

APPENDIX

A

NATIONAL CASE STUDIES

France Case Study

1 Background

Implementation

Activity to date

- 1.1 Key strategic policy for domestic transport in France was established by the “Loi portant organisation des transports intérieurs” (LOTI) of 30th December 1982. This included a formalisation of the monopoly role for SNCF for the provision of domestic passenger services.
- 1.2 The French Infrastructure Manager, RFF, was established by the “Loi n°97-135 du 13 février 1997 portant création de l'établissement public “Réseau ferré de France” en vue du renouveau du transport ferroviaire”. As is noted later in this case study, this mandated the ‘delegation’ of most responsibilities for infrastructure maintenance and management to the incumbent, SNCF. This legislation had the objective of separating the accounts of the IM and the incumbent RU, both to meet the requirements of the First Railway Package and to freeze SNCF’s historic debt.
- 1.3 The Railway Safety Directive was implemented into French legislation through the “Décret n°2006-1279 du 19 octobre 2006 relatif à la sécurité des circulations ferroviaires et à l'interopérabilité du système ferroviaire”. Also adopted in the same year there were a “loi” for the establishment of the national safety authority (EPSF) and a “décret” for its organisation and functions.

Institutions

Economic regulator

- 1.4 The *Autorité de régulation des activités ferroviaires* (ARAF) replaced the previous regulatory authority *Mission de contrôle des activités ferroviaires* (MCAF), which was a branch of the ministry, on 1 December 2010. ARAF was set up to regulate the rail market in compliance with Directive 2001/14/EC and it has more independence and greater powers than MCAF. Its main objectives are to contribute to the proper functioning of public service and competitive activities for the benefit of users and customers of rail services and to prevent non-discriminatory access to railway companies in the rail network.

Ministry

- 1.5 The Ministry of Ecology, Energy, Sustainable Development, and Territorial Development (*Ministère de l'écologie, du développement durable, des transports et du logement*) is responsible for transport matters at national level. According to Annex 6 of EC’s Communication SEC(2009)1687/2, the Ministry is in charge, i.a., of the following tasks:
 - issuing of RU licences;
 - notifying the National Safety Rules; and
 - monitoring interoperability.

National investigation body

1.6 The role of NIB in France is assigned the Bureau d'Enquêtes sur les Accidents de Transport Terrestre - (BEA-TT - the land transport investigation body). According to Annex 6 of the EC's Communication (ibid.), BEA-TT is tasked with:

- opening accident investigations;
- preparing final accident investigation reports;
- preparing annual NIB reports;
- keeping the register of rolling stock; and
- safety reporting and Vehicle Keeper Marking.

National safety authority

1.7 The NSA in France is the Public Office of rail Security (*Etablissement public de sécurité ferroviaire* - EPSF). According to Annex 6 of the EC's Communication (ibid.) EPSF's duties are: issuing Safety Certificates and acceptance of rolling stock, verification of subsystems, checking conformity of constituents, issuing authorisations for placing in service, including the corresponding registration numbers, issuing Safety Authorisations, publication of annual NSA reports.

Main market players

1.8 There are 15 licensed RUs in France (though not all are active):

- SNCB
- CFL
- ECR (part of the DB group)
- SNCF
- VFLI
- CFL Cargo
- Colas Rail
- TSO
- Trenitalia
- TPCF
- CFR
- Eurostar International Limited
- Europorte Channel
- Europorte France

1.9 The freight operators fall into three broad categories:

- Long-distance new entrants, notably Euro Cargo Rail, Europorte and Colas Rail;
- Incumbents, including SNCF but also incumbents from neighbouring networks; and
- Short-lines operators.

Assessments of progress

- 1.10 The IBM Rail Liberalisation Index 2007 placed France in a group of MSs which were behind schedule in the process of liberalisation and opening of rail market. In the 2011 edition of the Index, France moved into the “On Schedule” group but it remains at the low end of this table, with reports of discrimination in freight transport, cabotage restrictions in cross-border passenger transport and completely closed national passenger transport.
- 1.11 In 2009, the EC sent reasoned opinions to France (and other MSs) highlighting the following shortcomings in the implementation of the First Railway Package:
- Part of the essential functions is still performed by the (incumbent) Railway Undertaking, thereby infringing the provisions on independence of essential functions;
 - Charges for the use of the infrastructure are not determined by Infrastructure Manager itself;
 - Insufficient incentives for Infrastructure Manager to reduce costs and level of access charges;
 - Absence of performance scheme to encourage Railway Undertakings and the Infrastructure Manager to minimise disruption and improve the performance of the railway network;
 - Insufficient powers and resources of Regulatory Body to monitor competition in the rail service market, pending the effective establishment of a new Regulatory Body;
 - Insufficient independence of Regulatory Body from the (incumbent) Rail Undertaking and/or the Infrastructure Manager, pending the effective establishment of a new Regulatory Body;
 - Regulatory Body does not have sufficient powers to enforce its requests for information and its decisions, pending the effective establishment of a new Regulatory Body.
- 1.12 In recent years, important steps have been taken, especially as regards the market opening of rail freight transport and international passenger transport, and to the creation of an independent regulatory body, as discussed above.
- 1.13 In September 2011 the EC launched infringement proceedings against France and the United Kingdom over their failure to implement legislation to open the market for rail services in the Channel Fixed Link. The infringement concerns the lack of independence of the rail infrastructure manager of the Channel Fixed Link and the insufficient implementation of provisions in the First Railway Package concerning rail access charging, the independent regulatory body and capacity allocation.

Likely future developments

- 1.14 In recognition of the problems facing the French rail sector, the President of the Republic launched the ‘Assises du Ferroviaire’, a forum for all industry players, with the intention of developing a strategy for the future. Action is currently on-hold because of the Presidential elections.
- 1.15 One expected development is that the unprofitable long distance services that are known as “Trains d’Equilibre du Territoire”, subject to a public service contract with SNCF until 2013, will be used as a test-bed for competitive procurement of publicly-funded services. This may be followed by some experimentation with the opening up of regional service provision to competitive procurement. Many regional councils are complaining about the poor quality of service being delivered by SNCF on regional services and of a lack of transparency over the charges being demanded by SNCF for provision of train services
- 1.16 SNCF’s role of Delegated Infrastructure Manager is seen as increasingly untenable as RFF seeks to more actively control the delegated activities, leading to a duplication of effort and a lack of clarity. It has been determined by the government that this activity will only be undertaken within one organisation in the future but the decision on whether this is SNCF or RFF has not yet been determined. The two competing solutions are:
- The activities of the Delegated Infrastructure Manager within SNCF are transferred to RFF, together with the 55,000 staff concerned. (Gares et Connexions might also be transferred); or
 - A holding company, similar to that in Germany, is established within SNCF, with infrastructure management and train operations subsidiaries. However, unlike in the Germany model, RFF would be retained as a policy body allocating the rights to network capacity and charging for access to the network.
- 1.17 The formal opinion of ARAF¹ is that the direction of travel should be towards a much closer relationship between RFF, as the decision-maker for the network, and the roles that are currently in the SNCF’s network operations organisation. It argues that this is likely to place in question the logic of continuing to ‘delegate’ this activity to SNCF.

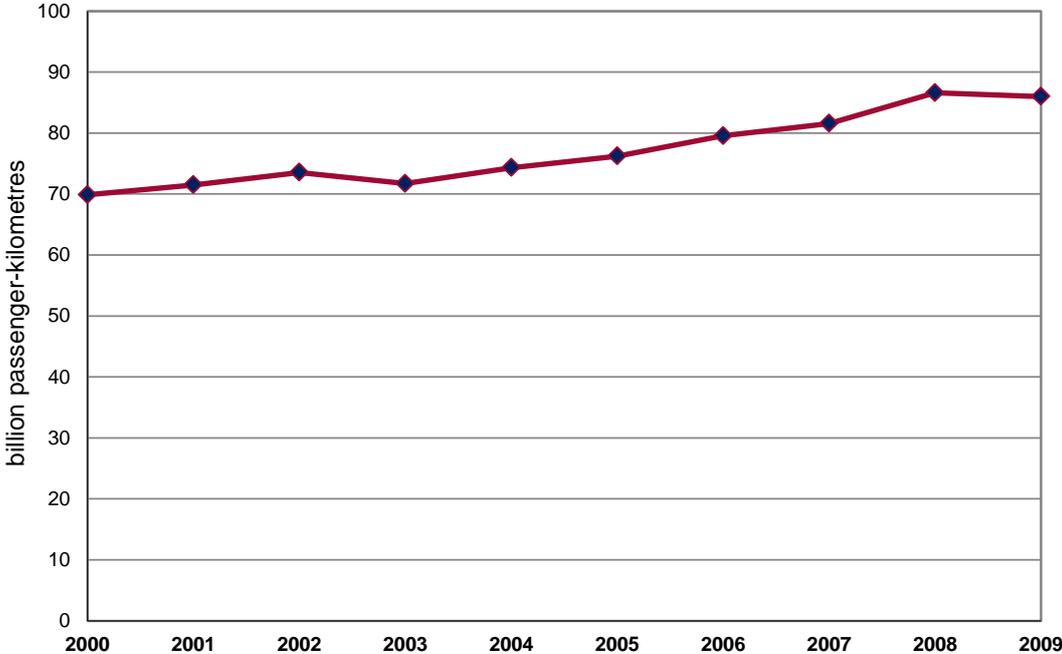
¹ ARAF Avis n° 2011-006 du 23 mars 2011

2 Evolution of the national markets

Changes in volumes

- 2.1 Figure 2.1 below depicts the trends in rail passenger transport in France over the past decade.
- 2.2 It can be seen from the graph that over the entire period up to 2008 there was a steady growth in passenger-km, although after 2008 there was a slight decline in passenger traffic. It should be also pointed out that in 2009, with 86 billion passenger-kilometres, France was the EU Member State with the highest rail passenger volume. Between 2000 and 2009, the French railways experienced an increase in rail passenger transport of about 23%.

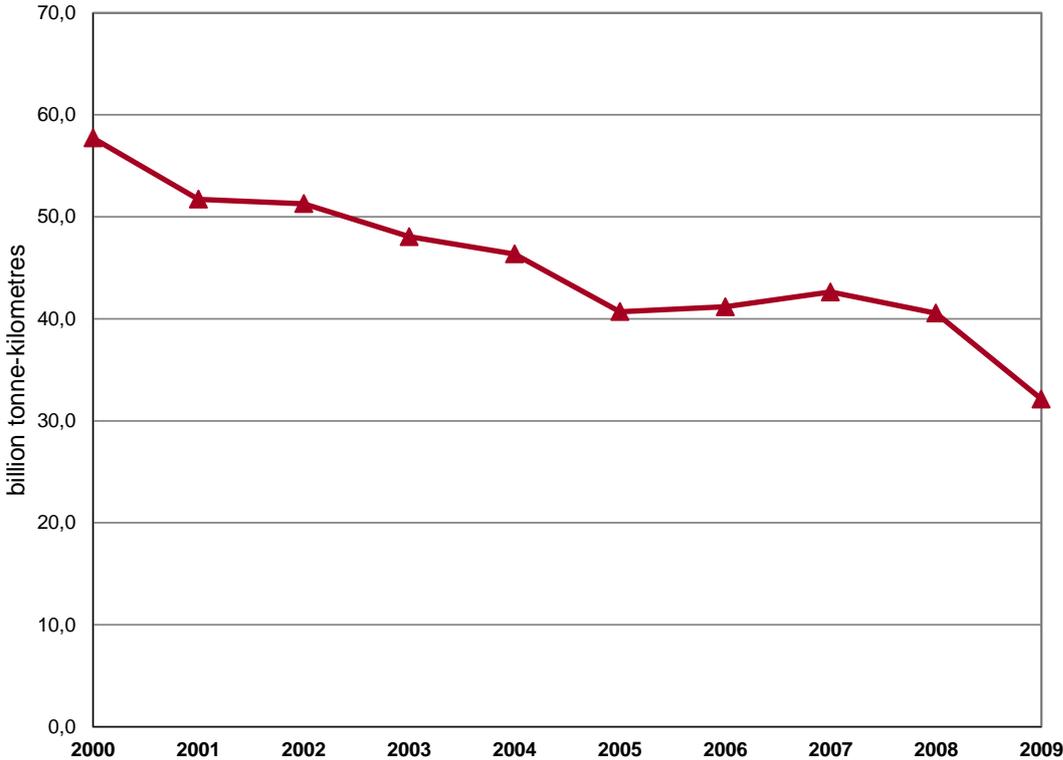
FIGURE 2.1 TRENDS IN RAIL PASSENGER TRAFFIC IN FRANCE



Source: European Commission (2011)

- 2.3 Figure 2.2 represents the evolution of rail freight traffic in France. As can be seen from the graph, the trends in the freight market are very different from the trends in the passenger. Freight traffic in the period 2000-2009 fell by 44.3%, from nearly 58 to around 32 billion tonnes-kilometres. Traffic recovered temporarily between 2005 and 2007; however after 2007 traffic begun to fall again as was the case in the majority of Member States.

FIGURE 2.2 TRENDS IN RAIL FREIGHT TRAFFIC IN FRANCE



Source: European Commission (2011)

Modal split

2.4 Road freight transport in France followed a somewhat different evolution in the reference period. In fact, between 2000 and 2007, the flows of goods transported by road increased to over 191 billion tonnes-kilometres. However, after the 2007 peak, figures plunged by 22% to pre-2000 levels. Despite such a reduction in absolute terms, road freight transport increased its modal share against rail by nearly 10%. In terms of modal split, rail freight transport lost market share over the entire period; whilst it accounted for over 25% of total surface transport in 2000, by 2009 it had plunged to around 17%.

2.5 Whilst rail freight transport in France has been declining over the entire period, haulage of goods by road saw a continuous rise from 2000 to 2007, to plunge rather steeply after that. The increase in flows in the first period was around 28 billion tonnes-kilometres (about 17%), whereas the dramatic fall that followed after 2007 saw traffic dropping by 35 billion tonnes-kilometres (approx. 18%) below 2000 levels. As regards modal split, the road sector has gained share over the years, growing to over 80% of total freight surface transport since 2005. The flows of freight calculated by summing up road and rail fell by over 19% in the two years following 2007, from over 230 billion tonnes-kilometres to about 188 in 2009.

Freight rail market shares

Freight

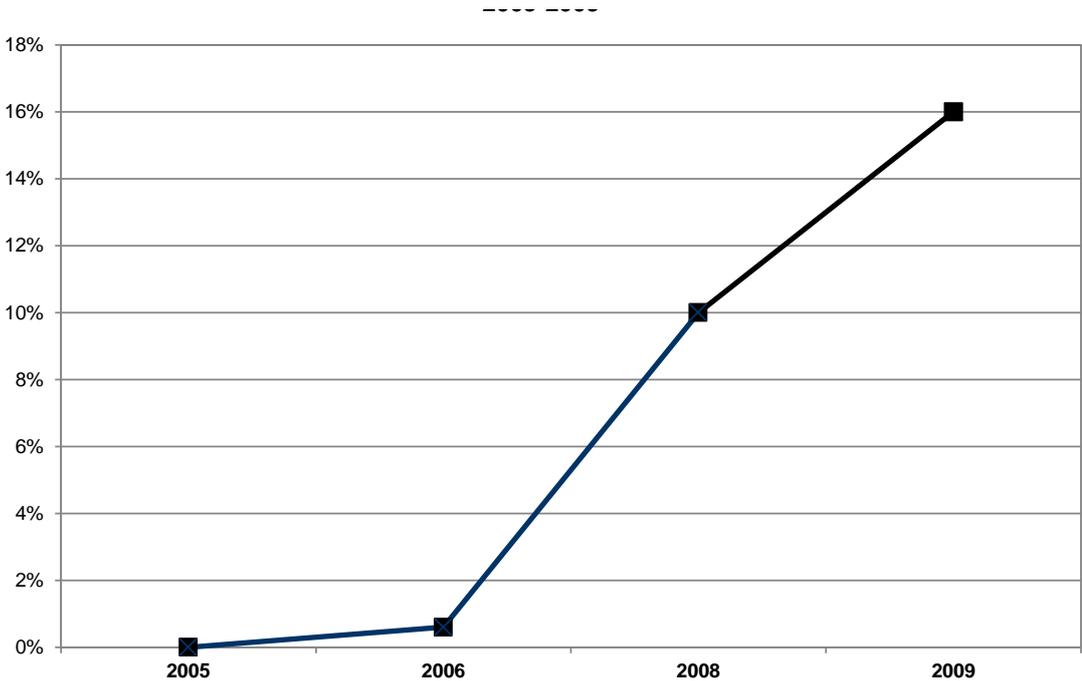
- 2.6 SNCF Fret is the incumbent freight operator. It has undertaken a number of restructuring operations but has suffered from a dramatic loss of traffic. Historically it was expected to accept many consignments that could not be conveyed profitably. It has sought to withdraw from these and to reduce its wagonload network accordingly.
- 2.7 SNCF Fret has also failed to reform historic labour practices and considers that the enhanced flexibility achieved by new entrants (notably in multi-skilling) represents unfair competition.
- 2.8 The non-incumbent share of the market is dominated by DB Schenker (which continues to operate in France under the brand 'Euro Cargo Rail') and Europorte 2, a Eurotunnel subsidiary that purchased Veolia France. In addition, some minor RUs have taken niche flows away from SNCF Fret and the non-incumbent sector also includes a number of cross-border transits by foreign incumbents.
- 2.9 The significance of this entry must be considered in the context of a French rail freight market that has lost over 44% of its market share in recent years (see Figure 2.2).
- 2.10 The table below sets out the evolution of rail freight market share of non-incumbents in France from 2005 to 2009. After liberalisation there has been an increase in the market share of new entrants. The graph below shows that between 2006 and 2009 the market share of new entrants grew from less than 2% to 16%.
- 2.11 1.1 Fret SNCF is still the main freight operator in France, with a traffic of 26.4 billion tonnes-kilometres in 2009 and a market share of about 84%. According to Railway Gazette International, the non-incumbent freight operator with the largest market share was Euro Cargo Rail at 8.5% (the company now claims to have raised this share to 20%), followed by Europorte, B Cargo (SNCB), CFL Cargo, Colas Rail (Bouygues) and TSO.

Passenger

- 2.12 In the passenger market, SNCF has a monopoly of domestic services. This is ensured by the 'Loi portant organisation des transports intérieurs' (LOTI) of 1982.
- 2.13 High speed services are operated by SNCF on a commercial basis. Other long distance services are operated by SNCF on behalf of the ministry on the basis of being socially and economically necessary.

Regional services are operated by SNCF on the basis of agreements reached with regional councils, who specify the service to be provided.

FIGURE 2.3 SHARE FREIGHT MARKET OF NON-INCUMBENT OPERATORS IN FRANCE



Source: European Commission (2009)

3 Market access

Description of the NSA

- 3.1 The EPSF was created in April 2006 but only in 2010 were its activities grouped into the current site at Amiens. The head of EPSF is appointed by parliament, which is intended to demonstrate complete independence from the ministry.
- 3.2 Prior to its creation, its roles were undertaken nominally by the Mission de Contrôle des Activités Ferroviaires (MCAF) within the transport ministry, though this body had no resources of its own to undertake the role of NSA and it was dependent upon SNCF to undertake studies related to acceptance of new rolling stock or systems.
- 3.3 The EPSF has two main divisions, as set out below, with the percentages representing the share of the budget:
- Authorisations and monitoring (62 staff), including:
 - Authorisations (30%)
 - Monitoring (35%)
 - Standards / Europe (17 staff), including:
 - Standards (12%)
 - Safety and interoperability / Europe and benchmarking (7%)
- 3.4 The organisation receives no state funding. It receives its funding from:
- A safety levy, set by law, on railway undertakings of 0.05% of their track access fees that are paid to RFF (95%);
 - Fees for processing requests for authorisations (4%); and
 - Other fees (1%).
- 3.5 In 2010, EPSF's total income was roughly €13 mil. A total of 103 authorisations were undertaken for €513,000, on average about €5,000 per authorisation. The income from the levy and fees is capped by law, currently at €17.5 million.
- 3.6 No information is provided about the *range* of charges for authorisations but it is evident, given the costs of €1 mil. or more being quoted by railway undertakings to gains approval for placing locomotives into service, that the charges levied by EPSF are not the most significant component.
- 3.7 There were 101 staff at the end of 2010. Staffing costs (including taxes) account for 79% of expenditure. Of these, 40 staff were on secondment from SNCF and 2 from RATP.
- 3.8 In 2010, the following authorisations for placing into service were granted:
- 8 for command and control systems
 - 1 for infrastructure

- 14 for traction
 - 4 for rolling stock
 - 3.9 EPSF does not publish data about the time taken to evaluate applications for authority to place into service. It is, however, mandated to work within the following timescales:
 - 1 month to evaluate documentation submitted and to advise applicant if any further information is required; then
 - 3 month to study the application and to give its response.
 - 3.10 By contrast, EPSF do publish data about the time taken to deliver Safety Certificates. These were in the range of:
 - 100 days for new Part A certificates;
 - 28 to 117 days for renewed or modified Part A certificates;
 - 28 to 100 days for new Part B certificates where Part A issued in France;
 - 3 to 114 days for new Part B certificates where Part A issued in another member state; and
 - 35 to 122 days for renewed or modified Part B certificates.
 - 3.11 Whilst EPSF no longer contracts-out the evaluation of applications of approvals to SNCF, the fact that about 50% its technical staff are on secondment from SNCF gives rise to concerns that their loyalties remain in that camp, or at least that they will have concern about the opportunities available at the end of their secondments. By contrast, one interviewee noted that many of these specialists are approaching retirement and will not be replaced by seconded staff, diminishing this alleged problem although they will be replaced with staff with less of an understanding of the sector. The NSA itself strongly disputes allegations of partiality by seconded staff.
- Description of the regulator***
- 3.12 ARAF replaced the previous (shadow) regulatory authority MCAF on 1 December 2010. Whilst there is annual report for 2006 on the internet, it has not been possible to find details of the activities of the MCAF between that year and the creation of ARAF.
 - 3.13 As with EPSF, ARAF's head is appointed by Parliament. Its main objectives are stated to be to contribute to the proper functioning of public service and competitive activities for the benefit of users and customers of rail services and to prevent non-discriminatory access to railway companies in the rail network.
 - 3.14 ARAF is funded by a levy on the track access charges paid to RFF by RUs. As with EPSF, this is subject to a ceiling that is laid down by parliament, as part of an initiative to limit public spending. This is currently €11 mil. this also acts as a restraint upon the amount of active market investigation ARAF can undertake.
 - 3.15 New entrants do not perceive that ARAF acts in a manner that suggests that it considers that increased competition should be sought as an objective in itself. Rather it is seen to prefer to monitor the arrangements as they exist and to respond to complaints. In

particular it perceives itself to have a key role in arbitrating between RFF and RUs about track access decisions. Some stakeholders mentioned that ARAF feels too constrained politically to challenge SNCF.

- 3.16 ARAF is supportive of the positions set out in the Independent Regulators' Group Rail 3rd position paper² in response to the Commission's Recast proposal, which supports a strengthening and extension of the independence, competencies, functions and resources of national regulatory bodies .
- 3.17 In particular it is not in favour of shifting regulatory powers and monitoring functions from the national level, believing that this would weaken the proposed strengthening of the national regulators' independence and competencies. It notes that ARAF itself is a relatively new body and is seeking to establish its position, a process will would not benefit from having its independence removed. ARAF believes that a good understanding of the national sector is invaluable in meeting its objectives.
- 3.18 From its perspective, enhanced cross-border coordination and consistency of approach can be achieved by means of a formal network of independent regulators. It recognises that there are some Member States that are 'poor performers', where no independent regulators have been established, but this is not considered to be a reason for taking powers from all Member States.
- 3.19 In French legislation, it is within the competence of national courts to rule upon conformity with European law and this should not be overlooked in the recast.
- 3.20 ARAF does not believe its role is to promote competition (as opposed to ensuring equality of treatment). This is the role for the Competition Regulator. In general it does not look for problems but expects to be alerted to them by RUs as and when they arise.
- 3.21 ARAF does not normally have any role in the regulation of safety but it does have a specialist technical resource to facilitate discussions with EPSF. The relationship between the organisations is reported by ARAF as being quite effective.

The role of the Infrastructure Manager

- 3.22 As with any infrastructure manager, RFF plays a key role in the allocation of network capacity. Its role is complicated by the fact that the detailed timetabling work is still done in SNCF's timetabling offices. This has long been the cause of complaint by new entrants, although RFF has in recent years played a more active role in seeking to ensure transparency.
- 3.23 The IM has until now played a significant role in the type approval process. We have been advised by Railway Undertakings that the technical dossier for a placing into service has initially to be submitted to RFF, which then will only forward to the NSA if it approves the dossier itself. However, the NSA advised us that the regulations have been changed and it is no longer necessary to submit dossiers to RFF (a fact that did not appear to be evident to RUs that we interviewed).

² 3rd Position Paper on the Recast - Regulatory questions arising from the ongoing discussion on the Recast : Views on the development of the Recast in the General Approach of the Transport Council adopted on 16th June 2011 and in the European Parliament's first reading of 16th November 2011 , Independent Regulators' Group Rail, 28/29 November 2011

- 3.24 Whilst an applicant proposing to operate a new rolling stock type over a given section of line, RFF operates a procedure of issuing attestations of compatibility of such stock for the route concerned. The assessment required to provide this should be undertaken within 2 months of the request being made but it has been reported to us that this target is often not met. The technical data necessary to undertake this compatibility assessment is set out in Annex 11.1 of the Network Statement 2012. It is clear from interviews that the major obstacle to getting timely approvals is RFF's lack of a register of its infrastructure. It is dependent upon SNCF to undertake the assessments. A particular problem cited is a lack of knowledge of platform heights.

Strengths and weaknesses of the systems adopted

- 3.25 From the point of view of RUs other than the incumbent, the French rail sector is not supportive enough of the activities of freight operators to capture the traffic necessary to achieve a significant modal shift to rail. The ministry is seen to take a conservative line and other bodies are seen to have a tendency to discriminate in favour of SNCF. New freight entrants have gained a large market share but this is in part because the total volumes of railfreight have fallen as SNCF Fret loses traffic.
- 3.26 Whilst at an institutional level, France is very tied to the principle of subsidiarity, RUs that operate at an international level would welcome much more standardisation of approach and even centralisation of authority in Europe. The proposal to have a European regulator with regional offices is widely welcomed from this perspective.
- 3.27 The creation of ARAF as an independent regulator to replace the shadow regulator MCAF, which was based in the ministry, is seen as a welcome improvement but RUs do not perceive there to be an active wish to challenge the incumbent. Not surprisingly, the proposal to centralise authority is not welcomed by ARAF, which is in the process of establishing its independence and influence within France. ARAF accepts the observation that interpretations of directives vary between Member States. However, it apportions much of the blame to the content of the Directives themselves, which makes transposition difficult. Furthermore this lack of clarity is seen to allow reluctant Member States to avoid taking necessary actions.
- 3.28 The NSA is reported as working well with RUs for the assessments that it undertakes but it is not seen under its present head to be challenging the IM over its role in being accepting or rejecting dossiers intended for the EPSF (which, as was noted above, EPSF is not a competence available any more for the IM). EPSF itself claims that this requirement has now been ended, though there would appear to be confusion in the sector about this issue.

Complaints

- 3.29 Interviewees have indicated that there is a strong reluctance for RUs to make formal complaints because of the 'boomerang effect', that is that subsequent applications will receive even less favourable treatment.
- 3.30 ARAF lists a total of four complaints on its website. None of these relate to safety certification or vehicle acceptance. The predominant complaints-resolution activity of ARAF relates to capacity allocation.

3.31 We have noted that ARAF does not have a mission to promote competition. However, it does undertake investigations to verify compliance with legislation, such as concerning the separation of the accounts of SNCF’s ‘Gares et Connexions’ division. It also publishes opinions on some policy areas, such as the future organisation of network operations but this would normally be in the context of wider consultation processes.

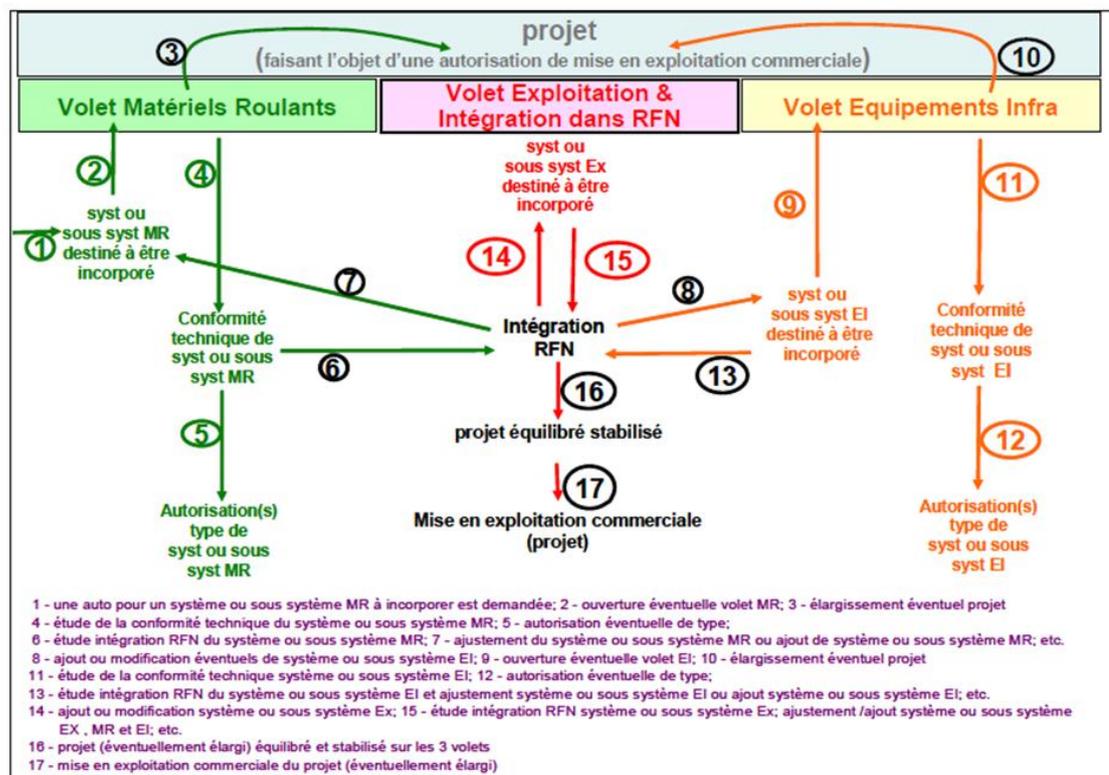
Examples of difficulties with market access

Type approval of locomotives

3.32 EPSE publishes a guide ‘Conditions d’autorisation de mise en exploitation commerciale d’un projet sur le RFN’ for the use of promoters of the introduction of new systems and sub-systems.

3.33 The process is illustrated in the diagram shown in Figure 3.1:

FIGURE 3.1 ILLUSTRATION PROCESSES FOR NEW SYSTEMS



3.34 As EPSF do not publish data about the time for type approval of rolling stock, interviews with railway undertakings have suggested that the performance of EPSF is considered to be much better than the previous arrangements.

Type approval of new locomotives for railway undertaking 1

3.35 We were advised of major delays caused in gaining approval of a new locomotive class. Following contact between two of these locomotives and station platforms, RFF refused to permit further test runs. However, our interviewee advised us that survey work ascertained that the platforms did not comply with TSIs, despite the route being declared

to be TSI-compliant. Furthermore, 90% of such platforms were allegedly found to be non-compliant.

- 3.36 The issue of platform gauging was also reported to have been raised in an international forum by the locomotive manufacturer as being its biggest issue in getting approvals in France.
- 3.37 It was suggested to us that EPSF has adopted a policy of not concerning itself with any dossiers that it has not received (and have not been forwarded by RFF as discussed above) and that it makes no effort to force RFF to enable testing to be undertaken. EPSF advised us that the requirement to submit dossiers initially to RFF has now been removed but it will still be necessary to undertake test runs and so the problems reported for this example may still remain.

Type approval of new locomotives for railway undertaking 2

- 3.38 Similar issues were reported by another freight railway undertaking, which reported that it takes 2 years and costs €5 - 10 mil. to get full approval for placing locomotives into service for national operations. The example was given of an application related to a particular locomotive type, for which the Part B approvals by RFF had not been given six months after the EPSF had granted the Part A certificate. The RU complained to the public tribunal on the basis of discrimination and won the case. RFF then proceeded to grant the necessary approvals within ten days. This RU also complained that EPSF does not consider it to be within its role to put pressure on RFF to improve the situation.

Type approval of tram-train

- 3.39 Another, more recent, controversial application for type approval is the tram-train where SNCF itself ended up in extended dialogue with suppliers. The former president of GART, Jacques Auxiette, has suggested that these engineers were allowed to go into risk-averse mode because there is “no pilot on the plane” to push the process forward.³ When an Alstom design was selected for the Nantes to Clisson line, acceptance testing took much longer than expected.

Trenitalia open-access international services

- 3.40 Trenitalia has stated that it would have cost them approximately €30 mil. to get its high speed trains approved in France, so they decided to abandon the authorisation process.

ERTMS/ETCS

- 3.41 An example for problems with the implementation of European standards is the signalling and train safety system ERTMS/ETCS. The EU-member states and Switzerland committed to equip certain tracks of European importance with ETCS by 2020. The principal aim of the introduction of ERTMS/ETCS system was to standardise the train safety system around Europe.
- 3.42 In 2009 RFF awarded a contract to install ETCS Level 1 ETCS Level 1 (overlaid on its KVB system) on the 2,200 route km that form the French sections of European freight corridors C (Antwerpen - Basel/Lyon) and D (Valencia - Budapest), which meet at Lyon and

³ Rapport fait au nom de la commission d'enquête sur la situation de l'industrie ferroviaire française: production de matériels roulants « voyageurs » et fret, Assemblée Nationale, 8/6/11, p221

Ambérieu. This has the potential to remove some of the barriers to market entry because it would not be necessary to install country-specific signalling equipment in rolling stock in order to operate on lines that are equipped. On the other hand, experience to date suggests that cross-acceptance of ERTMS / ETCS equipment is far from straightforward, notably due to different versions of ERTMS specifications being used on different networks.

- 3.43 ETCS Level 2 has been implemented for high speed trains (on the TGV Est Line) as an overlay to the TVM430 system.

TABLE 3.1 IDENTIFIED PROBLEM ELEMENTS

Element of problem drivers	Identified
deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks	
insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry	
granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases	✓
reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs	✓
deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks	
insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors	✓
deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks	✓ ⁴
insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry	✓
the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient	✓
national technical and safety rules sometimes pose a transparency and/or discrimination problems	✓
problems with proper implementation of EU railway directives; too divergent interpretation of the directives	✓
insufficient level of dissemination of railway-related information and training	

⁴ The ambitions of ARAF are restricted by the cap placed upon the fees that it can levy.

3.44 The table below summarises in a SWOT analysis the situation in France.

TABLE 3.2 SWOT ANALYSIS

<p>STRENGTHS</p> <ul style="list-style-type: none"> ■ Statutorily-independent NSA and regulator have now been established ■ New entrants have high market share within the rail mode (though this is in large part due to shrinkage of incumbent) 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> ■ The granting process of authorisations for placing in service is very expensive and time-consuming ■ IM is believed by RUs to have a veto over whether a technical dossier will be passed to the NSA ■ NSA still reliant upon staff seconded from incumbent ■ NSA not proactive in tackling weaknesses of system ■ Regulator not proactive & takes narrow view of remit ■ The ‘delegated infrastructure manager’ role for the incumbent creates conflicts of interest ■ Regulator has cap upon fees it can levy
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> ■ IM <u>may</u> win battle to remove network operations from the incumbent 	<p>THREATS</p> <ul style="list-style-type: none"> ■ SNCF currently lobbying to return to integrated infrastructure / operations with holding company ■ National institutions’ insistence on the principle of subsidiarity mitigates against consistency of interpretation with other MS ■ The French state has adopted a minimalist approach to opening the passenger market for cross-border services

Germany Case Study

1 Background

Implementation

- 1.1 The Railway Reform process in 1994 was the first step towards liberalisation and saw amongst others a shift of responsibility for the provision of regional rail passenger services from the Federal Government to the States (Länder). The implementation of this act, known as “regionalisation”, took place in 1996.
- 1.2 In Germany, the First Railway Package was implemented by the new National Railway Act [Allgemeines Eisenbahn Gesetz] (AEG), which came into force on the 30th of April 2005.
- 1.3 The Second Railway Package had to be implemented in national law by 30 April 2006. In October 2006, a reasoned opinion was sent to Germany given that they failed to notify the European Commission of its transposition. The Interoperability Directive, part of the package, was then implemented by an amendment of the National Railway Act on 13 December 2006. Despite that, on 22 May 2007, the Commission opened infringement proceeding against Germany on this issue. On 14 July 2007, the Second Railway Package was then fully implemented in national law. The interoperability Directive was transposed by the Transeuropäische-Eisenbahn-Interoperabilitätsverordnung (TEIV) and the Safety Directive, which also formed part of the package, by the Eisenbahn-Sicherheitsverordnung (EsiV). The EsiV excludes railway undertakings that are exclusively operating on regional networks from the obligation to obtain a safety certificate. On 24 November 2011, the European Commission decided to refer Germany to the court of justice due to failing to implement the latest amendment of the Safety Directive. The same day, the European Commission also started proceedings against Germany for the failure of the implementation of two further directives on interoperability (2008/57/EC and 2009/131/EC) which regulate, amongst others, the placing into service of parts of the railway system.
- 1.4 The first step of transposition of the Third Railway Package was the implementation of the directive on open access for all international rail services by an amendment of the National Railway Act on May 2009. On 3 December 2009, the Directive on the certification of train drivers in the community was fully implemented by the sixth legislative act on an amendment of national railway rules (Sechstes Gesetz zur Änderung eisenbahnrechtlicher Vorschriften) which concluded the fully implementation of the Third Railway Package.
- 1.5 According to the Rail Liberalisation Index 2011, which compares the relative market opening in Europe, Germany occupied third place slightly behind Sweden and Great Britain. The degree of liberalisation in the German rail market is reflected in the number of licensed and active RUs - 247 out of the 353 licensed RUs in Germany are currently active. In 2009, the share of new entrants in the German rail freight market was 26%, compared to 12% in regional passenger transport. The market share of new entrant RUs operating long-distance passenger services in Germany in the same year was almost zero.
- 1.6 Many of the incumbent railway companies from other Member States are active in Germany, either directly or through subsidiaries.

Institutions

- 1.7 The NSA in Germany is the Federal Railway Office (Eisenbahn-Bundesamt EBA), which is the supervisory and licensing authority. EBA's tasks include Issuing licences and safety certificates (valid for both rail freight and passenger transport) and the authorisation of rolling stock, verification of subsystems, declarations of conformity of constituents, authorisations for placing in service, including the corresponding registration numbers, Safety Certificates, Safety Authorisations, Notifying National Safety Rules, Publication of the annual NSA reports, maintaining a register of infrastructure and a rolling stock register, Safety reporting and Monitoring interoperability.
- 1.8 In Germany, the tasks of the Notified Body (NoBo) according to 2008/57/EC are carried out by EISENBAHN-CERT (EBC). EBC is an autonomous organisation under public law and acts as a financially and legally independent department of the EBA. The main tasks of EBC are to assess the conformity or suitability for use of the interoperability constituents and to carry out the EC-verification of the subsystems.
- 1.9 Regulatory Body: the Federal Network Agency for Electricity, Gas, Telecommunication, Post and Railway (*Bundesnetzagentur* - BNetzA) is an independent, cross-sector authority and has been responsible for regulation of the railway sector since 2006. BNetzA is tasked with monitoring rail competition and is responsible for ensuring non-discriminatory access to railway infrastructure. The Agency monitors compliance with the rules governing access to the infrastructure, especially in relation to the preparation of the timetable, decisions on the allocation of railway paths, access to service facilities, usage conditions and charging.
- 1.10 The role of NIB in Germany is assigned to the Investigation Office for Rail Accidents of the Ministry of Transport. According to article 21 of Directive 2004/49/EC its tasks focus on the different elements of accident investigation.

Main market players

Freight

- 1.11 The main market players in the German rail freight market are principally subsidiaries of European incumbent rail operators. The most important groups are the German incumbent DB Schenker Rail, the French incumbent SNCF Geodis, the Swiss incumbent SBB Cargo and the Italian incumbent FS Trenitalia (through TX Logistik).

Passenger

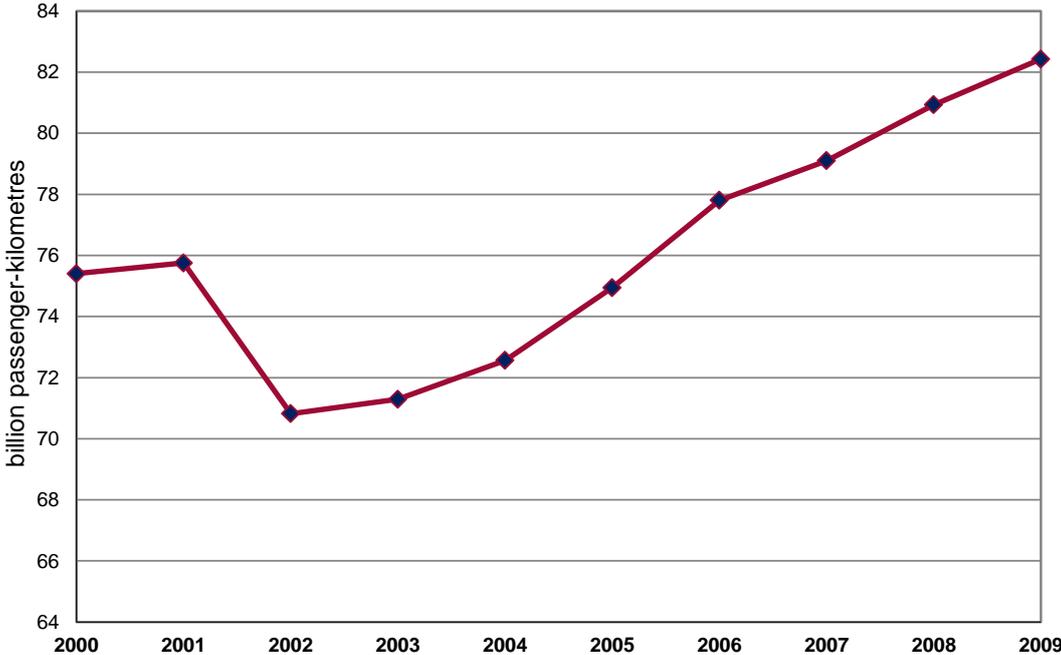
- 1.12 New entrants operate principally in the regional passenger rail market. The biggest player besides incumbent DB Regio are the private-owned French Veolia group followed by Netinera owned by Trenitalia. The third largest is BeNEX followed by the local transport operator Albtal Verkehrs-Gesellschaft and Keolis, which is a subsidiary of French incumbent SNCF.
- 1.13 More details on market shares for both the passenger and freight markets are provided in the next chapter.

2 Evolution of the national markets

Changes in volumes

2.1 Figure 2.1 sets out the evolution of the rail passenger market in Germany in terms of billion passengers-kilometres.

FIGURE 2.1 TRENDS IN RAIL PASSENGER TRAFFIC IN GERMANY

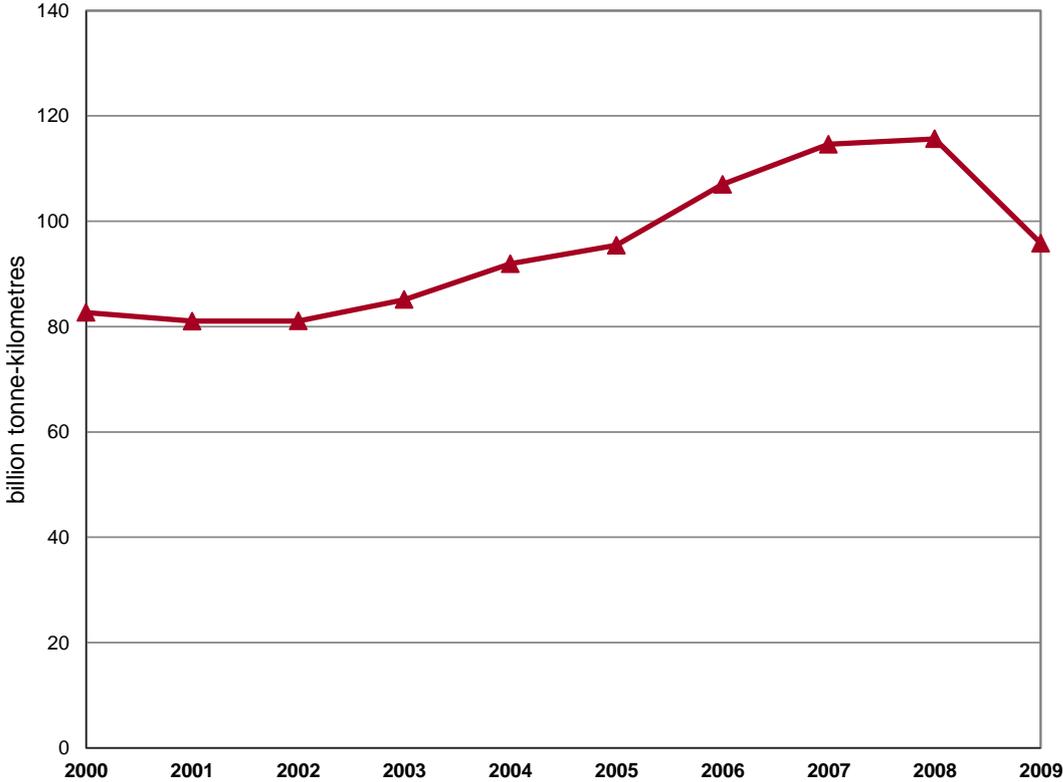


Source: European Commission (2011)

2.2 After a strong decline from 2001 to 2002 rail passenger figures increased steadily up to 2009 with cumulative growth over the period of 9.3%, from 75.4 billion passenger-kilometres in 2000 to 82.4 in 2009.

2.3 Figure 2.2 sets out the change in freight traffic over the same period. As can be seen, the freight sector grew from 2000 to 2008 and then fell back in 2009 as a result of a fall in economic activity. This trend is consistent with the overall trend in land transport freight flows over the period. In absolute terms the German rail freight market grew by 39.9%, from 82.7 billion tonne-kilometres in 2000 to 115.7 in 2008 but then fell back in 2009 showing a cumulative growth for the period 2000 to 2009 of 15.9%

FIGURE 2.2 TRENDS IN RAIL FREIGHT TRAFFIC IN GERMANY



Source: European Commission (2011)

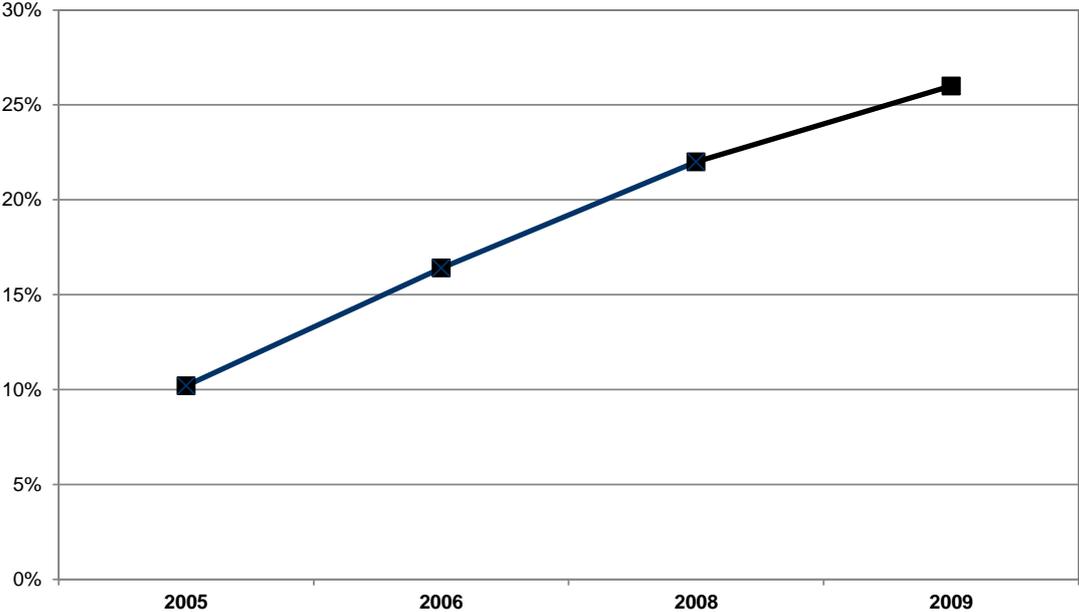
Modal split

2.4 When comparing the trends recorded in rail freight transport with those in road freight, it appears that the market has evolved in a similar manner. The flow of goods carried on German roads increased by about 17% in the period 2000-2008, then it dropped by approximately 7% in the following year. In terms of modal split, road freight in 2009 accounted for 72% of total freight surface transport. This share had previously decreased from around 73% in 2000 to just over 69.5% in 2008, but it rose again in 2009 by around 2.5%. At the same time, combined freight traffic fell by 10% from 380 billion tonne-kilometres in 2008 to 341 in 2009.

Market share

2.5 Figure 2.3 shows the evolution of the market share of new entrants in the German rail freight market from 2005 to 2009. In 2005 the market share was about 10.2%, by 2009 this share had grown to about 26.0%. In 3 years the incumbent operator DB Schenker Rail lost 15.8% of the total market to competitors.

FIGURE 2.3 SHARE FREIGHT MARKET OF NON-INCUMBENT OPERATORS IN GERMANY



Source: European Commission (2011)

2.6 New entrants focus almost exclusively on block trains. The market for single wagonload trains is predominantly served by the incumbent operator, DB Schenker Rail. The table below sets out the market shares for the main freight undertakings in Germany.

TABLE 2.1 MAIN RAIL FREIGHT OPERATORS IN GERMANY

Group	Companies	Market Share (2009)
DB Schenker	DB Schenker Rail	72.3%
SNCF Geodis	Captrain, ITL	5.5%
SBB Cargo	SBB Cargo Deutschland	2.7%
FS Trenitalia	TXL, OHE	2.6%
Häfen und Güterverkehr Köln	Häfen und Güterverkehr Köln	2.0%
Others		14.9%

Source: Holzhey, M. et al. 2011

2.7 The passenger market in Germany has been open for a number of years, there has been some entry but this has not been substantial in medium and long distance services (less than 1%). However, market share of new entrants in regional passenger rail transport is continuing to grow and is currently about 12.5%.

2.8 There are only a few competitors in long-distance passenger train service. A potential new entrant in long-distance passenger train service is the Hamburg-Köln Express. This private initiative will start its operation between Hamburg and Cologne in autumn 2012 and will be the first competitor of DB AG on an intercity route.

3 The role of national authorities

Description of the NSA

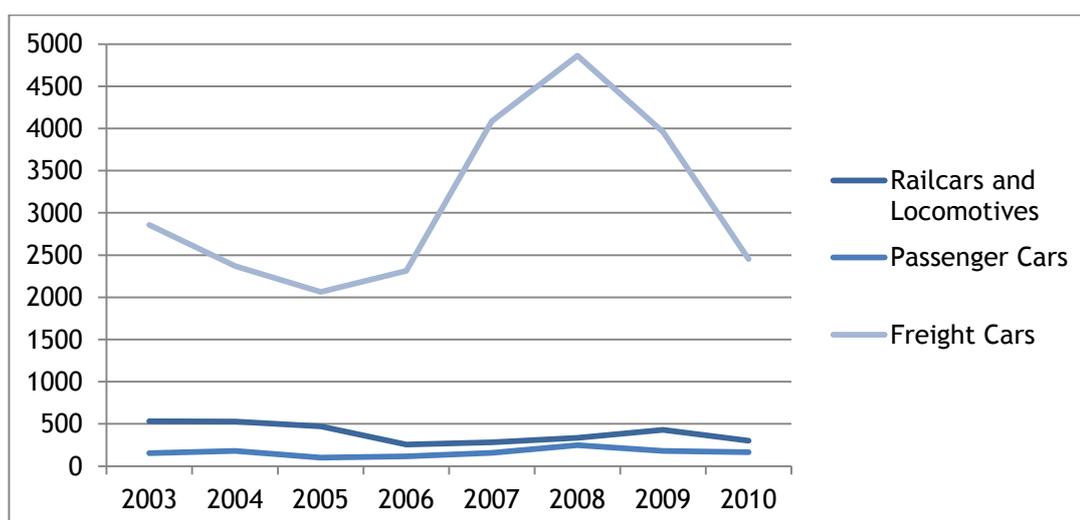
- 3.1 EBA staff totalled 1050 in 2010, the staff is employed entirely by EBA, its budget is included in the table below.
- 3.2 The headquarters in Bonn counts about 300 staff which are working on railway policy and issuing licenses and authorisations. EBA explained that it has just increased its team working specifically on vehicle authorisation by 10. The remaining staff is based in regional offices mainly dealing with supervisory tasks. The EBA is an executive agency of the Federal Ministry of Transport, Building and Urban Development (BMVBS) and thus forms part of its budget.

TABLE 3.1 BUDGET EBA 2010 IN 1000 €⁵ (INCLUDING NSA AND NOBO - EISENBAHN-CERT (EBC))

Receipts		Costs	
Administrative Receipts	47,351	Personal	60,817
Others	5,800	Others	20,591
Total Receipts	53,151	Total Costs	81,408

- 3.3 Figure 3.1 shows the evolution of the number of authorisations for placing into service granted by EBA in the years between 2003 and 2010.

FIGURE 3.1 AUTHORISATIONS FOR PLACING INTO SERVICE⁶



⁵ <http://www.bundesfinanzministerium.de/bundeshaushalt2011/pdf/epl12.pdf>

⁶ Eisenbahn-Bundesamt, Jahresbericht 2010/2011, Bonn, November 2011

Strengths and weaknesses of the systems adopted

- 3.4 Some stakeholder umbrella organisations have stated that neither the NSA nor the Regulatory Body show signs of insufficient independence or discriminatory behaviour against new entrants. The vehicle authorisation and the safety certification process are the two main market access problems according to these organisations.
- 3.5 In terms of the authorisation process, stakeholder organisations stated that the process is too slow and too demanding. They have stated that EBA is following a “zero-risk-approach” in this matter. One of the reasons for this is a lack of personnel. One stakeholder proposed to introduce a system similar to that already existing in other EU-Member States or in road transport with private certification companies like TÜV and DEKRA.
- 3.6 Until recently, the responsibility for safety issues of a railway undertaking in Germany fell on a few employees (the “Betriebsleiter”). The European safety directive 2004/49/EC, however, requires all RUs to obtain a new safety certificate and the implementation of a safety management system. One stakeholder stated that EBA is still acting with the old approach in mind and has not yet internalised the new process-oriented approach. Another stakeholder reported that the process of granting safety certificates has improved slightly since the end of 2010. Although they do not have a clear understanding of the reasons. However, the procedure implemented by EBA was checked and approved by ERA.
- 3.7 DB believes that the way PRM TSI has been adopted in Germany leads to significant difficulties for contractors who need to apply for derogations. Furthermore, DB reported that certain parts of PRM TSI are unclear or under dispute, and NoBos therefore exercise a certain degree of flexibility in their interpretation of compliance. All of which reflects a more guardian than implementer role of EBA. The lack of an auditing process behind the application of the PRM TSI is evident. EBA do not have a role with regards to implementation.
- 3.8 The Trans-European Railway Ordinance (TEIV) came into force in 2007 and outlines the rules and regulations supporting the adoption of TSIs in Germany. In accordance with Directive 2008/57 it states that 'standards must be applied to all comprehensive restoration or refitting of sub-systems'. Comprehensive restoration or refitting works shall generally refer to cases in which total project costs exceed €1 million. This, however, provides the industry with a clear definition when PRM TSI have to be applied.

Complaints

- 3.9 Since 2006, the regulatory body BNetzA initiated about 600 investigations and made 150 decisions. No complaints could be identified in terms of rolling stock authorisation and granting of safety certificates.

Examples of market access***Safety Certificates***

- 3.10 The European railway safety directive 2004/49/EC requires RUs from January 1st 2011 to hold a safety certificate in order to be granted access to the railway infrastructure. The responsible authorities for issuing these certificates are the national safety authorities, in Germany the EBA. On December 1st 2010, the EBA handled only 114 out of 348 requests.

Due to this delay a transitional arrangement had to be introduced that allows RUs to continue their operations if they requested the new safety certificate before January 1st 2011. Additionally, RUs are required to pay the EBA for the cost of the issuing process. Some RUs had to invest 2 man-years and to pay up to €70,000 for administrative and advisory costs to the EBA. Representatives of RUs reported that these costs created a high market entry barrier in particular for small RUs.

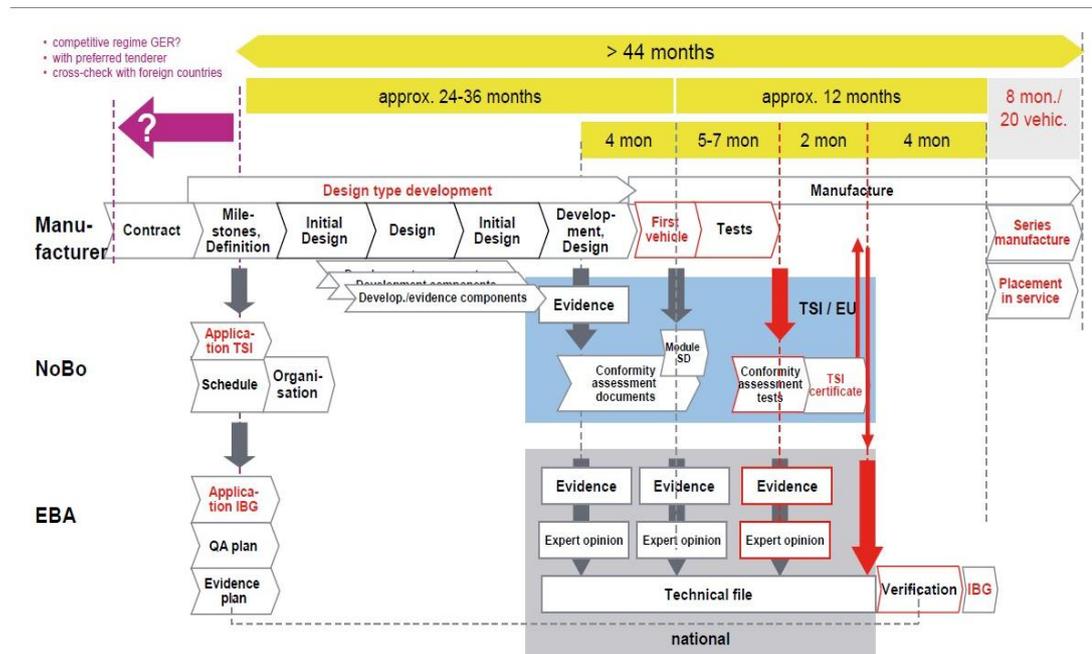
- 3.11 According to EBA, many RUs did not comply with the requirements to obtain a safety certificate. As a result, EBA published a guideline and organised several conferences. Many RUs could improve their documentation through the use of an individual advisory offered by EBA which is done for a fee.
- 3.12 Representatives of RUs reported that the procedure was chaotic. For a period of 3 years, EBA did not manage to clarify requirements. Although EBA published a guideline on the application process, this was received as too functional and not meeting the needs of the RUs. In addition RUs complained that the issuing procedure of EBA was too slow and as there was no feedback from EBA, RUs had no chance to correct their applications on time. This has been supported by correspondence provided by a RU.
- 3.13 RUs also reported that the approach used by EBA was too technical compared to the process-based approach suggested by the European railway safety directive.

Vehicle authorisation

- 3.14 The rolling stock authorisation process is becoming of increasing importance as a problem for stakeholders, which, according to RUs and producers has become an increasingly time-consuming and more demanding process. Trains which recently had particular problems with authorisation include E-Talent 2 from Bombardier, Flirt from Stadler and Coradia Lint/Continental from Alstom.
- 3.15 At the end of October 2010, 76 units of E-Talent 2 were to start operations on several DB Regio franchises. However, EBA issued authorisation for placing in service for E-Talent 2 only in October 2011 and only for two franchises.
- 3.16 The reason for the delay in the authorisation process depended on various factors and thus the responsibility is not totally clear. Certain responsibility rest with the EBA as technical requirements were changed during the authorisation process of the Talent 2 trains. Changes in the authorisation process after the design phase of the train can lead to non-calculable problems for both producers and train operators. Producers have to handle construction changes which frequently require new authorisation for already authorised components. As a result, operators cannot plan with certainty the start of operations of the new trains.
- 3.17 However, it cannot be ignored that the producer, Bombardier, delivered the trains with substantial defects in the software-system which affected safety-relevant elements like brakes, drives or the train protection system. As a result, Bombardier was not able to provide all necessary safety-evidences before October 2011.
- 3.18 Also Flirt and Coradia Lint had substantial problems in the authorisation process and started operations with delays.

- 3.19 Stakeholders have also mentioned problems that the approach adopted by EBA is very judicial in nature and not sufficiently focused on understanding whether technical details can be overcome in a simple manner. In addition, many stakeholders have mentioned that they have not appealed the decisions of EBA for fear of problems in future with other authorisations.
- 3.20 Furthermore, we have also been informed that there are also substantial costs and timescales for the reauthorisation of vehicles that have already been authorised in other Member States as a result of the authorisations not being accepted automatically, even for some elements that are common across Member States but for which there is no specific international cooperation agreement.
- 3.21 There is no sign of discrimination of new entrants as the responsible authority acts independently and all RUs are affected by these difficulties. However, incumbent DB Regio can handle these delays more easily as it has a large stock of back-up of rolling stock. E.g. in the case of Bayerische Oberlandbahn, operations of their new franchise started partially with buses due to the delay in the authorisation process of ordered rolling stock. These problems can affect RUs negatively as the expectations of politicians and passengers are especially high in the first days or weeks after the start of operations. (Holzhey et al. 2011)
- 3.22 According to the Rail Liberalisation Index study from 2011, train authorisation fees can add up to €120,000. It should be noted, that these costs are only fees for issuing authorisation and do not include costs for surveys, trials, tests and personal. After the submission of all necessary documents, EBA issues authorisation for placing in service within a period of 120 days. We were not provided with statistical information on average approval times within this period.
- 3.23 To address the emerging problems with train authorisation, BMVBS launched a joint working group including representatives from industry, operators and authorities. The results of this working group were published in the “Manual on Rolling Stock”. By the use of this manual, roles, obligations and responsibilities of the participating parties in the authorisation process are defined with the aim of clarifying the procedures. Furthermore the applicability of technical requirements for the authorisation process are to be established for a period of 7 years from the submission of the application for authorisation (IBG).
- 3.24 The procurement of, for example, new electric railcars takes usually between 3 and 4 years depending on the complexity of the model. This is followed by the time required for production of the ordered vehicle fleet. The detailed procurement process from the first contract to authorisation (IBG) is shown in Figure 3.2.

FIGURE 3.2 TIME REQUIREMENT PROCUREMENT PROCESS FOR NEW DEVELOPMENT OF AN ELECTRIC REGIONAL TRAIN

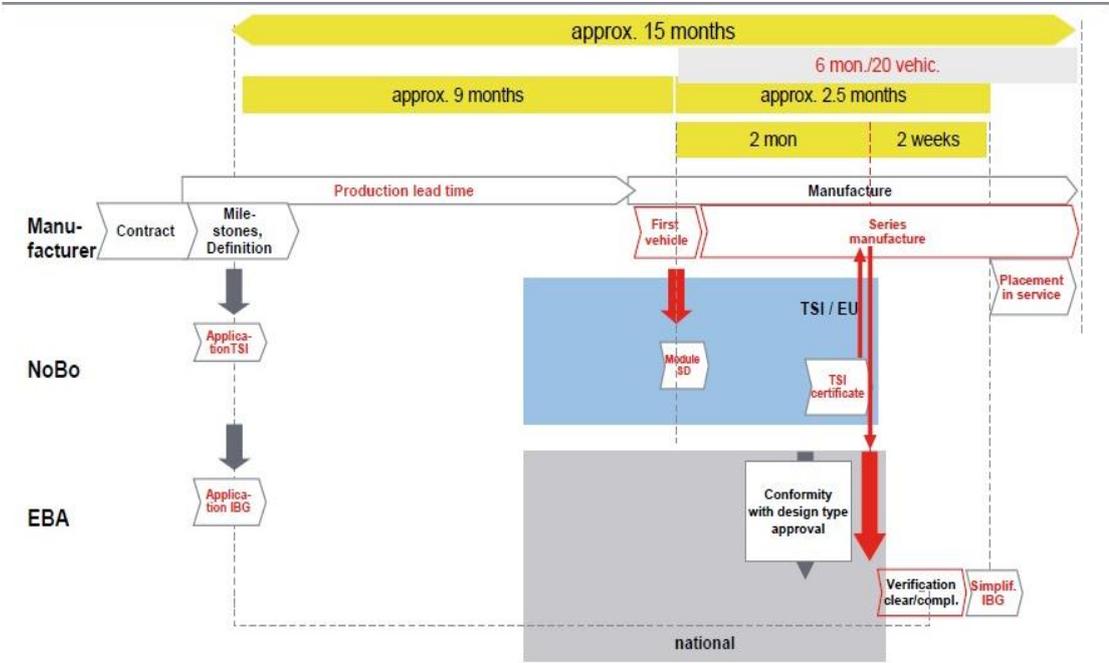


Source: EBA

- 3.25 The procurement period of less than 2 years can only be achieved by ordering already authorised vehicles. In this case, the duration of the procurement process is primarily determined by the phase of production preparation (approx. 1 year). The process is shown in Figure 3.3
- 3.26 The manual on rolling stock does not cover the entire national legal framework of the rolling stock authorisation process nor the entire framework of the European directive on interoperability on this issue (2008/57/EC) and hence is not compliant with it. The manual evolved as a result of a joint working group between industry, RUs and authorities with the objective to clarify uncertainties in the authorisation process.
- 3.27 Several issues could be identified which are not compliant with the European legislation. According to the manual, 16 different actors are involved in the authorisation process although the interoperability directive envisages only 5 actors. As a result, also the responsibilities of these actors differ with respect to the European framework. Another difference is the project-based approach described in the manual which involves the RU as a main actor in the authorisation process. In contrast, the Interoperability Directive describes a product-based approach in which the manufacturer may place on the market already authorised design types.
- 3.28 Given that the manual is a result of a co-operation between the most important actors in the authorisation process, it can be seen as something that has been approved by the German industry. Some important issues on the single processes and their duration could be clarified and several agreements were met in order to facilitate the whole authorisation process. As a result, the transparency of the whole process increased notably. The German Railway Industry Association highlights the long-term applicability of

technical requirements and the possibility to authorise vehicle types and platforms. These agreements ensure the legal and planning certainty of the manufacturers and lead to a shorter time to market.

FIGURE 3.3 TIME REQUIRED FOR PROCUREMENT OF EXISTING ROLLING STOCK



Source: EBA

- 3.29 Notwithstanding the shortcomings of the manual in relation to compliance with EU legislation, the fact remains that it’s publication has increased the transparency of the information that is needed to ensure authorisation although stakeholders have mentioned that the new processes have meant an average of 1 year delay on authorisation and a consequent increase in costs.
- 3.30 Finally, stakeholders have expressed concern that on some occasions the documents that have been provided by NoBos have not been automatically accepted by the NSA and they have been rechecked leading to an increase in costs and timescales for authorisations.

ERTMS/ETCS

- 3.31 An example for problems with the implementation of European standards is the signalling and train safety system ERTMS/ETCS. The EU-member states and Switzerland committed to equip certain tracks of European importance with ETCS until 2020. One of the main European rail freight corridors is the connection of the ARA ports in Belgium and Netherlands with Northern Italy. While the Netherlands and Switzerland already equipped or started to equip their parts of the corridor with ETCS, there is no progress on the German part.
- 3.32 The principal aim of the introduction of ERTMS/ETCS system was to standardise the train safety system around Europe. Due to the inconsistent implementation levels in different

countries, the ETCS system had become a barrier for new entrants in the railway market. Locomotives have to be equipped for different train-safety systems. The costs for enabling a locomotive for the Rotterdam-Genoa corridor are summed up to €750,000. The investment costs would amount to €200,000 per locomotive if the whole corridor would have been consequently equipped with ETCS.

- 3.33 After enabling locomotives for ETCS, authorisations in the respective countries have to be renewed. A rolling stock leasing company recently estimated the additional costs for enabling a locomotive, originally authorised in Germany and Austria, for operating in the Netherlands and Switzerland at up to €1,800,000. These costs include the ETCS signalling technology as well as the re-authorisation process. Taking into account this inconsistent development in implementation, the German Rail Network Advisory Board gave the recommendation to stop the implementation of ETCS in Germany.

National rules

- 3.34 Stakeholders have mentioned that the persistence of national rules are clearly increasing the costs of the authorisation process, but in general they accept that this is going to continue in the short to medium terms although they complain that there is no updated, full list of rules that they need to comply with which makes the authorisation process even longer than it should be.

Conclusions

- 3.35 Stakeholders have mentioned that the granting of safety certificates and the authorisation for placing into service are two main market access barriers in Germany. In the last years, many operators and manufacturers had substantial problems with these two issues. They stated that the granting process of safety certificates is a time-consuming and very expensive process. RUs in the past have not sufficiently informed about the requirements to meet. RUs and manufacturers also complained that the rolling stock authorisation process generated huge problems and that they had no legal and planning certainty given that requirements could be changed during the procurement process. Recently, stakeholders reported that the process of granting safety certificates improved slightly. With regard to the authorisation process, the actors involved created a joint working group and published a “manual on rolling stock” in order to address the reported problems and although it is not compliant with EU Directives, it can be seen as a step in the right direction in increasing transparency in the market.
- 3.36 The table below sets out the key problem drivers identified within this case study for Germany.

TABLE 3.2 IDENTIFIED PROBLEM ELEMENTS

Element of problem drivers	Identified
deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks	✓
insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry	
granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases	✓
reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs	✓
deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks	
insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors	✓
deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks	
insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry	
the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient	✓
national technical and safety rules sometimes pose a transparency and/or discrimination problems	✓
problems with proper implementation of EU railway directives; too divergent interpretation of the directives	✓
insufficient level of dissemination of railway-related information and training	✓

3.37 The table below summarises in a SWOT analysis the situation in Germany.

TABLE 3.3 SWOT ANALYSIS

<p>STRENGTH</p> <ul style="list-style-type: none"> ■ High number of new entrants in the rail freight and regional passenger rail market ■ NSA and Regulatory Body fully independent from incumbent RU ■ (The publication of the manual increased transparency through manual on rolling stock) 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> ■ The granting process of safety certificates is very expensive and time-consuming ■ The granting process of authorisations for placing in service is very expensive and time-consuming (not compliant with the directive on interoperability) ■ NSA and NoBo not fully independent
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> ■ Foreseen further growth in the German rail freight market ■ Strong market position of new entrants 	<p>THREATS</p> <ul style="list-style-type: none"> ■ The law currently requires all authorisations to meet current laws, it doesn't "stop the clock" once an authorisation has been requested ■ Presumed personal liability of EBA staff (as mentioned by stakeholders) increases the timescales and uncertainty around authorisations and safety certification

Hungary Case Study

1 Background

Implementation

- 1.1 In 1993 the Hungarian State Railway *Magyar Államvasutak Reszvenytársasagot (MÁV)* was transformed into a joint stock company; at the same time the accounting, organisational and legal functions were separated between the infrastructure and operations divisions of the former state railway company. The most recent re-organisations of the group's subsidiaries occurred in 2007 and 2008.
- 1.2 The rail reform determined a partially separated model in which MÁV Holding retains part of Infrastructure Manager activities, although the independent body VPE is in charge of capacity allocation. In addition there are Traffic Control Centres within the two incumbents MÁV Zrt and GYSEV Zrt (cf. section 1.4). The European Commission's COM (2009) 1687 describes the current corporate structure of the Hungarian IM as follows:
- *Independent infrastructure manager [allocating capacity]⁷ having delegated certain infrastructure management functions (e.g. traffic management, maintenance) to one of the train operating companies/ Integrated infrastructure manager working alongside an independent body in charge of capacity allocation.*
- 1.3 The main passenger operator, MÁV START is the only provider of passenger transport on the MAV network and is still owned by the public sector. Conversely, the former freight division *MÁV Cargo* was taken over in December 2008 by *Rail Cargo Austria* the freight transport division of *Österreichische Bundesbahnen (ÖBB)*, and in 2010 assumed the name *Rail Cargo Hungaria*.
- 1.4 The second incumbent GYSEV (*Győr-Sopron-Ebenfurti Vasút Zrt.*), provides freight and passenger transport services, and is the IM of part of the national rail network in the western part of the country and in eastern Austria.
- 1.5 According to IBM (2011) the implementation of EU Directives in Hungary is taking place in line with the expected timeline. There is open access to the rail freight market and domestic RUs have open access to the purely commercial passenger transport market. Public service contracts for passenger transport have been so far awarded directly (IBM, 2011). Foreign rail passenger operators have open access to international services. However, passenger transport in both the purely commercial and public service contract sector is provided exclusively by the incumbents MÁV and GYSEV and there are still no external RUs.
- 1.6 In 2010 the European Commission initiated legal action Hungary against the Republic of Hungary claiming that Hungary failed to fulfil its obligations under the current legislative framework for the following reasons:
- failed to ensure the **independence** from the railway companies of the **allocation** of train paths;

⁷ Now VPE is in charge of allocating capacity

- ❑ failed to ensure the **independence** from the railway companies of the establishment of charges;
- ❑ failed to ensure the financial balance of infrastructure managers;
- ❑ failed to provide infrastructure managers with incentives to reduce the costs of provision of infrastructure and the level of access charges;
- ❑ failed to ensure that **charges** for the minimum access package and track access to service facilities were set at the cost that is directly incurred as a result of operating the train service;
- ❑ failed to implement a scheme to encourage railway undertakings and infrastructure managers to minimise disruption and improve the performance of the railway network.

Implementation of the Railway Packages

1.7 The table below sets out the pieces of domestic legislation in which the EU Directives included in the three Railway Packages were transposed.

TABLE 1.1 IMPLEMENTATION OF RAILWAY PACKAGES DIRECTIVES

Package	Directive	National Law ⁸
First Railway Package	2001/12/EC, 2001/13/EC, 2001/14/EC	101/2007 (December 22 nd) GKM Rendelet (Regulation of the Ministry of Economy and Transport)
		83/2007 (X. 6.) (October 6 th) GKM-PM Rendelet (Regulation of the Ministry of Economy and Transport and Minister of Finance)
		Act. no. CLXXXIII of 2005 (repealed by Act no. LXXVI of 2008)
		40/2006 (June 26 th) GKM Rendelet (Regulation of the Ministry of Economy and Transport)
		Act. no. CLXXXIII of 2005 (repealed by Act no. LXXVI of 2008)
Second Railway Package	2004/49/EC	Act. no. CLXXXIV of 2005
		7/2006 (February 27 th) GKM Rendelet (Regulation of the Ministry of Economy and Transport)
		40/2006 (June 26 th) GKM Rendelet (Regulation of the Ministry of Economy and Transport)
		45/2006 (July 11 th) GKM Rendelet (Regulation of the Ministry of Economy and Transport)
		Regulation of 31/2010 (23 rd December) NFM Rendelet (Regulation of the Ministry of National Development)
	2004/50/EC	-
2004/51/EC	-	
Third Railway Package	2007/58/EC	-
	2007/59/EC	Act CXL of 2004 on the general rules of public administrative procedures and services
		Act. no. CLXXXIII of 2005 (repealed by Act no. LXXVI of 2008)
	203/2009. (September 18 th) Kormány Rendelet (Government Regulation)	

⁸ Source: <http://www.anube.hu/eujog/>

Institutions

- 1.8 **Regulatory Body:** the National Transport Authority *Nemzeti Közlekedési Hatóság (NKH)* is the regulatory body set up to regulate the rail market in compliance with Directive 2001/14/EC. In addition to rail transport, NKH also regulates road transport, shipping and aviation.
- 1.9 NKH is completely independent of government departments or Ministries and key market players. The authority employs about 50 staff for rail regulation, and is funded by the industry through three sources of funding:
- Administrative fees paid by RUs and IMs for licensing procedures (approx. 10% of total);
 - Supervisory fees paid by the RUs running on the national infrastructure (approx. 80%; (fees are calculated as 0.4% of the track access charge paid by the RU in the previous year);
 - Fines that may be imposed on RUs, IMs or on the capacity allocation body (VPE) in case of misconducts; these account for approximately 10% of total funding.
- 1.10 NKH monitors the activities of the capacity allocation authority VPE, including the assessment of network statement. It also conducts investigations over allocation procedures and charging issues, and monitors competition in general.
- 1.11 Upon receiving claims or requests by an RU, NKH is obliged to initiate investigation, but it can also initiate an investigation on its own initiative. Objections to NKH's decisions do not have a suspensive effect.
- 1.12 NKH has the power to issue sanctions and fines. It is also entitled to impose fines amounting to 2% of the annual revenues of the RU concerned.
- 1.13 **NSA:** a separate department of NKH performs the tasks of the NSA; it is in charge, inter alia, of the following duties:
- issuing Safety Certificates for Hungarian Railway Undertakings;
 - issuing Additional Safety Certificate for Foreign Railway Undertakings;
 - issuing Safety Certificate for the infrastructure manager;
 - checking the operational, technical and safety conditions of the rail tracks, operating facilities, railway vehicles and technological activities related to railway traffic safety;
 - releasing Permits and checks the activities of companies and crew dedicated to the field of railway vehicles repairing;
 - authorisation of rolling stock; and
 - publishing of the annual NSA reports.
- 1.14 **Ministry of National Development** (*Nemzeti Fejlesztési Minisztérium* - before 2010 Ministry of Economy and Transport) is not directly involved in any operational activity in the railways. It sets out the national legislative framework and provides the technical and policy direction to the national railways. It also supervises the activities of the NIB (TSB Annual Report, 2007); the Minister reports to the government annually on the activities of

TSB, the lessons learned from the independent investigations, the processes and trends concerning transportation safety.

- 1.15 **NIB:** the Transportation Safety Bureau (TSB) was established in 2006 as the legal successor of Civil Aviation Safety Bureau. Its main duty is the independent technical investigation of aviation, railway and marine accidents and incidents. The Railway Department of TSB conducts investigations on rail accidents, engages in relationships with national and European Agencies (including ERA), IMs and RUs, publishes the annual NIB report and accident investigation reports. TSB may issue safety recommendations to the other actors of the concerned transportation sector (operators, legislators, etc).
- 1.16 **Allocation body:** Rail Capacity Allocation Office (*Vasúti Pályakapacitás-elosztó Kft -VPE*). VPE was established in 2004 and is independent of RUs and has nationwide competence in allocating rail network capacity and in determining network access charges. VPE is owned exclusively by the Republic of Hungary, while the owner's rights are exercised by the Minister responsible for Transport. VPE's main responsibilities are:
- allocating railway capacity for open access network;
 - developing and publishing the Network Statement of Infrastructure Managers;
 - determining network access charges;
- 1.17 The revenue of VPE deriving from network access charges is used solely to cover its operational costs.

Main market players

Freight

- 1.18 Since the opening of the rail freight market the number of operators has increased to over 20. Despite this, as mentioned above, the lion's share of market is in the hands of the incumbent, now a private company named Rail Cargo Hungaria, with about 90% of market share.
- 1.19 Other main RUs active in the freight market are:
- AWT - Advanced World Transport Hungary Kft;
 - CER - Central European Railway ZRt;
 - Floyd ZRt;
 - HÉV (Budapest) - Helyi Érdekű Vasút;
 - LCH - Logistics Center Hungaria;
 - MMV - Magyar Magánvasút ZRt;

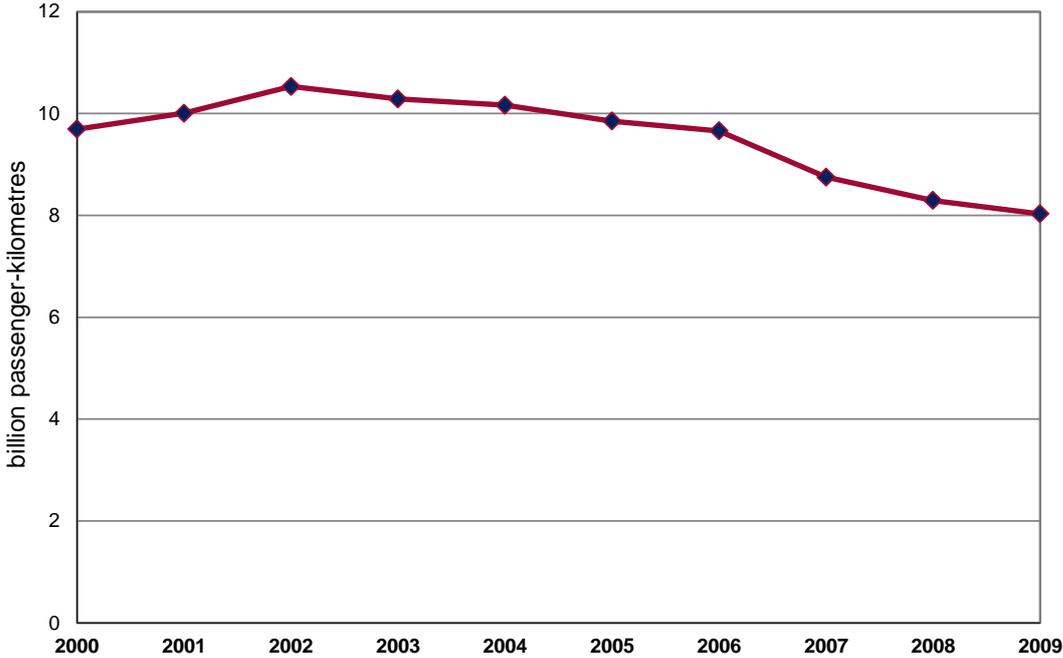
Passenger

- 1.20 Despite passenger transport being open to new entrants, no RUs other than the incumbents MÁV and GYSEV operate passenger transport services.

Changes in volumes

- 1.21 As in some other Member States, Hungary has experienced a fall in the modal share of rail both in freight and passenger transport⁹. Figure 2.1 below shows how the decline was not only in relation to market share, but also in relation to absolute numbers.
- 1.22 It can be seen from the graph that after a slight initial increase in the first two years, there was a constant fall in passenger-km in the following years, which became steeper after 2006. Over the entire period this amounted to a fall of about 17%.

FIGURE 1.1 TRENDS IN RAIL PASSENGER TRAFFIC IN HUNGARY

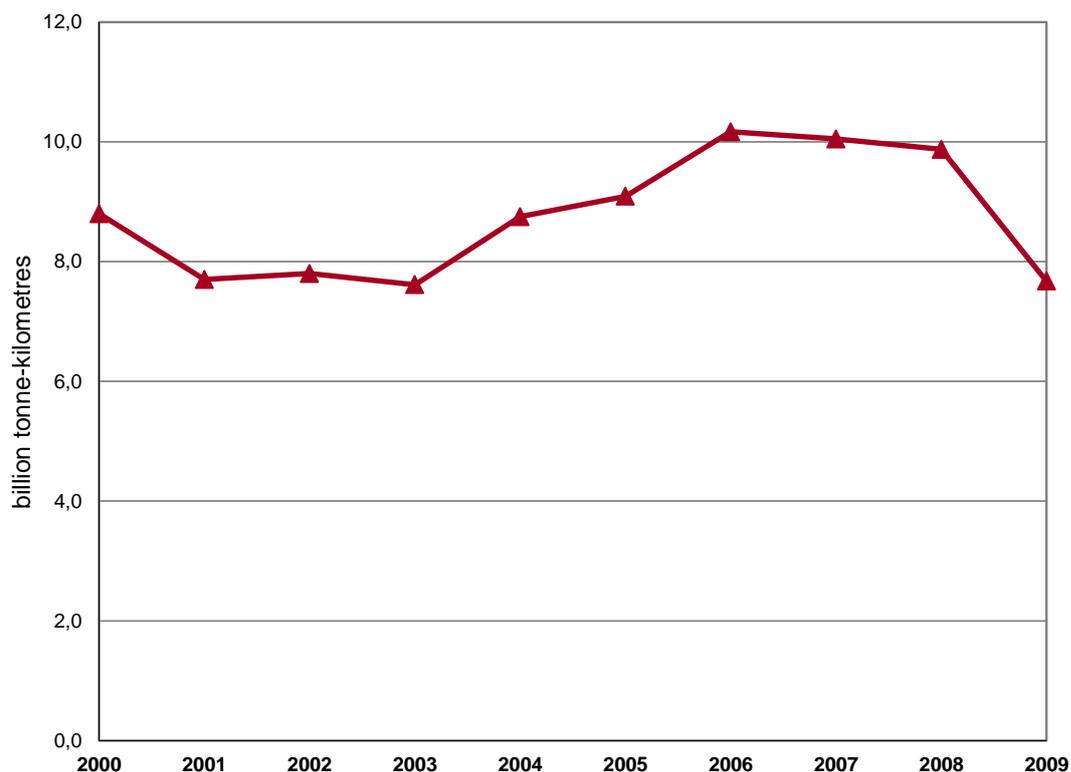


Source: European Commission (2011)

- 1.23 Figure 2.2 shows the change in freight traffic for the Hungarian railways. The graph shows that between 2000 and 2001 traffic dropped by around 1 billion tonnes-kilometre and initially remained at this level. Afterwards, the sector experienced four years of growth from 2003 to 2007, following this traffic began to decline, especially from 2008 when figures fell substantially, returning to the levels recorded at the start of the century. This fall since 2008 is common to all 27 EU Member States, indicating that the global crisis played an important role in the decline of the sector across the entire Community.
- 1.24 When looking at the figures over the whole period, it appears that between 2000 and 2009 freight transport fell by about 12%, from 8.8 to around 7.7 billion tonne-kilometres. This decline in freight rail transport was combined with a modal shift towards road transport, which led to over 7.5% decline of rail’s modal share in freight transport.

⁹ IBM (2011) indicates that the share of rail passenger transport from 13.3 per cent to 12.3 per cent between 2001 and 2008, whilst the share of rail freight transport declined from 28.1 per cent to 20.6 per cent over the same period. The modal shift has been towards road transport, especially as regards freight.

FIGURE 1.2 TRENDS IN RAIL FREIGHT TRAFFIC IN HUNGARY



Source: European Commission (2011)

Modal split

- 1.25 The trends recorded for rail freight transport were mirrored by road freight. The latter sector followed a similar trend, with a first contraction between 2000 and 2003, followed by a recovery that led to a peak in 2007 and renewed decline until 2009. In the reference period, the modal share of road haulage fluctuated between 55% and 60%, but rose to over 60% in 2009 as freight traffic reduced more significantly on rail than on roads.

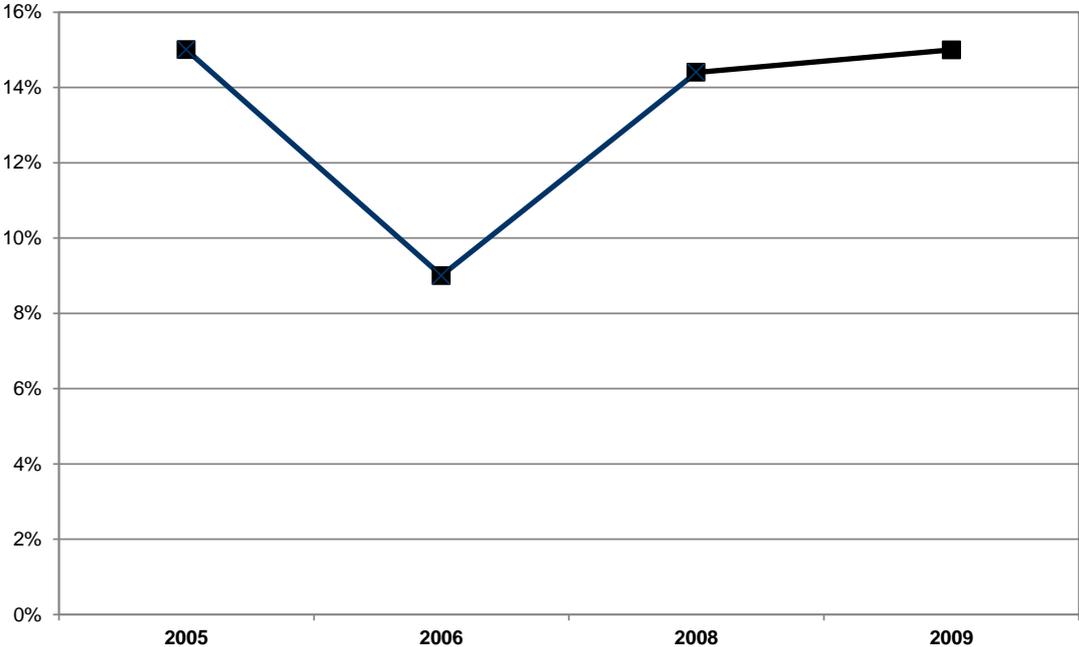
Market share

- 1.26 The market share of non-incumbent operators in the rail freight sector in Hungary from 2005 to 2009 is set out in Figure 2.3 below, which shows that the most recent market share values for new entrants is similar to the value in 2005 having recovered from a substantial fall in 2006. Although Rail Cargo Hungaria has been privatised it still remains the incumbent operator.
- 1.27 A study published by the Finnish Rail Administration (2009¹⁰) found that rail freight transport in Hungary is very much dependent on transit goods flow. The findings of this study suggest that former incumbent RUs, which still has the largest market share, benefit

¹⁰ Finnish Rail Administration (2009); *The liberalization process in Europe Market entry barriers versus competition stimulation - cases of Germany and Hungary*. Helsinki.

from their dominant position to the detriment of new entrants. despite the deregulation and privatization implemented over time.

FIGURE 1.3 SHARE FREIGHT MARKET OF NON-INCUMBENT OPERATORS IN HUNGARY



Source: European Commission (2009)

3.45

1.28 Table 1.2 shows the market share of new entrant undertakings in the rail freight market. It can be seen from the table that the market share captured by new entrants in 2008 was 14.4%, which grew to 15% in the following year, with GySEV Zrt and CER Zrt being the second and third largest undertakings in the market.

TABLE 1.2 MARKET SHARES OF RAILWAY UNDERTAKINGS IN FREIGHT (2008)

Railway undertakings	Market share (%)
GySEV Zrt	5.3
CER Zrt	4.9
MMV Magyar Maganvasut Zrt	2.9
Other RUs	1.3

2 Market access

The role of national authorities

Description of the NSA

- 2.1 As described in section 1.13, the role of NSA is covered by a department of the Transport Authority NKH, which processes applications for operating licences, safety certificates and homologation of rolling stock. NKH was created in 2007, taking over roles from previous authorities such as the Hungarian Rail Office from 2008. The Regulatory Body is a department of the same Authority, though formally the NSA and the RB are mutually independent.
- 2.2 In terms of decisional power, the NSA is independent from any other organisation. The president of the NSA is appointed by the president of NKH. The latter is nominated by the Minister of Transport. Neither the Minister nor the President of NKH have any power to modify or stop any decision taken by the president of the NSA.
- 2.3 The NSA has 28 employees directly involved in rail safety tasks. The total staff in force at the NKH is 54 Full Time Equivalent (FTE), including 12.4 FTE for secretarial duties, and are in charge of supervising the safety of a wide range of transport facilities and mechanical devices, including cable pulled vehicles, sky-lifts, pumping stations, funiculars, cranes, etc.). NKH is also in charge of monitoring the safety of the total extension of the Hungarian railway network (approximately 7,800 km).
- 2.4 It emerged from a face to face interview with the NSA, that due to budget constraints, the NSA is currently understaffed considering the significant amount of work it is required to perform. In order to perform its duties more effectively, NKH considers that it would need twice as much the staff currently employed. At the present the staff is significantly overloaded.
- 2.5 A further issue related to personnel is that NKH is not currently able to attract highly qualified staff, due to the low salaries which it is able to offer.
- 2.6 The funding of NKH is entirely coming from the industries supervised. In the case of the NSA, the rail sector provides funds through fees and penalty charges issued by the NSA for breaches of safety regulations.
- 2.7 The table below sets out the NSA's income and expenditure in 2011.

TABLE 2.1 FINANCIAL TABLE OF THE NSA (2011)

	(HUF)
Total revenues	469,874,024
Fines	
Missions abroad	3,078,253
Holidays, reimbursement for mobile devices/bill	287,940
VAT	1,210,046
Vehicle sales	
Financial compensation	8,200
Journal sales	
Total expenditure	606,918,783
Wage expenditure	376,865,456
Material expenditure	230,053,327

- 2.8 A total of 5,525 procedures/issues were carried out by the NSA in 2011. During these procedures 14,279 files were generated. 3,139 decisions were issued in the first instance; moreover, the NSA was involved as assistant in 48 processes.
- 2.9 According to the findings from IBM's study (IBM, 2011), although the legally prescribed period for processing an application for an operating licence is two months, applications from RUs tend to take three months in practice. As regards safety certificates, the legal period for release of a certificate is three months, while certificates are valid for five years. The legal period for the homologation procedure of rolling stock is 30 days.
- 2.10 In this respect, the NSA claims to be generally able to meet the terms legally set, attributing delays to applicant failing to present all the documentation required by law for the procedure required.
- 2.11 According to the NSA, the average time length for a safety certification is 4 months (legal terms), in case of type approval this is extended to 6 months. Authorisation for placing into service are much quicker, usually accomplished within few days. When interviewed about the costs of homologation, Floyd stated that on average the cost is around €22,000 for homologating a locomotive.
- 2.12 In terms of interoperability, NKH is strongly favourable to mutual recognition of safety certificates between NSAs. Operating licences issued by other EU Member States are recognised in Hungary. In addition, NKH, in cooperation with other NSAs, carries out common activities, such as type approval certifications of rolling stock intended to operate on international route. However, there were cases where not all the

characteristics of vehicles undergoing homologation were declared by manufacturers: NKH experienced events in which rolling stock indicated by the manufacturer as completely compatible with the Hungarian infrastructure was in fact fitted with different components (bogies, locks, brakes, etc.); such inconveniences cause delays to the process as new tests and measurements become necessary for approval. Therefore, more cooperation between manufacturers (and applicants in general) and the NSA would improve the smoothness of mutual recognition process.

Strengths and weaknesses of the systems adopted

- 2.13 The rail system in Hungary seems to be working reasonably well. There are private operators active in the freight market, where the market share of non-incumbent is growing. However, private operators still find that the role of national institutions are biased in favour of the national railways companies (i.e. the incumbent RUs).
- 2.14 One major issue recognised by both the NSA and the private operator interviewed (Floyd) is the poor implementation of the EU legislation at national level. According to NKH, the transposition of EU legislation into the domestic legal system is sometimes prone to errors and omissions. One of the main problems is faulty translation and a general poor command on the English language by senior staff in the public sector. This point of view is shared by Floyd, which also laments a number of inconsistencies between the original text of the laws and the translations in local language.
- 2.15 In the past years, the implementation was also particularly slow; however, also because of an infringement procedure brought by the EC, by the end of 2011 the Government has pushed for a quicker implementation of EU legislation, with more strict terms set by law.
- 2.16 Other problems are related to understaffing budget constraints of the NSA, which prevents it to hire experienced persons and determines a condition of work overload and occasional lacks of technical experience.
- 2.17 The Finnish Rail Administration (2009) identifies three main market entry barriers to new entrants in the Hungarian rail system: bureaucracy, investments and acquisitions of rolling stocks. In particular, the bureaucracy involved in the market entry process as the main barrier to entering the rail freight market in Hungary. According to the study, the Network Statement proves not helpful to new entrants, and the process for acquiring the necessary licences and permits requires a great deal of effort. These findings are partially corroborated by Floyd. Floyd reports that the legally set periods for issuing certificates and authorisations are systematically circumvented by the NSA through requests of additional documentations and tests.
- 2.18 However, despite problems which are common to all Eastern European Countries, there are also good practices implemented by the Hungarian NSA. NKH is particularly attentive to the issue of dissemination and spread of knowledge of the EU legislation. For this reason, they set up a mailing list with the latest updates from ERA, which is sent to all stakeholders. In order to do so, NKH has required the permission of ERA and of the Risk Committee. In addition, NKH organised an online tool which presents in a systematic way all the relevant legislation, which is otherwise fragmented and not easy to understand.

Complaints

- 2.19 The Regulatory Body has not dealt specifically with complaints relating to vehicle acceptance or safety certification so far. However, the interviewed operators pointed out that they do not make recourse to the RB in case of problems with the NSA, as these are part of the same organisation, hence their mutual independence is questionable.

Examples of market access

Floyd

- 2.20 Owned by Eurogate Intermodal GmbH (51 per cent), András Bogdán (26 per cent) and ICE Transport (23 per cent), Floyd was Hungary's first independent open access freight operator. As well as operating in Hungary, it is responsible for cross-border services into Austria and Germany. International partner companies include boxXpress.de GmbH (Germany) and TX Logistik Austria GmbH Austria) in the operation of intermodal services between Hamburg/Bremerhaven and Budapest. The company also cooperates with Softrans in Romania.

MMV - Magyar Magánvasút ZRt.

- 2.21 MMV was founded in December 2003 and obtained the Railway Operating Permission in July 2004. MMV's basic activity is based on block trains, with traction performed by second-hand modernised locomotives bought from CFR in Romania. The company gained also experience in delivering oversize goods and dangerous products. Part of its business is international, through contracts with partner railway companies. MMV's activities include renting railway wagons and industrial track services.
- 2.22 MMV employs around 20 staff and transports over 200 million tkm per annum, with a turnover of 2,343 million HUF¹¹.

Conclusions

- 2.23 Stakeholders have indicated that the main market access barriers in Hungary are to be attributed to the poor implementation of the EU legislation, the understaffing and insufficient budget allocated to the NSA and the consequent difficulty in achieving fast and smooth procedures for granting safety certificates and homologation of rolling stock.
- 2.24 The interviewed rail operators stated that the process for granting safety certificates and rolling stock homologation is time-consuming and expensive, with several iterative steps caused by lack of clarity and different interpretation of rules. RUs complain that the requirements to meet and the documentation to present to the NSA is not always clear.
- 2.25 The table below sets out the key problem drivers identified within this case study for Hungary.

¹¹ Source: Hungarian Rail Association Website. <http://www.hungrail.hu>

TABLE 2.2 PROBLEM ELEMENTS IDENTIFIED

Problem elements identified in the Task Specifications	Identified
Deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks;	✓
Insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry;	✓
Granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases;	✓
Reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs;	
Deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks;	N.A.
Insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors;	There are no NoBos in Hungary
Deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks;	✓
Insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry;	✓
National technical and safety rules sometimes pose a transparency and/or discrimination problems	✓
The level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient; [repetition - see above]	✓
Problems with proper implementation of EU railway directives; too divergent interpretation of the directives;	✓
Insufficient level of dissemination of railway-related information and training	

2.26 The table below summarises in a SWOT analysis the situation in Hungary.

TABLE 2.3 SWOT ANALYSIS

<p>STRENGTH</p> <ul style="list-style-type: none">There is a number of new entrants in the rail freight rail market, gaining market shareThe granting process of authorisations for placing in service is rapid and smooth (but not the granting by the NSAs the safety certificates to rail operators)The NSA make efforts to increase dissemination and awareness of EU and domestic legislation	<p>WEAKNESSES</p> <ul style="list-style-type: none">Poor implementation of EU legislationBudget and staff constraint of NSAThe granting process of safety certificates and for type approval is very expensive and time-consumingNSA and Regulatory Body not fully independent from ministry and heavily influenced by incumbent RU
<p>OPPORTUNITIES</p> <ul style="list-style-type: none">Foreseen possibilities for further growth in domestic and international rail freight marketNSAs from different countries are cooperating with NKH to facilitate international services.	<p>THREATS</p> <ul style="list-style-type: none">The implementation of current and future EU legislation is likely to continue to remain poor, mainly due to the lack of knowledge of the English language by rail institutionsBudget constraints might prevent NSA to cope with possible increased workload in the future

Italy Case study

1 Background

Implementation

- 1.1 The Italian rail market underwent a period of liberalisation in 2000 and 2001, with the opening up of the market to new entrant freight and passenger operators, on the condition that there should be reciprocity between the countries from which new entrants were seeking to enter.
- 1.2 The table below reports the national laws in which the EC Directives were transposed. It can be noticed that the Directives included in the different Railway Packages were transposed into the domestic legislation on average after 3 years from the issue by the EC.

Implementation of Railway Packages

TABLE 1.1 IMPLEMENTATION OF RAILWAY PACKAGES

Package	Directive	National Law
First Railway Package	2001/12/EC	Legislative Decree n. 188 of 8 July 2003
	2001/13/EC	
	2001/14/EC	
Second Railway Package	2004/49/EC	Legislative Decree n. 162 of August 10, 2007
	2004/50/EC	Legislative Decree n. 163 of August 10, 2007
	2004/51/EC	Legislative Decree n. 162 of August 10, 2007
Third Railway Package	2007/58/EC	Legislative Decree n. 15 of 25 January 2010
	2007/59/EC	Legislative Decree n. 247 of 30 December 2010, n. 247

Institutions

- 1.3 The Regulatory Body, the Ufficio per la Regolazione dei Servizi Ferroviari (USRF) is the body set up in Italy to regulate the rail market in compliance with Directive 2001/14/EC. It has independent decisional powers albeit being an office set up under the Ministry of Transport. Its duties include:
 - Supervision and monitoring of competition;
 - International cooperation, information exchange and coordination on activities, decision-making practices and principles;
 - Management of legal issues and institutional processes involving other public bodies responsible for competition in rail;

- Decisions in relation to acts and activities of the industry, with particular reference to rail IMs and RUs;
 - General activities in support of the Minister for the drawing up guidelines to regulate the sector and the development of competition in the markets for rail services.
- 1.4 This is about to change with the setting up of the independent transport authority in Italy, separating it out completely from the Ministry.
- 1.5 The Ministry of Transport is mainly responsible for issuing licences to RUs. Furthermore, it gives technical-political address to the national railway policy, provides funding for rail infrastructure and produces legislation-
- 1.6 The NIB is the Direzione Generale per le Investigazioni Ferroviarie (general Direction for Rail investigations) is the investigation body for Italy, which is a body of the Ministry of Transport. Among its duties, the office coordinates investigations on rail accidents, engages in relationships with national and European Agencies (including ERA), IMs and RUs
- 1.7 The NSA is the Agenzia Nazionale per la Sicurezza delle Ferrovie (ANSF) which is an independent body set up in compliance with Directive 2004/49/CE and in full operation since 2008. Its role is discussed in more detail below.

Main market players

Freight

- 1.8 The incumbent, Trenitalia Cargo, still holds the greatest share of traffic, as discussed in section 2.7, even though the market share captured by new entrants is expanding. There are other RUs active in freight transport, whose market share is minimal when compared with the incumbent. These main ones are:
- Rail Traction Company;
 - Railion Italia (DB Schenker Rail Italia);
 - BLS Cargo Italia Srl;
 - SBB Cargo International;
 - Crossrail Italia Srl;
 - Ferrovia Emilia Romagna Srl; and
 - Nordcargo.

Passenger

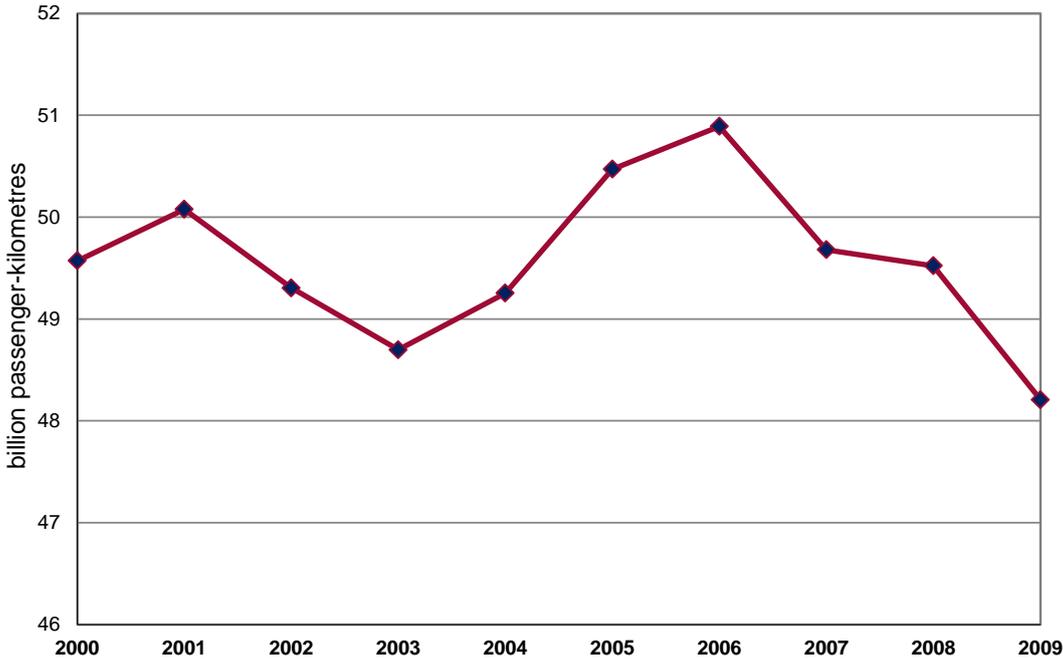
- 1.9 The passenger transport sector is largely dominated by the incumbent Trenitalia. There have been two other operators on commercial passenger service: Arenaways and DB, their situation is discussed further below. In addition a new entrant, high speed operator has commenced services on 28 April 2012.

2 Evolution of the national markets

Changes in volumes

2.1 Figure 2.1 below sets out the trends in rail passenger transport in Italy over the past decade. It can be seen from the graph that between 2001 and 2003 there was a sharp fall in passenger-km, followed by a rapid recovery which led to a peak in 2007. After 2007 there has been renewed decline.

FIGURE 2.1 TRENDS IN RAIL PASSENGER TRAFFIC IN ITALY

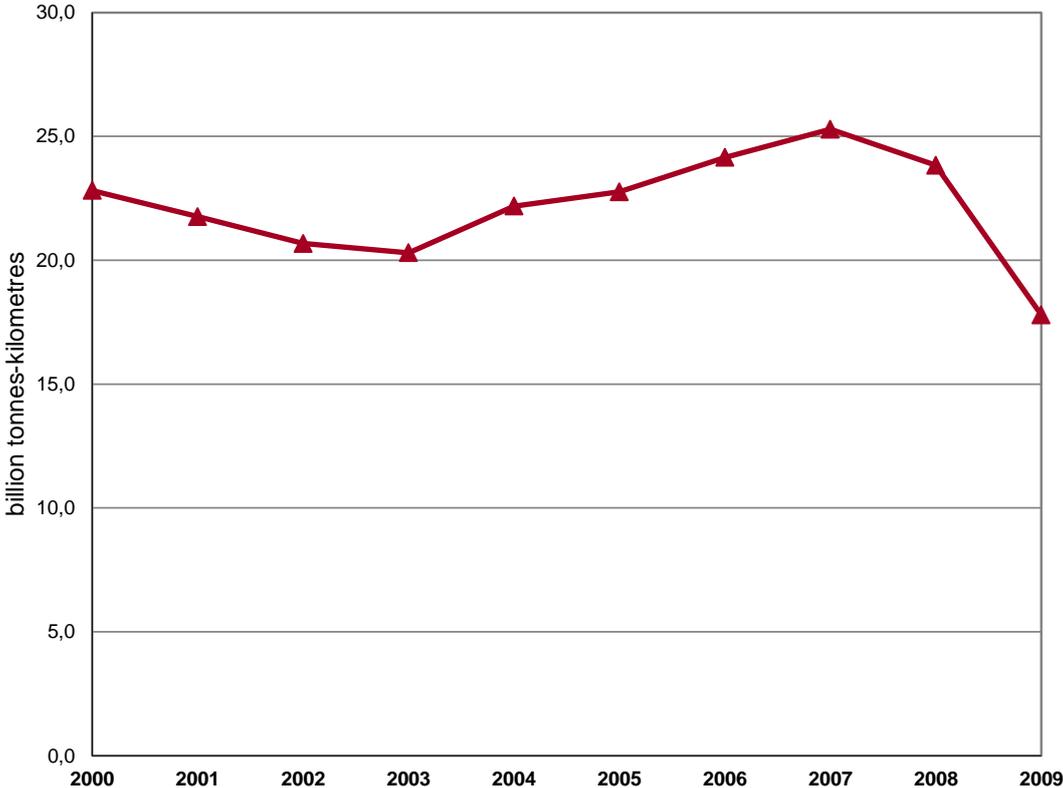


Source: European Commission (2011)

2.2 Over the entire period, Italy recorded a decline in rail passenger transport of about 2.8%, falling from 49.6 in 2000 to 48.2 billion passengers-km in 2009. It is worth noting that the decline started in 2006, one year before the effects of the global crisis affected the sector in other countries. One of the factors determining this early decline is the competition from low cost airlines, which expanded their traffic volumes remarkably in the 2000s taking advantage of a number of minor airport opening to low cost carriers and in some cases even financial contribution from regional governments to carriers to operate from specific airport (e.g. Trapani airport in Sicily). A further reason could be identified in the evolution of fares, which started increasing significantly by the second half of the 2000s in view of reducing the significant losses made by the company; this has also implied cutting several low cost services (e.g. night trains, “espresso” long distance low speed trains, etc.) in favour of high speed services with fares in some cases comparable to low cost flight tickets.

2.3 Figure 2.2 sets out the evolution of rail freight traffic in Italy. The graph indicates that, after a period of decline between 2000 and 2003, the sector experienced four years of growth until 2007. However, after peaking in 2007 traffic began to decline, especially from 2008 when figures plummeted rather steeply. When comparing the figures of 2000 and 2009, it appears that in the second half of this period freight transport diminished by over 5 billion tonnes-kilometres, corresponding to a 22% reduction.

FIGURE 2.2 TRENDS IN RAIL FREIGHT TRAFFIC IN ITALY



Source: European Commission (2011)

Modal split

2.4 The trend seen for rail freight transport in Italy is not very dissimilar from the ones recorded in road freight, although on a far bigger scale. In fact, the flows of goods transported by road, at 145.6 billion tonne-kilometres in 2009, were about eight time higher than those carried by rail, with a modal share of nearly 90% of surface freight transport. Although gaining in modal share since 2007, road freight transport has declined in absolute terms since 2005, along with rail, dropping by 8% compared to the figures recorded in 2000. From 2005 to 2009, both sector recorded a contraction of 30 billion tonne-kilometres, corresponding to a 16% fall in 4 years.

Market share

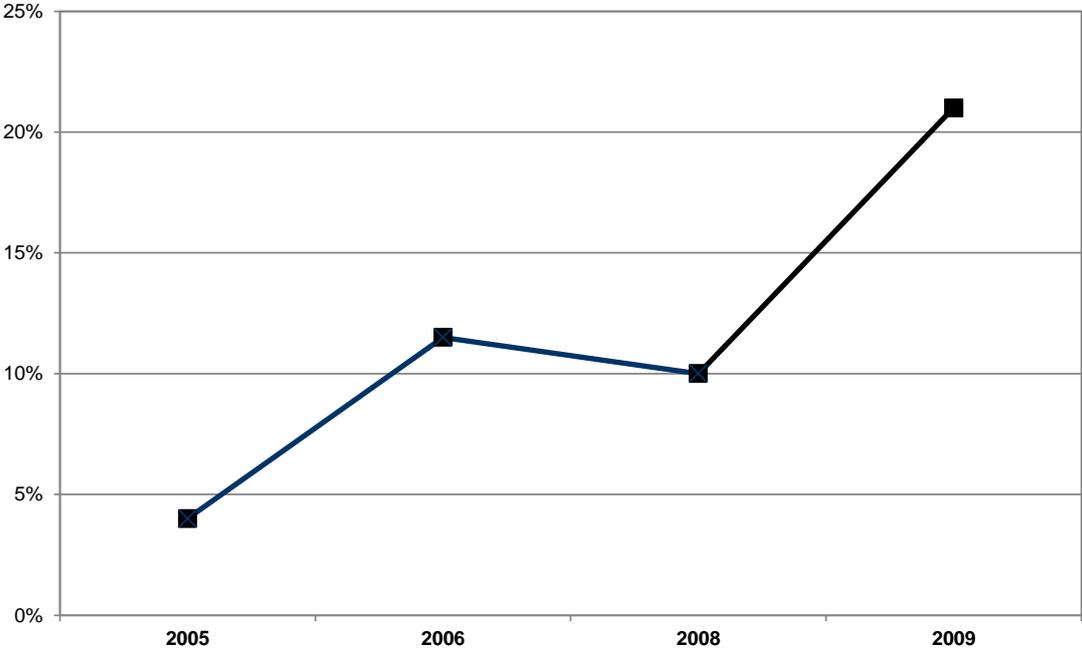
2.5 The Italian rail market underwent full liberalisation in 2000 and 2001, with the opening up of the market to new entrant freight and passenger operators. The only limitation that

was applied to this market opening was that there should be reciprocity between the countries from which new entrants were seeking to enter. Liberalisation was accompanied by the partial separation of the Infrastructure Manager (now RFI) from the national train operator (Trenitalia), with both companies remaining under the ownership and control of the holding company FS Holding.

2.6 Whilst in Italy the process of market opening for passenger transport is still at an early stage, the situation in freight rail transport is much more developed; in recent years new operators have entered the market and captured an increasingly significant share of traffic on some key corridors, especially on the Brenner corridor to Austria and Germany, but also on domestic routes.

2.7 Figure 2.3 sets out the evolution of rail freight market share in Italy from 2005 to 2009. Since liberalisation there has been a gradual increase in entry. The graph below shows that between 2005 and 2009 the market share of new entrants (Italian and foreign companies) grew from less than 5% to over 20%.

FIGURE 2.3 SHARE FREIGHT MARKET OF NON-INCUMBENT OPERATORS IN ITALY



Source: European Commission (2011)

2.8 Such growth of non-incumbent railway undertakings can be partially attributed to Trenitalia cutting several loss making services. In many instances the services discontinued by Trenitalia are taken over (or replaced with similar services) by new entrants. In other cases, industrial plants previously served by freight rail transport services had to resort to road transport for delivering their output; this was the case, for instance of the Heineken brewery in Massafra (Taranto, southern Italy), which after the closure of the freight terminal once used regularly, now has to rely entirely on road transport for deliveries on the national territory.

- 2.9 In fact, for a series of reasons partly inherited from the past, Trenitalia faces production costs that are in some cases substantially higher than those sustained by private and smaller companies on the same routes and services; according to Bozzi (2008), around 2007 the production costs of private operators ranged between 9 and 11 Euros per train-km, while those sustained by Trenitalia Cargo were around 18 euros under the same conditions. Whilst Trenitalia still controls the lion's share of the Italian freight transport market, increasing market shares have been captured by its main competitors are Rail Traction Company (RTC), Ferrovie Nord Cargo (FNC) and SBB Cargo Italia. In 2005, RTC and FNC each produced more than 1 million km per year, while SBB Cargo Italia reached about 500,000 train-kilometres (Eurofound, 2006).
- 2.10 A phenomenon commonly known as "cherry picking" was observed in the course of liberalisation in Italy, as new entrants focused on the profitable services and routes, skimming positive revenues that a monopolist would use to cross-subsidise other services which are deemed necessary (or socially desirable) but cause losses. Usually the less or non-profitable services remain in the hands of the incumbent.
- 2.11 This practice has been seen also in Italy; IBM (2011) maintains that non-incumbent RUs in Italy have cherry picked the most profitable flows practice and consequently serve predominantly attractive niche markets. This has meant that competition has developed mainly on corridors in the North of Italy, where there are the majority of profitable routes connecting northern regions with transalpine Countries. Germany represents the most important country for rail based trade. Only more recently has competition increased in central and southern areas of Italy (Federmobilità, 2009).
- 2.12 Eurofound (2006) reported that in 2005 Rail Traction Company controlled 30% of the freight rail transport on the Brennero-Verona line, whilst Ferrovie Nord Cargo and SBB Cargo Italia had similar shares on corridors between Italy and Switzerland.
- 2.13 The situation for passenger transport is rather different, with fewer new entrants focusing only a few international services and some national entering the market (Steer Davies Gleave, 2011). These initiatives have all taken off in recent years with, for example DB, OBB and Le Nord starting an international service between Munich and several Italian cities with a number of intermediate domestic stops. In November 2010 another operator, Arenaways, began operating between Turin and Milan. However a regulatory decision on the impact that this service would have on public service contracts between Trenitalia and the Italian regions has meant that the service could not stop at intermediate stations and the company has recently gone into and come out of administration.
- 2.14 A major change in this situation is expected in the near future with the entry of the private company NTV (Nuovo Trasporto Ferroviario), which will offer high speed passenger services on main routes in direct competition with the incumbent. NTV should not be affected by the ruling mentioned above as high speed services are not subject to public service contracts.

3 Market access

The role of national authorities

Description of the NSA

- 3.1 The Agenzia Nazionale per la Sicurezza delle Ferrovie (ANSF) is the NSA for Italy. It has been operational since June 2008. The main operational tasks carried out by ANSF are:
- To regulate rail traffic safety;
 - To verify the application of the rules adopted at national and EU level;
 - To promote processes for authorization and homologation of systems, subsystems and components;
 - To issue safety certificates to RUs and safety authorisations to IMs.
- 3.2 ANSF has about 100¹² staff members. Law n.162 of 2007 sets the maximum number of staff at 300 units when the ANSF is operating at full capacity. The current legislation allows for 50% of ANSF's personnel to be constituted by technical personnel transferred from FS Group and currently many of the staff members are still seconded, and paid by the infrastructure manager RFI.
- 3.3 This will shortly change as a result of a new legislative decree which has given AnsF additional resources including the permanent hiring of staff to fulfil its tasks.
- 3.4 The budget of ANSF is set at €11,9 mil., provided by the Government, to which its own revenues gathered from fees need to be added. In addition, the law established a 1% increase in the access fee to be paid by RUs to the IM (RFI), which RFI then has to transfer to the ANSF as an additional source of funding.
- 3.5 ANSF avails itself of Independent Safety Verifiers (Verificatori Indipendenti di Sicurezza - VIS), i.e. external bodies responsible for assessing the compliance of a component to the safety standards adopted for authorisation. These verifiers are the existing Notified Bodies appointed by the Ministry of Transport to verify compliance with TSIs. These are small companies, but with strong competences in both signalling and rolling stock¹³.
- 3.6 The number of decisions that ANSF has made since its inception in 2008 are:
- ANSF Directives: 1 in 2008, 1 in 2009, 2 in 2010, 1 in 2011;
 - ANSF Decrees: 1 in 2008, 14 in 2009, 15 in 2010; 10 as of February 2011;
 - Legally binding measures: 6 in 2008, 14 in 2009, 8 in 2010, 25 in 2011;
 - Other acts: 6 in 2008, 11 in 2009, 12 in 2010, 18 in 2011.

¹² ANSF, *Rapporto delle attività Giugno 2008 - Settembre 2010*. Available at: http://www.ansf.it/allegati/allegati2011/report_giu08_sett10.pdf

¹³ Gruppo Class for Anie/Assifer (2010) *La filiera ferroviaria italiana nella competizione globale*. Milan.

- 3.7 Since its creation, ANSF was understaffed (with less than 100 staff against the 300 envisaged by the establishing law at capacity) and faced a huge workload, According to Freight Leaders Council¹⁴ (FLC) (2010¹⁵), this resulted in a generalized delay in all ANSF's activities. This should be addressed with the resources decree mentioned above.
- 3.8 Processes are carried out by ANSF within legally prescribed periods. However, stakeholders have mentioned that the procedures for authorisation and safety certification is generally lengthy and difficult. This poses a number of obstacles to the activities of RUs. On some occasions, market opportunities arising in the short term were reportedly missed by RUs because of the lengthiness of the procedures necessary to obtain, for instance safety certificates. The FLC (2010) lament that ANSF does not take sufficiently into account the consequences of its decision on RUs in terms of economic sustainability. For instance, the procedures for the approval of rolling stock is the same for train locomotives and shunting locomotives, there is no simplified procedure for the latter, despite these do not interfere with normal traffic on the main network and are confined in terminals or yards.

Complaints

- 3.9 The Regulatory Body URSF has not dealt with any complaints that relate specifically to vehicle or equipment authorisation, but complaints have been raised with other bodies.

New national rules

- 3.10 Following the Viareggio accident in 2009, a decision¹⁶ was made by ANSF to introduce tougher inspections for the transport of dangerous goods; in particular, the decision required extraordinary checks on wagons fitted with wheelsets having the same characteristics of the ones involved in the accident, before allowing them to run on the Italian network. Rail Cargo Austria applied against this decision to the Lazio Regional Administrative Court (TAR), as imposing an unplanned and unjust national rule, the appeal was rejected.

NTV vehicle acceptance

- 3.11 NTV is currently seeking acceptance for passenger rolling stock for services that will commence in 2012. Following initial testing, NTV asked ANSF to be able to start carrying out authorisation testing for its new rolling stock. ANSF instructed RFI to provide NTV with appropriate paths to be able to carry out its testing programme. After a number of attempts at arranging these paths RFI formally refused to allow testing on its network. Subsequently NTV asked the Ministry of Transport to intervene which led to the Ministry directing RFI to allow NTV to reserve and use paths on its network.

Examples of difficulties with market access

- 3.12 One stakeholder mentioned that the cost of leasing its locomotives is substantially higher than it should be as a result of the costs that manufacturers have to bear in relation to

¹⁴ Freight Leaders Council is a free private association bringing together the main users and representatives of the transport sector in Italy.

¹⁵ Freight Leaders Council (2010), *Le condizioni per il rilancio del trasporto merci su ferro. Liberalizzazione e innovazione*. Quaderno n. 20. Milan.

¹⁶ Decree 5035/09 of 3 July 2009

authorisation costs. This was confirmed in the recent authorisation workshop where evidence was provided that the re-authorisation of rolling stock to meet national requirements in Italy, only for ERTMS components, cost €8 mil. for a fleet of locomotives increasing the capital cost to the manufacturer only for the Italian variant by about 5% leading to a similar increase in lease costs. According to IBM (2011) the fee for issuing the safety certificate amounts to €30,000, while the overall costs for homologation of rolling stock amount to up to €60,000.

- 3.13 This needs to be matched with considerations relating to the fact that some manufacturers have a difficult relationship with the Italian NSA which in itself is made worse by the resource issues at ANSF. There is a shared view from private RUs that the Italian NSA is rather slow in its activities; the processes to obtain a certificate or to complete homologations of materials are reportedly long and difficult. There are also concerns on the part of stakeholders of the fact that non-Italian safety certificates and authorisations have to be re-checked and tested which lengthens timescales for authorisation and certification.
- 3.14 It is important to note however that ANSF has informed us that they are in the process of finalising an authorisation manual that should increase the transparency of vehicle and other component authorisations. We have been informed that this will be ready soon and will be compliant with EU Directives.
- 3.15 The systematic increase in national rules should also be taken into consideration as a key element that causes operators problems.
- 3.16 A major problem that has emerged recently is the issue of the role of the Infrastructure Manager in the authorisation process as described above. This is clearly linked to the incomplete separation of the infrastructure manager from the incumbent railway undertaking.

Conclusions

- 3.17 Compared to other European countries, market opening in Italy is progressing on schedule. All the relevant Directives have been transposed in the national legislative framework and a growing number of new entrants has been observed in the rail freight market; in addition, the beginning of the new high speed services by NTV in 2012 will limit the domination of the incumbent in the passenger rail market. The share of new entrants in the rail freight market summed up to over 20% in 2009, plus with the reduction of freight services by the cargo division of the incumbent RU, it is foreseen that new entrants achieve further growth in the upcoming years.
- 3.18 The functioning of the railway institutions seem generally adequate to the dimension of the market: however, there are problems of understaffing in both the NSA and the RB. As regards the latter, the fact that it is part of the Ministry might raise doubts on the effective independence of the RB; anyway, the decisional power of the RB is not subject to any influence by the Ministry.
- 3.19 There is a shared view from private RUs that the Italian NSA is rather slow in its activities; the processes to obtain a certificate or to complete homologations of materials are reportedly long and difficult. Freight Leaders Council (2010) maintains the present

scenario of the Italian rail sector does not present interesting expectations of profit for any new entrants, due to rigidities, uncertainties and the perception of biased behaviour of the IM and other institutions in favour of the incumbent RU. Moreover, ANSF tend to be reluctant to accept foreign certificates/authorisations and RUs are usually asked to undergo further assessment and this takes time and costs.

3.20 The table below sets out the key problem drivers identified within this case study for Italy.

TABLE 3.1 PROBLEM ELEMENTS IDENTIFIED

Problem elements identified in the Task Specifications	Identified in the country
deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks	✓
insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry	
granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases	✓
reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs	✓
deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks	
insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors	✓
deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks	✓
insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry	✓
the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient	✓
National technical and safety rules sometimes pose a transparency and/or discrimination problems	✓
problems with proper implementation of EU railway directives; too divergent interpretation of the directives	✓
insufficient level of dissemination of railway-related information and training	✓

Strengths and weaknesses of the systems adopted

3.21 The table below sets out the main strengths, weaknesses, opportunities and threats identified in the system adopted in Italy, in the form of a SWOT analysis.

TABLE 3.2 SWOT ANALYSIS OF THE ITALIAN SYSTEM

<p>STRENGTHS</p> <ul style="list-style-type: none"> ■ Growing number of non-incumbents in the Freight market ■ New operators also in the passenger market 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> ■ Current timescales for authorisations and certifications ■ Uncertainties in the documents that are required for authorisations ■ Resources and importance of the regulatory body
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> ■ Increased power and resources for ANSF ■ Publication of the manual for vehicle authorisations ■ Learning by doing in the new system leading to efficiencies in authorisations and certification ■ Greater role for the new transport authority (Regulatory Body) 	<p>THREATS</p> <ul style="list-style-type: none"> ■ Continued blocking activities from the infrastructure manager ■ The ability to hire the appropriately skilled staff ■ Continued growth of national rules

Poland Case study

1 Background

Implementation

- 1.1 The liberalisation process in the Polish rail market started with the Railway Transport Act in 1997, under which, for the first time licensed operators were authorised to provide railway services on the Polish network. In addition, the Act provided for the obligation for separated accounting of railway and infrastructure operations. In 1999, 20 new entrants were licensed for operating in the Polish rail freight market. A new law on railway transport established the legal basis for rail market liberalisation in 2003.
- 1.2 Poland has implemented a partially integrated model¹⁷. The old state railway conglomerate, Polskie Koleje Państwowe (Polish State Railways, PKP) was transformed in 2001 into a holding group of separate specialised companies. The majority stake in the holding group is owned by the State Treasury,¹⁸ which is represented by the Ministry of Transport, Construction and Maritime Economy (hereafter Ministry of Transport)¹⁹. The PKP Group comprises, amongst others, the incumbent long-distance passenger and freight RUs (PKP Intercity and PKP Cargo), the IM (PKP Polskie Linie Kolejowe, or PKP PLK), and a number of other infrastructure companies, which own and operate vital railway assets (stations, IT and communications, electricity supply).
- 1.3 Each of the companies is a separate organisation, as per the requirements of the 1st EU railway package, however, their CEOs and Boards are appointed by the Ministry of Transport.

Institutions

- 1.4 Urząd Transportu Kolejowego (Rail Transport Office, UTK) is the body set up in 2003 to regulate the rail market in compliance with Directives 2001/14/EC and 2004/49/EC. It is an independent regulator, set up by the Ministry of Transport. The scope of duties of the UTK includes²⁰:
- Regulatory Body for the railway market (as per Directive 2001/14/EC);
 - National Safety Authority for railways (as per Directive 2004/49/EC);
 - National Enforcement Body for rail passenger rights (as per Regulation 1371/2007);
 - Technical oversight of the exploitation and maintenance of railway infrastructure, vehicles, and sidings;
 - Licensing and certification of train drivers.

¹⁷ According to the categories identified in COM (2009) 1687 (which reflect the categories in COM (2006) 189).

¹⁸Source: <http://www.pkp.pl/grupapkp> Retrieved 05/12/2011

¹⁹ As per Polish law, this means the Ministry of Transport is authorised to exercise executive power within the company on behalf of the Polish Government.

²⁰ Source: http://www.utk.gov.pl/porta1/pl/58/150/Informacja_o_Urzedzie_Transportu_Kolejowego.html Retrieved 05/12/2011

- these have been operated since 2007 by a joint-venture of Arriva (UK) and PCC Rail (now re-named Arriva RP following the takeover of both companies by Deutsche Bahn).

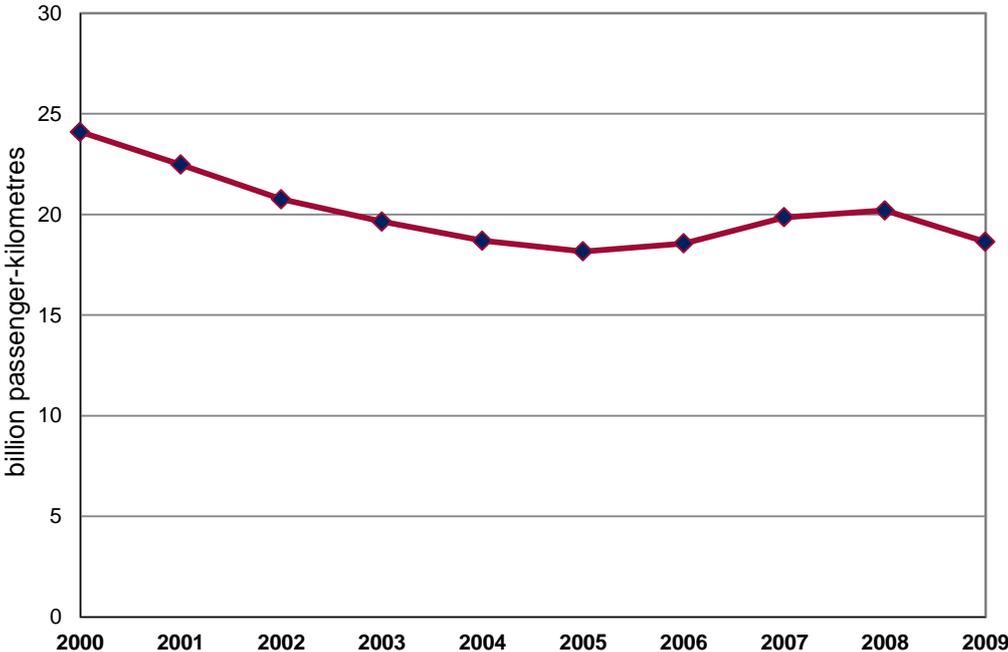
- 1.12 Furthermore, the city of Warsaw and the seaside conurbation of Gdańsk, Sopot and Gdynia have suburban rail companies operated by the PKP group (PKP SKM Trójmiasto, Gdańsk) or the local authority (SKM Warszawa, Warsaw).

2 Evolution of the national markets

Changes in volumes

2.1 Figure 2.1 shows the evolution of rail passenger transport in Poland from 2000 until 2009. The figure shows that there has been a constant decrease in total passenger-kilometres over the period that was only partially countered in 2007 and 2008. Measured over the entire period, the total volume of passenger kilometres decreased by 7.7%.

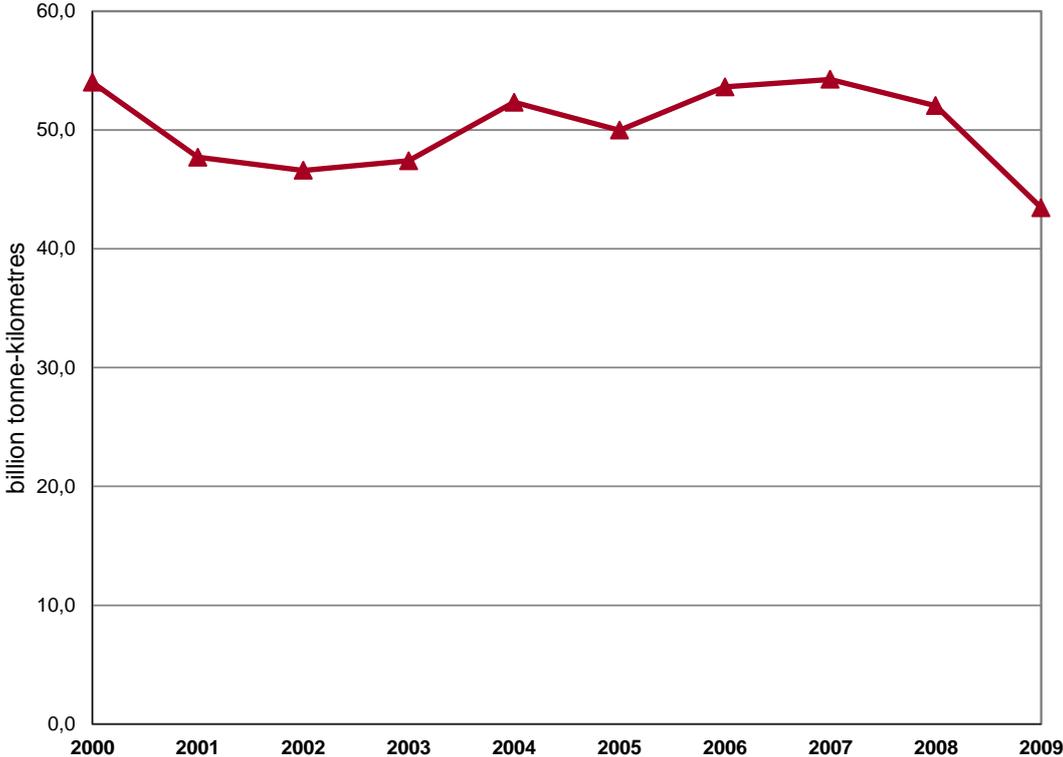
FIGURE 2.1 TRENDS IN RAIL PASSENGER TRAFFIC IN POLAND



Source: European Commission (2011)

2.2 The rail freight market in Poland is set out in Figure 2.1. The figure shows that during this period tonne- kilometres have fluctuated significantly, initially decreasing, then increasing to 2004 only to then drop back in 2005. The next two years saw the return to its 2000 level only to then drop off significantly in 2008 and 2009. Over the period the total reduction amounted to 19.4%. A significant proportion of this fall occurred between 2007 and 2009.

FIGURE 2.2 TRENDS IN RAIL FREIGHT TRAFFIC IN POLAND



Source: European Commission (2011)

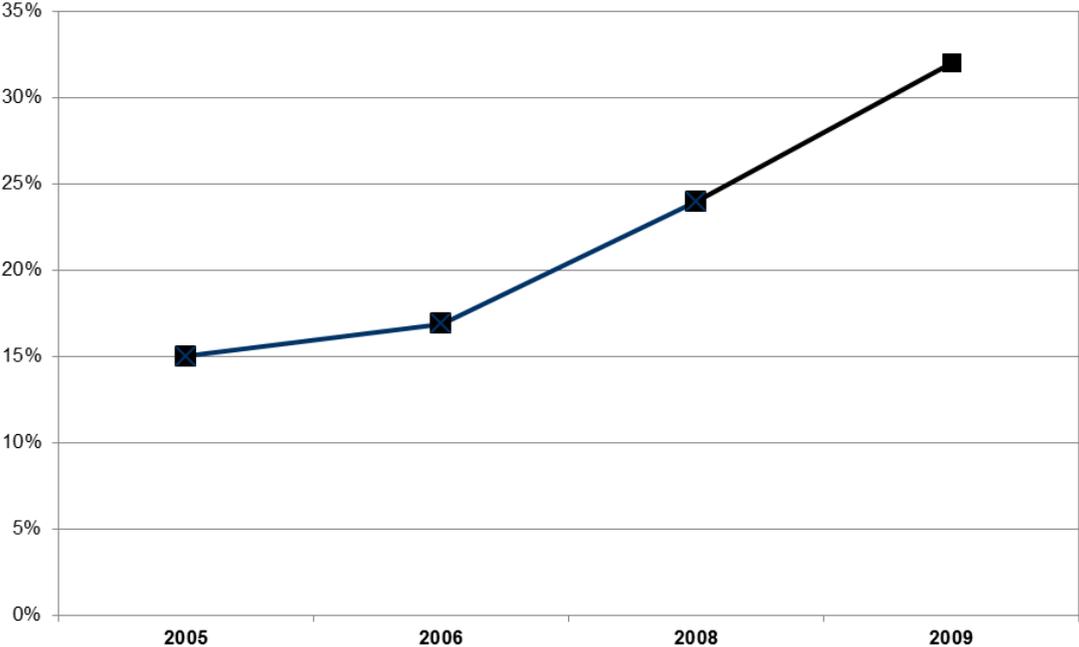
Modal split

2.3 In the first half of the decade, the market share of road and rail transport was almost equal. This however changed from 2006 when the market share of road freight grew significantly. The growth in the road sector was accompanied by a contraction in the rail sector from 2007 widening further the gap between road and rail and bringing it ever closer to the figures seen in many other European markets.

Market share

2.4 In 4 years, new entrants have more than doubled their market share from 15.1% in 2005 to 31.7% in 2009.

FIGURE 2.3 NON-INCUMBENT UNDERTAKINGS SHARE OF FREIGHT MARKET IN POLAND



Source: European Commission (2011)

- 2.5 The operations of new entrants in the Polish rail freight market were initially limited to short-distance freight traffic serving the industrialised areas in southern Poland. An analysis of the market shares shows a significant difference between transport volumes (tonnes) and transport performance (tonnes-kilometres). For example in 2009, new entrants had a market share of 54.7% in transport volumes in contrast to only 31.7% in transport performance.
- 2.6 This is exemplified by the case of PTK Holding Zabrze. This company derives a large part of its revenues from rail freight transport services serving the Silesian coal mines; the peculiarity of their operations is that it involves carrying enormous quantities of coal on very short routes, hence their total transport volumes may seem less significant than they should be.

TABLE 2.1 MARKET SHARE OF INCUMBENT OPERATOR AND NEW ENTRANTS IN THE POLISH RAIL FREIGHT MARKET 2009

Company	Market Share in t-km (2009)
PKP Group	68.68%
CTL Group	8.68%
DB Schenker Group	6.03%
Lotos Kolej	5.67%
PTK Holding Zabrze	2.60%
Pol-Miedź Trans	1.37%
Others	6.97%

Source: Król (2010)

2.7 The Passenger rail market shares in Poland are as follows:

TABLE 2.2 MARKET SHARES OF OPERATORS IN THE PASSENGER RAIL MARKET, 2010²⁴

Company	Market Share (Pass-km)	Market Share (Passengers)
PKP Intercity	46.82%	14.13%
Przewozy Regionalne	36.22%	43.62%
Koleje Mazowieckie	10.15%	20.31%
PKP SKM Trójmiasto	4.87%	14.22%
SKM Warszawa	0.78%	3.57%
Others	1.16%	4.15%

2.8 The largest operator by passenger-km is PKP Intercity, owned by the PKP group. However, as it is the main long-distance operator in Poland, its market share is much less when measured in numbers of passengers carried.

2.9 Following its devolution from the PKP group in 2008, Przewozy Regionalne (PR), the national regional rail operator, was divided and services were transferred to each of the voivodeships. Some voivodeships have chosen to create their own regional undertakings or tender out some regional services.

²⁴ Source: *Funkcjonowanie rynku transportu kolejowego w Polsce w 2010 r.* <http://www.utk.gov.pl/download.php?s=1&id=2061> pp. 18-19. Retrieved 05/12/2011

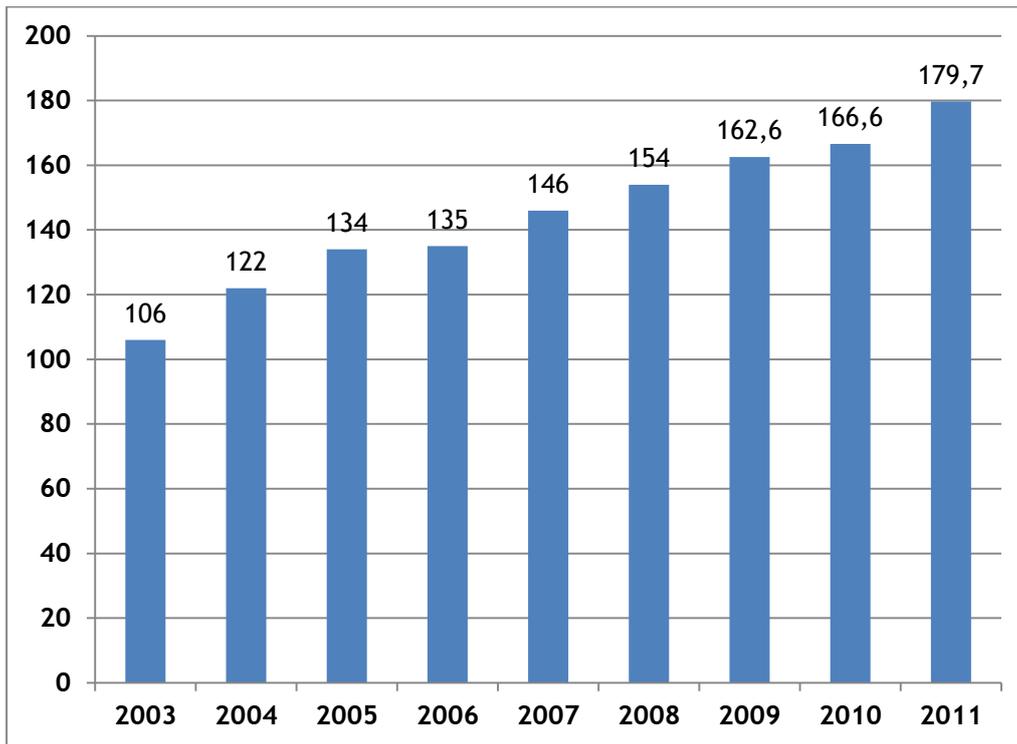
3 Market access

The role of national authorities

Description of the NSA

- 3.1 As mentioned above, the UTK is the market regulatory body, the national safety authority, and the national enforcement body for passenger rights. The UTK was founded in 2003 as the Regulatory Body in accordance with Directive 2001/14/EC. It has since been assigned the duties of National Safety Authority (Directive 2004/49/EC) and National Enforcement Body for rail passenger rights (Regulation 1371/2007). It has also inherited a number of other duties from its predecessor agency, the Główny Inspektorat Kolejnictwa (Main Railway Inspectorate, GIK) - such as verification of safety procedures on railway sidings, keeping the register of rail vehicles, or verification of internal safety procedures of infrastructure managers. The UTK also has safety oversight over the Warsaw Metro.
- 3.2 The status of the UTK is that of a Central Office of Government Administration, similar to other sector regulators. As such, the UTK is not formally a part of the relevant ministry, but is 'under its supervision'.
- 3.3 The president of the UTK is formally appointed by the prime minister. However, the hiring procedure for the position is organised by the Ministry of Transport, which then presents the candidate for approval to the chancellery of the prime minister. The Minister of Transport can also relieve the president of the UTK of his/her post.
- 3.4 The budget of the UTK, as with all Central Offices, constitutes part of the budget of the state, and is agreed by the government on an annual basis.
- 3.5 There are no staff seconded from either the incumbent RUs or the IM, however, the UTK occupies one floor within the building of the Ministry of Transport.
- 3.6 The number of staff of the UTK is presented in Figure 3.1 below. The numbers pertain to the total employment of the UTK, not the NSA staff in isolation:

FIGURE 3.1 NUMBER OF UTK STAFF AT YEAR END (FULL TIME EQUIVALENTS):

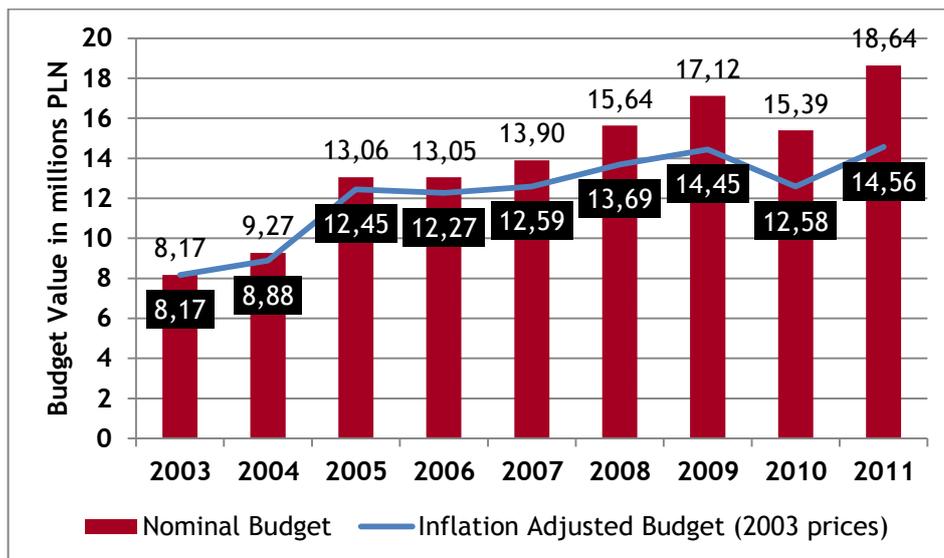


(Source: UTK)

3.7 The budget of the UTK is presented in

3.8 Figure 3.2 below. Please note the numbers pertain to the total budget of the UTK, not the NSA department in isolation:

FIGURE 3.2 ANNUAL BUDGETS OF THE UTK (MILLIONS OF PLN)



(Source: UTK; white digits on black background indicate the inflation-adjusted budget)

- 3.9 The UTK has also provided information regarding its functioning in the capacity of the National Safety Authority. Table 3.1 below shows the number of decisions issued by the UTK year-by-year, split by decision type:

TABLE 3.1 NUMBER OF DECISIONS ISSUED BY THE UTK SPLIT BY TYPE:

Decision Type	2003	2004	2005	2006	2007	2008	2009	2010	2011	TOTAL
SMS Acceptance								52	10	62
Safety Certificate Part A						1	4	50	14	69
Safety Certificate Part B							2	40	23	65
Placing In Service of Buildings, Equipment and Rail Vehicles	240	369	2802	2056	210	155	235	639	1041	7747
Placing in Service of Structural Sub-System							2	248	495	745
Granting of Licence	22	66	48	7	15	12	10	14	11	205
Change , Withdrawal, Termination, Suspension or Cancellation of Licence				15	18	8	16	29	19	105
TOTAL	262	435	2850	2078	243	176	269	1072	1613	8998

(Source: UTK)

- 3.10 The UTK has also provided information regarding the time required to process requests for Safety Certificates Part A and B:

TABLE 3.2 AVERAGE WORKLOAD REQUIRED TO REACH A DECISION REGARDING SAFETY CERTIFICATES (PART A & B - IN PERSON-HOURS):

Decision Type	2008	2009	2010	2011
Safety Certificate Part A	40	67.5	71.5	51
Safety Certificate Part B		17	16	11.5

- 3.11 In terms of licences, the UTK stated, that the current average time for reaching a decision regarding licences is approximately 3-6 months, with the fastest procedures taking 1 month, the longest ‘over a year’.
- 3.12 The UTK stated that cases related to placing into service of vehicles and other railway sub-systems are usually resolved within 2 months, with some instances requiring only a few days.
- 3.13 The UTK also provided statistics regarding the longest and shortest duration of the procedure of accepting an SMS (Safety Management System). For the Part A certificate, the longest procedure took 11 months; for Part B the longest procedure took 10 months. The shortest procedures for both Part A and B took 12 days. The UTK claims processing times have been dropping as both rail undertakings and the UTK itself have gradually learned both how to properly write the relevant document, and how to process it in the most time-efficient manner. Nonetheless, other stakeholders claim that the SMS approval can take as long as 27 months.

Strengths and weaknesses of the systems adopted

- 3.14 The key issues identified by both the UTK and other stakeholders interviewed as part of the consultation are as follows:
- There appears to be a problem with respect to the transposition of EU law into Polish law, which leads to Polish law not always accurately reflecting the letter and spirit of EU law;
 - The UTK is considered to be under-resourced, which causes issues with the time required to process requests made by rail undertakings;
 - Both the UTK and the Ministry of Transport do not appear to take into account the needs and requirements of the market when drafting new legislation or adopting EU legislation into Polish law.

Each of these issues is described below:

Transposition of EU law

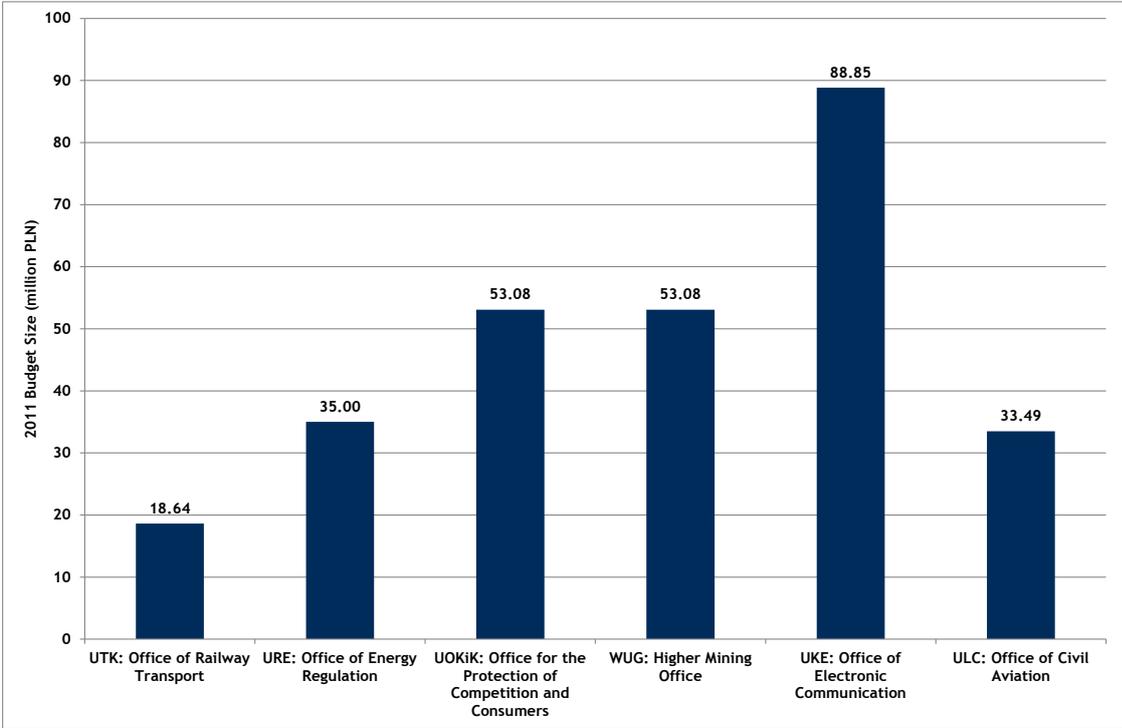
- 3.15 Stakeholders are of the opinion that the Polish lawmaking system is not well suited to implementing many EU laws (Regulations and Directives) into Polish law. There exists a system for checking whether draft legislation conforms to EU law, but there are claims it is faulty, as rail-related Polish legislation does not always reflect the EU law it was meant to implement in letter or spirit.
- 3.16 During a meeting with the Commission, UTK stated that there has been an element of doubt which organisation should take responsibility for the certification of aspects of the PRM TSI’s requirements. It was suggested that the General Office of Building Control (GUNB) should take responsibility for some elements of the certification process as they are responsible for all kinds of constructions including railway specific ones (i.e. station buildings, platforms, over and underpasses). UTK stated that these types of constructions are not in their responsibility within the scope of railway legislation as these are not relevant for safety of traffic operation and management. However, since they are responsible for authorising the placing into service of rolling stock and infrastructure

(including assessment of compliance with all relevant TSIs), the responsibility for elements of sub-systems as described in the PRM TSI might also be assigned to UTK. There is clearly an element of doubt arising from this relatively new piece of legislation that should be addressed and managed by a single party in order to ensure compliance can be managed effectively.

Lack of Resources at the UTK

3.17 Both the UTK and other stakeholders indicated, that the UTK is under-resourced financially, which makes the UTK unable to attract the right number of staff with the right qualifications. As of 23/01/2012, the UTK website showed 36 job adverts (out of a total of 180 Full Time Equivalent posts²⁵ - see Figure 3.1 above - this constitutes 20% of the current workforce). The UTK themselves have provided figures comparing their staff numbers and budget situation to that of other regulatory bodies in Poland.

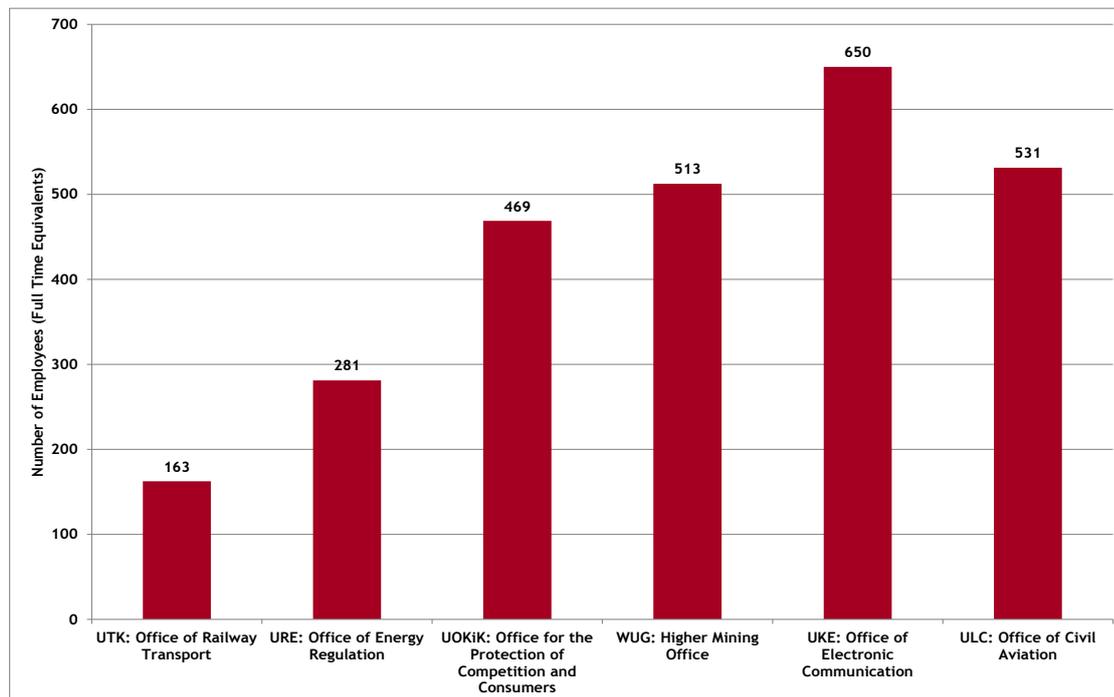
FIGURE 3.3 COMPARISON OF BUDGETS OF DIFFERENT POLISH REGULATORY BODIES (2011, MILLION PLN)



(Source: UTK, ULC)

²⁵ Source: http://www.utk.gov.pl/portal/pl/51/Oferty_pracy.html - retrieved 23/01/2012.

FIGURE 3.4 COMPARISON OF NUMBERS OF EMPLOYEES OF DIFFERENT POLISH REGULATORY BODIES (2009, FULL TIME EQUIVALENTS)



(Source: UTK)

- 3.18 The figures show that, despite other regulatory bodies having similar remits in terms of scope (they are either market regulators or safety authorities or both), their budgets are much higher than the UTK. The most meaningful comparison can be made with the ULC - the Polish Office of Civil Aviation - which is the aviation market regulator, safety regulator, and national enforcement body for passenger rights. The 2011 budget of the ULC was almost 80% higher than the UTK's, with the ULC employing 2.3 times as many employees as the UTK in 2009.
- 3.19 Evidence from stakeholders suggests the UTK does have problems in adhering to its own deadlines for processing documents and requests, while often asking for many changes to be made to the documents, which other stakeholders consider irrelevant to the actual substance of the document. While the UTK themselves admit they are underresourced, they claim, that long processing times usually result from the bad quality of documents submitted to them. Furthermore, the UTK also blames the way the law is constructed regarding their official response limits. Regulations stipulate the UTK must respond within 3 months of the request first reaching them. However, the UTK claims that, due the bad quality of the materials submitted to them, they must often request supplementary information to be given to them, which can extend the procedure beyond the stipulated limit.
- 3.20 Stakeholders have complained the UTK's charges for processing requests are high. The UTK has quoted prices as being:
- Ca. EUR 5000 for a Safety Certificate Part A

- Ca. PLN9000 (equivalent to around EUR2100) for a Safety Certificate Part B
- EUR 1750 fixed fee for a Licence
- A maximum of EUR 25000 for placing a complex vehicle (e.g. electric multiple unit) into service.

Prices are linked to the amount of person-hours spent on evaluating requests, and are set by the Ministry of Transport. The money paid for these procedures constitutes income of the state and does not directly go back to the UTK.

Issues Regarding Drafting of Laws

- 3.21 Stakeholders have indicated that railway laws in Poland have been known to favour the incumbent undertakings from the PKP group. They have also indicated that their point of view is not taken into account during the consultation phase of the drafting of new legislation.
- 3.22 The UTK has indicated that the Ministry of Transport often does not take into account the UTK's opinions, as the procedure for drafting new laws does not require it to do so. This is despite the fact, that the UTK is the regulatory body responsible for upholding and executing the law drafted by the Ministry.
- 3.23 Both the UTK and other stakeholders agree, that the tendency to favour the incumbent PKP group when drafting legislation has diminished over time.

Case Studies of Issues

- 3.24 As the UTK is both the Regulatory Body and the National Safety Administration, complaints against the NSA cannot be made to the RB as with other countries. However, evidence for examples of the issues outlined above have been supplied through the survey and stakeholder interviews.

Class 66 Acceptance Problem²⁶

- 3.25 This is probably the most well-known issue with regard to homologation of rolling stock in Poland. Freightliner PL, a subsidiary of the British-based Freightliner Group, wanted to enter the Polish market using spare Class 66 locomotives from their UK operations. The UTK refused to accept the locomotives, with Freightliner resorting to a complaint to the European Commission. The European Commission, based on a technical opinion from ERA, issued a decision, compelling the UTK to reverse its refusal to accept the locomotives. The case is described in more detail below.
- 3.26 Freightliner received its licence from the UTK in 2005. At the beginning of 2006 the Class 66 locomotives received permanent homologation from the UTK, and in January 2007 a permanent permission to operate in Poland. However, this decision was reversed in July 2007 by the UTK, on the grounds that the driver's seat in the Class 66 locomotive is located on the left. In Great Britain, trains usually drive on the left track, with signals located to the left of the track. In Poland the situation is reversed (drive on the right, signals on the right of the track). The UTK argued that having the Class 66 driver sit on the left with signals on the right of the locomotive would impair the driver's ability to notice

²⁶ Key source: <http://infokolej.pl/viewtopic.php?p=67547> and stakeholder consultation

and react to the signals. The UTK's decision was inconsistent with two technical opinions issued independently by two Polish Designated Bodies.

- 3.27 Following negotiations, the UTK issued two decisions in August and September 2007, making it mandatory for Class 66 locomotives to be staffed by two drivers at all times, and reversing its decision to homologate the locomotives for single-driver operation. Freightliner challenged these decisions in court. The Voivodeship Administrative Court in Warsaw annulled the UTK's decisions in February 2008. The UTK, however, issued a new decision only three days later, making it once again mandatory to operate Class 66 locomotives with two drivers. Freightliner PL chose to appeal to the UTK later in February 2008. This appeal was rejected by the UTK only in May 2009.
- 3.28 The European Commission became involved in the issue, and asked the UTK for an explanation, and the European Railway Agency for a technical opinion. The Commission pointed out, that since the locomotive was already approved for use in the UK and in France, then as per Directive 2001/16/EC on Interoperability there should be no reason as to why the locomotive could not be approved for use in Poland.
- 3.29 The European Commission also pointed out several instances of the UTK contravening EU law:
- There was no regulation forbidding UTK employees from taking up employment in a Rail Undertaking under the control of the UTK. Indeed, some of those working for the UTK were actually employees of the PKP Group companies on unpaid leave from the PKP;
 - The UTK is its own appeals body - i.e. the only way to appeal against a decision made by the UTK is to appeal to the UTK;
- 3.30 As a result of the intervention of the EC, Class 66 locomotives were approved for operation with one driver. In June 2010, the Minister of Infrastructure (until 2011 the ministry responsible for transport and railways) removed the president of the UTK from his office - the president had been a long-time employee of the PKP Group prior to his appointment to the UTK²⁷. His successor (removed from his post in January 2012) was not previously an employee of the PKP Group.
- 3.31 We were not provided with the additional cost of this process to either UTK or Freightliner.
- Issues with Polish Railway Law***
- 3.32 The UTK provided a number of examples, where either:
- EU law was incorrectly transposed into Polish law; or
 - Polish laws passed had unnecessarily strict regulations.
- 3.33 Examples quoted by the UTK were:
- i) EU Regulation 352/2009 on the establishment of a Common Safety Method for risk evaluation and assessment creates Assessment Bodies for the purpose of creating Safety Assessment Reports (art. 7). Polish regulations have not been updated to

²⁷ Source: <http://zbs.net.pl/zbs50.pdf>

specify the creation of such entities (and their function, scope, etc.), and as such these do not exist.

- ii) EU Directive 2004/49/EC (Railway Safety Directive) specifies in Art. 16 (2f), that the NSA should be responsible for *promoting the safety regulatory framework, including the system of national safety rules*. This rule has been directly transposed into Polish law and is an obligation of the UTK, however, no detailed instructions, resources or competencies were given to the UTK with this regard - as such the rule exists only on paper.
- iii) EU Directives 2008/57/EC and 2008/110/EC on interoperability specify the creation of Entities in Charge of Maintenance. However, the draft Polish law implementing this directive makes no mention of these. As a result, ECMs cannot be created in Poland.
- iv) The Polish railway law has an unnecessarily specific definition of who is a railway undertaking - defining that any entity operating any kind of vehicle on the railway must obtain a licence (except the Infrastructure Manager). As a result, all track maintenance companies, as well as PKP Energetyka, who provide EC4T and maintain OHLE must be fully licenced undertakings, even though in most instances they only operate specialist maintenance vehicles on sections of the railway closed to normal traffic.
- v) Legislation passed by successive Polish governments since 2003 has prepared 7 different definitions of a railway siding, each conforming strictly to a different EU regulation/directive.
- vi) Article 1 of Directive 2008/57/EC (Interoperability) insists that any interoperability conditions must be implemented by Member States in a manner compatible with Directive 2004/49/EC on railway safety. In Poland it was deemed not necessary to transpose this very important article into Polish national law.

Conclusions

- 3.34 New entrants in the Polish rail freight market were able to double their market share from 2005 to 2009 to over 30%. However, Stakeholders complained that there are several issues creating barriers for new entrants. They stated that rail-related Polish legislation is not always compliant with EU law and hence does not always reflect its letter and spirit.
- 3.35 A further concern is that the NSA and the Regulatory Body are integrated in the same authority, the UTK, and hence the UTK is its own appeal body. It is possible to use the administrative court system as a second-tier appeals body, however, this has been proven to be both costly and time-consuming.
- 3.36 Both the UTK and other stakeholders mentioned that the UTK is under-resourced financially. Furthermore, Stakeholders complained about the high fees for the granting of Safety Certificates and authorisations for placing into service.
- 3.37 Stakeholders indicated additionally that railway related laws are likely to favour the incumbent railway undertaking. In the draft phase of new legislation, the Ministry often does not consult neither the UTK nor other stakeholders. Both UTK and other stakeholders stated, however, that this problem has diminished over time.

3.38 Table 3.3 below summarises the Problem Areas in Poland, for the existence of which evidence has been provided:

TABLE 3.3 PROBLEM AREAS IN POLAND

Element of problem drivers	Identified
deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks	✓
insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry	✓
granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases	✓
reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs	✓
deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks	✓
insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors	
deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks	✓
insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry	✓
the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient	✓
national technical and safety rules sometimes pose a transparency and/or discrimination problems	✓
problems with proper implementation of EU railway directives; too divergent interpretation of the directives	✓
insufficient level of dissemination of railway-related information and training	✓

TABLE 3.4 SWOT ANALYSIS OF THE POLISH SYSTEM

<p>STRENGTHS</p> <ul style="list-style-type: none"> ■ The UTK is now seen as independent from the PKP Group; The UTK has managed to gradually reduce the time required to reach a decision; 	<p>WEAKNESSES</p> <ul style="list-style-type: none"> ■ The President of the UTK is nominated by the Ministry of Transport; ■ The budget of the UTK is insufficient, leading to staff shortages; ■ The UTK is not consulted by the Ministry of Transport on a regular basis, when laws concerning railways are drafted; ■ The UTK continues to be its own appeals body.
<p>OPPORTUNITIES</p> <ul style="list-style-type: none"> ■ The new EU cross-acceptance regulations may shorten the time required to place into service sub-systems approved elsewhere; ■ An increase in the budget of the UTK would alleviate the UTK’s staffing problems; ■ Including the UTK more into the legislation drafting process as the future enforcement body for the legislation could improve the quality of legislation passed and reduce the bureaucratic burden faced by rail operators in Poland. 	<p>THREATS</p> <ul style="list-style-type: none"> ■ Continued increases in the UTK’s workload without significant budget increases are unsustainable and may lead to institutional paralysis; ■ With the post of UTK president dependent on the Ministry of Transport, the UTK may continue to be seen as dependent on the Ministry, and colluding with the state-owned incumbent RU/IM.

UK Mini Case Study

- 1.1 In the past, the British infrastructure manager gave safety approval for the introduction of new vehicles or changes to vehicles. With the transposition of the Safety Directive into British law, this role was taken away from it.
- 1.2 Now, each railway undertaking and infrastructure manager is responsible for the safety of its own part of the railway system. Neither party gives permission to or has authority over the other. Authorisation for placing into service given only by the NSA.
- 1.3 A ‘duty of cooperation’ is mandated between the parties responsible for the management of the railway system. Each duty holder “approves” itself, using SMS and co-operation. There is a clear distinction between technical and commercial process - the need for commercial agreements between the railway undertaking and the infrastructure manager to gain access the network is unchanged. The infrastructure manager has a general obligation facilitate ‘network change’ for any infrastructure changes that are required.
- 1.4 A key element of the process of co-operation is that it provides affected parties with the opportunity to review the assessment of compatibility undertaken by the proposer of change (though some parties have gained a reputation for leaving their objectives until nearly reaching the deadline). The review process is conducted with the objective of achieving a consensus. It is recognised that it will not always be possible to reach a consensus. In this case, issues are escalated using the railway industry’s accepted processes.
- 1.5 For a train operator seeking type approval to operate new rolling stock, or operate existing rolling stock over new sections of route, it must do the following:
- identify other duty holders
 - identify technical interfaces
 - request interface information
 - assess good fit / safe clearance
 - establish compatibility
 - document and record outcome
- 1.6 The first new rolling stock to be approved under these arrangements was the Class 380 built by Seimens for operation by First ScotRail in Scotland. Early in the project, it appeared to some observers that the infrastructure manager had not adapted its stance to the new arrangements and was still acting in a manner consistent with its former role of ‘approver’ of rolling stock.
- 1.7 Objections had been raised by the infrastructure manager to the manufacturer’s proposals to undertake its testing on a test track outside the UK. This testing was intended to demonstrate that the train was compliant with TSIs. The infrastructure manager had particular concerns that this would not be able to give adequate assurance that there would not be EMC interference when the trains entered service because the type of neutral sections used in Britain for the overhead line power supply were not replicated on the test track. There was also

- concern about compatibility of the GSM-R equipment with ground equipment on the routes concerned and with potential interference with heritage telecoms frequencies.
- 1.8 Gauge clearance work related almost exclusively to platform stepping distances. The universal use of high platforms in Britain makes platform profile a common issue for the introduction of new passenger rolling stock. It is necessary to provide an optimum balance between clearance whilst passing and stepping whilst stationary.
- 1.9 The new vehicles were 23 metres long, as opposed to the 20 / 21 metre vehicles that they replaced. At curved platforms this extends the stepping gap between platform and doors because the doors are not at the ends of the vehicles. It was accepted that platform profile modification work would be necessary for this reason even if the train itself was TSI compliant.
- 1.10 Following the placing into commercial service of these trains, we discussed what had transpired with the responsible director of the railway undertaking. He advised us that a mature and cooperative relationship had been established with the IM and we can conclude that the project had demonstrated that the duty of cooperation can be made to work and that the infrastructure manager was meeting its obligations to facilitate network change. He reported that information had passed back and forth in a timely manner.
- 1.11 In particular, the infrastructure manager had been very accommodating in enabling night time operation of empty trains in order to test radio compliance.

APPENDIX

B

RESPONSES TO STAKEHOLDER SURVEY

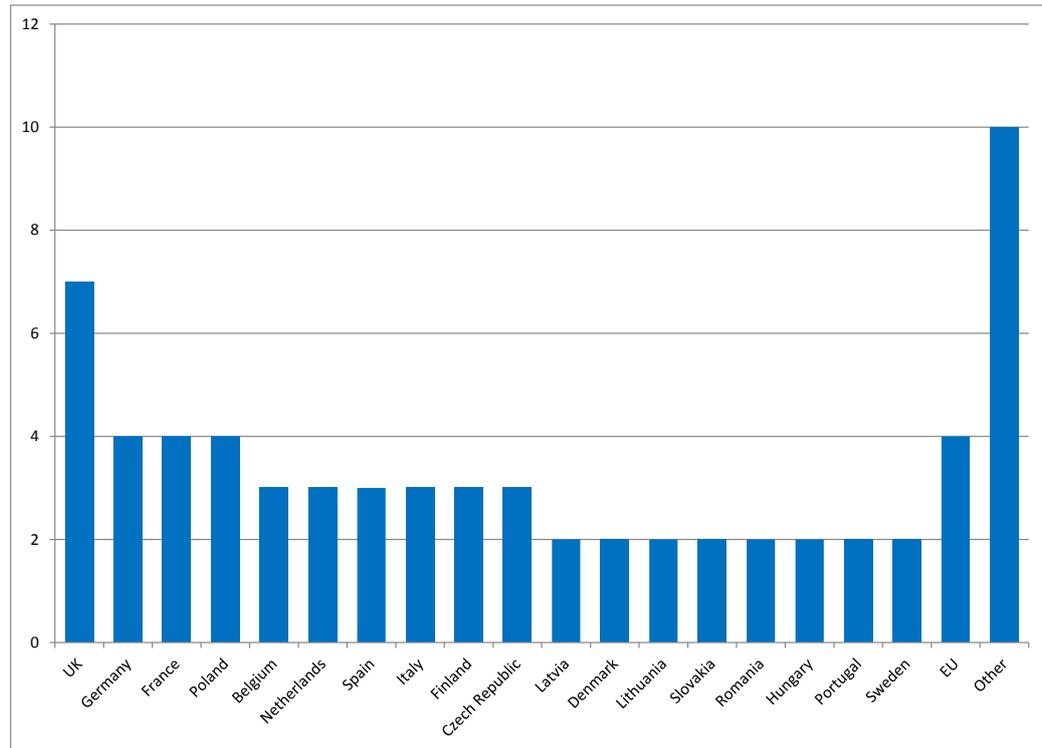
B1 CONSULTATION OF STAKEHOLDERS

- B1.1 This appendix sets out an overview of the stakeholders' consultation undertaken to gather views and facts from the sector on the problem definition, the objectives and the options measures and policy proposed.
- B1.2 The consultation was carried out through an on on-line survey, which was subsequently complemented by follow-up interviews with selected stakeholders conducted either face to face or via telephone.
- B1.3 The on-line survey was sent out on the 18th November 2011 and stakeholders were asked to provide their responses by the 15th December 2011. This timescale was subsequently extended to the 30th December 2011, in the week following this deadline we received a number of other responses which we have included in the analysis.
- B1.4 We sent the on-line survey to a total of 358 stakeholders throughout the European rail industry, although some of these were to multiple email addresses within the same institution and as such the number of unique survey requests sent to individual institutions was actually 119.
- B1.5 We received a total of 68 responses to the survey which represents a 57% response rate and is comparable with previous studies of this nature. In addition to this we received a further 10 written responses from stakeholders who preferred to respond in writing to the questions rather than complete the survey on-line. These additional responses have not been included in the numbers shown in the figure below, but the comments provided have been considered as part of the evidence base for the analysis.

Responses

- B1.6 The following figure represents the breakdown of respondents to the survey by Member State. The UK is the MS that shows higher representation, with 7 respondents, followed by Germany, France, Poland and EU-wide organisations (4 respondents each).

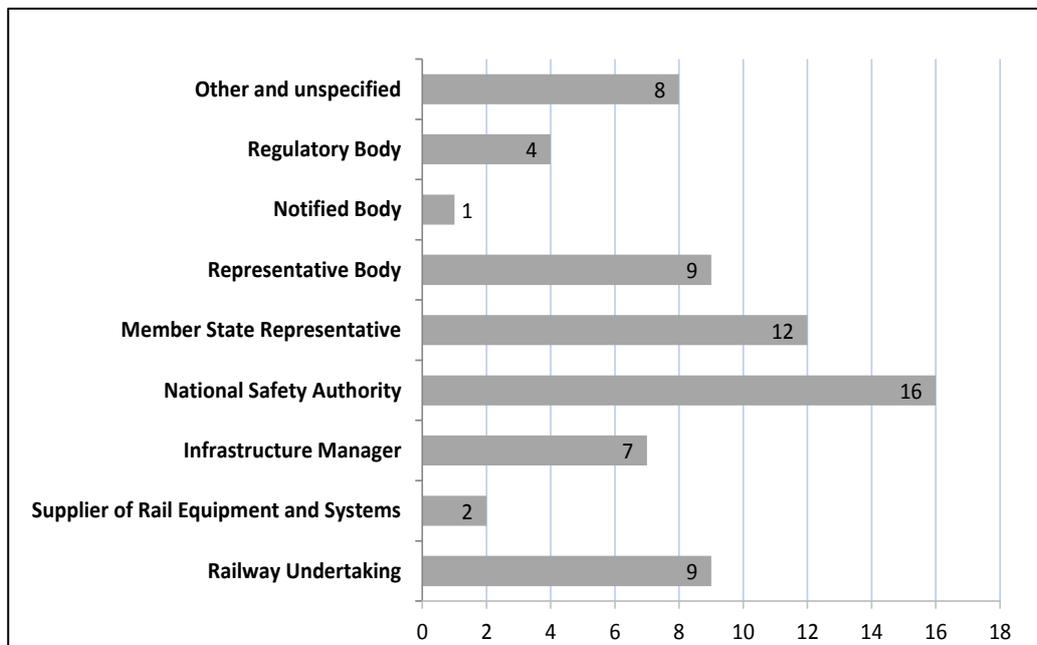
APPENDIX FIGURE B.1 BREAKDOWN OF RESPONDENTS BY MEMBER STATE



Note: The “other” category groups all MS with a single respondent, i.e. (Estonia, Greece, Luxembourg, Malta, Austria, Norway, Slovenia, Bulgaria, Cyprus)

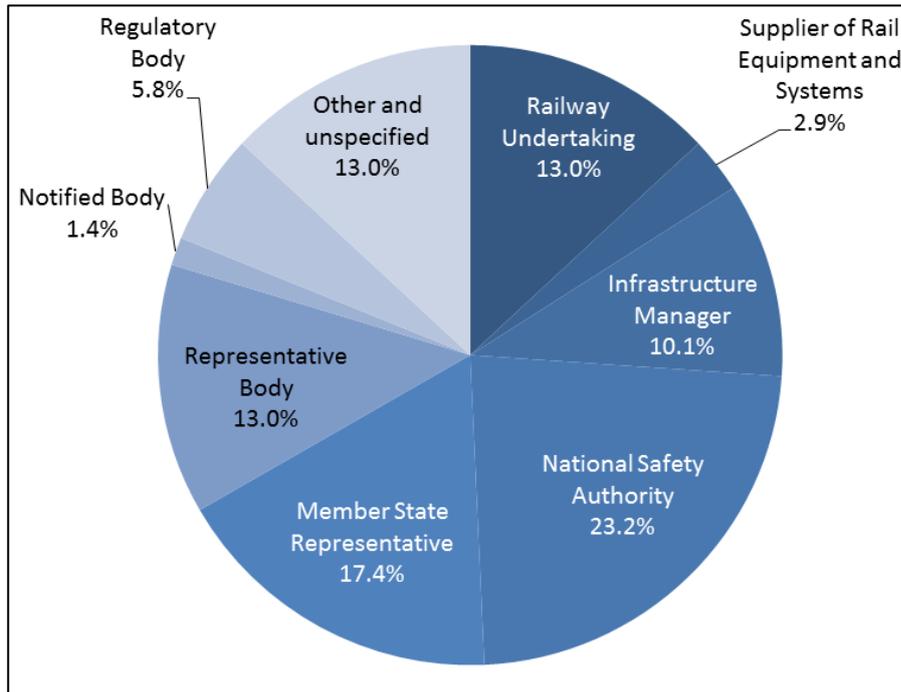
B1.7 The figure below shows the breakdown of the respondents by category.

APPENDIX FIGURE B.2 BREAKDOWN OF RESPONDANTS



B1.8 The largest group of respondents was represented by NSAs, closely followed by Member State representatives and railway undertakings. The breakdown of respondents is presented in percentages in the figure below.

APPENDIX FIGURE B.3 SURVEY RESPONDENTS



The follow-up interviews

B1.9 In addition to the on-line survey, we have undertaken follow-up interviews with a selection of stakeholders to probe more detail on the responses received through the survey. The table below sets out the stakeholders that we have interviewed. In some cases we held telephone interviews where we were unable to hold face-to-face interviews.

APPENDIX TABLE B.1 SUMMARY OF STAKEHOLDER CONSULTATION

Stakeholder	Type of discussion
The representative bodies	
CER	Face-to-face meeting
EIM	Face-to-face meeting
UIP	Telephone interview
UNIFE	Face-to-face meeting
UITP	Face-to-face meeting
EPTTOLA	Face-to-face meeting
ETF	Face-to-face meeting
ERFA	Face-to-face meeting
ALE	Face-to-Face meeting

Stakeholder	Type of discussion
Railway undertakings	
FS	Face-to-face meeting
SNCF	Face-to-face meeting
DB	Face-to-face meeting
A Polish new entrant	Face-to-face meeting
A French new entrant	Face-to-face meeting
A Hungarian new entrant	Face-to-face meeting
National Safety authorities	
EBA (German NSA & NoBo)	Telephone interview
ANSF (Italian NSA)	Face-to-face meeting
UTK (Polish NSA)	Face-to-face meeting
NKH (Hungarian NSA)	Face-to-face meeting
EPSF (French NSA)	Face-to-face meeting
Others	
A Rolling stock leasing company	Telephone interview
Netzwerk Europaeischer Bahnen (Association of German railway undertakings)	Telephone interview
2 rolling stock manufacturers	Face-to-face meeting
EPF	Face-to-face meeting
ERA	Face-to-face meeting
Dutch Ministry of Transport	Face-to-face meeting
Italian Regulatory Body	Face-to-face meeting
German Regulatory Body	Telephone interview

- B1.10 We were unable to arrange an interview with UIRR. The list included above is much longer than the one we had planned for in the proposal, but as the subject matter was key to a number of stakeholders who expressed a desire to discuss the issues in more detail, we accommodated additional interviews where possible. Unfortunately it was not possible to speak to everyone who requested a further interview given the timescales of the project.
- B1.11 In addition, we attended the stakeholder presentation and hearing at the end of February, which was very useful in understanding views of stakeholders and also in sharing the results of the on-line survey.

- B1.12 We also attended the vehicle acceptance task force meetings that have taken place since the start of this study in order to appreciate the specific problems in the vehicle acceptance process and to aid our understanding of the experiences of stakeholders present.

B2 RESPONSES TO THE QUESTIONS ON PROBLEM DRIVERS

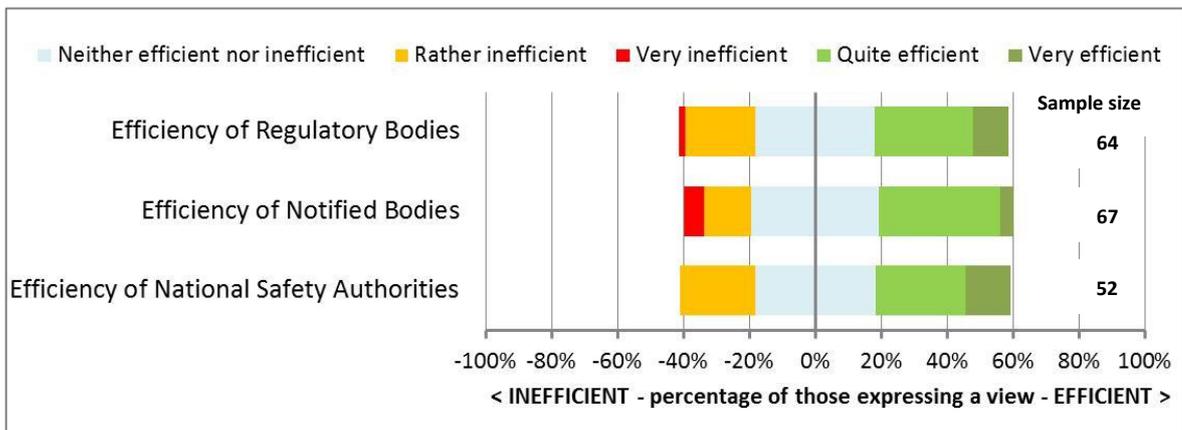
Problem driver 1 - Inefficiency of national institutions

B2.1 The Stakeholders were asked to provide their view on the functioning of the following national institutions:

- The workings of the NSAs;
- The functioning of the Regulatory Bodies; and
- The activities of the Notified Bodies (NoBos).

B2.2 The responses of stakeholders to the question regarding the inefficiency of national institutions is summarised in the graph below.

APPENDIX FIGURE B.4 STAKEHOLDERS OPINION ON EFFICIENCY OF NATIONAL INSTITUTIONS (*)



Note: (*) Interested parties excluded

B2.3 Once the responses of interested parties are excluded, the judgment of those expressing a view on the performance of the different institutions is reasonably aligned:

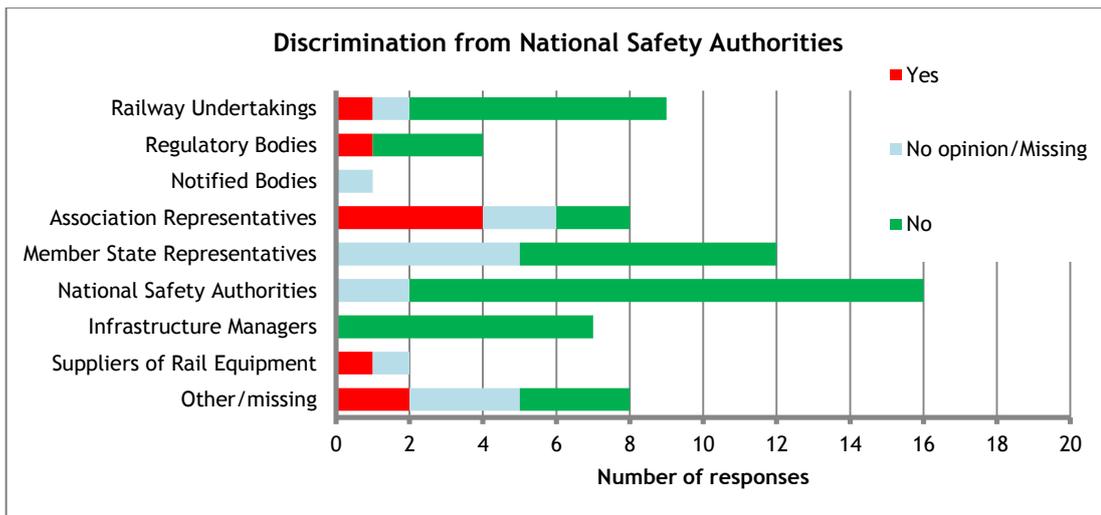
- About 40% of the respondents stated that efficiency of national bodies were quite or very efficient,
- A similar percentage rated all three institutions as ‘neither efficient nor inefficient’,
- While about 20% (23% in the case of RBs and NSAs) indicated that they operate very or rather ineffectively.

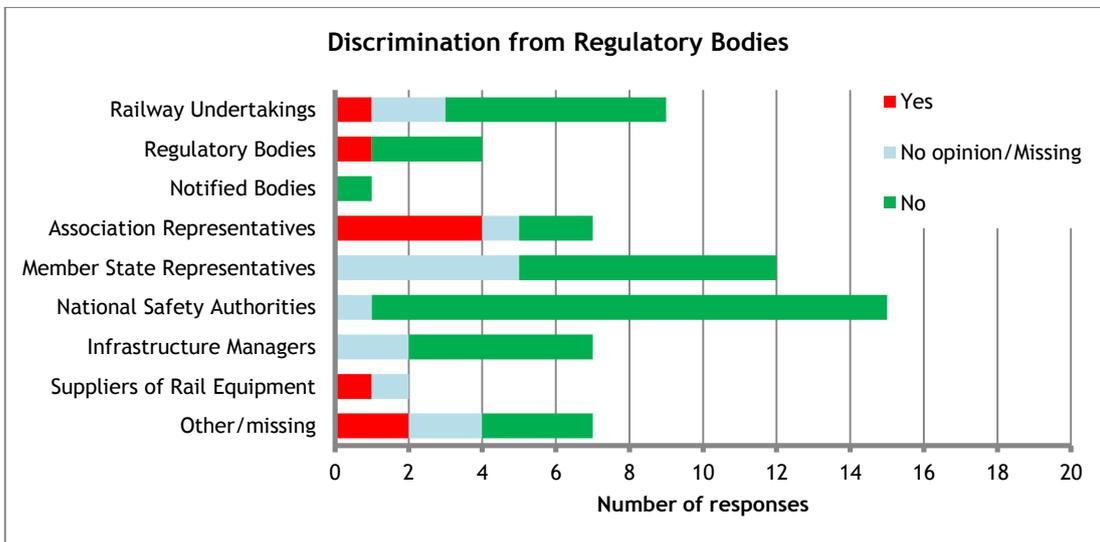
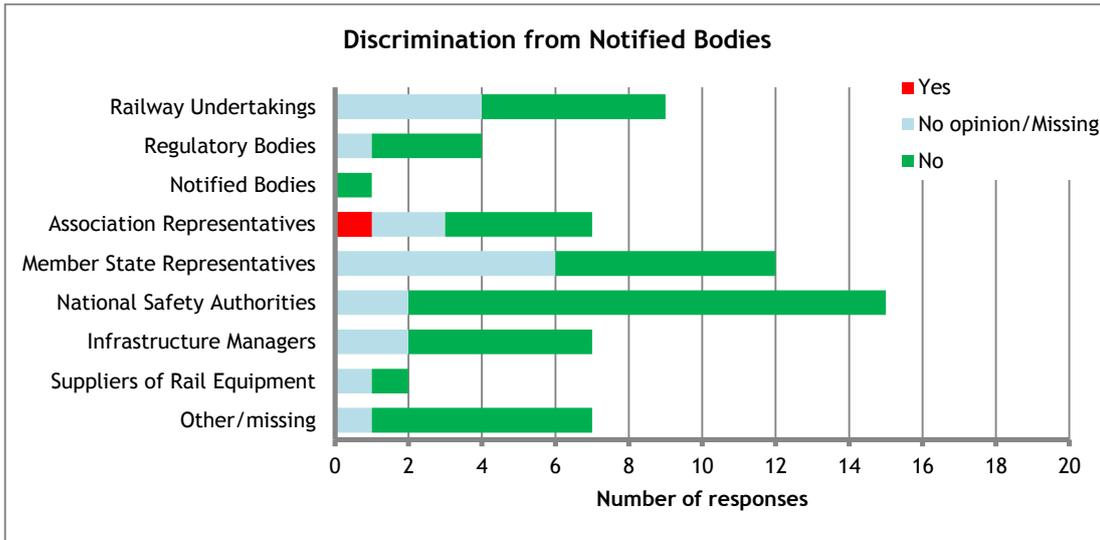
B2.4 Negative perceptions from stakeholders are limited to less than 25% of respondents; however, around 40% of respondents rated the national institutions as ‘neither efficient nor inefficient’. Over 25% of the total sample expressed no opinion or did not respond to the questions on the efficiency of NoBos or RBs, while missing responses or unexpressed opinions accounted for only 14% in the case of NSAs.

Problem driver 2 - Discrimination of new entrants

- B2.5 The vast majority of respondents (83% overall and 76% when responses from NSAs are excluded) indicated that they are not aware of any discrimination from NSAs. However negative views were expressed, especially by railway undertakings and their associations, and from suppliers of rail equipment, all of which have to deal with NSAs with regard to placing in service authorisations and safety certification. Half of the association representatives felt that there is discrimination from NSAs, confirming that this is a real issue for operators.
- B2.6 In the case of RBs, 82% of those expressing a view stated that Regulatory Bodies were not engaging in discriminatory practices. Among different respondent groups, railway undertakings and their representatives and equipment supplier gave the least positive response.
- B2.7 By contrast, although many respondents express no opinion on NoBos, their operation seems to be perceived as less discriminating against new entrants. All respondents that provided an opinion except one (the association representatives) stated that they are not aware of any discrimination from the Notified Bodies.

APPENDIX FIGURE B.5 DISCRIMINATION FROM NATIONAL BODIES

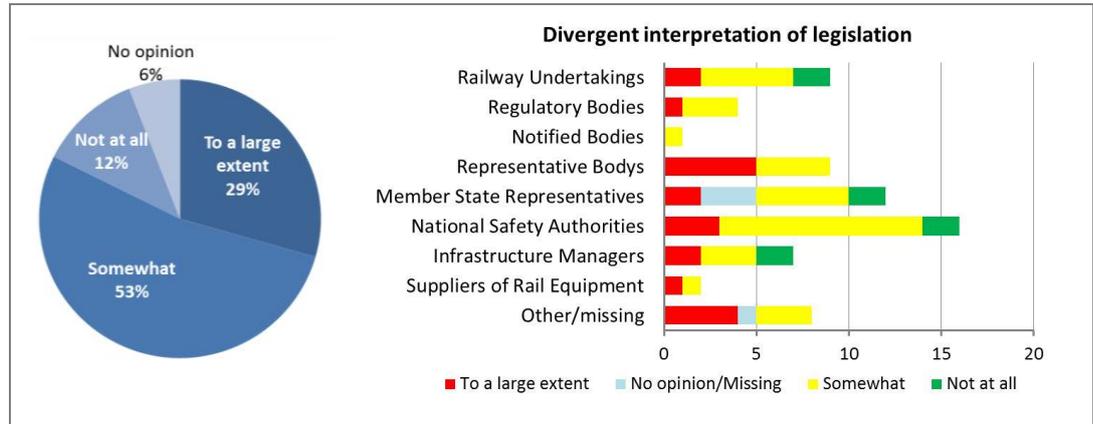




Problem driver 3 - Divergent interpretation of EU legislation

B2.8 Stakeholders generally agreed that there is a divergent interpretation of railway legislation by the Member States. More than half (53%) indicated that the interpretation is somewhat divergent, while 29% indicated that the interpretation is to a large extent divergent. Only 12% of those stating a view stated that there was no divergent interpretation.

APPENDIX FIGURE B.6 EXISTENCE OF DIVERGENT INTERPRETATION OF EU LEGISLATION

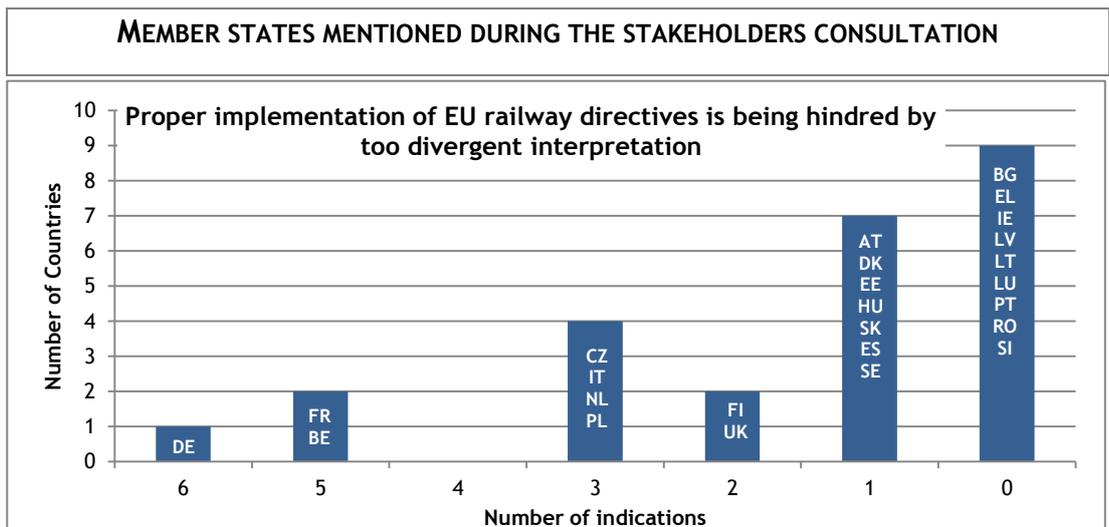


B2.9 According to the majority of respondents (62% of those expressing a view on this point) the divergent interpretation of EU railway Directives hinders their proper implementation. The situation seems to be critical particularly in:

- Germany, which was mentioned six times in relation to this aspect, and
- in France and Belgium, which were mentioned five times each.

B2.10 To a lesser extent, the surveys identified the Czech Republic, Italy, the Netherlands and Poland (mentioned three times each) and Finland and the United Kingdom (mentioned two times each) as countries where this problem is evident.

APPENDIX FIGURE B.7 DIVERGENT INTERPRETATION OF EU LEGISLATION AFFECTING PROPER IMPLEMENTATION OF EU RAILWAY DIRECTIVES



B2.11 The stakeholders interviewed in the Polish case study expressed the opinion that the Polish legislative system is not well suited to implementing many EU laws (Directives) into Polish law. A system exists for checking whether draft legislation

conforms to EU law, but it has been alleged that this is not appropriate, as rail-related Polish legislation does not always reflect the EU law it is supposed to implement in either letter or spirit.

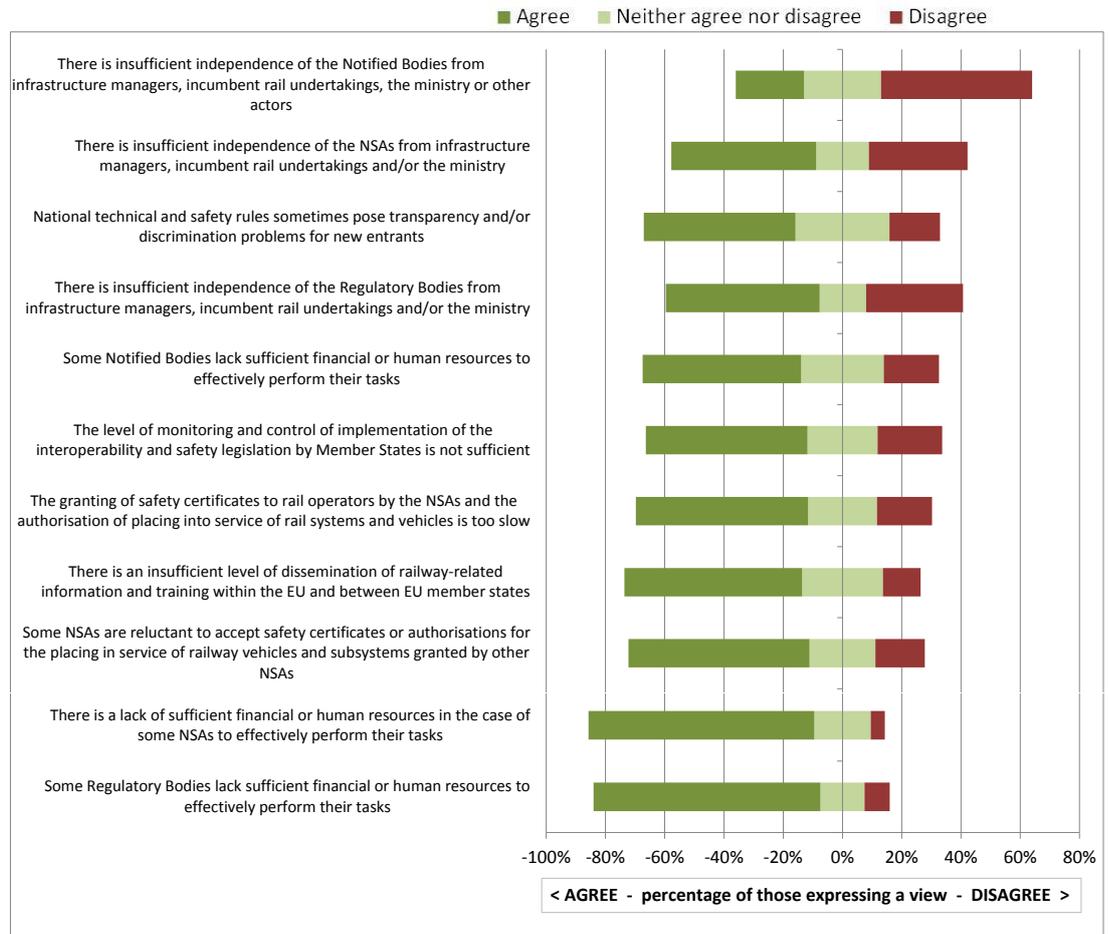
Key findings of the stakeholders' consultation

- B2.12 It emerged from the consultation that the drivers which are a major concern of stakeholders are the inefficient functioning of national institutions and the presence of divergent interpretation of EU legislation. Almost 80% provided an opinion, with the majority showing dissatisfaction with the current situation.
- B2.13 By contrast a minority of the interviewed stakeholders complained about the presence of discriminatory practices from NSAs or RBs. However, the fact that claims of the existence of discriminating practices come from RUs or suppliers of rail equipment indicates that operators perceive this issue as a constraint for the development of the sector.
- B2.14 The three problem drivers appear to be closely connected, as several stakeholders indicated the inefficient functioning of national institutions and the different interpretation of EU legislation (namely the differences in the fees they charge, the different procedures they adopt and the insufficient independence of some NSAs and RBs) as main causes of discrimination against new entrants.

Relevance of problem elements

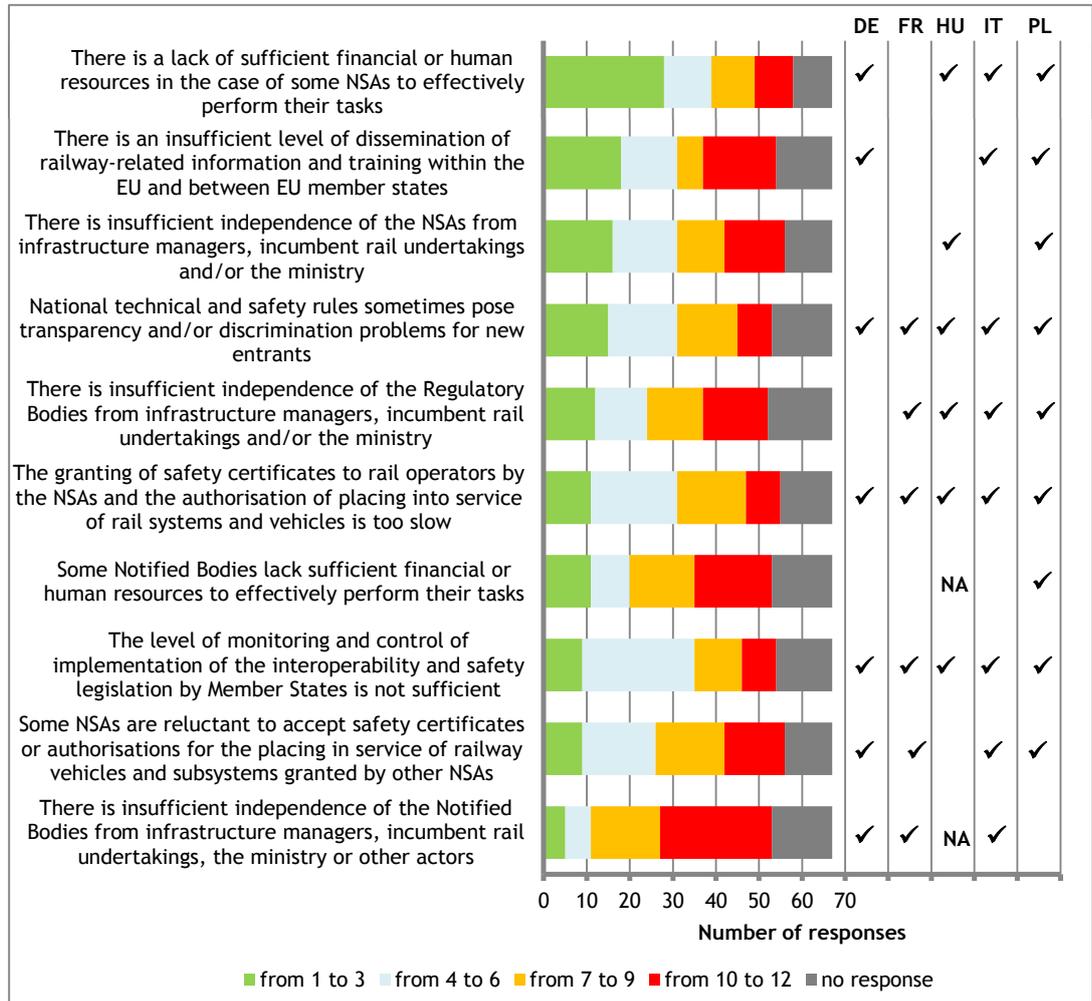
- B2.15 The figure below illustrates the opinion of stakeholders on the relevance of the different problem elements. The responses indicate that the lack of sufficient financial or human resources in the case of some National Safety Authorities and Regulatory Bodies are major issues of concern for stakeholders.

APPENDIX FIGURE B.8 RELEVANCE OF PROBLEM ELEMENTS



B2.16 This is confirmed by the evidence collected in the case studies as shown in the following figure, which illustrates the ranking that stakeholders provided in question 6 of the survey on the various problem elements. The colour coding refers to the number of stakeholders that provided each of the rankings, while the ticks indicate whether the problem element has been detected in the case studies undertaken. Problem elements are ordered by importance, that is the first element in the figure is the one that received the most ranking scores between one and three.

APPENDIX FIGURE B.9 PROBLEM ELEMENTS: STAKEHOLERS RANKING AND EVIDENCE FROM CASE STUDIE



B2.17 Two other key elements of concern are the fact that the proper implementation of EU railway directives is hindered by a divergent interpretation of the directives , together with an insufficient level of dissemination of railway-related information and training.

B2.18 Approximately 60% of the interviewed stakeholders agreed with the view that:

- Some NSAs are reluctant to accept safety certificates or authorisations for the placing in service of railway vehicles and subsystems granted by other NSAs and
- The granting of safety certificates to rail operators by NSAs and the authorisation of placing into service of rail systems and vehicles is too slow.

However, this issue was not amongst the top three ranked elements, but is confirmed by the fact that it belongs to the top six elements to be addressed (more than 30% of the sample ranked this issue among the top six).

B2.19 The level of monitoring and control of implementation of the interoperability and safety legislation by Member States is considered to be insufficient by 59% of the sample. 35 respondents indicated it in the top six elements of concern.

B2.20 The proposition that national technical and safety rules sometimes pose transparency and/or discrimination problems for new entrants was supported by just 51% of the sample, which is aligned with the fact that less than half of respondents ranked this among the first six problem elements to address.

B2.21 The issues related to Notified Bodies show less convincing evidence.

- 53% of the sample agreed with the statement that some NoBos lack sufficient financial or human resources to effectively perform their tasks, but only 20 respondents indicated this among the top 6 matters of concern;

- Less than a quarter of the sample selected ‘an insufficient independence of Notified Bodies from other national institutions’, and most of the respondents ranked this at the bottom of the list.

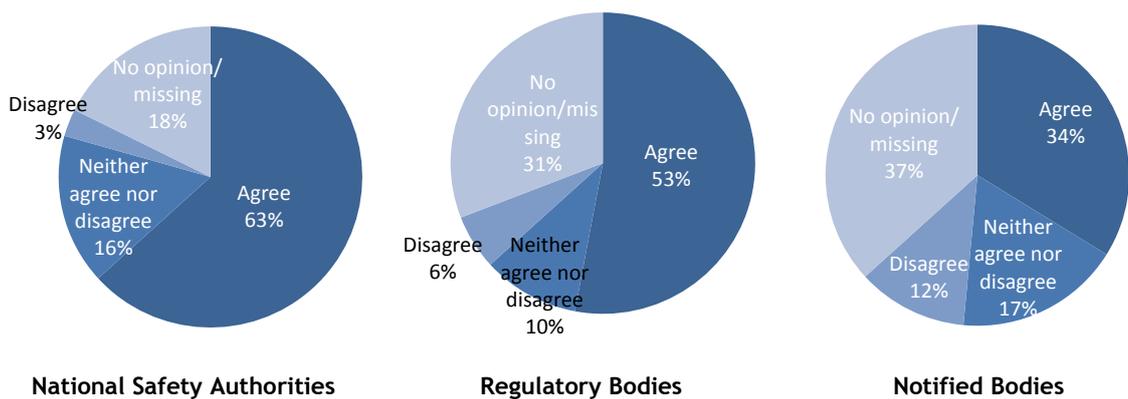
B2.22 Overall, the analysis provided evidence for all the elements indicated at the root of the problem drivers noted, except for those related to the operation of the Notified Bodies.

B2.23 It is clear that the lack of sufficient (financial and human) resources in the case of some national institutions is an issue of concern for the interviewed stakeholders, followed by the difficulties and differences related to the interpretation, implementation and monitoring of EU legislation in the rail sector.

Deficit/lack of sufficient (financial and human) resources in case of some national institutions to effectively perform their tasks

B2.24 The majority of respondents indicated that there is a lack of sufficient financial or human resources for NSAs and RBs, whereas only 34% indicated this as an issue for Notified Bodies. These figures are summarised in the figure below.

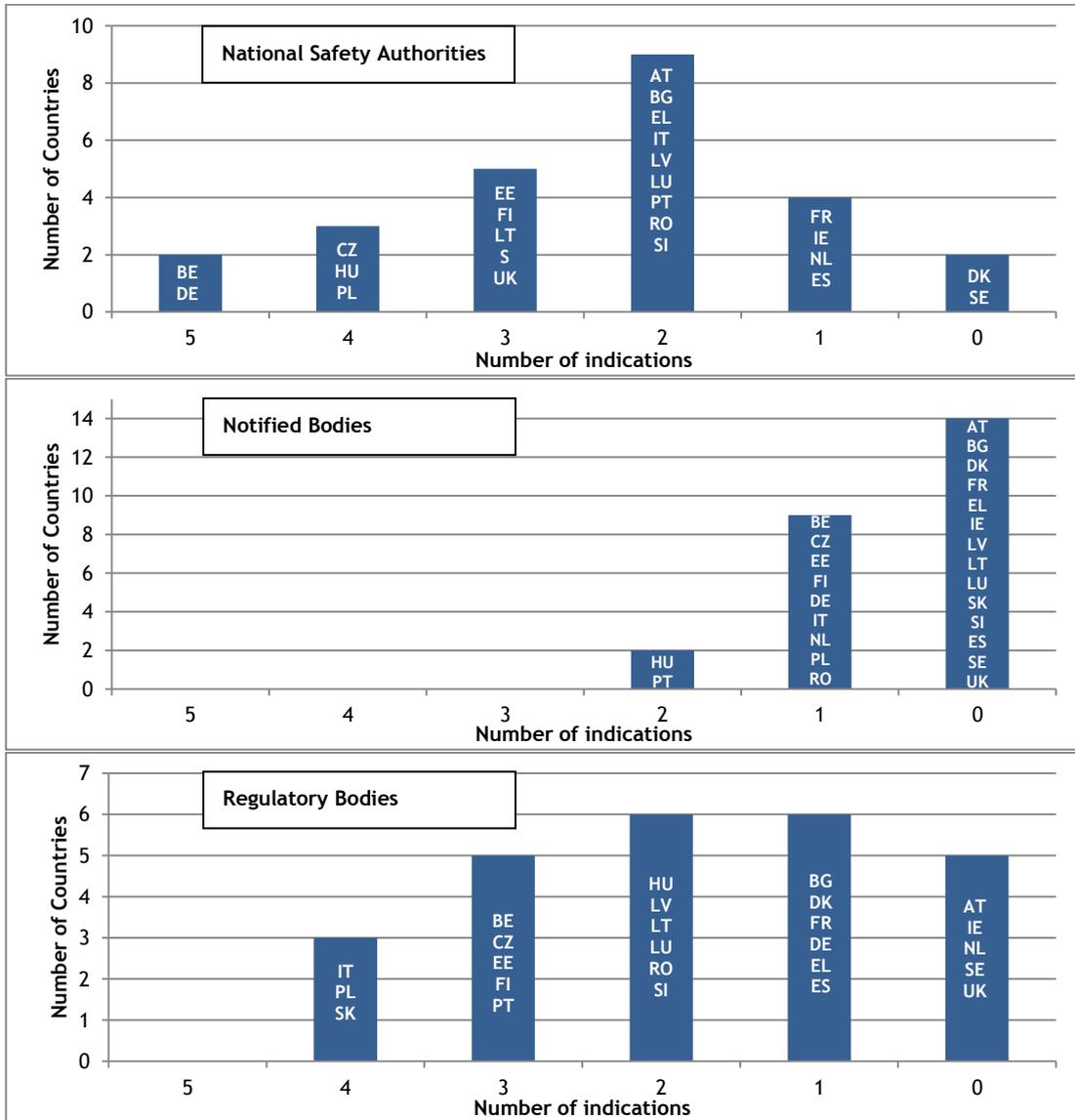
APPENDIX FIGURE B.10 LACK OF FINANCIAL AND HUMAN RESOURCES OF NATIONAL BODIES: OVERVIEW OF STAKEHOLDERS’RESPONSES



B2.25 The figure below sets out the number of times that each of these three national institutions in Member States were identified in the survey as lacking sufficient resources in the three institutions.

APPENDIX FIGURE B.11 LACK OF FINANCIAL AND HUMAN RESOURCES OF NATIONAL BODIES: SITUATION BY MEMBER STATE

MEMBER STATES MENTIONED DURING THE STAKEHOLDERS CONSULTATION



B2.26 The lack of financial and human resources has been identified as an issue for NSAs in relation to Germany and Belgium, and in the case of Regulatory Bodies for Italy, Poland and Slovakia. Member States where this issue seems not to apply are Denmark and Sweden in the case of NSAs, and Austria, Ireland, Netherlands, Sweden and United Kingdom in the case of RBs.

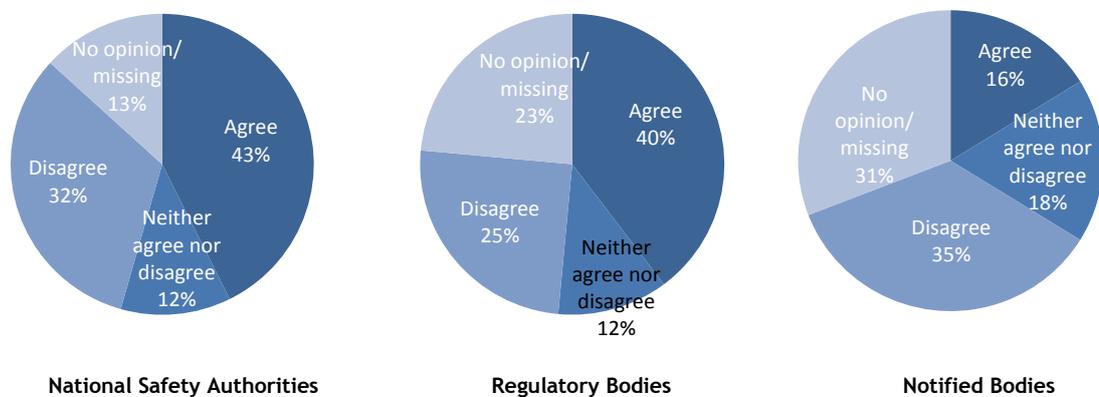
B2.27 One interviewed NSA complained that they would need to employ more staff because the number of tasks has increased due to the number of new entities that require supervision by the NSA in the areas of maintenance, training centres and examiners.

- B2.28 Some stakeholders identified the lack of staff and/or financial resources in national bodies as affecting the proper implementation of EU legislation in this field and in turn the entrance of new operators.
- B2.29 As regards Notified Bodies, a small percentage of respondents indicated issues related with human and financial resources in NoBos, but very few respondents mentioned this problem.

Insufficient independence of the national bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry

- B2.30 The majority of respondents indicated that there is a lack of independence in national bodies, as indicated in the figure below.

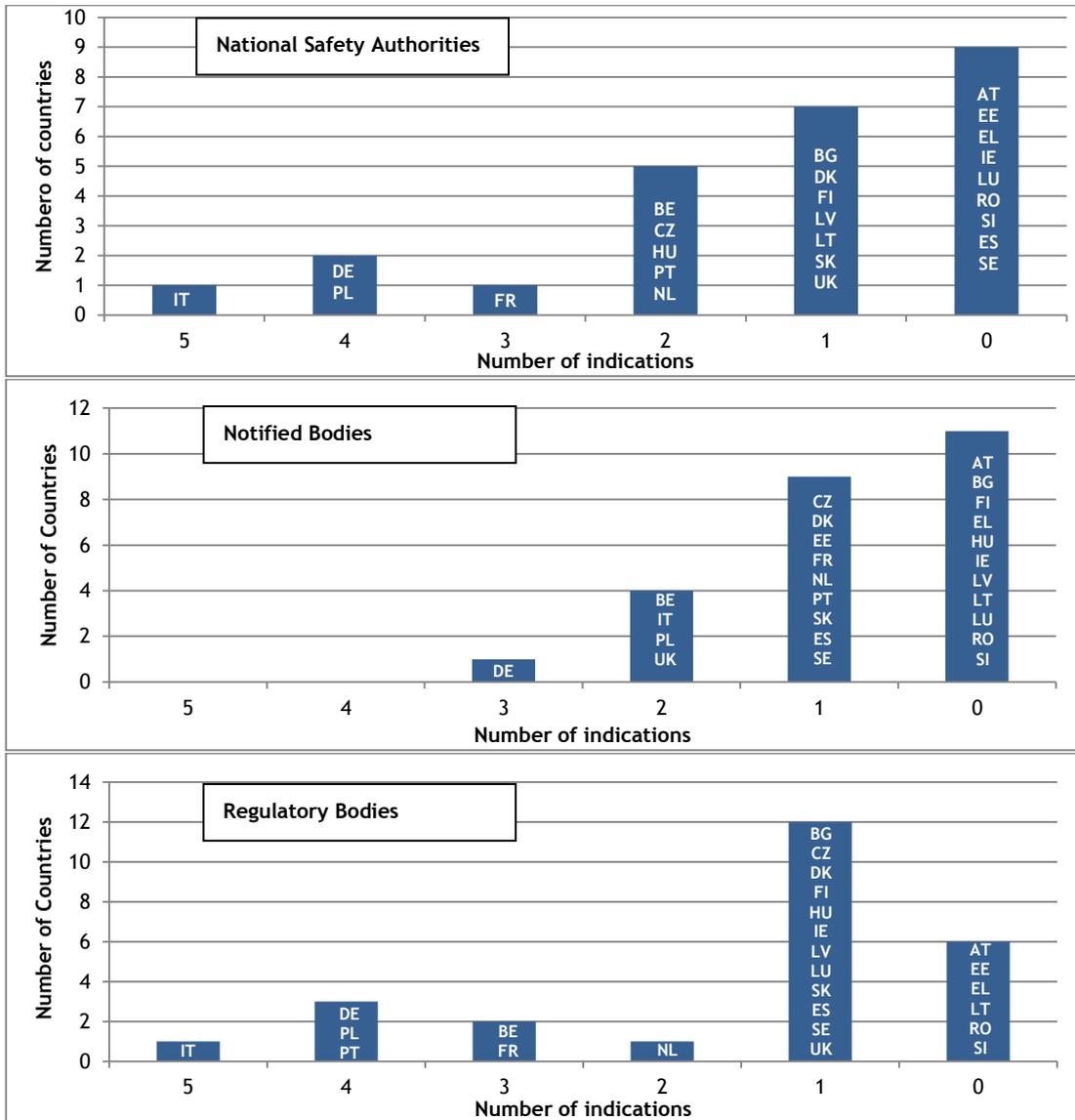
APPENDIX FIGURE B.12 INSUFFICIENT INDEPENDENCE OF NATIONAL BODIES: OVERVIEW OF STAKEHOLDERS' RESPONSES



- B2.31 In general, the stakeholders expressed more concern about independence in the case of NSAs and RBs rather than NoBos: only 16% of the sample indicated independence as an issue for NoBos. Conversely, taking into account just the responses of those expressing a view, 52% of the sample indicated that lack of independence affects RBs, and 37% reported the same for NSAs.
- B2.32 However, the situation varies across Member States. Some respondents seemed to be particularly concerned about the insufficient independence of the NSAs in Italy, which was mentioned five times and also in Germany, Poland (four mentions each) and France (three mentions).
- B2.33 In Portugal, one stakeholder pointed out that due to insufficient technical resources in the NSA, some competences and powers are delegated to the infrastructure manager, particularly in areas related to railway infrastructure. In Slovakia, the poor independence of the NSA and the RB is attributed to the fact that the organisation is fully connected to the state budget through a budgetary chapter managed by the Ministry of Transport.
- B2.34 Although the independence of Notified Bodies does not seem to be a major issue, this point was mentioned three times in the case of Germany

APPENDIX FIGURE B.13 LACK OF INDEPENDENCE OF NATIONAL BODIES

MEMBER STATES MENTIONED DURING THE STAKEHOLDERS CONSULTATION



B2.35 By cross tabulating the responses of stakeholders to the on-line survey and to the case study interviews, it emerges that the lack of independence does not necessarily raise discrimination issues and difficulties for operators. For example, the German NSA and RB were indicated as being insufficiently independents in the on-line survey, although no discriminatory behaviour against new entrants was identified in the case study interviews.

B2.36 At the same time, the presence of full independence alone does not prevent the occurrence of discriminating practices. In Hungary, one stakeholder claimed that the NSA, although formally independent, is biased in favour of the incumbent RU when it takes major decisions and when conducting consultations with the industry representatives. In some cases, as in Poland, this might be due to NSAs or RBs hiring staff previously employed by the incumbent railway undertaking.

Inefficient functioning of the NSAs relating to the acceptance of safety certificates or authorisations for the placing into service

B2.37 More than half (58%) of the interviewed stakeholders (excluding interested parties) agreed that the granting of safety certificates to rail operators by the NSAs and the authorisation of placing into service of rail systems and vehicles is currently too slow. As indicated in the figure below, Germany was mentioned in this respect seven times, followed by France with five mentions and Poland with four. Some respondents indicated that the poor performance of Germany is due to delays caused by the national NSA.

APPENDIX FIGURE B.4 INEFFICIENT FUNCTIONING OF NSAS ON THE RELEASE OR ACCEPTANCE OF SAFETY CERTIFICATES OR AUTHORISATIONS FOR THE PLACING INTO SERVICE

MEMBER STATES MENTIONED DURING THE STAKEHOLDERS CONSULTATION



B2.38 It was the general view amongst stakeholders that the situation varies among Member States, and depending on the type of authorisation required. For example one respondent pointed out that Sweden has problems with the authorisation to place non-TSI conforming vehicles in service, as the process is lengthy and costly for the applicant.

- B2.39 Slow processes were attributed to both lack of human resources of national bodies and limited knowledge of the requirements among applicants.
- B2.40 According to one stakeholder (a national institution) it is crucial to establish common accreditation programs in terms of specific TSIs for Directive 2008/57/EC, the “current system disturbs competition and makes it possible for incompetent entities to function in the market”.
- B2.41 One NSA pointed out that granting certificates and authorisations is a complex and long process also because “...we are still a long way from ideal interoperability” and “the NSA must pay close attention to all criteria guaranteeing operational safety”.
- B2.42 Rolling stock manufacturers emphasised the long duration of procedures, however one stakeholder mentioned: “the authorisation process could run more efficiently if constructors worked more closely with regulations from the beginning, whether that be from an administrative or a technical point of view. It can be noted that the NSAs are still often confronted with problems that should not reach that level”.
- B2.43 In Germany railway undertakings complained that the national NSA’s procedure for issuing safety certificates is too slow. In particular, since there is no feedback from the NSA on submitted documentation, RUs have no chance to correct their applications in the course of the process. The rolling stock authorisation process is becoming an issue of increasing importance for stakeholders. According to RUs and manufacturers, this has become more and more time consuming and demanding. For example, an RU indicated that locomotives which have been used for the past 30 years in Germany now need new authorisation.
- B2.44 As regard the mutual acceptance of safety certificates, 61% of the sample (excluding interested parties) indicated that some NSAs are reluctant to accept safety certificates or authorisations for the placing in service of railway vehicles and subsystems granted by other NSAs. However, few examples were provided as regards the Member State of concern, as only 12 respondents mentioned a Member State where this was the case. Respondents mentioned Germany six times, followed by France and Italy with three mentions each, and Poland and Hungary with two mentions.
- B2.45 The case study interviews in Poland provided examples of problems in rolling stock authorisation. Freightliner PL, a private freight operator, sought to use Class 66 locomotives on the Polish network.
- B2.46 An RU indicated that in Italy the wheelsets of a locomotive which already had authorisations in five other Member States had to be tested again. A stakeholder pointed out that when it tried to enter the Spanish market “the Spanish authorities were reluctant to accept its vehicles” and there was a great deal of bureaucracy involved, claiming that “this implies additional costs for the operator”.
- B2.47 According to a national body:
- “the problem is based on different transposition of EU directives in MS leading to slightly different requirements for the certification and authorisation processes, different safety cultures and different level of*

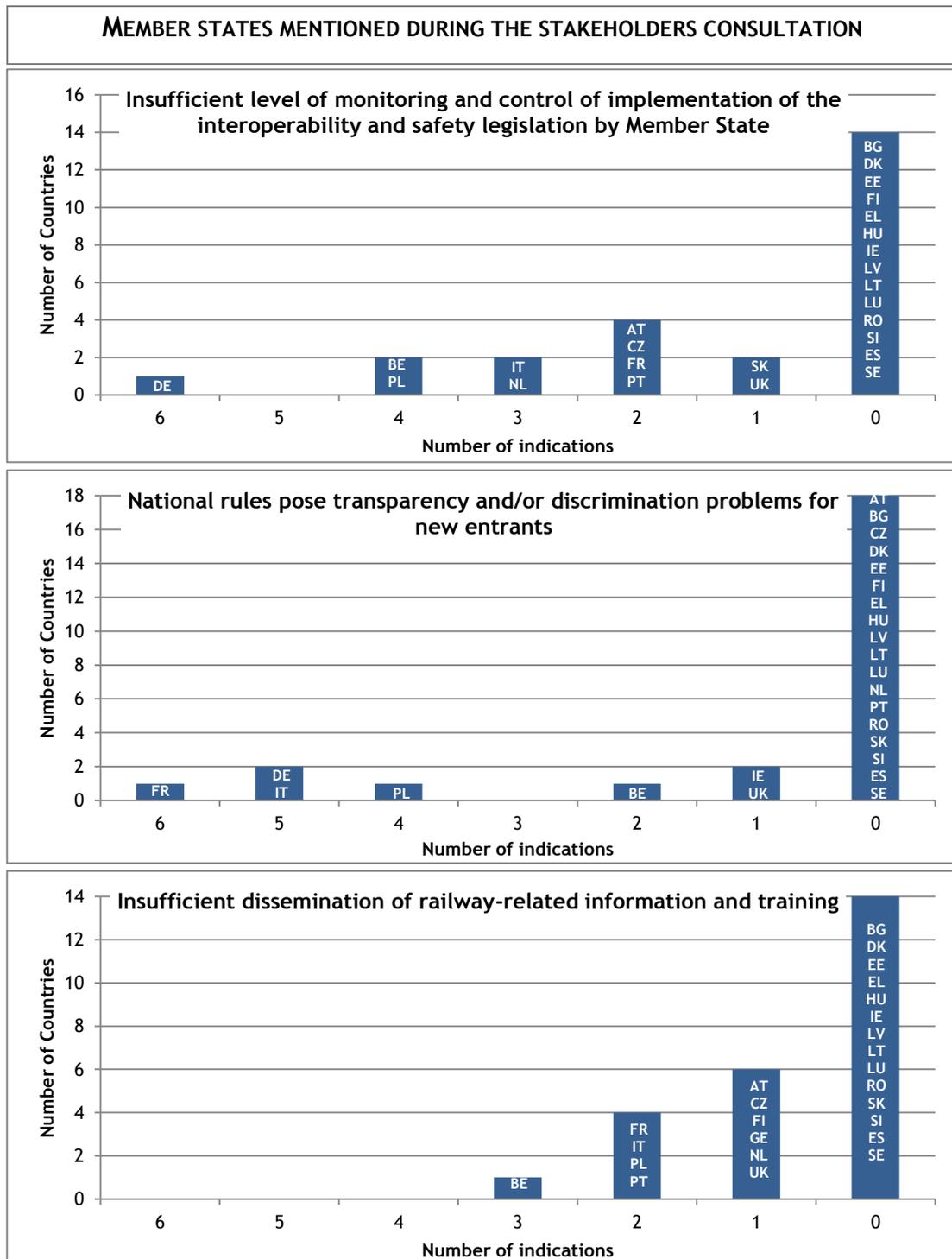
experience in the processes. Besides this, there are still huge differences in the quality of infrastructure and fixed installations that require additional checks”.

- B2.48 In their opinion “this problem will disappear along with market development” providing that there is “better quality of transposition and wider use of accreditation to verify competence against unified standards”.

Other elements

- B2.49 Most respondents (54% of those expressing an opinion) agreed that the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient. This problem was indicated specifically for Germany (mentioned six times), Belgium and Poland (mentioned four times each), Italy and the Netherlands (mentioned three times each). By contrast, in 14 Member States this was not mentioned as a specific issue.
- B2.50 Survey respondents were also concerned about the transparency and discrimination problems posed by national technical and safety rules. Nearly half (46%) of those that expressed a view on this agreed that this is an issue. Among Member States, France was mentioned six times, followed by Germany and Italy (five mentions each) and Poland (four mentions). Respondents also mentioned Ireland and the United Kingdom twice and Belgium once. The rest of Member States did not receive any specific mention in this regard, and some were specifically mentioned as not showing any transparency or discrimination problems (e.g. Slovenia, Bulgaria, Czech Republic, Romania).
- B2.51 In the Hungarian case study, both the NSA and the railway undertaking interviewed indicated transparency and discrimination problems posed by national technical and safety rules as an issue, also because the translation of EU legislation is generally poor and leaves substantial gaps. The railway undertaking also mentioned that there are diverging interpretations of the same rule from different institutions and that, as a result, they incur time and financial losses, due to lack of clarity and consistency of rules and interpretations generated by the imprecisions and holes left in domestic legislation.
- B2.52 In Italy, stakeholders expressed concern about the proliferation of national rules following the rail accident in Viareggio and that this is increasing their cost base. One respondent also claimed that in this country “national technical rules are often changed and not communicated in an official way”.

APPENDIX FIGURE B.5 OTHER ELEMENTS



B2.53 The majority of respondents indicated the insufficient level of dissemination of railway-related information and training within the EU and between EU member states as an issue.

B2.54 One stakeholder indicated that “there is too little consultation between the Ministries who are responsible for transposing directives”. Another one stated that

the biggest problems are the high number of new rules issued within a very short time and the great amount of detail regulated today by the EU.

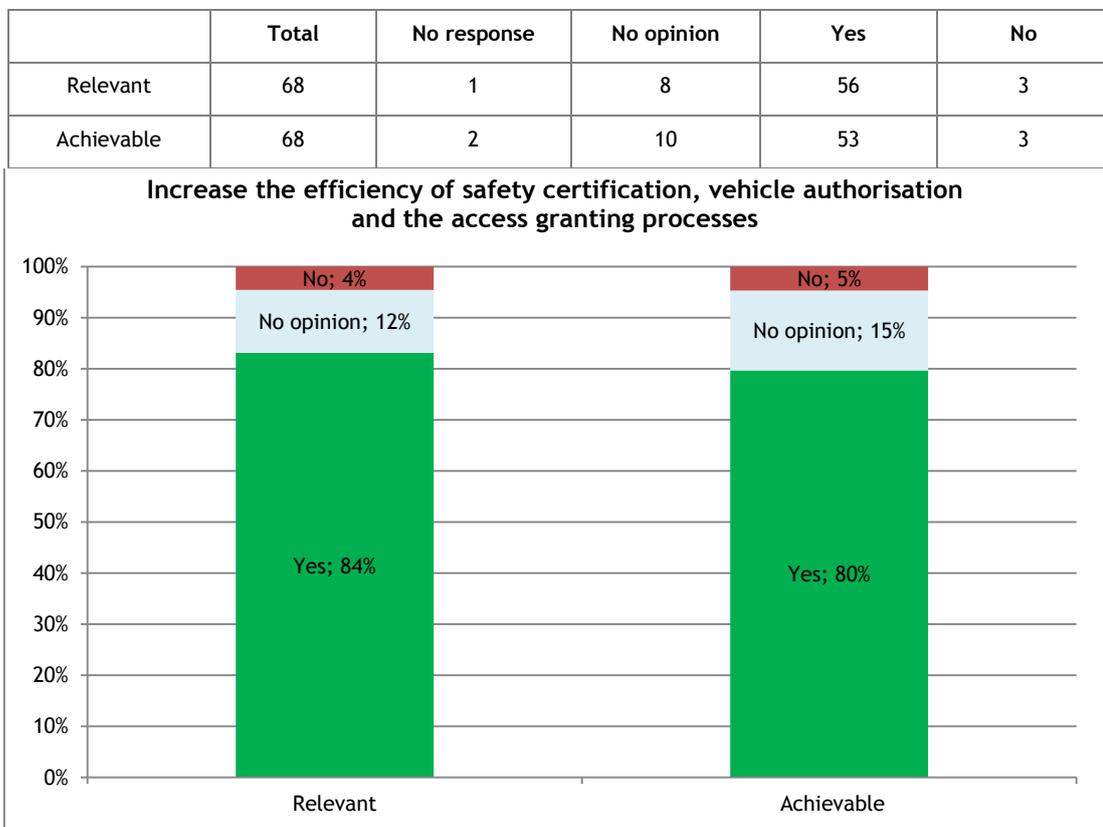
- B2.55 Some respondents suggested ways to improve the current way of disseminating railway related information and training in the EU, suggesting that ERA should take this role and work closely with national institutions to support them with information and tailored training tailored . For example, ERA could hold workshops and training oriented to one Member State or several neighbouring States who face similar problems. In the view of this stakeholder, “the training should refer to real case studies that could be solved by different groups of actors (NSAs, RUs, IMs)” and “the role of NSAs in this field should be more precisely described in EU legislation”, supporting his argument with the fact that current provisions of art 16(2,f) of the Safety Directive have not been properly transposed into Polish law due to a lack of understanding of this provision.

B3 RESPONSES TO THE QUESTIONS ON PROBLEM DRIVERS

The specific objectives

- B3.1 The figures below show the responses that we have received in relation to the three questions looking at the specific objectives.
- B3.2 The first figure below summarises responses to the following question related to the First Specific Objective:
- B3.3 “Please express your view on the following operational objectives: Increase the efficiency of safety certification, vehicle authorisation and the access granting processes.” Stakeholders were asked to comment as to whether this objective was relevant and/or achievable.

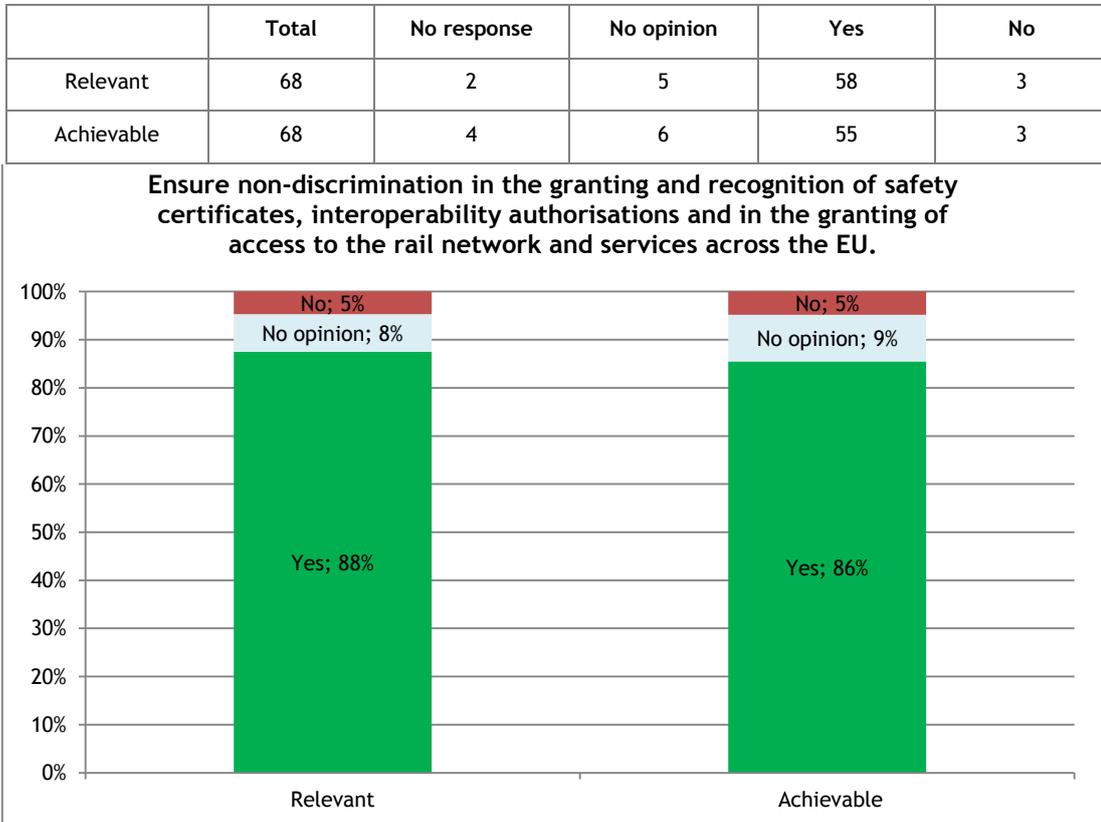
APPENDIX FIGURE B.16 RESPONSES TO SPECIFIC OBJECTIVE 1 QUESTION



- B3.4 The majority of the respondents agreed that an increase in the efficiency of safety certification, vehicle authorisation and the access granting process is a relevant objective. Only 4% of those responding had the view that this objective is not relevant. The chart paints almost the same picture with regard to the question of whether this objective is achievable. Almost 80% of those responding had the opinion that this objective could be achieved, in contrast to 5% considering this objective as not achievable.
- B3.5 The second figure below summarises responses to the following question related to the Second Specific Objective:

“Please express your view on the following operational objectives: Ensure non-discrimination in the granting and recognition of safety certificates, interoperability authorisations and in the granting of access to the rail network and services across the EU.”

APPENDIX FIGURE B.17 RESPONSES TO SPECIFIC OBJECTIVE 2 QUESTION

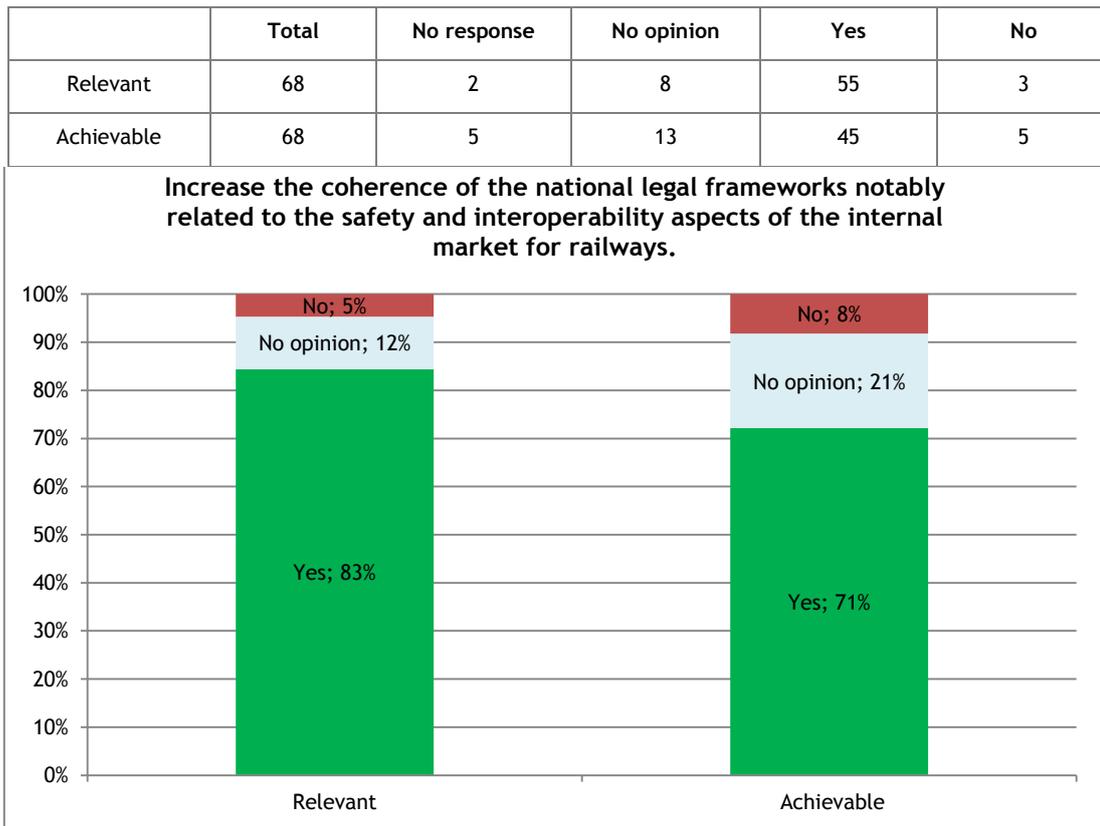


B3.6 The response rate for this question was also high given that only two of the survey respondents did not answer the question on the relevance and only four on the achievability of this objective. Of those responding, by far the majority responded with the view that ensuring non-discrimination with regard to safety certification, interoperability authorisations and access to rail network is a relevant (88%) and also achievable (86%) objective.

B3.7 The third figure below summarises responses to the following question related to the Third Specific Objective:

“Please express your view on the following operational objectives: Increase the coherence of the national legal frameworks notably related to the safety and interoperability aspects of the internal market for railways.”

APPENDIX FIGURE B.18 RESPONSES TO SPECIFIC OBJECTIVE 3 QUESTION



B3.8 The question on the relevance of this objective had a very high response rate with only two of 68 surveyed giving no response. The majority (83%) of those providing a response to the question agreed that increasing the coherence of the national legal frameworks is a relevant objective. Of the responses to the question on the achievability of this objective, a smaller majority considered this objective achievable. Of those responding 21% did not state an opinion and 8% had the view that this objective was not achievable.

B3.9 This stakeholder evidence supports the view that the three specific objectives are appropriate for the study. Given the high degree of stakeholder consensus that these specific objectives are both relevant and achievable and the manner in which they seek to address the problem drivers set out in the previous chapter, we believe that these specific objectives are appropriate and reflect correctly the requirements of the main objective. We do not consider it practical to define quantitative or qualitative indicators could accurately measure the progress of achievement of these objectives and the majority of the monitoring would need to be focused on the operational objectives discussed below.

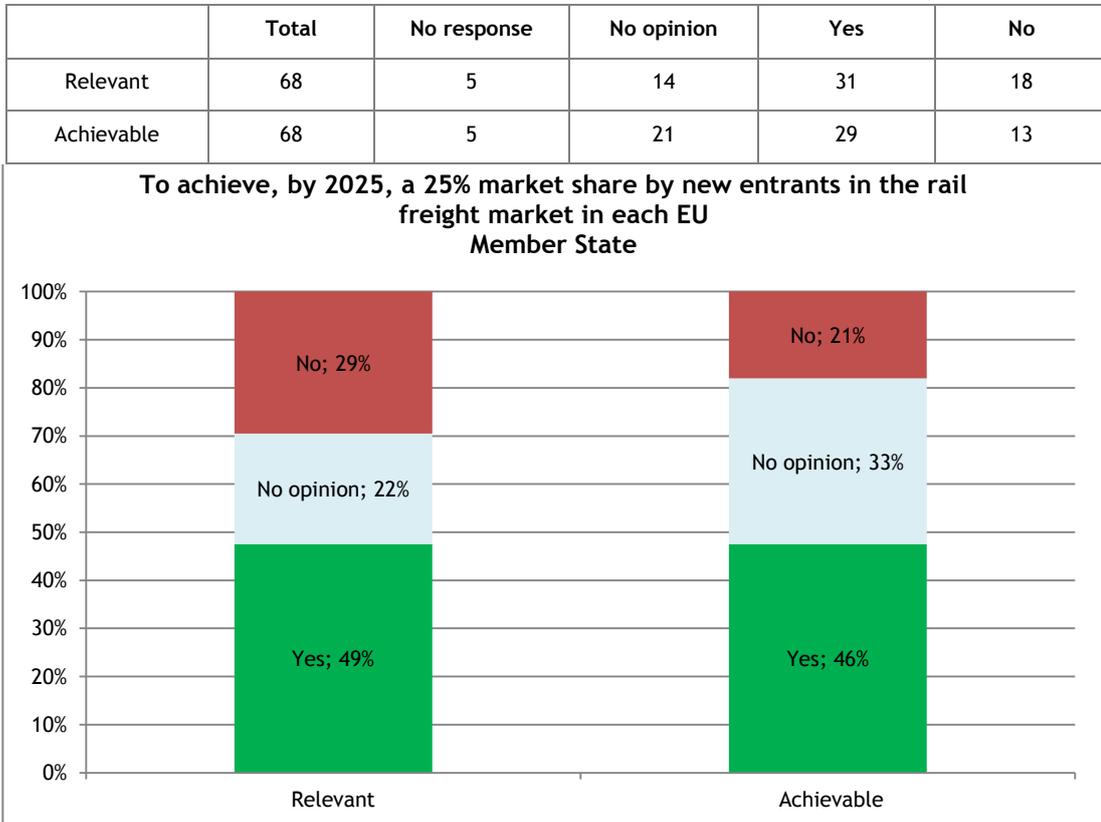
Operational objectives

B3.10 We consulted in the survey on the three operational objectives as described above and the results from the survey for the relevant questions are set out below.

B3.11 In relation to the first operational objective, stakeholders were asked to respond to the following question:

“Please express your view on the following operational objectives: To achieve, by 2025, a 25% market share by new entrants in the rail freight market in each EU Member State (where appropriate).”

APPENDIX FIGURE B.19 RESPONSES TO OPERATIONAL OBJECTIVE 1 QUESTION



B3.12 Both the question on the relevance and on the achievability of this objective had a response rate of 93% implying that in each case five of the surveyed stakeholders did not give an answer. Of those responding, a high number stated that they had no opinion on the relevance (22%) and no opinion on the achievability (33%). The results of the survey show that only 49% of the respondents provided a positive view that a 25% market share of new entrants in the freight market is a relevant and achievable objective. In contrast, 29% of the respondents considered the objective as not relevant and 21% as not achievable. Given the more favourable support that other questions in the survey have received this objective may not be the most appropriate for the analysis.

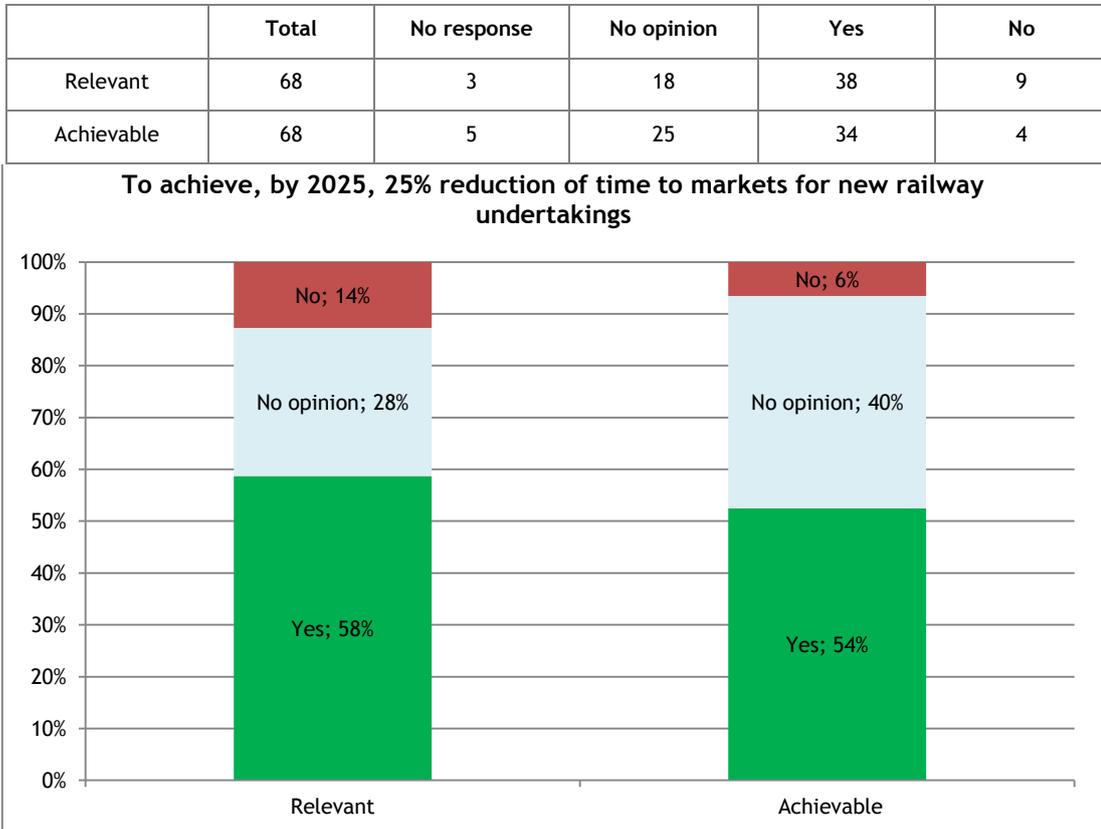
B3.13 In relation to the second operational objective, stakeholders were asked to respond to the following question:

“Please express your view on the following operational objectives: To achieve, by 2025, 25% reduction of time to markets for new railway undertakings.”

B3.14 The response rate for this question was very high at to over 90%. Of those responding, however, 28% stated no opinion on the relevance of the objective to reduce time to markets for new entrants. Another 14% viewed the objective as not

relevant. 58% stated that the objective was relevant. Of the respondents, only 6% had the view that this objective was not achievable, but also only 54% opined that it was.

APPENDIX FIGURE B.20 RESPONSES TO OPERATIONAL OBJECTIVE 2 QUESTION

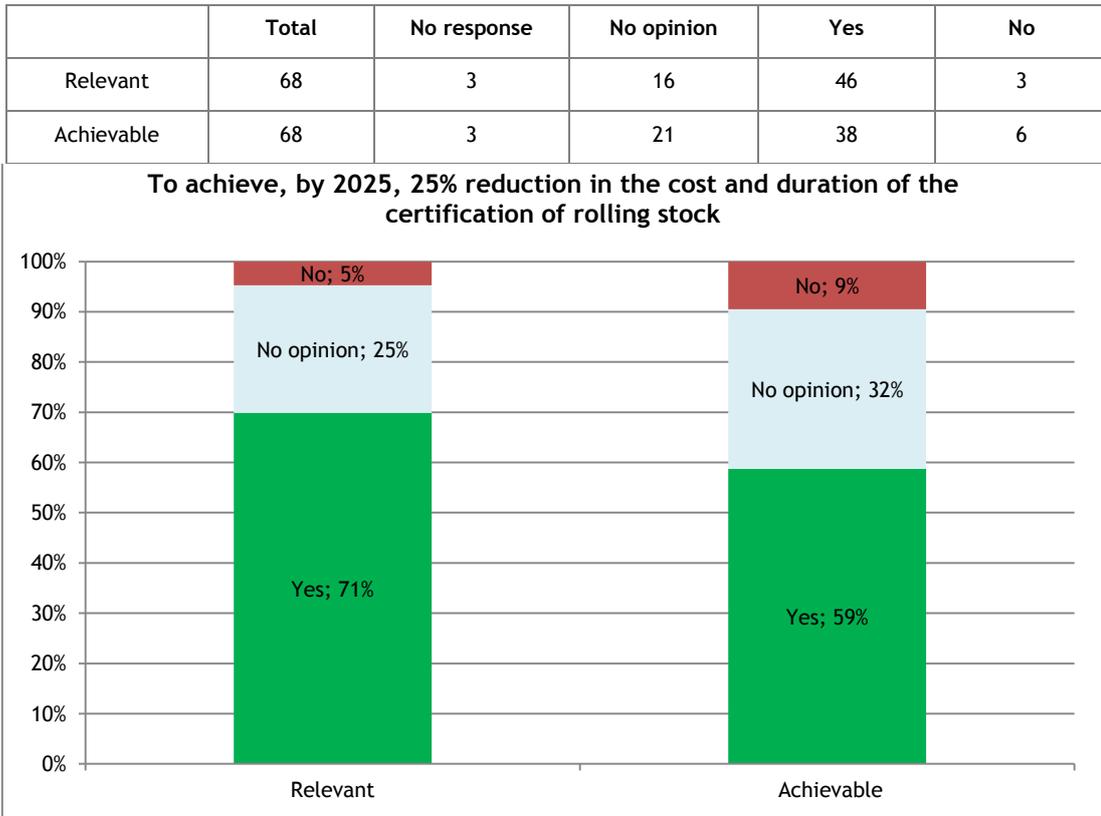


B3.15 In relation to the third operational objective, stakeholders were asked to respond to the following question:

"Please express your view on the following operational objectives: To achieve, by 2025, 25% reduction in the cost and duration of the certification of rolling stock."

B3.16 The response rate for this question was also high. About 76% of those surveyed expressed an opinion and 71% of those considered that the reduction in the cost and duration of the certification of rolling stock is a relevant objective whilst 25% of those responding had no opinion. However, less than 60% of respondents had the view that this objective could be achieved. About 9% stated explicitly that they perceive the objective as not achievable.

APPENDIX FIGURE B. 21 RESPONSES TO OPERATIONAL OBJECTIVE 3 QUESTION



B3.17 There was relatively strong stakeholder support for objectives 2 and 3, with only a small percentage of negative responses. However, the results for the first objective were less conclusive, with less than half stating that the objective is relevant. It should be noted though that some of those who responded “no” were incumbent rail operators whose self-interest could be expected to illicit such a response.

B4 RESPONSES TO THE QUESTIONS ON POLICY MEASURES

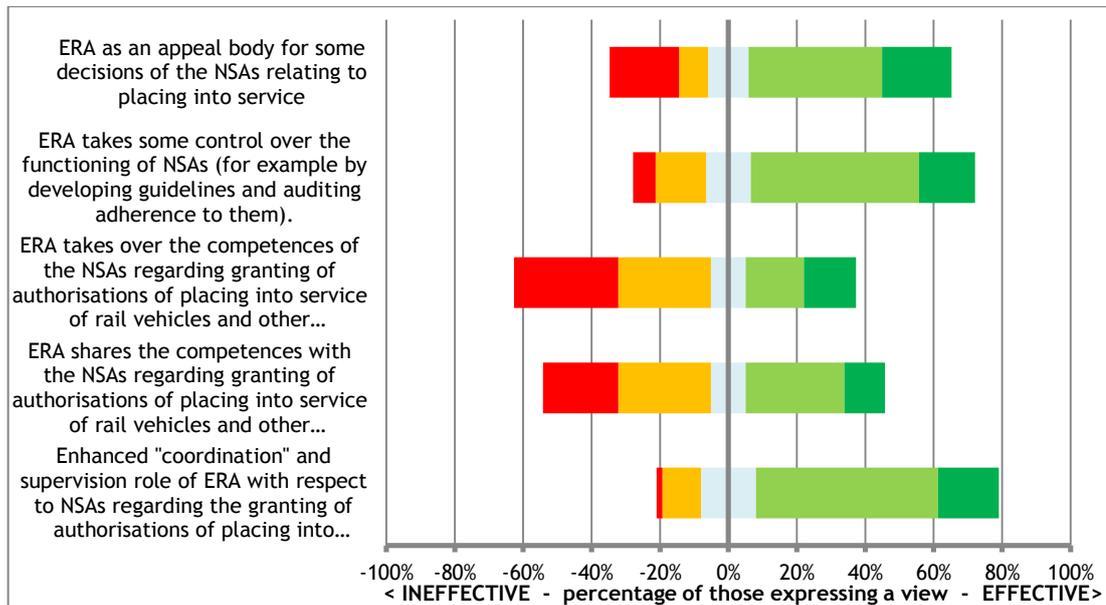
Options related to NSA’s - placing into service

B4.1 Question 10 i) of the survey asked:

"To what extent do you think the following options would be effective in improving the integration of the EU railway market: i) Options related to NSAs - placing into service"?

B4.2 The results of the survey were the following:

APPENDIX FIGURE B.22 Q10 - I) OPTIONS RELATED TO NSA’S - PLACING INTO SERVICE



B4.3 The response rate was very high with only 2 out of 68 surveyed not answering this question.

B4.4 The highest level of disagreement was in relation to the options where the Agency should take over or share key competences of the NSAs in terms of rail vehicle certification.

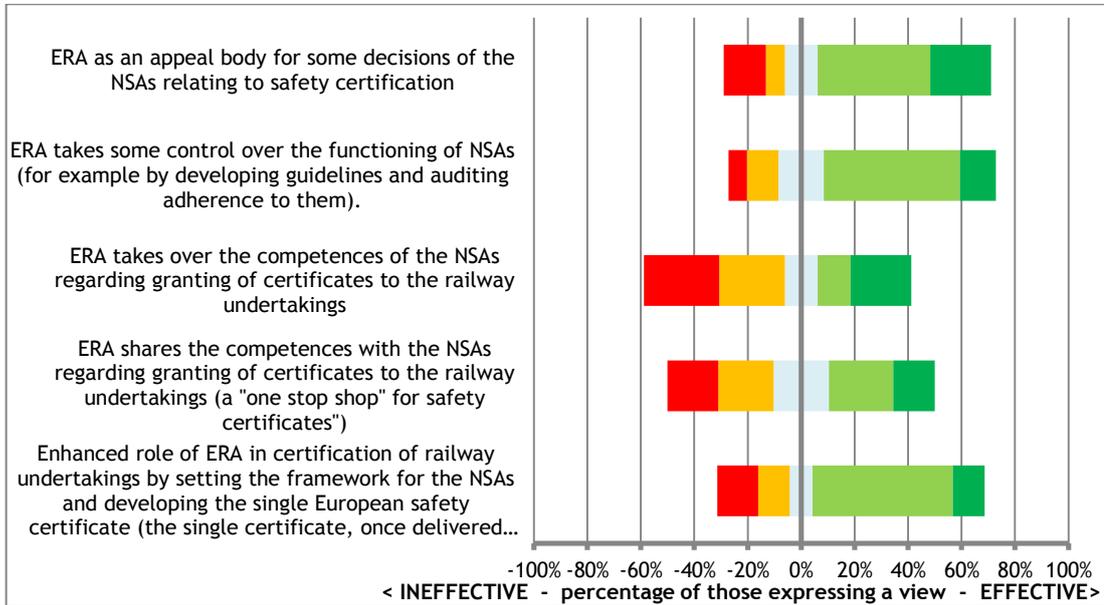
B4.5 The highest level of agreement was with the options that the Agency should take a greater role in the coordination and supervision of the NSAs and take some control over the NSAs, for example by developing guidelines. A majority agreed with the option that the Agency should act as an appeal body for decisions taken by the NSA. However, also a relatively high number of respondents perceived that option as very ineffective.

Options related to NSAs - safety certification

B4.6 The figure below summarises responses to survey Question 10 ii):

"To what extent do you think the following options would be effective in improving the integration of the EU railway market: ii) Options related to NSAs - safety certification"

APPENDIX FIGURE B.23 Q10 - II) OPTIONS RELATED TO NSAS - SAFETY CERTIFICATION

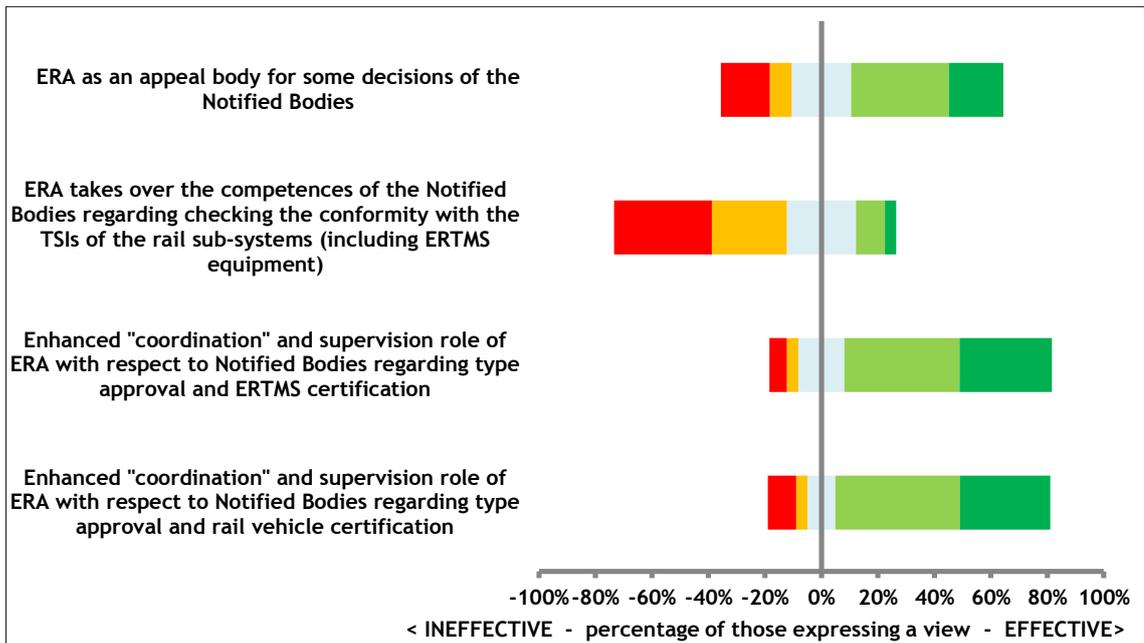


B4.7 The respondents generally agreed that the Agency should act as an appeal body and take some control over the functioning of the NSAs, for example by the development of guidelines and auditing adherence to them. The proposed option that the Agency should take over the competences of the NSAs regarding granting of certificates received the most negative response.

B4.8 The figure below summarises responses to survey Question 10 iii):

"To what extent do you think the following options would be effective in improving the integration of the EU railway market: iii) Options related to Notified Bodies"

APPENDIX FIGURE B.24 Q10 - III) OPTIONS RELATED TO NOTIFIED BODIES

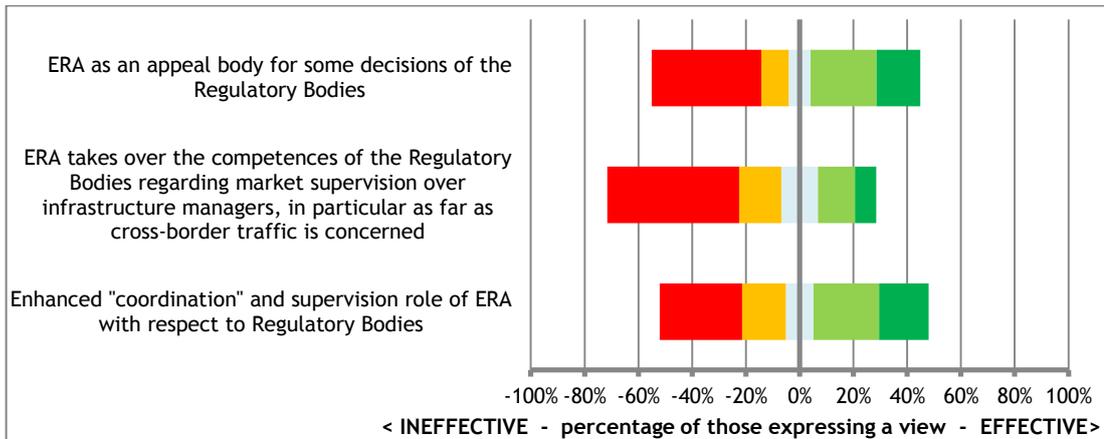


B4.9 The respondents expressed the view that an enhanced ‘coordination’ and supervision role of the Agency with respect to Notified Bodies would have a positive effect on an improvement of the integration of the EU railway market. A majority also agreed that the Agency should act as an appeal body for some decisions of the Notified Bodies. In contrast, survey respondents disagreed most with the proposals that the Agency should take over the competences of the Notified Bodies.

Options related to Regulatory Bodies

B4.10 The figure below summarises responses to survey Question 10 iv):
 "To what extent do you think the following options would be effective in improving the integration of the EU railway market: iv) Options related to Regulatory Bodies"

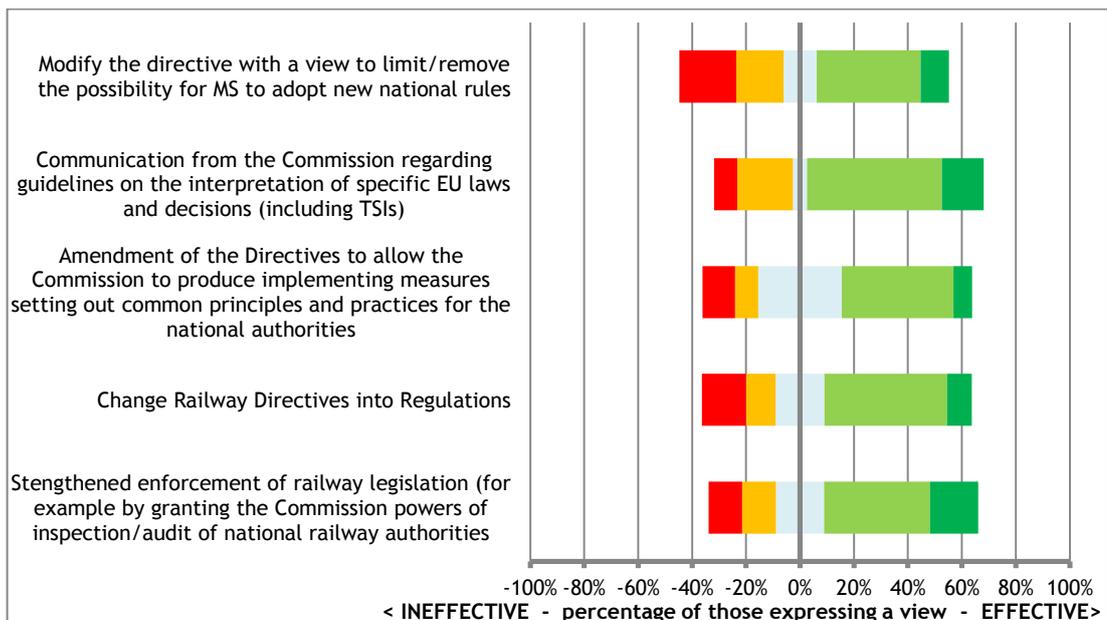
APPENDIX FIGURE B.25 Q10 - IV) OPTIONS RELATED TO REGULATORY BODIES



B4.11 Overall, survey respondents considered the proposed options related to Regulatory Bodies as not very effective in improving the integration of the EU railway market. The respondents disagreed most with the proposal that the Agency should take over the competences of the Regulatory Bodies regarding market supervision over Infrastructure Managers.

B4.12 The figure below summarises responses to survey Question 10 v):
 "To what extent do you think the following options would be effective in improving the integration of the EU railway market: v) Options to be carried out by the Commission"

APPENDIX FIGURE B.26 Q10 - V) OPTIONS TO BE CARRIED OUT BY THE COMMISSION



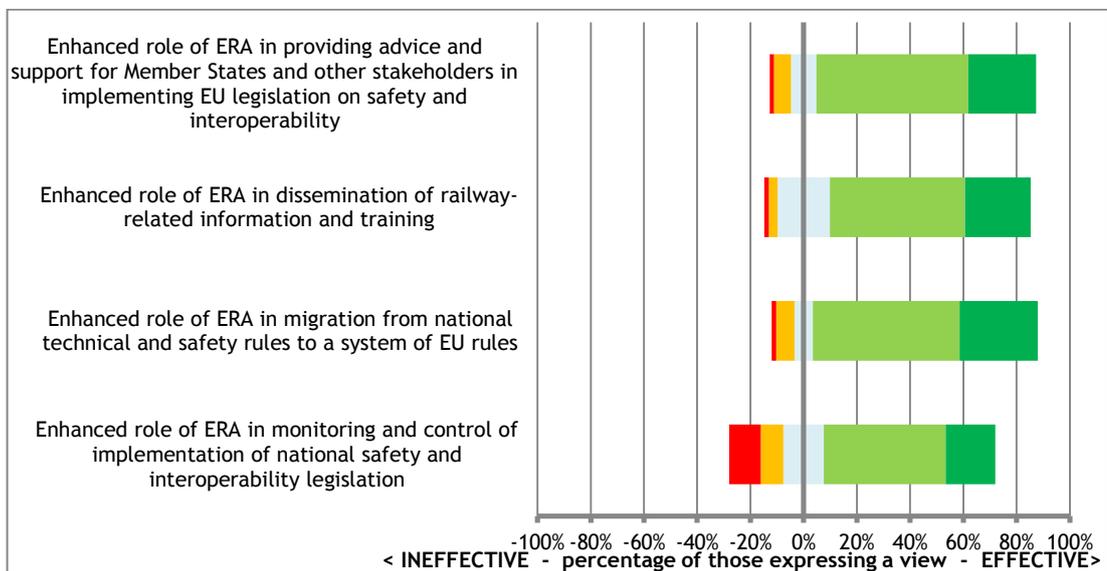
B4.13 Regarding the options to be carried out by the Commission, respondents had the most positive view on the option that the Commission should take over an enhanced role in the interpretation of specific EU laws, in particular with guidelines. Respondents also agreed that a strengthening of the enforcement of railway legislation by the Commission was an ‘effective’ or ‘very effective’ option. The option on limiting the possibility for Member States to adopt new national rules obtained the most negative responses.

Other options

B4.14 The figure below summarises responses to survey Question 10 vi):

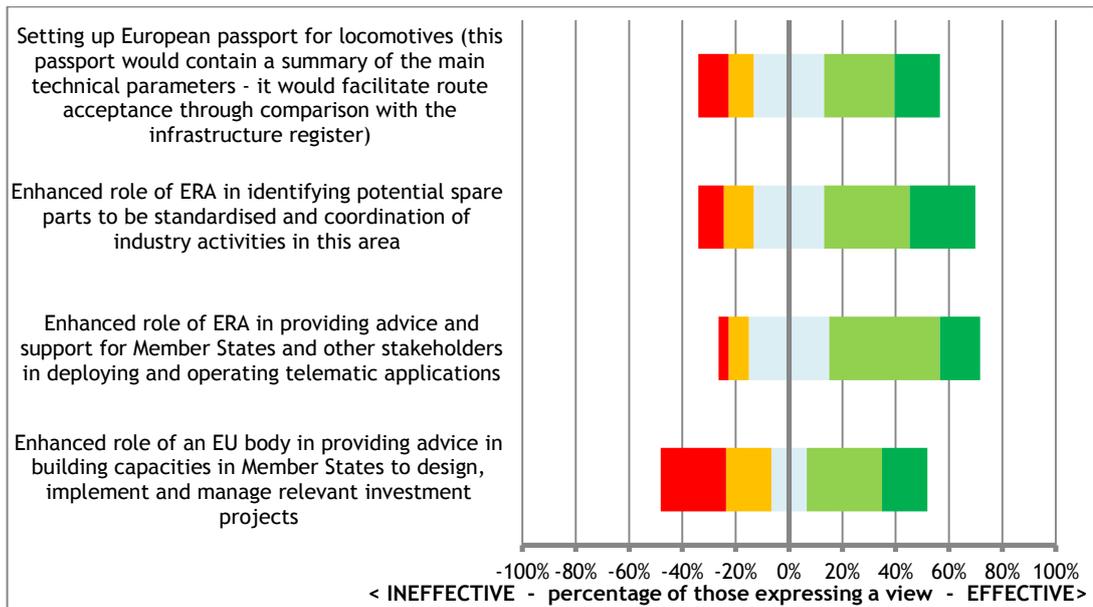
"To what extent do you think the following options would be effective in improving the integration of the EU railway market: vi) Other options"

APPENDIX FIGURE B.27 Q10 - VI) OTHER OPTIONS 1-4



B4.15 The majority of the respondents had a positive opinion on the proposed options. They agreed that the Agency should take over tasks regarding support to the implementation of EU legislation, dissemination of related information and the monitoring of its implementation.

APPENDIX FIGURE B.25 Q10 - VI) OTHER OPTIONS 5-8



B4.16 Respondents generally agreed with the proposed option that the Agency should take an enhanced role in the deployment and operation of telematic applications in Member States. There was also a majority that had the view that a European passport for locomotives and an enhanced role of the Agency in standardising parts for rail vehicles were effective options for an improvement in the integration of the EU railway market. There were less positive views on the option to engage an EU body with the provision of advice to Member States to build up their capacities to carry out relevant investment projects.

APPENDIX

C

SELECTION OF MEASURES

C1 SELECTION OF MEASURES

Selection of Measures

C1.1 In order to be able to define the appropriate subset of policy options the analysis needs to initially select the measures to be taken forward for further analysis. The process we have followed to select the measures is explained below.

Qualitative review/assessment of measures

C1.2 As agreed with the Commission, the qualitative analysis has primarily been undertaken for the policy options (or packages) as a whole, but we set out below a high level analysis of the individual measures based on our understanding of the market and desktop research on the likely impact of each of these single measures. For this we have also reviewed documentation prepared by the Agency on its future role although do not base our analysis solely on the information included in that document.

C1.3 In carrying out this analysis we have considered the following aspects:

- Whether the measures are likely to be effective in terms of the requirements of the specific objectives;
- Whether the measures can be activated within a short amount of time, that is within the timescales of the project; and
- The impact on costs for national institutions.

C1.4 The bullet points above have been elaborated in more detail in the table below around 4 key criteria: Effectiveness; Time to full effectiveness; Impact on national institutions; and consistency with legal framework. The classification used for each category is based on our understanding of the industry and its workings as well as the discussions that we have had with stakeholders in the interviews.

APPENDIX TABLE C.1 CRITERIA FOR INITIAL QUALITATIVE ASSESSMENT

Criteria	Description
Effectiveness	<p>What impact does each measure have on the three specific objectives?</p> <ul style="list-style-type: none"> • Increase the efficiency of safety certification, vehicle authorisation & access granting processes; • Ensure non-discrimination in the granting and recognition of safety certificates, interoperability authorisations and in the granting of access to the rail network and services across the EU; and • Increase the coherence of the national legal frameworks, notably related to the safety & interoperability aspects of the internal market for railways <p>Classified as High/Medium/Low/None. If all three objectives get “None” then that measure is excluded.</p>
Time to full effectiveness	<p>What are the timescales for the achievement of the three specific objectives above?</p> <p>Classified as Short/Medium/Long/Very long - the last leads to an automatic exclusion</p>
Impact on NSAs	<p>What is the impact on NSAs within the rail sector? Classified as High/Medium/Low/None</p>

C1.5 Based on these criteria, the figure below shows the results of our preliminary review of the measures.

APPENDIX FIGURE C.1 INITIAL QUALITATIVE EVALUATION OF MEASURES

MEASURES	Description of Option	Effectiveness			Time to full effectiveness	Effect on national institutions	Should the measure be included?
		Increase efficiency of safety certification & vehicle authorisation	Ensure non-discrimination in the granting of safety certificates & interoperability	Increase coherence of national legal framework			
2.1.1	Enhanced role of ERA in certification through the setting of an appropriate framework & developing the single European railway certificate.	HIGH	LOW	NONE	SHORT	LOW	YES
2.1.2	Enhanced "coordination" and supervision role of ERA with respect to NSAs regarding the granting of authorisations of placing into service.	LOW	LOW	LOW	SHORT	LOW	YES
2.1.3	Enhanced "coordination" and supervision role of ERA with respect to NoBos regarding type approval and rail vehicle certification.	LOW	LOW	LOW	MEDIUM	MEDIUM	YES
2.1.4	Enhanced "coordination" and supervision role of ERA with respect to Notified Bodies regarding type approval and ERTMS certification.	LOW	LOW	LOW	MEDIUM	MEDIUM	YES
2.1.5	Enhanced "coordination" and supervision role of ERA with respect to Regulatory Bodies (depending on developments in the rail recast).	NONE	NONE	NONE	SHORT	HIGH	NO
2.1.6	Control by ERA over the functioning of NSAs (for example by developing guidelines and auditing adherence to them).	LOW	LOW	LOW	SHORT	MEDIUM	YES
2.2.1	ERA takes over the competences of the NSAs regarding granting of certificates to the railway undertakings.	HIGH	HIGH	NONE	MEDIUM	MEDIUM	YES
2.2.2	ERA takes over the competences of the NSAs regarding granting of authorisations of placing into service of rail vehicles and other sub-systems.	HIGH	HIGH	NONE	LONG	HIGH	YES
2.2.3	ERA takes over the competences of the Notified Bodies regarding checking the conformity with the TSIs of the rail sub-systems (including ERTMS equipment).	HIGH	HIGH	NONE	LONG	HIGH	YES
2.2.4	ERA takes over the competences of the Regulatory Bodies regarding supervision over infrastructure managers, in particular as far as cross-border traffic is concerned (subject to the discussion on the recast of the first railway package).	NONE	NONE	NONE	LONG	HIGH	NO
2.2.5	ERA shares the competences with the NSAs regarding granting of certificates to the railway undertakings (a "one stop shop" for safety certificates").	MEDIUM	MEDIUM	LOW	MEDIUM	MEDIUM	YES
2.2.6	ERA shares the competences with the NSAs regarding granting of authorisations of placing into service of rail vehicles & other sub-systems (a "one stop shop" for interoperability authorisations): application sent to ERA, relevant NSAs are consulted, ERA takes decision.	MEDIUM	MEDIUM	LOW	MEDIUM	MEDIUM	YES
2.3	ERA as an appeal body for some decisions of the national authorities.	HIGH	HIGH	NONE	SHORT	LOW	YES
3.1	Strengthened action by the Commission in implementing the legislation.	MEDIUM	MEDIUM	LOW	SHORT	LOW	YES
3.2	Change of the railway directive into regulations.	MEDIUM	MEDIUM	HIGH	MEDIUM	HIGH	YES
3.3	Amendment of the railway directives to enable the adoption by the Commission of implementing measures setting out common principles and practices for the national authorities.	MEDIUM	MEDIUM	MEDIUM	MEDIUM	LOW	YES
4.1.1	Enhanced role of ERA in monitoring & control of implementation of national safety and interoperability legislation	LOW	LOW	MEDIUM	SHORT	MEDIUM	YES
4.1.2	Enhanced role of ERA in migrating from national technical and safety rules to a system of EU rule.	HIGH	HIGH	MEDIUM	LONG	HIGH	YES
4.2	Enhanced role of ERA in dissemination of railway-related information and training.	LOW	NONE	NONE	SHORT	LOW	YES
4.3	Enhanced role of ERA in providing advice and support for Member States and other stakeholders in implementing EU legislation on safety and interoperability.	LOW	MEDIUM	HIGH	SHORT	MEDIUM	YES
4.4	Enhanced role of an EU body in providing advice in building capacities in Member States to design, implement and manage relevant investment projects.	NONE	NONE	NONE	SHORT	LOW	NO
4.5	Enhanced role of ERA in providing advice and support for Member States and other stakeholders in deploying and operating telematic applications.	NONE	NONE	NONE	SHORT	LOW	NO
4.6	Communication from the Commission regarding guidelines on the interpretation of specific EU laws and decisions (including Technical Specifications for Interoperability).	MEDIUM	MEDIUM	MEDIUM	SHORT	MEDIUM	YES
4.7	Enhanced role of ERA in identifying potential spare parts to be standardised and coordination of industry activities in this area.	MEDIUM	MEDIUM	LOW	SHORT	LOW	YES
4.8	Modify the Directive with a view to limit/remove the possibility for MS to adopt new national rules	HIGH	HIGH	HIGH	MEDIUM	MEDIUM	YES
4.9	Setting up European passport for locomotives (this passport would contain a summary of the main technical parameters it would facilitate route acceptance through comparison with the infrastructure register)	HIGH	MEDIUM	LOW	LONG	MEDIUM	YES
4.10	Enhanced "coordination" and supervision role in the accreditation of NoBos	MEDIUM	MEDIUM	LOW	MEDIUM	LOW	YES

C1.6 The results shown above form an initial part of the selection process by identifying the exclusion of certain measures.

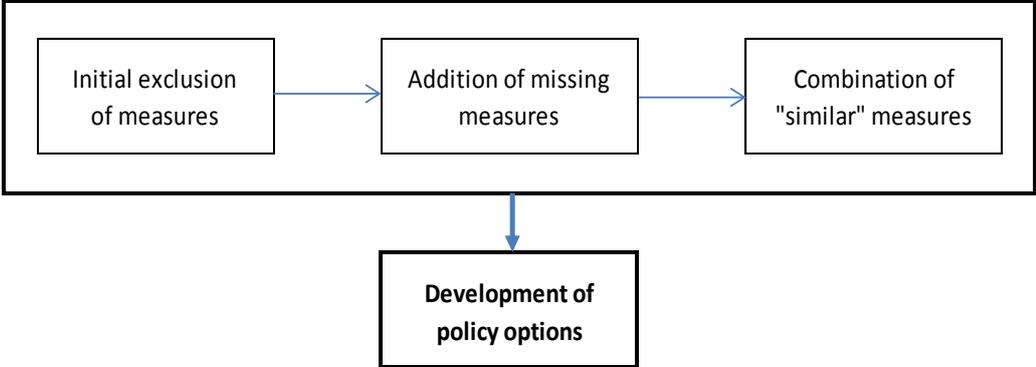
Process for selection of measures

C1.7 The process of selection of the most appropriate measures involves the following steps:

- Initially exclude those measures that have received a negative response from stakeholders or that are not implementable;
- Add any additional measures that were not foreseen in the survey, but that have been identified as result of stakeholder feedback; and
- Combine any measures that would be more appropriately considered collectively.

C1.8 The process is illustrated in the figure below.

APPENDIX FIGURE C.2



Step 1: Initial exclusion of measures

C1.9 The first step is to assess which measures are not likely to bring any useful results to the analysis. In order to do this, the analysis needs to first exclude those measures that received either a “No” initial qualitative evaluation (see Figure 5.1 above) or negative responses from the stakeholders (see Table 5.1 above). The latter of these is appropriate as if the sector as a whole (which includes operators, infrastructure managers, governments, regulatory bodies, user groups and NSAs) does not believe that these measures are relevant, then we should not be considering the measures in the next phases of the analysis. The measures identified for exclusion are:

- Roles related to Regulatory Bodies (measures 2.1.5, 2.2.4 and 2.3.4): Although it was seen as one of the main problems by the stakeholders, the options that related to a greater role for the Agency received a negative evaluation as set out in Figure. Follow-up discussions with stakeholders confirmed this concern, where all of those interviewed were of the opinion that the Agency should remain a technical body (that continues to rely on economic analysis for its recommendations), but that its role should not be extended to include responsibility for capacity allocation issues and other regulatory activities. The concern was that this type of role would take away the focus of the Agency’s activities on technical matters. We believe that it would also be premature to seek to change the market structure for Regulatory Bodies and as such have not

considered it further within this impact assessment. We have taken this decision because the current work that is on-going for the Rail Recast and the fact that one of the primary focuses is on the role, activities and independence of the Regulatory Body which are due to have a positive impact on the sector and should address the issues that the stakeholders have identified. We acknowledge that this may not be sufficient for the industry but believe that given the focus of this study is on technical/administrative barriers rather than market specific aspects this issue would not best be dealt with within the framework of this study.

- Roles related to the Agency taking over all activities of the NoBos (2.2.3 and 2.2.4): This received a negative evaluation in Figure 5.1 and negative responses in the survey. In addition to the negative responses it would be difficult to justify the Agency taking over all the activities of the NoBos, as in most cases it is a functioning part of the market where private (and public) operators are providing services in competition. This does not mean that problems have not been identified with Notified Bodies (as shown in Chapters 2 and 3), just that these options are not appropriate to address these difficulties. For example, we have been informed by stakeholders that there are differences in the quality of the outputs of some of the NoBos, but this would not justify having these tasks centralised with the Agency as they could just as easily be done with greater monitoring and coordination. Furthermore, these measures would effectively be punishing everybody for the problems of a small minority. We have added a measure, discussed below, to address these issues.

- C1.10 We have excluded from the analysis measure 3.2 (Change railway directives into regulations). While this in theory would be an ideal solution in resolving many of the implementation issues that are at the heart of the discrimination problems it is a measure that is not consistent with the principles of subsidiarity or proportionality. In particular the second of these points is fundamental, while the effects of the problems with vehicle authorisation and safety certification are important and have a significant impact on the costs of the sector, they are a small part of the overall railway legislative environment. Changing all the Directives just to address these problem areas seems excessive and may result in a substantial, one-off, administrative burden that could cancel out some of the benefits of having Regulations and therefore call into question the efficiency of the measure. The administrative burden would be immense also in terms of timescales with a long and difficult implementation process with the Regulations probably having significant difficulty in passing through the Council of Ministers due to the complexity and detail that would be required within the Regulations. Furthermore, as discussed below, there are other measures that address the problems related to vehicle authorisation and safety certification (as well as the role of national rules) in a more efficient and timely manner. Finally, when this issue was discussed in the stakeholder interviews it was seen as a good idea, but virtually impossible to achieve.
- C1.11 We have excluded from the analysis measure 4.4 (Enhanced role of an EU body in providing advice in building capacities in Member States to design, implement and manage relevant investment projects). There was no outright majority in favour of this measure. Follow-up discussions stated that it would not be appropriate for the Agency to do other activities other than technical aspects. Issues relating to specifying capacity should remain outside the scope. It can also be argued that such a task would not have an impact on the problem

of decreasing administrative and technical barriers at the heart of this impact assessment and as such should not be considered, as concluded by the qualitative analysis. We acknowledge that there could be a problem in ensuring that there is sufficient capacity in the networks across Europe, but the Agency would not be the best placed entity to address this. Furthermore, this measure is not directly linked to any of the problems that we have identified in Chapter 3 and as such is not relevant to this study.

- C1.12 We have merged measure 4.5 (Enhanced role of ERA in providing advice and support for Member States and other stakeholders in deploying and operating telematic applications) with measure 4.3, as both of these require the Agency having an enhanced role in providing advice in an area that is already an important activity of the Agency. However, we acknowledge that measure 4.5 is peripheral to the problems identified in Chapter 3.
- C1.13 We have not excluded from the analysis measures 2.2.1 and 2.2.2 even though they had a slightly negative result as set out. As we observe that the majority of stakeholders who responded negatively were the NSAs themselves who would have a vested interest in retaining such powers. Furthermore, these measures directly address the problem of discriminatory practices of the various NSAs.

Step 2: Creation of additional measures

- C1.14 As mentioned above, the stakeholder discussions and our desktop research has suggested some additional measures that would add value to the analysis as described below:
- A further intermediate step in relation to the role of ERA with respect to the NSAs involves a One-Stop-Shop approach, but with the NSAs retaining some competencies, they would still be national bodies but would be controlled by the Agency. In this case the Agency receives the request (for safety certification or authorisation for placing into service) and draws on the national expertise of NSA staff which can be considered as quasi-subsiaries of the Agency, but the decision and the process for certification or authorisation is prepared and followed according to Agency policy established centrally. The aim of these additional options is to ensure that the expertise that is inherent within the NSAs is retained and that they continue to evaluate the national specific parts of the network and carry out the audits that need to be carried out on companies, infrastructure and rolling stock. These measures address the problems of the differing opinions and practices of the NSAs being harmonised to remove divergent practices without going as far as moving everything to Valenciennes and therefore allowing some degree of subsidiarity to remain. These additional measures are also consistent with the practices that are evident in other transport sectors with a European Agency, the aviation and maritime sectors. These have been labelled as 2.2.X and 2.2.Y. These have not been included in the qualitative analysis above as this high level analysis would not give a significantly different results to the measures already included in the list that relate to the One-Stop-Shop.
 - We have added a further measure, 4.10, that was not included in the survey but that has been looked at in the qualitative analysis above and reflect the comments set out in the second bullet point of paragraph above. The insertion of this additional measure is a reaction to stakeholder feedback relating to a greater role for the Agency in setting the accreditation process that Member States have to follow to approve national NoBos. We have been informed that some NSAs recheck all the work undertaken by NoBos as

they are not satisfied with the analysis that some NoBos carry out. We have also been told that some applicants prefer to work with a small subset of NoBos as a result of concerns that the documents produced by others would not be satisfactory. While this should not be an issue and there shouldn't be a difference between the manner in which one NoBo works compared to another NoBo, this does lead to a delay to the authorisation of vehicles by NSAs. To mitigate this problem which has a direct impact on both the cost and time to market for railway undertakings, the Agency should detail the manner in which NoBos are to be accredited by Member States and what parameters Member States need to look for in carrying out this accreditation such as quality certification, experience in rail accreditation, etc. This oversight should remove the reticence that NSAs have with the outputs they receive from NoBos and therefore remove one of the barriers that is delaying rolling stock authorisation.

Step 3: Combination of similar measures

- C1.15 In seeking to define the measures appropriately we have identified that some of them can be combined as they would logically be better placed side-by-side in the analysis. This analysis lends itself best to combining possible activities of the NSAs and the NoBos to ensure that there is a consistent role of the Agency. To assess which measures would best go together the analysis initially listed all the possible combination of NSA and NoBo measures that had not already been excluded. This is set out in the table below, which also highlights (with grey shading) those specific measures that have been added in Step 2 discussed above and that were not originally foreseen in the analysis.

APPENDIX TABLE C.2 POSSIBLE COMBINATION OF POLICY MEASURES REGARDING NSAS AND NOBOS

NoBo NSA	1.0.0	2.1.3	2.1.4
1.0.0	Business as usual	Business as usual/Greater coordination of NoBos in vehicle authorisation	Business as usual/Greater coordination of NoBos in other authorisation
2.1.1	Greater role in developing single safety certificate/ Business as usual	Greater coordination in safety certification/Greater coordination of NoBos in vehicle authorisation	Greater coordination in safety certification /Greater coordination of NoBos in other authorisation
2.1.2	Greater coordination in authorisation/ Business as usual	Greater coordination in authorisation/Greater coordination of NoBos in vehicle authorisation	Greater coordination in authorisation/ Greater coordination of NoBos in other authorisation
2.1.6	ERA controls functioning of NSAs /Business as usual	ERA controls functioning of NSAs /Greater coordination of NoBos in vehicle authorisation	ERA controls functioning of NSAs / Greater coordination of NoBos in other authorisation
2.2.5	One-Stop-Shop on safety certification/ Business as usual	One-Stop-Shop on safety certification/Greater coordination of NoBos in vehicle authorisation	One-Stop-Shop on safety certification/ Greater coordination of NoBos in other authorisation
2.2.6	One-Stop-Shop on authorisation/ Business as usual	One-Stop-Shop on authorisation/Greater coordination of NoBos in vehicle authorisation	One-Stop-Shop on authorisation/ Greater coordination of NoBos in other authorisation
2.2.X	ERA and NSAs share competencies for safety certification/ Business as usual	ERA & NSAs share competencies for safety certification/Greater coordination of NoBos in vehicle authorisation	ERA & NSAs share competencies for safety certification/ Greater coordination of NoBos in other authorisation
2.2.Y	ERA and NSAs share competencies for authorisation/ Business as usual	ERA and NSAs share competencies for authorisation /Greater coordination of NoBos in vehicle authorisation	ERA and NSAs share competencies for authorisation / Greater coordination of NoBos in other authorisation
2.2.1	ERA takes over competencies of NSAs (for safety certification)/ Business as usual	ERA takes over competencies of NSAs (for safety certification)/Greater coordination of NoBos in vehicle authorisation	ERA takes over competencies of NSAs (for safety certification)/ Greater coordination of NoBos in other authorisation
2.2.2	ERA takes over competencies of NSAs (for authorisation)/ Business as usual	ERA takes over competencies of NSAs (for authorisation) /Greater coordination of NoBos in vehicle authorisation	ERA takes over competencies of NSAs (for authorisation) /Greater coordination of NoBos in vehicle authorisation

C1.16 Whilst looking at these individual options and discussing them with the stakeholders, we determined that in reality it would not be appropriate to consider the roles in relation to safety certification and vehicle authorisation in a different manner. This is because, for the final RU, they are both necessary to be able to start operations and also, given that the objectives relate to decreasing time to market, it is logical that they are dealt with in parallel. However, we understand that they are two distinct aspects of the current legislation. The same reasoning was also used in relation to the NoBos. If there is to be any kind of transfer of powers or change in roles in relation to vehicle authorisation, it should also be the same for other types of authorisations such as ERTMS. We acknowledge that the Agency has separate units for dealing with vehicle acceptance and with ERTMS, but the degree of involvement of the Agency in relation to these two aspects should be similar and the activities in terms of the development approaches towards the markets should be harmonised. As a result we have merged the following measures:

- For the NSAs:
 - 2.2.5 and 2.2.6 which now become 2.2.B
 - 2.2.X and 2.2.Y which now become 2.2.Z
 - 2.2.1 and 2.2.2 which now become 2.2.C
- For the NoBos:
 - 2.1.3 and 2.1.4 which now become 2.1.B

C1.17 This leads to a simplification of Table 5.3 of Chapter 5 into the table below.

APPENDIX TABLE C.3 UPDATED MEASURES MATRIX 1

NoBo	1.0.0	2.1.B
NSA		
1.0.0	Business as usual	Business as usual/ Greater coordination of NoBos
2.1.1	Greater role in developing single safety certificate/ Business as usual	Greater role in developing single safety certificate/ Greater coordination of NoBos
2.1.2	Greater coordination in authorisation/ Business as usual	Greater coordination in authorisation/ Greater coordination of NoBos
2.1.6	ERA controls functioning of NSAs /Business as usual	ERA controls functioning of NSAs / Greater coordination of NoBos
2.2.B	ERA as One-Stop-Shop/ Business as usual	ERA as One-Stop-Shop/ Greater coordination of NoBos
2.2.Z	ERA shares competencies with NSAs/ Business as usual	ERA shares competencies with NSAs/ Greater coordination of NoBos
2.2.C	ERA takes over role of NSAs/ Business as usual	ERA takes over role of NSAs/ Greater coordination of NoBos

C1.18 The addition of measure 4.10 in relation to an enhanced role in NoBo accreditation, complements well the greater role in relation to NoBos and as such improves the manner in which the problem relating to the lack of quality with some of the NoBos is addressed . We have therefore added measure 4.10 in this stage to measure 2.1.B without changing the denomination. The updated matrix is set out in the table below.

APPENDIX TABLE C.4 UPDATED MEASURES MATRIX 2

NoBo	2.1.B
NSA	
2.1.2	Greater coordination in authorisation/ Greater coordination of NoBos & their accreditation
2.1.6	ERA controls functioning of NSAs / Greater coordination of NoBos & their accreditation
2.2.B	ERA as One-Stop-Shop/ Greater coordination of NoBos and their accreditation
2.2.Z	ERA shares competencies with NSAs/ Greater coordination of NoBos and their accreditation
2.2.C	ERA takes over role of NSAs/ Greater coordination of NoBos and their accreditation

C1.19 Of these combinations we consider 2.1.6 as a complement to a number of the other measures rather than a measure on its own. In addition to this we would propose to add measure 2.3 which considers the Agency’s role as appeal body to national safety authorities. Within the stakeholder survey we asked separate questions that relate to the appeal role in relation to:

- NSA decisions on placing into service (now labelled 2.3.1);
- NSA decisions on safety certification (now labelled 2.3.2); and
- NoBo decisions (now labelled 2.3.3).

C1.20 These measures fit well with the measure where the Agency is a One-Stop-Shop as it would give that additional certainty to this role, while adding it elsewhere would not be appropriate as a coordination role would not fit well with the appeal. We have, however, excluded these measures from those options where the Agency has direct control on activities, that is where it does the activities of the NSA or where it exerts direct control over the activities of NSAs as discussed above. For the purpose of the options below we will return to their original denomination of measure 2.3 from which we have removed the appeal of the Regulatory Body’s decisions (2.3.4) as the role of appeal body should cover all technical tasks that the Agency has a role in.

C1.21 As a further development, we have noted that the Agency is already carrying out consultation for the movement towards a single safety certificate and this remains a fundamental area where there needs to be Agency intervention as noted in the discussion on the problem in Chapter 3. The same is true for vehicle acceptance where the Agency should be progressing the analysis towards a single vehicle authorisation process. However, the approach in relation to these two aspects needs to follow the same gradual approach as with respect to the NSAs. In order to do this we have split out the requirements of 2.1.1 and 4.9 into the following:

- 2.1.1a + 4.9a: Migration to a single (common) safety certificate and single vehicle authorisation (setting up European "passport" for vehicles): NSAs issues single safety certificates & single vehicle authorisations.
 - 2.1.1b + 4.9b: Migration to a single (common) safety certificate and single vehicle authorisation (setting up European "passport" for vehicles): ERA issues single safety certificates & single vehicle authorisations.
- C1.22 For these aspects to work together appropriately, 2.1.1a needs to be tied to 4.9a and 2.1.1b needs to be tied to 4.9b. We have assumed that neither of these options would be appropriate when tied to the "Greater coordination" measure (2.1.2) while they would be more effective with the more incremental options. However, for this measure to be effective, the definition needs to change to cover some aspects of safety certification. We have therefore extended this measure so that it now covers the following:
- Enhanced "coordination" and supervision role of ERA with respect to NSAs regarding the granting of vehicle authorisations and safety certificates including their mutual recognition by national authorities.
- C1.23 We have also assumed that the combined measure 2.1.1b + 4.9b will need to be accompanied by the possibility of the applicant to appeal ERA decisions to a separate body. This is discussed further in Chapter 5. Given that both 2.1.1a and 4.9a require that the NSA still makes the final decision, these work best when taken in conjunction with the ERA One-Stop-Shop measure 2.2.B. As measures 2.1.1b and 4.9b require that the final decision is taken by ERA, these aspects work best with the measures relating to ERA with regional offices (2.2.Z) and where ERA takes over the role of NSA activities (2.2.C)
- C1.24 When adding this measure to 2.2.Z and 2.2.C we have assumed that it will have different incremental impacts over the baseline.
- Step 4: conversion of the above measures into the outline of the options*
- C1.25 Based on this analysis we would see the core of the policy options as being based around the measures in the following table.

APPENDIX TABLE C.5 CORE MEASURES FOR POLICY OPTIONS

Option number	Option name	Core measures
1	Baseline	Business as usual (1.0.0)
2	Greater coordination of NSAs	Enhanced coordination (2.1.2) / Greater coordination of NoBos and their accreditation (2.1.B) / ERA controls functioning of NSAs (2.1.6)
3	ERA as a One-Stop-Shop	ERA as One-Stop-Shop (2.2.B) / Greater coordination of NoBos and their accreditation (2.1.B) / Appeal role for the Agency (2.3) / ERA controls functioning of NSAs (2.1.6)
4	ERA shares competencies with NSAs	ERA shares competencies with NSAs (2.2.Z) / Greater coordination of NoBos and their accreditation (2.1.B)
5	ERA takes over activities of NSAs regarding authorisation & certification	ERA takes over role of NSAs (2.2.C) / Greater coordination of NoBos and their accreditation (2.1.B)
6	Horizontal measures	Additional policy option (see description below)

C1.26 We have used the option descriptors above to make them easily understandable, but we acknowledge that the individual options are made up of a number of other measures that have an impact on the overall institutional framework rather than just the role of the Agency with respect to NSAs as discussed below.

C1.27 In addition we are also including an additional option: Option 6 that will focus on other measures, and will be known as “Horizontal measures”. We have briefly explained above what each of these measures are, as well as which measures should be added or removed from this list. The list of measures that are included in Option 6 are:

- 3.1: Strengthened enforcement action by the Commission for example by granting the Commission powers of inspection/audit of national railway authorities (Note that the question in the survey was posed differently: Strengthened action by the Commission outside infringement procedures, notably on non-discrimination in the railway market”. However, we believe that the focus of the question relates to the Commission having a strengthened role in the market and as such the responses that we received from the survey remain relevant for this study);
- 3.2: Change of the railway directive (relating to safety and interoperability) into regulations;
- 4.1.1 Enhanced role of ERA in monitoring and control of implementation of national safety and interoperability legislation;
- 4.1.2 Enhanced role of ERA in migration from national technical and safety rules to a system of EU rules;
- 4.2 Enhanced role of ERA in dissemination of railway-related information and training;
- 4.3 Enhanced role of ERA in providing advice and support for Member States and other stakeholders in implementing EU legislation on safety and interoperability;

- 4.6: Communication from the Commission regarding guidelines on the interpretation of specific EU laws and decisions (including Technical Specifications for Interoperability);
- 4.7 Enhanced role of ERA in identifying potential spare parts to be standardised and coordination of industry activities in this area;
- 4.8: Modify the directive with a view to limit/remove the possibility for MS to adopt new national rules;
- 4.9: Setting up European passport for locomotives (containing a summary of the main technical parameters thus facilitating route acceptance through comparison with the infrastructure register).

C1.28 It is important to note that many of these measures are closely linked and this is why they should be treated in one horizontal option. However within this option we note that measures 4.8 is more than just a complement, it is also a key component of 4.1.2, and therefore we have merged these for the following analysis whilst keeping the denomination 4.1.2.

Summary of measures taken forward for option definition

C1.29 Table D.6 below shows how the measures that remain following the option sifting relate to the problem elements identified in Chapter 3. Table D.7 below shows the qualitative assessment of these same, updated measures against the objectives following the same criteria and grading approach as set out in Figure 5.1 for the individual components. The “Final Qualitative Evaluation” column is based on our assessment of the qualitative effects as well as the comments we have received from stakeholders. We have given more importance to the score relating to Specific Objective 1: Increase efficiency of safety certification and vehicle authorisation as this is the main aspect that needs to be addressed in order to diminish the technical and administrative barriers that persist in the sector.

APPENDIX TABLE C.6 THE MEASURES AND LINKS TO THE PROBLEM MEASURES

Problem element	Measures																
	2.1.2: Greater coordination in vehicle authorisation	2.1.6: Control by ERA over the functioning of the NSAs (e.g. developing guidelines & auditing their adherence	2.1.B: Greater coordination of NoBos	2.2.B: One-Stop-Shop on safety certification & authorisations	2.2.Z: ERA as a One-Stop-Shop but with NSAs as regional offices for both certification and authorisation	2.2.C: ERA takes over the competencies of NSAs for safety certification & authorisation	2.3: ERA as an appeal body	2.1.1a + 4.9a: Migration to single safety certificate & single authorisation (NSA)	2.1.1b + 4.9b: Migration to single safety certificate & single authorisation (ERA)	3.1: Strengthened enforcement of railway legislation	3.3: Amendment of directives to enable the adoption of implementing measures	4.1.1: Enhanced role of ERA in monitoring & control of implementation of national safety & interoperability legislation	4.1.2: Enhanced role of ERA in migration from national technical & safety rules to a system of EU rules & limitation on the creation of new national rules	4.2: Enhanced role of ERA in dissemination of railway-related information & training	4.3: Enhanced role of ERA in advice & support for MSs & others in implementing legislation on safety & interoperability	4.6: : Communication from Commission on guidelines on the interpretation of specific EU laws & decisions	4.7: Enhanced role of ERA in identifying potential spare parts to be standardised and coordination of industry activities in this area
(1) Deficit/lack of sufficient resources of some NSAs to effectively perform their tasks;	✓	✓		✓	✓	✓			✓	✓							
(2) Insufficient independence of the NSAs from the IMs, incumbent RU and/or the ministry;	✓	✓		✓	✓	✓	✓	✓	✓	✓							
(3) Granting by NSAs of safety & the authorisations of placing into service is too slow in some cases;	✓	✓		✓	✓	✓	✓	✓		✓							
(4) Reluctance of some NSAs to accept safety certificates & authorisations of placing in service of vehicles & subsystems granted by other NSAs;	✓	✓		✓	✓	✓	✓	✓		✓							
(5) Deficit/lack of sufficient resources of some NoBos to effectively perform their tasks;									✓	✓							
(6) Insufficient independence of NoBos from the IMs, RUs, the ministry or other actors;			✓				✓		✓	✓							
(7) Deficit/lack of sufficient resources of some RBs to effectively perform their tasks;									✓	✓							
(8) Insufficient independence of RBs from the IMs, incumbent RUs and/or the ministry;							✓		✓	✓							
(9) The level of monitoring & control of implementation of the interoperability and safety legislation by MSs is not sufficient;											✓				✓		
(10) National technical & safety rules sometimes pose transparency and/or discrimination problems;									✓		✓	✓	✓		✓		
(11) Problems with proper implementation of directives; too divergent interpretation of the directives;									✓	✓	✓			✓	✓		
(12) Insufficient level of dissemination of railway-related information and training.													✓	✓			

APPENDIX TABLE C.7 FINAL MEASURES QUALITATIVE ASSESSMENT AGAINST OBJECTIVES

MEASURES	Description of Option	Effectiveness			Effect on national institutions	Final qualitative evaluation	Time to full effectiveness
		Increase efficiency of safety certification & vehicle authorisation	Ensure non-discrimination in the granting of safety certificates & interoperability	Increase coherence of national legal framework			
2.1.1a + 4.9a	Migration to a single (common) safety certificate and single vehicle authorisation (setting up European "passport" for vehicles): NSAs issues single safety certificates & single vehicle authorisations	MEDIUM	MEDIUM	NONE	MEDIUM	MEDIUM	MEDIUM
2.1.1b + 4.9b	Migration to a single (common) safety certificate and single vehicle authorisation (setting up European "passport" for vehicles): ERA issues single safety certificates & single vehicle authorisations	HIGH	HIGH	NONE	HIGH	HIGH	MEDIUM
2.1.2	Enhanced "coordination" and supervision role of ERA with respect to NSAs regarding the granting of authorisations of placing into service.	LOW	LOW	LOW	LOW	LOW	SHORT
2.1.B	Enhanced "coordination" and supervision role of ERA with respect to NoBos regarding type approval; rail vehicle certification; ERTMS certification & accreditation of NoBos.	LOW	LOW	LOW	MEDIUM	LOW	MEDIUM
2.1.6	Control by ERA over the functioning of NSAs (for example by developing guidelines and auditing adherence to them).	LOW	LOW	LOW	MEDIUM	LOW	SHORT
2.2.B	ERA shares the competences with the NSAs regarding granting of certificates to the railway undertakings and placing into service (a "one stop shop" for safety certificates and vehicle authorisation): the decision is taken by the NSA, ERA perform "entry and exit" checks of the application and of the decision	MEDIUM	MEDIUM	LOW	MEDIUM	MEDIUM	MEDIUM
2.2.C	ERA takes over the competences of the NSAs regarding granting of certificates to Rus & vehicle and sub-system authorisations.	HIGH	HIGH	NONE	MEDIUM	HIGH	MEDIUM
2.2.Z	ERA shares the competences with the NSAs regarding granting of certificates to RUs (a "one stop shop" for safety certificates") and for authorisations for placing into service (a one stop shop for interoperability authorisations).	HIGH	HIGH	LOW	MEDIUM	HIGH	MEDIUM
2.3	ERA as an appeal body for some decisions of the national authorities.	HIGH	HIGH	NONE	LOW	HIGH	SHORT
3.1	Strengthened action by the Commission in implementing the legislation.	MEDIUM	MEDIUM	LOW	LOW	MEDIUM	SHORT
3.3	Amendment of the railway directives to enable the adoption by the Commission of implementing measures setting out common principles and practices for the national authorities.	MEDIUM	MEDIUM	MEDIUM	LOW	MEDIUM	MEDIUM
4.1.1	Enhanced role of ERA in monitoring & control of implementation of national safety and interoperability legislation	LOW	LOW	MEDIUM	MEDIUM	LOW	SHORT
4.1.2	Enhanced role of ERA in migrating from national technical and safety rules to a system of EU rule.	HIGH	HIGH	MEDIUM	HIGH	HIGH	LONG
4.2	Enhanced role of ERA in dissemination of railway-related information and training.	LOW	NONE	NONE	LOW	LOW	SHORT
4.3	Enhanced role of ERA in providing advice and support for Member States and other stakeholders in implementing EU legislation on safety and interoperability.	LOW	MEDIUM	HIGH	MEDIUM	MEDIUM	SHORT
4.6	Communication from the Commission regarding guidelines on the interpretation of specific EU laws and decisions (including Technical Specifications for Interoperability).	MEDIUM	MEDIUM	MEDIUM	MEDIUM	MEDIUM	SHORT
4.7	Enhanced role of ERA in identifying potential spare parts to be standardised and coordination of industry activities in this area.	MEDIUM	MEDIUM	LOW	LOW	MEDIUM	SHORT

APPENDIX

D

IMPACT ASSESSMENT MODELLING APPENDIX

(in separate file)

APPENDIX

E

TERMS OF REFERENCE

E1 TASK SPECIFICATIONS

- E1.1 This appendix sets out the technical elements of the task specifications, we have not included here the details of the deliverables and the timescales.

Impact assessment study on the revision of institutional framework of the EU railway system, with a special consideration to the role of the European Railway Agency

Introduction

- E1.2 This document provides the terms of reference of a study to be carried out by a consultant to support the Commission in the impact assessment exercise concerning revision of institutional framework of the EU railway system, with a special consideration to the role of the European Railway Agency (hereinafter referred to as "the Agency").
- E1.3 The purpose of this Terms of Reference (ToR) is to describe the aim and scope of the impact assessment study and give instructions and guidance to the companies willing to submit offers (hereinafter referred to as "the tenderers") about the nature of the offer they have to submit. The ToR will also serve as the contractor's mandate during the implementation of the study, after selection of the successful tenderer. They will become part of the contract that will be concluded following the award of the tender.

Rationale and aims of the study

EU railway system and the European Railway Agency - introduction

- E1.4 The EU railway market has seen massive changes in the recent decade. They were gradually introduced by three legislative "railway packages" (with some accompanying acts) intended to open up the market and make railways more competitive and interoperable while maintaining high level of safety. The second package of 2004 contributed largely to the creation of an integrated European railway area, and it established also the European Railway Agency (ERA) and various national authorities.
- E1.5 The European Railway Agency was set up in 2005 under Regulation (EC) No 881/2004 and became fully operational as of the end of 2006. Its main role is to draw up draft technical regulations aimed at a common and harmonised approach to rail interoperability and safety in the EU. These draft technical regulations are submitted to the Commission to be transposed into autonomous acts. Its creation was necessary to support the gradual process of market opening of the European railway sector, in particular the development of international transport services, by removing technical and operational barriers and to promote the creation of an internal market in rail equipment and services.
- E1.6 In parallel with the gradual opening of the European rail market taking place in the last years, a network of specialised national institutions with various levels of ties with European institutions was set up by EU legislation with the aim of ensuring the smooth functioning of this market. This system includes today:

- the Notified Bodies, responsible mainly for conformity assessment of rail vehicles and subsystems, after having verified their compliance with the relevant Technical Specifications for Interoperability (TSIs);
- the National Safety Authorities (NSA), responsible, inter alia, for granting safety certificates for railway undertakings and safety authorisations for infrastructure managers, and authorising the placing railway vehicles and subsystems in service;
- the National Investigation Bodies (NIB), responsible for investigating serious railway accidents;
- the Regulatory Bodies, responsible for ensuring a fair and non-discriminatory access to the rail network and services.

E1.7 The main legislative act in force in the field of safety is the railway safety directive²⁸ and in the field of interoperability - a recast of the interoperability directive²⁹. Directive 2001/14/EC, establishing the Regulatory Bodies, is also important in the context of this study; it is in the process of revision in the framework of recast of the first railway package.

Deficiencies in functioning of internal railway market

Identification of the main problem and problem drivers

E1.8 The EU railway system is still being developed, however the Commission is aware that there are important problems that need solving, and some of them are of systemic nature. This is based on the preliminary analysis of the Commission supported by:

- complaints from private companies, especially the "new entrants";
- results of high-level conference on railway safety held on 8 September 2009 in the aftermath of the accident in Viareggio of June that year; the stakeholders advocated for the extension of the role of the Agency in the field of safety, especially a stronger supervision and action by the Agency in its capacity as the European Railway Authority to overcome the difficulties encountered by the Member States in establishing National Safety Authorities and speed up the process of homologation of rail vehicles;
- results of the ex-post evaluation of Regulation 881/2004 establishing the Agency³⁰ conducted in 2010-2011; ERA was assessed quite positive, however a few possibilities to improve the functioning of the EU railway system were also identified, including by taking on new roles by the Agency (for more information, see section 4).

E1.9 On this basis the Commission has reached the conclusion that **the highly decentralised system in place does not cope in a fully satisfactory manner with the European dimension of the internal market for rail services**. This main general problem can be attributed to three underlying causes (problem drivers):

²⁸ Directive 2004/49/EC with further changes

²⁹ Directive 2008/57/EC (recast)

³⁰ The final report of the evaluation: http://ec.europa.eu/transport/evaluations/doc/2011_era-evaluation-881-2004.pdf

- inefficient functioning of the national institutions set up by EU legislation;
- discrimination of new entrants (both national and foreign) by the national institutions set up by EU legislation;
- too divergent interpretation of the EU railway legislation by national authorities.

E1.10 The problem drivers are analysed further below.

Problem driver 1: inefficient functioning of the national institutions set up by EU legislation

- E1.11 Although in the view of most stakeholders and the Agency the regulatory framework seems to be complete, it is not yet fully nor consistently implemented and applied. There are signs that inappropriate legal frameworks remain in place, that some of the NSAs and other authorities may not be properly equipped to face the growing tasks, that there is not sufficient independence of the authorities from the infrastructure managers, incumbent rail undertaking or the ministry. This has a direct and negative impact on the smooth functioning of the whole integrated EU railway system. Some stakeholders call for ERA to audit the administrative capacities of the NSAs, however other options to remedy this problem should be also assessed, including strengthened control over some decisions or partial transfer of competences from national to the EU level.
- E1.12 The operation of the NSAs is linked with the functioning of Notified Bodies. The principal function of those independent bodies, created by the interoperability directive, is to check the conformity with the TSIs of the rail vehicles and subsystems (infrastructure, energy, control-command and signalling). Some of the Notified Bodies face similar problems as the NSAs regarding the lack of sufficient independence from the infrastructure managers, rail undertakings, the ministry or other players), with related negative impact on the internal railway market, especially regarding the process of approval of rail vehicles. Different possible relations between the ERA and the Notified Bodies should be assessed, from supervision up to taking over some of their functions.
- E1.13 Another important element of the railway regulatory framework are the Regulatory Bodies created by Directive 2001/14/EC. Their task is to ensure a fair and non-discriminatory access to the rail network and services. However, the Member States' regulatory bodies encounter difficulties in carrying out their supervision duties over infrastructure managers, in particular with regard to international traffic. These difficulties are often compounded by the lack of staff and financial resources and of sufficient independence from the infrastructure managers, incumbent rail undertaking or the ministry which exerts ownership rights over the incumbent operator. Therefore the question of more integrated supervision of the EU rail market, including a possibility of transfer of some competencies to EU level, should be examined. This issue was raised during discussions on the recast of the first railway package and the higher EU involvement has been advocated especially by the European Parliament.
- E1.14 Finally, there are signs that due to the fragmentation of the industry and to the lack of recruitment of new staff during the last decades, there is a general risk of losing rail technical expertise. In addition in the last 10 years the "new approach"

has heavily changed the EU railways with introduction of common rules based on the EU laws; it must be admitted that a lot of those new instruments proved to be difficult to understand and implement at the level of Member States not only by national authorities, but also by the companies. The Commission and the Agency are increasingly demanded by external stakeholders to deliver proper and high-quality training. It also seems that the general public and political decision-makers are not sufficiently informed about the advantages of the integrated EU railways what results in less favourable treatment of railways in comparison with other transport modes.

Problem driver 2: discrimination of new entrants (both national and foreign) by the national institutions set up by EU legislation

- E1.15 The NSAs are entrusted to grant the safety certificates to rail operators and authorisations of placing into service of rail systems and vehicles. This approach to safety certification and authorisation should in principle allow the free provision of rail services and circulation of trains across the EU. It is based on the principle of mutual acceptance of part A certificates regarding the safety management system, granted by individual NSAs to railway undertakings, and requires that NSAs work at similar level of performance. The adequacy of this approach has recently been questioned by many stakeholders (especially new entrants) given the reluctance of NSAs to accept part A certificates³¹ granted by other NSAs without further checks. This leads to additional checks and increases time and cost burdens for rail operators. The opportunity to give a more prominent role to ERA in this certification process has therefore been raised by many stakeholders. Depending on the solution chosen to solve this problem, the new role of ERA might contemplate a supervisory function in respect of the activities carried out by NSAs or being involved in the process of certification itself.
- E1.16 This problem of possible discrimination can have also a national dimension when NSAs are sometimes more reluctant to grant the safety certificates to new entrants in comparison with granting it to the incumbent railway companies.
- E1.17 Similar situation may occur in relation to Notified Bodies discriminating some actors when it comes to the conformity assessment and can take a form of protracting the procedure and/or refusing to issue the certificate without legitimate grounds.
- E1.18 The Commission is aware, as well, about the complaints concerning certain Regulatory Bodies and the risk of their discriminatory practises, in relation to equal access to the network and services.

Problem driver 3: too divergent interpretation of the EU railway legislation by national authorities

- E1.19 Member States' national transposition measures and practices sometimes deviate too much from what was agreed in directives and other EU acts. The directives leave Member States with a room of manoeuvre what in certain cases proves to be

³¹ The A part of the safety certificate confirms the acceptance of the railway undertaking's safety management system safety management system and is of a general nature, while part B of the certificate confirms "acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe supply of its services on the relevant network", and if of network-specific nature.

counterproductive to the objectives of the EU legislation. The level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient; the Commission alone cannot effectively oversee this process.

- E1.20 This is also linked with the issue of national technical and safety rules functioning at the level of Member States. They may be created only when no relevant community rules exist, however they often lack proper transparency and can pose problems to railway undertakings from other Member States. In that sense some of those rules can be regarded as discriminatory practice, leading to distortion of competition. The Commission has been alerted many times by stakeholders, especially private companies established recently, that an action at EU level is needed in that regard.
- E1.21 It must be added that Member States themselves admit that there are sometimes problems with the implementation of the EU railway legislation, and the Commission received signals that more assistance and support is needed, also regarding managing railway investment projects. Those problems may stem from lack of sufficient resources, defence of vested national interests by some companies and institutions, or highly complex nature of some of the EU acts. One of the specific areas where problems are very acute is the deployment and operation of railway telematic applications.

Elements of problem drivers

- E1.22 Each main problem driver from section 2.2.3 above has its elements which can be identified as follows:
- deficit/lack of sufficient (financial and human) resources in case of some NSAs to effectively perform their tasks;
 - insufficient independence of the NSAs from the infrastructure managers, incumbent rail undertaking and/or the ministry;
 - granting by the NSAs the safety certificates to rail operators and the authorisations of placing into service of rail systems and vehicles is too slow in some cases;
 - reluctance of some NSAs to accept safety certificates and authorisations of placing in service of railway vehicles and subsystems granted by other NSAs;
 - deficit/lack of sufficient (financial and human) resources in case of some Notified Bodies to effectively perform their tasks;
 - insufficient independence of the Notified Bodies from the infrastructure managers, rail undertakings, the ministry or other actors;
 - deficit/lack of sufficient (financial and human) resources in case of some Regulatory Bodies to effectively perform their tasks;
 - insufficient independence of the Regulatory Bodies from the infrastructure managers, incumbent rail undertaking and/or the ministry;
 - the level of monitoring and control of implementation of the interoperability and safety legislation by Member States is not sufficient; national technical and safety rules sometimes pose a transparency and/or discrimination problems;
 - problems with proper implementation of EU railway directives; too divergent interpretation of the directives;

- insufficient level of dissemination of railway-related information and training.

Main actors and other legal acts concerned

- E1.23 The ERA, the Commission, national authorities (the NSAs, Notified Bodies, Regulatory Bodies) and railway stakeholders (both sides of industry). Indirectly, the rails users, i.e. passengers and users of freight services will also be affected.
- E1.24 The eventual decision to extend the powers of the ERA and to amend the Regulation 881/2004 would have an impact on the provisions of the safety directive (parts on NSAs), the interoperability directive (parts on Notified Bodies) and Directive 2001/14/EC (parts on regulatory bodies), currently in the co-decision procedure (recast of the first railway package). If this is the case, those provisions will have to be amended accordingly.

Policy objectives

- E1.25 In light of the problem definition specified above, the general objective of this policy initiative is "to contribute to the completion of the internal market for transport through improvements to the operation of the integrated EU railway system and its institutional framework".
- E1.26 The specific objectives are to:
- Increase the efficiency of the safety certification, vehicle authorisation and access granting processes;
 - Ensure non-discrimination in the granting and recognition of safety certificates, interoperability authorisations and in the granting of access to the rail network and services across the EU;
 - Increase the coherence of the national legal frameworks notably related to the safety and interoperability aspects of the internal market for railways
- E1.27 The initial operational objectives developed so far by the Commission are:
- To achieve, by 2025, a 25% market share of rail freight market by new entrants in each EU Member State.
 - To achieve, by 2025, 25% reduction of time to market for new railway undertakings.
 - To achieve, by 2025, a 25% reduction in the cost and duration of the certification of rolling stock.

Description of tasks

Problem definition

The main problem and underlying causes

- E1.28 The consultant shall validate and substantiate the main problem identified in section 2.2: the highly decentralised system in place which does not cope in a fully satisfactory manner with the European dimension of the internal market for rail services, and 3 main underlying causes, or problem drivers (discrimination of new entrants (both national and foreign), inefficient functioning of the national institutions set up by EU legislation, too divergent interpretation of EU railway legislation by national authorities).

Evidence/indicators relating to the problem and the problem drivers

E1.29 The existence of the problem and each problem driver and its negative impact on the functioning of the railway internal market shall be substantiated by the consultant and estimated in quantitative terms (only where it is not possible, qualitative estimated should be provided). The consultant shall provide sufficient evidence to validate or reject the claims concerning the problem and problem drivers, and notably:

- provide figures on the penetration of the national markets by new entrants/foreign operators in order to verify that the internal market develops too slowly;
- provide figures on the development of international rail freight market, make the comparison with road to check if the latter increases market shares to the detriment of rail in cases where rail having a prima facie competitive advantage;
- provide a sufficient number of case studies validating and illustrating the discrimination of new entrants by the different national authorities (at least 3 examples from EU-15 and 2 from EU-12, covering each type of institution);
- provide case studies on the functioning of the national institutions with the aim of validating the statement that they function in a suboptimal way (in particular, verify/validate the statements that staff is "imported" from incumbent operators, staff numbers are inadequate for the extent of the tasks, de facto lack of independence from the ministry/incumbents, slowness in treating demands, evidence on mistakes, etc);
- provide figures on the duration of process of certification of railway undertakings and of granting authorisations of placing in service of railway vehicles and subsystems with the aim of validating the claim that some NSAs act too slowly what has a detrimental effect for the railway market.

E1.30 The list above is not exhaustive and the consultant shall propose, after having analysed the problem, any other indicator/evidence needed to fully substantiate and validate the problem definition together with the identified underlying causes of the problem (problem drivers).

E1.31 This robust corroboration of problem definition will at the same time support the adequacy of policy options given further below.

E1.32 On the basis of the evidence gathered, the consultant shall suggest - if necessary - amendments to the structure of the problem definition. Any such changes will have to be discussed with the Commission and will require the approval of the latter.

Objectives

E1.33 Based on the validation and substantiating of the definition of the problem and of its underlying causes, the consultant shall also validate the general and specific objectives of the foreseen initiative. Any changes to those two levels of the objectives would need to be discussed with the Commission and require the approval of the latter; in addition, they would need to be fully coherent with the suggested changes to the problem definition (including the description of underlying problem causes) as described in the last paragraph of Task 3.1.2 above.

- E1.34 The consultant shall also validate the operational objectives developed so far by the Commission (see section 2.4 above) and propose additional ones where justified.
- E1.35 The final list of operational objectives suggested by the consultant will be accompanied by a proposal for the concrete arrangements for monitoring their achievement in the future, including the choice of monitoring tools and timeframe.

Policy options

Overview of policy options and their substantiation

- E1.36 In light of the above specified problems and policy objectives, the Commission identified a number of options below. The actions considered aim at clarifying the regulatory framework (the ERA Regulation the railway safety and interoperability directives, Directive 2001/14/EC), in order to eliminate problems in functioning of the railway market and to further improve it. The list is not necessary exhaustive.
- E1.37 The options have to be substantiated (described in terms of concrete policy measures) and refined by the consultant in cooperation with the Commission; they shall be in a logical connection with the problem definition in its final form. The contractor shall check with the Commission the legal feasibility and effectiveness of the concrete measures proposed and seek advice from the Commission on the optimal choice of the policy tools for these measures. The final policy options shall be agreed by the Commission.
- E1.38 If necessary, the Contractor shall be able to find and assess any other option not mentioned in this list which would seem appropriate after having refined the problem definition, in consultation with the Commission.
- E1.39 The options are not necessarily conflicting with each other and could be, under certain circumstances, be treated as complementary. The contractor shall be prepared to assess, as requested, different combinations of options 2-4 as well as combinations of the sub-options of option 2 and 3, if such a solution would be justified on the basis of the assessment of impacts of the options.
- E1.40 For each of the options, the consultant shall define concrete arrangements linked to the realisation of the elements proposed, notably on how the supervision/take-over of competences can be organised in practice, including the necessary institutional changes of the European Railway Agency.
- Option 1: do nothing ("business as usual")
 - Option 2: extension of competences of ERA vis-à-vis the national authorities (NSAs, Regulatory Bodies, Notified Bodies):
 - without a transfer of competences from national to the EU level;
 - with a transfer of competences from national to the EU level;
 - ERA as an appeal body for some decisions of the national authorities.
 - Option 3: improve application of existing railway legislation:
 - strengthened enforcement of railway legislation
 - change of the railway directives into regulations

- amendment of the railway directives to enable the adoption by the Commission of implementing measures setting out common principles and practices for the national authorities

■ Option 4: Soft measures.

E1.41 The options are described in detail further below.

Description of option 2 (extension of competences of ERA vis-à-vis as supervisory body over the national authorities (NSAs, Regulatory Bodies, Notified Bodies)

E1.42 For option 2 the Commission has identified three sub-options (a, b and c) concerning the level of interactions between ERA and the national authorities; they are described below. The sub-options are not necessarily conflicting, therefore different combinations are possible.

E1.43 For each of the sub-options a number of elements relating to competences of every national authority was identified and is provided further below. Those elements also have to be substantiated (described in terms of concrete policy measures) and refined by the consultant in cooperation with the Commission in a similar manner as the options; they shall be in a logical connection with the problem definition.

E1.44 The contractor shall evaluate the disaggregated impacts of the implementation of sub-options a-c for the individual competences of each of the types of national authorities. The final shape of option 2 shall be determined by the results of this initial assessment of impacts and anyhow discussed and agreed with the Commission. Different combinations are possible, for example:

Example 1:

The initial assessment of impacts indicates that the competences of NSAs should be transferred to ERA, while those of Notified Bodies rather stay with the Member States, with a mere coordination role for ERA; finally, the decisions of Regulatory Bodies should be made subject to appeal in front of ERA.

In this situation, option 2 in its final form shall combine these three elements.

Example 2:

The initial assessment of impacts indicates that ERA should coordinate some activities of the NSAs (without the transfer of competences), and at the same time ERA should be the appeal body for some decisions of the NSAs. Competences of Notified and Regulatory Bodies are transferred to ERA.

In this situation, option 2 in its final form shall combine sub-options (a) and (c) concerning the NSAs and sub-option (b) for other authorities.

E1.45 The contractor shall give proposals for measures which would implement the final option 2 (for example, increase in the staff of the Agency, relocation of staff within the Agency, greater flexibility regarding the staff contracts in the Agency, revision of the Agency governance structure etc). A special attention must be

given to changes linked with eventual realisation of option 2 (b) and (c) in terms of legal and institutional requirements relating to independence of the Agency; the contractor shall propose how this independence from the railway industry could be achieved.

- E1.46 If necessary, the Contractor shall be able to find and assess any other element not mentioned in this list which would seem appropriate after having substantiated the problem definition, in consultation with the Commission.

Option 2 (a): Extension of ERA's competences without a transfer of competences from national to the EU level:

- E1.47 In this sub-option the Agency could perform a coordinating role for the national authorities in order to develop common principles and practices for making decisions (acting as their "secretariat"), or being given other supervisory tasks. In particular, the work of the Agency in this respect could lead to the adoption by the Commission of implementing measures setting out such common principles and practices. No transfer of competences from the national authorities to ERA is allowed. This sub-option should be based on the following - yet not exhaustive - list of elements deriving from problem definition, which should be substantiated by the consultant by translation into concrete policy measures:

- Enhanced role of ERA in certification of railway undertakings by setting the framework for the NSAs and developing the single European safety certificate (the single certificate, once delivered by on NSA, would be valid on the whole EU territory; part B of the current certificate would then be removed); at the end of this process the Commission would have to modify the safety directive
- Enhanced "coordination" and supervision role of ERA vis-à-vis NSAs regarding granting of authorisation of placing into service
- Enhanced "coordination" and supervision role of ERA vis-à-vis Notified Bodies regarding type approval and certification of rail vehicles
- Enhanced "coordination" and supervision role of ERA vis-à-vis Notified Bodies regarding type approval and certification of ERTMS equipment
- Enhanced "coordination" and supervision role of ERA vis-à-vis Regulatory Bodies (this element might be revised taking into account the results of the discussion on the recast of the first railway package)
- Control by ERA over the functioning of NSAs (for example: by developing guidelines and auditing adherence to them by the NSAs)

Option 2 (b): Extension of ERA's competences with a transfer of competences from national to the EU level

- E1.48 In this sub-option those competences of the national authorities, whose performance was identified as sub-optimal in the problem definition, are transferred - completely or partially - to the Agency. In the case of partial transfer the competences are shared between ERA and the national authorities, and the concept of ERA becoming a "one stop shop" can be invoked. This sub-option should be based on the following - yet not exhaustive - list of elements deriving from problem definition:

- ERA takes over the competences of the NSAs regarding granting of certificates to the railway undertakings
- ERA takes over the competences of the NSAs regarding granting of authorisations of placing into service of rail vehicles and other sub-systems
- ERA takes over the competences of the Notified Bodies regarding checking the conformity with the TSIs of the rail sub-systems (including ERTMS equipment)
- ERA takes over the competences of the Regulatory Bodies regarding market supervision, in particular as far as cross-border traffic is concerned (this element might be revised taking into account the results of the discussion on the recast of the first railway package)
- ERA shares the competences with the NSAs regarding granting of certificates to the railway undertakings (a "one stop shop" for safety certificates"): an application is sent to ERA, relevant NSAs are consulted, ERA takes the decision
- ERA shares the competences with the NSAs regarding granting of authorisations of placing into service of rail vehicles and other sub-systems (a "one stop shop" for interoperability authorisations): an application is sent to ERA, relevant NSAs are consulted, ERA takes the decision

Option 2 (c): ERA as an appeal body for some decisions of the national authorities

- E1.49 In this sub-option the Agency would be awarded with the power to analyse direct complaints from private companies (and other actors) against contested decisions of national authorities concerning measures identified for sub-options (a) and (b) above. After the analysis, ERA would provide a recommendation to the Commission which in turn would be empowered to adopt a decision that might over-rule the contested decision of a national authority.

Description of option 3 (improve application of existing railway legislation)

- E1.50 For option 3 the Commission has identified three sub-options (a, b and c) with different possibilities of actions in relation to existing legislation; they are described below. The sub-options are not necessarily conflicting, therefore different combinations are possible.

Option 3 (a): strengthened enforcement of railway legislation

- E1.51 The railway interoperability and safety legislation is introduced, in general, by directives which Member States must implement. This is not always the reality, therefore the Commission monitors the process and reacts in case of erroneous, partial or lack of implementation. Currently the biggest constraints lie in the institutional and resource framework.
- E1.52 The contractor shall analyse the possibilities for action and provide proposals which would enable the Commission to oversee and enforce application of the legislation, besides the infringement procedure. For example, granting the Commission powers of inspection/audit of national railway authorities should be taken into account.
- E1.53 The contractor shall substantiate this sub-option by proposing concrete policy measures needed to put in practice; suggestions on how the existing legislation would have to be amended shall be also provided, if necessary.

Option 3 (b): change of the railway directives into regulations

- E1.54 In this sub-option the possibilities of addressing the general and specific objectives (as described in section 2.4 above) through amendments of the EU railway interoperability and safety legislation shall be analysed and assessed. Notably, the feasibility of transforming the directives into regulations shall be taken into account. It would eliminate the too divergent interpretation and implementation of the railway law by Member States what has a negative impact on the functioning of the common EU railway market.
- E1.55 Every directive in question (interoperability, safety and Directive 2001/14/EC) shall be analysed separately, with a possible result being from none to all directives transformed into regulations. The final shape this sub-option should reflect this analysis.
- E1.56 The contractor shall provide suggestions on the concrete measures in the current legislation which would need to be amended in order to reach the specific objectives described in section 2.4 above.

Option 3 (c): amendment of the railway directives to enable the adoption of implementing measures by the Commission

- E1.57 Sub-option 3 (c) envisages limiting the divergent interpretation of the EU railway legislation by Member States by introducing the explicit possibility for the Commission to adopt implementing acts relating to the functioning of national authorities identified as sub-optimal in the problem definition. The implementing measures would set out common principles and practices for the national authorities, to ensure correct implementation of the railway legislation under uniform conditions.
- E1.58 Every directive in question (interoperability, safety and Directive 2001/14/EC) shall be analysed in this respect, with a possible result being from none to all directives amended in order to allow adoption of harmonising implementing measures by the Commission.
- E1.59 The contractor shall substantiate this sub-option by proposing concrete policy measures needed to put in practice.

Description of option 4 ("soft measures")

- E1.60 Option 5 should be based on the following - yet not exhaustive - list of elements deriving from problem definition:
- Enhanced role of ERA in monitoring and control of implementation of national safety and interoperability legislation and migrating from national technical and safety rules to a system of EU rules (in order to alert the Commission on cases of incorrect or discriminatory implementation)
 - Enhanced role of ERA in dissemination of railway-related information and training
 - Enhanced role of ERA in providing advice and support for Member States and other stakeholders in implementing EU legislation on safety and interoperability
 - Enhanced role of ERA in providing advice in building capacities in Member States to design, implement and manage relevant investment projects

- Enhanced role of ERA in providing advice and support for Member States and other stakeholders in deploying and operating telematic applications
- Communication from the Commission regarding guidelines on the interpretation of specific EU laws and decisions (including Technical Specifications for Interoperability)
- Enhanced role of ERA in identifying potential spare parts to be standardised and coordination of industry activities in this area (this would also imply more involvement in CEN/CENELEC activities).

E1.61 The EU candidate countries can be also taken into account for the measures described in points (a), (b), (d) and (e).

Assessment of impacts

- E1.62 The consultant must assess the economic, social and environmental impacts of the policy options substantiated and refined according to the tasks defined in section 3.2 above. The socio/economic, institutional and - where appropriate - legal perspectives must be taken into consideration.
- E1.63 The options identified above shall be - after their necessary corroboration and refinement - thoroughly assessed and consulted by the contractor with all stakeholders involved, as described in section 3.5 below.
- E1.64 The economic analysis shall address the microeconomic, sectoral and macroeconomic impacts of the implementation of the options and sub-options considered. The analysis shall include an assessment of administrative costs. The social impacts must include the impacts on rail passengers.
- E1.65 The assessment from the institutional perspective shall cover the capability of the options considered to ensure a smooth functioning of the procedures and institutions needed to ensure provision of interoperable and safe railway services in the EU. For each of the options, the consultant shall provide the likely practical effects of their implementation, most notably on the staffing of the Agency and of the national authorities, and on the EU budget.
- E1.66 Where appropriate the project shall examine the legal feasibility and effectiveness of the options indicated (including the compatibility with the Treaty and international agreements) in terms of the stated objectives pursued. It will be the task of the contractor to carry out all activities which enable him to perform the requested assessments such as data gathering, expert consultations, cost calculations, modelling, etc.[]
- E1.67 The impacts shall be assessed where possible in quantitative terms. Qualitative assessment must be properly justified on the grounds of the impossibility to make quantitative estimations. The list of impacts analysed shall be exhaustive, and use as the starting point the list of possible impacts provided in tables 1, 2 and 3 on pp. 33-38 of the Commission's Impact Assessment Guidelines³². The impacts provided in this table shall be analysed (quantitatively where possible, qualitatively elsewhere), unless clearly not relevant in the case of the foreseen initiative.

³² http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf.

Consultation of stakeholders

- E1.68 While analysing the options, the contractor shall consult all interested parties. It shall take a form of an electronic survey. The content of the survey will have to be agreed with the Commission before its publication. A sufficient advertisement of the survey among the stakeholders (notably through e-mail notifications) will be ensured by the contractor. In case the survey does not provide a sufficiently clear picture or the results are confusing, it could be followed by interviews with the most important stakeholders. The consultation process will in any case have to fulfil the Commission's minimum standards for public consultation³³, in particular in what concerns the duration of the consultation (minimum 8 weeks).
- E1.69 The results of the survey shall be presented in a graphical form. It should indicate responses of each group of stakeholders in relation to each option (and sub-option), and the appropriate combinations of all the options. The level of agreement/disagreement shall be represented by a scale from 1 (totally disagree) to 5 (totally agree), with 3 being "neither agree nor disagree". Responses indicating ignorance ("no opinion", "don't know") shall be also indicated.
- E1.70 The minimum list of stakeholders to be consulted is provided in annex 1; the final list shall be agreed by the contractor with the Commission.

EXISTING DOCUMENTATION AND INFORMATION, MONITORING SYSTEM

- E1.71 Background material and administrative and technical files concerning the specific field (see annex) will be provided by the technical and financial officers, if available. All other data shall be gathered by the contractor.
- E1.72 **In this context, the ex-post evaluation of Regulation 881/2004 establishing the European Railway Agency (in conformity with its Article 43) shall be thoroughly analysed by the contractor.** The final report, prepared by external company, was delivered to the Commission in April 2011³⁴ and its main findings are the following:
- Positive steps towards the completion of the initial objectives of the Regulation, however many of them are likely to continue to remain valid for the longer term.
 - The Agency has made reasonable progress as regards its contribution to the fulfilment of policy objectives (they relate to the overall effectiveness of the railway regime for which the Agency has only a contributory role).
 - The effectiveness of the instruments laid down by the Regulation for the fulfilment of the objectives (such as registers and databases) was assessed as useful to stakeholders, but use or awareness of some of them seems limited.
 - The costs incurred for the fulfilment of the objectives are broadly in line with comparable EU agencies.
 - The performance of the Agency is on the whole satisfactory, however, there are areas of opportunity for improvement, like introduction of key performance indicators or increasing the effectiveness of the working parties.

³³ COM(2002)704, http://europa.eu.int/eurex/lex/LexUriServ/site/en/com/2002/com2002_0704en01.pdf.

³⁴ http://ec.europa.eu/transport/evaluations/doc/2011_era-evaluation-881-2004.pdf

- The effectiveness and functioning of the Agency and its working practices as regards the structures created by the Regulation is overall assessed positively, nevertheless there are areas where the functioning of the Agency could be improved (such as quality control, more effective governance structure, greater flexibility regarding staff contracts).

E1.73 In addition, the evaluation looked into a list of possible future roles of the Agency, as advocated by stakeholders in the aftermath of the Viareggio accident (June 2009). Tasks from the list that were identified as the most appropriate included: provision of advice and support, dissemination of railway-related information and training and involvement in international cooperation and promotion of EU standards.

METHODOLOGY TO BE FOLLOWED

- E1.74 The methodology to be applied in this study is to be elaborated by the contractor. In his/her offer, the contractor will describe the phases of the study, together with a presentation of the various methodologies proposed for the different phases of the work (structuring, collecting data, analysing and judging).
- E1.75 The methodologies should build on the methods and models described in the most recent Impact Assessment guidelines of the European Commission³⁵. Particular attention should be given to the analysis of the administrative cost impact and to social impacts for which the study should use the 'Guidance for assessing Social Impacts within the Commission Impact Assessment system'³⁶.
- E1.76 The study should gather and present evidence for evaluating possible policy options (as described in chapter 3); their comparative advantages and disadvantages shall be assessed.
- E1.77 Whenever appropriate, the relevant sectoral social dialogue committees³⁷ shall be consulted.
- E1.78 The study should in particular include:
- Impact analysis, including identification of impacts, quantitative and qualitative assessment analysis of significant economic, social³⁸, environmental impacts. The "IA TOOLS online platform" provides guidance in determining whether the identified economic, environmental and social impacts can be assessed and quantified using existing models³⁹;
 - Administrative costs calculation for each policy option;
 - Consideration of risks and uncertainties in the policy options including obstacles to compliance.

³⁵ IA guidelines: http://ec.europa.eu/governance/impact/docs_en.htm

It is also advisable to align the methodology to the EC Evaluation Guide: http://ec.europa.eu/budget/documents/evaluation_en.htm?go=t1_0#table-1_0

³⁶ <http://ec.europa.eu/social/BlobServlet?docId=4215&langId=en>

³⁷ <http://ec.europa.eu/social/main.jsp?catId=480&langId=en>

³⁸ With the use of the above mentioned 'Guidance for assessing Social Impacts within the Commission Impact Assessment system'

³⁹ <http://iatools.jrc.ec.europa.eu/bin/view/IQTool/WebHome.html>

- Comparison of the policy options: weigh-up of positive and negative impacts of each identified policy option (and sub-option) in terms of effectiveness, efficiency and consistency and display of aggregated and disaggregated results. Presentation of comparisons between options by area. Given that some of the examined options have budgetary implications, particular attention will be brought to cost effectiveness of different options ("ex-ante" elements).
 - A special analysis must be carried out for quantification of social impacts, for which the Contractor shall apply the Commission guidelines⁴⁰.
 - Whenever appropriate, the relevant sectoral social dialogue committees shall be consulted.
 - The most suitable tool for the quantification of the social impact must be used.⁴¹
- E1.79 As described in section 3.1, the contractor shall substantiate the problem definition and the problem drivers. Similarly, they shall refine policy options in accordance with the policy objectives as described in chapter 2.
- E1.80 The final report on the work carried by the contractor should demonstrate that the various policy options have been carefully analysed. All relevant evidence of the analysis process has to be attached in an annex to the report to allow the argument to be followed in a transparent manner (questionnaires, results of surveys, calculations, etc.).
- The final report should include an executive summary written in such a way that any non-specialist should be able to follow the argumentation.

⁴⁰ <http://ec.europa.eu/social/main.jsp?catId=760&langId=en&preview=chJldmld0VtcGxQb3J0YWwh>

⁴¹ <http://iatools.jrc.ec.europa.eu/bin/view/IQTool/WebHome.html>

APPENDIX

F

GLOSSARY OF TERMS

F1 GLOSSARY

F1.1 The tables below summarise the principal terms and acronyms used in this report.

Term	Definition
Alstom	Rolling stock and subsystem manufacturer
Arenaways	Italian RU
The Agency	The European Railway Agency as provided for in Regulation (EC) No 881/2004 of 29 April 2004 as subsequently amended by Regulation (EC) No 1335/2008 of 16 December 2008.
Bayerische Oberlandbahn	German RU
Bombardier	Rolling stock and subsystem manufacturer
CR LOC&PAS TSI	Technical specification for interoperability relating to the rolling stock subsystem Locomotive & Passenger rolling stock
CR-RST TSI	Technical Specification for interoperability relating to Conventional Rolling Stock.
DB Regio	German RU (regional branch of the incumbent RB)
DV29	The authorisation process of structural subsystems and vehicles under Directive 2008/57/EC
First Railway Package	Suite of three European Directives (Directive 2001/12/EC, Directive 2001/13/EC and Directive 2001/14/EC) designed to promote rail market opening to competition at Europe-wide level.
Floyd	Hungarian RU
Fourth Railway Package	Set of new rules currently under discussion at European level regarding market opening for domestic passenger transport by rail and non-discriminatory access to rail infrastructure and services.
Freightliner PL	Polish RU
Impact Assessment	Process adopted by the European Commission for the evaluation of policies and legislative proposals. The process consists in a set of logical steps designed to produce evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts.
Infrastructure Manager	A body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings.
Länder	One of the 16 German federal states
National Investigation Body	A permanent body, independent of the actors of the rail sector, in charge of investigation to find the immediate causes and underlying causes after serious accidents on the railway system, with the objective of possible improvement of railway safety and the prevention of accidents.

Term	Definition
National Safety Authority	The national body entrusted with the tasks regarding railway safety in accordance with this Directive or any bi-national body entrusted by Member States with these tasks in order to ensure a unified safety regime for specialised cross-border infrastructures (Article 3 Directive 2004/49/EC).
Network Rail	British IM
Network Statement	A mandatory document (introduced by Directive 2001/14/EC) published by the IM of a rail network, which presents information on the network's rail infrastructure, and on commercial and legal access conditions.
Notified Body	A body responsible for assessing the conformity or suitability for use of the interoperability constituents, or for appraising the EC procedure for verification of the subsystems
PAS TSI	Technical specification for interoperability relating to the rolling stock subsystem 'Locomotives and passenger rolling stock' of the trans-European conventional rail system
PRM TSI	Technical Specification for Interoperability for Persons with Reduced Mobility; it set provisions binding for all trains used on the interoperable rail system
Public Service Contract	Public contracts other than public works or supply contracts having as their object the provision of services, including rail transport services.
Rail car leasing company	Company that provides rail wagons (usually for freight transport) either through full-service or net leasing, including a series of complementary services (e.g. certification, maintenance, taxes, etc.)
Rail Recast	Recast of the First Railway Package, intended to merge the three directives in force and their successive amendments, with the elimination of cross-references and the harmonisation of terminology and clarification of existing provisions.
RailNetEurope	Association of the majority of European Rail Infrastructure Managers and Allocation Bodies
Railway Undertaking	Any public or private undertaking, licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only
Railway manufacturers	Manufacturers of rolling stock and other rail related systems and subsystems (e.g. locomotives, ERTMS systems, diagnostic devices, etc.)
Regulatory Body	Independent body established by article 30 of Directive 2001/14/EC to supervise the market and act as an appeal body, in particular in case of claims from RUs of unfair treatment, discriminations by the IM.
Safety certificate	Mandatory certificate released by an NSA, which provides evidence that the RU has established its safety management system and can meet requirements laid down in TSIs and other relevant EU legislation and in national safety rules in order to control risks and operate safely on the network. It comprises 2 parts, related to common European rules (Part A) and specific requirements necessary for the safe operation of the relevant network (Part B).
Safety Directive	Directive 2004/49/EC
Single European Transport Area	Theoretical concepts indicating the elimination of all barriers between modes and national systems within the EU, to ease the process of integration and facilitating the emergence of multinational and multimodal operators across member states

Term	Definition
Single European Railway	A specification of the Single European Transport Area, indicating the abolishment of technical, administrative and legal obstacles which impede entry to national railway markets, cross border operations and a fully opened European rail market
SRT TSI	Technical specification of interoperability relating to safety in railway tunnels in the trans-European conventional and high-speed rail system.
Trenitalia	Italian RU
Wagon keeper	The entity responsible for a freight wagon, especially as regardsw maintenance and safety; it can be an RU or a wagon owner

Acronym	Full term
ALE	Autonomen Lokomotivführer-Gewerkschaften Europas (Autonomous Train Drivers' Unions of Europe, Germany)
ANSF	Agenzia Nazionale per la Sicurezza delle Ferrovie (National Agency for Rail Safety, Italy)
ARAF	Autorité de Régulation des Activités Ferroviaires (French RB)
BMVBS	Bundesministerium für Verkehr, Bau und Stadtentwicklung (Federal Ministry of Transport, Building and Urban Development, Germany).
BNetzA	Bundesnetzagentur (German RB)
CER	Community of European Railways and Infrastructures Companies
DB	Deutsche Bahn (German national railway company)
VDV	Verband Deutscher Verkehrsunternehmen (German association of transport undertakings)
DeBo	Designated Body
EASA	European Aviation Safety Agency
EBA	Eisenbahn-Bundesamt (Federal Railway Office, German NSA)
EBC	EISENBahn-CERT (Notified Body for Germany).
EEC	European Economic Community
EIM	European Infrastructure Managers
EMSA	European Maritime Safety Agency
EPF	European Passenger Federation
EPSF	Etablissement Public de Sécurité Ferroviaire (Public Office of rail Safety, France).
EPTTOLA	European Passengers Train and Traction Operating Lessors' Association
ERA	European Railway Agency
ERFA	European Rail Freight Association
ETF	European Transport Federation
ERTMS	European Rail Traffic Management System
EU	European Union

EU-15	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK
EU-12	Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovenia and Slovakia
EU-27	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.
FS	Ferrovie dello Stato Italiane
FTE	Full Time Equivalent
GDP	Gross domestic product
GHG	Greenhouse gas
IA	Impact Assessment
IM	Infrastructure Manager
MCAF	Mission de Contrôle des Activités Ferroviaires (former French regulator)
MS	Member State
NEB	National Enforcement Body
NKH	Nemzeti Közlekedési Hatóság (National Transport Authority, Hungary)
NIB	National Investigation Body
NoBo	Notified Body
NOTIF-IT	Notifications using Information Technology (database for the notification of national safety rules and national technical rules)
NPV	Net present value
NSR	National Safety Rule
NSA	National Safety Authority
NTR	National Technical Rules
NTV	Nuovo Trasporto Viaggiatori (Italian RU)
ORR	Office of Rail Regulation (UK)
PRM	Passengers with reduced mobility
PSC	Public Service Contract
RATP	Régie Autonome des Transports Parisiens (Independent Operator of Parisian Transports)
RB	Regulatory Body
RFI	Rete Ferroviaria Italiana (Italian IM)
RFF	Réseau Ferré de France (French IM)
RISC	Railway Interoperability and Safety Committee
ROSCO	Rolling stock leasing company
SDG	Steer Davies Gleave

SMART	Specific, Measurable, Achievable, Relevant and Time Bound
SME	Small and medium-sized enterprises
SMS	Safety Management System
SNCF	Société Nationale des Chemins de fer Français (French National Railway Company)
TRIS	Technical Regulations Information System (database held by DG Enterprise and Industry containing legislative initiatives of the Member States)
TSI	Technical Standards for Interoperability
UIP	International Union of Private Wagons
UIRR	International Union of Combined Road-Rail Transport Companies
UITP	International Association of Public Transport
UNIFE	Union of the European Railway Industries
URSF	Ufficio per la Regolazione dei Servizi Ferroviari (Italian RB)
UTK	Urząd Transportu Kolejowego (Rail Transport Office, Poland)