

# Annex XII – Table summarising and comparing the answers of Regulatory Bodies

|    | Role/Powers  | Assessment of economic equilibrium of PSC   | Definition of economic equilibrium of PSC   | Decisions on PSC | Gaps/weaknesses – Suggestions   | Comments  |
|----|--|---|---|------------------|---|---|
| BE | N/A  | Article 10,3,b of Directive 91/440/EEC has not been transposed into Belgian law.    | N/A   | N/A              | N/A   | N/A   |
| CZ | Directive 2007/58/EC has not been implemented yet.   | No opportunity to assess the economic equilibrium of a public service yet.          | N/A   | N/A              | N/A   | N/A   |
| DE | Did not answer the question.   | Stipulation concerning economic equilibrium has not been implemented in German law. | N/A   | N/A              | N/A   | N/A   |
| FI | <ul style="list-style-type: none"> <li>- Monitors railway market.</li> <li>-Handles disputes between RUs and IMs.</li> <li>- Current legislation does not address PSO as specific task of the RB.</li> </ul> | N/A   | <ul style="list-style-type: none"> <li>- RB required to determine economic equilibrium only if the Member State decides to limit the right of access and PSC cover</li> </ul> | None             | <ul style="list-style-type: none"> <li>- Lack of strategy and belief on how the rail sector could be made more competitive.</li> <li>- RU owning the exclusive right should be closely monitored for its market behaviour.</li> </ul> | <ul style="list-style-type: none"> <li>- A deeper analysis of the rail market in its whole in order to come up with a strategy on how the rail market could be more competitive.</li> <li>- Beneficial to have</li> </ul> |

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|              |  |     | international passenger service.<br>- Not applicable because no international passenger traffic between Finland and any other Member State.  |     | - Quality targets should be clear and appropriate.<br>- Use of financial compensation should be monitored. | more strict obligations for Member States in Regulation 1370/2007 with regard to Article 7 (e.g. obligation for Member States to justify clearly and openly the granting of exclusive rights as well as the length of the contract).<br>- The situation would improve if Member States had a clear and regulated monitoring obligation on exclusive rights of owners. |
| IT<br>"URSF" | <u>Supervision and monitoring:</u><br>- Supervision and monitoring of the competition and the degree of contestability of markets.<br>- Directions and prescriptions on the Network Statement.<br>- Exercise of the investigatory power.<br>- Cooperation with the other national regulatory bodies.<br><br><u>Regulation:</u> | N/A | - The "compromission of economic equilibrium" is when the difference between the total remuneration of specific PSC and the total cost incurred by the RU owner of the contract for the provision of services under the contract is < 0. | N/A | N/A  | N/A   |

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|             | <ul style="list-style-type: none"> <li>- Management of legal issues and processes between institutions involving other public bodies responsible for competition in rail transport.</li> <li>- Decisions against acts or activities adopted by the IM or RU.</li> <li>- Support to the Minister regarding the definition of guidelines to regulate the sector and the development of competition in the rail service market.</li> <li>- Assess the economic equilibrium of PSC.</li> <li>- Issue sanctions.</li> </ul>           |   | <ul style="list-style-type: none"> <li>- Whether the economic equilibrium is compromised shall be determined by the URSF on the basis of an objective economic analysis based on the parameters specified in a formula.</li> </ul> |     |  |     |
| NL<br>"NMA" | <ul style="list-style-type: none"> <li>- For publicly tendered concessions: NMA only has regular powers based on the Competition Act (applicable to all businesses in NL).</li> <li>- For concessions not publicly tendered: NMA supervises compliance under art. 69 of the Passenger Transport Act ("PTA", Wet Personenvervoer 2000), with the exception of the heavy rail concession granted to the Nederlandse Spoorwegen.</li> <li>- Art. 69 of the PTA: Companies that hold privately granted concessions should</li> </ul> | <ul style="list-style-type: none"> <li>- NMA does not currently have the power to assess whether the economic equilibrium of PSC is valid or not</li> <li>- Planned amendment of the national legislation to give the NMA the power to verify whether the economic equilibrium of the PSC is jeopardised by foreign operators that operate international train</li> </ul> | N/A  | N/A | <ul style="list-style-type: none"> <li>- The division between the tendered and privately granted concessions for bus, tram and metro. The three city districts (Amsterdam, Rotterdam and The Hague) should be tendered too, which would make control by the NMA unnecessary.</li> <li>- NMA only has indirect powers and cannot control suspected financial transactions itself. This when the burden to go to court is too high for private parties. This structure of private enforcement</li> </ul> | N/A |

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|    | <p>separate their private activities and the public transport activities in separate business entities, and keep transparent financial flows between those 2 entities / The public transport entity may not cross-subsidise other entities.</p> <ul style="list-style-type: none"> <li>- The transport companies publish an audit report each year; the NMA has the power to check the existence of such report but cannot investigate suspected financial transactions (the competitor has to start a civil procedure and claim damages).</li> <li>- Planned amendments of the PTA: the introduction of the possibility of directly awarding concessions to in-house operators in the city districts of Amsterdam, Rotterdam and The Hague, the power of NMA to supervise companies that hold concessions for heavy rail and the power of NMA to directly enforce the prohibition of cross-subsidies.</li> </ul> | services through NL.                              |  |                     | <p>is a barrier to effective enforcement of the prohibition of cross-subsidies.</p> <ul style="list-style-type: none"> <li>- The PTA contains no instruments to ensure effective management by the public service operators (to submit the management to an objective assessment).</li> <li>- Main suggestion: The amendment of the PTA; the making of a benchmark as a light-handed form of regulation.</li> </ul> |     |
| RO | Powers provided by Directive 2007/58/CE transposed into Romanian law by GEO 62/2009   | No assessments of the economic equilibrium (yet). | Keeping the financial economic situation balanced means to create and have | No decisions (yet). | No gaps or weaknesses.  | N/A |

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|             | (published in the Official Gazette of Romania Part I no. 399 12/06/2009).   |   | conditions in order to assure the necessary supplies.  |   |   |     |
| SE          | <ul style="list-style-type: none"> <li>- No direct role or power with regard to PSC.</li> <li>- Body granting authorisations to regional bodies responsible for public service passenger transports if they want to apply for, and be given access to, rail infrastructure themselves.</li> </ul>                                 | <ul style="list-style-type: none"> <li>- No and see no reason for such an assessment: society should not operate services that could be provided by the market, nor in any other way unnecessarily disrupt the market.</li> <li>- Article 10(3b) is not applied in Sweden because the transport services should be based on traffic that can be operated on a commercially viable basis.</li> </ul> | No need for such a definition (See left).  | No decision.                              | Considering the role of Regulatory Body, no gaps.   | N/A |
| SI<br>"RRB" | -RRB has the right to limit the access of an operator of new international passengers services with regard to certain lines on which a rail passenger service is already provided by PSC. The new international operator has to inform RRB of its intentions to access certain lines following which the RRB assesses whether the | <ul style="list-style-type: none"> <li>- RRB developed first guidelines for the assessment of the economic equilibrium of PSC.</li> <li>- Guidelines are in accordance with Directive 2001/14/EC.</li> <li>- The necessity to</li> </ul>  | <ul style="list-style-type: none"> <li>- General sense: The economic equilibrium is the state when a new service in the market for international rail passenger service has a significant impact on the PSC.</li> <li>- The assessment of the economic equilibrium requires</li> </ul> | No such decisions have been taken so far. | The guidelines to assess the economic equilibrium differ from state to state whereas there should be a single set of European guidelines in the light of the common European transport network. | N/A |

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|              | economic equilibrium will be compromised.   | asses the economic impact of a new international passenger service has not yet occurred, but RRB plans to upgrade the guidelines on a case-by-case basis. | examination of the dependence between the competitive service and its impact on the PSC. The RRB issued guidelines for that assessment.  |  |  |     |
| SK<br>"URZD" | <ul style="list-style-type: none"> <li>- Regulates fares in domestic passenger railway transport:</li> <li>- Sets maximum prices of basic fares and special rates for selected categories of passenger.</li> <li>- Sets fares on the basis of economically justifiable costs, purchasing power of passengers, competitive modes of transport and potential to compensate loss from the state budget.</li> </ul> | No opportunity to assess the economic equilibrium of a public service yet.  | <ul style="list-style-type: none"> <li>- The costs of the performance of public obligations including profit and the revenues from performance of public obligations together with compensation of provable loss shall be in balance.</li> <li>- Provable loss is the difference between the economically justifiable costs incurred by fulfillment of a contract on performance of public obligations including the reasonable profit and the revenues from regulated fares including other obligations incurred</li> </ul> | Not issued these kinds of decisions, since they are not the competence of RB (URZD). | <ul style="list-style-type: none"> <li>- European legislation has been fully transposed into the national regulatory framework.</li> <li>- Necessary to elaborate in more detail the methodology of assessing an economic equilibrium of contracts, or, eventually, provide explanation of article 1 of Directive 2007/58/EC.</li> </ul> | N/A |

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|          |  |  | by contract fulfillment.   |   |  |  |
| UK (ORR) | <ul style="list-style-type: none"> <li>- Independent safety and economic regulatory body of Britain's railways.</li> <li>- No direct role in relation to PSC other than to assess their economic equilibrium.</li> <li>- Regulating the main line Infrastructure Manager on costs and efficiency to ensure delivery of infrastructure outputs and fair and transparent access arrangements.</li> <li>- RB for the high speed line between London and the Channel Tunnel.</li> <li>- No role or powers for inland transport services other than rail.</li> <li>- Providing advice to the Office of Fair Trading for its reviews of mergers between public service operators.</li> <li>- Responsible for efficiency improvements by Network Rail and for safety regulation.</li> </ul> | <ul style="list-style-type: none"> <li>- Not yet been required to assess the economic equilibrium of PSC.</li> <li>- Guidance document on the assessment of new international passenger services: test in 7 stages.</li> </ul> | <ul style="list-style-type: none"> <li>- Consider that the economic equilibrium of PSC relates to the value of PSC, i.e. that a change in the value of PSC could indicate a change in their economic equilibrium.</li> <li>- Generally a result of a competitive bidding process that includes a number of variables.</li> <li>- To compromise the equilibrium of PSC, there needs to be a material impact on those PSC, moving outside the expected range.</li> </ul> | <ul style="list-style-type: none"> <li>- No decisions that concern PSC in the rail sector directly.</li> <li>- Domestic rail passenger services: policy of not approving rights to new competing services that are primarily abstractive of existing passenger operators' revenue without compensating economic benefits for existing passengers ("not primarily abstractive test").</li> </ul> | <ul style="list-style-type: none"> <li>- Not aware of any weaknesses or gaps in the current national regulatory framework.</li> <li>- Stable and predictable regulatory framework, which is flexible enough to accommodate evolutionary change in the industry (so no suggestions).</li> </ul> | Regulation 1370/2007 seems to be aimed at a market where there is a state-owned or incumbent operator, rather than a fully liberalised market, such as exists in GB. |