

Annex IX – Summary of replies of RUs

Answers of RUs providing domestic services in the following countries								
	Documents	Influence	Bargaining position	Corporate structure of IM	Risk coverage	Contract rendered necessary	Examples	Satisfaction
HU	Network statement	None	N/A	N/A	By law compulsory insurance of - 2.592.592 EUR for general accidents - 4.814.814 EUR for catastrophic accidents	No	Accident on 2/08/2008: IM was faulty and admitted its liability (settled out of court)	
IE	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RU active in several countries – general comment	Advocates application of CUI + extension of right of recourse	No influence but necessity to have a thorough financial background to deal with existing liability gaps	- RU = weaker than IM - bargaining power is affected by the lack of alternatives (monopoly) and no incentive to a monopoly to negotiate beyond the legal minimum - Advocates for a clear and secure legal framework for negotiations with IM	If managerial independence, no impact.	- No specific coverage towards IMs but towards all potential victims - premiums would be lower if possible recourse against IM would be organised by law and easy to enforce		Mostly settled out of court	
DE				no bargaining		Contract		

				because contrary to the principle of non-discrimination		references to national law		
UK	Track access contract			- approval of RB (ORR) - IM/RU may seek intervention of RB in case of disagreement	third party liability insurance on terms approved by ORR	Contract as a matter of course	CAHA (also for third parties, which introduce a claim and then CAHA allocate the liability amongst the parties of the industry)	
FR						Contract references to national law		
PL						Contract references to national law		
RO	Advocates for application of CUI + extension to domestic traffic + extension of right of recourse + standardisation through GTC	Only active in RO	- IM is a monopoly - Advocates for a clear and secure legal framework for negotiations with IM	Yes, deep impact		Yes - Contract	Where the contract does not mention clearly the level of liability, then before court	- 3/10 - need for a more efficient and rapid way to establish fault - in several cases, accidents are due to the poor state of infrastructure - Investigations of the Competent Authority to establish guilt

								are finalised too late (note that this is being changed with the transposition of the second railway package). - the situation is totally unfavourable to RUs.
FR	General Terms and Conditions as annex to the Network Statement	Only active in FR	N/A	- difficult to obtain modifications to the contract - some clauses are unfair	Amount given but no indication on whether it is significant or not	No	Operational discussion: IM was faulty and admitted its liability (settled out of court)	Not answered
FR	General Terms and Conditions as annex to the Network Statement	Only active in FR	- IM is a monopoly, the contract is of adhesion - contract provisions are unfair : . RFF has almost no liability and . RFF has important grounds of relief . limitations of the obtainable damage are insufficient to cover the damage . no	No if the principle of non-discrimination is respected and if IMs apply the same contractual conditions to all RUs.	N/A	N/A	N/A	RU bemoans that the questionnaire is limited to the relationship RU-IM and does not relate also to RU-wagon keeper, etc.

			compensations for delays attributable to IM whereas Regulation 1371/2007 applies and authorities impose penalties					
PL	/	/	/	/	/	/	/	/
PL	Contract of use liability settled in accordance with the civil code	Only active in PL	- disadvantageous bargaining position of RUs on contractual provisions relating to the consequences of other events than accidents. - IM excludes its liability for consequences of events and incidents caused by third parties, except those resulting from wilful misconduct or gross negligence	No if the Network Statement is strictly applied	Significant	It is advisable to include detailed provisions in the contract	In 2009: - 29 accidents attributable to RU - 38 accidents attributable to IM Mutual financial claims are settled according to accounting notes. Settlement by the parties on the basis of the Findings of railway committees	
UK	Contract Regarding the strict liability under	Regulatory oversight	- IM controls essential infrastructure hence, has a stronger	Yes: - small IMs may not have the capacity to bear or absorb	N/A	Yes	N/A	N/A

	Regulation 1371/2007, amendments to CAHA are under discussion		bargaining position - hence importance of regulatory oversight - concern that Regulation 1371/2007 favours IM by providing that RUs assume near strict liability towards passengers and vicarious liability for the actions of IMs. Access agreements must continue to address this risk	risks and may place undue risk on carrier - large IMs may have market presence and negotiating power used to restrict or impose liability inappropriately Effective regulatory oversight is required				
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Answers of RUs providing international and/or domestic services in the following countries								
	Documents	Influence	Bargaining position	Corporate structure of IM	Risk coverage	Contract rendered necessary	Examples	Satisfaction
RU active in several countries – general comment								The study should be extended to other relationship than RU-IM: - the responsibility regime is not clearly defined in the Safety

								<p>Directive (art. 4 § 3 and 4 and art. 9 § 2) and is in contradictions with:</p> <ul style="list-style-type: none">. article 14 bis on maintenance. RID <p>- CUI regarding the involvement of third parties</p> <p>- subsidiaries should be consulted to investigate their relation with IMs and other stakeholders <i>(note that this has been done, but subsidiaries did not answer)</i></p> <p>- position of EU regarding CUI did not promote the harmonisation of liability regimes. Contracts</p>
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FR	Contract	No and RFF's contract does not constitute an obstacle to other RUs Remark: obstacles stem rather from financial conditions, such as level of fees for the use of the infrastructure, investments in rolling stocks, etc.)	- not as such - but IM = monopoly, so that discussions are difficult, it is a contract of adhesion - in the contract: . force majeure has an extensive definition . no compensation for delays due to the IM whereas Regulation 1371/2007 is of application and authorities impose penalties	No if the principle of non-discrimination is respected and if IMs apply the same contractual conditions to all RUs. Remark: when a RU and IM are of the same group, contractual clauses tend to be more favourable to the IM since financial consequences for RU are minimised by financial transfers within the group.	- Difficult to say since the contract relates not only to the activities of RU - In addition, insurance is only the last means used by the undertaking to transfer risk	Contract	N/A	should contain CUI.
	BE, LU, NL	Contract	No Same remark as for France			Infrabel's contract is fairer than RFF's	N/A	
DE	Contract (Network Statement)	N/A	N/A	N/A	N/A	N/A	No accident in Germany	N/A