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Transport Studies Unit

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**GLOSSARY**

| Abbreviation           | Portuguese name                              | English name   |
|------------------------|--|--|
| <b>ORGANISATIONS</b>   |  |  |
| CP                     | Caminhos de Ferro Portugueses                | the main state-owned railway operator in Portugal  |
| FERTAGUS               |  | Private passenger train company operating Lisbon suburban service  |
| INE                    | Instituto Nacional de Estatística            | Portuguese statistics agency   |
| INTF                   | Instituto Nacional do Transporte Ferroviário | Rail Regulator   |
| REFER                  | Rede Ferroviária Nacional                    | Infrastructure Manager   |
| <b>LEGAL FRAMEWORK</b> |  |  |
| DL                     | Decreto-Lei                                  | Parliament-approved decree-law   |
| P                      | Portaria                                     | decree   |
| RCM                    | Resolução do Conselho de Ministros           | a resolution by the council of ministers (which can be changed or revoked only by passing a new Resolution for this purpose) |



## 1 ORGANISATIONS INVOLVED IN CARRYING OUT PUBLIC TASKS

Public tasks are distinguished according to the following clusters of activities:

- Separation, licensing and charging and safety;
- Interoperability;
- State aid, competition and public service obligations;
- Statistics.

The following organisations are involved in one or more of these clusters of activities:

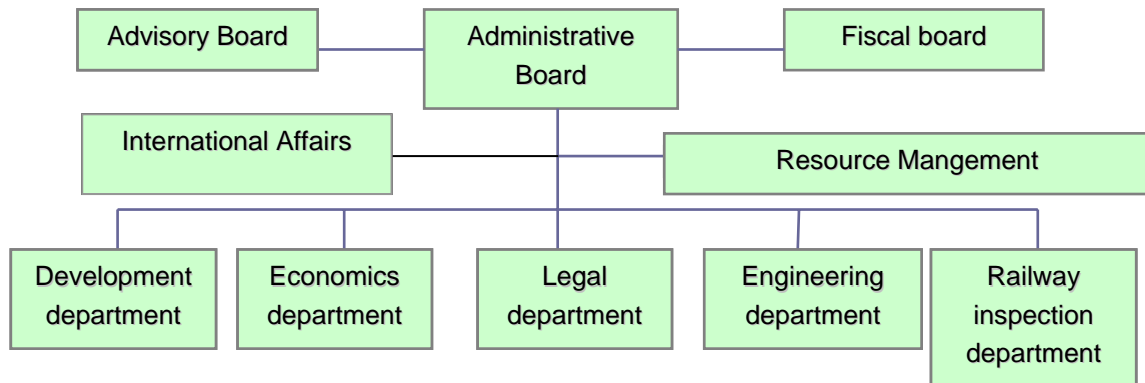
- INTF, the rail regulator;
- REFER, the infrastructure manager.

### 1.1 Current organisations

#### 1.1.1 INTF

Instituto Nacional do Transporte Ferroviário

*Organisation chart*



*Income and expenses*

| <b>Expenses in €million</b>    | <b>2002</b> | <b>2003</b> |
|--------------------------------|-------------|-------------|
| Staff                          | 2,4         | 3,0         |
| Purchase of goods and services | 1,0         | 1,0         |
| Capital building               | 0,3         | 0,7         |
| <b>TOTAL</b>                   | <b>3,7</b>  | <b>4,7</b>  |

*Number of  
(2003):  
INTF*

| <b>Income in €million</b>    | <b>2002</b> | <b>2003</b>        |
|------------------------------|-------------|--------------------|
| Infrastructure charges       | 2,6         | 3,3                |
| Government subsidy           | 0,8         | 0,8                |
| PIDDAC European subsidy      | 0,3         | 0,6                |
| <b>TOTAL</b>                 | <b>3,7</b>  | <b>4,7</b>         |
| <b>Staff</b>                 | <b>2003</b> | <b>2004 (est.)</b> |
| Internal staff               | 40          | 40                 |
| External (contracted) staff: | 8           | 10                 |
| o from CP                    | 2           |                    |
| o from REFER                 | 2           |                    |
| o from others                | 4           |                    |
| <b>TOTAL</b>                 | <b>48</b>   | <b>50</b>          |

*employees  
source:*

*Legal constitution*

INTF was established by Decree-Law (DL) 299-B/1998 as a public institute under the jurisdiction of the Ministry of Public Works, Transport and Communications.

*Clients*

Undertakings subject to INTF's regulatory powers regarding:

- Licensing  
REFER  
CP  
FERTAGUS
- Interoperability and safety  
REFER  
CP  
FERTAGUS
- State aid, competition and public service obligations  
INTF monitors the market, promotes competition and enforces competition laws within the railway sector. As to public service, INTF proposes the adoption of rules concerning

rail public service; monitors the award and management of public service contracts and assists the Government in public service contracting (v. Articles 10 and 12 of the Statutes annexed to Decree-Law 299-B/98, September 29)

- Statistics  
INE

*Contact details*

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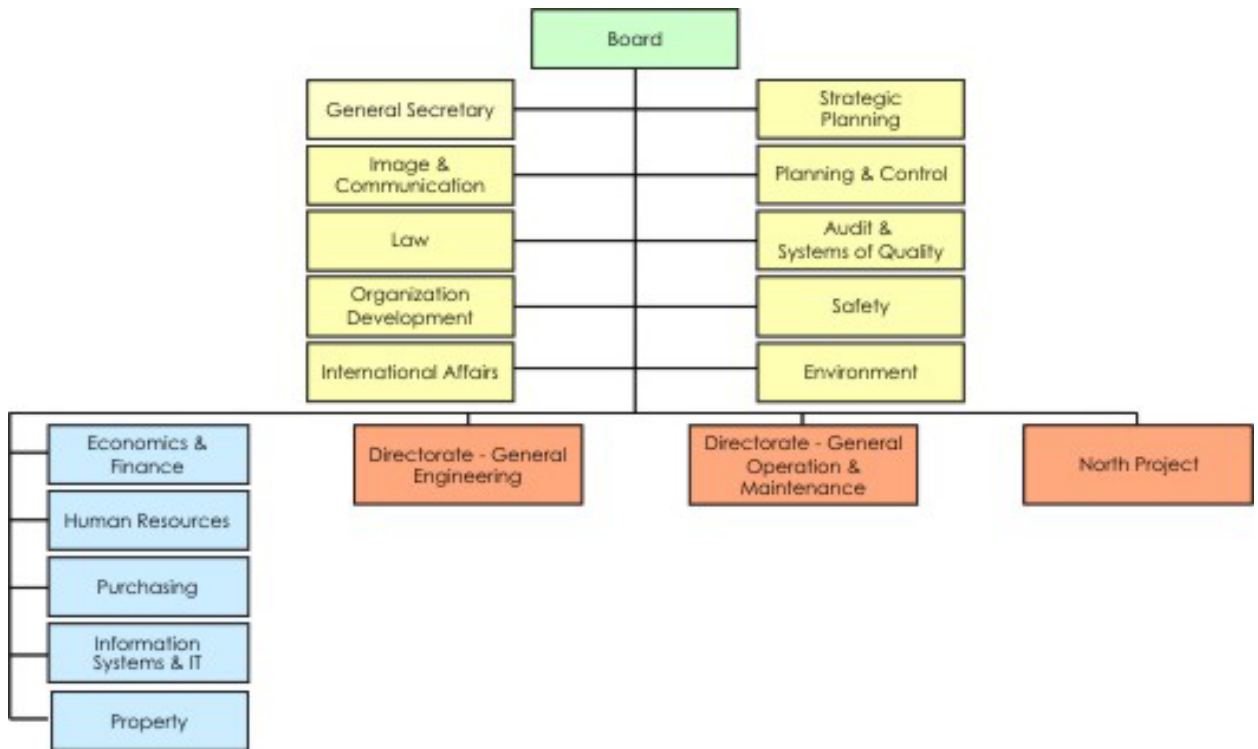
*Autonomy of organisation*

INTF is a public entity with legal personality, and financial autonomy, which is subject to general guidance and supervision by the Ministry for Public Works, Transport and Communications, as well as by the Ministry of Finance on budgetary matters. INTF is responsible for the establishment of the legal framework governing the sector and for the monitoring of its enforcement. The funding of INTF comes from the State Budget, fees derived from licensing, safety certification, standardisation, fines / penalties and a percentage of the charges collected by the infrastructure manager for the use of infrastructure.

**1.1.2 REFER**

Rede Ferroviária Nacional, EP

*Organisation chart*



*Income and expenses*

See Annex A+B: REFER finances

REFER was created in 1997 with a debt of 30% (of total liabilities), which has since risen to 45%. In 2001 it made an operational loss of €118m, or 37%. Debt service ratio is 19%. Public service performed by REFER can be the subject of compensation.

*Number of employees*

| <b>REFER Staff by department</b>             |             |
|--|-------------|
| Infrastructure Maintenance department        | 30%         |
| Commercial and Traffic Management department | 60%         |
| Other (Engineering, Management, IT etc.)     | 10%         |
| <b>TOTAL</b>                                 | <b>4646</b> |

*Source: REFER (2003)*

The total number of employees had reduced to 4646 by the end of 2003. Breakdown into departments was not available.

*Legal constitution*

REFER was established by Decree-Law 104/97, April 29, as a state-owned company under the jurisdiction of the Ministry of Public Works, Transport and Communications.

*Clients*

List of the undertaking's clients for the different activities performed by the infrastructure manager:

- Charging  
CP  
FERTAGUS
- Interoperability and safety  
CP  
FERTAGUS
- State aid, competition and public service obligations  
CP  
FERTAGUS
- Statistics  
INE

*Contact details for clients*

Rede Ferroviária Nacional (REFER EP)

Estação Sta. Apolónia

1100-105 Lisboa, Portugal

Tel +351 21 8816000

Fax +351 21 8816439

<http://www.refer.pt>

*Autonomy of organisation*

REFER is a state-owned company subject to INTF's regulation and supervision and to general guidance from the Ministry of Public Works, Transport and Communications and from the Ministry of Finance.

**1.2 Authorities required by the 2<sup>nd</sup> Railway Package**

**1.2.1 National Safety Authority**

The National Safety Authority in Portugal is INTF, the rail regulator.

**1.2.2 Independent Investigation Body**

Presently INTF is responsible for carrying out the investigations of accidents and incidents. However the provisions of Directive 2004/49/EC require the creation of an autonomous body which must be functionally independent from the rail regulator.

## **2 ORGANISATION OF PUBLIC TASKS**

### **2.1 Separation, licensing and charging**

#### **2.1.1 Investigation of accidents (2001/12)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

To promote and co-ordinate the execution of rail accident investigations and presentation of the resulting reports, whenever considered necessary or when requested by the relevant Ministry.

*Procedure*

Administrative Procedure Act

Deliberation of the Administration Board on the Procedures on Rail Accident Investigations

*Legal basis of procedure*

DL 299-B/98, September 29, Annex, art. 7c

#### **2.1.2 Safety certification of rolling stock and railway undertakings (2001/14)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

INTF is responsible for the issue, amendment, suspension and revocation of safety certificates, the possession of which is indispensable for the use of the infrastructure.

*Procedure*

1. The application for safety certification must be submitted by the RU to the infrastructure manager, REFER. The IM produces an opinion on the fulfilment of the requirements laid down in no. 8, article 64, DL 270/2003 by the TOC and forwards both documents (application and opinion) to INTF.
2. Within 30 working days upon reception of the application, INTF must decide on the granting of the safety certificate.
3. If INTF does not produce a decision within the above indicated period, the application should be considered denied.

*Legal basis of procedure*

DL 270/2003, art. 64 and 65

**2.1.3 Licensing of railway undertakings (2001/13)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

All railway undertakings willing to provide rail transport services must hold or apply for an appropriate license corresponding to the services to be provided. This license, issued by INTF, has to comply with the requirements established under Chapter III of Decree-Law 270/2003, October 28. The national railway license format is presented in the administrative act 168/2004.

*Procedure*

1. The task of issuing licences is carried out by INTF. The RU submits an application, providing all relevant information. The RU must meet the requirements relating to good repute, financial fitness, professional competence and liability coverage. Upon reception of the application INTF has 90 working days to decide whether to grant or deny the application.
1. A RU requests a licence, accompanied by all required documentation, subsequently the request will be answered by INTF within 90 days. If not, the request can be considered denied.
2. A licence is valid for 5 years, and can be extended by the same period.
3. If the RU is inactive for more than 6 months, then the licence may be withdrawn (unless the RU was founded less than a year before).

*Legal basis of procedure*

Chapter III of DL 270/2003, October 28

Administrative act 168/2004

**2.1.4 Track access (2001/12)**

*Responsible organisation*

REFER

*Objectives, tasks and responsibilities*

Any railway undertaking providing or willing to provide international rail transport services on the national railway infrastructure has to reach the necessary agreements with the national infrastructure manager, namely on administrative, technical and financial issues. These agreements must be non-discriminatory and comply with all the legal and regulatory requirements applicable on capacity allocation, infra-structure charging and safety certification.

The infrastructure manager has to co-operate with other infrastructure managers in order to enable the effective functioning of the rail services using more than one infrastructure. v. articles 21 and 23 of Decree-Law 270/2003, October 28.

*Procedure*

The RU requests access from REFER, as soon as REFER has granted access, the RU and REFER must enter a written agreement. INTF must be notified of the agreement reached between the infrastructure manager and the railway undertaking.

*Legal basis of procedure*

DL 270/2003, Art 20-22

**2.1.5 Developing the capacity allocation framework (2001/14)**

*Responsible organisation*

REFER

*Objectives, tasks and responsibilities*

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.

*Procedure*

1. For the allocation of international train paths, REFER must publish the working timetable at least 11 months in advance of its entry into force.
2. A TOC requests capacity from REFER, up to twelve months ahead of the coming into force of the timetable. In case of international train paths, this request may also be sent to other participating infrastructure managers.
3. REFER may request a down payment from the TOC to safeguard its own expectations regarding revenues and the expected use of the rail infrastructure.
4. REFER must prepare a draft timetable, not later than four months after the deadline for submission of capacity requests.
5. In case of conflicting requests, REFER will try to find a solution through consultation with the interested parties and attempt to accommodate all requests through coordination. The priority criteria shall take into consideration the importance of a service to society, relative to any other service which will consequently be excluded.
6. When requests for infrastructure capacity cannot be satisfied, REFER must declare that section of the infrastructure congested, informing INTF thereof.
7. Six months in advance of the entry into force of the working timetable REFER shall make the final version available to all TOCs concerned.
8. REFER must provide an explanation for any denial of requests.

*Legal basis of procedure*

9. In the case of international train paths, REFER must publish a timetable with available paths at least 11 months prior to the new timetable.
10. A RU requests capacity from REFER, up to twelve months ahead of the coming into force of the timetable. In case of international train paths, this request may also be sent to a joint international body of IM's.
11. REFER may request a downpayment from the RU proportional to the level of capacity requested
12. REFER must work out a draft timetable based on the requests made, not later than four months after the deadline for train path requests
13. In case of conflicting requests, REFER will mediate between the parties and try to find a solution through negotiation. Should this fail, then REFER will take a decision on the matter.
14. RU's have 30 days to provide comments on the draft timetable. However, if this happens on a large scale, REFER will declare the affected section of the infrastructure congested, in which case priority will be given to services running under a Public Service Obligation. If PSO's are not involved, REFER will also consider the benefits to society of each of the services.
15. In case of congested infrastructure, REFER may reserve paths for RU's that will supply a minimum amount of services (such as hourly services).
16. Six months prior to a timetable coming into force, REFER shall distribute the final version to all affected RU's.
17. REFER must give a motivation for any request denial.

*Legal basis of procedure*

DL 270/2003, Art. 33, 35-43

**2.1.6 Publishing of capacity allocation framework (2001/14)**

See the Network Statement at

<http://www.refer.pt/pt/exploracao.php?id=779&idold=531> or  
[http://www.refer.pt/fotos/anexo\\_42.pdf](http://www.refer.pt/fotos/anexo_42.pdf)

*Responsible organisation*

REFER

*Objectives, tasks and responsibilities*

To ensure transparency and non-discriminatory access, all the information required to use access rights must be published in a network statement. It is up to the infrastructure manager, after consultation with the interested parties, to develop and publish the network statement. The network statement sets out the nature of the infrastructure and provides information on the

conditions for access to the relevant part of the infrastructure. It must be kept up to date and modified whenever necessary.

*Procedure*

The network statement is published no less than four months in advance of the deadline for submission of requests for infrastructure capacity.

*Legal basis of procedure*

DL 270/2003, Articles 30-32,

**2.1.7 Setting of infrastructure charges (2001/14)**

*Responsible organisation*

REFER, INTF

*Objectives, tasks and responsibilities*

The settlement of the infrastructure charges is based on the legal framework set out in Decree-Law 270/2003, also set out in the contents of the Network Statement. They are issued on an annual basis, in the form of a table of charges.

These charges must take into account the travelled distance, type of service (passengers or freight) and the different lines used of the Portuguese rail network. Charges are also supposed to take into account all components essential for train circulation, like maintenance of track, signalling, traffic control costs, and other activities mentioned in Art. 27 of the decree law 270/2003. However, charges should not include costs of supply of electricity, supply of fuel, access to the communication network and other non-essential activities. Nevertheless, these non-essential activities can be characterized as additional or auxiliary services, and be charged as such (Art. 28 & 29, decree law 270/2003).

The Decree-Law states that the infrastructure may not endanger the competitive position of rail transport, especially freight transport; furthermore the charges may not absorb the increases in productivity of the RU's.

RU's that operate in low-yield market segments may ask for paying only the base fare. The Ministries of Finance and of Public Works, Transport and Housing decide on such requests. In case the RU can not even reach an economically viable service when paying the base fare, the request must be rejected. Any discount may not violate competition laws and must be restricted to specified stretches of railway.

*Procedure*

The access charges must respect the rules included in the decree law 270/2003.

Within the annual network statement, REFER publishes the access charge tables per train-kilometre, according to the type of service and depending on the part of the network reserved for this purpose.

INTF acts as an appeal body on charging matters.

*Legal basis of procedure*

DL 270/2003, art. 52, 54, 70-71

**2.1.8 Collection of infrastructure charges (2001/14)**

*Responsible organisation*

REFER

*Objectives, tasks and responsibilities*

REFER collects charges for the use of the rail infrastructure.

*Procedure*

please check DL 270/2003, Section VI.

REFER must make sure that the RU's pay their annual track charges to REFER. See the complaint chapter for the lawsuit on this matter.

*Procedure*

No specific procedures defined for charges collection.

*Legal basis of procedure*

DL104/97, Art. 7

DL 270/2003, Section VI

**2.1.9 Publishing of charging framework (2001/14)**

See the Network Statement at

<http://www.refer.pt/pt/exploracao.php?id=779&idold=531> or

[http://www.refer.pt/fotos/anexo\\_42.pdf](http://www.refer.pt/fotos/anexo_42.pdf)

*Responsible organisation*

INTF, REFER

*Objectives, tasks and responsibilities*

INTF: to publish the rules for the charging framework

REFER: to calculate the charges.

*Procedure*

Special temporary procedures apply in the years 2004 and 2005 (defined in Art. 81-91).

The normal procedure states that the network statement should be published by REFER 16 months before it is put into practice. The network statement will include a table of charges based on the rules issued by INTF.

INTF is entitled to issue recommendations and instructions, providing guidance on this subject.

*Legal basis of procedure*

DL 270/2003 no. 10/11 Art 54, 84-85

**2.1.10 Appeal against decisions related to charging and capacity allocation (2001/14)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

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.

*Procedure*

A RU sends an appeal against a decision of REFER,

Within 15 working days after receiving this appeal, REFER must forward it to INTF.

Within 30 working days after receiving this appeal, INTF decides either to uphold REFER's decision or to change it.

If INTF detects any "negative evolution" that could endanger the railway service market it must present corrective measures within 60 working days.

*Legal basis of procedure*

DL 270/2003 art. 70, 71-74.

## **2.2 Interoperability and safety**

### **2.2.1 Drawing up Technical Specifications for Interoperability (TSIs) (96/48 and 2001/16, art. 5, 6)**

#### *Responsible organisation*

AEIF – European Association for Railway Interoperability (joint representative body that brings together representatives of the infrastructure managers, railway companies and industry).

#### *Objectives, tasks and responsibilities*

To draw up TSIs in order to achieve interoperability within Community territory

#### *Procedure*

Draft TSIs are drawn up by a joint representative body and adopted by the Commission on advice of a Committee composed of the representatives of the Member-States and chaired by a representative of the Commission. TSIs are then published in the Official Journal of the European Communities by the Commission.

#### *Legal basis of procedure*

DL93/2000 art.5

DL75/2003 art.5

### **2.2.2 Appointing of Member State's representative in the Advisory Committee (96/48 and 2001/16, art 21)**

#### *Responsible organisation*

INTF

#### *Objectives, tasks and responsibilities*

Representing the Portuguese State in the Committee

#### *Procedure*

Not applicable

#### *Legal basis of procedure*

DL93/2000

DL75/2003

### **2.2.3 Regulation of interoperability (96/48 and 2001/16, art 8 and 20)**

#### *Responsible organisation*

INTF

#### *Objectives, tasks and responsibilities*

INTF must take all necessary measures to ensure that interoperability constituents are placed on the market only if they enable interoperability within the trans-European rail system and meet the essential requirements. The constituents are to be used as intended and must be suitably installed and maintained.

#### *Procedure*

If INTF finds a constituent to compromise the essential requirements, then INTF restricts its area of application, prohibits its utilisation, or orders its withdrawal from the market. INTF then informs the European Commission about measures taken, specifying whether the non-conformity was the result of a disregard of the essential requirements, an incorrect application of the European specifications, or a flaw in the European specifications.

#### *Legal basis of procedure*

DL93/2000 Art 5, 9

DL75/2003 Art 7-9

### **2.2.4 Authorisation of (sub)systems (96/48 and 2001/16, art 14)**

#### *Responsible organisation*

INTF

#### *Objectives, tasks and responsibilities*

INTF shall authorise the placing in service of those structural subsystems constituting the trans-European rail system located or operated on its territory.

#### *Procedure*

1. 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.
2. The mission of the notified body responsible for the EC checking procedure shall begin at the design stage and shall cover all of the manufacturing period up to the type-approval stage before a subsystem is placed in service. The notified body must also consider the interfaces and interaction with the system that the component will be part of.
3. The notified body shall be responsible for compiling the technical file that has to accompany the EC declaration of verification. The technical file must contain all the necessary documents relating to the characteristics of the subsystem and, where

appropriate, all the documents certifying conformity of the constituents of interoperability.

4. If all EC requirements are met, the Notified Body grants an EC declaration of verification, which must be accompanied by all relevant documents.
5. INTF will then authorise the (sub)system to be placed in service on the Portuguese railway network.

*Legal basis of procedure*

DL93/2000 art. 11

DL75/2003 art. 11-13

**2.2.5 Control on (sub/system) operation and maintenance in accordance with regulations (96/48 and 2001/16, art 14)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

It is up to INTF to

- i) authorize the placing in service of the structural subsystems;
- ii) to monitor, when they are placed in service and, afterwards, on a regular basis, if they are explored or maintained in accordance with the relevant essential requirements;
- iii) to verify, when the subsystems are subject to any renewal or adjustment, upon information furnished by the IM or RU, if they can be placed in service without being subject to further inspections or a new authorization.

*Procedure*

If a (sub)system of a structural character is found not to observe the essential requirements, INTF can order additional measures. In that case, INTF must also immediately inform the European Commission.

*Legal basis of procedure*

DL93/2000 Art. 11, 14

DL75/2003 Art. 11

## **2.2.6 Approval of Notified Bodies (96/48 and 2001/16, art. 20) List of the approved Notified Bodies and their relevant tasks**

There are currently no approved Notified Bodies in Portugal. <sup>1</sup>

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

To approve the bodies responsible for carrying out the procedure for the assessment of conformity or suitability for use referred to in Article 10, DL 75/2003 and DL 93/2000 and the checking procedure referred to in Article 13 of the above-mentioned Decree-Laws, indicating each body's area of responsibility.

*Procedure*

INTF informs its EU counterparts and the European Commission about notified bodies responsible for conformity assessment, and the area of competence of each one of them. Any potential Notified Body wishing to be registered as such must fulfil the criteria as defined in Annex VII of DL75/2003.

*Legal basis of procedure*

DL93/2000 art. 15

DL75/2003 art. 15 + Annex VII

## **2.2.7 Assessment/control of Notified Bodies (96/48 and 2001/16, art. 20)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

INTF shall apply the criteria provided for in Annex VII to Decree-Law 93/2000, May 23 and Decree-Law 75/2003, April 16, for the assessment of the bodies to be notified.

*Procedure*

Bodies meeting the assessment criteria laid down in Annex VII shall be approved while a failure to meet the mentioned criteria causes the withdrawal of the approval.

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<sup>1</sup> EOTC (European Organisation for Conformity Assessment) is an independent and non-profit making European body established in April 1990 by the European Commission, the European Free Trade Association (EFTA) and the European Standards Bodies. EOTC acts as a focal point for conformity assessment in Europe, but does not itself test or certify products and services.

*Legal basis of procedure*

DL93/2000 Art. 15 and Annex VII

DL75/2003 Art. 15 and Annex VII

**2.2.8 Assessment of conformity and/or suitability of (sub)systems for use (96/48 and 2001/16, art 13)**

*Responsible organisation*

Notified Bodies

*Objectives, tasks and responsibilities*

Manufacturers of interoperability constituents must observe the TSIs. When TSIs are not observed, any person placing the constituents on the market or using them in another system shall be responsible for the constituent's compliance with the TSIs.

*Procedure*

The manufacturer of subsystems, or his authorised representative must apply the relevant TSIs for an interoperability constituent. If the TSIs so require, then the Notified Body must assess the constituent's conformity or suitability. If the constituents are also subject to other Directives as well, those other Directives must also be met.

*Legal basis of procedure*

DL93/2000 art 10, 13

DL75/2003 art 9, 10, 14

**2.3 State aid, competition and public service obligations**

**2.3.1 Monitoring of competition (1017/68, 2001/12 and 01/2003)**

*Responsible organisation*

INTF

*Objectives, tasks and responsibilities*

It is up to the regulator to promote the observance and enforcement of free competition principles within the rail market. According to national legislation implementing the infrastructure directives (Decree-Law no. 270/2003, October, 28), co-operation, to be defined by protocol, should characterize the relationship between INTF and the Competition Authority.

*Procedure*

INTF may carry out researches / studies and other market analysis and notify the Competition Authority on the results.

*Legal basis of procedure*

DL 299-B/1998 (Annex) Art. 10 and art. 69, Decree-Law 270/2003, October 28

**2.3.2 Enforcing of competition (01/2003)**

*Responsible organisation*

Autoridade da Concorrência (Competition Authority, on behalf of the Ministry of Economy)  
INTF

*Objectives, tasks and responsibilities*

- The competition authority must see to the enforcement of competition through inspecting companies, detecting any unfairness or anomaly.
- INTF co-operates with the national competition authority through the monitoring of the market and the promotion of competition laws within the railway sector. INTF also acts as an appeal body as far as sectorial competition issues are concerned, namely for claims concerning non equitable or discriminatory capacity allocation. INTF's decisions are binding.

*Procedure*

Not applicable

*Legal basis of procedure*

DL10/2003

Law 18/2003

Decree-Law 270/2003, Art. 70-73

**2.3.3 Complaint handling related to competition (01/2003)**

*Responsible organisation*

Autoridade da Concorrência (Competition Authority, on behalf of the Ministry of Economy)  
INTF

*Objectives, tasks and responsibilities*

The competition authority must see to the enforcement of competition through inspecting companies, detecting any unfairness or anomaly.

INTF acts as an appeal body for claims concerning non-equitative or discriminatory capacity allocation and charging matters. INTF's decisions are binding.

*Procedure*

No specific procedure defined for competition-related complaint handling.

For INTF's role concerning complaint handling related to charging matters and capacity allocation, please see 2.1.10 (above).

*Legal basis of procedure*

Decree-Law 10/2003, January 18 and Law 18/2003, June 11

Decree-Law 270/2003, Art. 70-73

**2.3.4 Evaluation of annual PSO claims (1191/69)**

*Responsible organisation*

Ministries of Finances and Transport, INTF

Various PSO's exist. The PSO claims for 2004 are specified in RCM87/2004.

REFER received €3,730,855 for services covered under DL189-B/99 (regarding the waived track charges for Fertagus), and 1192/69/EEC and 1107/70/EEC regarding the normalisation of accounts.

CP received €2,397,000 for PSO services as defined by 1191/69/EEC, 1107/70/EEC and 1893/91/EC that are used directly without having been transposed into Portuguese law.

Fertagus received €9,900 under its old concession, however a new Decree-Law (DL78/2005) was published in April 2005. Fertagus receives this grant for its (suburban) operation across the Tagus river. The contract is valid until 31 December 2010. Fertagus must supply a certain frequency and quality, that is guarded by INTF. The contract assumes a certain traffic and price level, and if the actual infrastructure charges (whose variations are mainly determined by traffic levels) stay within a 3% bandwidth of the base scenario, Fertagus pays infrastructure charges according to the contract (and receives the PSO grant accordingly). If charges go up by more than 3%, Fertagus must pay the difference to REFER. However, if the charges go down by more than 3%, REFER must compensate Fertagus.

The Fertagus PSO contract covers 6,4% of the market, expressed in 2003 pkm.

*Procedure*

There are no public procurement procedures. The Fertagus contract was negotiated for the first time prior to the start of train services across the Tagus. When traffic figures were lower than anticipated, a new 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.

No procedures observed for CP, which is still state-owned. CP's deficits are covered by the state. There is no specification as to what services should or should not be provided.

*Legal basis of procedure*

DL189-B/99

DL299-B/98, Annex, art. 12

1191/69/EEC  
DL78/2005.  
RCM 87/2004

## **2.4 Statistics**

### **2.4.1 Collection of financial data from railway undertakings (1192/69)**

#### *Responsible organisation*

INE (the Portuguese National Statistics Institute)

#### *Objectives, tasks and responsibilities*

Any company registered as a “Sociedade Anónima” (joint stock company) is legally obliged to supply INE with statistical information (such as financial figures) upon request. As a public undertaking, CP is also bound to supply data and so is Fertagus which is so far the only private undertaking operating a rail passenger transport service under a concession contract.

#### *Procedure*

INE sends a questionnaire to the company to be filled in. If the company does not respond, INE has the right to actively retrieve the required information in a visit. If the company still refuses to co-operate, it has to pay a penalty.

#### *Legal basis of procedure*

DL 402/1980

DL 6/1989

### **2.4.2 Collection of financial data from infrastructure managers (1108/70)**

#### *Responsible organisation*

INE, REFER

#### *Objectives, tasks and responsibilities*

See procedures

#### *Procedure*

- On a yearly basis REFER must present the following documents as at December 31 of the previous exercise:
- Report;
- Balance Sheet and Statement of Financial Income;
- Detailed list of participation in the capital of other companies and foundations and of medium- and long-term investments;

- Map of the origin and application of funds;
- Cash-flow Statement.

*Legal basis of procedure*

DL 104/1997, Annex 1, Art 23

**2.4.3 National contribution to Community statistics on rail transport to Eurostat (91/2003)**

*Responsible organisation*

INE

*Objectives, tasks and responsibilities*

To provide information which enables the Community to monitor and develop the Common Transport Policy

*Procedure*

Periodic surveys

*Legal basis of procedure*

Regulation (EC) No 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics.

### **3 TRAIN OPERATING COMPANIES**

#### **3.1 List of train operating companies**

*Freight operations*

CP

*Passenger operations*

CP

FERTAGUS

#### **3.2 Safety License**

CP and FERTAGUS are presently covered by the transitional provisions of article 82, Decree-Law 270/2003.

v. Art. 82, Decree-Law 270/2003, October 28

#### **3.3 Market shares/transport volumes**

*Freight operations(2003)*

Total transport volumes for CP are 2072m tonne-km (100% market share)

*Passenger operations(2003)*

Total transport volumes for CP are: 3585m passenger-km (93,6% market share)

Total transport volume of FERTAGUS is 244,2m passenger-km (6,4% market share).



## 4 NGO'S

The following NGOs are active:

### 4.1 Industry associations

#### *APAT*

The Portuguese Freight Forwarders' Association (APAT) has been established to affiliate and represent the firms that are dedicated to the specific activity of freight forwarding. It looks after the interests of the freight forwarding companies and their employees, for example by verifying that there is no unfair competition and that collective agreements are respected. APAT represents and promotes the sector and organises professional training for its members.

### 4.2 Consumer Protection Association

#### *DECO*

DECO is a general consumer organisation that defends the interests of the Portuguese consumer. DECO was established in 1974 and currently has about 250,000 members.

DECO assists consumers in many ways, such as telephonic product aid, legal and judicial assistance such taking up law suit on behalf of large groups of consumers. It also acts as an intermediary in conflicts.

DECO tests products and publishes them in its magazine Pro Teste.

#### *IC (Consumer Institute)*

IC is a government consumer organisation that carries out market analysis and product testing in order to serve the interest of the Portuguese consumer. It publishes the magazine "O Consumidor", organises courses and intermediates in disputes. It also scrutinises advertising of products.

### 4.3 Trade unions

#### *CGTP-IN (Confederação Geral dos Trabalhadores Portugueses)*

CGTP-IN is an umbrella organisation of unions, including various local unions that protect the interests of employees in the railway sector, such as SNTSF.

CGTP-IN arranges salary and pension negotiations, fights for proper working conditions, and if necessary, can organise strikes.

***UGT (União Geral de Trabalhadores)***

UGT is an umbrella organisation of unions, including various local unions that protect the interests of employees in the railway sector.

Relevant unions associated with UGT are:

**SINAFE** (Sindicato Nacional dos Ferroviários do Movimento e Afins)

**SINDEFER** (Sindicato Nacional Democrático da Ferrovia)

**SINFA** (Sindicato Nacional de Ferroviários e Afins)

**SINFESE** (Sindicato Nacional dos Ferroviários Administrativos, Técnicos e de Serviços)

UGT arranges salary and pension negotiations, fights for proper working conditions, and if necessary, can organise strikes.

**4.4 Environmental groups**

***Quercus (Associação Nacional de Conservação da Natureza)***

Quercus is an NGO that pursues conservation of nature. Quercus engages in discussions with authorities, submits petitions and organises courses and excursions.

***GEOTA (Grupo de Estudos de Ordenamento do Território e Ambiente)***

G.E.O.T.A. is a national, non-profit, non-governmental organisation. It defends the interests of the environment. Its main activities are lobbying, professional training courses, publications and grassroots projects.

***LPN (Liga pela Protecção da Natureza)***

NPL promotes environmental awareness and defends the interests of the environment. Its main activities are lobbying and courses.

**4.5 Other**

## 5 FURTHER FACTS AND STATISTICS

### 5.1 Complaint statistics and information

In 1999, REFER started charging CP track access fees. However, CP refused to pay in 2000 and 2001 (adding up to €12m). Subsequently, REFER sued CP in 2002, meaning that two government bodies were fighting a legal battle, as CP was and still is government-owned. In the political row that followed, it was decided to develop a fairer fee calculation formula (as the fee had been one of the issues of the dispute) that was applied retroactively. The resulting, slightly lower amount was then paid, and the lawsuit withdrawn.

### 5.2 Railway accident statistics

| Type of accident                | Accidents / Victims |         |          |            |          |             |          |           |          |
|---------------------------------|---------------------|---------|----------|------------|----------|-------------|----------|-----------|----------|
|                                 | Accidents           | Victims |          |            |          |             |          |           |          |
|                                 |                     | Total   |          | Passengers |          | Trespassers |          | Employees |          |
|                                 |                     | Deaths  | Injuries | Deaths     | Injuries | Deaths      | Injuries | Deaths    | Injuries |
| (n°)                            |                     |         |          |            |          |             |          |           |          |
| <b>TOTAL</b>                    | 1 256               | 98      | 297      | 15         | 161      | 74          | 83       | 9         | 58       |
| <b>Collisions</b>               | 236                 | 19      | 57       | 1          | 10       | 14          | 32       | 4         | 15       |
| Trains                          | 4                   | 4       | 4        | -          | -        | -           | -        | 4         | 4        |
| Shunting                        | 10                  | -       | 1        | -          | -        | -           | -        | -         | 1        |
| Level crossings                 | 90                  | 14      | 36       | -          | 2        | 14          | 32       | -         | 2        |
| Others                          | 132                 | 1       | 16       | 1          | 8        | -           | -        | -         | 8        |
| <b>Derailments</b>              | 94                  | -       | -        | -          | -        | -           | 1        | -         | 4        |
| Trains                          | 24                  | -       | -        | -          | -        | -           | 1        | -         | 1        |
| Shunting                        | 70                  | -       | -        | -          | -        | -           | -        | -         | 3        |
| <b>Other causes</b>             | 926                 | 79      | 240      | 14         | 151      | 60          | 50       | 5         | 39       |
| Falling on tracks               | 84                  | 3       | 65       | 3          | 61       | -           | 2        | -         | 2        |
| Knocked over on track           | 111                 | 53      | 28       | 1          | 1        | 50          | 24       | 2         | 3        |
| Knocked over at stations        | 13                  | 9       | 6        | 8          | 4        | -           | 2        | 1         | -        |
| Knocked over at level crossings | 17                  | 10      | 7        | 2          | -        | 8           | 7        | -         | -        |
| Other accidents                 | 701                 | 4       | 134      | -          | 85       | 2           | 15       | 2         | 34       |

Source: INE (2003)



## 6 GRAPHICAL OVERVIEW

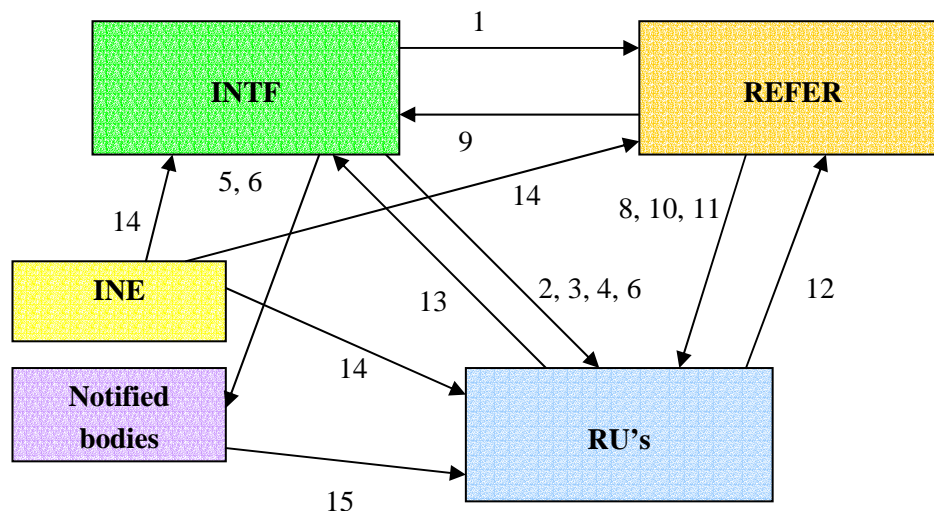
*Explanatory Notes:*

INTF is responsible for the development of the rail regulatory framework and for the monitoring of its enforcement. INTF issues instructions and guidelines to REFER (1) and the RU's (2) and enforces them. It issues safety certificates to RU's (3) and monitors whether safety regulations are observed (4). INTF also approves and monitors notified bodies (5). INTF has to safeguard that technical components of any future (high-speed) railways and train comply with the European specifications on interoperability (6). INTF also investigates railway accidents.

REFER is the infrastructure manager. It is responsible for infrastructure maintenance and renewal, it publishes the charging framework (8) (that requires INTF approval (9)) to the RU's, it collects the charges (10) and it allocates railway capacity in the form of train paths (11), that have to be requested by the RU's (12). RU's can submit appeals against the decisions of the IM; this appeal is handled by INTF (13). REFER is obliged to produce a detailed financial report.

Statistics are collected by INE from INTF, REFER and the RU's (14).

The notified bodies must assess conformity and suitability of (sub)systems. (15). There are currently no notified bodies in Portugal.





## ANNEX A REFER FINANCES

| Balance at 31 December<br>in 10 <sup>3</sup> Euros | ASSETS           |                  |                  |
|--|------------------|------------------|------------------|
|  | 2003             | 2002             | 2001             |
| <b>FIXED ASSETS</b>                                |                  |                  |                  |
| <b>Non-tangible assets</b>                         | <b>21,692</b>    | <b>17,408</b>    | <b>6,108</b>     |
| Installation costs                                 | 122              | 122              | 11               |
| R&D costs  | 10,777           | 9,634            | 2,407            |
| Property and other rights                          | 30               | 30               | 0                |
| Non-tang. Assets underway                          | 10,764           | 7,622            | 3,690            |
| <b>Tangible assets</b>                             | <b>5,350,710</b> | <b>4,628,947</b> | <b>4,095,165</b> |
| Premises and nat. resources                        | 114,134          | 103,661          | 69,324           |
| Buildings and other constr.                        | 3,236,034        | 2,922,877        | 2,489,156        |
| Basic equipment                                    | 45,428           | 42,292           | 38,860           |
| Transport equipment                                | 6,955            | 6,984            | 2,135            |
| Tools and utensils                                 | 404              | 402              | 130              |
| Administrative equipment                           | 8,920            | 7,888            | 2,815            |
| Other fixed assets                                 | 401              | 386              | 320              |
| Fixed assets underway                              | 1,929,829        | 1,530,899        | 1,465,268        |
| <b>Financial investments</b>                       | <b>17,102</b>    | <b>16,435</b>    | <b>15,599</b>    |
| Group companies                                    | 11,466           | 12,424           | 13,723           |
| Other companies                                    | 13               | 15               | 19               |
| Loans to gr. companies                             | 3,752            | 2,125            | 1,657            |
| Loans to other comp.                               | 1,871            | 1,871            | 200              |
| <b>NON-FIXED ASSETS</b>                            |                  |                  |                  |
| <b>Stocks</b>                                      | <b>23,664</b>    | <b>34,850</b>    | <b>32,742</b>    |
| Raw materials                                      | 22,606           | 30,597           | 31,523           |
| Goods  | 361              | 1,865            | 520              |
| Advance to purchase account                        | 698              | 2,388            | 698              |
| <b>Acc. receivable, short-term</b>                 | <b>237,145</b>   | <b>422,063</b>   | <b>362,100</b>   |
| Clients  | 116,723          | 347,767          | 246,681          |
| State and other publ. Entities                     | 67,800           | 37,805           | 33,071           |
| Other debtors                                      | 52,621           | 36,491           | 82,348           |
| <b>Marketable securities</b>                       | <b>0</b>         | <b>854</b>       | <b>16,959</b>    |
| <b>Bank deposits and cash</b>                      | <b>8,548</b>     | <b>1,261</b>     | <b>1,488</b>     |
| Bank deposits                                      | 8,466            | 1,187            | 1,416            |
| Cash   | 81               | 74               | 72               |

|                               |                  |                  |                  |
|-------------------------------|------------------|------------------|------------------|
| <b>Advances and deferrals</b> | <b>56,037</b>    | <b>56,544</b>    | <b>34,700</b>    |
| Profit increase               | 28,865           | 35,103           | 18,991           |
| Deferred costs                | 27,172           | 21,441           | 15,709           |
| <b>TOTAL ASSETS</b>           | <b>5,714,899</b> | <b>5,178,363</b> | <b>4,564,860</b> |

## LIABILITIES

|   | 2003             | 2002             | 2001             |
|---|------------------|------------------|------------------|
| <b>OWN FUNDS</b>                        |                  |                  |                  |
| <b>Own funds</b>                        | <b>2,576,162</b> | <b>2,536,237</b> | <b>2,483,303</b> |
| Capital                                 | 305,200          | 305,200          | 305,200          |
| Adjustments parts of capital            | -230             | -189             | -334             |
| Other reserves                          | 3,005,503        | 2,842,444        | 2,631,101        |
| Resultados transitados                  | -611,219         | -452,663         | -334,680         |
| Resultado liquido                       | -123,092         | -158,555         | -117,939         |
| <b>LIABILITIES</b>                      |                  |                  |                  |
| <b>Provisions for risks and dangers</b> | <b>20,291</b>    | <b>22,608</b>    | <b>27,159</b>    |
| Ongoing lawsuits                        | 15,401           | 14,735           | 14,442           |
| Accid. and illness workforce            | 0                | 9                | 9                |
| Other provisions                        | 2,394            | 2,394            | 2,394            |
| Pre-reform provision                    | 2,496            | 5,470            | 10,313           |
| <b>External debts, med/long-term</b>    | <b>2,199,281</b> | <b>1,708,729</b> | <b>1,534,542</b> |
| Credit institutions                     | 2,199,281        | 1,708,729        | 1,460,989        |
| Other creditors                         | 0                | 0                | 73,553           |
| <b>External debts, short-term</b>       | <b>835,494</b>   | <b>848,890</b>   | <b>489,507</b>   |
| Credit institutions                     | 451,136          | 373,469          | 189,455          |
| Suppliers                               | 55,603           | 73,068           | 86,649           |
| Suppliers - invoices processed          | 11,723           | 9,993            | 3,634            |
| Advances to suppliers                   | 85               | 0                | 85               |
| Asset suppliers                         | 274,492          | 219,431          | 156,192          |
| State and other publ. entities          | 3,397            | 4,092            | 4,371            |
| Other creditors                         | 39,057           | 168,838          | 49,121           |
| <b>Advances and deferrals</b>           | <b>46,442</b>    | <b>30,725</b>    | <b>30,349</b>    |
| Cost increase                           | 46,259           | 30,616           | 30,124           |
| Deferred profits                        | 183              | 109              | 225              |

ERAIL Monograph - Portugal

| Results<br>in 10 <sup>3</sup> Euros | 2001           |                           |                 | 2002           |                           |                 | 2003          |                           |                 |
|-------------------------------------|----------------|---------------------------|-----------------|----------------|---------------------------|-----------------|---------------|---------------------------|-----------------|
|                                     | Investment     | Infrastructure Management | TOTAL           | Investment     | Infrastructure Management | TOTAL           | Investment    | Infrastructure Management | TOTAL           |
| <b>Expenses</b>                     | <b>85,670</b>  | <b>229,904</b>            | <b>315,574</b>  | <b>100,459</b> | <b>242,231</b>            | <b>342,689</b>  | <b>86,884</b> | <b>229,075</b>            | <b>315,959</b>  |
| Goods sold and consumed             | 26,076         | 7,966                     | 34,043          | 34,923         | 5,649                     | 40,572          | 56,330        | 3,952                     | 60,282          |
| Supplies and external services      | 5,975          | 51,971                    | 57,946          | 8,784          | 48,696                    | 57,481          | 4,211         | 58,646                    | 62,857          |
| Fees and taxes                      | 16             | 281                       | 297             | 55             | 207                       | 262             | 355           | 6,741                     | 7,096           |
| Personnel                           | 18,960         | 111,883                   | 130,843         | 20,474         | 106,453                   | 126,926         | 20,961        | 103,889                   | 124,850         |
| Other operational costs             | 104            | 3,180                     | 3,284           | 61             | 3,060                     | 3,121           | 6             | 2,691                     | 2,697           |
| Amortisations                       | 547            | 5,433                     | 5,981           | 541            | 5,684                     | 6,226           | 1,868         | 4,386                     | 6,254           |
| Provisions                          | 0              | 1,357                     | 1,357           | 0              | 2,683                     | 2,683           | 0             | 1,965                     | 1,965           |
| Financial costs and losses          | 32,727         | 16,373                    | 49,100          | 35,439         | 14,359                    | 49,797          | 828           | 24,846                    | 25,674          |
| Extraordinary costs and losses      | 1,265          | 31,458                    | 32,724          | 182            | 55,440                    | 55,621          | 2,324         | 21,958                    | 24,282          |
| <b>Income</b>                       | <b>53,047</b>  | <b>144,622</b>            | <b>197,670</b>  | <b>68,815</b>  | <b>115,396</b>            | <b>184,213</b>  | <b>87,303</b> | <b>127,153</b>            | <b>214,456</b>  |
| Sales                               | 0              | 0                         | 0               | 0              | 0                         | 0               | 0             | 0                         | 0               |
| Supplying services                  | 0              | 95,234                    | 95,234          | 71             | 77,995                    | 78,066          | 53            | 76,030                    | 76,083          |
| Supplementary profits               | 101            | 7,566                     | 7,667           | 342            | 6,369                     | 6,712           | 504           | 7,178                     | 7,682           |
| Exploitation subsidy                | 0              | 7,018                     | 7,018           | 0              | 10,816                    | 10,816          | 0             | 29,385                    | 29,385          |
| Own production                      | 52,621         | 2,173                     | 54,794          | 64,644         | 1,074                     | 65,718          | 86,350        | 55                        | 86,405          |
| Other operational profits           | 0              | 1,253                     | 1,253           | 0              | 630                       | 630             | 0             | 0                         | 0               |
| Financial profits                   | 42             | 4,708                     | 4,750           | 33             | 7,418                     | 7,452           | 21            | 1,558                     | 1,579           |
| Extraordinary profits               | 284            | 26,670                    | 26,954          | 3,725          | 11,094                    | 14,819          | 375           | 12,948                    | 13,323          |
| Corporate tax                       |                | 79                        | 79              |                | 77                        | 77              |               | 91                        | 91              |
| <b>Result</b>                       | <b>-32,623</b> | <b>-85,361</b>            | <b>-117,984</b> | <b>-31,644</b> | <b>-126,912</b>           | <b>-158,553</b> | <b>420</b>    | <b>-102,014</b>           | <b>-101,594</b> |

