway sector are included in Council Regulation (EEC) No 1893/91 of 20 June 1991 amending Regulation (EEC) No

1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway. In particular, the competent authorities of the Member States may conclude public service contracts with a transport undertaking to ensure adequate transport services which take into account social and environmental factors and town and country planning, or with a view to offering particular fares to certain categories of passenger (Article 1). However, it is specified that Member States may maintain or impose the public service obligations referred to for urban, suburban and regional passenger transport services. Currently, the amended proposal for the revision of regulation 1191/69/EEC (COM(2002) 107 (the original proposal was put forward in July 2000, (COM(2000) 7)) concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterways includes provisions for introduction of public tendering for railway services in those cases where railway undertakings are compensated financially for public service obligations or are awarded time-limited exclusive rights. Of importance for public service contracts for railways are also Directive 2004/17/EC of the European Parliament and Council of 31 March 2004 coordinating the procurement of entities operating in the water, energy, transport and postal services and Directive 2004/18/EC on the co-ordination of the procedures for the award of public works contracts, public supply contracts and public service contracts.

In the following section we will review the PSO arrangements in the 29 countries focussing on who the contracting authority is, the length of contracts and the extent to which PSO are awarded through public procurement procedures. A separate note sets out more detailed information about public service obligations in the countries considered in the ERAIL study.

For EU15/EFTA countries this task is in most cases allocated to the Ministry of Transport or a Ministry with transport as part of its portfolio (Belgium, Denmark, Greece, Spain, Italy, Austria, Finland, Norway). In the case of Denmark, the new National Rail Authority is responsible for tendered services, while the Ministry of Transport is responsible for PSO claims with respect to non-tendered services (with DSB).

In some cases the responsibility is given to transport/railway regulatory authorities (e.g. Netherlands and Portugal) or other railway authorities (e.g. United Kingdom and Sweden). The Strategic Rail Authority is a national authority responsible for competitive tendering (this responsibility will though be transferred to the Department for Transport during 2005). In Sweden, regional public transport authorities negotiate and make agreements with operators at the regional/local level while the National Transport Authority supports non-profitable interregional passenger services for all modes.

In the case of Ireland Parliament determines the annual payment to the main public transport company (CIE), while in Switzerland the Confederation and regional authorities determine the payments towards public transport operations.

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In the case of new member / candidate countries the responsibility for these tasks is also mostly assigned to the Ministry of Transport (Czech Republic, Bulgaria, Hungary, Latvia and Slovakia). For Latvia the Railway Administration (LRA) and the Ministry reviews the information submitted by the operators regarding subsidy. Parliament then approves the subsidies for these operators.

A number of countries have introduced formal public service contracts for providing passenger services in the context of public service obligations especially among EU15 Member States (e.g. Belgium, Denmark, Germany, Spain, France, Italy, the Netherlands, Austria, Finland, Sweden and the United Kingdom). Among the new Member States/ candidate countries examples of countries with public service contracts include (Czech Republic, Estonia, Latvia and Poland). However, in some countries no formal public service contracts exist, e.g. the case in Greece, Ireland and Portugal (in the case of the services provided by the national rail company CP).

On the other hand the use of competitive tendering for awarding public service contracts is more limited. Competitive tendering has been used in the United Kingdom, Denmark, Germany, Italy, Sweden and Switzerland. In Estonia competitive tendering was used in 2000-01 but received only one bid and the procedure was cancelled. Portugal used competitive tendering for the award of the new trans-Tagus service in Lisbon, where a new entrant won the franchise. No other services have yet been subject to competitive tendering in Portugal.

The length of contracts shows significant variation. In particular, it varies from 1 year (e.g. Czech Republic, Estonia and Poland) to more than 10-15 years, e.g. the concession in Netherlands for the trunk network is 10 years, and Germany. Typically, the contract length is around 3-7 years, e.g. Denmark (in the case of Arriva's tendered contract), Spain, Sweden, the United Kingdom and Switzerland).

Another difference concerns what is included in public service contracts. In some cases public service contracts are global covering all passenger services. In Denmark, two public service contracts between DSB/ DSB S-tog and the state includes Copenhagen commuter traffic and regional/ long-distance services. In addition, the contract with Arriva is in place. In the United Kingdom all domestic passenger services are covered through a series of franchises. In contrast, some countries are using public service contracts for specific passenger services only. For example, in Sweden public service contracts are in place for non-profitable regional and interregional services.

The responsible bodies, length of contract and the extent to which public procurement is used are given in Table 24. An overview is shown in Table 25.

Table 24 *PSO arrangements*

	Contracting authority	Length of contract	Public procurement procedures
Belgique/België (Belgium)	The Federal State (Ministry of Mobility signs a contract with the railway operating company (SNCN)	The current contract is signed for 2005-2007 between SNCB and the Belgian State.	The management contract is awarded via direct negotiation between The State (Minister of Mobility) and SNCB. Up to now, no tendering procedures have been used.
Česká Republika (Czech Republic)	Ministry of Transport, self-governing regions	The contract is concluded annually for the particular timetable.	PSOs are not awarded through tendering.
Danmark (Denmark)	Ministry of Transport responsible for procurement regarding negotiated services. The National Rail Authority responsible for tendered services	The two negotiated contracts with DSB and DSB S-tog A/S run from 1st January 2005 to 2014 The tendered contract with ARRIVA started 5.1 2003 and is running for 7 years	Gradual introduction for regional services. ARRIVA was awarded the 1st tendered contract and started January 2003. Additional contracts for other regional services will be awarded through competitive tendering.
Deutschland (Germany)	By law the "Bundesländer" are the responsible authorities, however, some of them decided by their own regional transport law that there are special organisations like Public transport authorities ("Verkehrsverbände") or other organisations, sometimes units of several counties which are joined to "Zweckverbände". These authorities are the contractors with the TOC.	Usually the contracts awarded by a public procurement procedure last 10 years, some exceptions exist with much shorter intervals like 2 years, but this only happens under very specific circumstances	Partly, most "SPNV" is operated by Deutsche Bahn based on non-tendered contracts. There are also several contracts with competitors of DB and new entrants existing which do not follow a public procurement procedure. Today it can be estimated less than 15 % or the services are based on such procedures.
Eesti (Estonia)	Ministry of Economic Affairs and Communications	The contracts are signed every year.	Concerning Edelaraudtee AS, competitive tendering were made 2000-2001, but no other railway undertaking besides Edelaraudtee AS bid and the procedures was cancelled. The Ministry of Economic Affairs and Communications is looking for opportunities to take procedures to sign long-term contracts for public passenger transport.
Ellas (Greece)	Ministry of Transport and Communications	The time horizon for the Agreement between the State and OSE covers the period till 31.12.2007. However, there was never any specific contract between the two parties.	The Agreement mentions that the State will ask Hellenic Railways Organization in priority. However, there was never such a case.
España (Spain)	The state (Ministry of Development, MdF) as well as the regional governments.	Normally, the period is four years.	There is no competitive tendering for now, nor any competition for that matter.
France (France)	The contracting authorities for short distance (local/regional) services in France are the 20 French regional authorities and Ile de France (Regional Council of Paris). National and international	For the 20 + 1 contracts regarding Regional services does not exist one single length. Most contracts were signed in 2002 and they have a minimum duration of 5 years.	All ongoing contracts are signed via direct negotiations between the parties (SNCF and Regional Authorities).

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	Contracting authority	Length of contract	Public procurement procedures
	services are provided on the basis of a periodical law on which SNCF is acting		
Ireland (Ireland)	At present no public service contracts for rail	No public service contract for rail in place but there are plans to introduce these in the near future.	Exchequer pays annual grant to Irish Rail (via CIE)
Italia (Italy)	Ministry of Infrastructure and Transport, regional governments	PSO contracts for a period of three years, with annual revision, to guarantee proper public transport	Open tendering has been introduced. But the only three open tenders so far involved regional railways that were not operated by Trenitalia, these are still to follow.
Latvija (Latvia)	Ministry of Transport	Not available	There are PSO contracts signed to run specifically 5 lines in Latvia, although these have not involved tendering.
Lietuva (Lithuania)	Until now no PSO money has been paid to LG Passengers, the only passenger operator in Lithuania.	Not applicable	Tendering procedures not used
Luxembourg (Luxembourg)	Ministry of Transport	Not available	Up to now, no tendering procedures have been used. Currently, CFL receives state payment for passenger services under contract which is based on the financial proposal made by CFL to the government.
Magyarország (Hungary)	State of Hungary represented by the Minister of Economy and Transport	The framework agreement will be in force until 2008.	In Hungary at present there is no contract on PSO in force. Instead, elaboration of a framework agreement on PSO has been taking place.
Nederland (Netherlands)	Ministry of Transport – Trunk network Regional authorities – Periphery – (kaderwetgebieden)	Trunk network – 10 years concession (NS) Northern regions – 15 years (Arriva) Other concessions have a minimum of 8 years.	Most recent contracts have been awarded via competitive tendering (northern and eastern regions) The trunk network was directly awarded to the NS.
Österreich (Austria)	Ministry of Transport, Innovation and Technology, Austrian provinces and communities	Four years	Negotiated contract between the state (BMVIT) and ÖBB, as well as contracts involving regional authorities.
Polska (Poland)	Voivodship self-government (Marshal's Offices) for regional railway transport.	Typically one year, though PKP PR insists on longer contracts, within the frames of European directives.	Competitive tendering not used at the moment. In the beginning of the year 2005 the Wielkopolskie voivodship intended to announce a tender for regional services due to problems with reaching an agreement with PKP PR. However, no private operator fulfilled the requirements.
Portugal (Portugal)	Ministries of Finances and Transport, INTF CPs deficit is covered by the	No fixed length (originally set at 30 years). When traffic figures were lower than anticipated, a new	One service franchised (FERTAGUS)

	Contracting authority	Length of contract	Public procurement procedures
	state (there is no specification as to what services should or should not be provided)	round of negotiations started resulting in the 2005 contract. It specifies that the next round of negotiations must be held between 30 June 2008 and 30 June 2009.	
Slovenija (Slovenia)	Public Agency for Rail Transport (there might be a Public Agency for public passenger Transport in the future responsible for this task)	According to the Railway Law seven years	Competitive tendering has not been used for award of public service contracts.
Slovenská Republika (Slovakia)	Ministry of Transport, Posts and Telecommunications	The contract is signed annually	Competitive tendering has not been used for award of public service contracts.
Suomi/Finland (Finland)	Ministry of Transport and Communication (for the traffic bought by the state) Helsinki Metropolitan Area Council (Helsinki regional passenger services)	From one to five years	VR receives public budget contributions for unprofitable long-distance services. Helsinki regional passenger services are contracted to VR by the Helsinki Metropolitan Area Council. No use of competitive tendering.
Sverige (Sweden)	Rikstrafiken County Public Transport Authorities (CPTAs)	Three or five years. Rikstrafiken has the possibility to prolong the contract up to three more years.	Unprofitable interregional services procured by Rikstrafiken in competitive tendering process. For CPTAs both tendered and negotiated contracts
United Kingdom (United Kingdom)	Strategic Rail Authority (although responsibility will be transferred to the Department for Transport during 2005). The changes will also see an enhance role for PTEs, the Greater London Authority, Wales and Scotland devolved authorities regarding passenger services.	The length of contract varies between franchise contracts, however current policy is 7 years as the typical franchise period, with extensions of up to 3 years possible if justified by performance. Initially, the SRA favoured longer-term franchises (up to 20 years).	All domestic passenger services are procured through competitive tendering (franchising) (with minor exceptions).
Bългария (Bulgaria)	Ministries of Transport and Finance	The Contract is concluded for a 5-year term and entered into force on 01 January 2004.	At present BDZ EAD is the only passenger railway operator, in compliance with the normative framework, obliged to carry out transportation railway services on the territory of the country.
Ísland (Iceland)	Not applicable	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria	See Austria
Norge (Norway)	The Ministry of Transport and Communications	The length of the contract is one year.	Passenger transport on a regional line (Gjøvikbanen) is exposed to competition and will be awarded via competitive tendering procedures. The start of traffic on this line is summer 2006. The rest of the PSO's are at the moment not awarded via public procurement procedures.
România (Romania)	Central Government and any regional or local authority.	Not available	Competitive tendering not used
Schweiz/Suisse (Switzerland)	Federal State (for long-distance services) (Federal Office of Transport) Regional and local authorities (for regional services)	SBB/CFF/FFS long-distance service concession is guaranteed for a period of 1999 – 2007. SBB/CFF/FFS also has 12 regional districts of operations and	For long distance services no tendering is used. The concession is directly negotiated by SBB/CFF/FFS. For regional services tendering is

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	Contracting authority	Length of contract	Public procurement procedures
		there is 7-year concession in each one of them. BSL has contracts for a few lines in regional rail transport. Contract lengths range 6 to 7 years. Other operators have in general 1 year concession per served line.	used, but only in few cases.

Table 25 *Evaluation of PSO claims*

	EU15/EFTA countries	new member / candidate countries
Ministry of Transport	BE, DK, EL, ES, IT, LU, AT, FI, NO (9)	CZ, LV, HU, SK, BG (5)
Other regulatory body	NL, PT, SE, UK (4)	SI (1)
Other	DE, FR, IE, CH (4)	EE, PL, RO (3)
Not applicable		LT (1)
Total	17	10

Note: No data entry for Iceland and Liechtenstein

3.1.12 Statistics

A number of Community provisions regarding statistics for railways have been adopted in recent years. In this section we will focus on the following regulations:

- Commission Regulation (EC) No. 1192/2003 of 3rd July 2003 amending Regulation No. 91/2003 of the European Parliament and of the Council on rail transport statistics.
- Regulation (EC) No. 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics.
- Regulation (EEC) No. 1108/70 of the Council of 4 June 1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway.
- Regulation (EEC) No. 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of accounts of railway undertakings.

Commission Regulations No. 1192/2003 and Regulation No. 91/2003 established common rules for the production of Community rail statistics to be supplied to EUROSTAT.

A variety of models for collection of statistics from the railway undertakings are present in the countries included in the report. In a majority of countries the responsibility rests with the national statistics offices (e.g. Denmark, Germany, Netherlands, Portugal, Latvia and Lithuania). For other countries the Ministry of Transport is responsible (e.g. Austria, Greece, Switzerland) and railway authorities (e.g. United Kingdom, Estonia). In the case of Estonia the Ministry of Transport contributes also to this task.

The task included in Regulation No. 1192/2003 and 91/2003 concerning the national contribution to Community statistics (Eurostat) is in most cases allocated to the National Statistics Office (15 countries out of a total of 24 for which data are available). This is the case for countries such as Denmark, Germany, Ireland, Netherlands, Austria, Bulgaria, Hungary,

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Latvia, Lithuania, Poland and Slovakia. In a few cases the responsibility rests with the Ministry of Transport (e.g. Czech Republic, Greece and Romania). In the case of Greece, both the Ministry of Transport and the Ministry of National Economy and Finance are involved.

Also for a few countries the main railway undertaking is responsible for the national contribution (e.g. Belgium and France). However, in both the case of Belgium and France this task will be transferred to another body. Alternatively, the responsibility rests with the infrastructure manager (e.g. the case of Finland and Norway, although in conjunction with the National Statistical Offices). In Sweden, the Eurostat task is fulfilled by SIKa (the official transport research institute).

However, for a number of countries the organisation responsible has not been identified: Luxembourg and Switzerland. In the case of Switzerland there is no agreement yet between Swiss Federal Office of Statistics (SFoS) and EUROSTAT. The negotiations are currently ongoing.

Table 26 shows the various institutions dealing with statistics collection. An overview is given in table 27.

Table 26 *Statistics*

	Collection of financial data from railway undertakings	Collection of financial data from infrastructure managers	National contribution to Community statistics (Eurostat)
Belgique/België (Belgium)	Currently SNCB collects and provides data. It is not yet entirely clear how data collection and provision will be handled in the transition to a liberalised market. The new SNCB Holding will have to publish its yearly accounts.	Currently SNCB collects and provides data. It is not yet entirely clear how data collection and provision will be handled in the transition to a liberalised market. The new SNCB Holding will have to publish its yearly accounts.	Currently SNCB collects and provides data. It is not yet entirely clear how data collection and provision will be handled in the transition to a liberalised market. The new SNCB Holding will have to publish its yearly accounts.
Česká Republika (Czech Republic)	Czech Statistical Office and Ministry of Transport	Czech Statistical Office, Ministry of Transport, Railway Infrastructure Administration	Ministry of Transport
Danmark (Denmark)	Statistics Denmark (Danmarks Statistik)	Statistics Denmark (Danmarks Statistik)	Statistics Denmark (Danmarks Statistik)
Deutschland (Germany)	Federal Office of Statistics	Federal Office of Statistics	Federal Office of Statistics
Eesti (Estonia)	The Ministry of Economic Affairs and Communications and the Railway Inspectorate	The Ministry of Economic Affairs and Communications	Main Statistical Office
Ellas (Greece)	OSE, Ministry of Transport and Ministry of National Economy and Finance	OSE, Ministry of Transport and Ministry of National Economy and Finance	Ministry of Transport and Ministry of National Economy and Finance
España (Spain)	RENFE and other train operating companies	ADIF (the infrastructure manager) must produce a financial report every year that complies with general accounting standards	National Statistics Institute (INE)

	Collection of financial data from railway undertakings	Collection of financial data from infrastructure managers	National contribution to Community statistics (Eurostat)
France (France)	Ministry of Transport - Direction 'Economic and International Affaires' Economic and Statistical Service	Economic and Statistical Service	Currently SNCF transmits directly its statistical data to Eurostat and sends a copy to SES. From 2004/05 the Economic and Statistical Service will be responsible for the collection of statistical data of railway undertakings and for the transmission of these data to Eurostat.
Ireland (Ireland)	Córas Iompair Éireann (CIÉ)	Córas Iompair Éireann (CIÉ)	Central Statistics Office
Italia (Italy)	Train operating companies must make their annual balance sheets public	Infrastructure Manager (RFI and Ministry of Infrastructure and Transport (MIT): RFI is required to produce a financial report to the state.	National statistics institute
Latvija (Latvia)	Main Statistical Office of Latvia	Main Statistical Office of Latvia	The Main Statistical Office in Latvia gives railway statistics to Eurostat
Lietuva (Lithuania)	The division of Transport Service Statistics in the Department of Statistics	The division of Transport Service Statistics in the Department of Statistics	The division of Transport Service Statistics in the Department of Statistics
Luxembourg (Luxembourg)	CFL itself provides information to the Government about its activities and expenditures.	CFL itself provides information to the Government about its activities and expenditures.	There is a legal obligation (under EU regulation) for the government of Luxembourg to provide statistics.
Magyarország (Hungary)	Hungarian Central Statistics Office (KSH)	Hungarian Central Statistics Office (KSH)	Hungarian Central Statistics Office (KSH) Transport and Tourism Section.
Nederland (Netherlands)	Centraal Bureau voor de Statistiek (CBS). The railway undertakings have to give the MoT all information the MoT requires.	Centraal Bureau voor de Statistiek (CBS).	Centraal Bureau voor de Statistiek (CBS).
Österreich (Austria)	Federal Ministry of Transport, Innovation and Technology (Unit FC II)	Federal Ministry of Transport, Innovation and Technology (Unit FC II)	Statistics Austria (Enterprises Directorate) Federal Ministry of Transport, Innovation and Technology
Polska (Poland)	PKP SA Department of Archive of Railway Documentation	PKP SA Department of Archive of Railway Documentation	The Polish Central Statistical Office provides information on rail transport to Eurostat
Portugal (Portugal)	The Portuguese National Statistics Institute (INE). Any company registered as a company limited by shares is legally obliged to supply INE with statistical information.	INE National Statistics Institute) REFER	INE (National Statistics Institute) through periodic surveys
Slovenija (Slovenia)	The Slovenian Railway System is under reconstruction and Ministry of Transport will be responsible for collection of financial data from railway undertakings.	The Slovenian Railway System is under reconstruction and Ministry of Transport will be responsible for collection of financial data from infrastructure managers	The Slovenian Railway System is under reorganisation and the Statistical Office of the Republic of Slovenia will be responsible for national contribution to Community statistics on rail transport to Eurostat.

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	Collection of financial data from railway undertakings	Collection of financial data from infrastructure managers	National contribution to Community statistics (Eurostat)
Slovenská Republika (Slovakia)	ZSR (Infrastructure Manager) and the economical departments of internal units of ZSSK	ZSR (Infrastructure Manager)	Statistical data are sent by ZSSK to Statistical Office of Slovakia who is responsible for communication with Eurostat.
Suomi/Finland (Finland)	The Ownership Policy Unit of the Ministry of Transport and Communications	Ministry of Transport and Communications	Finnish Rail Administration (RHK) Statistics Finland
Sverige (Sweden)	SIKA (the Swedish Institute for Transport and Communications Analysis)	SIKA (the Swedish Institute for Transport and Communications Analysis)	SIKA (the Swedish Institute for Transport and Communications Analysis)
United Kingdom (United Kingdom)	Strategic Rail Authority	Office of the Rail Regulation	Strategic Rail Authority
Bългария (Bulgaria)	Ministry of Transport and Communication Executive Agency Railway Administration National Statistical Institute	Ministry of Transport and Communication Executive Agency Railway Administration National Statistical Institute	National Statistical Institute (NSI), Executive Agency Railway Administration, SRIC, BDZ EAD SRIC and BDZ EAD provide data directly to NSI.
Ísland (Iceland)	Not applicable	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria	See Austria
Norge (Norway)	Ministry of Transport and Communications	Ministry of Transport and Communications	Norwegian Railway Administration (Jernbaneverket) and the National Bureau of Statistics
România (Romania)	Ministry of Public Works, Transport and Housing	Infrastructure manager (CFR S.A)	Ministry of Public Works, Transport and Housing
Schweiz/Suisse (Switzerland)	Swiss Federal Office of Statistics (SFoS)	Swiss Federal Office of Statistics (SFoS)	There is no agreement yet between SFoS and EUROSTAT. The negotiations are currently ongoing.

Table 27 *Overview of organisation responsible for statistics*

	Collection of financial data from railway undertaking		National contribution to Community statistics (Eurostat)
National Statistics office (9)	DK, DE, FR, NL, PT, LV, LT, HU, CH	National Statistics office (15)	DK, DE, EE, ES, IE, IT, NL, AT, PT, LV, LT, HU, PL, SI, SK, BG
Ministry of Transport (6)	CZ, AT, FI, NO, SI, RO	Ministry of Transport (3)	EL, CZ, RO
Railway authority (2)	UK, BG	Railway authority (1)	UK
Other (10)	BE, EE, EL, ES, IE, IT, LU, SE, PL, SK	Other (5)	BE, FR, FI, SE, NO
Total	27	Total	24

Note re. Collection of data from railway undertaking: No entry for Iceland and Liechtenstein.

Note re. National contribution to Eurostat: No entry for Italy, Luxembourg, Switzerland, Iceland, and Liechtenstein. Data were not available for Luxembourg and Switzerland.

3.2 Transposition of EU Legislation (horizontal analysis)

Table 28 shows the extent to which the EU Member States and other European countries have transposed recent EU rail legislation:

The Rail Infrastructure Package:

- Directive 2001/12/EC
- Directive 2001/13/EC
- Directive 2001/14/EC

The Interoperability Directives:

- Directive 96/48/EC
- Directive 2001/16/EC

Overall, it appears that there is still some way to go before these directives are transposed into national law for EU Member States and other European countries, (the latter as far as they have chosen to do so).

The Directives in the Rail Infrastructure Package should have been implemented in the EU15 Member States in March 2003, but the process took significantly longer. In October 2003 9 Member States had not notified the Commission about the transposition of the Directives and therefore these Member States were brought in front of the Court of Justice. In its decision to bring the 9 countries for the Court of Justice the Commission mentions, however, that among these countries 4 countries had opened their rail freight to competition (Sweden, United Kingdom, Austria and Germany) while three had done so partly (Italy, Portugal and Spain). However, this does not exempt them to notify their national measures concerning market opening, as well as measures related to the other aspects covered by the infrastructure package.

Subsequently, Portugal, Spain, Ireland, Luxembourg, Austria and Sweden notified the Commission of implementation measures for the infrastructure package. However, following the condemnation of Germany, Greece, Luxembourg and the United Kingdom by the Court of Justice in October 2004, the Commission launched on 16 March 2005 further legal proceedings against these four Member States for failure to comply with the judgment of the Court and to communicate national measures for implementing the three directives of the 2001 rail infrastructure package. Furthermore, a court case against Netherlands was launched 14 December 2004 for incomplete implementation of the rail infrastructure package. Also, a court case against Spain has been launched for non-compliance of national measures. During April 2005 there has been a communication by Greece of the implementation measures for the infrastructure package directives (with a provisional English translation). Netherlands has also in April 2005 provided information about implementation measures for the infrastructure

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package directives. In the case of Germany, the Infrastructure Package has recently been transposed and communicated (May 2005). For the United Kingdom implementation measures are expected during 2005 following new consultation with interested parties.

http://europa.eu.int/comm/transport/rail/overview/infrastructure_implement_en.htm.

At the time of writing (June 2005) all the new Member States have communicated to the Commission about legislation transposing all three directives, although for some of these countries the transposition cannot at this moment be considered complete. None of the candidate countries have yet transposed these Directives in full.

In the case of other European countries implementation of the Infrastructure Package Directives is currently being prepared in Norway within the EEA Agreement procedures, while for Switzerland the Directives have been implemented (in accordance with the EU-CH Transport Agreement procedures).

In the case of the Interoperability Directive 2001/16/EC (trans-European conventional rail system) a majority of countries had not implemented this Directive by October 2003, despite the implementation was due for 20.04.2003 in the EU15 Member States. Therefore, the Commission brought in October 2003 8 Member States in front of the Court of Justice for failing to notify the Commission of any transposition of the Interoperability Directive (France, Austria, Germany, UK, Ireland, Italy, Sweden and Greece). Subsequently, Austria, France, Ireland, Italy and Sweden passed legislation transposing Directive 2001/16/EC, while legislation is pending in the UK.

http://europa.eu.int/comm/transport/rail/interoperability/conventional_en.htm

Most of the new EU Member States are in the process of implementing these Directives. All new EU Member States have communicated to the Commission about implementation measures for this Directive. For the two candidate countries the Directive Bulgaria has recently transposed the Directive into national legislation while for Romania full implementation is expected during 2005.

In the case of other European Countries the Conventional Interoperability Directive has been transposed in Norway, while for Switzerland the Directives are under investigation (an announcement will be made via the EU-CH Transport Agreement procedures).

The following countries have in June 2005 transposed all five directives listed in Table 29: Belgium, Czech Republic, Denmark, Spain, Italy, Hungary, Poland, Portugal and Sweden. For some countries such as Belgium, Luxembourg and Spain further legislative measures may be required to ensure full implementation (the same may be the case in several of the New EU Member States. It is anticipated that UK will over the next half year have passed the required legislation for transposing the Directives.

A short overview of Table 28 is given in Table 29.

Table 28 Overview of Transposition of EU Legislation (June 2005)

Legislation under preparation/incomplete transposition in italic

	2001/12/EC	2001/13/EC	2001/14/EC	96/48/EC	2001/16/EC
Belgique/België (Belgium)	Transposed through Royal Law dated 19 October 2004 "Arrêté royal portant certaines mesures de reorganisation de la S.N.C.B."	Transposed through Royal Law dated 12 March 2003 "Arrêté royal relatif aux conditions d'utilisation de l'infrastructure ferroviaire"	Transposed through Royal Law dated 12 March 2003 "Arrêté royal relatif aux conditions d'utilisation de l'infrastructure ferroviaire"	Transposed through Royal Law dated 3 April 2000 "Arrêté royal relatif à l'interopérabilité système ferroviaire transeuropéen à grande vitesse"	Transposed through Royal Law dated 15 May 2003 "Arrêté royal relatif à l'interopérabilité du système ferroviaire transeuropéen conventionnel"
Česká Republika (Czech Republic)	Transposed through amendment to Act no. 266/1994 in Act no. 103/2004	Transposed through amendment to Act no. 266/1994 in Act no. 103/2004	Transposed through amendment to Act no. 266/1994 in: Act no. 103/2004	Transposed through Act No. 266/1994 as amended by the Act no. 103/2004 and Decree of the Ministry of Transport No. 352/2004.	Transposed through Act No. 266/1994 as amended by the Act no. 103/2004 and Decree of the Ministry of Transport No. 352/2004.
Danmark (Denmark)	Transposed through the Act on Railway Operations 2003, Act. No. 310.	Transposed through the Act on Railway Operations 2003, Act. No. 310.	Transposed through the Act on Railway Operations 2003, Act. No. 310.	Transposed through Order No. 181 of 25.03.1999	Transposed through Order No. 263 of 08.04.2003
Deutschland (Germany)	Transposed through amendment of the General Railway Act (AEG) on 29 April 2005.	Transposed through amendment of the General Railway Act (AEG) on 29 April 2005.	Transposed through amendment of the General Railway Act (AEG) on 29 April 2005.	Transposed through the Railways Interoperability Regulation (EIV) of 20 May 1999	<i>Not communicated yet</i>
Ellas (Greece)	<i>Transposed through Presidential Decree 41/2005</i>	<i>Transposed through Presidential Decree 41/2005</i>	<i>Transposed through Presidential Decree 41/2005</i>	Transposed through Decree 345/01	<i>The draft decree to transpose this Directive into Greek Law is under elaboration</i>
Eesti (Estonia)	Transposed through Railways Act 2004	Transposed through Railways Act 2004	Transposed through Railways Act 2004	<i>Not transposed</i>	<i>Not transposed</i>
España (Spain)	Transposed through Act 39/2003 in 2005. Court case had been launched for non-compliance	Transposed through Act 39/2003 in 2005. Court case had been launched for non-compliance	Transposed through Act 39/2003 in 2005. Court case had been launched for non-compliance	Transposed through RD 1191/2000	Transposed through Royal Decree 646/2003

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	2001/12/EC	2001/13/EC	2001/14/EC	96/48/EC	2001/16/EC
France (France)	Transposed through decree N° 2003-194 of 7 March 2003	Transposed through decree N° 2003-194 of 7 March 2003 and in Law dated 6 May 2003 “Arrêté du 6 mai 2003 fixant les modalités de délivrance, de suspension temporaire et de retrait des licences d’entreprises ferroviaires”	Transposed through decree N° 2003-194 of 7 March 2003	Transposed through the Act on Interoperability of the Trans-European rail system (561/2002)	<i>Transposed through the Act on Interoperability of the Trans-European rail system (561/2002) however not fully.</i>
Ireland (Ireland)	Transposed through Statutory Instrument 536 of 2003	Transposed through Statutory Instrument 537 of 2003	Transposed through Statutory Instrument 643/2004 (<i>derogation of certain articles applied</i>)	Transposed through Statutory Instrument No. 118 of 2002	Transposed through Statutory Instrument on the 18 February 2004.
Italia (Italy)	Transposed through Legislative Decree 2003/188	Transposed through Legislative Decree 2003/188	Transposed through Legislative Decree 2003/188	Transposed through Legislative Decree 2001/299	Transposed through Legislative Decree 2004/264
Latvija (Latvia)	<i>The Directive is largely transposed through the Latvian Law on Railways</i>	<i>The Directive is largely transposed through the Latvian Law on Railways and Regulation of the Cabinet of Ministers “The Regulations of Licensing of Railway Operators”</i>	<i>The Directive is largely transposed through the Ministry of Transport Regulations “The Procedure of Public Usage of Railway Infrastructure Capacity Allocation”, Latvian Law on Railways and Latvian Cabinet of Ministers “Regulations of Railway Technical Operations”</i>	<i>The Directive is largely transposed, although further amendments due in 2005</i>	<i>The Directive is largely transposed, although further amendments due in 2005</i>
Lietuva (Lithuania)	<i>Largely transposed through amendments to the Railway Transport Code (Apr 2004)</i>	<i>Largely transposed through amendments to the Railway Transport Code (Apr 2004) and Licensing Rules of Passenger, Luggage and Freight Transportation by Railways</i>	<i>Largely transposed through amendments to the Railway Transport Code (Apr 2004) and Rules on Allocation of public railway infrastructure</i>	<i>Legislation on interoperability and safety are under preparation</i>	<i>Legislation on interoperability and safety are under preparation</i>
Luxembourg (Luxembourg)	<i>Transposed through Grand-Duchy Decree of 10 May 1995. Not communicated yet.</i>	<i>Transposed through Grand-Duchy Decree of 24 October 2003. Not communicated yet.</i>	<i>Transposed through Grand-Duchy Regulation of 24 October 2003. Not communicated yet.</i>	Transposed through Grand-Duchy Regulation of the 24th April 2000	Transposed through Grand-Duchy Regulation of 6 June 2003

	2001/12/EC	2001/13/EC	2001/14/EC	96/48/EC	2001/16/EC
Magyarország (Hungary)	Transposed through Revised 1993 Railway Act, 2001/CIX	Transposed through Decree 15/2002 KoViM	Transposed Decree 67/2003 of the Ministry of Economy and Transport and Joint Decree of the Ministry of Economy and Transport and the Ministry of Finance	Transposed Decree 9/2002 KöViM	Transposed through Decree 103/2003
Nederland (Netherlands) Update	Transposed through the competition law and the statutes of the Dutch Competition Authority NMA	<i>Transposed through the Railway Law</i>	Transposed through art. 62, 63 Spoorwegwet 2002 (Regulations for user charges for the Railway infrastructure) and Decree on Capacity Allocation 2000. Network Statement has been published by the Dutch infrastructure manager.	<i>Interoperability directives are not yet fully transposed</i>	<i>Interoperability directives are not yet fully transposed.</i>
Österreich (Austria)	Transposed through an amended Railway Act (Act no. 106/2004).	Transposed through an amended Railway Act (Act no. 106/2004).	Transposed through an amended Railway Act (Act no. 106/2004) The Network Statement has been published by the Austrian Infrastructure Manager.	Transposed through the Austrian Railway Act	<i>Transposed through a draft amended Railway Act. The draft has been sent to the Commission. Austria has notified the Commission of the Basic Parameters for some of the subsystems</i>
Polska (Poland)	Transposed through the 28 March 2003 Railway Act on the Regulation of Railway Transport	Transposed through the 28 March 2003 Railway Act on the Regulation of Railway Transport	Transposed through the 28 March 2003 Railway Act on the Regulation of Railway Transport and the 7 April 2004 Regulation on condition of access and use of railway infrastructure	Transposed through amendment of 20th April 2004 to the Law on Railway Transport	Transposed through amendment of 20th April 2004 to the Law on Railway Transport
Portugal (Portugal)	Transposed through Legislative Decree 270/2003	Transposed through Legislative Decree 270/2003	Transposed through Legislative Decree 270/2003.	Transposed through Legislative Decree 93/2000	Transposed through Legislative Decree no. 75/2003

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	2001/12/EC	2001/13/EC	2001/14/EC	96/48/EC	2001/16/EC
Slovenija (Slovenia)	<i>Partly transposed into national law through Railway Transport Act (ZzeIP 1999). Changes to legislative basis during 2005.</i>	<i>Partly transposed into national law Railway Transport Act (ZzeIP 1999). Changes to legislative basis during 2005.</i>	<i>Partly transposed into national law Railway Transport Act (ZzeIP 1999). Changes to legislative basis during 2005.</i>	<i>Largely transposed into national law. Changes following new railway legislation in 2005.</i>	<i>Largely transposed into national law. Changes following new railway legislation in 2005.</i>
Slovenská Republika (Slovakia)	<i>Partly transposed into national law through amendments to Act no. 164/1996 Coll. on Railroads.</i>	Transposed into national law through amendments to Act no. 164/1996 Coll. on Railroads.	<i>Partly transposed into national law through amendments to Act no. 164/1996 Coll. on Railroads.</i>	Transposed into national law through Act. no. 109/2005.	Transposed into national law through Act. no. 109/2005.
Suomi/Finland (Finland)	Transposed through regulation 198/2003 (Railway Law).	Transposed through the Railway Law and regulation 206/2003 (Regulation on the services to be provided to railway undertakings) and the Railway act	Transposed through the Railway Law and regulation 207/2003 (Regulation on the timetable period and the application for railway capacity) and the Railway act. Network Statement already published	<i>Most of the articles in EC Directive are transposed directly or indirectly into Finnish law through the Act on Interoperability of the Trans-European Rail System (561/2002, as amended by Act 200/2003)</i>	<i>Most of the articles in EC Directive are transposed directly or indirectly into Finnish law through the Act on Interoperability of the Trans-European Rail System (561/2002, as amended by Act 200/2003)</i>
Sverige (Sweden)	Transposed through the new Railway Act (2004:519) and the Railway Ordinance (2004:526)	Transposed through the new Railway Act (2004:519) and the Railway Ordinance (2004:526)	Transposed through the new Railway Act (2004:519) and the Railway Ordinance (2004:526)	Directive 96/48 was transposed into national law through Act (2000:1336) and Ordinance (2000:1339). TSI regulations have been incorporated into Swedish legislation through BV-FS 2002:3.	Transposed through the new Railway Act (2004:519) and the Railway Ordinance (2004:526)
United Kingdom (United Kingdom)	<i>Pending transposition It is anticipated that transposition will take place during 2005</i>	<i>Pending transposition. It is anticipated that transposition will take place during 2005</i>	<i>Pending transposition. Network Rail has published a Network Statement. It is anticipated that transposition will take place during 2005</i>	Transposed through Statutory Instrument 2002 No. 1166 "The Railways (Interoperability) (High-Speed) Regulations 2002	<i>Pending transposition. Consultation undertaken in 2004.</i>

	2001/12/EC	2001/13/EC	2001/14/EC	96/48/EC	2001/16/EC
Bългария (Bulgaria)	<i>Not transposed. Only 91/440 transposed</i>	<i>Not transposed Only 95/18 transposed</i>	<i>Not transposed. Only 95/19/EC transposed. Access conditions have been published by the Infrastructure Manager</i>	Railway Transport Act, Ordinance No 57 on essential requirements towards the railway infrastructure and the rolling stock	Railway Transport Act, Ordinance No 57 on essential requirements towards the railway infrastructure and the rolling stock
Ísland (Iceland)	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Liechtenstein (Liechtenstein)	See Austria	See Austria	See Austria	See Austria	See Austria
Norge (Norway)	Transposed through Regulations on authorisation to operate Railways, including Tramways, Underground Railways and Suburban Railways etc. and Access to the National Railway Network (Authorisation Regulations)	Transposed through Regulations on authorisation to operate Railways, including Tramways, Underground Railways and Suburban Railways etc. and Access to the National Railway Network (Authorisation Regulations)	Transposed through Regulations on the Allocation of Railway Infrastructure Capacity and the Levying of Charges for the Use of the National Railway Network (Allocation Regulations).	Transposed through Regulations concerning interoperability in the trans-European conventional network. Only available in Norwegian	Transposed through Regulations concerning interoperability in the trans-European conventional network. Only available in Norwegian
România (Romania)	<i>Partly transposed.</i>	<i>Partly transposed.</i>	<i>Full implementation in 2005</i>	<i>Full implementation in 2005</i>	<i>Full implementation in 2005</i>
Schweiz/Suisse (Switzerland)	Transposed through amendments to Main Railway Law (EBG). 742.101 (January 2003)	Transposed through amendments to Main Railway Law (EBG). 742.101 (January 2003)	Transposed through amendments to Main Railway Law (EBG). 742.101 (January 2003)	Transposed through Act on Interoperability of the Trans-European rail system (561/2002).	<i>Not transposed yet. Expected to be included in 2006/2007. Negotiations are ongoing</i>

Table 29 *Overview of Transposition of EC Directives*

Directive	Transposition			
	EU15	EFTA	New EU Member States	Candidate Countries
2001/12/EC	BE, DK, DE, ES, FR, IE, IT, NL, AT, PT, FI, SE (12)	NO, CH (2)	CZ, EE, HU, PL, (4)	-
2001/13/EC	BE, DK, DE, ES, FR, IE, IT, NL, AT, PT, FI, SE (12)	NO, CH (2)	CZ, EE, HU, PL, SK (5)	-
2001/14/EC	BE, DK, DE, ES, FR, IE, IT, NL, AT, PT, FI, SE (12)	NO, CH (2)	CZ, EE, HU, PL, (4)	-
96/48/EC	BE, DK, DE, EL, ES, FR, IE, IT, LU, AT, PT, SE, UK (13)	NO, CH (2)	CZ, HU, PL, SK (4)	- BG (1)
2001/16/EC	BE, DK, ES, IE, IT, LU, PT, SE (8)	NO (1)	CZ, HU, PL, SK (4)	- BG (1)

Note: the figures in the table reflects the situation in June 2005

3.3 Train operating companies

Traditionally, railways have been organised nationally as state monopolies responsible for both infrastructure and services, but recent years have seen a move away from this model. In particular, infrastructure and services have been separated (supported by EC Directive 91/440/EEC and the 1st Infrastructure Package). However, as highlighted earlier (Table 16) organisational separation of infrastructure and operations has not yet been achieved for all EU countries. For those countries belonging to the EU before 1 May 2004 organisational separation has been achieved for: Denmark, France, Netherlands, Portugal, Finland, Spain, Sweden and UK. In the case of Germany a separate entity DB Netz has been set up as part of the holding company DB AG. A number of the new Member States have also organisational separation between infrastructure and operations, including: Czech Republic, Estonia, Latvia, Hungary, Poland and Slovakia.

For operations some entry of new train operating companies has occurred. However, passenger and freight remained in a number of countries largely monopolised. In the case of passenger transport controlled competition has though been introduced in Great Britain and to a lesser extent in Denmark, Sweden, Netherlands, Germany, Italy and Portugal. Also there has been development concerning some open access for freight services, supported by Directive 2001/12.

Table 30 demonstrates that for a number of countries no other railway companies exist than the state railway. This is the case for Belgium, Greece, France, Ireland, Luxembourg, Finland,

Bulgaria, Czech Republic, Lithuania (new operator licensed only in May 2004), Romania and Slovenia. It should be noticed that almost all countries have arrangements (in principle) for open access.

Table 30 also provides evidence concerning market shares for passenger and freight in the 29 countries covered. It is clear that the rail market is for most countries highly concentrated, in many cases a publicly owned company is the dominating rail operator. It should be noticed that competition from alternative operators does not have to be on-track but could be in the form of off-tracks competition (e.g. as part of competitive tendering for passenger rail services as in the UK, Denmark, Germany, Netherlands, Italy, Portugal and Sweden). Furthermore, it should be mentioned that major restructuring has taken place of the publicly owned railway companies. The main trend has been to allow more independence and less direct political involvement such that these companies move towards business-like conditions.

Table 30 *Existence of other railway companies than state railway & Market shares for passenger and freight*

	Other railway companies than state railway	Market share for largest passenger operator (%)	Market share for largest freight operator (%)
Belgique/België (Belgium)	Y	~100	~100
Česká Republika (Czech Republic)	Y	Vast majority	Vast majority
Danmark (Denmark)	Y	~78 (DSB and DSB S-tog)	~close to 100% (Railion)
Deutschland (Germany)	Y	96	~90
Eesti (Estonia)	Y	45	100
Ellas (Greece)	N	100	100
España (Spain)	Y	93.7	95.6
France (France)	Y	~100	~100
Ireland (Ireland)	N	100	100
Italia (Italy)	Y	Vast majority	Vast majority
Latvija (Latvia)	Y	100	97
Lietuva (Lithuania)	N	100	100
Luxembourg (Luxembourg)	N	~100	~100
Magyarország (Hungary)	Y	99	85
Nederland (Netherlands)	Y	~100	~70
Österreich (Austria)	Y	98.0	98.6
Polska (Poland)	Y	99	99
Portugal (Portugal)	Y	93.6	100
Slovenija (Slovenia)	N	100	100
Slovenská Republika (Slovakia)	Y	Vast majority	Vast majority
Suomi/Finland (Finland)	N	100	100
Sverige (Sweden)	Y	~75	80-90

	Other railway companies than state railway	Market share for largest passenger operator (%)	Market share for largest freight operator (%)
United Kingdom (United Kingdom)	Y [Northern Ireland]: N	~10	Not available
Bălgarija (Bulgaria)	N	100	100
Ísland (Iceland)	n.a.	n.a.	n.a
Liechtenstein (Liechtenstein)	See Austria	See Austria	See Austria
Norge (Norway)	Y	Vast majority	Vast majority
România (Romania)	Y	Vast majority	Vast majority
Schweiz/Suisse (Switzerland)	Y	95	95

3.4 Non Governmental Organisations

There is a substantial variety of NGOs related to railways in terms of their numbers and influence. There are two distinct features of trade union (TU) representation in the rail sector in Europe. One is very high union density that is sometimes even higher than 90%; see table 31). Second, the presence of occupational and independent unions that may result in significant fragmentation of representation in the industry.

Table 31 *Union density in the main rail operators, 2000*

Country	Union density
Belgique/België (Belgium)	83%
Danmark (Denmark)	Almost 100%
Deutschland (Germany)	80%-90%
España (Spain)	About 90%
Ellas (Greece)	Almost 100%
France (France)	About 30%
Ireland (Ireland)	100% (compulsory)
Italia (Italy)	77%
Luxembourg (Luxembourg)	No data
Nederland (Netherlands)	Over 60%
Österreich (Austria)	Almost 100%
Portugal (Portugal)	About 90%
Suomi/Finland (Finland)	About 90%
Sverige (Sweden)	Over 90%
United Kingdom (United Kingdom)	Almost 100% for engine drivers, declining in other areas
Norge (Norway)	Over 90%

Source: EIRO(2000)

For most European railways the high union membership rate is due to the fact that this industry for a long time was and is still part of the state administration. This sector has traditionally displayed union presence that was higher than average. The strength of the railway unions in Europe does not only come from the high percentages of members but also from the importance of some occupational groups, notably engine drivers, which may have significant bargaining power and therefore have specific incentives to cooperate and organize (EIRO, 2000). For example, in many cases union density among train drivers is the highest among all TUs in this sector. In the case of the UK, the privatisation process did not affect drivers' membership rates and affiliation has remained at the same very high level (98%) among new employees.

At a EU level the European Transport Workers' Federation (ETF) represents rail workers in 22 Member States with Estonia being the main exception. ETF has a 80% share of the known number of workers who are members of a trade union organisation (mentioned in the Commission's proposal for a Directive on working time for train drivers, COM(2005) 32 final).

The second feature of European TUs in railways is a high degree of fragmentation and the presence of occupational and independent unions. The highest number of trade union organizations in the railway sector is found in Portugal (22 unions), Greece (18), Poland (14), Italy (12) and France (9). Among these countries there are some important differences. In France each union is affiliated to one of the union confederations. In Greece too, the 18 unions are organized within the same federation, the Pan-Hellenic Federation of Railway Workers (POS), which belongs to the Greek General Confederation of Labour (GSEE). This picture differs considerably from that in Italy, Poland and Portugal, where fragmentation is due to the presence of many autonomous unions in addition to the confederal unions. In general, the presence of autonomous unions may weaken union cohesion, due to the strong competition that may arise among different organizations. For instance, this is apparently happening in Portugal, where there may be several negotiations going on simultaneously with unions belonging to different confederations or representing different occupational groups. In Ireland too, in recent years an "unofficial" union, the [Irish Locomotive Drivers' Association \(ILDA\)](#) has been formed in opposition to the actions of the three "official" unions, which were already present. The other countries have a lower degree of union fragmentation, though the presence of occupational and independent unions is almost general (Belgium and Denmark).

Table 32 shows the influence of the various TUs in Europe.

Table 32 Trade union influence (if possible)

	% of employees in trade union		% of employees in trade union
Belgique/België (Belgium)	83%	Österreich (Austria)	Almost 100%
Česká Republika (Czech Republic)	-	Polska (Poland)	High unionization

	% of employees in trade union		% of employees in trade union
Danmark (Denmark)	Almost 100%	Portugal (Portugal)	About 90%
Deutschland (Germany)	80-90%	Slovenija (Slovenia)	-
Eesti (Estonia)	-	Slovenská Republika (Slovakia)	-
Ellas (Greece)	Almost 100%	Suomi/Finland (Finland)	About 90%
España (Spain)	About 90%	Sverige (Sweden)	Over 90%
France (France)	30%	United Kingdom (United Kingdom)	Almost 100% for engine drivers, declining in other areas
Ireland (Ireland)	100% (compulsory)	Bălgarija (Bulgaria)	n.d.
Italia (Italy)	77%	Ísland (Iceland)	n.a
Latvija (Latvia)	-	Liechtenstein (Liechtenstein)	See Austria
Lietuva (Lithuania)	-	Norge (Norway)	Over 90%
Luxembourg (Luxembourg)	n.d.	România (Romania)	-
Magyarország (Hungary)	-	Schweiz/Suisse (Switzerland)	90%
Nederland (Netherlands)	60%		

Note: Data used are from www.eiro.eurofound.eu.int/2000/03/study/tn0003402s.html

The industry associations have proved to act on various national and international levels. One of the strongest industry associations appears to be French FIF (*Federation of Railway Industries*). It groups together all the companies operating within the French rail industrial sector. The activities of FIF include the public relations, representation of railway companies' interest in the political debates, participation in UNIFE, communication with the EC, contribution to standardization and certification processes and many other tasks. In general, there is a distinction between industry associations in terms of countries where negotiations are held directly by the government (as in Denmark or Norway) or governmental agencies (as in Sweden), those where there are no employers' associations and the companies bargain in their own right (such as UK, Spain, Portugal, and Ireland), and those where companies are affiliated to employers' organizations (for example, Finland and Italy). There were very few industry associations among the new member / candidate countries, generally due to monopolies in the railway sector.

Most of the researched countries have had a users association that accounted for railway services as well. However, most of these NGOs have proven to have a general scope of activity. Italy has a relatively big number of such user groups (6) that directly or indirectly account for the quality railway services as well (for instance protection of the passengers and workers' rights). Table 33 shows the number of various user organisations across Europe.

Table 33 Existence of formal user organisations

	Formal user organisations		Formal user organisations
Belgique/België (Belgium)	3	Österreich (Austria)	2
Česká Republika (Czech Republic)	Several	Polska (Poland)	1
Danmark (Denmark)	1	Portugal (Portugal)	2
Deutschland (Germany)	4	Slovenija (Slovenia)	1
Eesti (Estonia)	1	Slovenská Republika (Slovakia)	0
Ellas (Greece)	3	Suomi/Finland (Finland)	1
España (Spain)	1	Sverige (Sweden)	1
France (France)	3	United Kingdom (United Kingdom)	1 national umbrella organisation with regional units
Ireland (Ireland)	1	Bългария (Bulgaria)	0
Italia (Italy)	4 (excl. trade union related organizations)	Ísland (Iceland)	n.a.
Latvija (Latvia)	1	Liechtenstein (Liechtenstein)	See Austria
Lietuva (Lithuania)	1	Norge (Norway)	2
Luxembourg (Luxembourg)	1	România (Romania)	0
Magyarország (Hungary)	0	Schweiz/Suisse (Switzerland)	More than 7
Nederland (Netherlands)	4		

As for environment groups, there were a number of organizations ranging from local to international competence. Yet again most of these NGOs had a general scope of action mainly trying to preserve the environment. In the UK though, *Transport 2000* is a NGO concerned with sustainable transport issues that looks for answers on how to reduce the environmental impact of all transport means. In general, the biggest concern of environmental NGOs related to railway tasks was the transportation of freight (especially dangerous goods). Greenpeace has had its activities noticed in the railways of Austria, Denmark and Germany (the latter was the case of protests over nuclear waste transportation over rail).

Among “Other” NGOs that were related to the railway activity in the member and accession states there was a broad range of different organizations. In the UK for instance there is an organization (*RailFuture*) that promotes the shift of passengers and freight from car to rail traffic. *GART* in France brings together 229 authorities responsible for the organization of

transport. It is the ‘voice’ of those authorities on a national level and towards the European Union. In Latvia for instance a *Railwaymen Society* exists that unites railway patriots and intellectuals under one roof while *Spanish Railway Foundation* aims to promote railway transportation through the development of cultural activities (courses, museums management, Via Libre magazine, archives and library maintenance).

To summarize, there are substantial differences between numbers and the power of NGOs between the EU15 States and the new EU Member States. Central and Eastern European NGOs have proven to be smaller in numbers compared to their counterparts in the west. In addition, NGOs in the EU15 Member States have more of an independent character, which allows them to organize better, acquire more publicity and improve their position in negotiations. Environmental NGOs in the railway sector in new member / candidate states were hardly present at all. Yet that seems to be consistent with the general situation of the NGO presence in the environmental sector of Eastern Europe. Nonetheless, NGOs (trade unions in particular) seem to be the only job security most Eastern European railway workers have while this sector is undergoing fundamental organizational reforms triggered by the EU accession.

3.5 Rail accident statistics

The template for the country monographs included information regarding rail accident statistics. In summary, the collected information was presented in Table 34 regarding persons killed in rail accidents (incl. at level crossings) and rail passengers killed in accidents according to the most recent year where data were available.

For a number of countries this information was not available: Switzerland, Hungary, Lithuania, Poland, Romania and Slovakia.

On the basis of this information it is not possible to draw any conclusions about accident risks between countries as it would be necessary to take into account traffic level (e.g. measured as train kilometres). It should be noted that these data are strongly dependent on single events, e.g. high numbers of killed in one year due to a single big accident. The highest number of persons killed in rail accidents was recorded in Germany (225). Germany also recorded the largest number of rail passengers killed (38). Luxembourg recorded the smallest number of persons killed (0) and also had together with Sweden the lowest number of rail passengers killed (0).

It should be noticed that a key characteristic of rail is its comparatively high safety level if compared to road safety, as highlighted in the table 35 in the next section (with respect to the ERAIL countries). These data are from 1997.

Table 34 Rail Accident statistics

	Persons killed in rail accidents incl. at railway crossings	Rail passengers killed in accidents		Persons killed in rail accidents incl. at railway crossings	Rail passengers killed in accidents
Belgique/België (Belgium)	29 (2001)	10 (2001)	Österreich (Austria)	58 (2002)	15 (2002)
Česká Republika (Czech Republic)	69 (2001)	0 (2001)	Polska (Poland)	-	-
Danmark (Denmark)	n.a (2000)	3 (2000)	Portugal (Portugal)	70 (2001)	7 (2001)
Deutschland (Germany)	225 (2000)	38 (2000)	Slovenija (Slovenia)	-	6 (2002)
Eesti (Estonia)	38	-	Slovenská Republika (Slovakia)	-	-
Ellas (Greece)	15 (2002)	4 (2002)	Suomi/Finland (Finland)	20 (2000)	2 (2000)
España (Spain)	2 (2000)	2 (2000)	Sverige (Sweden)	20 (2003)	1 (2003)
France (France)	104 (2002)	22 (2001)	United Kingdom (United Kingdom)	39 (2000/01)	21 (2000/01)
Ireland (Ireland)	2 (2000)	2 (2000)	Bălgarija (Bulgaria)	55 (2003)	n.a.
Italia (Italy)		22 (1999)	Ísland (Iceland)	n.a.	n.a.
Latvija (Latvia)	11	-	Liechtenstein (Liechtenstein)	n.d	n.d
Lietuva (Lithuania)	-	-	Norge (Norway)	6 (2001)	2 (2001)
Luxembourg (Luxembourg)	0 (2000)	0 (2000)	România (Romania)	-	-
Magyarország (Hungary)	-	-	Schweiz/Suisse (Switzerland)	n.a.	n.a.
Nederland (Netherlands)	14 (2002)	6 (2002)			

Table 35 *Road Accident statistics(2002)*

	Accidents involving personal injury (thousand)	Persons killed
Belgique/België (Belgium)	41.75	1315
Česká Republika (Czech republic)	26.59	1431
Danmark (Denmark)	7.13	463
Deutschland (Germany)	362.05	6842
Eesti (Estonia)	2.16	224
Ellas (Greece)	16.85	1654
España (Spain)	98.43	5347
France (France)	105.47	7655
Ireland (Ireland)	6.63	376
Italia (Italy)	237.81	6736
Latvija (Latvia)	5.08	518
Lietuva (Lithuania)	6.09	697
Luxembourg (Luxembourg)	0.77	62
Magyarország (Hungary)	19.69	1429
Nederland (Netherlands)	33.54	987
Österreich (Austria)	43.18	956
Polska (Poland)	53.56	5827
Portugal (Portugal)	42.22	1655
Slovenská Republika (Slovakia)	10.27	269
Slovenija (Slovenia)	7.87	610
Suomi/Finland (Finland)	6.20	415
Sverige (Sweden)	16.95	560
United Kingdom (United Kingdom)	221.75	3581
Bălgarija (Bulgaria)	6.77	1011
Ísland (Iceland)	n.a.	29
Norge (Norway)	8.72	275
România (Romania)	7.05	2461
Schweiz/Suisse (Switzerland)	23.65	544

Source: DG TREN (2004) Statistical pocket book 2004: Energy and Transport in Figures.

4 CONCLUSIONS

4.1 Transposition in law and implementation in practice

Overall, the information collected and examined as part of the ERAIL project has revealed that in terms of transposition that there is still some way to go before the Rail Infrastructure Package (Directives 2001/12, 2001/13 and 2001/14) and the Interoperability Directive regarding conventional rail (Directive 2001/16) are transposed into national law for all EU Member States and other European countries, (the latter as far as they have chosen to do so). This impression is illustrated by the recent decision (16 March 2005) by the Commission to launch further legal proceedings against 4 Member States (Germany, Greece, Luxembourg and the United Kingdom) for failure to comply with the Court of Justice in October 2004 and to communicate national measures for the Rail Infrastructure Package. Furthermore, the available evidence also suggests that implementation in many cases are not appropriate to ensure that the aims of the legislations are fulfilled (e.g. with respect to actual market opening), despite transposition in law.

A brief assessment of each country's implementation of the Railway Acquis is included in Table 36.

Table 36 *Assessment of individual countries' implementation of the Railway Acquis*

Belgique/België (Belgium)	Until recently limited reform in Belgium. In 2005 creation of new organisation for infrastructure (Infrabel). Limited market opening despite formal transposition of the Railway Infrastructure Package.
Česká Republika (Czech Republic)	Significant reform effort to adopt legislation to the Railway Acquis. Railway Infrastructure Package has been transposed. New entrants have emerged on the railway market, mainly freight operators, though limited market share compared to incumbent.
Danmark (Denmark)	Substantial reforms have been undertaken. Railway Infrastructure Package has been transposed together with the 2001 Interoperability Directive. Reforms of public institutions. Full separation of infrastructure and operations. Market entry for both passenger and freight operations. In the case of passenger through tender of contracts for regional services..
Deutschland (Germany)	Substantial reforms for the German railway market with open access for freight and long-distance passenger operations, along with possibility for controlled competition in the short-distance passenger market. DB AG a holding company with separate divisions for infrastructure and transport operations. Potential problem of dominant position of DB AG. Germany has not yet notified the EU about transposition of Railway Infrastructure Package.
Eesti (Estonia)	Railway network consists of two part networks in private ownership, both companies also provide transport services with only separate accounting. Some entry barriers for other railway undertakings. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Ellas (Greece)	Reform of the Greek railway market has been limited. The market is dominated by OSE where only separation of accounts has been adopted. In March 2005 a communication by Greece of the implementation measures for the Railway Infrastructure Package Directives.
España (Spain)	RENFE retains a monopoly in the Spanish railway market. Organisational separation of infrastructure and operations was finally implemented in 2005 with the creation of an IM. The Railway Infrastructure Package has now been transposed but at present there is a court case against Spain under way for non-compliance of national measures.
France (France)	Despite the transposition of the Railway Infrastructure Package barriers to access to the French market remain high such that SNCF is largely in a monopoly position

Ireland (Ireland)	Ireland has recently transposed the Railway Infrastructure Package (some derogations apply) and the Interoperability Directive for conventional trains. However, in practice market opening has not resulted in new entry and Irish Rail retains a monopoly; special characteristics of Irish Rail Market (island location, small network, technical circumstances). Only limited separation between infrastructure and operations.
Italia (Italy)	In recent years progress towards market opening, though certain entry barriers remain, e.g. safety certification and rolling stock approval. Infrastructure manager (RFI) though part of the holding Ferrovie dello Stato (FS). Transposition of the Railway Infrastructure.
Latvija (Latvia)	Restructuring of the railway sector in progress and market entry is starting. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Lietuva (Lithuania)	Significant development of railway sector underway. No separation of infrastructure and operations (apart from accounting). No competition in the market as yet. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Luxembourg (Luxembourg)	Luxembourg has satisfied certain minimum requirements regarding market opening and as a result CFL is still in a dominant position. Further legal steps against Luxembourg were announced in March 2005 for failure to communicate national implementation measures for the Railway Infrastructure Package Directives.
Magyarország (Hungary)	Limited competition in the Hungarian railway market. The market is dominated by two railway undertakings operating services on separate networks. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Nederland (Netherlands)	The Netherlands has adopted a number of railway reforms since the Mid-90's. Most elements of the Railway Infrastructure Package have been established though without full implementation in place. In December 2004 a court case against the Netherlands was launched for incomplete transposition. The Commission asks the Netherlands to fully implement legislation opening international rail freight. Subsequently, in April 2005 the Netherlands provided information to the Commission about the implementation measures for the three Directives in the package.

Österreich (Austria)	Railway Infrastructure Package has been transposed. However, entry barriers to Austrian market remain, e.g. in terms of extensive safety regulatory procedures. Limited competition in freight with passenger services being almost exclusively provided by ÖBB.
Polska (Poland)	Significant reform of the railway system in Poland. A number of external railway undertakings operate in the market. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Portugal (Portugal)	Recently, substantial reform regarding market opening. Problems though regarding transparency for approval of rolling stock. Separation of operations and infrastructure management. Portugal has transposed the Railway Infrastructure Package
Slovenija (Slovenia)	Some steps towards liberalisation. Limited competition in the market. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in November 2004.
Slovenská Republika (Slovakia)	Significant restructuring of railway system. However, certain constraints regarding access and licensing conditions. In practice no competition in the market. Implementation measures for the Railway Infrastructure Package were communicated to the Commission in April 2005.
Suomi/Finland (Finland)	Finland has transposed the Railway Infrastructure Package. However, VR Group Ltd. is still the only licensed railway undertaking.
Sverige (Sweden)	Sweden was one of the first countries to initiate the liberalisation of railways. Full separation between infrastructure and operations. In 2004, the Railway Infrastructure Package Directives were transposed.
United Kingdom (United Kingdom)	Great Britain has been one of leading reformers of railways in Europe regarding market opening, competition and separation of infrastructure and operations. Many of the elements of the Railway Infrastructure Package are in practice implemented, but formal transposition is presently lacking. [Northern Ireland]: different framework from rest of Great Britain with one single integrated railway company in public ownership.

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Bългария (Bulgaria)	Significant reform process involving: full separation between railway infrastructure and operations; independent company to manage the infrastructure; separate divisions on passenger and cargo service are established in the licensed state operator's structure, on territorial bases. There is a licensed private freight operator. Full transposition of Railway Infrastructure Package still to be achieved.
Ísland (Iceland)	Not applicable
Liechtenstein (Liechtenstein)	See Austria
Norge (Norway)	Progress towards market opening. Other freight operators are present. NSB BA though responsible for almost all passenger services. Most elements of the Railway infrastructure Package have been implemented. Infrastructure is separated from operations.
România (Romania)	Romania, although not yet a member of the EU, has restructured its railway sector since 1998. Full transposition of Railway Infrastructure Package is still to be undertaken. There are already ten private railway enterprises for freight and passengers transport
Schweiz/Suisse (Switzerland)	Non-discriminatory access conditions in the case of the freight. Limited market opening for passenger operations. Railway infrastructure package has been transposed.

The difference between transposition in law and implementation in practice will be illustrated with specific examples for all the countries covered in the ERAIL project (Table 36).

Table 37 Country examples regarding transposition in law vs. implementation in practice

Examples	
Belgique/België (Belgium)	Foreign operators without domestic license can access Belgian Market only as part of international grouping
Česká Republika (Czech Republic)	Complex range of different authorities and organisations may represent a barrier for new external railway undertakings.
Danmark (Denmark)	Although the creation of the National Rail Authority in 2003-04 has strengthened the planning and regulatory functions at the authority level there are issues that may raise problems in the future. This authority is placed under the Ministry of Transport such that the entity cannot be considered fully independent. This is of importance particularly with respect to ensure independent regulation of the sector.
Deutschland (Germany)	The infrastructure manager is still not independent of the operator of the DB-group (holding-structure), both legal, organisational and on the decision-making functions of the railway undertaking. However the infrastructure manager, DB Netz, is responsible for the allocation of infrastructure capacity, the design of the charging scheme etc.
Eesti (Estonia)	Although 20 operators are licensed, both Estonia Railway and Edelaraudtee have nearly a monopoly on the freight transport on their infrastructure. This indicates that it is difficult for the newcomers to start their operations.
Ellas (Greece)	The main problem with Greece is the delays that have occurred in the harmonization of its National Law to the Community new legislation for railways (mainly the first and second railway packages). Although Greece recently transposed the 1st Railway Infrastructure Package (March 2005).
España (Spain)	ADIF, the new IM was established on January 1st this year and is still in the process of organizing itself. The rail regulator is defined in the law, but still needs to be established in reality.
France (France)	No independent (rolling stock) test bodies other than those owned by SNCF. Tests are expensive and very technologically detailed.
Ireland (Ireland)	In practice infrastructure charges are not levied by the infrastructure manager (Irish Rail) on the railway undertaking (Irish Rail).
Italia (Italy)	Safety certification is done by a department of FS, the owner of Trenitalia, the main RU – and it take a very long time to issue such certificates (nine months up to two years!)

Examples	
Latvija (Latvia)	Although most Directives are transposed, it is difficult to judge how they work in practice; as there are few new entrants on the market with small market shares.
Lietuva (Lithuania)	Although according the law a PSO contract is obligated between the authority and the operator; there is no PSO contract between the railway operator and the MoT for passenger transportation.
Luxembourg (Luxembourg)	The CFL business units of infrastructure and transport are separate only in terms of accounting
Magyarország (Hungary)	The precise amount of infrastructure charges is not yet clarified.
Nederland (Netherlands)	ProRail is handling the capacity allocation. However the day-to-day planning system (VPT) is still operated by the NS. Railion the biggest freight operator has access to this system, but other operators have no direct access to this system.
Österreich (Austria)	The transfer of the existing licences (“Konzessionen”) to the licences according the new Railway Act might create problems as the new system is complicated, non-systematic and inconsistent.
Polska (Poland)	The access contracts between the infra manager and the operators are not open to the Regulatory Body.
Portugal (Portugal)	INTF (regulator) has no transparent procedure for approval of foreign rolling stock
Slovenija (Slovenia)	Several Directives of rail acquis have already transposed to national law, however objectives and procedures of the various actors are still under elaboration.
Slovenská Republika (Slovakia)	The provisions for the recognition of licences issued by other EU Member States in line with Directive 2001/13/EC are not yet in force.
Suomi/Finland (Finland)	Finland has introduced processes for the licensing of future railway undertakings and has thus made many steps towards liberalisation of railway transport. However, in practice, the state-owned railway VR Group Ltd. is still the only licensed national railway undertaking. The Railway Act grants VR Group Ltd. exclusive rights for national freight and passenger transport.
Sverige (Sweden)	Railway undertakings have been granted access rights above the requirements set out in EU Directives. However, the cost of obtaining adequate insurance is perceived as a real entry barrier, especially for small scale operators that face charges of at least SEK300.000 (EUR33.500) per year.
United Kingdom (United Kingdom)	Although a transparent licensing regime is in place it does not specify the arrangements for railway undertakings to obtain licenses to run rail freight services over the TERFN (as required by Directive 2001/13/EC)

Examples	
Bългария (Bulgaria)	Lack of full implementation of all requirements in EC Directives.
Ísland (Iceland)	Not applicable
Liechtenstein (Liechtenstein)	Not applicable
Norge (Norway)	Legal and technical entry barriers for new operators, e.g. in the form of requirements for training of train drivers from external (foreign) railway undertakings, lengthy process for certification of rolling stock and licensing.
România (Romania)	Lack of complete harmonization of the process for licensing, allocation of capacity and charging for infrastructure use in accordance with requirements in EC Directives.
Schweiz/Suisse (Switzerland)	Competition Commission and Price Monitoring Body cannot impose fines or start investigations ex-officio.

These examples highlight a number of issues that represent inappropriate/ insufficient implementation of the EC legislation. In particular, the following are of importance to be addressed in order to ensure implementation that will achieve the aims of the reforms:

- Lack of sufficient degree of separation between train operations and infrastructure management for some of the integrated national railway companies
- Lack of sufficient degree of separation between passenger and freight operations of national railway companies
- Lack of independence of infrastructure manager
- Infrastructure charges may be discriminatory or favourising dominant railway undertaking
- Lack of independent regulatory authorities
- Limited arrangements for regulation of infrastructure managers
- Limited arrangements for regulation of rolling stock providers
- Lack of competitive entry preserving dominant positions
- Predatory pricing by some railway undertakings
- Slow and expensive procedures regarding appeals for charging and capacity allocation
- Lack of independent appeals body
- Appropriate insurance for external railway undertakings are expensive
- Lack of access to train drivers
- Lengthy certification process for rolling stock
- Lengthy licensing procedures
- Lack of independent safety certification organisation
- Constraints for safety certificates from foreign railway undertakings
- Constraints for access for foreign railway undertakings
- Lack of public service contracts between authority and principal railway undertakings.

Two common themes of these aspects are the need to ensure **independent institutions** and adoption of **procedures that promote fair and non-discriminatory** access to the railway market(s) for all railway undertakings. A third and related theme would be restrictions on dominant position of **incumbent railway operator**

4.2 Barriers to market access

A number of barriers preventing appropriate implementation will below be outlined. Especially, we will distinguish between:

- Legal barriers
- Institutional barriers
- Technical barriers
- Market barriers
- Social barriers

Firstly, **legal barriers** may be present such that the only a minimal transposition can be achieved in practice.

Secondly, **institutional barriers** play a significant role. For example, these may relate to problems of establishing independent institutions from a previous integrated structure. If the infrastructure manager is still linked in organisational terms to the railway operations then that may create problems in terms of ensuring non-discriminatory access for third parties. In this context there are also issues relating to avoid abuse of dominant position by the incumbent railway undertakings.

Thirdly, **technical barriers** are of significance within the railway sector. In particular, problems of interoperability between EU countries have only very recently been addressed within the interoperability directives. It is likely that the 2nd Railway Package will contribute to reduce interoperability problems. In particular, the new European Railway Agency has a key task to enhance the interoperability of railways in Europe (Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation)).

Fourthly, **market barriers** may imply limited incentive for potential railway undertakings to enter a declining market. Furthermore, there are even more fundamental characteristics of the railway market that could create problems in terms of implementation (e.g. existence of substantial sunk costs may limit the scope for competitive entry).

Fifthly, **social barriers** are of substantial importance. This may take the form of stakeholders within the industry resisting the changes implied by the EC railway legislation. For example, the

market opening process may lead to job losses in the industry. In addition, market opening (in freight) has the potential to limit the role of the national railway companies.

4.3 Future perspectives

The promotion of railway in the transport market will require the development of mechanisms to ensure correspondence between transposition and implementation in practice regarding legislation in the railways area such that the barriers towards market opening can be eliminated. In this context it would be an advantage if the ERAIL research could be sustained beyond 2005 to facilitate updates regarding implementation of EU Railway legislation by the EU Member States and other European countries with specific reference to the 2nd and 3rd Railway Packages. Substantial effort was required in the initial phase of ERAIL to initiate the process of gathering information on a comparable basis. This effort would not be required for subsequent updates beyond 2005 as the framework would already have been established.

PART B – SUMMARIES

ANNEX A
LIST OF ABBREVIATIONS

ANNEX A LIST OF ABBREVIATIONS

ADIF	Spanish Infrastructure Manager
AFER	Romanian Railway Authority
BDZ	Bulgarian Railways
CFL	Luxembourg Railways
CFRF	
DB	German Railways
DGCCRF	French competition directorate
DSB	Danish Railways
EBA	EisenBahn-Bundesbahn, German Federal Railway Administration
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
Erail	European Railways Administrations Institutions and Legislation
EU	European Union
GmbH	German limited company
HSE	Health and Safety Executive UK
IM	Infrastructure Manager
INTF	Portuguese Railway Regulator
IVW	Dutch Railway Inspectorate
JSC	Latvian Railways
L	Law
LDZ	Latvian Infrastructure Manager
MoT	Ministry of Transport
MoTC	Ministry of Transport and Communications
MTN	Ministry of Transport and Navigation
n.a.	
No.	Number
NS	Dutch Railways
NSB	Norwegian Railways
ÖBB	Austrian Railways
OCCP	Polish Competition Office
ORR	UK office for rail regulation
OSE	Greek Railways
OSS	One-Stop-Shop
OTIF	Organisation for International Carriage by Rail
ProRail	Dutch Infrastructure Manager
PKP	Polish Railways
PSO	Public service obligation
PUK	Latvian Public Utility Commmission
RHK	Finish Rail Administrator
RD	Regulation (Spain)
RENFE	Spanish Railways
RFF	French Infrastructure Manager

RFI	Italian Infrastructure Manager
SBB/CFE	Swiss Railways
SEK	Swedish Krona
SJ	Swedish Railways
SNCF	French Railways
SRA	UK Strategic Rail Authority
SWEDAC	Swedish Board for Accreditation and Conformity Assessment
SWOT	Strengths, Weaknesses, Opportunities, Threats Analyses
TERFN	Trans European Rail Freight Network
TSIs	Technical Specifications for interoperability
Toc	Transport operating company
UKAS	United Kingdom Accreditation Service