

Annex I - Table comparing national legal regimes

GENERAL QUESTIONS

	Q1 – Liability between RUs and IMs : general and/or specific rules ?	Q2 – Contractual, tort or specific liability?	Q3 – Which legal relevant provisions or case-law are applicable?	Q4 – Functioning and interplaying of these principles?
Belgium BE	General	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - Articles 1146 to 1155 of the Civil Code on contractual liability; - Articles 1382 to 1386bis of the Civil Code concern the aquilian tortious liability. 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault unless otherwise provided (breach of contract) - tort liability is based on fault <p><u>Interplay:</u></p> <p>Combination:</p> <ul style="list-style-type: none"> - if breach to contract: contractual liability only - if not exclusively a breach of contract, both liabilities can be used
Denmark DK	<ul style="list-style-type: none"> - specific - general 	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - RU's liability is governed by the Railway Act sections 13-15 on the basis of which liable RU has a right of recourse against IM who caused the damage by fault or negligence. - Section 16 of Railway Act - General tort law through case law 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault unless otherwise provided - tort liability is based on fault and negligence <p><u>Interplay:</u></p> <p>Complementary - Tort law applies only to the extent the contract has not addressed a particular issue.</p>
France FR	General	Contractual	Article 1147 and s. of the Civil Code	<p><u>Functioning:</u></p> <p>contractual liability is based on fault (breach of contract) unless otherwise provided</p> <p><u>Interplay:</u></p> <p>Exclusivity - No possible competing liabilities.</p>

Germany DE	<ul style="list-style-type: none"> - specific - general 	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - Contractual liability : Sec. 241 et seq. of the Civil Code ; - Tortious liability: Sec. 823 and 831 of the Civil Code. - Case-law: complementary function 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault unless liability has been excluded - tort liability (both based on fault and objective) <p>Relief in case of strict liability:</p> <ul style="list-style-type: none"> - force majeure - an object accepted for safekeeping is damaged - an object being transported is damaged, unless a passenger is wearing or carrying it with him. <p><u>Interplay:</u></p> <p>Combination:</p> <p>Use of both liabilities is possible.</p>
Greece EL	General	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - The Civil Code - case law 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault (breach of contract) - tort liability is based on fault <p><u>Interplay:</u></p> <p>Combination:</p> <p>Use of both liabilities is possible</p>
Hungary HU	General	<ul style="list-style-type: none"> - contractual - tort <p>However, the provisions of non-contractual liability shall be applied to liability for breach of contract.</p>	The Civil Code	<p><u>Functioning and interplay</u></p> <ul style="list-style-type: none"> - strict liability if damage is connected to the risky activity - otherwise, liability based on fault - Unless otherwise provided in the contract, conflict of risky activities where damage caused by IM and RU to each other (the topic of the study): - tortious liability based on fault (culpability) - tortious liability based on malfunction where no culpability (relief if unavoidable and fact is outside the risky activity) - tortious shared liability where no culpability and no malfunction

Ireland IE	General	<ul style="list-style-type: none"> - (no contract because Irishrail is vertically integrated and Northern Ireland Railway is in an international grouping with Irishrail for the service between Dublin and Belfast) - Tort (though no issue since vertically integrated company) 	The Law develops by way of case law.	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - tort liability is based on fault (duty of care) - contractual liability is based on fault (breach of the contract) <p><u>Interplay:</u> Combination: Use of both liabilities is possible if a contractual agreement exists.</p>
Lithuania LT	General	Contractual (though please note that currently there is no such agreement since there is only one vertically integrated RU)	Articles 6.245 to 6.262 of the Civil Code	<p><u>Functioning:</u> Unless otherwise provided in the contract, Strict contractual liability (liability without fault)</p> <p>- relief:</p> <ul style="list-style-type: none"> . force majeure . action of plaintiff. <p><u>Interplay:</u> Exclusivity - No possible competing liabilities.</p>
Poland PL	General	<ul style="list-style-type: none"> - contractual - tort 	Articles 415, 435§1, 436§2, 437, 441§2, 355§1, 471, 473§2, 429, 430, 484, 361§1, 442, 118, 119, 6, 441, 447, 445§1, 363§1, 362 of the Civil Code.	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - unless otherwise provided in the contract, contractual liability is based on the principle of fault (guilt) - strict tort liability is based on the principle of risk <p><u>Interplay:</u> Combination: Use of both liabilities is possible: choice of the plaintiff.</p>

Romania RO	<ul style="list-style-type: none"> - specific - general 	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - Law no. 55/2006 on railway safety; - Government Decision no. 581/1998 on the establishment of National Railway Company "CFR" SA following the reorganization of the Romanian Railways; - Government Emergency Ordinance no. 12/1998 on the Romanian Railway Transport and the reorganization of the Romanian National Railway Company; - Government Emergency Ordinance no. 89/2003 on the allocation of Railway Infrastructure capacity and the levying of charges for the use of the railway infrastructure and safety certification; - Regulation for the Romanian Railway Transport and Unitary Norms for their enforcement approved by the Order of the Ministry of Transport no. 655/2007; - Civil Code, Commercial Code, Criminal Code, Standard Access Contract of CFR 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault (breach of the contract) - tort liability is based on fault (breach of legal provision) <p><u>Interplay:</u> Complementary - Tort law applies only to the extent the contract has not addressed that particular issue.</p>
Spain ES	General	<ul style="list-style-type: none"> - contractual - tort 	<ul style="list-style-type: none"> - Civil Code: articles 1902, 1903, 4°, 1101 et seq. - Case Law of the Supreme Court 	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault - tort liability is based on fault (negligence) <p><u>Interplay:</u> Combination:</p> <ul style="list-style-type: none"> - if breach to contract: contractual liability only - if not exclusively a breach of contract, both liabilities can be used
United Kingdom UK (English and Scots Law)	General	<ul style="list-style-type: none"> - contractual - tort / delict in Scotland) 	The Law develops by way of case Law	<p><u>Functioning:</u></p> <ul style="list-style-type: none"> - contractual liability is based on fault (breach of contract) - tort liability is based on fault <p><u>Interplay:</u> Combination:</p> <p>if not exclusively a breach of contract and, unless otherwise provided in the contract, both liabilities can be used</p>

SPECIFIC QUESTIONS:

	Q1 – Are RUs and IMs liable for the actions of their:				Q2 – Limitation to the liability?			Q3 – Criminal sanctions applicable?	Q4 – <i>Locus standi</i> requirements ?	Q5 – Time limitation to invoke liability?
	Auxiliaries?	Subcontractors?	Personnel?	Others?	Financial cap?	Remoteness limits?	Others			
Belgium BE	Yes : contractual and tort	Yes : contractual and tort	Yes : contractual and tort	N/A	No but Parties can limit their liability in the contract by a liquidated-damages clause	No, this principle is excluded in Belgian law where the theory of the “equivalence of the conditions” apply, no matter the remoteness of the causal link.	- Force majeure - if so provided by contract	Independent criminal sanctions for legal and natural persons (e.g. involuntary manslaughter, etc.) + Specific criminal sanctions in the Law dd. 19.12.2006 on Railway exploitation Security	Quality and interest to file the claim	- contractual: depends on the contract, but usually 10 years - tort : 5 years from notification of the damage without exceeding 20 years from the event - if fault is civil and criminal: 5 years
Denmark DK	- yes, if so provided in the contract - Otherwise, only they are as employed (under the instructions)	- yes, if so provided in the contract - Otherwise, only they are as employed (under the instructions)	Yes + possible right of recourse against the employee	N/A	No but RU only has a right of recourse for the amount of the damage paid to their clients	There must be a causal link	A rule similar to “novus actus interveniens” exists	Independent criminal sanctions for legal and natural persons (e.g. involuntary manslaughter, etc.)	Sufficient interest	3 years unless otherwise provided in a contract
France FR	Yes	Yes	Yes	N/A	If provided so in the contract			Independent criminal sanctions for legal and natural persons (e.g. involuntary manslaughter, etc.)	Legitimate interest	3 years from notification of the damage without exceeding 5 years from the event

Germany DE	- Contractual liability : yes - Tort liability: No, except: - if “special relationship”, OR - Sec. 831 Civil Code	- Contractual liability : yes - Tort liability: No, except: - if “special relationship”	Contractual liability : yes - Tort liability: No, except: - if “special relationship”, OR - Sec. 831 Civil Code	N/A	Yes for strict liability - Death or injury: 600,000€ max per person ; - Property: 300.000€ max	Double causal link to prove. Triple limitation: - condition sine qua non - adequate causation - “rule theory” (only in the scope of protection of the norm)	- force majeure	Specific (to rail accidents) criminal sanctions in the Criminal Code [on top of the independent criminal sanctions?]	Legal capacity to conduct a lawsuit	- Standard limitation: 3 years - 30 years for damages based on injury to life, body health or liberty
Greece EL	Yes	Yes	Yes	N/A	No	Yes, there has to be an “adequate cause”	novus actus interveniens	Specific (to railway transportation) and general criminal sanctions in the Criminal Code	Whoever has the capacity to be subject of obligations and rights	- General: 20 years - Tort: 5 years from awareness of the damage and of the liable person
Hungary HU	Yes	Yes	Yes	N/A	No (caps for transportation of goods and passengers under CIV and Regulation 1370/2007)	No	N/A	Specific (to transportation) criminal sanctions in the Criminal Code	The plaintiff has to be entitled to claim the object of the lawsuit	- 5 years is the general limitation - 3 years for strict liability
Ireland IE	- yes, if so provided in the contract - Yes for tort	- yes, if so provided in the contract - No but exceptions in tort	- yes, if so provided in the contract - Yes (for vicarious tort liability)	- yes, if so provided in the contract - N/A in tort law	- yes, if so provided in the contract - in tort, in principle, no, but depends on the Courts (District, Circuit or High Court)	- in contract law, only loss foreseeable at the time of the conclusion of the contract - in tort law, reasonably foreseeable	- contractual limitation - novus actus interveniens	- independent criminal sanctions (Railway Safety Act 2005)	- Contract law: privity of contract - Tort: sufficient interest	- Tort: 6 years (general claims), 2 years (personal or fatal injury); - Contractual: 6 years

Lithuania LT	Yes	Yes	yes	No	No, except if provided so in the contract, with exceptions	No	Force majeure	Specific (to railway accidents) criminal sanctions in the Criminal Code	Sufficient legal interest	3 years
Poland PL	Yes	Yes	Yes	N/A	No except if provided so in the contract	No	- nova causa interveniens	- Sanctions in the Criminal Code for natural persons - Sanctions in the Act on Liability of Entities for legal persons		- Civil: 3 years from the day the victim learned about it and the liable person, with a maximum of 10 years. - Criminal : 20 years
Romania RO	Yes	Yes (for tort liability)	Yes	Held liable for the actions of any person who has been entrusted with a task related to transport service	No (only between RU and clients)	There must be a causal link.	- fault caused by victim or third party - Force majeure	Specific (to safety of the railway traffic) criminal sanctions in the Criminal Code, only for natural persons.	(i) identity between plaintiff and holder of the right (ii) identity between defendant and bearer of liability	3 years from the date the plaintiff knew about damage and person responsible
Spain ES	Yes	No	Yes	N/A	No (cap of 3.005.060,52 EUR towards passengers)	There must be a relevant causal link (proximate cause)	- Exclusive fault of the victim - force majeure	Sanctions in the Criminal Code	Direct or indirect victims	1/3 years : tort liability 15/10 years: contractual liability

United Kingdom UK (English and Scots Law)	Yes	Yes (in the performance of the contract)	Yes (in the performance of their employment)	N/A	Yes -damage to property: £5 million - annual Liability Cap determined in track access agreements with exceptions -per incident liability cap - compensation following train delays	Yes, therefore exclusions of liability exist	N/A	- Sanctions in general Statutes and their interpretation in case law - Specific criminal sanctions in the Railway Act	- a right - a title - an interest	<u>English Law</u> 6 years : breach of contract/tort 3 years: personal injury 12 years: breach of deed Within 365 days of first becoming aware of the claim <u>Scots Law</u> 3 years: personal injury 5 years: contractual or pecuniary losses
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	Q6 – Who bears the burden of proof?	Q7 – What is the standard of proof?	Q8 – Which damage is repaired or compensated? 8.1. Foreseeable 8.2. Unforeseeable 8.3. Direct 8.4. Indirect 8.5. Death or personal injury 8.6. Damage to property 8.7. Pecuniary 8.8. Moral 8.9. Mere compensation 8.10. Punitive 8.11. Acts of terrorism 8.12. Train delays 8.13. Infrastructure disruptions 8.14. Infrastructure rehabilitation 8.15. Train immobilisation 8.16. Soil pollution 8.17. Others	Q9 – How is the damage repaired?			Q10 – Quantum of damage obtainable?			
				<i>In natura</i>	Financial compensation	Other means	Limited	Unlimited	Contributory negligence	Others

Belgium BE	The plaintiff - often shift of liability on defendant.	- Civil: written proof prevails + by all means of law - Criminal: by all means of law	<ul style="list-style-type: none"> - Foreseeable (contractual liability) - Unforeseeable (tort liability) - Direct - Indirect (tort liability) - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes, in principle	Yes, only if <i>in natura</i> is not possible	N/A	Parties can limit their liability in the contract	In principle, yes, it has to cover the entire damage	No but simultaneous faults of the victim and the author exist	All circumstances of the case have to be taken into account by Judge
Denmark DK	Plaintiff (even in the case of strict liability) - often shift of liability on defendant.	None	<ul style="list-style-type: none"> - Foreseeable (not atypical and random) - Direct and indirect if the causal link is sufficient - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage for personal injury and in other cases only if economic loss - Mere compensation - Punitive only if in the contract - Acts of terrorism - Delays, disruptions, rehabilitation, immobilisation only if caused by negligence or otherwise agreed upon. - Soil pollution 	If in the contract	Yes, in principle	N/A	If in the contract	Yes, the whole economic loss.	Yes, it can reduce or exclude compensation	N/A

France FR	The plaintiff	None	<ul style="list-style-type: none"> - Foreseeable - Direct (and sometimes indirect) - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage ("immaterial damage") - Mere compensation - disruptions, rehabilitation, immobilisation - Soil pollution 	No	Yes	N/A	If so provided by contract	Yes, if no contract provision	No	N/A
Germany DE	The plaintiff	Free assessment of evidence	<ul style="list-style-type: none"> - foreseeable - unforeseeable - direct and indirect - Death, personal injury - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation or sanction for unlawful behaviour - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes, in principle	Yes if asked or if <i>in natura</i> is not possible	N/A	Yes, there is a financial cap	No	Yes, it can reduce or exclude compensation	N/A
Greece EL	<ul style="list-style-type: none"> - Tort: plaintiff - contractual: respondent - "<i>res ipsa loquitur</i>" to a certain extent (widely known factual elements and findings of common experience) 	<ul style="list-style-type: none"> - full evidence is necessary - in some cases, balance of probabilities 	<ul style="list-style-type: none"> - foreseeable - direct and indirect - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Acts of terrorism - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes but rare	Yes, in principle	N/A	No	Yes	Yes, it can reduce or exclude compensation	N/A

Hungary HU	<ul style="list-style-type: none"> - The plaintiff - “<i>res ipsa loquitur</i>” to a certain extent (presumption in the event of strict liability) 	None	<ul style="list-style-type: none"> - Foreseeable and unforeseeable - Direct and indirect if the causal link is sufficient - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	If justified	Yes, in principle	<i>restitutio in integrum</i>	Yes, there is, in some cases, financial cap	No	Yes, compensation is then divided between parties	N/A
Ireland IE	<ul style="list-style-type: none"> - The plaintiff - “<i>res ipsa loquitur</i>” 	Balance of probabilities	<ul style="list-style-type: none"> - Foreseeable and , with limits, unforeseeable - Direct and indirect - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Punitive damages - Acts of terrorism, in certain limits - Delays, disruptions, rehabilitation, immobilisation - Soil pollution only if it is incidental to personal or property law 	Yes but rare	Yes, in principle	<i>restitutio in integrum</i>	Yes, depending on the jurisdiction, the value of the case, the amount of damages and based on guidelines	The High Court has no financial limit imposed on its jurisdiction	Yes, it can reduce or exclude compensation	The plaintiff has the obligation to mitigate his damage
Lithuania LT	<ul style="list-style-type: none"> - The plaintiff - <i>res ipsa loquitur</i> but no reverse burden of proof 	Balance of probabilities	<ul style="list-style-type: none"> - foreseeable - direct and indirect - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage 	No, only monetary compensation accepted	Yes	N/A	Limited to the economic position expected from	Limited to the economic position expected from the performan	Yes, it can reduce or exclude compensation	N/A

			<ul style="list-style-type: none"> - Moral damage - Mere compensation - Acts of terrorism, in certain limits - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 				the performance of the contract	ce of the contract but with no cap		
Poland PL	The plaintiff- in some cases (risky activities), the defendant (presumption of certain facts)	Free assessment of evidence + Documents	<ul style="list-style-type: none"> - foreseeable and , with limits, unforeseeable - direct and indirect - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - contractual penalty: punitive - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes if possible	Yes	<i>In natura</i> or financial : choice of the injured person	No cap but the quantum is limited to cover the losses incurred and the consequences	No cap but the quantum is limited to cover the losses incurred and the consequences	Yes, it can reduce or exclude compensation	N/A
Romania RO	The plaintiff	Free assessment of evidence supporting each party's allegations	<ul style="list-style-type: none"> - foreseeable and , with limits, unforeseeable - direct - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Acts of terrorism if not qualified as force majeure - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes, in principle	Yes, only if <i>in natura</i> is not possible	N/A	Yes but only between RU and clients	Except if provided in contract, unlimited between RU and IM	Yes, compensation is then divided between parties	N/A

Spain ES	<ul style="list-style-type: none"> - The plaintiff - <i>res ipsa loquitur</i> 	Free assessment of evidence	<ul style="list-style-type: none"> - foreseeable and unforeseeable - direct and indirect - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage - Moral damage - Mere compensation - Acts of terrorism if there has been an intervening cause that has facilitated the action of the terrorists (some negligence on the part of someone that increased the risk or the gravity of the consequences of the terrorist attack) - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes if feasible	Yes, most commonly	N/A	No (cap of 3.005.060,52 EUR towards passengers)	Yes	Comparative fault or negligence: it can reduce compensation	N/A
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United Kingdom UK (English and Scots Law)	- The plaintiff - <i>res ipsa loquitur</i>	Balance of probabilities	<ul style="list-style-type: none"> - foreseeable - direct - Death, personal injury, psychological harm - Loss or damage to property - Pecuniary damage with limits - Moral damage - Mere compensation - Acts of terrorism with limits - Delays, disruptions, rehabilitation, immobilisation - Soil pollution 	Yes but rare	Yes, in principle	N/A	Yes, there is, in contractual cases, financial caps but not allowed for all liabilities	- in contract, for death or personal injury caused by negligence -tort: unless otherwise provided by contract	Yes, compensation is then divided between parties	N/A
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