

European Commission, DG TREN

# **Insurance of Railway Undertakings**

Final report

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# 1 Introduction

## 1.1 Background

Rail insurance - a new market

The rail insurance market is a fairly new market evolving from the recent liberalisation/privatisation of the rail sector. The liberalisation resulted in the creation of separate infrastructure bodies which are often state-owned and private railway undertakings (RUs).

Prior to liberalisation, railway markets were solely national markets, with virtually no competition, and most RUs were state enterprises.

The opening of the internal railway market took place in the 1990'es by the adoption of the first railway package by the European Council in 1995. Liberalisation has taken place at different pace in the various EU countries resulting in different degree of market openness. Whereas some countries may be considered providing market access opportunities for external RUs, market access opportunities offered to RUs by other countries may be considered restrictive or the development of market opening in these countries as virtually non-existing.

In terms of insurance requirements to RUs, previous studies have demonstrated that there are great inconsistencies in the approaches taken when viewed at European level. With less information available as to the functioning of the European insurance market, it is the impression that different situations exist in the various countries. Whether these differences in legal requirements and the factual situation regarding insurance constitute a problem to the further integration of the European rail market is the subject of this Study.

Preparation of the study

This report was prepared in response to a request for services under an EU Commission DG TREN Framework Contract, Lot 2, Technical Assistance Activities.

The report contains the results of work carried out by COWI in close co-operation with DG TREN.

Expert assistance on insurance has been provided on an occasional basis by Mike George, Willis UK Limited.

## 1.2 Structure of the report

Structure of the report

The report is structured in five chapters:

- Chapter 1, introduces the study including its methodology. In addition, it draws up the general lines of the issue of railway insurance, including a definition of the most central terms applied in the report and anticipated future trends evolving in the rail insurance market.
- Chapter 2 provides a status of the legal and factual situation of rail insurance situation and the rail insurance market in the EU 25 + 4 countries included in the study;
- Chapter 3 presents the study findings and conclusions;
- Chapter 4 lists the problems identified in previous chapters in relation to insurance of railway undertakings, and,
- Chapter 5 contains the study recommendations.
- Annex 1 contains the original country profiles as reported by the EU 25 + 4 countries included in this Study (Please note that not all countries have submitted a country profile.);
- Annex II contains the responses from the questionnaire survey on stakeholder views on and opinions about the functioning of the European rail insurance market and proposals for how to improve it;
- Annex III provides a list of literature studied and of persons consulted.
- Annex IV provides an overview of actual insurance cover of RUs based on licenses published at the EU Commission's homepage.

## 1.3 Purpose of the study

The Study has been carried out for the EU Commission DG Transport and Energy under the Lot 2 Framework contract.

Objective and focus

The objective of the study according to TOR is to provide:

- an analysis of barriers to fair access to rail infrastructure with specific emphasis on an analysis of the railway insurance market.

The analysis covers existing and new member states (EU 25) as well as Bulgaria, Rumania, Norway and Switzerland; and distinctions are made between

- national railway companies (incumbent) and new railway undertakings,
- domestic and international operators, and

- freight and passenger operators.

In addition, particular attention was given to examine the difficulties encountered by small and/or new railway undertakings in gaining access to the rail network infrastructure with specific attention to problems related to obtaining sufficient insurance coverage.

Specific focus in dealing with the issues mentioned was given to

- difficulties in obtaining sufficient coverage for third party liabilities for
  - new railway undertakings;
  - international/cross border services;
  - freight operations.

#### Principal tasks

The specific objectives of the study have been achieved through two principal tasks:

1. update of existing information on rules governing the insurance of RUs (legal situation at international, EU and national level);
2. analysis of the current factual situation in the 29 countries to be covered by the study on whether there is competition in the market for rail services in the countries covered, with specific emphasis on
  - whether it is the functioning of the insurance market that constitutes a barrier to the further implementation of an internal rail-way market at Community level.

The study provides recommendations for how to improve the functioning of the internal rail market, with particular attention to:

- provision of information on experiences in supporting the creation of a market based rail service in countries that have achieved a functioning rail market;
- recommendations for future initiatives (studies, research, seminars, etc.) that may support the diffusion of information and state of the art knowledge on creating an internal rail market;
- provision of information on the opinions and positions of different stakeholders involved in delivering rail services and/or services supporting the delivery of rail services and thereby increase the knowledge base.

#### Tasks and results

The study provides answers - wholly or in part - to the following tasks as listed in the TOR:

- Examine the ways insurers or brokers assess the risks associated with the operations of RUs operating in the EU 25 + 4, in order to fix a premium;
- Give an overview on both the legal and factual situation in the countries covered regarding the rules governing insurance of RUs;
- Provide an estimate of insurance cover needed for RUs;
- Identify whether incumbents have an easier access to insurance than the new RUs;
- Assess whether the existence of Community rules on safety is likely to facilitate insurance coverage;
- Collect information on whether, in each Member State, RUs may directly contract an insurance policy with insurance companies having their registered office in other Member States;
- Develop best practice information on deriving insurance premiums from risk assessment and safety methods and indicators (Study SAMRAIL and SAMNET);
- Make recommendations for action in particular as to minimum liability, legal ceilings for liabilities, liable organisations and the possible need for a further harmonisation of law in Europe;
- Identify cases of possible distortions in the market, like state guarantees to certain railway undertakings or any other type of state aid;
- Provide recommendations to ensure that the risks of vehicles that are not kept by a RU are adequately ensured including the possibility of a vehicle related insurance;
- Develop indicators to assess the efficiency of the insurance markets, for example the premiums required to take out a certain coverage.

## **1.4 Approach and methodology**

### **1.4.1 Update of rules governing insurance of European railway undertakings**

Update of existing information - legal situation

The purpose of this task was to update the existing report: Study on rules governing insurance of European Railway Undertakings carried out for the DG TREN in the year 2000. The update is focused providing an overview of the legal and factual on rules governing insurance of railway undertakings.

The previous study included the EU 15 Member States and Switzerland. This coverage has been extended to include the EU 25 Member States, Romania, Bulgaria and Norway in the present study.



#### Procedure for data collection

The update builds on the following sources:

- The previous Study of rules governing the insurance of European railway undertakings, 2000;
- The final report from the Task Force on Licensing and Insurance, 2004;
- Questionnaires sent to the National Railway Authorities/Licensing Authority in each of the countries covered by the study. The questionnaire builds to a large extent on the questionnaire developed by the Task Force on Licensing and Insurance.

#### Questionnaire response rate

17 Licensing Authorities have answered the questionnaire.

- Belgium: Service public fédéral Mobilité et Transports
- Bulgaria: Railway Administration Authority
- Czech Republic: Czech Rail authority
- Denmark: Trafikstyrelsen
- Finland: Ministry of Transport and Communications
- Germany: Bundesministerium für Verkehr, Bau- und Wohnungswesen
- Hungary: Ministry of Economy and Transport of the Republic of Hungary
- Ireland: Department of Transport
- Lithuania: State Railway Inspectorate
- Luxemburg: Ministère des Transports
- The Netherlands: Netherlands Railway Safety Authority
- Poland: Prezes Urzędu Transportu Kolejowego (Office for Railway Transport)
- Portugal: Instituto Nacional do Transporte Ferroviário (INTF)
- Slovak Republic: Railway Regulatory Authority
- Slovenia: Railway Transport Agency
- Sweden: Järnvägsstyrelsen - Swedish Rail Agency
- United Kingdom, Office of Rail Regulation

Un-edited country reports are enclosed in annex I.

#### Stakeholders consulted

##### **1.4.2 Stakeholder consultation**

The basic methodological challenge in the study of the factual situation was the development and implementation of a sufficiently advanced data collection method. The primary mean for collecting data for the purpose of this study was through contacts with relevant stakeholders. The stakeholders to be covered by the study were defined as:

- National Licensing Authorities (LA);
- National Infrastructure Managers (IM);
- Railway Undertakings (RU);
- Insurance Brokers (BRO);
- Insurance Companies (INS).

Purpose of the stakeholder analysis	<p>The purpose of the stakeholder analysis was to generate an as broad as possible picture of the functions of the railway and railway insurance market in the 29 countries to be covered.</p> <p>Furthermore, the purpose was to generate an as detailed as possible picture of the situation in each country, meaning that both the "good" and the "less favourable" stories about the functioning of the national rail insurance market should be encouraged.</p> <p>Finally, the purpose was to collect opinions and positions from the directly involved stakeholders - and not their lobby and/or interest organisations. The lobby/interest organisations were invited to take part in identifying relevant persons to be addressed in each of the selected stakeholder organisations for which they held knowledge. Furthermore, the organisations were requested to encourage their members to provide answers to the questionnaires submitted, emphasizing that it was not the collective opinion of the lobby/interest organisations that was in focus but rather that of their members. Some of the organisations provided a positive assistance in identifying relevant persons and encouraging answers from their members, while other organisations did not want to provide such assistance if they were not allowed to provide direct input to the survey.</p>
Data collection procedure	<p>The procedure chosen for collecting opinions and positions was divided into two tiers. Tier one consisted in a questionnaire survey among a broad selection of stakeholders; tier two consisted in an in depth consultation with a limited number of stakeholders.</p>
Tier one - Questionnaire survey	<p>The stakeholder analysis is based on a number of questions in a questionnaire submitted to the identified stakeholders in mid-April 2006. Specific questions were drafted as relevant to each of the stakeholder groups involved.</p> <p>The purpose of tier one was to:</p> <ol style="list-style-type: none"> <li>1. identify and collect a list of relevant stakeholders in each of the 27 countries, including identification of relevant contact persons in the relevant organisations;</li> </ol> <p>It was agreed that only two RUs per country should be approached from the outset of the consultation. For this purpose, stakeholder organisations were urged to provide their assistance in identifying relevant stakeholders.</p> <ol style="list-style-type: none"> <li>2. submit questionnaires to the identified stakeholders;</li> <li>3. follow up the submission of questionnaires by phone calls to stakeholders in order to verify the receipt of the questionnaire (targeted at stakeholders to which we did not hold information of a contact person);</li> </ol>

4. review whether the submission of questionnaires needed adjustment and redirect questionnaires to other relevant stakeholders in case there was no contact person identified;
5. continuous review of the response rate assessed in the light of the representativity as related to stakeholder group and/or country and/or region and follow up as necessary.

A total of 157 questionnaires were sent to stakeholders (LAs, RUs, IMs, and insurance brokers and companies).

Cyprus and Malta have no railway infrastructure and hence no rail operations and were therefore not included in the Study.

#### Respondents

The questionnaires were distributed to stakeholders as follows:

- LAs: 30 questionnaires<sup>1</sup>
- RUs: 49 questionnaires (1 - 2 per country)
- IMs: 31 questionnaires (1 per country, few countries 2)
- Insurance brokers: 30 questionnaires (1 per country, few countries 2)
- Insurance companies: 17 questionnaires (1 per country to extent possible)

#### Response rate

A total of 57 questionnaires have been completed and returned to COWI. Returned questionnaires are distributed by stakeholder groups as follows:

- LAs: 20/30
- RUs: 14/49
- IMs: 15/31
- Insurance brokers: 2/30
- Insurance companies: 6/17

The table below summarises the status of completed questionnaires by country and by stakeholder group.

*Table 1.1 Questionnaire response rate by country and type of stakeholder*

Country	RU	LA	IM	INS	BRO	TOTAL
AT	1		1			2
BE		1	1			2
BG		1			1	2
CH	1		1			2
CZ		1	1			2
DE	1	2	1			4
DK	1	1		1	1	4

<sup>1</sup> The number sums up to thirty as this stakeholder group is composed of licensing authorities where identified, authorities which have completed the country profile in the TF study and which is not the licensing authority.

EE	1					1
ES		2				2
FI		1				1
FR			1			1
GR						
HU		1				1
IE	1	1	1		1	4
IT	1		1			2
LT		1				1
LU		1		1		2
LV						
NL		1	1			2
NO			2			2
PL		1			1	2
PT	1	1	1		1	4
RO	1					1
SE	1	1	1			3
SI	1	1	1			3
SK	2	1				3
UK	1	1	1		1	4
<b>TOTAL</b>	14	20	15	2	6	57

#### Representation of stakeholders

**Licensing authorities** that have returned a completed questionnaire represent EU15 as well as new EU countries. Northern, Eastern and Central European countries are well represented; from Southern Europe, Spain and Portugal have returned a completed questionnaire. Norway is the only non-EU Member State included in the study that has submitted answers to the questionnaire.

Responses include countries with different degree of market openness and hence, both authorities that may and may not have an experience in assessing applications for access to infrastructure and experience in assessing insurance requirements of RUs are represented among the respondents having submitted their answers so far.

The response rate from **Railway Undertakings** is rather low. RUs that have returned a completed questionnaire represent the EU 15 countries as well as a few new EU countries (Estonia, Slovak Republic and Slovenia). Northern and Central European countries are represented by Denmark and Sweden and Southern European countries are represented by Italy, France and Portugal. Romania and Switzerland represent the non-EU countries.

Among the RUs that have answered the questionnaire most - 11 RUs - are incumbent operators, and 3 are "new comers".

The response rate of RUs - in particular the response rate of new RUs - was not deemed satisfactory. In depth consultation with new RUs were therefore emphasised under the second tier of the stakeholder consultation (cf. description of methodology below). 8 new RUs were consulted in the second tier of the stakeholder consultation.

**Infrastructure managers** from 15 different countries have responded. Most respondents belong to the EU 15; Czech Republic and Slovenia represent the new EU countries/Eastern Europe. Northern, Central and Southern Europe are strongly represented (including France). Norway and Switzerland represent non-EU countries. In addition, EIM had facilitated the preparation of a summary response among the majority of its member organisations.

IMs were not targeted in the second tier of the stakeholder consultation as the response rate was deemed substantial and sufficient as respondents most likely to have experience relevant to this study had already responded.

**Insurance brokers and companies** are only represented to a limited degree: Bulgaria, Denmark, Ireland, Poland, Portugal, UK and Luxembourg - although we have made use of Willis' network and follow up emails.

During the second tier of the stakeholder consultation insurance brokers were in particular targeted for in depth consultation in order to strengthen the representation of the stakeholder group.

Registration in database

Incoming country profiles and questionnaires were registered in a data base. The information from the country profiles and the questionnaires have been analysed.

Tier two - in depth consultation

Tier two consisted of:

1. Review the incoming responses under tier one.
2. Drafting of criteria for selecting stakeholders for in-depth interviews/consultation in second tier, criteria selected were:
  - a. ensure representativity of survey as relevant to stakeholder groups (especially new comers in rail markets)
  - b. stakeholder opinions submitted in first tier revealed vast experiences in handling insurance requirements - and the problems related to it

In total Licensing Authorities, Railway Undertakings, and Insurance Brokers were approached for in-depth consultation representing five different jurisdictions.

## 1.5 Future trends

The new market conditions following from market liberalisation create new challenges in the European rail market. As the new market evolves and matures, stakeholders adjust their behaviour and find their way of manoeuvring under the new conditions. This creates new ways of doing things - new trends in the railway market.

Scrutinising the issue of insurance of railway undertakings it was found that rail insurance does not in itself constitute an immediate barrier to increased competition and subsequent further integration of the European rail market.

Meanwhile, it is the impression that this may be the perception of stakeholders in the railway sector because other obstacles than insurance will occur much earlier in the process of entering a new market and starting up international /cross border operations whereby the issue of insurance will only occur to the extent that all other barriers do not perform an obstacle.

In other words, it is possible to identify 'layers of obstacles' in the process of making the market function in accordance with the intention of a market mechanism. The first layer of obstacles will of course be the most obvious and the ones to be addressed first. Gradually, as the first layers are removed, other obstacles will appear and subsequently be addressed.

Some of the most obvious obstacles are the challenges of a technical nature, such as interoperability and other technical standards. Also differences in national legislative framework legal barriers such as expensive and complex licensing and approval processes, such as approval of rolling stock and differences in national legislative frameworks constitute important barriers.

The common European licensing system is a means to facilitate cross border /international freight operations. Where international railway services previously were composed by clusters of national railway companies, the new situation is that railway undertakings in principle should be able to run one service all the way from point A to B without changing engines, drivers, etc. at border crossings. This should in principle be possible without unfolding strenuous processes in order to obtain the proper approvals. RUs have to obtain a safety certificate in the country in which their services are carried out and to be able to demonstrate adequate insurance in accordance with the national provisions of the country of application.

As favorable preconditions for uninterrupted international /cross border transport gradually emerge by removing formal obstacles, the need for insurance coverage in other countries becomes all the more important.

However, there do seem to be problems for international rail services in the sense that the rail insurance market seem to be divided into a bottom layer - insuring all assets of rail operators - which is a national market, and an excess layer - insuring third party liability cover - which is primarily an international market. This fact calls for international rail services to be required to consult

and contract local national insurances when performing their international services. This fact will, anyhow, be a market entry barrier to international services, because there is not only a two layer insurance market - there is also a nationally divided market in one of the two layers.

## 1.6 Understanding insurance of railway undertakings

In order to understand the issues of insurance of railway undertakings this section briefly draws up the general lines of the issues and establishes the meaning of the most central terms applied in the below sections of the report.

Two interrelated processes/  
relationships

Basically, the procedural sequences in which RUs must engage in order to obtain adequate insurance for their operations unfold within two interrelated processes:

- the setting of liability cover requirements, which is partly regulated at international and EU level and partly at national level; and
- the negotiation of the price (premium) of insurance of railway undertakings in accordance with national liability cover requirements and risks.

These processes unfold within particular stakeholder relationships:

- the setting of liability cover requirements, in the relation between the national licensing authority and the railway undertaking; and
- the negotiation of the insurance premium, in the relation between the railway undertaking and the insurers.

Underlying these two processes and stakeholder relationships is the linkage between liability and insurance, i.e. risk. Both liability and insurance presume the existence of a number risks without which liability and insurance would be meaningless.

Understanding the risks of RUs, the process of setting liability requirements and of negotiating premiums is central in order to assess the functioning of the insurance market. Typically, it is within the two stakeholder relationships that problems relating to insurance of RUs evolve.

Risk, liability and insurance - their interrelation and definitions

The three aspects: risk, liability and insurance are interrelated. In order to understand the implications of this interrelationship as well as the many different meanings these elements constitute in the report, the different aspects of risks, liability, and insurance are described and defined below.

- Operating an RU is connected with different risks. *Risk* relates to the character and/or nature of the activity carried out, in this case, rail operation services. In principle, risk is only limited by the nature and extent of the activity carried out and will hence be generic for all rail operations.

- *Risk exposure* is used to characterise the likeliness with which the given risks will actually materialise in a damage. Whereas risks are generic to all RUs, the likeliness of the risks to materialise in a damage will be determined by the safety of the rail operation.
- *Liability* arises when a natural/legal person is considered responsible for a loss, damage or an injury. Distinction is often made between
  - contractual liability, and
  - third party liability.

Contractual liability concerns the inter-parties relationship, whereas third party liability concerns all relations not part of a contractual regime.

For example, passenger compensation for delays is an example of contractual liability; whereas any unforeseen damage to third part property caused by a responsible RU is an example of third party liability. Or, if a passenger train crashes into another passenger train, the responsible RU is contractually liable towards its own passengers, but third party liable towards passengers travelling with the other RU.

- *Third party liability cover requirements* determine which liabilities an organisation should be insured against. Liability cover requirements in relation to RUs are set forth in Directive 95/18/EC and transposed by National Authorities into National legislation. Liability cover requirements should hence be the same in all Member States countries.
- The *insurance* is an agreement between the liable part and an insurer that the insurer will pay for damages incurred by the liable part within the limits and criteria described in the agreement
- The *insurance premium* is the price the liable part pays for the insurance.
- *Insurance coverage requirement* is the monetary amount which the liable part *must* be able to pay out in case of an accident/incident for which it is liable in accordance with contract and/or national provisions. (This is often determined as a minimum amount and serves to limit the, in principle, unlimited costs of an accident for which the organisation is liable. The question is hence, who is liable for the carrying the costs above this limit? This, again, could be the State, the RU or the claimant).

#### The equation

The above definitions of and interrelationships between the three aspects: risk, liability and insurance, as well as their different meanings, when they appear in different relationships, constitute one of the major findings of the study (Cf. chapter 3, where the finding will be developed gradually through out the chapter).

Based on the above definitions, an equation can be deduced as a formula to derive premiums, as follows;



- *if* liability and risk are generic; and
- *if* liability insurance coverage requirement is the monetary value of the liability coverage requirement adjusted by GDP or by the cost of an accident in a given country, and
- *if* probability of an accident is determined by the safety of an RU; and
- *if*, Risk exposure = f (risk \* probability of a damage will materialise) - and hence specific for each RU

*Then*, risk exposure should be reflected in premiums - not in liability or insurance coverage requirements

Risk Exposure is measured in EUR

The probability of damage materialising is measured in %.

The 'damage' is either taken as a maximum damage or an average damage. Damage is equivalent to one occurrence - hereafter there will be a renegotiation. Damage depends on GDP and correlate to liability.

## 2 Status of railway insurance in the EU25 + 4

This chapter provides an overview of the rules governing the insurance of railway undertakings as well as a status of the factual situation in relation to insurance in the EU 25 + 4 countries included in this study.

### 2.1 International legal framework

COTIF

Unified rules governing the transportation of international goods in Europe have existed since the Berne Convention in 1890. The COTIF 1999 (Convention concerning the international carriage by rail) is the convention presently in force. It entered into force 1 July 2006 and replaced the previous convention, COTIF 1980, although not all member states have ratified the new version, as of yet.

The COTIF 1980 was largely based on a state owned railway sector in Member States and comprised an obligation to carry freight from other railway companies and an obligation to publish tariffs for passengers and full-wagon traffic. The COTIF 1999 adapts to the growing market conditions in the railway sector and replaces these obligations with increased contractual freedom.

The COTIF addresses many questions concerning liability within the railway system; among these, liability for damage to passengers, luggage, goods, wagons and delays of goods and lately also delays of passengers.

The COTIF system covers a wide area of legal relations between the parties involved in international railway traffic, including:

- customer - carrier
- carrier - carrier
- principal carrier - subcontracting carrier
- carrier - infrastructure manager
- carrier - wagon keeper
- carrier - auxiliary

In the COTIF 1999 freight transport is regulated mostly by Appendix B: Uniform rules concerning the Contract for International Carriage of Goods by Rail (CIM). The application of these uniform rules is mandatory for carriage for reward between two Member States.

The COTIF framework regulates liability between the parties involved in international freight transport (contractual liability); however, it does not regulate the liability against third parties (liability in tort).

As the focus of this study is on third party liability the COTIF will not be treated further in this report.

## 2.2 EU legal framework

### Directive 95/18

Directive 95/18 mentions the questions of liability and insurance. In Article 5 it is stated:

*"A railway undertaking must be able to demonstrate to the licensing authorities of the Member State concerned before the start of its activities that it will at any time be able to meet the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability listed in Articles 6 to 9."*

And in Article 9 it is set forth that

*"A railway undertaking shall be adequately insured or make equivalent arrangements for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties."*

Directive 95/18 leaves, however, the specific insurance requirements to the Member States both in respect to the nature of the incidents to be covered by the insurance and the level of insurance required.

A proposal from the Commission COM(2004) 143 sets forth a requirement strengthening passenger rights in international railway traffic. This proposal, however, also comprise regulation of insurance requirements:

*"The obligation of insurance set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring that a railway undertaking shall be insured up to a level that is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation."*

*The minimum insurance coverage per passenger shall be 310 000 EUR."*

The proposal does not intend to regulate third party liability and will therefore not be taken further into consideration.

### Directive 2004/49

Finally, Article 9 of Council Directive 2004/49 sets forth that

*"Infrastructure managers and railway undertakings shall establish their safety management systems to ensure that the railway system can achieve at least the Common Safety Targets (CSTs), in conformity with the national safety rules"*

described in Article 8 and Annex II and with safety requirements laid down in the Technical Specifications of Interoperability (TSIs), and that the relevant parts of Common Safety Methods (CSMs) are applied."

While the Directive 2004/49 supports a more systematic approach to risk-management in the railway sector and does make risk data available to the insurance sector, directive 2004/49 does not regulate third party liability.

## 2.3 National legal framework

The information on national rules governing the insurance of RUs is based on information from a questionnaire survey among National Railway Authorities and/or Licensing Authorities in the 27 countries.

The answers provided by each country in the questionnaires related to these issues are summarised in Table 2.2 and Table 2.3 in section 2.5 and discussed below.

### 2.3.1 Transposition of the EU Requirements

The EU requirements related to insurance of railway undertakings are set forth in Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings. Article 9 of the Directive says:

*"A railway undertaking shall be adequately insured or make equivalent arrangements for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties:"*

EU countries are required to transpose the Directive into national law. All countries having responded to the questionnaire have transposed the requirements in article 9 of the Directive in either primary law or by way of a regulation.

Insurance related  
functions of the Li-  
censing Authority

The Directive 95/18/EC require each Member State to designate a body responsible for carrying out the obligations of the Directive - including issuing and reviewing licenses and to suspend, revoke or amend licenses of railway undertakings if they do not comply with Directive obligations or national provisions compatible with Directive obligations. This also applies to national insurance requirements of adequate coverage or alternative arrangements.

All countries having responded to the questionnaire have designated a body responsible for implementing the Directive.

Commission Recommendation of 7 April 2004 on the use of a common European format for license documents and the subsequent publication of the documents is currently being implemented - at the moment it is possible to find the licensing documents and the insurance requirements for 15 out of the 50 RUs included in the stakeholder consultation.

### 2.3.2 National rules on liability coverage

Article 9 of Directive 95/18/EC states that a RU shall be covered for *"its liabilities in the event of accidents, in particular in respect of passenger, luggage, freight, mail and third parties"*.

#### Liability coverage requirements

Determining liability coverage is left to authorities in Member States. There are differences from country to country with regard to what liabilities the legislation requires RUs to be insured against. The full list of liabilities to be covered according to the Directive includes:

- third party,
- property,
- passengers,
- luggage,
- mail,
- freight/cargo,
- infrastructure

Table 2.2 below summarises which liabilities to be insured according to domestic provisions in each of the countries included in the study in comparison with the wording used in Article 9 of Directive 95/18/EC.

Table 2.1 *Answers given by the licensing authorities on liabilities to be covered by RUs according to national legislation*

	Third parties	Property	Passengers	Luggage	Mail	Freight/Cargo	Infrastructure
AT							
BE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BG							
CH							
CZ	No	No	No	No	No	No	No
DE	Yes	Yes	Yes	Yes	No	No	Yes
DK	Yes	Yes	Yes	Yes	No	No	No
EE							
ES							
FI	Yes	No	No	No	No	No	No
FR							
HU							
IE							
IT							
LT	Yes	Yes	Yes	Yes	Yes	Yes	Yes
LU							
LV							
NL	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NO	Yes	No	Yes	Yes	Yes	Yes	No
PL	Yes	No	No	No	No	No	No
PT	Yes	No	Yes	Yes	Yes	Yes	Yes
RO							
SE	Yes	No	Yes	Yes	Yes	Yes	Yes
SI	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SK	No	No	Yes	Yes	No	Yes	No
UK	Yes	Yes	Yes	Yes	No	No	Yes

The table demonstrates that there are differences from country to country regarding which liabilities national legislation requires to be covered by insurance.

Four countries require all liabilities mentioned in the Directive to be insured. Nine countries specify some of the liabilities mentioned in the Directive and it varies from country to country which liabilities are specified. All countries, except the Czech Republic and Slovakia, require insurance against third party liability. The Czech Republic has, as the only country, not specified any liability requirements at all.

### 2.3.3 National rules on insurance coverage

#### Insurance coverage requirements

In the national law/legislation of some countries the insurance coverage required for third party liability has also been determined, i.e. they have quantified "adequately insured" into a monetary amount which the RUs as a minimum or as a maximum should be able to pay out for the damages it may cause.

As shown in Table 2.2 in section 2.5 below, it varies from country to country whether a minimum insurance cover is required or not. Seven of the countries responding have set forth requirements on minimum third party insurance cover, whereas nine countries have no such requirements.

In countries setting minimum insurance cover requirements for third party liability coverage these requirements differ from € 223 million<sup>2</sup> in the UK to € 430,000 in Latvia. In countries with no minimum requirements the level of cover is set on a case by case assessment.

In some countries the liability insurance requirements are the same for all types of rail operations; in other countries the insurance requirements differ in relation to the type of operations. The latter is the case in Belgium and the Netherlands. In Belgium the minimum insurance requirement for third party liability is € 50,000,000 for freight transport and € 70,000,000 for passenger transport. In the Netherlands a lower coverage of 2,500,000 is permitted for local shunting operations.

#### Application of criteria for setting insurance cover requirements

Member States setting liability insurance coverage do not seem to apply specific criteria in order to fix the appropriate insurance coverage for railway undertakings. Interviews with licensing authorities in selected countries indicate that for the most part insurance coverage requirements have been set on the basis of a risk assessment estimating the costs of a worse case scenario accident and discussions with the railway industry concerning the relevance of the cover and the suitability of the cost for such cover.

Stakeholders also inform that the setting of liability insurance coverage suffers from a general lack of historical risk exposure data, data on incidents and costs

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<sup>2</sup> In the UK the RU can request for a lower level of cover which will then be considered on the basis of an independent risk assessment.

of incidents. In addition, the fact that the vertical disintegration of RUs and IMs only took place recently, data that does exist does not necessarily relate to the operation of rail services solely. This lack of targeted data may result in the setting of liability coverage requirements which do not match actual coverage needed.

E.g. according to the Office for Rail Regulation in the UK, the minimum requirement of £155M per incident is historic. "It has always been the requirement since the privatisation in 1994. It has never changed - never inflated. Before, British Rail got insurance cover up to that level. So it is historic. The way they calculated it, then, was looking at the costs of a worse case scenario; although, there has never been such a big claim - rather half of it". The liability coverage is currently under review.

In the Czech Republic, no target liability coverage has been set. "The way in which Directive 95/18 has been transposed into Czech law constitutes a problem as it only states that Railway undertakings should have insurance - not *adequate* insurance. This means that an insurance coverage of 1 Euro in principle could be adequate"<sup>3</sup>. Consequently, it is the opinion of the LA that the Authority has no legal mandate to set an insurance requirement.

Another problem of setting liability coverage and keeping an updated record of these data is the degree to which data is collected in a systematic way and of course, the degree to which this data is made available to interested stakeholders. There is no indication that data are systematically collected in jurisdictions covered by the study and for that matter that data is communicated to a broader range of stakeholders.

### **2.3.4 Procedures to check insurance requirements of foreign RUs**

Directive 95/18/EC entitles RUs to apply for a licence only in the Member State where they are established. However, if a RU wishes to operate in another MS, it has to meet the insurance requirements in that Member State. All Member States, that have submitted a country profile, except Lithuania, respond that it is checked if the RU meets the requirements. However, in Poland it is only checked that the RU meets the overall requirements in the Directive as there are no specific national insurance requirements.

In order to ensure easy access for foreign RUs, it is important that each MS have clear and transparent procedures to check whether the RU meets the insurance obligations. However, only nine countries state that they have fixed procedures to check if foreign RUs meet domestic insurance requirements. Six countries state that they have no fixed procedures.

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<sup>3</sup> Czech Rail Authority, in Interview in Prague. 23. June 2006



### 2.3.5 Shortcomings in the legal transposition and implementation of Directive 95/18/EC

Problems encountered

To sum up,

- 1 there are vast differences from country to country in how they approach the issue of liability of railway undertakings. This is in relation to
  - how they define the term "adequate" in the Directive 95/18/EC, which results in
  - differences in the scope of liabilities that are required to be covered by RUs in national legislation,
  - differences in whether a minimum liability insurance cover is required in national law or not, and if this is the same for all types of RUs or if distinction is made between types of operations.
  - In addition, it is found that only a few countries apply fixed, transparent and systematic procedures to check whether RUs applying for a license in a country other than its home country are adequately insured according to national insurance requirements in the country in which it applies for services.

There are several problems related to this:

- 2 it is in conflict with the Directive if all liabilities as prescribed in the Directive Is not mirrored in national legal provisions;
- 3 it is in conflict with the Directive if RUs are not *de facto* held responsible for the liabilities mentioned in the Directive; i.e. if the national authorities issue a license which does not cover the liabilities required in the Directive;
- 4 it is a problem, if some liabilities are not linked up to a liable organisation. Disputes about unsolved liabilities may work to the detriment of all parties, including the third party, and it may result in high premiums.
- 5 it makes the overall European insurance market less transparent; both to the insurance companies and to the RUs wishing to operate cross border services and/or in more than one country.
- 6 differences in national provisions as to liability cover requirements and insurance cover requirements constitute an obstacle to a common rail mar-

ket as it makes it difficult and expensive for international and cross border operations to insure their entire operations within the same policy<sup>4</sup>.

## 2.4 The rail insurance market and the negotiation of insurance premiums

Negotiation of premiums for insurance takes place in the relationship between the railway undertaking and the insurance company(ies) and/or brokers.

This section provides an understanding of the rail insurance market in terms of how insurance policies are generally structured and composed, as well as an account of involved parties and the mechanisms determining the price (premium) of insurance. Thereafter, the section gives an overview of the possibilities for RUs to take out insurance.

### 2.4.1 Understanding the insurance market

Principal layers in insurance

An insurance of a RU is typically divided into different layers of risk coverage. As a minimum there are two layers:

- A primary layer issued by the primary insurance company and covering claims on a "first-dollar-basis" up to a certain amount; and
- An excess layer covering claims in excess of the amount limit of the primary layer.

In countries with a big requirement for minimum insurance coverage for third party liability, as e.g. the UK, insurance coverage may be composed of a number of additional layers in-between the primary and top excess layer.

Within the primary layer the RUs may decide on an amount of risk for which it will retain financial responsibility itself under its insurance contract.

The threshold amount of the various layers differs from RU to RU and may also differ over time for each RU. Insurance policies are typically renewed and renegotiated once a year or if the RU is making changes to its operation. In this process the composition of layers and underwriters may change.

To avoid multiple compensations for a loss covered by more than one policy the policies assume liability in a specified order. The order varies by the type of loss and the coverage provided by the various policies in force. Excess liability coverage does not respond to a loss until the amount of the loss exceeds (or exhausts) any underlying policy limit. The primary policy pays all losses within the set limit and the excess policies will pay losses in excess of the primary coverage up to the excess policy limit determined.

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<sup>4</sup> The Italian RU Railtrraction Company has succeeded in short-circuiting this problem by through the co-operation with partners in other countries covered by their services to run their trains on the licenses of partners in their home countries.

An RU may contract all its insurance coverage with a single insurance company or with more (re)insurance companies. Within one layer several insurance companies may be involved.

The advantage of layering is the additional spread of risk among insurers and the premium savings each company grants the insured. If a large insurance limit is required, a number of insurers will be required to share the coverage as one insurer is unlikely to have sufficient capacity to write the risk in isolation.

#### Price of insurance layers

The primary layer is typically the most expensive layer and the most likely to be used. The primary layer will in part determine the price of other layers which makes it important to have the price of this layer right.

Excess layers typically cover low frequency and high exposure which are especially destructive if they occur. However, minor incidents, covered by the primary policy are likely to occur frequently and the value of these losses can accumulate into a rather large regular "base load" of claims. A simple shunting incident causing for instance damages of €50.000 may happen several times a year and put a substantial floor under an insurance premium.

This base load of smaller incidents is mostly determined by the level of technical development of a rail system and the size of operations. Hence, potentially, RUs have a possibility to influence premiums by demonstrating how they intend to manage risk to insurers.

As market capacity increases for RUs, competition is driving the cost of excess layer insurance down.

#### Market competition

Basically, the insurance market consists of three principal participants:

- insurance companies
- reinsurance companies; and
- insurance brokers

Almost all insurances at the primary layer are bought from domestic insurance companies or domestic branches of international insurance companies. This is also the case for most insurance at higher levels. Most reinsurance is bought at the international market. Typically, there are only a few insurance companies in each country operating in the market for rail insurances (cf. Table 2.3 on the factual situation). This means that there is only a very limited competition at the market. Even in the UK, which is probably the most mature market there are only a few insurance companies writing insurance for railway undertakings. In some of the small countries there may only be one insurer.

Certain markets, in particular within more mature insurance markets, such as the UK market, specialise in writing excess liability insurance above a certain indemnity limit, e.g. above £50M or £60M any one loss.

Railway undertakings in different countries have different traditions with regard to the extent to which they make use of insurance brokers in their effort to obtain adequate insurance. In e.g. the UK, almost all insurance contracting goes through insurance brokers, whereas in e.g. the Netherlands, railway undertakings are more likely to negotiate insurance directly with the insurance company(ies).

#### **2.4.2 Insurance possibilities of railway undertakings**

In the past, state owned railways bore the risk themselves. With the separation of the ownership of the railway undertakings and the infrastructure, and with new railways entering the market, this situation is fundamentally changing.

Possibilities to find  
Insurance on the  
market

Not being owner of infrastructure the RUs have much less capacity to insure themselves. RUs not having the necessary assets to insure themselves have been forced to look for insurance at the market. Due to this situation a market for railway insurance has gradually evolved.

Possibilities to be  
self-insured

However, large incumbent RUs may still have sufficient capacity to be fully or partly self-insured, and if national legislation allows for this, it may give the incumbent RUs a competitive advantage - when performing their activities under a self-insurance regime. The Licensing Authorities have been asked if the national legislation allows for RUs to be self insured. As can be seen in Table 2.2 in the next section, eight out of the responding countries allow RUs to be self insured.

However, restrictions apply in certain markets on the extent of self-insurance allowed.

In Poland, RUs may be insured by insurance companies in the market or they can insure their activities themselves in forms of bank guaranties or special bank deposits.

In Slovenia RUs may be self-insured only to cover liability of damage caused on the railway infrastructure. A statement from the RU that it will be able to cover damage on railway infrastructure is sufficient to get the license.

In the UK it is up to the RU how to fulfil the requirement. Although no RU is currently fully self insured, it is common for at least a part of the cover to be provided through self-insurance.

There are different opinions among stakeholders as to whether there is a functioning market for rail insurance, where insurance coverage can be found and taken out at reasonable price. A smaller number of stakeholders state that the rail insurance market is not functioning, however, the most predominant opinion among RUs and other stakeholders participating in the Study is that it is possible to find insurance either at the London market or in their own country -

but that insurance is expensive<sup>5</sup>. According to the RUs replying to the questionnaire and RUs interviewed, the cost of insurance does not, however, constitute a barrier to market entry as such. It is not a primary obstacle for a single European rail market; other barriers, such as traction and drivers constitute much more important barriers. This Study does, however, not catch the opinion of RUs who intended to but may have decided not to enter the market due to high insurance premiums - if any such RUs exist.

It is also the opinion of most RUs and insurance companies and brokers that common rules and risk profiles in neighbouring countries will make it easier for RUs to obtain insurance coverage in neighbouring countries, in order to perform cross border operations and make it more attractive for insurers to provide insurance to RUs performing cross border operations in neighbouring countries.

Certainly, integration of the European market into a single insurance market would create better basis for a well functioning rail market. Several initiatives have already been taken facilitating this; interoperability, common safety standards and technical indicators support this.

However, legislation and rules for liability are deeply rooted in the legal tradition of each country; the insurance market will therefore continue to have a strong national component reflecting the differences in legislation and legal usage.

State guarantees

No State guarantees or other types of state aid have been identified.

#### **2.4.3 Shortcomings in the functioning of the rail insurance market**

Problems encountered

In the above sections, a number of shortcomings as to the possibilities of RUs to be insured were identified. In sum, these are:

- 7 large incumbent RUs may still have sufficient capacity to be fully or partly self-insured, and if national legislation allows for this, it may give the incumbent RUs a competitive advantage - when performing their activities under a self-insurance regime.
- 8 According to RUs participating in this Study, insurance as such does not constitute an entry barrier to providing international/cross-border freight operation services; however, insurance is by most stakeholders considered expensive

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<sup>5</sup> It should be born in mind that most RUs responding to the questionnaire are previous incumbent RUs. In general, LAs are also more reluctant to state that there is a functioning market. This may of course be because they are in contact with RUs applying for network access, including those RUs that may decide not to enter the market due to high insurance premiums.

- 9 legislation and rules for liability are deeply rooted in the legal tradition of each country; the insurance market will therefore continue to have a strong national component reflecting the differences in legislation and legal usage.

## **2.5 Synoptic view of the legal and factual situation**

The following tables provide a synoptic view of the legal and factual situation in the EU 25 + 4 countries included in this Study. Table 2.2 contains information relating to the national rules governing the insurance of RUs and Table 2.3 contains information on the national situation regarding the insurance market.

The tables are based on the country profiles submitted by the licensing authorities.

*Please note that country profiles from some licensing authorities have not been submitted. They appear in blanc in the table.*

Table 2.2 *Legal situation Answers given by the licensing authorities to questions relating to the national rules governing the insurance of RUs*

	Has article 9 of directive 95/18/EC been transposed into law?	According to the law/regulation, can RUs be self-insured?	What risks should be covered according to national law/regulation?	Is the insurance cover required for third party liability determined by the law/regulation?	Does the law specify a fixed amount, a minimum cover/amount, or a case by case assessment?	Do the insurance requirements (cf. Question 5.b) depend on type of railway operation?	Do you have fixed procedures to check if foreign RUs meet domestic insurance requirements?	Has the licensing authority published any guidance on insurance against third party liability?	Are there any state guarantees (with regards to the RU or IM etc.)?
AT									
BE	Yes	Yes	Third parties Property Passengers Luggage Mail Freight/cargo Infrastructure	Yes	Minimum (€ 50 M for goods trains and € 70 M for passenger trains).	Yes	Yes	No	No
BG	Yes	N/A	Third parties Property Passengers Luggage Mail Freight/cargo	N/A	No.	?	N/A	N/A	N/A
CH									
CY									
CZ	Yes	No		No	Case by case.	No	Yes	No	No
DE	Yes	No	Third parties Property Passengers Luggage Infrastructure	Yes	Minimum (€ 10.225.837,62).	Yes	Yes	No	No
DK	Yes	No	Third parties Property Passengers Luggage	Yes	Minimum (Dkr 313 M).	No	Yes	No	No

	Has article 9 of directive 95/18/EC been transposed into law?	According to the law/regulation, can RUs be self-insured?	What risks should be covered according to national law/regulation?	Is the insurance cover required for third party liability determined by the law/regulation?	Does the law specify a fixed amount, a minimum cover/amount, or a case by case assessment?	Do the insurance requirements (cf. Question 5.b) depend on type of railway operation?	Do you have fixed procedures to check if foreign RUs meet domestic insurance requirements?	Has the licensing authority published any guidance on insurance against third party liability?	Are there any state guarantees (with regards to the RU or IM etc.)?
EE									
ES									
FI	Yes	Yes	Third parties	No	Case by case.	No. Not in the regulation.	No	No	No
FR									
GR									
HU	Yes	Yes	Third parties Passengers	No - but a minimal cover of 150 m HUF is required by the Central Inspectorate of Transport.	No fixed amount determined in the decree (see previous question).	No	Yes	Yes	No
IE									
IT <sup>6</sup>	Yes	Yes		Yes	Minimum (€ 50 M)	No			No
LT	Yes	No	Third parties Property Passengers Luggage Mail Freight/cargo Infrastructure	Yes	Case by case	No	No	No	No
LU	Yes	Yes	Third parties Passengers Freight/cargo Infrastructure	No	Case by case	No.	Yes	No	
LV					Minimum (€ 430.000).				

<sup>6</sup> Information is derived from interview with Ferrovie dello Stato/Trenitalia - and is hence not official.



	Has article 9 of directive 95/18/EC been transposed into law?	According to the law/regulation, can RUs be self-insured?	What risks should be covered according to national law/regulation?	Is the insurance cover required for third party liability determined by the law/regulation?	Does the law specify a fixed amount, a minimum cover/amount, or a case by case assessment?	Do the insurance requirements (cf. Question 5.b) depend on type of railway operation?	Do you have fixed procedures to check if foreign RUs meet domestic insurance requirements?	Has the licensing authority published any guidance on insurance against third party liability?	Are there any state guarantees (with regards to the RU or IM etc.)?
MT									
NL	Yes	No	Third parties Property Passengers Luggage Mail Freight/cargo Infrastructure	Yes	Minimum (€ 10 M)	No	To be verified	No	To be verified
NO			Third parties Passengers Luggage Mail Freight/cargo						
PL	Yes	Yes	Third parties	No	No	No	No	No	
PT	Yes	No	Third parties Passengers Luggage Mail Freight/cargo Infrastructure	Yes	Minimum (€ 10 M)	No	Yes	No	No
RO									
SE	Yes	Yes	Third parties Passengers Luggage Mail Freight/cargo Infrastructure	Yes	No	No	Yes	No	No

	Has article 9 of directive 95/18/EC been transposed into law?	According to the law/regulation, can RUs be self-insured?	What risks should be covered according to national law/regulation?	Is the insurance cover required for third party liability determined by the law/regulation?	Does the law specify a fixed amount, a minimum cover/amount, or a case by case assessment?	Do the insurance requirements (cf. Question 5.b) depend on type of railway operation?	Do you have fixed procedures to check if foreign RUs meet domestic insurance requirements?	Has the licensing authority published any guidance on insurance against third party liability?	Are there any state guarantees (with regards to the RU or IM etc.)?
SI	Yes	Yes	Third parties Property Passengers Luggage Mail Freight/cargo Infrastructure	No	No	No	No	No	No
SK	Yes	Yes	Passengers Luggage Freight/cargo	No	Case by case	No	No	No	To be verified
UK	Yes	Yes	Third parties Property Passengers Luggage Infrastructure	Yes	Minimum (€ 223 M)	No	Yes		No

Table 2.3 *Factual Situation Answers given by the licensing authorities to questions relating to the national situation regarding the insurance of RUs*

	What is the total number of licenses?	What is the number of licenses as distributed by type of operation?	Actual cover taken out (according to license).	Premiums	What is the number of licenses revoked?	What is the total number of insurance companies?	Total number of accidents within the last 5 years resulting in payment of compensation?
AT	14		ÖBB Traktion GmbH: € 100 M		0		
BE	4	-			1	N/A	N/A
BG	3	<b>Transport:</b> Goods - 3 Passenger - 1 <b>Operators:</b> Incumbent - 3			0	N/A	N/A
CH	0	-			0		
CY		-					
CZ	67	<b>Transport:</b> Goods - 49 Passenger - 18 <b>Operators:</b> International - 18	Ceske Drahy, a.s.: CZK 300 M Connex Morava: CZK 10 M		0	6	N/A
DE	356	<b>Transport:</b> Goods - 294 Passenger - 283 <b>Operators:</b> International - 340	RAIL4CHEM Eisenbahnverkehrs- gesellschaft mbH: To be verified		24	N/A	N/A
DK	12	-	DSB, Risk Management: To be verified		13		
EE	22		AS Eesti Raudtee: USD 25 M		6		
ES	3				0		

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	What is the total number of licenses?	What is the number of licenses as distributed by type of operation?	Actual cover taken out (according to license).	Premiums	What is the number of licenses revoked?	What is the total number of insurance companies?	Total number of accidents within the last 5 years resulting in payment of compensation?
FI	1		VR Osakeyhtiö (VR Ltd.): € 66 M		0	Many	One
FR	4				0		
GR	0				0		
HU	8	<b>Transport:</b> Goods - 7 Passenger - 2 <b>Operators:</b> Incumbent - 2 Cross-border - 0 International - 7	GYSEV PLC: HUF 985 M MAV Cargo co. Ltd.: HUF 2.958 M		8	4	N/A
IE	0		Irish Rail: N/A		0		
IT	39		Trenitalia S.p.a. (Ferrovie dello Stato Group): € 250 M Rail Traction Company: € 50 M	Trenitalia S.p.a. (Ferrovie dello Stato Group): N/A Rail Traction Company: € 150.000 / year	1		
LT	11				0	At least 2.	N/A
LU	1	<b>Transport:</b> Goods - 1 Passenger - 1 <b>Operators:</b> Incumbent - 1	Société Nationale de Chemins de Fer Luxembourgeois: € 37,5 M		0		

	What is the total number of licenses?	What is the number of licenses as distributed by type of operation?	Actual cover taken out (according to license).	Premiums	What is the number of licenses revoked?	What is the total number of insurance companies?	Total number of accidents within the last 5 years resulting in payment of compensation?
LV	8	<b>Transport:</b> Goods - 3 Passenger - 1 <b>Operators:</b> Incumbent - 4			1		
MT		-					
NL	17	-	Rotterdam Rail Feeding: €10.000.000 als maximum per gebeurtenis en per jaar  Shunter (workshop) €2.5 mio.  ACTS: €10.000.000 als maximum per gebeurtenis en per jaar	Rotterdam Rail Feeding: € 80.000 ACTS: € 80.000	0	N/A	N/A
NO	6	<b>Transport:</b> Goods - 49 Passenger - 18 <b>Operators:</b> International - 18			0		
PL	70	<b>Transport:</b> Goods - 294 Passenger - 283 <b>Operators:</b> International - 341	PCC Rail Szczakowa S.A., Poland: N/A	PCC Rail Szczakowa S.A., Poland: N/A	0	N/A	N/A
PT	0	<b>Transport:</b> Goods - 56 Passenger - 14	Caminhos de Ferro Portugueses, CP: N/A		0	N/A	N/A

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	What is the total number of licenses?	What is the number of licenses as distributed by type of operation?	Actual cover taken out (according to license).	Premiums	What is the number of licenses revoked?	What is the total number of insurance companies?	Total number of accidents within the last 5 years resulting in payment of compensation?
RO	0		SNTFM „CFR Marfa” SA: N/A		0		
SE	14	<b><u>Transport:</u></b> Goods - 11 Passenger - 3 <b><u>Operators:</u></b> Cross-border - 3 International - 3	Green Cargo AB: To be verified		3	1-2	N/A
SI	1	<b><u>Operators:</u></b> Incumbent - 1			0	15	29 from 2003 to 2005
SK	34	<b><u>Transport:</u></b> Goods - 33 Passenger - 1 <b><u>Operators:</u></b> Incumbent - 2	US Steel, s. r. o. Košice: N/A Železnica spoločnosť Slovensko, a. s. (ZSSK): N/A		0	N/A	N/A
UK	54		English Welsh and Scottish Railway Limited: € 223 M Freightliner Heavy Haul Limited: € 223 M		0	At least 20	N/A

### **3 Findings of the Study**

The status of rail insurance provided for in the previous chapter reveals great inconsistencies in insurance requirements to railway undertakings when viewed at European level. This chapter analyses and discusses ways of dealing with the problems of insurance of railway undertakings in Europe.

#### **3.1 Harmonisation of law in EU**

Harmonisation of EU law may be understood in two ways:

- the uniform and intended transposition and implementation of existing EU-requirements
- the need for further European legislation in order to force the implementation of an internal railway market

There does not seem to be any needs or basis for further harmonisation of law in Europe in the meaning of adopting further European law. All stakeholders agree that it should be the responsibility of the national authorities to set the minimum requirements to third party liability coverage as there are differences from country to country on how big potential claims might be for the same kind of accidents.

However, somewhat surprisingly, it is found (cf. section 2.3.3) that some of the Member States covered in the Study have not correctly transposed the EU requirements, yet. The extent to which this may be a problem has not been subjected to further investigations. However, there is no doubt that differences in the transposition of the EU requirements relevant to the insurance of railway undertakings is a basic obstacle to the intention of creating an internal railway market. A more consistent transposition of the EU requirements would establish the basis for similar conditions in the various countries facilitating transparency and certainty for both RUs and insurers.

In addition, other initiatives (formal as well as informal) aiming at facilitating a more coherent and integrated rail insurance market are recommended, without compromising the fact that each country has specific characteristics.

### 3.2 Risks associated with the operations of RUs

As stated earlier, operating an RU is connected with different risks. Risk is connected to a possible loss or injury. Risk relates to the character or nature of the activity carried out, in this case, rail operation services. In principle, risk is only limited by the nature and extent of the activity carried out.

#### Risks related to railway operations

There are differing opinions among stakeholders as to whether specific risks can be related to specific types of RUs, or whether risk is the same for all RUs irrespective of type; and in prolongation to that, whether liability and insurance coverage should be distinguished in accordance with the diversity found.

Some stakeholders hold that insurance coverage of a passenger train should be higher than for freight trains. Other stakeholders hold that all types of RUs potentially are exposed to the same risk and capable of causing the same damage.

Considering the fact that most traffic systems are mixed systems with passenger and goods train running "side-by-side", the risk that a freight train may run into a passenger train is in fact possible.

It is hence found that most RUs operating on the rail network in principle, face the same risks for causing damage - irrespective of type. Only in exceptional cases, where the potential is either exceptionally high, e.g. in the case of high speed trains, or exceptionally low, e.g. in the case of shunting or low speed operations in separated rail track-areas, the possible damages may be of a different character and magnitude.

RUs do have the potential of limiting the likeliness that an accident may take place, i.e. they may influence their actual *risk exposure*. This may be done through the implementation of effective risk management systems.

Hence, it is found that risks associated with rail operations are generic - which then also applies to liabilities - while the specific risk exposure is closely connected to the actual operations of each RU.

As mentioned earlier, the EU Directive lists a number of liabilities against which RUs in particular should be adequately insured, i.e. passengers, luggage, freight, mail and third parties.

The Directive does however, not mention liabilities in respect of

- terrorism attacks, and
- major environmental damages.

#### Environmental risk

Environmental risks are a specific kind of third party liability risks in which damage to environment at large - the general environment, as opposed to individual property - is at stake. The European Council adopted in 2004 Directive



2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage<sup>7</sup>.

The Directive applies to a number of occupational activities mentioned in an annex to the Directive (rail transport mentioned in Annex III, litra 8). Rail transport is one of the occupational activities covered by the provisions of the directive. The directive lays down the principles for codes of conduct for the operators of the occupational activities covered. These codes of conduct include obligations to:

- take preventive action to avoid development of an imminent threat of environmental damage, including wide-reaching obligations to provide information;
- undertake remedial action without delay to control, contain and/or remove the contaminants and/or other damage factors, including wide-reaching obligations to provide information;
- undertake relevant preparations for submitting information leading to the determination of remedial actions required;
- allocation of costs flowing from prevention and remediation actions.

The Directive is also explicit in dealing with financial security for the potential damage to the environment. Member States are encouraged to facilitate and encourage the development of such securities enabling operators to meet their obligations under the Directive. Finally, the EU Commission is required to undertake a study of the possibility to provide insurances or other types of financial guarantee before 2010.

The Directive is important in relation to the problems of railway insurance in the way that it represents a political decision of the allocation of the costs of damage to the environment flowing from railway undertakings. The Directive is also interesting in the way it addresses the problem of insurance. The background to the somewhat hesitant solution is that the insurance sector has not come up with accessible insurance products. The Industry organisations strongly opposed an obligatory insurance regime proposed in an earlier draft Directive, pointing to the fact that insurance premiums by far out-priced the actual costs of a typical damage to the environment.

The risk of terrorism attacks

In respect of terrorism attacks, only few countries covered by this study have so far taken a decision on the allocation of liability for damages caused by such an attack. Allegedly, railway undertakings are interested in terrorism protection in view of the catastrophic risks that RUs in general and especially passenger operations are exposed to. One of the problems related to national legislation in this area could be whether the legislation in question actually allows for an

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<sup>7</sup> O.J. 2004L143p56

equal coverage of all Railway Undertakings regardless of their ownership (state and/or private).

The ability of RUs to demonstrate how remote their operation is from the exposure to terrorism attacks has resulted in terrorism cover being offered by insurers of rail liability, although at additional charge. Capacity remains limited and full insurance against the entire liability cover can be tough to get.

*Table 3.1 Overview of existing terrorism insurance pools in the EU*

<b>Germany</b>	
Name of pool	EXTREMUS
Character of coverage	Voluntary
Minimum coverage	€ 25 M
Ceiling	€ 1,5 Bill.
<b>France</b>	
Name of pool	GAREAT
Character of coverage	Obligatory
Minimum coverage	€ 6 M
Ceiling	Unlimited
<b>Great Britain</b>	
Name of pool	Pool Re
Character of coverage	Voluntary
Minimum coverage	£ 100,000 (Own risk: £ 2,5 M)
Ceiling	Unlimited
<b>Northern Ireland</b>	
Name of pool	Compensationagency
Character of coverage	Obligatory
Minimum coverage	No minimum limit
Ceiling	Unlimited
<b>Austria</b>	
Name of pool	
Character of coverage	Voluntary
Minimum coverage	€ 5 M
Ceiling	€ 25 M
<b>Spain</b>	
Name of pool	Consortio de Compensation de Seguros
Character of coverage	Obligatory
Minimum coverage	No minimum limit
Ceiling	Unlimited

<b>The Netherlands</b>	
Name of pool	NHT
Character of coverage	Voluntary
Minimum coverage	No minimum limit
Ceiling	Unlimited

Source: *www.extremus.de*

The allocation of costs for damages caused by the London attack in July 2005 was distributed between the State and the Insurance sector. Victims of terrorism were compensated by the State, whereas damages to property were provided for by the primary insurances covering damage to the properties in question.

#### Legal frameworks and terrorism liability

The risk of terrorism attack has not been taken into account in the EU and so far only in few national legal frameworks of the countries included in this Study. It therefore, remains uncertain in the EU and in many countries whether RUs or the State may be held liable for the consequences of terrorist attacks. It is however, a relevant risk and an issue that should be addressed in national legislation and/or future possible Community legislation.

The allocation of liability as related to terrorism attacks is currently under debate in different Member States. The debates include among other items the establishment of collective pools covering all insurers up to a certain limit amount and/or for certain types of terrorism attacks. If damages incurred from an attack surmount this limit amount the state (tax payers) should be required to provide funds for supplementary compensations.

#### Problems encountered

The Study has encountered the following problems related to the risks associated with railway operations of relevance to the functioning of the insurance market:

- 10 There are differing opinions among stakeholders as to whether specific risks can be related to specific types of RUs, or whether risk is the same for all RUs irrespective of type; and in prolongation to that, whether liability and insurance coverage should be distinguished in accordance with the diversity found.
- 11 The Directive does not mention liabilities in respect of
  - terrorism attacks, and
  - major environmental damages.

It therefore remains uncertain whether RUs or the State may be held liable for the consequences of terrorist attack. Another problem in this context could be that if only national legislation prevails in this area - as in contrast to EU or international legislation - there may be a risk that international services may be facing different insurance requirements whenever a border is crossed.

### 3.3 Insurance coverage needed for RUs

The third party insurance cover needed for RUs are determined by the national legal requirement setting the coverage. The national legal requirements are listed in Table 2.2 above.

In some countries the coverage is determined in a case by case assessment. In other countries a minimum requirement is specified in the legislation. The minimum requirements range from € 430.000 in Latvia to € 223 million in the UK. The big differences may have many explanations. Two important explanations are:

- Differences in the interpretation of the term "*adequate cover*"<sup>8</sup>. In countries with small to medium requirements, it means coverage sufficient to cover claims in the case of basic or considerable accidents. In countries with large requirements it means coverage sufficient to cover worst case scenarios.
- The level of GDP in the different countries, as the damage a worst case accident can create depends partly on the price level in each country

In countries where the coverage requirement is determined based on a case by case assessment, the licensing authority assesses the risk exposure connected to the operations of the RU applying for license.

Table 3.2 below summarises information on actual insurance cover required by RUs as stated in their license and compared with coverage requirements as stated in national provisions. The comparison is limited by the fact that

- licenses from only 10 countries are published at the EU homepage;
- as noted earlier, not all LA have provided country information for this study, which means that information on insurance cover requirements is not available for all countries.

The information on actual cover required in licenses is summarised in terms of a "range" within which actual coverage is taken out by country.

Annex IV provides more detailed information on legal coverage requirements and actual coverage required of individual RUs according to their license.

The information in the table below and in the Annex is derived from licenses published at the EU's homepage.

Table 3.2 below - supported by the detailed information in Annex IV - provides the following findings:

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<sup>8</sup> The requirement in EU Directive 95/18 is that RUs must seek adequate coverage in order to obtain a license.

- No licenses allow a lower actual insurance cover than the minimum insurance cover required by national provisions;
- Several licenses have a larger actual insurance cover than the minimum insurance cover required by national provisions. Whether the higher actual insurance covers stated in licenses are determined by the Licensing Authority or voluntarily by the RU itself, is not known.
- Licenses with higher actual insurance covers than that required in national provisions are mainly licenses of large RUs (incumbent RUs).

It is found, from speaking with stakeholders, that several RUs choose to take out a higher insurance cover than required by law. One example is the Italian Ferrovie dello Stato Group where the requirement as stated in national provisions is €50 M whereas the actual cover taken out is € 250 M. This is the decision of the management of Ferrovie dello Stato Group in order to cover all the risks they are in principle exposed to, including the risk of terrorism attacks<sup>9</sup>.

*Table 3.2 Overview of insurance cover requirements and actual insurance cover as stated in licenses, summarised by country*

Country	No. of licenses	Coverage Specified by Law	Actual Coverage Range	License	Comments
AT	14	Not provided by LA.	€ 10 - 100 M	Published	
BE	4	Minimum (€ 50 M for goods trains and € 70 M for passenger trains)		Not published	Notice in Official Journal, but no cover amount published.
BG	3	Not provided by LA.		Not published	
CH	0	Not provided by LA.		Not published	
CZ	67	Case by case	CSK 5 - 300 M	Published	Case by case assessment.
DE	356	Minimum (€ 10,2 M)		Not published	Notice in Official Journal, but no cover amount.
DK	12	Minimum (Dkr 313 M)		Not published	Notice in Official Journal, but no cover amount.
EE	22	Not provided by LA.	EEK 7 - 300 M	Published	
ES	3	Not provided by LA.	€ 0,45 - 27,1 M	Published	
FI	1	Case by case	€ 66 M	Published	Case by case assessment.
FR	4	Not provided by LA.	€ 8 - 60 M	Most published	
GR	0	Not provided by LA.		Not published	

<sup>9</sup> Interview with Ferrovie dello Stato Group.

Coun-try	No. of licenses	Coverage Specified by Law	Actual Coverage Range	License	Comments
HU	8	Minimal cover of HUF 150 M	HUF 150 - 2.958 M	Published	
IE	0	Not provided by LA.		Not published	
IT	39	Not provided by LA.		Not published	Notice in Official Journal, but no cover amount published.
LT	11	Case by case		Not published	Notice in Official Journal, but no cover amount published.
LU	1	Case by case	€ 37,5 M	Published	
LV	8	Minimum (€ 0,43 M)		Not published	List of licensed RUs, but no cover amount published.
NL	17	Minimum (€ 10 M)	€ 10 - 115 M	Most Published	Minimum € 10 M.
NO	6	Not provided by LA.		Not published	
PL	70	Not provided by LA.		Not published	List of licensed RUs, but no cover amount published.
PT	0	Minimum (€ 10 M)		Not published	
RO	0	Not provided by LA.		Not published	
SE	14	Not provided by LA.		Not published	Notice in Official Journal, but no cover amount published.
SI	1	Not provided by LA.		Not published	List of licensed RUs, but no cover amount published.
SK	34	Case by case		Not published	
UK	54	Minimum (£ 155 M)	£ 155 M	Published	

#### Problems encountered

The Study has encountered the following problems related to insurance coverage needed for RUs of relevance to the functioning of the insurance market:

- 12 Different insurance coverage requirements stemming from different interpretations of the term "adequate" in Directive 95/18/EC.
- 13 The setting/calculating of national insurance requirements by national authorities does not happen on the basis of transparent or systematic methods which makes it difficult to assess if insurance requirements reflect actual risk faced by RUs.

- 14 Licenses issued in all countries are not published at EU's homepage as required by EU law, which also contributes to intransparency.

### 3.4 Identification of liable organisations

The issue of liable organisations as related to specific occurrences has been raised as it may act as a remedy to a presumed problem of unclear division of liability between different stakeholders, such as between RUs and IMs, in the wake of the vertical disintegration resulting from privatisation of rail services, and between RUs and private wagon keepers.

Identification of liable organisations for specific occurrences hence might facilitate the setting of liability requirements and hence insurance requirements of railway undertakings which reflect actual risks faced by the RUs.

There are different opinions among stakeholders as to whether or not there is a problem originating from unclear division of liability between potentially liable (types of) organisations. However, the vast majority of stakeholders consulted, most notably also within the insurance sector, believe that the identification of liable organisations in a predefined set of situations could be positive for a number of reasons:

- It would allow for uniform means of dealing with third party claims and could reduce insurance premiums since it would undoubtedly reduce the opportunity of subrogation against another party;
- Having predefined liability as well as the amount of coverage in a range of common scenarios, might speed up the resolution of claims and allocate liability on a consistent basis;
- Identification of liable organisations would satisfy an original requirement to ensure that the general public is not disadvantaged by vertical disintegration of RUs and IMs because of the privatisation. In a liberalised market there may be a danger that claims are pushed around between potentially liable organisations to the disadvantage of those suffering damages.

Findings from the stakeholder consultation also reveal that such a scheme require careful consideration and awareness under which preconditions it will function:

- Identification of liable organisation is only possible for smaller claims up to a certain amount in a range of common scenarios; it should be located within the self-insured portion of a railway undertaking's cover. If this was not the case a danger could be that the premium prices could rise considerably as insurers would have to pay out. Insurers would not approve of it.
- Careful consideration should be given as to where to set the cap on the predetermination.

- Pre-defined liability should be based on past data that shows who is most likely to be liable.
- The scheme should be developed on the basis of wide ranging consultation with the industry and a body responsible for overseeing the agreement should be appointed.
- The scheme should be developed in a way that it does not take away the incentive of RUs to reduce risk which may happen if they feel sure that there are certain risks for which they will not be held responsible.
- All parties using the network infrastructure have to join.

Hence, it is concluded that if adequately developed, the scheme is likely to have positive influence on liability coverage as well as on premiums and it is likely to speed up the case work processes.

Problems encountered

The Study has encountered the following problems related to unclear division of liabilities of potentially liable (types of) organisations of relevance to the functioning of the insurance market:

- 15 Unclear division of liable organisations may result in the pushing around of claims between potentially liable organisations for the detriment of all parties - including third parties, unnecessary inconsistency in the ways a number of third party claims are dealt with, and ultimately higher premiums for RUs.

### 3.5 Access to insurance

Factors influencing access to insurance

Access to insurance depends on two interrelated factors:

- capacity in the market (supply)
- the price of insurance (premium)

A number of factors influence capacity and premiums:

- Capacity is partly determined by market attractiveness. An important factor in this respect is certainty in terms of risks associated with railway operations; is rail insurance considered a 'good' or a 'bad' risk by insurers?
- Market size is also an issue. Increasing demand for insurance coverage may use up insurance capacity; which in turn may cause premiums to rise.

The size of the premium an RU will have to pay depends on a number of factors. Among these are both the liabilities which are required to be covered and the insurance cover required for the liabilities. A long range of additional factors influence on the willingness of insurers to insure RUs and on premiums. These are further discussed in section 3.8 below.



Following from this, the higher the required coverage and hence the premium, the more difficult it may be for a range of operators to obtain it. One operator needs coverage once, but twenty need it twenty times. The coverage an insurance market can offer is limited.

#### Access to insurance of Incumbent and new RUs

Generally, it seems that it is easier for large RUs to find coverage than it is for smaller RUs. Even the premium for the coverage will in most cases be lower. The incumbent RUs are in practically all countries the biggest rail operator which does seem to give incumbents easier access to insurance and in many cases pay less for the same coverage. The reason why big RUs have easier access to insurance is that they are well known and have a long safety track record with well proven routines. This is, as mentioned below, the most important issues to the insurers when calculating the risk.

The financial strength of a big (incumbent) railway also enables the railway to accept own risk retention as part of the insurance agreement to a much higher degree than a small railway could. The acceptance of substantial own risk retention will reduce premiums substantially.

In addition, as discussed in section 2.4.2 above, large incumbent RUs may still have sufficient capacity to be fully or partly self-insured, and if national legislation allows for this, it may give the incumbent RUs a competitive advantage. They will be less dependent on finding insurance in the market.

#### Problems encountered

The Study has encountered the following problems related to access to insurance of railway undertakings in the assessment of the functioning of the European insurance market:

- 16 It seems that there is a competitive distortion between large /incumbent RUs and small/new RUs when access to insurance. Often large/incumbent RUs have easier access to insurance coverage and that at more favourable prices than smaller /new RUs. In addition, the financial strength of a large /incumbent railway also enables the railway to accept own risk retention which is likely to reduce premiums substantially.

### 3.6 Community rules on safety

The insurance industry reacts positively to the introduction of Community rules on safety. As described in detail in section 3.8 the insurance industry has reacted in a positive manner to especially three elements in the Community rules on safety

- the establishment of safety management systems (SMSs), which will facilitate the dialogue between the railways and the insurance companies. (The industry sees however, no compelling reason for establishing a special Community risk assessment model since a variety of models exists already. Some are even used as part of the insurance setup.)

- the setting up of corporate safety targets (CSTs) and process of mitigating the risks should lead to fewer accidents and thereby lower premiums.
- the establishment of standardised European accidents statistics, which will give a statistical basis also for the insurance industry. The actual premiums will however, still be set on the basis of actuarial calculations of the insurance company and the loss record of the RU.

All in all, it must be emphasised that the introduction of Community Safety requirements will facilitate an easier exchange of information between RUs and insurers and thereby lead to better access to insurance cover.

### **3.7 Contracting insurance in other Member States**

The study has found no formal obstacles for RUs to contract an insurance policy with insurance companies having their registered office in other member states. However, differences from country to country makes it more difficult for the insurer to understand the market in other countries than their own which makes them less willing to insure RUs in other countries. These differences include e.g.:

- requirements of minimum coverage
- conditions for obtaining a safety certificate and a license
- differences in national law and practises e.g. in relation to the kind of occurrences to be covered

In accordance with these findings it was found that RUs tend to buy insurance from nationally based insurance companies. The reasons mentioned by RUs for this are:

- knowledge of the national market is a key item in contracting insurances
- RUs tend to prefer to deal with insurers and brokers in their own language and to have their insurance policy in their own language.

These findings even cover international insurance companies and brokers, which in a majority of cases operate through local national branches when providing insurances.

In few cases it has been identified that RUs have negotiated with foreign insurers. These situations were:

- A Czech RU negotiated with a foreign insurer, but the offer they got were not competitive.

- A Dutch RU is negotiating with a German insurer. The negotiations are still ongoing
- A RU from the UK has started up operations in Poland, on an insurance policy from a UK insurance company.
- A Polish RU on an international license is about to start up operations in Germany on this license. It is not considered a problem to get a German safety certificate or to meet German third party liability requirements.
- A number of European RUs place insurance for railway risks through the UK insurance market (e.g. Lloyd's)

The broader picture is then that although no formal obstacles were found the contracting of insurances from foreign insurers is not the order of the day. On the contrary it seems that there are more practical obstacles to an opening of the insurance market in a true cross border manner. These obstacles do seem to lie beyond an effect from possible legislation adopted for the purpose of devising more cross border insurance trading.

However, the few examples of cross border contracting of insurances identified reveal that the practical obstacles may be surmountable, and that the overcoming of these obstacles is related to an increased awareness of the possibility rather than legislative or other barriers.

#### Problems encountered

The Study has encountered the following problems related to the contracting of insurances from foreign insurers of relevance to the functioning of the insurance market:

- 17 No formal obstacles for RUs to contract an insurance policy with insurance companies having their registered office in other member states where found. It seems that there are more practical obstacles to an opening of the insurance market in a true cross border manner. The obstacles seem to lie beyond an effect from possible legislation adopted for the purpose of devising more cross border insurance trading. The encountered obstacles are:
  - differences from country to country created uncertainty among insurers, which makes them less willing to insure RUs in other countries.
  - RUs tend to prefer to deal with insurers and brokers in their own language and to have their insurance policy in their own language.

### 3.8 Best practice information on deriving insurance premiums

There is a clear unanimity among stakeholders consulted that premiums are not calculated on the basis of transparent and systematic methods anywhere in Europe. It is a problem that there are only few insurance companies per country holding sufficient knowledge about railway operations and their associated risks. This means that there are only few insurance companies in each county

interested in selling cover to RUs and that these companies in many cases seems to have difficulties in assessing the actual risks of operations undertaken by the RU demanding cover. This is likely to lead to unnecessary high premiums.

Basically, insurance companies and brokers focus on two items when setting the premium:

1. a measure of total value of the property or maximum possible loss, and
2. a measure of risk exposure.

The most important information the insurers or brokers require when assessing the risk is the safety record of RUs. This requirement will in itself give already established RUs with a long safety record an advantage as compared to possible newcomers. Another important factor is a major rail accident within the last couple of years.

Examples of important determinants considered by insurers and brokers when setting premiums/in the safety record is:

Measure of value of the property

- Annual payroll
- No. of employees
- Annual revenues and sales, other revenues
- No. of railcars owned or leased
- Average age of fleet
- Value of rolling stock

Extent and nature of operation

- type of RU (passenger or freight)
- extent of license: Passenger miles
- No. of passengers per day / per annum
- Average no. of passengers per train / Maximum no. of passengers per train
- extent of license: freight train miles
- type of cargo: dry / liquid bulk, break bulk, containerised
- class and volume of cargo /dangerous goods transported
- volume of railway traffic / number and capacity of traction (owned or leased)

	<ul style="list-style-type: none"> <li>• number of train services per week</li> <li>• Number of crossings: <ul style="list-style-type: none"> <li>• protected</li> <li>• unprotected</li> </ul> </li> <li>• Maximum/ average speed of trains</li> <li>• Average number of cars per train</li> <li>• Responsibility for any depots / no of depots responsible for</li> <li>• Number of stations served/managed</li> <li>• Maximum no. of other operators using the same line(s)</li> </ul>
Safety management	<ul style="list-style-type: none"> <li>• Updated safety policy details: <ul style="list-style-type: none"> <li>• Number of SPADS (Signals Passed at Danger)</li> <li>• Additional safety statistics</li> <li>• Details of safety policy</li> </ul> </li> <li>• the training of the train crew/locomotive driver</li> <li>• Summary of ground up aggregate losses, since first liability policy</li> <li>• Awareness of previous or potential future damages involving or alleged to involve serious personal injury or property damage</li> <li>• Occurrence expectations</li> <li>• On-going investigations by any governmental body into the operations of the RU<sup>10</sup>.</li> </ul>
Other determinants influencing on premiums...	<p>Whatever rating method used, the resulting insurance price will depend not only on the cost of meeting expected claims for a given class of risk and the cost of handling those claims, but on a number of additional factors. These include:</p>
...the characteristics of the physical environment	<ul style="list-style-type: none"> <li>• Specifics of the country of operation, such as <ul style="list-style-type: none"> <li>• conditions of the area transcended</li> </ul> </li> </ul>

<sup>10</sup> The list is based on statements from insurance brokers, companies, RUs, LAs and IMs as well as the "XL Insurance Global Risk" Excess Liability Anniversary Questionnaire.

- condition of the network infrastructure
- ...the legal framework
  - the national legal framework - such as
    - the clarity of the legal framework
    - The national insurance cover requirement.
- ...the cultural environment
  - Effects of market forces and market behaviours
  - propensity to claim - In some countries the propensity to claim is low.
  - the right of recourse (different countries have different recourse regimes)
- ...mechanisms internal to the insurance industry
  - The level of deductibles (excess) taken by individual policy holders
  - The cost effects of reinsurance that is purchased by insurers
  - loadings applied by insurers for contingencies (uncertain future events or trends)
  - expenses (.e.g in respect of commission, renewal costs, claims handling costs and general overheads,
  - investment income generated by the funds that insurers hold.

There seems to be difficulties between countries in the way insurance companies/brokers assess risks involved. In the UK both brokers and RUs report that personal relations between insurer and RU are of central importance. This is not the case in e.g. the Netherlands, where several RUs have reported that they submit the information required by the insurer/broker and they get in return an offer which is not negotiable.

- |   |   |
|---|---|
| Capability of RUs to present their 'case' | <p>According to (some) interviewed brokers, insurance companies will always respond to:</p> <ul style="list-style-type: none"> <li>• the information provided (cf. the list above): the better the information - the better premium);</li> <li>• (and just as important:) the better the information is presented - the better premium.</li> </ul>                |
| Intransparent premium calculation         | <p>In general, it is difficult to see through how insurers set premiums. According to a UK insurance broker, this is mainly because</p> <ul style="list-style-type: none"> <li>• it is difficult to assess risk, i.a. due to lack of (historical) incident data</li> <li>• conditions inherent to the insurance business - information is confidential</li> </ul> |

- many undertakings also perform other transport services, e.g. run buses and they tend to pool premiums for the entire portfolio.
- there is limited underwriting experience in the insurance market
- the insurance market is illogical. Insurance is based on the insurer's experience with the railway undertaking and trust. The insurer's perception of the risk is key;

#### Risk assessment and safety methods

As reported in the SAMRAIL report the RUs are generally proficient in their management of the safety of their operations. The safety management is not done through a separate formal Safety Management System (SMS) as required by the Safety Directive 2004/49 but is more or less embedded in the railway safety culture and operational procedures in each country.

The implementation of the Safety Directive will require the introduction of a formal SMS not very different from those used in the maritime and civil aviation sectors - a concept that will probably be more transparent for the insurance industry than the current safety practices.

In general RUs that have a risk assessment system will get a positive reception on the insurance market. It is however, also clear that the risk assessment will not be used directly as a base for setting the premiums - each company has its own method to set the premiums as mentioned above.

As some insurance brokers point out such a system could give the insurance companies a clearer picture of the risks - but this could also lead to the identification of "bad risks" and in some cases higher premiums.

A commonly agreed structure for the Safety Management System combined with requirements and guidance for each element as proposed in SAMRAIL is also received favourably by the insurance sector - as it makes it more understandable to everybody involved in the process.

#### Safety targets and Safety indicators

The Safety Directive requires RUs to establish a SMS to ensure that they can achieve at least Common Safety Targets (CST) set for different types of railway systems. Also the RUs have to report every year to the National Safety Authority on the corporate Safety Targets are met and on the development of the National Safety Indicators and the Common Safety Indicators (CSI).

This will require the RUs to set corporate policies and safety targets, which undoubtedly will be beneficial for the RUs when it comes to insurance. The RUs active and systematic mitigation of risks is however always beneficial when entering the insurance market; as the market naturally prefer a good risk rather than a bad. And also, it is far easier to sell the risk if it is well presented and managed through a system understandable to the broker and insurance company.

The reporting of the CSI to the National Safety Authority from infrastructure managers and RUs gives the basis for a unified European Statistic on railway

accidents. This should make the risk connected with railway industry more transparent; hopefully attracting more players into the field.

As pointed out by the Czech Licensing Authority the current setup of the CSI gives no information to split of liability between the parties involved in the accident. This makes it more difficult to use the CSIs for insurance purposes.

Given that one of the basic findings of the study is that risks and liabilities involved in railway operations to a large extent are generic for the vast majority of railway undertakings it seems that a vastly exaggerated number of factors goes into the calculation of insurance premiums, cf. above. This may in itself be caused by the fact that the two principal market agents (railway undertakings and insurance companies) are practically without mutual knowledge about one another and the "triggers" ruling the two agents' organisation.

Another factor could be that there are differences in the way Member States have implemented the railway acquis and given that the primary layer insurance market is a national market - there is a practical barrier to a smoother operating railway market in the fact that there are national differences in the bottom layer insurance markets.

However, it seems that an obvious recommendation is to draft and operationalise a simplified premium calculation method which should be applicable across the different Member States. A useful precondition for this is the uniform and intended transposition and implementation of existing EU-requirements whereby calculation of premiums will solely be a question of reflecting risk exposure of the individual railway undertaking.

## Conclusions

There is a lack of understanding between the railway sector and the insurance sector. As the railway market is relatively new in most countries the insurance sector is unsure of the market and hesitant to offer insurance, which reduces the handling capacity of the sector. The railway undertakings do however also struggle with the terms of insurance companies - first and foremost with the capacity of the insurance markets.

The implementation of the Safety Directive will undoubtedly contribute to an improvement of the dialogue between the insurance and railway sector as formal risk assessment is introduced and better information about risks will be available. Furthermore, the establishment and maintenance of better railway accident statistics should improve the situation.

As described earlier the insurance market is basically a market for selling risks. Risks are easier to sell if the seller can make them look good - this is not very different from other markets. Furthermore, insurance cover is typically layered; different market segments specialising in different layers of risks. Altogether this creates the picture of a complex market; not of a simple equation linking risk exposure, liability and premium.



#### Problems encountered

The Study has encountered the following problems related to the calculation of premiums which are of relevance in assessing the functioning of the insurance market:

- 18 Premium calculation method and guidance is not harmonised and not in any way subjected to efforts of simplification.
- 19 Premiums are not calculated on the basis of transparent and systematic methods anywhere in Europe. This may be due to:
  - lack of (historical) incident data making it difficult to assess risk; Only few insurance companies per country hold sufficient knowledge about railway operations and associated risks. This means that there are only few insurance companies in each country interested in selling cover to RUs; insurers that do offer rail insurance in many cases seem to have difficulties in assessing the actual risks associated with operations undertaken by the specific RU demanding cover. This is likely to lead to unnecessary high premiums.
  - conditions inherent to the insurance business - information is confidential
  - many undertakings perform other transport services, e.g. run buses and they tend to pool premiums for the entire portfolio;
  - there is limited underwriting experience in the insurance market
  - the insurance market is illogical. Insurance is based on the insurer's experience with the railway undertaking and trust. The insurer's perception of risk exposure of the individual RU is key; multiple factors influence on this perception.
  - Risk assessment systems are not used directly as a base for setting the premiums. Each insurance company has its own method to set the premiums.

### 3.9 Indicators to assess efficiency of the insurance markets

The question of establishment of indicators for a market is a rather complex one and worth an independent study. In the following we shall try to relay a few ideas for such an indicator, but we would like to point out that the implementation of an indicator (or indicators) will have to be based on a description of the indicator, a rigorous method description, and a clear and unambiguous data collection procedure. Furthermore, the market monitoring in this area should probably be coupled with already existing Railway Market Monitoring Scheme.

Three ideas have emerged in the process as possible indicators for the efficiency of insurance markets:

- the premiums required to take out a certain coverage (mentioned in the terms)
- the capacity of the insurance markets
- The number of insurance companies active on the railway insurance market.

The first idea suffers however, from at least two serious drawbacks:

First and foremost two companies required to take out the same insurance will likely pay different premiums. They will have different risk exposure due to the character of their operation, the number of trains and their safety practices. Also the premium will be influenced by the own risk accepted by the company and their track record.

Secondly the information concerning premiums is considered to be sensitive business information and is therefore hard to collect.

The second potential indicator on extent of capacity available in the market, i.e. €10m or €20m, etc. reflects market appetite. On the basis that European insurance capacity is available to all European entities, this could be a useful indicator.

The benchmark for market appetite should be based on thorough analysis of the individual country.

Just as difference in realistic liability cover requirements, the benchmark for market appetite in the individual country should reflect differences in the countries' economic situation (BNP)

According to some insurance brokers consulted, such a measurement should be welcomed (Mike George, UK).

The third proposal for an indicator, the number of insurance companies active on the railway insurance market could possibly give information to whether capacity and competition is actually in place on market.

As different insurance companies specialise in different layers of insurance it can however be difficult to establish whether there is a competitive insurance market.

### **3.10 Insurance in the railway sector in the USA**

The railway-sector in the US has a very different structure from Europe. The main differences are the following:

- there is in general no vertical separation of operations and infrastructure
- freight transport is the backbone of the system

- all freight railway companies are privately owned and only passenger-services are operated by federal, state or municipal entities

The US Railroad-system is one of the largest in the world. It was established on a private basis in the 19th. Century. The system was based on integrated railways providing passenger and freight-traffic on their own infrastructure. It was part of concession that the railway companies were bound to deliver passenger services also.

### **3.10.1 The creation of Amtrak**

Following "Rail Passengers Service Act" in 1970 Railway Companies were relieved of the loss-making passenger traffic. The passenger services were unified in The National Passenger Railroad Corporation (commonly known as Amtrak). The purpose of Amtrak is to uphold passenger services over a network of routes designated by Congress. Amtrak was granted a monopoly to provide intercity rail traffic.

In return for relieving the railway companies of their obligation to provide passenger services, the companies donated intercity passenger equipment and helped capitalize Amtrak. Also Amtrak became the owner of some of the infrastructure. More importantly the freight railroads guaranteed Amtrak priority access to their network; the infrastructure access was limited to the marginal costs of Amtrak's trains running on the freight railroad infrastructure.

Amtrak was originally intended to be a profitable company and only to receive federal grants for the first couple of years. Amtrak has however suffered from financial problems in the whole period from 1970 up till now.

### **3.10.2 Freight**

The backbone of the US railroad industry is the freight business. There are more than 500 freight railroads in the US; seven of these are so called class I railroads with a turnover of more than app. 250 million €. Besides class I railroad there are regional and short-line railroad, which are important as feeder lines - and for providing the door-to-door link in the transport chain.

Following the Rail Passengers Act of 1970, which relieved the Railroad Companies of their passenger services and The Staggers Act of 1980, which deregulated the freight railroad business, the freight business are today a viable business; capable of large investments.

### **3.10.3 Licensing and insurance**

There is no obligation to be licensed as a Railroad Company in the US; nor are there any mandatory insurance requirements. As the Railroad Companies own

infrastructure as well as rolling stock they have large asset base to protect; insurance is simply taken out to protect the assets of the company.

Insurance requirements however exists where tracks are shared by passenger and freight traffic or by several freight railroads; a liability cover of between 800-1000 million \$ with a self insured retention of 25 million \$ would be typical requirement in the track access agreement on a class I railroad.

FRA (Federal Railroad Authority) - an agency under the Ministry of Transportation - can overturn insurance requirements set in track access contracts.

#### **3.10.4 The insurance sector**

The US insurance market do not have a lot of players as most US insurers decline to underwrite Class I liability risks (as described above); the notable exception being the AIG Group. The bulk of the market capacity comes from London/European and Bermudian insurers.

## 4 Problems related to insurance of railway undertakings

This chapter lists all the problems related to the functioning of the European insurance market identified through out the Study and highlighted at the end of each section. For easy identification of where to read more about the cause and context of a given problem, the identified problems have been given a number which corresponds to the numbering of the problems as they are identified in the report.

The Study has encountered the following problems related to the national legal framework of the countries included in the Study (Cf. section 2.3):

- 1 There are vast differences from country to country in how they approach the issue of liability of railway undertakings. This is in relation to:
  - how they define the term "adequate" in the Directive 95/18/EC, which results in:
  - differences in the scope of liabilities that are required to be covered by RUs in national legislation;
  - differences in whether a minimum liability insurance cover is required in national law or not, and if this is the same for all types of RUs or if distinction is made between types of operations.
  - In addition, it is found that only a few countries apply fixed, transparent and systematic procedures to check whether RUs applying for a license in a country other than its home country are adequately insured according to national insurance requirements in the country in which it wishes to operate.
- 2 Following from this, it is in conflict with the Directive if all liabilities as prescribed in the Directive do not appear in national provisions; and,
- 3 It is in conflict with the Directive if RUs are not *de facto* held responsible for all liabilities mentioned in the Directive; i.e. if the national authorities issue a license which does not cover the liabilities mentioned in the Directive;
- 4 it is a problem, if some liabilities are not linked up to a liable organisation. Disputes about unsolved liabilities may work to the detriment of all parties, including the third party, and it may result in high premiums.

- 5 it makes the overall European insurance market less transparent; both to the insurance companies and to the RUs wishing to operate cross border services and/or in more than one country.
- 6 differences in national provisions as to liability cover requirements and insurance cover requirements constitute an obstacle to a common rail market as it makes it difficult and expensive for international and cross border operations to insure their entire operations within the same policy<sup>11</sup>.

The Study has encountered the following problems related to the possibilities of RUs to be insured (cf: Section 2.4):

- 7 a large incumbent RUs may still have sufficient capacity to be fully or partly self-insured, and if national legislation allows for this, it may give the incumbent RUs a competitive advantage - when performing their activities under a self-insurance regime.
- 8 According to RUs participating in this Study, insurance as such does not constitute an entry barrier to providing international/cross-border freight operation services; however, insurance is by most stakeholders considered expensive
- 9 legislation and rules for liability are deeply rooted in the legal tradition of each country; the insurance market will therefore continue to have a strong national component reflecting the differences in legislation and legal usage.

The Study has encountered the following problems related to the risks associated with railway operations of relevance to the functioning of the insurance market (cf: Section 3.2):

- 10 There are differing opinions among stakeholders as to whether specific risks can be related to specific types of RUs, or whether risk is the same for all RUs irrespective of type; and in prolongation to that, whether liability and insurance coverage should be distinguished in accordance with the diversity found.
- 11 The Directive does not mention liabilities in respect of
  - terrorism attacks, and
  - major environmental damages.

It therefore, remains uncertain whether RUs or the State may be held liable for the consequences of terrorist attack.

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<sup>11</sup> The Italian RU Railtrac Company has succeeded in short-circuiting this problem by through the co-operation with partners in other countries covered by their services to run their trains on the licenses of partners in their home countries.

The Study has encountered the following problems related to insurance coverage needed for RUs of relevance to the functioning of the insurance market (Cf: section 3.3):

- 12 Different insurance coverage requirements stemming from different interpretations of the term "adequate" in Directive 95/18/EC.
- 13 No transparent method of setting / calculating insurance requirements
- 14 Licenses issued in all countries are not published at EU's homepage as required by EU law

The Study has encountered the following problems related to unclear division of liabilities of potentially liable (types of) organisations of relevance to the functioning of the insurance market (Cf: section 3.4):

- 15 Unclear division of liable organisations may result in the pushing around of claims between potentially liable organisations for the detriment of all parties - including third parties, unnecessary inconsistency in the ways a number of third party claims are dealt with, and ultimately higher premiums for RUs.

The Study has encountered the following problems related to access to insurance of railway undertakings of relevance to the assessment of the functioning of the European insurance market (Cf: section 3.5):

- 16 It seems that there is a competitive distortion between large /incumbent RUs and small/new RUs when access to insurance. Often large/incumbent RUs have easier access to insurance coverage and that at more favourable prices than smaller /new RUs. In addition, the financial strength of a large /incumbent railway also enables the railway to accept own risk retention which is likely to reduce premiums substantially.

The Study has encountered the following problems related to the contracting of insurances from foreign insurers of relevance to the functioning of the insurance market (Cf: section 3.7):

- 17 No formal obstacles for RUs to contract an insurance policy with insurance companies having their registered office in other member states where found. It seems that there are more practical obstacles to an opening of the insurance market in a true cross border manner. The obstacles seem to lie beyond an effect from possible legislation adopted for the purpose of devising more cross border insurance trading. The encountered obstacles are:
  - differences from country to country created uncertainty among insurers, which makes them less willing to insure RUs in other countries.
  - RUs tend to prefer to deal with insurers and brokers in their own language and to have their insurance policy in their own language.

The Study has encountered the following problems related to the calculation of premiums which are of relevance in assessing the functioning of the insurance market (Cf: section 3.8):

- 18 Premium calculation method and guidance is not harmonised and not in any way subjected to efforts of simplification.
- 19 Premiums are not calculated on the basis of transparent and systematic methods anywhere in Europe. This may be due to:
  - lack of (historical) incident data making it difficult to assess risk; Only few insurance companies per country hold sufficient knowledge about railway operations and associated risks. This means that there are only few insurance companies in each country interested in selling cover to RUs; insurers that do offer rail insurance in many cases seem to have difficulties in assessing the actual risks associated with operations undertaken by the specific RU demanding cover. This is likely to lead to unnecessary high premiums.
  - conditions inherent to the insurance business - information is confidential
  - many undertakings perform other transport services, e.g. run buses and they tend to pool premiums for the entire portfolio;
  - there is limited underwriting experience in the insurance market
  - the insurance market is illogical. Insurance is based on the insurer's experience with the railway undertaking and trust. The insurer's perception of risk exposure of the individual RU is key; multiple factors influence on this perception.
  - Risk assessment systems are not used directly as a base for setting the premiums. Each insurance company has its own method to set the premiums.



## **5 Recommendations**

### **5.1 Recommendations related to the setting of liability cover requirements**

#### **5.1.1 Harmonisation of law in Europe**

Harmonisation of law is a problem encountering several aspects. In the sense of this Study harmonisation of law has been taken as meaning:

- the uniform and intended transposition and implementation of existing EU-requirements
- the need for further European legislation in order to force the implementation of an internal railway market

It was found, that there does not seem to be any need or basis for further harmonisation in the meaning of adopting further European law. All stakeholders agree that it should be the responsibility of the national authorities to set the minimum requirements to third party liability insurance coverage as there are differences from country to country on how big potential claims might be for the same kind of accidents.

However, somewhat surprising it was found that some of the Member States covered in the Study have not correctly transposed the EU requirements, yet. The extent to which this may be a problem has not been subjected to further investigations. However, there can be no doubt that differences in the transposition of the EU requirements relevant to the insurance of railway undertakings is such a basic obstacle to the intention of creating an internal railway market that it cannot pass uncommented.

It is therefore recommended that a conformity check of national legislations should be carried out for the purpose of uncovering:

- the identification of member states legislations that have transposed the EU-requirements partly or in their totality
- the degree to national practices and case law do not conform to the EU-requirements

- the degree to which the national authority organisations responsible for the implantation and functions and the resources they are provided are sufficient to take upon the challenge of being one of the profound change agents in the railway sector

The existing term "adequate" cover does on one hand to a large extent reflect what is needed and on the other hand allows member states to set the cover requirement at a reasonable level reflecting national conditions for railway operations. The substantial cost differences between countries must at the end of the day be reflected in how big claims - actual and/or potential - are for comparable accidents.

However, other initiatives (formal as well as informal) aiming at facilitating a more coherent and integrated rail insurance market are recommended, without compromising the fact that each country has specific characteristics.

Such initiatives, as found throughout the Study, have been described in this report and recommendations as to their realisation are suggested below.

### **5.1.2 Risks associated with rail operations**

It is our view that most RUs operating on the rail network carries the same potential for causing damage - irrespective of type and country of origin. Only in exceptional cases, where the potential is either exceptionally high, e.g. in the case of high speed trains, or exceptionally low, e.g. in the case of shunting or low speed operations in separated railtrack-areas, the possible damages may be of a different character and magnitude.

It is therefore our view that liability associated with rail operations is generic while the specific risk exposure is closely connected to the operations of each RU.

It is further concluded, that - although being a relevant and potential risk - only few countries covered by this study have so far taken a decision on the allocation of liability for damages caused by such an attack.. It is strongly recommended that the liable part(ies) for the consequences of terrorist attacks should be addressed and clarified - if not in the setting of liability cover requirements and/or in the negotiation of insurance - by national regulatory initiatives. It is equally strongly emphasized that such a decision is taken ensuring that all RU's operating within the national context are covered by this decision.

### **5.1.3 Recommendations for actions on minimum liability**

The differences in requirements for minimum liability coverage in countries constitute a problem in two dimensions:

- RUs operating in different countries are facing different demands which make it more difficult and expensive to insure their entire operations within the same insurance policy.

- It is an obstacle to a common insurance market as discussed above.

One answer to these problems could be requirements for minimum liability harmonised at EU level. This is, however, not recommended as discussed below in section 5.1.5.

Thus, it is recommended that it should still be the responsibility of the national authorities to set the requirement for third party liability. However, this should be done in a more harmonised way than the case is today. One way of achieving this is to develop a thorough set of guidelines on how to assess the needed minimum coverage. It is recommended that the EU Commission initiate the development of such guidelines involving the licensing authorities in the member states.

Furthermore, it is recommended that all countries predefine the requirement for minimum liability coverage. Case by case assessment of the requirement to the coverage does in most cases not seem to be fair. Most RUs operating on the rail network will have the same potential for causing damages, but there may be big differences in the probability of accidents causing these damages, due e.g. to their safety management or the type of operation

Thus, the potential for causing damages should be reflected in the pre-defined requirements for minimum liability cover whereas the probability for the damages to occur should be reflected in the premium paid for the insurance.

There might be exceptions where the potential for causing damages are exceptionally high, e.g. high speed trains or exceptional low, e.g. shunting or low-speed operations. In such cases there could be an opportunity of setting higher requirements and for the operator to negotiate a lowering of requirements.

It is found that there has not politically been taken a decision on liability in case of a terrorism attacks. Allegedly, RUs are interested in terrorism protection and a market for terrorism cover does exist, albeit at additional costs.

It is recommended that a discussion is taken as to who is liable in case of terrorism attacks and up to what limit (Cf. discussion below on legal ceilings).

#### **5.1.4 Recommendations for legal ceilings for liability**

The levels of liability cover set in member states are very different. In some countries there is no mandatory liability cover - in Latvia requirement is € 430.000 and in the UK the requirement is € 223m.

RUs from the new EU-countries (where insurance requirements are usually lower) therefore face far more expensive insurance requirements when planning to expand their operations into the 'old' EU-countries.

In connection with the second tier of the stakeholder consultation this was discussed with several new Czech RUs. The Czech RUs wanted lower insurance requirements - but they were also quick to point out that they wanted no com-

mon Community insurance requirement, if that would mean higher insurance demands in the Czech Republic.

In general there seems to be an understanding that insurance requirements are tied to GNP and that different countries therefore have different demands.

It seems relevant to discuss the possibility of introducing legal ceilings in the coverage requirement. These ceilings could especially be applied to

- terrorism attacks
- a major environmental damage

The introduction of legal ceilings for these two kinds of damage is justified by the fact that they both may result in unimaginable large damages stemming from quite "small" events. It is an ongoing debate at the moment where and to what extent the State or the Rail operator is liable for damages from a terrorism attack, whereas the environmental damage from railway operations have been dealt with in the EU Directive on Environmental Liability (Directive 2004/35).

### **5.1.5 More harmonised setting of liability coverage**

It is also concluded that differences in liability coverage requirements constitute an obstacle to a common rail insurance market and makes it difficult and expensive for international and cross border operations to insure their entire operations within the same policy. Based on the above mentioned perception that the risks to which Railway operations are exposed are generic to all RUs - the setting of liability cover should in principle not differ from country to country for comparable railway operations.

It is recommended that further attention should be devoted to disseminate knowledge on how proper liability coverage is set in the light of the Directive's rules. Especially, it is surprising that there are vast differences between the member states in how they define the term "adequate" coverage in their national legislation or interpretation of this legislation. Given that the risks to which Railway operations are exposed are generic to all RUs it is furthermore surprising that there are vast differences in what must be covered between countries, cf. section 2.3.3 and the table in 2.3.4.

Differences in the national economic situations in countries make it impossible to fully harmonise coverage requirements. Hence, it is recommended that

- it should still be the responsibility of national authorities to set the requirement for third party liability;
- that all countries predefine the requirement for minimum liability coverage, and that
- this should be done in a more transparent and harmonised way.

### 5.1.6 Uniform liability coverage calculation method

For this purpose, it is recommended, that the EU Commission initiate that a guideline be developed providing a methodology for uniform liability coverage calculation involving the licensing authorities in the Member States.

The guideline should include, build on and support the following principles:

- parameters for setting liability coverage
- liability coverage is calculated on the basis of a transparent and systematic method
- liability coverage is calculated in the basis of vast, historical and reliable (systematically collected) risk exposure and accident data.
- liability coverage requirements should be realistic and reflect actual risk., i.e. coverage reflect a country's economic situation, e.g. GDP levels or the costs of losses resulting from a rail incident/accident.
- Ensure that liability coverage requirements should be periodically revised in order to remain realistic and adequate.

The guideline should be published by the licensing authorities in the various countries in the national language.

Likewise, actual calculation of coverage should be published.

### 5.1.7 Identification of liable organisations

If adequately developed, it was concluded that a pre-definition of liable organisations as related to specific occurrences is likely to have positive influence on liability coverage and premiums and that it is likely to speed up the case work processes.

Hence, it is recommended that the national railway authorities initiate the development of a pre-defined scheme of liable organisations is developed.

The scheme should be developed taking the following into consideration:

- the cap on the predetermination
- which accidents are suitable for such a scheme
- ensure that it does not take away the incentive of railway undertakings to reduce risk
- designation of an organisation - in each country - responsible for overseeing the agreement - potentially a rail industry dispute resolution committee.

- The scheme should be developed on the basis of wide ranging consultation with the industry by the body responsible for overseeing the agreement.

#### Best practice example - the CAHA

It is further recommended that in developing the scheme, attention should be paid to the UK example of such a scheme, the Claims Allocation and Handling Agreement (CAHA).

The CAHA is currently being reviewed with the purpose of being improved. Findings from this review could very well be taken into consideration in the development of similar schemes.

In brief, the Claims Allocation and Handling Agreement sets out a protocol, signed up to by all "Industry Parties" (i.e. those who use or have access to the Railway in the UK) which deals with the handling and allocation of claims made by third parties against the UK Rail Industry Parties.

It is drafted as a multilateral contractual mechanism for industry parties to deal with claims between themselves no matter what commercial contracts they have with other industry parties. It sets predetermined liability for claims up to £7500 on a range of common scenarios. It should be noted that the cap on pre-definition for UK is low. It is likely to be within the self-insured portion of a railway undertaking's cover.

### 5.1.8 Community rules on safety

The implementation of the safety directive 2004/49 will be beneficial for the dialogue between the RUs and the insurance industry. As the European Railway Agency is drafting the specific requirements it is our recommendation that the insurance sector is included as a stakeholder in the process as this could cater for a harmonised and simple method for deriving premiums (cf. section 5.2)

### 5.1.9 Procedures to check insurance of infrastructure applicants

It is found that only a few countries apply fixed procedures to check whether RUs applying for access to infrastructure in a country other than that in which it obtained its licence are adequately insured according to national insurance requirements in the country in which it wishes to operate.

It is recommended that transparent and systematic procedures for checking whether RUs satisfy national insurance coverage requirements when applying for access to infrastructure within their jurisdiction are developed. It is recommended that Member States make these procedures transparent by publishing the requirements that must be fulfilled as well as the expected duration of the procedure.

## 5.2 Recommendations related to the negotiation of insurance premiums

It was found that stakeholders have very different perceptions as to the degree to which there is a functioning insurance market providing insurance at adequate prices.

Problems related to obtaining insurance mainly concern the cost of insurance (premiums).

In the following, recommendations related to this issue will be addressed.

Better understanding of rail risks and insurance among RUs and insurers

### 5.2.1 Improve a mutual understanding

It was found that there is a lack of understanding between the railway sector and the insurance sector. On the one side, the insurance industry is unsure of the market and hesitant to offer insurance, which reduces capacity. On the other side, the insurance market is a complex market without a simple equation linking risk, exposure, liability and premium.

It is recommended that both the RUs and the insurance industry take initiative to improve a mutual understanding of the respective markets.

- rail operations should provide information on the risks associated with rail operations, in order to reduce uncertainty and hence increase market attractiveness;
- the insurance industry should provide information on what the industry respond to when calculating premiums.

A better understanding among the parties should be ensured by:

- continue the process initiated under the EU Commission. The EU Commission should continue to provide a forum for stakeholder meetings working towards this aim,
- As part of stakeholder consultation process information materials could be produced as a resource for the insurance industry as well as the railway industry.

### 5.2.2 Risks should be reflected in premiums

Following the line of recommendations in section 4.1 and derived from an understanding that RUs operating on the rail network will have the same potential for causing damage it is similarly found that the actual probability of an accident is related to the safety management and size of operation of the individual RU. As mentioned earlier this risk should be reflected in premiums - and not in liability or in insurance coverage.

This system makes the relationship between the RU and the insurance sector the only relationship in which insurance may be negotiated giving the RU a clear incentive to reduce risks instead of just insuring existing risks.

In connection with the implementation of the Safety Directive this could lead to a widespread use of safety management systems and the systematic mitigation of risks

Best practice on deriving insurance premiums

### 5.2.3 Best practices on calculating premiums

The deriving of premiums is basically a question which is being negotiated between the RUs and the insurance companies and is subject to the conditions on the insurance market. As mentioned earlier, the deriving of premiums are done differently by different insurance companies.

It is the clear recommendation of the Consultant that the national railway authorities should regulate the minimum liability insurance coverage but that the premiums should be left to the insurance market.

However, there is an obvious need for a simpler method that on a uniform basis provide the necessary information upon which premiums should be derived.

The Safety Directive - in developing a harmonised approach to safety and harmonised conditions for issuing, including content and period of validity, of safety certificates - provides an obvious basis for turning the current 'state of the art' of deriving premiums into a 'best practice' method of deriving premiums as a large number of the variables currently determining premiums may be turned into constants/generic determinants.

It is recommended that the European Railway Agency as it is drafting the specific requirements includes the insurance sector as a stakeholder in the process in order to facilitate that this sector picks up the merits of the Directive and that this inclusion should facilitate a harmonised and simple method for deriving premiums in the sector (cf. section 5.2)]

Improved access for new RUs - pooling of liability fund

### 5.2.4 Pooling of liability fund

This study points to the fact that new Railway Undertakings have a distinct disadvantage when negotiating the terms and premiums for insurance of the following reasons:

- lack of track record
- financially weak compared to the incumbent railways

A possible solution could be to establish a mutual fund for newcomers on the EU-level.

The pool would have to be based on certain principles:



- the separation of the basic and excess layers of insurance. The RUs must take out insurance on the basic layer themselves so they have an incentive to work for high safety standards. The excess layer should then be covered by a mutual fund.
- negotiation with insurers / brokers should happen on a pool-perspective, i.e. in order for the pool to be attractive for participants, certain standards must be obtained in order to avoid a disincentive to maintain a high safety standard.

These principles require careful consideration as to which conditions should apply in order for RUs to get access to the pool

- It should be considered if requirements related to size of the RU should be adopted. On one hand, requirements that only RUs under a certain size (to be determined) is given access to the pool would make sense in order to ensure that capacity of the pool is not exhausted by large RUs; on the other hand, in order to obtain the benefits of the administrative costs that must be born to operate the pool a critical mass of about 100 participants is needed. Limiting access by the criteria of size may hinder this critical number of participants to be reached.
- It should be considered how a disincentive of the individual RU to maintain a high safety standard should be avoided. On one hand, RUs should be allowed access to the pool as long as they fulfil general safety requirements i.e. they are in the possession of a Part A safety certificate<sup>12</sup>. However, in order to avoid that some RUs may be denied access for not fulfilling higher requirements than those specified in the Directive; this may work as a disincentive for RUs to continuously aiming at reducing risk rather than insuring themselves out of the problem.

It seems obvious from the above that careful consideration of how and on the basis of which criteria such a pool may be established. One guiding principle underlying such considerations could be to emphasize the safeguarding of market access of the smaller RU's being the undertakings that potentially may be the first to be squeezed out in case of lack of capacity on the insurance market.

### **5.2.5 Indicators for measuring effectiveness of the insurance sector**

In order to be able to measure the functioning of the rail insurance market it is recommended that indicators be developed and a benchmark be established.

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<sup>12</sup> The safety certificate comprise: a) certification confirming acceptance of the RU's safety management system as described in Art. 9 and annex III of the Safety Directive and b) certification confirming acceptance of the provisions adopted by the RU to meet specific requirements necessary for the safe operation of the relevant network as described in Annex IV of the Safety Directive.

The question of establishment of indicators for a market is a rather complex one and requires an independent study. It is recommended that

A few ideas for indicators were suggested.

Development of indicators should be based on the following principles:

- it should be based on a description of the indicator, a rigorous method description, and a clear and unambiguous data collection procedure.
- the market monitoring in this area should be coupled with already existing Railway Market Monitoring Scheme.
- Indicators should be based on conventional business wisdom, which means that indicators should meet a number of criteria referred to as SMART: Specific, Measurable, Achievable, Realistic and Timely.
- Whilst indicators should live up to these general characteristics, indicators should also deliver value to both the insurance industry, the railway industry and to national authorities/the EU - which means that they should be based on focused consultation with all stakeholders affected.

### **5.3 Summary of recommendations for action - by responsible stakeholder**

Table 5.1 Recommendations for action according to responsible stakeholder

Action	Stakeholder to take action			
	EU	Member States / LA	RU	Insurance broker/ insurance company
Harmonisation of EU Law: Harmonised transposition / implementation of EU requirements (art. 9 of Dir. 95/18/EC)	Facilitate that a conformity check of national legislation will be carried out and monitoring and enforcement of extent to which EU requirements are correctly transposed and implemented	Responsible for correct transposition of EU requirements (95/18/EC)		
Risks associated with RUs: Liability for the consequences of terrorism attacks should be addressed and clarified	As liabilities are generic, liability of terrorism attacks should be addressed and clarified at EU level.			
Actions on minimum insurance requirements	Setting of minimum insurance requirements should be harmonised - EU should initiate a guideline on how to set coverage requirements  Exceptional cases allowing for higher/lower requirements should be defined.	National authorities should set requirements for 3 party insurance  All countries should predefine minimum insurance coverage requirements		
Legal ceilings	Liability and insurance limits in case of terrorism attacks and major environmental damages should be discussed and clarified			
Liable organisations		National Authorities should initiate development of pre-defined scheme of liable organisations		
Community rules on safety	The European Railway Agency should include the insurance			

Action	Stakeholder to take action			
	EU	Member States / LA	RU	Insurance broker/ insurance company
	sector in the drafting of specific requirements to safety			
Procedures to check insurance of infrastructure applicants	The EU Commission should initiate the development of transparent and systematic procedures for checking applicants			
Better understanding of rail risks and insurance	The process (Task Force) initiated under the EU Commission should continue		RUs and the insurance industry should take initiative to improve a mutual understanding of the respective markets	RUs and the insurance industry should take initiative to improve a mutual understanding of the respective markets
Calculation of premiums	The European Railway Agency should include the insurance sector in the drafting of specific requirements to safety - this should cater for uniform and simple method for deriving premiums			Uniform information and simple method for deriving premiums should be developed based on the provisions in the Safety Directive
Better access to insurance for new RUs	Discussion of establishment of a mutual fund at EU level should be facilitated by the EU Commission and involve the railway and the insurance sector  Principles and conditions should be defined		Railway undertakings should enter the discussion of establishment of a mutual fund at EU level  Principles and conditions should be defined	The insurance sector should enter the discussion of establishment of a mutual fund at EU level  Principles and conditions should be defined
Development of indicators for assessing effectiveness of the insurance sector	The EU Commission should initiate an independent study developing indicators and establishing a benchmark to measure effectiveness of the insurance sector  Relevant stakeholders should be consulted		The railway sector should engage in the developing indicators and establishing a benchmark to measure effectiveness of the insurance sector	The insurance sector should engage in the developing indicators and establishing a benchmark to measure effectiveness of the insurance sector



## **Annex I Country profiles**

## **Annex II Questionnaire responses on the functioning of the rail insurance market and proposals for action**

The original questionnaire responses are enclosed in a separate file.

## **Annex III List of literature studied and of persons consulted**

### **List of literature studied:**

- The Study of rules governing the insurance of European railway undertakings, 2000
- The final report from the Task Force on Licensing and Insurance, 2004
- RAILIMPLEMENT Study, 2006
- Guidance on Insurance Against Third Party Liability, Office of Rail Regulation, UK, August 2005
- Stefan Lohmeyer, Third Party Liability Exposure for Keepers of Private Railway Cargo Wagons Under Cotif 1999, General Counsel, VTG Aktiengesellschaft, 3 March 2006.
- Summary and conclusions of the Commission workshop on wagon use on 26 October 2005 in Brussels
- Dr. Heiko Fischer, Opening Speech at the UIP Workshop. Outstanding Issues for Independent Wagon Keepers, 26 October 2005.
- DIRECTIVE 2004/49/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive (Railway Safety Directive).
- DIRECTIVE 2004/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways
- Commission Recommendation of 7 April 2004 on the use of a common European format for licence documents issued in accordance with Council Directive 95/18/EC on the licensing of railway undertakings.
- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways
- Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings
- Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification



- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways
- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings

**List of persons consulted:****Interviews****Czech Republic:**

- Pavel Kodym, Director, Czech Rail Authority
- Pavel Skarabela, Vice Chairmand of the Board, Viamont
- Stefan Bernath, Railway Transportation Manager, Connex
- Emanuel Sip, Consultant, Association of Private Railways

**The Netherlands:**

- Mr. Karel Fuijkschot, AON, the Netherlands
- Mr. Andres Wedzinga, Netherlands Railway Safety Authority;
- Mr. Karel Poiesz, Rotterdam Rail Feeding
- Mr. Ronald Smits, Shunter
- Mr. Maikel Tenpierik, TCC
- Piet Hein van der Schoot, ACTS
- Michiel Tom, ACTS

**Poland:**

- Mr. Adam Brzezinka, PCC Rail Szczakowa S.A.

**The United Kingdom:**

- Mr. Robert Platsky, Head of Licensing, Office of Rail Regulation (ORR)
- Agnes Bonnet, Head of European Policy, Office of Rail Regulation (ORR)
- Dr. Brian Sullivan, European Practice Leader, Transportation Logistics, Ports and Fleet, MARSH, UK.

- Mr David Perry, Claims and insurance Manager, Freightliner
- Mr. Paul Phillips, Risk Manager, EWS
- Mr. Mike George, Account Director, Willis Limited, UK
- Mr. Chris Weston-Simons, Executive Director, Global Markets, International, Willis Limited, UK

**Italy:**

- Mr. Alberto Mazzola, International Relations and Regulatory Affairs, Ferrovie Dello Stato.
- Giuseppe Pietrosanto - GP, Ferrovie dello Stato
- Germano Guglielmi - GG, Ferrovie dello Stato
- Maria Rosaria Costa - MRC, Ferrovie dello Stato
- Dr. Paolo Tolla - PT, Sapri (Consultants for FS)
- Mr. Francesco Grotti, Railtrraction

**Stakeholders who have provided opinions and views in the stakeholder consultation****Austria:**

- ÖBB (IM), Herr Helmut Hantak
- ÖBB Traktion GmbH (RU)

**Belgium:**

- European Rail Infrastructure Managers (EIM) (IM), Mr. Dan Wolff
- Service public fédéral Mobilité et Transports (LA), Mr. Wim Loenders

**Bulgaria:**

- Bojana Georgieva (BRO)
- Railway Administration Authority (Ministry of T & C) (LA), Mrs. Ekaterina Genova

**Czech Republic:**

- Czech Railways, a.s. (IM), Mr. Jiri Cerny

- Czech Rail authority (LA), Mr. Kodym Pavel

**Denmark:**

- Willis, Denmark, (BRO) Clinton Perry
- Codan, (INS), Bo Andersen
- Trafikstyrelsen (LA), Mrs. Helle Viltoft
- DSB, Risk Management (RU), Insurance Adviser Kristian Thomas Kron

**Estonia:**

- AS Eesti Raudtee (RU) Alksei Averson

**Finland:**

- Ministry of Transport and Communications (LA), Ministerial Councillor Pekka Kouhia

**France:**

- Réseau Ferré de France (RFF) (IM), Mr. Jean-Michel Gayon

**Germany:**

- Deutsche Bahn NETZ AG (DB NETZ AG) (IM), Herr Reiner Freise
- Eisenbahn-Bundesamt (EBA) (LA), Mr. Manfred Mass
- Bundesministerium für Verkehr, Bau- und Wohnungswesen (LA), Ms. Marcia Heiseke
- RAIL4CHEM Eisenbahnverkehrsgesellschaft mbH (RU)

**Hungary:**

- Ministry of Economy and Transport of the Republic of Hungary (LA), Head of Railway Department Erika Tarr

**Ireland:**

- John Bissett (BRO)
- Iarnród Éireann (IM), General Manager Michael Murphy
- Department of Transport (LA), Mr. Dave Garland
- Irish Rail (RU), Director of Strategies and Change John Keenan

**Italy:**

- Rete Ferroviaria Italiana SpA (RFI) (IM), Mr. Roberto Carruso
- Trenitalia S.p.a. (Ferrovie dello Stato Group) (RU) Alberto Mazzola

**Lithuania:**

- State Railway Inspectorate (LA) Dainius Mazėtis

**Luxembourg:**

- La Luxembourgeoise (INS) Mr. Pit Hentgen
- Ministère des Transports (LA), Ms. Myriam Recken

**Netherlands:**

- Pro Rail (IM) Kees Harinck
- Netherlands Railway Safety Authority (LA), Mr. Andres Wedzinga

**Norway:**

- NSB (IM)
- Jernbaneverket (JBV) (IM), Mr. Yngve Andreassen

**Poland:**

- Krzysztof Pacak (BRO)

**Poland:**

- Prezes Urzędu Transportu Kolejowego (Office for Railway Transport) (LA), Mr. Piotr Cukierski

**Portugal:**

- Miguel Albuquerque (Lisbon) (BRO)
- Rede Ferroviaria Nacional, EP (REFER) (IM), Mrs. Manuela Ribeiro
- Instituto Nacional do Transporte Ferroviário (INTF) (LA), Mr. Pedro Me-  
nezes
- Caminhos de Ferro Portugueses, CP (RU)

**Romania:**

- SNTFM „CFR Marfa” SA (biggest freight RU) (RU), Man. Director Liviu Bobar

**Slovak Republic:**

- Railway Regulatory Authority (LA), Mr. (Dipl.Ing.) Miroslava Janušicová
- Slovak Republic, US Steel, s. r. o. Košice (RU), Mr. Michal Košč
- Zeleznicna spolosnost Slovensko, a. s. (RU), Head of Team for International Relations Lubomir Hradisky

**Slovenia:**

- SV Slovenian Railways (IM) Ana Založnik
- Railway Transport Agency (LA), Mr. Benjamin Steinbacher Pušnjak
- Slovenian Railways (RU), Director int. relations Miriam Kastelic

**Spain:**

- Ministra de Fomento (LA), Mr. Rafael Garcia Alcolea
- ADIF, Spanish Rail Authority (LA), Ms. Helena Palomar

**Sweden:**

- Banverket (BV) (IM), Mr. Hans Wolf
- Järnvägsstyrelsen - Swedish Rail Agency (LA), Mr. Ulrik Bergman
- Green Cargo AB (RU), VD Jan Sundling

**Switzerland:**

- Schweizerische Bundesbahnen SBB (IM), Head of Insurance Risk Management Marcello Biondo-Gutekunst
- Schweizerische Bundesbahnen SBB (RU), Vorsitzender der GL Benedikt Weibel

**United Kingdom:**

- Willis Limited, UK (BRO) Mike George
- Network Rail (IM), Mr. Simon Whitehorn
- Office of Rail Regulation (LA), Mrs. Agnes Bonnet

- European Rail Freight Association - ERFA (RU), Secretary General  
Monika Heiming

## Annex IV Actual insurance cover taken out by RUs

### *Actual insurance cover taken out by RUs*

Country	RU	Actual coverage taken out	Comments
Austria	TX Logistik GmbH	€ 10 M	
Austria	ÖBB Traktion GmbH	€ 100 M	
Austria	Graz - Köflacher Bahn und Busbetrieb GmbH	€ 10 M	(zweifaches Aggregate Limit)
Austria	Logistik Service GmbH	€ 50 M	€ 50 Mio pauschal für Personen- und, - oder Sachschäden € 10 Mio Sublimit für reine Vermögensschäden
Austria	LTE Logistik- und Transport GmbH	€ 35,9 M	Deckungssumme: insgesamt € 35.900.925,- - (€ 10.900.925,- und € 25.000.000,-)
Austria	Montafonerbahn AG	€ 39,5 M	Deckungssumme: € 14.534.567,-- und € 25.000.000.— somit insgesamt € 39.534.567,--
Austria	Rail Cargo Austria AG	€ 100 M	
Austria	RTS Rail Transport Service GmbH	€ 10,2 M	
Austria	Raab-Oedenburg-Ebenfurter Eisenbahn AG	€ 10,2 M	(dreifaches Aggregate Limit)
Austria	Salzburg AG für Energie, Verkehr und Telekommunikation	€ 10 M	(Jahresmaximum € 20 Mio) und € 20.000.000,- (einfaches Jahresmaximum). Jahreslimit: € 40 Mio.
Austria	Steiermarkbahn Transport und Logistik GmbH	€ 10,2 M	2 x per year
Austria	Stern und Hafferl Verkehrsgesellschaft mbH	€ 10 M	2 x per year
Austria	Wiener Lokalbahnen AG	€ 30 M	
Austria	ÖBB Personenverkehr AG	€ 100 M	
Belgium	SC Intercontainer-Interfrigo (ICF)	Withdrawn	
Belgium	SNCB - NMBS	To be verified	Page not loading
Bulgaria	BDZ EAD	N/A	No data on licenses
Bulgaria	Bulmarket DM OOD	N/A	No data on licenses
Czech Republic	Ceské dráhy, a.s.	CZK 300 M	
Czech Republic	Connex Morava a.s.	CZK 10 M	
Czech Republic	Connex Česká Železniční, s.r.o.	CZK 10 M	

Country	RU	Actual coverage taken out	Comments
Czech Republic	GJW Praha spol. s.r.o.	CZK 20 M	
Czech Republic	IDS - Inženýrské a dopravní stavy Olomouc, a.s.	CZK 40 M	
Czech Republic	Mostecká uhelná společnost as, právní nástupce	CZK 5 M	
Czech Republic	OKD, Doprava, akciová společnost	CZK 10 M per event.	
Czech Republic	Ostravská dopravní společnost, a.s.	CZK 10 M	
Czech Republic	Pus s.r.o.	CZK 5 M	
Czech Republic	Railtrans s.r.o.	CZK 5 M	
Czech Republic	RM Lines a.s.	CZK 20 M	
Czech Republic	Slezskomoravská Dráha a.s.	CZK 5 M	
Czech Republic	Sokolosvká uhelá, a.s.	CZK 20 M	
Czech Republic	Trat'ová Strojní stanice, a.s.	CZK 10 M	
Czech Republic	Unipetrol Doprava, a.s.	CZK 10 M	
Czech Republic	Viamont a.s.	CZK 50 M	
Czech Republic	VÍTKOVICE Doprava, a.s.	CZK 10 M	
Czech Republic	ZS Brno	CZK 10 M	
Denmark	Arriva Tog A/S	N/A	
Denmark	DSB, Risk Management	N/A	
Denmark	Railion Danmark A/S	N/A	
Estonia	AS Eesti Raudtee	\$ 25 M	
Estonia	Elektriraudtee AS	EEK 30 M	
Estonia	AS AVR Transservice	EEK 7 M	
Estonia	AS EVR Ekspress	EEK 30 M	
Estonia	AS Harku Karjäär	N/A	Page not loading
Estonia	AS Kunda Trans	EEK 7 M	
Estonia	AS Maardu Raudtee	EEK 10 M	
Estonia	AS Paldiski Raudtee	EEK 7 M	
Estonia	AS Railservis	EEK 7 M	
Estonia	AS Sillamäe Sadam	N/A	Page not loading
Estonia	AS Spacecom	EEK 100 M	
Estonia	AS Stivis	EEK 7 M	
Estonia	Coal Terminal Trans AS	EEK 7 M	
Estonia	Edelaraudtee AS	EEK 15,65 M	



Country	RU	Actual coverage taken out	Comments
Estonia	Eurodek Services OÜ	N/A	Page not loading
Estonia	KS Stivideerimise AS	EEK 7 M	
Estonia	OÜ Dekoil	N/A	Page not loading
Estonia	OÜ Link Oil Sankt-Peterburgi Eesti filiaal	N/A	No cover amount specified.
Estonia	OÜ Transoil	N/A	Page not loading
Estonia	Russian Estonian Rail Services AS	N/A	No cover amount specified
Estonia	Westgate Transport OÜ	N/A	Page not loading
Finland	VR Osaakehtiö (VR Ltd.)	€ 66 M	
France	CONNEX Cargo France	€ 45 M	
France	SNCF	N/A	
France	CFTA Cargo	€ 8 M	
France	Europorte 2	€ 60 M per incident	
France	SECO Rail	€ 45,75 per incident	
France	VEOLIA Transport (formerly: Connex)	€ 45 M per incident	
Germany	RAIL4CHEM Eisenbahnverkehrs-gesellschaft mbH	N/A	
Germany	Railion Deutschland AG	N/A	
Greece	OSE	N/A	No reporting by LA
Hungary	GYSEV PLC	HUF 985 M	Real estate in Budapest and Pécs
Hungary	MÁV Cargo co. LTD	HUF 2.958 M	Real estate in Budapest and Pécs
Hungary	CER Central-European RailwayTransport, Trading and Service Co.	HUF 150 M	
Hungary	Floyd Ltd.	HUF 150 M	
Hungary	MÁV Cargo co. Ltd.	HUF 1.158 M (See comments)	1 real estate in Pécs (total value: HUF 1.158.850.000)
Hungary	MÁV Hajdú Vasútépítő Ltd.	HUF 150 M	
Hungary	MMV PLC.	HUF 150 M	
Hungary	Train Hungary Ltd.	HUF 150 M	
Ireland	Irish Rail	N/A	No reporting by LA
Italy	Rail Traction Company S.p.a.	N/A	Page not loading, but prob. N/A
Italy	Trenitalia S.p.a. (Ferrovie dello Stato Group)	N/A	Page not loading, but prob. N/A
Latvia	A/S Baltijas Ekspressis	N/A	Not published yet
Latvia	VAS Latvijas dzelzceļs	N/A	Not published yet

Country	RU	Actual coverage taken out	Comments
Lithuania	Lietuvos Gelezinkelai	N/A	
Luxembourg	Société Nationale de Chemins de Fer Luxembourgeois	€ 37,5 M	Police du 1er rang: € 2,5 M Police du 2ème rang: € 10 M Police du 3ème rang: € 37,5 M
Netherlands	Railion Nederland	N/A	Not published yet
Netherlands	Syntus B.V.	€ 10 M per incident, € 20 M per year.	
Netherlands	ACTS Nederland	N/A	Not published yet
Netherlands	Connex cargo	€ 10 M per incident, € 42 per year.	
Netherlands	ERS Railways B.V.	€ 10 M per occurrence, € 20 M per year.	
Netherlands	Eurailscout Inspection and Analysis B.V.	€ 10 M per incident and per year.	
Netherlands	Nedtrain B.V.	€ 115 M per incident and per year.	
Netherlands	Nedtrain Consulting B.V.	€ 115 M per incident and per year.	
Netherlands	Noordned Personenvervoer B.V.	€ 10 M per occurrence, € 20 M per year.	
Netherlands	NS Reizigers B.V.	€ 115 M per incident and per year.	
Netherlands	Rail4Chem Benelux B.V.	€ 15 M per occurrence, € 30 M per year.	
Netherlands	Rotterdam Rail Feeding B.V.	€ 10 M per incident and per year.	
Netherlands	Shortlines B.V.	€ 10 M per occurrence, € 20 M per year.	
Netherlands	Spitzke Spoorbouw B.V.	€ 10,2 M per incident and per year.	
Netherlands	Thalys Nederland N.V.	€ 115 M per incident and per year.	
Netherlands	Volker Stevin Rail & Traffic B.V.	€ 10 M per occurrence, € 20 M per year.	
Norway	Cargonet AS	N/A	Not published yet
Norway	Malmtrafikk AS	N/A	Not published yet

Country	RU	Actual coverage taken out	Comments
Poland	Chem Trans Logistic HP S.A. now: CTL Logistics S.A	N/A	
Poland	PKP CARGO S.A.	N/A	
Portugal	Caminhos de Ferro Portugueses, CP	N/A	No reporting by LA
Portugal	FERTAGUS	N/A	No reporting by LA
Romania	Keolis	N/A	
Romania	SNTFM „CFR Marfa” SA (biggest freight RU)	N/A	
Slovak Republic	US Steel, s. r. o. Košice	N/A	No reporting by LA
Slovak Republic	Železnica spoločnosť Slovensko, a. s. (ZSSK – Passenger operator)	N/A	No reporting by LA
Slovenia	Slovenian Railways	N/A	Not published yet
Spain	Continental Rail S.A.	N/A	
Spain	RENFE-Operadora	See comments	Infrastructure: € 27,1 M Trains: € 27,1 M Third parties: € 27,1 M Third parties (injury and death): € 10 M Dangerous cargo: (damage to third parties) € 27,1 M
Spain	COMSA Rail Transport SA	See comments	Infrastructure: € 6 M Trains: € 18 M Third parties: € 1,5 M Third parties (injury and death): € 0,45 M Dangerous cargo: (damage to third parties) € 3 M
Spain	Press Cargo Tren S.A.	See comments	Infrastructure: € 6 M Trains: € 18 M Third parties: € 1,5 M Third parties (injury and death): € 0,45 M Dangerous cargo: (damage to third parties) € 3 M
Sweden	BK Tåg AB	N/A	
Sweden	Green Cargo AB	N/A	Page not loading, but prob. N/A
Switzerland	BLS Lötschbergbahn AG Konzernleitung	N/A	No data on licenses
Switzerland	Schweizerische Bundesbahnen SBB	N/A	No data on licenses
United Kingdom	English Welsh & Scottish Railway Limited - EWS	€ 223 M	
United Kingdom	Freightliner Heavy Haul Limited: Freight	€ 223 M	
United Kingdom	Advenza Freight Limited: Freight	€ 223 M	
United Kingdom	Advenza Freight Limited: Passengers	€ 223 M	

Country	RU	Actual coverage taken out	Comments
United Kingdom	Arriva Trains Wales: Freight	€ 223 M	
United Kingdom	Arriva Trains Wales: Passengers	€ 223 M	
United Kingdom	c2c Rail Limited: Passengers	€ 223 M	
United Kingdom	Central Trains Limited: Passengers	€ 223 M	
United Kingdom	CrossCountry Trains Limited: Freight	€ 223 M	
United Kingdom	CrossCountry Trains Limited: Passengers	€ 223 M	
United Kingdom	Direct Rail Services Limited: Freight	€ 223 M	
United Kingdom	Direct Rail Services Limited: Passengers	€ 223 M	
United Kingdom	English Welsh & Scottish Railway International Limited - EWS: Freight	€ 223 M	
United Kingdom	English, Welsh & Scottish Railway International Limited	€ 223 M	
United Kingdom	Eurostar (UK) Limited: Passengers	€ 223 M	
United Kingdom	Fastline Limited: Freight	€ 223 M	
United Kingdom	First Capital Connect Limited: Passengers	€ 223 M	
United Kingdom	First Great Western Link Limited: Freight	€ 223 M	
United Kingdom	First Great Western Link Limited: Passengers	€ 223 M	
United Kingdom	First Greater Western Limited: Passengers	€ 223 M	
United Kingdom	First Scotrail Limited: Freight	€ 223 M	
United Kingdom	First Scotrail Limited: Passengers	€ 223 M	
United Kingdom	First/Keolis Transpennine Limited: Freight	€ 223 M	
United Kingdom	First/Keolis Transpennine Limited: Passengers	€ 223 M	
United Kingdom	FM Rail Limited: Freight	€ 223 M	

Country	RU	Actual coverage taken out	Comments
United Kingdom	FM Rail Limited: Passengers	€ 223 M	
United Kingdom	Freightliner Limited: Freight	€ 223 M	
United Kingdom	Gatwick Express Limited: Passengers	€ 223 M	
United Kingdom	GB Railfreight Limited: Freight	€ 223 M	
United Kingdom	Great North Eastern Railway Limited: Freight	€ 223 M	
United Kingdom	Great North Eastern Railway Limited: Passengers	€ 223 M	
United Kingdom	Great Western Trains Company Limited: Freight	€ 223 M	
United Kingdom	Great Western Trains Company Limited: Passengers	€ 223 M	
United Kingdom	Hull Trains Limited: Passengers	€ 223 M	
United Kingdom	London & South Eastern Railway Limited: Passengers	€ 223 M	
United Kingdom	London Eastern Railway Limited: Freight	€ 223 M	
United Kingdom	London Eastern Railway Limited: Passengers	€ 223 M	
United Kingdom	Midland Main Line Limited: Freight	€ 223 M	
United Kingdom	Midland Main Line Limited: Passengers	€ 223 M	
United Kingdom	New Southern Railway Limited: Passengers	€ 223 M	
United Kingdom	Northern Rail Limited: Freight	€ 223 M	
United Kingdom	Northern Rail Limited: Passengers	€ 223 M	
United Kingdom	Rail Express Systems Limited: Freight	€ 223 M	
United Kingdom	Rail Express Systems Limited: Passengers	€ 223 M	
United Kingdom	Silverlink Train Services Limited: Passengers	€ 223 M	

Country	RU	Actual coverage taken out	Comments
United Kingdom	South Eastern Trains Limited: Passengers	€ 223 M	
United Kingdom	South West Trains Limited: Freight	€ 223 M	
United Kingdom	South West Trains Limited: Passengers	€ 223 M	
United Kingdom	The Chiltern Railway Company: Passengers	€ 223 M	
United Kingdom	West Anglia Great Northern Railway Limited: Freight	€ 223 M	
United Kingdom	West Coast Railway Company Limited: Freight	€ 223 M	
United Kingdom	West Coast Railway Company Limited: Passengers	€ 223 M	
United Kingdom	West Coast Trains Limited: Freight	€ 223 M	
United Kingdom	West Coast Trains Limited: Passengers	€ 223 M	