

Annex VIII - Questionnaires sent to the stakeholders

1. Questionnaire addressed to Regulatory bodies

1. Please report any case you have handled (including a short summary), if any, concerning possible restrictions to access to infrastructure or any discriminatory treatment due to liability regimes between RUs and IMs in the event of a rail accident.

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2. Please indicate the costs for RUs for opening a procedure before your institution (e.g. taxes, administrative costs, etc.).

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2. Questionnaire addressed to IMs

1. Please describe whether, why and to what extent you have adopted documents relating to the civil liability regime in relation to railway accidents between RUs and IM(s) (e.g. specific clauses in the contract on the use of infrastructure concluded pursuant to the national transposition of Article 10(5) of Directive 91/440/EEC on the development of railways, statement of network, etc.).

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2. If the contract concluded pursuant to the national transposition of Article 10(5) of Directive 91/440/EEC on the development of railways, contains clauses on the respective liability of the parties in the event of a railway accident, please indicate whether and to what extent these clauses of such contract can be negotiated with the RUs. Please describe the different existing clauses per client, if applicable.

3. Please report any railway accident occurred on your infrastructure in the course of operating or facilitating rail transport services and how the case was settled.

3. Questionnaire addressed to organisations of IMs

Please indicate whether and to what extent the issue of civil liability in relation to railway accidents between RUs and IM(s) is addressed in your organisation (e.g. amendments to the common structure and implementation guide to the network statement, etc.). Please explain why your organisation considers that it is necessary for it to address this issue.

4. Questionnaire addressed to RUs

1. Please describe whether and to what extent civil liability provisions in relation to railway accidents and in the relationship between RUs and IM(s) are prescribed in documents relating to your access to a rail infrastructure (e.g. specific clauses in the contract on the use of infrastructure concluded pursuant to the national transposition of Article 10(5) of Directive 91/440/EEC,¹ licence, safety certificate as provided pursuant to the transposition of Article 10(2)b of Directive 2004/49/EC,² etc.).

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2. What particular features of EU Member States' civil liability regime, if any, have influenced in a positive / negative way your decision to offer international rail services? Please detail which provisions and in which EU Member State.
Please describe how have these features been incorporated or taken account of in contractual arrangements with the IMs?

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3. Do you believe any EU Member State's national liability regime affects the relative bargaining position of the parties in the conclusion of the contract adopted pursuant to the transposition of Article 10(5) of Directive 91/440/EEC? If so, please specify in which Member State and the reasons why you consider that the liability regime does this.

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¹ Directive 91/440/EEC on the development of railways.

² Directive 2004/49/EC on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of RUs and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

4. Do you believe the corporate structure of the rail IMs affects the relative bargaining position of the parties in the conclusion of the contract adopted pursuant to the transposition of Article 10(5) of Directive 91/440/EEC? If so, please specify in which Member State and the reasons why you consider this.

5. Please indicate the amount engaged per year by your company and per specific measure to cover your civil liability towards IMs in the event of a railway accident and/or, at least, the proportion of such amount in your total costs to operate train services. Please make a distinction in your answer for every Member State in which you are active. Please specify whether this constitute a difficulty for your company.

6. Have national liability provisions caused you to rely on contractual terms and conditions?

7. Please report any railway accident you had on an infrastructure in the course of operating or facilitating rail transport services and describe the way the case was settled (e.g. judicial procedure,

arbitration, any out of court settlement, contractual terms, COTIF, etc.), including the costs disbursed for such settlement.

8. Please give a mark of 1 to 10 of your level of satisfaction in terms of risk management for each of the civil liability regime in force in the Member States in which you are active. Please indicate the modifications that would improve your level of satisfaction.

5. Questionnaire addressed to National transport ministries

1. Please describe how the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 as amended by the Vilnius Protocol of 1999 (and its appendices) is made applicable in your Member State (e.g. through ratification, through reception in national law, etc.). Please provide any relevant reference.

2. Please indicate the status in the hierarchy of norms of the COTIF (and its appendices) in your legal system (e.g. suppletive / complementary, imperative, etc.). Please provide any relevant reference.

3. Please provide your assessment of Appendix E – CUI of COTIF.

3.1. Is Appendix E – CUI of COTIF useful / useless? Please explain.

3.2. Are the terms of civil liability in Appendix E – CUI of COTIF too strict / too relaxed / adequate?
Please explain.

3.3. Does Appendix E – CUI of COTIF cover all the issues of civil liability raised between RUs and IMs? If not, please specify what issues are not covered and what you think the solution should be.

4. When the revised Appendix E – CUI of COTIF will enter into force, does your Member State intend to declare the Appendix non-applicable pursuant to Article 42 of COTIF? Please explain why?

5. Is there, in your national legal system, any limitation of the amount of damages to be awarded in the event of death and personal injury caused by a party to the contract to the other following the use of the infrastructure or any other event?