

Making the railway system
work better for society.

Minutes of 42nd Meeting

Management Board

Lille / 27 June 2017

The meeting opened at 10.15, Mr. Mats Andersson was in the Chair. The secretariat was provided by the European Union Agency for Railways. The Agency Management Team, Mr. Josef Doppelbauer, Executive Director 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	Present
Alt: Mr. Wolfgang Catharin		Excused
Ms. Clio Liégeois	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		Proxy Sweden
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	Proxy Finland
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	Excused
Alt: Ms. Helga Nemeth		Present
Ms. Mary Molloy	Ireland	Excused

Alt: Ms. Caitriona Keenahan		Present
Appointment pending	Italy	Excused
Alt: Mr. Giorgio Morandi		Excused
Mr. Patriks Markēvičs	Latvia	Present
Alt: Ms. Linda Gailite		Present
Mr. Martynas Čekanauskas	Lithuania	Excused
Alt: Ms. Giedrė Ivinskienė		Proxy 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		Present
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
Mr. Dragos Floroiu	Romania	Excused
Alt: Ms. Ana Maria Dascalu		Excused
Mr. Mikuláš Sedlák	Slovakia	Excused
Alt: Mr. Miroslav Dorčák		Excused
Mr. Boris Živec	Slovenia	Present
Alt: Mr. Benjamin Steinbacher Pušnjak		Excused
Ms. Paloma Iribas Forcat	Spain	Present
Ms. Vanessa García Lozano (Adviser)		Present
Alt: Mr. Eduardo Santiago González		Excused
Mr. Mats Andersson CHAIRPERSON	Sweden	Present
Alt: Mr. Carl Silfverswärd		Excused
Mr. Jeremy Hotchkiss	United Kingdom	Present
Alt: Mr. Ian Jones		Excused
EUROPEAN ECONOMIC AREA STATES (EEA) (no voting rights)		
Mr. Øystein RAVIK	Norway	Excused
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. Keir Fitch		Present
Ms. Ainhoa San Martin (Adviser)		Present
Ms. Agnieszka Kázmierczak		Excused
Alt.: Mr. Matthew Baldwin		Present
Ms. Isabel Rosenbrock (Adviser)		Present
SECTOR REPRESENTATIVES (no voting rights)		
Mr. Libor Lochman	Railway undertakings	Present

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

The Chair welcomed the following newly appointed Member States representatives: Ms. Paloma Iribas Forcat (Spain), Ms. Gabriela Tsvetanova Tsekova (Bulgaria), Mr. Eduardo Feio (Portugal) and Mr. Kåre Clemmesen (Denmark).

He also thanked warmly Ms. Ainhoa San-Martin, adviser to the representatives of the Commission, who would, as of September 2017, cease to participate to the Board meetings for her invaluable six-year contribution to the work of both the Management Board (Administrative Board) and of the Executive Board (Sub-Committee) of the Agency.

SUMMARY OF DECISIONS

The Management Board:

- 1) adopted the minutes of the 41st MB meeting held on January 31st 2017;
- 2) elected Ms. Clio Liégeois, representative of Belgium, Chairperson of the Management Board (MB) and, ex officio, Chairperson of the Executive Board (EB);
- 3) agreed on the paper on the role of the Executive Board (EB);
- 4) adopted an Opinion on the Agency's Annual Accounts 2016;
- 5) adopted the Agency's Annual Activity Report 2016 together with its Analysis and Assessment issued by the Management Board (MB);
- 6) adopted the provisions on auditing notified conformity assessment bodies in the framework of Article 34 § 3 of Regulation (EU) 2016/796;
- 7) agreed to meet again on September 26th 2017.

Voting members present or represented by proxy: 25

Votes: Decisions under points 1, 3, 4,5,6,7 above were taken unanimously.

Election of MB Chair, point 2 above: 1st round 18 votes for Ms C. Liégeois and 7 votes for Mr B. Živec. No second round took place as Mr B. Živec withdrew his candidacy. The MB confirmed Ms C. Liégeois as Chair, no objections were raised. Voting procedure by secret ballot. Ms. Monika Heiming (Infrastructure Managers / IM) and Mr. Gilles Peterhans (Railway Industry / RI) were appointed tellers.

Proposal on an internal language regime of the Agency: Due to the absence of consensus among its members, the Management Board did not reach a decision on the internal language arrangements applicable to the Agency (voting rule: absolute majority unless unanimity is requested by one MB member).

MINUTES

1. Adoption of the Agenda

The agenda was adopted.

2. Adoption of the minutes of the 41st Management Board (MB) meeting

The minutes of the 41st MB meeting were adopted.

Denmark pointed to the evolution of the MB meetings minutes gradually over the time in terms of both quantity and quality, considered them as a quite useful tool for the preparatory work to be carried out by the Board members themselves prior to the MB meetings discussions on some rather complex issues of strategic significance and mentioned the example on the reflections on the role and functions of the EB. Both Denmark and the Chair congratulated the Agency on the quality of the work done as regards the drafting of the minutes of the MB meetings.

3. Election of the Management Board (MB) and of the Executive Board (EB) Chairperson

The Chair recalled that he reached the end of his 3-year mandate as MB Chair and a new Chair had to be elected in line with Article 48 of the Agency Regulation.

The Board members were reminded of the candidacies announced thus far which were those of Ms. Clio Liégeois, representative of Belgium, and of Mr. Boris Živec, representative of Slovenia.

The MB voting members elected as Chair Ms Clio Liégeois, representative of Belgium.

Mr. Boris Živec explained that it had been a great pleasure for him to be given the opportunity to put forward his candidacy for the position of MB Chairperson alongside that of Ms. Clio Liégeois and said that he had done so out of conviction that it was crucial to ensure that at least two (2) candidates would run for election to the position of the MB Chairperson.

He congratulated the newly appointed MB Chairperson, Ms. Clio Liégeois, and expressed his confidence in and his support for the work to be delivered by her, as representative of a new generation and of a wholly new spirit, in these changing times for the railway sector.

The Chair thanked Mr. Boris Živec for being candidate and he congratulated his successor, Ms. Clio Liégeois on her appointment and announced that the starting date of her four-year term of office as MB Chairperson was July 22nd 2017.

The newly appointed MB Chair thanked the Board members for honoring her with their votes and stated that, despite her young age, she still considered herself as capable of taking over the duty of chairmanship and expressed her sincere confidence in the value of the Agency's work for the EU railway sector as a whole.

She also announced that she was looking forward to building a close working partnership with the MB members with the objective of facilitating the Agency's transition to the new regime under the 4th RP which was to be regarded, in her view, as one of the major future challenges and encouraged the MB members to bring to her attention at any time any issue they considered worthy of discussion.

The Commission congratulated Ms. Clio Liégeois on her election, thanked Mr. Boris Živec for putting also his name forward as a candidate and said that it was looking forward to working in close cooperation with both of them.

The Commission thanked also the outgoing Chair, Mr. Mats Andersson (Sweden), for his invaluable contribution to the work of both the MB and the EB and stressed in particular the importance of the role played by the MB Chairperson and the challenging nature of the tasks associated thereto in the sense that the position of the Chairperson required the simultaneous coordination of and cooperation with several actors, including the Member States, the Agency and the Commission.

The Chair informed the MB members that, following the appointment of Ms. Clio Liégeois as MB Chairperson, one additional seat of a member on the EB had thus fallen vacant, that a call for candidates to be appointed as EB members and/or alternates would be launched by the Agency in the aftermath of that meeting and urged them to express their interest if they wished to contribute actively to the work of the EB either as members or as alternates.

4. Role of the Executive Board (EB)

The Chair made the preliminary remark that he had been reflecting upon the relevant issues, which had been duly brought to the attention of the MB members for the first time during the 41st MB meeting in January 2017, since the establishment of the EB after the entry into force of the new Agency Regulation in June 2016.

He emphasised that the key principle underlying the reflections included in the paper on the future role of the EB, which had been made available to the MB members prior to their meeting, was the need for a more strategic perspective to be given to the work of the EB without prejudice to the core tasks already performed by the EB in relation to the preparation of the MB meetings and of the decisions to be taken by the latter and the monitoring of the Agency's progress on administrative and budgetary matters.

It was guaranteed that the proposal did not intend to give to the EB a more privileged role than that played by the MB in any way whatsoever and should rather be considered as an effort of the MB itself to strengthen the role of the EB while maintaining its overarching function in the Agency's administrative and management structure.

The Commission thanked the Chair for his initiative on the role of the EB and welcomed the revision of the previous version of the paper in line with the comments which had been made by the Commission.

It was pointed out that the EB played a crucial role in the work of the Agency and of its MB mainly in terms of enhancing efficiency and placing the focus of the discussions on the administrative and budgetary matters and that it was vital to ensure that the EB would be given, as much as possible, a clear and precise role in the Agency's governance structure so as to avoid any unnecessary duplication of discussions already held within other fora such as the MB, the RISC or during internal meetings taking place within the Agency.

The Commission, although it agreed in general with the idea of placing more emphasis on the strategic and forward-looking aspects of the role of the EB and valued highly the attempts to eliminate any pointless formalities and to make the preparation of the EB meetings discussions much more flexible, it reminded that the adoption of the final decisions fell within the exclusive sphere of competence of the MB.

Moreover, were it for the reflection paper to be finally adopted by the MB already during that meeting, the Commission considered that the focus should be shifted on the definition of the precise working methods of the EB in more concrete terms, on the establishment of a strategic calendar to be followed by the EB and, in particular, on the adoption of a strategic planning regarding any future tasks to be performed by the EB mainly in respect of the preparation of the SPD.

Denmark expressed the view that, as already mentioned by the Commission, according to Article 53 § 1 of the Agency Regulation, the EB had been mainly established for the purpose of providing assistance in the preparation of the decisions to be taken by the MB and found that it was crucial to ensure that the EB would not exceed its mandate by virtue of the aforementioned provision of the Agency Regulation.

Although Denmark acknowledged that the paper on the future role of the EB, read as a whole, already echoed that view, it insisted that some parts thereof did not entirely reflect such view and should therefore be redrafted. More specifically, Denmark proposed that the first line of section 5 of the paper on the "strategic calendar" should be reformulated so as to reflect more clearly the idea that the use of a strategic calendar was not the sole prerogative of the EB but essentially a tool at the service of the MB.

Denmark also regretted that the scheduling of the EB meetings only a few weeks prior to the immediately following MB meetings did not seem to link up with reality, mentioned the example of draft 2 of the Annual Activity Report (AAR) 2016 which had been made available not earlier than 6 (six) days before that meeting, identified the need for re-arranging the timetable of the EB meetings in such a way so that, at least those documents on the basis of which the MB would adopt a decision during the immediately following MB meeting, would not be received later than fourteen (14) calendar days prior to that meeting and suggested that the following phrase should be added under section 8 of the paper on the "meeting dates": "The EB should not deliver opinions on items submitted to the MB for decision later than 14 days before the MB".

Austria expressed its support for the initiative taken by the Chair, repeated that the EB played a really crucial role in the overall Agency's governance structure mainly in terms of the preparation of the MB meetings and agreed with the point made by Denmark on the need for certain time limits on the dissemination of the relevant documentation to the MB members to be more clearly defined in the paper on the role of the EB and respected by the Agency.

It was explained that the submission of updated documents to the attention of the MB members at a rather late stage before the relevant MB meetings did not allow for the different stakeholders' organisations in the Member States to be properly consulted and provide sufficient feedback thereupon and, thus, made the decision-making procedure within the MB much more difficult.

Austria recommended that more emphasis should be placed on a more strategic role to be played by the EB mainly in terms of ensuring that the documents to be finally decided upon by the MB would be sufficiently prepared well in advance of the relevant MB meetings and duly brought to the attention of the MB members within the specified time limits.

The Chair, in response to the first comment made by Denmark, suggested that the third sentence under section 5 of the paper on the “strategic calendar” could be rephrased as follows: “The content of this calendar is for the MB to discuss and to decide upon on an annual basis”.

On the second remark of Denmark, the Chair strongly advocated the need for the MB members to get sufficiently acquainted with and properly consulted on the final documents as early as possible in advance of the MB meetings but felt that the proposed updated planning of the EB meeting dates, which allowed to schedule each EB meeting six (6) to eight (8) weeks –and not just two (2) or three (3) weeks, as was previously the case– prior to the immediately following MB meeting, guaranteed that the EB members would be given adequate time to prepare, finalise and make available to the MB members the relevant documents at a quite earlier stage than before.

Germany expressed its support for the approach reflected in the paper on the role of the EB and underlined that the MB members should be given ample opportunity to examine, prior to the MB meetings, the content of the final documentation and to get appropriately updated on any changes made thereon following the conclusions drawn from the discussions held during the immediately preceding EB meeting.

The key principles and core ideas reflected in the paper on the future role of the EB were unanimously adopted by the MB and, consequently, the Chair was given a unanimous mandate to bring to the attention of the MB, already during its next meeting in September 2017, any necessary changes to be made to the EB Rules of Procedure (RoP) together with a proposal for a strategic calendar to be adopted by the MB and a reviewed schedule of the EB and MB meeting dates for the remainder of 2017 and for 2018 in line with the views expressed in the adopted paper on the role of the EB.

The Chair thanked the MB members for their strong support and admitted that he was pleased to hand over any tasks related to the necessary actions to be undertaken as a result of the formal adoption of the paper on the role of the EB to his successor in the EB/MB chairmanship, Ms. Clio Liégeois.

5. Language arrangements follow-up

The Board members were given a brief overview of the state of play on the progress made as regards the issue of the language arrangements applicable to the Agency.

The 4th RP Preparation Programme Manager announced that, following the need identified, already during the previous MB meeting, for a step-by-step approach to be followed on the matter, the Agency had prepared and put forward for adoption an updated proposal on the basis of which the Agency’s internal language arrangements, including those to be made in relation to the vacancy notices of calls for applications for posts at the Agency, should be the first issue to be dealt with on priority.

The introductory remark was made that the term “internal working language” was mainly intended to include the language(s) to be used for purely internal communication purposes, i.e. in exchanges between the Agency and other EU institutions as well as during the internal staff meetings convened at the Agency and that, according to the Agency’s proposal, English was defined as its internal working language.

It was announced that Article 2 of the updated draft MB decision envisaged, among others, in line with the text of Regulation 1/1958¹, the publication of the notices of calls for applications for posts at the Agency in all official EU languages in a summary including the job content, the publication of the full content of such vacancy notices in the internal working language of the Agency and the submission of the applications in the internal working language of the Agency.

The Board members were also provided with a short summary of the comments which the Agency had received prior to that meeting on its updated proposal.

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

More specifically, Finland considered that the text of the draft MB decision itself should more clearly stipulate, either in the recitals or in the main provisions thereof, that there was no intention to limit the rights of the applicants in any way whatsoever and/or to not impose upon them the obligation to use in their exchanges with the Agency the internal working language defined therein.

It was added that, according to the proposal on the Agency's internal language regime which had been made by Spain, a fourth recital should be added in the text of the draft MB decision with a view to defining more precisely the actual scope of the term "internal meetings convened by the Agency" as limited only to those meetings involving NSAs for the purpose of discussing technical issues or sharing experiences such as workshops, working groups or any other kind of network meetings, to the exclusion of any bilateral or multilateral meetings necessary for the performance of future tasks under the 4th RP, namely for issuing Vehicle Authorisations (VAs) and Single Safety Certificates (SSC), or any other meetings related thereto.

It was further reported that France was also of the opinion that any draft MB decision on the relevant topic should be clearly limited to the establishment of an internal language regime and would not affect, in any way whatsoever, the right enjoyed by the applicants to communicate with the Agency using a language of their own choice and that, following the discussions held during the 5th EB meeting on the matter, France had requested the Agency to revise Article 1 of the draft MB decision with a view to making room for the adoption by the Executive Director of decisions introducing arrangements of direct applicability regarding the Agency's internal language regime and for the use of at least two (2) internal working languages.

The Board members were informed that, on the basis of the suggestions made by France, the Commission had also put forward a proposal on the internal language regime of the Agency and that, according to such proposal, the Executive Director was entitled to determine the language(s) to be used for purely internal communication purposes within the Agency and without prejudice in any way whatsoever to the rights of all EU citizens and of the Member States themselves to address the Agency using any other official EU language.

Finally, it was stated that, on the basis of its comments which were received by the Agency on the eve of the meeting, Italy had expressed its support for the Agency's updated proposal and disagreed with the proposal made by France as less cost-efficient and as clearly favouring a regime where English and French would be the two (2) internal working languages of the Agency in complete disregard of the principle of equal treatment of all EU Member States.

It was added that Italy had expressed its support for the proposal made by Spain on the definition of the scope of the term "internal meetings convened by the Agency" and that it had additionally requested the Agency to make it clear in the text of the draft MB decision that any meetings held between the Agency and Member States, NSAs and NIBs were envisaged to be included in the scope of the above-mentioned term as well and to ensure that the use of English as such did not exclude the possibility of using any other official EU language during those meetings subject to a prior unanimous agreement of the meeting participants.

The Executive Director wished to draw the attention of the Board members on the great significance of a formally adopted internal language regime mainly in terms of cost-efficiency and reminded to them that, as already announced during the 40th MB meeting of November 2016, the MB would be kept regularly updated on the negative impact of the absence of a decision on the matter.

The Head of Resources and Support Unit a.i. recalled that an initial assessment of the scope of the consequences stemming from the absence of an MB decision on the language regime had been made available to the Board members prior to the 41st MB meeting in January 2017 and announced that, out of the total number of five (5) calls for applications for additional posts envisaged to cover the needs linked to the implementation of 4th RP and foreseen to be launched during 2017, four (4) had yet to be launched pending the adoption of a decision on the Agency's internal language regime and account being taken of the costs of translation which amounted to 100.000 € in total.

The Board members were informed that, were it not for an agreement to be reached during that meeting, the recruitment process could not be delayed anymore and that the above-mentioned calls for applications

which were foreseen to lead to the recruitment of at least ten (10) to twelve (12) additional staff members, would have to be immediately launched and simultaneously managed for cost-reduction purposes.

The Executive Director clarified that the impact of the absence of a decision on the issue of the Agency's internal language regime was not assessed only in budgetary terms and that the idea of combining the calls for application had been put forward as a mitigation measure which, despite its cost-efficiency, was rather resource-intensive and that the Agency would have to manage a heavy workload resulting therefrom.

Spain intervened to make a brief synopsis of its proposal on the definition of the scope of the term "internal meetings" and urged the Agency either to directly align the text of the draft MB decision with its suggestions or, at least, to include a clarification in the minutes of the 42nd MB meeting, to the effect that internal meetings convened by the Agency would be limited to those involving only Agency's staff and with the aim of ensuring that such internal language arrangements would not be extended to other types of meetings.

The representative of Austria expressed his support for the Agency's proposal which he had already been given the opportunity to discuss upon during the SERA Regional Conferences and found that the contributions made by Spain to the definition of the scope of the term "internal meetings" were quite useful.

He also suggested that the adoption of a step-by-step approach, including as regards bilateral meetings, should not be considered as excluding the possibility of allowing the use of another EU official language in addition to English which were already used and sensed that this was an interpretation which could be taken on board by Austria and, maybe by Italy as well, and expressed the view that the notion of "internal meetings" was to be construed as covering the activities of the Agency in a broad sense, including, of course, the meetings convened by the Agency.

Denmark welcomed the step-by-step proposal put forward by the Agency as a more pragmatic approach to be followed on the relevant issues and to be formally adopted already during that meeting.

Denmark insisted that, mainly for purposes related to internal cost-reduction, including those associated with the recruitment of staff, the provision of Article 1 of the draft MB decision should remain as such and agreed with the proposal made by Finland which provided sufficient safeguards against potential violations of the rights enjoyed by the applicants under the relevant EU legal framework and was in line with the objectives set under Article 2 of the Agency Regulation, according to which the Agency should be aiming, among others, at improving the competitive position of the railway sector.

Finland thanked Denmark for its support, confirmed that, in broad terms, the current Agency's proposal was acceptable by Finland and went on to provide a justification for his suggestion to insert an additional recital and/or an additional provision into the text of the draft MB decision by making reference to the need for ensuring that the rights enjoyed by the applicants by virtue of the Interoperability Directive (EU) 2016/797 would remain unaffected.

Portugal expressed its support for the position which had been adopted by Italy and by Spain on the matter.

The Netherlands agreed with the Agency's current proposal, invited the Agency to take on board the comments made by Finland and, although it recommended that an in-depth assessment should be carried out for the purpose of identifying whether it was possible for the MB to delegate its decision-making powers on the relevant issues to the Executive Director, it seriously doubted whether there was any point in providing the Executive Director with a mandate to make a choice among more than one language(s).

France announced that, on the basis of the agreement which had been reached during the 41st MB meeting on a step-by-step approach to be followed on the matter, it had put on the table a proposal on an internal language regime which favoured the use of more than one (1) working language and expressed the view that, due account being taken of the need for reducing the operating costs of the Agency and, at least those related to the translation of the calls for applications under publication, the MB could delegate to the Executive Director any decision-making powers conferred on it by the Agency Regulation in relation to the linguistic aspects of the internal working arrangements applicable to the Agency.

In response to the remark made by the Netherlands, France underlined the importance of the principle of the equal treatment of all official EU languages, owing to which only an internal language regime providing for the use of at least two (2) internal working languages could be considered appropriate and was in favour of a proper balance to be sought between the need for cost-reduction –in particular as regards translation-related costs– and the need to ensure that the principle of multi-linguism is fully complied with and respected.

Moreover, France agreed with the suggestions made by Spain and by Finland and emphasised that bilateral or multilateral meetings to be held in the context of future cooperation for SSC, VA and any other tasks related to the implementation of the 4th RP should not be considered as “internal” without prejudice to the operating procedures currently applicable to EB/MB meetings or to any other meetings of working parties organised by the Agency.

Belgium expressed the hope that there was still room for making progress and moving forward on the relevant issues if the Agency made sure to have most of the points raised by the MB members sufficiently addressed.

More specifically, Belgium thought that the suggestions made by Finland on the definition of the scope of the draft MB decision could be seen as capable of alleviating the concerns expressed by Spain and that the proposal made by Italy on the establishment of a “commonly agreed language” regime could possibly be put forward as a reasonable response to the concerns previously raised by France on the need to guarantee respect for the principle of multi-linguism.

It was explained that such proposal made the use of English in meetings convened by the Agency directly dependent on the prior agreement of the meeting participants not to use any other official EU language and it was added that, were it for a delegation by the MB of its decision-making powers to the Executive Director to be finally agreed upon and applied, the Executive Director was entitled to establish the use of one (1) language and offer, at the same time, the alternative solution of using a (second) commonly agreed language.

Germany made the observation that, despite the fact that the Agency’s efforts to ensure that all EU official languages were represented by the Agency by at least one staff member, English was already the main working language to be used internally within the Agency for purposes related to communication between its staff members which were, nevertheless, free to communicate in any other official EU language of their own choice.

However, given the fact that all the Agency’s staff members mastered English which was the main language to be used during a recruitment process and had been traditionally included among the standard eligibility and selection criteria to be used for assessing the applications submitted following a call for applications for posts at the Agency, it would be sufficient for the Agency to provide for the publication of the vacancy notices in English without limiting, however, in any way whatsoever, the right of the applicants for posts at the Agency to submit their application in any other official EU language of their own choice.

The Executive Director totally agreed with the option of publishing the vacancy notices only in English but reminded that, in view of the judgments rendered by the Court of Justice of the European Union (CJEU) on the matter, it was only on the basis of formally adopted internal language regime that the Agency could validly proceed to the implementation of such option.

In response to the arguments put forward by France regarding respect for the principle of multi-linguism, the Executive Director pointed out that the Agency could either introduce a “commonly agreed language” regime for the meetings held with external partners, as proposed by Italy, or, at least, ensure, the presence of a native speaker for each language in bilateral meetings, as suggested by Austria.

On the proposal on an internal language regime of at least two (2) working languages, the Executive Director made reference to certain criteria, such as the percentage of people in the EU who speak a specific official EU language, which would have to be used for selecting the appropriate languages and would most probably, if applied properly, favour the use of English and German as the most spoken official EU languages.

Slovenia supported, on the one hand, the views expressed by Germany but pointed, on the other hand, regretfully, to the absence of any compromise among the MB members even after two years of continuous and intensive discussions held on the matter.

Slovenia expressed the view that, account being taken of the fact that it was impossible for the MB to come up with a final agreement on the relevant issues and that the Agency needed to comply with a rather rigid EU legal framework, the latter would have to finally come to terms with the idea of having the costs raised in order to include any translation costs, unless the MB members realised the need to contribute seriously to the Agency's efforts for cost-reduction by adopting a step-by-step approach on the matter.

The Railway Undertakings (RU) expressed its strong disagreement with the position taken by Slovenia as being in complete disregard of the railway sector as a whole and raised a concern that, if such approach was to be followed, it would be the Sector which would eventually have to bear the extra costs of that choice.

Slovenia clarified that its statement should not be construed as simply acquiescing in a sorry state of affairs whereby costs would have to be raised but rather as implying that the limitations placed upon the Agency and the MB by virtue of the relevant EU legal framework which had been agreed upon by Member States representatives, had to be duly complied with and respected.

RU insisted that, according to the practice followed up until that point within the Agency, there was only one internal working language, that it should be the use of such practice that the MB should finally agree upon in particular in view of the impending implementation of the 4th RP which intended, among others, to reduce the costs and increase the competitive position of the railway sector and that the proposal made by Slovenia went towards a completely opposite direction in that sense.

Although the Commission agreed with the point made by Slovenia that the discussions held on the relevant topic seemed to be never-ending, it still considered that the efforts should be continued for the purpose of achieving a solid consensus among the MB members, highly appreciated the contributions made by both the Executive Director and by the Chair to that end and thanked all the MB members for their constructive input to the discussions held thus far.

However, the Commission announced that it was not yet in a position to give its final consent to any approach or solution put on the table pending the debates on the issue of the publication of the vacancy notices in 24 official EU languages which was still on-going internally within its Legal Service and preferred that the adoption of the relevant MB decision on the matter be postponed until the MB meeting of September 2017.

The Chair summarised that, following the input received from the MB members during the discussions held so far on the relevant issues, it could be commonly agreed that the current Agency's proposal combined with the suggestions made by Finland and the recommendations of Spain represented a good way forward.

Although the Chair maintained its doubts as to whether there was still room for coming up with a proposal which could successfully put up for adoption already during that meeting, it agreed with the Commission that a workable solution needed to be found on the basis of the contributions made by the MB members.

The Chair made a brief synopsis of the options available, up until that point, to decide upon and suggested that, in case that the approach of the delegation by the MB of its decision-making powers to the Executive Director was to be followed, such delegation should be formulated in a manner which did not run the risk of rendering the mandate included therein null and devoid of purpose.

The Executive Director repeated that the option of postponing the adoption of the MB decision on the matter to a later date was not a workable solution since the Agency, for the reasons related to the recruitment needs identified previously, could still come up, already during that meeting, with an updated proposal on its internal language regime which would take into account the suggestions made by Italy, Spain and Finland and hoped that a final agreement could be reached on the basis of such proposal unless the application of the unanimity clause contained in Article 74§1 second indent of the Agency Regulation was triggered by a dissenting MB member.

The Board members were provided with a brief overview of the updated proposal of the Agency which had been revised during the lunch break on the basis of the input received from the MB members.

The 4th RP Preparation Programme Manager explained that the suggestions put forward by both Spain and Finland had been taken directly on board by the Agency and were clearly reflected in recitals 3 and 4, respectively, of the updated text of the draft MB decision which read as follows:

“3. Internal working language is considered as the language to be used in communications within the Agency, between the Agency and EU institutions and during internal meetings convened by the Agency.

4. This decision should not limit directly or indirectly the linguistic rights of the applicants for SSCs, VAs or decisions concerning the harmonised implementation of ERTMS trackside”.

The Board members were informed that no changes had been made as regards the provisions of Article 1 and Article 2 of the draft MB decision as it had initially been proposed by the Agency and that, following a request made by Finland, it had been considered appropriate to introduce the following additional provision (new Article 3) in the draft MB decision as a complement to the fourth recital thereof: “Without prejudice to Article 2, this decision does not define the internal working language of the Agency in a way that would directly or indirectly oblige the applicants to submit their applications, annexes or any other supporting documents in or to have them translated into the internal working language of the Agency or to bear any additional fees, charges and costs for the said documents not being in the internal working language of the Agency”.

The Chair thanked both the Agency and the MB members for their great efforts to come up with an updated proposal on the Agency’s internal language regime and invited the MB members to adopt the revised text.

France intervened to flag once more that, as already indicated during the discussions previously held on the matter, it disagreed with the manner in which the provision of Article 1 of the draft MB decision had been drafted and, in particular with the fact that it defined English as the internal working language of the Agency.

France reminded of its intention not to give its consent to the establishment of a regime of a single internal working language and warned that, were it for the current proposal of the Agency to be put up for adoption, it would request the adoption of the relevant decision by unanimity and it would vote against such proposal.

The Chair invited the Board members to express their views on whether they agreed or not with the updated proposal on an internal language regime of the Agency as it stood at that moment.

With the exception of France, all MB members present were in favour of the revised Agency’s proposal.

The Chair wished to confirm whether, in such a case, France insisted on its request for application of the unanimity clause contained in Article 74 § 1 second indent.

France maintained its position and replied in the affirmative. No decision was reached on the issues related to the language arrangements applicable to the Agency.

The Executive Director thanked the MB members for their constructive contributions, wished to draw their attention on the difficulties which the Agency might face as regards the fulfilment of its establishment plan due to potential delays in the completion of the recruitment procedures which were kept on hold and should be launched immediately after that meeting since the translation services of the Translation Centre for the Bodies of the European Union would still have to be used and concluded that the effects of the absence of a formally adopted internal language regime could not be completely wiped out despite the mitigation measures which would be applied by the Agency for that purpose.

The Commission confirmed its intention to provide to the Agency all the support which would be necessary for that the above-mentioned calls for applications would be managed and processed as quickly as possible and, while not excluding the possibility for the Agency to encounter some difficulties in its dealings with the budgetary authority, expressed its serious concerns over the potential impact of the absence of a decision on the Agency’s internal language regime on its ability to deliver the work required for the implementation

of the 4th RP on time and urged the MB members to support the Agency's efforts to put in place mitigation measures, if necessary, with a view to ensuring that the attainment of the goals related to the 4th RP implementation would not be eventually jeopardised.

6. Opinion on the Annual Accounts 2016

The Board members were updated on the state of play regarding the Agency's Annual Accounts 2016.

The Accounting Officer of the Agency reminded that the provisional accounts had been presented during the 4th EB during in April 2017 and that, following the audit work performed by the external audit firm Ernst & Young and the preliminary observations issued by the European Court of Auditors, the Agency had received an unqualified opinion by both and that only the issue related to the Agency's seat agreement was to be regarded as still pending.

He announced that the final accounts 2016 had been prepared and signed by the Executive Director, that the opinion of the external financial auditor was expected to be delivered thereupon on the day after the MB meeting and that the final observations would be issued by the European Court of Auditors at a later stage.

He also outlined that, following some remarks made by the Commission, the draft produced on the final accounts had been updated compared to the provisional ones only as regards the references to the legal framework contained therein and the table reflecting the establishment plan 2016, and invited the MB members to give their positive opinion thereupon.

The Executive Director thanked the Accounting Officer and the entire team of the Finance and Procurement Sector of the Agency for the outstanding quality of their work in the management of the Agency's accounts.

The Chair mentioned that any decision to be adopted by the Board members would be grounded solely on the information which was available already at that stage, pointed out that the final accounts had been produced mainly on the basis of the remarks made by the Commission on the provisional ones and proposed the MB members to give their positive opinion taking into consideration that the Agency's Annual Accounts 2016, taken as a whole and drawn up under the responsibility of the Executive Director, accurately reflected the implementation of the Agency's budget 2016 and the activities undertaken during that year by the latter.

The Opinion on the Annual Accounts 2016 of the Agency was unanimously adopted by the MB.

The Chair thanked both the Commission for its useful contributions, in particular during the 5th EB meeting of June 2017, and the Accounting Officer of the Agency for his efforts to have the text of the draft MB decision properly aligned with the remarks made by the Commission.

7. Annual Activity Report (AAR) 2016 – Assessment of the Annual Activity Report (AAR) 2016

The Board members were given a short overview of the main aspects of the Agency's work envisaged to be covered by the AAR 2016.

The Strategy and Business Planning Officer of the Agency made the preliminary remark that the MB was required, by virtue of Article 51§1 point (a) of the Agency Regulation and of Article 47§2 of its Financial Regulation not only to adopt the AAR for the previous year, send it by July 1st to the European Parliament, the Council, the Commission and the European Court of Auditors and make it public but also prepare an analysis and assessment of the AAR which should also be forwarded, to the aforementioned EU institutions within the same deadline as that prescribed for the AAR itself, i.e. until July 1st.

The Board members were reminded that a draft 2 of the AAR 2016 had been made available to them a week before the meeting and were invited to adopt it taking also into due consideration the changes reflected in the one-page room document which had been distributed to them that morning.

The Board members were also provided –in the form of a non-exhaustive list– with a concise outline of some of the main achievements of the Agency during the year 2016, including, among others, the entry into force

of the technical pillar of the 4th RP, the implementation of the Agency's communication strategy and the development of the Integrated Management System (IMS), as well as with a brief statistical analysis of the Key Performance Indicators (KPIs) and the overall outputs achieved by the Agency throughout the years 2014, 2015 and 2016.

The Netherlands made a brief synopsis of the analysis and assessment of the AAR 2016 which had been prepared by the MB in line with the information contained in the AAR 2016 which had been highly appreciated and positively evaluated.

It was suggested that the Agency should focus more its AAR on those KPIS which were considered as being more of relevance for significant policy outcomes with a view to making it more easily readable for external stakeholders as well and that, in view of its internal re-organisation in anticipation of the performance of the new tasks under the 4th RP, it should provide in its AAR an estimate of the number of new cases which would potentially come up and have to be dealt with under the new legal framework and share such information with the stakeholders so as to provide assurance that it would be able to perform its new tasks both in quantitative terms as well as in qualitative terms.

The Commission acknowledged, on the one hand, that the delivery of the AAR required a great amount of work to be done by the Agency, but pointed out, on the other hand, that the AAR served as an important communications tool to be meticulously studied and examined especially by the Sector representatives.

However, the Commission mentioned that the Agency had not managed, despite its great efforts, to fully achieve the key objective of reducing the national rules by 50% and identified the need for the Agency to move forward as quickly as possible with the implementation of the different activities which had been postponed due to prioritisation such as the learning cases on SSCs and the work to be delivered in the long-term on the development of the Common Occurrence Reporting (COR).

On the analysis and assessment of the AAR 2016, the Commission found it strange that, whereas the MB was required to formally endorse the Agency's AAR, it was, at the same time, under the obligation to provide separately its comments on the AAR in the form of a draft analysis and assessment, observed that, contrary its expectations, the draft analysis and assessment of the AAR 2016 produced by the MB was not limited to a brief and perfunctory statement and suggested that the MB reflects seriously on the issue of the structure of its future draft assessment and analysis of the AAR and to hold a prior discussion on the matter within the EB.

On the substance of the draft analysis and assessment of the AAR 2016 itself, the Commission dismissed the implicit criticism expressed therein in relation to the issue of lack of resources, explained that, although it fully understood the reasonable concerns expressed by the MB members about the level of the available resources, it was not appropriate for a document produced by the MB to reflect such a disapproving tone. The Commission therefore suggested the use of the word "understandably" in order to mitigate the tone of the assessment.

The Commission welcomed the progress made by the Agency on the issue of compliance with its internal control standards and encouraged the Agency to continue its work with a view to achieving full compliance.

On the room document which had been made available to the MB members that morning read in conjunction with draft 2 of the AAR 2016, and, in particular, as regards point 2.8 thereof on the "follow-up of the observations from the Discharge Authority", the Agency was praised for making steps forward regarding the revision of its procedure for low-value contracts as it had promised in its AAR 2015, whereas on the recurrent issues related to the gender balance within the senior MT, the Agency was advised to reformulate the relevant part of the AAR 2016 so that the latter would clearly reflect the idea that the MB was aware of the situation and had encouraged the Agency to continue its efforts to effectively tackle the relevant issues.

Finally, the Commission offered to provide directly the Agency with its remarks on some purely linguistic aspects of the draft analysis and assessment of the AAR 2016 in order for the relevant text to be refined prior to its adoption by the MB.

RU highly appreciated the Agency's achievements during the year 2016 mainly in terms of the performance of the tasks required for the implementation of the technical pillar of the 4th RP and the timely delivery of the acts which needed to be produced under the new legal framework.

On the table of comments as regards Part I of draft 2 of the AAR 2016, RU emphasised the challenging nature of the VA-related tasks and the need for such tasks to be performed in a timely manner by the Agency and for quality work to be delivered in that regard so that the future processes could be set up properly to the benefit of the sector as well and made the general remark that, although the Agency was entitled to mark the relevant KPIs as fully achieved, the focus of the reporting exercise under the AAR should rather be placed on whether the Agency had managed to produce quality deliverables producing real benefit for the Sector.

The Chair identified the need for updating the text of the draft analysis and assessment of the AAR 2016 in line with the remarks previously mentioned by the Commission and wished to be given more clarifications on the deadline within which the MB should adopt the AAR 2016 together with its analysis and assessment.

The Commission found that it would be feasible for the Agency to integrate directly its comments into the current draft analysis and assessment of the AAR 2016 during the lunch break and to make available an updated version of the relevant draft MB decision for adoption during the afternoon session of the meeting. However, the Commission did not raise any objections to put off the adoption of the relevant MB decision until later if the MB members wished to be given time to express their views on the changes it had proposed.

Belgium put forward the idea of launching a written procedure for the adoption of decision on the matter.

The Chair estimated that the time was rather limited for a written procedure to be launched at that moment.

It was recalled that there were specific deadlines to be complied with and that, in particular as regards the adoption of the AAR 2016, including its analysis and assessment, the deadline was July 1st 2017.

The Netherlands confirmed its agreement with the modifications proposed by the Commission on the draft analysis and assessment of AAR 2016.

The Chair, in line with the suggestions made by the Commission, offered to have the relevant issues re-discussed after the lunch break and the updated text of the draft analysis and assessment of the AAR 2016 proposed for adoption in the afternoon session of the meeting.

The Infrastructure Managers (IM) agreed with the proposal made by the Chair and strongly recommend the Commission to bring to the attention of the Agency its comments at an earlier stage and, in any case before the MB meeting.

The Commission explained that this delay was mainly due to its heavy workload and expressed its sincere apologies for submitting its comments at such a late stage.

The Chair, taking into account that no comments and/or remarks had been made on the text of draft 2 of the AAR 2016 itself, proposed the MB members to adopt the current draft AAR 2016.

Draft 2 of the AAR 2016 was unanimously adopted by the MB.

The Board members were provided with a brief overview of the updated text of the draft assessment and analysis of the AAR 2016 as revised during the lunch break at the Commission's request.

It was outlined that the last sentence of the "observations on strategic priorities and governance" of the draft analysis and assessment of the AAR 2016 had been redrafted as follows: "The Management Board notes with appreciation the continued progress towards complying ERA Management Standards, the positive results on the Internal Audit Service and the report from the European Court of Auditors".

It was indicated that the word "understandably" had been added in the following part under the "conclusions and recommendations" of the draft analysis and assessment of the AAR 2016: "The Management Board notes that presently understandably only limited resources are available for the operation of the new tasks".

Moreover, the penultimate paragraph of the “conclusions and recommendations” of the draft analysis and assessment of the AAR 2016 had been reformulated as follows: “The Management Board will continue to monitor the execution of the budget, the progress on compliance with the Management Standards and the follow-up actions taken in response to IAS recommendations. As regards the Management Standards, the Management Board acknowledges ERA’s progress made and encourages the management to continue its efforts and further work towards full compliance with all Management Standards”.

Finally, the phrase “the permanent representatives of the Member States” had been removed from the last sentence of the “conclusions and recommendations” of the draft analysis and assessment of the AAR 2016 and the relevant text read as follows: “In the light of the above analysis and assessment, the Board requests to forward the Report, together with this assessment, to the European Commission, the European Parliament, the Council and the Court of Auditors”.

The Chair invited the MB members to adopt the analysis and assessment of the AAR 2016 taking into account the changes described above which had been proposed by the Commission.

The analysis and assessment of the AAR 2016 was adopted unanimously by the MB.

8. Monitoring of the National Safety Authorities (NSAs)

The Board members were provided with a brief overview of the current state of play regarding the Agency’s proposal on a policy for the monitoring of NSA and, more specifically, were updated on the status of the discussions held on the topic within the MB, the Agency’s revised proposal, the further steps to be taken in relation thereto and the key issues to be highlighted from among the comments made by the MB members.

It was reminded that the Agency was required, by virtue of Article 33 of the Agency Regulation, to undertake the monitoring of the performance and decision-making of NSAs and that the policy, working methods, procedures and practical arrangements according to which the Agency was supposed to exercise such monitoring powers were subject to the prior approval of the MB.

It was reported that, following the comments which had been received by the MB members in January 2017, it had been considered appropriate to revise the Agency’s draft proposal and to put forward for adoption a set of four (4) documents –in the form of annexes to the relevant draft MB decision– covering respectively the NSA monitoring policy, the evaluation procedure for the NSA monitoring activity, the guide on NSA monitoring matrix and the competency framework for NSA monitoring.

However, it was pointed out that, according to the comments received from the MB members, the maturity model had been severely criticized for going beyond the scope of Article 33 of the Agency Regulation and the approach proposed by the Agency lacked clear criteria for the performance of the NSAs monitoring.

It was noted that the Agency had also been requested to add a “sunset clause” in the text of the relevant draft MB decision and to introduce a requirement for reporting to the MB on the progress made after a first three-year audit cycle.

On the adoption of the cross-audit model which had been proposed by some MB members, it was explained that, despite the fact that the experience drawn from the cross-audits as such was really positive, this model was rather limited in scope and failed, contrary to the maturity model, to measure the organisational capacity of the NSAs and could not, therefore, serve as a sufficient basis for the assessment of the ability of the NSAs to effectively discharge their tasks as required under Article 33 of the Agency Regulation.

The Netherlands expressed its strong support for the Agency’s current proposal, found that the approach proposed by the Agency reflected a method of evaluating the performance and decision-making of the NSAs in accordance with professional standards and considered that, despite the fact that some NSAs were clearly not in favour of the use of the maturity model, the adoption of a harmonised methodology and of a consistent approach for assessing the level of safety in the different EU Member States should be regarded as being primarily the interest of the NSAs in the sense that the NSAs could use the findings of the assessments for

justifying the number and type of resources required by them and substantiating their requests for additional human expertise.

Denmark expressed its commitment to the principles underlying the NSAs monitoring policy, reminded that it had been given the opportunity to participate, on a voluntary basis, in the Agency's cross-audits and stressed the significance of the approach proposed by the Agency as a learning and development tool.

However, it was mentioned that, according to the provision of Article 33 § 2 of the Agency Regulation, read in light of the relevant discussions which had been held within the Council on Article 33 of the Agency Regulation, the Agency was entitled, among others, to audit the capacity of NSAs to execute tasks relating to railway safety and interoperability.

More specifically, Denmark explained that the scope of the NSAs competence was as broad as to cover both railway safety and railway interoperability and that, as evidenced by the wording of recital No. 21 of the Agency Regulation, the NSAs monitoring should deal with both aspects and found that the arguments which had just been put forward in support of the maturity model were not sufficient.

Denmark admitted that it was pleased not only with the clear reference in the citations of the relevant draft MB decision to Article 33 of the Agency Regulation but also with the formulation of Article 1 thereof in line with the wording used in the second indent of Article 33 § 2 of the Agency Regulation and, in support of its view, made reference to the excerpt from Annex I to the draft MB decision on the NSA monitoring policy: "Those [sic] coordination and harmonisation aim at ensuring a smooth operation of the European railway system as well [as] participating to an effective opening of the railway market. This includes safety as well as interoperability".

However, it was pointed out that Annex III to the draft MB decision which contained the working tool of the proposed approach, i.e. the Guide on NSA monitoring matrix, did not seem to properly reflect the view that the scope of the NSAs monitoring should include both railway safety and railway interoperability, mentioned the example of section 4.4 of the Guide on "authorisation of technical sub-systems" which failed to address the issue of railway interoperability in any way whatsoever and seriously challenged the view according to which the goals related to railway safety and railway interoperability could not be pursued and achieved at the same time.

Denmark summarised that the approach proposed by the Agency did not meet, in its view, the requirements set by Article 33 of the Agency Regulation and was not in line with the statements made on June 20th 2017 by the European Commissioner for Transport on the ultimate importance of interoperability for railways and the intention to maintain the role of the NSAs in the field of railway interoperability as well reflected therein.

Denmark announced its intention not to support the Agency's current proposal and invited the Agency to put more efforts into bringing the approach proposed therein in line with the requirements of the Agency Regulation with the aim of ensuring that the –currently overlooked– aspects of railway interoperability would be given due weight in any future proposal on NSAs monitoring to be put forward for adoption by the MB.

Belgium expressed its support for the Agency's proposal, claimed that the adoption of the maturity model represented a good way forward which would contribute to the establishment of a balanced relationship between the Agency and the NSAs, facilitate the cooperation between them and allow the NSAs to identify more easily and to address more effectively possible deficiencies by means of a rather iterative process and showed its clear preference for the adoption of a matrix approach over the adoption of a strict compliance model which would be limited to identifying existing non-conformities and could eventually serve as a tool for launching infringement procedures against a Member States before the CJEU.

In response to the concern raised by Denmark, although Belgium shared the views expressed by the latter on the significance of railway interoperability for the railway system as a whole, it could not but agree with the point made by the Agency that, in view of the impending changes to SSC and VA-related procedures, it had not been considered appropriate to extend the scope of the NSAs monitoring, at least during the first

three-year audit cycle, to the VA-related processes on the assumption that the findings of any assessment to be performed in relation to processes liable to change in the near future, would most probably be negative.

As far as the “sunset clause” was concerned, Belgium considered that its use could alleviate the concerns raised by Denmark by providing the possibility of reviewing the scheme after a three-year audit cycle and of making the necessary adjustments thereto with a more clear perspective of the new processes under the 4th RP in mind and with a view to giving proper attention to any elements, such as railway interoperability, identified as missing at that stage.

Latvia shared its experience with the matrix model, but maintained its doubts on the value of the matrix model as such and wished to be given more feedback on the relevant issues.

Latvia also agreed with the point made by Denmark that railway interoperability should also be clearly reflected in the Agency’s proposal on the NSAs monitoring policy since the NSAs implemented tasks related to both railway safety and interoperability.

Furthermore, it was pointed out that the date proposed by the Agency as the starting date of the first three-year audit cycle, i.e. January 2018, fell within the transposition period envisaged under Interoperability Directive (EU) 2016/797 and Safety Directive (EU) 2016/798 and it was suggested that the first cycle should be launched a year later, otherwise it was for the Agency to specify in its proposal whether the audits would be carried out during such period on the basis of the existing legal framework or in accordance with the new legal requirements.

The Commission wished to obtain further clarifications on the precise nature and function of the “sunset clause” which had been proposed by Belgium.

The Head of Safety Unit replied that his understanding of Belgium’s proposal was that, following a first three-year audit cycle, the MB would be provided with an initial report on the results achieved and the conclusions drawn from the Agency’s first experience on NSAs monitoring and that, in the absence of an MB decision giving the green light to the Agency to continue exercising its monitoring powers on the basis of the same methodology, the adopted MB decision on NSAs monitoring would automatically be rendered null and void and the Agency would have to either re-seek the agreement of the MB on the use of the maturity model for another three-year audit cycle or consider putting forward a different model to be agreed upon by the MB.

Spain expressed its full support for the position taken by France and by Germany on the issues related to the NSAs monitoring policy and explained that Article 33 of the Agency Regulation had been drafted in such a manner that, were it for the Agency to perform any additional audit-related tasks, a clear reference to such tasks would have been included to that effect in the list provided for under Article 33§2 of the Agency Regulation which intended to be exhaustive in nature.

It was also pointed out that the matrix approach, as proposed by the Agency, went beyond the clear scope of the NSAs monitoring prescribed under the legal framework referred to above and that only a proposal which would clearly specify the criteria according to which the Agency would carry out the assessment of the performance and decision-making of the NSAs and would plainly describe the tasks which the Agency was expected to deliver under such auditory role could be considered as being with acceptable limits and it was noted that the arguments used put forward by the Agency in response to the concerns which had been raised by France and Germany were not, in its view, sufficient and convincing.

Moreover, Spain raised objections to the idea of auditing the management of the NSAs on the grounds that it was impossible to establish uniform management standards to be imposed upon all the NSAs, considered that such monitoring did not fall within the scope of the NSAs monitoring envisaged under Article 33 of the Agency Regulation, as evidenced by the discussions which had been held thereon within the working group of the Council referred to above, and insisted that the Agency’s proposal on NSAs monitoring should clearly delimit the scope of the audits and not introduce within that scope additional elements, such as compliance with ISO standards, beyond what is clearly stipulated in the relevant provisions of the Agency Regulation or intended to be covered thereby.

The Head of Safety Unit thanked the Netherlands for its strong statement of support, appreciated the fact that the MB had frequently advised the Agency to draw lessons from the practice followed within the aviation sector and announced that EASA considered the maturity model proposed by the Agency as a quite advanced approach on the relevant issues and had recently expressed its interest in having such model introduced in addition to its standard compliance checks as a means of measuring organisational capability.

In response to the concerns raised by Denmark, the Head of Safety Unit did not exclude the possibility that the Agency's earlier proposals might not have been formulated in a clear manner, guaranteed that the issues related railway interoperability had also been examined and continued to be considered as worthwhile as railway safety matters but went on to question the actual value of a three-year audit cycle which would span over a period of time during which the NSAs would be faced with significant challenges due to changes in the regulation of the processes followed by them in the sense that any inconsistencies identified in relation to the old processes would have to be addressed and dealt with in compliance with the new legal requirements.

It was also added that the maturity model, which favoured a goal-setting approach and was more strategy-oriented in nature than other models, would allow the Agency to give due consideration to and to follow more closely, during a second audit cycle, the issues related to railway interoperability as well.

Furthermore, the Head of Safety Unit did not exclude the possibility that NSAs monitoring might also entail checking the compliance of the NSAs with the VA-related processes, but found that the remark which had been made by Denmark both previously and during the MB Workshop of March 2017 disapproved, in essence, the Agency's proposal for not placing sufficient focus on driving forward railway interoperability, the goals associated thereto as well as any achievements to result therefrom and added that the statement made by the Commissioner was mainly to be understood in that way. Consequently, it was stated that the adoption of a model which placed more emphasis on verifying whether there were specific and clear goals and objectives set towards such direction had been considered as a more useful and beneficial process than the adoption of a model which would be limited to checking whether, for instance, the Practical Arrangements (PAS) on VA were properly applied by the NSAs.

The Head of Safety Unit made also the observation that the matrix model had been applied originally at a Member State level and maintained the view that the goal of railway interoperability could be pursued and monitored legitimately only at a Member State level on the grounds that the scope of the decision-making powers of the NSAs in relation to railway interoperability issues was quite limited and that most of the relevant issues fell, as such, within the sphere of competence of the Member States –and not that of the NSAs– and inferred that the NSAs monitoring per se was not a sufficient tool allowing for the above-mentioned objectives to be fully achieved.

However, he hoped that the approach proposed by the Agency could possibly also accommodate the need for shifting the focus on such issues and indicated that the "sunset clause" which was envisaged to be included therein would give to the Agency the opportunity to use the matrix model during a first three-year audit cycle and to verify thereafter whether that model met the expectations and should continue to be used during a second audit cycle and thanked Belgium for its recommendations to that end.

It was also outlined that the Agency intended to use the NSAs monitoring for the purpose of checking not only the performance by the NSAs of their tasks which were related to their supervisory role under Article 17 of the Safety Directive but also the value of their contribution to the promotion and development of the regulatory framework both as regards railway safety and railway interoperability and emphasised that the latter had been clearly included among the duties of the NSAs enumerated under Article 16 of the Safety Directive and, given that the level of understanding of the requirements set by the Safety Directive was quite low as evidenced during the SERA Regional Conferences, the NSAs could play a crucial role in disseminating accurate information and providing useful feedback on the safety regulatory framework.

In response to the comments made by Spain, the Head of Safety Unit acknowledged that the representative of Spain might not have been fully convinced by the replies that the Agency had provided to the remarks

made by France and by Germany and asserted that, although it was difficult to work out, after the discussions held within the Council on the relevant provisions, the real intentions of the decision-makers regarding the scope of the NSAs monitoring, Article 33 of the Agency Regulation clearly provided for the adoption of a model which targeted the functioning of the NSAs as a whole instead of a model which would be limited to a mere evaluation of the level of compliance of the NSAs with the legal requirements.

On the point made by Spain on the reference to the ISO standards which had been included in the Agency's proposal, it was clarified that any such reference should not be interpreted as meaning that the Agency intended to impose a single management solution on all NSAs but rather as aiming at providing a sufficient safeguard that the conduct of the Agency's auditors would be in line with the internationally recognised and acceptable best practices as reflected in the ISO standards and guaranteed that the matrix model took into due consideration the differences between the NSAs both in terms of size as well as from the point of view of their internal organisation.

Nevertheless, the Head of Safety Unit wondered whether an organisation, such as an NSA, could be expected to consistently and coherently produce a high quality of work without having previously introduced a certain system or arrangement for such purpose and confirmed that, according to the approach proposed by the Agency, the NSAs would be required to have such mechanisms in place and to ensure that their management systems, whatever their structure, complied with some minimum standards defined in the maturity model.

The Commission agreed that the Agency was indeed entitled to audit the capacity and effectiveness of the NSAs and wondered whether, given in particular the fact that the Agency should promote the participation of qualified auditors in its audit team as much as possible, such type of assessment could also be usefully carried out on the basis of a strict conformity compliance check which did not seem to address sufficiently the qualitative aspects of the NSAs performance and decision-making.

Moreover, the Commission seriously doubted whether a strict compliance model could be used to serve any particular interests and highlighted that any conclusions to be drawn on the basis of that model –in the form of a check-list approach– appeared to straight down the road to infringement procedures without providing for a dialogue mechanism to be applied with the NSA concerned prior to such procedures being launched.

However, it was acknowledged that the concerns expressed by many MB members were reasonable and understandable and that efforts were being put into building confidence and trust in the use of a new model to be used by the Agency which was expected to take over additional responsibilities and to work in close cooperation with the newly developing NSAs but the Board members were assured that the “sunset clause” could provide a reliable way out in case their worst fears were realised mainly in the form of a ratchet effect on the NSAs and, therefore, the approach which had initially been adopted by the MB would need to be changed.

The Commission strongly advocated the maturity model which was, in its view, more nuanced and qualitative in nature and found that, were it for an infringement procedure to be launched following an assessment carried out on the basis of the matrix approach, the standards of proof would be raised significantly higher than in the case of an infringement procedure launched on the basis of a non-conformity assessment.

Denmark agreed with the arguments put forward by Spain, admitted that a great amount of effort had been spent into reading carefully and interpreting the relevant text of the Agency Regulation taking into account, among others, the circumstances of its adoption at the Council and insisted that the Agency's proposal was not in line with the requirements prescribed thereunder but simply went in the opposite direction to that in which it was supposed to go by virtue of the relevant legal framework.

Denmark indicated that it had not been convinced by the additional arguments which the Agency had put forward during that meeting and that, consequently, it did not intend to support the Agency's proposal, as it stood at that moment, suggested that the current proposal should be updated on the basis of a concise and careful reading of the relevant provisions of the Agency Regulation and pointed out that it made absolutely no sense for the MB members to have to wait for the completion of first three-year audit cycle before being

able to confirm that the interoperability-related issues, which had been included in the first place in the “full package” of the NSAs monitoring set up and approved by the Council, were indeed given proper attention in the Agency’s proposal.

France found that the reshuffling of the structure of the initial proposal of the Agency, following the MB Workshop of March 2017, was really helpful and made it easier for the MB members to understand and to follow the approach reflected therein and mentioned the example of Annex I on the NSA monitoring policy which defined clearly the strategic goals and set the ambitions of the project.

France informed the Board members that, during the discussions held within the relevant Council’s working group, the participants had expressed hesitations and reserves about the orientation of the NSAs monitoring exercise and the approach adopted thereby and confirmed that one of its major concerns concerned the possibility of using the matrix model as a means of exercising control over the NSAs.

France noted that Annex III to the relevant draft MB decision on the Guide on NSA monitoring matrix seemed to favour an approach which gave the impression of an in-depth assessment of the internal processes and the internal organisation of the NSAs despite the fact that such elements fell exclusively within the sphere of responsibility of the NSAs and went clearly beyond the objectives of the NSAs monitoring as defined under the relevant provisions of the Agency Regulation.

More specifically, France expressed the view that the assessment scheme envisaged by the matrix model, as described in Annex III to the Agency’s proposal on the Guide on NSA monitoring matrix, was too broad in nature, was not limited to a simple auditing of the capacity and the activities of the NSAs related to supervision and, thus, did not seem to be in line with the limits prescribed under Article 33§2 points (a) and (b) of the Agency Regulation, according to which the Agency was entitled to audit only the capacity of the NSAs to execute tasks relating to railway safety and interoperability and the effectiveness of the monitoring of the NSAs of the safety management systems of actors as referred to Article 17 of the Safety Directive.

France also agreed with the point made Spain in relation the various explicit references contained in the Agency’s proposal to the management system of the NSAs and, in particular, to the ISO standards, added that the NSAs were not required, under the relevant EU legal framework, to put in place such management systems and that it was sufficient to demonstrate their ability to effectively discharge their tasks and urged the Agency to take into account that not all NSAs complied with such a global management system.

France summarised that there was still room for additional discussions to be held and for further progress to be made on some quite fundamental issues and that the Agency’s proposal, as it stood at that moment, was not as mature as required in order to be endorsed by the MB already during that meeting.

Germany declared that it still maintained its initial position despite the new arguments which had been proposed by the Agency and duly taken into account and reminded that, according to its main line of reasoning, the approach adopted by the Agency was not acceptable just because it was grounded on the use of the matrix model.

Moreover Germany agreed with the views expressed by France on the matter, admitted that it preferred the option of cross-audits and insisted that there should be clear criteria on the basis of which the Agency was supposed to carry out the assessment of the NSAs.

Following the reference made by Germany to the cross-audit protocols by Germany, the Head of Safety Unit intervened to clarify that such protocols followed the same methodology as that already reflected in the maturity level approach, that the criteria for performing the assessment were actually less developed than those used in the matrix model and that the description of the different levels was much smaller.

However, he admitted that the cross-audits protocols set the pass mark for the NSAs at a significantly lower level than the matrix approach, mentioned an example of the assessment of the organisational requirements of the NSAs with the use of such protocols and concluded that this approach did not measure the capacity of and the effectiveness of the work delivered by the NSAs and certainly was not the best approach to rely upon.

The Head of Safety Unit invited the Board members to examine more closely the approach of the cross-audits protocols which, in his view, was weak in many areas and focused exclusively on the tasks performed by the NSAs and not on their organisation capacity and to postpone the adoption of a final decision on the NSAs monitoring at a later stage, should they wish to do so.

Furthermore, the point was made that it was primarily the EU regulatory framework applicable to the NSAs, including the Agency Regulation, which imposed on them the obligation to introduce management arrangements and to establish internal processes of a similar nature and mentioned the example of the Common Safety Method on Supervision² (CSM SU) which required that the NSAs should put in place such management systems and it was seriously challenged whether it made any sense for the Agency to exclude from the scope of the NSAs monitoring as such, even on the basis of strict conformity assessment approach, the compliance check of the management systems of the NSAs.

In addition, it was explained that a number of other requirements set by the Agency Regulation had not been formulated as strict “passed-failed” conformity criteria and it was highly doubted whether the cross-audits could also be used for measuring the strengths and weaknesses of the NSAs management system.

The Board members were also reminded of the opportunity offered to them to have the maturity model replaced by a strict compliance approach at the end of a first three-year audit cycle if they were of the opinion that such model was not suitable for the needs of the NSAs monitoring.

Following a relevant point made by the Commission, the Head of Safety Unit assumed that, were it for a purely compliance-based approach to be followed, the Commission would certainly be made aware quite frequently of the findings of the assessments and would be invited to intervene in many cases and found that the collaborative relationship which the Agency had already built with the NSAs could not be further developed and strengthened on the basis of such approach.

The Chair made a synopsis of the status of the discussions on the NSAs monitoring up until that point.

More specifically, it was summarised that a few MB members had expressed their strong support for the matrix model and the approach suggested by the Agency, whereas, at the same time, several other MB members had severely criticized the use of the maturity model as a basis for performing the assessment of the capacity and effectiveness of the work performed by the NSAs and had shown their clear preference for the use of a strict compliance or conformity assessment model and it was recalled that the MB should adopt the relevant decision on the matter by an absolute majority of its members entitled to vote.

However, the Chair admitted that, given the current dissensus among the MB members, he felt quite reluctant, at least at that stage, to put up for vote the Agency’s current proposal, declared that he was not in favour of proceeding with the adoption of a decision by the MB approving a scheme which many MB members had clearly and strongly opposed and wondered whether a constructive way forward which would allow for the adoption of a proposal by the MB, preferably, already in September 2017, could be sought on the matter.

The Head of Safety Unit suggested that the Agency intended to maintain its current proposal on the use of the matrix model and could come up, already during the MB meeting in September 2017, with an additional proposal on the use of a conformity assessment model which would clearly specify the legal requirements to be complied with as well as the tasks to be performed by the NSAs and contain unambiguous references to the legal framework governing the NSAs monitoring exercise with a further view to offering the possibility to the MB members to adopt both models while ensuring that the NSAs would be invited to choose themselves, from among those two options, the scheme on the basis of which they preferred to be audited.

². 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.

The Chair thanked the Head of Safety Unit for his constructive suggestions and admitted that he appreciated the idea of providing the MB members with some preliminary insight into the conformity model as such.

The representative of Finland admitted that he was about to give his consent to the application of the matrix model, at least during the first three-year audit cycle but found that, following a comparison made between the maturity model and the cross-audits approach during the discussions held within the MB, the different approaches reflected therein presented, in fact, a lot of similar aspects and sensed that the most challenging issues, which had given him also second thoughts about the use of the matrix model, were the ones related to the assessment of the NSAs capacity as such.

He also confirmed the accuracy of the statements made by Spain on the discussions held within the Council's working group on the relevant matters and added that the Member States representatives, in line with the wording of Article 33 of the Agency Regulation, had excluded the possibility that a maturity assessment approach, as such, represented a reliable way forward on NSAs monitoring which should only be limited to checking the NSAs compliance with the legal requirements.

However, Finland wondered whether Article 33 of the Agency Regulation and, in particular the wording used therein, should be construed as preventing the Agency from adopting an approach which would go beyond the criteria set by a strict compliance model and towards the use of a maturity model and expressed the view that the above-mentioned provision did not seem to impose any such limitation and that it was mainly a matter of a political choice to be made and agreed upon by the MB members.

Although Finland was ready to endorse the current proposal of the Agency, it still considered that, in view of the real delicacy of the matter for some MB members, the suggestion of the Head of Safety Unit according to which both models would be brought to the attention of and put forward for adoption by the MB represented, at least at that stage, a pragmatic way forward.

Finland advised also the Agency to consider the option of proposing of a mixed approach which would entail the combined use of the compliance model for the purpose of measuring the capacity of the NSAs and of the maturity model for the assessment of any other aspect of their work and providing the MB with the opportunity of revisiting, after a first three-year audit cycle, such approach with a view to deciding on whether it should continue to be applied or not.

The U.K. expressed the view that convincing arguments had been put forward in support of both models and declared that it would not raise any objection to the use of the maturity model as such.

However, it was mentioned that, given the current polarised status of the discussions within the MB on the issue of the approach to be adopted for the assessment of the NSAs, it would not be appropriate to put to the vote the current Agency's proposal, at least during that meeting.

The U.K. agreed with the idea put forward by the Head of Safety Unit in the sense that it would allow the Agency to come up with an alternative proposal on NSAs monitoring to be discussed and, eventually, agreed upon, already in September 2017, and recommended that, during the future discussions to be held on the matter in the coming Board meetings, the MB members should be also invited to reflect further on the issue of whether the above-mentioned schemes could effectively exist and work alongside each other and should be given adequate time to consult their NSAs prior to stating their views on the matter.

The Head of Safety Unit replied that the Agency could either propose both schemes or offer a choice between them and assured the Board members that it did not intend, in any way whatsoever, to merge the two schemes and produce a mixed combination thereof on the grounds that, as it had already been pointed out during the relevant discussions with EASA, the two models represented two completely different approaches, the first one being nothing more than a mere compliance check, the second one being a complete assessment of the organisation maturity of the NSAs.

He announced that the MB members would be given an overview, during their coming meeting in September 2017, of the main elements of the compliance model as well, that, following the adoption of both models,

the NSAs would be offered the possibility to make a choice between the conformity assessment model and the maturity approach and that his understanding was that the wording of Article 33 of the Agency Regulation did not seem to prohibit the adoption and use of more than one scheme for the assessment of the NSAs.

The Board members were also kindly requested to introduce their comments and/or remarks on any future proposal to be produced by the Agency on the relevant topic directly on the text in the form of track changes.

Denmark acknowledged that the discussions within the MB had been very fruitful and appreciated the constructive nature of the suggestions made by both the Chair and the Head of Safety Unit in that regard.

However, Denmark preferred that the adoption of an MB decision on the matter be postponed for later and, in any case, not earlier than the MB meeting of November 2017 in order for the MB members to be given sufficient time to discuss the relevant issues with the stakeholders at the national level before expressing their formal agreement on the adoption of a policy for the monitoring of NSAs and found that this additional time would also help the Agency come up with a stable proposal which would be successfully put to vote.

Belgium agreed with the suggestion made by the Head of Safety Unit and requested the Agency to make available its updated proposal and to accompany such proposal with a table for comments to be filled in, if necessary, by the MB members within a specific deadline well in advance of the MB meeting of September 2017 and, in any case, not later than two (2) weeks prior to that meeting.

Slovenia agreed with the proposal made by Denmark and added that the relevant issues were of extreme significance for the NSAs and that sufficient time for holding in-depth discussions thereon should be given to the MB members.

The Head of Safety Unit fully supported the request made by Belgium and guaranteed that both the updated text of the proposal and a table for comments would be made available to the MB members prior to their meeting in September 2017, pointed out that he would not raise any objection to postponing the adoption of the relevant MB decision at a later stage during 2017 but warned that a delay in the implementation of the scheme would mean that the text of the AAR 2017, which would be proposed for adoption during the coming year, would not include any reference to the NSAs monitoring as such.

He also recommended that the relevant discussions would rather be held at a Member State level and seriously doubted whether the NSAs were entitled, taking into account the relevant provisions of the Agency Regulation, to negotiate their own audit regime.

The Executive Director intervened to remind that it was by virtue of its Regulation, that the Agency had been given monitoring powers in relation to the performance and decision-making of the NSAs to be exercised directly and with immediate effect as from the date of the entry into force of the Agency Regulation and, in view of the fact that the relevant issues had been debated within the MB for more than one year already, he suggested that the MB members had to make an effort to reach a final agreement during their meeting in November 2017 bearing in mind that it was about time that confidence in the use of a new scheme be built.

The Chair concluded that the Agency would start working on a proposal for a conformity assessment model after verifying that it was possible, under the applicable EU legal framework, for the MB to proceed with the adoption of two models for NSAs monitoring, make the necessary arrangements for a preliminary discussion to take place –preferably in the form of a workshop and prior to the MB meeting of November 2017– on the basis of, at least, an initial draft of its proposal on a compliance model, announced that the MB members would be called to make a final decision on the matter not earlier than the MB meeting of November 2017 and urged the MB members to make sure that any discussions on the relevant issues would be held only between the Agency and the Member States representatives and that the NSAs which would be audited under the proposed scheme would not be, at least for the moment, involved in such discussions.

9. Monitoring of Notified Conformity Assessment Bodies (NoBos)

The Board members were given a brief account of the Agency's updated proposal on auditing NoBos with particular emphasis on the modifications which the Agency had introduced in the documents which had originally been made available to them following the 5th EB meeting of June 2017.

It was reminded that the document which contained the Agency's proposal on auditing NoBos was the same as that which had been initially presented during the MB meeting of November 2016 as well as during the MB Workshop of March 2017 and that it focused solely on audits which, alongside inspections, were supposed to fall within the scope of the NoBos monitoring taking into account that the MB was supposed to adopt, by virtue of Article 34§3 second indent of the Agency Regulation, a procedure solely for the performance of audits.

It was added that, since the 5th EB meeting of June 2017, the Agency had been mainly working on fine-tuning the recitals of the relevant draft MB decision as well as on refining some of the aspects of the technical document which defined the requirements for conformity assessment bodies seeking notification.

The Executive Director assured the Board members that the changes referred to in the text of the explanatory note which had been distributed the MB members prior to that meeting and reflected in the current Agency's proposal had been previously discussed with representatives from the Sector and that the explicit consent of the Sector organisations at EU level had been previously sought by the Agency on those modifications, mentioned, in particular, that the representatives from the Sector in Germany had declared in writing that they agreed with the Agency's updated proposal and concluded that the level of prior consultation of the Sector on the relevant issues had been as sufficient as to give to the Agency the necessary confidence that the approach proposed should be commonly agreed upon as the most appropriate one.

The Board members were also informed of the fact that the Agency was planning to give a feedback after 1 (one) year of implementation of the new regime and that a forum had been launched in order to facilitate the work on the continuous development of the scheme.

The Netherlands underlined the significance of the tasks related to NoBos monitoring for ensuring the interoperability of the railway system as a whole and expressed its support for the proposal which had been put forward by the Agency.

The Netherlands also noted that NSAs should maintain their role in relation to the NoBos monitoring as well, appreciated the idea of giving to the MB the opportunity to get regular updates on and follow closely the progress made on the implementation of the scheme at least during the first three-year audit cycle but questioned whether the number of audits envisaged under the audit cycle suggested by the Agency, according to which, for the first three years of the implementation of the scheme, three NoBos would be audited on an annual basis –and, thus, nine NoBos would be audited in total in the course of a three-year audit cycle– was sufficient.

Germany admitted that it viewed positively the Agency's proposal but clearly disapproved of the option of unannounced inspections envisaged therein as being completely pointless and considered that the bodies to be audited should be given the opportunity to make the necessary preparatory work prior to the audit.

Denmark expressed its full support for the Agency's proposal, confirmed the statements previously made by the Executive Director on the agreement which had been reached on the relevant issues during the preparatory meetings held with the Sector representatives and admitted that the process followed thus far on the Agency's own initiative had contributed significantly to ensuring both the stability and accuracy of the proposal which the MB members would be called to adopt and proposed that the Agency follows the same approach for any future proposals to be brought to the attention of and adopted by the MB members.

In response to the concern raised by Germany, the Executive Director clarified that the Agency was entitled, by virtue of Article 34§6 of the Agency Regulation, to conduct either pre-announced or unannounced

inspections of NoBos and failed to see a reason to refute the use of an option which had been explicitly provided for under the relevant EU legal framework.

In response to the point made by the Netherlands on the frequency and intensity of the auditing process envisaged under the Agency's proposal, it was explained that the Agency intended to create, at a first stage, a basic team consisting mainly of lead auditors and technical experts who would perform three audits per year, with a further view to identifying, at a later stage, the workload per person and to having this workload shared evenly among several members of the audit team and without excluding the possibility of creating several basic teams, depending on the priorities and on the interest in investing on such activities in the future, for the purpose of increasing the number of NoBos which would be subject to monitoring.

Following the concern raised by Germany in relation to unannounced inspections, it was pointed out that the text of the Agency Regulation itself already provided for the option of unannounced inspections and it was added that the Agency intended to provide further clarifications on the potential scope of those inspections and assess, on a case-by-case basis, whether measures falling within that scope would be finally used or not.

The Executive Director highlighted that the current proposal of the Agency placed a strong emphasis on the need to build an appropriate collaborative space between the Agency on the one hand and the recognising and accrediting bodies on the other hand with a further view to strengthening the overall system. Thus, making it easier for the Agency to focus its audits and inspections on areas which would be commonly identified and agreed upon by both the Agency's experts and the experts from recognising and accrediting entities working in a network with the Agency's team in areas of higher risk so as all efforts to be focused thereupon.

The Chair invited the Board members to adopt the Agency's proposal on auditing NoBos.

The provisions on auditing NoBos in the framework of Article 34§3 of the Agency Regulation were adopted unanimously by the MB.

10. Implementation of the 4th Railway Package (RP) – Strategic Perspective

The Executive Director made the introductory remark that the MB members would be provided with some feedback on the planning which had been made by the Agency on the management and use of its resources for the execution of the new tasks required for the implementation of the 4th RP and that the aim of the presentation was to provide to them the best possible assurance that the Agency, working in close cooperation with the stakeholders from the national ministries, the NSAs and the Sector would be ready to perform its new role in 2019.

The 4th RP Preparation Programme Manager reminded that, given the fact that the MB members had been offered several times, up until that point, the opportunity to get acquainted with the technical aspects of the work delivered by the Agency for the implementation of the 4th RP, the presentation to be made during that meeting would be mainly focused on the human resources-related aspects of the Agency's work.

The Board members were provided with a brief overview of the estimation which had been performed by the Agency mainly in terms of identifying the workload related to issuing SSCs and VAs as well as with a summary of the outcome of an internal call for expression of interest which had been launched by the Agency on a voluntary basis and for the purpose of assessing whether there were persons, from among its staff members, who already possessed the skills required for the performance of tasks related to SSC and VA.

The Board members were also given a general idea of the main EU official languages currently mastered by the Agency's staff members which had already been shortlisted, following the aforementioned internal call for interest, for the roles of the Assessor and of the Project Manager for both SSC and VA and it was outlined, in particular, that, even though the language skills of the shortlisted staff members were considered to be sufficient for covering the needs which could arise in relation to the performance of SSC-related tasks, the Agency lacked human expertise with knowledge of German and Polish.

The Executive Director intervened to point out that the Agency intended to include in the call for applications which would be launched after that meeting for the recruitment of additional staff members, as previously mentioned, the language requirements among the essential criteria to be met by the applicants with the aim of properly addressing the existing gap in the language skills which was clearly reflected in the conclusions drawn from the estimations performed by the Agency.

As a follow-up to the earlier discussions held previously within the MB on the role of the EB, the Commission found that the issues related to the strategic perspective of the 4th RP should be definitely included among those points which had to be followed closely by the EB and pointed, in particular, to the significance of those issues for ensuring the successful transition of the Agency to the new authorisation regime envisaged under the 4th RP.

It was also suggested that, should, for whatever reason, the future recruitment processes to be launched by the Agency not yield a sufficient number of persons to be recruited on a permanent basis, the Agency should also consider seriously the option of covering its needs on a purely temporary or interim basis, if necessary.

The Executive Director replied that the Pool of Experts (PoE), as such, was intended to provide a workable solution and that the experts from the NSAs would be the first ones to be relied upon in such cases although he explained that the term “expert” was meant to be broader and used to describe, in general, any person with the necessary skills to be recruited by the Agency as member of its project teams and clarified that, in particular as regards VAs, whereas the role of Assessor could be freely assigned to experts selected from among those included in the PoE, the role of the Project Manager should, in any case, be taken over by one of the Agency’s staff members.

On the issue of the assessment of the readiness of the Agency as well as of any other actors involved in the implementation of the 4th RP, including, among others, the NSAs, the Commission and the national ministries, the Executive Director announced that an informal 4th RP Steering Group had been established internally within the Agency and managed by the 4th RP Preparation Programme Manager for such purposes and that the Netherlands had put forward, during the 5th EB meeting, a proposal which clearly identified the need for a global assessment of the readiness of the Agency to deliver its new tasks already in 2019 to be undertaken.

He pointed out that any such readiness assessment would have to be performed in a rather proactive and transparent manner and by means of monitoring a series of lead indicators, such as the staff level, with a view to ensuring that the Agency would be ready on time to deliver its new tasks under the 4th RP and, where necessary, of taking action in the form of mitigation measures to fill any gaps detected and to address any deficiencies identified at as early a stage as possible.

The Board members were informed that the Agency planned to amend the Terms of Reference (ToRs) of the 4th RP Steering Group which should be given a broader mandate and to arrange a 4th RP Steering Group meeting in September 2017 for discussing the relevant issues and coming up with a proposal to be agreed upon by the MB during its meeting in September 2017 and the need for an intensive interaction to be developed and maintained between the MB and the 4th RP Steering Group was also stressed in that regard.

It was added that, following the adoption of the revised ToRs of the 4th RP Steering Group by the MB, the latter would be kept regularly updated on the work of the 4th RP Steering Group and that the Agency relied upon the crucial role which the MB could play in creating a direct interface between the Agency on the one hand and the Commission, the Member States and the Sector on the other hand.

The Netherlands intervened to explain the reasoning behind its proposal to introduce a point related to the assessment of the Agency’s readiness in the meeting agendas of both the EB and MB. More specifically, it was outlined that the main idea was to ensure that the system as a whole, including all the actors involved therein and, in particular the Agency, would, in close cooperation with each other, be ready on time to deliver the outputs required for the implementation of the 4th RP.

The Netherlands pointed out that the already existing processes internally within the Agency and the documentation which had already been produced on the relevant matters were not sufficient elements to

be exclusively relied upon and that, under the circumstances of the case, an external assessment of the Agency's readiness was recommended to be required and agreed with the suggestion made by the Executive Director that the ToRs of the 4th RP should be amended accordingly so as to reflect those views and provide the MB with the possibility to follow closely and monitor the work done within the 4th RP Steering Group.

The Trade-Union Organisations (T-UO) pointed to the fact that the difference in the number of Full-Time Equivalents (FTEs) estimated in relation to the total workload for both Project Manager and Assessor roles between SSC and VA was quite small compared to the total number of Project Managers and Assessors required for the performance of the such tasks and taking into account that this number was significantly higher in the case of VA than for SSC and requested the Agency to provide more clarifications on the matter.

The 4th RP Preparation Programme Manager explained that the Agency had drawn its estimates taking into account both the workload to be delivered by the Agency itself and the workload to be placed upon the PoE in combination with the total number of the staff members which would be assigned to different VA-related or SSC-related projects and repeated that those estimates had been based on the assumption that the main part of the workload to be performed by the Project Managers would be taken over by the Agency whereas the tasks related to the role of the Assessor, were it not for them to be exercised by the Agency's staff members, could be more easily delegated to the NSAs experts or to other experts from the PoE.

The Executive Director clarified additionally that the term "FTE" had been used to express the number of hours actually worked per person during a year and to serve as a reference point for estimating the average number of hours to be worked by a Project Manager and by an Assessor performing either VA-related tasks or SSC-related tasks and pointed out that the ratio of the total number of Project Managers and Assessors to the FTEs required was higher for SSC-related tasks than for VA-related ones because the estimates of the above-mentioned average number of hours to be worked by a Project Manager were different from those identified in the case of the Assessor.

T-UO wished to confirm whether the explanations provided by both the 4th RP Preparation Programme Manager and the Executive Director should be interpreted as meaning that the average number of the hours needed for the performance of SSC-related tasks was higher than the average number of the hours required for the performance of VA-related tasks.

The Executive Director explained that, in the case of the SSC-related tasks, the Agency had to perform more assessments itself, i.e. using its own resources, whereas in the case of VA-related tasks it could rely, among others, upon the work to be delivered by the NoBos, DeBos and AsBos and did not raise any objection to sharing the calculations on which the estimates which had just been presented to the MB members were based with them upon request.

The Commission made reference to the paper on the role of the EB which had been previously endorsed by the MB, noted that, according to the relevant section of that paper which described the vision of the EB, the latter was supposed, among others, to provide assistance to the Agency in fulfilling the tasks to be delivered under the 4th RP and identified the need for the roles of the EB and of the 4th RP Steering Group –within which Sector representation was higher– to be better clarified and clearly demarcated on from the other so as to avoid unnecessary duplication of work.

The Executive Director guaranteed that the Agency had taken good note of the role to be played by the EB, intended to deal with the relevant issues in the revised ToRs of the 4th RP Steering Group and suggested that the 4th RP Steering Group should be anchored in the EB as a reflection of the "strong core of the MB".

11. Implementation of the 4th Railway Package (RP) – Decisions

The 4th RP Preparation Programme Manager gave to the MB members an updated overview of the decisions that they would be called on to adopt for the implementation of the 4th RP during the years 2016-2018.

The Board members were reminded that, according to the detailed programme planning made by the Agency, the adoption of the technical and function specifications of the One-Stop Shop (OSS) had been

scheduled for September 2017 and that, for such purpose, they had already been provided, in view of the 41st MB meeting of January 2017, with a first draft of the vision document as well as with a mock-up of the OSS tool and assured that they would be given more feedback on the progress made in the meantime by the Agency on the development of the OSS tool later during that meeting.

It was added that, on the basis of the above-mentioned planning, the MB was expected to adopt the guidelines and the list of the main elements to be included in the cooperation agreements to be concluded between the Agency and the NSAs in accordance with Article 76 of the Agency Regulation at the beginning of 2018.

It was recalled that, during the discussions held on the planning of the MB tasks for the implementation of the 4th RP, it had been agreed that the MB would be provided with updates on the progress made by the Agency on the preparatory work to be done for ensuring the timely exercise by the MB of its decision-making powers for the implementation of the 4th RP and that, on the basis of such agreement, the Agency intended to provide the Board members with some preliminary information on the progress made in the development of the cooperation agreements later during that meeting.

The 4th RP Preparation Programme Manager highlighted that it was necessary to stick to that planning, warned that a potential delay in the delivery by the MB of one of its decisions could bear a significant impact upon the timely delivery of the other decisions to be adopted by the MB for the implementation of the 4th RP and invited the Board members to provide their feedback on the relevant issues or to make the Agency aware of the need for additional discussions or workshops to be held thereon as early as possible.

The Chair pointed to the fact that some of the MB decisions which were envisaged, according to the initial planning proposed by the Agency, to be adopted already at that point, such as the MB decision on the NSAs monitoring policy, had not yet been adopted and, thus, would have to be re-included in the list of the future MB decisions to be adopted for the implementation of the 4th RP and identified the need for adjusting the original planning of the MB decisions which had been put forward by the Agency accordingly.

12. Presentation on Cooperation Agreements

The Board members were given a brief overview of the current state of play as regards the progress made by the Agency in carrying out the necessary preparatory work for the development of the framework upon which the conclusion of the cooperation agreements could be founded.

The 4th RP Preparation Programme Manager made the preliminary remark that, following a decision taken by the NSAs in February 2015, an NSA subgroup for the development of the cooperation agreements had been established and that the Agency participated, already since mid-2015, to all the relevant NSA subgroup meetings as an observer.

As regards the text of the cooperation agreement itself, the Board members were informed that the 4th RP Preparation Programme Manager had been working on the “technical clauses” of such agreements, in close collaboration with the Safety Unit of the Agency, already since six months until then, whereas the “legal clauses” were being developed by the legal office of the Agency in close cooperation with NSAs lawyers and that both the NSA subgroup and the NSA Network were kept regularly updated on the progress made in the development of the cooperation agreements.

The Board members were firstly provided with a brief synopsis of the main aspects envisaged to be covered by the “technical clauses” of the draft cooperation agreements, they were reminded that the work on the guidelines and main elements to be included in the cooperation agreements would have to be completed already in early 2018, they were presented a list of the main items which had been identified, up until that point, as falling within the scope of the “technical part” of the cooperation agreements following the discussions held on the matter with the NSA subgroup of lawyers and they were invited, already at that stage, to provide their feedback and to express their views on the topics which they considered necessary to be covered with under the “technical part” of the cooperation agreements.

The Board members were also given a quick summary of the main questions which had been put on the table during the discussions held within the NSA subgroup of lawyers regarding the “legal clauses” of the cooperation agreements including but not limited to the distinction between “mandatory cooperation” and other forms of “voluntary cooperation” as well as between “framework cooperation agreements” and “specific cooperation agreements”, the law applicable to cooperation agreements and the competent authority which should be vested with jurisdiction to hear the disputes arising from the interpretation or application of such agreements, the duration, suspension and termination of the cooperation agreements and the issue of whether a “third-party liability clause” should be included in the body of those agreements.

The Chair wished to be conveyed an idea of the status and the atmosphere in which the discussions were held on the relevant matters with the NSAs and wondered whether, in view of the quite divergent views expressed by the Agency on the one hand and by the NSAs lawyers on the other hand on many of the issues arising in relation to the “legal clauses” of the cooperation agreements, it was safe to assume, already at that stage, that a scenario of polarisation along the lines of the already existing dissensus among the MB members on the topic of the NSAs monitoring would be repeated.

The Agency replied that, at the level of the NSA subgroup of lawyers, which was a group with a limited number of participants where only five or six NSAs were represented, the atmosphere was very positive and pleasant and the discussions were quite constructive, despite the divergent positions which were often taken by the participants therein, and admitted that the NSAs lawyers frequently expressed the view that it was mainly at the level of the NSA subgroup referred to previously that many of the points discussed between them –even if they were related to purely legal matters such as the law applicable to the cooperation agreements– should be further analysed and finally decided upon.

Belgium appreciated the opportunity offered to the MB members to be provided with feedback on the state of play of the ongoing discussions on the most important open points in relation to the development of the cooperation agreements.

As far as the issue of the law applicable to cooperation agreements was concerned, Belgium expressed its concern that it would be difficult for the Belgian NSA to enter into any cooperation agreement with the Agency without having received a clear and prior mandate for such purpose following the transposition of the Safety and Interoperability Directives into Belgian law and pointed out, however, that this concern had also been explained to other NSAs and that it seemed that the Belgian NSA was the only one to consider that the text of the Agency Regulation per se, despite its direct applicability in all Member States as from the date of its entry into force, did not seem to provide the NSAs with a sufficient legal basis which would allow them to enter into cooperation agreements with the Agency.

The Executive Director intervened to clarify whether some of the legal points presented, including on issues of jurisdiction and applicable law, could also be listed among the “main elements” to be included in the cooperation agreements which would be agreed upon by the MB.

It was clarified that the Agency did not exclude the possibility that some of the points discussed within the NSA subgroup of lawyers and mentioned previously during his presentation could indeed form part of the list of the “main elements” of the cooperation agreements to be adopted by the MB although such scenario had not yet been further examined and discussed up until that point in the NSAs subgroup.

In response to the concern raised by Belgium, the Executive Director noted that the cooperation agreements were to be considered as essential elements for ensuring the functioning of the entire new system to be put in place under the 4th RP as of June 16th 2019, including, among others, the PoE and the cooperation on SSC and VA, and would definitely have to be included among the critical issues to be closely monitored through the “readiness test” which had been proposed by the Netherlands and previously discussed between the MB members and emphasised that the notion of a SERA whereby the different legal systems of twenty-eight Member States would continue to be applicable on issues which were already regulated in a harmonised and uniform manner under the relevant EU legal framework seemed inconceivable.

Along the same lines, the Commission added that it was mainly Article 76 of its Regulation which empowered the Agency to build a collaborative regime with the NSAs, that the Agency Regulation, as such, was already fully in force, binding in its entirety and directly applicable in all Member States, that the issues arising in relation to the cooperation agreements could be already be dealt with effectively in Belgium or in any other Member State even before the transposition of the Interoperability and Safety Directives and acknowledged that, although arrangements initially agreed upon might be subject to revision in light of the eventually transposed texts of the Directives, the aforementioned provision of the Agency Regulation provided in the meantime both the Agency and the NSAs with a sufficiently solid legal basis for concluding cooperation agreements in the meantime.

In response to the question made by the Executive Director, the Commission suggested that the Agency should focus on whether some of the issues which would potentially be included in the list of the “main elements” to be covered by the cooperation agreements as such had already been dealt with under the EU legal framework and mentioned the example of the liability relationship between the Agency and the NSAs which was already envisaged under the EU legal framework governing issues related to liability consequences in general and dealt with by reference to the applicable law and not by means of a subsequent decision of a contractual nature and urged the Agency to draw inspiration from the arrangements made in that regard under the relevant EU rules applicable to such matters.

Austria seriously challenged the validity of the arguments put forward by Belgium in relation to the need for transposition of the above-mentioned Directives into its national law, pointed out that, despite the fact that Belgium had not yet transposed the above-mentioned Directives into its national law, the relevant texts were already in force and prevented, as of the date of their publication, the Member States from introducing legislation which could be considered as contravening, directly or indirectly, the Directives and confirmed that it did not share the same concerns as Belgium since the Directives would be transposed into Austrian law over the course of the following two years.

France welcomed the significant contributions of the Agency to the project on the development of the cooperation agreements and considered that, although there was still room for further progress to be made, it was apparent from the feedback which had just been given to the MB members that the Agency had already carried out in-depth work on the relevant issues.

However, France pointed out that, whereas the issues related to the “legal clauses” of the cooperation agreements had been thoroughly examined and that a detailed analysis had been undertaken in relation thereto, as evidenced by the very specific and precise nature of the questions raised as regards the “legal part” of such agreements, the topics envisaged under the “technical clauses” of the cooperation agreements had been much more briefly and summarily dealt with.

France admitted that it had been taken by surprise when provided with the list of the items to be included in the “technical clauses” as agreed during the discussions held within the NSA subgroup of lawyers and was quite astonished to find out that certain topics were discussed within a group of lawyers despite their strong technical dimension.

Moreover, France expressed its serious concerns over the distinction between the “technical clauses” and the “legal clauses” of the cooperation agreement and considered that some of the items which had been included in the aforementioned list should not be addressed separately one from another but rather dealt with in conjunction and mentioned the example of the timeline and the OSS-related items in that regard.

France explained that the proposed distinction between the “technical” and the “legal” aspects of the cooperation agreements was artificial in the sense that a decision made on the technical matters as such could influence a decision to be taken in relation to the legal issues and vice versa and wished to be given detailed feedback on the next steps to be taken on the work to be delivered as regards the technical aspects of the cooperation agreements.

The 4th RP Preparation Programme Manager, in response to the points raised by both France and by the Chair, explained briefly that, as the project on the cooperation agreements had to be dealt with at a rather late stage in the process towards the 4th RP implementation, it was crucial for the Agency to have a clear idea of the elements to be included in the different Implementing Acts (IAs) before discussing and deciding upon the framework of the cooperation agreements and reminded that the adoption of the relevant decision by the MB had been scheduled for January 2018.

It was further reported that, during the discussions held within the NSA subgroup, divergent views had been frequently put forward on many issues and that the NSAs had often raised the objection that it was not plausible to make a decision on such issues prior to the final adoption of the relevant IAs, that the work on the project did not progress as quickly as initially planned and that, given that a series of questions had been raised within the NSA subgroup on the “legal clauses” of the cooperation agreements, it had been considered appropriate to establish a small group of lawyers who would concentrate their efforts on the legal aspects of such agreements.

The Board members were also assured that all the items which had been included in the list of the “main elements” of the “technical clauses” of the cooperation agreements had been already examined from a legal point of view within the NSA subgroup of lawyers but would be further elaborated and developed within the NSA subgroup on the basis of the input received, among others, from the experts of the working party on SSC and that the final outcome was envisaged to be the result of a combined work.

It was pointed out, for instance that, as regards the item “timeline” which had been included in the lists of the items to be included in the “technical part” of the cooperation agreements, the intermediate milestones in a project would not be defined by lawyers but rather by the experts on SSC and VA who participated in the working party workshops and that the NSA subgroup was supposed to be the ultimate forum where those intermediate milestones would be further discussed and finally determined.

On the concern raised by Belgium, it was noted additionally that the MB would play a key role in adopting, at a certain point in time, a decision on the guidelines and the list of the main elements to be included in the cooperation agreements which could further serve as a guidance to be mandatorily followed by both the Agency and by the NSAs on the relevant issues even if the latter still considered such issues debatable.

The Chair appreciated the fact that the MB members were given the opportunity to get actively involved, at that stage, in the discussions on some really important topics, found that the progress of the work to be done by the Agency in the field of the cooperation agreements, until the adoption of a final MB decision, should be closely monitored by the MB members and announced that the relevant issues would be put again on the table during the coming MB meeting in September 2017.

13. Conflicts of Interest (Col) Rules for Board(s) of Appeal (BoA) members – first draft for consultation

The Board members were given a brief overview of the main aspects covered in the BoA Col Rules as well as of the next steps to be taken by the Agency in relation thereto.

It was recalled that, according to Article 51§1 point (s) of the Agency Regulation, it was for the MB to adopt rules for the prevention and management of conflicts of interest in respect of, among others, the BoA members, including provisions on declarations of interest and, where appropriate, post-employment.

It was pointed out that the management of conflicts of interest and the preventive actions to be taken in that regard, the measures to ensure impartiality and independence, the principle of declaration of interests and the categories of declarable interests featured amongst the main aspects covered in the BoA Col Rules and that different types of Declarations of Interests (DoIs) had been foreseen in those Rules, i.e. the Public Annual Declaration of Interests (PADoI) and the Ad Hoc Declaration of Absence of Conflicts of Interest (DACoI).

It was announced that the adoption of the BoA Col Rules by the MB had been scheduled to take place in September 2017 and that, for such purpose, it had been considered appropriate to provide the MB members with a first draft of the BoA Col Rules prior to that meeting.

The Board members were invited to send in writing any comments and/or remarks they might wish to make on the proposed text of the BoA Col Rules to the Agency by July 15th at the latest, preferably by using the table for comments which had already been made available to them as well and informed that, on the basis of the comments and remarks which would be received, a revised version of the BoA Col Rules would be produced and duly brought to the attention of the MB members in early September in view of the planned adoption of the BoA Col Rules by the MB during its 43rd meeting in September 2017.

Belgium intervened to update the Board members on the state of play regarding a first round of discussions which had already been held within the EB on the matter. More specifically, it was reported that some EB members had expressed a preliminary concern over the scope and the length of the text of the BoA Col Rules proposed by the Agency and that the latter had, in response to the remarks made, explained it had produced its proposal on the basis of benchmarking done against the similar legal framework in place in other EU Agencies –such as EASA, ECA, ESMA– and after taking also into account the already existing Col policy which was applicable to the members of the MB of the Agency.

It was also outlined that the Chair had suggested that the Agency should, in anticipation of a discussion on the level of detail, proactively include in the presentation to be made during the MB meeting of June 2017 a brief justification of the detailed nature of the BoA Col Rules and that the Executive Director had expressed his concern on the potential difficulties to be faced by the Agency in finding appropriate candidates to be appointed as BoA members and had suggested that the only workable solution was to identify a number of potential candidates and test those candidates against the criteria set under proposed the BoA Col Rules.

The Chair thanked Belgium for providing to the MB a brief update on the discussions which had been made during the 5th EB meeting in June 2017 on the proposed text of the BoA Col Rules, reminded that the deadline set by the Agency for the submission of comments on its proposal was July 15th 2017 and requested the MB members to reflect further on the Agency's proposal and provide their remarks within the deadline set.

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

The Board members were given a brief overview of the main requirements for the adoption of the technical and functional specifications of the OSS which had been scheduled to take place during the MB meeting of September 2017 and, in particular, on the progress made by the Agency on the development of the OSS tool.

The IT Officer of the Agency provided a synopsis of the main objectives pursued by the Agency in respect of the implementation of the OSS-related project and of the key principles followed for the development of the OSS tool as they had been discussed and agreed upon with the OSS User Group.

It was explained that the Agency had chosen to share with the MB members only information related to the business requirements and the features of the OSS tool in the sense that this had been considered the appropriate level of detail of the information to be provided to the MB in view of the adoption of the technical and functional specifications of the OSS in September 2017.

The Board members were reminded that the so-called “vision” document, together with some HTML mock-ups, had already been made available to them and were invited to focus their attention mainly on sections 3.4 and 3.5 of the vision document concerning the “stakeholder requests (STRQ)” and the “features (FEAT)” respectively in order to be given an idea of the scope of the project and of the functionalities of the system.

The IT Officer gave a more detailed insight into section 3.4 of the vision document which contained a list of fifty-three stakeholder requests and intended to reflect the high-level functionalities that the user expected the system to deliver on the basis of the business needs already identified, as well as a brief description of the main features of the OSS system, i.e. the services which would be provided to the users by the tool at the

following three distinct layers: the user management layer, the applicant submission layer and the application management layer.

The Executive Director informed the MB members that the mock-up of the OSS tool had been presented during all the five SERA Regional Conferences organised by the Agency and confirmed that the interest expressed by the stakeholders in the tool was quite strong and announced that the Agency intended to hold special sessions on the OSS tool with groups of stakeholders with the aim of using their feedback for making further progress on the business requirements and the functionalities of the tool.

The representative of Belgium pointed out that the vision document which had been provided prior to the meeting had been drafted in such a plain language that it was easy for her, despite her lack of expertise on purely technical matters owing to her legal background, to follow and understand the relevant text and considered that this alone served as a strong proof that the Agency had done a great work in relation thereto.

Moreover, Belgium expressed the view that the explanations which were contained in section 4.1 of the vision document on “methodology – software development in iterations” on the main reasons for which the Agency had opted for an iterative cycle of development of the OSS tool were fully in line with the observation which had previously been made by the 4th RP Preparation Programme Manager that the MB was supposed to adopt a decision on the functional and technical specifications of the OSS tool at a quite late stage in the process towards the implementation of the 4th RP and concluded that the approach chosen by the Agency represented a good way forward on the relevant issues.

Furthermore, on the assumption that it was the vision document that the MB would be finally called upon to endorse, Belgium went on to make a point on the third paragraph of section 2 thereof on the “executive summary” which read as follows: “The OSS should include such functionality to support the submission of applications, the proper dissemination of information about them, such as stages and their outcome and an early warning to users when similar tasks are requested. It should also allow the integration of related information and make use of the current ERA registers when applicable”.

More specifically, Belgium suggested that the Agency should include in the above-mentioned paragraph a clear reference to the relevant legal basis, i.e. to Article 12 of the Agency Regulation, in its efforts to justify the reasons for which it had considered appropriate to develop a tool with the functionalities described therein. Belgium observed that the same remark applied also as regards the following excerpt from the second paragraph of section 3.1.2 of the vision document: “The ICS must include at least the following functions/components, as explicitly required by the new legal text”.

Belgium expressed its satisfaction with the envisaged integration of any NSA platform in the OSS platform as reflected under point 7 of section 3.1.2 on the scope of the OSS project, reminded that this possibility, which was not been provided for under the relevant EU legal framework, had also been debated –although not agreed upon– during the relevant discussions which had taken place within the Council on the relevant matter and expressed the hope that this initiative would facilitate the establishment and further development of a good collaborative space between the Agency and the NSAs.

The Executive Director, following the point made by Belgium, announced that the issue of the technology to be used for the development of the OSS tool had already been put on the table and that the conclusion had been drawn that it would be recommendable to follow on the matter an approach based on the so-called “service-oriented architecture” (SOA) which would allow for the smooth integration of the different IT systems of the NSAs into the OSS IT tool and stressed that this was a case where the intentions reflected in the vision document had already materialised into a concrete technology-related decision.

Denmark welcomed the vision document and the significant work carried out on the matter but went on to recommend a change in the approach already adopted by the Agency in dealing with the relevant issues.

More specifically, Denmark made reference to the legal basis for the development of the OSS tool under the Agency Regulation and asserted that the purpose of the development of the OSS tool as such was quite clearly reflected therein. It was explained that, according to Article 12§1 point (d) of the Agency Regulation,

the OSS should include, among others, an early-warning system able to identify at an early stage the needs for coordination between decisions to be taken by NSAs and the Agency in the case of different applications requesting similar VAs or SSCs.

Although Denmark appreciated the initiative which had been previously announced by the Executive Director on the need for some additional meetings to be held prior to the adoption of the technical and functional specifications of the OSS by the MB, it pointed out that, with reference to the discussions which had been held within the Council on the relevant issues, the ultimate purpose of the OSS tool should be to avoid, as much as possible, any unnecessary duplication of work between the NSAs and the Agency and to ensure that an optimal form of communication would be place in those cases where the Agency would be issuing SSCs.

Denmark suggested that, in line with the above-mentioned provision of the Agency Regulation, it should be clearly reflected in the Agency's proposal on the functional and technical specifications of the OSS that any documents exchanged for purely communication purposes, such as correspondence, between the applicants and the NSAs concerning the applications would not have to be filed in the OSS system and expressed its concern about the potential administrative burdens which would be placed upon the NSAs as a result of additional filing requirements and warned that such practice could also entail more costs for the applicants.

Denmark summarised that the Agency should make sure that the relevant document to be put forward for adoption by the MB during the MB meeting in September 2017 would not exceed the mandate provided by the Agency Regulation and would not impose additional administrative duties to be fulfilled by the NSAs and recommended that the additional meetings which the Agency intended to hold with the stakeholders on the relevant issues could serve as a tool to be used by the Agency for identifying and avoiding such risks in due time.

The Executive Director disagreed with the opinion expressed by Denmark and, in support of his view, made reference to Article 12 § 1 point (a) of the Agency Regulation which clearly stipulated that the OSS tool was foreseen to be developed, among others, as a single entry point through which the applicant should submit its application files for type authorization, vehicle authorisations for placing on the market and SSCs and that, where the area of use or operation was limited to a network or networks within one Member State only, this single entry point should be developed so as to ensure that the applicant could select the authority it wished to process the application for issuing authorisations or SSCs for the whole procedure.

He inferred from the aforementioned provision of the Agency Regulation that, contrary to the interpretation given by Denmark solely on the basis of point (d) of Article 12§1 thereof, the OSS tool was intended to serve, among others, as a single entry point at both national and international level.

The 4th RP Preparation Programme Manager intervened to point out that, during the relevant discussions which had been held within the OSS User Group, the issue of the type and of the level of detail of the information to be registered in the OSS tool was among the debated ones. However, he admitted that the issue of whether the exchange of information between the applicant, the NSAs and the Agency would also need to be recorded in the system had not yet been discussed, mentioned, for instance, that the exchange of views taking place between the NSA and an applicant for the purpose of providing further clarifications on the content of the application file would not have to be recorded as such in the OSS tool and noted that it was incumbent on the assessor of the NSA to decide on the level of information which was necessary to be recorded in the tool and which would serve as a basis for his final decision on the application.

He also assured the Board members that the use of the OSS tool did not intend to put a ban on any other form of exchange of information than the one required for purely OSS-related purposes and proposed to hold a bilateral meeting with stakeholders from Denmark for further discussing the relevant issues in case the latter insisted that the explanations which had just been provided by him were not convincing and did not alleviate its concerns.

The Commission agreed with the point made by Belgium on the need to include in the description of the project scope a clear reference to the legal basis, advised the Agency to undertake a thorough analysis of the

OSS-related issues against the texts of both the Agency Regulation and of the Interoperability and Safety Directives in order to make sure that all the legal requirements contained in the legislative package had been duly taken into account and properly reflected in the development of the OSS tool and to produce a correspondence table with a view to achieving traceability between the business requirements and the legal requirements of the OSS tool.

On the concern raised by Denmark and the clarifications provided by the Agency in response thereto, the Commission expressed the view that, while the desire of the Member States not to be overburdened by bureaucracy and to use IT tools compatible with their own internal IT systems was quite reasonable and understandable, particularly as regards the applications which concerned more than one Member States, the OSS tool could effectively serve as a document management system which would allow all the actors involved in the relevant processes to keep full track of the progress in the exchange of relevant information and to ensure that no data would be lost and that the information would be easily retrievable at any point in time.

Moreover, the Commission went on to make a point regarding on the list of the components, in the vision document, which had been excluded from the scope of the OSS project and, although it recognised the need for keeping the function of the OSS tool as simple as possible for the purpose of having the relevant system in place on time, it considered that several elements which had been included in the list and, in particular, the first item on “the creation of, or any integration with, the European Vehicle Register (EVR), as introduced by Article 35 of the Agency Regulation and Articles 46-47 of the Interoperability Directive”, were among those clearly identified within other working groups as really important issues, invited the Agency to reflect further upon the relevant matter with a view to figuring out as quickly as possible whether some of those items could be incorporated in the OSS project either from the outset or as early as possible thereafter and warned that any potential risks related to duplication of systems or manual transfer between such systems should be limited as much as possible.

Furthermore, as regards the section of the vision document on “stakeholder requests (STRQ)” and following the request of the Agency to receive relevant feedback from the MB members, the Commission found that the information contained in that section, although clearly expressed, was not easy to understand and wondered whether the Agency could accompany the relevant texts with flowcharts or any other visual means of representation of the information included in the table so as to enable the reader, and in particular the NSA and Sector representatives who would be dealing with the relevant processes on a regular basis, to follow and process without difficulty the information and to provide the Agency with the requested feedback.

Finally, the Commission found that the information contained in the table under section 3.9 of the vision document was concise and clearly expressed and highlighted that OSS-related risks could be an area which should closely monitored by either the EB or the MB during the coming two years.

The Netherlands expressed the view that the Agency had done a great work in developing the OSS system and requested further clarifications on the extent to which the OSS tool intended to cover also the pre-engagement phase and the exact the point in time at which the relevant processes were expected to be launched, taking into account that a heavy use of resources was envisaged to be made during that phase, and assumed that the OSS tool should most probably be functional already at that point.

The IT Officer of the Agency guaranteed that the pre-engagement phase had been included in the OSS project as well and clarified that the process which the OSS tool intended to support started with the submission of the application and ended with the issuing of the final decision and that an application could also be submitted during the pre-engagement phase at the applicant’s own initiative and on a purely voluntary basis.

In view of the planned adoption of the technical and functional specifications of the OSS during the coming MB meeting in September 2017, the Chair wondered whether it was the vision document which would be put forward for adoption by the MB at that stage or some other document to be made available in due time.

The 4th RP Preparation Programme Manager clarified that, from the Agency’s perspective, the combined use of the vision document with the HTML mock-ups of the OSS tool which were intended to provide a visual

representation of the actual functions of the system reflected a sufficient level of information to be given to the MB members in anticipation of the adoption of a decision by them on the OSS functional and technical specifications, pointed out that no comments had been submitted thus far by the MB members even though the latter had been given the opportunity to do so until the end of May 2017 and requested the MB members to send their comments and/or remarks, if any, to the Agency.

Belgium proposed that the Board members should, already at that stage, be provided with a table for comments and a clearly specified deadline within which they should submit their comments and/or remarks.

The 4th RP Preparation Programme Manager agreed with the suggestion made by Belgium, guaranteed that a comment sheet would be circulated as soon as possible to the MB members and indicated that July 31st 2017 would be the deadline for the submission of comments by the MB members.

15. Single Programming Document (SPD) 2018 draft follow-up – SPD process 2019

The Board members were provided with a brief overview of the progress made on the SPD 2018 and the next steps to be taken in relation to the SPD 2019 process.

The Strategy and Business Planning Officer of the Agency reminded that, following the 5th MB Workshop on SPD 2018 which had been held on January 30th 2017, the version 2.1 of the draft SPD 2018 had been endorsed by the MB during its 41st meeting and forwarded to the EU institutions referred to in Article 52 § 1 of the Agency Regulation by January 31st 2017 and noted that this was the draft version on the basis of which the Commission was expected to deliver its official opinion until July 1st 2017.

It was announced that a draft 3 of SPD 2018, which would be in line with the comments submitted by the Commission as well as the remainder of the outstanding comments which had been made during the above-mentioned consultation workshop and had not yet been taken on board by the Agency, would be made available to the MB members in October 2017 and that a final draft of the SPD 2018 would be put forward for adoption during the MB meeting of November 2017.

The Board members were informed that, in the meantime, the Agency had already started reflecting and working upon the SPD 2019 and were presented with a possible timetable for the preparation of SPD 2019.

It was explained that, according to the planning which had been made by the Agency on the relevant issues, the latter intended to provide the MB members with a first draft version of the SPD 2019 already in October 2017 in view of the 44th MB meeting which had been scheduled to take place in November 2017 and that it had been considered appropriate to hold the MB workshop on SPD 2019 the day after the 44th MB meeting, i.e. on November 30th 2017.

It was also recalled that each year the consultation process was being placed earlier than the previous one, and it was acknowledged that the option of scheduling the relevant MB consultation workshop in November 2017 would give the Agency more time for preparing a stable draft SPD 2019 to be produced and sent to the EU institutions referred to in Article 52 § 1 first indent of the Agency Regulation within the deadline set, i.e. by January 31st 2018 at the latest.

It was further announced that draft 2 of the SPD 2019 would be adjusted in line with any comments to be made during the MB consultation workshop of November 2017 and could be endorsed by the MB during its 45th meeting in January 2018 and sent to the aforementioned EU institutions by the end of that month.

It was also reported that, upon receipt of the official opinion of the Commission on draft 2 of the SPD 2019 by July 1st 2018 at the latest and after taking into consideration any other comments already available at that stage, a new version of SPD 2019 would be further circulated to the Board members prior to their meeting in September 2018 and it was guaranteed that, in any case, a final draft would be made available to them in advance and put forward for adoption as draft 3 or draft 4 of the SPD 2019 –depending on whether a previous version of draft SPD 2019 would already have been produced and sent out for discussion during the 47th MB meeting of September 2018– during the 48th MB meeting of November 2018.

The Chair reminded the Board members of the one-day time limit within which draft 2.1 of the SPD 2018 had to be adopted in the immediate aftermath of the MB consultation workshop and considered that, account being taken of the text of the Agency Regulation which had to be complied with and the time line according to which the relevant work should be delivered, the option of re-scheduling the MB consultation workshop in November 2017 was a workable solution and that more efforts should be put into ensuring that an in-depth discussion on draft SPD 2019 would be held during the 44th MB meeting of November 2017 so that the Agency would be in a position to produce, by the deadline set, a stable draft which would serve as a solid basis not only of the official opinion to be delivered by the Commission but also of the crucial decisions to be taken by the latter on financial and budgetary matters.

Given the fact that the MB consultation workshop on draft SPD 2019 had been scheduled to take place in November 2017, Belgium recommended that the MB members should be given, already at that stage, the opportunity to reflect on the idea of getting involved in the SPD 2019 process as sponsors and to express formally their interest during the coming MB meeting of September 2017.

The Chair agreed with the suggestion made by Belgium and invited MB members to consider the option of becoming sponsors by contributing to the preparation of the draft SPD 2019 and to announce their interest during the upcoming MB meeting of September 2017.

The Commission wondered whether the timetable for the SPD 2019 process which had just been presented by the Agency was already aligned or needed to be aligned with the new calendar of the EB and MB meetings as reflected in the paper on the role of the EB and formally agreed upon between the MB members.

The Chair admitted that he had not considered the issue up until that point and guaranteed that, in any case, there was no conflict between the timetable proposed for the SPD 2019 and the arrangements made regarding the EB and MB meetings dates to worry about.

It was agreed that the proposed calendar of the EB meetings to be held during the year 2018 would be streamlined in accordance with the above-mentioned timetable for the preparation of the draft SPD 2019 and that the dates of the MB meetings scheduled during 2018, and in particular of those during which the MB members would be called to exercise their decision-making powers in relation to draft SPD 2019, would be given due consideration in the planning of the EB meeting dates for the year 2018 as well.

16. Seat agreement – State of play

The Board members were given a brief overview of the current state of play regarding the seat agreement.

More specifically, it was reported that, although during a meeting which had been held on May 30th 2017 with the representative of the French Ministry of Foreign Affairs in Lille the Agency had been assured that a first draft of the seat agreement would be sent by the French authorities prior to the MB meeting of June 2017, no such draft had been made available to the Agency up until that point.

France confirmed the statement made by the Executive Director, added that the French authorities were already working on a draft seat agreement to be signed with the Agency and that, given the fact that several ministries had been involved in the relevant process and in spite of the intention of the French authorities to come up with a concrete proposal prior to that meeting, it was not possible to produce such a draft on time.

France announced that a draft seat agreement was envisaged to be made available and further discussed upon with the Agency during the coming days and hoped that a draft headquarters agreement for the MB to give its approval upon would be made available to its members well in advance of their next meeting in September 2017.

The Executive Director admitted that he intended to send an official letter to the French Ministry of Foreign Affairs as a kind reminder of the expiration of the deadline which had been provided for under Article 71§1 first indent of the Agency Regulation in June 2017 and that he viewed the commitment expressed by the French authorities as proof of their sincere intention to conclude a seat agreement with the Agency.

He also considered that, taking into account the initial deadline set by the Agency Regulation for the conclusion of the seat agreement between the Agency and France, i.e. June 16th 2017, the approval of the Agency's seat agreement by the MB in September 2017 fell within a reasonable period of delay and invited the Board members to give a positive vote on the seat agreement which would be put forward for their approval during the coming MB meeting of September 2017.

The Chair felt that the French authorities should be afforded some additional time and assumed that the MB members would be hopefully provided with a first draft of the seat agreement to be agreed upon by them during their meeting in September 2017.

Railway Undertakings (RU), taking into consideration that a greater number of experts would be invited to participate in the Agency's meetings in the forthcoming period, expressed the hope that, despite the reasonable expectations for improvement of the bus connections between Brussels and Valenciennes, Lille would be maintained as the main seat of the Agency as regards its meetings since it was a much more easily accessible venue compared to Valenciennes and requested that the Agency provides some assurance to the MB members that Lille would still be kept as the main venue for the future meetings to be held by the Agency.

The Executive Director explained that, although during the meeting which had taken place with the representatives from the European Court of Auditors in Valenciennes the Agency had insisted that the option of maintaining the offices of the Agency in Valenciennes and holding the meetings in Lille was the most appropriate one in terms of cost-efficiency, the arguments which had been put forward by the Agency were not sufficiently convincing as evidenced by the negative remark which had been included in that regard in the discharge report and he emphasised that the Agency should maintain both seats and that the meetings of the Agency should continue to take place in Lille.

It was also mentioned that, with the agreement of the Chamber of Commerce and Industry (CCI) of the Region Hauts-de-France, the new logo and flag of the Agency would be put on the building at its premises in Lille and that, in the meantime, the focus of the efforts had been shifted to the possible improvement of the transport connections to and from Valenciennes and it was announced that, as of September 2017, there would be a bus connection between Valenciennes and Quiévrain train station, the mid-term goal being to manage the establishment of a direct railway connection between Brussels and Valenciennes for the purpose of making Valenciennes directly accessible from the Brussels airport in slightly more than one hour.

17. Follow-up on the SERA Regional Conferences

The Board members were provided with a brief follow-up on the SERA Regional Conferences and presented two videos on the highlights of the SERA Regional Conferences.

The Executive Director announced that around 4.000 participants had attended the five (5) SERA Regional Conferences and that, out of 300 registrations which had been made in total for the SERA Convention Conference, the attendees who had finally participated in the final event were not less than 200.

It was stated that, throughout all the SERA Regional Conferences, the feedback had been received that this was a unique opportunity for the Agency to come out and get in touch with the Member States and to be made aware of their concerns and it was pointed out that, during the presentation in the SERA Convention Conference of the Agency's response plans to future challenges, the stakeholders seemed very pleased that the Agency had taken on board most of their comments and remarks.

It was also noted that the participants in the SERA Regional Conferences had also recommended that other EU institutions, and in particular the Commission, should follow that practice, place more emphasis on getting the stakeholders involved in the relevant policy discussions on their own initiative and be ready to share their contributions with the stakeholders in the Member States.

The Executive Director wished to thank not only the Head of Corporate Management and Evaluation Unit and the entire communication team of the Agency for the great efforts that they had put into the organisation of the SERA Regional Conferences but also the co-hosts in the different Member States for providing the

Agency with valuable guidance on the appropriate venues to be chosen for the conferences and for the social events scheduled thereafter.

It was also stated that, in view of the successful organisation of the events, the Agency had been strongly requested to repeat the exercise and that similar events would be organised not earlier than the beginning of 2019 which represented the perfect timing for the Agency to go out to the public since the new processes under the 4th RP would be launched immediately thereafter.

It was also acknowledged that one of the greatest experiences gained from the SERA Regional Conferences was the teambuilding which had been achieved through the discussions between the Agency and the NSAs as well as between the NSAs of the various Member States themselves and it was considered that this was one of the key elements of the success of the SERA Regional Conferences which helped get the message that team work and joint effort were prerequisites to the successful implementation of the 4th RP across.

The representative of Austria thanked the Agency and, as a participant in the SERA Conference Central, which had taken place on June 7th 2017 in Berlin, wished to congratulate the Agency for the organisation of those events and admitted that it was the first time that he attended an event where all the different stakeholders and actors involved were present.

Austria expressed its satisfaction, in particular, with the possibility offered to the participants to choose themselves the topics to be discussed during the conference and that, even though the issues proposed by Austria were not finally chosen, they were still somewhat covered by the discussions held during the conference. It praised the quality of the discussions held on many of the recurrent issues of great significance and it was recommended that, account being taken of the overall positive impression from the organisation of the conferences by the Agency, the latter should definitely consider to re-organise such events in the near future and, in any case, before 2020.

The representative of IM found that the conferences were great, mentioned that she did not have the opportunity to attend all the events and that the IM representatives who had also attended some of the conferences were quite pleased to have participated in those events.

The Agency was also advised to repeat the whole exercise in early 2019 and it was suggested that its future efforts should focus more on improving the voting tools to be used by the participants during the conferences and that it should seriously consider the idea of providing the participants with virtual representations – mainly in the form of mock-ups– of the different tools, including, among others, of the OSS tool.

The Chair stated that he appreciated the great efforts put by the Agency into the organisation of the SERA Regional Conferences, thanked also the Head of Corporate Management and Evaluation Unit and the whole communication team for their valuable contributions and the impressive work delivered during a rather intensive and fairly short process, announced that he had also received really positive feedback from some representatives from the Swedish Sector who had participated in the SERA Regional Conference Baltic Nordic held in Helsinki on May 10th 2017 and found that it was up to the Agency to decide whether it would finally include in its draft SPD 2019 the planning and organisation of similar events in the future as well.

The Executive Director highlighted the value of dissemination as one of the key lessons to be learnt from the whole exercise in particular as regards the Sector and the stakeholders who were particularly willing to take up the information presented to them and stressed that the benefits gained from such interaction were bidirectional.

RU found that the whole experience drawn from the SERA Regional Conferences was really useful and placed a lot of emphasis on the fact that such conferences had taken place throughout the several EU regions and that the target audience of each of them consisted mainly of participants coming from the same region and sharing essentially the same interests, whereas the SERA Convention Conference had been held mainly for the purpose of giving the opportunity to those who were not able to attend the SERA Regional Conferences to be provided with consolidated overview of the previous discussions as well as with a wrap-up of the views expressed during such discussions and invited the Agency to organise similar events in the foreseeable future.

18. Budget execution 2017 and transfers of appropriations, budget 2018, follow-up discharge, audits, Implementing Rules (IR) to the Staff Regulations (SR)

The Chair announced that all information points on finance, staff and audits would not be discussed and invited any Board members who wished to be provided with more clarifications or explanations or to raise a specific question or to make a comment or remark in relation thereto to do so during the second session of the meeting.

As regards the follow-up on discharge and audits, the Executive Director informed the Board members that, as already announced during the 5th EB meeting, at least for the time being, the Agency did not have any open IAS audit recommendation.

The Executive Director reminded that, although the IAS audit report was initially expected to be submitted to the Agency by the end of May 2017, the Agency had not received thus far any such report. He assumed that the IAS audit report would certainly contain a number of recommendations on actions for improvement about which the Board members would be duly informed upon receipt of the report.

It was stated that the lack of a clear Agency strategy as well as the absence of a direct link between such strategy and the individual objectives of its staff members was one of the issues for which the Agency had been strongly criticized by the IAS contrary to the report which had been produced at the end of the ISO audit and had identified and included undoubtedly among the strengths of the Agency the adoption of a clear strategy, and in particular, of a clear breakdown of such strategy into the individual objectives of the Agency's staff members and it was suggested that the ISO audit report should be further shared with IAS as a response to the comments contained in its audit report.

Concerning the budget 2018, the Commission noted that, whereas the establishment plan 2018, as adopted by the MB and agreed upon by the Commission, included forty-two or forty (40) Contract Agents (CAs), the Agency had proposed the recruitment of only thirty-eight (38) of them, expressed its concern given that those extra resources had been asked for unallocated and pointed out that, were it for the Agency eventually not to make use of such resources, it would be more difficult for the Commission to provide to DG BUDGET a solid justification for similar requests next time.

Although it totally understood that the Agency was in a difficult position in the sense that fewer resources were envisaged to be used in the following year, it warned that, owing to the particularities of the case as regards the recruitment issues referred to previously during the discussions, the Agency would have to act with greater caution when deciding not to make use of extra resources already approved and granted even for a short period of time and indicated that staff members recruited for the purpose of covering short-term needs often manage to hold their posts for a longer period under a different contractual regime though.

The Head of Resources and Support Unit a.i., in response to the concern raised by the Commission, replied that, in any case, the Agency aimed at reaching the target of thirty-eight (38) CAs, assured the Board members that this target would be achieved, mentioned that, from a purely practical point of view, it was not plausible for the Agency to propose one-year contracts and then have the staff members which would have been recruited on the basis of such short-term contracts dismissed under the reasonable assumption that most of the candidates who would be offered such contracts would not, in all probability, be willing to sign them.

Moreover, following the previous discussions on the potential impact of the absence of a formal decision on the Agency's internal language regime, the Head of Resources and Support Unit a.i. gave some explanations on the budget execution 2017 and transfers of appropriations.

It was noted, in particular, that a transfer of appropriations had been made to the sundry recruitment budget line on the grounds that the Agency had launched one call for applications which required additional budget for covering translation costs and that, consequently, it had fallen short of the appropriation which was required for covering the costs related to the assessment of candidates and it was announced that, in the absence of a formally adopted MB decision on the internal language arrangements of the Agency, a further

transfer of appropriations was envisaged to be made and planned to be reported to the MB members during their coming meeting in September 2017.

On the issue of recruitment for covering short-term needs, Belgium highlighted that the relevant matters had been debated both within the EB and the MB, declared that it fully agreed with the Agency that it did not make any sense to proceed to a recruitment on the basis of a one-year contract and identified the need for the Agency to further reflect and hold bilateral discussions with the Commission on such issues.

However, Belgium suggested that, were it for the short-term recruitment solution to weaken significantly the Agency's position in ensuring the resources which would be necessary for its effective functioning and make more difficult the negotiations with and the final agreement of DG BUDGET on the requested resources, the Agency should maybe seriously proceed with caution when refusing such short-term offers of additional human resources.

19. AOB

The Board members were informed that the Agency had successfully passed the ISO audit in May 2017, that no non-conformities had been found as a result thereof and that only one recommendation for further improvement had been made.

It was announced that the Agency had been awarded the ISO 9001:2015 certificate on June 23rd 2017.

Both the representative of the Commission, Mr. Matthew Baldwin, on behalf of all the members of the Commission, and the Executive Director, on behalf of the Agency and the MB, thanked warmly the outgoing Chair for his invaluable contributions and for his passionate dedication to the Agency's work during all those years and wished him every success in his future endeavours.

20. Meeting dates

The next –43rd– MB meeting will take place on September 26th 2017 in Lille, whereas the 44th MB meeting would be held on November 29th 2017 and the consultation workshop on SPD 2019 has been scheduled to take place the day after the MB meeting, i.e. on November 30th 2017, in Valenciennes.