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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
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**Progress report on the implementation of the Railway Safety Directive
(Directive 2004/49/EC) and of the Railway Interoperability Directives
(Directives 96/48/EC and 2001/16/EC)**

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1. INTRODUCTION

Recent difficulties notwithstanding, rail plays a significant part in the European economy. In 2004 in EU-27, rail transport had an estimated turnover of €60 billion and brought €34 billion added value to the economy, accounting for over 900 000 jobs.

In the review of the September 2001 White Paper on European transport policy¹, the Commission reaffirmed the environmental and societal advantages of railways, and the key role they can play in ensuring sustainable mobility.

Rail transport did in fact experience an unprecedented rise in popularity during the 19th century and the first half of the 20th century before spiralling into decline with the upsurge of car ownership and commercial aviation. In order to arrest this downward trend, the European Community has adopted legislation whose main aim is to revive rail transport through the gradual development of an integrated European railways area.

The foundations were laid with the adoption of Directives 91/440, 95/18 and 95/19 on the separation of accounts, infrastructure charging and capacity allocation. In parallel, the first measures were adopted to eliminate the ‘technical’ barriers hindering the development of rail transport. The **Rail Interoperability Directives**² helped to launch technical work on defining the technical specifications for interoperability (TSIs), which are essential to ensure that trains can run safely and seamlessly throughout the entire trans-European rail transport network.

Adopted at the end of 2000, the **first railway package** enables any railway company licensed in accordance with Community criteria to be granted access to the railway infrastructure on fair and non-discriminatory terms to provide pan-European services, starting with international freight services on the trans-European rail freight network. On the basis of decisions in the first railway package, the September 2001 White Paper on European transport policy clearly advocated the continued development of a European railway area.

This is the basis on which the **second railway package** was adopted, on 30 April 2004, with a precise timetable for more extensive opening up of the freight market on 1 January 2007, a Directive on Railway Safety, a Regulation establishing a European Railway Agency and an updating of the Railway Interoperability Directives.

In March 2004, the Commission put forward a **third railway package** with new proposals, this time on the opening up, by 2010, of the international passenger transport market, the certification of train crews and passengers’ rights. The third package was adopted in October 2007. The **cross-acceptance proposals** adopted by the Commission in December 2006 to improve the technical part of the regulatory framework, namely the Railway Interoperability Directives, the Rail Safety Directive and the Regulation establishing the European Railway Agency (referred to below as ‘the Agency’).

Indeed, one of the crucial points needing improvement to allow more free movement of trains was **the procedure for the approval of locomotives**. Secondly, as part of the **programme**

¹ See COM(2006) 314: Keep Europe Moving — Sustainable mobility for our continent; mid-term review of the Transport White Paper published by the European Commission in 2001.

² Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail network, OJ L 235, 17 September 1996, and Directive 2001/16/CE of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system, OJ L 110, 20 April 2001.

for simplifying legislation³ the Commission proposed consolidating and merging the Railway Interoperability Directives. Thirdly, drawing on its **ten years' experience** of implementing the 'Interoperability' Directives⁴, the Commission proposed a series of improvements to the technical part of the regulatory framework.

The cross-acceptance proposals turned rapidly into legislation: the new Railway Interoperability Directive entered into force on 18 July 2008, while the amendments to the Railway Safety Directive and the Regulation establishing the Agency entered into force respectively on 24 December 2008 and 1 January 2009.

The network is likely to develop further, as financial support has been granted to many rail projects from the TEN-T funds. Under the TEN-T programme, the Commission has also launched and encouraged the development of ERTMS (European rail traffic management system), which is part of the common control, command and signalling system designed to replace the existing national systems. The Community also provides considerable financial support for the rail sector through its cohesion policy.

This report will assess the impact of the EU legislation on the safety and interoperability of the Community rail system.

2. LEGAL AND INSTITUTIONAL FRAMEWORK

2.1. The legislation

The EU legislation covered by this report is as follows:

- Directive 96/48/EC on the interoperability of the trans-European high speed rail system ('the HS interoperability directive');
- Directive 2001/16/EC on the interoperability of the trans-European conventional high speed rail system ('the CR interoperability directive');
- Directive 2004/49/EC 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 and safety certification ('the railway safety directive');
- Directive 2004/50/EC modifying Directives 96/48/EC and 2001/16/EC.

However other secondary legislation is also considered, such as:

- All TSIs adopted by the Commission under the railway interoperability directives, including amended versions (see list in Annex 1);
- Commission Directive 2007/32/EC amending Annex VI to Directive 96/48/EC and Annex VI to Directive 2001/16/EC;
- Commission Regulation (EC) No 653/2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive

³ See COM(2005) 535 and COM(2006) 690: Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment.

⁴ See also the Commission's report on the implementation of the interoperability directives adopted on 6 November 2006.

2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC⁵;

- Commission Decision 2007/756/EC adopting a common specification of the national vehicle register provided for under Articles 14(4) and (5) of Directives 96/48/EC and 20016/EC.

2.2. The Committee and the role of the Commission

2.2.1. How it functions

A Committee of Member State representatives was established under Article 21 of Directive 96/48/EC. The rules of procedure for the Committee were adopted in October 1997 with minor modifications adopted in October 2000 and 2002.

The number of representatives expanded twice, in line with the enlargements of the European Community in 2004 and 2007.

The competences of the Committee have been extended three times: in 2001 with the conventional rail interoperability directive, in 2004 with the railway safety directive, and in 2007 with the train driver certification directive (Directive 2007/59/EC⁶)

The Committee is chaired by the Commission and has held 50 meetings (up to 31 December 2008). The agenda is prepared by the Commission and includes, as standard parts: items submitted for vote under comitology procedures, items for discussion and items to agree on the Community position for meetings organised by international organisations such as OTIF and OSJD. Since the Agency was established, it has reported regularly on the state of play of its work leading to Commission measures.

Railway interoperability and safety cannot be developed in isolation from other legislation, such as that on ECM (electromagnetic compatibility), air pollution, health and safety, social aspects and dangerous goods. Therefore draft measures are sometimes discussed in other fora before being submitted to this Committee for vote; equally other Committees may be consulted, such as the Dangerous Goods Committee or the Standardisation Committee.

2.2.2. Adoption of measures in the last two years

Since the interoperability report adopted by the Commission in 2006, the Committee has adopted a number of opinions in connection with the measures listed in section 2.1.

Three additional draft measures were approved at the 50th meeting of the Committee:

- Draft Commission Decision amending Decisions 2006/861/EC and 2006/920/EC concerning technical specifications of interoperability relating to subsystems of the trans-European conventional rail system;
- Draft Commission Regulation on the adoption of a common safety method on risk evaluation and assessment as referred to in Article 6(3)(a) of Directive 2004/49/EC of the European Parliament and of the Council;

⁵ OJ L 153 of 14 June 2007, p. 9.

⁶ Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, OJ L315 of 3 December 2007, p. 51.

- Draft Commission Decision on the adoption of a common safety method for assessment of achievement of safety targets, as referred to in Article 6 of Directive 2004/49/EC.

These measures were adopted in the first half of 2009.

All measures are adopted under the relevant ‘comitology’ procedure, as referred to in the basic act, which refers to Council Decision 199/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission.

2.3. The establishment of the European Railway Agency

2.3.1. How it works

Until 2004 draft Technical Specifications for Interoperability (TSIs) were developed by the AEIF (*Association Européenne pour l'Interopérabilité Ferroviaire*) which acted as Joint Representative Body in accordance with Article 6(1) of both Directives 96/48/EC and 2001/16/EC.

Since the European Rail Agency was established in 2005, it has acted as a focal point for the players in the sector and government – ‘the place where all the players meet’. Its objective is to contribute, on technical matters, to the implementation of Community legislation aimed at improving the competitive position of the railway sector. It hopes to achieve this by increasing the interoperability of railway systems and developing a common approach to safety on the European railway system, creating a European railway area without frontiers and guaranteeing a high level of safety

The Agency is overseen by an Administrative Board with representatives of each Member State and the Commission. Sector Associations are included, with non-voting status.

Its work involves producing recommendations intended to become Commission decisions or regulations and issuing opinions on matters relating to Interoperability and Safety. All recommendations must be accompanied by an economic analysis.

2.3.2. Deliverables of the last two years

The Agency’s first task was to establish itself, its processes and procedures and to recruit staff to carry out its work. This it has done and it has now reached ‘cruising speed’. The Agency now has well over one hundred staff and has already completed a significant number of the (over one hundred) tasks mandated to it.

2007 saw the completion of the first recommendation on Common Safety Methods, that covering risk assessment methodology, and the completion of the preliminary draft Conventional TSIs for Infrastructure and Energy which, following translation, were submitted for consultation in the second half of 2008. The preliminary draft TSI for Conventional Locomotives and Passenger Carriages is now under discussion. The Agency has also offered advice and technical opinions to the European Commission on matters relating to interoperability and safety.

The Agency database went live in May 2007 and now contains full records of safety certificates and authorisations, accident reports and national safety rules. This database also contains the virtual vehicle register which was under trial during 2008. In 2009 it will be expanded to accommodate the full range of data which the Agency is expected to manage according to the amended version of its founding Regulation.

A draft recommendation for the Certification of Maintenance Workshops was issued in mid-2008 whilst in the field of ERTMS the Agency has taken up its role of system authority by putting in place robust change and system version management regimes and delivered the recommendation and 2.3.0d specification for ETCS, which came into force on 1 June 2008. The functionality for the next version (version 3.0.0) has been specified and the detailed project plan for full definition of the complete baseline has now been developed.

An important role of the Agency is the sharing of information and good practice and in this context a Network of National Safety Authorities has been set up and a trial programme of peer reviews between the national safety authorities has been put in place. For a broader audience conferences have been held on railway safety management in 2006 and 2008, and on ERTMS in 2007. The first biannual safety report and the Agency recommendations in respect of the 1520mm rail network were also delivered in 2008.

The Agency has established close relationships with other organisations involved in railway technical and safety matters. An MoU on collaboration was agreed with CEN/CENELEC in May 2007 and the Agency is also collaborating with other international organisations such as OTIF and OSJD.

Recently adopted legislation, as explained in section 1, has given the Agency new tasks in the fields of cross-acceptance, vehicle type and other registers, and certification of entities tasked with maintenance and oversight of ERTMS. In anticipation of the work on cross-acceptance a new unit was created in April 2008.

A robust process of economic evaluation has been integrated into all this work.

2.4. The establishment of NSAs

The role of the national safety authorities (NSA) is critical both in maintaining safety and in assuring that safety is not a barrier to market opening during the development of interoperability.

Their key tasks according to Article 16.2 (Railway Safety Directive):

- Authorising the bringing into service of structural subsystems constituting the railway system;
- Supervision of compliance of interoperability constituents with the essential requirements;
- Authorising the placing in service of rolling stock not yet covered by TSIs;
- Issue, renewal, amendment and revocation of safety certificates and safety authorisations;
- Monitoring, promoting and, where appropriate, enforcing and developing the safety regulatory framework;
- Supervising that rolling stock is registered and that information in the National Vehicle Register is kept up to date.

Most of the national safety authorities were established in 2006 and 2007 (according to Article 16.1). At the end of 2008 there was only one Member State that had not yet established its national safety authority.

In a minority of Member States the national safety authorities also perform other tasks such as regulatory activities and issuing licences, while the other Member States delegate one or both

of these tasks to the Ministry of Transport. In general most of the national safety authorities were created under the Member State's Ministry of Transport.

The Agency is responsible for helping the national safety authorities to harmonise their decision-making criteria across the European Union through an active exchange of views and experience. According to Article 6(5) of its Regulation, the Agency should also organise and facilitate cooperation between the NSAs. The network of safety authorities was established on 21 July 2005.

The main objective of the network is to support gradual harmonisation of decision-making criteria and to develop a European approach to regulation of railway safety and interoperability by sharing experiences, opinions and best practices. In addition, information on the work of the Agency and especially the results of discussions in all ERA working groups are shared with the Network, allowing NSAs which are not members of these groups to be informed, to comment and to make proposals.

The network is convened on a regular basis in a plenary; in addition Task Forces have been established with the following objectives:

- to propose the guidelines and formats of Annual Reports by exchange of experience and opinions;
- to feed NSA experiences back into the acceptance process and practical implementation of ERTMS within the specifications;
- to learn from each other about best practice; harmonise decision-making criteria; support mutual trust among the NSAs and improve knowledge and experiences about control and governance processes used by the different NSAs (peer reviews).

2.5. The establishment of Notified Bodies

The duties of Notified Bodies include verification declarations for Interoperability Constituents (components) and the EC verification procedure for subsystems. Member States are responsible for appointing these bodies in accordance with Article 20(2) of both Directives 96/48/EC and 2001/16/EC.

In January 2008, there were 38 Notified Bodies accredited for Directive 96/48/EC and 35 Notified Bodies accredited for Directive 2001/16/EC spread across 16 European countries.

A coordination group of Notified Bodies — NB RAIL — has been set up and the first meeting took place in December 2000. It meets regularly to:

- share experiences and exchange views on the conformity assessment procedures in order to understand the Interoperability Directives better and apply them more consistently;
- draft and issue technical recommendations on matters relating to Railway Conformity Assessment;
- ensure consistency with European standardisation work;
- draw up reports on technical aspects of the assessment procedures;
- discuss Commission documents and other information relevant to Railway Interoperability;

- discuss questions and problems that arise from the practical application of the Interoperability Directives.

More information can be found on:

<http://circa.europa.eu/irc/nbg/nbrail/info/data/en/information/nbrail/00nb%20rail%20homepage.htm>

2.6. The establishment of National Investigation Bodies

Independent investigation bodies charged with investigating serious accidents on the railway should be set up in each Member State. At the end of 2008, only two Member States had not yet established their national investigation body (NIB).

NIBs are obliged to exchange views and experiences with each other, with the support of the Agency. The aims of this exchange are:

- to develop common investigation methods;
- to draw up common principles for following up safety recommendations in investigation reports; and
- to adapt investigations to the latest technical and scientific progress.

The Network meets regularly to exchange information on ongoing investigations and on methodological issues. It has set up internal task forces to study certain subjects in more detail. The NIBs reports on occurrences investigated, and the investigation reports, are published on the ERA website.

At the moment accident reporting by the Member States is not comparable in quantity, as the bases for reporting vary between the different Member States. Some Member States only investigate serious accidents according to Article 19 of the Railway Safety Directive, whilst others have national laws which give a wider scope and grant discretion to the investigation body on whether or not to investigate.

The investigation bodies established according to the Railway Safety Directive may be single or multimodal. Many are multimodal across transport modes such as marine and aviation, whilst others cover land transport only. Accidents should be notified to ERA within one week of the decision to open an investigation, and final investigation reports are usually submitted within 12 months of the date of the accident.

2.7. Standardisation

As a rule, European specifications are developed in the spirit of the new approach to technical harmonisation and standardisation. They allow a presumption of conformity with certain essential requirements of the Interoperability Directive, particularly in the case of interoperability constituents and interfaces. In normal circumstances these European specifications, or the applicable parts thereof, are not mandatory and the TSIs do not explicitly refer to them. References to these European specifications are published in the

Official Journal of the European Union, and Member States publish the references to the national standards transposing the European standards.

However, in accordance with Article 5(8) of the Interoperability Directive, TSIs may in certain cases make an explicit reference to European standards or specifications where this is strictly necessary in order to achieve the objectives of the that Directive. Such explicit reference has consequences which must be made clear; in particular, such European standards or specifications become mandatory from the moment the TSI is applicable. In the future, the Commission will make efforts to reduce as far as possible making standards mandatory because those references can raise concerns regarding the availability of standards for the public.

After the adoption of the two Interoperability Directives for high-speed and conventional rail in 1996 and 2001 respectively, the Commission issued two standardisation mandates addressed to the European standardisation bodies CEN, CENELEC and ETSI.

By spring 2008, 38 standards or standard series had been provided in support of the two Directives. Several more standards are under development and in accordance with the general mandate given by the Commission to the standardisation bodies the Agency has made 20 requests for development of new standards related to TSIs.

In May 2007, the ERA signed a Memorandum of Understanding with CEN, CENELEC and ETSI to streamline technical coordination with European Standardisation Bodies and to ensure consistency between the TSI drafting process and the development of standards.

In September 2007 an ad-hoc group with representatives from ERA and European standardisation bodies delivered a paper outlining the link between the TSI and the development of standards. This approach would shorten the time for the delivery of the TSI and standards to 3 years.

2.8. How are stakeholders involved ?

Stakeholders are involved at different stages of the decision making process.

For drawing up the recommendations the Agency has established a number of working parties. In the working parties each Member State may be represented by their safety authority whilst the sector actors are represented by up to three nominees from their European representative associations. The representative associations are the Community of European Railways and Infrastructure Managers (CER), the European Infrastructure Manager (EIM), the European Railway Supply Industry (UNIFE), the European Rail Freight Association (ERFA), the International Association of Public Transport (UITP), the Union of Combined Transport (UIRR), the International Union of Private Wagons (UIP) and the trades unions ETF and ALE. These working parties all conduct their business in a transparent manner.

In the case of TSIs, the recommendations of the Agency include:

- a report on the results of the consultation of associations and bodies representing users in accordance with Article 6(7) of Directive 2008/57/EC;
- a report on the results of the consultation of social partners as regards the conditions referred to in Article 5(3)(g) of that Directive, in accordance with Article 6(8) of the same Directive.

Recommendations are further assessed by the Commission, which checks the compatibility of the recommendation with other legislation and, where appropriate, may decide to consult one or more stakeholders, for example through bilateral contacts or workshops.

On the basis of the recommendation, the Commission then prepares a draft Commission decision, directive or regulation, which is further submitted to the Committee for opinion, in accordance with the procedure specified in the legal basis.

3. LEGAL IMPLEMENTATION OF THE DIRECTIVES BY THE MEMBER STATES

3.1. Task of the Commission

In 2008 the Commission started an assessment of the national legislative measures enacted by Member States to comply with Directives 2004/50/EC and 2004/49/EC. These legislative provisions apply only to Member States which have railway infrastructure and rail operations. Cyprus and Malta do not have a rail sector. Where implementation is discussed, it therefore relates to all Member states except Cyprus and Malta (except as footnoted here⁷ in relation to Cyprus).

The assessment has two steps.

The first step is to check whether the Member States have notified all necessary national measures.

The second step is to check if all provisions of the directives have been appropriately implemented; this includes conformity checks and desk studies but also, in some cases, bilateral meetings and fact-finding missions to check, for example, the size of the administrative capacity to perform the tasks required by the Directives.

That assessment is under way; this report gives only preliminary results.

3.2. The Railway Safety Directive (including the notification of national safety rules)

Directive 2004/49/EC lays down specific roles and responsibilities for railway undertakings and infrastructure managers and further requires the establishment of a National Safety Authority in each Member State, as well as an accident investigation body. The Directive also requires the development of common safety targets and common safety methods.

All Member States have notified the Commission of the national measures implementing Directive 2004/49/EC, except Luxembourg, against which infringement proceedings are still open.

There is one particular aspect that merits in-depth analysis; it relates to the notification of national safety rules.

Article 8 (1) of the Railway Safety Directive requires Member States to establish national safety rules. The term 'national safety rules' is defined in Article 3 (h) of the same directive: *'all rules containing railway safety requirements imposed at Member State level and applicable to more than one railway undertaking, irrespective of the body issuing them'*.

⁷ Cyprus has implemented Article 2 of Directive 2004/50/EC, amending Article 16 (3) of Directive 2001/16. This is a list of the technical rules in use for implementing the essential requirements of each subsystem (Implementation by 30 April 2005).

Article 8 (2) obliged Member States to notify all relevant national safety rules in force before 30 April 2005, and Article 8 (4) requests continuing notification of amendments to national safety rules already notified and of new rules unless the rule is wholly related to the implementation of TSIs. The information requirements for the notifications are set out in Article 8 (2) and Annex II of Directive 2004/49/EC.

Between April 2005 and August 2006, the Commission received 25 notifications in 18 different languages, containing almost 5000 national safety rules. The Commission sent a technical request to the Agency to examine these notifications: to determine their compliance with Articles 3 (h) and 8 (2) and Annex II of the Railway Safety Directive, to identify issues of concern, and to recommend further measures to the Commission.

Based on this technical examination, the Agency proposed the following recommendations: the notifications from the Netherlands and Norway should be accepted; the notifications from Belgium, Denmark, Estonia, France (excluding the Channel Tunnel notification), Ireland, Italy and Sweden should be clarified; the notifications from Austria, Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, the United Kingdom including Northern Ireland and the Channel Tunnel, and the French notification for the Channel Tunnel should be renewed.

Clarification was recommended where it was considered necessary for the Member State to explain certain points in the notification that were unclear. The renewal of the notification was recommended when it was considered that substantial changes were required, such as the provision of more information, the reclassification of some rules or the exclusion of rules that were not considered to be national safety rules.

In July 2007 the Commission asked the Member States to submit either clarifications of their notifications within 5 months or the renewed notifications within 6 months.

By April 2008, the Commission had received clarifications from Belgium, Estonia, France and Sweden and renewed notifications from the Czech Republic, Finland, Germany, Greece, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain and United Kingdom. Also Bulgaria submitted its notification according to Article 8(2). In total these notifications comprise more than 1000 rules, which the Agency has examined as part of the validation and registration process.

In 2008 the Agency examined how national safety rules are published and made available according to Article 8(3) of the Railway Safety Directive. The main focus of the work carried out by the Agency was to develop and test a methodology for evaluating the publication and accessibility of national safety rules. The evaluation included both the objective aspect, such as the collection and analysis of factual information on national safety rules, and a subjective viewpoint, i.e. individual opinions on the accessibility and clarity of the rules. For practical reasons the evaluation was divided into two phases.

The first phase was completed at the end of 2008 and the report that the Agency published recently discussed four aspects:

- incorporation in the national legislation
- publication of the rules
- availability or accessibility of the rules to stakeholders
- the ease of understanding of these safety rules.

The experience in phase I has been reviewed and adaptations have been made for the launch of the external study to collect information for phase II in the remaining 17 Member States and for the Channel Tunnel. On this basis the Agency will put recommendations to the Commission in 2009 on ways to improve accessibility of the safety rules.

3.3. Interoperability Directives

All Member States have sent notifications of national measures implementing Directive 96/48/EC (High-Speed), Directive 2001/16/EC (Conventional Rail) and Directive 2004/50 (alignment of High-Speed and Conventional Rail Directives and extension of the scope).

There is one particular aspect that deserves an in-depth analysis; it relates to the notification of national technical rules.

Article 16(3) of both High-Speed and Conventional Rail Directives required Member States to notify the Commission and all other Member States, for each subsystem, of national rules in use for implementing the essential requirements in the absence of TSIs. That obligation was confirmed in Directive 2004/50 and extended to information related to the bodies charged with the conformity assessment procedures for those national rules. The Commission published the notifications on the CIRCA website set up for exchanging information with the Committee members. In 2007 the Agency was asked to evaluate all notifications related to National Technical Rules (NTR) and reported to the Commission in 2008 as follows:

- notifications of NTR seem to be incomplete
- the lists available do not have a common format. Many of them cannot be considered as valid and most were submitted back in 2003 (these lists may no longer be valid);
- the following figures summarise the general situation:
 - Total due (legal documents asking for notifications times Member States): 336
 - Total available to ERA: 65 (19 % of total due)
 - Valid notifications: 6 (9 % of total available)
 - Valid, clarification is necessary: 32 (49 % of total available)
 - Not valid, re-notification is necessary 27 (42 % of total available)

ERA proposes that the Commission should launch a re-notification process in order to collect all the lists of NTR. ERA proposes to launch the re-notification process when:

- the database which the Commission is developing, and which will enable the Member States to upload their lists of technical rules (electronic notification), has been put into service and
- the ERA recommendation in Annex VII of the new Interoperability Directive has been delivered: this implies asking the Member States to include in the notification the information necessary for the cross-reference document on rolling stock rules.

Both conditions are expected to be fulfilled in the first half of 2009.

3.4. TSI obligations: national rules, agreements, implementation plans, others

In some cases, Commission implementation measures such as TSIs also create obligations. For example, adopting TSIs means Member States must withdraw existing national rules and notify national rules in use to close open points. Open points are technical aspects that are not yet explicitly covered in a TSI and that are clearly identified in an annex to the TSI. In other

cases the decision adopting a TSI requires a national implementation plan to be established by all Member States.

The Commission has regularly verified that these obligations are met, in cooperation with ERA, in Committee work and/or bilateral meetings.

3.5. Implementation in the field

One of the most important aspects is the administrative capacity of the national safety authorities to perform the tasks allocated to them.

The NSAs are regularly in contact with ERA because of the large number of ERA activities requiring the NSAs' expertise and information. Therefore the Commission is talking to ERA about the possibility of exploiting ERA knowledge and expertise to support the evaluation of national administrative capacity.

The study on 'Rail Interoperability & Safety — Transposition of legislation and progress on the field' commissioned by the Commission in 2006 (the 'KEMA' study) led in 2007 to the following assessment of the NSAs and NIBs in relation to the requirements in the Directive:

Concerning NSAs

1. The body designated as National Safety Authority could be identified in all countries, except for Bulgaria (Bulgaria only joined the EU in 2007).
2. In Spain and Italy the current situation with respect to NSA tasks differs significantly from what the Directive requires.
3. For Greece and Luxembourg no information could be collected on NSA tasks.
4. There are two problems associated with the implementation of NSA tasks, but these were known already. They concern the tasks related to the cross-acceptance of rolling stock and the rolling stock register.
5. In France, the independence of the NSA from SNCF and RATP is an issue.
6. Although the Directive explicitly allows the NSA to be the Ministry of Transport or part of it, putting the NSA outside the Ministry of Transport has advantages, mainly when dealing with infrastructure safety issues.
7. NSA resources in terms of number of staff and opportunity to hire external support seem to be generally adequate.
8. With some exceptions, there is an increasing level of documentation and transparency of procedures.

Concerning NIBs

1. No information on a NIB could be collected for Bulgaria and Lithuania.
2. In all other countries a permanent body for accident investigation exists, except in Italy, where the investigation commission is of a non-permanent nature.
3. The strict requirement on the independence of accident investigation was not fully met in Germany. As far as the authors know, there were no plans to change this.

4. The strict requirement on the independence of accident investigation was not met in Greece, Italy, Poland, Portugal, Romania, Slovenia and Spain. However these countries announced changes that were expected to solve the problem.
5. In at least 19 and potentially 23 countries there is a conflict of interest that could arise during an investigation and its follow-up because the NIB is in or close to the Ministry responsible for Transport.
6. In Finland the no-blame nature of an investigation could be affected by the fact that its NIB is in the Ministry of Justice; this issue does not occur in the other countries.
7. In most cases the scope of the NIB is broader than just the basic requirement of investigating serious railway accidents.
8. The NIBs' resources in terms of permanent staff and opportunity to hire external support seem to be generally adequate, but the latter may affect their independence under some circumstances.
9. Procedures for accident investigation are in general either available or in the process of being devised.

However the situation has evolved in 2008 and 2009; for example, only one Member State had not yet set up its NIB by April 2009.