Evaluation of Regulation 881/2004

Final Report

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2. Article 43 of the Regulation provides for an evaluation of the implementation of the Regulation five years after the Agency takes up its duties. This is the Final Report of a study to support the Commission in the evaluation of the implementation of the Regulation. The aim of the study is to evaluate:

> ❚ *The implementation of the Regulation and its impact, to assess the effectiveness of the system it has created, and notably the effectiveness of the Agency in fulfilling its mission as set out in the Regulation; the study will assess whether and how the main objectives of the Regulation are effectively attained and how the instruments and procedures provided by the Regulation have been implemented.*
>
> ❚ *The potential new roles of the Agency in the fields of railway safety and interoperability.*

Approach

3. Our approach, described in Chapter 2, involved three parallel work streams:

   ❚ A The impact of the Regulation, described in Chapters 3 and 4

   ❚ B The Effectiveness of the Agency, described in Chapters 5 to 8

   ❚ C Areas for improvement and recommendations, described in Chapters 9 to 11

4. We drew on six principal sources of information:

   ❚ **Desktop analysis** of published information available from the Agency, the Commission and in the Member States

   ❚ **Benchmarking** of the Agency against selected comparator bodies

   ❚ **Stakeholder consultation, comprising:**

   ▪ an online survey

   ▪ interviews with stakeholders

   ❚ **Interviews with the Agency** management and a sample of other staff

   ❚ **Independent analysis** based on our understanding of the issues, experience of other industries, and synthesis of the above information

Conclusions

Overall conclusion

5. The Agency has been in existence for 5 years. During this time it has expanded to an organisation of 140 staff with an annual budget of £23.5m[1]. Given the breadth of responsibilities bestowed upon the Agency under the Regulation, the process of establishing the organisation, developing its administrative and operational processes and delivering its work programme have presented it with a considerable challenge.

6. From our investigations and research we conclude that the Agency has made good progress towards completing the initial objectives set out in the Regulation. It has been successful in engaging with the wide range of stakeholders that make up the European railway sector and, as our survey has demonstrated, the majority of stakeholders value the Agency and the contribution it is making towards the objectives of enhancing the level of interoperability of railway systems and developing a common approach to safety.

7. We have examined in some detail the functioning and performance of the Agency. Previous investigations have highlighted a number of areas for improvement such as multi-annual budget planning. Given that the Agency has developed from an embryonic state in just five years, we consider such findings unsurprising. More importantly, we have observed a continuous cycle of improvement and the current management team have instigated various initiatives to address identified weaknesses, such as managing quality within the Agency and of its outputs.

8. However, we have identified further areas of opportunity to improve the Agency's performance, such as developing a more integrated system for quality assurance and introducing objective based performance measures into the organisation's management reporting processes. We also suggest the current governance arrangements should be reviewed, with a view to strengthening the management of the Agency's operations and performance.

9. We have also examined and evaluated a number of potential future roles for the Agency, which could supplement or supersede its current responsibilities. These are discussed in this report, with our conclusions and recommendations summarised in Chapter 11.

10. We also recommend that any extension or modification of the Agency's responsibilities should not be progressed at the expense of addressing the areas for improvement that we have identified in relation to Agency's current role.

The completion of the initial objectives

11. There have been positive steps towards the completion of the initial objectives, although given the challenges presented by the physical, technical and institutional differences between the railway networks of Member States, many of these objectives are likely to continue to remain valid for the longer term.

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[1] 2010

The contribution of the Agency

12. Overall the Agency has made reasonable progress in pursuit of its policy objectives, taking account of the timescales and the resources at its disposal.

13. The Agency has had an indirect influence on innovation in interoperability through its role in extending the scope of TSIs (Technical Standards for Interoperability) and on safety through the development of CSMs (Common Safety Methods), CSIs (Common Safety Indicators) and CSTs (Common Safety Targets). The role of the Agency, however, has not been to actively promote innovation, rather it has led the setting of standards in response to innovation. The absence of strategic measures of safety and interoperability in the Agency's business reporting highlight a potential lack of focus on the primary objectives set out in Article 1 of the Regulation.

14. In the past the Agency has focused, in accordance with its mandate, almost exclusively on the technical aspects of its activities and this has been at the expense of consideration of the wider cultural change needed across the European rail industry. In our opinion there is a need for the Agency to recognise and define an objective of promoting a European railway culture. In pursuing this objective, it should seek to break down institutional barriers and hence encourage the realisation of a single European railway. This objective is already implicit in some of the Agency's activities.

15. There has been insufficient guidance to Member States on the implementation of Directives. Whilst we note the workshops held and the guidance notes that have accompanied some Recommendations/Directives have been helpful, we have seen limited evidence to date of the Agency assisting Member States with the implementation the Directives. We believe that the Agency could do more in the future, such as assisting in the dissemination of information and training.

16. There is a widely held view among stakeholders that the Agency is making a strong contribution to increasing interoperability. Some stakeholders highlighted concerns about "Open points" that have remained and errors that have emerged following their publication and remained uncorrected. We also conclude that the Agency should encourage interoperability through practical measures to limit the scope for interpretation, for example by limiting the number of "Open points" within TSIs and through better quality control of published documents.

The effectiveness of the instruments

17. The stakeholder survey revealed that the majority of the instruments are regarded as quite useful. The website and extranet were identified as the most useful of the instruments listed in the survey. However, low response rates for many of the instruments suggest limited use or awareness of them.

18. Our findings highlight that the instruments of the Agency are useful to stakeholders, but there are opportunities for improvements. The Agency should undertake a more detailed survey of stakeholders specifically aimed at soliciting feedback on the instruments, notably the website, the extranet and the document register, to enable a better understanding of the needs of users and their specific concerns and then to identify actions for improvement.

The costs of the Agency

19. Our analysis shows that on high level measures of cost-efficiency, the Agency is not atypical compared to the other EU Agencies. Whilst this does not reveal how the cost efficiency of the Agency relates to the provisions prior to its establishment, or the degree to which greater efficiency could potentially be achieved, some comfort is provided that the Agency is broadly as cost efficient as its peers. Of some concern, however, is the rising trend in staff costs per head, and the Agency should develop a strategy to reverse this.

20. In undertaking this analysis it became evident that the absence of KPIs (Key Performance Indicators) relating to the costs of the agency's operations is perhaps an indication in itself that cost efficiency has not been a key management objective to date. We conclude that potential improvements in cost efficiency could be identified and incentivised through the introduction of cost related KPIs within the standard management processes of the Agency.

The performance of the Agency

21. We conclude that the Agency is making a positive contribution in assisting Member States with meeting their obligations, but there are areas of opportunity for improvement.

22. Given the specific requirements of the Regulation, the Agency appears to have been broadly effective in organising the expertise needed to fulfil its task objectives through the formation of working parties. However, we identify some possible measures that the Agency could take to facilitate the effectiveness of the working parties.

23. The Agency works within the European Commission framework. This limits the Agency's freedom in terms of setting budgets and recruitment. The Agency has no powers to make or impose decisions and can only forward Recommendations and Opinions to the Commission. The Agency has plans to adopt multi-annual activity-based budgeting. We believe that this strategy will help the Agency to improve its resource and budget control.

24. The location of the Agency in Valenciennes and its separate conference facilities in Lille result in significant administration costs for Agency staff travelling between the two sites and travel costs for many visitors from other Member States. We have examined the economic implications of the current arrangements and conclude that there may be occasions when working parties could be more efficiently held elsewhere.

25. Analysis suggests that the Agency achieves in large part its work programme within the planned timeline, however slightly less than other EU Agencies. It seems that practically all objectives from the work programmes are eventually achieved; the non-completion of some objectives within the timescales also depends on factors which are outside the control of the Agency.

26. We believe that the absence of key performance indicators from the Agency's management reporting processes represents a significant impediment to improving the Agency's performance. Key performance indicators are common practice for most businesses and enterprises and are also employed by other EU Agencies.

The functioning of the Agency

27. During the five years since its formation, the Agency has become well established as the primary organisation responsible for facilitating harmonisation in interoperability and safety across the European railway network. From our assessment we conclude that it is broadly carrying out all the functions required by the Regulation. However, we have identified a number of areas where the functioning of the Agency could be improved.

The potential future role of the Agency

28. The table below summarises our evaluation of potential future roles for the Agency. The table summarises that there are a number of areas where the Agency could viably take on greater responsibility following the relevant changes to the Regulation. We discuss these potential roles in Chapter 9 and summarise our conclusions and recommendations in Chapter 11.

SUMMARY OF POTENTIAL FUTURE ROLES FOR THE AGENCY

Role	Will it require additional resources?	Can it be Self-financing	Recommendation: Should the Agency have an expanded role?	If so, does it need a change to the Regulation?
Spot checks of safety-critical components	YES	NO	NO	Not applicable
Type approval and certification of rail vehicles and ERTMS	YES	Yes	YES but only in relation to ensuring that the NoBos are suitable trained and through facilitating the development of guidelines.	Yes
Certification of infrastructure managers and railway undertakings	YES	YES if certification is done centrally	YES in setting the framework and developing the single European safety certificate. NO in carrying out the RU certification itself in the short term except for ERTMS corridors	YES and may require a change to the Safety and Interoperability Directives so that the Agency becomes the authority for certification on the ERTMS corridors
Supervision, audit & inspection of NSAs	YES	NO	YES in auditing NSAs adherence to common guidelines	YES
Investigation of railway accidents	YES	NO	NO	Not applicable
Monitoring national safety and interoperability legislation	YES, but minimal	NO	YES	Yes
Promoting innovation	Yes	YES	NO	Not applicable
International cooperation and promotion of EU standards	YES	YES in some cases	YES as delegated authority for technical matters	YES
Dissemination of railway-related information and training	YES, but minimal	YES	YES	NO
Provision of advice and support	YES	YES	YES	YES

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Recommendations

29. We have identified a number of areas for improvement in relation to the functioning and performance of the Agency and its instruments, together with proposed modifications to the Regulation. In summary:

Recommendation 1:

❙ The Agency should take on a more co-ordinating role in the development of ERTMS

Recommendation 2:

❙ Improve the Registers and stakeholder awareness of them

Recommendation 3:

❙ Improve reporting of trends in European rail safety performance

Recommendation 4:

❙ Adopt an accredited system of quality assurance

Recommendation 5:

❙ Establish a forum with RSSB and similar bodies for sharing best practices in managing multi-stakeholder cross-industry programmes

Recommendation 6:

❙ Develop guidance protocols for the management of working parties

Recommendation 7:

❙ Frequency and location of NSA and NIB Network meetings to be reviewed

Recommendation 8:

❙ Increase the number of joint NSA/NIB meetings

Recommendation 9:

❙ Monitor and review the effectiveness of the networks of NSAs and NIBs

Recommendation 10:

❙ Establish a strategy for the Agency's communication with the industry as a whole (in particular in relation to the implementation of Directives)

Recommendation 11:

❙ Define and report strategic KPIs for safety and interoperability

Recommendation 12:

❙ Obtain stakeholder feedback on the effectiveness of the website and extranet

Recommendation 13:

❙ Investigate potential for recovery of costs

Recommendation 14:

▌ Develop guidelines in collaboration with the Commission on how the Agency shall prioritise its activities

Recommendation 15:

▌ Examine alternative locations for working party meetings

Recommendation 16:

30. Develop and incorporate a suite of KPIs and targets into the Agency's management reporting processesThe following recommendations require modifications to the Regulation

Recommendation 17:

▌ Conduct an independent review into governance of the Agency

Recommendation 18:

▌ Promoting a European railway culture to become a defined objective of the Agency

Recommendation 19:

▌ Provide clarity of the Agency's responsibilities to provide assistance to Member States

Recommendation 20:

▌ Require the Agency to publish a report on the Safety Performance of European railways on an annual basis

Recommendation 21:

▌ Introduce flexibility to the rules governing the extension of temporary staff contracts

31. Our recommendations are described in further detail in Chapter 11.

1 Introduction

Preface

1.1 This report sets out the results of Steer Davies Gleave's evaluation of Regulation (EC) No 881/2004 and the functioning of the European Railway Agency ("the Agency"). The analysis on which the report is based is drawn from our internal knowledge and analysis of the European railway system, interviews with a number of industry parties including the Agency, and a benchmarking exercise comparing the Agency with similar transport Agencies.

The context to this study

1.2 Since the December 1992 publication of the White Paper on the future development of the common transport policy, the European Commission ("the Commission") has sought to increase competition and competitiveness within the European Railways with the aim of creating a Single European Market for Rail. This liberalisation has been more difficult than was the case for the majority of other industries (including those where there are local monopolies) because of the independent histories and standards of the national railway industries.

1.3 Over the years the railways have taken steps to reduce barriers to entry into the market by three main means:

❙ Restructuring, requiring accounting separation of infrastructure operations from freight and passenger services, independence of the track access allocation functions from rail operations, and market opening.

❙ Technical harmonisation of the industry through the development of common Technical Standards for Interoperability (TSIs).

❙ The development of a Common Approach to Railway Safety.

Regulation 881/2004 (amended by Regulation 1335/2008)

1.4 Harmonisation of interoperability and safety could not be achieved purely through Directives, not least because of the specialised technical expertise required for their implementation. Such expertise was particularly important in supporting the development of the TSIs, Common Safety Targets (CSTs) and Common Safety Methods (CSMs), and in monitoring their implementation across Member States.

1.5 Regulation (EC) No 881/2004 of 29 April 2004, as subsequently amended by Regulation (EC) No 1335/2008 of 16 December 2008, ("the Regulation") therefore specified the creation of the European Railway Agency ("the Agency").

1.6 Article 1 of the Regulation, setting out the initial objective, is reproduced in Table 1.1 below.

TABLE 1.1   THE REGULATION: THE OBJECTIVE OF THE AGENCY

Article	Text
1	This Regulation establishes a European Railway Agency, hereinafter referred to as "the Agency".
	The objective of the Agency shall be to contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety.
	In pursuing these objectives, the Agency shall take full account of the process of enlargement of the European Union and of the specific constraints relating to rail links with third countries.
	The Agency shall have sole responsibility in the context of the functions and powers assigned to it.

1.7 Selected further text from the Regulation is presented throughout this report where relevant to the context.

The study

1.8 Article 43 of the Regulation, reproduced in Table 1.2 below, provides for an evaluation of the implementation of the Regulation.

TABLE 1.2   THE REGULATION: THE EVALUATION OF THE REGULATION

Article	Text
43	Five years after the Agency takes up its duties, the Commission shall carry out an evaluation of implementation of this Regulation, the results obtained by the Agency and its working methods. This evaluation shall take account of the views of the representatives of the railways sector, of the social partners and of customers' organisations. The findings of the evaluation shall be made public. The Commission shall propose, if necessary, an amendment to this Regulation.
	In that context, the Commission shall, if appropriate, present a proposal for revision of the provisions of this Regulation in light of developments in respect of regulatory agencies, in accordance with the procedure laid down in Article 251 of the Treaty. The European Parliament and Council shall examine this proposal and in particular consider whether the composition of the Administrative Board needs to be revised, in accordance with the general framework to be adopted for regulatory agencies.

1.9   This is the Final Report of a study to support the Commission in the evaluation of the implementation of the Regulation. The aim of the study, selected from the complete task specifications reproduced as Appendix B, is to evaluate:

> I   *The implementation of the Regulation and its impact, to assess the effectiveness of the system it has created, and notably the effectiveness of the Agency in fulfilling its mission as set out in the Regulation; the study will assess whether and how the main objectives of the Regulation are effectively attained and how the instruments and procedures provided by the Regulation have been implemented.*
>
> I   *The potential new roles of the Agency in the fields of railway safety and interoperability.*

1.10   The study must also allow for the identification of areas for improvement, and to provide the Commission with the necessary input for eventual amendment of the Regulation. The study therefore has three main themes:

   I   Evaluation of the impact of the Regulation

   I   Evaluation of the functioning of the Agency

   I   Identification of areas for improvement

The impact of the Regulation

1.11   The Regulation requires an assessment of how the Agency contributes:

> I   *"…on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety."*

1.12   Assessing this contribution requires a review of the follow areas:

> I   *The completion of the initial objectives*
>
> I   *The contribution of the Agency to the fulfilment of the policy objectives*
>
> I   *The effectiveness of the instruments laid down by the Regulation*
>
> I   *The costs incurred for the fulfilment of the objectives*

The effectiveness of the Agency

1.13   Key issues in relation to the effectiveness of the Agency are:

> I   *The performance of the Agency*
>
> I   *The effectiveness and appropriateness of the functioning and working practices of the Agency in relation to the structures created by the Regulation*

Areas for improvement

1.14   The task specifications required us to use the analysis described above to identify any potential areas for improvement, specifically that:

> *The existing system shall be assessed with a view to a possible amendment of the Regulation and the extension of the powers of the Agency. The contractor shall issue recommendations in that regard. Taking into account that the legal framework has been recently amended and is still in the phase of implementation by the Member States, the contract shall analyse further areas for improvement. The following indicative and not exhaustive elements shall be assessed with specific attention to the evaluation of the impact of the new roles of the Agency, the consequences of in terms of financial and human resources and the possibility of self-financing new and existing activities: …*

Study phases

1.15   The task specifications required us to carry out the study in three phases:

> I *Inception phase, covered by an Inception Report*
>
> I *Investigation phase*
>
> I *Preparation and finalisation of the final report*

1.16   This Final Report marks the end of the finalisation phase.

Structure of report

1.17   We describe our approach and methodology to the study in Chapter 2.

1.18   Our findings are described for each of the main elements of the study in Chapters 3 to 9 as follows:

I Chapter 3, 'The completion of the initial objectives'

I Chapter 4, 'The contribution of the Agency'

I Chapter 5, 'The effectiveness of the instruments'

I Chapter 6, 'The costs of the Agency'

I Chapter 7, 'The performance of the Agency'

I Chapter 8, 'The functioning of the Agency'

I Chapter 9, 'The potential future role of the agency'

1.19   Within each chapter, our findings are set out in the following order:

i)   Findings from the survey of stakeholders

ii)   Findings from interviews conducted with stakeholders and, where relevant, members of the Agency

iii)   Analysis drawing on desk research of documentation made available to us by the Commission, the Agency and other public sources and findings from the consultation of stakeholders

iv)   Summary of key conclusions

1.20   Our conclusions for the study are summarised in Chapter 10 and our Recommendations are set out in Chapter 11.

1.21   Many of our findings have relevance to topics dealt with in more than one part of the document. To aid the reader and minimise duplication of text, we have provided cross references throughout the document. Where specific paragraphs are referenced, these are shown in parentheses ( ).

2 Approach and methodology

Study structure

2.1 Figure 2.1 below summarises the study structure, comprising an Inception Phase, an Investigation Phase and a Finalisation Phase. This Final Report is the principal output of the Finalisation Phase.

FIGURE 2.1 STUDY STRUCTURE
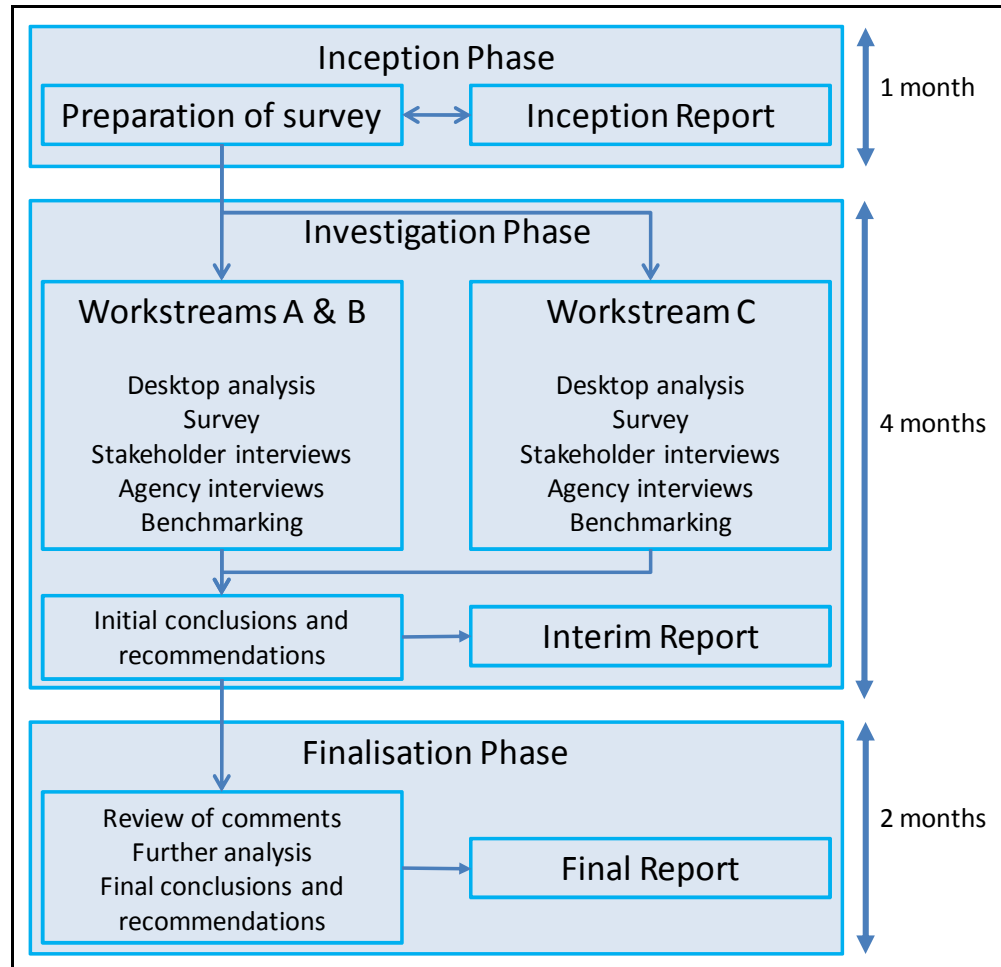
2.2 Our Work Programme involved three parallel workstreams:

  ▌ A The impact of the Regulation

  ▌ B The Effectiveness of the Agency

  ▌ C Areas for improvement

We set out our findings from Workstream A in Chapters 3 to 6 and from Workstream B in Chapters 7 and 8. Workstream C, which looked at the potential areas for improvement are included in Chapter 9. Our conclusions are summarised in Chapter 10 and our recommendations in Chapter 11.

2.3 We drew on six principal sources of information:

❙ **Desktop analysis** of published information available from the Agency, the Commission and in the Member States

❙ **Benchmarking** of the Agency against selected comparator bodies

❙ **Stakeholder consultation, comprising:**

▪ an online survey

▪ interviews with stakeholders

❙ **Interviews with the Agency** management and a sample of other staff

❙ **Independent analysis** based on our understanding of the issues, experience of other industries, and synthesis of the above information

2.4 Each source of data has strengths and weaknesses. Existing documents and data on comparator bodies are readily available and objective, but rarely describe whether existing arrangements work effectively or analyse potential alternatives. Anonymous surveys enable a large and wide range of stakeholders to be canvassed and can solicit honest views on both existing and potential arrangements. Their disadvantage, however, is that they offer only a limited opportunity for respondents to explain and justify their responses. Interviews allow further explanation and probing, but interviewees may be inhibited by the lack of anonymity or feel obliged to defend the perceived interests of their organisation. Our approach has been to employ all of the available methods of investigation, coupled with our own independent analysis, taking into account factors or constraints which were not addressed by survey respondents, stakeholders or interviewees or in other data sources. Our aim has been to ensure a balanced and comprehensive coverage of the subjects of this study.

2.5 We describe our methods further below, including practical issues encountered and how we have addressed them.

Liaison

2.6 We worked closely with the Commission in areas such as the design of the stakeholder survey and the selection of individual stakeholders for the interview programme, and with the Agency staff, whom we interviewed during three visits to Valenciennes and at other locations.

Desktop analysis

2.7 We were given access to a range of background documentation by the Commission and the Agency.

2.8 We compared the Agency's annual reports, Work Programme and outputs with its objectives, in particular identifying any additional activities and workload it had been given or taken on, and carried out analogous analysis of three comparator bodies as part of the benchmarking exercise described below.

2.9 We also examined documents such as European Court of Auditors reports, the Directives that have a direct impact on the activities of the Agency and any various position papers published by the Agency's stakeholders.

2.10   Of particular interest to us was a report prepared on behalf of the Commission, 'Evaluation of the EU de-centralised agencies in 2009'. This report set out the findings of a study which was tasked with 'an evaluation of the agency system in order "to contribute to the ongoing debate on the future of the Community agency system by taking a horizontal look at all agencies and examining the real implications of the creation and operation of agencies in the Union". Whilst the main focus of the report was in examining the whole network Agencies, it made some specific observations about the ERA. We make reference to some of the relevant findings throughout this report.

Practical issues

2.11   The principal limitation of desktop analysis is that published documents normally describe the (*de jure*) formal arrangements rather than the (*de facto*) way in which they work in practice or might change in the future. In particular, care must be taken in assuming that the formal arrangements set out in documentation either are used in practice or would be effective if they were. This difficulty was addressed, at least in part, by conducting interviews with a range of stakeholders and the Agency, where we were able to examine how the functioning of the Agency and its processes work in practice.

Benchmarking

2.12   We proposed a programme of benchmarking the Agency against comparator bodies and subsequently agreed with the Commission that these should be:

I   The European Maritime Safety Agency (EMSA)

I   The European Aviation Safety Agency (EASA)

I   Office of Rail Regulation (ORR), the economic and safety regulator of railways in Great Britain, UK

2.13   The first two of these were chosen as European transport agency peers to ERA and whilst having different specific responsibilities and mandates, share some common characteristics with ERA, including their governance frameworks. The ORR was selected to provide an alternative comparison agency within the same industry sector and of similar scale but operating in a different governance framework.

An overview comparing the Agency with these bodies is provided in Table 2.1.

TABLE 2.1   BENCHMARKING: THE AGENCY AND THE COMPARATOR BODIES

Characteristic	ERA	EMSA	EASA	ORR
Year of creation	2004	2002	2002	1993, 2004
Governance	Standard: there is a single administrative board with only Member State and European Institution representatives holding voting rights			Independent regulator
Internal audit capacity	Yes			No
Location	Valenciennes, France	Lisbon, Portugal	Köln, Germany	London, UK
Principal activity	Expert advice	Operational coordination	Individual applications	Safety and economic regulation
Activity-based management	Yes	Essentially yes	Yes	Yes
Total staff	113	179	440	304
Annual budget (2010)	€24 million	€54 million	€135 million	€35 million[2] (£30 million)

2.14   The benchmarking was structured around a number of attributes of the Agency against which comparisons with the comparator bodies could be drawn, as summarised in Appendix D.

Practical issues

2.15   The benchmarking exercise provided a range of useful information which we draw on where relevant in Chapters 3 to 9 of this report. However, we acknowledge the limitations of the benchmark comparisons with the Agency particularly in respect of:

▌ Differences in role

▌ Differences in work processes

▌ Lack of quantitative data at a detailed level

Differences in role

2.16   Despite benchmarking the Agency against its closest analogues in the aviation and maritime industries, the European Aviation Safety Agency (EASA) and the European Maritime Safety Agency (EMSA), it is important to note that the different history and structure of these industries and the fact that they perform different roles, limits their value as benchmarks:

▌ EASA deals with a globally standardised industry. Aviation works in a single language, aircraft are provided by a small number of global suppliers and are self-powered, and they operate worldwide on infrastructure designed to

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common international technical standards. Aircraft and airlines operating across national boundaries could not operate effectively with safety certification valid only in a single state. There is broad acceptance that many parties have effective powers to suspend the operation of airspace, airlines or aircraft with immediate effect.

▎ EMSA also deals with an industry in which the standards for key technical interfaces are already harmonised globally. Most operations are carried out in the local language, and there are many local shipbuilding industries, but ships are self-powered and can operate worldwide by adding technical equipment.

2.17 The Agency, in contrast, deals with a series of national industries which have historically worked with their respective national languages, supply industries and standards, and with international operations typically dealt with by adaptations of domestic equipment and standards on a case-by-case basis. The majority of railway vehicles and railway undertakings (RUs) operate only in one Member State and rarely have any need for safety certification elsewhere. In addition, railway vehicles, unlike aircraft or ships, are often not self-powered and are typically coupled together, requiring complex and historically diverse interfaces not only between vehicle and infrastructure but also between one vehicle and another.

2.18 For these reasons, while global interoperability is already the norm in the aviation and shipping industries supervised by EASA and EMSA, achieving greater interoperability across European rail networks forms a major part of the Agency's objectives and workload.

2.19 The third comparator body, the Office of Rail Regulation (ORR), works in the same industry as the Agency, but has a different role, as an economic and safety regulator. As an economic regulator, ORR has a role in the determination of the efficient costs of achieving the outputs required from the industry, but normally avoids specifying the technologies used to achieve them.

Differences in work processes

2.20 While all the comparator bodies publish clear and comprehensive annual reports on their objectives and activities, intrusive additional analysis, beyond the scope of this study, would be needed to map the many processes within each organisation and to identify the resources associated with them. With few common processes and no common unit of workload, it has been difficult to compare processes or efficiency in the Agency and the comparator bodies.

Quantitative data

2.21 We have drawn comparisons of quantitative data where possible. Some data such as staff turnover can provide useful indicators of performance trends, aggregate quantitative data such as overall budgets and headcounts cannot readily be used to identify relative efficiencies because of the lack of a common unit of workload.

Principal areas of benchmarking

2.22 We were able to carry out extensive benchmarking of the Agency's staff costs, as described in Chapter 6.

2.23 The benchmarking also provided useful insights into the problems and constraints surrounding the management of the Agency, in particular the management of staff

resources and recruitment. The comparison with other EU Agencies allowed us to investigate the extent to which these issues originate in the generic framework governing this type of European institution, rather than deficiencies within the Agency itself. The contrast with the management arrangements in place within the ORR, which operates under a different legislative and institutional framework, was particularly informative.

Stakeholder consultation

2.24   The European rail industry has a wide range of stakeholders including Representative Bodies and other industry bodies in every Member State with a rail industry.

Representative Bodies

2.25   Article 3 of the Regulation identifies "Representative Bodies" to whom the Agency is required to forward its Work Programme, as shown in Table 2.2 and listed in Table 2.3.

2.26   Of the 260 respondents to the online survey described below, 22 self-identified as being associated with a Representative Body. We identified these respondents in our survey analysis, but note that their responses may not represent the official views of the Representative Body concerned.

2.27   We also attempted to interview all eleven Representative Bodies, and completed interviews with all but two of them, as discussed below.

TABLE 2.2   THE REGULATION: REPRESENTATIVE BODIES

Article	Text
3.2	The Agency shall forward the adopted Work Programme to the Representative Bodies from the railway sector acting on a European level. The list of these bodies shall be drawn up by the Committee referred to in Article 21 of Directive 96/48/EC.

TABLE 2.3   INTERVIEWS: APPROVED LIST OF REPRESENTATIVE BODIES

Organisation
ALE: Autonomen Lokomotivführer-Gewerkschaften Europas
CER: Community of European Railways and Infrastructures Companies
EIM: European Infrastructure Managers
EPTTOLA: European Passengers Train and Traction Operating Lessors' Association
ERFA: European Rail Freight Association
ETF: European Transport Federation
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

Other industry bodies

2.28   The Commission also requested that the bodies listed in Table 2.4 should be consulted as part of this study and in particular be included in the online survey.

TABLE 2.4   INTERVIEWS: OTHER BODIES TO BE CONSULTED

Organisation
The European Standardisation Organisations: CEN, Cenelec & ETSI
National Safety Authorities (NSAs)
National Investigation Bodies (NIBs)
NBRail: coordination group of Notified Bodies for railway products and systems
Members of the Railway Interoperability and Safety Committee (RISC)
Transport Attachés
The International Union of Railways (UIC)
A selection of Members of the European Parliament Transport Committee

2.29   The Commission also agreed that a range of other industry parties should be included in the online survey, including Railway Undertakings (RUs), Infrastructure Managers (IMs) and representatives of the supply industry.

Online survey

Survey structure, length and content

2.30   Best practice in survey design needs to take account of the depth and breadth of information required, the demands on respondents' time, their willingness and ability to answer honestly and accurately, and the relative merits of asking, processing and interpreting "closed" questions, with a predefined series of responses, and "open" questions, allowing any response.

2.31   We were aware that industry stakeholders receive many requests to participate in surveys, both by the Agency and by other bodies. We therefore aimed to minimise the time required to complete the survey, in particular by avoiding as far as possible questions which had already been asked in other studies.

2.32   Appendix C contains screenshots of the complete online survey.

Survey circulation and responses

2.33   At the end of July 2010, the bodies listed in Table 2.2 and Table 2.3 were sent a letter from the Commission setting out the goals of the study and the rationale for the survey.

2.34   1,269 organisations or individuals were invited to take part, the majority of whom were identified from a list of working party participants provided by the Agency.

2.35   The survey itself was opened to respondents on 3 August with a request for responses by 3 September. Given the summer timing, we had anticipated that some responses would be delayed and, following a request from the group of Representative Bodies, we extended the response period to 12 September.

2.36   To facilitate candid responses the survey was designed to offer anonymity, although respondents could if they wished identify themselves and/or the organisation with which they were associated and whether they were responding in an official capacity.

2.37   260 full or partial responses to the survey were received, a response rate of around 20%, which is broadly consistent with other surveys we have carried out for the Commission. We grouped respondents as belonging to Representative Bodies and nine other broad types of organisation, as summarised in Figure 2.2 below.

steer davies gleave

FIGURE 2.2   SURVEY RESPONDENTS BY TYPE OF ORGANISATION

Bar chart of survey respondents by type of organisation:

Type of organisation	Respondents
Other and unspecified	23
Member State representative	8
Administrative Board member	9
Notified Body	11
Railway Undertaking	14
National Investigation Body	21
Representative Body	22
Infrastructure Manager	32
Supplier of equipment or systems	37
National Safety Authority	83
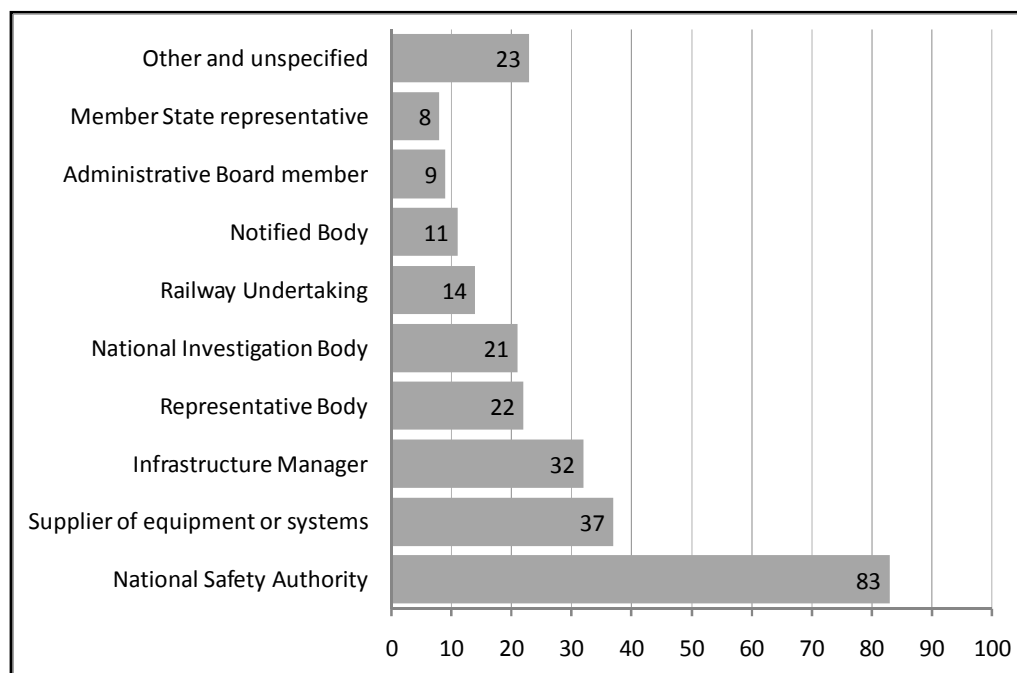
2.38   While a large number of respondents self-identified as employees of National Safety Authorities (NSAs), fewer than twenty respondents self-identified as from Railway Undertakings (RUs), Notified Bodies (NoBos), Administrative Board members and Member State representatives.

2.39   A number of stakeholders also sent us letters and position papers to supplement their responses to the online survey. All these responses have been reviewed and taken into account in our analysis.

Survey analysis

We were aware that the survey responses might not reliably reflect the views of particular parts of the industry, particularly where it seemed likely that more than one response came from the same organisation. However, in the absence of details of all respondents' identities, and fewer responses in most categories than the number of Member States with railways, we determined that it would be impractical and potentially misleading to attempt to apply any statistical weighting to the responses.

2.40   We acknowledge the risk that the absence of any adjustment could result in disproportionate weight being given to highly-represented groups such as the NSAs. However, analysis showed that there was only limited correlation between response and type of respondent, suggesting that the over-representation of one group was not a concern.

2.41   In the text of this report we identify where average response rates for an organisation type are based on a particularly small sample.

Practical issues

2.42   The principal limitations of surveys relate to sample size, completeness of responses, and the lack of opportunity to follow-up responses.

2.43   As with any survey to which responses are voluntary, the value of the survey is limited by the number of complete responses to each question. Some questions elicited no valid or useful responses from one or more organisation categories, but even where responses were valid and useful, the small sample size limited the degree of confidence which could be placed in the results.

2.44   Figures throughout this report present the survey responses at face value, but apparent differences in responses between respondent groups may not be statistically significant and should be treated as of indicative value only.

2.45   An anonymous survey can only identify the responses to closed questions and not investigate the reasoning behind them. We dealt with this by including open questions on a number of key issues, where respondents were free to comment with no restriction on word count, as shown in the survey screenshots in Appendix C.

2.46   Despite these limitations, the survey provided a practical means of reaching and seeking views from the extensive and diverse network of stakeholders on the wide range of issues forming the basis for this study. Furthermore, it has provided a valuable insight from a statistically significant sample of stakeholders and thereby strengthened the analysis drawn from desk research, benchmarking and interviews.

Stakeholder interviews

2.47   The programme of industry interviews was drawn up to complement the stakeholder survey in order to offset the anticipated limitations that are inherent in such research methods, as described above.

2.48   We agreed with the Commission that we would interview all the Representative Bodies listed in Table 2.3 and four other parties, as set out in Table 2.5.

TABLE 2.5   INTERVIEWS: TARGET STAKEHOLDERS

Organisation
An Administrative Board member
ALE: Autonomen Lokomotivführer-Gewerkschaften Europas
ANSF: Agenzia Nazionale per la Sicurezza delle Ferrovie (NSA for Italy)
CER: Community of European Railways and Infrastructures Companies
EIM: European Infrastructure Managers
EPTTOLA: European Passengers Train and Traction Operating Lessors' Association
ERFA: European Rail Freight Association
ETF: European Transport Federation
NBRail: coordination group of Notified Bodies for railway products and systems
ORR: The Office of Rail Regulation (NSA for Great Britain)
RAIB: Rail Accident Investigation Board (NIB for Great Britain)
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

2.49   We conducted interviews with all these bodies between mid-September and November 2010, with the exception of two Representative Bodies, ALE and UIP, who were unable to schedule interviews during this period. We also held additional interviews with a member of a Representative Body, a number of NIB reflection group representatives, and two members of the Administrative Board.

2.50   Where an interviewee had both responded to the survey and identified himself/herself, the completed survey was discussed as part of the interview to enable us to probe the thinking behind particular responses.

Practical issues

2.51   The principal issues for the interview programme were securing and scheduling interviews within the timescale of the study and the limited amount of information that could be captured within each individual interview.

2.52   Nonetheless the Stakeholder interviews, while in some cases relatively time consuming, proved to be an effective means of gathering relevant information and opinions from within the industry and provided greater insight than would otherwise have been obtained from desk research and the online survey alone.

Interviews with the Agency

2.53   We visited the Agency in Valenciennes three times and met a number of other staff at other locations, carrying out nineteen interviews including with the Executive Director, the Heads of Unit, and twelve other staff, as set out in Table 2.6.

TABLE 2.6   INTERVIEWS: AGENCY STAFF

Unit	Head of Unit	Other staff interviewed
Executive Director	✓	Internal Auditor
Safety	✓	3 staff members
Interoperability	✓	2 staff members
Economic evaluation	✓	1 staff member
ERTMS	✓	1 staff member
Cross-acceptance	✓	
Administration	✓	Head of ICT Head of Finance 1 staff member from ICT 1 staff member from Human Resources

2.54   Our interviews were structured with the aim of understanding:

❚ The views of the Executive Director and Heads of Unit on the issues set out in the terms of reference for this study

❚ The views of staff members on the workings of the Agency and how it could be improved in future

❚ The views of all interviewees on working conditions and arrangements in the Agency

Practical issues

2.55   There were no significant difficulties encountered in carrying out the interviews with the Agency.

2.56   Throughout the study we have benefited from extensive cooperation from the Agency, the industry stakeholders and the comparator bodies and received almost all the information requested or expected. We have also obtained as much information through surveys and interviews as possible within the limited time and resources which respondents and interviewees could reasonably be expected to devote to the study.

Independent Analysis

2.57   Whilst drawing on the desk research, surveys, stakeholder interviews and benchmarking described above, our analysis has been conducted independently, utilising the experience and expertise of Steer Davies Gleave with the aim of making an objective and reasoned assessment from which our conclusions have

been drawn and recommendations prepared. These are set out in chapters 10 and 11 respectively.

2.58   In evaluating the performance and functioning of the Agency and proposals for potential new roles, the following criteria were used:

I   Consistency with the objectives of the Regulation

I   Consistency with EU principles

I   Consistency with the aim of improving and simplifying processes

I   Consistency with industry and management good practice

I   The likely language skills, resourcing and staffing requirements

2.59   The emerging survey results provided an insight into the range of views held within the stakeholder community. However, the interviews with individual stakeholder representatives and Agency staff enabled us to investigate and elicit further clarity on specific issues and aspects of the Agency's work and helped us to address questions raised from our desk research, benchmarking analysis and the survey results. By drawing on all these sources of information and analysis, we have aimed to reach a balanced view in making an assessment of the implementation of the Regulation, the effectiveness of the Agency and its potential future roles.

2.60   Our approach has been to form an objective, independent view, focusing on evidence. However, in a study such as this there are many issues, as the survey has illustrated, where evidence is either absent or inconclusive. We therefore acknowledge that our conclusions and recommendations reflect our considered opinions reached after taking account of all the inputs to the study.

3 The completion of the initial objectives

Introduction

3.1 We were asked to evaluate, inter alia:

> ❚ *The definition of an optimal level of technical harmonisation in the interoperability field*
>
> ❚ *The definition of a common approach to railway safety*
>
> ❚ *The level of development of ERTMS*
>
> ❚ *The clarity of the acts issued by the Agency*
>
> ❚ *The establishment of systems of registration and exchange of information*
>
> ❚ *The working practices of the Agency in respect of the railway industry and the competent national railway authorities*

3.2 The evaluation of these objectives is necessarily based predominantly on subjective views, as none of them can be quantified with objective data. This part of the evaluation therefore draws principally on our knowledge of the industry, the (limited) information that we can extract from the benchmarking analysis, and information from the stakeholders in the form of survey questions and interviews.

3.3 Our survey asked specific questions on the completion of the initial objectives, which were followed up in our interviews.

3.4 Figure 3.1 summarises responses to survey Question 7:

"To what extent has the Agency fulfilled the following objectives:"

FIGURE 3.1   SURVEY RESPONSES: FULFILMENT OF INITIAL OBJECTIVES

Note: further details of responses are given in Figures 3.2 to 3.5.
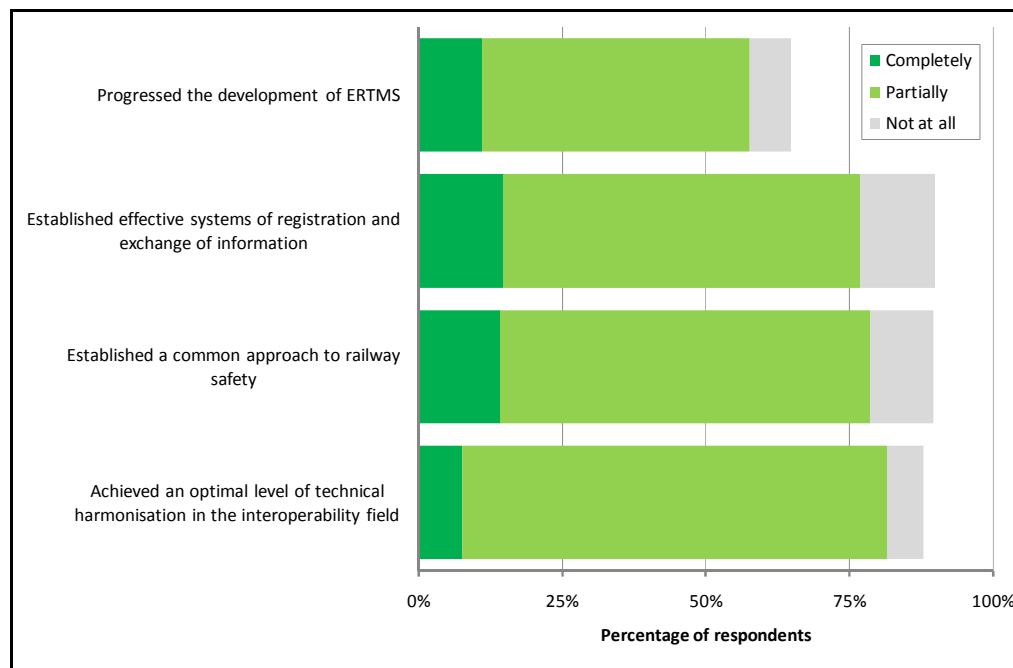
3.5   The majority of those providing a response to the question stated that the Agency had at least partially fulfilled each of the initial objectives.

3.6   The chart shows that almost 80% of respondents to the survey expressed an opinion on three of the objectives, but less than 70% commented on the development of ERTMS. The lower response rate in respect of the latter is likely to be a reflection of the diversity of respondents to the survey, where some would, by the nature of their interests, be likely to have little or no knowledge of the progress made with ERTMS.

3.7   The fact that no more than 15% of responses selected the 'completely fulfilled' category for any of the objectives is perhaps unsurprising. Assessment of the achievement of these objectives is open to a significant degree of subjectivity and their absolute achievement cannot be precisely determined. Anything less than 100% achievement could reasonably be interpreted as 'partially fulfilled'.

3.8   Perhaps of more concern is the similar proportion of responses that selected the 'not at all fulfilled' category. This suggests that there may still be some way to go to achieving the initial objectives and, in the view of some, there remains a large gap.

3.9   Whilst the overall picture is positive in so far as suggesting that progress is being made towards the achievement of the initial objectives, these results show that the perception is not unanimous across the stakeholder community.

3.10   We discuss each of the objectives further below, taking account of an analysis of the results of the survey, but also a review of the documentation that has been provided to us, our understanding of the market and, where relevant, information that we have received from comparator bodies.

Developing ERTMS

3.11   Article 21a of the Regulation sets out in detail the work of the Agency in relation to ERTMS. The principal aims are set out in Table 3.1 below.

TABLE 3.1   THE REGULATION: ERTMS

Article	Selected text
21a.1	The Agency, in coordination with the Commission, shall assume the tasks set out in paragraphs 2 to 5 with a view to (a) ensuring a coherent development of ERTMS; (b) contributing to the compliance of ERTMS equipment as implemented in Member States with the specifications in force.

3.12   ERTMS has been developed to establish a new common standard signalling system to facilitate interoperability across Europe. It has been supported by governments and industry and is now becoming increasingly recognised globally as a leading standard for new signalling systems. ERTMS aims at replacing the different national train control and command systems in Europe. The deployment of ERTMS will enable the creation of a seamless European railway system and help to increase European railway's competitiveness.

Survey

3.13   Figure 3.2 summarises responses by category of respondent to survey Question 7:

"To what extent has the Agency fulfilled the following objectives: Progressed the development of ERTMS?"

FIGURE 3.2   SURVEY RESPONSES: PROGRESSING ERTMS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Completely	Partially	Not at all
260	24	83	26	110	17
100%	9%	32%	10%	42%	7%
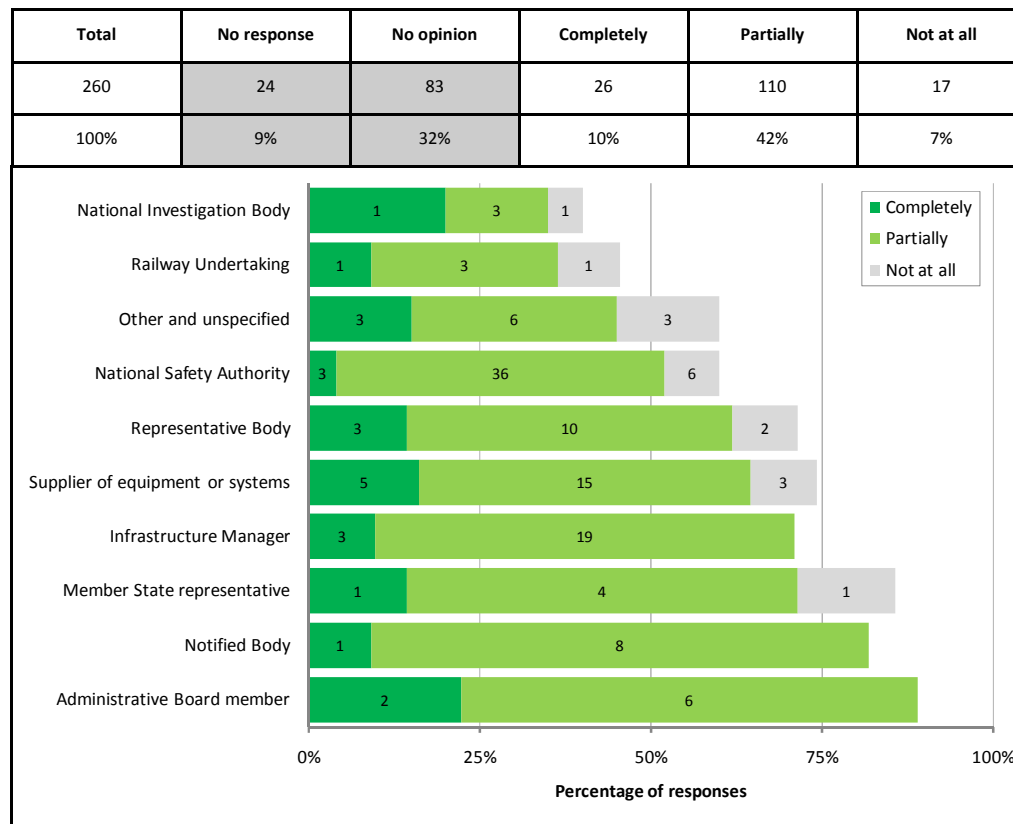
3.14   Fewer than 60% of those surveyed offered an opinion on how the Agency had progressed ERTMS. This can be interpreted as reflecting the degree of involvement or relevance of ERTMS which will vary considerably between stakeholders. This is at least partly borne out by the low response rates from the NIBs and RUs, many of whom will have had little or no involvement with the ERTMS programme.

3.15   Of those responding, by far the majority responded with the view that the Agency has only partially fulfilled its objectives relating to progression of the development of ERTMS, suggesting that the achievements to date have fallen short of stakeholder expectations. The fact that 13% of the NSAs responding to this question felt that the objective has not been fulfilled at all is particularly concerning, although we received no specific comments elaborating on this in the survey or the interviews.

Interviews

3.16   Interviewees reported that the establishment of the Agency had resulted in a more coherent and structured approach to the development of the technology, but that there remain issues of dealing with multiple systems approved in different Member States and in the short term there will be no Single European Railway Area in relation to ERTMS.

3.17   The Agency is now seen positively as the systems authority for ERTMS, but some stakeholders said that it could do more to ensure a standard approach and that the system adopted was gradually reducing barriers to entry. Nonetheless, migration to ERTMS across the EU will only be completed over a long period.

Analysis

3.17.1   The evidence of progress in the specification of TSIs suggests that the Agency is in a much stronger position to coordinate ERTMS-related activity than its predecessor, AEIF, was. This may reflect the shift from an industry-led, consensus-based approach to TSI definition to one involving discussion and agreement within the working parties and RISC. These bodies are more representative of the industry as a whole, as they cover additional stakeholders and allow for the participation of a wider group of Representative Bodies in the decision making process.

3.18   A review of early ERA Annual Reports revealed that there was a slow transition between the AEIF and the ERTMS Unit following its creation, with the delay being due to the setting up of the Agency as a whole as well as to the completion of the activities of AEIF in this area.[3]

3.19   The creation of the Agency led to interoperability issues passing from a team of 15 staff members to a structure in the ERA Establishment Plan that budgeted for a total of 17 staff members (counting only the Interoperability and ERTMS Units) and in 2010 had grown to 45 staff members. Furthermore, the AEIF had 14 working groups looking at Interoperability and ERTMS issues. The number of groups covering interoperability and ERTMS has now grown to more than 30. The ERA has also gained greater importance as a result of its role as systems authority.

3.20   In our view, the new arrangements strike a more appropriate balance between building industry consensus on the one hand and effective decision making on the other, with the development of ERTMS as a whole benefiting from the role that the Agency has developed in recent years.

3.21   However, our high level review of the application of standards in different Member States suggests that there is a continued risk of diverging standards, even within individual Member States. For example, in the Netherlands different levels of ERTMS have been deployed on different high speed lines (levels 1 and 2 as well as a hybrid). This suggests a need for greater coordination of activity, particularly the specification of ERTMS, within and between Member States, and more effective engagement with national infrastructure managers seeking to apply standards to their networks.

3.22   The European Commission and the industry signed a Memorandum of Understanding in July 2008 aimed at facilitating the cooperation of the industry in the development of ERTMS.[4] The Agency is playing its part in this agreement by developing Baseline 3 of the ETCS system and setting up further working groups to facilitate the functional specification of the system as a whole. This is starting to have some effect on the industry, but at present it is focused on ERTMS Corridors and the TEN-T network. Further coordination will be necessary to ensure that the development of ERTMS can continue in a synchronised manner.

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[3] ERA 2005 Annual Report

[4] Memorandum of Understanding Between the European Commission and the European Railway Associations (CER – UIC – UNIFE – EIM – GSM-R Industry Group – ERFA) concerning the strengthening of cooperation for speeding up the deployment of ERTMS. July 2008.

3.23   Within this framework the Agency, in its role as systems authority, needs to take on more of a co-ordinating role to ensure that acceptance of technology is compliant with the current standards. There is a need for both positive incentives and a form of sanctions, with the Agency monitoring the technological choices in Member States but also, if necessary, recommending that the Commission withhold ERTMS funding if the solution adopted is not compliant with the requirements set out by the Agency.

3.24   We also note that Article 2 of Commission Decision 2009/561/EC on the implementation of the TSI relating to the control-command and signalling subsystem of the trans-European conventional rail system requires that the Commission undertake an evaluation of the European Deployment Plan for ERTMS before the end of 2015. It is important that the Agency is kept informed of the progress of this evaluation.

Establishing systems of registration and information exchange

3.25   This can be expected to be a fundamental aspect of the Agency's work going forward. In order for it to be able to carry out its tasks effectively, it must have a comprehensive understanding of the individual networks. Therefore, the Agency will need an effective system for collating the relevant information from the Infrastructure Managers.

3.26   Articles 18 and 19 of the Regulation set out the Agency's role in registration and information dissemination, as summarised in Table 3.2 below.

TABLE 3.2   THE REGULATION: REGISTRATION AND INFORMATION EXCHANGE

Article	Selected text
18.1	"The Agency shall draw up and recommend to the Commission common specifications for: (a) the national vehicle registers…; (b) the European register of authorised vehicle types…; (c) the registration of infrastructure…."
18.2	"The Agency shall set up and keep a register of types of vehicle authorised by the Member States for placing in service on the rail network within the Community,"
19.1	The Agency shall make publicly accessible the following documents and registers provided for by the Railway Interoperability Directive and the Railway Safety Directive: (a) the EC declarations of verification of subsystems; (b) the EC declarations of conformity of constituents available to the national safety authorities; (c) the licences issued in accordance with Directive 95/18/EC; (d) the safety certificates issued in accordance with Article 10 of the Railway Safety Directive; (e) the investigation reports sent to the Agency…; (f) the national rules notified to the Commission…; (g) the link to the national vehicle registers; (h) the link to the registers of infrastructure; (i) the European register of authorised types of vehicles; (j) the register of requests for changes and planned changes to the ERTMS specifications; (k) the register of vehicle keeper markings kept by the Agency…."

Survey

3.27   Figure 3.3 summarises responses by category of respondent to survey Question 7:

"To what extent has the Agency fulfilled the following objectives: Established effective systems of registration and exchange of information?"

FIGURE 3.3   SURVEY RESPONSES: EFFECTIVE SYSTEMS OF REGISTRATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Completely	Partially	Not at all
260	22	24	35	148	31
100%	8%	9%	13%	57%	12%

3.28   A high proportion of those surveyed (over 80%) expressed an opinion and over two-thirds of every respondent group considered that the objective had been at least partially met, rising to three-quarters or more of all NIBs, Representative Bodies, NSAs, Administrative Board members and NoBos. A number of respondents made use of Question 8 to provide written suggestions that the exchange of information could be better facilitated.

3.29   The results of the survey portray a relatively positive picture with 16% of those expressing an opinion indicating the Agency has completely fulfilled this objective and a further 69% of the view that it has partially fulfilled the objective. However, given that Agency employs a number of different systems for registration and exchange of information, each of which may only be used by certain stakeholder groups; the survey results may be concealing the extent to which Agency is meeting the needs of some stakeholders but not others.

3.30   In conclusion, the survey results may not tell the full story in relation to the Agency achieving the objective of achieving effective systems of registration and information exchange.

Interviews

3.31   Interviewees generally commented that the Agency has made a substantial contribution in this area and pointed out the benefits of information availability. However, some suggested that the exchange of information could be better facilitated. There were also a number of comments on the registers:

I That there is little information on which registers are available

I Where available, they are not accessible to all interested parties

I Where accessible, they are not yet complete

Analysis

3.32   Table 3.2 above set out the requirements of the Regulation regarding the system of registers that the Agency needs to set up. We have observed that the Agency has started to prepare registers that reflect all the requirements in the table except for the link to the infrastructure registers. Our review of the registers themselves confirms that there are a number of gaps in their contents and we discuss these further in Chapter5 below.

3.33   The Regulation has set out the framework necessary to decrease information asymmetry in the sector. The goal of the registers as well as Regulations 91/2003, 1192/2003 and 332/2007 is to address this and to create the basis by which the Agency can facilitate interoperability. Establishing the framework is only an initial step towards resolving this problem and the onus is on Agency to ensure that the registers and other systems are developed to be effective.

3.34   In summary, the Agency has established a system of information exchange through the registers, the website and the extranet, which is compliant with the requirements of the Regulation. The Regulation itself is exhaustive in setting out what the requirements should be. We have examined the Registers and note that, as they stand, their contents have a number of gaps and are largely dependent on information being provided by the Member States, in particular, the infrastructure managers.

3.35   Feedback from stakeholders suggest that there remains scope for further improvement, with a need for more active facilitation and dissemination. We suggest that the Agency could address this by holding workshops with the industry stakeholders to explain the structure of the registers, how they work and the benefits that they will bring to the industry once they have been populated. This should be an interactive process, in order to also better understand the specific needs of stakeholders and to develop a coherent architecture for registers. The Agency should also carry out a benchmarking exercise with registers employed in other industries to identify best practices in their design and operation.

Defining a common approach to railway safety

3.36   Article 1 of the Regulation sets out the objective of the Agency, with further details of common safety methods, targets and indicators set out in Articles 6, 7 and 9, as shown in Table 3.3 below.

TABLE 3.3   THE REGULATION: COMMON APPROACH TO SAFETY

Article	Selected text
1	"The objective of the Agency shall be to contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by … developing a common approach to safety on the European railway system,…"
6.1	"The Agency shall recommend to the Commission the common safety methods (CSMs) and the common safety targets (CSTs) provided for in Articles 6 and 7 of the Railway Safety Directive."
7	"…the Agency shall draft and recommend a harmonised format of safety certificates, … and a harmonised format for applications for safety certificates,…"
9.1	"The Agency shall establish a network with the national authorities responsible for safety and the national authorities responsible for the investigations … in order to define the contents of the common safety indicators…"
9.2	"On the basis of the commons safety indicators, national reports on safety and accidents and its own information, the Agency shall submit every two years a report on safety performance, which shall be made public."

3.37 The Agency has focused extensively on developing this common approach with substantial input from the NSAs, although as discussed below, the work in this area is still ongoing.
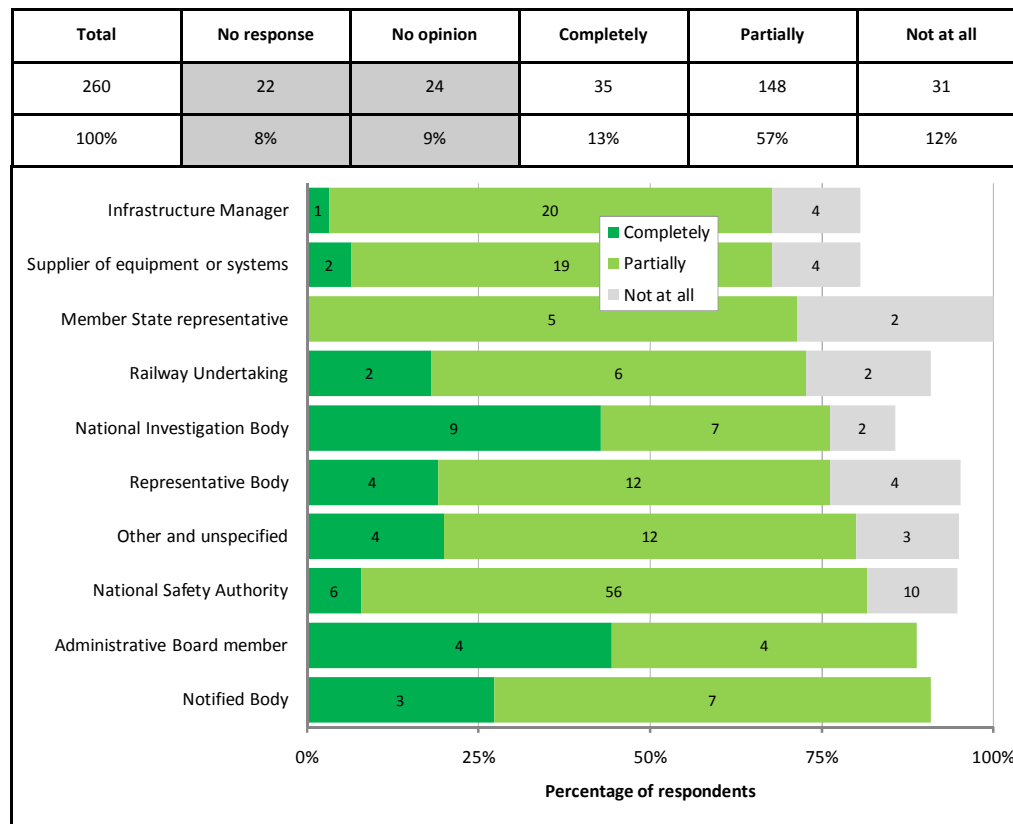
Survey

3.38 Figure 3.4 summarises responses by category of respondent to survey Question 7:

"To what extent has the Agency fulfilled the following objective: Established a common approach to railway safety?"

FIGURE 3.4   SURVEY RESPONSES: COMMON APPROACH TO SAFETY

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Completely	Partially	Not at all
260	21	25	34	154	26
100%	8%	10%	13%	59%	10%

Percentage of responses
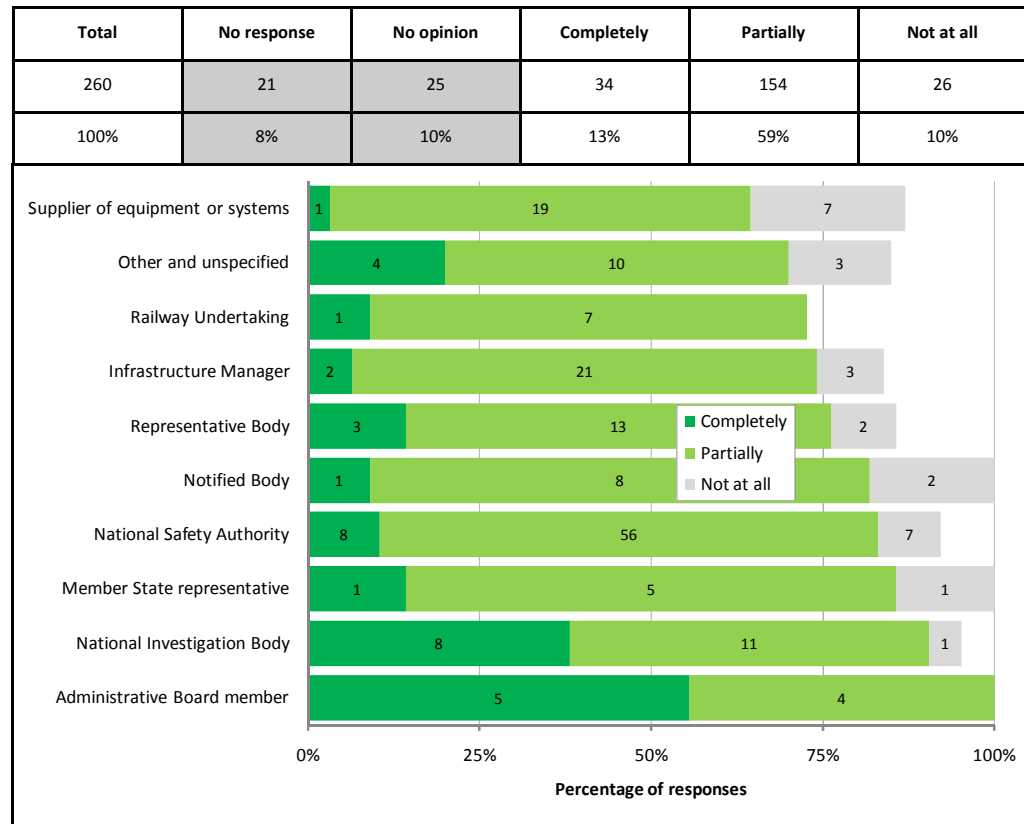
3.39   Over 80% of those surveyed expressed an opinion and over 60% of every respondent group considered that the objective had been at least partially met, rising to three-quarters or more of all Representative Bodies, NoBos, NSAs, Member State representatives, NIBs and all Administrative Board members.

3.40   Whilst the overall results of the survey paint a relatively positive picture, the views of the operators and suppliers within the industry appear to be less positive than the institutions about the extent to which a common approach to safety has been established. In particular, the views of the industry suppliers and operators may reflect a concern that the steps towards a common approach taken so far have not had a measurable benefit at an operational level.

Interviews

3.41   Interviewees generally said that the Agency had come a long way in defining a common approach to safety. Its response to the derailment at Viareggio on 29 June 2009 was commended as measured and appropriate.

3.42   However, interviewees also noted that national requirements are still in force and that this inevitably limits the extent to which a common approach, while necessary, can be achieved. This was also evidenced by one survey respondent who noted that in Italy the "Part B" certificate (described in paragraph 3.45) is route-specific, and not yet even valid at the national level.

3.43   Whilst interviewees were generally supportive of the role and measures being adopted by the Agency, there were contrasting views expressed in relation to the

creation of a single safety certificate and the impact that this would have on the role of the NSAs. This appears to be a potential area of contention.

Analysis

3.44   Our research revealed that the Agency has made significant progress in achieving requirements set out in the Regulation (as shown Table 3.3 above).

3.45   The Agency has developed a number of CSMs and CSIs, which are now being implemented by the Member States, and in response to the requirements of Article 7 has prepared a common approach to safety certification. This follows the provisions of Article 10 of Railway Safety Directive 2004/49/EC: a "Part A" certificate for Europe-wide acceptance and a "Part B" certificate for the requirements of individual Member States, with the aim of moving to a single harmonised safety certificate.

3.46   The Agency published its recommendations on the first set of CSTs in September 2009. Furthermore, in January 2011, the Agency published a presentation setting out its initial thinking on the values for the CSTs (relating to a Working Group presentation of March 2010) showing that there is still work outstanding in this area.

3.47   The Agency set up a network of NSAs and NIBs under Article 9.1 for the purpose of defining the content of the CSIs as specified in Directive 2004/49/EC. It was decided that this would be done through a revision of Annex 1 of the Directive. Our understanding is that this recommendation was actually sent to the Commission in September 2008[5], somewhat sooner than the proposed deadline. Furthermore, implementation guidance was produced shortly after in November 2008.[6] A total of 11 working group meetings were held prior to the publication of the Recommendations and a further 3 have been held since to discuss the implementation of the CSIs and the link with the CSTs. We discuss the network of NSAs and NIBs in more detail at paragraph 3.130 below.

3.48   Article 9.2 of the Regulation required the Agency to produce a biennial report on safety performance. In practice, the Agency has published such a report annually, entitled 'Railway Safety Performance in the European Union', which aims to provide an objective description of the safety of European railways based on information and data gathered from the National Safety Authorities (NSAs) of EU Member States.

3.49   From 2007 the NSAs were required to submit annual reports detailing the previous year's activities. In 2006 to 2007 NSAs were not established in all Member States and so in some cases no reports were issued.

3.50   The Agency's 2008 Safety Performance report contained statistics and data on a range of CSIs for 2006, including:

❙   Fatalities by category of person and traffic volume;

❙   Serious injuries by category of person and traffic volume;

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[5] ERA/REC/SAF/02-2008

[6] ERA_SU_GUID_CSIs

▌ Number of accidents by type and traffic volumes;

▌ Number of precursors to accidents and traffic volumes;

▌ Cost of all accidents, hours lost for accidents and traffic volumes;

▌ Technical safety of infrastructure and its implementation, management of safety and traffic volumes.

3.51   The 2008 report noted that the statistics and data supplied by several Member States precluded a perfect comparison between nations. For example Belgium reported average figures over 2001-2006 as opposed to 2006 data, whilst some Member States did not send a report to the Agency. The CSI report Annex stated that: "Unfortunately the fulfilment of point 6 of Annex 1 to Directive 2004/49/EC is not satisfactory yet; the reporting of the applied definitions is a crucial element in understanding and analysing railway statistics."

3.52   Additionally, in the 2008 report the data followed national definitions so that the exact interpretation of the indicators for each Member State varied. In the 2009 and 2010 reports common definitions of accident and safety data have been used, allowing a more consistent recording and comparison of accident and safety data.

3.53   The 2009 and 2010 reports also provided an expanded range of CSIs, providing more detailed breakdowns of existing data and several additional indicators including:

▌ The costs of all accidents

▌ The hours lost due to accidents

▌ The technical safety of infrastructure and its implementation

▌ The management of safety – number of audits planned and conducted

3.54   The 2010 report has for the first time contained a full set of consistent data for the full range of years (2006-2008). However, the report highlights that the Agency still has concerns regarding the reporting of serious accidents in some Member States and that additional work needs to be done to ensure consistency in the data collected and supplied by the individual NSAs to ERA.

3.55   With only data points for three years, it is not possible to discern an overall trend in safety performance from the 2010 Safety Performance Report. However, ongoing collation of safety data on this basis will enable a clearer pictured to be discerned in due course. However, in order to provide a useful measure of the level safety for rail travel, we suggest that performance measures could be further improved by application of weightings, such as the number of passenger fatalities per passenger-km.

3.56   The implementation process has now extended to peer reviews of NSAs, with the Agency's participation, which should further the development of a common approach, although there remains a problem that the less developed NSAs may not yet have all the skills and resources required to carry out their functions.

3.57   We conclude that the Agency has contributed significantly in recent years to the development of a common approach to railway safety, as required by Article 1 of the Regulation. It has gone beyond setting the framework and has started to

provide solutions to safety issues. This has been assisted by the publication of supporting documents such as the annual progress report on CSMs and CSTs (for 2009), which describes progress on the definition of a common approach to railway safety. Further work is required, including the revision of the CSMs, but the Agency has contributed significantly to this definition.

Defining an optimal level of harmonisation in interoperability

3.58   The aim of this section is to evaluate the extent to which the Agency has defined an optimal level of technical harmonisation.

3.59   Article 1 of the Regulation sets out the objective of the Agency, with further details relating to interoperability set out in Articles 12 to 15, as shown in Table 3.4 below.

TABLE 3.4   THE REGULATION: INTEROPERABILITY

Article	Selected text
1	"The objective of the Agency shall be to contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems…"
12	"The Agency shall contribute to the development and implementation of rail interoperability in accordance with the principles laid down in Directives 96/48/EC and 2001/16/EC. To this end, the Agency shall: (a) organise and conduct, on a mandate from the Commission, the work of the working parties… (b) ensure that the TSIs are adapted to technical progress and market trends and to social requirements… (c) ensure coordination between the development and updating of the TSIs … and the development of the European standards which prove necessary for interoperability… (d) assist the Commission in organising and facilitating the cooperation of notified bodies…"
14.1	"The Agency shall recommend, at the request of the Commission, procedures for implementing interoperability of the railway system by facilitating coordination between railway undertakings and between infrastructure managers…"
14.2	"The Agency shall monitor progress with the interoperability of the railway systems. Every two years it shall present and publish a report on progress with interoperability. The first such report shall be published during the Agency's second year of activity."

3.60   The Regulation does not formally refer to an "optimal" level of harmonisation, or distinguish between:

❙ Defining the level of harmonisation, which may be achieved in the near future; and

❙ Achieving the level of harmonisation, which is only likely in the long term, as railway assets and systems currently in use are retired and replaced.

3.61   In addressing the question of defining an optimal level of interoperability harmonisation, we first sought the opinions of stakeholders and, secondly, considered the extent to which the Agency has taken steps to define and target an optimal level.

Survey

3.62   Figure 3.5 summarises responses by category of respondent to survey Question 7:

"To what extent has the Agency fulfilled the following objective: Achieved an optimal level of technical harmonisation in the interoperability field?"

3.63   We acknowledge that this question is nuanced slightly differently from the brief, but we considered that it would be easier for stakeholders to interpret and respond to than a question asking them specifically to assess whether an optimal level has been defined.

FIGURE 3.5   SURVEY RESPONSES: OPTIMUM HARMONISATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Completely	Partially	Not at all
260	22	29	18	176	15
100%	8%	11%	7%	68%	6%
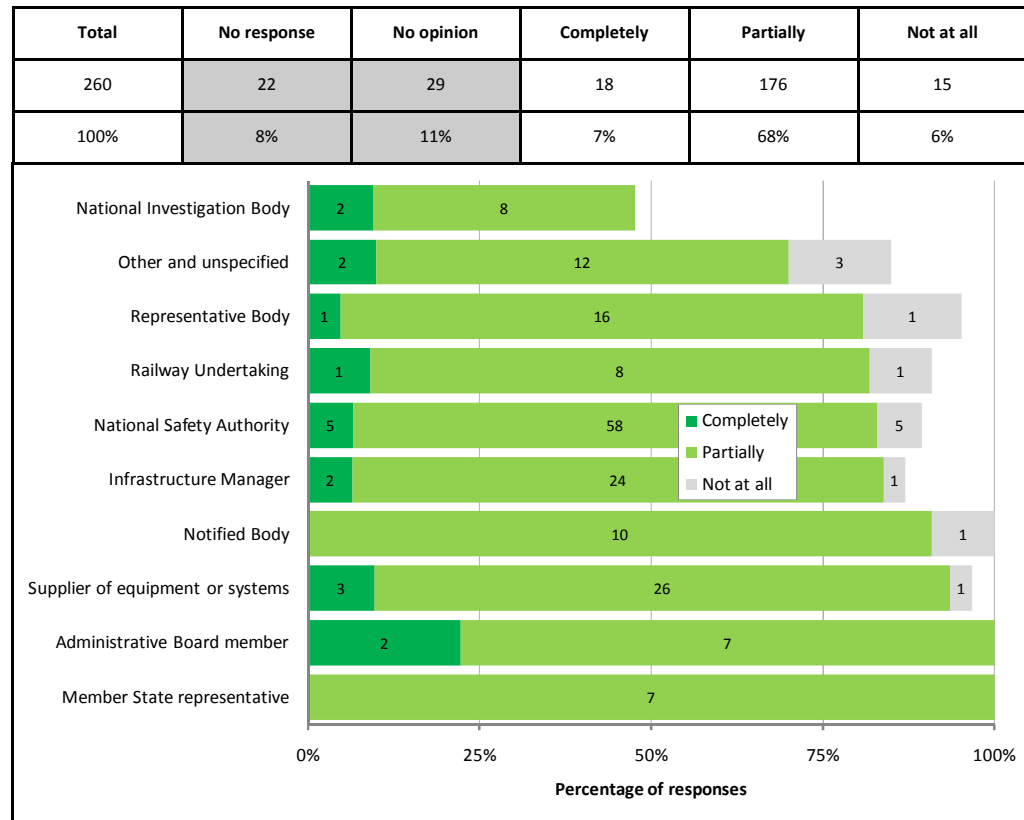
3.64   Almost all respondents and all Administrative Board members and Member State representatives considered that the objective had been at least partially met, a higher proportion than for the other three initial objectives addressed in this part of the survey. The fact that only 7% considered the objective completely fulfilled is probably at least partly a reflection of the difficulty in defining an 'optimum' level.

3.65   We acknowledge that assessment of the question posed is open to a high degree of subjectivity, but we can at least conclude that the perception of the majority of

stakeholders suggests that the Agency is working towards an optimal level of interoperability harmonisation. This was further supported by the responses to Question 9 (4.2) relating to increasing railway interoperability. We observed that 83% of those that stated that the Agency had achieved an optimal level of technical harmonisation also expressed a view that the Agency had contributed a great deal to increasing railway interoperability.

3.66 The relatively low response rate by the NIBs may reflect that this is not an aspect of direct concern to their area of interest, at least in the shorter term.

Interviews

3.67 Our interviews revealed that the Agency and the industry do not always agree on whether TSIs should define what is necessary for interoperability, what is necessary to deliver the Article 1 objective, and what the definition of the optimal level of harmonisation should be. Comments included that:

❚ The Agency's view of the optimal level of harmonisation may differ from the intentions of Directive 2008/57/EC, and some stakeholders felt they needed to ask the Commission to intervene to focus the Agency on the requirements of the Directive.

❚ EN standards are often added to, or included in, the TSIs by the Agency. Many interviewees objected that the EN standards have either too much or too little detail, and that updates to the EN standards will invalidate the TSIs and leave the NoBos and NSAs an inconsistent framework.

❚ The Agency pays insufficient attention to the economic costs of TSIs in the short, medium and (in some cases) long term, which can hinder, rather than enhance, the Article 1 objective of "improving the competitive position of the railway sector". This also begs the question of whether all relevant factors are included in the economic evaluations, which is discussed further in Chapter 6.51.

❚ The Agency should close "Open points" in the existing TSIs before extending their geographical scope.

3.68 Survey respondents and interviewees reported that the Agency had made more progress than had been achieved by its predecessor, AEIF, but while "Open points" remain in the current TSIs, a definition of the optimal level of harmonisation will remain some way off.

Analysis

3.69 Unlike in the aviation and maritime sectors overseen by EASA and EMSA respectively, interoperability between the railways of Europe is inherently constrained by nearly 200 years of independent development, particularly of the infrastructure, incompatible track gauges and diverse structure gauges, electrification, signalling and control systems. The costs of fully harmonising all these diverse technical characteristics, with retrospective replacement of major rail infrastructure assets, appears unlikely to be optimal within the foreseeable future.

3.70 We have not seen evidence of a strategic plan to define an optimal level of harmonisation, nor a vision of what the long term level of technical harmonisation

should be. Within its long term planning (discussed in more detail in the following chapters), the Agency needs to ensure that it starts to consider how to define this optimal level, based not only on the current state of the European railways, but also on possible developments in future decades. This should then be the driving force of its strategy in interoperability that goes beyond the short term requirements set out in the Commission mandates.

3.71 The Agency could benefit from considering how technical harmonisation has been addressed in other transport modes. For example, road signs are now harmonised across Europe, but there is no harmonisation of road widths, that is there will always be historical urban roads, or low bridges that make it impossible for certain vehicles to pass. In this analogy the Agency's initial work may best be focused on the "road sign" issues (which in the railways could, for example, relate specifically to cross acceptance) before requiring retrospective renewal and replacement of major rail infrastructure assets to meet a longer term harmonisation objective.

3.72 From our assessment of the Agency, the focus of technical harmonisation has been on progressing the development of TSIs in accordance with its mandate. However, the Agency does not yet appear to have reached a clear definition of what an optimal level of technical harmonisation should be, nor does there appear to be a clear vision for how harmonisation should migrate across the network in the medium and longer term.

3.73 In our view, the key question revolves around the term 'optimal'. Technical harmonisation should not be an end in itself. Its purpose is to facilitate the objective of improving the competitive position of the railway sector. The optimum may be defined as the level of harmonisation where the efficiency and economic benefits accruing to the railway system as a whole are at their greatest relative to the costs of achieving that level of harmonisation. The situation in Europe is dynamic. Successive technological developments are leading to lower implementation costs. Also, with an expanding network of new and upgraded interoperable high speed rail corridors, the benefits of extending interoperable systems to linking infrastructure are increasingly able to offset the marginal costs.

3.74 We believe that responsibility for monitoring this dynamic and forming an economic view of the appropriate progression of harmonisation in interoperability should fall to the Agency. We therefore suggest that its mandate is amended to incorporate a requirement to define an optimal level of harmonisation with reference to economic principles.

3.75 In conclusion, the Agency, in progressing harmonisation of interoperability through the development of the TSIs is generally supported by stakeholders, although there remain specific areas for improvement such as the issue of 'open points' as noted above. However, the strategic issue of defining an optimum level of harmonisation is less clear. The Agency should take responsibility for this and revisions to its mission are likely to be necessary to give further clarity and impetus to its activities.

The clarity of the acts issued by the Agency

3.76 Article 2 of the Regulation defines the acts of the Agency, as shown in Table 3.5 below.

TABLE 3.5   THE REGULATION: THE AGENCY'S ACTS

Article	Text
2	The Agency may: (a) address recommendations to the Commission concerning the application of Articles 6, 7, 9b, 12, 14, 16, 16a, 16b, 16c, 17 and 18; and (b) issue opinions to the Commission pursuant to Articles 9a, 10, 13 and 15, and to the authorities concerned in the Member States pursuant to Article 10.

3.77   Once the Agency has made a Recommendation to the Commission, this is turned into a draft Commission measure, which requires that the text be checked for legality and accuracy of language and that it complies with other EU policies. This process is carried out through an intensive consultation with other Commission services including the legal service. The Agency's Recommendation may be substantially modified by the Commission.

3.78   The text is then submitted to the Rail Interoperability and Safety Committee (RISC), which comprises representatives of the Member States, provided for under Article 29 of the Revised Interoperability Directive (2008/57/EC) and Article 27 of the Railway Safety Directive. RISC may also request changes to the Recommendation on grounds including economic, social, environmental and competition issues.

3.79   The possibility that major changes are made by RISC also means that the Agency must review documents emerging from RISC and feedback and explain to the working parties any changes to the original expert advice.

3.80   Figure 3.6 shows the number of Recommendations and Opinions issued by the Agency over the period since 2005, its first full year of operation.

FIGURE 3.6   THE AGENCY'S ACTS: RECOMMENDATIONS AND OPINIONS
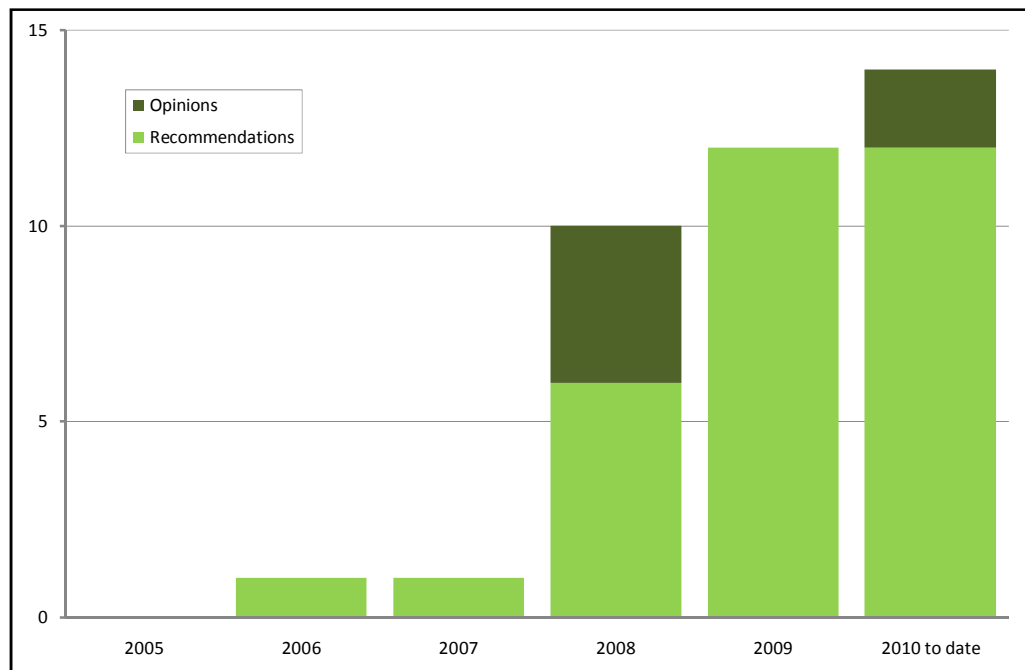
3.81 Output was initially limited, with only a single Recommendation issued in each of 2006 and 2007, but since 2008 the Agency appears to have been producing around one output per month, with the total output in response to Commission mandates still steadily increasing. In interpreting the survey responses below, however, it should be noted that only six Opinions have been issued to date.

Survey

3.82 Figure 3.7 summarises responses by category of respondent to survey Question 15:

"How would you rate the quality of the Agency's outputs particularly in relation to: Recommendations sent to the Commission?"

3.83 We acknowledge that this question is nuanced slightly differently from the brief, but we found in pre-testing the survey the term "Clarity of the acts" was not easily understood.

FIGURE 3.7   SURVEY RESPONSES: THE AGENCY'S RECOMMENDATIONS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	1 Very low	2	3	4	5 Very high
260	33	1	10	83	98	35
100%	13%	0%	4%	32%	38%	13%
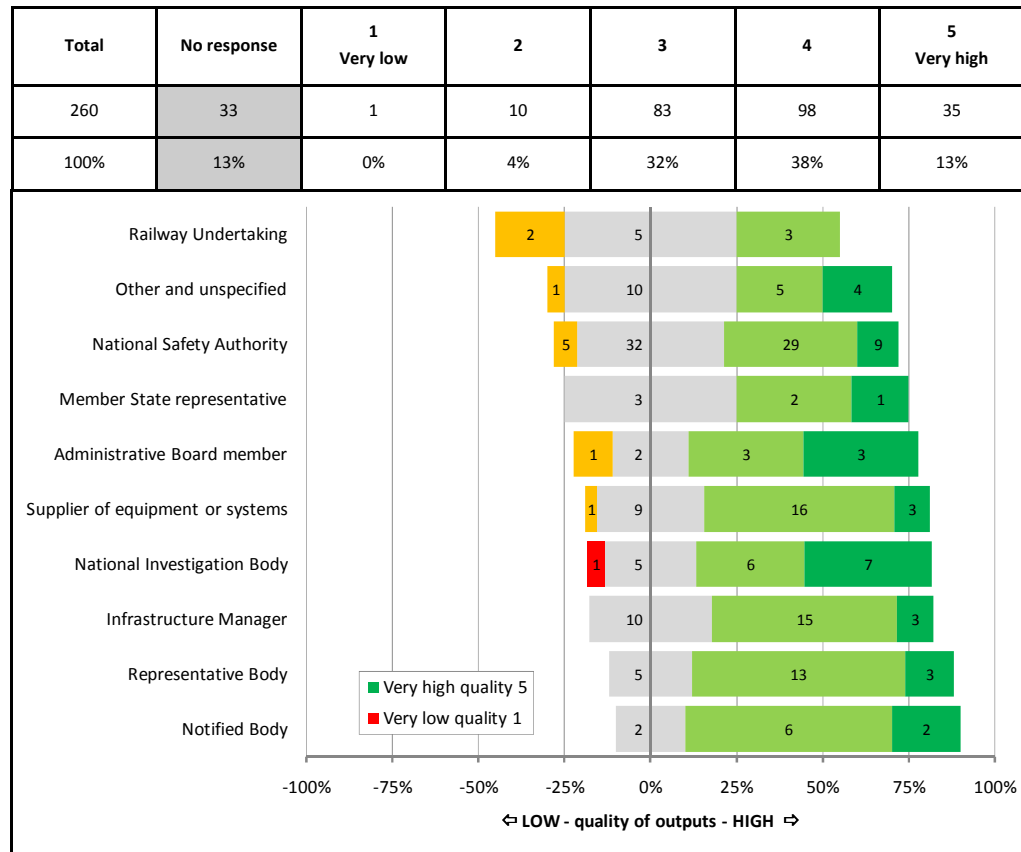
3.84 The results of this specific question show that there was a high response rate and that respondents generally thought that the quality of the recommendations was high or very high, with only a small number giving a low score and only one NIB respondent giving a very low score. One third of all respondents gave the median score, three. This may have been inflated by respondents who held no firm opinion.

3.85   The Railway Undertakings gave the least positive response in relation to this question. Whilst we were unable to determine specific reasons for their lower scoring, it is noteworthy as they are ultimately are the parties who interpret and apply some of the TSIs (and the wider recommendations). These results may also reflect the lower degree of involvement that some of the Railway Undertakings will have had in the preparation of the Agency's outputs to the Commission. Conversely, the Infrastructure Managers and NoBos were much more positive about the quality of the recommendations.

        We conclude that there are mixed views among stakeholders about the quality of the Agency's recommendations to the Commission.

3.86   Figure 3.8 summarises responses by category of respondent to survey Question 15:

        "How would you rate the quality of the Agency's outputs particularly in relation to: Technical Opinions?"

        FIGURE 3.8   SURVEY RESPONSES: THE AGENCY'S OPINIONS

        Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	1 Very low	2	3	4	5 Very high
260	35	1	18	87	89	30
100%	13%	0%	7%	33%	34%	12%
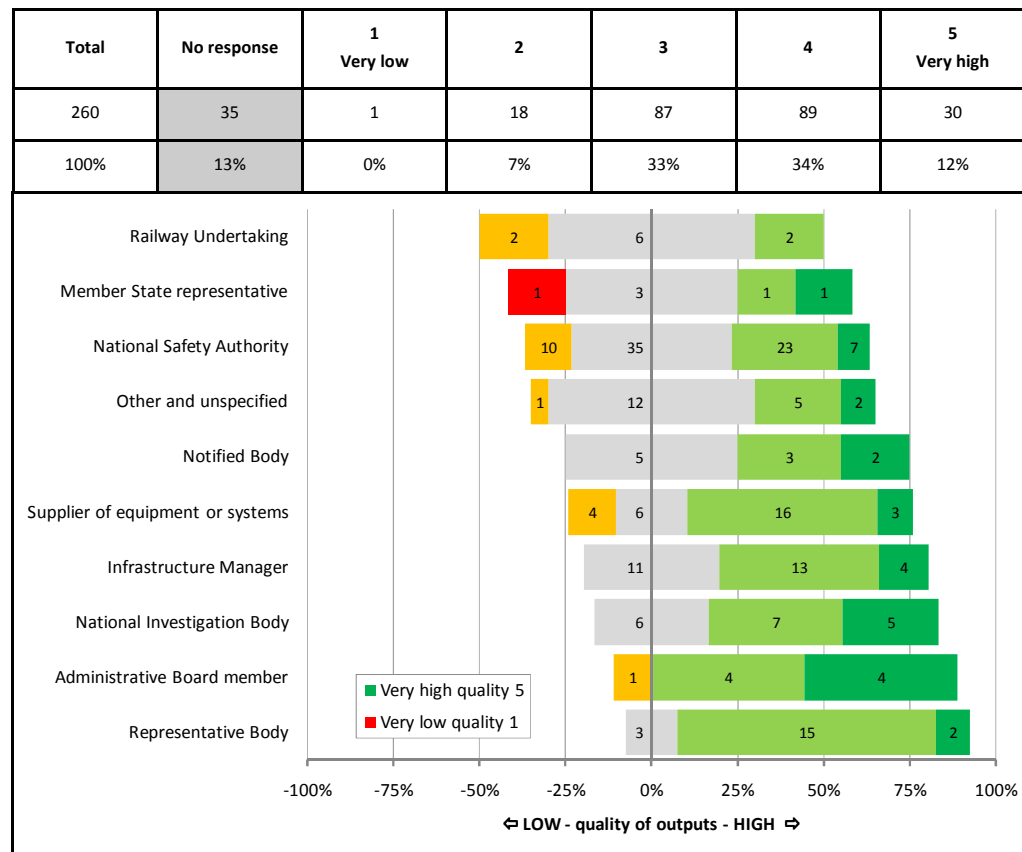
3.87   The response rate for this question was also high. Of those responding, 85% of Representative Bodies but only 30% of the RUs rated the quality of the Opinions positively.

3.88   The responses to this question were generally less positive than those expressed for the Recommendations in the previous question. Since there have been fewer Opinions than Recommendations, the results may have been skewed by a subset or a single Opinion. The largest difference was seen in relation to the NoBos who

were the most positive in relation to the Recommendations but were much less positive on the Opinions.

3.89   The spread of opinion revealed by these results does not help identify specific areas where the Agency is performing well or poorly, but it does suggest that the quality of the outputs of the Agency are inconsistent and there is evidently room for improvement.

Interviews

3.90   Interviewees reported that the quality of Recommendations and Opinions was generally acceptable, but they highlighted some cases of lack of clarity, or "Open points", which had made implementation difficult.

3.91   However, the majority of stakeholders interviewed expressed concern at the extent to which the Agency's Recommendations are subsequently modified by RISC:

▌ One interviewee who had attended RISC as an observer was concerned at the extent to which Recommendations were subjected to negotiation.

▌ Some commented that RISC may introduce drafting which either contradicts the findings of the working party experts or complicates, rather than simplifies, the development of a Single European Railway Area.

▌ Others argued that RISC had been obliged to reopen drafting where the working parties had not reached a clear consensus.

3.92   Interviewees suggested a range of changes, from wider participation at RISC to Agency review of final documents before publication. These are discussed in the analysis below along with our suggestions for improvements.

Benchmarking

EASA has a process for drafting safety rules which we compare in Figure 3.10 with the Agency's process for producing recommendations.

3.93   ORR is independent and produces determinations, which are binding unless successfully challenged in the courts. Determinations are typically supported by the publication of an evidence base, consultation, and reasoned statements of the processes it has used to reach them. As far as we are aware, ORR's determinations have ultimately been accepted by the affected parties without recourse to judicial review.

3.94   With regard to quality, neither ORR or EMSA operate accredited quality assurance systems, although ORR employ parts of the ISO9001 system within their Safety Directorate. Conclusions of the evaluation of EMSA in 2008 highlighted the lack of an appropriate quality management system as a major fault to be addressed.[7]

3.95   EASA maintain an integrated management system, which, whilst not fully accredited, takes into account IS0 9001 requirements and the internal standards of the European Commission. EASA has also established an Integrated Management System (IMS) to manage its processes in order to meet the organisation's mission

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[7] Evaluation of the European Maritime Safety Agency, COWI, 2008

and objectives. The EASA IMS is also designed to ensure that quality of services delivered by the Agency equally satisfies the stakeholders without compromising on safety or environmental protection. In our opinion the performance of ERA and the quality of its outputs could benefit if it were to develop and implement a similar system.

Analysis

3.96 Figure 3.6 above shows that there has been a continued increase in the number of Recommendations and Opinions produced by the Agency. As production has increased, so has the quality of the outputs produced. A more templated approach has been adopted, with version control and checks introduced in the outputs of the safety unit. However, this has not been consistently applied to all Agency documentation. The issue of the quality of outputs has also been raised by a number of stakeholders outside the scope of this study, for example the joint UNIFE-CER paper of 2009[8].

3.97 The Agency has recently appointed a quality officer and progress has been made with initiatives to improve quality. In particular, the current internal review process requires all Heads of Unit to review the outputs before they are put to the Executive Director. Quality assurance processes should help to further increase the clarity of the acts that emerge as a result of the Regulation. The Agency's 2009 Annual Report highlighted that the quality officer will facilitate the establishment of a formal quality management system at ERA. Whilst we note that the Agency is taking steps to improve quality, an integrated quality assurance system has yet to be established. On the subject of internal quality control, the 2011 Work Programme report merely restated the text of the previous year's report:
"To ensure quality and consistency all Agency activities covering more than one operational unit's area of expertise involve staff from all the competent units and all recommendations whether or not they involve more than one unit are subject to an internal review by all units before their final sign-off by the Executive Director."

3.98 Our findings revealed that the quality of the Agency's outputs remains inconsistent and that a more unified approach to its process and output controls is needed.

3.99 Some of the basic principles for improving the quality and clarity of the acts of the Agency are being applied, but some are less well adhered to. Such principles should include:

❙ Clear and realistic timescales for the preparation of a Recommendation (and Opinion following the final Working Party);

❙ An internal documentation review process which includes:

▪ review by the Head of Unit (already undertaken);

▪ review / check by other Units (recently introduced to mitigate potential conflicts);

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[8] For the enhancement of the role of ERA, A joint position paper by the CER and the UNIFE, 2009

- technical peer review;

- a language review to ensure that the output is in clear English; and

- a legal compliance review;

I A contingency plan to allow for revisions/amendments arising from the review process.

3.100 We understand that the Agency has previously given consideration to adopting a recognised quality assurance accreditation, but chose not to pursue this on the grounds of cost. However, given the strategic importance of the Agency's outputs, we believe that securing accreditation for an internationally recognised quality assurance system, such as ISO 9001, would represent value to the industry, reflect modern best practice and enhance the credibility of the Agency's outputs.

3.101 In conclusion, there is more that the Agency can do to improve the quality of its outputs and the clarity of the acts that it produces. This is consistent with the stakeholder survey and interviews which were relatively positive about the outputs of the Agency but identified room for improvement. There is clear evidence that the Agency is taking positive steps to improve quality, but in our assessment there remains a significant opportunity to go further and this could be achieved without any changes to the Agency's mandate or its structure. We would advocate that the Agency's quality assurance processes are subjected to continuous review cycle and that the Agency should implement an accredited, internationally recognised quality assurance system, such as ISO 9001.

3.102 We also recommend that the Agency considers the developing an Integrated Management System and that the system employed by EASA should be examined as a potential model.

The working practices of the Agency

3.103 We were asked to evaluate the working practices of the Agency in respect of the railway industry and the competent national railway authorities. The Agency carries out a large number of processes relevant to its different activities, but we have focused on two major areas of industry-facing activity:

I The working parties established in accordance with Article 3 to draw up Recommendations to the Commission

I The networks of NSAs and NIBs established in accordance with Article 9 to define the content of the common safety indicators (CSIs)

The working parties

3.104   The Regulation sets out, principally in Article 3, how the Agency shall establish working parties to draw up the Recommendations required under Article 2. The principal relevant texts are listed in Table 3.6 below.

TABLE 3.6   THE REGULATION: THE WORKING PARTIES

Article	Text
3.1	"For drawing up the recommendations provided for in Articles 6, 7, 9b, 12, 14, 16, 17 and 18 the Agency shall establish a limited number of working parties.
	These working parties shall take as a basis, on the one hand, the expertise built up by • **professionals from the railway sector**, and in particular, the experience gained by • **the European Association for Railway Interoperability (AEIF)** and, on the other hand, the expertise of • **the competent national authorities**.
	The Agency shall ensure that its working parties are competent and representative and that they include adequate representation of those sectors of the industry and of those users which will be affected by measures which might be proposed by the Commission on the basis of the recommendations addressed to it by the Agency.
	The work of the working parties shall be transparent.
	Whenever the work provided for in Articles 6, 12, 16 and 17 has a direct impact on the working conditions, health and safety or workings in the industry, **representatives from the workers' organisations** shall participate in the relevant working parties."
3.2	"The Agency shall forward the adopted Work Programme to the representative bodies from the railway sector acting on a European level. The list of these bodies shall be drawn up by the Committee referred to in Article 21 of Directive 96/48/EC. Each body and/or group of bodies shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party."
3.3	"The national safety authorities defined in Article 16 of the Railway Safety Directive, or, depending on the subject, the competent national authorities, shall appoint their representatives for the working parties in which they wish to participate."
3.4	"The Agency may, if necessary, add to the working parties independent experts recognised as competent in the field concerned."
3.5	"The working parties shall be chaired by a representative of the Agency."
24.4	"The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff. Their travel and subsistence expenses, based on rules and scales adopted by the Administrative Board, shall be met by the Agency."

Survey

3.105   Figure 3.9 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: The working parties?"

FIGURE 3.9   SURVEY RESPONSES: THE WORKING PARTIES

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	31	32	1	14	40	110	32
100%	12%	12%	0%	5%	15%	42%	12%
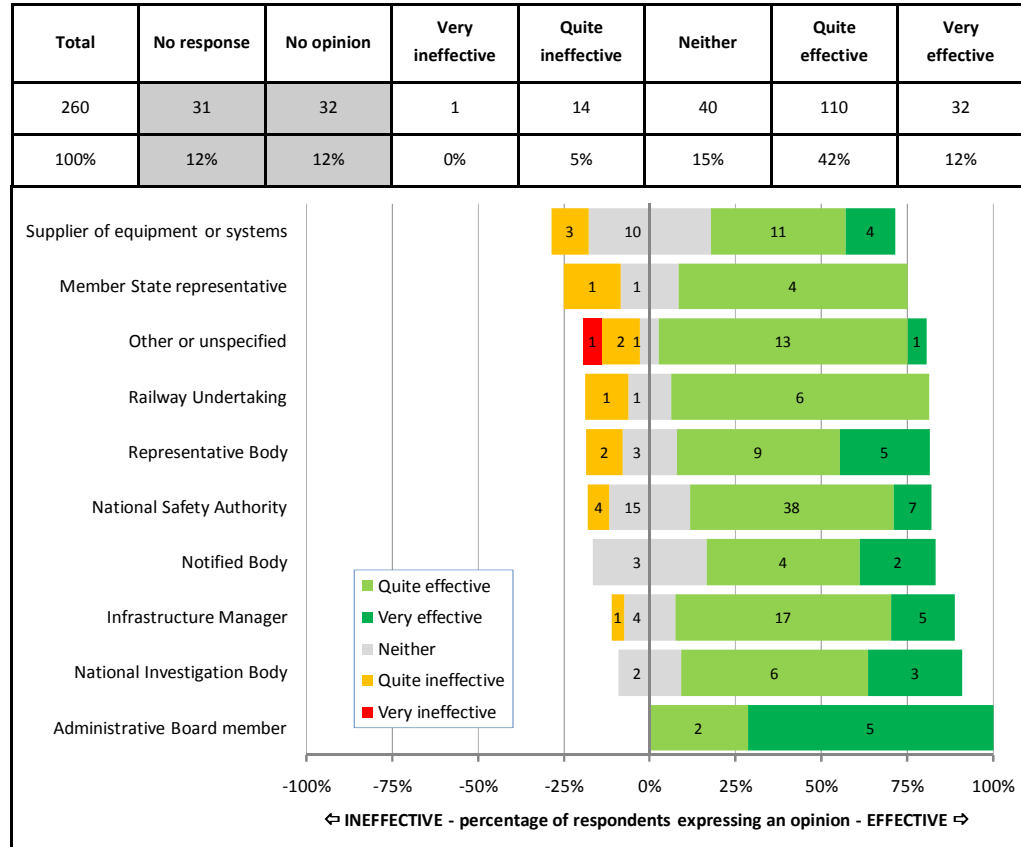
3.106   Of the 260 respondents, 197 (76%) expressed a view, 72% of whom stated that the Agency was 'Quite effective' or 'Very effective'. The most divided range of views came from the equipment suppliers, around 12% of whom felt that the Agency was quite ineffective in this area. This may reflect that some of the supplier industry feel that their interests are not well represented by the working parties. However, from our observations of the composition of working parties, suppliers appear to be well represented. The issue may therefore be more about their lack of influence on the outputs of the working parties.

3.107   Of the 64 NSA respondents, 6% felt that the Agency was ineffective. This may reflect some of the concerns, particularly in relation to participation in the working parties, which were also expressed in interviews and are discussed later in this section.

3.108   The Regulation's focus on working parties to develop TSIs, continuing the approach of AEIF, appears to be supported by the industry and also reflected by the fact that only one of nearly 200 respondents stated that the Agency's performance was "Very ineffective".

Interviews

3.109   Stakeholder interviewees were also generally positive about the working parties, commenting that the Agency is learning from experience and that the usefulness of the working party meetings is improving. The process of selection of experts is generally carried out effectively although some stakeholders were concerned that it might become more difficult either to locate suitably qualified experts or to persuade them to attend working party meetings in Lille, which we discuss in Chapter 7. All the interviewees considered that there was scope for further improvement in their functioning, with a number of reasons being put forward:

❚ Independent experts have also sometimes been brought in by the Agency, as permitted under Article 3 paragraph 4, even when the working party members already have the requisite expertise.

❚ The Agency representatives, as technical experts themselves, tend to focus on putting forward proposals or imposing their own views, rather than facilitating the development of a consensus among the experts. In some cases the Agency's Recommendations report the Agency representative's view rather than the consensus (this could at least partly be addressed by the better quality management processes discussed in the previous section).

❚ Meetings may be called at short notice and split over two days when they could have been completed in one (note that a Lille meeting split over two days might enable all participants to attend with one night away, when an all-day meeting would require some participants to spend two nights away).

❚ Papers prepared for the meetings are not always of sufficient standard, and circulated sufficiently far in advance, to enable the meetings to proceed efficiently.

❚ The Agency representatives responsible for chairing the working parties under Article 3 paragraph 5 do not have a consistent standard of project management skills, and it can take time for some working parties to begin to achieve results. In some cases this leads a suboptimal management of the desired output.

❚ Papers circulated after each meeting may not accurately reflect the comments and changes proposed by the experts. The concern here was not that the comments get ignored per se, but rather an absence of clear reasoning behind why a comment had been rejected by the Agency. This is *prima facie* inconsistent with the Article 3 paragraph 1 requirement that the workings shall be transparent.

❚ Recommendations issued by the Agency at the end of the working party process may subsequently be changed by RISC or the Commission with the result that it is not transparent to the working party members how their deliberations have been used.

❚ The reimbursement of travel and subsistence expenses required in Article 24 paragraph 4 has only been applied to the experts, excluding working party participants from the NSAs and NIBs, as a result of the fact that NSAs and NIBs can appoint a representative to a working party but have not been invited to do so directly by the Agency.

3.110   Some of these issues relate to the drafting of the Regulation on staff, some to the secretarial processes of the Agency, and some to the training and skills of the Agency's representatives, as discussed further in the section below.

Benchmarking and analysis

3.111   Figure 3.10 summarises the overall working party process by which the Agency prepares Recommendations for the Commission, through the industry, and in some cases with consultation. It compares it with a simplified description of how the process of drafting safety rules is carried out in EASA.

FIGURE 3.10   BENCHMARKING: DEVELOPING RULES AND RECOMMENDATIONS
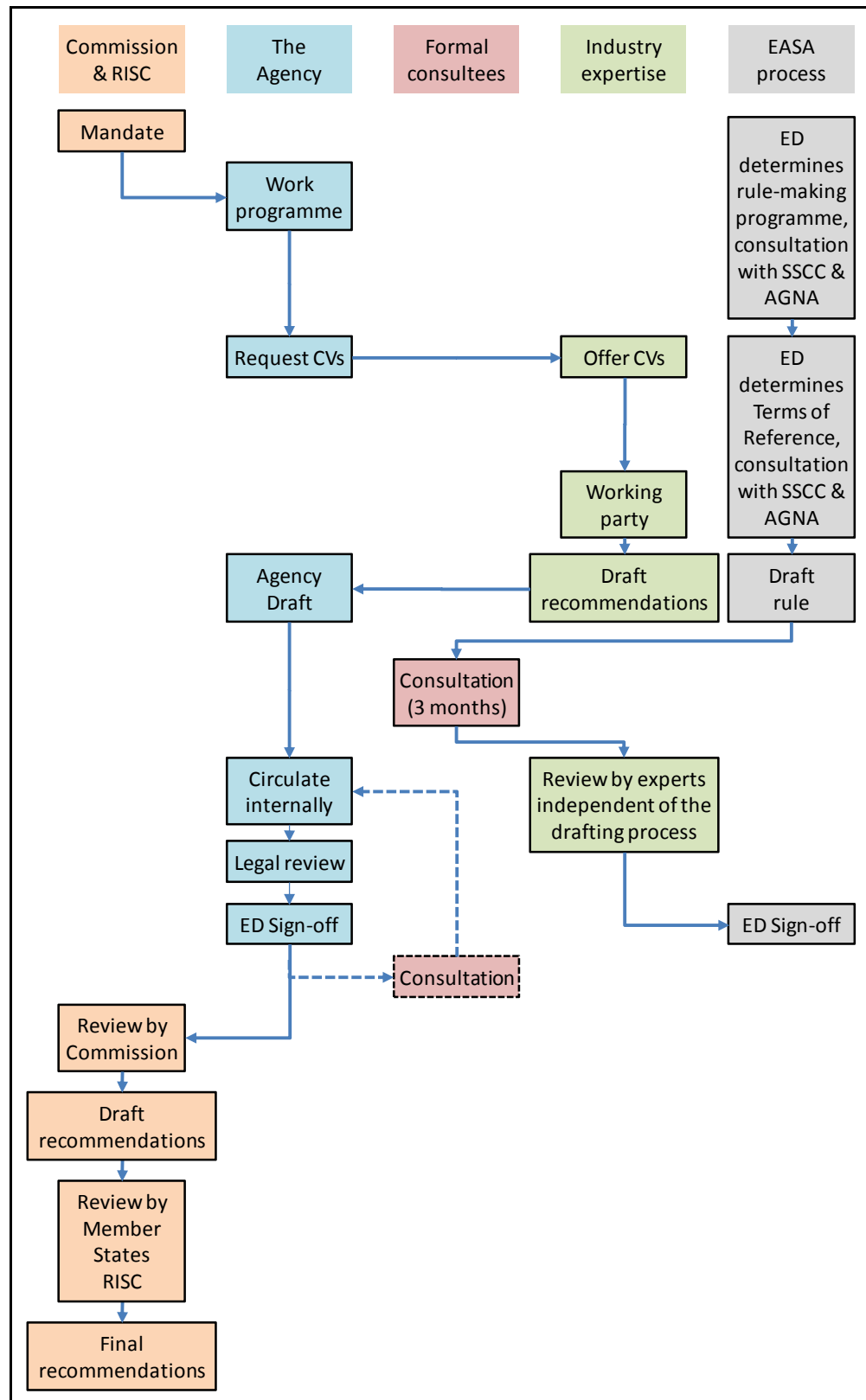
3.112   The Agency's process begins with a mandate from the Commission, which is then taken into account in the Work Programme, after which relevant stakeholders are notified and industry expertise is sought, from professionals in the railway sector,

the European Association for Railway Interoperability (AEIF), and the competent national authorities. CVs of suitably qualified experts are offered to the Agency and those accepted are brought together to form a working party chaired by the Agency, as provided for in Article 3 of the Regulation.

3.113   The later stages in the Agency's process involve circulation of an Agency draft and legal review within the Agency before sign-off by the Executive Director, but without the involvement of the Administrative Board.

3.114   Consultation with social partners, if required under Article 4, or rail freight customers and passengers, if required under Article 5, then follows, after which the draft Recommendations may in principle be modified and reviewed again before sign-off.

3.115   Once the Agency's processes are completed, its Recommendations are reviewed by the Commission and then by RISC, both of whom have the power to amend or reject Recommendations, before the publication of final Recommendations by the Commission in the form of a Decision or Regulation.

3.116   In EASA, in contrast, much of the initial work takes place internally, up to the preparation of a draft safety rule. There is then a three month consultation phase, in which any person or organisation interested in the rule is entitled to comment. This is followed by review of the comments by both experts not directly involved in the drafting and the EASA staff drafting group tasked with drafting the rule.

3.117   EASA's process defers this review by both independent experts and EASA staff until immediately before sign-off by the Executive Director. EASA stresses on its website that "In order to ensure that decisions on safety issues are free from all political interference, decisions must be in the hands of a neutral and independent decision maker invested with the necessary powers. This is why the safety decisions of the Agency will be taken by its Executive Director, as is already the case in most countries which have developed systems for aviation safety regulation."

3.118   The Agency's process, in contrast, subjects the Recommendations of the working party of experts to repeated further review within the Agency, for legal purposes, and finally by RISC on behalf of the Member States.

3.119   A key issue is that wide consultation on draft Recommendations as late as possible in the process gives all industry parties, including those who were party to the earlier drafting and refining processes, an opportunity not only to see the emerging outputs but also to comment on them. This is the approach not only of EASA, as shown above, but also of the ORR, which generally holds broad public consultation on its draft outputs before finalising them.

3.120   While Article 3 of the Regulation refers to "a limited number of working parties", the Agency's extranet now lists more than 50 working groups, and Agency staff make an average of 1500 trips from Valenciennes to Lille each year. The large number of working parties raises the issue not only of the volume of travel required to attend them, which we discuss in Chapter 7, but also the workload of the Agency in chairing every working party (Article 3 paragraph 5) and providing the associated secretarial and administrative support. In contrast, in 2009 EMSA held only 17 working group meetings, with an average of 12 participants.

3.121 However, this stark comparison may simply reflect fundamental differences in the functioning and structure between the rail and maritime sectors. In the rail sector in the UK the comparison is more appropriately with the Rail Safety and Standards Board (RSSB) rather than the ORR, as the former is responsible for developing and co-ordinating technical and safety standards. In this regard the RSSB illustrates the complexities of cross-industry co-ordination of rail standards within just one Member State. For example, they oversee a wide range of cross-industry working parties and co-ordination committees, including:

▮ An Industry Standards Co-ordination Committee (10 meetings/year)

▮ Six Standards Committees (52 meetings/year)

▮ Five Systems Interface Committees plus ad hoc sub-groups

▮ A Technical Strategic Leadership Group

▮ A Safety Policy Group

▮ An Operations Focus Group

3.122 The RSSB, although under a different governance structure, shares many similarities with the Agency in terms of its role of developing and co-ordinating technical and safety standards. We believe there could some value in ERA and RSSB sharing experiences and ideas for managing multi-stakeholder cross-industry programmes with the aim of identifying best practices in information dissemination and initiatives to improve efficiency and quality of outputs.

3.123 Examination of the material on the Agency's extranet has enabled us to assess the size and composition of working parties. The average number of members for working parties for which membership information is available is 27 but the range extends from 8 to 89. It is not possible to readily infer from the written material available the efficiency of the working parties but we note that given the large number of potential participants in an average size working party the use of sub-groups and task forces is understandable on practical grounds (although we are aware that some stakeholders have called into question the excessive use of sub groups and task forces).

3.124 Analysis of the composition of a sample of the working parties shows that a range of interests have been represented, both from Representative Bodies such as UNIFE and CER and NSAs. Further analysis of a limited number of meeting minutes suggests that this is also true of actual meetings. One surprising finding was the number of ERA attendees at some meetings. For example, the Wagon TSI working party appears to have been attended by several ERA participants regularly and the 22nd meeting was attended by ten Agency staff. Furthermore, a review of the agendas and outputs of some of the working party meetings shows a substantial degree of variability.

3.125 A literal reading of the regulation would suggest that the ERA role is purely a chairing role which should restrict the number of ERA participants. Further, minutes from an early working party meeting on the Certification of Maintenance Workshops record one ERA participant as an Expert, which is expressly forbidden by the regulation.

3.126 Our observation of the working parties and the feedback we received from stakeholders indicated that the conduct of the working parties, the chairmanship and their effectiveness varies considerably. We believe that the effectiveness of the working parties could be improved by providing common guidance protocols and appropriate training to the project officers.

3.127 These are all standard practices that the Agency should enact and monitor through its quality management processes. As some experts participate in multiple working parties a standard approach would benefit all.

3.128 The Regulation is clear in its requirement to create working parties to reach a collective approach to the definition of TSIs; the reason for adopting this approach was to recreate the positive elements of the AEIF while improving its efficiency. It is clear that the industry views this approach favourably, but it is also clear that the process can be improved.

3.129 In conclusion, the Agency is meeting the requirements of the Regulation to establish working parties, but as stakeholder feedback has shown, there are opportunities to improve their functioning. Whilst it is difficult to measure efficiency, adoption of common protocols and promoting best practices identified from within the Agency and other agencies, such as the RSSB in the UK, could help improve the consistency and effectiveness of the Agency's working parties.

The networks of NSAs and NIBs

3.130 Article 9 of the Regulation, relating to the monitoring of safety performance, requires the Agency to establish a network with the NSAs and NIBs as set out in Table 3.7 below.

TABLE 3.7   THE REGULATION: THE NETWORKS OF NSAS AND NIBS

Article	Selected text
9.1	The Agency shall establish a network with the national authorities responsible for safety and the national authorities responsible for the investigations provided for by the Railway Safety Directive in order to define the content of the common safety indicators listed in Annex I to that Directive and to collect relevant data on railway safety.

3.131 This Article requires the establishment of the networks "in order to define the content of the common safety indicators (CSIs)". The Common Safety Targets (CSTs) and Common Safety Methods (CSMs) have now been defined and the networks have been retained primarily as a forum to exchange views and best practice and to facilitate work on the Reflection Group created by the Agency to assess its future role.

Survey

3.132   Figure 3.11 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: The networks of the National Safety Authorities?"

FIGURE 3.11   SURVEY RESPONSES: THE NETWORKS OF NSAS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	24	115	4	8	43	46	20
100%	9%	44%	2%	3%	17%	18%	8%
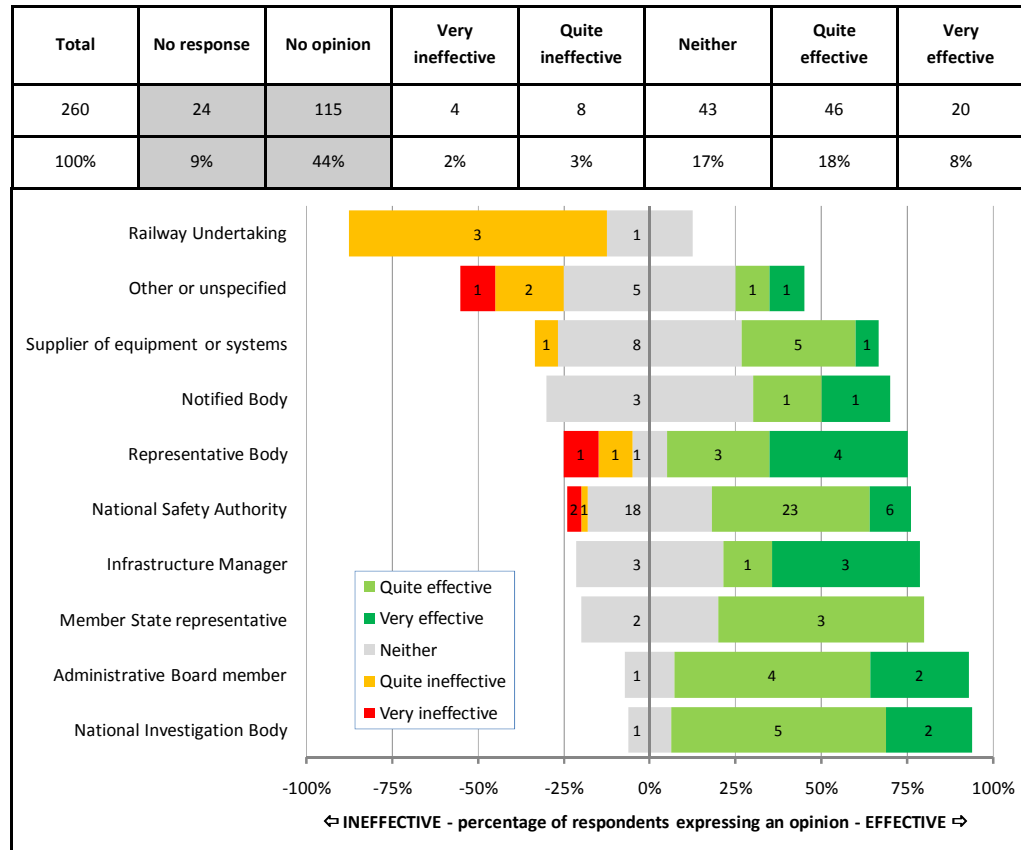
3.133   Of the 260 surveyed, only 121 (47%) expressed a view, 55% of whom stated that the Agency was Quite effective or Very effective. There were very negative views from the RUs, but with only four respondents in this category, these results were not statistically significant.

3.134   Given the relevance of the question, the response rate of the NSAs (around 60%) was surprisingly low. Of those responding only 58% rated the Agency as effective. This seems to highlight that many of the NSAs have a less than positive view of the Agency's performance in establishing the network of NSAs.

3.135   Figure 3.12 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: The networks of the National Investigating Bodies?"

FIGURE 3.12 SURVEY RESPONSES: THE NETWORKS OF NIBS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	27	164	3	4	21	27	14
100%	10%	63%	1%	2%	8%	10%	5%

⇦ INEFFECTIVE - percentage of respondents expressing an opinion - EFFECTIVE ⇨
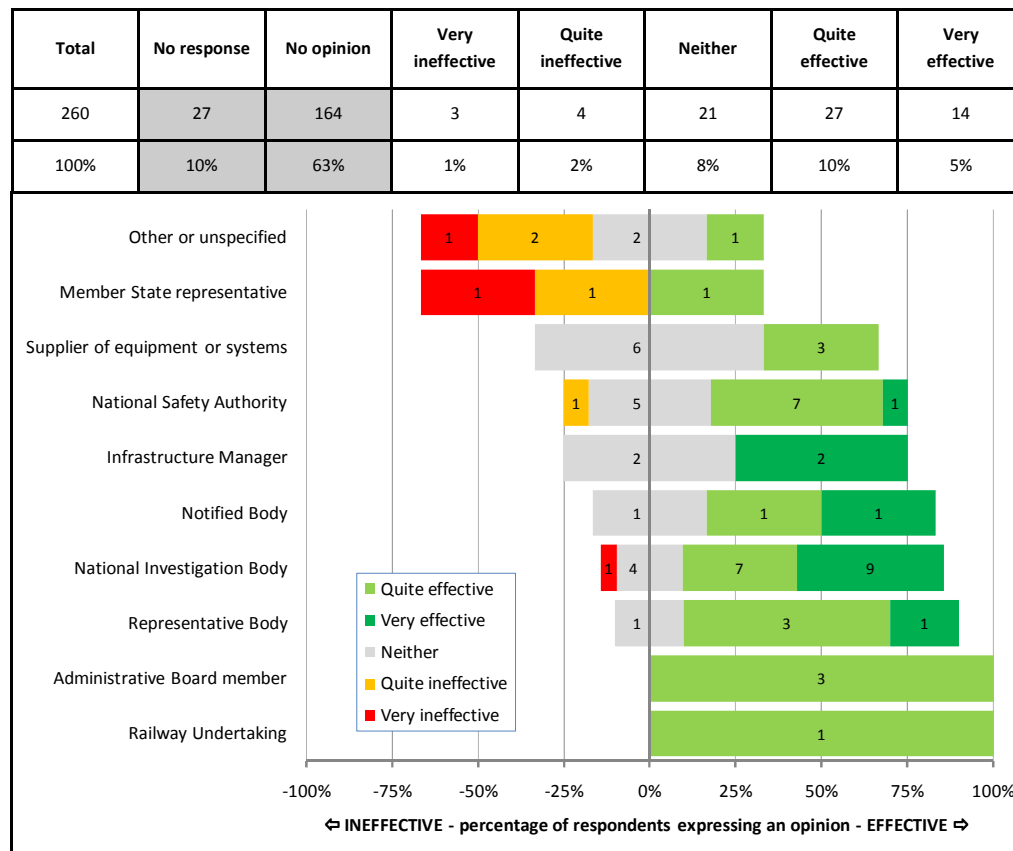
3.136   Of the 260 surveyed, only 69 (27%) expressed a view, 59% of whom stated that the Agency was Quite effective or Very effective. The low response rate is unsurprising as many of the stakeholders would be unlikely to have much awareness of the network of NIBs.

3.137   The responses of the NIBs are particularly of interest for this question. All the NIB respondents to the survey (which does not imply representatives of all the NIBs) provided a response to this question. The majority of the NIB respondents were positive, with 43% considering the Agency's performance with respect to the network of NSAs to be 'very effective'. However, there were also some negative views, including one response in the 'very ineffective' category.

3.138   The performance of the NSA and NIB networks is also picked up in Chapter 8, where Figure 8.3 shows that NSA and NIB networks received slightly lower average survey scores for effectiveness than other functions of the Agency.

Interviews

3.139   A number of interviewees suggested that the Agency could do more to ensure the effectiveness of the networks, with specific suggestions being facilitation of information exchange and providing training and support to the new NSAs and NIBs. Given the specialist nature of these functions, the Agency may be better placed in facilitating such support from within the community of NSAs and NIBs. We consulted a selection of the NIBs. Some were also critical of the manner in which the Agency has conducted meetings with the NIBs, where they felt their

views were not being fairly taken into account. The spread of opinion was consistent with the survey results.

Benchmarking

3.140 None of the comparator bodies has established a network directly analogous to those of the NSAs and NIBs.

Analysis

3.141 Article 9.1 of the Regulation envisaged two roles for the networks. The task of developing common safety indicators is now complete, as described in paragraph 3.47 above, and in January 2011 the Agency published a presentation setting out its initial thinking on the values for the CSTs, relating to a Working Group presentation of March 2010. The need to collect relevant data on railway safety continues.

3.142 Article 17.4 of Directive 2004/49/EC points to the need for the NSAs to exchange views and in particular to facilitate and coordinate the safety certification of railway undertakings with international train paths and furthermore that the Agency should support in this task. Article 21.7 of this Directive requires the NIBs to undertake a similar exchange of information but in relation to developing common investigation methods, the Agency is also required to support this activity.

3.143 In order to meet these requirements the network of NSAs and NIBs has been set up. Since the inception of the networks there have been 15 NIB plenary meetings, 21 NSA plenary meetings and 1 joint NSA/NIB meeting, as well as a number of more detailed meetings on specific issues.

3.144 The NIB meetings are now structured around the discussion of general topics relating to accident investigation methods and issues being taken forward by the various NIBs. At each NIB meeting one or more of the NIBs present on their core tasks and activities, which facilitates the broader understanding of the competencies of the individual NIBs.

3.145 The NSA meetings deal with a number of issues in relation to safety and certification but also interoperability. They are generally structured around an assessment of progress in relation to the Work Programme, as well as ongoing tasks.

3.146 Our review of the documentation relating to the NSA and NIB meetings for the two networks has shown that they appear to be generally well organised and focus on the areas of work that the Agency is taking forward. Furthermore, reviewing the minutes of the meetings there has been a vibrant discussion of the main topics. The NSAs and NIBs are also generally represented in the majority of working parties.

3.147 We note that there is a lower attendance rate for the NSA meetings than for the NIB meetings and, in both cases, the absentees are usually (but not always) from those Member States that have a longer journey time to get to the meetings. There is some risk that the networks become less representative, and that decisions are taken only by a core group of regular attendees. Therefore we

suggest that the frequency and location of the meetings should be reviewed to help ensure comprehensive coverage across all Member States.

3.148　The decision to carry out joint NSA/NIB meetings seems to be a positive step, given that many of the issues touch both networks, in some cases from different points of view. We recommend that the Agency consider, through consultation with the networks of NSAs and NIBs, arranging more of these joint meetings or possibly merging some of the separate meetings during the year.

3.149　However, the Agency does not appear to actively monitor and review the effectiveness of the networks and this ought to be addressed. The Agency should also monitor the effectiveness of these networks going forward. We recommend that the Agency agrees a Terms of Reference with each of the respective networks, including scope of work activities and defined milestones. These should be aligned with the Agency's own annual Work Programme. The Agency should review the progress and achievements of the networks against these milestones, which should be documented in an annual report. The report should identify where milestones have not been achieved and, where appropriate, propose measures to improve the effectiveness of the activities of the NSA and NIB networks. In line with the Agency's proposed strategy to adopt multi-annual work planning, the activities of the networks could similarly be developed with a multi-annual time horizon.

3.150　This would have the benefit of not only monitoring progress, but also facilitating the planning of work for future years.

3.151　We note that the Agency appears to be leading the network meetings rather than "…supporting the safety authorities in these tasks"[9] as envisaged by the Directive. Whilst the principle of the Agency chairing the meetings need not be a problem, feedback from some stakeholders suggests that the Agency is taking more of a directive role, which goes against the word and spirit of the Directive. We would also expect the networks themselves to drive the agendas and topics for discussion. We would advocate an open consultation between the Agency and the networks of NSAs and NIBs on how the networks can be improved and developed given that the primary objective relating to the creation of CSIs has now largely been achieved.

Summary of conclusions on the completion of the initial objectives

3.152　There have been positive steps towards the completion of the initial objectives, although given the challenges presented by the physical, technical and institutional differences between the railway networks of Member States, many of these objectives are likely to continue to remain valid for the longer term.

Developing ERTMS

3.153　The Agency is in a much stronger position to coordinate ERTMS than was AEIF. The establishment of the Agency has resulted in a more coherent and structured approach to the development of the ERTMS, a view that was supported stakeholders.　However, there is a risk of diverging standards between or even

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[9] Article 17.4, Directive 2004/49/EC

within the Member States, which will require greater coordination of activity (3.21). More widely, the Agency has little control over developments to, or implementation of, ERTMS in other parts of the world, and the Agency may increasingly need to collaborate with non-European bodies on the development of ERTMS as a global standard (9.167).

3.154   Within the framework established by the Commission's 2008 memorandum of understanding with the Industry (3.22), the Agency, in its role as systems authority, needs to take on a more active co-ordinating role to ensure that acceptance of technology is compliant with the current standards.

Establishing systems of registration and information exchange

3.155   The Agency has established a system of information exchange through the registers, the website and the extranet, which is compliant with the requirements of the Regulation. The Regulation itself is fairly exhaustive in setting out what the requirements should be. We have examined the Registers and note that, as they stand, their contents have a number of gaps and are largely dependent on information being provided by the Member States, in particular, the infrastructure managers (3.32).

Defining a common approach to railway safety

3.156   The Agency has contributed significantly in recent years to the development of a common approach to railway safety as required in Article 1 of the Regulation. It has gone beyond the setting of the framework and has started to provide solutions to the safety issues. This has been backed up by the publication of supporting documents such as the annual 'Railway Safety Performance in the European Union' Report' which reports on the progress on CSMs and CSTs. There is still much work that needs to be done, including the revision of the CSMs, but the Agency has contributed significantly to this definition (3.54).

3.157   From the information published to date, it is not possible to discern the overall trend in European railway safety performance since the establishment of the Agency (3.55). However, the mechanisms to capture this information are now in place and in the future, with a longer data time series, such an assessment will be possible.

Defining an optimal level of harmonisation in interoperability

3.158   Technical harmonisation should not be an end in itself. Its purpose is to facilitate the objective of improving the competitive position of the railway sector. Therefore, an optimum needs to be found. The optimum may be defined as the level of harmonisation where the efficiency and economic benefits accruing to the railway system as a whole are at their greatest relative to the costs of achieving that level of harmonisation. The situation in Europe is dynamic (3.73).We believe that responsibility for monitoring this dynamic and taking a macro economic perspective on the progression of harmonisation in interoperability should fall to the Agency. It may therefore be appropriate that its mandate is amended to incorporate a requirement on the Agency to do this.

3.159   In conclusion, the Agency, by virtue of progressing harmonisation of interoperability through the development of the TSIs is generally supported by stakeholders (3.64), although there remain specific areas for improvement, such as

the issue of 'open points' (3.67). However, the strategic issue of defining an optimum level of harmonisation is less clear (3.72). The Agency should take responsibility for this and revisions to its mandate may be necessary to give further clarity and impetus to this important issue.

The clarity of the acts issued by the Agency

3.160   In conclusion, there is more that the Agency can do to improve the quality of its outputs and the clarity of the acts that it produces. This is consistent with the stakeholder survey and interviews which were relatively a positive about the outputs of the Agency but identified room for improvement (3.89, 3.90). There is clear evidence that the Agency is taking positive steps to improve quality, but in our assessment there remains a significant opportunity to go further and this could be achieved without any changes to the Agency's mandate or its structure (3.96 – 3.100). We would advocate that the Agency's quality assurance processes are subjected to continuous review cycle and that the Agency should implement an accredited internationally recognised quality assurance system, such as ISO 9001.

The working practices of the Agency

The working parties

3.161   The Agency is meeting the requirements of the Regulation to establish working parties, but as stakeholder feedback has shown (3.106), there are opportunities to improve their functioning. Whilst it is difficult to measure efficiency, adoption of common protocols and promoting best practices identified from within the Agency and other agencies, such as the RSSB in the UK, could help improve the consistency and effectiveness of the Agency's working parties (3.122).

3.162   Our observation of the working parties and the feedback we received from stakeholders indicated that the conduct of the working parties, the chairmanship and their effectiveness varies considerably. We believe that the effectiveness of the working parties could be improved by providing common guidance protocols and appropriate training to the project officers (3.126).

The networks of NSAs and NIBs

3.163   NSA and NIB meetings for the two networks appear to be generally well organised and focus on the areas of work that the Agency is taking forward. Furthermore, reviewing the minutes of the meetings there has been a vibrant discussion of the main topics. The NSAs and NIBs are also generally represented in the majority of working parties.

3.164   The decision to carry out joint NSA/NIB meetings seem to be a positive step, given that many of the issues touch both networks, in some cases from different points of view. However, stakeholder feedback suggests that the Agency could do more to ensure the effectiveness of the networks. The Agency does not appear to actively monitor and review the effectiveness of the networks and this ought to be addressed (3.149).

4 The contribution of the Agency

Introduction

4.1 We were asked to analyse the contribution of the Agency to the fulfilment of the policy objectives and to evaluate, inter alia:

> ❚ *The evolution of the levels of railway interoperability and safety*
>
> ❚ *The contribution to the revitalisation of the railways and the development of a genuine European railway culture*
>
> ❚ *The promotion of innovation in the field of railway interoperability and safety*
>
> ❚ *The implementation by the Member States of their obligations stemming from the rail legislative framework at EU level*

Survey

4.2 Figure 4.1 summarises responses to survey Question 9:

"To what extent has the Agency contributed to the development of the following:"

FIGURE 4.1   SURVEY RESPONSES: THE AGENCY'S CONTRIBUTION

Note: further details of responses are given in Figures 4.2 to 4.5.
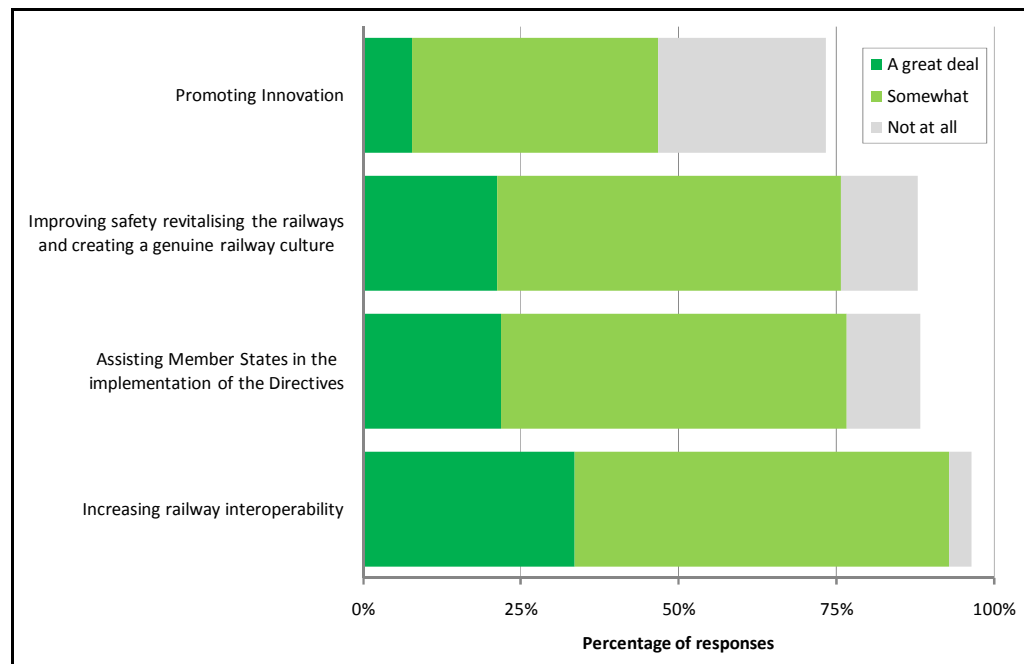
4.3 Respondents generally agreed that the Agency had contributed to increasing interoperability, implementing Directives and improving safety. They were less positive about its contribution to the promotion of innovation. Whilst the headline suggests that the Agency has not been making a significant contribution to promoting innovation, the result may have been influenced by a lower level of awareness among the stakeholder community (30% expressed no opinion or did not respond).

4.4   We discuss the Agency's contribution in each area further in turn below, drawing on survey results, feedback obtained through the interviews and our own research including, where applicable, information from the comparator agencies.

Promoting innovation in interoperability and safety

4.5   Article 21 of the Regulation envisages a role for the Agency in "promoting of innovation", as set out in Table 4.1 below.

TABLE 4.1   THE REGULATION: PROMOTING INNOVATION

Article	Text
21	"The Commission may entrust the Agency, in accordance with the Agency's Work Programme and budget, with the task of promoting innovations aimed at improving railway interoperability and safety, particularly the use of new information technologies and tracking and tracing systems."

Survey

4.6   Figure 4.2 summarises responses by category of respondent to survey Question 9:

"To what extent has the Agency contributed to the development of the following: Promoting innovation?"

FIGURE 4.2   SURVEY RESPONSES: PROMOTING INNOVATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	A great deal	Somewhat	Not at all
260	23	55	19	97	66
100%	9%	22%	7%	37%	25%
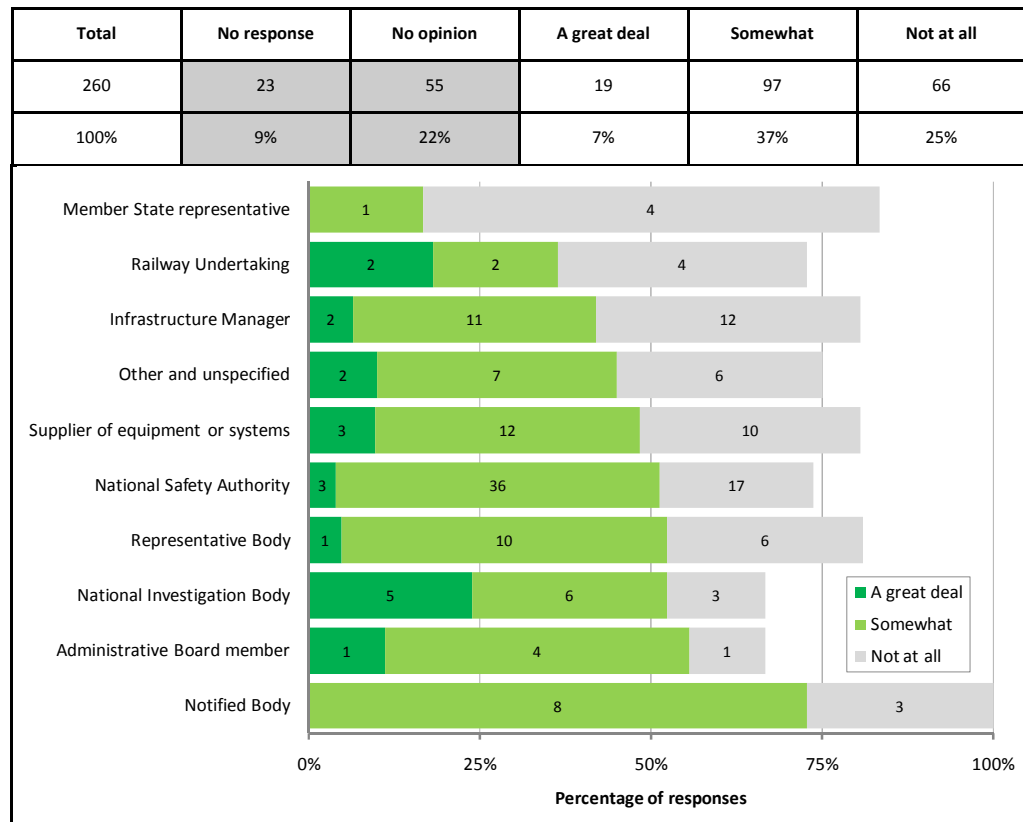
4.7   More than a third of stakeholders expressing an opinion considered the Agency has not made any contribution to promoting innovation. Whilst there was some

variation in the pattern of opinion between the stakeholder groups, the overall picture shown by the results suggests that the Agency has made some progress in this area but it has not been as effective as in the other areas of activity assessed within the scope of the survey.

Interviews

4.8   Stakeholder interviewees generally agreed that the Agency had made a contribution to innovation, especially in areas such as ERTMS, where its focusing of the attention of the industry on a common goal had improved the rate of progress. However, interviewees from the Agency suggested that it is difficult to identify specific actions it could or should take to promote innovation.

Analysis

4.9   The Agency has had an indirect influence on innovation in interoperability through its role in extending the scope of TSIs to cover aspects such as People with Reduced Mobility and Telematics Applications for Passenger and Freight (TAP and TAF). The role of the Agency, however, has not been of actively promoting innovation, more that it has been leading the setting of standards following the development of innovation. In some of the interviews we were also alerted to the fact that the setting of standards or the inclusion of EN standards in TSIs may actually have had an effect of stifling innovation rather than encouraging it.

4.10   The picture is somewhat different in relation to safety as the creation of CSMs and the definition of CSIs have lead to many Member States innovating in the way they deal with safety to meet these requirements (where these provisions have actually been implemented into national law). Through this innovation the Agency is trying to increase safety across Member States.

4.11   In both of these cases the Agency has not promoted innovation in the pure sense of promoting the development of technology, something that is to be fostered under the Lisbon Agenda. Nor has the Commission asked it to do so as set out by Article 21 of the Regulation other than in terms of the TSIs mentioned above. Whilst the Agency has contributed considerably to the development of a framework for technological development in respect of ERTMS, TAF and TAP, the aim of this activity has been to define common standards rather than promote particular technologies. We do not believe that the Agency has fallen short of its requirements in this area, as it is for the Commission to identify where innovation should be addressed and where this has happened (such as in the cases of TAP and TAF) the Agency has set the requirements within a TSI. We address the issue of promoting technology further in discussing the future role of the Agency in Chapter 9 (9.140 to 9.158).

Developing a genuine European railway culture

4.12   The Regulation makes no specific reference to a European railway "culture", but the emergence of such a culture could be seen as evidence of success in integrating and harmonising the railways of the Member States.

Survey

4.13   Figure 4.3 summarises responses by category of respondent to survey Question 9:

"To what extent has the Agency contributed to the development of the following: Improving safety, revitalising the railways and creating a genuine railway culture?"

FIGURE 4.3   SURVEY RESPONSES: CREATING A EUROPEAN RAILWAY CULTURE

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	A great deal	Somewhat	Not at all
260	23	34	49	126	28
100%	9%	13%	19%	48%	11%
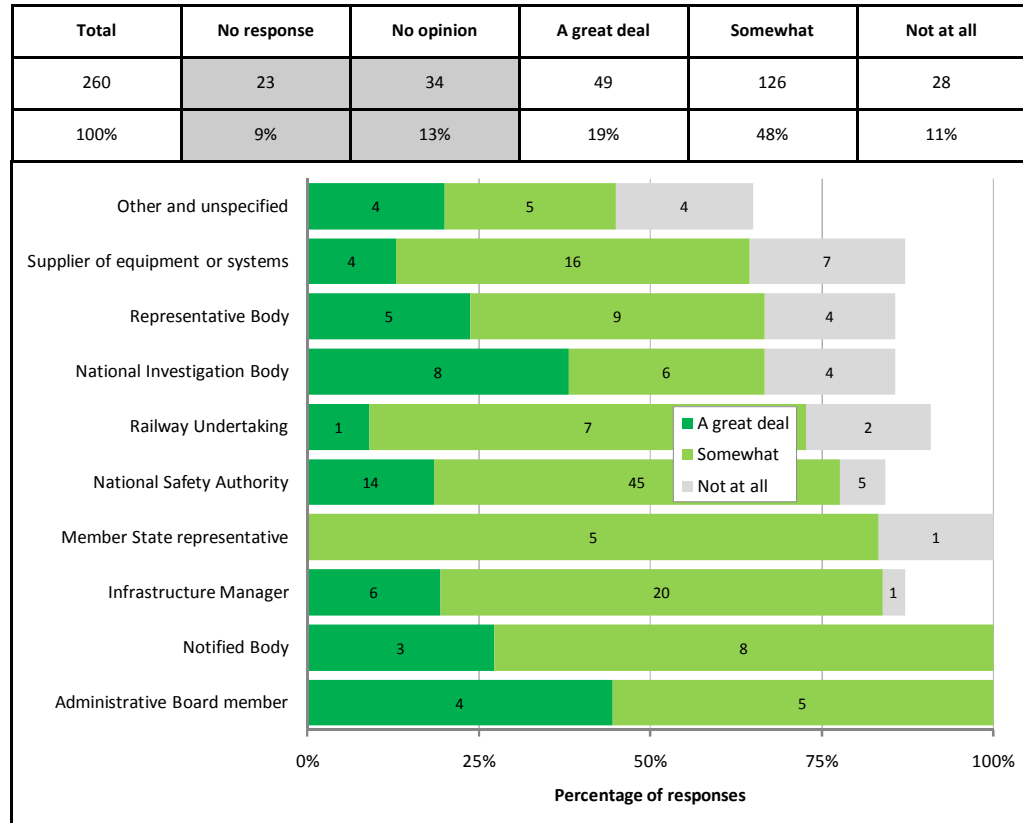
4.14   Overall the results were quite positive and suggest that the majority of stakeholders consider the Agency to be making a real contribution to improving safety, revitalising the railways and creating a genuine European railway culture. But this view was not unanimous and 14% of those responding felt the Agency has made no contribution at all as expressed by a significant proportion of representatives of the suppliers, Representative Bodies and NIBs.

Interviews

4.15   Interviewees were generally positive, although some stressed the tension between harmonisation and subsidiarity. They emphasised that, unlike aircraft and airlines, most railway vehicles and railway undertakings operate in a single Member State, and therefore powers should remain with national authorities.

Analysis

4.16   Europe's railways have developed not only with different technical standards but also different cultures. While harmonisation of the former will require, as a minimum, gradual replacement of the existing railway assets, greater harmonisation of the latter should be possible, through shared understanding and

wider use of common methods of working. We note that the use of a single language as means of communication within the Agency and its working parties can be seen as a first step in creating this culture, as can the development of ERTMS Corridors by a number of infrastructure managers be seen as a first step in the long term goal of creating a single European railway.

4.17   The Regulation itself (or other legal instruments) are unlikely to provide effective mechanisms in their own right to further the development of such a culture. However, the Agency has a potentially important role in this area such as in the provision of information and training and the setting up of "road shows" and workshops.

4.18   In the past the Agency has focused, in accordance with its mission, almost exclusively on the technical aspects of its activities and this has been at the expense of consideration of the wider cultural change needed across the European rail industry. In our opinion there is a need for the Agency to recognise and define an objective of promoting a European railway culture, not as an end in itself, but as a means to breaking down institutional barriers and changing the way of thinking in the sector which is fundamental to facilitating the realisation of the vision of a single European railway. We noted that there already appears to be realisation within the Agency of this need and that this is implicit within some of its activities. We recommend that the objective of promoting a European railway culture should become more explicit within the scope of the Agency's role and steps are taken to articulate this within its Mission and management objectives.

Assisting Member States in the implementation of the Directives

4.19   Article 21b of the Regulation envisages a role for the Agency in assisting in the implementation of the Community legislation, as set out in Table 4.2 below.

TABLE 4.2   THE REGULATION: ASSISTING IMPLEMENTATION

Article	Selected text
21b.1	"…the Agency shall, at the request of the Commission, assist the Commission in the implementation of the Community legislation aimed at enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system."

Survey

4.20   Figure 4.4 summarises responses by category of respondent to survey Question 9:

"To what extent has the Agency contributed to the development of the following: Assisting Member States in the implementation of the Directives?

FIGURE 4.4   SURVEY RESPONSES: IMPLEMENTATION OF THE DIRECTIVES

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	A great deal	Somewhat	Not at all
260	24	62	43	108	23
100%	9%	24%	17%	42%	9%
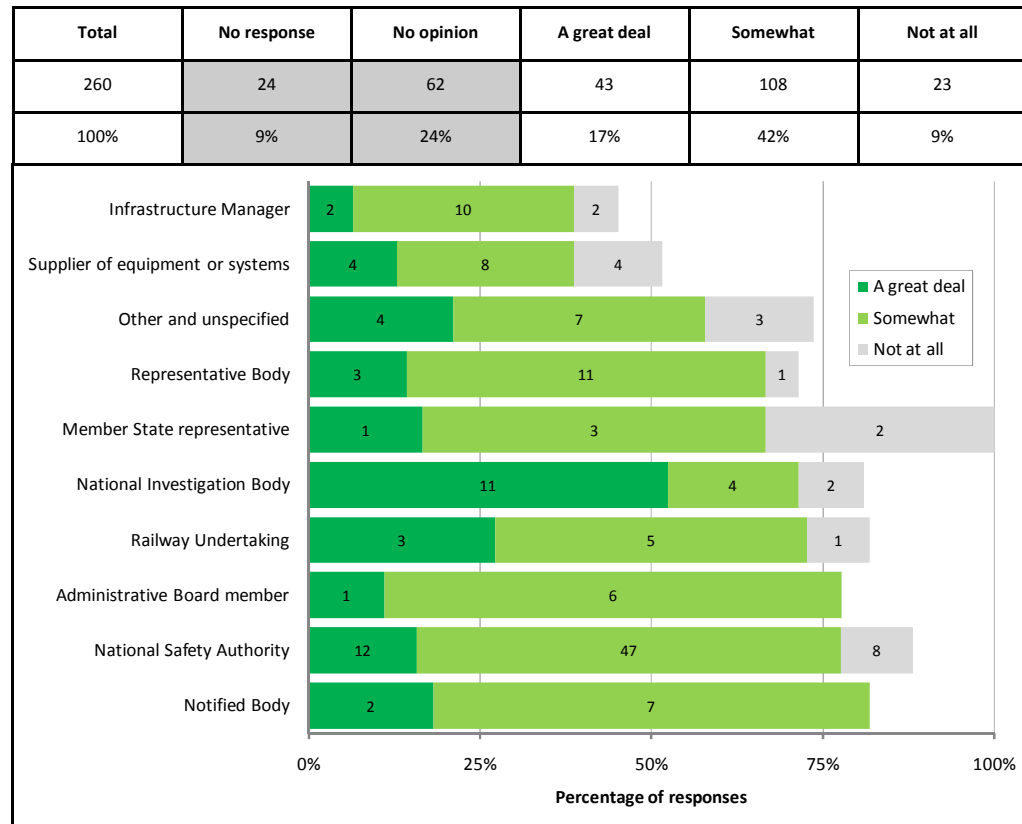
4.21   In most cases over three quarters of respondents said that the Agency had contributed at least somewhat to the objective. However, if the No response/No opinion values are taken into consideration the results were much less supportive from the Infrastructure Manager and industry supplier groups, in both cases with less than 50% of respondents stating that the Agency had at least somewhat assisted Member States. Also, only four of the eight Member State representatives provided a positive response. In contrast a high proportion of the NIBs were particularly positive, perhaps reflecting the support that they have received individually in applying the Directives.

Interviews

4.22   Interviewees were also generally positive about the Agency's contribution. However, some mentioned that:

❚   Directives had remained unimplemented long after the deadline

❚   the required national institutions had been established with insufficient powers or staff

❚   the Agency needed to do more to assist implementation through explaining the detail of what is required by the Directives and how the Commission believed that they should be interpreted

4.23   Guidance document "DV29" on the authorisation process of structural subsystems and vehicles under Directive 2008/57/EC, and meetings in various Member States

to explain it, were mentioned as examples of where the Agency has taken steps in the right direction. However, it was pointed out that the document was only circulated for comment just before the deadline for the implementation of the Directives and had still not been published.

Analysis

4.24   The implementation of Directives in the railway sector has been hampered by difficulties with interpretation of the requirements by Member States and the relevant stakeholders. The Agency has started to address this issue with such documents as the guidelines for CSIs mentioned in paragraph 3.46 and through guidance documents such as DV29. The Agency has recently undertaken a number of workshops to help stakeholders to understand the intention of the Directives and any implications for the way in which they should be implemented.

4.25   The Regulation specifically refers to the Agency, at the Commission's request, providing assistance to the Commission rather than to Member States. We believe that it would be appropriate for the Agency to do more to improve understanding of the purpose and scope of Directives at the national level, for example by providing more documentation similar to DV29. The Agency should ensure that the documents that it prepares are to a consistently high standard in terms of quality and clarity (see discussion in the previous chapter on the clarity of the acts). The Agency should also ensure that documentation such as TSI's should be accompanied by a detailed guidance documentation that sets out how each Member State should implement the requirements in the Directives.

4.26   There appears to be a potential oversight on behalf of the Agency that having had wide participation in the working groups, the Directives/TSIs when published are assumed to be appreciated and understood by the entire industry. Feedback from stakeholders suggests that this has not been the case and the Agency will in future need to provide more assistance in this area to facilitate the implementation process. Communications with stakeholders forms a core part of the Agency's activities, but we have not found evidence of a comprehensive stakeholder communications strategy.

4.27   We recommend that the Agency should prepare a communications strategy that sets out how it will interact with the industry as a whole in particular in relation to the implementation of Directives. The strategy should be reviewed and updated on an annual basis and form part of the Work Programme. It should include details such as the number of planned training visits in Member States and scheduled publications such as key guidance documents to support TSIs or decisions made by RISC. Such a strategy would also help to support the development of a European railway culture, as discussed from paragraph 4.12 above.

4.28   We conclude that there has been insufficient guidance to Member States on the implementation of Directives. Whilst we note the workshops held and the guidance notes that have accompanied some Recommendations/Directives, we have seen limited evidence to date of the Agency assisting Member States with the implementation the Directives. We believe that the Agency could do more in the future, such as assisting in the dissemination of information and training.

4.29   We are aware that the Agency has already started monitoring the implementation of the Safety Directive and is in the process of informing the Commission of this

analysis. The question of whether the Agency's role should be extended to auditing the compliance of Member States is raised and discussed in Chapter 9.

Increasing railway interoperability

4.30   As illustrated in Table 3.4 above, Article 1 begins the Regulation by setting out the objectives of the Agency to enhance interoperability and develop a common approach to safety.

Survey

4.31   Figure 4.5 summarises responses by category of respondent to survey Question 9:

"To what extent has the Agency contributed to the development of the following: Increasing railway interoperability?"

FIGURE 4.5   SURVEY RESPONSES: INCREASING INTEROPERABILITY

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	A great deal	Somewhat	Not at all
260	23	21	75	133	8
100%	9%	8%	29%	51%	3%

4.32   With the exception of a small number of RUs, NIBs and NSAs, all respondents considered that the Agency had made at least some contribution to increasing railway interoperability and many rated the Agency as having contributed 'a great deal'. Overall, the results of the survey with respect to this question are quite positive and suggest that stakeholders believe that the Agency is making a real contribution to increasing interoperability. Notable features of the results were that the NSAs were less positive than all other groups except railway undertakings and NIBs. The low response rate for NIBs was perhaps to be expected given their interests are less directly associated with interoperability issues. This was also

reflected in their responses to the question relating to the optimal level of technical harmonisation discussed in the previous chapter (see Figure 3.5).

4.33   We also observe that the Administration Board Members had a more positive perspective than the other stakeholder groups. This prompts a question of whether the Agency, including its Administration Board is fully aware of the perceptions of their stakeholders.

Interviews

4.34   Many interviewees expressed concern about the number of "Open points" in the TSIs. Some referred to errors which had emerged following their publication and which had remained uncorrected, which in the short term had hindered, rather than enhanced, interoperability. There was a common view that the Agency should focus on closing "Open points" before considering extending their geographical scope.

Analysis

4.35   Against this background, we have considered the means by which the Agency's contribution to interoperability and improved safety might be assessed. While the Agency has done much to establish a framework within which both these initiatives can be taken forward, measuring the impact it has had in each area since 2005 is challenging. This is because the impact of specific activity on the pace of change is difficult to identify given the range of other factors affecting observed outcomes. For example, there has been a long term downward trend in rail fatalities in EU15 Member States. Rail fatalities in these Member States fell from 117 in 2000 to 28 in 2008, while remaining Member States have seen an increase in the period between 2005 to 2008[10]. The downward trend in EU15 Member States is partly attributed to changed practices and improved technology, especially in signalling. From the data available we have not been able to discern whether the progress made by the Agency is having a quantifiable effect in improving railway safety. However, the absence of strategic safety measures from the Agency's own strategic business performance monitoring systems highlights an opportunity, especially given that the Agency already provides a large amount of statistical information related to safety in its report on railway safety report in Europe[11].

4.36   We recommend that the Agency establishes a means of defining and measuring safety as strategic measure of its progress against its core objectives. This should include establishing and reporting a corresponding KPI which should form part of its strategic business performance measures. We also recommend that the requirement in the Regulation that the Agency prepare a biannual safety report be changed to require the Agency to produce such a report on an annual basis given the pace of change in the rail sector (we note that in practice, the Agency has produced its Report on Safety Performance in the EU on an annual basis).

4.37   As we noted above, significant interoperability development within the existing networks is likely to emerge only in the longer term as railway assets and systems currently in use are retired and replaced. However, the absence of a definition of

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[10] 2009 Transport Statistics Pocketbook, European Commission

[11] Railway Safety Performance in the European Union 2010, ERA

interoperability or measures to assess the optimal level of interoperability makes it difficult to determine the progress being achieved. We suggest that the Agency should develop a means of defining and measuring interoperability such as the percentage of national or TEN networks that meet particular standards or criteria (tied to the definition of the optimal level of technical harmonisation described from paragraph 3.58 above). The Agency should then establish and report a corresponding KPI which should the form part of its strategic business performance measures.

4.38   We also conclude that the Agency should facilitate increasing interoperability through practical measures to limit scope for interpretation, for example by limiting the number of "Open points" within TSIs.

Summary of conclusions on the contribution of the Agency

4.39   We conclude that the Agency has made reasonable progress in pursuit of its policy objectives, taking account of the timescales and the resources at its disposal.

Promoting innovation in interoperability and safety

4.40   Stakeholders generally agreed that the Agency had made a contribution to innovation, especially in areas such as ERTMS, where its focusing of the attention of the industry on a common goal had improved the rate of progress. However, interviewees from the Agency suggested that it is difficult to identify specific actions it could or should take to actively promote innovation. (4.8)

4.41   The Agency has had an indirect influence on innovation in interoperability through its role in extending the scope of TSIs and on safety through the development of CSMs, CSIs and CSTs. The role of the Agency, however, has not been of actively promoting innovation, more that it has been leading the setting of standards following the development of innovation. (4.9)

Developing a genuine European railway culture

4.42   Stakeholders recognise that the Agency is making a positive contribution to the development of a European railway culture. However, as they acknowledge, compared to other transport sectors such as aviation, the process is far more difficult, as Europe's railways have historically developed not only with different technical standards but also different cultures. As most railway vehicles and railway undertakings continue to operate only within a single Member State there remain strong arguments for retention of controls at the national level (4.15).

4.43   In the past the Agency has focused, in accordance with its mandate, almost exclusively on the technical aspects of its activities and this has been at the expense of consideration of the wider cultural change needed across the European rail industry. In our opinion there is a need for the Agency to recognise and define an objective of promoting a European railway culture, not as an end in itself, but as a means to breaking down institutional barriers and change the way of thinking in the sector which is fundamental to facilitating the realisation of the vision of a single European railway. We noted that there already appears to be realisation within the Agency of this need and that this is implicit within some of its activities. (4.18)

Assisting Member States in the implementation of the Directives

4.44   There has been insufficient guidance to Member States on the implementation of Directives. Whilst we note the workshops held and the guidance notes that have accompanied some Recommendations/Directives, we have seen limited evidence to date of the Agency assisting Member States with the implementation the Directives. We believe that the Agency could do more in the future, such as assisting in the dissemination of information and training.(4.28)

4.45   The Agency has already started monitoring the implementation of the Safety Directive and is in the process of informing the Commission of this analysis. The question of whether the Agency's role should be extended to auditing the compliance of Member States is raised and discussed in Chapter 9.

Increasing railway interoperability and safety

4.46   There is a widely held view among stakeholders that the Agency is making a real contribution to increasing interoperability. (4.32)

4.47   Some stakeholders highlighted concerns with the TSIs and where "Open points" have remained and errors which had emerged following their publication had remained uncorrected. These issues have served to hinder rather than enhance interoperability. (4.34). We also conclude that the Agency should facilitate increasing interoperability through practical measures to limit scope for interpretation, for example by limiting the number of "Open points" within TSIs and better quality control of published documents.

4.48   The absence of strategic measures of safety and interoperability from the Agency's business reporting highlights an opportunity, especially given that the Agency already provides a large amount of statistical information related to safety in its report on railway safety report in Europe. It also highlights a potential lack of focus on the primary objectives set out in Article 1 of the Regulation. We recommend that this should be addressed, by introducing appropriate KPIs that would help to focus the Agency and its stakeholders on progress against the key policy objectives. This issue of measuring performance is discussed further in Chapter 7. (4.35-4.37)

5 The effectiveness of the instruments

Introduction

5.1 We were asked to evaluate, inter alia

> ▌ *The acts of the Agency as provided for in Article 2 of the Regulation*
>
> ▌ *The public database of documents developed by the Agency as provided for in Article 11 of the Regulation*
>
> ▌ *The registers developed by the Agency as provided for in Articles 18 and 19 of the Regulation*

Article 2 of the Regulation, summarised in Table 3.5, sets out the Agency's role in addressing Recommendations and issuing Opinions which we discussed in Chapter 3. Article 11 has now been subsumed into Articles 18 and 19, the requirements of which are set out in Chapter 3, Table 3.2.

5.2 The Agency also produces a range of other documentation including:

▌ The safety and interoperability reports required by Article 9 and Article 14

▌ The annual Work Programme and (annual) general report required by Article 30

5.3 This chapter examines the effectiveness of the instruments and systems of registration and information exchange, building on the assessment described in Chapter 3 where we noted the extent to which these have been established by the Agency.

Survey

5.4 Figure 5.1 summarises responses to survey Question 11:

"How useful do you find the following instruments of the Agency:"

FIGURE 5.1   SURVEY RESPONSES: THE EFFECTIVENESS OF THE INSTRUMENTS

Note: further details of responses are given in Figures 5.2 to 5.4.
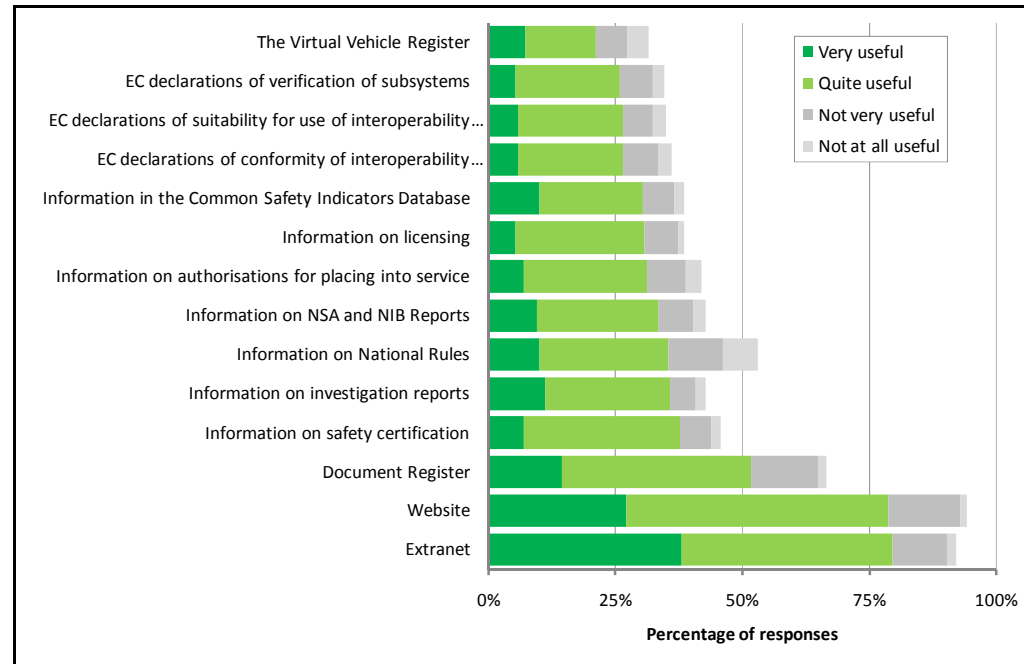
5.5   The inclusion of a "No opinion/not used this instrument" option in Question 11 allowed us to examine the extent to which each instrument had been used by the industry. While familiarity with the website and extranet was relatively high, levels of use of other instruments was much lower, with less than a third of respondents expressing any view on the Virtual Vehicle Register.

5.6   However, instruments used only by a small number of stakeholders seem to be effective and valuable to them. Of those with a view, at least two-thirds rated each instrument either quite useful or very useful. Nonetheless, some comments queried the rationale for some databases, claiming that they provided little information or duplicated information already available in the Member States.

5.7   The general view across the majority of the instruments was that most respondents found them quite useful, with a similarly sized minority expressing opposing opinions of 'very useful' and 'not very useful'. The website and extranet were viewed more favourably with a higher proportion considering these to be 'very useful'.

5.8   Overall, the picture suggests that most of the information is regarded as useful, but the low response rates suggest that there may be a lack of awareness of many of the instruments.

Interviews

5.9   Some interviewees commented that individual registers were incomplete and in some cases contained little data as yet. Agency representatives confirmed that it had proved difficult to obtain information from the Member States. Interviewees also emphasised that existing instruments should be populated before proceeding with further projects, such as DREAM (Database for Railway Economic Assessment Management) to support economic evaluation.

5.10   We summarise below in greater detail the survey responses to questions on the Agency's website, extranet and Document Register.

The website

5.11   The website of the Agency can be found at www.era.europa.eu. We asked stakeholders their opinions and conducted our own assessment and benchmarking of the site.

Survey

5.12   Figure 5.2 summarises responses by category of respondent to survey Question 11:

"How useful do you find the following instruments of the Agency: Website?"

FIGURE 5.2   SURVEY RESPONSES: USEFULNESS OF THE WEBSITE

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion or not used	Very useful	Quite useful	Not very useful	Not at all useful
260	21	14	65	123	34	3
100%	8%	5%	25%	47%	13%	1%
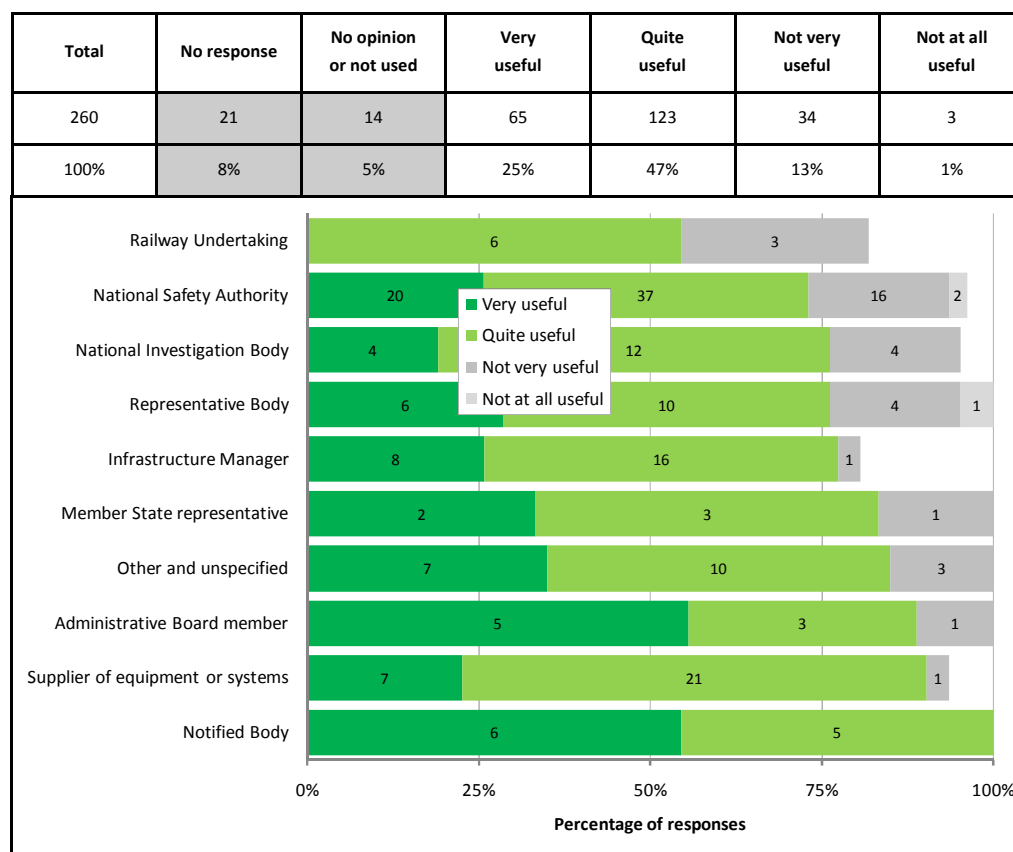
5.13   Only a small proportion of respondents had not used, or had no opinion of, the website and, with the exception of RUs, a large majority of each group considered it least quite useful. However, about 25% of the NSAs thought that the website was not useful and this appears to relate to a view that the website search function is not very effective and in need of improvement. Other shortcomings appear to relate to the issue of document accessibility. Given that this did not seem to be of concern to the Notified Bodies, the issue may be confined to certain categories of information.

5.14   The survey revealed that relatively few stakeholders either do not use the website or do not find it useful. The majority find it quite useful, prompting the question,

what would help make it more useful. If it doesn't already do so, it would be worthwhile for the Agency to undertake a more detailed survey of stakeholders specifically aimed and soliciting such feedback.

Interviews

5.15   Interviewees confirmed that the website was useful, with the principal criticism being that a recent update had made it less user-friendly, and made it more difficult to access information.

Benchmarking

5.16   We benchmarked the Agency's website against those of the comparator bodies, rating each website from 1-5 against thirteen standard indicators. The Agency scored 42 of a possible 65 points, better than EMSA's website but worse than those of ORR and particularly EASA, which scored 54 and, unlike all the other websites, provided information in multiple languages.

5.17   The results for the Agency's website, as at October 2010, are summarised in Table 5.1 below.

TABLE 5.1   BENCHMARKING: THE AGENCY'S WEBSITE

Score (Out of 5)	Criterion	Rationale for low score
5	Contact details easily accessible?	
	Link to home page from all pages?	
	Jargon minimised and explained?	
4	Clear and concise text?	
	Clear and uncluttered pages?	
	Limits opening of new windows?	
	"Breadcrumb" trail of location in site?	
	Quality of document register	
3	Easy to navigate?	
1	Easily accessible FAQ?	No FAQ
	Link to site map from all pages?	No site map
	Quality of site search facility?	Site search is very limited
	Recently viewed pages list?	No recently viewed pages list

5.18   The website compared favourably on some criteria but lacked a number of facilities including an FAQ () section. Interviewees noted that it was generally more difficult to find general information such as objectives, Annual Reports and other public documents on the Agency's website. We also noted that there was no system of monitoring website "hits" and no direct link from the website to the extranet.

5.19   We conclude that there is scope to improve the website and that these improvements should focus on facilitating the accessibility of the website and the documents that are included within it, particularly the site search facility.

5.20   The Agency should consult its stakeholders to understand their specific needs and invite their suggestions for improvement. The Agency should consider additional professional support in the design of its website and we would suggest that the EASA and, possibly, the ORR websites would serve as a useful reference to identify potential areas for improvement.

The extranet

5.21   The Agency's extranet provides an online resource enabling registered users to access to the Agency's document database and a collaboration space for the members of the Agency and its working parties.

Survey

5.22   Figure 5.3 summarises responses by category of respondent to survey Question 11:

"How useful do you find the following instruments of the Agency: Extranet?"

5.23   It should be noted extranet has been updated since the survey was carried out.

FIGURE 5.3   SURVEY RESPONSES: USEFULNESS OF THE EXTRANET

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion or not used	Very useful	Quite useful	Not very useful	Not at all useful
260	21	19	91	99	26	4
100%	8%	7%	35%	38%	10%	2%

5.24 Only a small proportion of respondents had not used, or no opinion of, the extranet, and a large majority of each group considered it at least quite useful. The low response rate for the Notified Bodies is understandable given that they participate in relatively few working groups and are therefore likely to have less cause for access to the extranet. There were some negative responses, with the most negative coming from the Representative Bodies. Corresponding comments suggested that these reflected difficulties they experienced in extracting information, particularly the amount of time taken, rather than about the content itself.

5.25 The survey revealed that some stakeholders either do not use the extranet or do not find it useful. The majority find it quite useful, prompting the question, what would help make it more useful.

Interviews

5.26 Interviewees commented that the extranet was useful but could be better organised. Specific suggestions included:

I Ensuring that information was published sufficiently early to be of use: this point relates principally to the processes of the working parties, discussed above from paragraph 3.104

I Directing working party members to updates relevant to their work

I A need for a more user-friendly interface

5.27 A number of interviewees reported that there was substantial dissatisfaction about the manner in which updates were notified on the extranet. They requested that a better process be used to highlight these updates either by email to working group participants and/or by notification on the extranet homepage, including a link to the update (subject to the person accessing the site having access rights to the relevant new document or communication).

Analysis

5.28 Our benchmarking of the Agency's website highlights a number of aspects that could be improved. However, we note that the content coverage has been improving. We suggest that the Agency focus on "quick wins" where relatively small or inexpensive changes will be of most benefit to stakeholders and industry.

5.29 We note that the extranet has recently been upgraded and that this has made the interface more user friendly. This overhaul was in response to criticism that the Agency has received in this area and we acknowledge that changes are being implemented as our document is being finalised.

5.30 We recommend that the Agency undertakes a more detailed survey of stakeholders specifically aimed at soliciting feedback on the website and the extranet to enable a better understanding of the needs of users and their specific concerns and to identify actions for improvement.

The document register

5.31   The Agency maintains and regularly updates an extensive document register.
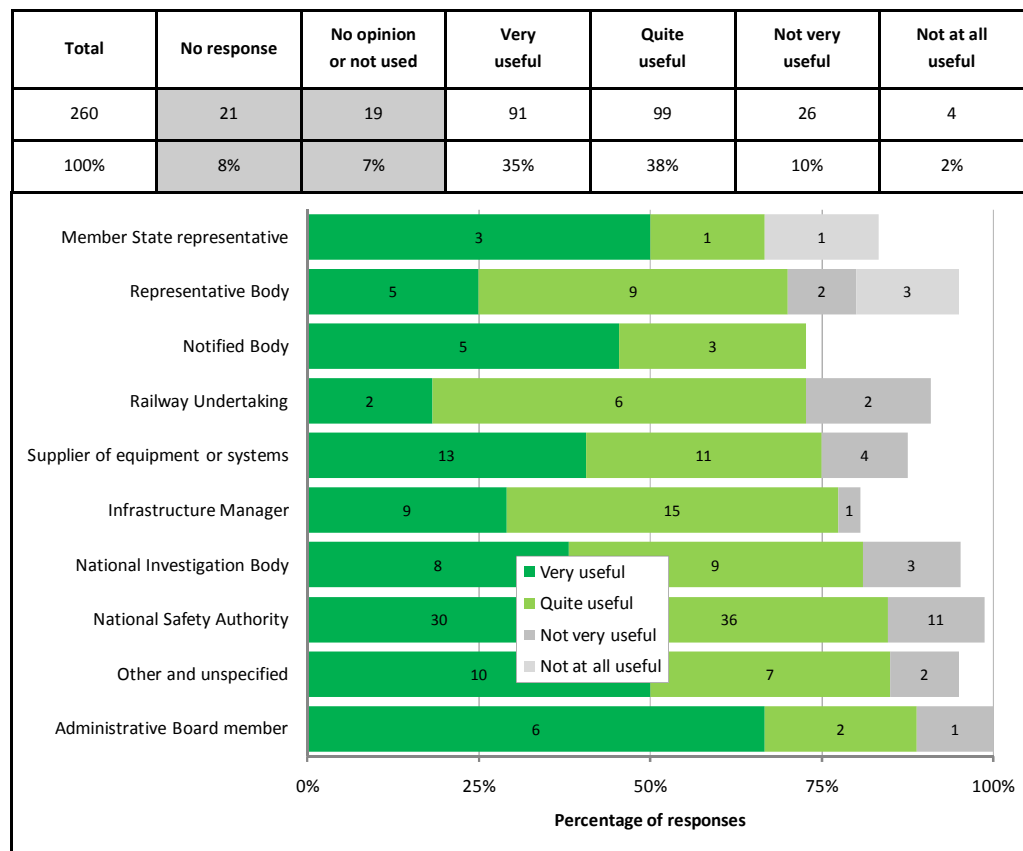
Survey

5.32   Figure 5.4 summarises responses by category of respondent to survey Question 11:

"How useful do you find the following instruments of the Agency: document register?"

FIGURE 5.4   SURVEY RESPONSES: USEFULNESS OF THE DOCUMENT REGISTER

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion or not used	Very useful	Quite useful	Not very useful	Not at all useful
260	24	79	34	88	31	4
100%	9%	30%	13%	34%	12%	2%
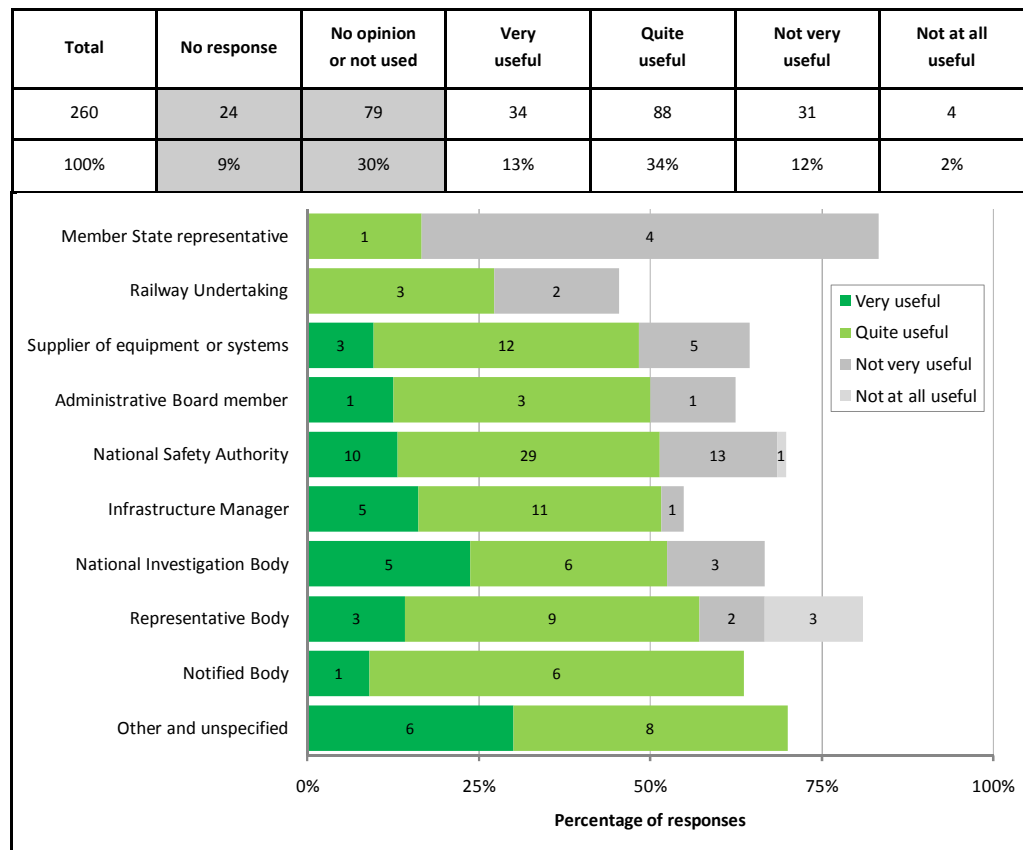
5.33   Only 60% of those surveyed had an opinion on the document register, but of those expressing an opinion, 78% found it useful. Such a low response rate suggests that there may be a low level of awareness of the document register. However, there appears to be a significant body of stakeholders who use the register and find it useful. The results prompt further questions:

I   Would raising awareness of the document register increase its utilisation by stakeholders?

I   Are there attributes of the register that could be improved?

I   Are there aspects of the register that have little or no value and could be withdrawn?

5.34   It would be worthwhile for the Agency to undertake a more detailed survey of stakeholders specifically aimed at soliciting feedback to address these questions.

Interviews

5.35   Interviewees were not directly asked about the document register as part of our interview template, and none of them commented on it.

Benchmarking

5.36   EASA's website provides, in principle, access to a wider range of documents than are available in the Agency's document register. Four groups of documents can be accessed under "communications":

I   General Publications, such as the latest annual report and similar documents

I   Press Releases, the largest significant group

I   Presentations

I   Fact sheets

5.37   A wide range of other documents are accessible through the EASA website, in particular in the section on the Rulemaking Directorate, but there is neither a central register nor a dedicated document search facility. However, documents appeared to be filed logically, and the website is supported by a powerful search facility which enables specific documents to be located readily.

5.38   EMSA's document register is accessible direct from the EMSA website home page. The document register is well-structured with subfolders, but lacks a specific search facility, and many documents are contained in "zipped" folders.

5.39   ORR maintains a public register with a dedicated online search facility. The volume of information is large, but the interface is outdated and difficult to use.

Analysis

5.40   The Agency's document register has a flexible search facility and there is also a form on which to request information searches. In addition to the main database the Agency is building the European Railway Agency Database of Interoperability and Safety (ERADIS). This is effectively an additional large public register of interoperability and safety documentation.

5.41   While the creation of such a register further facilitates information transparency, we identified a number of areas where the document register could be improved, including:

I   Neither the document register nor ERADIS can be accessed directly from the website home page, although ERADIS is not yet complete.

I   A number of documents can only be accessed once another document has been found. For example the annual accounts do not appear as a search result but as a "related document" via the relevant Administrative Board decision.

5.42   These issues should be addressed and could increase the usefulness of the document register, the potential value of which would be significant in helping to reduce information asymmetry across the industry and facilitating the creation of a single European railway.

Summary of conclusions on the effectiveness of the instruments

5.43　Many of the Agency's instruments are under development or awaiting data, particularly from the Member States. The Agency can remind the Member States of their obligations under the various Regulations highlighted in Chapter 3 as well as the requirements and timescales for the individual registers, but can do little without comprehensive, accurate and timely data. However, the Agency could make improvements in number of areas, including:

I　The timeliness of information generated by the Agency being assigned to the website/extranet;

I　How stakeholders are notified of updates on the extranet;

I　The interfaces of the website and extranet; and

I　Stakeholder awareness of the document register and its search facility.

5.44　Our findings highlight that the instruments of the Agency are useful to stakeholders, but there are opportunities for improvements. The Agency should undertake a more detailed survey of stakeholders specifically aimed at soliciting feedback on the instruments, notably the website, the extranet and the document register, to enable a better understanding of the needs of users and their specific concerns and then to identify actions for improvement.

5.45　These improvements will be of great benefit to the industry as a whole. The Agency should ensure that it has an appropriate long term strategy in relation to gathering industry information (both from Member States and from its own sources) and then publishing and using it in an appropriate manner. At present the Agency does not have such a strategy and this is limiting its effectiveness in gathering and disseminating useful information.

6   The costs of the Agency

Introduction

6.1   We were asked to evaluate, inter alia

> *The cost-efficiency of the instruments laid down by the Regulation, in particular:*
>
> ❚ *The rulemaking function and associated procedures as carried out by the Agency in support to the legislative action of the Commission and the national railway authorities in comparison with the system in place before entry into force of the Regulation*
>
> ❚ *The supporting tools established by the Agency, such as the database and registers*

6.2   In addressing this task we encountered a number of difficulties:

❚ By definition, a measure of cost efficiency should determine the cost of achieving a specific output relative to what it should reasonably be expected to cost. Many of the Agency's activities are highly bespoke and there are no direct comparators.

❚ Some of the Agency's activities being were previously carried out by AEIF, others by a diverse and disparate range of organisations and some were not carried out at all.

❚ We were unable to identify information from AEIF to enable a meaningful comparison with their activities and the associated costs.

❚ The costs of some of the Agency's activities are not recorded such that the costs of specific activities, for example administration of the database and registers, can be readily disaggregated.

6.3   For these reasons we have taken a pragmatic approach, examining the readily identifiable expenditure of the Agency and associated cost drivers and drawn comparisons, where relevant, with the comparator agencies selected for this study.

Benchmarking the overall expenditure of the Agency

6.4   We have made a comparison of the overall expenditure of the Agency with that of the other comparator agencies selected for this study.

6.5   The EU Agencies are funded primarily by the Commission. The economic regulatory functions of the ORR are funded by licence fees from the industry in Great Britain, the NSA activities are also funded by the industry, through the safety levy charged to railway service providers.

6.6   Figure 6.1 compares expenditure at the Agency and the comparator bodies.

FIGURE 6.1   BENCHMARKING: EXPENDITURE TRENDS
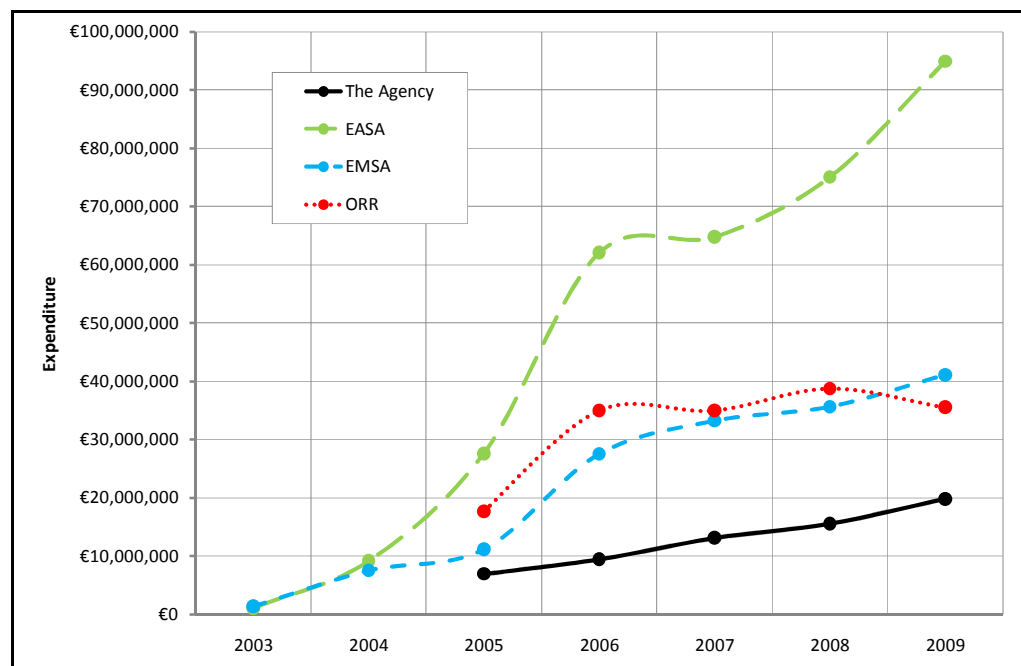
6.7   The expenditure of all the EU Agencies has been growing, but that of EMSA and EASA has outpaced the growth of ERA expenditure, whilst that of ORR grew similarly and then stabilised. These trends can be explained.

6.8   The expenditure profile of ORR appears consistent with there being a peak workload over the period 2006-2008 reflecting its activities required to support the last Periodic Review, a key part of the ORR's regulatory role.

6.9   EASA had a very large increase in expenditure, growing from just under €10m in 2004 to around €95m in 2009. A high proportion of this was related to increases in employment costs and by 2009 the agency employed 460 people. This expansion in employment resulted in an increase in a range of other associated costs for example, rental costs for the organisation increased from €1.5m in 2005 to €5.9m in 2009. Similarly spending on IT rose from €420k to €4.8m over the same period. The agency's expansion can be explained by the increased scope of its responsibilities. The European Commission Regulation 2016/2008 gave the agency additional responsibilities in air operations, pilot licensing and third country operations in 2008. In 2009 Regulation 1108/2009 further expanded the scope of the agency's activities bestowing control of safety and regulation of air traffic management, air navigation services and aerodromes.

6.10   This increase in expenditure of EMSA can be attributed to several factors related to the expansion of the organisation's responsibilities and workforce between 2005 and 2009. In 2004 a policy for EMSA visits to Member States was adopted in accordance with Article 3 of the EMSA Regulation 1406/2002/EC and this led to a significant increase in the organisation's workload and activity.

6.11 We examined the 2009 budgeted expenditure of the EU Agencies, as shown in Figure 6.2 below, broken down into three categories, 'Administrative', 'Staff' and 'Operational' expenditure.

FIGURE 6.2   BENCHMARKING: EXPENDITURE 2009
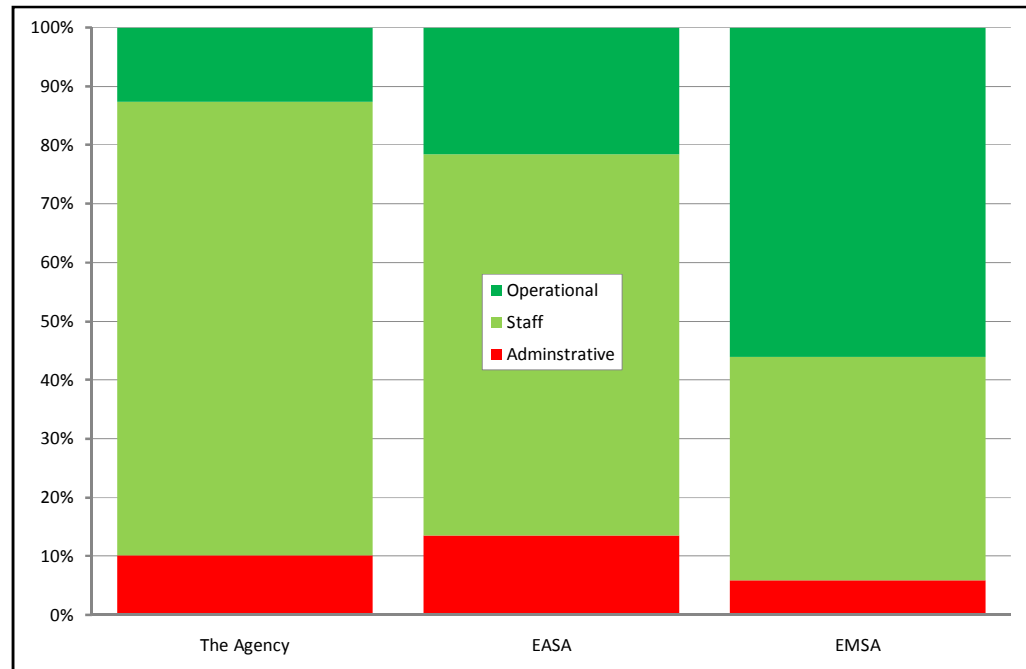
6.12 The Agency's administrative expenditure, at 10% of the total, represents a lower proportion than that of EASA and higher than that of EMSA, although the EU Agencies also differ widely in the extent to which their costs relate to staff or operations. Staff may drive a relatively large proportion of the administrative workload, and we observe that the Agency has the lowest Administrative cost per unit of staff. The horizontal study "Evaluation of the EU decentralised agencies in 2009"[12] also concluded that the Agency's costs were comparable with other Agencies of similar size.

6.13 Ideally it would be possible to compare the cost-effectiveness of the Agency with AEIF, its predecessor, and EASA, EMSA and ORR, its current comparator bodies. However:

I   In the absence of detailed data on the processes and costs of AEIF, there is little evidence of the relative cost-effectiveness of AEIF and the Agency in any given area of activity.

I   Similarly, and as noted in Chapter 2, the benchmarks provide only limited ability to quantify the cost-efficiency of the Agency, in particular because of the lack of a common unit of workload.

6.14 The rate of cost growth of the Agency appears proportionate to the growth in its activities and outputs and compares favourably with the other EU agencies. Similarly, the proportion of administration costs relative to staff is markedly lower

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[12] Evaluation of the EU decentralised agencies in 2009 Vol. II p. 96

than the other EU agencies. We acknowledge that the characteristics of the Agency's activities differ from those of the other agencies. Nonetheless, the Agency appears to be relatively cost-effective compared to its peer group.

6.15　However, whilst we would that there would be some scale economies in administration cost as the Agency grows, this has not been borne out to date. Administration costs accounted for 22% of the Agency's budget in 2008, whilst they account for 25% of its planned expenditure for 2011[13].

6.16　The Agency only recently began to consider preparing activity-based accounts, making it difficult for the Administrative Board or external stakeholders to judge its efficiency. During 2010 the Administrative Board established a budget sub-committee and there is now a greater focus on transparency and accountability. The March 2010 meeting of the subcommittee agreed to examine the possibility of working towards a closer relationship between resources and tasks ("activity based budget"). We discuss the Agency's administrative procedures further in Chapter 8.

Survey

6.17　We used the stakeholder survey as an opportunity to assess stakeholder perceptions of the cost efficiency of the Agency. Whilst not a quantitative method, we felt that it was likely to reflect the observed behaviours of the Agency and its practices and therefore a potentially relevant indicator of its cost-effectiveness.

6.18　Questions 16-20 examined the issue of the Agency's cost-effectiveness, although the questionnaire did not identify whether respondents knew the size of the Agency's budget.

6.19　Question 16 asked:

"How cost effective do you consider the Agency to be?"

6.20　Of 260 respondents, 26 provided no reply and 101, including all but two RUs, expressed no opinion. Figure 6.3 summarises the remaining 133 responses, barely half the total survey base, by category of respondent.

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[13] Source: ERA Work Programme 2008 to 2011

FIGURE 6.3   SURVEY RESPONSES: THE AGENCY'S COST-EFFECTIVENESS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Not at all cost effective	Not very cost effective	Quite cost effective	Very cost effective
260	26	101	3	47	71	12
100%	10%	39%	1%	18%	27%	5%

⇦ Not cost effective - see text - Cost effective ⇨
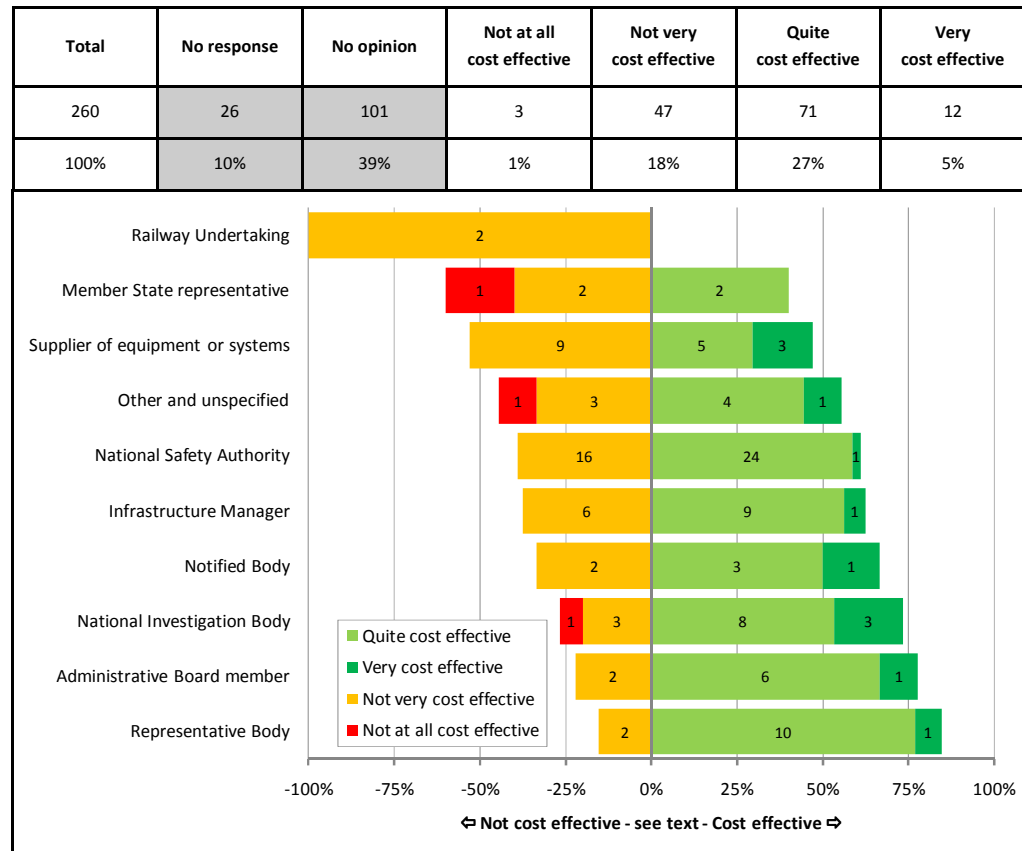
6.21   Only 133 (51%) of those surveyed offered an opinion on the Agency's cost-effectiveness. The low response rate is not surprising given that many respondents may have felt insufficiently informed to answer this question. Of those who did respond, opinion was somewhat divided. Among the RUs, Member State representatives and suppliers, the balance was more towards the view that the Agency is not very cost effective. However, with the other groupings and of the overall population of opinion, the balance was toward the view that the Agency is cost effective. A number of survey respondents also amplified this view in the form of comments in response to Question 17 or Question 20 (see Appendix C).

6.22   Whilst acknowledging the relatively high number of non-respondents and no-opinions, we conclude that the balance of opinion among stakeholders is weighted towards a view that the Agency is cost effective. This is more a measure of the Agency's performance against expectation than of absolute efficiency, but we can take some comfort from these results.

6.23 Question 19 of the survey asked:

"Do you think the Agency's budget is about right, too large or too small?"

6.24 Of those surveyed only 85, or less than one-third, expressed an opinion. Figure 6.2 summarises these opinions by category of respondent.

FIGURE 6.4   SURVEY RESPONSES: THE AGENCY'S BUDGET

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	Don't know	Too small	About right	Too large
260	30	145	26	44	15
100%	12%	56%	10%	17%	6%
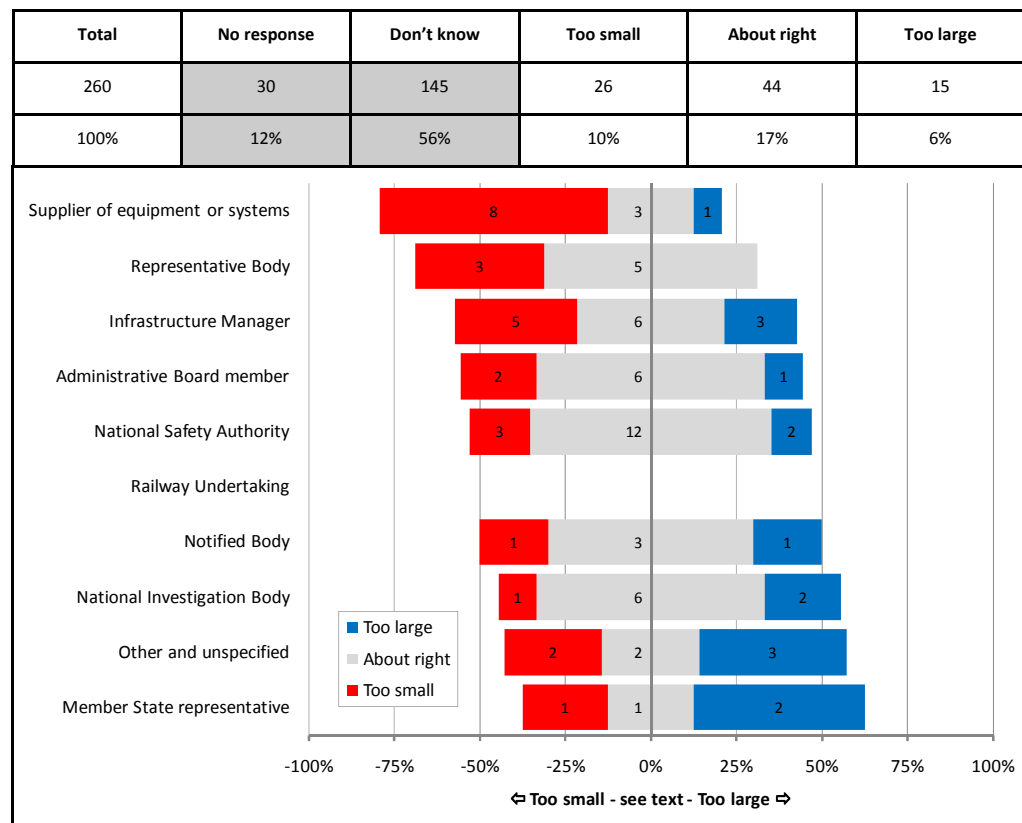
6.25 This question received a very low response rate and there were no responses at all from Railway Undertakings. Opinion was divided among those who did respond making it difficult to infer any meaningful conclusions. Overall we note that the predominant view (52% or respondents) was that the budget was 'About right'.

Interviews

6.26 Some interviewees queried the rationale for, and costs of, operating two offices and using temporary staff. Other comments on cost focused on the size of the Agency's Administration Unit, which accounts for 34% of its staff.

Benchmarking

6.27 Key issues for an organisation's effectiveness are the productivity, cost and satisfaction of its workforce. We examined data on the staff of the Agency and the comparator bodies over the period 2003 to 2009 or, for ORR, financial year 2009/10.

Staff numbers

6.28 Staff at the three EU Agencies are all categorised using EU civil service designations. In each case the majority of staff are temporary agents, on contracts of up to five years, with a minority of contract agents and a small number of seconded national experts. ORR employees are civil servants and are mainly employed on a permanent basis.

Figure 6.5 shows the growth in staff numbers at the Agency and the comparator bodies over time.

FIGURE 6.5   BENCHMARKING: STAFF NUMBERS
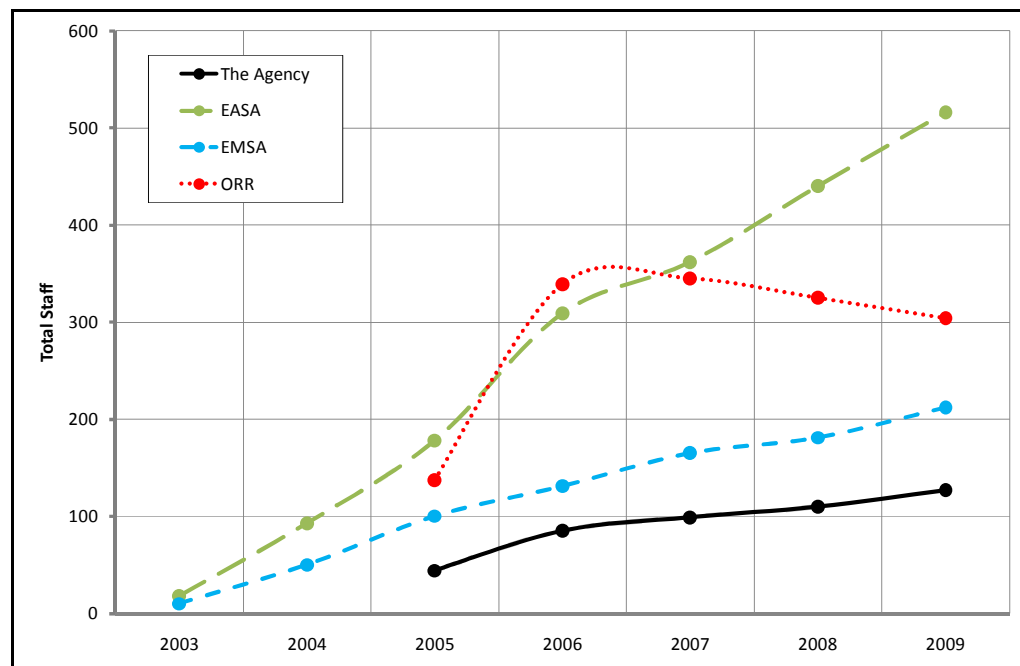
6.29 All the EU Agencies have continued to grow steadily over time since their creation. EASA is the largest Agency, but early activity reports show that resourcing was a continuous issue in the early years. However, while the Agency remains the smallest of the EU Agencies, it shows the same pattern of steady growth of around 15-20% per annum, in parallel with an expanding Work Programme.

6.30 ORR staff numbers, in contrast, peaked in 2007 at nearly 350 and have since declined almost to 300. This may be explained in part with the cyclical nature of ORR's Periodic Reviews, the last of which was carried out over the period 2006-2008.

Staff vacancies

6.31   Growth in the Agencies imposes a need for recruitment and hence a potential staff shortage if vacancies cannot be filled as workload increases.

6.32   Figure 6.6 below shows that the Agency has generally compared well with the comparator bodies.

FIGURE 6.6   BENCHMARKING: STAFF VACANCIES 2006-2009
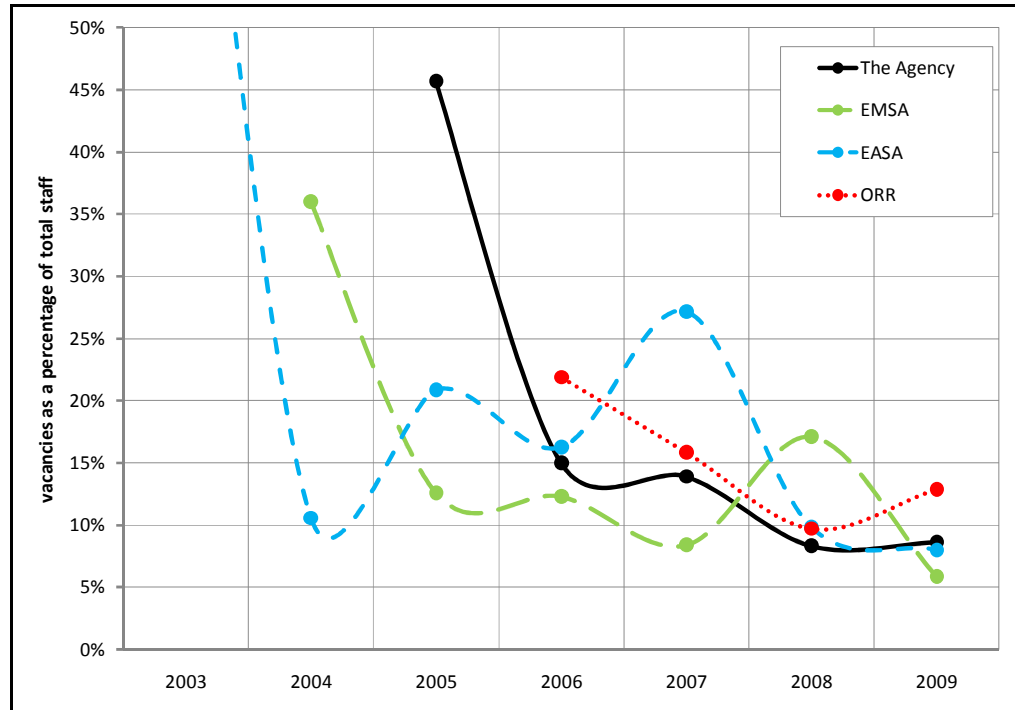
6.33   All the EU Agencies had a high vacancy rate at the time of their initial establishment and, at EASA; its continued rapid growth resulted in a staff vacancy rate peaking at over 25% in 2007. Since 2006 the Agency has generally had a lower vacancy rate than the other Agencies.

Staff turnover

6.34   Figure 6.7 compares historic staff turnover data, although we were only able to obtain data on staff turnover at EMSA for 2009.

FIGURE 6.7   BENCHMARKING: STAFF TURNOVER
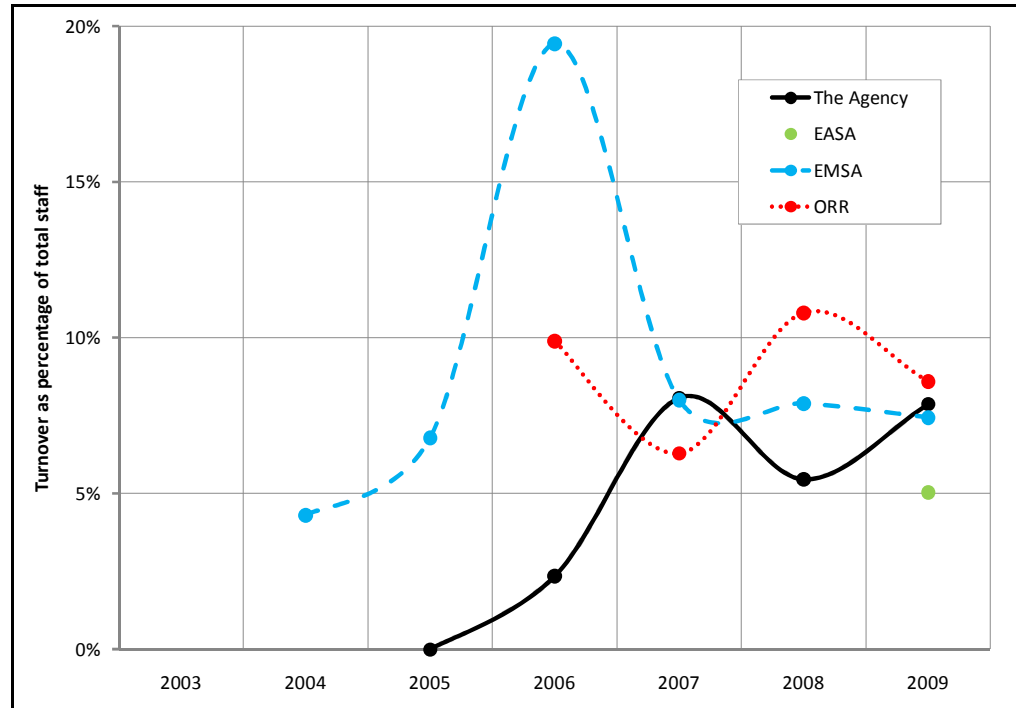
6.35   Staff turnover at the Agency appears to be broadly comparable with that at EASA and ORR.

6.36   We also considered whether the expiry of fixed term contracts at the Agency would create a future peak in turnover. Our analysis suggests that, in addition to natural turnover, the Agency will need to replace 8-9% of staff in each of the four years 2011-2014. We discuss this further below at paragraph 8.40.

Staff costs per head

6.37   Figure 6.8 compares data on staff costs per head.

FIGURE 6.8   BENCHMARKING: STAFF COST PER HEAD
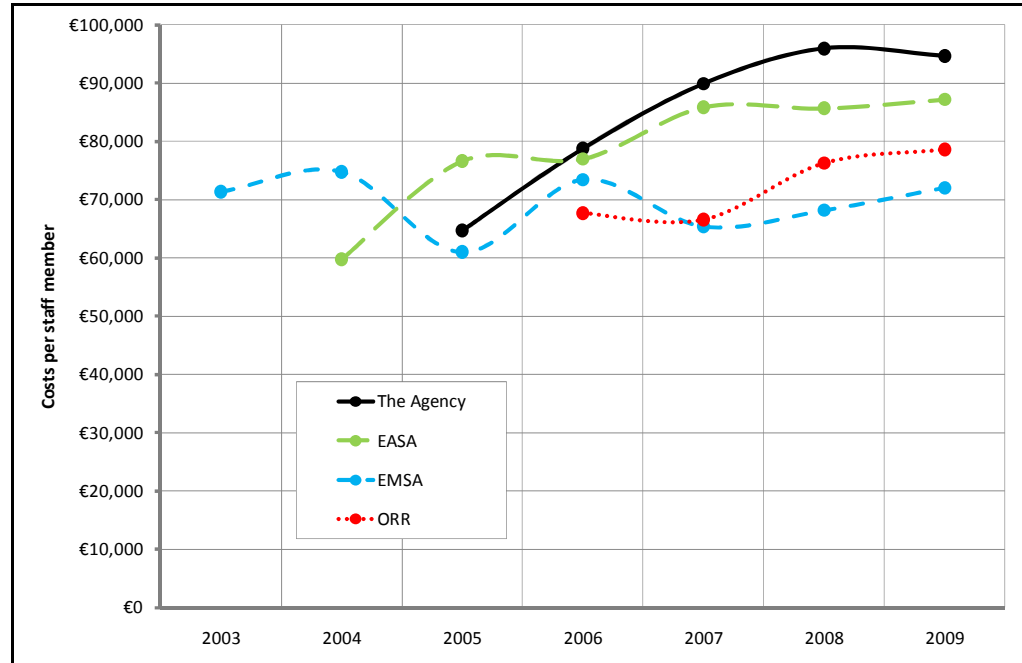
6.38   The Agency has slightly higher staff costs per head than the comparator bodies, but our analysis shows that a significant element of the discrepancy is explained by the effect of a higher local weighting set by the Council upon a proposal by the Commission for France. Staff costs have also grown rapidly at the Agency, although the small apparent fall in 2009 appears to be linked at least partly to a fall in the local weighting.

We also examined the profile of the grades of staff at the Agencies. Figure 6.9 shows the proportion of staff who are above any given grade.

FIGURE 6.9   BENCHMARKING: STAFF BY GRADE
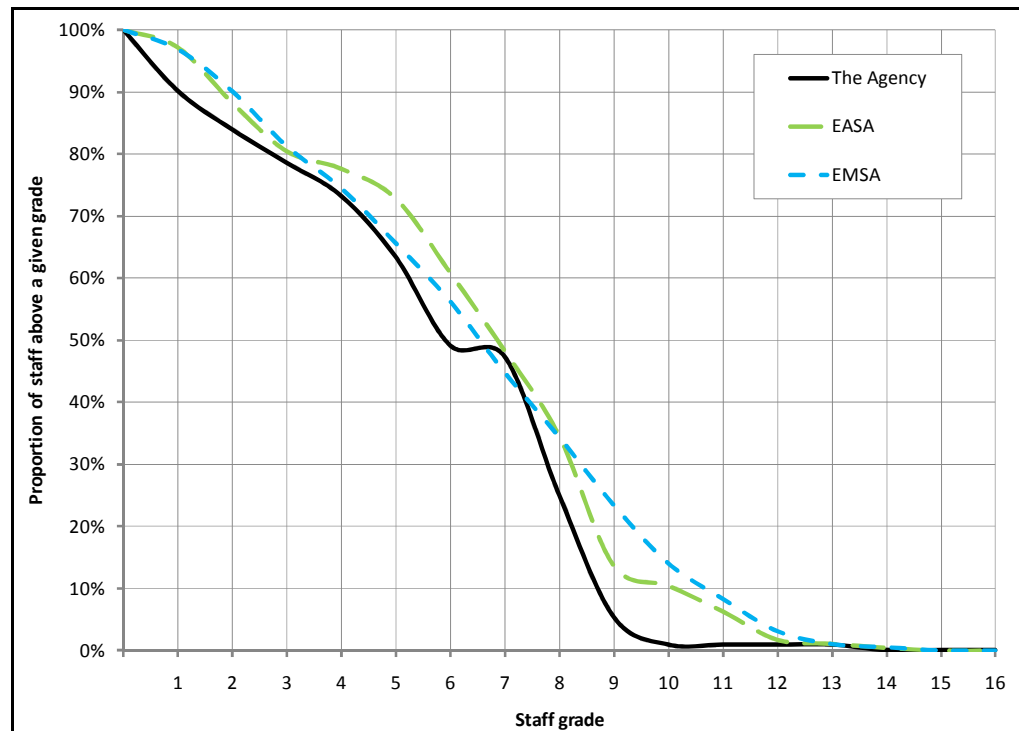
6.39   Fewer than half the Agency's staff are above grade 6, compared with more than 55% in EMSA and more than 60% in EASA. The Agencies all have similar proportions of staff above grade 7, but the Agency also has a lower proportion than the other Agencies above all higher grades, and almost none above grade 10. The overall conclusion is that, relative to the other Agencies, the staff of the Agency are more concentrated in the lower grades 1-6 and 8-10.

6.40   In summary, the high average staff costs at the Agency may be largely due to core salary items, over which the Agency has little or no control.

Administration staff

6.41   The horizontal study "Evaluation of the EU decentralised agencies in 2009" included analysis showing that the 34% of the Agency's staff engaged in administration was only marginally higher than the other Agencies and typical for medium size European agencies, with 75-150 staff, set out in Table 24 of the report. [14]

6.42   Our analysis shows that the 34% proportion of administrative staff in the Agency is the same in EASA, slightly lower (29%) in EMSA and considerably lower (18%) in ORR. The horizontal study shows that this relatively high proportion of administrative staff is common to the EU Agencies and at least partly driven by the Staff Regulations and Financial Regulations by which they are all bound.

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[14] Evaluation of the EU decentralised agencies in 2009 Vol. II p. 96

6.43   We are aware that some other EU Agencies have decentralised certain administrative functions such as financial initiation, but this was not the case in the EU Agencies that we examined in our benchmarking exercise. We understand that where this has been done, the size of the Administration Unit has be reduced by up to 20%, although it was not clear whether this has been offset by increased costs in other Units or whether overall efficiency has been affected.

6.44   We also note that the European Parliament has carried out a study[15] looking at the possibility of centralising a number of administrative functions for all EU Agencies. It concluded that there may be benefit in doing this, especially for smaller EU Agencies. Whilst a case may subsequently be made to centralise some Agency administrative functions in order to achieve a net financial saving for the Commission, we would caution that the apparent savings could be offset by inefficiencies arising within the Agency. This could happen where the activities supporting the Agency's Work Programme became impeded by slower decision making as a result of the Agency losing direct control of some of its administrative processes.

Staff absentee rate

We attempted to gather consistent data on staff absentee rates, but EASA data were limited to absences due to sickness and we were unable to establish a clear definition of the EMSA data. Figure 6.10 compares the partial data available.

FIGURE 6.10 BENCHMARKING: STAFF ABSENTEE RATES

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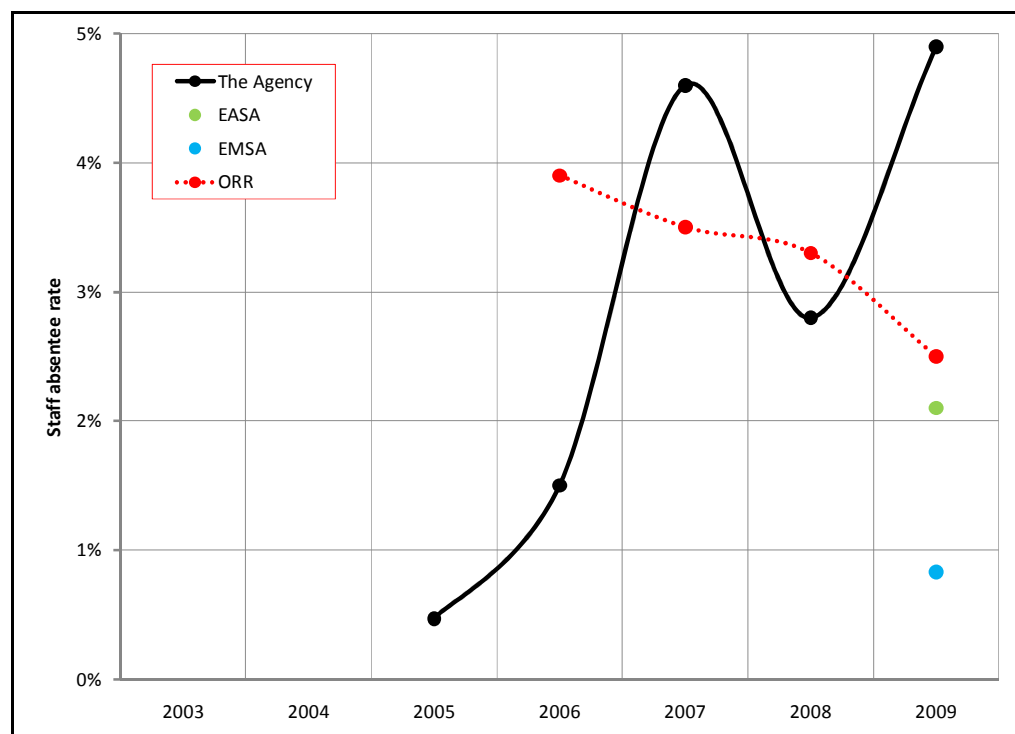
[15] Opportunity and feasibility of establishing common support services for EU agencies, European Parliament, 2009

6.45 Average absentee rates at the Agency over the last three years are broadly similar to those at ORR. The limited data appear to suggest that absentee rates have risen at the Agency while they have fallen at ORR, but this may be at least partly due to the disproportionate effect of individual absences within a relatively small Agency.

Costs associated with office location and staff travel

6.46 We examine these costs under the section 'Current Seat Arrangements' in Chapter 7, the conclusions of which are included in this chapter below.

Summary of conclusions on costs of the Agency

6.47 Table 6.1 summarises the findings of the above analysis using data from 2009, or financial year 2009/10 for ORR.

TABLE 6.1   BENCHMARKING: SUMMARY OF STAFF 2009

Data	The Agency	EASA	EMSA	ORR
Staff numbers	127	516	212	304
Staff vacancies	9%	8%	6%	13%
Staff turnover	8%	5%	7%	9%
Staff cost per head	€95,000	€87,000	€73,000	€79,000
Staff in administration	34%	34%	29%	18%
Staff absentee rates	4.9%	2.1%	0.8%	2.5%

6.48 Summarising the findings of the benchmarking shows that, for 2009:

▌ The Agency currently has fewer staff than all the comparator bodies although, in common with other EU Agencies, its staff numbers have grown by 15-20% per annum.

▌ Vacancy rates are similar to those of the comparator bodies, and historic data shows that the Agency has consistently performed well.

▌ Turnover at the Agency appears similar to the comparator bodies.

▌ The Agency has fewer staff in higher grades than the other EU Agencies, but slightly higher average costs per member of staff, which appears to be largely as a result of a higher local pay weighting determined by the Commission.

▌ Administrative staff levels at the Agency are comparable with those of the other EU Agencies, but all are higher than ORR.

▌ Absentee rates do not appear to be inconsistent with those at ORR, although the trend may be slightly upwards while that at ORR is downwards.

6.49 In conclusion, as high level measures of cost-efficiency, these comparisons suggest that the Agency is not atypical compared to the other EU Agencies. Whilst this does not reveal how the cost efficiency of the Agency relates to the provisions prior to its establishment, or the degree to which greater efficiency could

potentially be achieved, some comfort is provided that the Agency is broadly as cost efficient as its peers. Of some concern, however, is the rising trend in staff costs per head, and we consider that the Agency should develop a strategy to reverse this.

6.50   In undertaking this analysis it became evident that the absence of KPIs relating to the costs of the Agency's operations is perhaps an indication in itself that cost efficiency has not been a key management objective to date. We discuss this further in Chapter 7 (7.94-7.99, 7.103-7.104) and conclude that potential improvements in cost efficiency could be identified and incentivised through the introduction of cost related KPIs within the standard management processes of the Agency.

6.51   A complete summary of our conclusions relating to the Agency's costs is provided in Chapter 10 (10.36 to 10.52).

7 The performance of the Agency

Introduction

7.1 We were asked to examine:

> ❚ *The scope for operational choices made by the Agency and the choices made, taking into account the available means and resources*
>
> ❚ *The scope for assistance by the Agency to the Member States and the assistance given in fulfilling their obligations stemming from, inter alia, the interoperability and safety Directives, including the exchange of information, dissemination and training*
>
> ❚ *The involvement of expertise from the industry and the competent railway authorities, notably involved in the working parties as provided in Article 3 of the Regulation*
>
> ❚ *The consultation process as provided in Articles 4 and 5*
>
> ❚ *The relations with the Commission*
>
> ❚ *Annual and multi-annual programming, including the issue of properly defined performance indicators*
>
> ❚ *Available financial resources, including the analysis of the amount of tasks stemming from legal obligations vis-à-vis the level of financing*
>
> ❚ *Current seat arrangements*

7.2 In this chapter we have organised our assessment of these issues under the following headings:

❚ Assisting the Member States

❚ Involving expertise from industry and railway authorities

❚ The consultation process

❚ Relations with the Commission, finances, and operational choices

❚ Current seat arrangements

❚ Annual and multi-annual programming and performance indicators

❚ The role of the economic evaluation unit

7.3 We sought stakeholder opinions on the first four of these topics as part of our stakeholder survey. We have also drawn on evidence gathered via the stakeholder and Agency interviews, our review of documentation made available by the Commission and the Agency and, where relevant, benchmarking analysis.

Survey

7.4   Figure 7.1 summarises responses to survey Question 21:

"How would you rate the Agency's performance regarding:"

FIGURE 7.1   SURVEY RESPONSES: THE AGENCY'S PERFORMANCE

Note: further details of responses are given in Figures 7.2 to 7.6.
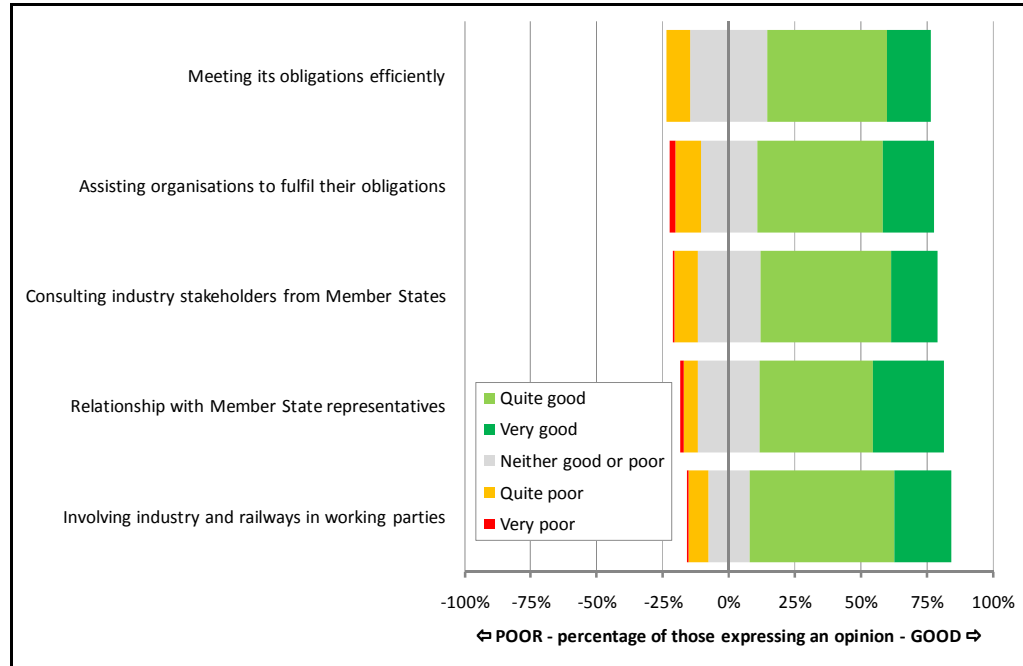
7.5   The Agency was rated highest on "Involving expertise from the industry and competent railway authorities in working parties" and lowest on "Meeting its obligations effectively", although the differences in average ranking are small and on all the questions over three-fifths of respondents rated the Agency as Very good or Good. Whilst noting that some stakeholders had concerns, the opinions of stakeholders generally suggested that the performance of the Agency is relatively good across all of the areas mentioned.

7.6   Stakeholders surveyed and interviewed also mentioned the role of economic evaluation in the Agency in relation to the various cost-benefit analyses required by the Regulation. We also comment on this at the end of this section in paragraphs 7.105 to 7.109.

Assisting the Member States

Survey

7.7   Figure 7.2 summarises responses by category of respondent to survey Question 21:

"How would you rate the Agency's performance regarding: Assisting organisations to fulfil their obligations stemming from the interoperability and safety Directives, including the exchange of information, dissemination and training?"

FIGURE 7.2   SURVEY RESPONSES: ASSISTING ORGANISATIONS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very poor	Quite poor	Neither	Quite good	Very good
260	22	42	4	19	42	93	38
100%	8%	16%	2%	7%	16%	36%	15%
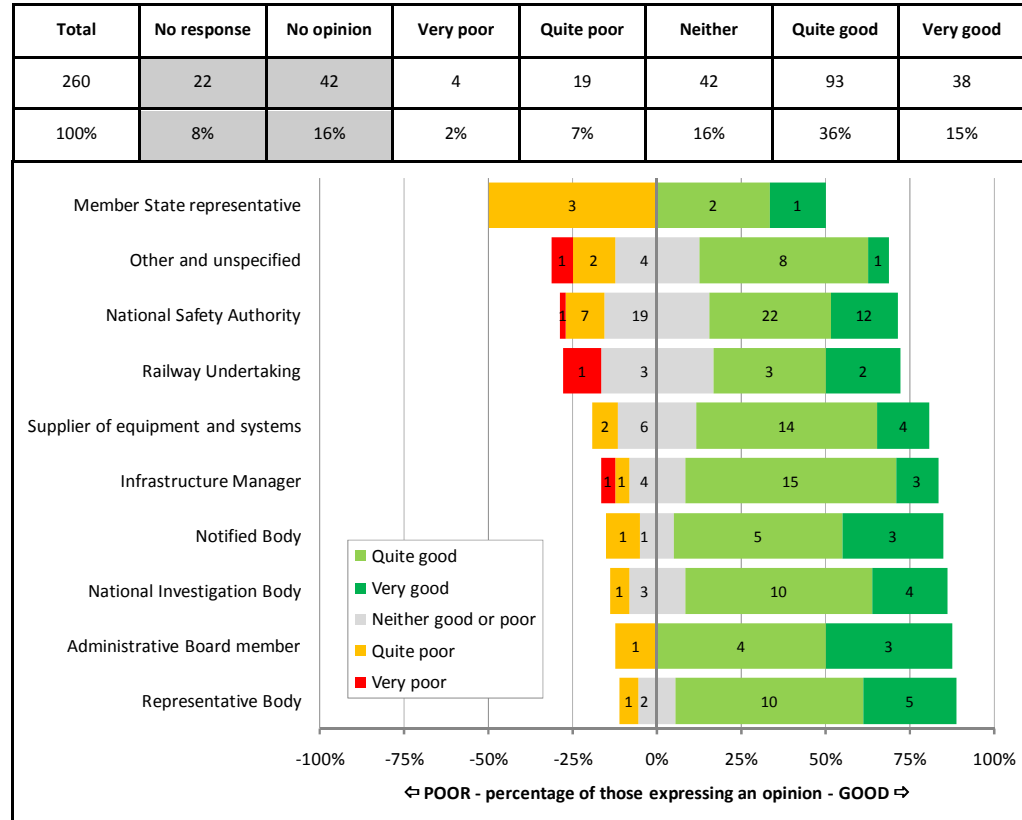
7.8   Only three of the six Member State representatives that responded expressed a positive view. Up to three-quarters of all other respondents rated the Agency as quite good or very good, suggesting a high overall level of stakeholder satisfaction. However, some groups, notably the NSAs were less positive about the performance of the Agency in providing assistance and support. This was further borne out by feedback received through interviews. Given the disparity between the level of maturity, resources and capability of the NSAs between the different Member States, there is a need for the Agency to consider how to address the differing needs for support among this group. This issue also arose in Chapter 3 (from paragraph 3.130) and is discussed further in Chapter 9, from paragraph 9.11 and 9.16.

Figure 7.3 summarises responses by category of respondent to survey Question 21:

"How would you rate the Agency's performance regarding: Its relationship with the Member State representatives?"

FIGURE 7.3   SURVEY RESPONSES: RELATIONS WITH MEMBER STATES

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very poor	Quite poor	Neither	Quite good	Very good
260	23	75	2	9	38	69	44
100%	9%	29%	1%	3%	15%	27%	17%
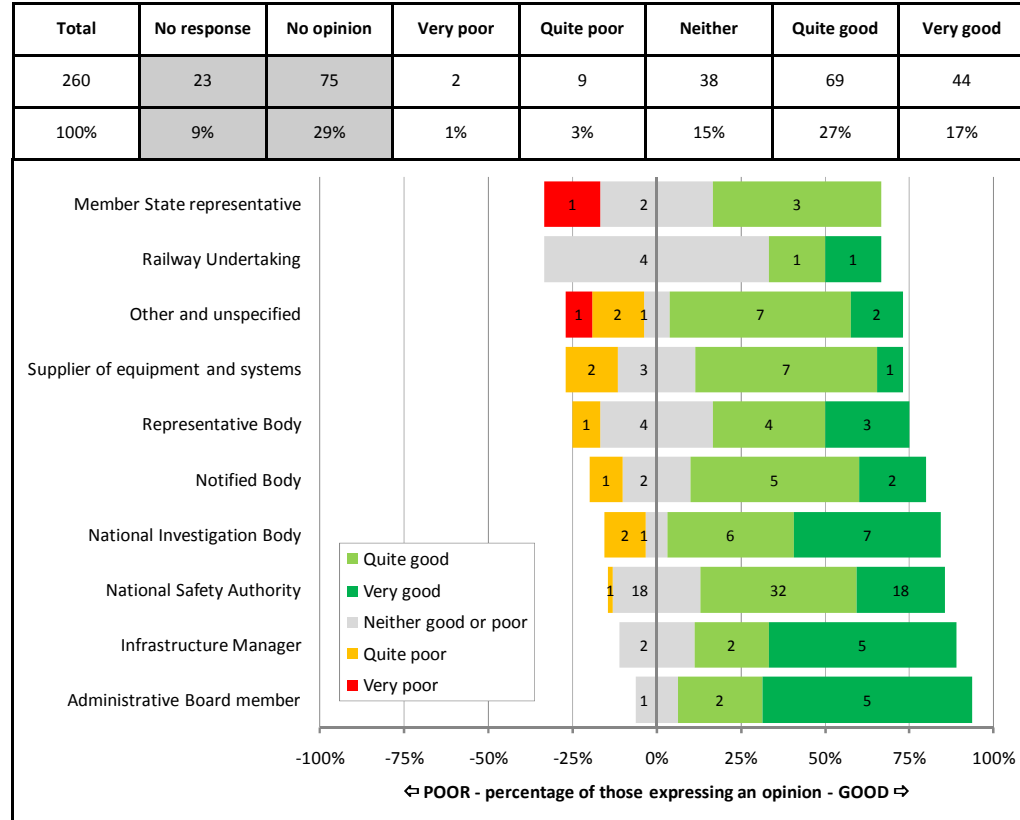
7.9   Whilst only a small group, the six respondents representing Member States are particularly relevant to this question. The fact that one of these rated the Agency Very poor and two rated it Neither good or poor raises a concern about the Agency's relationship with Member States. However, we also exercise caution, given the small sample size.

7.10   The view of the Administration Board members was much more positive. Again, whilst not statistically representative, this does suggest that the Agency may not be fully aware of how its relationship with the Member States is received. We suggest that the Agency examines this further to identify any shortcomings in its relations with Member States and how these could be improved.

7.11   The response rate for this question was surprisingly high. Possibly this may have been due to many interpreting the question as relating to all parties within Member States rather than the relationship at State level.

Interviews

7.12   Interviewees generally reported that the Agency had a good relationship with the Member States. They commented favourably on the recent workshops held in a number of Member States and the publication of DV29, as well as making specific suggestions for:

    ❚ Preparing more documents with the same goal as DV29;

    ❚ Wider dissemination of information on the Agency and its work; and

    ❚ Assisting the Member States directly in applying the requirements, in particular through training and exchange of best practice with those NSAs and NIBs requesting assistance.

7.13   Interviewees generally reported that, while progress was being made in all these areas, there was still scope for improvement in the performance of the Agency.

Analysis

7.14   We commented in Chapter 4 on the Agency's role in assisting with the implementation of Directives. From previous studies on European rail legislation, such as Railimplement[16], we have found that problems often arise at the point of transposition of Directives into national law, reflecting underlying differences in policy objectives in Member States as well as difficulties in translation and interpretation.

7.15   The Agency should consider presenting guidelines or options in a local language when communicating directly with individual Member States. This would facilitate the understanding of the Directives substantially. We understand that this would be difficult to do in all national languages, but by using the varied languages available within the Agency it should be possible to cover a large majority of the Member States and thus ensure a consistent understanding of the Agency's requirements. We recognise that this would deviate from the principle of the Agency working exclusively in English, but suggest that the benefits may outweigh the costs. We also note that such an approach has been used effectively in relation to the licensing of railway undertakings in accordance with Directive 2001/13/EC.

7.16   It is important that the Agency focuses on improving information dissemination so as to ensure that the Directives are later implemented into national law in the correct manner. The availability of guidelines in local languages may help facilitate this.

7.17   Drawing on the discussion above and in Chapter 4 (from paragraph 4.29), we conclude that the Agency is making a positive contribution in assisting Member States with meeting their obligations, but there are areas of opportunity for improvement, notably in the provision of:

    ❚ Guidance documentation, such as DV29 which was positively received and could serve as an example of how future guidance should be prepared;

    ❚ Information dissemination; and

    ❚ Training and support.

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[16] Railimplement: The implementation of the EU Directives 2001/12, 2001/13 and 2001/14 in the Member States, Steer Davies Gleave 2006

Involving expertise from industry and railway authorities

7.18   We discussed in Chapter 3 the Agency's working parties' processes and administration. As set out in Table 7.1, Article 24 requires that the working parties should not rely on, or be dominated by, the expertise of its own staff, and Article 3 of the Regulation requires that they take as a basis the expertise of the professionals in the railway sector, AEIF, and the competent national authorities.

TABLE 7.1   THE REGULATION: EXPERTISE AND THE WORKING PARTIES

Article	Selected text
3.1	"… the Agency shall establish a limited number of working parties."
3.1	"These working parties shall take as a basis, on the one hand, the expertise built up by • professionals from the railway sector, and in particular, the experience gained by • the European Association for Railway Interoperability (AEIF) and, on the other hand, the expertise of • the competent national authorities."
3.1	"Whenever the work provided for in Articles 6, 12, 16 and 17 has a direct impact on the working conditions, health and safety or workings in the industry, representatives from the workers' organisations shall participate in the relevant working parties."
24.4	"The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff."
3.5	"The working parties shall be chaired by a representative of the Agency."

7.19   Once a mandate for a Recommendation has been received from the Commission, and the need for a working party is established, it is populated as set out in Chapter 3, paragraph 3.112.

Survey

7.20   To get some insight into how well the Agency has performed in respect of its mandate to involve railway sector expertise from within the industry and competent authorities, we asked stakeholders for their opinion.

7.21   Figure 7.4 summarises responses by category of respondents to survey Question 21:

"How would you rate the Agency's performance regarding: Involving expertise from the industry and competent railway authorities in working parties?"

FIGURE 7.4   SURVEY RESPONSES: INVOLVING INDUSTRY EXPERTS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very poor	Quite poor	Neither	Quite good	Very good
260	22	26	1	16	33	116	46
100%	8%	10%	0%	6%	13%	45%	18%

7.22   Overall, stakeholders considered the Agency to be performing well in respect of its involvement of experts. All the NoBos and a significant majority of other respondents rated the Agency as quite good or very good. However, there was also as significant minority that took a contrary view, suggesting that the Agency's performance may not be good across all areas.

Interviews

7.23   The above observation was further corroborated by some of the interviewed stakeholders who identified a number of areas where there might be scope for improvement:

   ❙ The process of asking stakeholders to nominate suitable experts, who in turn may have been asked to volunteer, may not result in the best-qualified candidates being identified or put forward;

I Even if a candidate is accepted, the Agency has no means of ensuring that they are able and willing to attend working party meetings in person, and attendance from some of the NSAs and NIBs has been consistently limited;

I The working parties normally meet in Lille, which can require the experts to travel for up to two hours from the nearest international airport, as discussed below; and

I There can be delays of up to a year in paying experts the costs of travelling to and from meetings of the working parties.

7.24 While Article 3 refers to "a limited number of working parties", the Agency's extranet now lists over 50, many of them requiring specialist experts.

Benchmarking

7.25 The Regulation emphasises the involvement of industry experts in all the decisions and recommendations that the Agency prepares, which perpetuates the approach inherited from AEIF. Other Agencies organise occasional working parties but they are not central to their functioning.

Analysis

7.26 Given the specific requirements of the Regulation listed in Table 7.1, the Agency appears to have been broadly effective in coordinating the expertise available in the industry into working parties capable of addressing a range of detailed technical issues.

7.27 It remains to be seen, however, whether this approach is sustainable. One risk is that it becomes more difficult in future to identify sufficient experts willing to take part in the working parties, as a result of:

I The existing experts becoming overloaded;

I The slowness of the process of repayment of travel expenses; and

I The difficulty of travelling to working party meetings in Lille.

7.28 In Chapter 3 we discussed the operational aspects of the working parties and how improvements can be made in relation to standardising and making them more coherent. Our findings suggest that there are also other measures that the Agency could take to facilitate the effectiveness of the working parties, including:

I Streamlining the process of reimbursing experts' expenses

I Assisting Representative Bodies with the selection and recruitment of experts to the working party, potentially by creation of a reserve list of potential candidates from the Representative Bodies, following the Agency's current practice for its own recruitment. The reserve list could be prepared and updated based on the requirements of the annual Work Programme; and

I Considering holding some working party meetings at locations other than Lille where this would be more convenient to the majority of attendees.

7.29 We discuss the location of the working party meetings further below in paragraph 7.69.

The consultation process

7.30   The Regulation sets out requirements for consultation with the social partners (Article 4) and rail freight customers and passengers (Article 5) whenever the work on various issues summarised in Table 7.2 below has a direct impact on them.

TABLE 7.2   THE REGULATION: REQUIREMENTS FOR CONSULTATION

Article	Subject	Consultation required with	
		The social partners	Rail freight customers and passengers
6	Technical support on Safety	✓	✓
12	Technical support on Interoperability	✓	✓
7	Safety Certificate	✓	
16	Certification of maintenance workshops	✓	
17	Certification of entities in charge of maintenance	✓	

7.31   We understand that the Agency maintains a register of around 150 bodies from the Member States, drawn from a list in Directive 2008/57/EC, which it is required to consult under Articles 4 and 5.

7.32   As noted above, Article 3 also requires that representatives from the workers' organisations shall participate in working parties provided for in Articles 6, 12, 16 and 17 which have a direct impact on working conditions. This means that, *prima facie*, workers' organisations have the ability to influence Recommendations both through the working parties' deliberations and then subsequently as consultees. Other stakeholders might argue that this unfairly favours the workers' organisations, although no such comment was made during either the survey or the stakeholder interviews described below.

Survey

7.33   Figure 7.5 summarises responses by category of respondent to survey Question 21:

"How would you rate the Agency's performance regarding: Consulting railway industry stakeholders from across all Member States?"

FIGURE 7.5   SURVEY RESPONSES: CONSULTING STAKEHOLDERS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very poor	Quite poor	Neither	Quite good	Very good
260	22	54	1	16	44	91	32
100%	8%	21%	0%	6%	17%	35%	12%
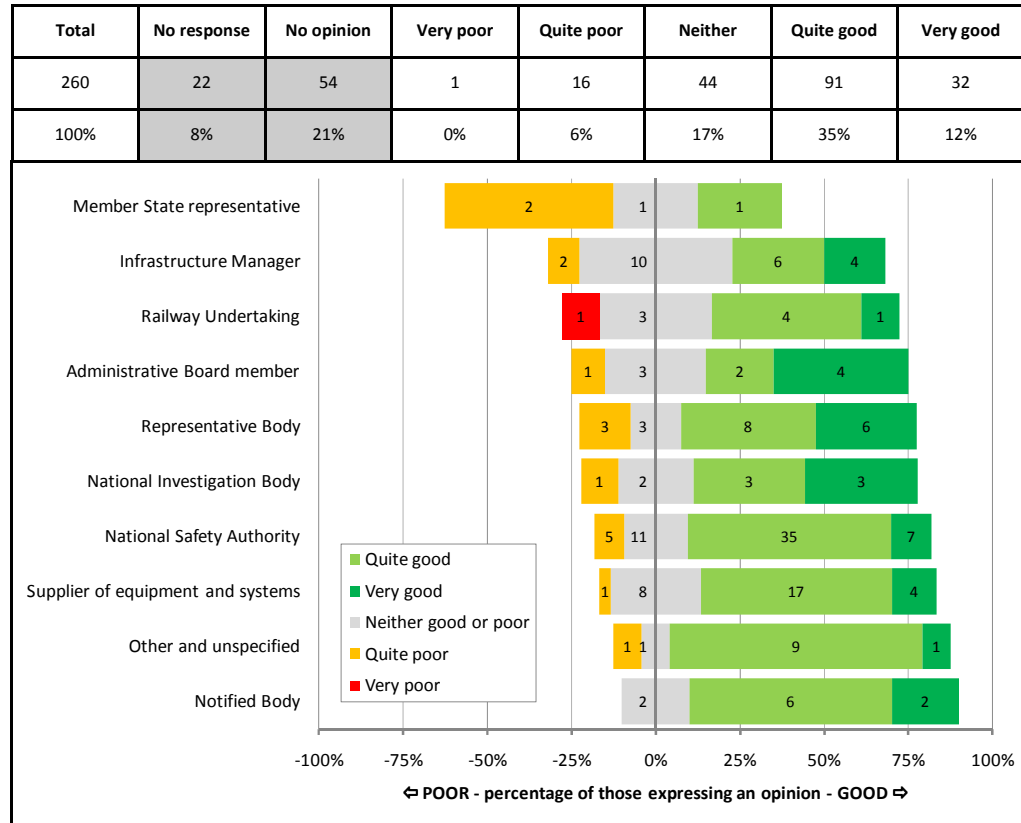
7.34   Overall, stakeholders considered the Agency to be performing relatively well in respect of consulting stakeholders. Two of the four Member State representatives that responded provided a negative view; but up to three-quarters of other respondents, rated the Agency as quite good or very good. However, there was also a significant minority that took a contrary view, suggesting that the Agency's performance may not be good across all areas.

7.35   Less than half of the Infrastructure Manger respondents gave a positive score for this question, although this may be a reflection of the limited level of direct involvement they have in the consultation process.

Interviews

7.36   Interviewees did not identify any specific concerns regarding the consultation process and reported that it has improved in recent consultations.

Benchmarking

7.37   The benchmarking revealed that the ORR publishes consultation documents on its website and invites responses from all interested parties. The Agency has also

begun to publish consultation documents on its website, as summarised in Table 7.3 below.

TABLE 7.3   THE REGULATION: CONSULTATIONS VIA THE AGENCY'S WEBSITE

Area	Subject	Intended audience
Safety	Certification of entities in charge of maintenance	
Inter-operability	Preliminary report on the profile and the tasks of the other crew members performing safety-critical tasks under Article 28 of Directive 2007/59/E	Sector organisations CER, EIM, ETF
	Draft recognition schemes for train driver examiners and training centres	Members of RISC
	Draft recommendations on the recognition of examiners and training centres for train drivers	
ERTMS	Draft recommendation for the Control-Command and Signalling Technical Specification for Interoperability	Article 4 consultees
		Article 5 consultees

Analysis

7.38   There is a risk that, if a consultation is open to anyone wishing to express a view, the workload of the Agency may rise and the processing of consultation responses may take longer. In addition, the status of the consultees identified in Articles 4 and 5, and the weighting attached to their views, may be eroded.

7.39   However, our experience from other regulatory environments is that broad consultation is almost invariably beneficial and can elicit a wide range of perspectives and insights. Consultation responses should be assessed on their merits, and useful contributions taken into account irrespective of where they originate. Extending consultation exercises to a wider audience would therefore improve the outcome of such exercises and we recommend that it should form part of the process described in Chapter 3 relating to the publication of outputs and the clarity of the acts.

7.40   In our opinion a consultation exercise that is planned effectively and in advance can lead to more effective outcomes. We believe that the Agency should develop a consultation strategy that ensures that consultation is undertaken consistently and comprehensively. For this we believe a common template approach would help, where the principles are predefined and customised according to the specific subject and audience.

Relations with the Commission, finances, and operational choices

7.41 The Agency's relations with the Commission, including the determination of financial resources and workload and its ability to make operational choices, are constrained by the Regulation in a number of ways. Table 7.4 summarises a number of Articles that define these relations and powers.

TABLE 7.4 THE REGULATION: RELATIONS WITH THE COMMISSION

Article	Selected text
25.2 (c)	"The Administrative Board shall adopt, by 30 November each year, and taking the opinion of the Commission into account, the Work Programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. That Work Programme shall be adopted without prejudice to the annual Community budgetary procedure."
38.1	"Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be set out in the budget of the Agency. Revenue and expenditure shall be in balance."
38.4	"Each year, the Administrative Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year."
38.6	"On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of subsidy to be charged to the general budget."
2	"The Agency may: • Address recommendations to the Commission concerning the application of Articles 6, 7, 9b, 12, 14, 16, 16a, 16b, 16c, 17 and 18 • Issue opinions to the Commission pursuant to Articles 9a, 10, 13 and 15 • Issue opinions to the authorities concerned in the Member States pursuant to Article 10."
24.1	"The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency."
38.9	"The Administrative Board shall notify the budgetary authority as soon as possible of its intention to implement any project which may have significant financial implications for the funding of the budget."

Survey

7.43   We did not include questions on relations between the Agency and the Commission in the stakeholder survey, as few respondents could be expected to have both knowledge of and views on the subject.

Interviews

7.44   Interviewees suggested that the design of the Regulation led to a number of tensions between the Agency and the Commission. Several interviewees expressed the view that there had been tension and that relations had not always been productive. One suggested that the Commission may act as a bottleneck and has insufficient capacity to process all the Recommendations received from the Agency.

Benchmarking

7.45   Unlike ORR, EASA and EMSA, the Agency has no powers to make or impose decisions and can only forward Recommendations and Opinions to the Commission. This limits the Agency's autonomy and, potentially, its effectiveness.

Analysis

7.46   While the Agency does not enjoy the degree of independence of the comparator bodies, none of the stakeholders suggested that it should be more independent of the Commission or that the relationship with the Commission should be altered in any way. We do not see a need to change the powers of the Agency vis-à-vis its relationship with the Commission in relation to providing Recommendations and Opinions as it is appropriate that the Commission and RISC continue to have the final sanction. There are, however, a number of areas where the relationship may change as a result of the potential future roles of the Agency. We discuss these further in the context of the potential future role of the Agency in Chapter 9.

The Agency's budget

7.47   The process of setting the Agency's budget is defined by the Regulation:

I The Agency develops its budget estimates (Article 38.1, 38.4) from estimates of future workload.

I The Commission enters its own estimates (Article 38.6) in the EU budget.

I The Agency must adopt the Work Programme irrespective of the budget eventually made available (Article 25.2 (c)).

I The Agency can notify the budget authority if its emerging workload is inconsistent with the budget (Article 38.9) but has no powers to balance them. We understand that such a notification was made after an error was discovered in the 2009 budget.

7.48   This process appears to create some difficulty for the Agency in managing its budget, with some of the allocated budget remaining uncommitted and a significant element of committed expenditure being rolled through to the following year. However, the Agency has improved its budget control performance.

7.49 Table 7.5 shows the total commitments and payments made from the budget between 2006 and 2009. The table shows that the Agency has improved the match between its forecast and actual spending over time. Its unused budget has fallen in percentage terms from 27% in 2006 to 1.9% in 2009. However there was a significant spike in the level of unused budget in 2008 when the unused budget was around 4% of the total.

TABLE 7.5   ERA BUDGET COMMITMENTS & PAYMENTS

	2006	2007	2008	2009
Budget	14,398,000	16,645,000	18,000,000	21,000,000
Commitments C1	10,421,586	13,261,051	17,254,186	20,598,991
% of the Budget	72.38	79.66	95.85	98.09
Unused C1 Budget	3,976,414	383,948	745,813	401,008
Payments C1	7,741,551	10,565,986	13,150,157	16,052,085
% of the commitments C1	74.28	79.67	76.21	77.92
Payment Appropriations C1 to be Carried Over	2,719,449	2,694,913	4,104,028	4,546,906
% of the commitments C1	26.09	20.32	23.78	22.07
Commitments carried over C8	0	2,719,449	2,694,913	4,104,028
C8 to be cancelled	0	726,320	484,494	520,818
% of the carry over C8	0	26.7	17.97	12.69

Source: Report on budgetary and financial management information for the financial year 2009

7.50 The level of committed expenditure being rolled through to the following year can be attributed, at least in part, to delays in the Agency's procurement processes, such that contracts for activities within its Work Programme were let too late to enable their completion within the budget period. This problem does not appear to be unique to the ERA as the comparison with EASA and EMSA in Figure 7.6 shows.

FIGURE 7.6   BENCHMARKING: APPROPRIATED, COMMITTED AND PAID FUNDS (2009)
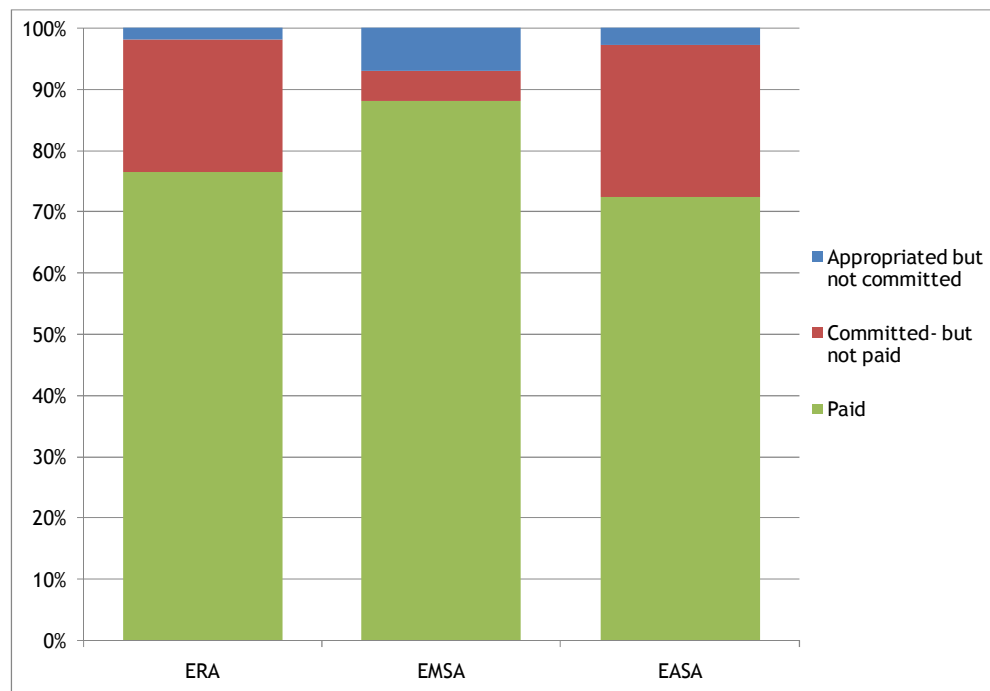
7.51   We discuss the issues related to budget management and procurement further from paragraph 8.35 below.

The Agency's workload

7.52   The actual workload of the Agency depends on the number and complexity of the Recommendations and Opinions requested by the Commission (in the case of the former) and Member States (in the case of the latter) during the year under Article 2 of the Regulation.

7.53   A recent example of unpredictable work for the Agency resulted from the collision of two passenger trains at Buizingen in Belgium on 15 February 2010. The Special Parliamentary Commission established to investigate the safety of the Belgian Railway System invited the Agency to assess the effectiveness of the implementation of Railway Safety Directive 2004/49/EC in Belgium and in particular the functioning of the Belgian NSA and NIB. This activity does not appear to fall within the types of acts of the Agency permitted by Article 2 of the Regulation.

7.54   In our view, this activity relates directly to the objectives, set out in Article 1, "to contribute, on technical matters, to the implementation of the Community legislation". We would expect that a core role of the Agency would be to respond to requests of this nature from the Member States. While in this specific case it would be reasonable for the Agency to recover its costs from the Member State, this would not necessarily be the case in other circumstances.

7.55   Looking forward, we understand that, if and when DV29 is published in 2011, the Agency is likely to face an increased requirement for Opinions, although it is difficult to predict with confidence the timing or volume of any resulting work. Best practice from other sectors would be for the Agency at least to identify how

it will respond to requests for Opinions, setting out likely timescales and budgets taking into account information and resource requirements and costs.

7.56   The work required for the provision of Opinions has parallels with that of antitrust authorities where they are required to respond to complaints. Whilst an antitrust authority cannot necessarily predict the specific complaints that it will receive, or what will be required to respond, many of these authorities have established guidelines and protocols on how they will deal with complaints, such as how they will involve the complainant, the timescales for reaching various stages of the analysis and in some cases an indication of the resources that will be needed to carry out an investigation. We believe there would be merit in the Agency developing similar guidelines for drawing Opinions, as this would provide greater transparency and help to improve resource planning.

Charging for some activities

7.57   Currently, of the activities that the Agency undertakes, the only area that we are aware of where there is potential for recovery costs is in relation to Opinions where they are requested by Member States, although we note that this has not been done to date. All other activities are essentially activities that are carried out on behalf of the Commission and there is little scope for these activities to be charged for. We discuss in Chapter 9 the potential future role of the Agency and consider whether any of these roles could be self-financing.

7.58   We suggest that the Agency conducts a review of its current activities to assess whether there are any potential areas where it could reasonably recover some or all of its costs. For example, it has been suggested that the Agency could charge for access to the registers given the cost that it is incurring in setting up the registers. In this particular case we are concerned that this would *de facto* limit access to the registers and increase the cost of access to a network which would be an additional burden to new entrants.

7.59   The Agency does not currently have an administrative framework and mechanism for charging for its services. If it were to adopt a policy of charging for certain activities, various measures would need to be put in place, including:

I   Definition of the services for which charges may be administered;

I   Administrative framework and procedures for charges to be administered and a transparent system of accounting;

I   A bottom-up analysis and attribution of costs associated with the chargeable services;

I   A schedule of charges for related staff time, administration costs and other expenses; and

I   Guidelines on how the Agency intends to prioritise its activities between chargeable and non-chargeable activities.

7.60   We also note that the Horizontal study[17] showed that there was a strong correlation between those EU Agencies with a fully operational quality

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[17] Evaluation of the EU decentralised agencies in 2009 Vol II p. 105-106

management system and those EU Agencies that received some of their resources from fees and charges.

7.61   In considering any proposals for charging for its activities, we recommend that Agency consider how chargeable activities carried out by other EU Agencies are administered (e.g. the basis of charges applied by national authorities for the issuing of railway licences).

The Agency's priorities

7.62   Beyond the specific duties set out in the Regulation, the work of the Agency is driven by mandates from the Commission. While the Regulation requires it to prepare a budget it has, once mandated, little scope to make operational choices.

Interviews

7.63   Interviews with the Agency suggest that, to date, the financial and human resources made available have been broadly consistent with its workload, but while Article 38 of the Regulation requires that "Revenue and expenditure shall be in balance" the Agency's duty to prepare a Work Programme includes no specific powers to prioritise work or to balance the budget.

Analysis

7.64   The Agency's relations with the Commission highlight its lack of control of the interaction between its workload and its financial and staff resources. Its budgeting, staffing and workload are firstly approved and adopted by the Administrative Board although our understanding is that this approval may still be overridden as all resourcing is then reviewed by the Council and the Parliament, who subsequently set limits on the budget and staff establishment.

7.65   The Agency has no powers to decline, defer or prioritise the workload in response to a shortage of either suitable staff or funds, but in practice does defer workload by extending timescales, as set out in the 2009 Work Programme.

7.66   The Agency can only recruit suitable staff through the procedures of Article 24 paragraph 1, and is expected to exercise its task programme through working parties to which it may not provide experts. In practice many working parties are attended by more Agency staff than are necessary to chair the meeting, and it seems likely, and sensible, that they comment on areas in which they have expertise.

7.67   The Agency is also constrained by the requirements of Financial Regulation 652/2008/EC which imposes strict guidelines on how products are procured, how payments are made and how expenses are reimbursed. Past decisions by the Commission and opinions by the Court of Auditors mean that the Agency has to have a relatively large Administrative Unit, as discussed above in paragraph 6.41. Many survey respondents added comments expressing concern not only with the costs of travel and transfers between Lille and Valenciennes but also with the costs of administering them.

7.68   In summary, the Agency has limited control over either the volume of its workload or its resources. There is therefore potential for conflict with the Commission if the Agency finds that it is unable to deliver its Work Programme and meet the required outputs and time scales within its budget. Against this background, we

suggest that the Agency should develop, in collaboration with the Commission, guidelines on how it intends to prioritise activities in the face of emerging budget constraints. This needs to be done within the framework of the long term planning and strategy discussed in Chapter 3. We recommend that, within the framework of the mandates, the guidelines are defined to provide the Agency with a degree of autonomy in relation to prioritising its activities, to ensure that the likely increase in Opinions in the coming years can be effectively balanced with the ongoing activities (and new mandates) of the Agency. We also believe that the Agency's ability to manage its work load and budget will be improved by the proposal to move to multi-annual programming, as described below in (paragraph 7.101).

Current seat arrangements

7.69 In June 2009 the Agency inaugurated new premises in Valenciennes. Unlike EASA and EMSA, the Agency has not entered into a "Seat agreement" involving an exchange of rights and obligations with the local authority.

7.70 Interviews with the Agency suggested that the new working environment and office arrangements are viewed positively, but revealed that the office is almost full and leaves little room for the Agency to expand or reorganise.

7.71 In addition to Valenciennes, the location of the main building and official work place of its staff, the Agency also operates from Lille, where the majority of operational staff spend at least some time working in conference and meeting facilities adjacent to Lille Europe station.

7.72 Valenciennes has direct rail services to Lille and Paris [18] but not to Brussels, so staff travelling to the Commission at Brussels often drive, with the journey taking around 80 minutes. Lille has direct rail services to Paris and the French regions and also to Brussels and various points in the United Kingdom, the Netherlands and Germany.

7.73 Valenciennes and Lille are in relatively close proximity, around 40 minutes[19] apart both by road and by the direct rail service which typically operates hourly for most of the day. For this reason a number of the Agency's staff have chosen to live in Lille and commute to Valenciennes. Nonetheless, Agency staff make around 6 round work trips per day, or 1500 per year, between the two locations, each of which requires about 90 minutes' travelling time, and is treated as a "mission" under the Staff Regulations, requiring additional administrative time and cost. The Agency has proposed a simplified system of reimbursing travel expenses for these missions, reducing the workload of the Finance Team. An initial version of this proposal had been rejected by DG HR in the Commission, but negotiations were ongoing at the time of this study.

7.74 We note that the Court of Auditors in their 2006 report state that the cost of the two office locations resulted in additional costs of about €400,000. They subsequently reiterated this in their 2008 report.

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[18] Services to Paris are less frequent and it is usually quicker to travel via Lille

[19] Equating to around 90 minutes between the Agency's offices door-to-door

Benchmarking

7.75   One issue raised in relation to the horizontal study "Evaluation of the EU decentralised agencies in 2009" [20] was the issue of the remoteness of the Agency from some of the industry. Many of the interviewees that we spoke to mentioned the difficulties of attending working parties in Lille, requiring up to 2 hours travel from either Brussels National Airport or Paris Charles de Gaulle (allowing for access and wait times; train services between Lille and Charles de Gaulle are scheduled in as little as 55 mins), the nearest airports with services throughout the European Union. This limits the number of participants who can attend even a short working party meeting as a day trip, and increases the time they need to spend away from their own organisations. Stakeholders were also concerned that this could bias the findings of the working parties in favour of the experts and participants who were most able to attend.

7.76   We compared both the Agency's distance from a major airport and its current office rental costs with the comparator bodies, as summarised in Figure 7.7.

7.77   While all of the comparator bodies were within 30 kilometres of an international airport, the Agency was more than 100 kilometres from one that can be reached directly from the majority of European capitals. Offsetting this was a rent per square metre considerably lower than that of all the comparator bodies, although ORR operates at sufficiently high density that its rent per staff member was still slightly lower than that of the Agency.

FIGURE 7.7   BENCHMARKING: ACCESSIBILITY AND OFFICE COSTS
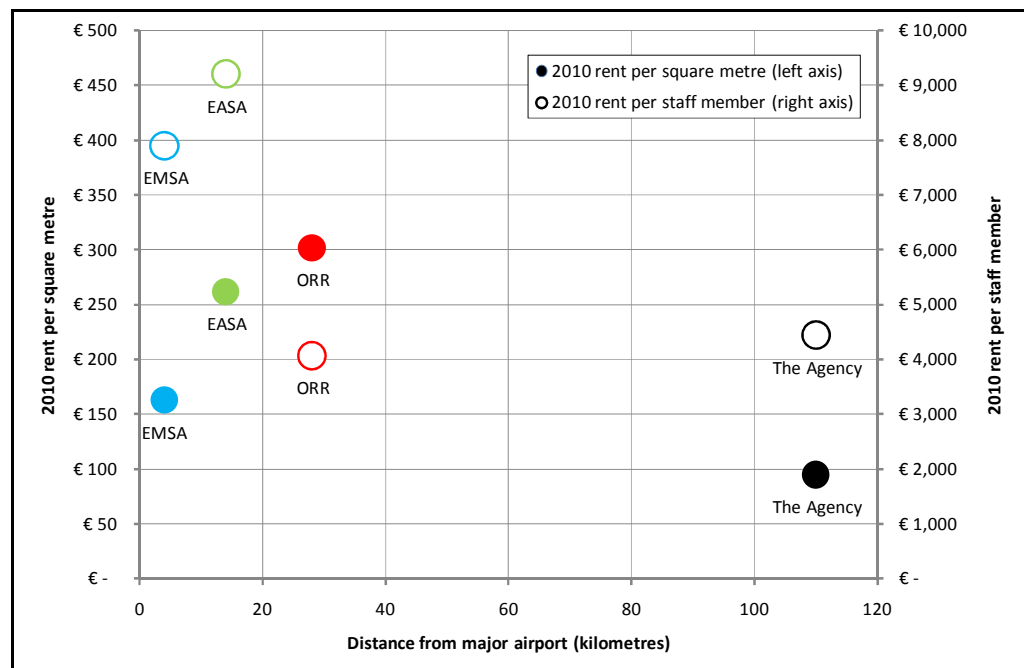
Analysis

7.78   We calculated that, even including the direct costs of travel between Valenciennes and Lille, the Agency's costs per staff member were still lower than those of EMSA

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[20] Evaluation of the EU decentralised agencies in 2009 Vol. III p. 143

and EASA and should be seen in the context of the other cost comparisons as described in Chapter 6.

7.79   However, this calculation ignores the opportunity cost of travel time for Agency staff or other working party participants or the expenses of the latter. Given that the major task of the Agency, under Article 3, is to establish working parties comprised of experts and other participants from all Member States, we would expect that the Agency would take into account the overall cost of the working parties to the industry and not just the direct travel costs. As a result we further refined the analysis to add the opportunity cost of travel to various meeting locations. This analysis considered the direct costs of travel, as well as the opportunity costs of the time attributed to reaching and attending meetings in different locations. The total costs have been calculated taking into consideration not only the cost to the experts, but also of Agency staff that participate in the working party meetings.

7.80   The working parties typically include many more participants from the Member States than staff from the Agency, and the location in which they are held should ideally minimise overall travel times and costs for the whole working party. In addition, we understand that the present facilities in Lille are too small for some of the Agency's meetings.

7.81   We estimated the total costs of nine experts from different major European capitals, two representatives of the Commission in Brussels, and two staff of the Agency, travelling to a working group meeting. We considered the existing location of Lille, reached via Paris Charles de Gaulle airport, the immediate alternatives of Paris and Brussels and, for comparison, Köln and Lisbon, the seats of EASA and EMSA. We assumed that the meeting would last all day, from 10:00 to 18:00, and included:

I   Cost of facilities, at €1000 for a meeting room for a day in Paris (airport or city centre). No extra cost was allowed in Brussels or the other locations as it was assumed that the meetings would take place in Commission facilities;

I   Overnight accommodation costs, where necessary to attend for the whole day;

I   Travel costs (the actual fares measured on a predefined working day in March) by air or rail. Where rail travel is possible (travel between Paris, Brussels, London and Lille) we have used it in the model; and

I   The opportunity cost of travel time, at €50-60 per hour.

7.82   Figure 7.8 summarises the results of our analysis for each location, divided into the following categories:

I   Time costs and expenses paid by the Agency which includes:

▪   The time cost for Agency staff to get to the meetings;

▪   The direct travel cost for Agency staff;

▪   Rental costs for facilities in Paris; and

▪   The total direct travel cost for the experts that is reimbursed by the Agency.

I   Time costs and expenses paid by the Commission which includes:

- ▪ The time cost of Commission staff to get to the meetings; and

- ▪ The travel cost for Commission staff to arrive at the meetings.

I Time costs borne by the experts.

FIGURE 7.8   BENCHMARKING: TRAVEL COSTS
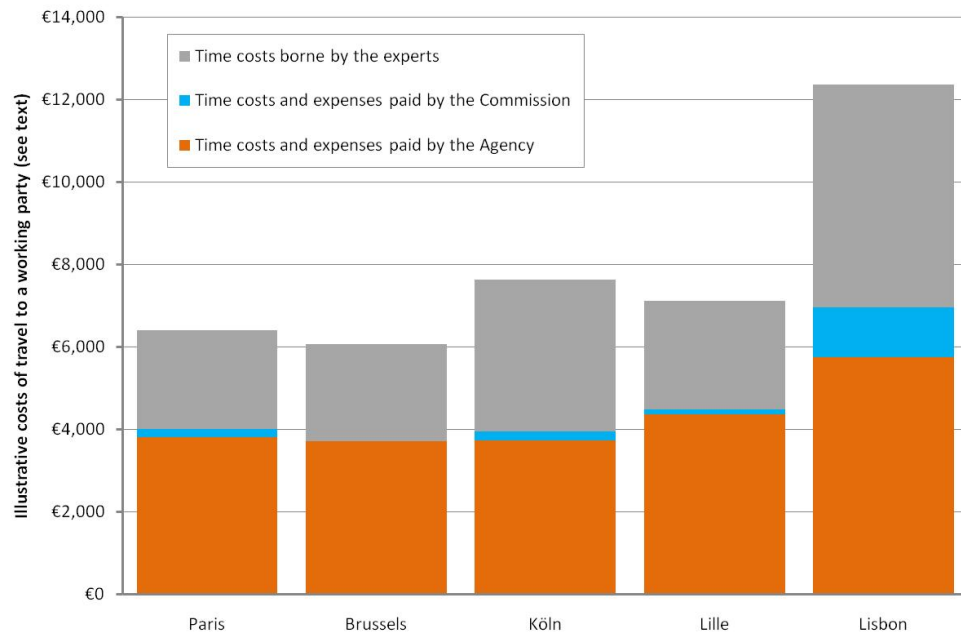
7.83   As might be expected, the total travel and time costs to Lisbon, the relatively peripheral location of EMSA, were the highest, and these were followed by those to Köln, the location of EASA. Nonetheless, the total cost of this hypothetical working group meeting could be reduced by €1,000 by holding it in Brussels and €700 by holding it in Paris. It should be noted that these estimates are conservative as often stakeholders travel on full fare economy class tickets (in accordance with the Agency's reimbursement policy), rather than the cheapest rates that we found and participation at working groups is often much higher than the nine experts that we assumed.

7.84   Considering the relative accessibility of Valenciennes, Lille, Brussels and Paris, there could be potential to reduce total costs by holding some working party meetings in either Paris or Brussels, or their rail-accessible airports. Our analysis suggests that the inconvenience and cost to the Agency could be offset by time and cost savings to other participants, depending on their respective employment locations.

7.85   We conclude that there may be occasions when working parties could be more efficiently held elsewhere, although we acknowledge that any financial savings could be modest relative to overall Work Programme costs. Retention of conferencing facilities in Lille is likely to be the most practical strategy for the foreseeable future, although, given the modular nature of the facilities, we recommend that the Agency examines the potential for reducing its dependence on the facilities in Lille and locating some future working party meetings at other locations, such as in Brussels or Paris, where this can be shown to be economically advantageous.

Annual and multi-annual programming and performance indicators

7.86   Table 7.6 summarises the principal Articles of the Regulation relating to the Agency's programme. In essence, an annual Work Programme must be identified and adopted in advance and irrespective of the budgetary process.

TABLE 7.6   THE REGULATION: THE WORK PROGRAMME

Article	Text
25.3	"The Agency's Work Programme shall identify the objectives of each activity. As a general rule, each activity and/or each outcome shall be the subject of a report to the Commission."
3.2	"The Agency shall forward the adopted Work Programme to the representative bodies from the railway sector acting on a European level."
25.2 (c)	"The Administrative Board shall adopt, by 30 November each year, and taking the opinion of the Commission into account, the Work Programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. That Work Programme shall be adopted without prejudice to the annual Community budgetary procedure."
	"If, within 15 days of the date of adoption of the Work Programme, the Commission expresses its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, amended if necessary, within a period of two months, in second reading either by a two thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States."

Interviews

7.87   Interviewees focused on the need to improve the Agency's accountability to the industry through suitable performance monitoring, and in particular mechanisms to increase the quality of its outputs. The Work Programmes do not identify any key performance indicators (KPIs), although they do list the year's main tasks and deadlines, and an annex to the 2009 annual report details the delivery of the Work Programme for the year.

Benchmarking

Progressing the Work Programme

7.88   We compared the Work Programmes of the Agency, EMSA and EASA, and identified activities for which no target completion date had been set, some of which were identified in the Work Programme as *ad hoc*. This amounted to 27% of the activities in the Agency's Work Programme, compared with 14% for EMSA and 8% for EASA.

7.89   Figure 7.9 compares the Agencies' performance for the remaining activities which have a target completion date set. The top of the chart shows that EMSA and EASA had both achieved over 70% of their Work Programme but the Agency has achieved less than 60% based on our approach described below. The bottom of the chart shows that the Agency's best performance had been in the ERTMS Unit, whereas in contrast the Economic Evaluation Unit had not completed either of the two activities planned for the year.

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FIGURE 7.9   BENCHMARKING: COMPLETION OF ANNUAL WORK PROGRAMME
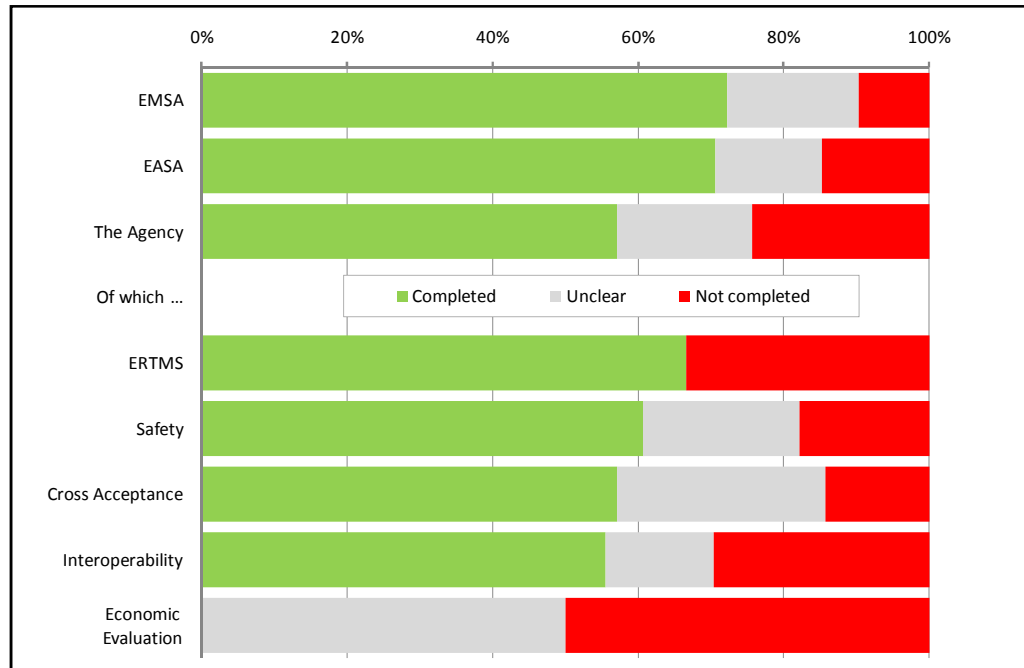
7.90   The analysis above is based on a number of assumptions, and does not reflect how updated Work Programmes may already include deferrals relative to the original programme. The analysis compares what was planned in the final approved Work Programme in 2009 compared to the 'Master Task sheet' for 2009 from the Agency's website that provides the information that is the basis for the Annual Report for that year. The document is not always explicit as to targets or achievements and therefore some activities we have labelled "unclear". It is possible that these may in fact have been completed. Also, the majority of activities were at least substantially complete. Finally, the addition of extra tasks throughout the year has not been specifically examined, with the possibility that work programme slippage is related to changes in the volume of ad hoc work over the year.

7.91   Updated figures (to March 2011) received from the Agency on activities in the 2009 Work Programme show that the Interoperability and ERTMS units have now completed 89%, the Safety Unit has now achieved 93% and the Cross-Acceptance Unit has now achieved 96% of the 2009 Work Programme.

7.92   In commenting the Agency's performance, it must be highlighted that in comparison with EMSA and EASA, the Agency receives a higher proportion of "ad hoc" or "on demand" tasks, which diverts staff resources from previously planned activity making it difficult to adhere to the planned timescales. This is aggravated by the fact that the budgeting and recruitment procedures which the Agency has to comply with lead to long recruitment timescales following the adoption of a new task in the work programme; resource shortfalls arising from ad-hoc requests or staff shortages often results in delays of output delivery. It should also be noted that there are other external factors that often require the tasks in the Work Programme to de rescheduled.

7.93   Nonetheless, in preliminary observations on the 2009 annual accounts, the European Court of Auditors noted that, as was also the case in the 2008 accounts, the Agency had carried forward 41% of Title II and 61% of Title III appropriations, and that significant transfers between budget lines took place in the final two months of the year. The auditors concluded that *"The number of transfers and the large carry-overs were mainly due to cancellation and delays in procurement procedures, recurrent delays in the execution of payments and significant changes made to the annual Work Programme during the year."*

Key Performance Indicators (KPIs)

7.94   ORR has long reported a number of KPIs relating mainly to its responses to queries and requests but also including some efficiency measures, such as the proportion of support costs. However, with the exception of the KPIs, ORR's reporting of outcomes does not normally link them to specific objectives.

7.95   EASA has reported a total of 37 KPIs since 2009, although not all are prominent in the annual report or even included in it.

7.96   Following an evaluation of EMSA in 2008, its 2009 Annual Report began to compare outputs to objectives but not to priorities. In 2009 EMSA defined a number of KPIs for external services, on which it intends to report in 2010.

7.97   The need for KPIs is supported by the horizontal study "Evaluation of the EU decentralised agencies in 2009", which states: *"Several agencies are making an effort to develop results-based performance indicators, usually connected to their activity-based management systems. However, actual use of such indicators is still extremely rare, meaning that the monitoring of results and impacts is almost non-existent."*

7.98   While this suggests that there is scope for improving monitoring arrangements across all Agencies, the study goes on to say, particularly in relation to one Agency, that *"The evaluation stated that the absence of activity-based costing (ABC) makes it difficult to monitor the effectiveness and efficiency of the organisation, and that the lack of this management information prevents the Board from exercising an effective supervision of the agency."*

7.99   We believe that the absence of key performance indicators from the Agency's management reporting processes represents a significant impediment to improving the Agency's performance. The monitoring of key performance indicators is common practice for most businesses and enterprises and KPIs are also employed by other EU Agencies, such as EASA. We would strongly advocate that the Agency identifies measures and metrics which reflect those elements of its activities that are critical to the achievement of its objectives. Typically these could include metrics relating to:

❙ Operating costs and budget

❙ Work Programme deliverables

❙ Work Programme time scales

❙ Stakeholder engagement

❙ Staff recruitment and retention

Analysis

Progressing the Work Programme

7.100   We examined the Agency's Annual Work Programmes for the years 2005 to 2010 inclusive, and noted that, as provided for in the Regulation:

I   The Work Programme must be based on existing and expected mandates and may not be consistent with the future budget.

I   The Administrative Board is required to adopt the Work Programme but has no control over either its content or its affordability.

I   As provided for in principle by Article 25.2 (c), the Work Programme has sometimes been updated during the year. For example, the 2009 Work Programme was amended in November 2009, long after the budget had been fixed, with many of the changes relating to the deferral of work which should already have been completed.

I   The Agency has neither a multi-annual programme nor a clear process for the management team to implement the annual programme once adopted.

I   The Court of Auditors in their report for 2008 stated: "Objectives are not always formulated in a "SMART" (Specific, measurable, achievable, relevant, timely) way but rather in a way which does not allow the identification of shortfalls against objectives and the assessment of achievements." Our review of the Annual Work Programmes confirmed this shortcoming in previous years. However, we have noted improvements in the 2010 and 2011 Work Programme with a detailed list of activities, objectives and timescales being set out. Opportunities remain for further improvements, such as incorporating a detailed breakdown of resourcing requirements by activity.

7.101   The Agency acknowledges the need to improve its Work Programme and budget planning and is now taking steps to introduce multi-annual programming and activity-based budgeting into its management processes. The Agency should report and explain delays to the Work Programme in its annual report, and set out recovery plans. The Agency should also develop a strategy that looks ahead over a longer time horizon (we suggest 2-5 years). This would facilitate the work of the Administration Board in approving and adopting the Work Programme by providing multi-year vision of where the Agency needed to be and how the activities within one specific Work Programme fit within that overall strategy.

7.102   Multi-annual programming has also been requested by the Court of Auditors and the Administrative Board has now agreed that this approach should now be developed.

Key Performance Indicators (KPIs)

7.103   We believe that an effective monitoring system is essential to improving performance. The Agency lacks an effective business performance monitoring system employing KPIs. We recommend that a suite of metrics are developed to enable measurement and monitoring of each of the Agency's core activities. The metrics should reflect the critical elements that contribute to delivering the Agency's objectives. Each of the Heads of Unit should agree to an appropriate

suite of KPIs and targets. They should be accountable for the achievement of the targets and monitoring and reporting of the KPIs should be integrated within the Agency's management reporting systems.

7.104   It would be appropriate to formulate a hierarchy of KPIs such that the highest level KPIs are reported to the Administrative Board.

The role of the economic evaluation unit

7.105   Several stakeholders surveyed and interviewed mentioned the role of economic evaluation in the Agency. Economic evaluation is specifically referred to in Articles 6, 16b paragraph 1 (e), (g) and (h) and 21a paragraph 8 of the Regulation, as summarised in Table 7.7 below.

TABLE 7.7   THE REGULATION: ECONOMIC EVALUATION

Article	Cost-benefit analysis required or proposed
6.4	"Any Recommendations on common safety methods (CSMs), common safety targets (CSTs) or other initiatives"
16b.1 (e)	"The possibility of using a smartcard combining licence and certificate for train drivers"
16b.1 (g)	"If asked by the Commission, the application of the provisions of the Train Drivers Directive to train drivers operating exclusively on the territory of a requesting Member State"
16b.1 (h)	"If asked by the Commission, another cost-benefit analysis following the expiry of any temporary exemption period"
21a.8	"Using a single type of laboratory equipment, a single reference track and/or a single certification body at Community level"

7.106   In recognition of these requirements, the Executive Director created and appointed a Head of economic evaluation charged with the task of evaluating Recommendations prepared by the working parties. The Economic Evaluation Unit currently has an establishment of eight staff.

Survey

7.107   The stakeholder survey did not raise the issue of economic evaluation, but a small number of survey respondents nonetheless commented that the Agency needed to improve the quality of the process and that economic evaluation has an important role to play.

Interviews

7.108   We probed this issue in the stakeholder interviews and were informed of similar concerns, specifically that:

I Evaluations have not always had access to sufficient data to support a robust conclusion. The Agency reported that obtaining reliable data could be problematic.

❚ Evaluations have not always included all relevant factors. One interviewee mentioned an example where inclusion of one previously-overlooked factor fundamentally changed the conclusions of the evaluation.

❚ Evaluations usually follow the findings of a working party rather than an initial mandate from the Commission. Interviewees suggested that an earlier evaluation of the initial mandate would show whether and under what circumstances a proposal was likely to be beneficial and hence inform and focus the activities of the working party.

7.109 However, some interviewees considered that the economic evaluation was sufficient to justify the Agency's Recommendations and, notwithstanding the specific requirements of the Regulation, some questioned the need for any economic evaluation at all. This may have been a result of the interviewees not fully understanding of the objectives of the economic evaluation unit or that the unit's contribution has been constrained by lack of supporting data.

Benchmarking

7.110 The benchmarking showed that all the comparator bodies carry out at least some economic evaluation, although we have not reviewed their obligations or methods in detail.

Analysis

7.111 Economic evaluation is still in its infancy in the railway environment in many Member States and at the EU level. The Agency is making substantial progress in this area, but this is limited by the amount of information that is currently available to support evaluations. This should improve in the future as the relevant Registers are populated.

7.112 Beginning the economic evaluations earlier might provide more time in which to identify the correct scope and gather robust data, and could also help guide and focus the working party processes. We have been informed that an element of this does occur for the majority of working parties, although its importance appears to be underestimated, at least by some working party participants.

7.113 Economic analysis has the potential to enable the Agency and its working parties to make more informed decisions and should help the Agency to prioritise its work more cost effectively. It should be regarded as a key element to the Agency's work and as more comprehensive information becomes available through the various Registers that the Agency is developing, more comprehensive and thorough economic evaluations should become possible. In view of this, we question whether 8 staff members will be sufficient to enable thorough economic evaluations to be undertaken given the anticipated future workload.

Summary of conclusions on the performance of the Agency

Assisting the Member States

7.114 Our survey of stakeholders revealed that generally there is a high level of satisfaction with the assistance provided by the Agency (7.8). However, when asked about its relationship with Member States, this received a more mixed response (7.9).

7.115   Problems often arise at the point of transposition of Directives into national law, reflecting underlying policy objective differences in Member States as well as difficulties in translation and interpretation (7.14).The Agency will need to focus on improving information dissemination so as to ensure that the Directives are later implemented into national law in the correct manner. The availability of guidelines in local languages may help facilitate this.

7.116   We conclude that the Agency is making a positive contribution in assisting Member States with meeting their obligations, but there are areas of opportunity for improvement, notably in the provision of:

I   Guidance documentation relating to the implementation of Directives, where DV29 was positively received as an example of which more should be prepared;

I   Information dissemination

I   Training and support

I   Guidelines in local languages

Involving expertise from industry and railway authorities

7.117   Given the specific requirements of the Regulation, the Agency appears to have been broadly effective in coordinating the expertise available in the industry into working parties capable of addressing a range of detailed technical issues. It remains to be seen, however, whether this approach is sustainable, as there are potential difficulties in attracting and retaining technical experts. However, we identify some possible measures that the Agency could take to facilitate the effectiveness of the working parties (7.28).

The consultation process

7.118   Overall, stakeholders considered the Agency to be performing relatively well in respect of consulting stakeholders, although a significant minority that took a contrary view, suggesting that the Agency's performance may not be good across all areas. (7.34)

7.119   The Agency has recently adopted the practice of publishing consultations on its website and making them open to responses from all interested parties. Broader consultation is almost invariably beneficial and can elicit a wide range of perspectives and insights.

7.120   A consultation exercise that is planned effectively and in advance can lead to more effective outcomes. We believe that the Agency should develop a consultation strategy that ensures that consultation is undertaken consistently and comprehensively. For this we believe a common template approach would help, where the principles are predefined and customised according to the specific subject and audience.

Relations with the Commission, finances, and operational choices

7.121   The roles and responsibilities imposed on the Commission and the Agency by the Regulation may, from time to time, lead to tensions at the working level. However, we have seen no evidence, from the comparator bodies or elsewhere, that these tensions are atypical of any two bodies required to work closely together. Our understanding is that the Agency's relations with the Commission

are broadly effective and we have found no evidence to suggest that a major change is required.

7.122 The Regulation sets down a number of detailed requirements for the operation of the Agency as established by the Commission. The Agency has no powers to make or impose decisions and can only forward Recommendations and Opinions to the Commission (7.46). The process of setting the Agency's budget is also defined by the Regulation. Its budgeting, staffing and workload are all determined by the Commission, the Council and the Parliament by independent and uncoordinated processes (7.64). It has no powers to decline, defer or prioritise the imposed workload in response to shortage of either suitable staff or funds. It therefore manages operations principally by extending timescales (7.64). In effect, work is completed, and funding is only used, once suitable staff have been recruited and have sufficient time available.

7.123 The Agency has plans to adopt a multi-annual activity-based budgeting (7.101). We believe that this strategy will should help the Agency to improve its resource and budget control.

7.124 Currently, of the activities that the Agency undertakes, the only area that we are aware of where there is potential for recovery costs is in relation to Opinions where they are requested by Member States, although we note that this has not been done to date. All other activities are essentially activities that are carried out on behalf of the Commission and there is little scope for these activities to be charged for. (7.57). Although we suggest that the Agency review this specific subject in further detail. (7.58).

Current seat arrangements

7.125 The location of the Agency in Valenciennes and its separate conference facilities in Lille result in significant administration costs for Agency staff travelling between the two sites and travel costs for many visitors from other Member States. We have examined the economic implications of the current arrangements and conclude that there may be occasions when working parties could be more efficiently held elsewhere, although we acknowledge that any financial savings could be modest relative to overall Work Programme costs. Retention of conferencing facilities in Lille is likely to be the most practical strategy for the foreseeable future, although, given the modular nature of the facilities, we recommend that the Agency examines the potential for reducing its dependence on the facilities in Lille and locating some future working party meetings at other locations, such as in Brussels or Paris, where this can be shown to be economically advantageous. (7.85)

Annual and multi-annual programming and performance indicators

7.126 Analysis suggests that the Agency achieves less than 60% of the Work Programme, compared with over 70% for the other EU Agencies (Figure 7.9). This may be of no practical consequence, if the Work Programme document is treated as an administrative formality, but it highlights the inconsistencies between the processes for defining the Agency's budgeting, staffing and workload described in paragraph 7.122 above.

7.127 The Regulation requires the Agency to set out a Work Programme, and the Administrative Board to adopt the Work Programme, despite the fact that it has no

control over either its content or its affordability. These formal procedures can take no account of the Agency's workload as it evolves.

7.128   The horizontal study "Evaluation of the EU decentralised agencies in 2009" noted that several Agencies are developing performance indicators, and suggests that there is scope for improving monitoring arrangements across all Agencies (7.98). The Agency acknowledges the need to improve its Work Programme and budget planning and is now taking steps to introduce multi-annual programming and activity-based budgeting into its management processes. (7.101).

7.129   We believe that the absence of key performance indicators from the Agency's management reporting processes represents a significant impediment to improving the Agency's performance. Key performance indicators are common practice for most businesses and enterprises and are also employed by other EU Agencies, such as EASA.

The role of the economic evaluation unit

An economic evaluation unit has been established but the quality of the work has been limited by lack of sufficient data to form robust conclusions or to include all relevant factors (7.108). We would expect that this will improve in future as information is collected and the relevant Registers are populated (7.111). However, economic evaluations of Recommendations, under Article 6.4, would often be of greater benefit if they were applied to the initial mandates rather than to completed Recommendations (7.108).

7.130   Economic analysis has the potential to enable the Agency and its working parties to make better more informed decisions and should help the Agency to prioritise its work more cost effectively. It should be regarded as a key element to the Agency's work and as more comprehensive information becomes available through the various Registers that the Agency is developing, more comprehensive and thorough economic evaluations should become possible. In view of this, we question whether 8 staff members will be sufficient to enable thorough economic evaluations to be undertaken for the anticipated future workload.(7.113)

8 The functioning of the Agency

Introduction

8.1 As of August 2010 the Agency had an approved establishment of 139 staff arranged into six Units as set out below in Figure 8.1. An increase in the establishment to 144 has been proposed for 2011.

FIGURE 8.1   THE AGENCY'S FUNCTIONS: ORGANISATION FROM AUGUST 2010
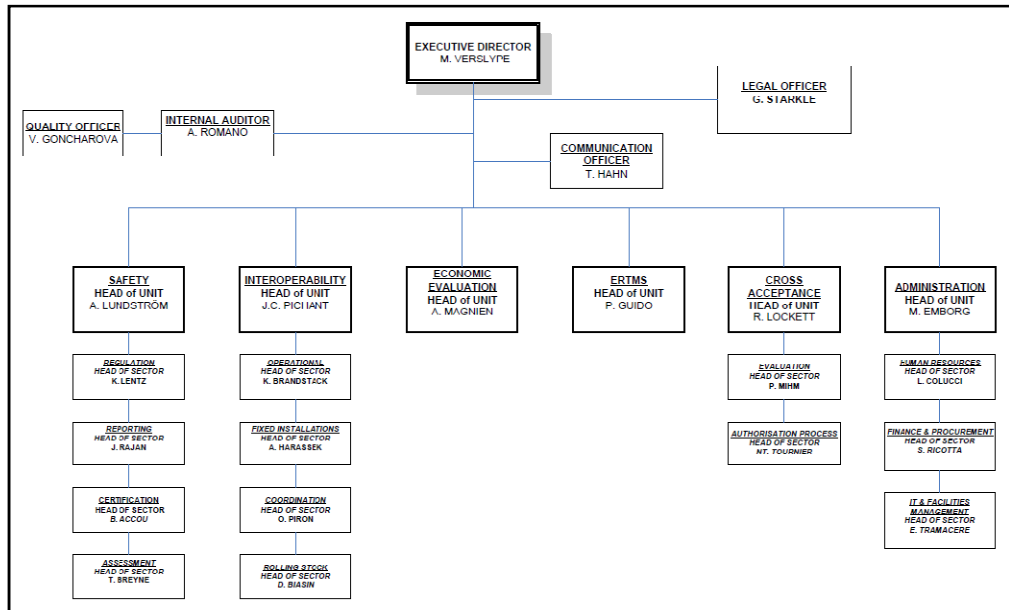
FIGURE 8.2   THE AGENCY'S FUNCTIONS: STAFF NUMBERS
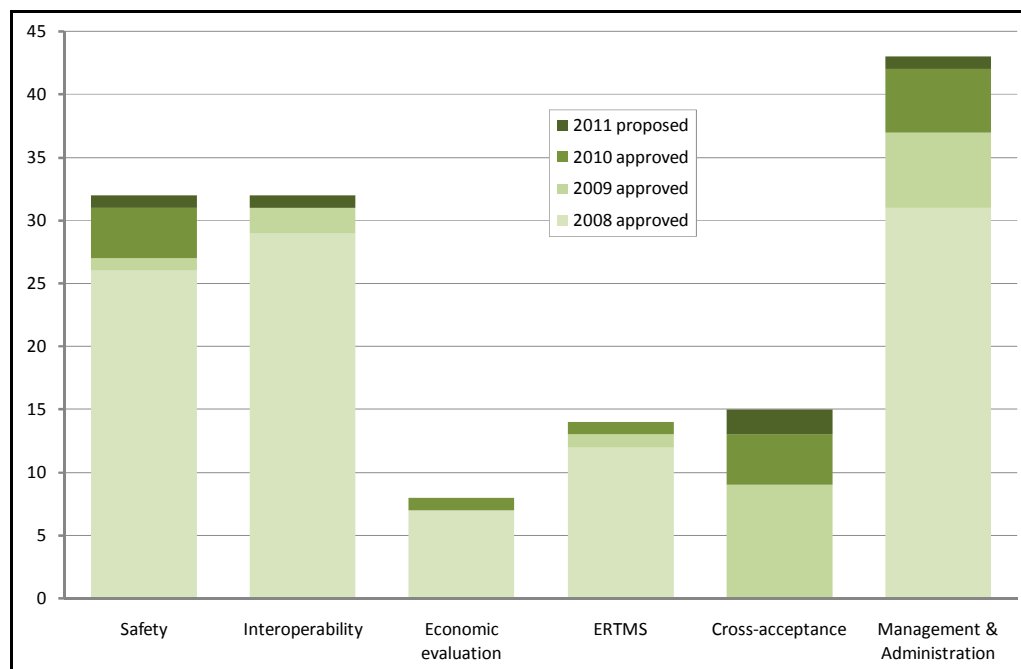
8.2 We were asked to examine:

The effectiveness and functioning of the Agency and its working practices as regards the structures created by the Regulation

❙ *The Administrative Board*

❙ *The powers of the Executive Director*

❙ *The working parties*

❙ *The networks of the National Safety Authorities and the Investigating Bodies*

❙ *The administrative procedures supporting the operational activities of the Agency*

❙ *The impact of the financial and staffing rules on the work of the Agency, including the administrative burden originating from the adoption of the Commission's procedures, rules and practices*

❙ *The overall internal organisation of the Agency*

Survey

8.3   We included a number of questions in the stakeholder survey relating to the functioning of the Agency.

8.4   Figure 8.3 summarises responses to survey Question 24:

"How would you rate the Agency's performance regarding:"

FIGURE 8.3   SURVEY RESPONSES: THE AGENCY'S FUNCTIONING

Note: further details of responses are given in Figures 3.9, 3.11-3.12 and 8.4-8.6.
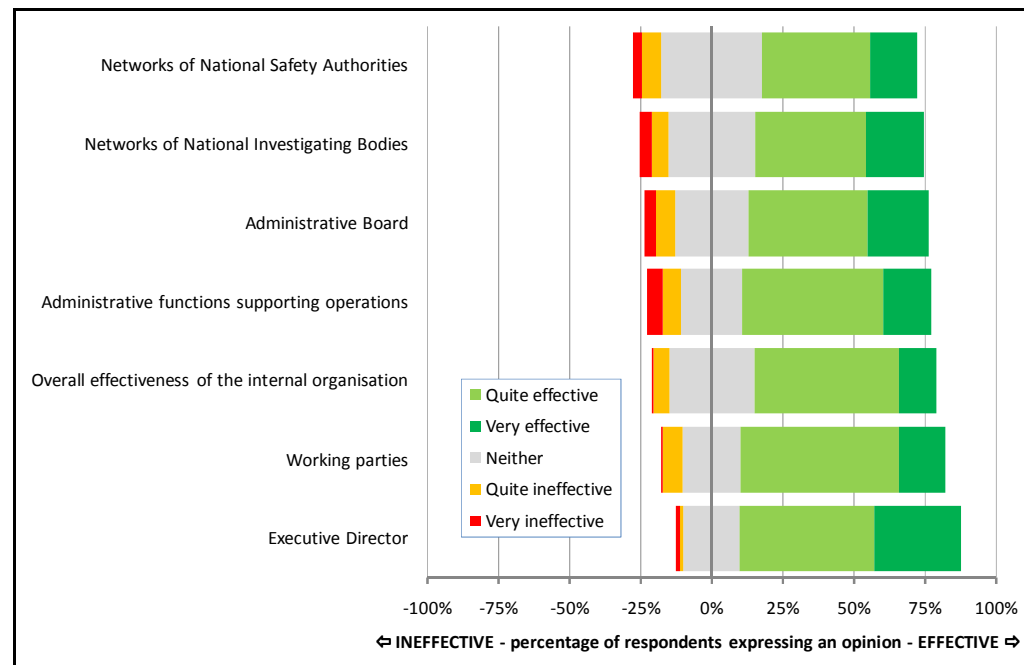
8.5   Overall the results indicate a majority view that the functions of the Agency perform quite well. The highest average ratings were given to the Executive Director and the working parties, both ranked as either very effective or effective by over 70% of respondents with an opinion. The lowest average rating was for the

networks of NSAs and NIBs, both ranked as either very effective or effective by under 60% of respondents with an opinion.

8.6   Further detail of stakeholder views was elicited from questions relating to specific Agency functions as described in the sections below.

8.7   We reviewed the working parties and the network of NSAs and NIBs in Chapter 3, as described in paragraphs 3.104 to 3.120 and paragraphs 3.130 to 3.131 respectively.

The powers of the Executive Director

8.8   The functions and powers of the Executive Director are defined in Article 30 of the Regulation, as set out in Table 8.1 below.

TABLE 8.1   THE REGULATION: THE POWERS OF THE EXECUTIVE DIRECTOR

Article	Text
30.1	"The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competences of the Commission and the Administrative Board."
30.2	"The Executive Director shall: (a) prepare the Work Programme and, after consultation of the Commission, submit it to the Administrative Board; (b) make the necessary arrangements for implementation of the Work Programme and, as far as possible, respond to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation; (c) take the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation; (d) establish an effective monitoring system in order to compare the Agency's results with its operational objectives and establish a regular assessment system corresponding to recognised professional standards. On this basis the Executive Director shall prepare each year a draft general report and submit it to the Administrative Board; (e) exercise the powers laid down in Article 24(2) in respect of the Agency staff; (f) prepare a draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39."
30.3	"The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or unable to attend to his/her duties, one of the Heads of Unit shall take his/her place."

Survey

8.9   Survey responses were generally positive about the role of the Executive Director.

Interviews

8.10   Interviewees repeatedly referred to potential tensions between:

I   The Executive Director's executive responsibilities, as set out in the Directive;

I   The expectation that the Executive Director would be a technical expert from the rail industry; and

I   The inevitably more detailed knowledge of individual technical areas of the Heads of Unit and their staff.

8.11   A particular concern was that the relative technical knowledge of the Executive Director and the Heads of Unit has in the past exacerbated a "silo" effect, in which Recommendations and Opinions provided by the Agency may be delegated to, or dominated by, the views of a single Unit or Head or Unit rather than the Agency as a whole. However, we have also been told that the Executive Director is aware of the issue and has taken steps to remedy it, and that industry discussions have reported that the coordination between the Units is improving.

Benchmarking

8.12   The benchmarking work suggested that powers of the Executive Director are similar to those in the other EU Agencies, EASA and EMSA. In contrast, the Office of Rail Regulation (ORR) has replaced a single "Regulator" with a structure in which an active Chief Executive is responsible to a Board comprised largely of the heads of the ORR's delivery units.

Analysis

8.13   The Executive Director prepared the Work Programme, as required, although as we note above has limited powers to balance revenue and expenditure and it is for the Administrative Board to notify the budgetary authority of any likely budgetary difficulty.

8.14   The Executive Director is required (Article 30 paragraph 2 (c)) to adopt internal administrative instructions, and to publish orders, but we have seen little evidence of standard procedures and processes for the Agency, for the working parties, and for the production, review and quality control of its outputs (as discussed in Chapter 3).

8.15   The Executive Director is also required (Article 30 paragraph 2 (d)) to establish an effective monitoring system and assessment system, although there appears to be only limited quantitative monitoring of the performance of the Agency as noted in Chapter 7 (paragraph 7.103).

8.16   In our opinion there appears to be substantial room for improvement in these last two areas, and we note in Chapter 3 (from paragraph 3.96) the need for improving quality and in Chapter 7 (7.103) the need to improve performance monitoring.

The Administrative Board

8.17 The Regulation sets out in Articles 25 to 29 the powers, composition, chair, meeting and voting arrangements of the Administrative Board, selected elements of which are set out in Table 8.2 below.
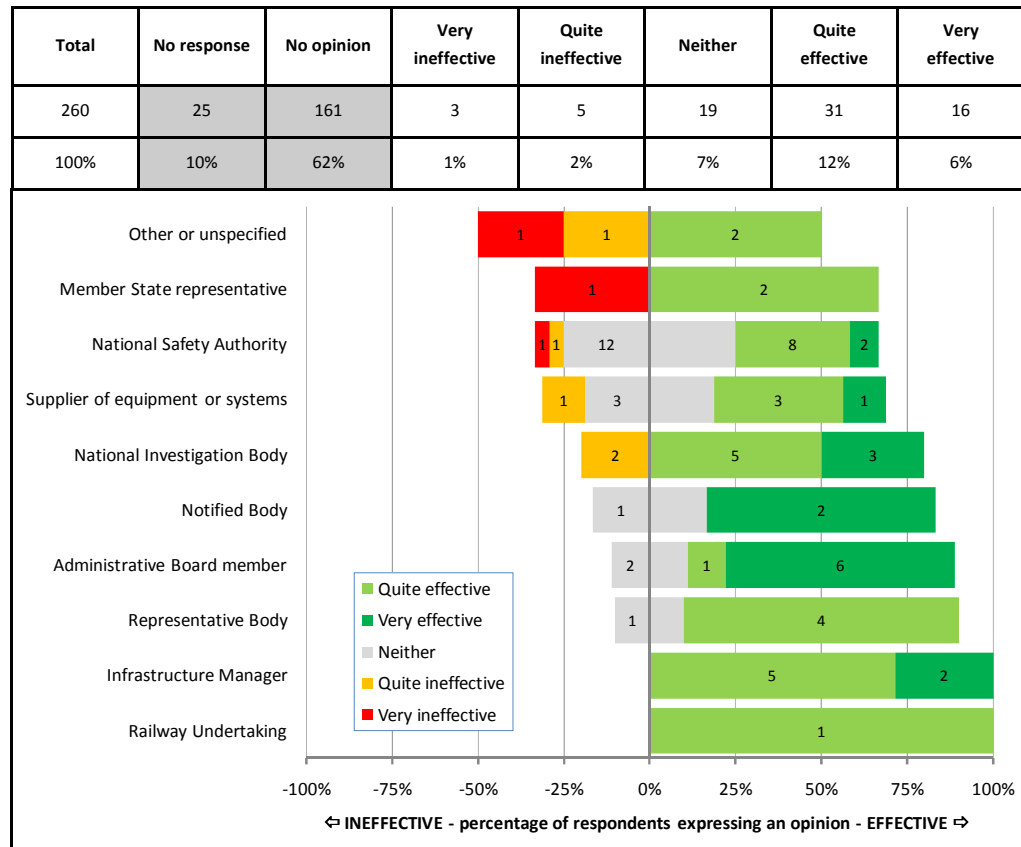
TABLE 8.2 THE REGULATION: THE ADMINISTRATIVE BOARD

Article	Selected text
25.2	"The Administrative Board shall: (a) appoint the Executive Director pursuant to Article 31; (b) adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the Member States, the European Parliament, the Council and the Commission; (c) adopt, by 30 November each year, and taking the opinion of the Commission into account, the Work Programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. That Work Programme shall be adopted without prejudice to the annual Community budgetary procedure. (d) exercise its functions in relation to the Agency's budget, pursuant to Chapter 6; (e) establish procedures for decision-making by the Executive Director; (f) define a policy for the visits to be carried out pursuant to Article 33; (g) exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 30(3); (h) establish its rules of procedure."
26.1	"The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of six representatives, without the right to vote, the latter representing at European level the following groups: (a) railway undertakings; (b) infrastructure managers; (c) the railway industry; (d) worker unions; (e) passengers; (f) freight customers. For each of these groups, the Commission shall appoint a representative and an alternate from a shortlist of four names submitted by their respective European organisations with a view to ensuring appropriate representation of all interests. Board members and their alternates shall be appointed on the basis of their relevant experience and expertise."
28.1	"Meetings of the Administrative Board shall be convened by its Chairperson. The Executive Director of the Agency shall participate in the meetings."
28.2	"The Administrative Board shall meet at least twice a year. It shall also meet at the instance of the Chairperson, at the request of the Commission, at the request of the majority of its members or of one-third of the Member States' representatives on the Board."
29	"Unless stated otherwise, the Administrative Board shall take its decisions by a two-thirds majority of its members entitled to vote. Each member entitled to vote shall have one vote."

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Survey

8.18 Figure 8.4 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: The Administrative Board?"

FIGURE 8.4 SURVEY RESPONSES: THE ADMINISTRATIVE BOARD

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	25	161	3	5	19	31	16
100%	10%	62%	1%	2%	7%	12%	6%

8.19 Of the 260 respondents, only 74 (28%) expressed a view, 64% of whom stated that the Administrative Board was Quite effective or Very effective. One of the three Member State representatives responding, and one NSA, stated that it was very ineffective. The low response rate is perhaps not surprising, given that few stakeholders have any direct involvement with the Administration Board. It is difficult therefore to draw any meaningful conclusions about the views of the wider stakeholder community from the survey results. However, we note that all the Administration Board members provided a response to this question and that none of them gave a negative view on the functioning of the Board.

Interviews

8.20 The consensus among the interviewees was that the Administrative Board added limited value to the functioning of the Agency. Many stakeholders advocated a greater role in the oversight of the Agency and its day-to-day tasks.

Benchmarking

8.21 The key issues appear to be:

❚ The composition of the Administrative Board

❚ The frequency with which it meets

8.22 These are compared with the comparator bodies in Table 8.3 below.

TABLE 8.3 BENCHMARKING: THE ADMINISTRATIVE BOARD

	The Agency	EMSA	EASA	ORR
Executive	1	1	1	5
Other voting members	4 Commission 27 States	1 Commission 27 States	4 Commission 27 States	7
Non-voting members	6 Sector 1 Norway	5 Sector 1 Norway 1 Iceland		
Observer			6 Balkans 20 Advisors	
Meetings (2009)	3	4-5	3	11-12

8.23 The powers of the Administrative Board are, as with those of the Executive Director, similar to those in the other Agencies, EASA and EMSA. The composition of the Administrative Board is also similar to that of the other Agencies, with a single Executive representing the Agency and over thirty other voting members including one from each Member State. The voting requirement for a two-thirds majority means that decisions may repeatedly be carried by a large bloc of largely passive members.

8.24 ORR, in contrast, is not an Agency of, or answerable to, government but an independent regulator. It has replaced a single "Regulator" with a structure in which an active Chief Executive is responsible to a Board comprised largely of the heads of the ORR's delivery units. The structure of the ORR Board is therefore more similar to that of a private company, with a number of senior Executives and a slightly larger number of non-Executives meeting roughly monthly.

Analysis

8.25 The Administrative Board is only required to meet twice a year and actually meets three or four times a year, dealing in 2009 with 24 decisions of which seven were by written procedure. This appears insufficient to give effective oversight of the Executive Director's approach to new mandates and the performance of its administrative functions. However, we note that the Administrative Board has now established a "Sub-Committee on financial, budgetary and staff-related issues" which we believe will help to improve the governance of the Agency.

8.26 The Administrative Board includes members from each of the Member States including Cyprus and Malta, neither of which has a railway. It is questionable whether this is appropriate and we note that the Horizontal Study also identified this issue. We are not convinced that a Board comprising of 38 members that meets only twice per year is the most effective means of assuring effective governance of the Agency. There are precedents for other Agency Board models as also observed by the Horizontal Study, for example EFSA that has a 15 member

board that is mainly composed of professionals and experts. Whilst the establishment of the sub-committee has increased the effectiveness of management oversight of the Agency, we believe that the governance of the Agency should be subject to further review. Feedback from stakeholders with experience of the Administration Board demonstrated that it does not provide effective governance over the functioning of the Agency. The size of the Board membership and the frequency of its meetings allow for little discussion and analysis of matters relating to the management and performance of the Agency's functions.

8.27   We recommend that an independent review is conducted to determine how the governance of the Agency could be improved so as to ensure that the operation and performance of the Agency's activities in relation to its Work Programme and objectives are subject to greater management scrutiny and accountability to stakeholders. The review should include evaluation of:

I   the terms of reference and membership of the Administration Board

I   the need for and role of sub committees with authorities delegated from the Administration Board

I   provision of systems for the monitoring and control of performance and quality

I   the structure and functioning of the Agency's management team, including accountabilities for monitoring and managing key performance measures (KPIs)

I   how the Agency engages with its stakeholders

8.28   We would anticipate that changes to the Agency's governance arrangements arising from this review would be likely to require amendments to the Regulation.

The internal organisation of the Agency

8.29   The Regulation defines the responsibilities of the Administrative Board (Articles 25-29) and the Executive Director (Articles 30-32), who is required to appoint other members of the Agency's staff in accordance with Article 24. The Executive Director may appoint one or more Heads of Unit (Article 30) but the internal organisation of the Agency is otherwise unspecified.

8.30   As the organisation chart in Figure 8.1 shows, the Agency currently has five operational and one administration Units, with the six Heads of Unit reporting to the Executive Director. Despite this structure, in practice Cross-acceptance and ERTMS overlap with Interoperability, and Safety and Economic Evaluation overlap with all the other Units.

Survey

8.31   Figure 8.5 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: And how would you rate the overall effectiveness of the internal organisation of the Agency?"

FIGURE 8.5   SURVEY RESPONSES: THE AGENCY'S OVERALL EFFECTIVENESS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	29	84	1	8	44	75	19
100%	11%	32%	0%	3%	17%	29%	7%

⇦ INEFFECTIVE - percentage of respondents expressing an opinion - EFFECTIVE ⇨
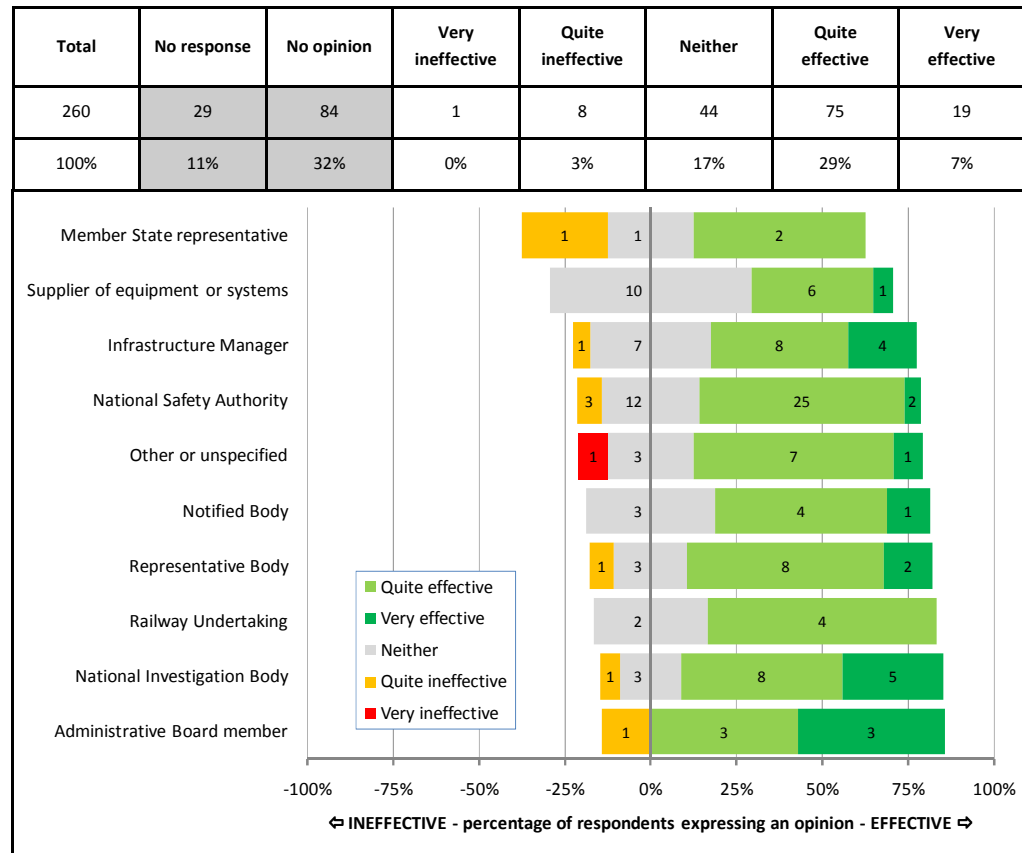
8.32   Of the 260 respondents, only 147 (57%) expressed a view, with the majority stating that the Agency was quite effective or very effective. However, the response rate was twice that of the question relating to the Administration Board. The results suggest that the majority of stakeholders consider the internal organisation of the Agency to be effective, although we note that the respondents expressing this view represented only 36% of those surveyed. There was, however, a significant minority of respondents who consider the internal organisation to be less than effective.

Interviews

8.33   A number of stakeholders interviewed were concerned that there was limited communication between different Units which tend to operate, as noted above, as technical "silos" with limited communication between them. There is a risk that Recommendations or Opinions developed largely or wholly within one Unit do not reflect the potential contribution of, or impact on, other Units.

Analysis

8.34   The Agency's internal structure is similar to that of the comparator EU Agencies and, to a certain extent, to the ORR, with a functional allocation of responsibilities between Units, and some overlaps. We found evidence that the Units have not always collaborated effectively, but our understanding is that these problems have been recognised and are being addressed through improved management communications and the sharing of draft texts between Units (as

highlighted in the 2010 and 2011 Work Programmes). Nevertheless, we consider that these more effective working arrangements could be reinforced with explicit procedures for internal consultation to ensure that all relevant Units are involved in particular decisions, as discussed earlier in Chapter 3 (3.96).

The administrative procedures and the financial and staffing rules

Survey

8.35 Figure 8.6 summarises responses by category of respondent to survey Question 24:

"How would you rate the Agency's performance regarding: The administrative functions supporting the operational activities of the Agency?"

FIGURE 8.6   SURVEY RESPONSES: THE ADMINISTRATIVE FUNCTIONS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Very ineffective	Quite ineffective	Neither	Quite effective	Very effective
260	29	106	7	8	27	62	21
100%	11%	41%	3%	3%	10%	24%	8%
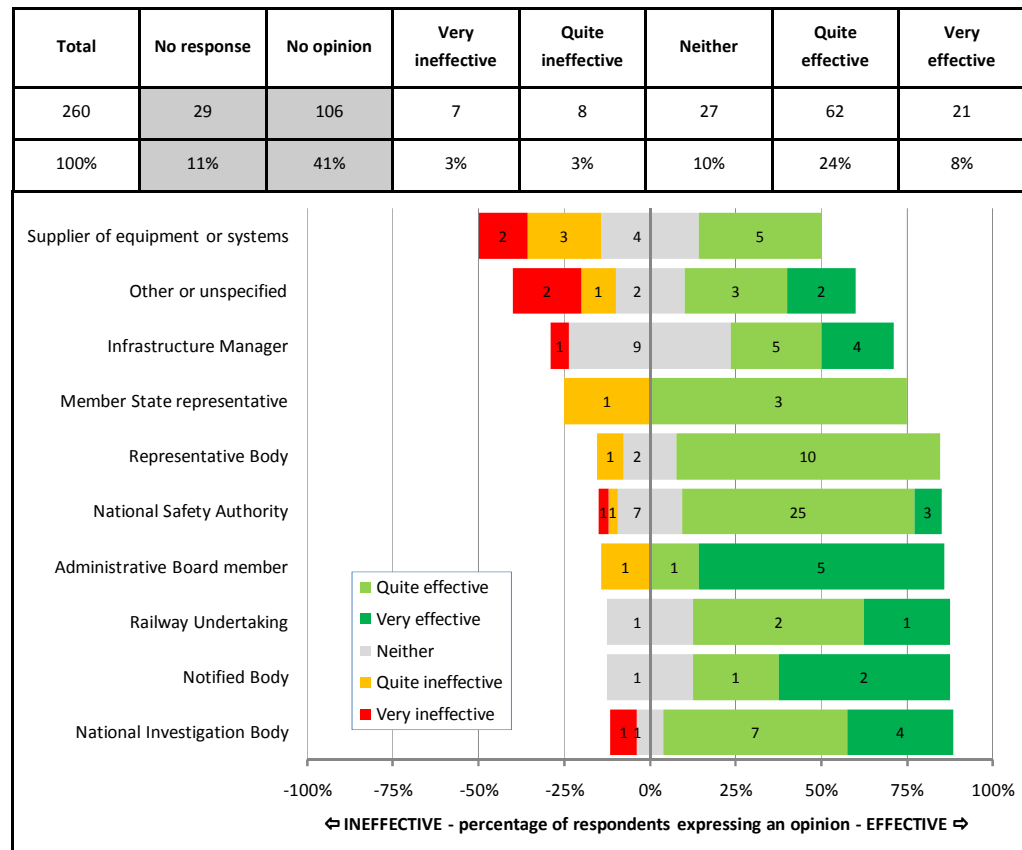
8.36 Of the 260 respondents, only 125 (48%) expressed a view, 66% of whom stated that the Agency was quite effective or very effective. Again, given the low response rate it is difficult to infer any firm conclusions from the survey. The most negative responses came from the suppliers of equipment, with specific concerns being expressed about delays in the reimbursement of expenses. Perhaps unsurprisingly the members of the Administration Board were the most positive group as they were with most of the questions relating to the functioning of the Agency.

Interviews

8.37 Key issues identified from the interviews included:

I The Agency's lack of authority to simplify the administration of "missions" to Lille, as discussed in paragraph 7.73 above

I The need for multiple signatures to sign off expenses

I Lengthy processes to appoint new staff

8.38 Article 24 of the Regulation limits the duration of temporary staff appointments to five years, extendable by a maximum of three years where required to guarantee continuity, but only for the first ten years of operation. Some interviewees were concerned that this compulsory turnover resulted in a continued loss of skills, but others highlighted the benefits of continually refreshing the Agency with expertise from the industry. Other stakeholders generally spoke of the benefits of refreshing the Agency with new staff.

Benchmarking

8.39 As discussed in paragraph 6.33 above, the other EU Agencies included in the benchmarking exercise have experienced similar recruitment problems. ORR does not follow the same process, and recruitment timescales there are usually much shorter.

Analysis - staff

The completion of the Agency's first five years has resulted in a peak in turnover despite taking advantage of the current flexibility to extend some contracts, which will also help spread the next round of renewal dates. However, as Figure 8.7 shows, the peak replacement requirement of 19 temporary employees, in 2013, is only a relatively small proportion of the Agency's total staff.

FIGURE 8.7   THE AGENCY'S FUNCTIONS: STAFF REPLACEMENT REQUIREMENTS
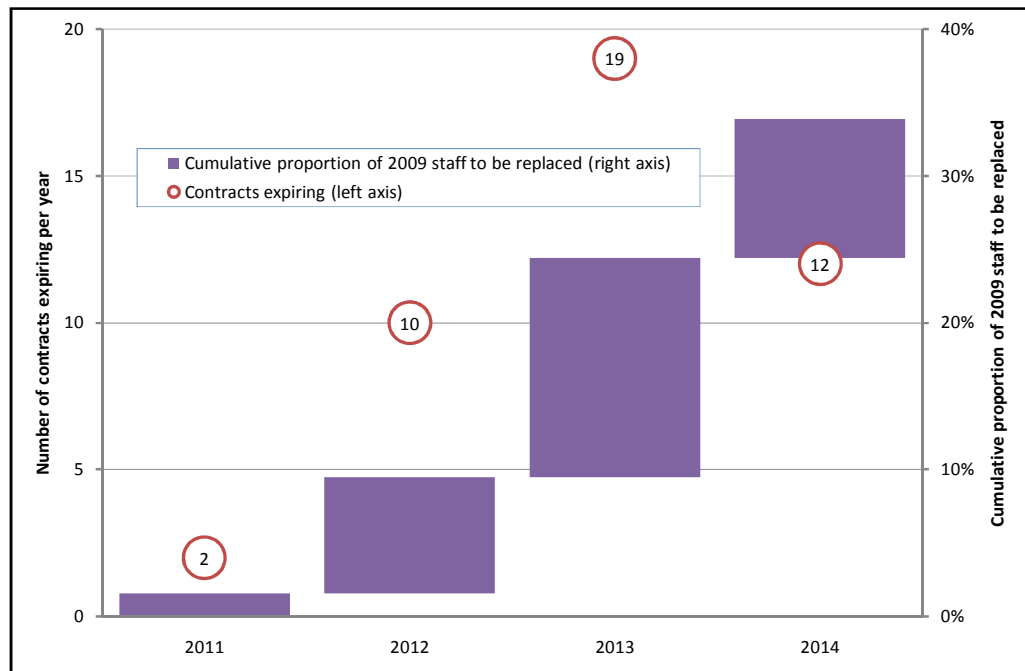
8.40   Over the next four years, the cumulative number of temporary employees to be replaced amounts to around 34% of the 2009 staff, an average of only 8-9% replacement per year. Although the Agency will also need to deal with natural wastage and recruitment to expand, the peak in turnover should not require an unusually large volume of recruitment in relation to the Agency's size.

8.41   However, recruitment of the replacements needed to keep established posts filled can take up to six months to complete all the processes required by the Staff Regulations. New posts must be identified in the annual Work Programme and recruitment to them can only start after it has been approved, resulting in a recruitment process lasting up to eighteen months, even if a suitable candidate can be found. We understand that some posts have been repeatedly advertised but are not yet filled, a point that was identified and commented on by the Court of Auditors.

8.42   The Agency works within the framework of the Commission and is subject to its rules and regulations, particularly the Staff Regulations as set out in Article 24. These rules impose a heavy burden on small Agencies, some of which falls on the Heads of Unit, limiting the amount of time they are able to devote to operational matters. The Administration Unit is the Agency's largest and employs 34% of its staff.

8.43   Other findings from our interviews with Agency staff revealed that many staff do not have job descriptions. Some Agency staff expressed concerns about the quality of services provided by the Administration Unit (a contrary view to that of stakeholders responding to the survey as shown in Figure 8.6 above).

8.44   The recruitment problems faced by the Agency were identified by the Horizontal Study "Evaluation of the EU decentralised agencies in 2009" [21], which noted that:

"The Agency experiences regular human resources difficulties, due to a combination of several factors:

- *1- high expertise required in each domain and strong competition for such expertise*

- *2 - type of contract (four years contract renewable up to a total period of eight years)*

- *3 - the location of the agency (no international school in Valenciennes for instance)*

- *4 - the protracted planning and budget process and long timescales between the authorisation of a post budget and the starting of work.*

Typically the budget for a new post will be authorised in December of the preceding year but will not be filled until the summer."

8.45   The study concluded that:

"This is a serious difficulty, because for each requirement there is a need for an expertise that cannot be easily transferred between tasks. Experts in wagon maintenance for instance, cannot realistically be expected to be also sufficiently

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[21] Evaluation of the EU decentralised agencies in 2009 Vol III p .143

qualified to work on the signalling system (ERTMS). According to the agency, the result is at the moment a chronic deficit of 20% staff according to Work Programmes."

8.46   Our analysis above suggests that whilst staff turnover is driven in part by the requirements of Article 24 of the Regulation, the volume of the implied turnover should be within a manageable level. However, we are concerned that this could lead to the mandated contract termination of key staff representing a significant risk. This could be compounded in the event of the simultaneous departure of key members of staff where the resultant loss of critical expertise and experience could cause a loss of continuity and potentially jeopardise the delivery of Work Programmes and undermine the process of improving the management and performance of the Agency.

8.47   We believe a more pragmatic approach is needed, with, subject to meeting appropriate criteria, temporary staff contracts, by exception, extending beyond the 5 year threshold (8.38). This would provide the Agency with greater flexibility and potentially mitigate disruption to the Work Programme and loss of continuity in knowledge sharing.

8.48   For this reason we recommend that Article 24 is modified to make provision for this option.

Analysis – procurement and financial control

8.49   From our interviews and discussions with the Agency we learned that they had identified a need to improve their procurement and other internal processes in the following areas:

❙ A need to enhance risk mitigation as a result of procurement activity failing to achieve its intended results. A knowledge and risk-based approach was needed to underpin more effective procurement. This issue was highlighted by the European Court of Auditors reports relating to years 2006, 2007 and 2008 where a number of deficiencies were identified in the sample of procurements that had been reviewed.

❙ Setting 'SMART' objectives and rigorous planning focusing on the development of an explicit link between procurement activity and the objectives defined in the annual Work Plan.

❙ Enhanced monitoring and reporting over contract execution.

❙ A need to move from compliance toward effective delivery.

❙ A need to develop and consolidate a common corporate culture, moving away from a silo orientated model toward a more integrated structure.

8.50   It appears that progress has been made on all of the issues above as they have not been repeated in following reports, although other significant issues have been raised in relation to the management of assets and payment of invoices. In relation to the latter, we note that the Agency performs substantially worse than the comparator Agencies, as shown in the table below.

TABLE 8.4   PAYMENT OF INVOICES (2009)

	ERA	EMSA	EASA	ORR
Percentage of invoices paid late (>30 days)	75%	25%	<1%	2.5%

8.51   We note that the horizontal study "Evaluation of the EU decentralised agencies in 2009" concluded that:

"There is an efficiency problem with respect to implementing the Staff and Financial Regulations since this represents a cost, particularly in the small agencies, and a constraint on flexible response to needs."

8.52   This suggests that many of the problems identified are perhaps endemic among EU Agencies, and that consequently they should be addressed at the Commission level.

Summary conclusions on the functioning of the Agency

8.53   During the five years since its formation the Agency has become well established as the primary organisation responsible for facilitating harmonisation in interoperability and safety across the European railway network. From our assessment we conclude that it is broadly carrying out all the functions required by the Regulation. However, we have identified a number of areas where the functioning of the Agency could be improved, notably:

I   Improved quality control, including the development of standard procedures and processes for the Agency, for the working parties, and for the production, review and quality control of its outputs

I   Effective systems for monitoring and assessment, including the establishment of a comprehensive range of KPIs integrated within the Agency's management reporting system

I   A more effective governance structure in which the operation and performance of the Agency's activities in relation to its Work Programme and objectives are subject to greater management scrutiny and accountability to stakeholders

I   Amendment to Article 24 of the Regulation to provide flexibility in the terms of temporary contracts of key critical staff

I   Process improvements to mitigate risks associated with procurement

8.54   We acknowledge that some of these issues have been identified by the Agency itself as areas in which it needs to improve, in particular, management of the quality of the documents that produces. However, corrective actions have been slow to materialise. We believe that the current governance structure is not as effective as it should be and may account for this lack of impetus. We believe that the Agency needs to develop a culture of continuous improvement and that a strengthened management structure and governance arrangements which focus on measurement of performance to deliver outputs aligned with the organisations objectives should be priorities for the Agency in the immediate future.

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8.55 Our conclusions relating to the functioning of the Agency are further detailed in Chapter 10.

8.56 In Chapter 9 we examine potential future roles for the Agency, which could supplement or supersede its current responsibilities. In our opinion, any extension or modification of the Agency's responsibilities should not be progressed at the expense of addressing the aspects of the organisations performance and functioning identified in this and preceding chapters as areas for improvement.

9 The potential future role of the Agency

Introduction

9.1 In this chapter we examine potential new roles for the Agency with specific reference to those listed in the task specifications for this study as shown below:

> *The existing system shall be assessed with a view to a possible amendment of the Regulation and the extension of the powers of the Agency. The contractor shall issue recommendations in that regard. Taking into account that the legal framework has been recently amended and is still in the phase of implementation by the Member States, the contract shall analyse further areas of improvement. The following indicative and not exhaustive elements shall be assessed with specific attention to the evaluation of the impact of the new roles of the Agency, the consequences in terms of financial and human resources and the possibility of self-financing new and existing activities:*
>
> ▌ *The process of certification of the railway undertakings and infrastructure managers*
>
> ▌ *The investigations taking place after railway accidents*
>
> ▌ *Spot-checks of components that are crucial for railway safety and random spot-checks on the territory of the Member States to verify critical safety aspects*
>
> ▌ *The level of supervision over the National Safety Authorities, including the question of a possible audit and inspections by ERA*
>
> ▌ *Monitoring the implementation of the EU railway safety and interoperability legislation by the National Safety Authorities and the Member States*
>
> ▌ *Authorisation (type approval/certification) of rail vehicles and the ERTMS equipment*
>
> ▌ *Dissemination of railway-related information and training by ERA, including its homogenisation aspect*
>
> ▌ *External dimension of the European railway legislation and cooperation with third parties, particularly in view of promotion of the EU technological standards*
>
> ▌ *Support to industry in implementation and management of new technologies for railways*
>
> ▌ *Any other additional role related to the activities of the Agency in the field of interoperability and safety whose development may be justified on the basis of the results of the evaluation*

Survey

9.2 We sought the opinions of stakeholders on each of these potential new roles for the Agency. The results are summarised below. Stakeholder views are examined

further as part of our assessment of each of the specific roles which are discussed in turn in the remainder of this chapter.

9.3   Survey Questions 27-30 examined specific proposals for expanding the role of the Agency.

9.4   Figure 9.1 summarises the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role:"

FIGURE 9.1   SURVEY RESPONSES: EXPANDING THE AGENCY'S ROLE

Note: further details of responses are given in Figures 9.2 to 9.11.
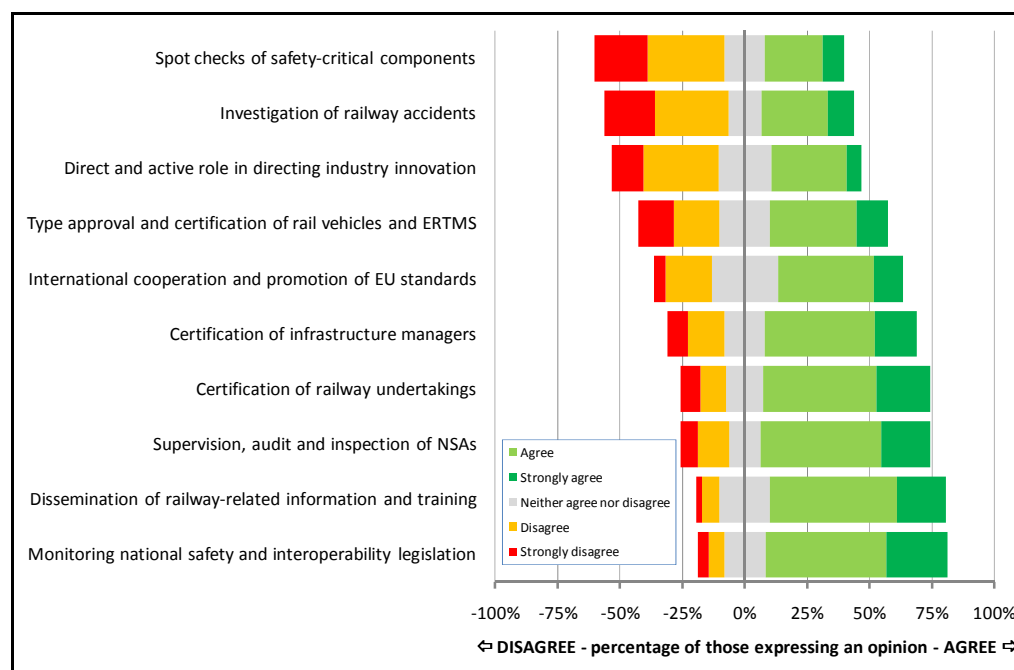
9.5   Survey respondents disagreed most with the proposals that the Agency should carry out spot checks of safety-critical components instead of NSAs, or always be involved in national accident investigations, and agreed most with the proposals that ERA should take a greater role in disseminating railway-related information and monitoring the implementation of legislation within the Member States. In the case of the first two of these roles the proportion of stakeholders in favour were outweighed by those not in favour.

Interviews

9.6   Most interviewees favoured an expansion of the role of the Agency.

9.7   Most also favoured consolidation and making best use of the instruments already in place. A number suggested that closing "Open points" in the TSIs should be a priority, and that time should be allowed to understand the cost impact of the existing framework. Others argued that the key to harmonisation was cross-acceptance rather than further regulation. One fear was that, without a continued focus on harmonisation, the TSIs might become merely an additional layer of administration.

9.8 Stakeholders also noted that any expansion of the role of the Agency would almost certainly imply an expanded budget and require additional skilled staff not immediately available in the market.

Analysis

9.9 The current role of the Agency, as set out in the Regulation, is designed to be complementary to those of other industry bodies including, in particular, the National Safety Authorities (NSAs) and National Investigation Bodies (NIBs) established under the Railway Safety Directive 2004/49/EC. Within the overall industry structure there is considerable interdependency between the role of the Agency and that of the NSAs and NIBs. Thus it would be difficult to make material changes to the Agency's role in some areas without also considering the necessary changes to the roles of these bodies, which might require new or amended legislation.

9.10 In the following sections of this Chapter we therefore discuss, firstly the role of the Agency in relation to the National Safety Authorities (NSAs) and then the proposed changes to the Agency's role that also relate to the NSAs. We then discuss the role of the Agency in relation to the National Investigation Bodies (NIBs) followed by the proposed changes to the Agency's role that also relate to the NIBs. We then examine a number of other potential future roles for the Agency.

The role of the Agency and the National Safety Authorities (NSAs)

9.11 Article 1 (d) of Railway Safety Directive 2004/49/EC required each Member State to establish a National Safety Authority (NSA). Many Member States have implemented the Directive effectively, with NSAs which are technically competent, responsive to industry's needs, and seen as impartial in their treatment of different parties. However, two major difficulties exist:

I In Member States with a small railway there may be insufficient workload to maintain the skills and retain the staff needed to carry out the many activities of the NSA. The same issue also applies to the NIBs.

I The perception of some in the industry that an NSA may be slow or inefficient in the granting of a safety certificate, not have sufficient administrative capacity or not be impartial between different applicants, in particular by favouring incumbent or established RUs.

9.12 Survey responses and interviewee comments on questions relating to the NSAs reflect a mix of perceptions of the relative importance of these issues. The tasks specifications noted that:

> *Also the cooperation between ERA and NSAs must be assessed because several models exist, from the current situation (no formal link, different competencies, only exchange of experiences and best practices), to the extreme situation where ERA replaces NSAs, through several other cooperative models.*

9.13 Currently the level of cooperation and overlap is essentially limited to the exchange of information within the network of NSAs, as discussed in Chapter 3 and the subsequent peer reviews that are starting to be undertaken with the active consent of all parties. In addition, Article 10 of the Regulation already allows the

Agency to issue Opinions regarding the decisions of NSAs if asked to do so by the Competent Appeal Body, by the NSA itself and in some cases by the Commission.

Interviews

9.14 The Stakeholders that we interviewed expressed a wide range of views on the competence and responsiveness of the NSAs, with significant support in principle from some for the Agency to supervise, audit or monitor the NSAs. Examples of views in favour are:

❚ NSAs should ask the Agency to provide Opinions, although there would remain an issue of whether, and in what circumstances, these would be binding.

❚ The railway sector cannot afford to be subject to either different national interpretations of European rules or months of delay before being able to introduce appeals, as is frequently the case in several Member States.

❚ The lack of clarify in the definition of national rules is a source of unproductive conflict with some NSAs which impose a very restrictive interpretation of the Safety Directive. One reported example is an NSA that considered that rules on electromagnetic compatibility of rolling stock with train detection systems are not national rules because the interface should be managed bilaterally between IM and RU.

❚ The peer reviews are welcome as a starting point, but NSAs should be monitored by the Agency, although it should not assume responsibility in all Member States merely because some are not felt to be working effectively.

❚ Anything that the Agency can do to ensure a level playing field for the sector in relations with the NSAs is to be encouraged. The NSAs all need to be working on the same basis and applying a common interpretation of the same EU legislation, and the task of co-ordinating them can only be performed by the Agency.

❚ It would probably be unworkable for a single European body to have knowledge of the whole European network. Other bodies are therefore necessary to provide local knowledge. However, they could and should apply consistent processes and the Agency should perform a quality assurance role.

❚ The Agency should ensure that the NSAs have sufficient capacity to undertake their roles in their respective national markets.

❚ The Agency should have the power to audit NSAs and make strong recommendations for harmonisation. Audits should check not only that the law is being applied but also how it is being applied. They should also assess the capacity of the NSAs to carry out their work effectively.

❚ The Agency should have the duty to check with all NSAs, by 2011 at the latest, the completeness of the national rules relating to all interfaces with the national network, to the extent that they differ from the target system specified in the TSI, and should have authority to audit how the NSAs perform their roles in the management of safety on the national railway systems.

❚ The Agency should have a role of clarification and intervention in the event of disputes with NSAs.

NSAs with a small workload or limited skills

9.15   We noted above that, in Member States with a small railway, there may be insufficient workload to maintain the skills and retain the staff needed to carry out all activities for which the NSAs are responsible. Potentially, in Member States with networks requiring no "Part B" certificate and used only by RUs first established in other Member States, the NSA might have no workload in granting safety certificates for RUs.

9.16   NSAs, like other professional organisations, need not only established principles and suitably-qualified staff but also a sufficient workload to keep them up-to-date and active. The Agency's 2009 Biennial Report on interoperability shows that the number of staff available to deal with all aspects of interoperability varies from 500 in the largest NSA to a single staff member in the smallest.

9.17   Some of the detailed functions of an NSA may be exercised so infrequently that the necessary skills have to be relearned whenever there is a requirement for them. This fundamental difficulty will remain while the railway for which the NSA is responsible generates insufficient regular workload in each technical skill area. In some Member States the NSA is responsible for sectors other than rail, but while this may provide better consistency in aggregate workload it will not resolve the need to provide expertise in specific railway issues on an infrequent basis.

9.18   If an NSA freely admits that it needs advice or lacks technical skills, there are some provisions for doing this through Article 10 of the Regulation.

NSAs perceived as slow, inefficient or not impartial

9.19   A different problem arises where an NSA is perceived to be slow, inefficient or not impartial. In many cases, such as where a local "Part B" certificate remains, there will be no alternative to dealing with the NSA.

9.20   Were the Agency to exercise an audit function in respect of the NSAs, there would be a risk that such a role could foster a more adversarial relationship between the NSAs and the Agency, potentially jeopardising cooperation in other areas such as the working parties. Such a role is anyway not specifically allowed for in the Regulation. However, there is reference to where the Agency can assist the Commission (primarily in Article 21b, but also elsewhere). This provision could enable the Commission to request assistance, which in this case should come in the form of a request to audit the NSAs.

9.21   There are potential benefits, in the long run, of a move towards or to a single European Agency replacing the NSAs. As harmonisation develops, and the workload of the NSAs becomes more similar, there will be less rationale and, potentially, no recurring workload, for some of the NSAs. It could be more cost-effective to have a single central pool of skills in the relevant technical areas, rather than to duplicate much of it in the Member States.

9.22   There would, however, be potential difficulties in the Agency recruiting and providing accommodation for all the necessary staff, and providing the relevant linguistics skills, unless over time all relevant railway documents and processes were harmonised, or issued in, a more limited range of working languages. The horizontal study "Evaluation of the EU decentralised agencies in 2009" found that

the Agency already has difficulties recruiting and retaining suitable staff, as discussed above in paragraph 8.44.

9.23   We discuss below, the proposed changes to the role of the Agency that have specific relevance to the NSAs. Our analysis looks at how the different models identified in paragraph 9.13 might address the two principal potential difficulties identified in paragraph 9.11 above within the context of:

I   carrying out spot checks on the network;

I   type certification;

I   safety certification; and

I   the Agency exercising an auditing role in relation to the NSAs.

Spot checks of safety critical components

9.24   The NSAs currently carry out spot checks on safety but the task specifications suggested that the Agency might also take on this role. The task specifications noted that:

> *These spot-checks are usually part of the monitoring/supervision role of the NSAs after having delivered safety certificates to RUs and safety authorisations to IMs. However the question of the execution of such checks has emerged at the conference on railway safety organised by the Commission on 8 September 2010.*
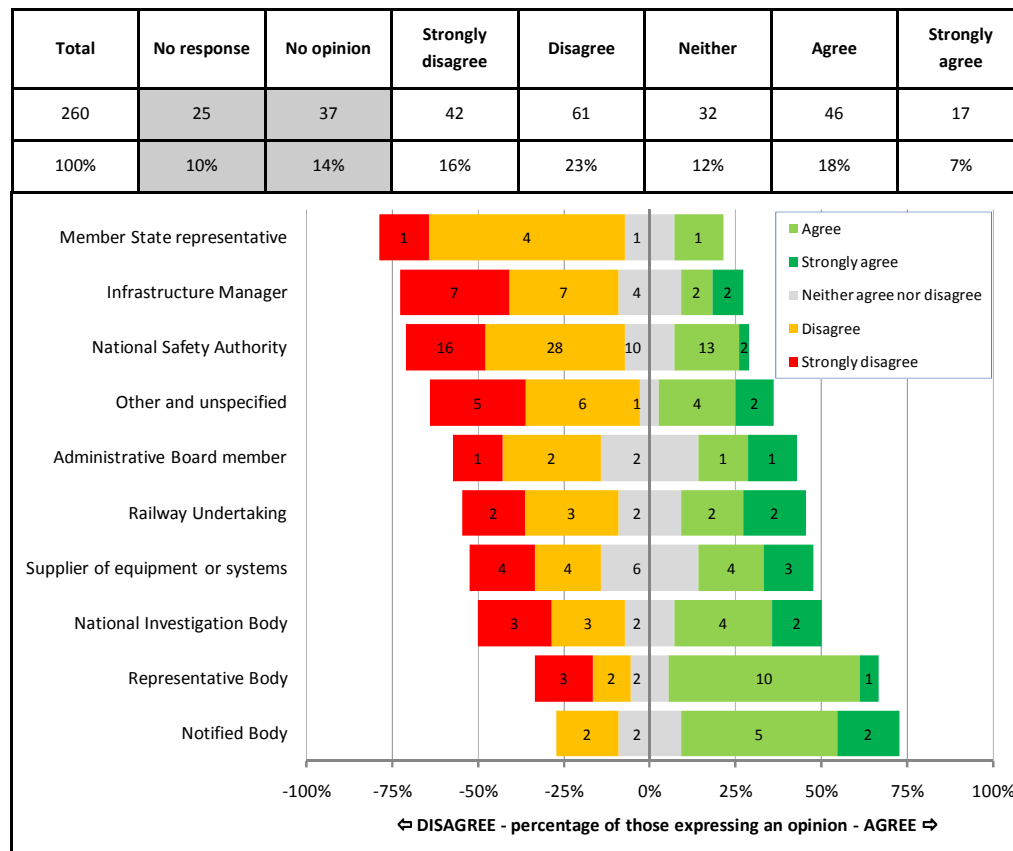
Survey

9.25   Figure 9.2 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Carrying out spot checks of key railway safety components instead of NSAs?"

FIGURE 9.2   SURVEY RESPONSES: SPOT CHECKS ON COMPONENTS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	25	37	42	61	32	46	17
100%	10%	14%	16%	23%	12%	18%	7%

9.26   Of the 198 expressing an opinion, 103 (52%) disagreed with the concept and 63 (32%) agreed, making this the only proposal with which a majority disagreed. The strongest level of disagreement was among national bodies including five of the seven Member State representatives responding, a large majority of the IMs, and the many respondents from the NSAs. Opinions were divided among the respondents of the NIBs, RUs and suppliers, with some strongly agreeing and some in strong disagreement. There was a higher proportion in agreement among the Representative and Notified Bodies, although these groups would not be directly affected by spot checks.

9.27   85% of those agreeing with the proposal also advocated the Agency having a greater role in the oversight of the NSAs, as discussed below.

More than half of the stakeholder respondents who expressed an opinion disagreed with the proposal and 21% of these were in strong disagreement. These results highlight a considerable level of concern among stakeholders and we would therefore suggest exercising caution in implementing the proposal to extend the role of the Agency to include spot checks of safety critical components.

Interviews

9.28   None of the interviewees made a case for the Agency having an inspection role, or actively replacing the role of the NSAs in this area, and several raised strong objections to the concept, although one suggested that the Agency could provide assistance in response to requests from the NSAs. It was pointed out that a

harmonised approach to monitoring and supervision is already being developed in the form of the Common Safety Method. Spot check inspections by the Agency would both require additional resources in the Agency and impose an additional burden on the industry.

9.29 In summary, the expansion of the Agency's role to initiate spot checks was not supported and was at best seen as a low priority.

Benchmarking

9.30 EASA can provide spot checks as part of its standardisation checks, but we have not identified either the number or the focus of the checks.

9.31 EMSA carries out inspections, but these focus on the certification of Recognised Organisations (ROs), rather than the suppliers, owners and operators of equipment, and only the Commission has the authority to take action after a failed inspection.

Analysis

9.32 Article 33 of the Regulation requires the Agency to inform Member States of planned visits, the names of the delegated Agency officials, and the date on which the visit is to start. We would expect that at least some Member States would be reluctant to subject the local industry to external spot checks, and note that only one of the seven Member State representatives agreed with the proposal. In order for any spot checks to be effective, this Article would need to be modified.

9.33 Preparation for spot checks might need to involve translation and interpretation of national rules to enable inspectors to identify and understand the requirements. It would also be necessary to devise a protocol on what notice should be given.

9.34 The introduction of spot checks also raises the issue of sanctions in the event that the spot checks were not satisfactory, more particularly the question of what powers the Agency would have to apply sanctions and how they would be enforced. One option would be for the Agency merely to inform the local NSA, which would then decide how to proceed, rather than imposing sanctions itself (which, in our view, could jeopardise the Agency's role as an industry partner).

9.35 The introduction of spot checks also raises the issue of sanctions in the event that the spot checks were not satisfactory, with the question of what powers would the Agency have to apply sanctions and how they would be enforced. One option would be for the Agency merely to inform the local NSA, which would then decide how to proceed. However, if the Agency were to impose sanctions we believe this could jeopardise its role as an industry partner and there would recommend against this.

9.36 In the airline industry it is accepted that EASA, the United States' FAA, other aviation safety administrations, as well as the aircraft and engine manufacturers, all have the effective power to suspend operation of particular equipment as a result of incidents, checks or research carried out anywhere in the world. We discuss in paragraph 9.110 below the extensive collaboration in response to a recent aviation incident. As with the powers to close airspace for security or safety reasons, whatever the resulting disruption, this is long-accepted international practice in a global industry which is highly conscious of public perceptions of safety and security.

9.37 In the national railway industries, in contrast, strong resistance could be expected to extending powers of inspection and enforcement to bodies outside the Member State.

9.38 We noted in Chapter 3, from paragraph 3.45, the work on CSMs, CSIs and CSTs, which is being undertaken to improve information transparency in the industry. The ongoing work in this area is facilitating the creation of an appropriate framework to render national spot checks consistent and transparent.

9.39 Therefore, based on our assessment of the current framework and the potential changes that would be needed in this area, as well as the findings of our stakeholder consultation, we do not believe that the Agency carrying out spot checks instead of NSAs would have any material benefit in terms of improving safety or efficiency.

Type approval and certification of rail vehicles and ERTMS equipment

9.40 The task specifications noted that:

> *The current legislation provides for the following common EU procedure for the certification of vehicles:*
>
> ❚ *Step 1: the conformity with the TSI is checked by an independent Notified Body*
>
> ❚ *Step 2: the applicant prepares an EC declaration of verification and sets up the file for the request of authorisation to place the vehicle in service*
>
> ❚ *Step 3: the National Safety Authority (NSA) delivers an authorisation of placing in service.*
>
> *The role of ERA could be possibly widened as follows:*
>
> ❚ *acting as a notified body*
>
> ❚ *acting as a one stop shop or coordinator for multi-Member States authorisation*
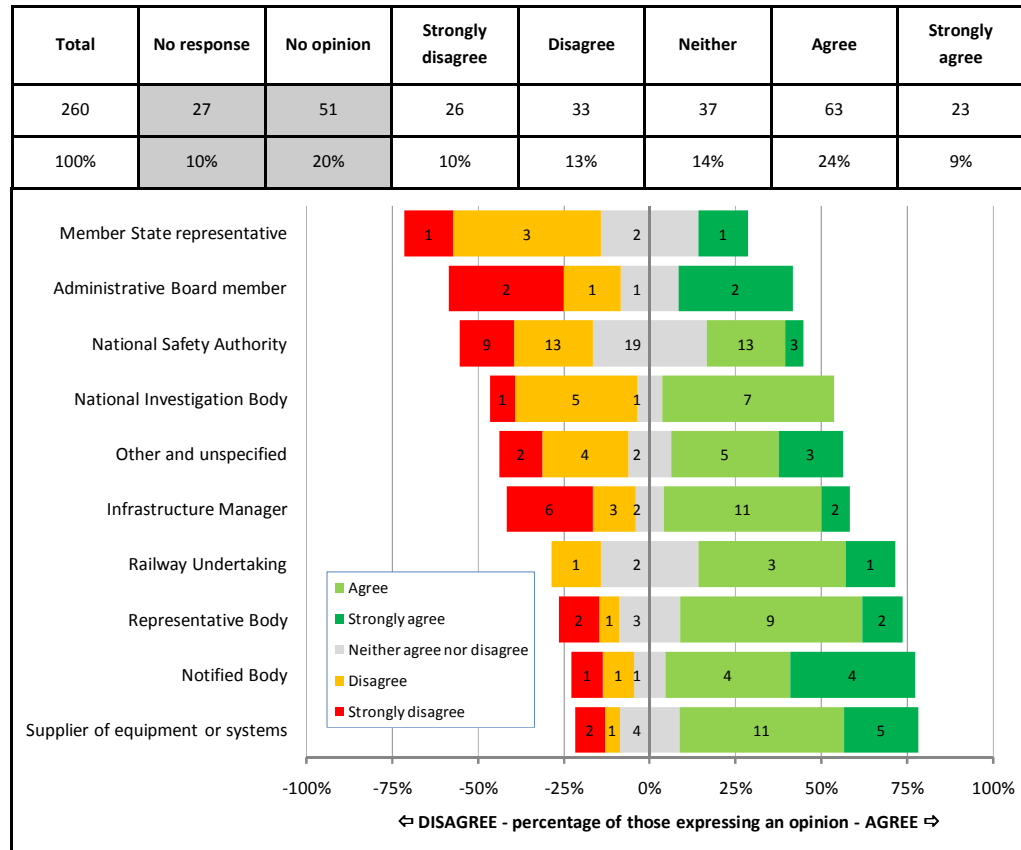>
> ❚ *acting as an authority*

Survey

9.41   Figure 9.3 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: An extended role in the authorisation process (type approval/certification)?"

FIGURE 9.3   SURVEY RESPONSES: TYPE APPROVAL AND CERTIFICATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	27	51	26	33	37	63	23
100%	10%	20%	10%	13%	14%	24%	9%

⇦ DISAGREE - percentage of those expressing an opinion - AGREE ⇨

9.42   Of 182 expressing an opinion, 59 (32%) disagreed with the concept and 86 (47%) agreed. The strongest levels of disagreement were among the seven Member State representatives and the Administrative Board members, NSAs and NIBs. The strongest level of support was among RUs, Representative Bodies, Notified Bodies and suppliers. There were more respondents that strongly disagreed than strongly agreed.

Interviews

9.43   Stakeholder views typically reflected one of two incompatible positions:

❚ Concerns with the current processes, a desire that they be improved, and a willingness for the Agency to be part of the solution; or

❚ Resistance to increased involvement of the Agency in the administration of the processes by local NoBos and national NSAs.

9.44 Many stakeholders felt that there was scope for improvement, commenting that:

❚ Some NSAs focus on components and systems which have previously been certified but are deemed to be high risk, rather than those which have changed since a previous certification;

❚ Even with ERTMS there is no genuine European authorisation system, and this leads to additional costs;

❚ "A true European type authorisation is required, granted by the Agency in the form of an inscription in the European Register of Authorised Types of Vehicles (ERATV)";

❚ There should be a European type authorisation "delivered at the outcome of the first authorisation of a vehicle of the type by one of the NSAs" and ERATV should be a tool to support this; and

❚ In one case, certification for equipment intended for use in more than one Member State should be dealt with by the Agency, which would invite the relevant NSAs to participate as appropriate.

9.45 Some interviewees were attracted by the idea of a "one stop shop". One suggested that the Agency should be mandated with the role of a "strong" European coordinator, with stronger powers of supervision of the NSAs and to resolve conflicts between the NSAs and the parties seeking type approval and certification.

9.46 Some interviewees were against the Agency becoming a NoBo. One argued that the same body should not both specify regulations and assess compliance with them, and also noted that a NoBo would require a wide range of technical skills, including installations for testing components or sub-systems.

9.47 One stakeholder suggested that the Agency should have the powers of an NSA, but provided no further details on how it would work alongside the NSAs in that event.

Benchmarking

9.48 Both EASA and EMSA act within a global framework in which the European Union is bound by international agreements.

9.49 EASA has the authority to undertake type certification and certify continued airworthiness of products, parts and appliances designed, manufactured, maintained or used by persons under the regulatory oversight of the Member States. One effect is that the continuing approval of not only EASA but also a number of other bodies, notably the United States' FAA, is required for continued operation of any equipment. In practice the relevant bodies work closely together on both issuing and withdrawing certificates of airworthiness.

Analysis of options

9.50 Some stakeholders were attracted by the concept of a "one stop shop" or coordinator role (beyond what is included in Articles 12 and 13 of the Regulation). We consider these options further below.

The Agency as an NoBo

9.51   A Europe-wide network of NoBos is now in place. None of the interviewees identified any problems with the functioning of the NoBos, and the Commission has not exercised the power in Article 13 to ask the Agency to monitor the quality of their work. While many NoBos focus on the national rules and language of a single Member State and NSA, some are already expanding or collaborating to deal with more than one NSA where there is a market need.

9.52   If the Agency, supported by the Commission, were to act as a NoBo and win work on a competitive basis, it is possible that this would be seen as unfair competition to commercial organisations. As with the proposals for spot checks discussed above, we do not believe that the same body should both specify regulations and assess compliance with them. In the immediate future, we would recommend that the Commission ask the Agency to monitor and review the NoBos according to Article 13 and, following this review, provide a recommendation on the best way forward which should focus on ensuring that the NoBos were sufficiently trained to meet the requirements of the industry.

The Agency as an NSA

9.53   The Agency could, in principle, act as an NSA by being given powers equivalent to those of EASA, as we mention above. However, the arrangements in aviation, whereby many bodies have parallel powers to remove or modify certifications of airworthiness, might merely complicate the process of authorisation within the railway sector. To improve or simplify the process it would be necessary for the Agency to have powers to overrule, or to replace, the NSAs. Furthermore, we note that four of the seven Member State representative survey respondents disapproved of an extended role for the Agency.

9.54   An alternative option would involve extending the existing informal collaborative arrangements, such that the Agency, other NSAs, or other technically competent bodies would carry out specific work on behalf of an NSA, which would still retain formal authority. This would require a strengthening of Article 10 of the regulation but could be a viable option as it would not encroach on the role of the NSA.

9.55   Any extension of the Agency's role into work currently carried out by the NSAs would not only require additional resources, but also knowledge of the local rules and, potentially, language. We would expect that the Agency would be able to develop cost estimates for the additional work, which could in principle be self-financing, although there would remain the practical issue of recruiting or training staff with suitable knowledge and language skills to work at the Agency.

9.56   In our opinion, the most favourable option would be for the Agency to ensure that the framework under which the NSAs operates is coherent, transparent and fully understood, thus avoiding misinterpretation of TSI requirements and decreasing the possibility of further barriers to entry and technical harmonisation being developed within Member States. In order to do this, the Agency will need to develop clear guidelines on how NSAs should to carry out type approval and certification, setting strict limits on the areas that can result in type approval and certification being blocked.

9.57   Our stakeholder consultation revealed that a significant proportion of respondents are in favour of the Agency taking on an extended role in the type approval and

certification processes. This reflects a level of dissatisfaction with the current operation of the system, in particular the way in which some NSAs implement the national requirements in relation to type approval. There was no evidence that the dissatisfaction was aimed at the functioning of the NoBos.

9.58 We understand, however, that the NoBos themselves would prefer further involvement from the Agency in this area to ensure that there is a consistent approach between technical (EN) standards and what is then included in the TSIs, in particular in relation to whether they are to apply TSIs or potentially updated EN standards that differ from those that have been included or quoted in a TSI.

9.59 Given that there is an established working market in this area it would seem contrary to the principles of liberalisation for a public body to then retake control by becoming the Notified Body. Therefore our recommendation is that the Agency should remain a partner to the market, but it should exercise an enhanced "coordination" role, in particular in relation to ensuring that the Notified Bodies are suitably trained and skilled to check the conformity of TSIs (possibly by the Commission calling on the provisions in Article 13 of the Regulation). The Agency should also ensure that it sets clear guidelines (beyond the EU declaration) on how NSAs are to review the submissions and what factors need to be taken into consideration when assessing the submitted documentation.

9.60 This should be accompanied by a strengthening of the provisions in Article 10 (and the relevant provisions in the Interoperability Directive) to allow for a competent appeal body to pass judgement on all matters relating to type certification, and not only on railway vehicles. We do not believe that those aspects relating to providing guidelines could be self-financing, nor the monitoring described above, although any training that resulted from the monitoring activities could be funded by the NoBos as it would have a direct (positive) impact on their revenue earning activities.

9.61 Article 21a of the Regulation requires that, on the basis of a report by the Agency on the certification process of the ERTMS equipment due by 1 January 2011, the Commission shall assess the costs and benefits of, inter alia, a single certification body at Community level. We understand that this relates only to the certification process of ERTMS and therefore a process for other railway equipment will be more difficult to reach. It would seem logical to defer any final decision until the results of this analysis are known, including the conclusions on its costs and benefits, because:

▌ at the very least this review will identify the steps that are needed (particularly in relation to national and EU competencies) to move ERTMS to a common system;

▌ it will provide a guide as to how wider certification can be carried out; and

▌ it will give an indication of whether or not wider certification is achievable.

Certification of infrastructure managers and railway undertakings

9.62   The task specifications noted that:

> *Whilst it seems logical to keep certification of infrastructure managers (IMs) at national level, the certification of railway undertakings (RUs) which operate across borders could be coordinated by ERA. In the current legislation RUs need a part A certificate, delivered by one MS and valid in the whole EU rail system, and a part B certificate which is only valid in one MS and which reflects the capacity of the RU to meet the national rules of that MS. ERA is currently developing a migration strategy towards a single safety certificate which would allow an RU to operate in the whole EU rail system with a single safety certificate. The potential role of ERA in those processes should be assessed.*

Survey

9.63   Certification of IMs, usually providing single national networks, and the RUs, potentially providing competing international services, raises different issues. In practice the stakeholder survey revealed broadly similar views on the scope for the Agency's involvement.

9.64   Figure 9.4 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Coordination of the process of certification of infrastructure managers?"

FIGURE 9.4   SURVEY RESPONSES: CERTIFICATION OF IMS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	25	34	17	29	33	88	34
100%	9%	13%	7%	11%	13%	34%	13%

9.65   Of 201 expressing an opinion, 46 (23%) disagreed with the concept and 122 (61%) agreed. The strongest levels of disagreement were by three of the seven Member State representatives responding and the IMs and NSAs who are the three stakeholder groups that would be directly affected by this change. The strongest level of agreement was among NIBs and the eleven Notified Bodies responding, none of whom disagreed with the proposal. The best three scoring respondent groups would not necessarily be directly affected by this change and therefore the results for these groups should be analysed in this context. Conversely, the level of disagreement among some of the respondents of the Member States, IMs and NSAs was such that, in our opinion, the proposal for the Agency's role being extended to coordinating the certification of Infrastructure Managers should be considered with caution.

Figure 9.5 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Coordination of the process of certification of railway undertakings?"

FIGURE 9.5   SURVEY RESPONSES: CERTIFICATION OF RUS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	24	27	16	22	31	95	45
100%	9%	10%	6%	8%	12%	37%	17%

9.66   Of 209 expressing an opinion, 38 (18%) disagreed with the concept and 140 (67%) agreed. The strongest levels of disagreement were among Member State representatives and the IMs and NSAs. The strongest levels of agreement were among Representative Bodies, suppliers and NoBos. These results show a lower level of disagreement with the principle of the Agency being involved in the certification of RUs compared to that with the principle of it taking a role in the certification of IMs.

Interviews

9.67   A number of points were made by interviewees regarding the certification of IMs and RUs, including that:

▌ Time should be allowed for CSIs and CSTs to mature, to understand differences in national safety levels, before changes were made.

▌ Inspection by NSAs and certification by the Agency would break the link between award and supervision and could result in knowledge gaps.

▌ The existence of a CSM on Conformity Assessment would naturally lead to harmonisation of the assessment criteria across the Member States.

❚ In some Member States, refusing, delaying or complicating the issue of a part B safety certificate is used to create a barrier to entry.

❚ The operating rules will remain so different that a part B safety certificate for each Member State (see 3.44) will continue to be necessary for a long time. In some Member States it is currently necessary to obtain a separate part B certificate for each route.

9.68   It was also suggested that there was poor coordination between the NSAs, affecting RUs operating across borders or using the same equipment in different Member States.

Benchmarking

9.69   Regarding aviation infrastructure, the Single European Sky II package passed by the European Parliament in March 2009 provides for increased responsibilities for EASA with the aim of ensuring precise, uniform and binding rules for aerodrome operations, air traffic management and air navigation service provision. EASA will also carry out standardisation inspections in the Member States. However, the implementation and impact of these changes is not yet complete.

9.70   EMSA carries out inspection visits to monitor the inspection by Member States of foreign ships and the facilities for the disposal of waste from on board ships. In many cases EMSA's role is to ensure that the Member State is correctly applying inspection standards specified by the International Maritime Organisation (IMO).

Analysis

9.71   The on-line survey, as set out above, used the term "coordination" in relation to the certification of both RUs and IMs. We acknowledge that this may have been interpreted in different ways by different respondents and we note that the Agency is already undertaking some coordinating activities.

9.72   On the certification of IMs (Figure 9.4), a large number of respondents favoured the Agency having a role in "Coordination of the process of certification". In this instance we intended 'coordination' to refer to setting the appropriate framework within which NSAs process and monitor certification. There is a role for the Agency to standardise the manner in which NSAs request information for certification and then evaluate the request. However, we do not believe that any material benefits would derive from transferring certification responsibilities away from the NSAs. If it is found that some NSAs are not exercising their certification responsibilities effectively, the Agency may then have a role in identifying and recommending measures to improve the functioning of the NSA.

9.73   We therefore do not recommend an extension of the Agency's role in relation to the certification of IMs in future, but that it continues to work closely with NSAs to assist them in ensuring that they are effective in exercising their certification responsibilities through the standardisation of the certification process across the EU.

Certification of Railway Undertakings

9.74   On the certification of RUs (Figure 9.5), it seems logical for work on migration to a single safety certificate to continue and we recommend that this is completed as

soon as possible, although not all stakeholders were convinced that this would be achievable in the near future. Two distinct issues need to be addressed:

I The harmonisation of safety certification, which the Agency can help coordinate; and

I The removal of artificial barriers to entry, and in particular the poor perceptions of some NSAs by some in the industry, which we identified in paragraph 9.11.

9.75 The principal issue we identified is the perception that, in some Member States, the certification process for RUs has been or may in future be abused to create a barrier to entry. This could be resolved by the Agency setting the framework in an appropriate manner on a similar basis to that for the creation of a single harmonised safety certificate, as envisaged in Article 7 of the Regulation.

9.76 As an example of how getting the framework right and leaving the decision making at Member State level can work effectively, we cite the case of the licensing of Railway Undertakings. Following the publication of the First Railway Package of Directives there was substantial uncertainty on what was required to obtain a licence in individual Member States. In the Railimplement[22] study that we undertook in 2005, our discussions with stakeholders pointed to both the operators and the Ministries themselves not having a clear understanding of what needed to be presented to national authorities or what needed to be reviewed by those authorities. Some of the discussions with stakeholders we had at the time suggested that a centralised licensing approach would be the optimal solution. Subsequently, the Commission set out a list of more detailed requirements for licensing.

9.77 Today, the licensing of railway undertakings works relatively successfully across Europe at a national level and guidelines are in place in the majority of Member States. International operators tend to prefer to obtain a specific licence in the Member States in which they operate, rather than use their existing licence to move freight and passengers across borders. This example suggests that, while initially there were a number of problems in setting up an efficient, effective and transparent framework, the system is now working effectively where appropriate guidance is provided from the centre (the Commission) and effective implementation is being carried out in a decentralised manner (in Member States). Recently, transparency has been improved further by the requirement that approved licences be placed on the Agency website, although we are not aware of any direct monitoring of this area by the Agency.

9.78 Having set the appropriate guidelines, the Agency will need to ensure that the NSAs are suitably trained to be able to carry out the activities required of them. This will not be necessary for all NSAs, but Agency assistance will need to be provided to those NSAs with limited resources and experience.

9.79 The issue of RU certification for international operations is likely to be become increasingly important as the liberalisation of railways in Europe develops. The

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[22] Railimplement: The implementation of the EU Directives 2001/12/EC, 2001/13/EC and 2001/14/EC in Member States, Steer Davies Gleave, 2006

established model of RU certification by the Member States through their respective NSAs has served adequately to date. We recommend that the Agency continue with its work on developing a single safety certificate as an important milestone in ensuring the reduction of administrative barriers.

9.80   Furthermore, we recommend that, having set the framework in an appropriate manner as described above, the Agency initially consider trialling cross border safety certification of railway undertakings for the ERTMS Corridors. After a 5 year period we recommend that the Agency review the cost and benefits of this activity with the long term (10-20 years) goal of extending this to the entire single European railway (potentially passing through an intermediate step relating to the TEN-T network).

9.81   We are aware that in the short term this will duplicate some of the activities of the NSAs and increase the call on the Agency's budget. However, in our view it will also reduce uncertainty and help to facilitate competition and growth.

9.82   This will need to be accompanied by a change in Article 10 of the Regulation, or the addition of a specific provision to this effect.

9.83   As with other areas of proposed change, it would be desirable for the Agency to provide support and collaboration to bodies in the Member States. The Agency would also require budgetary, staff and (potentially) language resources to take on certification work, transferring costs from some or all of the Member States to the Commission.

Supervision, audit and inspection of the NSAs

9.84   The task specifications noted that:

> *The Commission is currently assessing the implementation of the railway safety directive in the Member States. One of the aspects to be checked is the administrative capacity of the NSA to deliver its duties: certification of the Infrastructure manager, certification of the railway undertakings, authorisation to place into service vehicles and subsystems, licensing of drivers, monitoring railway safety, etc. There are signs that some of the NSAs may not be properly equipped to face the growing tasks. NSAs were set up since 2004 as required by the railway safety directive; however the level of development varies a lot among Member States. In accordance with the current legislation ERA has set up a group of NSAs and organises regular meetings that allow not only the possibility to discuss recommendations being prepared by ERA but also the opportunity to exchange experiences and best practices related to the daily tasks of the NSAs. Peer reviews are also being organised in order to deepen that exchange of experiences in a more efficient way. The opportunity and feasibility of the ERA to audit the administrative capacity of the NSAs will be assessed by the contractor.*
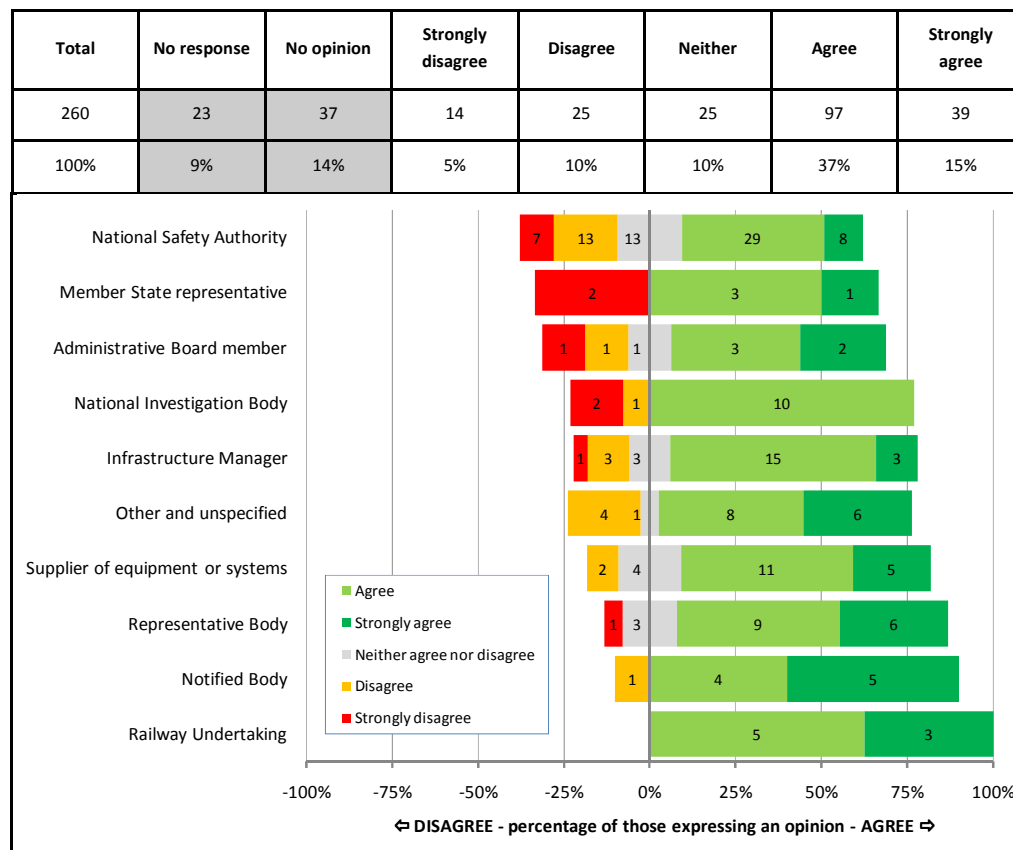
Survey

9.85 Figure 9.6 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: More of an oversight role with regard to the NSAs, for examples through audits of their procedures?"

FIGURE 9.6   SURVEY RESPONSES: NSA SUPERVISION AND AUDIT

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	23	37	14	25	25	97	39
100%	9%	14%	5%	10%	10%	37%	15%

9.86 Of 200 expressing an opinion, 39 (20%) disagreed with the concept and 136 (68%) agreed. All eight RUs responding and nine of the ten NoBos responding agreed with the proposal. Even including those expressing No response/No opinions, there was an overall majority in favour of this extended role. However, some stakeholders strongly disagreed with the proposal, particularly some of the NSA, Member State, Administrative Board and NIB respondents. Of the 70 respondents from the NSAs, opinions were divided with over half agreeing but almost 30% in disagreement. This spread of opinion across the NSAs may reflect the different levels of organisation maturity and experience among them. It could be expected that the more developed NSAs would be less likely to support a proposal that would expose them to an increased level of supervision and audit.

9.87 Despite a majority of stakeholders supporting the principle of the Agency taking a greater role in the supervision of the NSAs, there were some strong counter opinions, particularly among the NSAs. For this reason we would again suggest caution when assessing the benefits of this proposal.

Interviews

9.88 We noted in paragraph 9.14 a number stakeholder comments on the potential involvement of the Agency in supervision, inspection and audit of the NSAs. In addition, some interviewees had significant concerns over the desirability of this approach, and suggested that the remedy lay with the Commission. Suggestions included that:

▌ The Commission should create a duty for the NSAs to cooperate, with the Agency overseeing or facilitating this duty.

▌ The Agency's role should be analogous to that of EASA, described below, but that the Commission should carry out any supervision.

▌ The second package already provided a comprehensive framework and that the Commission should enforce it through some mechanism requiring the NSAs to have adequate capacity.

Benchmarking

9.89 EASA carries out standardisation inspections of the National Aviation Authorities (NAAs) to ensure that rules are being implemented in a standardised manner, and has the resources to carry out inspections in their place.

9.90 In the maritime sector the primary responsibility for activities such as surveys of ships lies with the Recognised Organisations (ROs), which are monitored by EMSA, rather than national maritime organisations. However, EMSA visits Member States to monitor their implementation of Directives, potentially requiring at least some monitoring of the national maritime authorities.

Analysis

While many interviewees expressed dissatisfaction with the NSAs or their processes, there was no consensus on how these could be improved, what mechanisms would be used and what changes to the powers and duties of the NSAs, the Agency and the Commission would be required.

9.91 NSAs can share information on staffing and skills through the NSA network. NSAs requiring support, or Member States perceiving that their NSAs require support, are in any case free to seek technical assistance from other NSAs, the wider industry or specialist technical or management consultants. It would be unrealistic and unnecessary to expect the Agency to be able to maintain availability of the range of skills, experience and language capability already provided in the market.

9.92 A potential area of opportunity is to achieve greater consistency between the NSAs and we recommend that the Agency works closely with the NSAs to develop an appropriate set of common guidelines. Such guidelines would define consistent standards relating to the NSA's activities such as the information to be requested from railway undertakings and minimum notice periods for spot checks. The guidelines should draw on best practice activities and processes already carried out by NSAs, with the Agency should facilitating their development rather than directing the decision making process. Whilst this approach may take longer than the Agency setting the guidelines directly, we believe a more collaborative approach will result in stronger support for the outcome among the NSAs.

9.93   The guidelines should identify the administrative capacity that a typical NSA should have in terms of budget and staff numbers, taking account of potential future activity. This has been highlighted as an important issue that the network of NSAs is seeking to address. We acknowledge, however, that setting such guidelines may have implications for national budgets.

9.94   Having established a common set of guidelines the Agency could then take on the role of monitoring and auditing the NSAs for compliance with the guidelines.

9.95   Our terms of reference requested an evaluation of whether the Agency should be auditing the administrative capacity of the NSAs, and we asked a survey question about whether the Agency should audit all the activities of the NSAs. The survey responses and the interviews were generally in favour of this.

9.96   The benefits of this approach, coupled with the introduction of appropriate guidelines, would be that stakeholders would have greater assurance that the NSAs were acting in a fair and non discriminatory manner, although their activities would continue to be performed at the national level by staff with the required specialist knowledge. A potential disadvantage of this approach is the risk that it could create a more adversarial relationship between the NSAs and the Agency and undermine the latter's partnership role. However, we do not believe this is an insurmountable problem and provided appropriate protocols are established.

9.97   The process of establishing the NSA guidelines would involve a Work Programme requiring a working party comprising Agency and NSA representatives. We recommend that once these guidelines are in place the Agency should then be given the role of auditing that they are adhered to. This ongoing audit role of the Agency would require dedicated resources and would therefore increase the costs of the Agency accordingly. We also note that this audit role would require a change to the Regulation, which could be identified in Article 10 paragraph 2 through the addition of a point (c) referring to this issue. However, we believe this approach to improving the consistency of the functions of the NSAs offers a considerably more practical and cost effective solution to implement and operate than an alternative in which NSA functions are centralised within the Agency or a separate European wide railway safety body. We do not believe that it would be practical for such an audit role to be self-financing.

The role of the Agency and the National Investigation Bodies (NIBs)

9.98   Article 1 (d) of Railway Safety Directive 2004/49/EC requires the establishment in every state of an accident and incident investigating body. These National Investigation Bodies (NIBs) must be permanent and independent of the actors of the railway sector. NIBs are required to carry out a safety investigation, independent of any judicial inquiry, into any serious accident on the railway or any accident or incident which could be a significant precursor to serious accidents.

9.99   The Directive defines a "serious accident" broadly, as any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other similar accident with an obvious impact on railway safety or the management of safety.

9.100   Even where the legislation has been correctly implemented and NIBs have been established, a number of potential difficulties arise, particularly for the Member States with relatively small railways. In an increasingly safe railway, they may have insufficient workload to maintain the skills and retain the staff needed to carry out safety investigations after every relevant accident or incident.

9.101   One proposal has therefore been to extend the role of the Agency in at least some types of safety investigations, which we discuss below.

Investigation of railway accidents
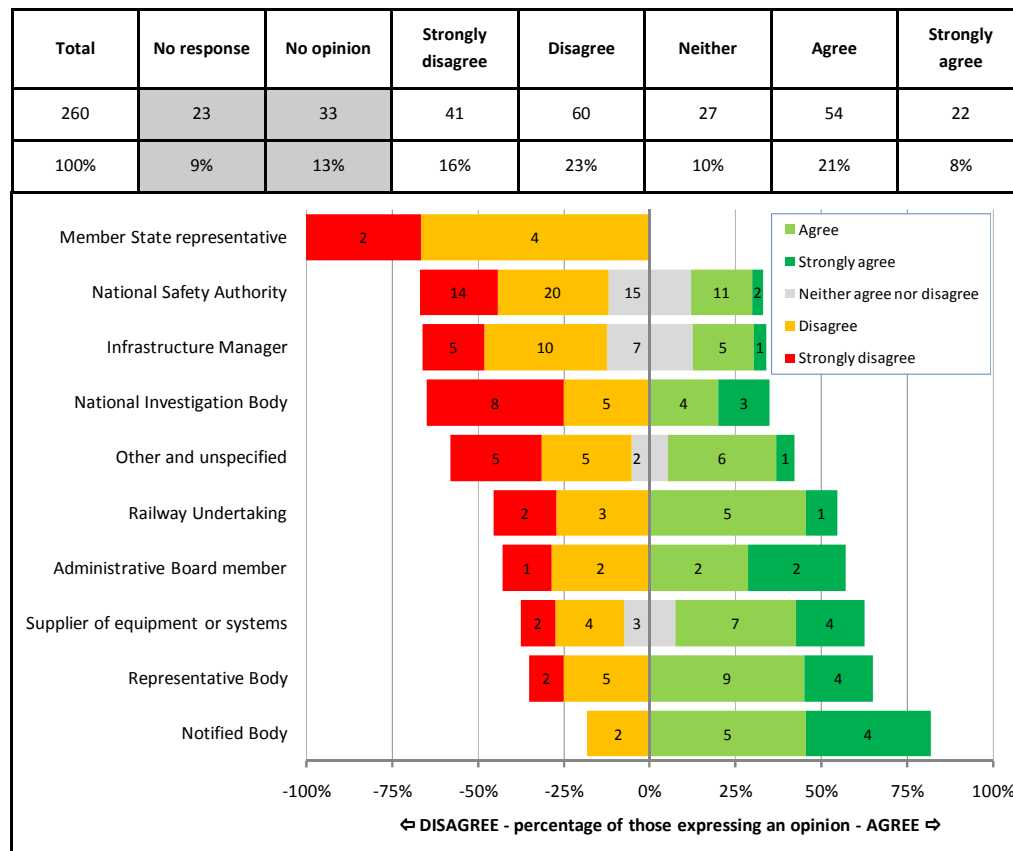
9.102   The task specifications noted that:

> *In the current legislation investigations are mandatory after serious accidents and they have to be performed by national investigation bodies (NIBs). ERA is allowed to participate upon request of the NIBs. The study should consider the possibility of mandatory participation of ERA in investigations of serious accidents, as well as the terms of any such participation.*

Survey

9.103   Figure 9.7 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Always be involved in national accident investigation (rather than only if invited by the national authority as is currently the case)?"

FIGURE 9.7   SURVEY RESPONSES: INVESTIGATION OF RAILWAY ACCIDENTS

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	23	33	41	60	27	54	22
100%	9%	13%	16%	23%	10%	21%	8%

9.104   This survey question had a very high response rate. Of 204 expressing an opinion, 101 (50%) disagreed with the concept and 76 (37%) agreed. All six Member States representatives providing a view disagreed to some extent, as did many national NIBs, NSAs and IMs. Importantly, the NIBs were also more against than in favour of such an approach with the largest single response being "strongly disagree". The results indicate a significant level of concern about this proposal among those bodies residing in the Member States, notably the NIBs IMs and NSAs. However, they do not explain the nature of those concerns. We investigated this further in our interviews.

Interviews

9.105   While it was acknowledged that some NIBs have only limited resources and skills, none of the interviewees favoured the Agency having mandatory participation in safety investigation. A number of reasons were cited, some of which had also been identified in our own preliminary desktop analysis, including:

❚ National legislation on the powers and duties of criminal and emergency authorities, and the constraints this imposes on safety investigation bodies;

❚ National railway standards and operating practices, which still differ and may be documented only in the local language;

❚ The belief that investigation should be seen to be carried out by a body recognised locally as being independent; and

▌ The limited value of the Agency being involved in accidents which were either minor or of relevance only for local standards or operating practices.

9.106   One view was that the Agency should become involved in investigations, but only in the case of "catastrophic" or "multi-fatality" accidents, presumably intending that this be a narrower definition than that of "serious accident" in the Directive.

9.107   Others suggested that the Agency could contribute expertise to the accident investigation process, but this should be through monitoring or auditing the NIBs, or accepting invitations to assist them, rather than leading investigations in its own right.

9.108   One interviewee suggested that the European Railway Agency Database of Interoperability and Safety (ERADIS) could be expanded to provide all the NIBs with information on incidents elsewhere.

9.109   There were also suggestions that the Agency could offer further training and guidance, which we discuss further below, particularly to NIBs still developing their teams and procedures.

Benchmarking

9.110   EASA has an accident investigation section which, at the end of 2009, had five staff, and in November 2010 sent experts to Singapore to participate in an incident investigation involving Australian-registered aircraft VH-OQA. The investigation was led by the Australian Transport Safety Bureau (ATSB) but also supported by counterparts from Singapore, Indonesia, France, the United Kingdom, Airbus, Rolls Royce and the airline, QANTAS. We understand, however, that EASA's role derives from its authority (under Regulation 216/2008) to approve foreign airline operators, rather than a specific power to investigate.

9.111   EMSA has the ability to provide accident response equipment, such as oil spill containment systems, but does not have any direct accident investigation role.

Analysis

9.112   We noted that NIBs in Member States with small railways may have insufficient workload, in an increasingly safe industry, to maintain the skills and retain the staff needed to carry out safety and accident investigations. However, they are likely to have a wide range of national knowledge and language skills, and investigative powers under national legislation, which are not available to the Agency.

9.113   We considered a hypothetical incident in one Member State involving RUs and/or passengers, particularly if injured or killed, from other Member States, which could:

▌ Require technical knowledge of the construction and use of equipment of a RU from another Member State; and

▌ Lead to pressure for the involvement of the authorities, such as the NIBs, of the Member State of the victims.

9.114   However, we saw no reason why this should act as an automatic trigger for involvement of the Agency, which might have no additional relevant skills or knowledge. It is for the Member States to determine whether to invite outside

assistance, and to do so from those most able to provide either additional technical knowledge or a perspective independent of local interests, as in the case of the air accident investigation referred to above. There was, for example, no apparent practical difficulty in involving the Agency in the Buizingen collision at the request of Belgian Special Parliamentary Commission.

9.115   We found no evidence that existing arrangements of inviting either the Agency or other NIBs to observe or assist where appropriate are not sufficient.

9.116   Mandatory involvement of the Agency without a specific invitation would be problematic for all the reasons identified by the stakeholders: national emergency and criminal procedures, national railway standards, language requirements, and staff and financial resources.

9.117   In addition, it would be necessary to define and limit the Agency's right to be informed, to defer or halt investigation until Agency staff had mobilised, to ask questions or to advise, to specify particular tests, inspections or research, or to direct the whole investigation. There would also be issues of what investigatory costs should be borne by the Agency in these circumstances, in contrast to an invitation where it would, in principle, be free to ask the relevant NIB to reimburse its reasonable costs.

9.118   Involvement only in major incidents, however defined, would reduce the Agency's potential workload but would not address any of these issues.

9.119   Against these real difficulties, we have not identified any benefits of mandatory involvement additional to those available through involvement by invitation. Furthermore, we have found no evidence to show how mandatory involvement of the Agency in accident investigations would contribute to the primary objective of improving the competitive position of the railway sector through developing a common approach to safety on the European railway system.

9.120   Nonetheless, we note the proposals for the enhancement of ERADIS to support the NIBs, which may be a worthwhile improvement. It may be appropriate to consult the NIBs on whether this would be beneficial, and it could in principle be self-financing if one or more NIBS provided not only a specification but also funding.

9.121   In conclusion, we do not recommend that the Agency should have mandatory involvement in the investigation of serious accidents. Whilst its participation should continue to be by invitation only, we suggest that such invitations may be requested by the relevant Member State (such as the transport Ministry or the permanent representative in Brussels) and not limited to the respective NIBs.

9.122   However, the Agency does have an important role to play in facilitating the network of NIBs. Some NIBs have been established for many years, are highly experienced and have advanced systems of accident investigation. However, we note that some NIBs are less well established and have limited resources. Whilst the Member States are responsible for ensuring that their NIBs have the appropriate skills to deal with accident investigation when they are needed, the Agency could play a greater role in helping to remedy these disparities. As discussed in Chapter 3 from paragraph 3.144 the Agency could facilitate, through the network of NIBs, increased co-operation between them, sharing best practices and resources where appropriate. The Agency could also facilitate knowledge and

data sharing. We acknowledge that this is already done to a certain extent within the network, although we suggest that this could be improved by structuring meetings so that they are focused on identifying where best practice in one NIB can be applied in others.

9.123   We consider that any measures to improve the capability and functioning of the less developed NIBs should not impose any unnecessary burden or restriction on the functioning of NIBs that are already well developed and highly effective. However, we recommend that the Member States be required to report on the capability and functioning of their NIBs to the Agency and that the Agency has an audit/reporting role, as suggested in relation to the NSAs (9.84 - 9.97).

Monitoring implementation of safety and interoperability legislation

9.124   Article 9 (see Table 3.3) requires the Agency to submit a report on safety performance every two years. Article 14 (see Table 3.4) requires the Agency to monitor progress with the interoperability of the railway systems and to present and publish a report on progress every two years. The task specifications required consideration of the possibility of extending the monitoring role of the Agency to assess the effectiveness of safety and interoperability legislation and to report to the Commission on non compliance:

> *The idea of involving ERA in the process on behalf of the Commission will be assessed. A possibility of conducting technical investigations to monitor the effectiveness of the application of the legislation will be also explored, as well as an obligation to report the cases of non-compliance to the Commission with the view of opening an infringement procedure.*

Survey

9.125   Figure 9.8 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Monitoring the implementation of the EU railway safety and interoperability legislation at a national level?"

FIGURE 9.8   SURVEY RESPONSES: MONITORING IMPLEMENTATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	23	9	10	14	38	110	56
100%	9%	3%	4%	5%	15%	42%	22%

9.126   Monitoring implementation of safety and interoperability legislation achieved more support than any other suggested extension of the Agency's role. The question also received a high response rate. Of 228 expressing an opinion, 24 (11%) disagreed with the concept and 166 (73%) agreed. Opinions were divided among the seven Member State representatives. This could reflect differing positions according to whether the Member States concerned were compliant or not with the legislation, although we note that the sample size was small among this group.

9.127   No representatives of the NoBos or NIBs disagreed with the proposal. The relatively high level of support shown by the RU and supplier representatives suggests that, unsurprisingly, those bodies that are set to benefit from removing barriers to entry in the rail sector recognise value from better monitoring and enforcement of the legislation.

Interviews

9.128   In contrast to the survey findings of broad support, interviewees expressing a view were generally more cautious. The Agency already produces biennial safety and interoperability reports which help the Commission to identify failures of implementation. Stakeholders were sceptical that an additional monitoring and reporting role would address what was seen as the key problem, the time required by the Commission to enforce Member State obligations. The general view of interviewees was that the Agency should support the Commission as an advisor or monitor, but not on deciding whether a Member State was infringing EU law.

9.129   EASA not only monitors the implementation of legislation but, as noted above, carries out standardisation inspections of the National Aviation Authorities (NAAs).

9.130   EMSA supports the Commission by providing consistent and comparable technical reports on the implementation of EU maritime legislation. EMSA's ongoing inspection work covers Member States, third countries with seafarers' training systems recognised or to be recognised at EU level, and organisations that are recognised by the EU Member States when acting as flag states.

Analysis

9.131   The Regulation already allows the Commission to ask the Agency to monitor implementation of Community Legislation through Article 21b in particular in relation to:

❙   "…(a) communicating information on how specific aspects of the Community legislation are implemented;

❙   (b) providing technical advice in matters requiring specific know-how; and

❙   (c) collecting information through the cooperation of national safety authorities and investigation bodies provided for in Article 6(5)."

9.132   The proposed potential future role would take the monitoring function a step further than the current legislation requires, with the Agency actively undertaking detailed investigations of the application of the spirit, as well as the letter of the law and making recommendations, where relevant, on potential activation of infringement procedures.

9.133   The need for monitoring compliance and a process for addressing infringements has been demonstrated with many of the rail Directives. Problems remain in many Member States, as the number of infringement proceedings that have been initiated by the Commission shows. We note that the Safety Unit of the Agency is already undertaking some form of monitoring of the implementation of the Safety Directive in Member States although we are not aware that this has been formalised through a specific request (Mandate) by the Commission.

9.134   An argument in favour of the Agency undertaking detailed technical evaluations of the implementation of rail legislation is that it is as well or better placed than Commission, having the relevant expertise and understanding of the requirements. This is particularly the case in relation to the Safety and Interoperability Directives since the Agency was responsible for drafting the Directives and the related TSIs. However, the turnover of key Agency personnel driven by the terms of the temporary contracts (as discussed in Chapter 8) may lead to a loss of some of the knowledge and expertise currently held within the Agency.

9.135   We believe that the proposed role would amount to an additional workload on the Agency's resources and would need to be supported by appropriate budget provision. However, we would anticipate this being relatively small and there would potentially be some synergy with other monitoring activities that could be taken into account in developing a revised resource plan and budget.

9.136   The proposal will require the modification of Article 21b, in particular the removal of the relevant part of paragraph 2 of Article 21b "…carried out without prejudice

to all other tasks assigned to the Agency…" as this monitoring activity would become a key responsibility. We do not envisage any problem with this.

9.137   The main risk remains that the role of partner to the industry would be jeopardised as a result of this new role. The Agency would move to being the policeman of the sector telling the Commission which Member States they should be pursuing. This could harm relationships within working parties and also within RISC.

9.138   We recommend that there is a role for the Agency to play in monitoring the implementation of Directives, but we believe that this should be limited (in terms of safety) to extending paragraph 2a of Article 21b to include communicating information on implementation and carrying out investigations on the effectiveness of implementation (assessed by reference to whether barriers to market entry have been removed. However, the role should not include identifying potential infringements and communicating these to the Commission. Similar provisions should also be added to Article 14 to ensure that the same monitoring can be carried out for interoperability legislation.

9.139   Based on our consultation of stakeholders, we believe that such an approach would be more likely to receive stakeholder support (9.128).

Promoting innovation

9.140   Article 21 of the Regulation "promoting of innovation" is set out in Table 4.1 above. The task specifications noted that:

> *By the end of 2011 the Agency will deliver the final draft of the revised TSI on Telematic Applications for Freight services (TAF). The implementation steering will be a complicated process and will need a support. ERA should be considered for this role as an institution having the expertise and coordination/steering skills. A similar possible role for ERA should be explored with regard to other above-mentioned technologies.*
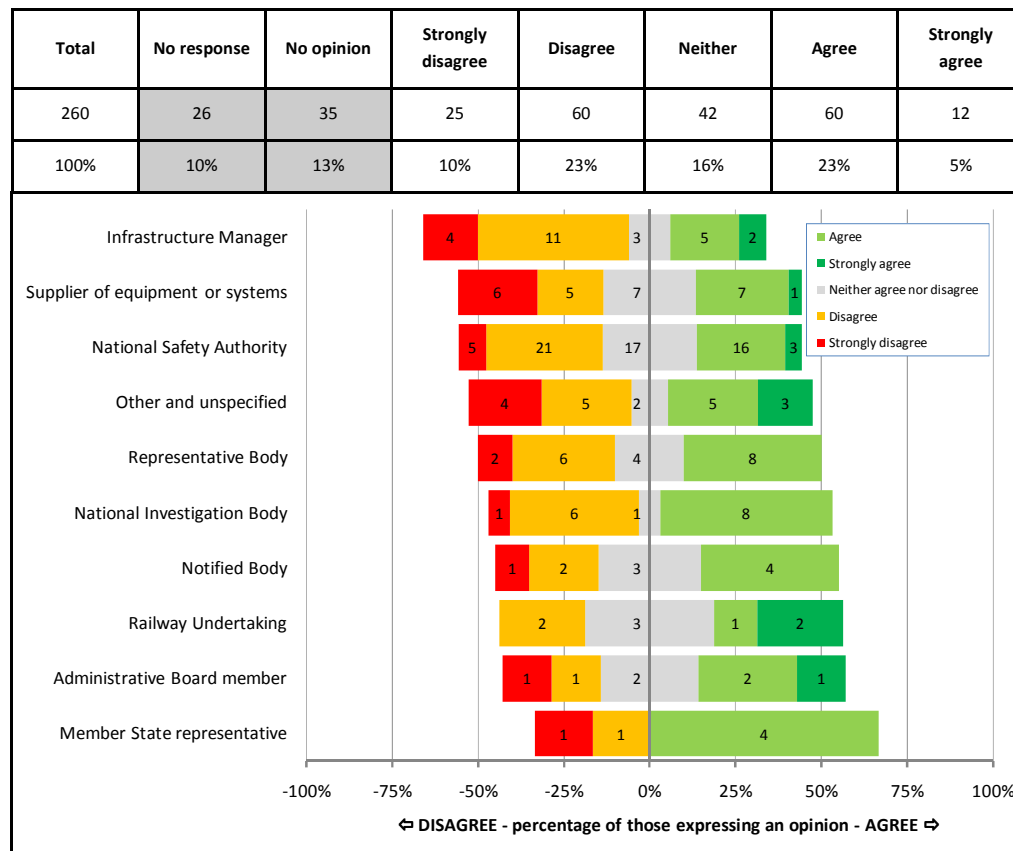
9.141   The other technologies mentioned were Telematic Application for Passengers (TAP), ERTMS, registers and wagon-tracking technology.

Survey

9.142   For the purposes of the survey of stakeholders, we adopted a more general question relating to the Agency's potential role in promoting technology innovation.

9.143   Figure 9.9 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Direct and active role in directing industry innovation and coordinating its activities?"

FIGURE 9.9   SURVEY RESPONSES: PROMOTING INNOVATION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	26	35	25	60	42	60	12
100%	10%	13%	10%	23%	16%	23%	5%

9.144   Stakeholder opinion was divided on this question. Of 199 respondents expressing an opinion, 85 (43%) disagreed with the concept and 72 (36%) agreed. The strongest levels of disagreement were among IMs, suppliers and NSAs. The strongest level of agreement was among Member State representatives, of whom four of the six expressing a view agreed. There were twice as many respondents that strongly disagreed than strongly agreed. The level of disagreement was significant and not confined to particular stakeholder groups, suggesting that furthering the role of the Agency in directing industry innovation and coordinating its activities would not be well supported by the stakeholder community.

Interviews

9.145   Survey respondents' written responses and interviewees raised two major issues: the tension between standards and innovation, and the role of research and development.

9.146   Interviewees noted that the introduction of standards is likely to shift the focus of innovation from the best way to meet a need to the best way to comply with the standard. Examples were given of where TSIs appeared arbitrarily to limit the scope for innovation by including current EN standards in the text, but no specific proposals were put forward on how innovation could be promoted.

9.147   One stakeholder suggested that the Commission should sponsor more research and development, and that the Agency should be involved, but with the aim of encouraging technical harmonisation rather than innovation. Another suggested

that the Agency should be capable of specifying areas for research, while leaving delivery to specialist project organisations.

9.148 Another stakeholder said that it would not be appropriate for the rail industry unilaterally to set standards in areas common to other industries, such as occur in passenger information systems or relating to persons with reduced mobility (PRM).

9.149 Concern was also expressed about the rationale for extending the Agency's role to promoting innovation in new technologies, particularly in the area of telematics. There absence of failure in the supply markets raises the question of whether intervention is actually required. Furthermore, the Agency lacks skills and expertise in relation to the commercial aspects of technology development. It was also stated that the Agency lacks expertise in the fields of passenger information, ticketing and revenue management systems, an issue that it should address in furthering the development of the TAP TSI.

Benchmarking

9.150 EASA's role in examining technologies is largely limited to safety rather than broader issues of standards and interoperability, although it does carry out environmental approval of products. Its role in relation to new technologies is primarily to determine whether they meet the relevant safety standards.

9.151 EMSA is not actively engaged in the development of new shipping technology.

9.152 ORR has a role in the determination of the efficient costs of achieving the outputs required from the industry, but normally avoids specifying the technologies used to achieve them.

Analysis

9.153 The industry broadly agrees that the Agency has been successful in advancing the development of ERTMS beyond the work done be AEIF, and it is advantageous for a new technology to be guided in this way. The consistency of ERTMS compares favourably with the divergent technologies being adopted in areas such as road tolling.

9.154 However, while the Agency's role under Article 21 could be clarified and extended, the Agency's core skills are in setting standards, rather than identifying or marketing new technologies. The Agency does not have the appropriate skills or commercial focus to readily engage and co-ordinate a range of other technologies. As our stakeholder survey results show, extending the Agency's role in these areas is not likely to be met with broad stakeholder support.

9.155 We note that the Agency has built up a significant knowledge base from the TAF (and TAP) TSI and also from other technological improvements aimed at improving and promoting innovation. The Agency could viably use this knowledge to further the implementation of TAF in the same way that it is doing with ERTMS. This would ensure that there is a common approach to implementing TAF which applies the lessons learnt from the Agency's role in ERTMS and secure standardisation from the beginning.

9.156 The risk is that, given that TAF (and TAP) are applications that cover not only the rail environment, but also other modes of transport, strong Agency influence could have adverse consequences in other transport modes. Experts in other transport

modes would be needed to assess the potential impact of the Agency's proposals, particularly in relation to road haulage and maritime transport for freight applications and bus and aviation transport for passenger applications.

9.157 In conclusion, there are a number of difficulties with the Agency having extended involvement in the promotion and development of new technologies for the rail sector. Firstly, there does not appear to be a clearly defined problem that the Agency's involvement would address. Secondly, the commercial dynamics associated with technologies are not exclusively related to the rail industry and do not align well with the Agency's core capabilities and expertise. Thirdly, a significant proportion of the stakeholder community is likely to be unsupportive of this proposition.

9.158 Given these concerns, we believe that the Agency's involvement should primarily be limited to a monitoring and facilitating role and that technology development should be a matter for the relevant industries to progress in response to market needs, albeit within a framework shaped by standards and guidelines determined by the Agency and its stakeholders through its working parties.

International cooperation and promotion of EU standards

9.159 The Agency has held discussions with a number of non-European railway industry bodies to explain the EU's approach to harmonisation and in particular ERTMS. The task specifications noted that:

> *ERA has been contacted in the context of several new rail projects in third countries in order to explain the EU approach in technical harmonisation in the field of rail specifications. The promotion of the EU technological standards is not in the current tasks of ERA but will be considered as ERA would appear to be the body having better expertise for such a role.*
>
> *The contractor should also assess an enhanced role of ERA in international relations, particularly regarding preliminary arrangements with third countries as a support to the Commission in a process of negotiating and signing mutual recognition agreements. Similar support to the Commission in the framework of negotiations with OTIF and OSJD should be also evaluated.*
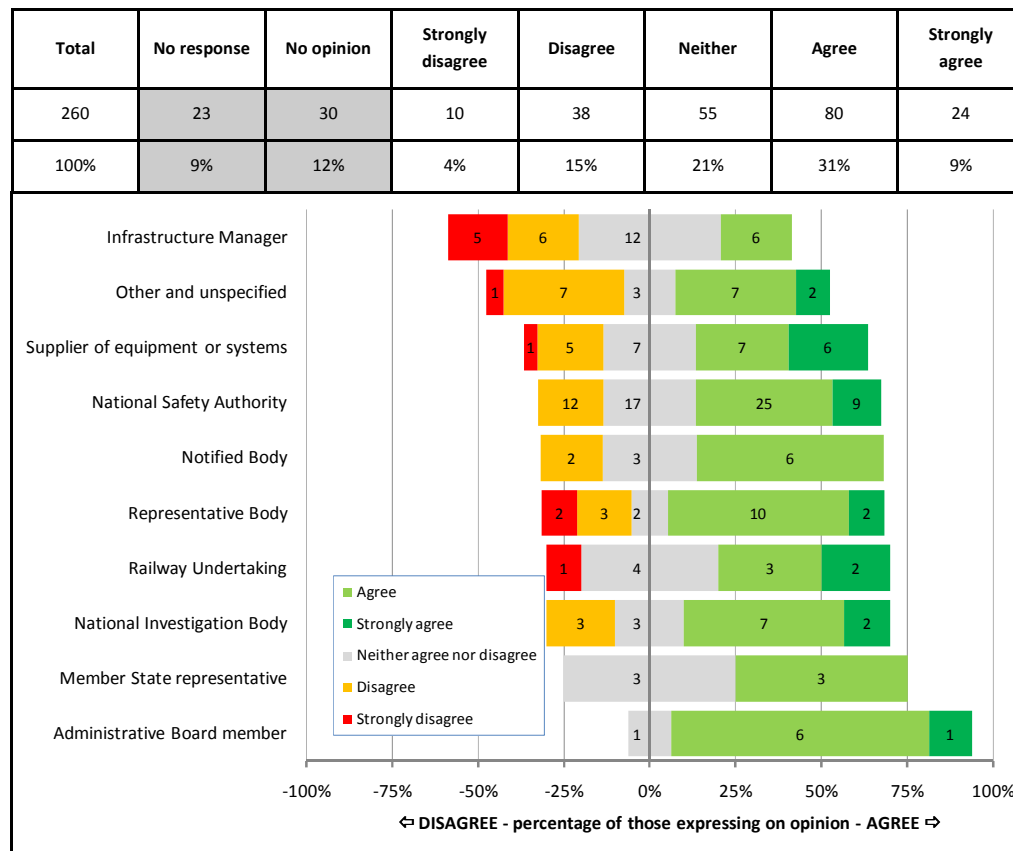
Survey

9.160 Figure 9.10 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: International (outside the EU) role be enhanced in order to promote EU technology?"

FIGURE 9.10 SURVEY RESPONSES: INTERNATIONAL PROMOTION

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	23	30	10	38	55	80	24
100%	9%	12%	4%	15%	21%	31%	9%

9.161   Of 207 respondents expressing an opinion, 48 (23%) disagreed with the concept and 104 (50%) agreed. It was notable that the strongest levels of disagreement were among IMs, despite the fact that the proposal would not have a direct consequence for them. None of the Member State representatives or Administrative Board members responding disagreed with the proposal. There was no particularly strong support from suppliers, who might in principle benefit most from promotion of EU technology. Of 29 suppliers responding only 13, or 45%, agreed or strongly agreed with the proposal.

9.162   On balance, stakeholder opinion was in favour of the proposal. However, the level of disagreement was significant. Whilst there would be no direct consequence of this proposal for most stakeholders, they may have been concerned that this kind of role for the Agency would prove to be a distraction from its primary objectives.

Interviews

9.163   A few interviewees commented in favour of international cooperation and promotion of EU technology but none raised this as a major issue. Two stakeholders had no objection to an international dialogue provided that it did not add to the Agency's cost or delay core work such as the closure of "Open points" in TSIs.

Benchmarking

9.164   The global standards authority in aviation is the International Civil Aviation Authority (ICAO). EASA is actively involved in international cooperation to define new ICAO standards and can promote European proposals. It also works bilaterally with non-European regulators including, where needed, the provision of technical support. However, we understand that the working style is primarily one of collaboration between colleague bodies, of which EASA is one of the best-resourced and most experienced, rather than active promotion of either EU standards or European technology.

9.165   EMSA supports the Commission at a technical level during international meetings, but we understand that as with railway matters it is for the Commission, not EMSA, to defend or advocate the EU position.

Analysis

9.166   There are at least three different levels at which the Agency might be called to take on an international role regarding EU technology:

❚   Actively promoting emerging EU standards, for which there appears to be support in principle, and by extension favouring technology which meets those standards, which even suppliers do not appear particularly to favour. The Agency has not been established as a marketing body and, as we noted above, is expected to be independent of commercial interests;

❚   Responding to requests for information from outside the EU, a natural part of its role in information dissemination and training; and

❚   Negotiation over developments to EU standards with parties outside Europe.

9.167   We consider that this last role is likely to represent the greatest challenge, particularly with the growing use of ERTMS outside the EU and the anticipated need, in Article 12 of the Regulation, to "ensure that the TSIs are adapted to technical progress and market trends". Non-EU railways are increasingly involved in ERTMS development, and one or more of them may advocate or implement changes to the existing standard, potentially overtaking the EU as the *de facto* standard setter. In this area at least, the Agency's role may need to become more like that of EASA, collaborating with non-European bodies on the development of ERTMS as a global standard.

9.168   Standards harmonisation beyond the EU may well be inevitable in some areas and should not fundamentally change the role of the Agency, but it may increasingly need to act in consultation and collaboration with non-EU bodies rather than as a leader within the EU industry. The *fora* for these exchanges will be OTIF and OSJD but the Commission will expect to receive technical support from the Agency.

9.169   Some of the international roles described above could become self-financing, for example by inviting manufacturers within the EU to pay the Agency to promote their products, although negotiations with bodies outside the EU are unlikely to be self-financing activities. We would expect that dealing with information requests and supporting global standards would be recognised by the Commission and that the Agency's recruitment and budgeting processes would take into account the staffing and financial implications.

9.170   We note that the Commission has a number of obligations regarding international relations that extend from OTIF to OSJD and other projects such as the Trans European Railway for the United Nations. Some of these obligations are limited to presenting current progress in harmonisation across the EU (and are limited to reviewing legislation) while others are more technical in nature.

9.171   Given the level of relevant expertise held within the Agency, there is in our view some logic to the Agency becoming the delegated authority for the more technical aspects of these international relations. However, the Commission should continue to participate in those ventures that do not require significant technical knowhow. The Agency will need increased funding to be able to carry out this new task..

9.172   This task does not align with the "core business" of the Agency and any additional provisions to be incorporated in the Regulation in relation to these activities should be subject to the same qualification as set out in paragraph 2 of Article 21b, namely they should not prejudice the other activities of the Agency.

Dissemination of railway-related information and training

9.173   The task specifications noted that:

> *Recent studies have shown that due to the fragmentation of the industry and due to the lack of recruitment of new staff during the last decades there is a general risk of losing rail technical expertise. In addition there has been in the last 10 years an incredible development of new principles in terms of the common safety approach but also in terms of technical specifications.*
>
> *Although ERA has developed its own dissemination policy and tools which aim at making aware the rail community and the citizens of concrete results of its activities, ERA could play a bigger role in making sure that the developments made at EU level are properly understood in the management and working level of the industry.*

Survey

9.174   Figure 9.11 summarises by category of respondent the responses expressing an opinion on survey Question 28:

"Do you agree or disagree with the following possible extensions of the Agency's role: Greater role in disseminating railway related information and training the industry?"

FIGURE 9.11 SURVEY RESPONSES: INFORMATION AND TRAINING

Note: chart shows only respondents expressing an opinion and omits shaded cells.

Total	No response	No opinion	Strongly disagree	Disagree	Neither	Agree	Strongly agree
260	24	30	5	14	42	105	40
100%	9%	12%	2%	5%	16%	40%	15%
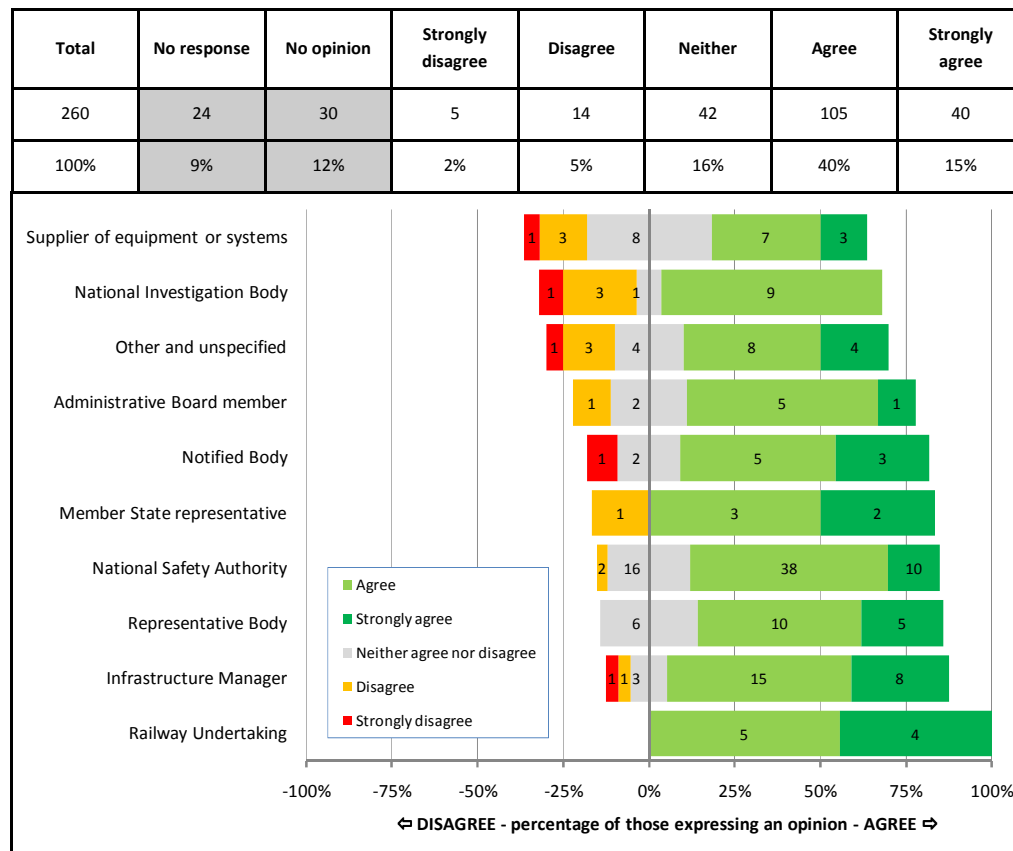
9.175   Overall, this proposal received support from the majority of stakeholders. Of 206 expressing an opinion, 19 (9%) disagreed with the concept and 145 (70%) agreed. The strongest levels of agreement were among Representative Bodies, IMs and RUs: none of the Representative Bodies or the nine RUs responding disagreed. The strongest levels of disagreement were limited to a few individuals.

Interviews

9.176   Not all interviewees were aware of the Agency's provision of formal training, but others said that training sessions had been useful and there was generally support for an increase in its role in dissemination and training. One interviewee mentioned that the workshops and meetings were particularly useful in improving the railway culture of the new Member States.

Benchmarking

9.177   EASA has a designated technical training department which serves primarily as an internal function but can also provide training to the staff of the National Aviation Authorities (NAAs). EASA also publishes free "e-syllabi" on aviation legislation training and maintains an "e-examination" system that operates through established examination centres.

9.178   EMSA provides a significant amount of training through IT-based services that disseminate information to Member States. It also provides training in Port State

Control inspection and has been developing an e-learning system in collaboration with a number of European and non-European states.

9.179 ORR publishes extensive documentation from the industry including statistics, research and guidance on how various industry processes are approached, but does not offer formal training to other parties.

Analysis

9.180 The evidence from the comparator bodies is that a global or European organisation is well-placed to collate and disseminate information, as the Agency is required to do under Articles 18 and 19 of the Regulation, and to prepare training. Provision of information and training need not require detailed knowledge of national systems and processes or languages. It can also, in principle, be made self-financing, if the Agency provides training on the subjects and in the format, including the languages of instruction, required by the industry.

9.181 We have highlighted a number of areas (see for example 3.126, 3.139, 4.18, 7.17 and 9.78) where the Agency could do more to inform the industry about its Recommendations and ways of working. We recommend that Articles 18 and 19 should be supplemented with specific provisions in the Regulation that require the Agency to carry out dissemination and training on its activities, particularly regarding interpretation of its Recommendations and Opinions. This training could be voluntary for general industry participants, but should be compulsory for the Representative Bodies who would have a duty to inform their members of what information has been passed to them. NSAs and NIBs should also consider attending these sessions which should, in any case, be tailored to their needs and should address issues that are of particular relevance to them.

9.182 Whilst the processes of dissemination and training provision would have cost and resource implications for the Agency, these would be offset, at least in part, by reducing subsequent clarifications and, potentially, remedying misinterpretations by Member States. Furthermore, the value of the benefits of correct understanding of Recommendations and guidance provided by the Agency and correct implementation of Directives in the longer term would far outweigh the short term costs of dissemination and training.

9.183 We also note that there are a wide range of potential delivery mechanisms. Training could be provided jointly with, procured from, delegated to, or coordinated by other suitable bodies within the industry or elsewhere, if this proved to be a cost-effective means of delivery. We believe that these activities can be at least partially self-financing given that the Agency could seek to recover the costs of training sessions and seminars. For example, it could do this through the organisation of conferences that could have external sponsorship ensuring recovery of at least part of the costs.

Other potential roles for the Agency

Providing advice and support

9.184 In paragraph 7.53 we described the recent incident in which a Belgian Special Parliamentary Commission invited the Agency to assess the effectiveness of the implementation of the Railway Safety Directive in Belgium. We noted that this activity does not appear to fall within the Agency roles permitted by Article 2 of

the Regulation. However, in our view it could be interpreted that such an activity is in keeping with the objectives set out in Article 1 of the Regulation (in particular in relation to "…creating a European railway area without frontiers and guaranteeing a high level of safety") and is an appropriate role for the Agency.

9.185   We propose that the Regulation be amended so that there is a clear recognition that the Agency should be involved in activities such as this as a supplement to the Opinions that the Agency already provides.

9.186   Specifically, the Agency should be able to provide advice and support on matters provided that:

I   They are in pursuit of Article 1;

I   They are by invitation of a Member State, national organisation or the Commission;

I   They do not duplicate or undermine the role of another competent organisation (for example, the Agency should not be asked to carry out the same work as a national organisation, which could result in two inconsistent sets of conclusions);

I   The invitation clearly specifies the Agency's role and the work required; and

I   The role and work required are consistent with the Agency's financial and staffing resources (and, specifically, any reasonable material costs of the Agency will be paid).

9.187   This role could be provided for through a modification or clarification of part (b) of Article 2. Furthermore, the activity could be self financing if it was requested by a Member State, as the Agency could recover the cost of the activity from the country in question.

Summary of conclusions on the potential future role of the agency

9.188   This chapter has examined a range of options concerning the potential future role of the Agency. The analysis has initially considered the potential changes related to the role of the Agency with respect to the NSAs, followed by the role of the Agency with respect to the NIBs. We then examined other possible roles suggested in the study terms of reference and an additional potential role.

9.189   As illustrated in Figure 9.1 the stakeholder survey revealed that most stakeholders were in favour of an expanded role of the Agency in a number of areas. Having examined the issues relating to each of the potential new or modified roles in more detail, we have reached a number of conclusions and recommendations. These are summarised in Table 9.1 below, which sets out for each of the future roles:

I   Whether or not the potential new role will require additional resources;

I   The possibility of self financing;

I   Whether or not there is a future role for the Agency in the relevant area; and

I   If so, whether or not this requires a change to the Regulation.

TABLE 9.1   SUMMARY OF FUTURE ROLES FOR THE AGENCY

Role	Will it require additional resources?	Can it be Self-financing	Recommendation: Should the Agency have an expanded role?	If so, does it need a change to the Regulation?
The Agency and NSAs				
Spot checks of safety-critical components	YES	NO	NO	Not applicable
Type approval and certification of rail vehicles and ERTMS	YES	YES	YES but only in relation to ensuring that the NoBos are suitable trained and through facilitating the development of guidelines.	YES
Certification of infrastructure managers and railway undertakings	YES	YES if certification is done centrally	YES in setting the framework and developing the single European safety certificate. NO in carrying out RU certification itself in the short term except for ERTMS Corridors	YES, and may require a change to the Safety & Interoperability Directives so that the Agency becomes the authority for certification on ERTMS Corridors
Supervision, audit & inspection of NSAs	YES	NO	YES in auditing NSAs adherence to common guidelines	YES
The Agency and NIBs				
Investigation of railway accidents	YES	NO	NO	Not applicable
Other potential future roles				
Monitoring national safety and interoperability legislation	YES, but minimal	NO	YES	YES
Promoting innovation	YES	YES	NO	Not applicable
International cooperation and promotion of EU standards	YES	YES in some cases	YES as delegated authority for technical matters	YES
Dissemination of railway-related information and training	YES, but minimal	YES	YES	NO
Provision of advice and support	YES	YES	YES	YES

10 Conclusions

Introduction

10.1 Article 43 of the Regulation, reproduced in Table 10.1 below, provides for an evaluation of the implementation of the Regulation.

TABLE 10.1   THE REGULATION: THE EVALUATION OF THE REGULATION

Article	Text
43	Five years after the Agency takes up its duties, the Commission shall carry out an evaluation of implementation of this Regulation, the results obtained by the Agency and its working methods. This evaluation shall take account of the views of the representatives of the railways sector, of the social partners and of customers' organisations. The findings of the evaluation shall be made public. The Commission shall propose, if necessary, an amendment to this Regulation.
	In that context, the Commission shall, if appropriate, present a proposal for revision of the provisions of this Regulation in light of developments in respect of regulatory agencies, in accordance with the procedure laid down in Article 251 of the Treaty. The European Parliament and Council shall examine this proposal and in particular consider whether the composition of the Administrative Board needs to be revised, in accordance with the general framework to be adopted for regulatory agencies.

10.2 We summarise here the conclusions of the evaluation carried out for the Commission, dealing in turn with the more detailed themes set out in our terms of reference:

I   The completion of the initial objectives

I   The contribution of the Agency

I   The effectiveness of the instruments

I   The costs of the Agency

I   The performance of the Agency

I   The functioning of the Agency

I   The potential future role of the Agency

10.3 Where appropriate, we cross-reference our conclusions to the text of this report with the relevant paragraph numbers as shown in parentheses ().

Overview

10.4 The Agency has come a long way in its initial years of existence and has developed to become an important partner to the European railway industry. Prior to the publication of the Regulation there was considerable opposition to the creation of the Agency, this opposition has disappeared. Furthermore, the majority of stakeholders believe that the Agency is fundamental to decreasing the technical barriers that remain in the industry and facilitating interoperability.

10.5 In our evaluation we have found that the Agency is generally performing well in the majority of areas, but we have identified a number of areas where its actions and operations can be improved. These are discussed below.

The completion of the initial objectives

10.6 There have been positive steps towards the completion of the initial objectives, although given the challenges presented by the physical, technical and institutional differences between the railway networks of Member States, many of these objectives are likely to continue to remain valid for the longer term.

Developing ERTMS

10.7 The Agency is in a much stronger position to coordinate ERTMS than was AEIF. The establishment of the Agency has resulted in a more coherent and structured approach to the development of the ERTMS, a view that was supported by stakeholders. However, there is a risk of diverging standards between or even within the Member States, which will require greater coordination of activity (3.21). More widely, the Agency has little control over developments to, or implementation of, ERTMS in other parts of the world, and the Agency may increasingly need to collaborate with non-European bodies on the development of ERTMS as a global standard (9.167).

10.8 Within the framework established by the Commission's 2008 memorandum of understanding with the Industry (3.22), the Agency, in its role as systems authority, needs to take on a more active co-ordinating role to ensure that acceptance of technology is compliant with the current standards.

Establishing systems of registration and information exchange

10.9 The Agency has established a system of information exchange through the registers, the website and the extranet that is compliant with the requirements of the Regulation. The Regulation itself is fairly exhaustive in setting out what the requirements should be. We have examined the Registers and note that, as they stand, their contents have a number of gaps and are largely dependent on information being provided by the Member States, in particular, the infrastructure managers (3.32).

Defining a common approach to railway safety

10.10 The Agency has contributed significantly in recent years to the development of a common approach to railway safety as required in Article 1 of the Regulation. It has gone beyond setting the framework and has started to provide solutions to safety issues. This has been backed up by the publication of supporting documents such as the annual 'Railway Safety Performance in the European Union' Report' which reports on the progress on CSMs and CSTs. There is still much work that needs to be done, including the revision of the CSMs, but the Agency has contributed significantly to this definition (3.54).

10.11 From the information published to date, it is not possible to discern the overall trend in European railway safety performance since the establishment of the Agency (3.55). However, the mechanisms to capture this information are now in place and in the future, with a longer data time series, such an assessment will be possible.

Defining an optimal level of harmonisation in interoperability

10.12 Technical harmonisation should not be an end in itself. Its purpose is to facilitate the objective of improving the competitive position of the railway sector. The optimum may be defined as the level of harmonisation where the efficiency and economic benefits accruing to the railway system as a whole are at their greatest relative to the costs of achieving that level of harmonisation. The situation in Europe is dynamic (3.73). We believe that responsibility for monitoring this dynamic and forming an economic view of the appropriate progression of harmonisation in interoperability should fall to the Agency. It may be appropriate to amend the Agency's mandate to incorporate such a responsibility.

10.13 In conclusion, the Agency, in progressing harmonisation of interoperability through the development of the TSIs is generally supported by stakeholders (3.64), although there remain specific areas for improvement, such as the issue of 'open points' (3.67). However, the strategic issue of defining an optimum level of harmonisation is less clear (3.72). The Agency should take responsibility for this and revisions to its mandate may be necessary to give further clarity and impetus.

The clarity of the acts issued by the Agency

10.14 There is more that the Agency can do to improve the quality of its outputs. This view is consistent with the stakeholder survey and interview responses, which were relatively positive about the outputs of the Agency but identified room for improvement (3.89, 3.90). There is clear evidence that the Agency is taking positive steps to improve quality, but in our view there remains a significant opportunity to go further and this could be achieved without any changes to the Agency's mandate or its structure (3.96 – 3.100). We suggest that the Agency's quality assurance processes are subjected to continuous review cycle and that the Agency should implement an accredited, internationally recognised quality assurance system, such as ISO 9001.

The working practices of the Agency

The working parties

10.15 The Agency is meeting the requirements of the Regulation to establish working parties, but as stakeholder feedback has shown (3.106), there are opportunities to improve their functioning. Whilst it is difficult to measure efficiency, adoption of common protocols and promoting best practice identified from within the Agency and other agencies, such as the RSSB in the UK, could help improve the consistency and effectiveness of the Agency's working parties (3.122).

10.16 Our observation of the working parties and the feedback we received from stakeholders indicated that the conduct of the working parties, the chairmanship and their effectiveness varies considerably. We believe that the effectiveness of the working parties could be improved by providing common guidance protocols and appropriate training to the project officers (3.126).

The networks of NSAs and NIBs

10.17 NSA and NIB meetings appear to be generally well organised and focused on the areas of work that the Agency is taking forward. Furthermore, reviewing the minutes of the meetings there has been productive discussion of the main topics.

The NSAs and NIBs are also generally represented in the majority of working parties.

10.18 The decision to carry out joint NSA/NIB meetings is a positive step given that many of the issues touch both networks. However, stakeholder feedback suggests that the Agency could do more to ensure the effectiveness of the networks. The Agency does not appear to actively monitor and review the effectiveness of the networks and this should be addressed (3.149).

The contribution of the Agency

10.19 Overall the Agency has made reasonable progress in pursuit of its policy objectives, taking account of the timescales and the resources at its disposal.

Promoting innovation in interoperability and safety

10.20 Stakeholders generally agreed that the Agency had made a contribution to innovation, especially in areas such as ERTMS, where it has helped the industry to focus on a common goal and improved the rate of progress. However, interviewees from the Agency suggested that it is difficult to identify specific actions it could or should take to actively promote innovation.(4.8)

10.21 The Agency has had an indirect influence on innovation in interoperability through its role in extending the scope of TSIs and on safety through the development of CSMs, CSIs and CSTs. The role of the Agency, however, has not been to actively promote innovation, rather it has been led the setting of standards in response to innovation. (4.9)

Developing a genuine European railway culture

10.22 Stakeholders recognise that the Agency is making a positive contribution to the development of a European railway culture. However, as they acknowledge, compared to that in other transport sectors such as aviation, the process is far more difficult given the historical development of Europe's railways within national boundaries. As most railway vehicles and railway undertakings continue to operate only within a single Member State, strong arguments for retention of controls at the national level remain (4.15).

10.23 In the past the Agency has focused, in accordance with its mandate, almost exclusively on the technical aspects of its activities and this has been at the expense of consideration of the wider cultural change needed across the European rail industry. In our opinion there is a need for the Agency to recognise and define an objective of promoting a European railway culture. In pursuing this objective, it should seek to break down institutional barriers and hence encourage the realisation of a single European railway. This objective is already implicit in some of the Agency's activities. (4.18)

Assisting Member States in the implementation of the Directives

10.24 Our survey of stakeholders revealed that generally there is a high level of satisfaction with the assistance provided by the Agency (7.8). However, when asked about its relationship with Member States, this received a more mixed response (7.9).

10.25 Problems often arise at the point of transposition of Directives into national law, reflecting underlying differences in the policy objectives of Member States as well

as difficulties in translation and interpretation (7.14).The Agency will need to focus on improving information dissemination so as to ensure that the Directives are later implemented into national law in the correct manner. The availability of guidelines in local languages may help facilitate this.

10.26   There has been insufficient guidance to Member States on the implementation of Directives. Whilst we note the workshops held and the guidance notes that have accompanied some Recommendations/Directives have been helpful, we have seen limited evidence to date of the Agency assisting Member States with the implementation the Directives. We believe that the Agency could do more in the future, such as assisting in the dissemination of information and training.(4.28)

10.27   The Agency has already started monitoring the implementation of the Safety Directive and is in the process of informing the Commission of this analysis. The question of whether the Agency's role should be extended to auditing the compliance of Member States is raised and discussed in Chapter 9.

10.28   We conclude that the Agency is making a positive contribution in assisting Member States with meeting their obligations, but there are areas for improvement, notably in the provision of:

▌ Guidance documentation relating to the implementation of Directives, where DV29 was positively received as an example of which more should be prepared;

▌ Information dissemination;

▌ Training and support; and

▌ Guidelines in local languages.

Increasing railway interoperability and safety

10.29   There is a widely held view among stakeholders that the Agency is making a strong contribution to increasing interoperability. (4.32)

10.30   Some stakeholders highlighted concerns about "Open points" that have remained and errors that have emerged following their publication and remained uncorrected. (4.34). We also conclude that the Agency should encourage interoperability through practical measures to limit the scope for interpretation, for example by limiting the number of "Open points" within TSIs and through better quality control of published documents.

10.31   The absence of strategic measures of safety and interoperability in the Agency's business reporting highlight an opportunity, especially given that the Agency already provides a large amount of statistical information in its report on railway safety report in Europe. (4.35-4.37). They also highlight a potential lack of focus on the primary objectives set out in Article 1 of the Regulation. We recommend that this should be addressed by introducing appropriate KPIs that would help to focus the Agency and its stakeholders on progress against the key policy objectives. The issue of measuring performance is discussed further in Chapter 7.

The effectiveness of the instruments

10.32   The stakeholder survey revealed that the majority of the instruments are regarded as quite useful. The website and extranet were identified as the most useful of the

instruments listed in the survey. However, low response rates for many of the instruments suggest limited use or awareness of them. (5.5-5.8)

10.33   Many of the Agency's instruments are under development or awaiting data, particularly from the Member States. The Agency can remind the Member States of their obligations under the various Regulations identified in Chapter 3, as well as of the requirements and timescales for the individual registers, but can do little without comprehensive, accurate and timely data. However, the Agency could make improvements in number of areas, including:

I   The timeliness of information generated by the Agency being assigned to the website/extranet;

I   How stakeholders are notified of updates on the extranet;

I   The interfaces of the website and extranet; and

I   Stakeholder awareness of the document register and its search facility.

10.34   Our findings highlight that the instruments of the Agency are useful to stakeholders, but there are opportunities for improvements. The Agency should undertake a more detailed survey of stakeholders specifically aimed at soliciting feedback on the instruments, notably the website, the extranet and the document register, to enable a better understanding of the needs of users and their specific concerns and then to identify actions for improvement.

10.35   The Agency should also ensure that it has an appropriate long term strategy for gathering industry information (both from Member States and from its own sources) and publishing it.

The costs of the Agency

10.36   Survey respondents had few views on the cost-effectiveness of the Agency (6.21). However, a number of interviewees queried the rationale for operating two offices and using temporary staff. There were also suggestions that the Agency's Administration Unit, which accounts for 34% of its staff, is too large (6.26).

10.37   We obtained extensive data on the staffing, costs and travel arrangements of the Agency and its comparators, and were able to benchmark the Agency on a number of metrics, as summarised below.

Staff numbers and turnover

10.38   In common with other Agencies, and in parallel with an expanding Work Programme, the Agency has grown steadily by around 15-20% per annum since its creation in 2005 (6.29). Staff turnover has also been broadly comparable with the other Agencies, although it is expected to rise as some of the initial recruits move on (6.36). The completion of the Agency's first five years has resulted in a peak in turnover despite the Agency taking advantage of the current flexibility to extend some contracts, which will help spread the next round of renewal dates (08.37). Looking forward, the coming peak in turnover should not require an unusually large volume of recruitment in relation to the Agency's size (8.40).

Staff recruitment

10.39   Despite this sustained growth, the Agency has at first sight been generally successful at recruiting the necessary staff, with a vacancy rate often lower than the other Agencies we examined (6.33). However, it must work within the Staff Regulations mandated by Article 24 (Table 7.4). New posts must be identified in the annual Work Programme and recruitment to them can start only after it has been approved, resulting in a recruitment process lasting up to eighteen months, and some posts have been repeatedly advertised and not filled (8.41). This limits the ability of the Agency both to replace existing staff and to acquire the expertise required to take on new roles.

10.40   These difficulties were identified by the horizontal study "Evaluation of the EU decentralised agencies in 2009" (Vol. III p.143) which highlighted that because of the limited scope to transfer technical experts between tasks the Agency had reported staff shortages impacting its Work Programmes.

10.41   The Agency is likely to continue to face the twin challenges of working within the constraints of the Staff Regulations and continually needing to recruit technical specialists in the areas of work emerging from its workload of mandates from the Commission.

Staff in administration

10.42   The size of the Agency's Administration Unit is consistent with that of EASA and EMSA, and the horizontal study "Evaluation of the EU decentralised agencies in 2009" confirmed that this was broadly typical for medium-sized European Agencies (6.41). The critical issue appears to be the Staff Regulations which Article 24 requires the Agency to apply.

Staff costs

10.43   The Agency had slightly higher staff costs per head, at €95,000 in 2009, than the comparators bodies. We compared the mix of staff grades at the Agency, EASA and EMSA, and found no evidence of "grade inflation", with the Agency staff being concentrated in the lower grades 1-6 and 8-10 (6.39). We concluded that a significant element of the slightly higher average staff costs of the Agency is the higher local weighting set by the Council upon a proposal by the Commission (6.38). In summary, the higher average staff cost is probably due to factors over which the Agency has little or no control.

Staff absenteeism

10.44   Only limited comparable information was available on staff absentee rates at other EU Agencies. However, average absentee rates at the Agency are, at around 3-4%, broadly comparable with the Office of Rail Regulation (ORR), our other comparator body (6.45).

Office costs

10.45   The Agency inaugurated new premises in Valenciennes, France, in June 2009, but unlike EASA and EMSA has not entered a "Seat agreement" involving an exchange of rights and obligations with the local authority (7.68). However, the Agency also operates from Lille, where the majority of operational staff spend at least some time (7.71).

The Agency enjoys relatively low office costs, at under €100 per square metre in 2010, compared to €150-250 per square meter for the other Agencies and around €300 for ORR's offices in central London (Figure 7.7).

Office location

The Agency's seat in Valenciennes is over 100 kilometres from an international airport, compared with less than 30 kilometres for all the comparator bodies (Figure 7.7).

10.46   The Agency mitigates the effect of its poor location by holding many working group and other meetings in Lille, which lacks a major airport but is relatively accessible by rail. This involves considerable travel by Agency staff, with around 6 round work trips per day, or 1500 per year, each of which requires around 80 minutes' travel time and is treated as a "mission" under the Staff Regulations, requiring additional administrative time and cost (7.73).

10.47   Even including the costs of travel between Valenciennes and Lille, the Agency's costs per staff member are still lower than those of EASA and EMSA (7.77).

Travel costs

10.48   However, the Agency does not bear all the costs, including both expenses and travelling time, of experts and other attendees to Lille from all over Europe.

10.49   The horizontal study "Evaluation of the EU decentralised agencies in 2009" noted the issue of the remoteness of the Agency from some of the industry. Stakeholders were concerned that the findings of the working parties could be biased in favour of the experts and participants who were most able to attend (7.75). In the longer term it may be increasingly difficult to identify experts willing to travel to Lille, particularly if this requires payment for two nights' accommodation for experts to attend a one-day meeting.

10.50   We estimated that the total cost to the Agency and the Commission of an illustrative working group meeting could be reduced by €500 by holding it in Köln, €800 by holding it in Brussels and €1,500 by holding it in Paris. (7.83). It might be more cost-effective for at least some meetings to be held in Paris, Brussels, or their rail-accessible airport (7.85).

10.51   In conclusion, as high level measures of cost-efficiency, the comparisons above suggest that the Agency is not atypical compared to the other EU Agencies. Whilst this does not reveal how the cost efficiency of the Agency relates to the provisions prior to its establishment, or the degree to which greater efficiency could potentially be achieved, some comfort is provided that the Agency is broadly as cost efficient as its peers. Of some concern, however, is the rising trend in staff costs per head, for which the Agency should develop a strategy to reverse.

10.52   In undertaking this analysis it became evident that the absence of KPIs relating to the costs of the Agency's operations is perhaps an indication in itself that cost efficiency has not been a key management objective to date. We discuss this in Chapter 7 (7.94-7.99, 7.103-7.104) and conclude that potential improvements in cost efficiency could be identified and incentivised through the introduction of cost related KPIs within the standard management processes of the Agency.

The Performance of the Agency

Involving expertise from industry and railway authorities

10.53 Given the specific requirements of the Regulation, the Agency appears to have been broadly effective in organising the expertise available in the industry into working parties capable of addressing a range of detailed technical issues. It remains to be seen, however, whether this approach is sustainable, as there are potential difficulties in attracting and retaining technical experts. However, we identify some possible measures that the Agency could take to facilitate the effectiveness of the working parties (7.28).

The consultation process

10.54 Overall, stakeholders considered the Agency to be performing relatively well in consulting them, although a significant minority took a contrary view. (7.34)

10.55 The Agency has recently adopted the practice of publishing consultations on its website and inviting responses from all interested parties. Broader consultation is almost invariably beneficial and can elicit a wide range of perspectives and insights.

10.56 A consultation exercise that is planned effectively and in advance can lead to more effective outcomes. We believe that the Agency should develop a consultation strategy that ensures that consultation is undertaken consistently and comprehensively. For this we believe a common template approach would help, where the principles are predefined and customised according to the specific subject and audience.

Relations with the Commission, finances, and operational choices

10.57 The roles and responsibilities imposed on the Commission and the Agency by the Regulation may, from time to time, lead to tensions at the working level. However, we have seen no evidence, from the comparator bodies or elsewhere, that these tensions are atypical of any two bodies required to work closely together. Our understanding is that the Agency's relations with the Commission are broadly effective and we have found no evidence to suggest that a major change is required.

10.58 The Regulation sets down a number of detailed requirements for the operation of the Agency as established by the Commission. The Agency has no powers to make or impose decisions and can only forward Recommendations and Opinions to the Commission (7.46). The process of setting the Agency's budget is also defined by the Regulation. Its budgeting, staffing and workload are all determined by the Commission through independent and uncoordinated processes (7.64). It has no powers to decline, defer or prioritise the imposed workload in response to shortage of either suitable staff or funds. It therefore manages operations principally by extending timescales (7.64). In effect, work is completed, and funding is only used, once suitable staff have been recruited and have sufficient time available.

10.59 The Agency has plans to adopt multi-annual activity-based budgeting (7.101). We believe that this strategy will help the Agency to improve its resource and budget control.

10.60   Currently, of the activities that the Agency undertakes, the only area that we are aware of where there is potential for recovery of costs is in relation to Opinions requested by Member States, although we note that to date such costs have not been recovered. All other activities are essentially carried out on behalf of the Commission and there is little scope for these activities to be charged for. (7.57). However, we suggest that the Agency review this specific subject in more detail. (7.58).

Current seat arrangements

10.61   The location of the Agency in Valenciennes and its separate conference facilities in Lille result in significant administration costs for Agency staff travelling between the two sites and travel costs for many visitors from other Member States. We have examined the economic implications of the current arrangements and conclude that there may be occasions when working parties could be more efficiently held elsewhere, although we acknowledge that any financial savings could to be modest relative to overall Work Programme costs. Retention of conferencing facilities in Lille is likely to be the most practical strategy for the foreseeable future, although, given the modular nature of the facilities, we recommend that the Agency examines the potential for reducing its dependence on them and locating some future working party meetings at other locations, such as in Brussels or Paris, where this can be shown to be economically advantageous. (7.85)

Annual and multi-annual programming and performance indicators

10.62   Analysis suggests that the Agency achieves less than 60% of the Work Programme, compared with over 70% for the other EU Agencies (Figure 7.9). This may be of no practical consequence if the Work Programme document is treated as an administrative formality, but it highlights the inconsistencies between the processes for defining the Agency's budgeting, staffing and workload described in paragraph 10.58 above.

10.63   The Regulation requires the Agency to set out a Work Programme, and the Administrative Board to adopt the Work Programme, despite the fact that it has no control over either its content or its affordability. These formal procedures can take no account of the Agency's workload as it evolves.

10.64   The horizontal study "Evaluation of the EU decentralised agencies in 2009" noted that several Agencies are developing performance indicators, and suggests that there is scope for improving monitoring arrangements across all Agencies (7.98). The Agency acknowledges the need to improve its Work Programme and budget planning and is now taking steps to introduce multi-annual programming and activity-based budgeting into its management processes. (7.101).

10.65   We believe that the absence of key performance indicators from the Agency's management reporting processes represents a significant impediment to improving the Agency's performance. Key performance indicators are common practice for most businesses and enterprises and are also employed by other EU Agencies, such as EASA.

The role of the economic evaluation unit

An economic evaluation unit has been established but the quality of the work has been limited by lack of sufficient data to form robust (7.108). We would expect

the quality of evaluations to improve in future as information is collected and the relevant Registers are populated (7.111). However, economic evaluations of Recommendations, under Article 6.4, would often be of greater benefit if they were applied to the initial mandates rather than to completed Recommendations (7.108).

10.66   Economic analysis has the potential to enable the Agency and its working parties to make more informed decisions and should help the Agency to prioritise its work more cost effectively. It should be regarded as a key element to the Agency's work and as more comprehensive information becomes available through the various Registers that the Agency is developing, more comprehensive and thorough economic evaluations should become possible. In view of this, we question whether 8 staff members will be sufficient to enable thorough economic evaluations to be undertaken in future.(7.113)

The functioning of the Agency

10.67   During the five years since its formation, the Agency has become well established as the primary organisation responsible for facilitating harmonisation in interoperability and safety across the European railway network. From our assessment we conclude that it is broadly carrying out all the functions required by the Regulation. However, we have identified a number of areas where the functioning of the Agency could be improved.

The powers of the Executive Director

10.68   Article 30 of the Regulation sets out the powers of the Executive Director, which are similar to those of the equivalent position in other EU Agencies. We note a potential tension between the Executive Director's role as set out in the Regulation, as a technical expert in his or her own right, and as a manager of the Heads of Unit, each of whom has more detailed technical knowledge of their own field.

10.69   The Executive Director is required to prepare the Work Programme but, as discussed above, has limited effective control over either the workload or budget.

10.70   The Executive Director is also required to adopt internal administrative instructions, to publish orders and to establish an effective monitoring system and assessment system. Whilst we acknowledge that the Agency has been making successive improvements to its procedures and quality controls, we draw attention to the absence of an integrated quality assurance system (3.97) and to the limited quantitative monitoring of the performance of the Agency as noted in Chapter 7 (7.104).

The Administrative Board

10.71   The consensus of the stakeholders that we interviewed was that the Administrative Board added limited value to the functioning of the Agency (8.20).

10.72   The Administrative Board has a range of formal duties, including adoption of the Work Programme as discussed above, but is of limited assistance in guiding the Executive Director and the Heads of Unit or of reviewing, endorsing or defending the Agency's work.

10.73   We are not convinced that a Board comprising of 38 members that meets only twice per year is the most effective means of assuring effective governance of the Agency. There are precedents for other Agency Board models as also observed by the Horizontal Study, for example EFSA that has a 15 member board that is mainly composed of professionals and experts. Whilst the establishment of the sub-committee has increased the effectiveness of management oversight of the Agency, we believe that the governance of the Agency should be subject to further review.(8.25)

The internal organisation of the Agency

10.74   The Regulation and the Staffing Regulations effectively require that the Agency be organised in a number of Units, each with a Head of Unit. This approach appears to be broadly effective, although we found evidence that the Units have not always collaborated effectively. We understand that problems of poor collaboration have been recognised and are being addressed through improved management communications and the sharing of draft texts between Units. Nevertheless, we consider that these more effective working arrangements could be reinforced with explicit procedures for internal consultation to ensure that all relevant Units are involved in particular decisions, as discussed in Chapter 3 (3.97). The number of Units may need to change and new Head of Unit positions created if the role of the Agency changes or expands.

Administrative procedures and the financial and staffing rules

10.75   From our interviews and discussions with Agency staff we learned that they had identified a need to improve the organisation's procurement processes. Progress has been made in addressing these, although other significant issues have since emerged in relation to the management of assets and payment of invoices. In relation to the latter, we note that the Agency performs substantially worse than the comparator Agencies (8.49).

10.76   Article 24 of the Regulation specifies rules for the Work Programme, revenue and expenditure and requires that Agency apply the Staff Regulations of the Officials of the European Communities. These arrangements add complexity, delay and cost to the functioning of the Agency. The horizontal study add reference concluded that "There is an efficiency problem with respect to implementing the Staff and Financial Regulations since this represents a cost, particularly in the small agencies, and a constraint on flexible response to needs." This suggests that many of the problems identified are perhaps endemic among EU Agencies, and that consequently they should be addressed at the Commission level.(8.51)

10.77   One particular issue arising from the Staff Regulations is the mandating of temporary staff contracts which apply to most of the non-administrative staff of the Agency. The regulations stipulate temporary contracts shall last no longer than 5 years. We are concerned that this represents a significant risk that would be compounded in the event of the simultaneous departure of key members of staff. In these circumstances the resultant loss of critical expertise and experience could cause a loss of continuity, potentially jeopardise the delivery of Work Programmes and undermine the process of improving the management and performance of the Agency. We believe a more pragmatic approach is needed with, subject to their meeting appropriate criteria, temporary staff contracts, by exception, extended

beyond the 5 year threshold (8.38). This would provide the Agency with greater flexibility and potentially mitigate disruption to the Work Programme and loss of continuity in knowledge sharing. (8.46 - 8.47)

The potential future role of the Agency

10.78 Given the close link between the conclusions and recommendations for the potential future role of the Agency, conclusions relating to this topic are provided together with accompanying recommendations in Chapter 11.

11   Recommendations

Introduction

11.1   Our conclusions set out in Chapter 10 identify a number of areas of opportunity for improvement. In this chapter we set out our recommendations in relation to those opportunities.

11.2   To facilitate read across from our findings and conclusions, we present our recommendations grouped under the study themes to which they relate.

The completion of the initial objectives

Developing ERTMS

Recommendation 1: The Agency should take on a more co-ordinating role in the development of ERTMS

11.3   Within the framework of cooperation in the development of ERTMS, the Agency, in its role as systems authority, needs to take on more of a co-ordinating role to ensure that acceptance of technology is compliant with the current standards. There is a need for both positive incentives and a form of sanctions, with the Agency monitoring the technological choices in Member States but also, if necessary, recommending that the Commission withhold ERTMS funding if the solution adopted is not compliant with the requirements set out by the Agency.. (3.23)

Proposed timescale for completion: December 2015

Establishing systems of registration and information exchange

Recommendation 2: Improve the Registers and stakeholder awareness of them

11.4   Feedback from stakeholders suggests that there remains scope for further improvement, with a need for more active facilitation and dissemination. We recommend that the Agency should address this by holding workshops with the industry stakeholders to explain the structure of the Registers, how they work and the benefits that they will bring to the industry once they have been populated. This should be an interactive process, in order to better understand the specific needs of stakeholders and to develop a coherent architecture for registers. (3.35)

11.5   The Agency should also undertake out a benchmarking exercise with registers employed in other industries to identify best practices in their design and operation.

Proposed timescale for completion: December 2011,for the awareness and benchmarking study; December 2013, modifications to Registers: December 2014

Defining a common approach to railway safety

Recommendation 3: Improve reporting of trends in European rail safety performance

11.6   Given the limited period for which integrated safety performance data has been collated, it is not yet possible to discern an overall trend in safety performance. However, ongoing collation of safety data on this basis will enable a clearer

pictured to be discerned in due course. We recommend that the future Safety Performance Report should include measures that reflect the overall level of safety. The Common Safety Indicators (CSIs) as currently reported should be supplemented with weighted safety performance measures, such as the number of passenger fatalities per passenger-km. (3.55 , 4.35)

Proposed timescale for completion: 2011 issue of Railway Performance in the European Union.

The clarity of the acts issued by the Agency

Recommendation 4: Adopt an accredited system of quality assurance

11.7 The Agency has made improvements to its process for managing quality. However, we believe that given importance and far reaching implications of the Agency's outputs, the Agency should establish an integrated quality management system. We have highlighted the progress made my EASA in improving its systems of quality management (3.95) and recommend that the Agency establishes a 'twinning' forum with EASA where the Agencies are able to share best practices. In, particular, we commend the Agency examines the EASA Integrated Management System as a potential model system for its own operations.

Proposed timescale for completion: December 2011

11.8 We also recommend that the Agency develops a plan to implement an accredited internationally recognised quality assurance system, such as ISO 9001. (3.102)

Proposed timescale for completion: Accredited system in place by 2013

The working practices of the Agency

Recommendation 5: Establish a forum with RSSB for sharing best practices in managing multi-stakeholder cross-industry programmes

11.9 The RSSB of Great Britain, although under a different governance structure, shares many similarities with the Agency in terms of its role of developing and co-ordinating technical and safety standards. We believe there could be value in ERA and RSSB sharing experiences and ideas for managing multi-stakeholder cross-industry programmes with the aim of identifying best practices in information dissemination and initiatives to improve efficiency and quality of outputs. (3.122)

11.10 We recommend that the Agency collaborates with the RSSB and, as appropriate, similar bodies of other Member States, to establish a forum for identifying and sharing best practices in managing multi-stakeholder cross-industry programmes.

Proposed timescale: Forum established by September 2011

Recommendation 6: Develop guidance protocols for the management of working parties

11.11 Our observation of the working parties and the feedback we received from stakeholders indicated that the conduct of the working parties, the chairmanship and their effectiveness varies considerably. We believe that the effectiveness of the working parties could be improved by providing common guidance protocols and appropriate training to the project officers. (3.126)

11.12 We recommend that the Agency develops a documented set of common guidance protocols for the conduct and management of working parties and implements a

programme of training on the guidance for all its project officers who have responsibility for managing working parties.

Proposed timescale: December 2011

Networks of NSA/NIBs

Recommendation 7: Frequency and location of NSA and NIB Network meetings to be reviewed

11.13 There is a risk that due to the timing and location of the NSA and NIB network meetings, some members are rarely able to attend. The consequence of which could be that the networks become less representative, and that decisions are taken only by a core group of regular attendees. We therefore recommend that the frequency and location of the meetings should be reviewed to help ensure comprehensive coverage across all Member States. (3.147)

Proposed timescale: September 2011

Recommendation 8: Increase the number of joint NSA/NIB meetings

11.14 The decision to carry out joint NSA/NIB meetings is a positive step, given the many issues that are relevant to both networks. We recommend that the Agency consider, through consultation with the networks of NSAs and NIBs, arranging more of these joint meetings or possibly merging some of the separate meetings during the year. (3.148)

Proposed timescale: September 2011

Recommendation 9: Monitor and review the effectiveness of the networks of NSAs and NIBs

11.15 The Agency should monitor and review the effectiveness of the networks of NSAs and NIBs. We recommend that the Agency agrees a Terms of Reference with each of the respective networks, including scope of work activities and defined milestones. These should be aligned with the Agency's own annual Work Programme. The Agency should review the progress and achievements of the networks against these milestones and which should be documented in an annual report. The report should identify where milestones have not been achieved and, where appropriate, propose measures to improve the effectiveness of the activities of the NSA and NIB networks. In line with the Agency's proposed strategy to adopt multi-annual work planning, the activities of the networks could similarly be developed with a multi-annual time horizon. (3.149)

Proposed timescale: Terms of Reference established by date of publication of the Agency's 2012 Work Programme

The contribution of the Agency

Assisting Member States in the implementation of the Directives

Recommendation 10: Establish a strategy for the Agency's communication with the industry (in particular in relation to the implementation of Directives)

11.16 There appears to be a potential oversight on behalf of the Agency that having had wide participation in the working groups, the Directives/TSIs when published are assumed to be appreciated and understood by the entire industry. Feedback from

stakeholders suggests that this has not been the case and the Agency will in future need to provide more assistance in this area to facilitate the implementation process. Communications with stakeholders forms a core part of the Agency's activities, but we have not found evidence of a comprehensive stakeholder communications strategy.

11.17   We recommend that the Agency should prepare a communications strategy that sets out how it will interact with the industry as a whole in particular in relation to the implementation of Directives. The strategy should be reviewed and updated on an annual basis and form part of the Work Programme. It should include policy and guidelines for stakeholder consultation as well as details such as the number of planned training visits in Member States and scheduled publications such as key guidance documents to support TSIs or decisions made by RISC. (4.25 , 7.40)

Proposed timescale: Incorporate in the 2012 Work Programme

Increasing railway interoperability and safety

Recommendation 11: Define and report strategic KPIs for safety and interoperability

11.18   The absence of strategic measures of safety and interoperability from the Agency's business reporting highlight a potential lack of focus on the primary objectives set out in Article 1 of the Regulation. We recommend that this should be addressed, by introducing appropriate KPIs that would help to focus the Agency and its stakeholders on progress against the key policy objectives. (4.36 , 4.48). Specifically, the Agency should define KPIs that would provide measures of the level of interoperability and safety at a European level (see also Recommendation 3).

11.19   The KPIs should be reported in the Agency's annual report.

Proposed timescale: KPIs to appear in Agency's Annual Report for 2011 and Work Programme for 2012

The effectiveness of the instruments

The Website and Extranet

Recommendation 12: Obtain stakeholder feedback on the effectiveness of the website and extranet

11.20   There is scope to improve the Agency's website and extranet. We recommend that the Agency conducts a survey of its stakeholders to understand their specific needs and invite their suggestions for improvement. (5.30)

11.21   The Agency should also consider additional professional support in the design of its website and we suggest that the EASA website would serve as a useful reference to identify potential areas for improvement.(5.20)

Proposed timescale: December 2011

The performance of the Agency

Relations with the Commission, finances, and operational choices

Recommendation 13: Investigate potential for recovery of costs

11.22 Currently the Agency does not recovery costs through charges for the services that it provides. However, we recommend that the Agency conducts a review of its current activities to assess whether there are any potential areas where it could reasonably recover some or all of its costs. (7.58)

11.23 In considering any proposals for charging for its activities, we recommend that Agency considers how chargeable activities carried out by other EU Agencies are administered (e.g. the basis of charges applied by national authorities for the issuing of railway licences).(7.61)

Proposed timescale: December 2011

Recommendation 14: Develop guidelines in collaboration with the Commission on how Agency shall prioritise its activities

11.24 The Agency has limited control over either the volume of its workload or its resources. There is therefore potential for conflict with the Commission if the Agency finds that it is unable to deliver its Work Programme and meet the required outputs and time scales within its budget. Against this background, we recommend that the Agency develops, in collaboration with the Commission, guidelines on how it shall prioritise activities in the face of emerging budget constraints. (7.68)

11.25 We recommend that, within the framework of the mandates, the guidelines are defined to provide the Agency with a degree of autonomy in relation to prioritising its activities, to ensure that the likely increase in Opinions in the coming years can be effectively balanced with the ongoing activities (and new mandates) of the Agency.

Proposed timescale: July 2012 and incorporated in the 2013 Work Programme

Seat arrangements

Recommendation 15: Examine alternative locations for working party meetings

11.26 Considering the relative accessibility of Valenciennes and Lille to the various Member States there may be occasions when working parties could be more efficiently held elsewhere, although we acknowledge that any financial savings could be modest relative to overall Work Programme costs. Retention of conferencing facilities in Lille is likely to be the most practical strategy for the foreseeable future, although, given the modular nature of the facilities, we recommend that the Agency examines the potential for reducing its dependence on the facilities in Lille and locating some future working party meetings at other locations, such as in Brussels or Paris, where this can be shown to be economically advantageous. (7.85)

Proposed timescale: September 2011

Multi-annual budgeting and performance indicators

Recommendation 16: Develop and incorporate a suite of KPIs and targets into the Agency's management reporting processes

11.27 We believe that the absence of key performance indicators from the Agency's management reporting processes represents a significant impediment to improving the Agency's performance. The monitoring of key performance indicators is

common practice for most businesses and enterprises and KPIs are also employed by other EU Agencies, such as EASA. (7.99)

11.28 Further to Recommendation 10 above, we also recommend that a suite of metrics are developed to enable measurement and monitoring of each of the Agency's core activities. Each of the Heads of Unit should agree to an appropriate suite of KPIs and targets. They should be accountable for the achievement of the targets and monitoring and reporting of the KPIs should be integrated within the Agency's management reporting systems. (7.103)

11.29 It would be appropriate to formulate a hierarchy of KPIs such that the highest level KPIs are reported to the Administrative Board.

11.30 We recommend that the Agency identifies measures and metrics which reflect those elements of its activities that are critical to the achievement of its objectives. Typically these could include metrics relating to:

❙ Operating costs and budget

❙ Work Programme deliverables

❙ Work Programme time scales

❙ Stakeholder engagement

❙ Staff recruitment and retention

Proposed timescale: Report initial values in Annual Report 2011 and in Work Programme for 2012

Recommended modifications to the Regulation

11.31 Some of our proposals arising from this evaluation of the Agency would require modifications to the Regulation. These are described below.

The Administration Board

Recommendation 17: Independent review into governance of the Agency

11.32 We are not convinced that a Board comprising of 38 members that meets only twice per year is the most effective means of assuring effective governance of the Agency. The size of the Board membership and the frequency of its meetings allow for little discussion and analysis of matters relating to the management and performance of the Agency's functions. (8.25)

11.33 We recommend that an independent review is conducted to determine how the governance of the Agency could be improved so as to ensure that the operation and performance of the Agency's activities in relation to its Work Programme and objectives are subject to greater management scrutiny and accountability to stakeholders. The review should include evaluation of:

❙ the terms of reference and membership of the Administration Board

❙ the need for and role of sub committees with authorities delegated from the Administration Board

❙ provision of systems for the monitoring and control of performance and quality

I the structure and functioning of the Agency's management team, including accountabilities for monitoring and managing key performance measures (KPIs)

I how the Agency engages with its stakeholders

11.34 Any decision following this review is likely to need a change in the Regulation.

Proposed timescale: March 2012 and included as a requirement in the 2012 Work Programme

Developing a genuine European railway culture

Recommendation 18: Promoting a European railway culture to become a defined objective of the Agency

11.35 There is a need for the Agency to recognise and define an objective of promoting a European railway culture, not as an end in itself, but as a means to breaking down institutional barriers and changing the way of thinking in the sector which is important to facilitating the realisation of the vision of a single European railway. We recommend that the objective of promoting a European railway culture should become more explicit within the scope of the Agency's role and it should articulate this within its stated mission and core values (4.18).

11.36 Promoting a European railway culture should be adopted as an objective of the Agency and should be incorporated into the Agency's core values and mission statement.

Proposed timescale: Recommendation to the Commission on the wording of a change to the Regulation by December 2011

Recommendation 19: Provide clarity of the Agency's responsibilities to provide assistance to Member States

11.37 The Regulation specifically refers to the Agency, at the Commission's request, providing assistance to the Commission rather than to Member States (4.25). We recommend that Article 21b of the Regulation is modified to extend the Agency's responsibilities to provide assistance to Member States.

Recommendation 20: Require the Agency to publish a report on the Safety Performance of European railways on an annual basis

11.38 We note that the Agency has produced a Report on Safety Performance in the EU on an annual basis. Whilst the Regulation only requires such a report to be prepared on a biannual basis, we recommend that it is amended to require the Agency to publish such a report on an annual basis (4.36). We recommend that paragraph 2 of Article 9 of the Regulation is modified accordingly.

Recommendation 21: Introduce flexibility to the rules governing the extension of temporary staff contracts

11.39 We believe a more pragmatic approach is needed to the rules concerning the employment of temporary staff. We recommend that, subject to meeting appropriate criteria, it should be permissible that temporary staff contracts, by exception, may be extended beyond the 5 year threshold (8.38). This would provide the Agency with greater flexibility and potentially mitigate disruption to the Work Programme and loss of continuity in knowledge sharing. For this reason

recommend that Article 24 of the Regulation is modified to make provision for this option. (8.48)

The potential future role of the Agency

11.40   As part of the evaluation we were asked to evaluate a number of potential future roles for the Agency and our finding are described in Chapter 9. Our conclusions and recommendations in relation to these potential future roles are set below. We highlight firstly, those areas related specifically to the relationship between the Agency and NSAs and secondly, the relationship between the Agency and NIBs, followed by a summary of other potential future roles.

Spot checks on safety critical components

11.41   There was a considerable level of concern among stakeholders and we would therefore caution implementation of the proposal to extend the role of the Agency to include spot checks of safety critical components. We **do not believe** that the Agency carrying out spot checks instead of NSAs would have any material benefit in terms of improving safety or efficiency. (9.39)

Type approval and certification of rail vehicles and ERTMS equipment

11.42   With respect to the Agency taking a more prominent role in the activities of the NSA in this area, the most favourable option would be one where the Agency ensures that the framework under which the NSAs operates is coherent, transparent and fully understood. This would help avoid misinterpretation of TSI requirements and decrease the possibility of further barriers to entry emerging within Member States. In order to do this, the Agency will need to develop clear guidelines on how NSAs should carry out type approval and certification.

11.43   Our stakeholder consultation revealed that a significant proportion were in favour of the Agency taking on an extended role in the type approval and certification processes.

11.44   Article 21a of the Regulation requires that, on the basis of an Agency report on the certification process of ERTMS equipment due by 1 January 2011, the Commission shall assess the costs and benefits of, inter alia, a single certification body at Community level. We understand that this relates only to the certification process of ERTMS and therefore a process for other railway equipment will be more difficult to achieve. It would seem logical to defer any final decision until the results of this analysis are known, including the conclusions on its costs and benefits, as:

I   this review will identify the steps that are needed (particularly in relation to national and EU competencies) to move ERTMS to a common system;

I   it will provide a guide as to how wider certification can be carried out; and

I   it will give an indication of whether or not wider certification is achievable.

11.45   With respect to the Agency getting involved in NoBo activities we note that there is an established working market in this area and as such it would seem contrary to the principles of liberalisation for a public body to then retake control by becoming the Notified Body.

11.46   Therefore our **recommendation** is that the Agency should remain a partner to the market, but it should exercise an enhanced "coordination" role with a view to ensuring that the Notified Bodies are suitably trained and skilled to check the conformity of TSIs (possibly by the Commission calling on the provisions in Article 13 of the Regulation). The Agency should also ensure that it sets clear guidelines (beyond the EU declaration) on how NSAs review submissions and the factors to be taken into consideration.

11.47   This should be accompanied by a strengthening of the provisions in Article 10 (and the relevant provisions in the Interoperability Directive) to allow for a competent appeal body to pass judgement on all matters relating to type certification and not only on railway vehicles. We do not believe that to the function of providing guidelines could be self-financing, nor the monitoring described above, although any training that results from the monitoring activities could be funded by the NoBos as it would have a positive impact on their revenue earning activities. (9.59)

Certification of Infrastructure Managers and Railway Undertakings

11.48   In relation to the certification of IMs, there is a role for the Agency to standardise the manner in which NSAs request information for certification and then evaluate the request. However, we do not believe that any material benefits would derive from transferring certification responsibilities away from the NSAs. If it is found that some NSAs are not exercising their certification responsibilities effectively, then the Agency may then have a role in identifying and recommending measures to improve the functioning of the NSA.

11.49   We therefore **do not recommend** an extension of the Agency's role in relation to the certification of IMs in future, but propose that it continues to work closely with NSAs to assist them in ensuring that they are effective in exercising their certification responsibilities. (9.73)We **recommend** that the Agency continue with its work of developing a single safety certificate, as this represents an important milestone towards the aim of a European railway area without frontiers. (9.79)

11.50   Furthermore, we **recommend** that, having set the framework in an appropriate manner, the Agency initially consider trialling cross-border safety certification of railway undertakings for the ERTMS Corridors. After a 5 year period we recommend that the Agency review the costs and benefits of this activity, with the long term (10-20 years) goal of extending this to the entire single European railway (potentially passing through an intermediate step based on the TEN-T network). (9.80)

11.51   We are aware that in the short term this will duplicate the roles of some NSAs within the Agency and thus increase its costs, but as a contribution to the strategic objectives of the Agency, it is a step that should be taken. This will need to be accompanied by a change in Article 10 of the Regulation, or the addition of a specific provision to that effect.

Supervision, audit and inspection of the NSAs

11.52   For this potential future role to be effective, it will be important to ensure that a suitable framework is in place. A potential area of opportunity is to achieve greater consistency between the NSAs and we **recommend** that the Agency works closely with the NSAs to develop an appropriate set of common guidelines for the carrying out of day-to-day activities.

11.53   The process of establishing the NSA guidelines would involve a work programme requiring a working party comprising Agency and NSA representatives. We **recommend** that once these guidelines are in place the Agency should then be given the role of auditing adherence to them. This ongoing audit role of the Agency would require dedicated resources and would therefore increase the costs of the Agency accordingly. We also note that this audit role would require a change to the Regulation, which could be identified in Article 10 paragraph 2 through the addition of a point (c) referring to this issue. However, we believe this approach to improving the consistency of the safety functions of the NSAs offers a considerably more practical and cost effective solution to implement and operate than an alternative where NSA functions were centralised to the Agency or a separate European wide railway safety body. We do not believe that it would be practical for such an audit role to be self-financing. (9.97)

Investigation of railway accidents

11.54   We **do not recommend** that the Agency should have mandatory involvement in the investigation of serious accidents. Whilst its participation should remain by invitation only, we suggest that such invitations may be requested by the relevant Member State (such as the transport Ministry or the permanent representative in Brussels) and not limited to the respective NIBs. (9.121)

11.55   We **recommend** that the Member States be required to report on the capability and functioning of their NIBs to the Agency and give the Agency an audit/reporting role, as suggested for the NSAs.

Monitoring the implementation of legislation

11.56   We acknowledge that there is a role for the Agency to play in monitoring the implementation of Directives, but we **recommend** that this should be limited (in terms of safety) to extending paragraph 2a of Article 21b to include communicating information on implementation and carrying out investigations on the effectiveness of implementation (letter vs. spirit of the law), in terms of whether the barriers to entry that were supposed to be removed have actually disappeared. The role should not include recommending potential infringements to the Commission. The Commission should take these decisions autonomously based on the evidence provided by the Agency, as to do otherwise would be likely to jeopardise the Agency's role as partner in the industry. Similar provisions should also be added to Article 14 to ensure that the same monitoring can be carried out for interoperability legislation. (9.138)

Promoting innovation

11.57   We cite a number of concerns with the proposition of the Agency having extended involvement in the promotion and development of new technologies for the rail sector. Firstly, there does not appear to be a clearly defined problem that the Agency's involvement would address. Secondly, the commercial dynamics associated with technologies that are not exclusively related to the rail industry do not align well with the Agency's core capabilities and expertise. Thirdly, a significant proportion of the stakeholder community is likely to be unsupportive of this proposition.

11.58   Given these concerns, we **believe** that the Agency's involvement should primarily be limited to a monitoring and facilitating role and that technology development

should be a matter for the relevant industries to progress in response to market needs, albeit within a framework shaped by standards and guidelines determined by the Agency and its stakeholders through its working parties. (9.158)

International cooperation and promotion of EU standards

11.59   Given the level of relevant expertise held within the Agency, there is, in our view, some logic to the Agency becoming the delegated authority for the more technical aspects of these international relations. However, the Commission should continue to participate in those ventures that do not require significant technical knowhow. The Agency will need increased funding to be able to carry out this new task.

11.60   This task does not align with the "core business" of the Agency and as such we **recommend** that any additional provisions to be incorporated in the Regulation in relation to these activities should have the same provisions as set out in paragraph 2 of Article 21b, whereby (sic) they should not prejudice the other activities of the Agency. (9.171)

Dissemination of railway-related information and training

11.61   We believe that it is important for the Agency to increase its activities related to the dissemination of railway-related information and training and **recommend** that Articles 18 and 19 should be supplemented with specific provisions in the Regulation that require the Agency to carry out dissemination and training on its activities, particularly regarding interpretation of its Recommendations and Technical Opinions. (9.182)

Other potential roles: Providing advice and support

11.62   We believe that the type of advice that the Agency provided in the case of the Buizingen incident described in paragraph 7.53 provides a valuable contribution to the improvement of safety in the European railway system. Therefore, we **recommend** that the Regulation be amended so as to provide clarity that the Agency should be involved in activities such as this, in addition to the Technical Opinions that the Agency already provides. (9.185)

APPENDIX

A

GLOSSARY

A1   GLOSSARY

A1.1   The tables below summarise the principal terms and acronyms used in this report.

Term	Definition
Acts of the Agency	Recommendations and Opinions by the Agency as provided for in Article 2 of the Regulation.
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.
The Agencies	Two or more EU Agencies: the Agency, EASA and EMSA.
The comparator bodies	The Agencies and ORR, all of which have been used for the benchmarking comparison within this evaluation.
ERTMS Corridors	Freight corridors developed by infrastructure managers with the aim of creating interoperable corridors for rail to develop and compete with roads.
The industry	For the purposes of this report the term industry refers to all parties that are involved in the railway industry including manufacturers, operators, industry associations, notified bodies and public bodies.
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.
Instruments of the Agency	Registers and documents drawn up and made accessible by the Agency as provided for in Articles 18 and 19 of the Regulation.
Interoperability	The ability of a rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance for these lines. This ability depends on all the regulatory, technical and operational conditions which must be met in order to satisfy the essential requirements
Mandate	Commission instructions to the European Railway Agency to perform certain activities under the Safety and Interoperability Directives.
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.
Recommendation	A report presented to the Commission by the European Railway Agency in response to a Mandate provided by the Commission following discussion and negotiation within a working party, as provided for in Article 2 of the Regulation.
The Regulation	Regulation (EC) No 881/2004 of 29 April 2004 as subsequently amended by Regulation (EC) No 1335/2008 of 16 December 2008.
Representative Body	A body that represents the various parts of the industry, as set out in Table 2.2 of the main body of this report

Term	Definition
Opinion	An opinion presented to the Commission or relevant authority in response to a request made to clarify technical points within European Legislation, as provided for in Article 2 of the Regulation.

Acronym	Full term
ABC	Activity-Based Costing
AEIF	European Association of Railway Interoperability
ALE	Autonomen Lokomotivführer-Gewerkschaften Europas
ATSB	Australian Transport Safety Bureau
CEN	Comité européen de normalisation - European Committee for Standardization
CENELEC	Comité européen de normalisation en électronique et en électrotechnique - European Committee for Electrotechnical Standardization
CER	Community of European Railways and Infrastructures Companies
CSI	Common Safety Indicators
CSM	Common Safety Methods
CST	Common Safety Targets
DG HR	Directorate-General Human Resources and Security
DREAM	Database for Railway Economic Assessment Management
DV29	The authorisation process of structural subsystems and vehicles under Directive 2008/57/EC
EASA	European Aviation Safety Agency
EC	European Community
EFSA	European Federation of Sea Angler
EIM	European Infrastructure Managers
EN	European Norm (standard)
EMSA	European Maritime Safety Agency
EPTTOLA	European Passengers Train and Traction Operating Lessors' Association
ERA	European Railway Agency
ERFA	European Rail Freight Association

ERADIS	European Railway Agency Database of Interoperability and Safety
ERATV	European Register or Authorised Types of Vehicles
ERTMS	European Rail Traffic Management System
ETF	European Transport Federation
ETSI	European Telecommunications Standards Institute
EU	European Union
FAA	Federal Aviation Authority
FAQ	Frequently Asked Questions
GSM-R	Global System for Mobile Communications - Railway
ICAO	International Civil Aviation Authority
ICT	Information and Communication Technology
IM	Infrastructure Manager
IMS	Integrated Management System
ISO	International Organization for Standardization
KPI	Key Performance Indicator
MS	Member State
NAA	National Aviation Authority
NIB	National Investigation Body
NoBo	Notified Body
NRB	Network of Representative Bodies
NSA	National Safety Authority
ORR	Office of Rail Regulation (Great Britain)
OSJD	Organisation for the Cooperation of Railways
OTIF	Intergovernmental Organisation for International Carriage by Rail
RISC	Railway Interoperability and Safety Committee
RO	Recognised Organisations (in the maritime sector)
RSSB	Rail Safety and Standards Board (Great Britain)
RU	Railway Undertaking
SDG	Steer Davies Gleave

SMART	Specific, measurable, achievable, relevant, timely
TAF	Telematics Applications and Freight
TAP	Telematics Applications for Passenger
TRAN	Committee on Transport and Tourism (a committee within the European Parliament.)
TSI	Technical Standards for Interoperability
UIC	The International Union of Railways
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

APPENDIX

B

SCOPE OF THE EVALUATION STUDY

B1 SCOPE OF THE EVALUATION STUDY

B1.1 The Task Specifications set out the following scope for the evaluation study.

The study will cover three areas of analysis: an evaluation of the implementation of the Regulation, an evaluation of the functioning of the Agency and an identification of areas of improvement (including possible future roles of the Agency) as follows:

1 The impact of the Regulation

The overall impact of the Regulation shall be assessed against the initial objectives of the Regulation laid down in its Chapter 1.

The completion of the initial objectives

The role of the Agency in their completion is essential and stems from mandates and Work Programmes. The tenderer shall evaluate, among others:

▌ *The definition of an optimal level of technical harmonisation in the interoperability field*

▌ *The definition of a common approach to railway safety*

▌ *The level of development of ERTMS*

▌ *The clarity of the acts issued by the Agency*

▌ *The establishment of systems of registration and exchange of information*

▌ *The working practises of the Agency in respect of the railway industry and the competent national railway authorities*

The contribution of the Agency to the fulfilment of policy objectives

These objectives concern the overall effectiveness of the railway regime for which the Agency has only a contributory role. Their fulfilment is primarily dependent on the Member States implementing the directives and implementing them in a consistent manner. The tenderer shall evaluate, among others, the following elements, and give the recommendation on how the Agency can further contribute to the proper implementation of the directives by the Member States:

▌ *The evolution of the levels of railway interoperability and safety*

▌ *The contribution to the revitalisation of the railways and the development of a genuine European railway culture*

▌ *The promotion of innovation in the field of railway interoperability and safety*

▌ *The implementation by the Member States of their obligations stemming from the rail legislative framework at EU level*

The effectiveness of the instruments laid down by the Regulation for the fulfilment of the objectives

The tenderer shall provide a recommendation on the efficacy of such instruments and identify the main areas of impact of the Agency instruments. It will include but will not be limited to the analysis of the impact and added value of:

I *the acts of the Agency as provided for in Article 2 of the Regulation*

I *the public database of documents developed by the Agency as provided for in Article 11 of the Regulation*

I *the registers developed by the Agency as provided for in Articles 18 and 19 of the Regulation*

The costs incurred for the fulfilment of the objectives

The tenderer shall evaluate the cost-efficiency of the instruments laid down by the regulation, in particular:

I *The rulemaking function and associated procedures as carried out by the Agency in support to the legislative action of the Commission and the national railway authorities in comparison with the system in place before entry into force of the Regulation.*

I *The supporting tools established by the Agency, such as the database and the registers.*

2   The effectiveness of the Agency and its working practices

The evaluation study should allow an assessment of the relative effectiveness and appropriateness of the Agency's practices, when they are derived from the Regulation, or when they have been put in place in order to face immediate needs.

The tenderer shall assess a number of elements such as:

The performance of the Agency in particular with regard to

I *The scope for operational choices made by the Agency and the choices made, taking into account the available means and resources*

I *The scope for assistance by the Agency to the Member States and the assistance given in fulfilling their obligations stemming from, inter alia, the interoperability and safety Directives, including the exchange of information, dissemination and training.*

I *The involvement of expertise from the industry and the competent railway authorities, notably involved in the working parties as provided in Article 3 of the Regulation.*

I *The consultation process as provided in Articles 4 and 5*

I *The relations with the Commission*

I *Annual and multi-annual programming, including the issue of properly defined performance indicators*

I *Available financial resources, including the analysis of the amount of tasks stemming from legal obligations vis-à-vis the level of financing*

I *Current seat arrangements*

The effectiveness and functioning of the Agency and its working practices as regards the structures created by the Regulation

❚ *The Administrative Board*

❚ *The powers of the Executive Director*

❚ *The working parties*

❚ *The networks of the National Safety Authorities and the Investigating Bodies*

❚ *The administrative procedures supporting the operational activities of the Agency*

❚ *The impact of the financial and staffing rules on the work of the Agency, including the administrative burden originating from the adoption of the Commission's procedures, rules and practices*

❚ *The overall internal organisation of the Agency*

3   Identification of areas of improvement

The existing system shall be assessed with a view to a possible amendment of the Regulation and the extension of the powers of the Agency. The contractor shall issue recommendations in that regard. Taking into account that the legal framework has been recently amended and is still in the phase of implementation by the Member States, the contract shall analyse further areas of improvement. The following indicative and not exhaustive elements shall be assessed with specific attention to the evaluation of the impact of the new roles of the Agency, the consequences in terms of financial and human resources and the possibility of self-financing new and existing activities:

a)   The process of certification of the railway undertakings and infrastructure managers

   Whilst it seems logical to keep certification of infrastructure managers (IMs) at national level, the certification of railway undertakings (RUs) which operate across borders could be coordinated by ERA. In the current legislation RUs need a part A certificate, delivered by one MS and valid in the whole EU rail system, and a part B certificate which is only valid in one MS and which reflects the capacity of the RU to meet the national rules of that MS. ERA is currently developing a migration strategy towards a single safety certificate which would allow an RU to operate in the whole EU rail system with a single safety certificate. The potential role of ERA in those processes should be assessed.

b)   The investigations taking place after railway accidents

   In the current legislation investigations are mandatory after serious accidents and they have to be performed by national investigation bodies (NIBs). ERA is allowed to participate upon request of the NIBs. The study should consider the possibility of mandatory participation of ERA in investigations of serious accidents, as well as the terms of any such participation.

c)   Spot-checks of components that are crucial for railway safety and random spot-checks on the territory of the Member States to verify critical safety aspects

These spot-checks are usually part of the monitoring/supervision role of the NSAs after having delivered safety certificates to RUs and safety authorisations to IMs. However the question of the execution of such checks has emerged at the conference on railway safety organised by the Commission on 8 September 2010.

d) *The level of supervision over the National Safety Authorities, including the question of a possible audit and inspections by ERA*

The Commission is currently assessing the implementation of the railway safety directive in the Member States. One of the aspects to be checked is the administrative capacity of the NSA to deliver its duties: certification of the Infrastructure manager, certification of the railway undertakings, authorisation to place into service vehicles and subsystems, licensing of drivers, monitoring railway safety, etc. There are signs that some of the NSAs may not be properly equipped to face the growing tasks. NSAs were set up since 2004 as required by the railway safety directive; however the level of development varies a lot among Member States. In accordance with the current legislation ERA has set up a group of NSAs and organises regular meetings that allow not only the possibility to discuss recommendations being prepared by ERA but also the opportunity to exchange experiences and best practices related to the daily tasks of the NSAs. Peer reviews are also being organised in order to deepen that exchange of experiences in a more efficient way. The opportunity and feasibility of the ERA to audit the administrative capacity of the NSAs will be assessed by the contractor.

e) *Monitoring the implementation of the EU railway safety and interoperability legislation by the National Safety Authorities and the Member States*

The idea of involving ERA in the process on behalf of the European Commission will be assessed. A possibility of conducting technical investigations to monitor the effectiveness of the application of the legislation will be also explored, as well as an obligation to report the cases of non-compliance to the Commission with the view of opening an infringement procedure.

f) *Authorisation (type approval/certification) of rail vehicles and the ERTMS equipment*

The current legislation provides for the following common EU procedure for the certification of vehicles:

▪ *step 1: the conformity with the TSI is checked by an independent Notified Body;*

▪ *step 2: the applicant prepares an EC declaration of verification and sets up the file for the request of authorisation to place the vehicle in service;*

▪ *step 3: the National Safety Authority (NSA) delivers an authorisation of placing in service.*

ERA has already an important role in the future authorisation process. Indeed, following the Commission proposal of December 2006 concerning "cross-acceptance" of vehicles, the new interoperability directive 2008/57 already gives ERA the duty to facilitate the cross-acceptance process by developing a reference document in which all national rules will be classified according to a

predefined list of parameters. All national rules will be compared and their equivalence will be assessed. ERA will also be able to deliver Technical Opinions on an ad hoc basis, upon request of the NSA or the applicant.

The role of ERA could be possibly widened as follows:

- *acting as a notified body*

- *acting as a one stop shop or coordinator for multi-Member States authorisation*

- *acting as an authority*

These are very different roles which must be assessed for their advantages and disadvantages.

Also the cooperation between ERA and NSAs must be assessed because several models exist, from the current situation (no formal link, different competencies, only exchange of experiences and best practices), to the extreme situation where ERA replaces NSAs, through several other cooperative models.

Regarding the ERTMS, type certification of such equipment also appears to be a task that might be better performed at EU level instead of national level. Also in this case the different roles of ERA (as notified body, as one stop shop or coordinator for multi-Member States authorisation, as authority) should be considered and assessed.

g) *Dissemination of railway-related information and training by ERA, including its homogenisation aspect*

Recent studies have shown that due to the fragmentation of the industry and due to the lack of recruitment of new staff during the last decades there is a general risk of losing rail technical expertise. In addition there has been in the last 10 years an incredible development of new principles in terms of the common safety approach but also in terms of technical specifications.

Although ERA has developed its own dissemination policy and tools which aim at making aware the rail community and the citizens of concrete results of its activities, ERA could play a bigger role in making sure that the developments made at EU level are properly understood in the management and working level of the industry.

h) *External dimension of the European railway legislation and cooperation with third parties, particularly in view of promotion of the EU technological standards*

ERA has been contacted in the context of several new rail projects in third countries in order to explain the EU approach in technical harmonisation in the field of rail specifications. The promotion of the EU technological standards is not in the current tasks of ERA but will be considered as ERA would appear to be the body having better expertise for such a role.

The contractor should also assess an enhanced role of ERA in international relations, particularly regarding preliminary arrangements with third countries as a support to the Commission in a process of negotiating and

signing mutual recognition agreements. Similar support to the Commission in the framework of negotiations with OTIF and OSJD should be also evaluated.

i) *Support to industry in implementation and management of new technologies for railways (TAF TSI (Telematic Application for Freight services), TAP TSI (Telematic Application for Passengers), ERTMS, registers, wagon-tracking technology)*

   By the end of 2011 the Agency will deliver the final draft of the revised TSI on Telematic Applications for Freight services (TAF). The implementation steering will be a complicated process and will need a support. ERA should be considered for this role as an institution having the expertise and coordination/steering skills. A similar possible role for ERA should be explored with regard to other above-mentioned technologies.

j) *Any other additional role related to the activities of the Agency in the field of interoperability and safety whose development may be justified on the basis of the results of the evaluation*

APPENDIX

C

ONLINE SURVEY: SCREENSHOTS

C1   ONLINE SURVEY: SCREENSHOTS

C1.1   The screenshots below show details of the questions asked in the online survey.

EUROPEAN COMMISSION

Evaluation of Regulation 881/2004
and the European Railway Agency

SECTION A Involvement with the Agency

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Q1 Which type of organisation do you represent?

- ○ Railway Undertaking
- ○ Supplier of Rail Equipment and Systems
- ○ Infrastructure Manager
- ○ National Safety Authority
- ○ Member State Representative
- ○ Association Representative
- ○ Administrative Board Member
- ○ National Investigation Body
- ○ Notified Body
- ○ Other [   ]

Q2 How familiar are you with the Agency?

- ○ Very familiar
- ○ Quite familiar
- ○ Not very familiar
- ○ Not at all familiar

Q3 How would you describe your involvement with the Agency?
Please fill in below

Q4 How often do you have contact with the Agency?

- ○ Daily
- ○ Weekly
- ○ monthly
- ○ every few months
- ○ less often

Q5 Do you have the right amount of contact with the Agency?

- ○ Yes
- ○ No, would prefer more contact
- ○ No, would prefer less contact

Q6 Do you have any more comments about your involvement with the Agency?
Please fill in below

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Next Page »

EUROPEAN COMMISSION

Evaluation of Regulation 881/2004 and the European Railway Agency

SECTION B   Objectives of the Agency

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Q7   To what extent has the Agency fulfilled the following objectives:
Please check one box on each row

	Completely	Partially	Not at all	No opinion
Achieved an optimal level of technical harmonisation in the interoperability field?	○	○	○	○
Established a common approach to railway safety?	○	○	○	○
Progressed the development of ERTMS?	○	○	○	○
Established effective systems of registration and exchange of information?	○	○	○	○

Q8   What else has it achieved?
Please fill in below

Q9   To what extent has the Agency contributed to the development of the following:
Please check one box on each row

	A great deal	Somewhat	Not at all	No opinion
Increasing railway interoperability	○	○	○	○
Improving safety revitalising the railways and creating a genuine railway culture	○	○	○	○
Promoting innovation	○	○	○	○
Assisting Member States in the implementation of the Directives	○	○	○	○

Q10   Do you have any more comments about the objectives of the Agency?
Please fill in below

SECTION C   Instruments of the Agency

Q11   How useful do you find the following instruments of the Agency:
Please check one box on each row

	Very useful	Quite useful	Not very useful	Not at all useful	No opinion / not used this instrument
Website	○	○	○	○	○
Extranet	○	○	○	○	○
Document Register	○	○	○	○	○
Information on licensing	○	○	○	○	○
Information on safety certification	○	○	○	○	○
Information in the Common Safety Indicators Database	○	○	○	○	○
Information on investigation reports	○	○	○	○	○
Information on NSA and NIB Reports	○	○	○	○	○
EC declarations of verification of subsystems	○	○	○	○	○
EC declaration of conformity of interoperability constituents	○	○	○	○	○
EC declaration of suitability for use of interoperability constituents	○	○	○	○	○
Information on authorisations for placing into service	○	○	○	○	○
The Virtual Vehicle Register	○	○	○	○	○
Information on National Rules	○	○	○	○	○

Q12 Are there any other instruments you are aware of?
Please fill in below

Website

Extranet

Document Register

Information on licensing

Information on safety certification

Information in the Common Safety Indicators Database

Information on investigation reports

Information on NSA and NIB Reports

EC declarations of verification of subsystems

EC declaration of conformity of interoperability constituents

EC declaration of suitability for use of interoperability constituents

Information on authorisations for placing into service

Q13 How do you think the following should be improved?
Please fill in below

The Virtual Vehicle Register

Information on National Rules

| Q14 | **Do you have any more comments about the instruments of the Agency?** |
| Please fill in below |

| Q15 | **How would you rate the quality of the Agency's outputs particularly in relation to:** |
| 5 being very high quality and 1 being very low quality |

	5	4	3	2	1
Recommendations sent to the Commission	○	○	○	○	○
Technical Opinions	○	○	○	○	○

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SECTION D   Cost effectiveness of the Agency

Q16   How cost effective do you consider the Agency to be?
Please check one box on each row

- ○ Very cost effective
- ○ Quite cost effective
- ○ Not very cost effective
- ○ Not at all cost effective
- ○ No opinion

Q17   Please explain
Please fill in below

Q18   How do you think the cost effectiveness of the Agency could be improved?
Please fill in below

Q19   Do you think the Agency's budget is about right, too large or too small?
Please check one box on each row

- ○ About right
- ○ Too large
- ○ Too small
- ○ Don't know

Q20   Please explain
Please fill in below

SECTION E   Performance of the Agency

Q21   How would you rate the Agency's performance regarding:
Please check one box on each row

	Very good	Quite good	Neither good nor poor	Quite poor	Very poor	No opinion
Assisting organisations to fulfill their obligations stemming from the interoperability and safety Directives, including the exchange of information, dissemination and training	○	○	○	○	○	○
Involving expertise from the industry and competent railway authorities in working parties	○	○	○	○	○	○
Consulting railway industry stakeholders from across all member states	○	○	○	○	○	○
Its relationship with the Member States representatives	○	○	○	○	○	○
Meeting its obligations efficiently	○	○	○	○	○	○

Q22 Why did you rate the following as poor?
Please fill in below

Assisting organisations to fulfill their obligations stemming from the interoperability and safety Directives, including the exchange of information, dissemination and training

Involving expertise from the industry and competent railway authorities in working parties

Consulting railway industry stakeholders from across all member states

Its relationship with Member State Representatives

Meeting its obligations efficiently

Q23 Do you have any more comments about the performance of the Agency relating to Q22?
Please fill in below

Q24 How would you rate the Agency's performance regarding:
Please check one box on each row

	Very effective	Quite effective	Neither effective nor ineffective	Quite ineffective	Very ineffective	No opinion
The Administrative Board	○	○	○	○	○	○
The Executive Director	○	○	○	○	○	○
The working parties	○	○	○	○	○	○
The networks of the National Safety Authorities	○	○	○	○	○	○
The networks of the National Investigating Bodies	○	○	○	○	○	○
The administrative functions supporting the operational activities of the Agency	○	○	○	○	○	○
And how would you rate the overall effectiveness of the internal organisation of the Agency	○	○	○	○	○	○

Q25 **Why did you rate the following as ineffective?**
Please fill in below

The Administrative Board

The Executive Director

The working parties

The networks of the National Safety Authorities

The networks of the National Investigating Bodies

The administrative functions supporting the operational activities of the Agency

And how would you rate the overall effectiveness of the internal organisation of the Agency

Q26 **Do you have any more comments about the performance of the Agency relating to Q25?**
Please fill in below

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SECTION F Areas for Improvement

Q27 We would like your ideas for how the Agency might be improved and invite you to record your thoughts below. How would you improve:
Please fill in below

The scope of the powers, responsibilities and duties of the Agency

The institutional structure of the Agency

The instruments managed by the Agency

Facilities managed by the Agency

The behaviour or performance of the Agency

Any other aspect of the Agency

Q28 Do you agree or disagree with the following possible extensions of the Agency's role
Please check one box on each row

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No opinion
Coordinate the process for the certification of railway undertakings?	⊙	⊙	⊙	⊙	⊙	⊙
Coordinate the process for the certification of infrastructure managers?	⊙	⊙	⊙	⊙	⊙	⊙
Always be involved in national accident investigation (rather than only if invited by the national authority as is currently the case)?	⊙	⊙	⊙	⊙	⊙	⊙
Carrying out spot checks of key railway safety components instead of NSAs?	⊙	⊙	⊙	⊙	⊙	⊙
More of an oversight role with regards to the NSAs, for example through audits of their procedures?	⊙	⊙	⊙	⊙	⊙	⊙
Monitoring the implementation of the EU railway safety and interoperability legislation at a national level?	⊙	⊙	⊙	⊙	⊙	⊙
An extended role in the authorisation process (type approval/certification) ?	⊙	⊙	⊙	⊙	⊙	⊙
Greater role in disseminating railway related information and training the industry?	⊙	⊙	⊙	⊙	⊙	⊙
International (outside of the EU) role be enhanced in order to promote EU technology?	⊙	⊙	⊙	⊙	⊙	⊙
Direct and active role in directing industry innovation and coordinating its activities?	⊙	⊙	⊙	⊙	⊙	⊙

APPENDIX

D

BENCHMARKING: INFORMATION SOUGHT ON COMPARATOR BODIES

D1   BENCHMARKING: INFORMATION SOUGHT ON COMPARATOR BODIES

D1.1   The table below summarises the information sought on comparator bodies as part of the benchmarking exercise.

Data	Purpose
Staff: Number of staff by skill level and demographics; Salaries and unit costs; Employment conditions; Staff turnover; Absentee rates; Vacancies; Recruitment process; Performance appraisal	To understand the effectiveness of the Agency in recruiting and retaining staff with appropriate skills
Objectives: Number of objectives & what were they; How are objectives prioritised? Number of objectives met in first 5 years; Are objectives devolved through the organisation.	To compare the extent to which the Agency and the comparator bodies are driven by objectives and their success in achieving them.
Institutional: Board structure & composition; Number of board meetings; Comparison of powers and decision making.	To assess the institutional structure of the body and how it compares with the others.
Budget and expenditure: Sources of funding; How is budget determined and authorised; Breakdown of accounts; Travel expenditure.	To analyse the relative cost-effectiveness of the Agency and the comparator bodies.
Documentation: Size of public register; Accessibility of website; Languages available; Industry tools developed.	To establish whether a clear mandate within the Regulation has been met and what best practice could be adopted.
Work level: Number of referrals to the Commission; Outcomes of referrals to the Commission; Number of workshops (and their frequency); Quantity of publications produced; Volume of correspondence.	To analyse the volume of output produced by the Agency and the comparator bodies.
Performance: How is performance measured? KPIs; Measurement of performance against objectives; Number of audits; Key findings of audits.	To identify the extent to which the management of the Agency is focused on performance.
Stakeholders: Number of stakeholders; How stakeholders are engaged; Industry support; Have they made things easier for the industry?	To assess the degree to which the Agency involves the industry in its work and its Recommendations.
Facilities: Size and number of facilities; Cost of facilities; Location of facilities; Reasons for choice of location(s)	To compare the effect of the Agency's split location and the regional location with the comparator bodies.

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