

Rail Restructuring in Europe



EUROPEAN CONFERENCE OF MINISTERS OF TRANSPORT

RAIL RESTRUCTURING IN EUROPE



EUROPEAN CONFERENCE OF MINISTERS OF TRANSPORT (ECMT)

The European Conference of Ministers of Transport (ECMT) is an inter-governmental organisation established by a Protocol signed in Brussels on 17 October 1953. It is a forum in which Ministers responsible for transport, and more specifically the inland transport sector, can co-operate on policy. Within this forum, Ministers can openly discuss current problems and agree upon joint approaches aimed at improving the utilisation and at ensuring the rational development of European transport systems of international importance.

At present, the ECMT's role primarily consists of:

- helping to create an integrated transport system throughout the enlarged Europe that is economically and technically efficient, meets the highest possible safety and environmental standards and takes full account of the social dimension;
- helping also to build a bridge between the European Union and the rest of the continent at a political level.

The Council of the Conference comprises the Ministers of Transport of 39 full Member countries: Albania, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, the Former Yugoslav Republic of Macedonia (F.Y.R.O.M.), Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. There are five Associate member countries (Australia, Canada, Japan, New Zealand and the United States) and three Observer countries (Armenia, Liechtenstein and Morocco).

A Committee of Deputies, composed of senior civil servants representing Ministers, prepares proposals for consideration by the Council of Ministers. The Committee is assisted by working groups, each of which has a specific mandate.

The issues currently being studied – on which policy decisions by Ministers will be required – include the development and implementation of a pan-European transport policy; the integration of Central and Eastern European Countries into the European transport market; specific issues relating to transport by rail, road and waterway; combined transport; transport and the environment; the social costs of transport; trends in international transport and infrastructure needs; transport for people with mobility handicaps; road safety; traffic management, road traffic information and new communications technologies.

Statistical analyses of trends in traffic and investment are published yearly by the ECMT and provide a clear indication of the situation in the transport sector in different European countries.

As part of its research activities, the ECMT holds regular Symposia, Seminars and Round Tables on transport economics issues. Their conclusions are considered by the competent organs of the Conference under the authority of the Committee of Deputies and serve as a basis for formulating proposals for policy decisions to be submitted to Ministers.

The ECMT's Documentation Service is one of the world's leading centres for transport sector data collection. It maintains the TRANSDOC database, which is available on CD-ROM and accessible via the telecommunications network.

For administrative purposes the ECMT's Secretariat is attached to the Organisation for Economic Co-operation and Development (OECD).

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Further information about the ECMT is available on Internet at the following address:

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FOREWORD

This report was prepared by the ECMT Group on Railways on the basis of submissions provided by national Governments and railway companies. Thanks are due to all the national correspondents that contributed to the work. Its initial purpose was to provide the basis for an assessment of the implementation of ECMT and EU instruments for promoting the development of international rail transport, with a view to determining the nature of further actions in this field. The value of providing comparative information in a coherent framework for over 30 European countries in one reference document led to the decision to publish the report, so that it could be available to a wider audience.

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NATIONAL PROFILES

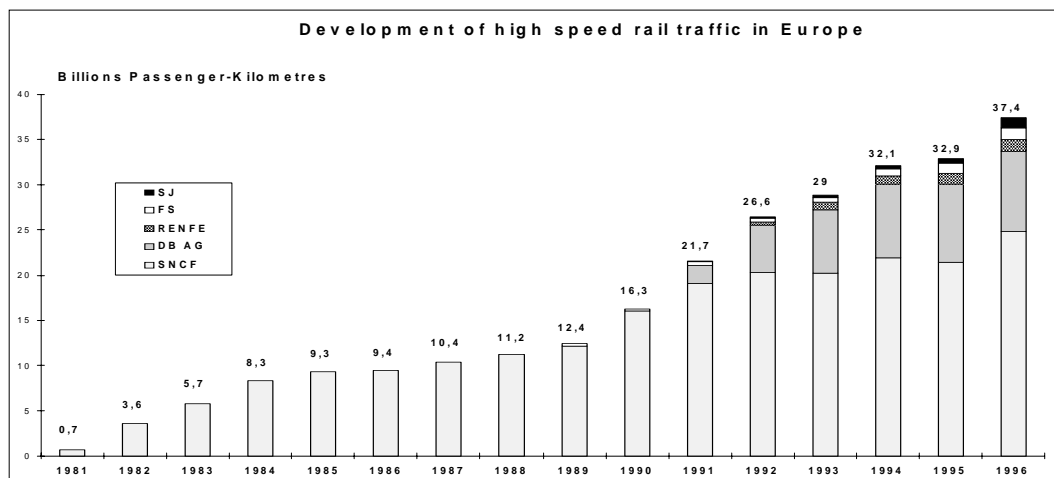
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1. INTRODUCTION

Since 1960, the railways' share of the market for both goods and passenger transport has declined considerably. There are many factors behind this underlying trend. Most of them lie outside the rail sector and are linked to socio-economic changes and policy choices that have favoured the growth of road transport. Some, however, originate within the rail sector. There is an increasingly pronounced mismatch between the organisation of rail transport services and rapidly changing patterns of demand. In some cases the services on offer no longer correspond to the requirements of the market, parts of which have changed substantially, particularly with the development of a demand for transport on extremely short notice (to serve just-in-time production needs) and by small loads.

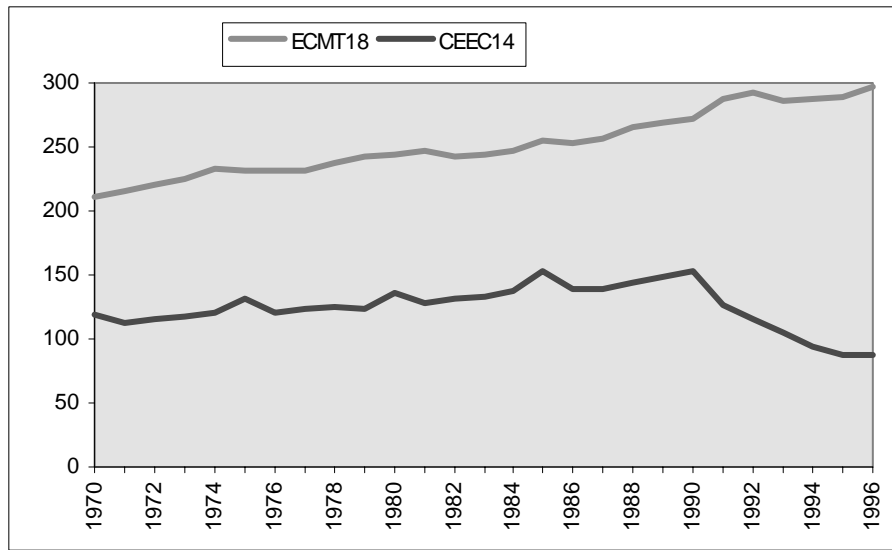
Private cars account for over 85 per cent of inland passenger-kilometres travelled in western Europe, leaving relatively little scope for bus, coach and rail although this general picture masks the growth of high-speed rail travel (Figure 1).

Figure 1.



The situation in central and eastern Europe is rendered less clear not only by statistical deficiencies but also by the recent recession, leading to increased costs for car use, especially through higher fuel prices, and by the effect of austerity measures on incomes. In the longer term, however, higher levels of car use appear inevitable. The number of passenger-kilometres travelled by rail fell by one-third between 1970 and 1995.

Figure 2.
Passenger Rail Transport
 (Billion passenger-kilometres)



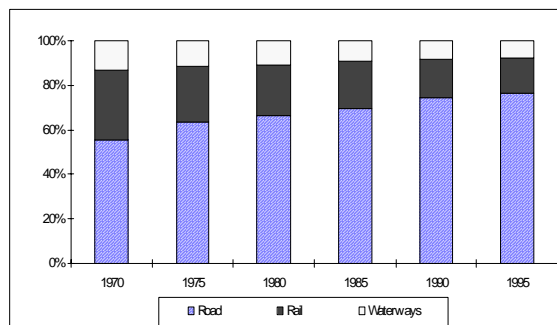
ECMT 18 = A, B, CH, D, DK, E, F, FIN, GR, I, IRL, L, N, NL, P, S, TR, UK.

CEEC 14 = BG, BIH, BY, CZ, EST, H, HR, LT, LV, MK, PL, RO, SK, SLO.

Figures 3 and 4 show overall trends in goods transport. Although analysis of these graphs should take into account the fact that around 60% of journeys cover less than 50 km, a market segment where road inevitably dominates, the results are uncompromising for rail and confirm the pressing need to continue commercialisation of the sector.

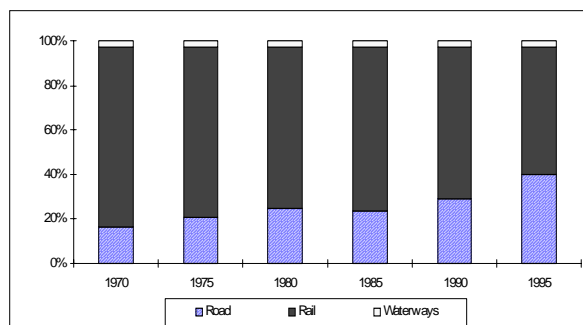
Figure 3. **Freight Transport**

Market share by mode in western Europe
 (% of tonne-kilometres)



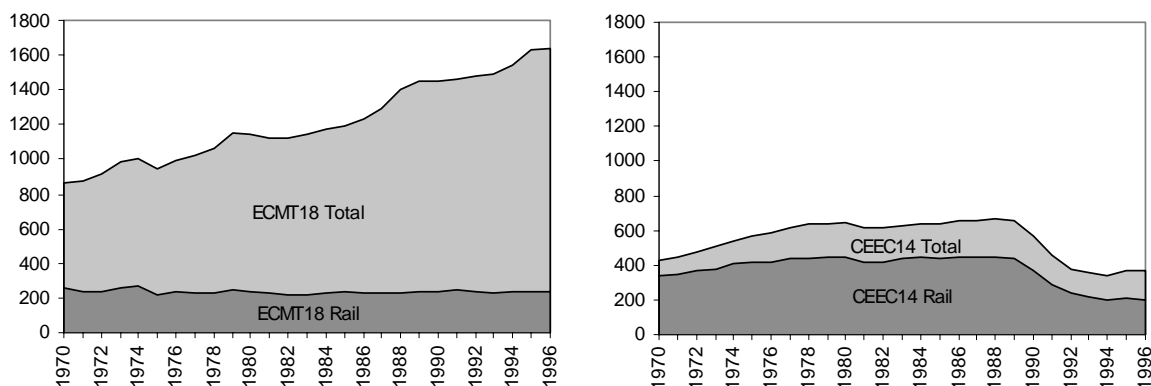
15 countries: B, CH, D, DK, E, F, FIN, GR, I, L, N, NL, S, TR, UK.

Market share by mode in central and eastern Europe
 (% of tonne-kilometres)



11 countries: BG, CZ, EST, H, HT, LT, LV, PL, RO, SK, SLO.

Figure 4.
Rail and Total (rail, road, inland waterway and pipeline) Freight Transport
 (Billion tonne-kilometres)



ECMT 18 = A, B, CH, D, DK, E, F, FIN, GR, I, IRL, L, N, NL, P, S, TR, UK.
 CEEC 14 = BG, BIH, BY, CZ, EST, H, HR, LT, LV, MK, PL, RO, SK, SLO.

These trends should not mask certain positive factors.

- Beyond its advantages in terms of the environment, energy efficiency and safety, rail transport is still vital for many journeys, both for those who do not have access to a car and for large numbers of commuters travelling between their home and their place of work or education.
- High-speed services have enabled the railways to recoup significant market share, especially for medium distance intercity travel. Rail is an excellent substitute for road and air transport in this segment as it helps to reduce congestion to the benefit of other traffic, such as short distance road transport and intercontinental air travel.
- Notwithstanding the sharp decline in traffic resulting from economic and industrial restructuring (affecting heavy industries such as coal and steel in particular) and the relocation of production in certain sectors, rail remains well placed on the market for freight transport over distances greater than 150 - 200 km. The elimination of frontiers across Europe and the future enlargement of the European Union undoubtedly offer new opportunities.
- Despite the existence of competitive imbalances between transport modes, rail is experiencing steady growth in combined and container transport.

The general approach adopted in Europe to improving the efficiency and competitiveness of railway undertakings centres on fostering commercial freedom. This has been pursued on the basis of three complementary pillars: a clearer definition and separation of the roles of railway undertakings *vis à vis* the state; improvement in the financing of railways through greater transparency; and a progressive opening, through provision of non-discriminatory rights of access, of rail infrastructure for specified categories of service. These developments have been facilitated notably through a separation of accounts for infrastructure and operations and the isolation of non-commercial debts. Common rules have been applied to debt restructuring in the countries of the European Union.

At the Vienna Session of the ECMT Council of Ministers in 1995, Ministers requested, for 1998, a report on implementation of ECMT Resolutions 95/3 and 93/6 on the development of international

rail transport. The resolutions reinforce the efforts of Ministers to render railways more efficient and competitive, the only means to ensuring an important place for rail services in transport markets on a sustainable basis. Notably, the resolutions extend the philosophy underlying recent EU Directives on railways, particularly 91/440/EEC, 95/18/EC and 95/19/EC, to all Member countries of the ECMT. The key requirements of relevant EU Directives and ECMT Resolutions are summarised in Table 1 and the report prepared for Ministers follows.

2. APPLICATION OF ECMT RESOLUTIONS AND EU DIRECTIVES

EU Member States

Member states of the European Union are required to transpose EU Directives into national laws and by 1 March 1998, thirteen of the fifteen Members had done so in respect of 91/440/EEC (see Table 1 for requirements). Italy and Luxembourg had not yet completed transposition in regard to access rights and the European Commission is taking infraction proceedings against them.

The deadline for transposition into national law of Directive 95/18/EC on the licensing of railway undertakings and Directive 95/19/EC on allocation and charging for the use of infrastructure was 27 June 1997. By 1 March 1998 only four Member States had satisfied the Commission in this respect, though most others have begun preparations for the necessary regulations, and infraction proceedings have begun against 11 Member States.

Norway, Switzerland and Turkey

Outside the European Union progress in implementing ECMT Resolutions varies. In Norway, infrastructure and operations were separated organisationally by the restructuring of 1 December 1996. Operations are managed by a state-owned joint stock company and infrastructure by an agency of the state. One rail line has been taken over by private operators. Public service obligations are specified in an annual agreement between the government and the operating company. Access to infrastructure for new operators is provided for in law. Infrastructure use fees have existed since 1990, although passenger trains pay no fees. Norway has based its reforms on EU and European Economic Area policies.

In Switzerland, ECMT Resolutions will be applied in forthcoming reform of the rail sector, with proposals presented to Parliament during 1997. The integrated national rail carrier, CFF, is to be transformed into a state-owned joint stock company. Infrastructure and operations accounts will be separated and possibly there will also be organisational separation. There are numerous private rail companies in Switzerland but for the present all integrate infrastructure and operations. Third party operators, notably from Germany and Italy, run trains on Swiss tracks but on the basis of bilateral contracts with CFF. Under the reforms, access will be provided for services beyond those identified by 91/440/EEC, although only on a reciprocal basis. Tariffs for the use of infrastructure require operators to cover short-run marginal costs, though full cost coverage is not applied. The debts of CFF are expected to be restructured in 1999.

In Turkey, a draft Railway Law has been prepared which, while preserving the integrated national rail carrier TCDD as a state enterprise, will provide for independence to set tariffs freely according to commercial logic. It will also provide for a contract to specify public service obligations. Separation of infrastructure from operations for accounting purposes has begun and possible organisational separation is under examination but not covered in the draft law. TCDD will be organised into separate passenger, freight and infrastructure business units. Access to infrastructure on a non-discriminatory basis is provided for under the draft law. Debt restructuring will be undertaken in two parts following entry into force of the Railway Law, with debt for equity swaps in regard to accumulated tax debts and conversion of overdue loan repayments and interest also into equity.

New Member Countries

In ECMT's new Member countries, the most pressing challenge to adopting the principles of EU Directives and ECMT Resolutions is in restructuring debt in the railways. This is made more difficult by generally high ratios of national debt to GDP and budget deficit to public income. The separation of infrastructure and operations accounts is applied in most countries but in most the independence of the management of railway undertakings to set tariffs is diluted in practice by government advisory, review and approval procedures. The legal basis for access to infrastructure has been provided in some countries, but generally national monopolies are the only rail undertakings to have been awarded rights. Table 2 provides a short summary of the application of ECMT Resolution 93/6 and 91/440/EEC, to which it relates, in ECMT's new Member countries.

Table 1. Key requirements of ECMT Resolutions and EU Directives and Regulations

Regulation 91/1893/EEC concerning the obligations inherent in the concept of public service in transport

- Public Service Obligations must be provided for in contracts. Urban, sub-urban and regional services may be excluded from this requirement but their accounts must be separated from non-PSO activities.

Directive 91/440/EEC on the development of the Community's railways

Governments must:

- Afford railway operators independence to behave commercially.
- Ensure infrastructure and operations are managed separately - optional - with separate accounts - compulsory.
- Prevent aid given to infrastructure passing to operations and *vice versa*.
- Establish rules for payment for infrastructure use based on non-discrimination.
- Grant rights of access for international groupings to run international freight and passenger services.
- Grant track access to international combined transport operations.
- Ensure PSOs and related contracts are made according to commercial principles.
- Ensure sound financing structures for public railway undertakings.
- Reduce indebtedness to levels that do not impede sound financial management.
- Provide State Aid to reduce debts only in accordance with Articles 77, 92 and 93 of the EEC Treaty.

The Commission set up an advisory commission on the application of the Directive.

ECMT Resolution 93/6

Recommends:

- International groupings be granted transit rights in third countries as well as access rights in the countries of their constituent members, for international transport.
- All railway undertakings be eligible to seek track access in other countries in order to provide international combined transport services.

Directive 95/18/EC on the licensing of Railway Undertakings

Requires that:

- Operators obtain:
 1. An operating licence (conditions cover financing capacity, professional qualifications, insurance)
 2. A safety certificate
 3. Path allocations
- States designate licensing authorities.

ECMT Resolution 95/3

Recommends:

- That national operating licences be recognised by other countries on a reciprocal basis.
- That operators apply for safety certificates to the country(s) in which the infrastructure to be used is located.
- That operators apply for train path allocations to the country(s) in which the infrastructure to be used is located.

Directive 95/19/EC on allocation of railway infrastructure capacity and the charging of infrastructure fees

Governments must, in general:

- Ensure non-discriminatory access for international consortia and combined transport operators as defined in 91/440/EEC.
- Ensure optimum use of infrastructure.
- Ensure no discrimination in charging for the use of infrastructure.

In particular (within 2 years of 27 June 1995):

- Define an infrastructure manager.
- Ensure infrastructure managers accounts balance income (including PSO payments) and expenditures.
- Lay down rules for determining infrastructure fees based on type of service, time-tabling and infrastructure wear.
- Publish procedures for allocation of capacity.
- Define an allocation body.
- Explain reasons for refusals to allocate capacity.
- Appoint an independent body for appeals.

Table 2. **Application of key criteria in ECMT's new Member countries**
(See also table 5 and the Annexes)

	Independence	Separation of Infrastructure from Operations	Access Rights
Bulgaria	<p>BDZ is a state enterprise with separate legal identity but statutes that significantly limit commercial freedom.</p> <p>PSOs are covered by a contract (<i>contrat de plan</i>).</p> <p>The Minister of Transport supervises prices, excluding freight rates.</p>	Accounts separated.	No legal basis.
Croatia	<p>HZ is a state enterprise with separate legal identity but statutes that significantly limit commercial freedom.</p>	Accounts are to be separated by the creation of two business units.	Provisions only exist for the contracting out of services by HZ.
Czech Republic	<p>CD, Czech Railways, is a state organisation with separate legal identity but statutes that significantly limit commercial freedom.</p> <p>Maximum tariffs are set by the Ministry of Finance, except for freight.</p>	Separation of accounts and financial flows for infrastructure and operations implemented in practice.	Legal basis exists but no new operators yet.
Estonia	<p>Estonian Railway Ltd., Edelraudtee Ltd. and EVR Koehne Ltd. are joint stock companies with separate legal identity currently owned 100% by the state.</p>	Separation of accounts underway. Infrastructure subsidies to be provided by earmarked taxes in the future.	Non-discriminatory access rights exist.
Hungary	<p>MAV is a state-owned joint stock company.</p> <p>PSOs are covered by a three-year contract with the state.</p> <p>The government controls and sets passenger tariffs.</p>	Accounting was separated between two divisions of MAV.	Legal basis for reciprocal access rights exist, though practical dispositions have yet to be determined.
Latvia	<p>LaR is a state-owned joint stock company.</p>	Accounting separated in 1997 with an organisational separation planned for 1998.	Competition for passenger traffic exists between public and private companies to a limited degree.
Lithuania	<p>LiR is a state-owned joint stock company.</p> <p>From 1998 PSOs will be covered by a contract with the state.</p> <p>Freight tariffs are set by the company, passenger tariffs by the government.</p>	<p>Separate business units have been established within LiR.</p> <p>Accounts are to be separated during 1998.</p>	Access is provided for by the railway code. New operators have to obtain a licence and to conclude a contract with the infrastructure manager on the use of infrastructure capacity.

Table 2. **Application of key criteria in ECMT’s new Member countries** (*continued*)

	Independence	Separation of Infrastructure from Operations	Access Rights
Moldova	<p>CFM is a state enterprise reporting to the Ministry of Transport, with legal identity but statutes that significantly limit commercial freedom.</p> <p>International tariffs are approved by the Ministry following negotiations between CIS and Baltic State governments, and following bilateral accords with Turkey, Bulgaria and Romania.</p>	<p>There is no separation of accounts or organisation, with no plans for charging for the use of infrastructure. Plans for separating infrastructure and operations are under examination.</p>	<p>No rights of access.</p>
Poland	<p>PKP, Polish State Railways, is a state-owned enterprise with management autonomy.</p> <p>PSOs are compensated in accordance with the Budget and under an accord between the Treasury and PKP.</p> <p>The Government sets tariffs for passenger traffic, and for the transport of coal and iron ore where PKP has a dominant position.</p>	<p>From 1999 two separate organisations will be created within PKP.</p>	<p>PKP management is obliged to grant access to railway operators on the basis of mutual agreement, and in the case of foreign operators, through intergovernmental agreement.</p>
Romania	<p>CFR is a state enterprise with separate legal identity but statutes that significantly limit commercial freedom, under the authority of the Ministry of Transport.</p> <p>PSOs are covered by contract (<i>contrat de plan</i>).</p>	<p>CFR is an integrated utility, with separation at the level of business units.</p>	<p>Access allowed by law after consultation with CFR.</p>
Slovakia	<p>ZSR is a state enterprise with separate legal identity but statutes that significantly limit commercial freedom.</p> <p>PSOs are covered by contract, but other legal provisions allow the state to delay payments due to state budget difficulties.</p> <p>Tariffs are controlled by the government with the exception of freight rates.</p>	<p>Accounting separation only.</p>	<p>Access provided for by law.</p>
Slovenia	<p>SZ (Slovenske železnice) is a state-owned joint stock company.</p> <p>The Government controls passenger tariffs.</p>	<p>Accounts are separated.</p>	<p>Legal basis exists but practical dispositions have yet to be implemented.</p>

3. CHARACTERISATION OF RAIL RESTRUCTURING IN ECMT MEMBER COUNTRIES

3.1 Improvement of the finances of railway undertakings

Significant progress has been made in the 1990s in many countries on restructuring debts to free rail undertakings to operate on more commercial grounds. In almost all the new Member countries of the ECMT, however, debt write-offs have been precluded by demands for financial support from other parts of industry and by limited public budgets and public borrowing capacity. The following statistics on railway debt were compiled for the European Commission.

Table 3a. **Railway Debts in 1994**

	Railway debts (million ECU)	Rail debt in % GDP	Public debt in % GDP	Public borrowing in % GDP
Austria, ÖBB	2 892	1.7	65	4.4
Belgium, SNCB	3 539	1.8	136	5.3
Denmark, DSB	2 782	2.3	76	3.5
Finland, VR	166	0.2	59	6.3
France, SNCF	28 731	2.6	48	5.8
Germany, DB AG ¹	5 795	0.3	50	2.5
Greece, CH	937	1.1	110	12.1
Ireland, CIE	323	0.7	91	2.0
Italy, FS	42 067	4.9	126	9.0
Luxembourg, CFL	168	1.4	6	2.2
Netherlands, NS	2 807	1.0	78	3.2
Portugal, CP	1 529	2.1	72	5.8
Spain, RENFE	8 140	2.0	63	6.9
Sweden, SJ+BV	1 958	1.2	80	10.8
UK, BR+Railtrack	10 709	1.2	54	6.8
Slovenia, SZ	153	1.29	18	2.3

Notes: ¹ After recapitalisation; DB debt in 1993 was 33 788 MECU.

Source: Mercer management Consulting; SZ; Ministry of Finance of Slovenia.

Table 3b. Evolution of Railway Debt 1980 - 1995

	Change (%) 1980 - 1990	Change (%) 1990 - 1995	Railway debts in 1995 (million ECU)
Austria, ÖBB	20	152	3 831
Belgium, SNCB	-14	39	4 055
Denmark, DSB ¹	31	-52	179 ¹
Finland, VR	485	91	275
France, SNCF	10	37	31 264
Germany, DB AG	12	-72	9 437
Greece, CH	149	125	1 036
Ireland, CIE	104	9	399
Italy, FS	-16	-	30 100
Luxembourg, CFL	12	25	179
Netherlands, NS	16	-35	1 278
Portugal, CP	-24	129	2 135
Spain, RENFE	52	27	8 628
Sweden, SJ+BV	297	41	2 637
UK, BR+Railtrack	-14	121	5 917

Notes: ¹ Not strictly debt but an "outstanding account" resulting from transformation of ferry division into joint-stock company. Moreover, transfer of ownership of the fixed link across the Great Belt from DSB to Great Belt AS in November 1996 freed DSB from all debt.

Source: Mercer management Consulting.

Table 3c. Railway Debt Indicators 1980 - 1995

	Debt : Equity Ratio ¹			Debt Service (%) ²		
	1980	1990	1995	1980	1990	1995
Austria, ÖBB	0.15	0.14	0.51	2	2	4
Belgium, SNCB	1.39	0.67	1.00	5	8	6
Denmark, DSB	0.12	0.15	0.06	2	2	0
Finland, VR	0.02	0.15	0.26	2	0	2
France, SNCF	1.22	4.82	3.46	5	13	17
Germany, DB AG	1.58	1.90	0.54	8	10	1
Greece, CH	0.19	0.58	0.93	3	9	15
Ireland, CIE	1.91	2.14	1.72	3	7	3
Italy, FS	3.31	1.10	0.69	11	21	30
Luxembourg, CFL	0.92	0.91	0.76	3	4	8
Netherlands, NS	0.77	0.58	0.42	2	8	2
Portugal, CP	2.12	2.28	12.86	23	16	30
Spain, RENFE	1.14	2.26	2.46	6	19	31
Sweden, SJ+BV	0.49	1.56	3.35	1	3	7
UK, BR+Railtrack	2.18	0.93	2.52	3	3	3

Notes: ¹ Ratio of debt (long and short term) to equity, where equity = 1.

² Interest payments as a percentage of operating costs.

Source: Mercer Management Consulting.

Details of debt restructuring plans are included in the national tables annexed below. Debt service ratio is a key indicator of the financial viability of the companies. Where debts have been restructured it will be important to keep debt service within the bounds typical of private sector businesses with characteristics (of capital concentration, expected rates of return on investment, etc.) similar to railways, if national railways are to be able to operate with full commercial independence. In many of the railways of central and eastern Europe, high debt service ratios prevent railways from planning investments for maintenance and modernisation without recourse to state budget transfers. In the countries of the European Union, the debt service ratios recorded in Table 3c for 1995 were unsustainable in France, Greece, Italy, Portugal and Spain. Since then debt restructuring has improved the situation in these countries with the exception of Portugal where according to the European Commission [COM(1998)202 Communication on the Implementation and Impact of Directive 91/440/EEC on the Development of the Community's Railways and on Access rights for Rail Freight] CP remains in grave financial difficulty.

3.2 Independence

The degree of independence from government control for railway undertakings to operate according to commercial interests can be characterised by four criteria: legal corporate constitution; arrangements for applying public service obligations; government influence over investment decisions and arrangements for end-use tariff supervision by government.

Ownership

Four characteristic forms of legal constitution can be identified among ECMT railway undertakings in decreasing order of independence:

1. Privately-owned joint stock companies (in the United Kingdom - except Northern Ireland).
2. State-owned joint stock companies (in a majority of EU States, Norway, Switzerland and a minority of eastern and central European countries). The state share holding may be reduced in the future in some countries (for example Germany).
3. State enterprises with statutes conferring commercial freedom (in a minority of EU States).
4. State enterprises with statutes limiting commercial freedom significantly (in a majority of central and eastern European countries).

In a majority of ECMT countries national railways are organised as 100% state-owned joint stock companies. Of the countries surveyed, only the Russian Federation continues to run railways as a department of government although this was common in the past, and recently in ECMT's newer member countries. The transformation of railways from government departments into state enterprises even with limited commercial freedom is an important step towards commercialisation.

In countries where railway infrastructure and operations have been separated organisationally only the United Kingdom has privatised both parts. Most governments have opted to retain infrastructure in public ownership with the creation of a state agency (non-ministerial state department) to manage it (Denmark, Finland, Netherlands, Norway, Sweden). France and Portugal have established independent state-owned enterprises to manage infrastructure.

Among the joint stock companies private capital is incorporated only in Belgium, less than 1% of shares, and the United Kingdom. In Great Britain all passenger operations have been franchised (contracted for limited periods of time) to private companies and infrastructure, freight operations and ancillary businesses have all been sold to the private sector. In Germany, shares are expected to be

sold in rail companies after DB AG is transformed into 5 companies under DB Holding AG. The transformation is planned for 1999. Only a minority share holding (up to 49.9%) may be sold in the infrastructure company DB Netz AG (currently DB Fahrweg division).

Distinguishing between state enterprises with commercial freedom and those whose decisions are subject to relatively detailed government intervention is not always straightforward. Railways in many central and eastern European countries have greater independence than in the past but most are still state enterprises and their boards are usually chaired by government officials. The Boards approve strategic decisions covering investment, divestiture of assets and joint ventures, and management often has little commercial freedom. Where government officials do not play a major part on Boards greater commercial freedom can be expected although details such as the terms and conditions of contracts for chairmen and managers and the maximum value of investments that can be made without reference to government determine the real degree of freedom.

Government influence over investment decisions

Uneconomic investment decisions have, historically, been imposed by Governments on railways, and in most European countries have been the main cause of accumulated debt. Insulating railway operators from such debts has been a central aim of the railway reforms supported by Directive 91/440/EEC and ECMT Resolutions. In some countries -- most clearly in the United Kingdom -- this has been addressed by isolating non-commercial investments and non-commercial aspects of overall investment planning, making these the subject of specific grants from public funds. This has also been part of the strategy in many other countries where, for example, local authorities will be expected to participate in investments in regional networks.

Where state agencies have taken over responsibility for infrastructure, government influence on investment decisions may have been reinforced. Although this does not compromise management independence for operators, any uneconomic future investments could result in higher access charges. The extent to which the costs of investment decisions made on non-commercial grounds are passed on to operators will depend on the way in which the principles for determining access charges are applied.

Directive 95/19/EC requires infrastructure managers to balance revenues with expenditures. In cases where revenues from operations and compensation from government for public service obligations are insufficient to provide a surplus for depreciation and investment, railways will be dependent on the State to fund, or guarantee repayment on loans, for investment. This continues to be the case in many of the countries of central and eastern Europe. Perhaps surprisingly, internal cost recovery rates tend to be higher in rail enterprises in these countries than in some railways in EU member States but this is simply a result of the inadequacy of compensation for public service obligations.

Public service obligations

Arrangements for imposing public service obligations and providing commensurate compensation from public funds are critical to the commercial freedom of railway operators and to the financial viability of the sector. Mechanisms for applying public service obligations can be characterised as follows:

1. *Ex-ante* negotiation of PSO contracts between government and railway operators on the basis of competitive tendering.
2. Specification of PSOs and compensation in an annual or multi-year contract on the basis of consultation with railway undertakings.
3. Specification of PSOs in an agreement with compensation determined separately.
4. De-facto imposition of PSOs through tariff setting without specific compensation.

Regulation 91/1893/EEC proposed (although did not require) the use contracts as pre-requisite to establishing commercial freedom for railway operators. Beyond this basic condition, introducing *ex-ante* negotiation of the service levels required and the financial compensation to be paid is the key to commercialising rail operations. Such negotiations have the greatest scope when they take part as part of the process of competitive tendering for operating franchises.

Most EU Member states have introduced contracts that meet the aims of the Regulation; the Netherlands and Spain continue to use alternative forms of agreement to provide compensation payments to passenger services. The United Kingdom and Finland have moved furthest in making negotiation of PSO packages part of competitive tendering for passenger operations.

The majority of ECMT's new Member countries have, or are introducing, legal contracts for public service obligations. In a number of them, however, public service obligations have yet to be defined even in the form of written agreements. There are also cases where open-ended escape clauses would render enforcement of contracts, particularly in respect of payment, impossible (e.g. Slovakia).

Tariff regulation

One further factor in determining the degree of freedom of railways from Government is the regulation of tariffs. In most countries, tariffs for domestic passenger services are determined or at least approved by Government although in some this applies only to certain types of ticket (for example, to standard second class tickets in the United Kingdom). Tariff regulation usually takes the form either of multi-year agreements on trends in maximum tariffs or Government review of all tariff changes. Government passenger tariff policies generally attempt to balance covering costs with concerns to keep the cost of rail travel relatively low for low income groups. The emphasis tends to vary over time and between countries. Multi-year agreements are clearly preferable as they provide for forward planning by the rail operator and financial stability. These characteristics are enhanced when tariffs are approved on the basis of written guidelines for meeting the objectives of Government policy. Negotiation is likely to be important in arriving at stable tariff structures. Where a disaggregated industry structure is adopted, an independent regulatory office offers the most transparent structure for tariff regulation.

Freight services are subject to much less tariff regulation than passenger services. Very few freight rates are regulated in EU States. Freight tariffs are regulated in about half of central and eastern European countries. In some, this is confined to special categories of freight identified as strategically important. In most it applies to freight services that enjoy a monopoly. Monopoly situations are more common than in western Europe as industrial policy under the command economy resulted in over-development of heavy industry sometimes in uneconomic locations from a logistical point of view.

Degree of independence

The degree of independence, and in particular commercial freedom, enjoyed by rail operators is determined by a combination of factors. Legal constitution can be misleading if viewed in isolation. For example, railways in EU Member States (and Switzerland) that continue to be constituted as state enterprises tend to have greater commercial freedom in practice than those in eastern and central Europe for a number of reasons: commercialisation has been taking place over a longer period in a market economy environment; railways are of less strategic significance in western Europe; and competition from other modes, particularly road, is stronger in the older member countries of the ECMT, reducing the need for regulation and increasing the need for commercial freedom.

In terms of independence the British and Swedish systems stand out. The British system is characterised by *ex-ante* negotiated PSOs, with both PSOs and tariff regulation covered in franchise agreements. Both operations and infrastructure are owned 100% by private capital. In Sweden, PSOs are contracted for by tender and there is no tariff regulation, although both infrastructure and operations are run by state enterprises. The railways of Belarus, Croatia, Estonia, Moldova and the Russian Federation appear to enjoy the least commercial freedom.

Table 4. Characterisation of the independence of railway undertakings

(In some cases allocation to specific categories is difficult and these tables should be seen as indicative)

KEY	1 indicates highest level of potential independence		
Legal constitution	1 Joint stock company privately-owned 2 Joint stock company 100% state-owned 3 State enterprise with commercial statutes 4 State enterprise with statutes substantially limiting commercial freedom		
State influence on investment decisions	1 Low (e.g. overall programme only requires approval as a formality) 2 Intermediate 3 High (e.g. if government has to be asked for funds or loan guarantees for all investments)		
Public Service Obligations	Form of agreement	1 Legal contract 2 Written agreement 3 Other 4 None	
	Basis for compensation	1 Competitive tendering 2 Negotiated agreement 3 Imposed by Government	
	Compensation mechanism	1 <i>Ex-ante</i> payment 2 Deficit financed 3 Failure to make agreed payments habitual	
Tariff regulation	Passenger tariff controls	1 None 2 Some specified services 3 All subsidised services 4 All domestic services 5 All passenger services	
	Freight tariff controls	n No controls exist y Some or all freight rates controlled	

Companies - major undertakings only Infrastructure (I) Operations (O) or Both	Legal constitution				State influence on investment decisions			Public Service Obligations									Tariff regulation					Freight Yes/No	
	1	2	3	4	1	2	3	Form of agreement				Basis for compensation			Compensation mechanism		Passenger tariff controls						
	1	2	3	4	1	2	3	1	2	3	4	1	2	3	1	2	3	1	2	3	4	5	
Austria OBB (Both)		x				x				x				x			x				x		n
Belgium SNCB (Both)		x				x		x												x	x		n
Bulgaria BDZ (Both)			x				x	x									x						n
Croatia HZ (Both)				x			x			x										x			n
Czech Republic CD (Both)				x			x			x											x		n
Denmark BS (I) DSB (S)				x			x			x				x			x						
Estonia EVR (Both)		x					x			x				x			x				x		n
Finland RHK (I) VR (O)		x		x			x			x				x			x				x		n
France RFF (I) SNCF (O)			x				x			x													n

Companies - major undertakings only Infrastructure (I) Operations (O) or Both	Legal constitution				State influence on investment decisions			Public Service Obligations									Tariff regulation				
								Form of agreement				Basis for compensation			Compensation mechanism		Passenger tariff controls				
	1	2	3	4	1	2	3	1	2	3	4	1	2	3	1	2	3	4	5		
Germany DB-AG (Both)		x				x		x					x		x						n
Greece CH (Both)			x			x															
Hungary MAV (Both)		x					x	x					x						x		n
Ireland CIE (Both)			x			x		x											x		
Italy FS SpA (Both)		x					x	x											x		
Latvia LaR (Both)		x					x				x										
Lithuania LiR (Both)		x					x	x					x						x		n
Luxembourg CFL (Both)		x					x	x											x		
Moldova CFM (Both)				x			x	x	←	←	x								x		
Netherlands Railned, RIB, NSV (I) NSR, NSC (O)		x					x						x		x				x		n
Norway JT (I) NSB (O)			x	x			x													x	
Poland PKK (Both)				x			x	x					x						x		y
Portugal REFER (I) CP (O)				x			x												x		
Romania CFR (Both)			x				x	x											x		n
Slovakia ZSR (Both)				x			x	x						x			x		x		n
Slovenia SZ (both)		x					x			x			x				x		x		n
Spain RENFE (Both)			x				x				x								x		
Sweden BV (I) SJ (O)			x	x			x						x						x		n
Switzerland CFE (Both)		x					x	x					x						x		n
Turkey TCDD (Both)				x			x	x	←	←	x								x		
United Kingdom Railtrack (I) TOCs (O)	x	x					x						x						x		n

Table 4. **Characterisation of the independence of railway undertakings (continued)**

Notes	
Austria	The Government has established separate companies for the construction and upgrading of important lines, HLAG and BEG (Hochleistungs, Brenner), as well as for financing of rail infrastructure (SCHIG). There are also a small number of private companies operating integrated narrow gauge railways. PSOs cover a proportion of inter-urban and regional services, tariff regulation only applies to services covered by PSOs.
Belgium	1% of SNCB shares are traded on the stock exchange. Standard 2nd class tariff increases must not exceed inflation plus 2%. SNCB must inform government of all tariff changes.
Czech Rep.	PSO arrangements defined in law establishing CD.
Denmark	BS (Banestyrelsen) is the rail infrastructure Agency under the Ministry of Transport. One private freight company and 13 small integrated (partly privately owned) railways operate in Denmark along with DSB. PSO contracts will be open to competitive tendering from January 2000
France	PSOs are covered in a schedule of conditions approved by Ministerial Decree.
Finland	RHK, the Finnish Rail Administration, is a Government Agency.
Italy	FS operates the network under franchise. There are also 27 regional companies providing local passenger services currently managed by FS but due to pass to Regional Government ownership. FS sets fares but can be required to modify them by Minister of Transport according to published criteria and in return for compensation.
Lithuania	PSO contract to be agreed for 1998, partially covering losses.
Luxembourg	The state oversees infrastructure maintenance and construction but charges CFL with its management. CFL's capital is owned by the Luxembourg, Belgian and French States.
Netherlands	Except under public service contracts for unprofitable services, NSR will cease to receive payments from the Government by 2000. Railed manages rail capacity and regulates access. NSV is charged with ensuring safety and efficiency, RIB with maintenance and construction of infrastructure. Both are government financed and independent from the operations side of NS.
Slovakia	The obligation to provide services in the public interest is covered by law no. 258/1993 on ZSR. The law provides the basis for the public service contract between ZSR and the State. These provisions also appear in the new law on ZSR currently under preparation.
Slovenia	A new Railway Law, concerning operations and infrastructure, is in the process of parliamentary approval. A structure of two companies is proposed, one providing passenger and freight operations, the other responsible for maintenance, modernisation and construction of public (state-owned) railway infrastructure.
Spain	There are a number of narrow gauge integrated networks owned and operated by Regional Public Administrations. RENFE is free to set tariffs except for certain regional services provided in return for compensation payments where local authorities set tariff ceilings.
Sweden	Regarding PSOs, SJ supplies services on a tendered basis for both national and local government (County Public Passenger Transport Administrators).
Switzerland	Future restructuring is expected to transform CFF into a joint stock company with a majority state holding. There are also many small privately-owned integrated rail companies. Regarding PSOs, Federal and Canton Governments sub-contract services. Levels of service are the subject of <i>ex-ante</i> negotiation. Tariffs are set by rail companies but can be verified by the federal Government.
Turkey	PSO contract planned under draft law.
United Kingdom	The Office of the Rail Regulator (ORR) can exert pressure on Railtrack to make investments and the Office of Passenger Rail Franchising (OPRAF) can shape franchises to encourage investments. PSOs are provided as legal agreements supervised by OPRAF. Compensation is covered in the terms of the Franchises, awarded as a result of competitive tendering. PSO compensation is therefore distributed to operators which use it to pay Track Access Charges to Railtrack (with slots allocated on a competitive basis). Track access charges are subject to regulation from the Office of the Rail Regulator (ORR) using an RPI-X formula. Some passenger fares (basically standard second class tariffs) are controlled for all franchisees.

3.3 Separation of Infrastructure from Operations

In accordance with provisions of 91/440/EEC, all of the EU States have separated infrastructure from operations for accounting purposes. Accounts are also separated in Bulgaria, Hungary, Latvia, Norway, Poland, Romania, Slovakia and Switzerland. Croatia, the Czech Republic, Estonia, Lithuania and Turkey are in the process of separating accounts but in Moldova no separation is planned.

A slightly different pattern emerges for organisational separation, as follows.

Independent infrastructure and operations entities: Denmark, Finland, France, Netherlands, Norway, Portugal, Sweden and the United Kingdom. Separation is planned in Germany, Estonia and Latvia.

Possibility of separation under study: Bulgaria, Greece, Italy, Romania and Turkey.

Integration to be retained (with separate business units in most cases): Austria, Belarus, Belgium, Croatia, Czech Republic, Greece, Hungary, Ireland, Lithuania, Moldova, Poland, Russian Federation, Slovak Republic, Slovenia, Spain, Switzerland and Ukraine.

Accounting separation is intended to promote efficiency in infrastructure management and in railway operation by providing for a tighter focus on each of these two distinct activities and should provide for transparency in the use of public funds in the railways. Separation of accounts is also an essential step towards enabling new railway undertakings to exercise access rights by providing a basis for the development of infrastructure charges that are fair and non-discriminatory. Despite compliance with the letter of Directive 91/440/EEC, accounting reforms have been insufficient to meet these objectives in the large majority of EU Member States. Audited profit and loss accounts and balance sheets have been published separately for infrastructure and operations only for companies in Finland, France, Spain (profit and loss account only), Sweden and the United Kingdom. For railway companies in other countries only partial data is available and even this is not yet published.

Organisational structure has a bearing on the potential routes to introducing non-discriminatory access and, in particular, to the eventual introduction of competition for the use of infrastructure. Many railways have gone further than the separation of rail operations and infrastructure management required by 91/440/EEC and made extensive use of contractual relations between different business units to improve the definition of management responsibilities. This has happened even where institutional separation is not envisaged, often with substantial efficiency gains. Until experience accumulates of operating institutionally disaggregated systems (in railways with market bases and productivity comparable to integrated European rail systems), it would be premature to venture conclusions as to whether institutional separation is a necessary condition for realising the bulk of potential efficiency gains. However, a series of key issues for efficiency and customer service flow from the decision to make a basic separation of infrastructure and operations (these were explored in detail by ECMT Round Table 103 in 1997).

In summary, there are three areas of particular importance to maximising the benefits that disaggregating railway systems can yield. 1) Government must focus on getting the structure and regulation right for the key elements of natural monopoly: investment planning, time-tabling and dispatch. 2) The prices charged for access to infrastructure must be transparent and understandable, and should clearly reflect government policy as to the way in which infrastructure is to be used. 3) Government compensation payments, and other support, must be provided as efficiently as possible, avoiding leakage and ensuring that the results match the policy goals for providing support.

3.4 Access to Infrastructure

A step by step approach has been adopted, at the European level, for the liberalisation of access to infrastructure. Directive 91/440/EEC provided for the promotion of international groupings of national rail companies by guaranteeing such groupings non-discriminatory access to infrastructure for the provision of freight services and international passenger services. Specifically Article 10 directs each EU Member State to grant:

- a) access and transit rights to international groupings of railway undertakings in the Member States in which the constituent companies are established;
- b) transit rights to such international groupings in other Member States for international services between countries in which members of the international grouping are established;
- c) access rights for railway undertakings engaged in international combined transport of goods.

Article 10 also requires the railway undertakings concerned to conclude administrative, technical and financial agreements with local railway infrastructure management to regulate traffic and safety, and requires these agreements to be made on a non-discriminatory basis.

In all cases the directive covers only international services. It should be noted that (a) places a geographical boundary on the extent to which access must be granted on a non-discriminatory, non-reciprocal basis. Only international combined transport operators enjoy full non-discriminatory access to track in all EU Member States.

There have been no directives or resolutions related to domestic traffic although the European Commission has advocated that the provisions of Directive 91/440/EEC be extended to all freight and all international passenger services i.e. not just ones operated by international groupings. This was reiterated in COM(96)421 *A Strategy for Revitalising the Community's Railways*.

The provisions for access made by ECMT Member countries are summarised in Table 5. Of the various elements of 91/440/EEC, transposition into national law of rights of access has taken longest. Although details vary between countries, all but two EU Member States have now transposed this directive, with Italy and Luxembourg still in the process of preparing the necessary legislation. The legal basis for access (both for combined transport and other international services) has also been established in the majority of ECMT Member countries. For many countries, with the notable exception of relations between members of the European Union, reciprocity continues to be a requirement for granting access rights.

In Germany, legal provisions go beyond the requirements of 91/440/EEC. This is because the Government intends eventually to open all rail markets to competition. Track ownership and management have been invested in DB AG (until Fahrweg AG becomes the owner in 1998). The AEG *Allgemeines Eisenbahngesetz* (General Rail Act) provides for free access to track for all railway undertakings registered in Germany (for non-public railway undertakings on the basis of reciprocity). The track is also open to international groupings and combined transport (without reciprocity). Access exceeding the provisions of Article 10 of 91/440/EEC is possible on the basis of reciprocity (EU undertakings) or bilateral treaties (EEA and other country undertakings).

In France, the law of 13 February 1997 creating RFF provides the basis for introducing access rights. This is in addition to the transposition of 91/440/EEC which took place in 1995. Rules for

access charges are determined by a decree of 1997. They comprise charges for rights of access to a section of track for a determined period, charges for reservation of track capacity and charges for the actual traffic carried.

The Netherlands has adopted an approach of allowing access rights with the process controlled by the Ministry of Transport. Priority is assigned to domestic passenger services and on main lines new operators may use spare capacity. For domestic traffic, there are zero charges at least until the year 2000 because of fears that charging will discourage use of rail.

In the United Kingdom there is open access for freight (as there was before privatisation). Access rights have been limited for passenger services by the Rail Regulator's moderation of competition provisions, designed to provide protection to franchise operators both from new entrants and each other. It is anticipated that over time more competition will gradually be introduced.

East and Central European states have made mixed progress in implementing the access provisions of 91/440/EEC and the ECMT Resolutions. Most have made an accounting separation of infrastructure or are in the process of implementing it. Many have made legal provisions for access although detailed regulations and track access fees have been defined only in the Czech Republic, Poland and Slovakia. In most countries the national carrier retains its monopoly and access would only be granted at its discretion. This can not be regarded as non-discriminatory access, although the situation is evolving rapidly in many countries.

Reciprocity will continue to characterise access rights outside of the European Union, as for the time being, mechanisms for international arbitration in case of disputes over discriminatory practices in European rail markets exist only in the Union.

Fees for the use of infrastructure

The development of tariffs for the use of infrastructure varies greatly between Member countries. Most Member countries have identified procedures for setting fees, and a number have laid down precise rules for the structure and level of fees. In others, infrastructure companies, or business units, are responsible for setting charges.

The objective of most governments that have set rules for infrastructure fees is to cover costs, differentiating fees to reflect such factors as type of service, wear on track, distance of run, routing, etc. Whether the basis for calculation is marginal or total costs is in some cases unclear and the approach varies between countries. For example, in the United Kingdom charges for open access operators are negotiated between Railtrack and operators but are required by the Regulator to lay between variable costs at the margin and "stand alone" costs (i.e. the cost that would be incurred if an operator had to provide its own infrastructure). In the Netherlands zero access charges were applied until 1 January 1998 when a charge of ECU 1 / km was introduced for international freight corridors (Freight Freeways). Such differences may complicate the development of open access.

Some governments, such as Norway, apply a clearing mechanism through the infrastructure fees to "equalise costs" between different categories of service. Such systems complicate the introduction of competition on the network, and could give rise to disputes when fees are determined for international groupings operating services.

A categorisation of trends in Member countries is as follows:

- Infrastructure company sets fees, with provision for a disputes procedure: Germany, Netherlands, Sweden, United Kingdom.
- Structure and level of fees laid down in law or through Government instructions: Czech Republic, Finland, Hungary and Norway. Under development in France, Italy, Lithuania and Slovakia. Under study in Greece and Portugal.
- General guidelines laid down in law: Austria, Belgium, Croatia, Latvia, Poland, Slovenia and Switzerland.
- No legal provisions: Bulgaria, Moldova, Romania.

The way in which fees for the use of infrastructure are determined can have an important impact on the development of rail services operating under the access provisions of 91/440/EEC. For example, where fees comprise several elements including an access charge (together with a reservation charge, running charge, etc.) weighting the access charge heavily will put potential new entrants at a disadvantage. Similarly, offering discounts for bulk reservations would also result in higher unit costs for new entrants which are likely to operate fewer trains than incumbent national operators. The development of appropriate regimes for infrastructure charges was the subject of ECMT Round Table 110 in March 1998 (forthcoming). Future work will focus on the balance between the different elements that make up infrastructure fees and the degree to which harmonisation is necessary in order to meet the objectives of international rail policy.

Impact of regulations to provide access rights

Remarkably few operations have emerged to exploit access rights for international services in the 7 years since EU Directive 91/440/EEC was issued. Table 4 shows that international services have been provided by combined transport operators or international groupings of railway undertakings under access rights in the following categories:

- The European Rail Shuttle (ERS) runs container services by rail between Rotterdam and Northern Germany, and Rotterdam and Northern Italy. ERS is a joint venture between three shipping companies, Sea-Land, Maersk and P&O/Nedlloyd, and national railways companies. However, ERS can not be defined as an open access operator since it has separate arrangements with each national railway for provision of traction.
- Various international passenger services which are run as joint ventures, sometimes without change of locomotive or driver. Some of these arrangements preceded 91/440/EEC although there is now greater separation between the providers of these services from the national railway organisations (e.g. as a separate company for UK Eurostar or separate business units for French Eurostar) and international joint ventures are replacing collaborative agreements.
- Malmtrafikk AB (MATB), a joint venture formed in 1996 between LKAB (an iron ore company), NSB and SJ which transports ore along a line between Norway and Sweden.

It should be noted that, in all of the above cases, the national railway companies are partners in providing the service. The only new entrants are the private sector partners of the railways but they are not competing with the national railways. Also there appears to be no reason why the services could not have been provided without the access provisions of 91/440/EEC.

More progress has been made in introducing competition and greater efficiency for domestic services, perhaps because no intergovernmental agreement or reciprocity is required:

- Some local passenger services and short line operations for freight have been contracted to new entrants in Sweden.
- Germany has opened up the whole national (public) network for access; it is possible for the DB AG network to be used by local passenger services and short line freight operators.
- In the Netherlands, Lovel's Rail has since August 1996 been allowed to compete with NS on one passenger service.
- In the United Kingdom, all rail passenger services have been franchised and all freight assets sold, each without associated track. The largest open access operator, National Power, has recently agreed to discontinue open access operation of coal trains, with English, Welsh and Scottish Railways (formed from British Rail's freight business) offering an attractive deal in substitution. This leaves only one open access freight operator, Direct Rail.
- The Czech Republic has introduced open access and operators are running services carrying coal and waste products on CD tracks.
- In Latvia, a private company called Latvian Express competes with LR for some domestic passenger markets.

Although there is no evidence that the provisions of Directive 91/440/EEC and the ECMT Resolutions have had any direct impact on freight operations so far beyond those that would have taken place in their absence, the mere existence of laws providing access rights may have acted as a catalyst for change. Also these reforms are ones which may be expected to take time. Not only must the national railways adapt to the new laws, but there is also a need for innovative firms to emerge to take advantage of the opportunities created by access rights.

Table 5. Provisions for Access

Key	
Separation of infrastructure from operations	1 Infrastructure entirely independent
	2 Infrastructure subsidiary of service operator
	3 Infrastructure a separate division of service operator
	4 Accounting separation only
	5 No separation
Types of operators covered	1 Scope wider than 91/440/EEC
	2 As defined in 91/440/EEC
	3 Narrower than 91/440/EEC
Basis for access	1 All operators
	2 Only other national railways on reciprocal basis
	3 Other

Country	Separation of infrastructure from service provision (1-5)	Any legal provisions for access?	Regulations in place?	Types of operators covered?	Basis for access	Basis for setting infrastructure fees	Basis of fee differentiation?
Austria	4	Yes	Yes	1	3	¹	²
Belgium	4	Yes	Yes	2	1	³	
Bulgaria	4	No	No	Not specified			
Croatia	4 Required by law but not yet implemented	Yes, but only for contracting out by HZ	No	No provision for international groupings or combined transport operators		Not defined	
Czech Republic	3 CD controls nearly all of network	Yes	Requirements contained in law allow account to be taken of capacity	1 All types of operators	1 Track Infrastructure Authority (Government Body) resolves conflicts	Defined by MoF together with passenger tariffs	No differentiation between same types of operators. Higher fees for freight than passenger services

^{1.} Fees have to be set according to Directive 95/19/EC and the principles of its articles 7 and 8.

^{2.} Fees have to be set according to Directive 95/19/EC and the principles of its articles 7 and 8.

^{3.} Fees are set by SNCB. They are determined by the weight, train kms, electricity costs and administration costs.

Table 5. Provisions for Access (*continued*)

Country	Separation of infrastructure from service provision (1-5)	Any legal provisions for access?	Regulations in place?	Types of operators covered?	Basis for access	Basis for setting infrastructure fees	Basis of fee differentiation?
Denmark	1	Yes, 1993/94 Act	Yes	1 ⁴	1	Defined by law and the annual State budget.	Non-discrimination and efficient use of infrastructure.
Estonia	5, Accounting separation underway	Yes	Yes	1 (all operators)			Principle of non discrimination
Finland	1	Yes, Act 21/1995	Yes	2	1	Two part tariff marginal cost recovery ⁵	Traffic freight or passenger.
France	1	Yes, 91/440 transposed in 1995		2	1	⁶	Still under discussion.
Germany	4 ⁷	Yes, article 14 General Railway Act	Yes	1	3 ⁸	Charges are negotiated between DB AG and the operator, market oriented prices.	Volume discounts
Hungary	4	Yes, 1993 Act	No	Not specified in Act	2		Principle of non-discrimination
Ireland	5, No separation, even of accounts	No	-	-	-	-	-
Italy	3	None ⁹	No	-	-	¹⁰	-

⁴ In principle 'open access' is possible for any operators, of any nationality. In practise it is difficult mainly because priority is given to existing operators. From January 1999 the rail freight market will be opened to full competition and from January 2000 PSO contracts will be open to competitive tendering.

⁵ Track access charges consist of 1) a variable fee based on the social marginal costs of train and road traffic, resulting in a charge per train gross tonne-kms, with different charges for passenger and freight traffic, 2) a fixed per tonne fee for freight traffic. It is estimated that in 1997 the access charges will cover around 15% of the total cost of the rail network.

⁶ A fee composed of a fixed element corresponding to a right of entry for a defined period; an element consisting of a charge for reserving capacity; and a charge for actual traffic flows.

⁷ It is envisaged that infrastructure and operation will be separated institutionally 3 to 5 years from now.

⁸ See main text, section 3.4.

⁹ A draft decree, approved by the Minister for Transport, sets out the basic principles for access to the FS network by operators of other countries.

¹⁰ No fees exist. However, studies of fee structures in line with the principles outlined in Directives 91/440 and 95/19 are underway.

Table 5. Provisions for Access (*continued*)

Country	Separation of infrastructure from service provision (1-5)	Any legal provisions for access?	Regulations in place?	Types of operators covered?	Basis for access	Basis for setting infrastructure fees	Basis of fee differentiation?
Latvia	4, Planned for 1997.	Yes.	Yes.	Passenger services.			
Lithuania	5, Separation of accounts planned for 1998.	Access provided for by railway code.		International groupings with CIS institutions not permitted.	1	Recovery of infrastructure maintenance and development costs.	Some favourable fees for PSO services; freight traffic fees will be differentiated depending on time of journey, weight of train and density of traffic.
Luxembourg	1	Yes. ¹¹	No. ¹²	1	2	¹³	-
Moldova	5	No.	No.				
Netherlands	2	No. ¹⁴	Yes, (Dec 97).	2	3	¹⁵	
Norway	1	Yes, 1993 Act. ¹⁶	Yes.	2	1	Marginal/partial cost recovery. ¹⁷	-
Poland	4	Yes, 1995 Act.	Yes.	1	3	Partial cost recovery.	-
Portugal	1	Yes, 1995 Decree.	Yes.	2	3	Under discussion.	Under discussion.
Romania	4	Yes, with technical examination by CFR.		Not specified.	Not specified.	Not specified.	Not specified.

¹¹ The Law of 10th May 1995 on management of rail infrastructure stipulates that rail enterprises established inside or outside Luxembourg should have access to the network with the limits and conditions set out by EU Law. The Law also recognises rights of access for international rail enterprise groupings. The Law of 28th March established such rights on the basis of reciprocity.

¹² Legal procedures for the transposition of Directives 95/18 and 95/49 are underway.

¹³ The principle of establishing fees for the use of infrastructure is provided for in the law of 10 May 1995 and will be elaborated in the transposition of Directives 95/18 and 95/19.

¹⁴ In practise it is possible, e.g. LOVERS have been operating a service from Amsterdam to Ijmuiden, they also plan to offer more services in direct competition with NS.

¹⁵ Fees are zero until the year 2000, by when a calculation methodology will have been developed, except for freight corridors where a fee of ECU 1 / km is levied.

¹⁶ Jernbanelov (Norwegian Rail Traffic Law).

¹⁷ A track access fee has existed since 1990. It is cost-based but is adjusted to achieve fair competition between modes. The idea is to equalise the levels of cost coverage amongst modes. Passenger traffic pays no fees for rail infrastructure.

Table 5. Provisions for Access (*continued*)

Country	Separation of infrastructure from service provision (1-5)	Any legal provisions for access?	Regulations in place?	Types of operators covered?	Basis for access	Basis for setting infrastructure fees	Basis of fee differentiation?
Slovakia	4	Yes, 1996 Act.	Yes.	1, no restriction.	1 (in theory).	Marginal cost/full cost recovery two part tariff.	Based on cost but with no differentiation between operators of the same type.
Slovenia	4 ¹⁸	Yes. ¹⁹	Yes. ¹⁹	2	¹⁹	¹⁹	¹⁹
Spain	3	None.	No.	-	-	- ²⁰	
Sweden	1	Yes. ²¹	Yes.	1	1 ²²	Marginal cost recovery two part tariff. ²³	-
Switzerland	3	(Yes). ²⁴	No.	1	3 ²⁵	Fees comprise a basic price (related to marginal cost and a contribution to full cost coverage) plus elements for supplementary services.	-
Turkey	5, but separate business units and accounts being separated.	None but planned in draft law.					
United Kingdom	1	Railtrack is responsible, including for Open Access in the case of freight.	Yes for freight.	3, for freight.	3, open to all domestic and foreign freight operators (open access).	Full cost recovery for passenger services using a two part charge, e.g. a high fixed element, plus a low variable tariff per train km (linked to type of rolling stock). Freight charges are negotiated on a flow by flow basis between Railtrack and the freight company.	Charges to TOCs vary according to (1) demand for train paths, e.g. time of day, which line, which station, (2) type of rolling stock. Charges to freight operators vary with traffic involved, time of day and overall congestion.

¹⁸ A new Railway Law in the process of parliamentary approval will make infrastructure entirely independent.

¹⁹ General rights of access exist, but there will be a 6 month period following adoption of the new Railway Law during which implementing regulations will be drafted.

²⁰ No specific calculation of charges. A series of 'transfer prices' are planned. These will establish access fee calculations taking into account type of traction, maintenance and joint services (stations).

²¹ Rail infrastructure is regulated by SFS 1988:1378 (Access to the tracks and pricing); SFS 1996:734 (Access to tracks, traffic control, and the range of state-owned rail infrastructure), SFS 1996:735 (operating and working instructions to BV); & the Rail Safety Law (SFS 1990:1157 and SFS 1996:736).

²² Licensed traffic operators have the right to gain access to the state railway infrastructure. However, SJ has an exclusive position in inter-regional passenger traffic and retains grandfather rights for goods traffic. All applications for access must go through BV.

²³ Track user fees were introduced in 1988 and are based upon variable and fixed fees. Fees are set by the government, with variable fees to cover the marginal costs of operating trains, including wear & tear, and external costs like accidents and emissions. They are divided into track, accident, catenary, diesel and marshalling charges. The fixed fees are calculated as annual fees per axle in different weight classes for various types of wagons and per pulling axle for locomotives.

²⁴ The revised law on railways should in principle enter into force on 1 January 1999 extending non-discriminatory access to all freight traffic and to some passenger transport services (according to EU Directives). However, access for foreign companies will only be granted after reciprocal arrangements have been reached.

²⁵ All operators on the basis of reciprocity.

Table 6. Impact of Access Rights and Barriers

Country	New operators	Link to national operator	Markets served	Traffic new or extracted from nat. operator	Impact on existing operators	Impact on new operators	Impact of access rights on customers	Barriers for new and potential operators
Czech Republic	Domestic companies.	None.	Domestic coal and waste.	Extracted.	Extraction of traffic.			
Hungary	Inter-container.							No regulations. Reciprocal rights only. Timetable control not with infrastructure department so allocation of slots to 3rd parties is not impartial.
Latvia	Latvia express.	None.	Some passenger markets.					No provisions for access rights for freight.
Lithuania	Since 1998 a new private operator, Unigela.	None.	International and domestic freight markets.	Extracted.	Extraction of traffic.	-	-	None.
Netherlands	LOVERS. ²⁶	None.	Passenger.	New.	None.	-	Reopening of a route.	No competition rules for 'open access'; no rolling stock leasing company; safety devices & staff belong to NS.
Norway	MTAB. ²⁷	NSB owns 25% of MTAB.	Metal ore.	Extracted.	No real impact as the value of the flows is not great.	None.	Not known.	Permission required from Ministry of Transport before access to the network is granted. This involves satisfying criteria including, service quality, know-how, safety procedures and insurance. NSB needs no permission and acts as the supervising authority for the Ministry.
Sweden	MTAB ¹ ; BK-tag & Sydtag ²⁸ , Others. ²⁹	MTAB (part owned by SJ). Others.	Mainly freight and local passenger.	Extracted.	No real impact as the value of freight flows is not great. The same goes for passengers.	None.	Not known.	Domination of SJ, its exclusive position in inter-regional passenger traffic and its grandfather rights in freight. Also operational barriers.

²⁶ LOVERS started as a relatively small shipowner based in Amsterdam (specialising in sight-seeing boats and water taxis). Interest in operating rail services has also been shown by VSN (the national bus company).

²⁷ Malmtrafik AS/Malmtrafik AB - A consortium of the following companies: LKAB an iron ore company (51%), NSB (24.5) and SJ (24.5%). The consortium was formed in 1996 and transports iron ore on the Ofoten line, from Kiruna in Sweden to Narvik in Norway.

²⁸ These are two very small passenger operators, operating only a few trains on two lines, serving County Public Passenger Transport Administrators (CPPTA), giving them an overall passenger market share of around 0.1%.

²⁹ Several companies operate SJ feeder services - they haul around 1-2% of the total market net tonne kms mainly on their own vertically integrated lines. However, they also haul over BV's lines if subcontracting to SJ. Whilst, this is not an example of 'open access' it shows that the scope for it exists.

Table 6. **Impact of Access Rights and Barriers** (*continued*)

Country	New operators	Link to national operator	Markets served	Traffic new or extracted from nat. operator	Impact on existing operators	Impact on new operators	Impact of access rights on customers	Barriers for new and potential operators
United Kingdom	Own-account freight operators: Direct Rail (BNFL); National Power (now transferred to EWS).	None.	Waste from nuclear power stations to waste site; coal to power stations.	Extracted.	Loss of some of most profitable traffic. Forced freight rates down (e.g. EWS bid for National Power's custom).	More control over operations.	More control over operations and lower tariffs.	Few barriers but tough regulatory and commercial challenges: obtaining safety certificates, trained staff and train paths and obtaining surplus rolling stock.

4. CONCLUSIONS

As has been described, the thrust of European Union and ECMT railway instruments has been to promote the efficiency and competitiveness of railways through a gradual liberalisation of targeted markets for rail services. This has been achieved without compromising the desire of some governments to retain integrated national carriers, usually for reasons of specific strategic interest.

Directive 91/440/EEC and regulation 91/1893/EEC set minimum requirements for transparency in financial flows between Government and railways and within the rail sector and provide for independence for railway operators to behave commercially. This is an essential basis for achieving, progressively, the objectives of liberalising the provision of rail services and improving efficiency in the sector.

Directive 91/440/EEC supports the development of a more liberal approach to access to infrastructure across borders than the traditional bilateral arrangements between national carriers, replacing bilateral reciprocity with transit rights for international groupings of European Union railways and according access rights to international rail enterprises for combined transport services. ECMT Resolution 93/6 reinforces this philosophy by requiring infrastructure managers in all ECMT countries to grant rights of access equivalent to those required by Directive 91/440/EEC.

A number of international initiatives are underway within the scope of Directives 91/440/EEC, 91/1893/EEC, 95/18/EC and 95/19/EC, regulation 91/1893/EEC and Resolutions 93/6 and 95/3 to make their application more effective. These initiatives together with a number of key issues will need to be examined in some depth before definitive recommendations can be made. They can be summarised as follows.

The existing disparity of infrastructure charges in Member countries makes it important to achieve more convergence in the approaches followed for developing tariffs, if the full benefits sought from according access rights are to be realised. The ECMT examined charging regimes in Round Table 110 of March 1998. The European Commission is expected to present a draft directive on charging for the use of infrastructure and allocation of timetable slots later in 1998. The results will provide the foundation for further work in this area at the level of the ECMT.

Appeals and dispute settlement procedures for infrastructure fees might prove necessary for international operators subject to the access provisions of 95/19/EC, as part of the right of access. Governments could encourage new entrants by requiring their national railways to provide, promptly and at reasonable cost, information necessary for potential operators seeking to provide international services, including regulations and data on track access charges. Potential operators would also be assisted by measures to facilitate internationally co-ordinated allocation of infrastructure capacity slots, giving appropriate priority to international freight *vis a vis* passenger and domestic services and taking account of the wider economic benefits.

The freight corridors initiatives "Freeways" and "Freightways" encouraged by the European Union represent an important step in facilitating the commissioning of international freight rail services by developing "one stop shops" for shippers (to replace a multiplicity of bilateral contracts) and promoting international freight transport in the allocation of infrastructure capacity. Experience acquired from the routes opened in 1998 should be applied across all of Europe covered by the ECMT.

The European Commission will present a second draft directive in 1998, on public service obligations and public financing of railway undertakings. Regulations on public service obligations might benefit from revision to require *ex-ante* negotiation of contracts in respect of public service obligations with competitive tendering (where appropriate based on non-discrimination between modes). This could result in better value for public money spent on providing transport services than general current practice. The existing recommendation for the use of contracts in compensating public service obligations, in regulation 91/1893/EEC, might have to be modified as a result.

Finally, at the national level, competitiveness might also be improved by railways producing plans for improving customer focus. Governments should encourage state-owned railways to do this, where it has not already begun.

In summary, although ECMT countries are at different stages in the transposition of European Union Directives and ECMT Resolutions, the approach to improving rail efficiency underlying these instruments has been adopted in almost all Member countries. Progress has been made in ensuring management independence for railway enterprises to behave commercially and in improving the transparency of financial flows in almost all the countries surveyed and legal provision for access rights have been made in most Member countries. Immediate priorities for completing implementation of the existing Directives and Resolutions are a) ensuring publication of adequate accounts for infrastructure and operations in all Member countries, and b) developing fees for the use of infrastructure and of criteria for the allocation of infrastructure capacity that provide an adequate basis for implementation of policy, particularly in regard to the progressive liberalisation of access to rail infrastructure.

NATIONAL PROFILES

AUSTRIA

I. Implementation of Resolutions	
Legal independence	<p>In 1993, ÖBB was restructured as a public limited company and responsibility for all operational management functions transferred to a board of directors under the Federal Railways Act - "<i>Bundesbahngesetz</i>", 1992. The State acts as proprietor represented by the Minister of Transport.</p> <p>The Act provides for multi-year guidelines issued by Ministers of Transport and Finance for budgetary transfers to the railways. Contracts related to PSOs have been concluded under this framework in line with 1191/69/EEC and 1893/91/EEC.</p> <p>Government only regulates tariffs under PSO contracts and for "<i>Verkehrsverbände</i>" regional passenger services.</p>
Separation of infrastructure management from operations	Accounts for business relating to the provision of transport services and those for business relating to the management of the railway infrastructure are kept separately (in line with article 6, paragraph 1, of Council Directive 91/440/EEC).
Market access for new operators	Access rights for new operators have been regulated recently according to EU Directives. Access rights will also be granted in the context of the EU freight corridors initiative (Freeways).
Fees for use of infrastructure	Fees will be set by the infrastructure manager according to Directive 95/19/EC following the principles of articles 7 and 8.
Establishment of international groupings	The legal basis -- according to the principles of article 10 of Directive 91/440/EEC -- will be the forthcoming Railways Act.
Rights of access to promote combined transport	Access rights will also be granted in the context of the EU freight corridors initiative (Freeways).
Improvement of the finances of railway undertakings	In accordance with Directive 91/440/EEC, the state has taken financial responsibility for the infrastructure of ÖBB. The undertaking established for this purpose also has the right and obligation to sell all real estate which no longer requires operational management functions (see II below).
General comments	Austria has already implemented Council Directive 91/440/CEE as well as Directives 95/18/CE and 95/19/CE.
II. Other restructuring measures	
Implemented	A new corporation was set up through a special act for financing rail infrastructure (" <i>Schieneinfrastrukturfinanzierungsgesetz</i> ") and was given a certain amount of money. The money must be distributed to all Austrian railway undertakings to finance their infrastructure.
Results and expectations	In future, this financing corporation should be self-financing from infrastructure fees, from the capital markets and from EU funds allocated to Austria.

AUSTRIA (*continued*)

III. Other significant developments	
Broader changes currently occurring	In accordance with Council Regulation 1893/91/EEC (re: action by Member states concerning obligations inherent in the concept of a public service by rail, road and inland waterway - amending Regulation 1191/69/EEC) contracts have been concluded between the Transport Ministry and railway undertakings to ensure adequate rail transport services in that field.
Relations between Eastern and Western Europe	In correlation with the changes in Eastern Europe, Austria is trying to negotiate new rail cross-border agreements with its neighbouring countries, Hungary, Slovenia, the Czech Republic and the Slovak-Republic.

BELGIUM

I. Implementation of Resolutions	
Legal independence	<p>The Law of 21 March 1991 reforming a number of public business undertakings established SNCB's managerial and legal independence from the State. However, its independence is qualified in that the same law also imposes a number of public service obligations on SNCB, principally: the provision of domestic passenger transport by conventional train services; the acquisition, construction, maintenance, management and operation of rail infrastructure.</p> <p>The regulations and conditions under which SNCB is to carry out its public service obligation are stipulated in a management contract between the Government and the independent public undertaking.</p> <p>The first management contract covered the period 14 October 1992 to 31 December 1996. The second contract covers the period 1 January 1997 to 31 December 2001.</p> <p>SNCB is free to set fares and fare structures for its public services and to determine the scale, type and level of prices for passenger transport by conventional trains. However, the management contract caps annual fare increases, linking them to certain distance criteria and to the retail price index.</p>
Separation of infrastructure management from operations	<p>From an accounting standpoint, the SNCB is subject to the same legislation as private sector companies. However, it is required to set up a separate accounting system for its public service activities, on the one hand, and its other activities on the other. Separate accounts are kept for operations and infrastructure management. There is no separation at an institutional level, and the SNCB has no plans for such a separation in the future.</p>
Market access for new operators	<p>The provisions of Directive 91/440/EEC were transposed into Belgian law by the Royal Decree of 5 February 1997. No applications have yet been received from new operators.</p>
Fees for use of infrastructure	<p>The procedure for transposing Directives 95/18/EC and 95/19/EC is underway.</p> <p>Usage fees will be set by the infrastructure manager, in this case the SNCB, taking due account of such considerations as operating costs, the situation in the transport market and fair competition between different transport modes.</p> <p>Fees will be charged on a non-discriminatory basis for all services of a similar nature.</p>
Establishment of international groupings	<p>Based on the provisions of Directives 91/440/EEC, 95/18/EC and 95/19/EC. The Royal Decree translating Directive 91/440/EEC into Belgian law was passed on 1 February 1997.</p>
Rights of access to promote combined transport	<p>Preparations for the translation of Directives 95/18/EC and 95/19/EC into Belgian law are in hand.</p>

BELGIUM (continued)

Improvement of the finances of railway undertakings	The Council of Ministers of 15 February 1996 approved the SNCB restructuring plan, which is aimed at balancing the finances of the SNCB by 2005. At the same time, a substantial increase in subsidies for investment in the railways and the index-linking of the allocation for the public service obligation will help improve SNCB's finances. The Government has also set up a finance company, TGV Financière, to cover all construction and equipment costs for the border to border high-speed network; this public limited company was established on 24 April 1997.
General comments	It is still too early to assess the impact and implications of the new EU provisions. Until such time as they can be assessed, the Belgian Delegation considers that liberalisation should go no further than the present stage and that the option of maintaining integrated railway undertakings managing both infrastructure and operating activities should be kept open.
II. Other restructuring measures	
Implemented	<p>Restructuring: in its "Objective 2005" plan, the SNCB intends to introduce a series of measures to reduce production costs and increase productivity by restructuring its operating services and adopting a better-targeted personnel policy.</p> <p>SNCB is also radically restructuring its internal organisation, splitting up its rail activities between independent business units and setting up independent procurement and support services centres.</p> <p>Furthermore, legal measures introducing fiscal and financial provisions have been in force since the 1996 financial year. These provisions are additional to the internal measures taken by the SNCB in the course of restructuring and modernisation.</p> <p>Measures aimed at reducing delays at borders: as part of plans to set up "freightways" providing access rights to all freight transport licence-holders, everything possible will be done to speed up border crossings, including the removal of customs and phyto-sanitary checks in certain cases. Technical formalities will also be speeded up.</p>

BULGARIA

I. Implementation of Resolutions	
Legal independence	<p>BDZ is legally independent. This independence was reinforced by the BDZ law of 1995.</p> <p>Public service requirements are implemented according to the provisions of the service agreement between the state and BDZ.</p> <p>According to tariff law, the Minister of Transport supervises railway passenger transport prices. According to the BDZ law, BDZ's general director sets rail tariffs subject to the supervision of the Minister of Transport.</p>
Separation of infrastructure management from operations	<p>The legal basis for separation of accounts is the BDZ law.</p> <p>Separation of accounts has been implemented but institutional separation of infrastructure management from operations is not yet accomplished.</p>
Market access for new operators	Although no legal basis for access exists, new domestic operators would be granted access to infrastructure.
Fees for use of infrastructure	No legal basis exists. There are no instructions or formulas for fee calculation.
Establishment of international groupings	None in the area of railway transport operations.
Rights of access to promote combined transport	Rules for access to infrastructure do not exist but there are rules for the use of combined transport.
Improvement of the finances of railway undertakings	Resources are not available to write-off existing debts but a programme for financial restructuring is underway.
General comments	A new general law on railway transport is in the process of drafting.
II. Other restructuring measures	
Implemented	<p>BDZ is implementing a rehabilitation and restructuring project for the period 1996-1998.</p> <p>The next step is the consideration of the draft law on railway transport.</p>
Results and expectations	The main aim is financial survival for BDZ.
III. Other significant developments	
Broader changes currently occurring	<p>Prices are now annually.</p> <p>There is a new Balkan railway tariff.</p>

BULGARIA (*continued*)

Relations between Eastern and Western Europe	<p>The rehabilitation and restructuring project for the period 1996-1998 is supported by loans from the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, export credit agencies and the European Union PHARE programme.</p> <p>Drafting of the law on railway transport is supported by the PHARE programme.</p>
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CROATIA

I. Implementation of Resolutions	
Legal independence	The Law on Railways of 28 June 1994 established "HZ-Croatian Railways" as a state-owned joint stock company with independent legal identity.
Separation of infrastructure management from operations	In accordance with the Law on Railways the company will split accounts for the railway infrastructure business unit from the operations business unit.
Market access for new operators	Article 7 of the Law on Railways allows local communities - municipalities, towns, counties and interested legal or physical persons to maintain infrastructure facilities, in whole or in part. HZ's Board may contract out transportation services to third parties.
Fees for use of infrastructure	There are fees for the use of railway infrastructure facilities and such charges are to be presented in HZ's accounts as revenue earned by the infrastructure business unit.
Establishment of international groupings	Not being considered yet. All foreign operators have to be authorised under Croatian legislation. However, as subsidies are still necessary for all services, the issue of international access is tied up with subsidies. Nevertheless, possibility exists for granting concessions for the construction of railway infrastructure and its management. Decisions in this area rest with the Croatian Parliament.
Rights of access to promote combined transport	No requests yet. Acceptable in principle, but details would have to be negotiated.
Improvement of the finances of railway undertakings	The implementation of short and long-term measures proposed within the framework of restructuring and reorganising of the financial situation of the Croatian railways should improve the financial situation of the Croatian railways and will help resolve problems during the period 1997-2000.
General comments	The Croatian rail system, partially destroyed by war, needs a period of consolidation in which to increase efficiency and productivity, with the privatisation of some of its subsidiaries.
II. Other restructuring measures	
Implemented	The Government approved the Programme of Restructuring and Financial Recovery of the Croatian Railways on 13 January 1994. The restructuring is to be carried out in three stages: 1. Passing of the Law on Croatian Railways and reconstruction of war-damaged railway infrastructure: underway. 2. Reduction of the work force: underway. 3. Increase of productivity: underway.
Results and expectations	Results: too early to say. Expectations: Adaptation to a market economy; Privatisation of the company.

CROATIA (continued)

III. Other significant developments	
Broader changes currently occurring	Market access: Croatia's economic development, manufacturing capacities, skilled personnel, opening of its market to international investors and ownership restructuring will all have an impact on the development and business of the Croatian Railways.

THE CZECH REPUBLIC

I. Implementation of Resolutions	
Legal independence	The legal position of the Czech Railways (CD), a State organisation, is regulated by a special Act, No. 9/1993, on Czech Railways, as amended by Act No. 212/1993. Czech Railways has a legal identity entered in the Business Register. CD's basic line of business is the carriage of passengers and goods by nation-wide track infrastructure. CD is subject to the legal regulations governing all state enterprises except in areas where the Act on Czech Railways provides otherwise. CD draws up an annual settlement of account and an analytical breakdown of accounts and finance by business area. CD has a duty to ensure the settlement of accounts and to publish its data.
Separation of infrastructure management from operations	As from 1st January 1996, CD has been organised in two divisions: the Business Operations Division and the Transport Infrastructure Division. The former provides for the operation, control and organisation of track traffic. The latter provides for the management of the rail infrastructure. CD's management is organised into two separate accounting and financial areas: the rail infrastructure area and traffic and other operations. Funds cannot be transferred between the two accounts other than as payments for services provided.
Market access for new operators	<p>The Act on Track Infrastructure, in force since 1st January 1995, stipulates the duty of operators of nation-wide tracks and regional tracks to provide authorised carriers (granted a licence from the Track Authority), track access. The Track Infrastructure Authority regulates access by granting licences for the required track section, provided capacity is available. Ministry of Transport Decree No. 173/1995, in force since 1st December 1995, establishing traffic regulations concerning track infrastructure, stipulates criteria to be applied in arbitrating the cases of conflict arising when demand exceeds capacity and when applicants want to run trains within the same time interval. Licences are issued for a defined period of the train timetable and for a limited duration.</p> <p>Market access for new track operators is governed by Act 266/1994 on track infrastructure. It stipulates that to operate on track infrastructure, official authorisation is necessary and this will be issued by a Track Infrastructure Administration Authority. To operate on nation-wide track infrastructure, regional track infrastructure and sidings, the appropriate Authority is in Prague. To operate on special tracks, tramways, trolley-bus lines and cableways, the appropriate Authority is the district office where the track infrastructure is located.</p> <p>The conditions of professional competence (i.e. professional qualifications for specific occupations) are laid down in the Act on Track Infrastructure.</p>
Market access for new operators (cont.)	The scope of professional knowledge, and verification procedures are stipulated in Ministry of Transport Decree No. 101/1995 which contains "Regulations on Health and Professional Qualifications for Persons Operating Track Infrastructure and Transport on Track Infrastructures".

THE CZECH REPUBLIC (continued)

Fees for use of infrastructure	Fees for the use of nation-wide and regional track infrastructure are determined by Act No. 526/1990 on prices. Currently, the price is a maximum one fixed annually by the Ministry of Finance and published in the Gazette of Prices. Fees are set according to the following criteria: higher fees for goods trains than for passenger trains; on the basis of gross t-kms and train-kms; 3 train categories each with its own fee level. Fees do not cover services whose prices are fixed contractually, namely: supply of electricity; rent for the use by the carrier of premises belonging to the track infrastructure operator; requested escort of trains by qualified staff of the track infrastructure operator; development of special train timetables for authorised carriers; other services requested by authorised carriers, e.g. supply of fuel, oil, water, heating, washing, cleaning, disinfecting of wagons, etc.
Establishment of international groupings	None in the Czech Republic so far. International traffic on track infrastructure in the state is fully provided for by a national railway undertaking agreement with the railway undertakings of neighbouring countries.
Rights of access to promote combined transport	All entities have the right of access to the nation-wide and regional track infrastructures providing they meet the conditions for granting a licence under the Act of Track Infrastructures. In the Czech Republic, there are undertakings ensuring international combined transport acting as shippers or forwarding agents. The track traffic proper, in the framework of combined transport, is entirely ensured by the national railway undertaking.
General comments	<p>Despite substantial re-organisation of the Czech Railways, separation of track infrastructure from operations and the creation of two independent business units with separate management and balance sheets has not yet been fully implemented. For this reason, the term “railway undertaking”, which under the Act on Track Infrastructures corresponds to the term “carrier”, cannot be applied to the Czech national railway undertaking yet.</p> <p>Under the Act on Track Infrastructure, the right of access to infrastructure may be granted to new carriers by a state authority. Line-capacity allocation to a new carrier falls to the track infrastructure operator who is, however, bound by the decision of the state authority in issuing an operating licences. For train schedule allocation, the new carrier must enter into a contract with the manager of the track infrastructure. In case of conflict, the decision of a state administration authority (Track Infrastructure Authority) prevails.</p> <p>The main barrier to new entry is the poor business prospects for non-CD carriers, in the face of efforts of the national railway enterprise to retain its monopoly, especially in the profitable transportation of bulk consignments.</p>

THE CZECH REPUBLIC *(continued)*

II. Other restructuring measures	
Implemented	<p>Two Acts and eight Decrees have been implemented regarding track infrastructure and operations. Three of the Decrees implement regulations under the Act on Track Infrastructure.</p> <p>As from 1 January 1999 the Czech Railways will be transformed into a state enterprise according to the Act on State Enterprises.</p> <p>A basic document entitled State Transport Policy is under preparation. This covers railway debt clearance along with other items concerning restructuring of CD. It is expected to be submitted to Parliament for approval in the summer of 1998.</p>
III. Other significant developments	
Broader changes currently occurring	<p>A gradual implementation of the EU White Paper, A Strategy for Revitalising the Community's Railways, and an application of amendments to EU Directive 91/440/EEC are to be expected. However, these development will have to be preceded by appropriate political decisions, notably concerning debt clearance of the existing railway undertakings.</p> <p>Railway transport will be influenced by the organisational restructuring of CD. The aim is to increase the economic efficiency of rail traffic and its further development. Another important change will be the new Act on State Enterprise (see above) which will directly influence the activities of CD.</p>
Relations between Eastern and Western Europe	<p>Relations between CD and western European countries may be characterised as relations of standard co-operation and competition based on market principles. Like other European countries, in the rail transport field the Czech Republic applies a number of important agreements and covenants, such as COTIF, RID, etc.</p>

DENMARK

I. Implementation of Resolutions	
Legal independence	On 1 January 1994 the Danish State Railways, DSB, were separated from the Ministry of Transport as an Agency. A bill that will change DSB into an independent joint stock company is planned to be proposed to parliament on 11 March 1998.
Separation of infrastructure management from operations	Since 1 January 1997 infrastructure management has been entrusted by Banestyrelsen (The Danish National Railway Agency). The Agency is organisationally separated from the Ministry and DSB.
Market access for new operators	Laws and Regulations have been adopted to transpose Directive 91/440/EEC into Danish law. Directive 95/18/EC was put into force on 27 June 1997. Up till now one private company has been licensed.
Fees for use of infrastructure	<p>A system of fees for use of infrastructure is gradually being introduced, putting into force Directive 95/19/EC. The first step was the introduction of fees from 27 June 1997 for passing the Great Belt Tunnel. At the beginning of 1999 fees will have been introduced for the whole railway infrastructure.</p> <p>The fee-system has several elements:</p> <ol style="list-style-type: none"> 1) <u>Admittance fee</u>. Proportional to the distance over which the operator seeks admittance, Fee Dkr 3000 / km for mainlines and Dkr 1500 for other lines. Paid annually. 2) A <u>kilometre fee</u>. The fee is paid for each train per kilometre driven. The fee is Dkr 20 / km for main lines and Dkr 3 / km for other lines. 3) A <u>capacity fee</u> for use of the main line between Oresound (Copenhagen) and Snoghoj (Fredericia) between 06.00 and 07.00. The <u>capacity fee factor</u> is determined by the degree to which a single train deviates from an average speed of 100 km an hour. Faster and slower trains pay more. The factor is applied to the kilometre fee for main lines. 4) Special <u>bridge transit fees</u> are paid for using the tunnel/bridge across the Great Belt and from 2000 a fee will be introduced for using the bridge across Oresund from/to Sweden. 5) Consumption of <u>material resources</u> and <u>special services</u> for instance electricity etc. are to be paid according to actual consumption.
Establishment of international groupings	None yet.
Rights of access to promote combined transport	Will be allowed from 1 January 1999.
Improvement of the finances of railway undertakings	As a result of previous restructuring of the public funding of DSB (including infrastructure now in Banestyrelsen) the Danish railway system has no debt.

DENMARK (continued)

II. Other restructuring measures	
Implemented	<p>Two Bills are expected to be adopted by Folketinget (The Danish Parliament) in spring 1998:</p> <p><u>Bill on Railway Operations</u>: The Danish Government proposed a Bill at Christmas. The Bill is drafted as a general law on railway operation in Denmark. Among significant issues are:</p> <ul style="list-style-type: none">– rail freight transport will be liberalised from 1 January 1999;– railway passenger traffic (Public Service Obligation Traffic) will be managed according to specific contracts from 1 January 1999;– up to 15% of passenger traffic will be the object of tendering before the end of 2003;– licensed operators may start new passenger services from 1 January 2000 where there are available time slots. <p><u>Bill on DSB Independent Public Company</u>: A bill that will split DSB, part into an independent joint stock company (a special kind of Limited Company) and part into a Limited Company (the City Railway system in Copenhagen) is planned to be proposed to Parliament on 11 March 1998. The bill should come into force on 1 January 1999.</p>

ESTONIA

I. Implementation of Resolutions	
Legal independence	Estonian railways are owned by two joint stock companies with independent legal identity - Estonian Railway Ltd. and Edelaraudtee Ltd. - both 100% state-owned. Edelaraudtee Ltd. operates domestic passenger services and Estonian Railway Ltd. operates freight services and international passenger services.
Separation of infrastructure management from operations	Arrangements for separation are currently underway. In the future, infrastructure subsidies will be financed by earmarked taxes. Currently, Edelaraudtee Ltd. owns two sections of railway: Tallin-Lelle-Parnu-Moisakula; and Tallin-Lelle-Turi-Viljandi. The rest of the rail network is owned by Estonian Railway Ltd.
Market access for new operators	There is unrestricted access to the market for all new operators. Licences are necessary for operating.
Fees for use of infrastructure	All operators pay fees to the owner of the infrastructure.
Establishment of international groupings	Transport policy is being revised according to provisions of Directive 91/440/EEC regarding access to infrastructure.
Rights of access to promote combined transport	Transport policy is being revised according to provisions of 91/440/EEC regarding access to infrastructure.
Improvement of the finances of railway undertakings	Due to the total increase of goods transport during the first quarter of 1998, the profit of the Estonian Railways has grown when compared to the same period in 1997.
General comments	A new Railway Act, that accords with the provisions of EU Directives 91/440/EEC, 95/18/EC and 95/19/EC, is currently under preparation. A Public Transport Act is also in the process of preparation and concerns public service obligations in rail, road and waterborne transport. A regulation is also under preparation at the Ministry of Finance that will introduce an accounting system for expenditure on rail, road and inland waterway infrastructure, applying the provisions of Regulation 70/1108/EEC.
II. Other restructuring measures	
Implemented	Regulation No. 240-k of 8 March 1996 established Edelaraudtee ltd. (domestic passenger transport) and reorganised the former state corporation Estonian Railway into a joint stock company, 100% state-owned. EVR Koehne Ltd. was established by Government decision in September 1996 to maintain and build infrastructure. Regulation No. 442-k of 11 June 1997 sets out provisions for: <ul style="list-style-type: none"> - the establishment of a joint stock company for Tallin commuter rail passenger transport, separating this from Estonian Railway Ltd. (underway); - establishment of a joint stock company for railway carriage and carriage management by Estonian Railway Ltd. (underway);

ESTONIA (*continued*)

	– establishment of a joint stock company for international passenger transport by Estonian Railway Ltd. (underway).
Results and expectations	Edelaraudtee Ltd., Estonian Railways Ltd. and EVR Koehne Ltd. have been established. With an increase in transit transport Estonian Railway Ltd. has achieved good results. The development of EVR Keohne Ltd. has been rather rapid.
III. Other significant developments	
Broader changes currently occurring	Complete reconstruction of the international transit corridor Tallin- Narva in accordance with west European standards. Privatisation of railways including the sale of state-owned stocks.
Relations between Eastern and Western Europe	As an applicant to join the European Union, all Estonian legislation will be harmonised with that of the Union. Estonian railways take part in the activities of western European railways (through UIC) and eastern European railways (through OSShD). Estonian railways together with other Baltic States and CIS countries operate a common pool of freight wagons. As a transit country, Estonia pays much attention to the development of east-west transit. Co-operation with regard to transit cargo transport between east and west is being promoted and infrastructure along the current corridors is being modernised.

FINLAND

I. Implementation of Resolutions	
Legal independence and Separation of infrastructure management from operations	<p>Directive 91/440/EEC has been fully transposed into Finnish legislation. The legal independence of the Finnish State Railways (VR) was established by separating the operational activities into a group of joint stock companies formed according to the rules of Finnish company law. The parent company is called "VR-Group Ltd" (Finnish Railways). The state holds 100% of its shares. Being a company enables it to operate on equal commercial terms with other modes in the transport field. The state exercises its control over the company through shareholders rights and membership on the board of directors. The VR-Group companies started their activities on 1st July 1995.</p> <p>The Finnish Rail Administration, a separate authority, was founded in accordance with Act 21/1995. Administratively it is subordinated to the Ministry of Transport and Communications. The Rail Administration is responsible for the maintenance and development of the state-owned network. It is also responsible for the safety of rail transport.</p> <p>VR sets tariffs free from government control.</p> <p>VR bears no PSO responsibilities. The State and municipal governments bear responsibility for public service interests and contract services from transport companies on the basis of competitive tendering.</p>
Market access for new operators	New entrants are allowed to operate on the rail network according to the rules laid down in Directive 91/440/EEC.
Fees for use of infrastructure	The Finnish track fee consists of two parts: 1) A variable fee based on: the social marginal costs of train and road traffic; train gross tonne-kilometres; passenger/freight traffic. 2) A fixed fee for freight traffic (0.75 FIM/carried tonne (0.13 ECU/tonne). The track fee will be adopted from the beginning of 1997 and the total 1997 revenue is estimated to be approximately 300 MFIM, which covers approximately 15 % of the total cost of the railway network.
Establishment of international groupings	International railway groupings may operate in Finland according to the Directive 91/440/EEC.
Rights of access to promote combined transport	Use of infrastructure for operations of international combined transport has been established according to the Directive 91/440/EEC.
Improvement of the finances of railway undertakings	The VR-Group Ltd is a profit making company which pays dividends to the shareholder (the state).
General comments	Finland has had no difficulties in implementing the ECMT Resolutions and EU Directives.

FINLAND (continued)

II. Other restructuring measures	
Implemented	<p>VR-Group Ltd. has two main subsidiaries: VR Ltd. for freight and passenger services; VR Track Ltd. for maintenance and construction services for the railway network.</p> <p>Rail network transferred to the Finnish Rail Administration which is responsible for maintaining and developing the rail network and for the safety of rail transport. VR-Track Ltd. and the Finnish Rail Administration have concluded a framework agreement on track building and maintenance services for 1996 and 1997.</p> <p>VR-Data, the VR Group computer services business unit, was turned into a joint stock company on 1 April 1996.</p> <p>Reduction in personnel from 29 000 in the 1980s to 14 800 now.</p>
Results and expectations	Partly as a result of reorganisation VR-Group has become one of the most profitable railway undertakings in Europe.
III. Other significant developments	
Broader changes currently occurring	<p>Directive 95/18/EC on the licensing of railway undertakings and 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees transposed into Finnish legislation.</p> <p>Finland is participating in the implementation of the White Paper on revitalising the community's railways.</p>
Relations between Eastern and Western Europe	<p>Finland is taking an active part in developing the pan-European corridors, especially corridors 1, 9 and 10 and the Barents-Euro-Arctic Transport Area.</p> <p>Finland has a railway traffic agreement with Russia.</p>

FRANCE

I. Implementation of Resolutions	
Legal independence	<p>Railway reform underway includes notably the establishment of RFF (Réseau Ferré de France) by a law of 13.2.1997, the new owner of national rail infrastructure, responsible for the development of the network. SNCF will maintain infrastructure on behalf of RFF as well as managing rail traffic and operations. Both RFF and SNCF are constituted as “EPIC”, state enterprises with commercial statutes. They have legal responsibility and financial autonomy subject to governance by the state.</p> <p>Public service obligations are imposed by rules dating from 1983 in the process of modification to take account of RFF.</p> <p>Tariffs are set by SNCF. For passenger services they require Ministerial approval. For freight the Minister of Transport is simply informed of tariffs.</p>
Separation of infrastructure management from operations	Separation of accounts has existed since the establishment of SNCF. The creation of RFF has resulted in organisational separation.
Market access for new operators	The legal basis for access is established by decrees transposing Directives 91/440/EEC, 95/18/EC and 95/19/EC. Directive 91/440/EEC was transported by a decree of 9.05.1995, undergoing modification to take account of the creation of RFF. A decree transposing 95/18/EC and 95/19/EC is under preparation. There are no new operators.
Fees for use of infrastructure	<p>The law establishing RFF provided for rules to determine infrastructure fees to be laid down by decree, and this was issued on 5.05.1997. It provides for the track to be categorised by usage (urban, intercity, high speed etc.) for the purposes of charging. For each category fees will be composed of: a fixed element corresponding to a right of access to the network, for a given period; a capacity reservation element; and a use charge. The last two elements will be subject to determination by a series of criteria. Two instructions await approval by the government to designate track sections to the various categories and to determine the calculation of fees.</p> <p>There is as yet no competition for slots.</p>
Establishment of international groupings	European groupings are recognised under French legislation as “GEIE”s. Three exist under the terms of 91/440/EEC, EUROSTAR, THALYS and TALGO.
Rights of access to promote combined transport	The access requirements of 91/440/EEC were transposed by the decree of 9.5.1995, which must, however, be modified to take account of the creation of RFF.
Improvement of the finances of railway undertakings	Rail reform in France aims, notably, at relieving SNCF of a large part of its debt. 135 billion Francs of debt was transferred to RFF on its creation, corresponding to loans related to infrastructure. SNCF aims to reduce its debt as part of its plans to attract customers. RFF revenues flow from infrastructure fees and a contribution from the state budget to infrastructure costs.

FRANCE (continued)

II. Other restructuring measures	
Implemented	<p>The second aspect of rail reform in France is an experiment with decentralisation of regional passenger services that began in January 1997. This aims to pass full responsibility for the organisation of SNCF's passenger rail services to 6 regions. The Government will finance these regions with the operating subsidies formerly paid to SNCF. The trial will run for 3 years and result in a report to parliament on whether to make the change permanent.</p> <p>The third part of French rail reform is covered in a new sectoral plan that covers a number of measures designed to improve the commercial and financial performance of SNCF.</p> <p>Border delays have been addressed by bilateral accords that provide for passport and customs controls to be made on-board on the EUROSTAR, TALGO and THALYS services that account for a large part of international passenger connections.</p> <p>For freight transport, SNCF's agreement to create a north-south freight corridor with the Belgian, Luxembourg and probably Italian networks is likely to reduce border delays.</p>

GERMANY

I. Implementation of Resolutions	
Legal independence	<p>The legal basis is Article 87e of the “Grundgesetz” (Constitution) and the Railway Restructuring Act of 1993. The management of the railways owned by the Federal Republic is governed by the principles of private law (under the previous law it had the status of an “authority”). After the merger between “Deutsche Bundesbahn” (DB) and “Deutsche Reichsbahn” (DR) into a new entity “Bundeseisenbahnvermögen” (BEV - Special Asset Federal Railways), commercial activities were separated out in January 1994 under the name of “Deutsche Bahn Aktiengesellschaft”, DB AG (German Rail Joint-Stock Corporation).</p> <p>Article 87e of the Railway Restructuring Act provides for the Federal Republic to remain the majority shareholder (no less than 50.1%) in DB Netz AG (the infrastructure joint-stock company) - to be established in 1999 - and remain responsible for preserving and developing the rail track network (infrastructure responsibility) and for an offer of services on this network to serve the public interest (service preservation commitment). It is important to note that it is the state that is responsible both for preserving railway infrastructure and PSOs, not DB AG which is not subject to any commitment towards public service.</p> <p>The application of obligatory tariff regulations for the transportation of goods by rail has been substantially reduced. It is no longer required that tariffs be drawn up and submitted for approval or that transport prices be officially approved. On the other hand, the rules for the conditions of carriage, such as the “Eisenbahn-Verkehrsordnung” (EVO - Railway Operations Ordinance) and the “Allgemeine Geschäftsbedingungen” (AGB - General Conditions of Business), continue to be issued by, or at least be subject to approval by, the Federal Government, (except when the approving authority relinquishes its authority).</p> <p>For passenger transport, it is still obligatory to establish tariff regulations and submit them for approval. Approval is required for both ticket prices and the conditions of carriage for short-distance passenger rail transport, whereas for long-distance passenger rail transport, only the conditions of carriage need to be approved.</p>
Separation of infrastructure management from operations	<p>The legal basis is the Deutsche Bahn Gründungsgesetz (DBGGrG - Act to Establish the German Rail Joint-stock Corporation) of 1993. The Act provides at first for the creation of DB AG by the extraction of commercial activities from the Bundeseisenbahnvermögen (BEV - Special Asset Federal Railways) and the separation of the business into divisions for long distance passenger traffic, short distance passenger transport, freight and infrastructure, separate both for accounting purposes and organisationally. Not earlier than 3 years and not later than 5 years after the registration of DB AG in the register of commerce (5 January 1994) these businesses shall be transformed into at least four separate joint-stock companies. In December 1997 the supervisory board of DB AG decided to transform the railways into the following 5 companies:</p> <ul style="list-style-type: none"> - DB Reise und Touristik AG (long distance passenger transport); - DB Regio AG (short distance passenger transport); - DB Cargo AG (freight transport);

GERMANY (continued)

	<p>- DB Netz AG (infrastructure); - DB Station and Service AG (passenger stations). The companies will be grouped under a holding company, DB AG. Dissolution of the resulting DB AG Holding will require an Act of Parliament.</p>
Market access for new operators	<p>The legal basis is Article 14 of the General Rail Act (AEG). The new regulation opens the networks of all German railways serving public transport to all railway undertakings registered in the Federal Republic of Germany. As far as non-German undertakings are concerned, the same regulation applies, provided either that the tracks of these undertakings are also open to other operators (EU Member States) or that an inter-governmental agreement has been concluded on the use of tracks (other countries). Disputes over the use of tracks can be settled through the Federal Railway Office or the antitrust authorities, as appropriate. In addition to the long-established non-Federal Republic-owned railways, there are new railway undertakings using the DB AG rail network.</p>
Fees for use of infrastructure	<p>As DB AG is no longer part of the Federal Administration but an undertaking under private law, it enjoys the full rights and responsibilities of such undertakings and, therefore, has the right to calculate the fees for the use of the tracks it owns. The Federal Ministry of Transport exercises no influence in this respect. To implement the right of non-discriminatory access to the rail network, as provided for by law, the Federal Ministry of Transport has recently passed an Ordinance specifying the rules for calculating such prices, but not indicating any price level.</p> <p>The introduction of competition for railway infrastructure capacity was one of the main objectives of the railway reform and the motive for the government's decision to transfer ownership of the track network to DB AG and not to levy fees, in the proper sense of the word, for the use of rail tracks.</p>
Establishment of international groupings	<p>The legal basis is Article 14 of the "General Rail Act". International groupings are regarded merely as a transitional solution towards a situation where genuine competition exists among railway transport operators. Therefore, the concept has not been expressly taken into account in German legislation over and above the provisions of Directive 91/440/EEC. Moreover, decisions on the establishment of such groupings fall within the entrepreneurial responsibility of railway transport operators.</p> <p>DB AG has entered into numerous joint ventures (in various forms of co-operation) with other railway undertakings, e.g. DACH "City Nightline" sleeper trains.</p>
Rights of access to promote combined transport	<p>The provisions of Directive 91/440/EEC have been transformed into national law (Art. of the General Railway Act). No use has yet been made of the specific advantages of combined transport operations in cross-border rail transport.</p>

GERMANY (continued)

Improvement of the finances of railway undertakings	A comprehensive financial restructuring concept was part of the restructuring efforts for the railways owned by the Federal Republic, covering areas such as: a balance sheet clean-up, the elimination of debts of DEM 70 billion, the take-over of the additional financial burden due to the lack of productivity of Deutsche Reichsbahn plus the financing of investments to enable Deutsche Reichsbahn to catch up with the current state of technology, and a substantial reduction of staff costs by discontinuing their classification as public-service employees.
II. Other restructuring measures	
Implemented	<p>Structural changes and privatisations:</p> <ol style="list-style-type: none"> 1) Regionalisation: As from 1 January 1996, the running and funding of DB AG's rail-bound short-distance passenger transport activities were put on a regional (<i>Länder</i>) level in order to make such services more cost-effective and appropriate to the needs of customers and, thus, more attractive to them. As partial compensation for their financial involvement, the <i>Länder</i> will receive annual grants out of the mineral oil tax revenue of the Federal Republic. 2) Railtrack investment: Any investment into the rail network of the railways owned by the Federal Republic is done on the basis of the 1992 Federal Traffic Infrastructure Plan. The Railtrack Development Act, 1993 contains a requirement for the submission of an investment plan for the triennium 1995-1997 and for five-year periods thereafter. The annual volumes of investments have been specified in the Federal Republic's medium-term budget plan as well as in its annual budget provisions: DEM 10 billion for 1995 and a yearly amount of DEM 7.2 million thereafter. It should be noted that under the 1992 Federal Traffic Infrastructure Plan, the rail track investment volume for the years from 1991 to 2012 amounts to DEM 213.6 billion. <p>Various measures aimed at reducing waiting times at border crossings are being continued: on a bilateral level, negotiations are well underway with Poland and the Czech Republic regarding cross-border rail traffic; on a multilateral level, there is follow-up work on the COTIF project FACILRAIL and work on the European Union's "goods freeways".</p>
III. Other significant developments	
Broader changes currently occurring	Changes in the taxation of rail services. Changes in regulations relevant to international rail services: Directives 95/18/EC, 95/19/EC, and 96/48/EC (the latter being concerned with the interoperability of the trans-European high-speed rail system) are currently in the process of implementation on a national level.

GERMANY (*continued*)

Relations between Eastern and Western Europe	Specific Issues of contention: The Eastern border of the Federal Republic of Germany is an external border of the European Union. As a result, some obstacles to rail transport which have been eliminated within the European Union still prevail along that border. Moreover, competition from road hauliers is particularly fierce. Other obstacles include the lack of harmonisation between the traffic law systems as embodied in COTIF, SMGS and SMPS and a number of incompatibilities on the technical level.
	Investments: Work to interlink the rail networks of the former Deutsche Bundesbahn and the former Deutsche Reichsbahn is being pushed ahead with top priority in the framework of the “Traffic Infrastructure Projects German Unity”. Simultaneously, even greater efforts are being made towards developing cross-border rail connections between West and East.

GREECE

I. Implementation of Resolutions	
Legal independence and separation of infrastructure management from operations	CH is a state company which operates under a regime of independence for management, administration and internal financial and accounting control. Budget and accounts are maintained separately from the state. Separate accounts are kept for operations and infrastructure management. There is no separation at institutional level.
Market access for new operators	Directive 91/440/EEC applies.
Fees for use of infrastructure	Under study.
Establishment of international groupings	International groupings may operate in Greece under the conditions of Directive 91/440/EEC.
Rights of access to promote combined transport	Rights of access are granted to promote combined transport under the conditions of Directive 91/440/EEC.
Improvement of the finances of railway undertakings	The State will cover all existing railway debts accumulated to 31 December 1997.

HUNGARY

I. Implementation of Resolutions	
Legal independence	Hungarian State Railways is a joint-stock company (MAV Rt.) in 100% state ownership. The shareholder's rights are exercised by the Minister of Transport. The legal framework governing the operation of MAV Rt. comprises: the Railways Act; the Concession Act; and a Contract concluded between the Hungarian State and MAV Rt. on 1st February, 1995 (the State-MAV contract).
Separation of infrastructure management from operations	The legal basis is the joint decree of the Ministers of Transport and Finance on separation of the infrastructure from operations. This defined criteria for separating assets, receipts, costs and expenses and established rules for accounting. The two functions are currently run by the same company: within MAV there is an infrastructure unit and an enterprise unit, with separate accounts.
Market access for new operators	Enabling legislation has been passed in the form of the Railways Act. Access is provided for on the basis of reciprocity against a "proper" and non-discriminatory charge for the use of infrastructure. The practicalities have not yet been fully clarified.
Fees for use of infrastructure	The State-MAV Contract regulates the fees to be paid by the enterprise unit to the infrastructure unit of MAV for the use of infrastructure, which pursuant to current principles are to cover costs related to the operation, maintenance and refurbishment of the infrastructure. In principle, the fees being elaborated are to be proportionate to use.
Establishment of international groupings	None as yet.
Rights of access to promote combined transport	The former monopolistic situation has been eliminated and there is open access for combined transport. All carriers are entitled to organise a train under preferential tariffs.
Improvement of the finances of railway undertakings	By two steps in 1994 and 1995, the Government released MAV Rt. from the obligation of repaying its short-term operational debts from previous years and paid MAV Rt.'s debts to the social insurance fund. In principle, the scheme laid down in the State-MAV Contract in regard to public service obligations excludes any need for MAV to raise short-term credits for such purposes, provided the costs of railway services have been properly determined.
II. Other restructuring measures	
Implemented	Assignment of non-core activities (e.g. vehicle repair, construction, etc.) to independent enterprises; privatisation of certain enterprises owned by MAV Rt.; organisation of regional profit centres, separate from the primary network, along railway lines with poor traffic; establishment of regional offices to market passenger and freight transport; elimination of the management level of regional directorates; introduction of a double-stage management system for the infrastructure unit of MAV; staff reductions; a 3-year agreement with the trade unions based on the 3-year State-MAV Contract.

HUNGARY (*continued*)

Results and expectations	Extension of the 3-year State-MAV Contract for a term of 5 years and the elaboration of a 5-year business plan and a development and rehabilitation programme.
III. Other significant developments	
Broader changes currently occurring	Assignment of further non-core activities, such as IT and R&D to independent enterprises the preparation of double-stage management for the enterprise unit of MAV, with regional directorates to take over a wider range of functions.
Relations between Eastern and Western Europe	Investment projects: reconstruction of the Budapest-Hegyeshalom (Vienna) line allowing a max. speed of 160 km/h, including the installation of the ETCS system to enable high-speed border crossing (European reference project); the establishment of a new railway connection between Hungary and Slovenia; the electrification of further international connections (between Hungary and Croatia, and Hungary and the Slovak Republic); the rehabilitation of international main lines to eliminate speed limits.

IRELAND

I. Implementation of Resolutions	
Legal independence	The legal independence of Irish Rail, the company responsible for the operation of rail services in Ireland, predates Directive 91/440/EEC. Irish Rail is a subsidiary company of Coras Iompair Eireann (CIE) which is a statutory corporation established under the 1950 Transport Act. Irish Rail is established under the provisions of the 1986 Transport (Re-Organisation of CIE) Act.
Separation of infrastructure management from operations	In accordance with Directive 91/440/EEC separate accounts of the business of transport services and the business of managing railway infrastructure are kept by Irish Rail.
Market access for new operators	Directive 91/440/EEC was transposed into Irish law by Statutory Instrument No 204 of 1996. The legislation allows for suitably qualified operators to exercise the right of access to the Irish railway network for international services and international combined transport operations. There has been no demand for access to the railway consequent to that legislation. Ireland is in the process of transposing Directive 95/18/EC on the licensing of railway undertakings and Directive 95/19/EC on the allocation of infrastructure capacity and charging of infrastructure fees.
Establishment of international groupings	Irish Rail and Northern Ireland Railways jointly operate rail services between the two jurisdictions on the island of Ireland on the Dublin to Belfast line. A major upgrading of rail services on this line was completed in 1997.
Rights of access to promote combined transport	The access requirements of Directive 91/440/EEC were transposed by Statutory Instrument No 204 of 1996.
Improvement of the finances of railway undertakings	The uneconomic nature of rail services in Ireland is not expected to change but there was some improvement in the financial situation of Irish Rail in 1997.
General comments	It is expected that because of Ireland's geographical location, isolation from the European rail network, differences in the rail gauge and the uneconomic nature of rail services in the State, the impact of Directives 91/440/EEC, 95/18/EC and 95/19/EC will be very limited.
Other significant developments	Irish Rail is engaged in a capital intensive programme of rolling stock replacement and track and infrastructure renewal. It is planned that the existing Exchequer subsidy payment to Irish Rail will be replaced by a number of public service transport contracts with the company. Among other things, the contracts will clearly specify the quantity and quality of services to be provided and what the State will pay in return.

ITALY

I. Implementation of Resolutions	
Legal independence	<p>The legal and managerial independence of FS SpA, set up as a state-owned joint-stock company, was established under the terms of its franchise contract and the articles of association incorporating the company. A former government corporation, FS was first transformed into a government agency (1985), and was then given greater independence when it was incorporated as a state-owned company (1992). Although the State (Treasury) is the only share-holder and appoints the members of the Board, independence is a principle that is very much in evidence in the company's articles of incorporation.</p> <p>FS SpA's activities are governed by a corporate plan and a Planning Contract. A public service contract with the State governs the provision of public transport services. The 1997 Finance Act provides for the devolution of responsibility for local transport (mostly passenger services) to the Regions. Service contracts will be drawn up for each region.</p> <p>The company is free to set fares (Article 13 of the franchise contract) but must have the approval of the Minister of Transport who, in the public interest, can require the company to provide certain services at prices set in accordance with government criteria, for which the company receives compensation.</p>
Separation of infrastructure management from operations	<p>Separate accounting and substantive separation of infrastructure (ASA Rete) and operations have been effected. There is no institutional separation as yet, although a decision by the Interministerial Committee for Economic Planning (CIPE) does make provision for it.</p>
Market access for new operators	<p>Up to now rail transport has been a monopoly, regulated by the franchise contract. Formal approval of Council Directives 95/18/EC and 95/19/EC under which the bodies responsible for franchise and safety certification will be set up, is pending. A draft decree, approved by the Minister of Transport, sets out the basic (interim) principles for access to the FS network by operators of other countries, in accordance with Article 10 of Directive 91/440/EEC.</p> <p>There are no new operators as yet. However, in addition to FS SpA, which operates the national passenger and freight transport network under franchise, there are regional rail companies which also provide services under franchise contracts. These companies will initially be managed by FS SpA, but will be transferred to the Regions in line with the "Public finance rationalisation measures" Bill.</p>
Fees for use of infrastructure	<p>Studies on fee calculation have been conducted in line with the principles outlined in Directives 91/440/EEC and 95/19/EC. These studies provide for fares by line and type of traffic. No provisions have been made at ministerial level for their implementation. The current costs structure comprises mainly fixed elements. Fees are intended to cover the difference between actual costs and Government infrastructure subsidies.</p> <p>There is no competition for slots at present. At least not until Directives 95/18/EC and 95/19/EC enter into force. In addition, FS SpA is in the process of gradually introducing an element of competition between its passenger and freight businesses.</p>

ITALY (continued)

<p>Establishment of international groupings</p>	<p>As yet, FS SpA has no international agreements as outlined in Directive 91/440/EEC. However, two separate European Economic Interest Groupings (EEIG) have been set up to develop high-quality daytime and night train services between Italy and France.</p> <p>In 1993, Cisalpino was set up in conjunction with Swiss railways (SBB and BLS) to run daytime services between Milan and Switzerland. The company was incorporated in Switzerland and therefore does not really constitute an international undertaking as defined in Directive 91/440/EEC, but may be the forerunner to such an undertaking. It operates rail services under a sub-franchise contract authorised under clause 5 of the franchise contract between the Ministry of Transport and FS. Again in the passenger sector, FS has concluded commercial agreements with OBB for night train services via Tarvisio and with SNCF-RENFE EEIG for the Milan-Barcelona-Paris line (Salvador Dali train).</p> <p>In the freight sector, joint ventures have been set up with: Swedish railways (SJ) for services to Switzerland (SVE - RAIL ITALIA); Polish railways, for services to Poland and Eastern Europe (POLRAIL); and with Hungarian Railways, for services to Hungary and Eastern Europe (EASTRAIL).</p>
<p>Rights of access to promote combined transport</p>	<p>As Directive 95/19/EC has not yet been implemented, it has not been possible to introduce provisions aimed at promoting combined transport by means of access rights. A number of initiatives in this area have been proposed by members of the CER, but are still at draft stage. In the longer term, providing that clear, unambiguous and consistent decisions are taken, combined transport could be promoted on selected routes, possibly on <i>freeways</i> which would facilitate access for combined transport from a commercial or organisational standpoint.</p>
<p>Improvement of the finances of railway undertakings</p>	<p>Following the implementation of Directive 91/440/EEC a special fund was set up to service debts. All loans taken out by FS SpA to finance investments in the period prior to its incorporation as a joint-stock company were transferred to this fund and the State has assumed responsibility for both capital and interest payments. Law No. 662 of 23 December 1996 (1997 Finance Act) stipulates that loans and debts entered into by FS SpA prior to its incorporation are, for all practical purposes, to be deemed Government debts, including any debts and loans entered into prior to or after the entry into force of this law.</p>
<p>II. Other restructuring measures</p>	
<p>Implemented</p>	<p>In addition to the CIPE decision on the institutional separation of infrastructure from operations a further decision by the same body requires FS SpA to submit a privatisation plan for its transport services. As stated previously, there are also plans to transfer responsibilities for local transport services to the Regions. Taken as a whole, these initiatives point to a move towards the reduction of direct Government intervention in the medium term: infrastructure will remain in the public sector, local transport services will be managed at regional level (not necessarily by the public sector), long-haul freight and passenger transport services will be privatised.</p>

ITALY (continued)

	<p>A major shake-up is in progress; there are plans to invest in new technologies (Traffic Control Centres for each corridor, Integrated Infrastructure Diagnostic systems, etc.)</p> <p>Delays for customs, phyto-sanitary and police checks at border crossing points are very short except at Villa Opicina and Gorizia. However, the peace process in the countries of the former Yugoslavia has produced remarkable improvements even at these checkpoints. Customs and police checks on passenger trains at these crossing points now take only 15-30 minutes (10-15 minutes elsewhere). Italy believes that future measures to reduce waiting times should focus on either the introduction of locomotives that are capable of operating on railways with different power supplies (e.g. multi-system locomotives), or on full implementation of already existing agreements on on-board customs and police checks between Italy and all of its neighbouring countries, with the exception of Slovenia. In fact, according to the ministries concerned (the Interior and Finance Ministries), only some such checks are now carried out due to a shortage of staff and inadequate computer facilities.</p> <p>With respect to contacts and bilateral agreements at Government level, Slovenia and Italy signed a Convention regulating rail services via the Villa Opicina and Central Gorizia crossing points, in June 1995.</p> <p>Over the last few years, delays at borders have been further reduced as wagon technical inspections are now carried out away from border crossings.</p> <p>Lastly, in implementation of Directive 91/440/EEC, FS SpA is taking part in "Freight freeway" pilot projects that are designed to identify measures to reduce delays at border crossing points.</p>
III. Other significant developments	
Broader changes currently occurring	There are no changes in the taxation of rail services.
Relations between Eastern and Western Europe	<p>The construction of the Venice-Ljubljana-Budapest-Kiev corridor, as defined at the Pan-European Conference in Crete in 1994 is extremely important in FS SpA's view.</p> <p>Early in the same year, Italy signed a co-operation agreement with Ukrainian Rail to fund a preliminary study on the Ukrainian section of the corridor, which will be conducted by Italferr.Sis-TAV.</p> <p>A co-operation agreement with Croatian railways on the introduction of swap-body trains on the Croatian network and a feasibility study on the new Rijeka-Trieste high-speed line has also been drawn up.</p> <p>Links have also been established with Slovenian railways to set up three study groups; two of the groups will work on improving passenger and freight transport, the third on the project to link the Slovenian network with the Lyon-Turin-Milan-Venice high-speed corridor, one of the 14 priority projects identified at the Essen Summit.</p>

LATVIA

I. Implementation of Resolutions	
Legal independence	The Latvian Railway was transformed into a state-owned joint stock company in 1993. Government's direct role has been reduced since then.
Separation of infrastructure management from operations	In accordance with the Latvia Railway restructuring plan, infrastructure should be separated from operations in terms of accounting from 1st January 1977. A complete separation of infrastructure has been planned for 1998.
Market access for new operators	<p>"Latvian Express" (private) competes directly with "Latvian Rail" (public) for passenger traffic, to a limited degree.</p> <p>Some privatisation of spurs has been carried out.</p>
Fees for use of infrastructure	Latvian Express pays for the use of infrastructure.
Establishment of international groupings	With the assistance of international groupings, a project for the restructuring of the Latvian Railway is underway, in accordance with the requirements of Directive 91/440/EEC. Development of the main corridors is also being studied. Working groups are being set up, under the guidance of the UEEIV, to carry out a feasibility study on the first transport corridor.
Rights of access to promote combined transport	There have not been any requests regarding special rights to operate combined transport yet.
Improvement of the finances of railway undertakings	There seems to be a general improvement in the railways' financial situation.
General comments	<p>Restructuring and rationalisation of the Latvian Railway were started in 1996. The privatisation of railway enterprises which are not directly linked with operations is underway. A gradual reduction in staff numbers has been started.</p> <p>A plan has been made to renew passenger rolling stock over the next 10 years.</p> <p>Passenger traffic is subsidised by freight traffic. There is a lack of state funds for new investment in infrastructure and the maintenance of rolling stock. No contract yet with government on bilateral responsibilities concerning railways.</p>
II. Other restructuring measures	
Implemented	A Railway Law is being prepared regarding the restructuring of the rail enterprises. Railway enterprises which are not directly concerned with rail operations will be privatised.
Results and expectations	Too early to see any results though there seems to be a general improvement in the railways' financial situation. Expectations are: an increase in Latvian Railways competitiveness, improvement in passenger comfort, financial stability, greater independence from the state and a move towards EU standards.

LATVIA (continued)

III. Other significant developments	
Broader changes currently occurring	Restructuring of the railway system and a move towards EU standards. Modernisation of rolling stock. Improvement of passenger comfort. Improvement of the environment. Privatisation.
Relations between Eastern and Western Europe	No changes.

LITHUANIA

I. Implementation of Resolutions	
Legal independence	<p>The Railway Code, article 4, provides for the independence of the Lithuanian Railways Joint Stock Company. Its activities are regulated by the Law on Joint Stock Companies.</p> <p>Beginning 1998, a public service obligations agreement between the State and the railway company will come into force (Railway Code, article 7). The Government has authorised the Ministry of Transport to sign this agreement on behalf of the State.</p> <p>Passenger transport tariffs (ticket prices) are defined by the Lithuanian Railways and co-ordinated with the government (Law on the Fundamentals of Transport Activities). Freight carriage tariffs are defined by the company itself, according to the market. Article 51 provides that the government can define freight tariffs in the case of <i>force majeure</i>.</p>
Separation of infrastructure management from operations	<p>Restructuring of Lithuanian Railways has been underway since 1996. Infrastructure is managed by a separate organisational unit. Separate internal financial accounting for infrastructure is to be implemented in 1998.</p>
Market access for new operators	<p>Access to infrastructure for other undertakings is provided for in article 22 of the Railway Code. Their relationship is to be regulated by their mutual agreement.</p> <p>According to the Regulations adopted by the government in 1996, licences for the transportation of passengers or freight can be acquired by any undertaking which meets the requirements defined in the Railway Code (staff, rolling stock ownership, etc.).</p> <p>One new private operator, UNIGELA, has so far obtained a licence for the carriage of freight.</p>
Fees for use of infrastructure	<p>Fees for the use of infrastructure will be defined in 1998. According to the Draft Law on Transport Activities, these fees are to be paid to the infrastructure manager. Fees will be the same for all users. Some advantages could be granted to operators catering for public service obligations (Railway Code, article 7).</p> <p>A study to define infrastructure fees has been prepared.</p>
Establishment of international groupings	<p>No restrictions to this in the Railway Code, with one exception: groupings of Lithuanian undertakings with post soviet institutions are prohibited by legislation of the Lithuanian Republic.</p>
Rights of access to promote combined transport	<p>There are no special provisions in the Railway Code, but some additions to the code are to be presented in 1998. The Draft Law on Transport Activities, before Parliament for approval, contains provisions on combined transport.</p> <p>A project on combined transport between Mukran - Klaipėda - Minsk - Moscow is to be implemented in 1998 with the participation of Germany, Lithuania, Belarus and Russia.</p>

LITHUANIA (continued)

Improvement of the finances of railway undertakings	<p>The financial situation of the railways is not good because the losses caused by passenger transport (USD 25 million per year) are covered by the revenue from freight transport. The railway's financial means for development are therefore limited.</p> <p>An Agreement between the state and the railways provides that the state cover losses from passenger transport. State coverage of losses in passenger transport, however, is insufficient (only about 20%).</p>
General comments	Some transit passenger trains from the Russian Federation cross Lithuanian territory without controls.
II. Other restructuring measures	
Implemented & Results and expectations	<p>Restructuring of Lithuanian Railways begun in 1996. Infrastructure, rolling stock, passenger and freight carriage are being established as separate units. There will be separate accounts for infrastructure from 1998. Loss-making lines are being reviewed, the number of stations is being reduced and train composition is being concentrated in four main shunting yards.</p> <p>A loan from the EIB has been obtained for the rehabilitation of track, the modernisation of signalling and telecommunications and the refurbishment of locomotives.</p> <p>The rehabilitation of 115 km of track is being carried out with a loan from EBRD. Development of the main border stations (Kena and Kybartai) has begun. Some border formalities are now carried out at shunting yards (Vaidotai, Bugeniai, Draugyste and Radviliškis), 30 to 50 km from the border. This will help reduce delays at border stations. A system of checking trains <i>en route</i> is being implemented to reduce stops at border stations to only 5-10 minutes.</p>
III. Other significant developments	
Broader changes currently occurring	On 4th June 1996, Lithuania adopted the Railway Transport Code, the provisions of which are in line with EC Directive 91/440/EEC. Lithuania has been a member of OTIF since 1st November 1995. Since 1998 Lithuania is a member of the European Freight Wagon Fleet (RIV) and in the second half of 1998 Lithuania will join the Trans-European Railway Organisation (TER).
Relations between Eastern and Western Europe	Lithuanian Railways takes part in the activities of Western European railways (OTIF, UIC) and Eastern European railways (OSShD). Lithuanian Railways together with other Baltic states (Latvia and Estonia) and CIS countries operate a common pool of freight wagons.

LUXEMBOURG

I. Implementation of Resolutions	
Legal independence	New statutes for the National Rail Company of Luxembourg (CFL) were approved by a law of 28th March 1997. The status of an independent state company was retained whilst increasing its capital and reducing the administrative burden related to state supervision and management. The company's capital continues to be held by three participants: the states of Luxembourg, Belgium and France. Company accounts are to be maintained according to commercial practice.
Separation of infrastructure management from operations	The separation of infrastructure and operations is provided for by a law of 10th May 1995. The state oversees maintenance and modernisation of the rail network together with international interconnections. Thus the state determines the construction of new lines and the extension or closure of existing lines. Management of the network is entrusted to CFL under contract to the State. The accounts of CFL for the management of the network are clearly separated from accounts for other activities.
Market access for new operators	The law of 10th May 1995 on the management of rail infrastructure stipulates that rail enterprises, established inside or outside Luxembourg, should have access to the network within the limits and conditions set out by EU law. The law of 28th March established such rights on the basis of reciprocity. Legal procedures for the transposition of Directives 95/18/EC and 95/19/EC are underway.
Fees for use of infrastructure	The principle of establishing fees for the use of infrastructure is provided for in the law of 10th May 1995. It will be elaborated in the transposition of Directives 95/18/EC and 95/19/EC.
Establishment of international groupings	The establishment of international rail enterprise groupings and recognition of rights of access to infrastructure and transit for them to provide international rail and combined transport services is provided for in principle by the law of 10th May 1995. Rights of access and transit will be specified in the transposition of Directives 95/18/EC and 95/19/EC.
Improvement of the finances of railway undertakings	Under the law of 28th March 1997, the State will take over the principal and interest of CFL debt as it stood on 31st December 1996. The State has also participated in an increase of the company's capital.
II. Other restructuring measures	
	Under a regulation of 29th July 1993 concerning the application of EU regulation 69/1191/EEC on the actions of Member states related to public service obligations in rail, road and inland waterways transport, the State has concluded contracts with CFL for the provision of public rail and road services. These contracts include clauses on the restructuring of the organisation of CFL and improvement of productivity and efficiency related to the services offered. In 1998, the locomotive fleet of CFL will be modernised by the acquisition of 20 bi-current electric locomotives.

LUXEMBOURG *(continued)*

III. Other significant developments	
	CFL is a partner in a project for a new mass transport system in Luxembourg, the regional tram project.

MOLDOVA

I. Implementation of Resolutions	
Legal independence	<p>Moldova has taken ECMT Resolutions 95/3 and 93/6 into consideration in managing its rail sector.</p> <p>Mainline rail transport in Moldova is provided by the State undertaking Moldovan State Railways which reports to the Ministry of Transport and Roads. It is administered in accordance with state laws on State Enterprises and on Entrepreneurship and Enterprises, together with other government and departmental legislation, orders of the Ministry of Transport and Roads and the rail undertaking's statute.</p> <p>Moldovan Railways is a legal entity with legal, financial, managerial and organisational independence. It has an independent (consolidated) balance sheet and exclusive competence for administering (rail) transport organisations, entities and institutions.</p> <p>Interstate (CIS and Baltic countries) and international rail freight tariffs are set in accordance with the Moldovan Railways tariff policy, which is drawn up in conjunction with the rail carriers of the CIS and approved annually by the Moldovan Ministry of Transport and Roads in agreement with the Ministry of the Economy.</p> <p>Domestic freight rates are approved by the Ministry of Transport and Roads; passenger fares (including those for suburban trains) are approved by the Ministry of the Economy in agreement with the Ministry of Transport and Roads.</p> <p>A single tariff is charged for interstate passenger transport and on all the CIS railways. For international passenger transport an 'East-West tariff' is used; there are also contractually-agreed tariffs with the railways of a number of countries (Romania, Bulgaria, Turkey) where the trains and wagons of Moldovan Railways operate.</p>
Separation of infrastructure management from operations.	The management and infrastructure of Moldovan Railways are not separated; nor is accounting.
Fees for use of infrastructure	There are no plans at present to charge fees for the use of infrastructure.
Rights of access to promote combined transport	From 1997, Moldovan Railways plans to start to introduce combined transport within the framework of the OSJD agreement on the organisational and operational aspects of combined transport on Europe-Asia routes. It plans to use the Ungeny-Oknitsa-Volchinets, Ungeny-Chisinau-Bendery-Kuchurgan railway lines.
Improvement of the finances of railway undertakings	Given the lack of financial resources for maintaining and upgrading the rail network to the necessary standard, in 1996 the Ministry of Transport and Roads with the participation of the Railways Directorate drew up and submitted to the government for consideration and approval, a programme of state support for rail transport in coming years, with a view to financing its most pressing needs for capital investment and repairs of rolling stock and track, the continuation of electrification of sections of the rail network and the acquisition of new rolling stock and other equipment.

MOLDOVA (continued)

II. Other restructuring measures	
	<p>In view of changes in the financing of the country's economy, the Ministry and Railways Directorate are currently considering the introduction of new railways management during the period of transition to a market economy. A Transport Act and a Rail Transport Code which would make rail transport independent of the state are being drawn up.</p> <p>No current plans to privatise the railways. However, to make the railways more efficient at a time of increased competition from other transport modes, various schemes for restructuring them are being drawn up within the framework of the law on "Restructuring Enterprises" adopted this year, including the separation of operations from infrastructure and the creation of a state holding company from the rail undertakings in Moldova.</p> <p>The railways management has been given until the end of the year to bring the number of workers engaged in the railway's main activity into line with the volume of traffic carried, including a 30% reduction of staff in the Railways Directorate.</p> <p>The Ministry of Finance and the railways are currently reducing the debit and credit of the railways by offsetting one against the other.</p>
III. Other significant developments	
Broader changes currently occurring	<p>With the transfer of rail transport to the jurisdiction of the Republic of Moldova in 1992, in 1993 the government passed a decree on the Rail Transport Programme and Development Plan for the Republic to the year 2010. It provides for the electrification of the Razdelnaya-Bendery-Chisinau-Ungeny line (238 km), the construction (rehabilitation) of the Revaka-Kainary section of line (45 km), and the upgrading of the stations in Chisinau, Rybnitsa, Ungeny and other towns. Most of the work has already started, however as the railways do not have sufficient funds and the state budget is limited, work has slowed down. Ways of attracting foreign investment to make good the shortfall are therefore being considered.</p> <p>Moreover, the necessity and methods of promoting the development of Moldova's rail system were examined and recommended for implementation by World Bank report No 13891-MD of April 1996 on the Moldovan transport sector, and also by the TNREG9301 project "Rail transport (research) (Russia, Belarus, Ukraine and Moldova)" drawn up under the EC TACIS programme in 1996. Of particular interest to Moldova in these studies is the acknowledgement of Moldova's investment requirements with regard to the maintenance and upgrading, of its rail network in the light of the projected volume of future traffic. Also of vital importance to Moldova are the conclusions regarding the advisability of building corridor No 9 of the Trans-European Network through Moldova in the form of a new railway line (Slobodka/Ukraine)-Voronkovo-Orgeyev-Chisinau-Leovo-Kantemir-(Falcu/Romania), and the confirmation of the need to develop, socially and economically, the areas adjoining it, especially in the northern part of the country.</p>

THE NETHERLANDS

I. Implementation of Resolutions	
Legal independence	<p>In June 1995, the Dutch government and Netherlands Railways (NS) made agreements about the future of the railways, the relationship between the state and NS and action in relation to infrastructure, privatisation and other rail operators. NS has become an independent company.</p> <p>Passenger services have to be independent of state grants within five years. State grants are to be phased by the year 2000.</p> <p>There will be services which are not commercially viable, while it is in the public interest to continue them. In such cases the State will conclude a contract with NS to the effect that these services can continue with financial aid from the State. In 1997 the government spent NLG 80 million for this purpose, while general aid will decrease to zero in the year 2000.</p> <p>From 1996 NS sets fares and timetables itself. The aim is to improve the quality of the services and to attract more passengers.</p> <p>As part of the NS Holding company, NS Cargo is an independent organisation providing freight transport. In 1996 the government gave it one final injection of capital (and received shares in return), so that NS Cargo can restructure its organisation and gain new markets.</p>
Separation of infrastructure management from operations	<p>NS is divided into several business units: NS-Reizigers (passengers) and NS-Cargo (freight). Independent units were created for infrastructure, maintenance of infrastructure, control of capacity and management of stations. The aim is to achieve growth in the number of passengers and the amount of freight and improve rail transport as an essential element of a coherent transport policy. Rail infrastructure in total will be managed by three organisations: NS Railinfrabeheer, Railned and NS Verkeersleiding. NS Railinfrabeheer will maintain infrastructure, build new infrastructure and keep it in good condition, Railned will manage rail capacity and regulate access, NS Verkeersleiding will provide efficient and safe rail traffic management. These organisations will be financed by the government and operate independently from railway companies on the basis of governmental guidelines.</p>
Market access for new operators	<p>NS may be exposed to competition from other rail operators. In August 1996, a small new rail company started a passenger service between Amsterdam and IJmuiden - NS's first competitor. New companies may enter the rail freight market, too, and compete with NS Cargo. The government stimulates this competition by creating facilities for new railway companies. Competition should provide an efficient market for rail freight and make rail transport competitive with road transport.</p>
Fees for use of infrastructure	<p>The rail companies' (freight and passenger) transition to the new market situation will take several years, so until the year 2000 they will be exempt from paying infrastructure fees. After 2000, companies will have to pay fees for the use of rail infrastructure.</p>

THE NETHERLANDS (continued)

II. Other restructuring measures

The European (EC) directives concerning Railways have been implemented.

Facilitation of border crossing in international rail transport: the Dutch government wants to reduce delays during border crossing. In several international fora the government has made agreements and sets standards to improve the border crossing of passenger and freight trains. The Dutch and Polish governments agreed to reduce the border delay on the German-Polish border for freight-trains from the Netherlands into Poland. Trains will be handled as quickly as possible. There are ongoing negotiations about replacing the customs formalities and other controls from the country-border to the rail terminal. Completing customs controls at the terminal make it possible for freight trains to accelerate their average speed.

Development of European conventional and high-speed railway network:

- In 1995, the Dutch government approved the building of the “Betuweroute”, a new dedicated freight rail line from Rotterdam to the German border. This railway will be connected with the German network. The line will be completed in the year 2005.
- Recently the government also approved the building of the High-Speed Railway from Amsterdam to Brussels. This HSL can reduce the total time for a journey from Amsterdam to Paris by 2 hours. It will be completed in the year 2003.
- The Flemish and Dutch governments agreed to start the procedure for a new freight railway from Rotterdam to Antwerp. This will improve the rail capacity for border-crossing freight trains especially for traffic between the port of Rotterdam and the port of Antwerp.
- Finally, the Dutch government is planning a high-speed line from Amsterdam to Cologne, and is studying the possibilities of a high-speed passenger connection from Amsterdam to Berlin.

NORWAY

I. Implementation of Resolutions	
Legal independence	Since 1st December 1996 the operations part of NSB has been established as a state-owned limited company (NSB BA) and the infrastructure transferred to a state body (Jembaneverket). There is an annual agreement between the Government and NSB on public service obligations.
Separation of infrastructure management from operations	Following the restructuring of 1st December 1996, infrastructure management is separate from operations.
Market access for new operators	Directive 91/440/EEC applies. Regulations have been developed.
Fees for use of infrastructure	A rail track fee has existed since 1990. It is cost-based but is adjusted to achieve fair competition between modes. The idea is to equalise the levels of cost coverage amongst modes. Passenger traffic pays no fees for rail infrastructure.
Establishment of international groupings	Regulations have been developed. The transport of iron ore on the Ofoten line was taken over in 1996 by an international grouping (Malmtrafikk AS/Malmtrafikk AB).
Rights of access to promote combined transport	Regulations have been developed. No special rights to operate combined transport have yet been requested.
II. Other restructuring measures	
Implemented	Through the restructuring of 1st December 1996, NSB was established as a limited company with a sound financial basis.
Results and expectations	It is too early to tell the effects but a more efficient and market-oriented railway are expected.
III. Other significant developments	
Broader changes currently occurring	EU/EEA policy is serving as a basis.

POLAND

I. Implementation of Resolutions	
Legal independence	<p>Legal basis: Law on the state enterprise "Polskie Koleje Panstowe" (PKP) of 6 July 1995.</p> <p>Public service obligations are covered by an accord between the Treasury, represented by the Ministers of Finance and of Transport and Maritime Economy, and the Management Board of PKP. The Accord specifies the basis for the financing of PKP from the state Budget, including payments in respect of public service obligations. (article 17 of the Law).</p> <p>According to the Law on Transport of 16 November 1984 amended on 2nd September 1994, the rail operator sets tariffs freely for freight, except where it holds a monopoly. For passenger services, prices are regulated in areas supported by state subsidies.</p>
Separation of infrastructure management from operations	<p>The legal basis for separation of accounts is article 19 of the Law of 6 July 1995. The law provides for accounting separation of, at the least, infrastructure from operations. In their accounts, PKP separate revenues from subsidised passenger services. Track considered of national importance (17 000 of the total 23 000 km of the PKP network) receives direct subsidies and therefore PKP maintains separate accounts for this category of track in regard to:</p> <ul style="list-style-type: none"> - maintenance and administration; and - construction and development costs. <p>Institutional separation of infrastructure management from operations will be established in 1999 in accordance with the Law on Rail Transport of 27th June 1997.</p>
Market access for new operators	<p>Both the Law on PKP 1995 and the Law on Rail Transport of 1997 provide the legal basis for market access for new operators.</p> <p>For the time being there are 6 new operators, 4 sand and 2 industrial railways using lines abandoned by PKP in the Silesia region.</p>
Fees for use of infrastructure	<p>A decree from the Ministers of Finance and Transport adopted on 1st July 1997 establishes principles for the setting of fees for the use of railway infrastructure.</p> <p>The main elements in the calculation of tariffs will be the technical quality of the line, the intensity of use of the line, the type of service and technical characteristics of the train using the line. Other elements are of little significance.</p>
Establishment of international groupings	<p>Article 11 of the Law of 6th July 1995 provides for PKP to enter into co-operative agreements with other rail companies and international organisations.</p> <p>PKP co-operates with international groupings in the area of combined transport, for example with ICF.</p>
Rights of access to promote combined transport	<p>Article 10 of the Law on Rail Transport of 1997 places an obligation on "Railway Management" to grant access to railway operators. In this respect there are no special rights for combined transport.</p>

POLAND (continued)

Improvement of the finances of railway undertakings	<p>PKP has no debt and settles accounts daily. However, as it is not currently profitable, the means for rapid modernisation of the network are not available.</p> <p>To improve future finances PKP is restructuring, rationalising real estate assets and personnel, to arrive at levels appropriate to running efficient transport services.</p>
General comments	<p>The new Law on Rail Transport of 27th June 1997 came into force on 17th November 1997. It introduces the provisions of Directives 91/440/EEC, 95/18/EC and 95/19/EC into Polish law together with procedures for ensuring interoperability according to Directive 96/48/EC.</p>
II. Other restructuring measures	
Implemented	<p>The Government and Parliament are preparing a joint draft law on the restructuring of PKP. The objection is a rapid reduction in real estate assets and excess labour force.</p> <p>Modernisation of infrastructure and rolling stock, especially for international services, is underway.</p> <p>Modernisation of border crossing is underway, financed from the budget and by the PHARE programme.</p>
Results and expectations	<p>A healthy company able to function in a market environment.</p>
III. Other significant developments	
Broader changes currently occurring	<p>The tax regime applied to railway services has been modified: PKP are subject to general tax rules except in the case of land designated for the construction of new lines which is exempt from tax on condition that it is to be used by the railway in perpetuity.</p> <p>There have been no recent changes in regulations related to international services.</p>
Relations between Eastern and Western Europe	<p>Specific problems include overcoming barriers to improved cross-border services.</p> <p>Improvement of line E-20 (Kunowice-Poznan-Warsaw-Terespol) is underway with domestic financing supported by foreign assistance - a line of credit from the European Investment Bank and assistance from the PHARE programme.</p> <p>The Zgorzelec-Wroclaw section of line E-30 is being modernised with EIB co-financing.</p>

PORTUGAL

I. Implementation of Resolutions	
Legal independence	CP is a state-owned company with legal independence.
Separation of infrastructure management from operations	Accounting separation began in 1996 and organisational separation was implemented by Decree No 104/97 which created REFER EP, a public enterprise for the management of rail infrastructure.
Market access for new operators	In 1995, a Decree was published regulating access to domestic railway infrastructure for international rail transport services. This Decree transposes the rights of access provided for in article 10 of Directive 91/440/EEC into national legislation. A public tender has been held for a new N-S link across the Tagus.
Fees for use of infrastructure	The Decree that created REFER EP established principles for the collection of fees for the use of rail infrastructure. These have yet to be determined.
Establishment of international groupings	The 1995 Decree envisages, for international groupings, under certain conditions, rights of access to the domestic railway infrastructure for the operation of international transport services between Member States where the companies that form these groupings are established.
Rights of access to promote combined transport	The same 1995 Decree envisages for companies, under certain conditions, the right of access to the domestic railway infrastructure, in order to operate combined goods transport services in conditions of equity.
II. Other restructuring measures	
Implemented	Creation of new/specialised subsidiaries.
III. Other significant developments	
Broader changes currently occurring	A broad programme of modernisation of the domestic rail network (including rolling stock) is underway with an emphasis on lines that form part of the Trans-European Network. A Decree is in preparation to complete transposition of Directives 95/18/EC and 95/19/EC, already partially implemented by Decree No 252/95 of 23 September 1995 and Decree No 104/97 of 29 April 1997. Preparations are underway for the establishment of a regulatory body for the rail sector.
Relations between Eastern and Western Europe	The Decree of 1995 envisages access by companies established in third countries, under certain conditions.

ROMANIA

I. Implementation of Resolutions	
Legal independence	Romanian National Railways (CFR) is a public utility under the authority of the Ministry of Transport. It is a financially independent commercial operation. Its relationships with other public institutions are governed under the terms of its service contract (Law 129/1996 on Romanian rail transport) agreed between the Ministry of Transport, representing the Government, and CFR.
Separation of infrastructure management from operations	Rail infrastructure (i.e. all those components required to provide a safe public train service in accordance with technical standards and regulations for railways) is the property of the State. CFR is responsible for infrastructure management and development. This function is organised separately within the utility with separate accounts.
Market access for new operators	Under Romanian rail transport law, other legal entities can be authorised to operate local services on the Romanian rail network managed by CFR. Access and infrastructure use in accordance with special railway standards and requirements are authorised, but only with the consent of CFR (Law 129/1996).
Fees for use of infrastructure	Entities transporting goods or passengers using CFR infrastructure capacity must pay a user fee to the infrastructure service managed by CFR. For CFR itself, this fee is determined in its service contract with the state.
Rights of access to promote combined transport	International combined transport groupings are allowed access to the Romanian network in accordance with the law and with international agreements to which Romania is a signatory (Law 129/1996).
General comments	The service contract between CFR and the State stipulates, <i>inter alia</i> , Government responsibilities for the satisfactory operation of public rail transport and covers State budgetary transfers for infrastructure and compensation for CFR for the provision of public service.
II. Other restructuring measures	
Results and expectations	The process of restructuring CFR began in 1994 when separate business sectors were set up (Infrastructure, Traffic, Freight, Passenger Services, Rolling Stock, Property). The main guiding principles of the restructuring process were as follows: all CFR businesses were to be run along commercial lines; profit to be an incentive in all business sectors; separate accounting for each of the CFR's business activities, i.e. its freight, passenger, infrastructure and property services; access rights to the railway infrastructure for all companies whose core business is rail transport; rights to all assets owned by CFR and the right to accumulate personal assets; the assurance of government support for investment in infrastructure and for services with a social element; over the period 1994-1995, CFR managed to reduce spending substantially, by rationalising technical procedures and reducing staff to approximately 38 000 employees, producing substantial productivity gains.

ROMANIA (continued)

	<p>The restructuring process began to produce results in 1995, when the company increased its turnover relative to 1994: freight traffic (in tonne-kilometres), 10.2 per cent up on 1994; passenger traffic (in passenger-kilometres), 3.1 per-cent up on 1994.</p> <p>It is planned to extend to the entire network, rights of access to infrastructure for other rail operators and to organise certain areas of activity (infrastructure, freight, passenger operations) into public limited companies.</p>
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SLOVAKIA

I. Implementation of Resolutions	
Legal independence	<p>ZSR is a state enterprise (following the general form) under the law on ZSR, no. 258/1993. ZSR is a legal entity recorded on the legal business register. Its principal activities are the transport of goods and persons on the national rail network (management and operation of infrastructure, maintenance and the repair of rolling stock, etc.). Its administrative bodies are the Board of Directors and a Director General. ZSR is directly dependant on the state budget.</p> <p>The new law on ZSR S.A., currently under preparation for entry in force 1.1.1999, will be a further step in the transformation of ZSR into a commercial company, reinforcing the commercial independence of the state railways.</p>
Separation of infrastructure management from operations	Under law 258/1993 accounts for infrastructure and operations have been separated. From 1.1.1997 four divisions were created within ZSR: infrastructure; rolling stock; passenger transport; and goods transport. Each division manages its accounts independently. This represents an intermediate degree of separation at a phase when sufficient financial means can not be transferred to rail operations.
Market access for new operators	Law 258/1993 provides rights of access to rail infrastructure and law 1647/1996 determines the conditions for the operation of infrastructure and for operating transport services. Licences for operating infrastructure and for operating services are awarded by Government (an administrative unit for railways) following fulfilment of the conditions laid down by the law.
Fees for use of infrastructure	Fees are calculated on the basis of law 18/1996 on prices. The Minister of Finance sets maximum tariffs for the use of infrastructure by decree. Freight trains are charged more than passenger trains, taking account of the category of line used.
Rights of access to promote combined transport	A contract in support of Ro-La type combined transport has been concluded between the state and ZSR for the period 1998-2000. The state will compensate ZSR for the difference between the costs of infrastructure use and favourable tariffs on offer.
II. Other restructuring measures	
Implemented	<p>In 1995 the government adopted a programme for the reconstruction and development of rail transport to 2000. The following initiatives have been launched under this framework:</p> <ul style="list-style-type: none"> – preparation of the new law on ZSR S.A.; – a programme of long term development of the principal European rail corridors identified by the Crete and Helsinki Paneuropean conferences; – examination of a transformation of regional lines into commercial companies.

SLOVAKIA (*continued*)

III. Other significant developments	
Relations between Eastern and Western Europe	Slovakia benefits from a number of important international rail accords: COTIF and RID. Slovakia is actively participating in work on paneuropean corridors, notably corridors IV, V and VI.

SLOVENIA

I. Implementation of Resolutions	
Legal independence	<p>The legal basis for independent operation exists together with mechanisms for meeting public service requirements. New measures are envisaged for the supervision of prices.</p> <p>The Law on the Method of Conducting and Financing Transport (LMCFT, National Gazette no. 71/1993) that applies to the existing rail network and to ownership transformation of the socially-owned rail company <i>Slovenske železnice</i> d.d. (SZ) defines rail transport services, sets out the conditions for providing services in the public interest, regulates the management of rail infrastructure and sets out the reorganisation and ownership transformation process for SZ. The provisions of LMCFT incorporate the principles of Directives 91/440/EEC, 95/18/EC and 95/19/EC.</p> <p>The LMCFT stipulates that the government conclude annual contracts with SZ or concession contracts with concessionaires.</p> <p>Prices for rail passenger transport are controlled and subsidised. Prices for goods transport are free from controls.</p>
Separation of infrastructure management from operations	<p>The legal basis for accounting separation exists. Institutional separation is still in progress.</p> <p>The LMCFT stipulates that SZ separate accounting for rail infrastructure from transport services and that separate accounts also be maintained for operations subject to public service obligations.</p> <p>The state owns rail infrastructure 100%. Operation, management and administration of this infrastructure is the responsibility of the commercial company SZ d.d.</p>
Market access for new operators	<p>The legal basis, including procedures in the event of a dispute, is in the process of preparation. There have been no cases of new operators entering the market thus far and no requests for access.</p> <p>The LMCFT provides for free access to rail infrastructure for users fulfilling the specific conditions determined by law. Access to rail infrastructure will be authorised by a national body, with procedures still to be finalised.</p>
Fees for use of infrastructure	<p>The legal basis for setting fees for the use of public rail infrastructure is in the process of preparation. A methodology for charging fees for the use of infrastructure has been designed.</p> <p>The LMCFT provides for the charging of fees for the use of rail infrastructure. SZ is exempt from payment of these fees until it completes a rehabilitation programme. A study has been drafted which will serve as a basis for setting the amount of fees for the use of rail infrastructure. According to the study, three methods for calculating fees are possible, using different weighted values to account for fixed, variable and external costs.</p> <p>Fees for the use of public rail infrastructure have not, thus far, been charged.</p>

SLOVENIA (*continued*)

Establishment of international groupings	No international groupings have been established thus far.
Rights of access to promote combined transport	<p>The legal basis for access rights and for promoting combined transport is in the process of preparation. Such rights have only been exercised so far by the Intercontainer association.</p> <p>Issues relating to allocation of rail route capacities and the calculation of fees are addressed in principle by provisions of the LMCFT. In order to implement the provisions of Directive 95/19/EC, the provisions of the LMCFT need to be supplemented with conditions that will regulate the allocation of rail routes to operators of combined transport.</p>
Improvement of the finances of railway undertakings	<p>Railway debts have been restructured and written-off and measures adopted to guarantee that uncovered debts will not be incurred in the future.</p> <p>In mid-1993 the government initiated a rehabilitation programme for the period 1993-1996 with the aim of restructuring the railways into a modern, market-orientated system. Rehabilitation continues in the form of a new programme for further restructuring in the period 1997-2000 to improve efficiency, profitability and transparency and reduce operating costs.</p>
II. Other restructuring measures	
Implemented	<p>Restructuring and privatisation of non-core businesses and other measures for improving productivity.</p> <p>The new programme of further restructuring for SZ will introduce a new organisational structure to be implemented gradually. This will introduce further separation of business units and increase the responsibilities of management and employees for achieving business results within the newly formed units.</p>
III. Other significant developments	
Broader changes currently occurring	Slovenia will continue to implement the provisions of EU Directives regulating rail transport.
Relations between Eastern and Western Europe	Efforts will continue to integrate the Slovene rail system into an integrated European system and to strengthen relations with Austria, Italy, Croatia, Hungary and other countries as well as to adopt international agreements regulating issues in the area of rail transport.

SPAIN

I. Implementation of Resolutions	
Legal independence and separation of infrastructure management from operations	Directive 91/440/EEC has been transposed into Spanish legislation. The railway company RENFE has separated infrastructure and operations into business units within the same company.
Market access for new operators	Access is permitted in conformity with Directive 91/440/EEC but as yet no company operates rail services other than RENFE.
Fees for use of infrastructure	In the first half of 1998, Spain was in the process of transposing Directive 95/19/EC, incorporating it into Spanish law. There are no specific fees as yet.
Establishment of international groupings	International groupings are provided for under the conditions of Directive 91/440/EEC. RENFE and SNCF (France) co-operate on some routes.
Rights of access to promote combined transport	Access rights according to the terms of Directive 91/440/EEC are guaranteed, but RENFE is a partner in all such groupings.
Improvement of the finances of railway undertakings	A multi-year contract between RENFE and the State determines RENFE's annual budget. The 1994-1998 contract has proved extremely positive for improving RENFE's finances.
II. Other restructuring measures	
Implemented	In 1997, the State established a public company for the design, construction and management of a high speed corridor between Barcelona and Madrid.

SWEDEN

I. Implementation of Resolutions	
Legal independence	<p>SJ and other operators are fully independent for business purposes (SJ was already relatively independent of the state before 1988). However, the ownership of SJ remains with the state.</p> <p>Both the state and local transport authorities have the right to purchase passenger transport to fulfil public service requirements. This must be done through tender.</p> <p>The Swedish government does not supervise prices.</p>
Separation of infrastructure management from operations	<p>Since 1988; the responsibility for infrastructure accounting has been held by Banverket, a state agency.</p> <p>Since the Government assumed the responsibility for providing rail infrastructure in 1988, infrastructure management has been totally separate from traffic operations.</p>
Market access for new operators	<p>In accordance with Directive 95/18/EC, licensed traffic operators have the right to gain access to state railway infrastructure. However, SJ has an exclusive position in inter-regional passenger traffic and retains grandfather rights for goods traffic. To access the network, applications are to be forwarded to Banverket. New operators include: MTAB, a new iron ore transport company set up in 1996 (main owner: iron ore company LKAB; joint owners: SJ and NSB); two small companies operating a few railcars on two regional services; eight small freight operators, mainly with feeder traffic for SJ, have been operating for a few years.</p>
Fees for use of infrastructure	<p>Track-user fees were introduced in 1988 and based on variable + fixed fees. Freight transport using combined transport pays no fixed infrastructure user fees in order to promote this type of transport. All fees are decided by the Government. The variable fees cover the marginal costs of operating the trains including not only the wear and tear on rails and catenary but also external costs like accidents and emissions. They are divided into track-, accident-, catenary-, diesel-, and marshalling charges. The fixed fees are calculated as annual fees per axle in different weight classes for various types of wagons and per pulling axle for locomotives. State income from the charges was about 30% of the total infrastructure maintenance costs. The weight of fixed versus marginal elements in the calculation of fees is 35/65. There is no competition for infrastructure capacity slots.</p>
Establishment of international groupings	<p>International groupings and combined traffic enterprises have access to the state railway infrastructure in accordance with Directive 91/440/EEC. An example of an international grouping, in operation since July 1996, is MTAB, an independent rail freight company dominated by the mining company LKAB, which runs the important iron ore traffic in northern Sweden between the mine fields in Kiruna and the harbour of Narvik, both in Norway, and Luleå in Sweden.</p>

SWEDEN (continued)

	Existing forms of co-operation with other railways are: the Hansa Rail GmbH, a sales and marketing company for rail freight transport between Sweden and Germany, and SveRailItalia AB, a similar company for traffic between Sweden and Italy.
Rights of access to promote combined transport	The same rights apply to combined transport as to other freight business, which means open access on the same conditions as for other freight transport. No special rights to operate combined transport according to the Directive 91/440/EEC have yet been requested but are developed within SJ with a subsidiary owned by SJ.
Improvement of the finances of railway undertakings	Restructuring and write-offs of existing debts. SJ debts for infrastructure and for some obsolete assets for the operation were assumed by the state in 1988 in order to give SJ a fresh start. The operators no longer have any financial responsibility for state-owned infrastructure. They pay fees in the same way as on the road side (see above). There are neither public service obligations nor other traffic obligations. SJ has restrictions on the level of its debts and is allowed to sell assets and subsidiaries within set limits.
II. Other restructuring measures	
Implemented	<p>Rules governing organisational procedures within SJ were liberalised. Substantial staff cuts and cuts in rolling stock (mainly wagons and shunting engines) were made. For the moment there are no discussions concerning the eventual privatisation of SJ.</p> <p>The use of incentive clauses in the track access agreements has been used in order to increase the productivity and efficiency of traffic operations and infrastructure management.</p> <p>Measures aimed at reducing border delays include: 1) General: a new fixed link between Sweden and Denmark to be in place by the year 2000; 2) For passenger traffic: a bilateral agreement with NSB (in force) enabling through-operation of trains without exchange of train crew or traction unit; through-running of diesel units over the ferry crossing to Denmark being introduced June 96, will marginally reduce the operational delay; 3) For freight traffic: border crossing formalities have been moved inland; full-scale electronic handling of freight documentation has been introduced between SJ and NSB; a bilateral agreement is in force concerning mutual acceptance of the classification of dangerous goods (RID); technical inspection of rolling stock before acceptance by the other railway has been cancelled; formation of inter-nation trains rationalised through concentration to Malmö; advance information on train formation given and received between SJ, DSB and DB.</p>
Results and expectations	Banverket has increased its investment volume tenfold since the split in 1988. Tracks are enhanced for both high-speed tilting trains and for freight traffic (the latter is very important in Sweden). SJ has, improved its efficiency and is now by far the most efficient European railway undertaking measured in traffic units par staff. SJ's manpower in 1995 was half what it was in 1988.

SWEDEN (continued)

III. Other significant developments	
Broader changes currently occurring	<p>In 1991, 25% VAT was introduced on rail passenger transport. In 1993, this figure was lowered to 12% which is the current rate.</p> <p>Sweden has implemented Directives 91/440/EEC and 95/18/EC. The network to freight traffic is open to all, i.e. not only to international groupings and combined traffic undertakings.</p> <p>In 1998, there will be a new transport policy in Sweden, the contents of which are not yet ready. Focus will be on the environment and safety.</p> <p>The competitive situation in Sweden concerning rail freight has to a considerable extent been changed by allowing higher axle loads and longer permissible length for lorries in Sweden. In addition, tax on diesel vehicles has been reduced.</p>
Relations between Eastern and Western Europe	<p>The Nordic countries are currently working on the Nordic Triangle Project, for which Banverket now receives funds for feasibility studies for the enhancement of the railway network. The Nordic Triangle project also has its implications for railway traffic with Russia, from Helsinki to St. Petersburg. Banverket is monitoring the development in the Barents region for possible traffic exchange with Northern Russia.</p>

SWITZERLAND

I. Implementation of Resolutions	
Legal independence	<p>ECMT Resolutions 93/6 and 95/3 will be implemented in Switzerland under restructuring plans which aim at putting Swiss railways on a new footing. The current structure and legal basis no longer meet the requirements of a modern railway system. The main objective of restructuring is to make the railways more competitive, thus improving the cost/benefit ratio for the public authorities. Restructuring will pave the way for the separation of policy and management functions, greater operational freedom and the introduction of an element of competition into the railway system. It will also help resolve the issue of debt relief for the Swiss Federal Railways (CFF).</p> <p>From an organisational and legal standpoint, CFF in its current form (as an unincorporated body) is no longer capable of meeting today's requirements. Its legal status will therefore be changed in order to give it greater managerial freedom.</p> <p>Various types of legal status, from that of private limited company to co-operative, were examined and CFF will be transformed into a state-owned joint stock company.</p> <p>The restructuring of the railways will ensure a clearer division of responsibilities between the Federal Government and CFF. Federal Government intervention will be confined to setting policy and financial objectives. Although the Federal Government will continue to be responsible for investment, CFF will have sole operational responsibility. In order to achieve these objectives, the Federal Council and CFF are to set jointly-agreed corporate targets every four years. These targets will be set out in a Service Agreement that is to be submitted for approval to both Chambers of Parliament. Parliament is to set a spending ceiling for CFF (excluding regional transport) for the same period, in line with the targets set in the Agreement. The Service Agreement and the spending ceiling will establish the framework within which the company is to operate. The company will be solely responsible for implementing the Agreement. If it fails to meet targets, it will be subject to penalties (withdrawal of automatic cover for operating deficits).</p>
Separation of infrastructure management from operations	<p>For railway undertakings, the restructuring programme provides for separate accounting and sometimes total separation of infrastructure and operations, which were previously integrated. This will end cross-subsidisation and ensure the necessary transparency. Only separate accounting is planned for small and medium FSPs and narrow-gauge railways. The larger FSPs will be required to introduce separate accounting in the same way as the restructured CFF.</p>
Market access for new operators	<p>Under the present structure State and private railways are largely the only providers of passenger and freight services on their own infrastructure. In order to provide access to the network, restructuring will be required. Rail operators which can use the same network will to some extent be competing with each other. The Swiss rail network is already being used by "third parties" for long-distance international passenger transport and freight transport (e.g. DACH</p>

SWITZERLAND (continued)

	<p>Hotelzug operates a “City NightLine” service; a European Economic Interest Grouping (EEIG) operates TGV services to France; Cisalpino SA runs a tilt-train passenger service to Italy). Access rights for service such as these are governed by bilateral contracts with infrastructure operators, generally on a co-operative basis.</p> <p>In the context of railway restructuring Switzerland will extend non-discriminatory access to its network in line with likely future developments in EU law (i.e. to all freight traffic, some passenger transport services). However, access will only be granted to foreign companies with which reciprocal arrangements exist.</p> <p>Clear, workable rules must be established if access to the network is to increase competition between the railways. This will mean regulating access limits as well as access rights. In Switzerland, regional and long-distance and regional passenger services are the backbone of the country’s public transport services. These “time-dependent” services will therefore have priority. It is also important to prevent third parties “creaming off” the most lucrative services (e.g. by providing only peak services) as this would be detrimental to the system as a whole. In order to have access to the network, railway companies will be required to meet the following conditions:</p> <p>Licensing procedure: the licensing procedure will include a review of the general requirements to be met by companies applying to use the network. The review should focus essentially on the applicant company’s safety standards with regard to staff, organisation and rolling stock as well as on financial security (solvency and insurance cover). In order to prevent social dumping, companies will have to prove that they comply with provisions on health, working conditions and employees rights and that their employees are hired on comparable terms. In addition to these general requirements for network access, the regulatory authority will check that companies are in a position to comply with the legal technical requirements applicable to a given line. Personnel and equipment safety requirements applicable to specific lines must be met.</p> <p>Access procedure: traction and rolling stock safety will be checked in accordance with an internationally established procedure.</p> <p>Agreement: the infrastructure manager and the service provider will be required to sign an agreement on the allocation of paths and fees (where price formulae are applicable to the calculation of path fees). Charges will be based on transparent costing for infrastructure users. In the event of disputes, an appeal may be filed with an arbitration committee which will be responsible for ensuring that access is granted on a non-discriminatory basis.</p>
<p>Fees for use of infrastructure</p>	<p>Pricing should take into consideration market conditions and should seek to obtain maximum prices for particularly lucrative services. The transport sector should cover short-term marginal costs at least (direct costs incurred by one extra train). The idea that an operator should meet all infrastructure costs is rejected. The definition and practical details of the pricing system should be finalised in the context of railway restructuring.</p>

SWITZERLAND (continued)

Improvement of the finances of railway undertakings	Federal Government loan repayments are a drain on the CFF's finances. Long-term commitments are four times as high as equity capital funding. As things now stand, CFF is unable to meet either capital or interest payments on past infrastructure loans. Interest payments are met largely by the Federal Government as infrastructure appropriations. In 1995, CFF's interest charges amounted to SF 676 million, or 10 per cent of its overheads. Its past debts will therefore have to be written off as part of the restructuring process. It is expected that it will be possible to do this by 1st January 1998 in line with the following guidelines: Loans and commitments (SF 5 560 million in 1997) entered into by CFF for its pension and emergency fund (CPS) to be taken over by the Federal Government. This will increase CFFs indebtedness to the Federal Government and the transaction will be shown on the balance sheet. The financial and profit and loss accounts will not be affected; 8 billion of SF 14 billion in cash loans to the infrastructure sector (including transferred CPS loans) will be converted to equity capital and will be shown as a transfer of assets in the Federal Government accounts. With the exception of current profit-earning investments (especially those used solely by third parties, generating plant under Rail 2000), the remaining SF 6 million in loans will be converted into conditionally repayable loans at variable interest rates. CFF's previous equity capital of SF 3 billion will serve as a basis for the transport sector. Loans at normal interest rates for the transport sector (rolling stock) will continue as before.
General comments	Several fundamental issues still have to be resolved with the second stage of the restructuring process in view. These are, among others: overseeing safety issues; procedures for approving plans; relations between CFF and the FSP; division of responsibilities between Federal and Cantonal levels. Railway restructuring should be regarded as a process of gradually adapting public transport structures to market demands. The present package of measures should therefore be followed by others consistent with the concept of on-going restructuring.
II. Other restructuring measures	
Implemented	In addition to the restructuring of the railway sector, CFF is undertaking internal restructuring. The aim is to increase its responsiveness. This will be achieved by structures that more closely mirror the market and by de-layering. Restructuring along these lines is necessary to introduce an element of competition into the railway sector. The process of in-house restructuring involves the reorganisation of CFF. Apart from the chairman's department, the company will be split into a transport and an infrastructure sector, each with its own balance sheet and profit and loss account. The main duties of the Lausanne, Lucerne and Zurich management departments, which will now be subordinate to the "infrastructure" department, will be mainly infrastructure and operations management. With a view to the restructuring of Regional Passenger Transport in line with amendments to railway legislation, CFF divided its network into six regions on 1st January 1996.

SWITZERLAND (continued)

	<p>Regional deputies liaise directly with the Cantons, which now act as sponsors for regional transport services.</p> <p>Other measures aimed at improving CFF's productivity are in hand. These include the "turnaround" programme, which is aimed at making a commercial return on full single wagon-load traffic. The programme has reduced the wagon fleet for this type of traffic and has optimised rolling stock management.</p> <p>A study on possible ways to increase the profitability of transit freight traffic and combined (import/export) transport is also under way; both the production and sales sides seem to offer some potential in this respect.</p> <p>The internal restructuring of CFF is aimed at providing greater incentives at all levels to encourage the development of a profit-oriented corporate culture. The process is expected to be phased in by 1st January 1998. The restructuring of CFF and the railways sector go hand in hand.</p>
III. Other significant developments	
Relations between Eastern and Western Europe	Relations between the CFF and the countries in transition have not posed any particular problem.

TURKEY

I. Implementation of Resolutions	
Legal independence	TCDD is a State Economic Enterprise. A Draft Railway Law and a Draft Contract in which public service obligations will be redefined are being prepared so that TCDD may carry out its activities in accordance with commercial and economic principles and determine its tariffs freely, according to market conditions. TCDD will remain a State Economic Enterprise under the new law.
Separation of infrastructure management from operations	Studies are underway regarding the separation of infrastructure and operations and their re-organisation as independent business units. The intention is to finance the infrastructure unit through government funds. Separation of accounts in accordance with Directive 91/440/EEC is underway.
Market access for new operators	The new Draft Railway Law will include articles which will provide free access to the railway network for third parties. A new operator under an access arrangement will be licensed by the government to operate a particular route. A contract for the use of infrastructure will be negotiated and signed by the TCDD network business and the operator.
Improvement of the finances of railway undertakings	Once the draft Railway Law enters into force, accumulated tax and social security debt as at 31st December 1996 will be converted into equity together with the conversion into equity of overdue loan payments and interest due.
General comments	Restructuring will be supported by capital investments of US \$ 120 million per year, whilst downsizing will reduce government support towards 40% of 1997 levels.
II. Other restructuring measures	
Implemented	A 10-year restructuring plan was prepared for TCDD with the support of consultants. Implementation has begun.
Results and expectations	Business units have been re-organised into passenger, freight, workshops and infrastructure. It is expected that there will be an increase in productivity and efficiency through reducing costs and increasing revenues and from the transition to a new organisational structure.
III. Other significant developments	
Relations between Eastern and Western Europe	Due to its geographical location, Turkey serves as a bridge between Europe and Asia; and activities being carried out in the G 24 Working Group focus on ensuring interoperability in railway services.

UNITED KINGDOM

I. Implementation of Resolutions	
Legal independence and Separation of infrastructure management from operations	<p>Railway undertakings in Great Britain are legally separate from Government and have autonomy in managing their own affairs. Almost all of the rail industry has been transferred to the private sector, including 100% of passenger services. Under the new industry structure British Rail's track and infrastructure has moved to the private sector and is the responsibility of Railtrack; passenger services are managed and operated by the private sector through a franchising system; and a Rail Regulator has been set up to oversee the industry and ensure no party abuses any access rights to the infrastructure.</p>
Market access for new operators and Fees for use of infrastructure	<p>Train operating companies, both passenger and freight, can gain access to the rail network through commercial access agreements with Railtrack. Access agreements, and the charges included in them, are subject to approval by the independent Rail Regulator. Basic train operator access charges comprise:</p> <ul style="list-style-type: none"> a) track usage charges: charges which reflect the short-run effects on maintenance and renewal costs of running trains of different types for different distances; b) traction current charges: charges which recover the costs of electric current, varying geographically and temporally, and reflecting distance covered and type of vehicle; and c) a fixed charge, payable irrespective of the number and type of trains run. <p>Infrastructure charges for franchised passenger operators are essentially determined, through the award of the franchise, whereas other potential passenger operators (open access operators) would be free to negotiate charges as are all freight operators. Competition in the passenger transport market is limited to protect franchisees (that compete periodically for the market). Plans to open this market to competition on the tracks have been postponed for the time being.</p>
Establishment of international groupings	<p>An international grouping has been formed to operate passenger rail services through the Channel Tunnel. The grouping comprises the private sector British company Eurostar (UK) Ltd with SNCF and SNCB. A separate company, European Night Services Ltd, has been formed to operate overnight passenger services through the Tunnel. The shareholders of this company are Eurostar (UK) Ltd, SNCF, NS and DB. Directive 91/440/EEC, which provides for access for international groupings, has been implemented in the UK (although not yet for the Channel Tunnel itself, where discussions on draft regulations continue between the UK and France and the European Commission). A development agreement has been signed with the private sector consortium London & Continental Railways Ltd for the design, construction and operation of the high-speed Channel Tunnel Rail Link between London and the Channel Tunnel. This is expected to open in 2003.</p>
Rights of access to promote combined transport	As above.

UNITED KINGDOM *(continued)*

Improvement of the finances of railway undertakings	Railtrack are able to provide a better service freed from the inevitable constraints of public ownership, bringing substantial benefits to train operators, passengers and other rail users and investors. In the private sector Railtrack will be able to exploit fully the potential of the rail network, to deliver improvements for operators, and hence rail users, and to take advantage of the opportunities offered by private sector finance. The Government pays compensation payments for rail services via the Franchising Director.
General comments	<p>The UK privatisation programme began some years ago. Legislation, in the form of the Railways Act 1993, was introduced to provide the statutory framework for the privatisation and liberalisation of the railways in Great Britain. The privatisation programme has been consistent with the spirit and content of the European Community's transport policy for railways.</p> <p>The provisions of Resolutions 95/3 and 93/6 have been implemented.</p>
II. Other restructuring measures	
Implemented	<p>The UK introduced legislation: The Railways Act 1993. Railtrack was set up and privatised, and a Franchising Director and Rail Regulator appointed. The Government is continuing with its intention to franchise all passenger train services, and has already privatised the Rolling Stock Leasing Companies and a number of smaller sales of BR businesses have been completed.</p> <p>The public interest will continue to be protected by the Rail Regulator and through Railtrack's Network Licence and other statutory provisions. The separation of service provision and infrastructure management, the granting of franchises, and making possible the use of the rail infrastructure to new entrant operators will further the EC objectives of making the railways more competitive; attract greater volumes of rail traffic; and secure commercial independence for the railways. Recognising the need to maintain certain unprofitable services -- or socially necessary services -- the franchising system has been designed to ensure that private operators can operate services even when they are loss-making.</p>
Results and expectations	It is difficult to assess results as the railway has been so recently restructured and privatised; but early indications are favourable.
III. Other significant developments	
Broader changes currently occurring	<p>The Channel Tunnel Rail Link will be a 68-mile, high-speed railway line between the Channel Tunnel and London St. Pancras. The line will more than double the capacity for Eurostar international passenger services and reduce journey times by around half an hour. CTRL will also carry domestic passengers cutting the journey times for many Kent commuters by 30 minutes or more. The line will have the capability to accommodate freight if necessary.</p> <p>Following the successful completion of the Channel Tunnel Rail Link competition early in 1996, European Passenger Services (now renamed Eurostar (UK) Ltd.) and Union Railways Ltd, the company which has progressed the CTRL project, were transferred to London and Continental Railways Ltd. (LCR). The effective date for this transfer was 31st May 1996.</p>

UNITED KINGDOM *(continued)*

	<p>Railfreight Distribution (RfD), the train operating company running European freight services, is exploiting routes to and from the major manufacturing regions of the UK through the Channel Tunnel and across Europe to the south and east. 70% of the international rail freight market is in the north and west of the country. RfD operated about 160 trains per week in 1997. The trains carry containers and swapbodies for easy interchange with road haulage. Trains carrying new cars are also running, and some classic wagon services are operating.</p> <p>RfD was the last remaining public sector rail freight operator in Great Britain. The business was offered for sale in June 1996 and sale completed in early 1997.</p>
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CIS COUNTRIES

BELARUS

Limited information Belarussian railways (BCh), based on a review of published information¹, is presented here.

The Market Context

The structure of the market for BCh differs from the railways in the European Union (EU) though less so than most other railways in the CIS:

- Rail has a monopoly in most of the markets in which it operates;
- Belarussian railways are predominantly freight railways: freight represents 67% of total unit km² compared to only 46% in the EU.

BCh are essentially a transit railway serving the Russian Federation. It is dependent on transit traffic and profits from this are used to offset overall losses.

Over the period 1991 to 1995 tonne-km fell by over 60%. However because fares were held down, passenger km fell by only 20%. Passenger services are heavily loss making.

Partly because of the importance of transit traffic to Russia, BCh are to a significant extent dependent on MPS (Russian Federation) both operationally and commercially.

Management Independence

BCh are managed by an administration under the Ministry of Transport and Communications. Few if any steps have yet been taken to commercialise or reform the railways along the lines of the ECMT Resolutions. The management of BCh has little independence from the State.

Financial Situation

Few if any effective measures have been taken to improve the financial position of BCh. On the contrary, the weak financial position of BCh may be worsened by reported plans to upgrade lines for high speed operation of passenger services.

¹ International Railway Journal, May 1996, World Business Report/ World Bank database and Jane's World Railways, 1997-1998.

² Number of tonne-km plus number of passenger km.

RUSSIAN FEDERATION

The Market Context

Before considering the steps taken and the proposals for reform, it is important to consider the size and structure of the market for the railways of the Russian Federation. The railways of the Russian Federation represent 60% of the railways of the former Soviet Union. Despite traffic falling by more than a half since 1991, they are still one of the largest railway systems in the world carrying 1 100 billion tonne-km in 1997. This was exceeded only by the US (Class I railroads: 1 900 billion) and by China (1 300 billion)¹. By comparison, the railways of the EU carried only 220 billion tonne-km², a fifth of the level in the Russian Federation. In contrast, passenger km in the Russian Federation (170 billion) are significantly lower than in the EU (260 billion).

The structure of the market for the railways of the Russian Federation differs significantly from the railways in the European Union (EU) in the following ways:

- Rail in the Russian Federation has a monopoly in most of the markets in which it operates. In 1990, the railways carried 50% of freight tonne-kms in the Soviet Union³ (EU 15% in 1994⁴), the rest mainly being carried by pipeline. Excluding pipelines and water transport, the modal share by rail was nearly 90% (EU 22%). Rail's dominance is because of the absence of competition from road, which carried only 7% of freight tonne-kms (EU 72%).
- The size of the network and average distances are far higher - the average distance of haul for freight in the Russian Federation is 1200 km, whereas for the railways of the EU⁵ it ranges between 120 km and 400 km.
- The railways of the Russian Federation are predominantly freight railways: freight represents 75% of total unit km⁶ in the Russian Federation compared to only 46% in the EU.
- There is considerable bulk freight and volumes of traffic are very high - the density of traffic (measured in traffic units per km of track) in the Russian Federation is nearly 4 times that in the Netherlands, which has the highest density in the EU.

These factors need to be considered when assessing the need and scope for reform in the Russian Federation.

Federal Rail Transport Law (1995)

The Federal Rail Transport Law (1995) is the most important legislation concerning the management of railways in the Russian Federation. It defines the legal basis for the organisation of the sector and of the economic relations between the various bodies involved.

¹ Source: "World Business Report, 1998", World Bank database, figures for US, China and Germany are for 1995.

² Source: "A Strategy for Revitalising the Community's Railways", EU White Paper, 1996.

³ Railway Sector Survey of Russia, Belarus, Ukraine and Kazakstan, EBRD, 1993.

⁴ Source: "A Strategy for Revitalising the Community's Railways".

⁵ "World Business Report, 1998", World Bank database.

⁶ Number of tonne-km plus number of passenger km.

The law sets out the relationship between the State and the railways. Under this law, the common use railways of the Russian Federation are unified under the direct management of the Ministry of Railways (MPS) (Article 1). The key elements of the relation between the State and the railways as defined in the Law are as follows:

1. MPS manages and defines the economic relationships between the 17 railway enterprises and the various related institutes and organisations which service the industry, including the distribution of profits (Articles 3.2, 4.2, and 11.2).
2. Railway assets are federal property but railway enterprises are allowed to use those assets for specific (railway) purposes. Procurement and management of railway assets must take place within rules defined by Government (Article 4.2).
3. Railway enterprises are allowed to use land for rail transport. MPS controls the use of this land (Article 5).
4. Management of the transportation process is solely the competence of the MPS. Other Government bodies have no right to interfere (Article 7.2).
5. The appointment and dismissal of the head of each railway must be approved by Federal Government on the basis of requests from MPS in consultation with the executive institutions of the Russian republics and regional governments (Article 8).
6. MPS controls the finances and business activities of railway enterprises and related institutes and organisations, and provides the appropriate authorities (it is not specified which they are) with consolidated accounts (Article 11.8).
7. Tariffs must be set on the basis of rules defined by the Federal government (or Federal republics and regional governments in the case of suburban passenger transport) (Article 10). Tariffs should reflect costs taking account of any subsidies.

The 17 regional railways are federally owned state enterprises. Each enterprise is designated a profit centre and has control over:

- locomotives;
- some passenger coaches;
- loading of wagons.

Each enterprise also has control over a major portion of capital expenditure - each is allowed to retain operating profits after tax and any compulsory payment to MPS, such as contributions to central funds and reserves and for the financing of general expenditure).

Inevitably, the regional railways act in their own interests and these may not always correspond to the interest of the railways as whole. For example:

- Regional railways are allocated revenues on the basis of a formula. This could be improved to reduce incentives created unintentionally by the current formula for regional railways to delay the onward movement of wagons in transit;
- A regional railway has little incentive to provide a service to traffic that does not originate in the region;
- Investment decisions are often made locally and may not be optimal. Similarly, assets are controlled locally and utilisation may be sub-optimal.

A major challenge for MPS is therefore to improve the incentive structure for the regional railways.

Federal Law on the Activity of Natural Monopolies (1996)

The Federal Law on the Activity of Natural Monopolies (1996) provides for the establishment of the Federal Service for the Regulation of Natural Monopolies in Transport (FSEMT) which was formed in 1997. FSEMT reports to the Federal Government. Its role in railways is to regulate freight rates and passenger (excluding suburban) tariffs, a role which was formerly the responsibility of the Ministries of Economy and Finance.

An earlier law in 1995 had delegated responsibility for suburban passenger tariffs (and subsidies) to Federal republics and regional governments. However, Federal republics and regional governments have no money to pay subsidies and MPS continues to run loss making suburban services paid for with cross subsidies from freight.

Nevertheless, progress is being made. There is now a general agreement between MPS and 67 republics and regional governments concerning the improvement of regional transport. MPS has also concluded bilateral agreements with 20 republics and regional governments concerning tariff regulations linked to the compensation to be paid to railways for operating services and to construct new railway facilities.

Anti-Monopoly Law

The State Anti-Monopoly Committee (GAK) was created by presidential decree in 1990. It is a federal executive body responsible for implementing state policies in the areas of competition, monopolies and consumer rights.

There are a number of laws and statutes which define the powers of GAK. The main one that is relevant to the railways is the Law on Competition which could be used against the railways if, for example, there was tariff discrimination

Both FSEMT and GAK have duties which require them to be involved in railway restructuring.

Comparison of Current Status with ECMT Resolutions

Management Independence:

Resolution 93/6 recommended that railway undertakings should be independent of the State in order to encourage commercialisation of railway undertakings and transparency in the relationship between the railways and government bodies.

Management of the Russian national rail monopoly has been delegated to MPS and as the Minister of Railways is a member of the Cabinet, this may reduce MPS's independence from Government. This is because it increases the possibility of political influence in managerial decision making and may make it more difficult to commercialise the railways in the future.

Despite external tariff controls, MPS has shown a high degree of autonomy with respect to influence from other parts of government stemming from the historical strength and importance of MPS. MPS has therefore been able to raise freight rates to cover costs so that it did not require State funding, further increasing its independence. This may change with the Federal Law on the Activity of Natural Monopolies. External control of tariffs may increase because:

- the Law on the Activity of Natural Monopolies requires MPS to provide information to support requests for freight rate increases;
- MPS will no longer be able to cross subsidise passenger services from freight profits and may need more investment support and possibly compensation for operating passenger services.

At present MPS also has limited control over the railway enterprises in many areas. Tighter financial discipline on MPS may result in MPS having to exert tighter controls on the railway enterprises.

It is too early to say how effective these new controls will be. However, the effect of tighter financial discipline being imposed on MPS, if effective, may be expected to increase the transparency of finances throughout the rail sector thereby preparing MPS for a more commercial environment. Despite the fact that these changes will increase State control, they represent steps in the direction of the objectives underlying the ECMT Resolutions.

Improving the Financial Position of the Railways

Resolution 93/6 recommends measures be taken to improve the financial position of the railways. The changes described above are likely to worsen their financial position unless other measures are taken to remedy the situation, such as allowing MPS to close loss-making passenger services or receive from the State budget specific compensation payments for passenger services.

A related issue is the extent to which MPS is considering high speed passenger railways. It is difficult to see how such investments can be profitable in the CIS given the low level of incomes. They are profitable in Western Europe only on some routes despite much higher incomes.

Recommendations of Resolution 93/6 to Provide Access Rights

The other main recommendations of Resolution 93/6 were to provide access rights, requiring:

- establishment of separate accounts for infrastructure management;
- granting of rights of transit and rights of access for international transport.

There is nothing in the Federal Transport Law in these areas. However the law already allowed the formation of joint ventures between MPS and foreign railway companies. For example, the Trans Siberian Express Service (TSES) was formed between Sea-Land, a subsidiary of CSX (a US rail company) and Soviet Railways in 1991 to run international intermodal services. Initially it ran only between Belarus and Vostochniy on the East coast of Russia but it now has spurs to Finland, Mongolia and Central Asia. Sea-Land's joint venture partner is now the Russian MPS and the joint venture buys most services from MPS which in turn buys services from the other CIS railways or the regional railway enterprises in Russia.

This example is similar to the European Rail Shuttle, a joint venture also involving Sea-Land, which operates between Rotterdam and Germany and Italy. This indicates that, in terms of access for international intermodal services, the Russian Federation is comparable to the more liberal Western European countries.

Presidential Decree 426

The future approach to be adopted in reforming the railways was set out in Presidential Decree 426 on “Structural Reform in Natural Monopolies”, issued in April 1997. The main objectives of the decree were to:

- improve State control of the railways;
- reduce the cost of rail service provision particularly through competition;
- improve the quality of service.

The Decree was followed in August 1997 by a Government Order on “Structural Reforms, Privatisation, and Strengthening Control of Natural Monopolies”. This Order set out in greater detail a time frame for actions over the period 1997 to 2000 and allocated responsibility for these actions. Decree 426 requires the Government to make the following changes:

1. Changes in the area of management independence and regulation:

- establish an appropriate commercial governance structure for the administration of the railways (i.e. the role of the State, as owner of the railway entity, in controlling its activities);
- rationalise freight tariffs and prevent the railway from exploiting its monopoly position to the detriment of industry (because there is little competition from other modes in many freight markets);
- replace cross subsidies from freight to passenger services with federal and local funding under contracts;
- establish a regulatory framework which reflects the degree of monopoly enjoyed by railways and to relax regulation as competition is introduced.

2. Changes which will improve the financial position of the railways

- privatise rail equipment suppliers;
- separate non rail activities, and divest wherever feasible ;
- eliminate cross subsidies between freight and passengers, and provide compensation for public service obligations from State resources and allow tariff increases which will allow costs to be recovered on these passenger services;
- increase the productivity of low density lines or dispose of them, where funding is not available from other sources;
- separate social activities, and divest wherever feasible (the railway provides a whole range of services to its employees which would normally be provided independently in market economy, e.g. hospitals and schools).

3. Changes in the area of industry structure and competition:

- establish separate accounts for infrastructure;
- establish separate businesses for freight and passenger services - there would be competition except for regional and commuter passenger transport;
- encourage competition in rail transport by allowing other companies to operate under licence and to have non-discriminatory access to infrastructure and rolling stock maintenance;
- introduce the leasing of freight wagons.

Current position

Decree 426 represents major progress in reforming the railways and, if implemented, would go beyond the EU Directives and ECMT Resolutions in terms of introducing competition. Details of the regulatory and structural reforms to be adopted under the decree are currently being developed by an inter-ministerial working group. This working group comprises representatives of the Ministries of Finance, Economics, Transport¹ and Railways, the Anti Monopoly Committee (GAK) and the Federal Service for the Regulation of Natural Monopolies in Transport (FSEMT).

The working group is developing a Concept Paper which has been broadly agreed by Government and which is due to be finalised shortly. The Concept Paper is understood to be broadly consistent with Decree 426 although there appear to be some significant differences:

- Decree 426 envisaged completing most reforms by the end of the year 2000. The current proposal is that the period up to 2000 would represent the first phase, to be followed by a second phase (2001-2005) and a third, open ended, phase from 2006. Only the first phase of the reforms is firm and some elements of the subsequent phases will be developed later.
- The corporate governance structure would not change until after 2005, leaving MPS with the dual role of policy maker and manager until that time.

¹ The Ministry of Transport has responsibility for overall transport policy.

UKRAINE

The Market Context

The structure of the market for Ukrainian railways differs significantly from the railways in the European Union (EU), though less so than that of the Russian Federation:

- Rail has a monopoly in most of the markets in which it operates.
- The size of the network and average distance are far higher than in the EU - the average distance of haul for freight in Ukraine is 500 km, whereas it ranges between 120 km and 400 km for the railways of the EU¹.
- Ukrainian railways are predominantly freight railways: freight represents 75% of total unit km² (as in the Russian Federation) compared to only 46% in the EU.
- There is considerable bulk freight and volumes of traffic are high, though less than in the Russian Federation - the density of traffic (measured in traffic units per km of track) is nearly twice that in the Netherlands, which has the highest density in the EU.

Traffic fell by more than a half between 1989 and 1995. This has resulted in financial difficulties which have meant there has been no money for investment.³

Law on Railway Transport (1996)

The Law on Railway Transport was enacted by the Supreme Council of the Government of Ukraine on July 4, 1996 and defines the role of the Cabinet of Ministers, the Ministry of Transport (MOT), Ukrzlyznytisia (UZ) (the government administrative body responsible for rail transport) and “the railways” (regional based organisations which, according to the Law are the basic organisational units of the railway - the six inherited from the former Soviet Union remain in place). It also defines the inter-relationships between these bodies.

The relevant provisions of this law are as follows:

- Cabinet defines the rules and procedures for operation of the railway, provides guidance on the prioritisation of development, facilitates the acquisition of assets, and decides how the railway is to be organised (Article 4). It also appoints and dismisses management on the basis of the recommendations from the Ministry of Transport (Article 4).
- Cabinet places a state order with UZ each year pertaining to transportation, new facilities, and upgrading and determines the State budget to be allocated to carry out those tasks (Article 10).
- Management of transportation processes and regulation of economic activities is carried out in a centralised manner and is the exclusive responsibility of UZ. UZ is subordinate to MOT (Article 4).
- MOT approves the Railway Charter with the agreement of the Ministry of Economy and the Anti Monopoly Committee (Article 4).

¹ “World Business Report, 1998”.

² Number of ton km plus number of passenger km.

³ International Railway Journal, May 1996.

- Assets used by the railways are State property and are managed by UZ. Leasing, exchange and decommissioning of rolling stock are carried out by the railways upon agreement from UZ. Assets not used for railway operations may be privatised upon agreement of MOT and UZ (Article 5).
- Local bodies of the State and local government have control in their areas of jurisdiction including stations, suburban tariffs and closure of low activity sections of the railways. They must provide compensation for any railway losses resulting from their decisions (Article 7).
- Tariffs are based on state budget and pricing policies and follow procedures approved by Cabinet (except for suburban services) and by local bodies (suburban services) which should provide compensation for any resulting losses (Article 9).
- Economic relations between the railways, including distribution of revenues follow procedures determined by UZ (Article 10).

Comparison of Current Status with ECMT Resolution

Although Ukrainian law covers some important areas related to ECMT Resolutions, especially in relation to compensation for losses caused by service obligations, it does not fully meet the needs of a commercial environment.

Increasing Management Independence:

Resolution 93/6 recommended that railway undertakings should be independent of the State in order to encourage commercialisation of railway undertakings and transparency in the relationship between the railways and government bodies. Management independence is limited for Ukrainian railways in two respects:

- The Cabinet has very extensive powers which are likely to constrain the UZ and the railways in their ability to manage the system on a commercial basis in response to the needs of the market.
- MOT has an important role in a number of matters that affect the operations of the railway: there is therefore no clear distinction between policy making and operations.

Moreover, the General Director of UZ is a Deputy Minister in the Ministry of Transport. Although this arrangement is not required by the Law, it suggests that in practice UZ has limited independence from the State.

Improving the Financial Position of the Railways

Resolution 93/6 recommends that measures be taken to improve the financial position of the railways. There is nothing in the law that will lead to improvements in this respect. For example, there is nothing in the law preventing profits from freight being used to subsidise passenger services.

Rights of Access

The other main recommendations of Resolution 93/6 concern rights of access for international rail services. There is nothing in the 1996 law in this area or on competition policy.

Further Changes under Consideration

The Government recognises that there is a need to change further the legal and institutional framework and is currently reviewing options for reform. Options under consideration include:

Increasing Management Independence:

- Creating of a clear institutional separation between policy making and operational management.

Improving the Financial Position of the Railways

- Reducing staff at UZ headquarters, eliminating divisional management, and closing loss making lines and services.¹
- Creating separate companies to provide suburban services in the larger cities with funding provided by local government - some progress has reportedly been made in some cities in setting up compensation agreements.²
- On the other hand, like other railways in the region, consideration is being given to high speed rail lines which are almost bound to worsen the financial position of the railways.³

Allowing Competition

- Separating infrastructure from passenger and freight businesses within UZ is under consideration, thereby establishing the conditions to provide for rights of access to infrastructure.⁴

¹ International Railway Journal, May 1996.

² Le Rail, December 1997.

³ Rail International, July 1996.

⁴ International Railway Journal, May 1996.

INTERNATIONAL TRAFFIC IN THE CIS

CIS Railway Transportation Council

The Railway Transport Council of the CIS member states was established by the heads of CIS governments in February 1992 following the break up of the Soviet Railways and consists of the administrative heads of the railways in each CIS state. The Council has a small permanent staff. The resolutions of the Council are mandatory for all members who agree to the resolution. Only resolutions concerning finances require a unanimous vote. Other resolutions require 75% of the vote.

The railways of the Baltic States are observers at meetings of the Council and generally choose to follow decisions made at those meetings.

Originally, the main focus of the Council was rolling stock but it now deals with all operational and commercial matters. For services between CIS states, the Council sets rules and regulations for co-ordinating fleet planning, documentation, inter-railway accounting, safety standards, research, tariffs and relations with forwarders and shippers. It sets common technical standards, monitors the maintenance of wagons used in different States and sets charges for use of wagons.

In October 1996, the Council of the heads of CIS governments adopted a resolution, prepared by the Council and the Inter-State Economic Committee (MEK) which provided for:

- the design and implementation of a co-ordinated tariff policy for international freight;
- the free movement of goods within the CIS.

It also provided for:

- tax harmonisation for railway undertakings;
- compensation for losses in passenger transport (to avoid the need to cross subsidise passenger services using profits from freight);
- subsidies to finance purchase of rolling stock (the reason for this provision is unclear because if subsidies are to be provided at all, they are most effective if the railways are free to use them for the most profitable investment, which may not always be wagons);
- budgetary support for improving frontier crossings;
- other joint programmes to reduce costs.

The underlying purpose of these measures was to reduce costs in order to allow tariffs to be reduced.

Interstate Tariffs within the CIS

A significant proportion of traffic in each CIS country is interstate (29% for the Russian Federation, 36% for Ukraine and 65% for Belarus). Appropriate arrangements for setting tariffs and distributing revenue are therefore very important. MPS (Russian Federation) acts as clearing house for revenue from interstate traffic.

The regulations, rules and procedures governing tariffs for interstate traffic within the CIS are based on the international transit tariff (MTT) agreement between the former Soviet Union and other former Comecon countries. The MTT agreement specifies maximum charges per kilometre for different lengths of haul and types of cargo. Maximum rates are fixed in Swiss Francs.

Following the break up of the Soviet Union, the Railway Administrations of the CIS signed an agreement in 1993 setting out the procedure for determining tariffs each year within the limits of the MTT maximum tariffs.

Each railway can reduce its rates unilaterally. Rates can be increased twice a year but if a railway seeks a further increase, it must give other railways two months warning of its intention to do so. Other railways, however, have no powers to prevent the increase, providing the rates do not exceed the MTT maximum. There has so far been only one case of a railway wishing to make a third increase in a year.

The Resolution of October 1996 also provided for the introduction from 1997 of lower maximum freight charges to reflect the cost reductions made possible by the various tax and subsidy provisions contained in the Resolution (as discussed above).

Interstate Tariffs with other European Countries

Interstate tariffs with the former Comecon countries of Central Europe are still determined by the MTT agreement described above. Traffic from Western Europe is also charged on this basis on the railways of the former Comecon countries.

Comments on the Development of East-West Traffic

There are number of obstacles to the development of railway traffic between the CIS countries and Western Europe. These include:

- The differences between the types of waybills used in the former Comecon countries and those used in the rest of Europe. These differences mean that the waybills must be rewritten at the border between the two groups of countries.
- Cash flow problems within the railways of the CIS leading to bills being unpaid.
- Inadequate systems for controlling the flow of wagons between countries and the differences between legal systems which make it difficult to deal with lost wagons and damage to goods.

Removing these obstacles represents a challenge for all railways involved in East - West traffic. However a start has been made. Waybill differences between Western Europe and CIS Member States are gradually being eliminated. For example, an agreement was signed in January 1998 between MPS, BCh, PKP and DBAG for direct services between these railways under a single waybill.

ANNEXES

RESOLUTION No. 93/6 ON THE DEVELOPMENT OF INTERNATIONAL RAIL TRANSPORT

The Council of Ministers of Transport, meeting in Noordwijk on 26th and 27th May 1993:

HAVING REGARD TO

- Report CEMT/CM(93)17 on the Development of International Rail Transport;
- Directive No. 440/91 on the Development of the Community's Railways, adopted on 29th July 1991 by the Council of Ministers of the EEC and incorporated in the agreements relating to the European Economic Area;

CONSCIOUS of the need to meet the challenges arising as a result of:

- the increasing number of ECMT Member countries which are not at present members of the EEC;
- the substantial expansion of relations with countries of Central and Eastern Europe;
- the existing problems in connection with transit through the Alps; and, in a much more general context;
- the expected growth in mobility over the next few years or even decades, and especially its impact on the environment;

REAFFIRMING the need, in this context, to increase the efficiency and competitiveness of the railways vis-à-vis other modes of transport in order to strengthen their social and economic role in the transport sector, of which they are a vital component;

BASING legitimate expectations and aims on the growth of rail transport with a view to its positive contribution to the establishment of sustainable mobility and its compatibility with conservation of the natural and human environment;

NOTING that the subject matter and implications of EEC Directive No. 440/91 relate solely to the railways and that any improvement in the operation of the transport system must also deal with matters relating to the need for balanced competition among the different modes of transport in terms of both harmonisation and liberalisation;

CONSIDERING that the effect of the following definitions given in EC Directive No. 440/91:

- a) railway undertaking: any private or public undertaking whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertaking should ensure traction;
- b) infrastructure manager: any public body or undertaking responsible, in particular, for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;
- c) international grouping: any association of at least two railway undertakings established in different countries for the purpose of providing international transport services between countries;

is to introduce new agents on the European market for rail transport in addition to the national public railway undertakings that already exist and to create new conditions as regards competition and co-operation in the rail sector;

EXPRESSES THE WISH that railway undertakings be free to establish international groupings with a view to facilitating international transport;

WARRANTED to examine and, if necessary, to determine and finalise as promptly as possible, minimum harmonised establishment requirements for all international operators, it being understood that safety standards and rules for all these operators must be identical, in order to:

- ensure healthy intra-modal competition in the rail transport market and also ensure traffic safety;
- avoid imbalances in competition between existing and new operators;

REAFFIRMING that, notwithstanding the progress already made by a number of Member countries, it is necessary to ensure the legal independence of railway undertakings and greater autonomy for them in managing their own affairs, without prejudice to the existence of public service activities -- especially in the sphere of national passenger transport -- or of rules, or even controls, with respect to financial, industrial, real estate and personnel issues, provided that railway undertakings are in no way penalised, particularly vis-à-vis other competing modes;

DRAWING ATTENTION to the obligation of all railway undertakings (including existing national public undertakings) to establish at least separate accounts for infrastructure management and the operational side, so as to ensure healthy intra-modal competition and non-discrimination among operators working on the same market;

BELIEVING it to be advisable to examine in greater depth the concept of a fee for the use of infrastructure in the light of the following considerations:

- a) such a fee is unavoidable since it is consistent with the logic of opening up the rail transport market, although it is only one of the factors involved in the improvement of inter-modal competition;
- b) subject to the explicit reservation of adherence to the principle of non-discrimination among rail operators, a degree of independence can be left to each individual Member country in this respect; it must also be borne in mind that the fee may be subject to special conditions in the case of trains catering for public service requirements and that it is also an element in the management of the use of train paths;
- c) the harmonisation of certain minimum requirements would be of some relevance in view of the highly disparate situations that are found within the geographical area covered by the Conference;

RECOMMENDS that, on a reciprocal basis:

- international groupings be granted rights of access and transit in the countries of establishment of their constituent railway undertakings, as well as transit rights in the other countries for the provision of international transport services between the countries in which the undertakings constituting the said groupings are established;
- railway undertakings be granted access to the infrastructure in the other countries for the purpose of operating international combined transport goods services;

it being understood that an administrative, technical and financial agreement must be concluded with the infrastructure managers;

REAFFIRMS the role to be played by governments -- each using its own particular mechanisms -- in restructuring existing national public railway undertakings, the aim being to reduce their indebtedness and improve their financial situation in structural terms so as to ensure balanced intra-modal competition;

INSTRUCTS the Committee of Deputies:

- to ensure that this Resolution is monitored in general and to submit to it a further report in the coming year;
- to focus its work more particularly on:
 - a) the different experience acquired by countries in separating rail infrastructure management from the operational side (examining the medium and longer-term consequences that such separation may entail and also the pattern of development of the situation in countries with economies in transition);
 - b) all aspects of the concept of a fee for the use of rail infrastructure (principles, level, terms and conditions);
 - c) a reappraisal of the issues arising in connection with this Resolution, due account being taken of progress that might be made within the EEC and other ECMT Member countries.

RESOLUTION No. 95/3 ON THE DEVELOPMENT OF INTERNATIONAL RAIL TRANSPORT

The Council of Ministers of Transport, meeting in Vienna on 7th and 8th June 1995,

HAVING REGARD to report CEMT/CM(95)7 on the continuing development of international rail transport;

RECALLING Resolution No. 93/6 on the development of international rail transport;

CONSIDERING that the said Resolution should be supplemented by a number of provisions relating to the exercise of rights of access or transit, with the exception of shuttle services through the Channel Tunnel, by international groupings of railway undertakings or railway undertakings operating international combined transport goods services;

WITH REFERENCE to the common position arrived at by the Council of Ministers of the European Union on the draft Directives on the licensing of railway undertakings and on the allocation of railway infrastructure capacity and the charging of infrastructure fees;

REAFFIRMING its policy resolve to harmonise, to the widest possible extent, the conditions governing the establishment and operation of the international rail transport market in Europe as a whole;

WISHING to promote the greatest possible consistency between the systems in Member States of the European Union, on the one hand, and those of ECMT Member countries that do not belong to the European Union on the other, without prejudice to the commitments of the Member States of the European Union under Community law;

NOTING with satisfaction that Member countries have already implemented a number of the measures recommended in Resolution No. 93/6, as evidenced for example by the considerable progress made in establishing the legal independence and managerial autonomy of railway undertakings and the steps taken to separate transport infrastructure management from the operational side, at least for accounting purposes;

CONVINCED that the problems confronting rail have to be resolved by transforming railways into responsible and dynamic undertakings which can identify the best business opportunities and operate in an increasingly open market;

REALISING that competition among all railway operators on an equal footing is essential and a step in the right direction;

CONSIDERING that, in the overall interests of safety, transparency, non-discrimination and catering for market needs, it is essential to ensure at least a minimum degree of harmonisation of the conditions governing the establishment of operators and to lay down common rules for the allocation of infrastructure capacity and the charging of infrastructure fees;

BELIEVING that it is also in the general interest to continue to provide efficient public services;

INVITES Member countries to set up a system whereby:

- new and existing undertakings, without any discrimination, have both rights and obligations with regard to establishment, safety, the allocation of infrastructure capacity and the charging of infrastructure fees;
- a right of priority access may be granted to certain public services or to services provided on specific infrastructure of a specialised nature for either high-speed or freight trains;
- undertakings operating certain types of services may be granted special rights as regards the allocation of infrastructure capacity, on a non-discriminatory basis, if such rights are essential to ensure adequate public services or efficient use of infrastructure capacity or to allow the financing of new infrastructure;
- the infrastructure manager may receive fair compensation for agreeing to reserve priority access for certain public services;
- the level of the fee is such that it enhances the efficiency and competitiveness of the railways in general and the operation of international rail services in particular, while at the same time gives the infrastructure manager sufficient independence to market available capacity, in the light not only of costs but also of demand, in a way that will help him to balance his finances and that will promote the development of rail transport;

CONSIDERS it essential that a licence be issued and a safety certificate acquired prior to any application for access to or transit on rail infrastructure and, accordingly, that such licences and certificates are prerequisite to the right to operate transport services;

RECOMMENDS:

- a) that licences be issued on the responsibility of Member countries to existing and new undertakings for the services they intend to operate;
- b) that these licences be recognised in other Member countries on a reciprocal basis;
- c) that the award of licences be subject, throughout their period of validity, to requirements relating to good repute, financial standing, professional competence and civil liability cover;
- d) that the responsible authority be empowered to have licences reviewed at regular intervals of not more than five years;

PROPOSES that railway undertakings, defined as any private or public undertakings whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertakings should ensure traction, should apply for:

- the safety certificate to an authority appointed by the Member country in which the infrastructure to be used is located;
- one or more train paths to the allocation authority or authorities in the Member country in which the transport service has its point of departure;

CONSIDERS it essential for each country to appoint a body to be responsible for capacity allocation, whether it be a specific authority or the infrastructure manager;

BELIEVES it advisable:

1. that infrastructure fees:
 - a) be determined by means that enable the infrastructure manager to market available capacity efficiently;

- b) be determined essentially according to the nature of the service, time of service, market situation, type and quality of infrastructure;
 - c) be the same in identical circumstances;
2. that each country establish the means of determining fees after consulting the infrastructure manager;
 3. that fees be paid directly to the infrastructure manager;

DRAWS ATTENTION to the fact that the infrastructure manager's accounts must, under normal business conditions, at least show a balance between income from infrastructure fees plus any government contributions, on the one hand, and infrastructure expenditure, on the other (maintenance, operating and management costs);

STRESSES the importance of setting up an independent body for appeals against decisions concerning the allocation of infrastructure capacity or the charging of fees;

INSTRUCTS the Committee of Deputies to ensure that this Resolution is implemented and to report back to it in this respect within three years at the latest.

COUNCIL DIRECTIVE

of 29 July 1991

ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS (91/440/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas greater integration of the Community transport sector is an essential element of the internal market, and whereas the railways are a vital part of the Community transport sector;

Whereas the efficiency of the railway system should be improved, in order to integrate it into a competitive market, whilst taking account of the special features of the railways;

Whereas, in order to render railway transport efficient and competitive as compared with other modes of transport, Member States must guarantee that railway undertakings are afforded a status of independent operators behaving in a commercial manner and adapting to market needs;

Whereas the future development and efficient operation of the railway system may be made easier if a distinction is made between the provision of transport services and the operation of infrastructure; whereas given this situation, it is necessary for these two activities to be separately managed and have separate accounts;

Whereas, in order to boost competition in railway service management in terms of improved comfort and the services provided to users, it is appropriate for Member States to retain general responsibility for the development of the appropriate railway infrastructure;

Whereas, in the absence of common rules on allocation of infrastructure costs, Member States shall, after consulting the infrastructure management, lay down rules providing for the payment by railway undertakings and their groupings for the use of railway infrastructure; whereas such payments must comply with the principle of non-discrimination between railway undertakings;

1. OJ N° C 34, 14.2.1990, p. 8 and OJ N° C 87, 4.4.1991, p. 7.

2. OJ N° C 19, 28.1.1991, p. 254.

3. OJ N° C 225, 10.9.1990, p. 27.

Whereas Member States should ensure in particular that existing publicly-owned or controlled railway transport undertakings are given a sound financial structure, whilst taking care that any financial rearrangement as may be necessary shall be made in accordance with the relevant rules laid down in the Treaty;

Whereas, in order to facilitate transport between Member States, railway undertakings should be free to form groupings with railway undertakings established in other Member States;

Whereas, such international groupings should be granted rights of access and transit in the Member States of establishment of their constituent undertakings, as well as transit rights in other Member States as required for the international service concerned;

Whereas, with a view to encouraging combined transport, it is appropriate that access to the railway infrastructure of the other Member States should be granted to railway undertakings engaged in the international combined transport of goods;

Whereas it is necessary to establish an advisory committee to monitor and assist the Commission with the implementation of this Directive;

Whereas, as a result, Council Directive 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonisation of rules governing financial relations between such undertakings and States¹ should be repealed,

HAS ADOPTED THIS DIRECTIVE

SECTION I

Objective and scope

Article 1

The aim of this Directive is to facilitate the adoption of the Community railways to the needs of the Single Market and to increase their efficiency;

- by ensuring the management independence of railway undertakings;
- by separating the management of railway operation and infrastructure from the provision of railway transport services, separation of accounts being compulsory and organisational or institutional separation being optional;
- by improving the financial structure of undertakings;
- by ensuring access to the networks of Member states for international groupings of railway undertakings and for railway undertakings engaged in the international combined transport of goods.

1. OJ N° L 152, 12.6.1975, p. 3.

Article 2

1. This Directive shall apply to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State.
2. Member States may exclude from the scope of this Directive railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services.

Article 3

For the purpose of this Directive:

- 'railway undertaking' shall mean any private or public undertaking whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertaking should ensure traction;
- 'infrastructure manager' shall mean any public body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;
- 'railway infrastructure' shall mean all the items listed in Annex I.A to Commission Regulation (EEC) N° 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) N° 1108/70¹, with the exception of the final indent which, for the purposes of this Directive only, shall read as follows: 'Buildings used by the infrastructure department';
- 'international grouping' shall mean any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States;
- 'urban and suburban services' shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;
- 'regional services' shall mean transport services operated to meet the transport needs of a region.

SECTION II

Management independence of railway undertakings

Article 4

Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

1. OJ N° L 278, 23.12.1970, p. 1, Regulation amended by Regulation (EEC) N° 2116/78 (OJ N° L 246, 8.9.1978, p. 7).

Article 5

1. Member States shall take the measure necessary to enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Railway undertakings shall be managed according to the principles which apply to commercial companies; this shall also apply to their public services obligations imposed by the State and to public services contracts which they conclude with the competent authorities of the Member State.

2. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and the other technical, commercial and financial management objectives; they shall also lay down the method of implementation.
3. In the context of the general policy guidelines determined by the State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:
 - establish with one or more other railway undertakings an international grouping;
 - establish their internal organisation, without prejudice to the provisions of Section III;
 - control the supply and marketing of services and fix the pricing thereof, without prejudice to Council Regulation (EEC) N° 1191/69 of 26 June 1969 on action by Member States concerning the obligation inherent in the concept of a public service in transport by rail, road and inland waterway¹;
 - take decisions on staff, assets and own procurement;
 - expand their market share, develop new technologies and new services and adopt any innovative management techniques;
 - establish new activities in fields associated with railway business.

1. OJ N° L 156, 28.6.1969, p. 1; Regulation last amended by Regulation (EEC) N° 1893/91 (OJ N° L 169, 29.6.1991, p. 1).

SECTION III

Separation between infrastructure management and transport operations

Article 6

1. Member States shall take the measures necessary to ensure that the accounts for business relating to the provision of transport services and those for business relating to the management of railway infrastructure are kept separate. Aid paid to one of these two areas of activity may not be transferred to the other.

The accounts for the two areas of activity shall be kept in a way which reflects this prohibition.

2. Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure shall be managed by a separate entity.

Article 7

1. Member States shall take the necessary measures for the development of their national railway infrastructure taking into account, where necessary, the general needs of the Community.

They shall ensure that safety standards and rules are laid down and that their application is monitored.

2. Member States may assign to railway undertakings or any other manager the responsibility for managing the railway infrastructure and in particular for the investment, maintenance and funding required by the technical, commercial and financial aspects of that management.
3. Member States may also accord the infrastructure manager, having due regard to Articles 77, 92 and 93 of the Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments.

Article 8

The manager of the infrastructure shall charge a fee for the use of the railway infrastructure for which he is responsible, payable by railway undertakings and international groupings using that infrastructure. After consulting the manager, Member States shall lay down the rules for determining this fee.

The user fee, which shall be calculated in such a way as to avoid any discrimination between railway undertakings, may in particular take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.

SECTION IV

Improvement of the financial situation

Article 9

1. In conjunction with the existing publicly owned or controlled railway undertakings, Member States shall set up appropriate mechanisms to help reduce the indebtedness of such undertakings to a level which does not impede sound financial management and to improve their financial situation.
2. To that end, Member States may take the necessary measures requiring a separate debt amortisation unit to be set up within the accounting departments of such undertakings.

The balance sheet of the unit may be charged, until they are extinguished, with all the loans raised by the undertaking both to finance investment and to cover excess operating expenditure resulting from the business of rail transport or from railway infrastructure management. Debts arising from subsidiaries' operations may not be taken into account.

3. Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 77, 92 and 93 of the EEC Treaty.

SECTION V

Access to railway infrastructure

Article 10

1. International groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established.
2. Railway undertakings within the scope of Article 2 shall be granted access on equitable conditions to the infrastructure in the other Member States for the purpose of operating international combined transport goods services.
3. Railway undertakings engaged in international combined transport of goods and international groupings shall conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning the international transport services referred to in paragraphs 1 and 2. The conditions governing such agreements shall be non-discriminatory.

SECTION VI

Final provisions

Article 11

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. After consulting the committee provided for in paragraph 2 on these questions, the Commission shall take the appropriate decisions.
2. The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 12

The provisions of this Directive shall be without prejudice to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedure of entities operating in the water, energy, transport and telecommunications sectors¹.

Article 13

Decision 75/327/EEC is hereby repealed as from 1 January 1993.

Reference to the repealed Decision shall be understood to refer to this Directive.

Article 14

Before 1 January 1995, the Commission shall submit to the Council a report on the implementation of this Directive accompanied, if necessary, by suitable proposals on continuing Community action to develop railways, in particular in the field of the international transport of goods.

Article 15

Member States shall, after consultation with the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993. They shall forthwith inform the Commission thereof.

1. OJ N° L 297, 29.10.1990, p. 1.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 16

This Directive is addressed to the Member States.

Done at Brussels, 29 July 1991.

For the council
The president
H. VAN DEN BROEK

COUNCIL DIRECTIVE

of 19 June 1995

ON THE LICENSING OF RAILWAY UNDERTAKINGS (95/18/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189c of the Treaty³,

Whereas the single market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the principle of the freedom to provide services should be applied to the railway sector, taking into account that sector's specific characteristics;

Whereas Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁴ provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings;

Whereas, in order to ensure that access rights to railway infrastructure are applied throughout the Community on a uniform and non-discriminatory basis, it is appropriate to introduce a licence for railway undertakings providing the services referred to in Article 10 of Directive 91/440/EEC;

Whereas it is appropriate to maintain the scope of Directive 91/440/EEC, including the exceptions made in it for regional, urban and suburban services and whereas it should be specified that transport activities in the form of shuttle services through the Channel Tunnel are also excluded from the scope of that Directive;

Whereas a licence issued by a Member State should accordingly be recognised as valid throughout the Community;

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1. OJ N° C 24, 28.1.1994, p. 2 and OJ N° C 225, 13.8.1994, p. 9.
 2. Opinion delivered on 14 September 1994 (OJ N° C 393, 31.12.1994, p. 56).
 3. Opinion of the European Parliament of 3 May 1994 (OJ N° C 205, 25.7.1994, p. 38), Council Common Position of 21 November 1994 (OJ N° C 354 of 13.12.1994, p. 11) and Decision of the European Parliament of 14 March 1995 (OJ N° C 89, 10.4.1995, p. 30).
 4. OJ N° L 237, 24.8.1991, p. 25.

Whereas Community conditions for access to or transit via railway infrastructure will be regulated by other provisions of Community law;

Whereas, having regard to the principle of subsidiarity and in order to ensure the requisite uniformity and transparency, it is appropriate that the Community lay down the broad principles of such a licensing system, leaving to Member States the responsibility for the granting and the administration of licences;

Whereas, in order to ensure dependable and adequate services, it is necessary to ensure that railway undertakings meet at any time certain requirements in relation to good repute, financial fitness and professional competence;

Whereas for the protection of customers and third parties concerned it is important to ensure that railway undertakings are sufficiently insured or have made equivalent arrangements in respect of liability risks;

Whereas the suspension and revocation of licences and the granting of temporary licences should also be dealt with in this context;

Whereas a railway undertaking will also be required to comply with national and Community rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety on specific stretches of track;

Whereas, in order to ensure the efficient operation of international rail transport, it is necessary that railway undertakings respect the agreements in force in this field;

Whereas, finally, the procedures for the granting, maintenance and amendment of operating licences to railway undertakings should reflect a general desire for transparency and non-discrimination,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Objective and Scope

Article 1

1. This Directive concerns the criteria applicable to the issue, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Community when they provide the services referred to in Article 10 of Directive 91/440/EEC under the conditions laid down in that Article.
2. Railway undertakings the activities of which are limited to the operation of urban, suburban or regional services shall be excluded from the scope of this Directive.

Railway undertakings and international groupings the activity of which is limited to the provision of shuttle services transporting road vehicles through the Channel Tunnel shall also be excluded from the scope of this Directive.

3. A licence shall be valid throughout the territory of the Community.

Article 2

For the purposes of this Directive:

- (a) 'railway undertaking' shall mean any private or public undertaking the main business of which is to provide rail transport services for goods and/or passengers, with a requirement that the undertaking must ensure traction;
- (b) 'licence' shall mean an authorisation issued by a Member State to an undertaking, by which its capacity as a railway undertaking is recognised. That capacity may be limited to the provision of specific types of services;
- (c) 'licensing authority' shall mean the body charged by a Member State with the issue of licences;
- (d) -- 'urban and suburban services' shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;

-- 'regional services' shall mean transport services operated to meet the transport needs of a region.

Article 3

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by this Directive.

SECTION II

Licences

Article 4

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established.
2. Member States shall not issue licences or extend their validity where the requirements of this Directive are not complied with.
3. A railway undertaking which fulfils the requirements imposed in this Directive shall be authorised to receive a licence.
4. No railway undertaking shall be permitted to provide the rail transport services covered by this Directive unless it has been granted the appropriate licence for the services to be provided.

However, such a licence shall not itself entitle the holder to access to the railway infrastructure.

Article 5

1. 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.
2. For the purposes of paragraph 1, each applicant shall provide all relevant information.

Article 6

Member States shall define the conditions under which the requirement of good repute is met to ensure that an applicant railway undertaking or the persons in charge of its management:

- has/have not been convicted of serious criminal offences, including offences of a commercial nature;
- has/have not been declared bankrupt;
- has/have not been convicted of serious offences against specific legislation applicable to transport;
- has/have not been convicted of serious or repeated failure to fulfil social- or labour-law obligations, including obligations under occupational safety and health legislation.

Article 7

1. The requirements relating to financial fitness shall be met when an applicant railway undertaking can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months.
2. For the purposes of paragraph 1, each applicant shall give at least the particulars listed in section I of the Annex.

Article 8

1. The requirements relating to professional competence shall be met when:
 - (a) an applicant railway undertaking has or will have a management organisation which possesses the knowledge and/or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence,
 - (b) its personnel responsible for safety, in particular drivers, are fully qualified for their field of activity, and
 - (c) its personnel, rolling stock and organisation can ensure a high level of safety for the services to be provided.
2. For the purposes of paragraph 1, each applicant shall give at least the particulars listed in section II of the Annex.

3. Appropriate written proof of compliance with qualification requirements shall be produced.

Article 9

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.

SECTION III

Validity of the licence

Article 10

1. A licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Directive. A licensing authority may, however, make provision for a regular review at least every five years.
2. Specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.

Article 11

1. If there is serious doubt that a railway undertaking which it has licensed complies with the requirements of this Directive, and in particular Article 5 thereof, the licensing authority may, at any time, check whether that railway undertaking does in fact comply with those requirements.

Where a licensing authority is satisfied that a railway undertaking can no longer meet the requirements of the Directive, and in particular Article 5 thereof, it shall suspend or revoke the licence.

2. Where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Directive on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.
3. Notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the re-organisation of the railway undertaking, provided that safety is not jeopardised. A temporary licence shall not, however, be valid for more than six months after its date of issue.
4. When a railway undertaking has ceased operations for six months or has not started operations six months after the grant of a licence, the licensing authority may decide that the licence shall be submitted for approval or be suspended.

As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.

5. In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or take-over, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardised; in that event, the grounds for such a decision shall be given.
6. Where a railway undertaking intends significantly to change or extend its activities, its licence shall be resubmitted to the licensing authority for review.
7. A licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings are commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.
8. When a licensing authority suspends, revokes or amends a licence, the Member State concerned shall immediately inform the Commission accordingly. The Commission shall inform the other Member States forthwith.

Article 12

In addition to the requirements of this Directive, a railway undertaking shall also comply with those provisions of national law which are compatible with Community law and are applied in a non-discriminatory manner, in particular:

- specific technical and operational requirements for rail services,
- safety requirements applying to staff, rolling stock and the internal organisation of the undertaking,
- provisions on health, safety, social conditions and the rights of workers and consumers.

Article 13

Railway undertakings shall respect the agreements applicable to international rail transport in force in the Member States in which they operate.

SECTION IV

Transitional provision

Article 14

Railway undertakings operating rail services shall be granted a transitional period of twelve months as at the final date of transposition referred to in Article 16 (2) in order to comply with the provisions of this Directive. That transitional period shall not cover any provision which might affect the safety of railway operations.

SECTION V

Final provisions

Article 15

1. The procedures for the granting of licences shall be made public by the Member State concerned, which shall inform the Commission thereof.
2. The licensing authority shall take a decision on an application as soon as possible, but not more than three months after all relevant information, notably the particulars referred to in the Annex, has been submitted, taking into account all the available information. The decision shall be communicated to the applicant railway undertaking. A refusal shall state the grounds therefore.
3. Member States shall take the measures necessary to ensure that the licensing authority's decisions are subject to judicial review.

Article 16

1. The Commission shall, two years after the application of this Directive, submit to the Council a report on such application accompanied, if necessary, by proposals concerning continued Community action, with particular regard to the possibility of enlarging the scope of the Directive.
2. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive within two years of the date of its entry into force. They shall forthwith inform the Commission thereof.
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 18

This Directive is addressed to the Member States.

Done at Luxembourg, 19 June 1995.

For the Council
The President
B. PONS

ANNEX

I. Particulars referred to in Article 7 (2)

1. Financial fitness will be verified by means of an undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. Detailed particulars must be provided, in particular on the following aspects:
 - (a) available funds, including the bank balance, pledged overdraft provisions and loans;
 - (b) funds and assets available as security;
 - (c) working capital;
 - (d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;
 - (e) charges on an undertaking's assets.
2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.
3. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents must include information concerning the matters referred to in paragraph 1.

II. Particulars referred to in Article 8 (2)

1. Particulars of the nature and maintenance of rolling stock, in particular as regards safety standards.
2. Particulars of the qualifications of personnel responsible for safety and details of personnel training.

COUNCIL DIRECTIVE

of 19 June 1995

ON THE ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY AND THE CHARGING OF INFRASTRUCTURE FEES (95/19/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189c of the Treaty³,

Whereas greater integration of the Community transport sector is an essential element of the internal market and whereas the railways are a vital part of the Community transport sector;

Whereas the principle of the freedom to provide services needs to be applied in the railway sector, taking account of the specific characteristics of that sector;

Whereas Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁴ provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings;

Whereas it is important to ensure that, where railway undertakings and the international groupings which they constitute provide the services referred to in Article 10 of Directive 91/440/EEC, they benefit fully from the new access rights and whereas, to this end, it is appropriate to establish a system for the allocation of railway infrastructure and the charging of infrastructure fees which is non-discriminatory and uniform throughout the Community;

Whereas the scope of Directive 91/440/EEC should be maintained, including the exceptions laid down therein for regional, urban and suburban services, and whereas it should be specified that transport operations in the form of shuttle services through the Channel Tunnel are also excluded from the scope of that Directive;

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1. OJ N° C 24, 28.1.1994, p. 2 and OJ N° C 225, 13.8.1994, p. 11.
 2. Opinion delivered on 14 September 1994 (OJ N° C 393, 31.12.1994, p. 56).
 3. Opinion of the European Parliament of 3 May 1994 (OJ N° C 205, 25.7.1994, p. 38), Council Common Position of 21 November 1994 (OJ N° C 354 of 13.12.1994, p. 19) and Decision of the European Parliament of 14 March 1995 (OJ N° C 89, 10.4.1995, p. 31).
 4. OJ N° L 237, 24.8.1991, p. 25.

Where, pursuant to the principle of subsidiarity, it is appropriate that the Community lay down the broad principles of such a system, leaving it to the Member States to put in place the detailed rules for the relevant practical implementation;

Whereas the Member States should ensure sufficient flexibility as regards the allocation of infrastructure capacity to allow efficient and optional use of the infrastructure;

Whereas, however, it is necessary to grant certain priority rights with regard to the allocation of infrastructure capacity, notably for public services and services provided on a specific railway infrastructure;

Whereas it is also necessary to provide for the possibility of granting special rights in allocating infrastructure capacity if those rights are essential to ensure adequate transport services or to allow the financing of new infrastructure;

Whereas the accounts of the infrastructure manager should be in balance so that infrastructure expenditure can be covered;

Whereas, furthermore, it is necessary to define non-discriminatory rules as regards the charging of infrastructure fees in the same market;

Whereas efficient use of infrastructure capacity requires that fees be fixed according to a common set of general criteria;

Whereas, out of a general concern for transparency and non-discrimination, common rules should be adopted concerning the procedures for the allocation of infrastructure capacity and the charging of infrastructure fees;

Whereas, in the interests of traffic safety, railway undertakings must, in order to have access to a particular infrastructure, hold a certificate of safety based on certain common criteria and on national provisions, issued by the body competent for the infrastructure used; whereas they must also conclude with the infrastructure manager the requisite technical, administrative and financial agreements;

Whereas it is necessary to guarantee possibilities for making an appeal before an independent body against decisions taken by the authorities and bodies competent as regards the allocation of infrastructure capacity and the charging of infrastructure fees; whereas this possibility for making an appeal is required in particular to resolve any conflicts of interest in cases where an infrastructure manager is at the same time a transport services operator and is responsible for allocating train paths and/or collecting infrastructure fees,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Objective and scope

Article 1

1. The purpose of this Directive is to define the principles and procedures to be applied with regard to the allocation of railway infrastructure capacity and the charging of infrastructure fees for railway undertakings which are or will be established in the Community and the international groupings which they form, where such undertakings and groupings carry out services referred to in Article 10 of Directive 91/440/EEC under the conditions laid down in that Article.
2. Railway undertakings the activities of which are limited to the operation of urban, suburban and regional services shall be excluded from the scope of this Directive.

Railway undertakings and international groupings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are also excluded from the scope of this Directive.

3. Railway infrastructure capacity shall be granted in the form of the allocation of train paths in accordance with Community and national law.

Article 2

For the purpose of this Directive:

- (a) 'railway undertaking' means any public or private undertaking the main business of which is to provide rail transport services for goods and/or passengers, with a requirement that the undertaking must ensure traction;
- (b) 'international grouping' means any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States;
- (c) 'infrastructure manager' means any public body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;
- (d) 'train path' means the infrastructure capacity needed to run a train between two places at a given time;
- (e) 'allocation' means the allocation of railway infrastructure capacity by an allocation body;
- (f) 'allocation body' means the authority and/or infrastructure manager designated by the Member States for the allocation of infrastructure capacity.

SECTION II

Allocation of railway infrastructure capacity

Article 3

Each Member State shall designate the allocation body in accordance with the requirements of this Directive. In particular, the allocation body, which shall be informed of all train paths available, shall ensure that:

- railway infrastructure capacity is allocated on a fair and non-discriminatory basis and that,
- subject to Articles 4 and 5, the allocation procedure allows optimum effective use of the infrastructure.

Article 4

1. Member States may take the necessary measures to ensure that priority is given to the following rail services in the allocation of railway infrastructure capacity:
 - (a) services provided in the interest of the public, as defined in Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway¹;
 - (b) services wholly or partly operated on infrastructure constructed or developed for certain specific services (specialised high-speed or freight lines), without prejudice to Articles 85, 86 and 90 of the Treaty.

This provision shall apply without discrimination to all services within the scope of Article 1 having comparable characteristics and providing similar services.

2. With regard to services provided under paragraph 1 (a), Member States may compensate the infrastructure manager for any financial losses incurred due to the imposition of a certain infrastructure capacity allocation in the interests of public service.

Article 5

Member States may grant special rights as regards infrastructure capacity allocation on a non-discriminatory basis to railway undertakings operating certain types of services or in certain areas if such rights are indispensable to ensure adequate public services or efficient use of infrastructure capacity or to allow the financing of new infrastructures, without prejudice to Articles 85, 86 and 90 of the Treaty.

1. OJ N° L 156, 28.6.1969, p. 1. Regulation as last amended by Regulation (EEC) N° 1893/91 (OJ N° L 169, 29.6.1991, p. 1).

SECTION III

Charging of infrastructure fees

Article 6

1. The accounts of an infrastructure manager shall, under normal business conditions over a reasonable time period, at least balance income from infrastructure fees plus State contributions on the one hand and infrastructure expenditure on the other.
2. The infrastructure manager may finance infrastructure development including provision or renewal of capital assets, and may make a return on capital employed.

Article 7

There shall be no discrimination in the charging for services of an equivalent nature in the same market.

After consulting the infrastructure manager, Member States shall lay down the rules for determining the infrastructure fees. These rules shall provide the infrastructure manager with the facility to market the available infrastructure capacity efficiently.

Article 8

1. The fees charged by the infrastructure manager shall be fixed according to the nature of the service, the time of the service, the market situation and the type and degree of wear and tear of the infrastructure.
2. As regards the procedures for the payment of fees, Member States may provide for the possibility that a global agreement be concluded with the infrastructure manager as regards public services, in accordance with Regulation (EEC) No 1191/69.

Article 9

1. The fees shall be paid to the infrastructure manager(s).
2. Member States may require the infrastructure manager to provide all the information on the fees necessary to satisfy them that they are charged on a non-discriminatory basis.
3. The infrastructure manager shall inform railway undertakings using its infrastructure to provide services referred to in Article 10 of Directive 91/440/EEC in good time of any major changes in the quality or capacity of the infrastructure concerned.

SECTION IV

General provisions

Article 10

1. Member States shall lay down the procedures for the allocation of railway infrastructure capacity referred to in Article 1 (3). They shall publish their procedural rules and inform the Commission thereof.
2. An application for infrastructure capacity shall be submitted to the allocation body of the Member State on the territory of which the departure point of the service concerned is situated.
3. The allocation body to which an application has been submitted shall immediately inform the other allocation bodies concerned of this request. The latter shall take a decision as soon as possible but no later than one month after all relevant information has been submitted; each allocation body shall have the right to refuse an application. They shall immediately inform the allocation body to which the request has been submitted.

The allocation body to which an application has been submitted shall, together with the other allocation bodies concerned, take a decision on the application as soon as possible, but no later than two months after all relevant information has been submitted.

An application which has been refused on the grounds of insufficient capacity shall be reconsidered at the next time-table adjustment for the routes concerned if the applicant undertaking so requests. The dates for such adjustments and other administrative arrangements shall be available to interested parties.

The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reason therefore.

4. An applicant undertaking may directly contact the other allocation bodies concerned with this request on condition that the allocation body to which the application has been submitted is informed.
5. The railway undertakings to which railway infrastructure capacity is allocated shall conclude the necessary administrative, technical and financial agreements with the infrastructure managers.

Article 11

1. The Member States shall provide that in addition a safety certificate in which the railway undertakings' safety requirements are set out be submitted in order to ensure safe service on the routes concerned.
2. In order to obtain the safety certificate, the railway undertaking must comply with the regulations under national law, compatible with Community law and applied in a non-discriminatory manner, laying down the technical and operational requirements specific to rail services and the safety requirements applying to staff, rolling stock and the undertaking's internal organisation. In particular, it must provide proof that the staff whom it employs to operate and accompany the trains providing services referred to in Article 10 of Directive 91/440/EEC has the necessary

training to comply with the traffic rules applied by the infrastructure manager and to meet the safety requirements imposed on it in the interests of train movement.

The railway undertaking must also prove that the rolling stock comprising these trains has been approved by the public authority or by the infrastructure manager and checked in accordance with the operating rules applicable to the infrastructure used. The safety certificate shall be issued by the authority designated for the purpose by the Member State in which the infrastructure used is situated.

Article 12

Member States may provide for the possibility that applications for infrastructure access are accompanied by a deposit or similar security.

If an applicant does not make use of an allocated train path, an amount may be deducted from the deposit which represents the cost incurred in processing the application and any subsequent loss of earnings due to the non-use of the infrastructure capacity concerned. In the other cases, the deposit/security shall be returned in its entirety.

SECTION V

Final provisions

Article 13

1. Member States shall take the measures necessary to ensure that decisions on the allocation of infrastructure capacity or the charging of fees shall be open to appeal before an independent body when so requested in writing by a railway undertaking. This body shall take its decision within two months of the submission of all relevant information.
2. Member States shall take the measures necessary to ensure that decisions taken in accordance with paragraph 1 are subject to judicial review.

Article 14

1. The Commission shall, two years after the application of this Directive, submit to the Council a report, accompanied - if necessary - by proposals regarding continued Community action, with particular regard to the possibility of enlarging the scope of the Directive.
2. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years following the date of the entry into force of this Directive. They shall forthwith inform the Commission thereof.
3. When Member States adopt the provisions referred to in paragraph 2, they shall contain a reference to this Directive or be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 15

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 16

This Directive is addressed to the Member States.

Done at Luxembourg, 19 June 1995.

For the Council
The President
B. PONS

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