

Making the railway system
work better for society.

Minutes of 43rd Meeting

Management Board

Lille / 26 September 2017

The meeting opened at 10.15, Ms. Clio Liégeois was in the Chair. The secretariat was provided by the European Union Agency for Railways. The Agency Management Team, the Executive Director, Mr. Josef Doppelbauer, and Agency staff were present.

Attendance list

MEMBERS OF THE MANAGEMENT BOARD		
EU MEMBER STATES (with voting rights, one vote per member state)		
Mr. Klaus Gstettenbauer	Austria	Proxy to the Netherlands
Alt: Mr. Wolfgang Catharin		Excused
Ms. Clio Liégeois CHAIRPERSON	Belgium	Present
Alt: Ms. Valérie Verzele		Excused
Mr. Veselin Vasilev	Bulgaria	Excused
Alt: Ms. Gabriela Tsvetanova Tsekova		Present
Appointment pending	Croatia	Excused
Alt: Ms. Ljiljana Bosak		Excused
Ms. Chrystalla Mallouppa	Cyprus	Excused
Alt: Ms. Elpida Epaminonda		Excused
Mr. Jindřich Kušnír	Czech Republic	Excused
Alt: Mr. Luboš Knizek		Present
Mr. Kåre Clemmesen	Denmark	Present
Alt: Mr. Hans Christian Wolter		Present
Mr. Indrek Laineveer	Estonia	Present
Alt: Mr. Raigo Uukkivi		Excused
Mr. Yrjö Mäkelä	Finland	Present
Alt: Mr. Risto Saari		Excused
Ms. Anne-Emmanuelle Ouvrard	France	Present
Alt: Mr. Hubert Blanc		Excused
Mr. Wolfram Neuhöfer	Germany	Present
Alt: Mr. Michael Schmitz		Excused
Mr. Triantafyllos Papatriantafyllou	Greece	Present
Alt: Mr. Grigoris Sampatakakis		Excused
Mr. Lászlo Mosóczy	Hungary	Present
Alt: Ms. Helga Nemeth		Excused
Ms. Mary Molloy	Ireland	Excused

Alt: Ms. Caitriona Keenahan		Present
Mr. Eugenio Martino	Italy	Excused
Alt: Mr Giorgio Morandi		Present
Mr. Patriks Markēvičs	Latvia	Present
Alt: Ms. Linda Gailite		Present
Ms. Giedrė Ivinskienė	Lithuania	Excused
Alt: Mr. Justas Rašomavičius		Proxy to Latvia
Mr. André Bissen	Luxembourg	Present
Alt: Mr. Marc Östreicher		Excused
Appointment pending	Malta	Excused
Appointment pending		Excused
Mr. Hinne J.Y. Groot	Netherlands	Present
Alt: Mr. Marnix Van der Heijde		Excused
Mr. Ignacy Góra	Poland	Excused
Alt: Mr. Pawel Rolek		Present
Mr. Eduardo Feio	Portugal	Present
Mr. José Pires (Adviser)		Present
Alt: Ms. Ana Miranda		Excused
Ms. Mihaela Carabineanu	Romania	Excused
Alt: Ms. Ana Maria Dascalu		Excused
Mr. Mikuláš Sedlák	Slovakia	Excused
Alt: Mr. Miroslav Dorčák		Excused
Mr. Boris Živec	Slovenia	Excused
Alt: Mr. Benjamin Steinbacher Pušnjak		Excused
Ms. Paloma Forcat Iribas	Spain	Present
Alt: Mr. Eduardo Santiago González		Excused
Appointment pending	Sweden	Excused
Alt: Mr. Carl Silfverswärd		Present
Mr. Jeremy Hotchkiss	United Kingdom	Present
Alt: Mr. Ian Jones		Excused
EUROPEAN ECONOMIC AREA STATES (EEA) (no voting rights)		
Mr. Øystein RAVIK	Norway	Present
Alt: Mr. Erik Ø. REIERSØL-JOHNSEN		Excused
ETFA Surveillance Authority	Observer	
Mr. Gaspar Ebrecht	ESA	Excused
EUROPEAN COMMISSION (voting rights: 2 votes in total)		
Mr. Henrik Hololei		Excused
Alt: Mr. Matthew Baldwin		Present
Ms. Michaela Strohshneider (Adviser)		Present
Ms. Agnieszka Kázmierczak		Present
Alt.: Mr. Keir Fitch		Present
Ms. Isabel Rosenbrock (Adviser)		Present
SECTOR REPRESENTATIVES (no voting rights)		
Mr. Libor Lochman	Railway Undertakings	Excused
Alt: Mr. Markus Vaerst		Present
Ms. Monika Heimig	Infrastructure managers	Present

Alt: Mr. Maurizio Gentile		Excused
Mr. Philippe Citroën	Railway industry	Present
Alt: Mr. Gilles Peterhans		Excused
Mr. Guy Greivelding	Trade-Union Organisations	Excused
Alt: Ms. Sabine Trier		Excused
Mr. Josef Schneider	Passengers	Present
Alt: Mr. Maurice Losch		Excused
Mr. Ralf-Charley Schültze	Rail Freight Customers	Excused
Alt: Mr. Gavin Roser		Excused

The Chair welcomed the newly appointed representatives of Italy and of Romania, Mr. Eugenio Martino and Ms. Mihaela Carabineanu respectively, as well as the adviser to the Commission representatives and Deputy Head of Rail Safety and Interoperability Unit (C.4) of Directorate C at the Directorate-General for Mobility and Transport (DG MOVE) of the Commission, Ms. Michaela Strohschneider.

She also wished all the best to the representative of Denmark, Mr. Hans Christian Wolter, who would, following that meeting onwards, step down as member of the Management Board and thanked him warmly for his invaluable five-year contribution to the work of the Management Board.

SUMMARY OF DECISIONS

The Management Board:

- 1) adopted the minutes of the 42nd meeting held on June 27th 2017,
- 2) appointed Mr. Yrjö Mäkelä as member and Ms. Paloma Forcat Iribas as alternate of the Executive Board (EB) and confirmed Mr. Hinne J.Y. Groot as member of the EB with a four-year mandate,
- 3) amended the Rules of Procedure (RoP) of the EB,
- 4) agreed on the Strategic Rolling Calendar of the EB for the years 2017-2018,
- 5) adopted rules for the prevention and management of conflicts of interest in respect of the members of the Board(s) of Appeal (BoA) of the European Union Agency for Railways,
- 6) adopted the technical and functional specifications for the establishment of the One-Stop Shop (OSS),
- 7) agreed on the 4th Railway Package (4th RP) Readiness Assurance Terms of Reference (ToRs),
- 8) agreed to meet again on November 29th 2017.

Voting members present or represented by proxy: 24

Votes: Decisions under points 1, 2, 3, 4, 5, 6, 7 above were taken unanimously. Election of EB alternate, point 2 above: The decision on the appointment of Ms. Paloma Forcat Iribas as alternate to the Executive Board was taken with twenty-three (23) votes in favour and one (1) abstention.

MINUTES

1. Adoption of the agenda

The agenda was adopted with the point on the headquarters agreement being for discussion and not for decision.

2. Adoption of the minutes of the 42nd Management Board (MB) meeting

The minutes of the 42nd MB meeting were adopted.

3. Appointment of Executive Board (EB) members

The Board members were informed that there was two vacant seats of an EB member and of an EB alternate to be filled and reminded that the decision on the appointment of the EB members and/or alternates should be adopted by a two-thirds majority of the MB members entitled to vote and that, in other words, at least twenty (20) votes would have to be cast in favour of the candidate proposed for the vacancy.

The Chair announced that the representative of Finland, Mr. Yrjö Mäkelä, who had already been serving since June 2016 on the EB, although under a two-year mandate, as alternate, had put forward his candidacy for the vacant seat of EB member and asked the representative of Spain, Ms. Paloma Forcat Iribas, who had also expressed her interest in being appointed to the EB, to indicate whether she intended to put her candidacy forward for the vacant seat of EB member or that of EB alternate.

The representative of Spain replied that, given the involvement of the representative of Finland in the work of the EB as alternate since more than one year at that point, she would put her name forward for the EB alternate vacancy so that both MB members would be given the opportunity to be represented on the EB.

There were no further candidacies announced for the two seats of member and alternate which had been declared vacant on the EB. The appointment procedure for each of those seats was held on a show of hands.

The representative of Finland, Mr. Yrjö Mäkelä, was appointed as EB member for a full four-year term of office.

The representative of Spain, Ms. Paloma Forcat Iribas, was appointed as an EB alternate.

The representative of the Netherlands, Mr. Hinne J.Y. Groot who had also been appointed, since June 2016, to serve a two-year mandate as EB member, was confirmed as EB member and assigned a full four-year mandate.

4. Rules of Procedure (RoP) of the Executive Board (EB) – Amendment

The Chair made the introductory remark that it was the adoption of the paper on the future role of the EB by the MB during its 42nd meeting in June 2017 which had dictated, among others, the review of the existing EB RoP and reminded that any subsequent amendment of such RoP was subject to prior approval by the MB.

It was also clarified that the initial Agency's proposal on the amendment of the EB RoP had been slightly revised following the 6th EB meeting of September 2017 and that, on the basis of the revised Agency's proposal, firstly it fell on the MB to formally endorse –and update on an annual basis thereafter– the EB strategic calendar and, secondly, the EB meetings should be held, in line with the Agency Regulation and the Denmark's request during the previous MB meeting, at least once every months and, where possible, not less than two weeks and not more than six weeks prior to the scheduled MB meetings.

The MB members were given a brief overview of the Agency's proposal on the necessary changes which needed to be brought to the current text of the EB RoP following the discussions within the MB and the formal approval of the relevant paper on the role of the EB during the 42nd MB meeting of June 2017.

The Commission expressed its support for the proposal put forward by the Agency, considered that such proposal echoed quite accurately the views reflected in the paper on the role of the EB and recommended its adoption by the MB.

Denmark expressed also its support for the Agency's current proposal, noted with appreciation that its comments had been taken on board by the Agency and concluded that the proposed amendment of the EB RoP on the convening of EB meetings was fully in line with the requirements prescribed under the relevant provision of the Agency Regulation as well.

Denmark took also the opportunity to request the Agency to circulate to the MB members the necessary documentation in a timely manner and, where possible, well in advance of the MB meeting during which such documents would be discussed and/or adopted and mentioned, for instance, that some of the OSS-related documents proposed for adoption had been made available to the MB members not earlier than a week prior to the MB meeting.

In response to the Denmark's remark, it was pointed out that, although the text of both the draft MB decision and of its accompanying explanatory note had indeed been distributed to the MB members just a week before their meeting, the OSS vision document itself which had been annexed to and formed an integral part of the draft MB decision to be adopted by the MB had been made available already since the end of August 2017 and no significant changes had been brought thereto following the EB meeting of September 2017.

The Chair added that the extension of the initial deadline for the submission of comments on the OSS vision document by the MB members might have accounted as well for the belated submission of the definitive version of the MB decision to be adopted and expressed her hope that the current Agency's proposal on the amendment of the EB RoP read in conjunction with its proposal on the dates of the EB and MB meetings for the year 2018 would eventually accommodate the need for the MB members to receive the documents to be discussed and/or adopted during the MB meeting sufficient time in advance.

The proposed amendments of the EB RoP were adopted unanimously by the MB.

5. Executive Board (EB) Strategic Rolling Calendar 2017-2018

The Chair stated that the document on the EB Strategic Rolling Calendar 2017-2018 which had been circulated to the MB members prior to their meeting had come as a result of joint efforts by herself and by the MB Deputy Chair and had been produced on the basis of the paper on the role of the EB adopted during the 42nd MB meeting in June 2017 and following discussions held on the matter with the outgoing MB Chair, Mr. Mats Andersson.

It was clarified that the topics contained in the proposed EB Strategic Rolling Calendar 2017-2018 should be considered as the most important ones to be further reflected upon and discussed from a strategic point of view in the future EB meetings to be held during 2017 and 2018 and that, on the contrary, those topics in relation to which it was incumbent, by virtue of the Agency Regulation, on the MB to adopt a formal decision –and on the EB to make the necessary preparatory work prior to the adoption of such decisions– had been clearly excluded from the scope of such calendar so that the EB meetings agendas could be set in a more flexible manner taking into consideration both the maturity stage of the proposals which would be potentially put forward and the sensitivity of the strategic issues which would be discussed as a result thereof.

It was added that the main rationale behind the establishment of an EB Strategic Rolling Calendar 2017-2018 was to assign to the EB a clear mandate to hold more detailed and in-depth discussions on some key issues of strategic priority, that the intention was to allow for a periodic assessment of the EB Strategic Rolling Calendar 2017-2018 and, if necessary, for its review on an annual basis after its formal adoption by the MB and that the proposed dates for the EB meetings to be held during 2018 were only indicative and would have to be finally agreed upon by the MB members later that day during the discussions on the meeting dates.

Moreover, it was explained that the EB rapporteurs who would be appointed to monitor and follow more closely the Agency's work on the strategic topics identified in the EB Strategic Rolling Calendar 2017-2018 could provide both the EB and the MB with regular reports on the progress made by the Agency on the issues falling within the scope of their tasks from the preparatory phase until the adoption of a final decision on the matter and that not all EB/MB meetings agendas included new topics to be discussed since the discussions and the follow-up on some of the key strategic issues already identified in the EB Strategic Rolling Calendar 2017-2018 might take more time than initially planned and need to be continued at the following meeting(s).

The Commission sought to confirm whether the EB Strategic Rolling Calendar 2017-2018 was supposed to be viewed as the rolling plan of the discussions to be held within the EB exclusively on strategic topics and whether, in such a case, the Agency intended to make a separate planning as regards the discussions to be held on purely administrative and budgetary matters falling within the scope of the EB tasks either on the basis of the standard programming, budgeting and reporting cycle or on any other basis which might trigger the need for such discussions in the future.

The Chair, while acknowledging that administrative and budgetary matters should still be dealt with by the EB on a regular basis as part of its routine workload, justified the exclusion of the relevant issues from the scope of the EB Strategic Rolling Calendar 2017-2018 to be adopted by making reference to the need to afford greater flexibility in determining the appropriate timing of the discussions to be held on such issues depending on the circumstances and without the involvement of the MB being necessary in that regard.

The EB Strategic Rolling Calendar 2017-2018 was adopted unanimously by the MB.

6. Conflicts of Interest (CoI) Rules for members of Board(s) of Appeal (BoA)

The Chair made the introductory remark that a revised version of the BoA CoI Rules produced on the basis of the comments which had been made by the Board members and grouped, together with the Agency's replies thereto, into a comments table had been made available to the MB members in advance of that meeting.

The Board members were provided with a brief overview of the main aspects covered in the proposed BoA Col Rules and the comments received on the initial version as well as the next steps envisaged to be taken in relation thereto.

The Chair requested the Agency to make available to the MB members the presentation which had been made on the proposal on the BoA Col Rules as soon as possible and reported to the MB on the discussions which had been held on the matter during the 6th EB meeting of September 2017.

The proposed BoA Col Rules were adopted unanimously by the MB.

7. Technical and functional specifications of the One-Stop Shop (OSS)

The Chair reminded that, following the 42nd MB meeting of June 2017, the MB members had been given ample opportunity to submit comments on the vision document and that the Agency had announced, already during the 6th EB meeting of June 2017, its intention to prepare, on the basis of the comments received from the MB members up until that point, a revised version of the vision document to be further circulated to the MB members and proposed for adoption, to finalise and send out to all the MB members concerned its replies to the comments made by them and to hold, on a bilateral basis and upon request, further discussions on any open points.

The 4th Railway Package (RP) Preparation Programme Manager confirmed that most of the comments which had been made by Belgium, Spain, the Netherlands, France, UNIFE and CER had already been taken on board and were, this, fully reflected in the current version of the vision document proposed for adoption which contained an additional section providing a brief summary of the key principles of the OSS project –which were previously spread out throughout the whole document and were to be found mostly under sections 3.5 and 3.6 on the stakeholder requests and the main features of the tool respectively– as well as an explicit reference to the legal basis of the different functionalities of the tool under section 3.5 thereof. He also placed emphasis on the need to move forward with the adoption of the relevant MB decision as soon as possible so as to ensure that a fully operational tool would be available for the Agency to make use of already during the shadow running phase which was about to start in June 2018.

Sweden wondered whether, given that there were still a number of outstanding issues concerning mainly technical details which had yet to be resolved in the discussions between the Agency and the NSAs, the adoption of the technical and functional specifications of the OSS would bring an end to the discussions on the above-mentioned technical details or whether it would still be possible for the Agency and the NSAs to continue the debates and to seek a final agreement on any points which remained open from a technical point of view in future bilateral meetings which would take place at a later stage and, in any case, after the adoption of the relevant MB decision.

The Commission noted its appreciation for the high quality of the proposal put forward by the Agency and, along the lines of the concern previously raised by Sweden, sought to confirm whether the Agency intended to build the OSS tool in as sufficiently flexible a manner as to allow its evolution through a dynamic process and the adjustment of its functionalities to future needs not yet fully foreseeable at that point.

Spain thanked the Agency for taking its comments on the draft proposal on board, disagreed with the choice of the Agency to include the detailed business process diagrams as annex to the vision document and wondered whether the future modification of such diagrams, if any, was also subject to prior approval by the MB or whether such formal approval process could be bypassed in that case.

Denmark agreed with the points made by both Sweden and the Commission and recalled that the OSS tool was mainly intended to serve among others, by virtue of Article 12 § 1 of the Agency Regulation, both as a single entry point for the submission of application files for VAs and SSCs and as an early-warning system able to identify at an early stage the needs for coordination between decisions to be taken by the NSAs and the Agency in the case of different applications requesting similar VAs or SSCs.

Furthermore Denmark warned against the potential risk of overburdening the NSAs with additional administrative bureaucracy by highlighting that, according to its reading of the Agency Regulation, the EU legislator did not intend to introduce a form of mandatory parallel filing of documents by the Agency and the NSAs or to have the documents produced by the NSAs in the relevant field audited by the Agency.

Denmark eventually expressed its support for the Agency's current proposal, but held the view that the NSA should not use the OSS when dealing with matters falling exclusively within the sphere of the national railway traffic and was looking forward to the establishment of a clear set of practical rules both on VAs and SSCs to be produced at a later stage in the process.

In response to the concerns raised by the MB members, the Chair recalled that the Agency would come back in the future, if necessary, with a revised proposal for adoption by the MB and pointed out that the NSAs did not seem to have, by virtue of Article 12 of the Agency Regulation, a choice of whether or not to make use of the OSS system.

On the remarks made by the MB members regarding the degree of flexibility envisaged in the development of the OSS tool, the 4th RP Preparation Programme Manager answered that the first two key principles in the latest version of the vision document contained an explicit reference to the requirement for sufficient flexibility in the project development and guaranteed that the OSS system had been designed from the outset as an IT tool which would function in support of the authorisation and certification processes.

While acknowledging that the vision document provided already a high-level description of the key principles underpinning the OSS projects and of the main functionalities of the OSS tool, he explained that the OSS User Group should still further reflect upon, in close cooperation with the Sector, the appropriate ways in which all the elements identified above would be put into practice through a process entailing the interaction between the Agency, the NSAs and the applicants.

The Board members were assured that the adoption of the proposed decision would not block in any way whatsoever the discussions to be held subsequently on the technical details with the final users of the tool and that, in the unlikely event that the technical and functional specifications would have to be amended following the discussions within the OSS User Group after their formal adoption by the MB, the Agency would deploy its change management process and bring to the attention of the MB any request for revision of the adopted specifications. Finally it was reminded that the new functionalities to be potentially developed in relation to any future release of the OSS tool would have to be submitted to the MB for prior approval.

The 4th RP Preparation Programme Manager agreed with the point made by Spain on the rather detailed nature of the business process diagrams which had been annexed to the vision document, but clarified that it was the MB which had requested the Agency to include such diagrams in the first place in the text of the draft decision to be adopted and did not exclude the possibility of having those diagrams amended as well in the future, if necessary, without the prior approval of the MB being necessary in that regard.

In response to the remark made by the Netherlands on the non-mandatory use of the OSS system by the NSAs, it was underlined that, although there was a minimum set of requirements prescribed under Article 12 of the Agency Regulation and applicable to all cases where an application for VA or SSC would have to be submitted through the OSS system, the choice of the services to be used in cases of purely national interest was left at the discretion of the NSAs and it was mentioned, for instance, that the issues related to the functionalities management could be dealt with in a more flexible manner and on a bilateral basis between the NSAs and the applicants.

In support of the argumentation provided by the Agency, the 4th RP Preparation Programme Manager made reference to the first key principle of the vision document which clearly stipulated that the OSS system was mainly intended as an IT tool "easy to use, introducing the minimum or no administrative burden at all to the users".

On the concerns raised by the MB members with regard to the need for flexibility in the development of the OSS tool, the Executive Director pointed to Article 12 § 2 of the Agency Regulation which clearly placed on

the MB the duty to adopt the technical and functional specifications and a plan for the establishment of the OSS. He advised the MB members to proceed with the adoption of the proposed vision document pointing out both the possibility to use the change management process envisaged therein as well as the explicit reference to the close cooperation with the network of the NSAs stipulated in the Agency Regulation.

Sweden repeated its previous concern and wondered whether the adoption of a decision by the MB on the matter would impede the further development of the functional and technical specifications of the OSS.

The 4th RP Preparation Programme Manager replied that the planned adoption of a decision on the technical and functional specifications of the OSS was not tantamount to excluding any possibility for further discussion and reflection on the adopted specifications within the OSS User Group. He guaranteed that, were it for the need to revisit the high-level requirements prescribed under the vision document arise in the future, the Agency would make use of the proposed change management process and put forward for approval by the MB any proposal for review of the adopted specifications of the OSS.

The Executive Director identified the adoption of the vision document as a prerequisite for any further progress in the discussions on the technical details regarding the development of the OSS tool and stressed that the requirements of Article 12 of the Agency Regulation had to be mandatorily complied with and that the availability of a change management process and the Agency's commitment to continued cooperation with and involvement of the NSA network in the development of the OSS specifications provided the necessary safeguards that the OSS had been designed as a workable, dynamic and evolutionary system.

The Commission observed that the evolution of the OSS system was parallel to the development of the Implementing Acts (IAs) which would be adopted in the near future such as, among others, the IA on the practical arrangements for VA and that, by definition, the adoption of a decision by the MB on the technical and functional specifications of the OSS could not have the result of hindering further progress in developing the adopted specifications at a more detailed level.

Sweden expressed its satisfaction with the replies provided in response to its concerns and announced that it would support the Agency's proposal.

In reply to a request for clarification made by France, the Chair explained that, while the Agency did not intend to amend the text of the MB decision itself so as to bring it in line with the comments which had just been made by the MB members, it would, nevertheless, make sure that the main points to which the Executive Director had previously referred to be reflected in the minutes of the meeting.

The Executive Director suggested that a recital should be added in the form of a preamble to the MB decision which would make explicit reference to the requirements set forth under the first indent of Article 12 § 2 of the Agency on the need for the OSS to be established as a flexible tool and to the possibility for further development of the adopted specifications through the deployment of the change management process in close cooperation with and appropriate consultation of the network of NSAs.

The MB agreed to take on board the proposal made by the Executive Director and adopted unanimously the proposed draft MB decision on the technical and functional specifications for the establishment of the OSS.

The Chair announced that the version of the adopted decision revised on the basis of the suggestion made by the Executive Director would be made available to the MB members and published as soon as possible.

8. Terms of Reference (ToRs) of the 4th Railway Package Steering Group (4th RP SG)

The Chair made the introductory remark that, following the discussions during the Board meetings in June 2017 on the Netherlands's proposal on the assessment of the Agency's readiness in view of the impending implementation of 4th RP, it was considered appropriate to proceed to the first step of the revision of the ToRs of the 4th RP SG which had been set up by the Executive Director.

It was explained that the current proposal put forward by the Agency was intended to provide the necessary support for the functioning of the 4th RP and to shift, at the same time, the focus of the discussions from the

narrow scope of the impact of the 4th RP on the Agency's work to the much broader context of the impact of the 4th RP on the overall EU system of which the Agency was only a part.

It was added that the meetings of the 4th RP SG would be held separately from those of the EB, that several experts, including two or three MB representatives, would be invited to participate in those meetings, that both the EB and the MB would be informed about the recommendations which would be issued by the 4th RP SG and would bear an impact upon the Agency's work as such, and that any decision-making powers continued to lie solely with the MB as the ultimate "readiness assessment sponsor".

It was also reported that the 4th RP SG would also be composed of experts representing both the NSAs and the Sector and of a Project Manager from the Agency's staff to be deployed as a Full-Time Equivalent (FTE), that it was up to the 4th RP SG itself to determine the exact methodology to be followed for the performance of the readiness assurance assessment, including the decision on whether recourse should be made or not to the services of an external consultant, and that the prior approval of the MB would most probably have to be sought on any proposals put forward by the 4th RP SG with budgetary implications for the Agency.

The Board members were provided with a brief overview of the approach to be developed by the 4th RP SG on the basis of the initial proposal made by the Netherlands and the discussions held within the 4th RP SG.

The 4th RP Preparation Programme Manager underlined that the 4th RP SG should, firstly, focus on identifying the major risks which could potentially cause a system failure on the assumption that one or more of the actors involved in the processes envisaged under the 4th RP, such as the Agency, the NSAs or the applicants would be unprepared to effectively cope with the new challenges. It would then be up to the 4th RP SG to assess the identified major risks and to propose appropriate mitigation measures to be applied in close cooperation with the NSAs and the Sector.

The Board members were informed by the Chair on the outcome of the discussions which had been held on the matter during the 6th EB meeting of September 2017.

More specifically, the Chair explained that the EB had reached the conclusion that the idea of a readiness assurance assessment was both necessary and useful. However, the Agency's proposal had been criticized for its wide scope, it had been pointed out that the Sector was only limitedly and indirectly concerned by such proposal and it had been suggested that 4th RP SG should rather consider placing its focus on assessing the readiness of the Agency and the potential interfaces to be developed with the NSAs although it had been acknowledged that the Agency should be kept updated on the Sector's readiness in view of the 4th RP so that appropriate remedy actions, such as dissemination, could be taken as early as possible, if necessary.

Moreover, the need to prepare a report until June 2018 on the progress which would have been made, up until that point, regarding the necessary preparations in view of the forthcoming 4th RP, to avoid, as much as possible, any unnecessary duplication of the discussions already held within other existing fora such as the NSA network, the Group of Representative Bodies (GRB) and the RISC and to further reflect on the issue of whether the EB was the appropriate body to undertake the overall management of the readiness assessment project without any involvement of the 4th RP SG being necessary in that regard had been considered as well.

The Chair summarised that the EB had been given the overall impression that the proposed 4th RP readiness assurance assessment should be treated both as a confidence-building exercise and as a useful early-warning tool and that, account being taken of the 4th RP SG's reporting obligations to the EB, it had expressed its support for the idea of aligning the time frame set for the 4th RP SG meetings with that of the EB meetings.

The Chair reported to the Board members on the discussions which had been held on the relevant matters within the 4th RP SG.

The Chair analysed that during the above-mentioned discussions, the 4th RP SG itself had drawn the conclusion that it should avoid, as much as possible, duplicating the work which was already supposed to be carried out within other existing bodies. It was stressed, and that, while the proposal for the adoption of a broad vision for the 4th RP SG which would aim at covering the Sector's activities as well, had been put on the

table, some participants had expressed their strong preference for a much more limited scope which would allow the 4th RP SG to focus its work on assessing the readiness of the Agency and of the NSAs and the synergies to be potentially established between them.

It was also mentioned that the Executive Director considered that the Agency's proposal should contain, at least, an explicit reference to the first indent of Article 53 § 1 of Interoperability Directive (EU) 2016/797 which clearly provided for the obligation of the Commission to produce a report on the progress made in preparing for the Agency's enhanced role by June 16th 2018.

Finally it was said that the suggested approach was to set up the flexible agendas for the 4th RP SG in order to leave room for discussions to be held on a case-by-case basis.

The Chair guaranteed that the Agency's proposal on the 4th RP readiness assurance assessment project which entailed, among others, the establishment of the 4th RP SG, would not place additional burden on any of the actors involved in the process towards the implementation of the 4th RP and explained that it was mainly for the purpose of introducing the above-mentioned reporting obligations to the MB that the proposal on the revision of the existing 4th RP SG had been put forward.

The Commission expressed its satisfaction with the current Agency's proposal on the 4th RP readiness assurance assessment ToRs, agreed with the points made previously on the necessity to avoid duplicating the work performed by other bodies by establishing the 4th RP SG as a mechanism with added value in terms of ensuring, among others, the readiness of the Agency and of all the other actors involved in the complex and challenging process of the 4th RP implementation and considered that the work done with the 4th RP SG could serve as a useful input for the report which the Commission would have to prepare by June 2018.

Italy agreed in principle with the views expressed on the matter during the 6th EB meeting and made the observation that the text of the proposal itself did not seem to contain an estimation of the needs in terms of financial and human resources and wondered whether the readiness assurance assessment project would be financed by the budget which had already been approved by the MB or whether the Agency would have to submit a request for approval of additional budget.

Denmark held the view that the scope of the current proposal was limited to the assessment of the Agency's readiness, expressed its support for such proposal provided that it did not place any restrictions on and was compatible with Article 2 of the Agency Regulation and recommended that the work of the 4th RP SG should be more closely monitored by the MB which could be provided with feedback on the progress which would have been made by the Agency as the transition phase was coming to its end during its meeting in June 2018.

The Chair intervened to mention that, according to the EB Strategic Rolling Calendar 2017-2018 which had just been adopted by the MB, the EB would be updated on the results of the 4th RP readiness assurance assessment in September 2018.

The Netherlands thanked the Agency for elaborating further its initial proposal which had been put forward and discussed during the MB meeting of June 2017 and admitted that it was quite pleased with the current Agency's proposal in the sense that the 4th RP SG could play a significant role and produce real added value in the assessment of the readiness not only of the Agency but also of any other actors involved in the process towards the implementation of the 4th RP such as, among others, the NSAs.

The Netherlands placed emphasis on the need to adopt a collaborative methodology for performing the 4th RP readiness assurance assessment with a view to involving actively in the process the Agency, the NSAs, the Member States and the Sector as well as a holistic approach aiming at ensuring that the whole system would be ready on time to function under the new regime.

It expressed its agreement with the points made by the 4th RP Preparation Programme Manager that the 4th RP SG should act in a proportionate manner by focusing its efforts on identifying and assessing the most critical risks and the major future challenges and confirmed its view that the 4th RP SG should limit the scope of its work to the assessment of the Agency's readiness and of the potential synergies to be developed

between the Agency and the NSAs and undertake, as appropriate, dissemination activities with regard to the Sector's work.

The U.K. expressed its support for the current Agency's proposal and its commitment to take the steps necessary for the implementation of the technical pillar of the 4th RP like other EU Member States, agreed with the Commission's point on the expected added value of the 4th RP SG, added that the 4th RP SG should not only report to the EB/MB on its findings but also strive to further disseminate its best practices to the NSAs and pleaded for transparency in the work of the 4th RP SG as much as possible so that the NSAs be kept regularly updated on the outputs of the 4th RP SG meetings.

Germany regretted that the presentation on the proposed 4th RP SG approach had not been made available to the MB members earlier and, in any case, at least fourteen calendar days before their meeting.

Germany wished to draw the attention of the MB members to the great challenges associated with the 4th RP implementation, raised the concern that, given the high level expertise of the members of the 4th RP SG, the detailed work which was expected to be undertaken by the 4th RP SG might have to be carried out in the context of a different working group and warned that, as the clock was ticking, the expectations got significantly higher regarding the quality of the outputs which would have, thus, to be achieved as soon as possible.

Germany recommended that the 4th RP SG should rather focus its future efforts on identifying potential synergies to be developed between the activities of the Agency and those of the NSAs on the topics related to the 4th RP implementation. It was considered that the Sector's activities could only be of a secondary importance and thus covered by the envisaged scope of the work to be carried out by the 4th RP SG only as regards the interfaces to be potentially established between such activities and the activities of the Agency and/or of the NSAs.

In response to Germany's comments, the Executive Director confirmed that the potential interfaces between the work of the Agency and the activities of the NSAs had also been identified during the discussions held within the 4th RP SG as one of the key issues to further be reflected upon.

He replied to Italy that, although any costs related to project management in the context of the 4th RP SG were envisaged to be covered by the budget available for the 4th RP implementation programme, the revised 4th RP SG ToRs left open the possibility of making additional budget requests depending on the financial aspects of the proposals which the 4th RP SG would make e.g. regarding the use of the services of an external consultant.

The Chair intervened to assure the U.K. that the 4th RP SG intended to provide the NSA network with regular updates on the progress of its work on the readiness assurance assessment.

The 4th RP Preparation Programme Manager guaranteed that, although the proposed 4th RP SG ToRs provided explicitly for the obligation of the 4th RP SG to keep the MB regularly updated on the progress of its work, the Agency would also give regular reports to the NSA network which, in turn, could provide valuable feedback on the recommendations issued by the 4th RP SG and propose additional measures to be taken in response to the risks already identified by the 4th RP SG.

The Railway Industry (RI) noted UNIFE's appreciation for the invitation to participate in the work of the 4th RP SG, pointed as well to the need for any unnecessary duplication of the work already carried out in other fora to be avoided as much as possible, suggested that the 4th RP SG should focus its efforts on ensuring the adequate follow-up to the most important topics which were closely linked to the 4th RP implementation and that, at least for the time being, the relevant issues were mainly to be further reflected upon jointly by the Commission and by the Agency.

The Chair pointed out that it was mainly for the purpose of avoiding potential duplication of the discussions already held in different contexts that it had been considered appropriate to allow the 4th RP SG to determine its own methodology and mentioned that it fell upon the members of the 4th RP SG who participated in other

groups or networks to ensure that the discussions already held within such groups or networks on issues related to the 4th RP implementation would not be duplicated within the 4th RP SG.

The Chair also added that the Agency had built up its current proposal in such a flexible way in order to allow the 4th RP SG to prioritise the discussions on the issues related to the 4th RP readiness assurance assessment by placing its primary focus on the work of the Agency and the future interfaces to be developed between such work and the activities of the NSAs. In addition, it could deal with –if deemed necessary– with the preparedness of the Sector in view of the forthcoming 4th RP as an ancillary matter.

Furthermore, the Chair wished to confirm whether Germany agreed with the proposal put forward by the Agency as it stood at that moment and pointed out that, if requested, the approach proposed to be followed by the 4th RP SG could be revised so as to accommodate the need for sufficient flexibility.

Germany agreed with the current Agency's proposal and clarified that its previous statement was mainly aiming at drawing the attention of the MB to some of the aspects identified therein for further reflection.

The Chair assured the Board members that their comments would be taken into account and that the 4th RP SG would be kept updated on the discussions which had been held on the matter during that day.

The 4th RP Readiness Assurance ToRs were adopted unanimously by the MB.

9. Headquarters agreement for approval

The Board members were reminded that no decision was envisaged to be adopted on the relevant agenda point and were provided with a brief overview of the state of play regarding the discussions on the conclusion of the headquarters agreement between the Agency and France.

The Chair informed the MB members that, during the constructive discussions held between the Agency and representatives of the French authorities in a meeting which had taken place on September 5th 2017 in Paris, it had been announced that the draft seat agreement would have to go through an additional round of inter-ministerial consultations and that its definitive version would be sent to the Agency and further circulated to the MB members for their approval upon conclusion of this consultation phase.

France confirmed the statement made by the Chair and added that the comments which the Agency had already made on the first draft of the seat agreement would undergo scrutiny by the competent national authorities which would then forward to the Agency their final proposal on the headquarters agreement.

The Executive Director thanked France, and in particular its representative on the MB, for the constructive cooperation on the preparation of the seat agreement, confirmed that there were only a few open issues upon which further clarification had yet to be issued by the French authorities and admitted that he was looking forward to receiving the final text as soon as possible.

The Chair suggested that if the final proposal on the seat agreement would be made available well before the next MB meeting on 29 November 2017, the MB could approve the text by written procedure.

The U.K. found very useful the feedback which had already been provided to the MB members regarding the procedural aspects for the approval of the seat agreement and wondered whether there was any information to be shared, already at that point, with the MB members on the possible content of such agreement.

The Executive Director clarified that the draft seat agreement under discussion had been drawn up on the basis of a model seat agreement for EU Agencies and after taking into account the legal framework applicable to the Agency and that there were only a few details which needed to be further agreed upon by both sides.

The MB members agreed with the suggestion made by the Chair on the adoption of the decision on the approval of the headquarters agreement through written procedure.

10. Language arrangements follow-up

The Chair recalled the conclusion drawn from the discussions held during the 42nd MB meeting of June 2017 on the fact that the scope of any future decision to be adopted on the matter should rather be limited to the language arrangements to be introduced in relation to internal meetings without prejudice to the rights of the applicants to use a language of their own choice in their communication with the Agency and with due consideration of the need to allow possibly for the use of a commonly agreed language other than English.

The Board members were also reminded that no final consensus had been achieved within the MB on the Agency's proposal as a result of the application of the unanimity clause of Article 74 § 1 of the Agency Regulation triggered by France which insisted on its request for the establishment of an internal regime which would explicitly provide for the use of two official EU languages within the Agency, i.e. of English and French, and that, as no new proposal sufficient enough to pave the way forward had been put on the table thus far, the Agency should take mitigation measures in order to make amends for the absence of a formal MB decision adopting the proposed language arrangements. It was announced that the MB members would be kept regularly updated on the repercussions of the absence of a language regime along the lines of the report on the budgetary impact of the absence of a decision on the language arrangements on the publication of calls for applications which had already been made available to them during previous meetings.

The Executive Director intervened to confirm that a report providing a general overview of staff-related issues, including as regards the above-mentioned mitigation measures, had been prepared in view of that meeting and would be presented by the Head of Resources and Support Unit under the relevant agenda point.

He urged the MB members to demonstrate initiative and come up with a proposal which would help the Agency overcome the current stalemate in particular in view of the significant future challenges which the transition towards the 4th RP represented not only for the Agency but for the entire railway sector as well.

The Chair regretted that it was not possible to figure out a workable solution on the language-related issues, admitted that the time might not yet be ripe for the adoption of a decision on the matter, thanked the MB members for their valuable contributions to the relevant discussions and invited them to share with the Agency any suggestion on to the best way forward.

Germany pointed that the discussions which had been held at MB level on the Agency's language regime, in particular as regards the issue of the language(s) to be used in the vacancy notices to be published, featured many twists and turns which made it difficult for the MB members to follow the debates and to get a broad overview of the issues at stake and recommended that it would be useful for the MB members to be provided with a synopsis of the most important points to be dealt with in the context of a future proposal on the internal language arrangements applicable to the Agency.

The Executive Director agreed with the point made by Germany, reminded that it was incumbent on the MB, by virtue of Article 74 § 1 of the Agency Regulation, to adopt appropriate rules for the implementation of Regulation 1/1958¹ and to decide upon the internal and external aspects of the language arrangements applicable to the Agency and that, according to the established case law of the Court of Justice of the European Union (CJEU) on the issue of the recruitment-related language arrangements, in the absence of a formally established language regime, the provisions of Regulation 1/1958 –referred to explicitly under the above-mentioned provision of the Agency Regulation– had to be necessarily complied with.

Italy regretted that, although significant efforts had been made towards finding a balanced middle ground, no workable solution had been identified up until that point, emphasised that before solving the problem a good amount of thinking should put into understanding it, believed that the different aspects of the Agency's proposal on its language regime were divisible and could be dealt with separately and that, while the MB members could agree on the use of English in the field of recruitment and internal meetings, it was more

¹. EC Council: Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385–386.

than apparent that any future language regime should be established with due regard to the right of the applicants to use a language of their own choice in their communication with the Agency and invited France to specify the topics in relation to which it insisted on the use of French.

The Chair confirmed that the idea of a step-by-step approach to be followed in dealing with language-related issues had already been discussed and put into practice, agreed with Italy's observation on the alleged divisibility of the different aspects of the proposal on the Agency's language arrangements and called on MB members to make their eventual proposals known in view of the discussions to be held on the matter during the upcoming MB meetings.

11. Implementation of the 4th Railway Package (RP) – Decisions and strategic perspective (practical arrangements on VA – Vote in RISC)

The Chair informed the Board members that they would be provided with feedback on both the external and the internal aspects of the implementation of the 4th RP, i.e. not only on the decisions to be adopted within the RISC, but also the preparatory work to be carried out internally within the Agency mainly as regards its organisational structure.

The Executive Director provided to the MB members a brief overview of the dissemination activities –in particular with regard to the OSS– in which the Agency had been strongly engaged at a Member State level already since June 2017 in the immediate aftermath of the SERA Regional Conferences as well as of the SERA Convention Conference which had been quite successfully organised by the Agency, identified the imminent RISC vote on the adoption of the practical arrangements for VA in November 2017 as one of the key milestones in the way towards the implementation of the technical pillar of the 4th RP and assured the MB members that the relevant discussions within RISC were expected to run smoothly in a constructive and non-confrontational atmosphere as clearly evidenced from the quite positive outcome of the discussions which had already been held during the Expert Group meeting on September 18th 2017.

Specific reference was also made to the work of the “liaison office” which had been established by the Agency, already since June 2017, as a means of formal interaction with potential applicants until the formal adoption of the relevant IA by the RISC. In that respect, following a series of meetings held both with the NSAs and potential applicants, a short list of fourteen concrete authorisation projects which would have to be dealt with by the Agency in 2019 had already been prepared. The main purpose of such exercise being to identify, already at that point, the projects to be used as a basis for the development of the learning cases which the Agency would be working on over the coming months until the beginning of the shadow-running phase in June 2018.

It was also announced that the preparatory work to be carried out in view of the planned reorganisation of the Agency was expected to be completed by mid-2018 in order for the new organisational structure to be put to the test already during the shadow-running phase and, if necessary, reviewed prior to June 16th 2019.

In addition, it was explained that, out of all options available to choose from, the Agency inclined, at least for the time being, towards a solution which would allow the Agency to place special focus on its future role as an Authority through the creation of a separate internal organisational entity which would specifically deal with applications for VAs and SSCs and be staffed with resources which would continue to be deployed, where necessary, for the performance of daily routine tasks on activities such as TSIs, safety culture and ERTMS which the Agency had been carrying out since its establishment in 2004.

The Executive Director took the opportunity to underline that the TSIs to be developed in the future mainly in relation to VA-related cases, should define the criteria applicable to such cases as precisely as possible and pointed to the examples of the Control-Command and Signalling TSI and of the LOC & PAS TSI.

Additionally, the Board members were informed that, in the context of the preparations required for the 4th RP implementation, the Agency had been working on the review of its internal governance processes with a view to coming up with a proposal which would be grounded on Article 51 § 1 point (d) of the Agency

Regulation on the establishment by the MB of procedures for decision-making by the Executive Director and could be put forward for adoption in the future.

It was also recalled that a similar provision contained in the previously applicable Agency Regulation had never been put into effect on the grounds that any financial and staff-related issues could be adequately dealt through the implementation of decision-making procedures already envisaged under the Agency's Financial Regulation or the Staff Regulations and the CEOS.

The Commission recommended that the Agency should consider including in the agendas of the future MB meetings an additional information point for the purpose of providing the MB members with a brief overview of the RISC-related and other processes taking place in the frame of the 4th RP implementation with due consideration for the need to avoid any unnecessary duplication of the discussions already held within other fora, confirmed that it had been working closely with the Agency on the practical arrangements for VA with a view to ensuring a successful conclusion during the RISC meeting in November 2017, welcomed both the Agency's initiative of establishing a "liaison office" and its plans on its future reorganisation and maintained its commitment to continue working closely with the Agency on the development of new TSIs.

The Commission wished to draw the attention of the MB members to the complexity of the proposal on the practical arrangements for VA, acknowledged that, despite the significant progress which had already been made on the relevant work, there were still a few open points to be resolved in particular as regards the concept of "type authorisation", urged the MB members to send their comments and/or remarks, if any, within the limited time span remaining until the formal adoption of the relevant IA so as to ensure, as much as possible, that the RISC would agree upon a workable compromise for all concerned parties and offered to discuss any open points on an ad-hoc basis and at a bilateral level upon request.

RI intervene to confirm the statements previously made by the Executive Director and by the Commission on the constructive outcome of the discussion held during the Expert Group meeting which had been held the week before the 43rd MB meeting and expressed its hope that those productive outputs would be clearly reflected in the draft IA which would be put to the vote during the RISC meeting in November 2017.

The Chair agreed with the point made by the Commission on an additional information point to be included in the future MB meetings agendas with regard to the progress made on the preparatory work for the implementation of the 4th RP given that not all Member States were represented in the RISC or Expert Group but suggested to be cautious in order to avoid duplication of the discussions held within the different committees or working groups.

12. Conflicts of Interest (Col) rules for MB members

It was recalled that the ERA Administrative Board (AB) Conflicts of Interest (Col) Policy, adopted in March 2015 had to be updated and brought into line with the requirements Agency Regulation.

The Chair insisted on the fact that this exercise provided a great opportunity for an overall assessment to be made of the adequacy of the existing policy on the management of Col in respect of the MB members and urged the Board members to further reflect on whether the current Col Policy for MB members should just be amended as previously described or totally replaced by a similar set of rules on the prevention and management of conflicts of interest applicable to MB members to be put forward for adoption by the MB.

The MB was given a brief outline of the Agency's proposal on a possible framework for the handling of the conflicts of interest which could arise in respect of the Board members.

It was announced that, despite the great efforts made for the timely and accurate collection and publication of the CVs and DoIs of all the MB members, there were still twelve (12) missing CVs and nine (9) missing DoIs which had yet to be provided and it was noted that the Agency had been urged by the European Parliament on numerous occasions to fully respect the principle of transparency and to publish all missing declarations.

However, it was pointed out that the lack of CVs and DoIs of the MB members was due in large part to the membership turnover and the usual delays in the appointment of the replacements.

The Board members were invited to further reflect on the issue of whether they preferred to have the AB CoI Policy currently in force updated in line with the requirements set by the new Agency Regulation or replaced by a similar set of rules on the prevention and management of conflicts of interest applicable to MB members which would be formally adopted by the MB most probably during its 45th meeting in January 2018.

The Chair reported on the discussions which had been held during the 6th EB meeting on the relevant matter.

It was highlighted that, mainly for reasons of consistency, the EB members had opted, on the one hand, for the adoption of a framework on the prevention and management of conflicts of interest in respect of the MB members along the lines of the BoA CoI Rules which had been adopted by the MB earlier during that meeting and had agreed that the Agency should not bring any in-depth changes to the already existing CoI policy but rather focus on aligning the relevant policy with the requirements prescribed under the Agency Regulation.

However, it was stated that the EB members were totally aware, on the other hand, of the difference between the mission of the MB members and the role of the BoA members which would be called to settle disputes between opposing parties and should, therefore, be subject to special treatment as regards the prevention and management of their conflicts of interest and it was highlighted that a comparison between the proposed MB CoI framework and the adopted BoA CoI Rules might not be the best approach to follow.

The Chair summarised that the discussions during the previous EB meeting had led inevitably to the conclusion that the Agency should come up with a proportionate and reasonable proposal which would not place, as much as possible, additional administrative burdens on the MB members and would accurately reflect the transparency principles embodied in the Agency Regulation and took the opportunity to invite once more those MB members who had not yet submitted to the MB Secretariat their CVs and DoIs or who had submitted contradictory or inconsistent DoIs to send to the Agency the missing documents or to correct any discrepancies identified in the submitted documents as soon as possible.

The Commission admitted that it failed to see the point of adopting new rules for the handling of conflicts of interests in respect of the MB members and recommended that the currently applicable CoI Policy should be maintained and, if necessary, streamlined with the requirements of the Agency Regulation on the basis of a balanced approach.

The Chair referred to the extensive discussions which had been held within the MB on the adoption of the ERA AB CoI Policy, admitted that, despite her initial doubts, the final document which had been adopted reflected a quite reasonable and proportionate approach and expressed the view that the option of bringing the already existing CoI Policy into conformity with the Agency Regulation represented the best way forward.

Both the U.K. and Sweden echoed the Commission's plea for proportionality.

Germany placed emphasis on the need to strike a fair balance between the principles of transparency on the one hand and the rights of respect for private and family life enjoyed by the MB members on the other hand, opted for the adjustment of the already existing CoI Policy applicable to Board members to the requirements set forth in the Agency Regulation with due regard for the main principles reflected therein which should be maintained and argued against extending the scope of application of the above-mentioned CoI Policy to the interests held by the "family members" of the MB members as such.

The Chair agreed with the point made by Germany on the need to achieve the proper balance between transparency and respect for private and family life.

Finland agreed both with the Commission and with Germany that the relevant issues should be dealt with on the basis of a balanced approach and suggested that benchmarking against the similar framework applicable to the members of the MB of other EU Agencies could offer some valuable insight into rules which could be included as well in a future CoI policy to be adopted in respect of the members of the Agency's MB.

The Chair concluded that the Agency had been clearly mandated to put forward, following benchmarking against the Col framework applicable to members of the MB of other EU Agencies, a proportionate proposal which would strike the appropriate balance between the principle of transparency and respect for privacy.

It was proposed that a first draft of the MB Col Policy could be produced in line with the remarks made by the MB members and forwarded to them for their consideration and, if deemed appropriate, for formal adoption in view of the 44th MB meeting of November 2017.

13. Procedure for cooperation with national authorities in judicial proceedings

The Chair recalled that the Board members had already been provided prior to their meeting with a first draft of the Agency's proposal on the procedure for cooperation by the Agency and its staff in national judicial proceedings which represented a first attempt –at an Agency-wide level– to identify the obligations that the Agency would have to comply with when it would be requested to cooperate with the authorities of the EU Member States in judicial proceedings which involved the Agency by reason of the Agency having exercised its tasks in relation to VAs, SSCs and decisions for the approval of ERTMS trackside equipment projects.

It was proposed that, in view of the planned adoption of the relevant decision during the 45th MB meeting of January 2018, the Agency intended to produce a revised version of its initial proposal taking into consideration the comments made by the Board members –such as those which had already been submitted by Spain– and that further comments and/or remarks would be welcome until November 20th 2017 or, upon request, within a deadline such that the competent national authorities could be sufficiently consulted on the matter, in which case the adoption of the relevant decision would have to be postponed to the 46th MB meeting of June 2018.

The Board members were also updated on the state of play of the discussions held on the matter during the 6th EB meeting of September 2017.

The Chair reported that the EB members had been made aware that there was no policy or procedure already in place within other EU Agencies similar or, at least of a comparable nature, to the draft procedure which had been prepared by the Agency and that it had been deemed appropriate to formulate the relevant proposal in such a way as to allow for its revision, if necessary, after its formal adoption by the MB without setting a specific time-limit for such revision and on the basis of a minimum return of experience drawn from the application of the procedure in practice which could then be sufficiently relied upon by the Agency.

However, it was explained that, as pointed out already during the discussions held amongst the EB members on the matter, the application of any revision clause contained in the procedure proposed for adoption could be effectively triggered only after the Member States would have started to apply the procedure and, in any case, after the end of the transition phase towards the 4th RP implementation, although it was speculated that the MB could agree upon a specific time-limit for the revision of the procedure under adoption.

It was also highlighted that, following a concern raised by both the Sector and by Belgium during the 6th EB meeting, the Board members had been reassured that they were to be considered as clearly excluded from the scope of the proposed procedure and that in response to a point made by the Commission on the potential applicability of Protocol No. 7 on the privileges and immunities of the European Union² on the non-statutory staff of the EU, it had been analysed that the scope of the procedure extended not only to the Agency's staff which was covered by the Staff Regulations and the CEOS but also to other categories of Agency staff not covered thereby and identified as such under Article 69 of the Agency Regulation, e.g. the Seconded National Experts (SNEs), who could perform tasks related to VAs, SSCs and approval of ERTMS trackside equipment projects.

². Consolidated version of the Treaty on the Functioning of the European Union Protocols, Protocol (No. 7) on the privileges and immunities of the European Union, OJ C 326, 26.10.2012, p. 266–272.

The U.K. expressed its satisfaction with the Agency's initiative to extend the initial deadline for the submission of comments by one (1) month, agreed in principle with the approach reflected in the proposed procedure, announced that the draft procedure was currently undergoing scrutiny by its legal services in particular as regards its application in cases where the NSAs would be acting as prosecuting authorities and guaranteed that efforts would be made so that the Agency could be provided, if not with a definitive reply, at least with some provisional feedback on the relevant issues until the deadline of November 20th 2017.

The Chair wished to confirm whether the proposal of the Agency for the extension of the initial deadline for the submission of comments on the draft procedure had alleviated the concerns which had been raised by France during the 6th EB meeting on the need for the Member States representatives to be given sufficient time in order to consult properly the competent national authorities on the matter.

France admitted that the Agency's presentation had already shed some light on many issues which had been left, up until that point, open and guaranteed that the proposal on the extension of the initial deadline made it feasible for the MB members to send their comments and/or remarks on the proposed procedure on time.

14. Monitoring of National Safety Authorities (NSAs)

The Chair recalled that, following the discussions during the previous Board meetings of June 2017, the Agency had further reflected upon the appropriate model to be chosen for performing the NSAs monitoring.

Thus, a proposal was presented combining the compliance model for which some MB members had expressed their preference and the maturity approach which had formed the basis of the Agency's initial proposal and had been supported by a significant number of MB members although criticized by some others for its rather broad scope when compared with the Agency's narrow and precise mandate under Article 33 of the Agency Regulation.

It was announced that, according to the updated proposal of the Agency, the compliance model would be applicable to all NSAs contrary to the maturity model which would be applicable only to those NSAs having clearly opted for its application prior to the start of the first three-year cycle and it was explained that the purpose of the discussion to be held during that day on the relevant topic was to come to a conclusion as to whether the Agency's revised proposal alleviated the concerns previously raised by the MB members and, therefore, should be put forward for adoption during the coming 44th MB meeting of November 2017.

The Board members were given a brief synopsis of the updated proposal of the Agency on NSAs monitoring.

The Head of Safety Unit clarified that document Annex III bis, which had been made available, among other documents, to the MB members in view of their meeting in September 2017, was the reference document to be used for the performance of an audit in accordance with the compliance-based model, thanked both Spain and the Chair (Belgium) for providing their input on the updated proposal and reminded that their comments had already been added, together with the Agency's replies thereto, in the comments sheet which had been circulated to the MB members in advance of their meeting.

The Board members were assured that, in practice, those NSAs which would have opted for the application of both the maturity model and of the compliance-based approach would not be subject to two separate audits but rather be monitored only once by auditors who would have been received sufficient training on both models and would, thus, be able to deliver an audit report which would contain two outputs and that the compliance-based model focused mainly on the obligations imposed, by virtue of the relevant EU legal framework upon the NSAs and not upon the Member States as such.

The Head of Safety Unit also informed the MB members that, as requested by some of them, the vehicle and infrastructure authorisation had been included in the scope of the Agency's proposal but voiced serious concerns over the use of auditing processes which were envisaged under the old scheme established by the previously applicable Directives and would have to be replaced, at some point, by the new processes which were foreseen under the 4th RP.

The Chair reported on the discussions held on the matter during the 6th EB meeting of September 2017.

It was stated that some EB members had suggested that Annex II to the draft decision on NSAs monitoring was rather too complicated and descriptive and should, therefore, be brought to the attention of the MB not in the form of an annex but rather as a document containing an exemplary analysis of the procedure to be followed in accordance with the other annexes for internal use.

It was also highlighted that the EB members had expressed their concerns that the blended approach proposed by the Agency should not end up in placing additional burdens on those NSAs which would choose to be audited on the basis of the maturity model and had urged the Agency to reflect more clearly in its proposal the main incentive behind the use of the maturity model, i.e. the minimisation of the risks related to infringement procedures initiated against Member States on the basis of the audit findings and that the Agency had made clear that neither the use of the maturity model as such excluded the scenario of involving the Commission in cases where the audit findings revealed major deficiencies in the functioning of the NSAs.

The Chair mentioned that, following a point made on the appropriate degree of publicity to be given to the final audit reports, it had been explained that, according to Article 33 § 3 of the Agency Regulation, the audit reports were to be shared only with the NSA, the Member State concerned and the Commission on the one hand and that public access to such reports was governed, on the other hand, by Regulation (EC) 1049/2001³. It was added that according to Article 4 § 2 thereof, the audit reports were not in principle publicly accessible –and thus could not be made available to the MB members– unless there was an “overriding public interest” in their disclosure such as, among others, in the case of serious deficiencies identified through the audits performed by the Agency.

The Chair summarised that the EB members had agreed that the Agency’s proposal, as it stood at that moment, should not be fundamentally changed and should be put forward for adoption during the 44th MB meeting of November 2017 in such a way as to allow both the Agency to launch its monitoring programme as soon as possible and the MB to amend, if necessary, its decision on the NSAs monitoring policy at any point after the end of the first-three year cycle and on the basis of the appropriate return of experience.

The Chair added that, although the Agency had explicitly, already during the 6th EB meeting, guaranteed that its proposal would not end up with overburdening with additional checks those NSAs which would have voluntarily chose to adhere to the maturity model, in the meantime, the idea of a “dual approach” which would leave the choice between the maturity model and the compliance-based approach up to the NSAs had been put on the table.

Italy considered that, although it was apparent from the use of the matrix approach, it should be made clearer in the Agency’s proposal itself that the main objective was to identify possible areas for future improvement and not to assess non-conformities, requested the Agency to define more precisely the powers of the team leader and their precise scope in its proposal and suggested that the NSA monitoring process should only be launched after the NSAs would have started performing their new tasks, i.e. after 2019-2020.

Denmark found that the process of holding more than one discussions on an important subject as the NSAs monitoring was quite useful and beneficial in view of the adoption of a decision on the matter.

Denmark appreciated that the Agency had decided not only to widen the scope of its current proposal so as to cover the monitoring of the performance of the NSAs in the field of railway interoperability as well in line with the requirements prescribed under the Agency Regulation and the statements made by the European Commissioner for Transport, Ms. Violeta Bulc, which pointed in the same direction but also to introduce in its proposal elements of the cross-audit model by adding Annex III bis, but observed that there were some auditing sub-systems which were still missing from the proposed methodology to be followed for audits done on the basis of the matrix model and suggested that the Agency’s proposal should be updated accordingly.

³. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43-48.

In response to the remark made by the Head of Safety Unit on the applicability of the processes related to vehicle and infrastructure authorisation, Denmark, while fully acknowledging that such processes were expected to be fully applicable only after the transition to the 4th RP had been completed, it pointed out, nevertheless, that by including those processes in the scope of the NSAs audits already during the transitional phase, the risk of errors during the full-scale implementation of the 4th RP could be reduced significantly.

Moreover, Denmark sensed that the matrix model would eventually turn out to be more resource-demanding than initially expected both for the Agency and for the NSAs.

It suggested that the use of such model should be postponed to a later stage, but welcomed the idea of debating further on the technical issues identified above with the Agency on a bilateral basis and was looking forward to receiving a revised version of the Agency's proposal which would have been produced in line with its remarks and could be put forward for adoption during the MB meeting of November 2017.

The Netherlands recalled that the initial proposal which had been presented and discussed during the MB Workshop on NSAs and NoBos monitoring on March 9th 2017 and the Board meetings of June 2017 had been supported by a significant number of MB members and was grounded on the use of the maturity model.

While it reiterated its preference for the maturity model as reflected in the initial proposal put forward by the Agency and confirmed that it would not raise any objections to the current Agency's proposal on a mixed approach to be followed on the NSAs monitoring, the Netherlands insisted that the Agency should consider seriously taking a backward step to its original proposal by presenting the compliance-based approach as an alternative to the maturity model.

It supported the opinion to place the maturity model on an equal footing with the compliance-based approach so as to avoid creating additional burdens for the NSAs and, therefore, leave the choice between those two models at the discretion of the NSAs at least during the first-three year cycle.

The Chair wished to confirm whether Denmark, in view of the reservations which it had previously expressed about the use of maturity model, agreed with an approach according to which all NSAs would be given the choice between the two models or whether it preferred that the Agency should rather come up with a different proposal which would favour the use of the compliance-based approach.

Denmark clarified, in line with the remark made by the Netherlands, that it was ready to accept a proposal which would recognise the freedom of the NSAs to choose between the two models and placed emphasis on the need for more detailed discussions to be held on the relevant issues with a view to resolving any open points or to clearing up any misunderstandings as early as possible and, in any case, well in advance of the adoption of the relevant decision.

The Commission admitted that a great amount of time had already been spent on discussions and that it was about time that the MB found a way through so that the Agency could finally move forward with the implementation of the NSAs monitoring scheme, reaffirmed its strong support for the maturity approach and pointed out that the current Agency's proposal did not seem to introduce the compliance-based model as an alternative to the maturity model but rather as a model to be mandatorily applied to all NSAs which could additionally adhere to the maturity model if they wished to do so prior to the start of the first audit cycle.

On the suggestion made by the Netherlands, the Commission added that it would be easier for the Board members to draw a reliable conclusion as to the value of each of two models after the end of the three-year cycle and urged for the adoption of the compromise solution which had been put forward by the Agency.

Spain thanked the Agency for including Annex III bis in its proposal as it had been requested during the previous MB meeting but admitted that it was not totally satisfied with the replies which the Agency had given in response to its comments on Annex II and agreed with the suggestion which had been put on the table during 6th EB meeting on the removal of Annex II from the list of the Annexes to the draft MB decision which would be formally adopted during the 44th MB meeting of November 2017.

Spain seriously challenged whether the NSAs should be mandatorily subject to a process of self-evaluation in the context of the NSAs monitoring scheme proposed by the Agency, noted that the scope of the audited activities was not the same under both the maturity model and the compliance-based approach, requested that, according to the views held by the Spanish NSA, the scope of audits should not, in either case, go beyond the points listed under Article 33 § 2 of the Agency Regulation.

The representative of France thanked also the Agency for responding to her request by including Annex III bis in its proposal, recalled that she had been amongst those Member States representatives who had clearly expressed, already during the MB meeting of June 2017, their strong preference for a proposal on the NSAs monitoring which would be firmly grounded on the compliance-based approach developed on the basis of the past experiences drawn from the cross-audits which had been carried out by the Agency and agreed with the idea of leaving the choice of the audit model to the NSAs at least as regards the first three-year cycle in the sense that such approach would allow each NSA to decide upon the next steps in the development of the scheme in a more flexible and autonomous manner.

Finland expressed also its preference for the maturity model but agreed with the approach proposed by the Agency and sensed that a compromise which would offer the NSAs the possibility to choose between the two models was more than necessary at that moment at least as a valid starting point to be used during the initial phase of the scheme. However, Finland considered that, should the need to revisit the relevant issues arise after the end of the three-year cycle or any other period prescribed under the revision clause to be included in the relevant MB decision, any review of the adopted NSAs monitoring policy should be based on the lessons to be learnt from the implementation of the two models and the conclusions drawn therefrom on the actual amount of workload which each of those models entailed both for the Agency and for the NSAs.

The U.K. stated that it had opted initially for the maturity model as well, but found that the current blended approach proposed by the Agency was a quite sensible compromise and stressed that efforts should be put into achieving a proportionate workload when implementing such approach in practice. Nevertheless, the U.K. viewed the three-year cycle of audits as rather too ambitious and did not exclude a scenario where both the Agency and the Member States would end up being overloaded and, while it agreed with the core principles embodied in the mixed approach which had been put forward for adoption, it recommended that the Agency should consider following a risk-based approach in the selection of audits to place its focus upon.

Sweden expressed its support for the mixed approach proposed by the Agency but raised serious concerns over the amount of the future workload to be placed on the NSAs as a result of the adoption of such proposal and wondered whether the duration of the first cycle should be extended beyond the three years.

The Chair wished to share with the Agency and the Board members the Belgian position on the current proposal on NSAs monitoring. She reminded firstly that Belgium had, since the very beginning, expressed its strong support for the maturity approach and that it considered, therefore, regrettable that the current approach suggested by the Agency not only lacked clear added value but, on the contrary, favoured the application of the maturity model on top of compliance-based audits and, thus, seemed to place on the NSAs additional burdens.

Belgium agreed with the idea of providing the NSAs with real choice in deciding whether they would be audited on the basis of the maturity model or in accordance with the compliance-based approach, found that such proposal represented the best way forward on the matter, but questioned whether the choice of the audit method should be left, from the start, at the discretion of the Member States and recalled, in that regard, that it had pointed to some inconsistencies between Annex I and Annex II to the draft MB decision and that the Agency had confirmed that its comments would be taken on board and that the relevant text would be amended accordingly.

Moreover, on the issue of the appropriate margin of appreciation enjoyed by the Member States, Belgium insisted on the need for the Member State concerned to be made aware of the findings of the audit by receiving a copy of the final audit report.

However, it suggested that a clear distinction should be drawn between the responsibility of the NSAs for the organisation of their internal management systems on the one hand and the duty of the Member States to set up the appropriate framework which would govern the activities of the NSAs and to place at their disposal adequate resources and seriously doubted whether such distinction was already accurately reflected in the Agency's proposal as it stood at that moment.

More specifically, Belgium raised the concern that the Member States might be held unduly accountable for the NSAs actions even in cases where the choice of the management system to be applied internally within the NSAs would go beyond the limits of their decision-making powers.

It was reminded that, in such cases, it was the Member State against which the infringement proceedings would be instituted, in the first place, before the CJEU and invited the Agency to clearly reflect the distinction between the different levels of responsibility of the actors involved in the relevant process.

On the request which had been made by Denmark regarding the need for the aspects related to railway interoperability to be covered by the scope of the Agency's proposal as well, Belgium admitted that it failed to see the point of a monitoring scheme which would assess, among others, processes possibly subject to imminent fundamental changes owing to the transition towards the implementation of the 4th RP and voiced its concern that, while some NSAs would be audited on the basis of a legal framework liable to change in the near future, other NSAs would be monitored on the basis of a legal framework which would have just entered into force following the transposition of the 4th RP Directives into the respective national laws.

Belgium warned also against a monitoring scheme which would turn out to be more complex and more resource-demanding than necessary and would not deliver such constructive and useful outputs both for the Agency and for the NSAs as initially expected and concluded, in that sense, that more efforts should be put into finding a solution which would avoid, as much as possible, placing additional burdens on the NSAs.

Germany considered that the compliance-based approach should be definitively part of the proposal on NSAs monitoring and that, although the scheme proposed by the Agency did not seem to reflect such approach as clearly as the cross-audits, there were some lessons yet to be learnt from all the concerned parties before determining the orientation of the scheme.

Furthermore, it was observed that the report which would be produced internally on the basis of the self-evaluation carried out by the NSAs prior to each audit could serve as a valuable input in the process of drawing up the final audit report and invited the Agency to take into account such observation and to amend its proposal accordingly.

The Head of Safety Unit, in response to the questions raised by Italy, clarified that the role and responsibilities of the team leader had been clearly set out in Annex IV to the draft MB decision but welcomed further corrections and comments from the MB members on the relevant texts.

He expressed the view that the scheme proposed by the Agency had been developed not as a policing tool but as a diagnosis mechanism aimed at identifying potential deficiencies through a learning process and guaranteed that, although the compliance-based approach was not fully compatible with the elements of the learning process, the proposal would be reformulated so as to reflect more clearly the main rationale behind the scheme as identified above.

As regards the appropriate timing for launching the NSAs monitoring scheme, it was pointed out that the activities currently undertaken by the NSAs should have already undergone scrutiny by the Agency and could serve as a useful starting point for the proposed scheme to be based upon by providing a first indication of the aspects on which the focus ought to be placed upon implementation of the new processes envisaged under the 4th RP. The need for the Agency to start, already at that point, building the necessary competency to manage the scheme and to develop a thorough understanding in the area of NSAs monitoring and the relevance of the topic to the discussions which had been held earlier during that day on the 4th RP readiness assurance assessment project was also highlighted in that regard.

The Head of Safety Unit welcomed Denmark's proposal for bilateral discussions but wondered whether such bilateral contacts should be established with the Member State representatives on the MB or at the level of the NSAs which might not always be entitled to define their own audit scheme and wished to clarify whether Denmark agreed with an approach which allowed the NSAs to choose out of two models their preferred one. He also expressed his sincere appreciation to the Netherlands for its strong support for the maturity model and clarified that the current Agency's proposal envisaged the application of the compliance-based model to all NSAs which could choose whether they would be subject to additional audits on the basis of the maturity model.

However, it was noted that most of the MB members seemed to plea in favour of a different choice model which would allow the NSAs to determine from the outset their preferred audit method by choosing between the compliance-based approach and the maturity model and it was stressed that the Agency should put more efforts into coming up with a proposal which would live up to the expectations of the MB members as much as possible well in advance of the MB meeting of November 2017.

On Spain's request for removal of Annex II, it was recalled that, in response to a similar request which had been made by France during the 6th EB meeting of September 2017, the Agency had explained that Annex II focused mainly on the internal aspects of the work to be carried out by the Agency in regard to NSAs monitoring and that it had been considered necessary to add Annex II to the draft MB decision on NSAs monitoring in order to align the overall proposal with the requirements prescribed under the second indent of Article 33 § 2 of the Agency Regulation.

While acknowledging that self-evaluation was frequently regarded as a cumbersome obligation, the Head of Safety Unit revealed that the experience drawn from the pilot projects run by the Agency both on cross-audits and on the matrix had led to the conclusion that the self-assessment process formed an integral part of the preparatory work to be carried out prior to the audits and feared that, in the absence of such self-evaluation, the audit process would be much more difficult and time-consuming and that the NSAs would not be given sufficient motivation to do themselves justice.

In response to the suggestion made by Germany, it was outlined that the Agency made use of the self-evaluation report prepared by each NSA but only at a later stage in an effort to avoid, as much as possible, a situation whereby the auditors would be aware of the findings contained in the self-assessment report prior to the start of the audit process and would, therefore, be biased or appear to be biased in the evaluation to be performed subsequently by them and recommended that any differences between the self-evaluation report and the findings of the final audit report should be identified and highlighted as a key area of attention.

Moreover, the Head of Safety Unit claimed that Article 33 of the Agency Regulation did not seem to impose any restrictions on the scope of the activities which could be audited, that efforts had been made so that the different aspects covered by the 4th RP Directives be identified and reflected in the text of the current proposal and invited the MB members to share with the Agency their views on NSAs activities which should not be possibly subject to monitoring by the Agency.

In response to the concerns raised on the volume of workload created by and the amount of resources required for the performance of NSAs monitoring, the Board members were informed that the Agency had been involved in cross-audits for about five or six years and that around twelve to thirteen matrix assessments had been completed over a period of four years and that, despite the fact that the efficiency levels of the compliance-based approach could be further improved mainly in terms of internal processes, it had been concluded therefrom that the maturity model as such was much less burdensome than the compliance model.

Following the remarks made by the U.K., the Head of Safety Unit admitted that, while the choice of a three-year cycle was indeed rather ambitious, extra efforts would have to be put by all the parties involved in the process towards the implementation of the 4th RP into carrying out the necessary preparatory work beforehand in an effective manner.

He emphasised that it had to be made sure that in particular those actors which played a central role in delivering the 4th RP –both the Agency and the NSAs– would be functioning robustly and properly in order to be in a position to perform successfully their new tasks and that, with this in mind, it had been considered appropriate to specify a three-year time limit as a minimum trial period sufficient enough for managing the implementation of the project at least in its early phases.

On the suggestion made by the U.K. with regard to the use of the risk-based approach in the Agency's future work on audits, it was added that the key question was firstly to identify the potential risk(s) to be more carefully looked at during the implementation of the NSAs monitoring scheme.

Furthermore, it was considered that the Agency could either place its focus on evaluating the safety performance at national level and, more specifically, the performance of the NSAs, or examine whether the NSAs were properly functioning or not.

However, the Head of Safety Unit inferred, from the information which was already available to the Agency regarding, among others, the Common Safety Method on Supervision (CSM SU)⁴ or the CSM for monitoring⁵, that some Member States seemed to have achieved a high level performance in safety standards but not necessarily through compliance with EU law. He sensed that in future iterations of the scheme, the Agency could maybe reach a better level of understanding of the "NSA maturity" notion and come to the conclusion that much more time might have to be spent on certain NSAs than on others since the Agency had not yet attained that baseline level which would allow evaluating the NSAs fair and square already at that point.

The Head of Safety Unit also replied to Sweden that additional efforts would be put into providing the MB members with a proposal which would make a clear distinction and offer a genuine choice between the two models.

On the points made regarding the exclusion of the aspects related to railway interoperability from the future scope of the scheme, he explained that, while the Agency was totally aware that the real value of an audit which focused on processes liable to change from time to time was rather low, it had been decided to extend the scope of the NSAs monitoring to such aspects, at least in the context of the compliance-based approach, following a request to do so by Denmark and admitted that the interoperability-related aspects could be explored at a second stage and only after the new processes have been put in place and the implementation phase has been launched, i.e. not earlier than 2020.

In response to the concerns raised by Belgium, the Project Officer in charge assured the Chair that the issue of whether the Member States should be held accountable for actions falling exclusively within the sphere of competence of the NSAs mainly as regards their internal organisation would be further reflected upon and discussed, if necessary, on a bilateral basis between the Agency and Belgium.

The representative of Denmark appreciated the work done by the Agency on the issues related to NSAs monitoring, welcomed the presentation which had just been made on the topic and pointed out that, while the question previously raised by the Head of Safety Unit was totally understandable in the sense that RISC consisted of both Member States representatives as well as of NSAs representatives, the already existing organisational structure in each Member State was a crucial element to be taken into account in the case of the bilateral contacts proposed and gave the example of his appointment as a Member State representative.

The U.K. expressed its satisfaction with the reply given by the Agency to its remark on the use of the risk-based approach in the future audits to be carried out in the context of the NSAs monitoring scheme.

⁴. Commission Regulation (EU) No. 1077/2012 of 16 November 2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation (Text with EEA relevance), OJ L 320, 17.11.2012, p. 3-7.

⁵. Commission Regulation (EU) No 1078/2012 of 16 November 2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance (Text with EEA relevance), OJ L 320, 17.11.2012, p. 8-13.

I was added that the Agency could differentiate the approach to be followed in each case by deciding, among others, to extend the initial phase in the case of those Member States which were of less concern in terms of their performance in safety after the collection of the baseline data has been completed.

The Netherlands admitted that it was pleased that the Agency had offered to further reflect upon the different choice scenarios and wondered whether it would be feasible for the Agency to come up over the course of the remaining weeks until the 44th MB meeting of November 2017 with a proposal which could be put forward for adoption during the coming MB meeting.

The Chair summarised that a decision point should be included in the agenda of the 44th MB meeting of November 2017 and that a revised version of the Agency's proposal should be prepared, discussed during the 7th EB meeting and further circulated to the MB well in advance of next meeting. The Chair invited the Head of Safety Unit to liaise, if necessary, with any of the MB members who had made remarks on the Agency's proposal during that day for further clarifications, urged the Board members who still wished to comment upon the current proposal to share their comments with the Agency as soon as possible and expressed the hope that the MB would manage to reach an agreement on the matter during its meeting in November 2017.

The Chair recalled that a decision adopting the provisions on auditing notified conformity assessment bodies (NoBos) in the framework of Article 34 § 3 of the Agency Regulation had already been adopted during the 42nd MB meeting of June 2017.

The Head of Interoperability Unit announced that a dissemination event on NoBos monitoring organised by the Agency had been scheduled to take place in Valenciennes on December 12th 2017 and that representatives from the Notifying Authorities of the Member States as well as from the NSAs would be invited to participate.

The Board members were informed that such event represented a great opportunity for the attendees to deepen or to update their knowledge on several issues such as the processes deployed and the activities undertaken by the Agency with regard to the NoBos monitoring, the role of NoBos, the criteria used in audits and inspections.

Furthermore, the event would provide them with additional feedback on the Agency's initiative on the establishment of a forum for exchange of best practices in applying the NoBos assessment scheme, the main purpose being to hold the discussions in as interactive and constructive an atmosphere as possible.

The Board members were kindly invited to participate in the event and to forward the invitation to any other party which might be interested in the relevant topic within the respective Member States and were notified of the Agency's intention to have its NoBos monitoring programme launched next year.

15. Presentation on cooperation agreements

The Chair made the preliminary observation that the MB should adopt, by virtue of Article 51 § 1 point (t) of the Agency Regulation, guidelines as well as the list of the main elements to be included in the cooperation agreements to be concluded between the Agency and the NSAs in relation to the implementation of Articles 14, 20 and 21 thereof on VAs, SSCs and ERTMS trackside project approvals and that the Agency envisaged to develop, through the discussions which were about to be held within the MB on the matter, a profound understanding of the concepts of "guidelines" and "main elements" of the cooperation agreements.

The Board members were given an overview of the current status of the progress made by the Agency on the preparatory work required for the development of the framework on which the conclusion of the cooperation agreements would be grounded.

The 4th RP Preparation Programme Manager provided a brief summary of the views expressed during the NSA Subgroup meetings on the potential scope of a MB decision adopting the guidelines and the list of the main elements to be included in the cooperation agreements as well as an update on the planning made by

the Agency until the adoption of such decision during the 46th MB meeting in June 2018 and the status of the discussions held within the NSA Subgroup on the legal clauses of the cooperation agreements.

The Board members were firstly reminded that the conclusion of the cooperation agreements between the Agency and the NSAs mainly in relation to SSCs and VAs was clearly envisaged under the provision of Article 76 of the Agency Regulation which made a clear distinction between “framework cooperation agreements” on the one hand and “specific cooperation agreements” on the other hand depending on whether such agreements involved one or more NSAs. It was stipulated explicitly that the cooperation agreements might include specific cooperation arrangements in the case of networks requiring specific expertise for geographical or historical reasons and did not exclude the possibility that the cooperation agreements could cover bilateral aspects agreed upon between the Agency and the NSAs other than the ones related to SSCs and VAs.

It was emphasised once more that the main purpose of the discussions to be held within the MB during that day on the matter was to shed more light on the precise scope of the notion of “guidelines and main elements” to be included in the cooperation agreements. In addition it was clarified that, according to the views of the NSA Subgroup, the scope of the future MB decision to be adopted should be as broad as to cover, as far as the “list of the main elements” was concerned, all the elements which could possibly be included in the cooperation agreements regardless of whether they were of a legal or technical nature or whether they were mandatory or optional and, as far as the “guidelines” were concerned, the main principles which were applicable to the elements of the cooperation agreements elements as defined above.

It was also pointed out that, after the adoption of the relevant MB decision, the Agency intended to develop in close cooperation with the NSA network detailed clauses regarding all the main elements to be included in the cooperation agreement framework which was envisaged to serve as a basis for the preparation and conclusion of specific cooperation agreements between the Executive Director of the Agency and each NSA.

The Board members were also informed that, whereas the technical clauses of the cooperation agreements were being dealt with by the NSA Subgroup, a Subgroup of lawyers had been established for the purpose of holding more detailed discussions on the legal clauses of the cooperation agreements. It was explained that the first proposal on both technical and legal aspects of the cooperation agreements was expected to be delivered by both Subgroups until the beginning of November 2017 at the latest, that a first formal draft of the cooperation agreements framework would be presented to the MB during its 45th meeting in January 2018 and that, for such purpose, the Agency intended to make available to the MB a list of the main elements and guidelines of the cooperation agreements as agreed upon by the Agency and the NSA network during the discussions held within the NSA Subgroup in order for the Board members to give their feedback upon.

It was also explained that, according to the detailed planning made by the Agency, the MB members would be given ample opportunity to follow closely the process leading to the adoption of its final decision on the matter as they would be invited to consult and submit their comments and remarks on the draft proposals which the Agency intended to make available to them at regular intervals.

It was announced that more detailed discussions on the relevant issues was envisaged to be held during a dedicated MB workshop which would take place in March 2018 and it was suggested that the Chairs of the NSA Subgroup be invited as of the 44th MB meeting of November 2017, with the agreement of the MB members, to all the MB meetings which had been scheduled until the adoption of the final decision in June 2018 so that the MB members would be provided with direct feedback on the progress of the work on the ongoing project.

The Board members were given some more detailed examples of the main elements and guidelines to be included in the future cooperation agreements as an indication of the understanding achieved thus far on the above-mentioned notions through the discussions held within the NSA Subgroup on the matter.

The Legal Adviser of the Agency made a quick synopsis of the main legal issues discussed recently both at the level of Subgroup of lawyers and within the NSA Subgroup such as, among others, the issues related to the

law applicable to cooperation agreements, the competent authority to be vested with jurisdiction to hear the disputes arising from the interpretation or application of the provisions of such agreements, the appropriate liability regime to be established under the cooperation agreements including the issues arising from a third-party liability clause that could be potentially included therein, the duration, suspension and termination of the cooperation agreements as well as their possible amendment and/or re-negotiation.

The issues of whether a provision on the “Pool of Experts” (PoE) and, possibly, the secondment and allocation of NSAs experts for the purpose of assisting the Agency in the performance of its own tasks on VAs and SSCs could possibly be included in the body of the cooperation agreements, whether the Agency should bear or not the risk of non-payment of the fees and charges due by an applicant or whether the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) were entitled to exercise their powers to carry out audits and investigations by virtue of Article 79 §§ 2-4 of the Agency Regulation over the NSAs as the Agency’s counterparties under the cooperation agreements were also explored.

Additionally, the Board members were provided with a list of other legal topics under discussion –either of minor importance or strongly interrelated with other issues on which discussions were also still ongoing– including, among others, the issues related to languages, sub-contracting, archiving, transparency of cooperation agreements, public access to documents, conflicts of interest for NSAs, national experts and Agency staff, and were notified of the Agency’s intention to seek the opinion of the Commission and, in particular that of DG MOVE, on the most highly debated legal clauses of the cooperation agreements.

The 4th RP Preparation Programme repeated that a document reflecting the views of the both the Agency and the NSAs as expressed during the discussions held on the matter within the NSA Subgroup would be circulated soon to the MB.

He invited the Board members to provide the Agency with their input on the appropriate scope of the cooperation agreements and, in particular, on their understanding of the notions of the “guidelines” and “main elements” taking into account the document which would be made available to them. He added that, as far as the legal clauses of the cooperation agreements were concerned, the feedback of the MB members upon the precise scope of the Agency’s mandate under Regulation (EU) 2016/796 and the appropriate position to be taken by the Agency on the relevant issues would be requested at a later stage.

The Chair summarised that it was apparent from the presentation which had just been made by the Agency that there were still a lot of open points which had yet to be discussed, thanked the Agency for providing the MB with detailed information on the process to be followed for the adoption of the relevant decision.

The Chair found quite useful the idea of organising a specific workshop for the purpose of holding more in-depth discussions on the topics identified above and placed emphasis on the significance of the future decision to be adopted by the MB on the matter and on the need for the MB members to be given sufficient time to reflect further on the issues at stake.

The Board members were given an update of the relevant discussions which had been held amongst the EB members during their 6th meeting which had taken place in September 2017. The Chair reported that, during the discussions held within the EB, it had been suggested that, while clarity could possibly be achieved on the definition of the notion of the “main elements”, the precise scope of the term “guidelines” could not be determined that easily. The need to develop a sufficiently flexible framework which would allow the Agency to further negotiate a cooperation agreement with each NSA on a bilateral basis had also been stressed. The EB members had also made the observation that some topics could easily be dealt with in the context of a multilateral arrangement while some other issues should rather be subject to bilateral discussions between the Agency and the NSAs.

Italy agreed that there were a number of open issues to be discussed and, possibly, brought to the attention of the Commission for its consideration and opinion and went on to make a point on the issues related to fees and charges payable by applicants.

More specifically, Italy suggested that the part of the assessment to be performed by the NSAs should be treated, for payment purposes, as part of the Agency's assessment and not as part of the work done by an external consultant.

It was pointed out that, as already agreed, it was only the national law which would be applicable to fees related to tests and pre-engagement and that such fees should not be considered as part of the Agency's fees for VAs, stressed the importance of the relevant matter and expressed its hope that such open points would be clarified in the future discussions to be held on the topic.

The Commission underlined the fundamental importance of the cooperation agreements scheme to the successful implementation of the 4th RP and made reference to the discussions which had been held earlier that day on the need to put in place a mechanism for the assessment of the readiness of the EU system as a whole to effectively respond to the future challenges.

However, the Commission expressed serious concerns about the timetable proposed to be followed for the adoption of the relevant MB decision in the sense that, according to the detailed planning made by the Agency, the cooperation agreements framework was not envisaged to be made available to the MB earlier than five months prior to the planned adoption of the final decision. It highlighted the fact that the Agency would have to launch and enter into bilateral discussions with twenty-eight NSAs within one year and thus recommended that the proposed time schedule should rather be more closely looked and reflected upon so as to identify possible ways of speeding up the whole process leading to the formal adoption of the MB decision on the matter.

Moreover, the Commission wondered which the precise scope of the notion of "guidelines" should be and assumed that, were it for the text of the Agency Regulation to be taken as a starting point for answering such question, the "guidelines" should be considered as defining the framework within which the Agency was supposed to negotiate with each NSA on a bilateral basis with the objective of facilitating not only the process of negotiation as such but also the subsequent cooperation between the Agency and the NSAs as well as between the NSAs themselves on the implementation of the operation activities which would have to be jointly carried out as a result of the cooperation agreements conclusion.

It was recommended that the generic part of the framework cooperation agreements should be established in as broad a manner as possible and that efforts should be made so that the specific elements to be agreed upon on a case-by-case basis following bilateral negotiation between the Agency and each NSA should be as limited as possible and it was outlined that the ultimate purpose of the work on the development of the "main elements" and "guidelines" should be to come up with a "model cooperation agreement" which could serve as a quite uniform basis of the discussions to be held subsequently at a bilateral level with each NSA.

Furthermore, the Commission wished to underline potential linkages to be identified between the project of the cooperation agreements on the one hand and the work to be done in relation to other projects as for instance the interfaces which could possibly be developed between the technical aspects of the software system to be used in the OSS and the legal obligations which would be actually imposed upon the NSAs by reason of their interaction with such system.

It concluded that there were a number of issues which were expected to be dealt with in the context of the cooperation agreements and were already envisaged under or governed by the EU regulatory framework.

As far as the legal clauses of the cooperation agreements were concerned, the Commission noticed that there were a lot of challenging and complex issues yet to be examined more closely by the Agency and, possibly, by DG MOVE which should be formally requested to give its opinion. It was recommended that the Agency should strive to build up a framework which would be as uniform as possible by relying, among others, upon the common EU legal elements. More specifically, on the issues arising in respect of the potential liability regime to be established under the cooperation agreements, it was pointed out that, despite the reluctance of the NSAs to be subject to any other legal system other than the national law of the respective Member States, it would be extremely difficult for the Agency to come to terms with a situation whereby its own

liability would be governed by EU law on the one hand but such EU law could not be effectively invoked by the Agency in support of a future claim to be lodged against a NSA potentially held liable and governed by a legal regime other than the EU law on the other hand.

On the specific issues related to suspension and termination of cooperation agreements, the Commission seriously doubted whether the NSA enjoyed the right to renounce subsequently the cooperation agreement entered into between them and the Agency in the sense that, according to Article 76 of the Agency Regulation, the conclusion and entry into force of the cooperation agreements seemed to be a prerequisite for the performance by the Agency of its tasks related to authorisation and certification under the 4th RP.

The Commission summarised that, given their degree of complexity, some of the issues referred to above should rather be further reflected upon and discussed on a more regular basis as part of the agenda of each MB meeting which had been scheduled to take place from that point onwards and until the formal adoption of the relevant MB decision had been completed and invited the Member States representatives on the MB to indicate, if possible, whether the NSAs in their Member States were prepared to sign up to the proposed course of action.

The Chair agreed with the point raised by the Commission on the need for speedy and accurate decision-making on the issues at stake, but wished to draw the attention of the MB members on the potentially strong interdependencies to be identified between a MB decision on the guidelines and main elements to be included in the cooperation agreements and other decisions to be taken in the context of ongoing or future discussions taking place within other fora on other topics.

It was proposed that the work on such topics might have to be carried out in parallel with the progress made by the Agency on the cooperation agreements project with a view to ensuring that the proper decisions would be made at the appropriate point in time.

The U.K. expressed its support for the time frame set out by the Agency, agreed with the point made during the presentation that there were a number of difficult issues which should be further reflected upon.

It also mentioned its intention to support the right of either party to the cooperation agreements to proceed to the cancellation of such agreement provided that sufficient notice had been given to the other party so as to avoid a situation whereby a party would be locked in an unsuitable contractual arrangements.

Finally, the UK suggested that the Agency should avoid putting forward a detailed proposal to be agreed upon by the MB by giving room, as much as possible, to the NSA Subgroup to agree on the details regarding the identified issues taking into due consideration the need to establish a framework for the cooperation agreements which would flexible enough to accommodate specific arrangements such as, among others, the ones related to the Channel Tunnel involving both the U.K. and France.

Finland agreed with the U.K. that the detailed work on the cooperation agreements should rather be carried out within the NSA Subgroup and warned against a possible involvement of the MB in the discussions and decisions to be made on some of the above-mentioned issues too early in the process.

However, Finland wondered whether the Agency had already verified if all the NSAs were competent to conclude cooperation agreements, made the observation that, while the Finnish NSA did have such competence, other NSAs might not be in a position to validly enter into such arrangements before the transposition of the Railway Safety and Interoperability Directives into the national law of the respective Member States has been completed, i.e. prior to 2019 or 2020 and asked the Agency what was the appropriate course of action in such cases.

The Chair intervened to confirm that Belgium shared the same concerns with Finland, explained that, according to the Belgian position on the matter, the exact date of the entry into force of the cooperation agreements was quite crucial for Belgium. This was reason why it had requested the Agency to delay the entry into force of such agreements until the transposition of the 4th RP Directives into Belgian law has been completed and clarified that such request did not prevent the Agency from concluding the cooperation

agreements at a preceding time point but was simply aiming at ensuring that such agreements would come into effect and become fully applicable only after the entry into force of the national law transposing the 4th RP Directives.

France, while it fully acknowledged that significant progress had been made in the discussions on the relevant topics, it noted that there were still some crucial and rather sensitive open points to be further reflected upon and, eventually, dealt with in close cooperation with the Commission.

However, France insisted that, apart from the legal clauses as such which had been already thoroughly examined as clearly evidenced from the precise nature of the questions raised, it would have been useful if the MB members could be provided as soon as possible with a first overview of the main issues regarding the technical clauses of the cooperation agreements. It was considered that the MB should be already aware of the progress made on work related to the cooperation agreements not only from a legal but also from an operational point of view and recommended that some of the issues identified above should be examined in light of the nature of the cooperation agreements as agreements between two bodies and not as elements of a subcontracting system.

Spain shared the concerns raised by the Commission on the time schedule proposed by the Agency and, in line with the relevant point previously made by the Commission, expressed the view that the consensus of the NSAs on the generic part of the framework cooperation agreements should be as broad as to allow for only limited deviations to be made therefrom by each NSA.

Spain added also that the specific elements to be agreed on a bilateral basis between the Agency and each NSA should be made available to the other NSAs which could adhere to such elements as well, if they deemed it appropriate.

In response to the remarks made by the Commission and Spain, the 4th RP Preparation Programme Manager admitted that, although it would be difficult to reach a consensus on some aspects, the majority of the NSAs represented on the NSA Subgroup shared also the view that the scope of the common part of the framework cooperation agreements should be as wide as possible out of fear that, if a lot of specific elements have been treated in a different manner in the bilateral arrangements to be agreed upon between the Agency and each NSA on an individual basis, the system as a whole might run the risk of not functioning properly.

It was also acknowledged that the project on cooperation agreements was one of the last remaining projects listed under the Agency's 4th RP programme and the progress on such project was strongly dependent on the outcome of the work on other projects such as those related to IAs on fees and charges and practical arrangements for VAs and it was stressed, therefore, that it was crucial to stick to the original planning made by the Agency as regards the decisions to be adopted by the MB for the implementation of the 4th RP.

The 4th RP Preparation Programme Manager expressed also his hope that the scope of the specific cooperation agreements which the Agency would sign with twenty-eight different NSAs within one year following the adoption of the relevant decision by the MB would be as limited as possible.

It was clarified that such period could, in most cases, be less than one year since the Agency intended to establish, already since the beginning of 2018, a detailed time frame for the conclusion of the cooperation agreements in close cooperation with the NSAs taking into account that some NSAs were under the obligation to follow a specific internal process prior to the conclusion of the cooperation agreements. Board members were invited to indicate whether the Member States represented by them wished to have the Commission notified as well.

In reply to the question made by Finland, the 4th RP Preparation Programme Manager assured the Board members that the conclusions of the relevant discussions had been thus far fully in line with the concerns which had also been previously raised by Belgium. He also said that, despite the quick progress which was expected to be made on the negotiation and the conclusion of the cooperation agreements, their envisaged entry into force would take place only after the transposition of the 4th RP Directives into the national law of the respective Member States.

Moreover, the 4th RP Preparation Programme Manager clarified that the points made by Italy did not seem to be directly related to the issues dealt with in the context of the discussions on the cooperation agreements but should rather be taken into account by the Commission and by the Agency mainly as regards the IA on fees and charges. He guaranteed that those points had already been duly brought to the attention of the Agency during the Expert Group meeting which had taken place the week before the MB meeting and were expected to be fully taken into consideration.

The Chair found that the idea of the Agency on involving the two Chairs of the NSA Subgroup directly in the MB meetings discussions on the matter was a quite constructive way forward as it would give the MB members the opportunity to receive direct input on the progress made in the discussions held within the NSA Subgroup. The Chair proposed that the Agency should address a formal invitation to both Chairs, invited the MB members to share any written comments and/or remarks they wished to make already at that point with the Agency and announced that an update on the state of play of the discussions on the matter would be given during the 44th MB meeting of November 2017.

16. Single Programming Document (SPD) 2018 Draft 3

The Chair recalled that an updated version of Draft 3 of SPD 2018 had been circulated to the MB members in advance of their meeting both in clean version as well as in track changes together with the Commission's official opinion on draft SPD 2018 and announced that the Agency intended to produce, on the basis of the remarks reflected therein and any other comments which had been brought to its attention in the meantime, Draft 4 of SPD which would be sent out to the MB by the end of October 2017 in view of its planned adoption during the 44th MB meeting of November 2017.

The Strategy and Business Planning Officer of the Agency confirmed that SPD 2018 was coming closer and closer to the end of its development cycle. More specifically, it was explained that the latest version of SPD 2018 reflected those comments made during the MB Consultation Workshop of January 2017 which had not yet been taken into account and had been aligned with the official opinion issued by the Commission.

Finally, it was announced that the Agency had received, in the meantime, additional comments on issues related to resourcing, gender balance and reclassification from DG MOVE and that it intended to include its replies in Draft 4 of the SPD 2018 together with the procurement plan which, in line with the practice followed during the previous years, would be added only to the final version of draft SPD 2018 to be proposed for formal adoption by the MB.

The Chair stated that she was looking forward to receiving Draft 4 of the SPD 2018 in view of the MB meeting of November 2017 and thanked the Commission for making available to the Agency its comments in writing.

17. Single Programming Document (SPD) 2019 and preparation of Consultation Workshop

The Chair recalled that the Agency was currently in the process of working upon a new SPD structure and made the introductory remark that the Agency intended to provide the MB members with an outline of the updated SPD 2019 structure, among others, for the purpose of identifying potential candidates which would take on the role of sponsors-rapporteurs in relation to the topics reflected in the new SPD 2019 structure already at that point.

The Strategy and Business Planning Officer stated that the Agency had prepared a new structure for SPD 2019 due to various reasons and explained, for instance, that the SPD structure would be no longer driven by the organisational chart of the Agency, would further improve the one-Agency view, would be in line with some the remarks which had been received on the matter by the Internal Audit Service (IAS) and followed the plan-do-check act cycle.

The Board members were given a visual illustration of the founding elements of the proposed new structure of the SPD 2019 and were provided with a brief overview of the structure of the SPD 2019 in particular in

comparison with the current SPD structure as reflected in SPD 2018 and with special emphasis on the updated scope of the Activities envisaged under the new SPD 2019 structure.

It was clarified that the main purpose of this exercise was to ensure consistency and continuity in the transition from one year to another at least in terms of the objectives to be achieved. The Agency had made some progress on its work on the SPD 2019 structure since the MB members were first made aware of such structure and that, consequently, it had been considered appropriate, in the meantime, to revise some objectives, in particular those related to safety.

It was explicitly mentioned that the updated version of the SPD 2019 structure would serve as the main reference point for the SPD 2019 Consultation Workshop which had been scheduled to take place the day after the coming MB meeting, i.e. on November 30th 2017.

The Board members were reminded that a call for SPD 2019 sponsors had been launched prior to the 6th EB meeting of September 2017 and informed that, up until that point, it was only the representative of Railway Undertakings (RU), Mr. Libor Lochman, who had expressed his interest in becoming sponsor for ERTMS. However, it was recommended that any future candidates should be appointed as sponsors not at the level of Activities but rather as rapporteurs for each of the strategic areas identified in the new SPD 2019 structure.

The Board members were kindly invited to express their interest as soon as possible and, preferably, until October 6th 2017, in any of the following topics which remained available and were still open for sponsorship: “harmonised approach to safety”, “removing technical barriers”, “simplified access for customers” and “evaluation, management and resources”.

The Chair repeated that the number of candidates who had expressed, at least up until that point, their interest in becoming rapporteurs-sponsors for specific topics identified in the new SPD 2019 structure was not sufficient, clarified that those topics were not significantly different in substance from those which the sponsors were used to deal with in the past and that the old Activities and Objectives included in SPD 2018 had just been reshuffled and streamlined in order to fit in well with the new structure envisaged for SPD 2019 and invited those MB members who had been previously assigned the role of sponsors to put their name forward as rapporteurs for strategic areas of SPD 2019 until the deadline specified above.

It was also stressed that the idea of sponsorship entailed a lot of bilateral exchanges between the rapporteurs and the relevant Heads of Unit (HoUs) of the Agency and that those who would be assigned such role would have the opportunity to acquire a more in-depth overview of the Agency’s work in a specific area and would, thus, be mandated to report back to the MB and to provide to its members the best possible assurance that the Agency’s progress on the relevant work was on the right track.

The Executive Director intervened to indicate the main reasons for which the Agency had decided to review the structure of its SPD. More specifically, he referred to the planned internal re-organisation of the Agency which had been mentioned earlier during that day, analysed that the tasks in relation to which the Agency would receive fees and charges needed to be clearly distinguished and separated from those in respect of which the Agency would maintain a regulatory role.

Furthermore, efforts had been made so as to group, as much as possible, those tasks which would be financed by fees and charges payable by applicants under Activity 3 of the new SPD 2019 structure and indicated that the first two titles of the Objectives listed thereunder on “preparing for SSC” and “preparing for VA” were the same as those listed under Activities 1 and 2 of SPD 2018 and should, therefore, be construed respectively as follows: “delivering SSC” and “delivering VA”.

It was added that the Agency had decided to restructure its SPD in response to the criticism formulated by IAS which held the view that the current structure of the Agency’s SPD was lacking clarity and consistency and that, following the comments by IAS on the matter, it had been considered appropriate to include also in the new SPD structure from the outset an Activity which would define the main targets to be achieved and would determine the key strategic issues to be further explored, i.e. Activity 1 of the new SPD 2019 on “contributing to shaping target reference and global reference for the EU rail system”.

It was also explained that, whereas Activities 2 and 3 on “developing the harmonised regulatory SERA technical framework” and on “implementing the harmonised SERA regulatory framework (under the 4th RP)” respectively concerned the development and implementation of the technical framework, among others, on VAs, SSCs, VAs, registers and ERTMS approvals, Activity 4 revolved around the issues related to “monitoring, evaluating and reporting” on the Agency’s outputs, outcomes and impacts” and that, in line with the remarks of IAS, the scope of Activity 5 had been determined more precisely so as to cover only the activities of the Agency which were related to internal support.

The Executive Director admitted that, although it was apparent from the draft report which had been sent to the Agency that IAS did not intend to insist on its initial remarks, the new approach as reflected in the updated structure of SPD 2019 represented the best way forward in particular in view of the Agency’s future role as a Union authority and the preparatory work to be carried out prior to the finalisation of the internal aspects related to the Agency’s re-organisation in mid-2018.

The representative of Germany intervened to express his interest and the interest of his alternate in becoming sponsor for the topics which had been listed under Activity 3 of the new SPD 2019 structure on “implementing the harmonised regulatory SERA technical framework (under the 4th RP)”.

The Chair thanked Germany for putting forward its candidacy and took the opportunity to invite once more the MB members to express their interest in taking over the sponsorship for the remaining topics as identified in new SPD 2019 structure.

The Commission particularly welcomed the Agency’s work on the restructuring of its SPD, placed emphasis on the significance of the overall SPD-related exercise which made it easier for the MB members to follow the progress made by the Agency on the key strategic areas which were reflected in its SPD and regretted that the process for the preparation of the draft SPD 2018 had not been followed as closely as required.

More specifically, the Commission held the view that the SPD provided an accurate reflection of the Agency’s needs in resources at a certain point in time and went on to underline, in that sense, the high value of the SPD as a tool which the Agency could use in particular for justifying in a solid and concrete manner its requests for additional resources to the budgetary authorities.

Moreover, the Commission noted its appreciation for the Agency’s initiative to organise a MB Consultation Workshop on SPD 2019 in November 2017 and urged the Agency to avail itself of this opportunity and to use the time remaining until the 45th MB meeting of January 2018 for the purpose of refining as much as possible the relevant draft which the MB would be called on to formally endorse during that meeting.

While the Commission agreed in principle with the proposed new structure of SPD 2019, it announced that it would send to the Agency some remarks in particular as regards the wording used for the description of some of the objectives included therein and stressed once more that all future efforts should be placed on ensuring that the Agency would put forward a strong proposal on draft SPD 2019 in January 2018.

In response to the remark made by the Commission on the titles used in the new SPD 2019 structure, the Chair explained that a transition would have to be made, during 2019, from the preparatory phase in view of the 4th RP to the phase of the implementation of the 4th RP and that some of the Objectives included therein would have to be reformulated so as to reflect more clearly such distinction between those two phases.

The Executive Director added that, from June 2019 onwards, the Agency was expected to be ready to proceed with the implementation of the 4th RP and that the Objectives of the new SPD structure 2019 corresponding to the second half of the year 2019 would be reformulated accordingly.

The Chair thanked the Agency for the feedback provided on the progress of its work on the new SPD 2019 structure and said that she was looking forward to receiving additional expressions of interest from the MB members in response to the call for sponsors/rapporteurs which had been launched by the Agency.

18. Budget execution 2017 and transfers of appropriations

The Board members were informed about the execution of the Agency's budget 2017 as of September 20th 2017 and about the transfers which the Executive Director had made in accordance with Article 27 § 1 of the Agency's Financial Regulation since the beginning of the year.

The Head of Resources and Support Unit reported that no significant changes had been introduced in the document which had been made available to the Board members in view of their 42nd meeting in June 2017. It was briefly described that the level of commitments and payments was more or less in line with that of the previous year and that the targets set initially with regard to the commitments, payments and payments on commitments carried-over from the previous year were expected to be achieved by the end of that year, it was pointed out that, out of all the transfers made since the beginning of 2017, those listed under Title 3 were the most significant ones and it was guaranteed that the Agency intended to do some fine-tuning of the naming used for the description of the budget lines contained in the relevant document.

The Commission admitted that it had just taken note of the exact figures included in the Agency's budget execution 2017, stressed that it was necessary to verify that the Agency had made progress on the work related to the execution of its budget and, in particular, on the levels to be achieved in regard to both commitments and appropriations and wished to obtain more clarifications on the envisaged level of carry-over from that year's payment appropriations.

The Agency pointed out that it was required to achieve the target of at least 95% of the payment execution and that its performance was expected to go beyond target levels as it was only the payment of ongoing studies which was still due.

The Commission clarified that its previous question concerned the carry-overs to be made from the credits of 2017 and wondered what was the level expected to be achieved by the Agency in relation to such carry-overs by the end of that year.

The Head of Resources and Support Unit replied that the Agency was required to achieve by the end of 2017 90% for Title 1, 80% for Title 2 and 70% for Title 3 and guaranteed that those target levels would be achieved.

19. Staff-related issues state of play

The Head of Resources and Support Unit made the introductory remark that the explanatory note on staff-related issues which had been distributed to the MB members prior to the meeting was intended not only to provide updated feedback on the current state of play regarding the budget and organisational impact of the absence of an internal language regime but also to give some additional information, following the Commission's request, on the staff turn-over and the recruitment plan of the Agency for the year 2017.

On the repercussions of the absence of formal language regime mainly in terms of budget, the Board members were informed that the translation costs related to the publication of an external call for applications which had been launched in the beginning of 2017 had reached the total amount of 14.000 € and that the translation costs for the publication of a horizontal call for applications for TAs which was about to be launched were expected to amount to 39.000 €.

It was stressed that, as already mentioned during the previous MB meeting of June 2017, the Agency should put more efforts on strengthening its HR team in view of the high workload which would inevitably result from the selection procedures which were about to be launched shortly and would turn out to be quite resource-demanding.

The Board members were also updated on the current state of play of staff-related issues as of August 28th 2017. More specifically, it was highlighted that the purpose of the call for applications for Contract Agents (CAs) which had been published recently by the Agency was to allow for the establishment in different fields of several reserve lists which would include at least ten persons each with a further view to closing the gap in the total number of CAs.

The Chair observed that the feedback provided by the Head of Resources and Support Unit made it easier for the MB members to follow and to build a better understanding of the internal aspects of the preparatory work carried out by the Agency for the 4th RP implementation and placed emphasis on the significance of the issues related to the impact of the absence of a decision on the Agency's language arrangements in the context of the general discussion on the resource needs of the Agency.

The Chair also agreed with the point made on the need for the Agency to focus more on strengthening its HR team as an efficient means of responding to the challenges lying ahead in the field of recruitment, thanked the Head of Resources and Support Unit for the work done towards that direction and guaranteed that the MB would support the Agency's efforts to establish a strong HR management with the aim of dealing more effectively with the future staff selection procedures.

The Executive Director reiterated that the Agency would have to take mitigation measures in order to make amends for the absence of an officially adopted language regime. More specifically, he stressed the fact that, due to the absence of a formally adopted language regime, the Agency should not only undertake the translation of the vacancy notices to be published in all twenty-four official EU languages but also make use of existing reserve lists for the recruitment of additional staff members with profile similar to that of the vacant post(s).

It was announced that a multi-disciplinary calls for applications had already been launched for CAs and was about to be closed and that the Agency could make use of the reserve lists to be established for the different fields of activities envisaged under such call instead of launching a new call for applications during 2018. The Board members were also informed that a multi-disciplinary call for Temporary Agents (TAs) was about to be published soon and that, along the same lines, several reserve lists were envisaged to be established for the different areas of expertise identified in the call.

However, the Executive Director warned that the practice of such multi-disciplinary calls for applications, although it was convenient for the Agency from a purely practical point of view and necessary as a compromise solution, was a bit problematic since it could fuel criticism on the part of IAS that candidates applying for the same post under the same call would have to be evaluated on the basis of different criteria according to the profile sought but pointed, at the same time, to the need to ensure that the Agency could avail of the appropriate resources in a timely manner.

The Commission found that the information reflected document which had been circulated to the Board members on staff-related issues was extremely useful, took note of the Agency's decision on the mitigation measures to be adopted as a result of the absence of a formal language regime. It fully agreed with the point made by the Chair on the need to reinforce the Agency's HR management in view of the major future challenges that the Agency would be faced with in the area of staff recruitment. However, the Commission wished to reserve its position in relation to the IAS remarks on the relevant issues until the publication of its final report which would have, most probably, been made available until the MB meeting of November 2017.

20. Follow-up audits

The Board members were given a brief overview of the current state of play as regards the IAS audits.

The Executive Director reported that the IAS audits had taken place in April 2017, than an advanced draft report had been received from the IAS by the end of June 2017 and that, following a meeting which had been held with the IAS in early July 2017 for the purpose of obtaining clarifications on some open points, the Agency was given the opportunity to submit its comments, if any, on the draft report by August 10th 2017.

The MB members were informed that the IAS planned to issue a draft report on the basis of the remarks made by the Agency which was entitled to submit those comments through official channels upon publication of such report and that the official comments of the Agency would serve as a basis for the preparation of the final IAS report which would also be made available to the MB members.

However, the Executive Director seriously doubted whether the IAS would manage to produce its report in time before the coming MB meeting of November 2017 taking into account that the draft IAS report to be commented upon by the Agency had not yet been made available.

The Board members were assured that at least for the moment, there were no open IAS recommendations. However, it was pointed out that new recommendations were expected to be foreseen in the IAS report to be received in the near future and that, although the Agency did not intend to make any official statement prior to the receipt of the final IAS report, it had already embarked upon the necessary preparatory work to be done in relation to the expected new recommendations by launching an action plan in order to deal more effectively with any open issues potentially identified such as, among others, its HR strategy.

The Chair mentioned that the MB was looking forward to receiving the final IAS report and additional feedback on the actions envisaged to be taken by the Agency in response to the findings.

21. AOB

The Chair made a point on issues related to staff gender balance.

It was announced that the European Economic and Social Committee (EESC) had decided to launch an initiative on “Women and transport – Platform for Change” for the purpose of raising awareness on the role of women in transport, including in the railway sector as a whole, and that the relevant opening ceremony had been scheduled to take place, with the presence of the European Commissioner for Transport, Ms. Violeta Bulc, on November 27th 2017 at the EESC premises in Brussels.

The Chair considered that the Agency could play a crucial role by participating actively in this initiative, all the more so since some of the comments which had been included in its SPD 2018 on the need to enhance the staff gender balance not only internally but also in the whole railway sector, urged the MB members to give their full support to the ideas reflected in this proposal which had been put forward jointly by EESC and DG MOVE and welcomed any additional suggestions as to the best way forward on the relevant matter.

The Board members and, in particular the Sector representatives, were informed –and kindly requested to diffuse across all levels the message– that the Agency intended to support such initiative and would be closely involved in the work to be delivered by DG MOVE and EESC in that regard.

They were also invited to participate actively in the initiative as well by sharing their input and by further disseminating the good practices already established by CER and ETF, among others, by means of joint recommendations which had been firstly issued in 2007 –and updated in 2012– for a better representation and integration of women in the railway sector.

The U.K. expressed its support for the initiative announced by the Chair, wondered whether further details regarding the future actions to be taken in that regard could be shared with the MB already at that point and promised to make sure, on its part, that any relevant information which would be shared with the MB members would receive the necessary publicity.

The Board members were also informed that the representative of Denmark, Mr. Hans Christian Wolter, had announced that he would retire from the service in the Danish Ministry of Transport, that he planned to step down as member of the MB and that, therefore, the ongoing meeting was the last MB meeting where he had participated.

The outgoing representative of Denmark, Mr. Hans Christian Wolter, expressed his sincere appreciation for being given the opportunity to participate for several years in the work of the Agency’s MB, felt that his role and tasks as MB member were both challenging and stimulating at the same time and admitted that he was deeply honoured and grateful for having had the chance to be one of the “founding fathers” of the technical pillar of the 4th RP by participating actively in the work of the Council during the negotiations on the relevant legislative proposals.

The representative of Denmark congratulated both the Executive Director and the staff of the Agency for their brilliant work as well as the MB members for their passionate dedication and continued commitment to the Agency's mission and was confident that all future efforts to be put by the Agency into dealing with the challenges lying ahead over the two years remaining until full transition to the 4th RP has been completed would lead to success.

The Chair stated that the representative of Denmark would be greatly missed for his extremely useful input on a number of topics which had been discussed amongst the MB members during all those years and wished him every success in his future endeavours.

The Executive Director thanked warmly the representative of Denmark for his unconditional support for the Agency's work and, in particular, for his continuous commitment to ensuring the quality of such work and agreed with the Chair that he would be greatly missed for his invaluable contributions to the work of the MB.

22. Meeting dates

The Board members were presented the updated proposal of the Agency on the dates of EB and MB meetings to be held during 2017 and 2018 which had been prepared in line with the amended text of the EB RoP adopted earlier during that day.

The Chair announced that the 44th MB meeting would be held on November 29th 2017 in Valenciennes and that the MB Consultation Workshop on SPD 2019 had been scheduled to take place the day after the MB meeting, i.e. on November 30th 2017, also in Valenciennes.