EUROPEAN UNION AGENCY FOR RAILWAYS

Making the railway system work better for society.

Minutes of 40th Meeting

Management Board

Lille / 29 November 2016

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.

The Chair welcomed the Deputy Director-General (Coordination of Directorates C, D & E) of Directorate-General for Mobility and Transport (DG MOVE), Mr. Matthew Baldwin and the new representative of the UK, Mr. Jeremy Hotchkiss and thanked warmly the previous representative of the UK, Mr. Robin Groth, who would be replaced by Mr. Jeremy Hotchkiss from then onwards, for his invaluable four-year contribution to the work of the Management Board (Administrative Board) and the Executive Board (Sub-Committee) of the Agency.

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 Liegeois	Belgium	Present
Alt: Ms. Valérie Verzele		Excused
Mr. Veselin Vasilev	Bulgaria	Excused
Alt: Ms. Giulietta Marinova-Popova (Adviser – Chief Expert at RAEA)		Excused
Ms. Lyuba Angelova (translator)		Excused
Appointment pending	Croatia	Excused
Alt: Ms. Ljiljana Bosak		Excused
Ms. Chrystalla Mallouppa	Cyprus	Excused
Alt: Ms. Elpida Epaminonda		Excused
Mr. Jindřich Kušnír	Czech Republic	Excused
Alt: Mr. Luboš Knizek		Present
Mr. Jesper Rasmussen	Denmark	Excused
Alt: Mr. Hans Christian Wolter		Present
Mr. Indrek Laineveer	Estonia	Present
Alt: Mr. Raigo Uukkivi		Excused
Mr. Yrjö Mäkelä	Finland	Present
Alt: Ms. Elina Thorstrom		Excused

Mr. Hubert Blanc	France	Present
Alt: Ms. Anne-Emmanuelle Ouvrard		Excused
Mr. Wolfram Neuhöfer	Germany	Excused
Alt: Mr. Michael Schmitz		Present
Mr. Triantafyllos Papatriantafyllou	Greece	Present
Alt: Mr. Grigoris Sampatakakis		Excused
Mr Gábor Rácz	Hungary	Excused
Alt: Ms. Helga Nemeth		Present
Ms. Mary Molloy	Ireland	Excused
Alt: Ms. Caitriona Keenahan		Present
Mr. Antonio Parente	Italy	Excused
Alt: Mr Giorgio Morandi		Present
Mr. Māris Riekstiņš	Latvia	Excused
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. Paulo de Andrade	Portugal	Excused
Alt: Ms. Ana Miranda		Excused
Mr. Dragos Floroiu	Romania	Present
Alt: Ms. Ana Maria Dascalu		Excused
Mr. Mikuláš Sedlák	Slovakia	Excused
Alt: Mr. Miroslav Dorčák		Present
Mr. Boris Živec	Slovenia	Excused
Alt: Mr. Benjamin Steinbacher Pušnjak		Excused
Mr. Jorge Ballesteros Sánchez	Spain	Excused
Alt: Mr. Eduardo Santiago González		Present
Mr. Mats Andersson **CHAIRPERSON**	Sweden	Present
Alt: Mr. Carl Silfverswärd		Present
Mr. Robin Groth	United Kingdom	Present
Mr. Jeremy Hotchkiss		Present
Alt: Mr. Ian Jones		Excused
EUROPEAN ECONOMIC AREA STATES (EEA) (no voting rights)		
Mr. Øystein RAVIK	Norway	Present
Alt: Mr. Erik Ø. REIERSØL-JOHNSEN		Excused
ETFA Surveillance Authority	**Observer**	
Mr. Gaspar Ebrecht	ESA	Excused
EUROPEAN COMMISSION (voting rights: 2 votes in total)		
Mr. Henrik Hololei		Excused
Alt: Mr. Keir Fitch		Present

Ms. Agnieszka Kázmierczak		Present
Alt.: Ms. Paloma Aba Garrote		Excused
Mr. Matthew Baldwin		Present
SECTOR REPRESENTATIVES (no voting rights)		
Mr. Libor Lochman	Railway undertakings	Excused
Alt: Mr. Markus Vaerst		Present
Ms. Monika Heiming	Infrastructure managers	Present
Alt: Mr. Andreas Matthä		Excused
Mr. Maurizio Gentile (advisor)		Present
Mr. Philippe Citroën	Railway industry	Present
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

SUMMARY OF DECISIONS

The Management Board:

1) adopted the minutes of the 39th MB meeting held on June 23rd 2016
2) appointed the Deputy Chairperson (and alternate member) of the Executive Board, Ms. Clio Liegeois, member of the Executive Board in the place of the representative of the UK, Mr. Robin Groth who ceased to be member of the Management Board and of the Executive Board
3) adopted the Single Programming Document (SPD) 2017
4) adopted the budget and establishment plan 2017
5) adopted an amendment to the "Arrangements to be applied by the Agency for Public Access to Documents" adopted on 28 October 2004 and updated on 17 November 2009
6) agreed to adopt the amendment to the "Policy for Visits to Member States" by written procedure
7) adopted the procedures for the adoption of the Single Programming Document (SPD) and Annual Activity Report (AAR)
8) agreed to meet again on January 31st 2017

   Votes: All the above-mentioned decisions were taken unanimously.
   Voting members present or represented by proxy: 24

9) Decision on linguistic arrangements to be applied at the Agency: Due to lack of unanimity among its members, the Management Board did not reach a decision on the linguistic arrangements (voting rule: absolute majority unless unanimity is requested by one MB member).
   Proposal made by the Agency – votes casted: in favour 23, against 1, abstention none (unanimity requested by France)
   Proposal made by France – votes casted: in favour 16, against 8, abstention none (unanimity requested by Austria, Belgium, Finland, Italy, Netherlands, Romania, Spain, Sweden)

MINUTES

1. Adoption of the Agenda

The agenda was adopted.

2. Adoption of the minutes of the 39th Management Board (MB) meeting

The minutes of the 39th MB meeting were adopted.

3. Appointment of members of the Executive Board (EB)

The Chair informed the MB members about the appointment of the EB alternate member, Ms. Clio Liegeois (Belgium), as a Deputy Chairperson of the EB on November 10th 2016.

He explained that the representative of the UK, Mr. Robin Groth would step down as member of both the MB and the EB and that, consequently, one seat of Member States representatives on the EB would remain vacant.

It was further announced that the only candidacy put forward was that of the Deputy Chairperson –and alternate member– of the EB, Ms. Clio Liegeois and, in the absence of a request for secret ballot by at least one-third of the members present, proposed that the vote be taken by show of hands.

Ms. Clio Liegeois was appointed unanimously full member of the Executive Board.

The Chair congratulated the newly appointed member on her election. Furthermore, he reminded that, due to the appointment of Ms. Clio Liegeois as a member of the EB, a seat of an alternate had thus fallen vacant and announced that the intention was to hold an appointment procedure for all vacant seats in the EB during the MB meeting in January 2017.

4. Language policy

The Executive Director highlighted that the Agency was mainly driven by three motives when preparing its proposal on a language policy.

It was explained that the first motive was linked to the mission of the Agency itself which was to make the railway system work better for society, i.e. to ensure a railway system that would be both safe and affordable and it was pointed out that the cost reduction would also help enhance the safety of the railway system since in that way more people would be deterred from using other modes of transport.

The Executive Director said that the second objective to be found behind the Agency's proposal was related to the efficiency of the Agency and, in particular, the potential costs that would have to be borne by the Agency and to which the Member States, Norway, Iceland and Liechtenstein would have to contribute as well.

It was stressed that, in drafting its current proposal, the Agency intended to achieve a fair and equitable treatment of all Member States, including both "large" [sic] ones and "smaller" [sic] ones, as well as an equal treatment of all applicants.

The 4th Railway Package (RP) Preparation Programme Manager reminded to the Board members that the Agency had already sent out the latest version of its proposal updated on the basis of the discussions held both within the June 2016 MB meeting and the September and November 2016 EB meetings, as well as any comments received thereafter.

The Board members were presented the structure of the amended proposal. More specifically, it was pointed out that all the main rules on the linguistic arrangement were to be found in a single provision, that of Article 1, which stipulated that:

"a) For cost reduction, efficiency and clarity reasons, English will be the reference working language to be used in relation to all technical matters as well as for meetings of the Agency.

b) Due to the Agency's location in France, French to be an alternative reference working language for administrative purposes like procurements to local providers and contacts with local authorities.

c) The Agency shall respect the right of any EU citizen to address any EU institution/body using his/her own language".

It was added that the following provision, Article 2, gave a brief explanation of the consequences of the rules implementing Regulation 1/1958 contained in the Agency's proposal, providing that all meetings, including the meetings of the MB and EB and the NSA, NIB and NRB plenaries, organised by the Agency would be in English or in the two reference working languages except if other common working language(s) could be agreed between all involved participants to the meeting and that, depending on the subjects to be discussed, the Agency would have to specify the language(s) which would be used during the meeting in the draft agenda.

In addition, it was envisaged that a glossary providing the correspondence between technical terms in all EU languages would be developed by the Agency to ensure that the very specific railway terms used during meetings and in the Agency documents could be understood.

Furthermore, the proposal stipulated that the Agency would strive to maintain, as much as possible, a geographical balance, which should be taken into account in the recruitment of staff, with the objective to ensure, for each official language of the EU, that there would be at least one staff member representing the

respective language regime and that, when required, some technical documents published by the Agency would have to be translated in other EU official languages or made available on its website in all EU official languages.

It was also explained that the provisions of the proposal neither limited in any way whatsoever the applicants' right to submit to the Agency applications or supporting documents in any of the EU official languages nor imposed on the latter any requirement to have the said documents translated into the reference working languages.

The Member States authorities would also maintain the right to send to the Agency documents in their respective national languages without translation requirements; specificities such as e.g. the need for Railway Undertakings (RU) to have their Safety Management System (SMS) in their operational languages would have to be detailed in appropriate acts which would serve as a complement of the decision to be adopted by the MB.

Finally, the "revision clause" inserted in Article 4 would give to the Agency the possibility to report to the MB on the application of the decision on language rules no later than five years after its adoption and the MB could agree to adopt, if necessary, amendments.

As regards the justification paper, which had been sent along with the proposal to the MB members, it was clarified that, during the MB meeting in June 2016, some Member States representatives had requested the Agency to provide more explanations on the language arrangements proposed. The aim of the paper, which had already been circulated to the Board members, was to give a detailed overview of impact assessments conclusions performed by the Agency, inferences drawn from discussions held during workshops with stakeholders, i.e. the Sector and the NSAs, as well as some qualitative explanations on the different points of the proposal and some figures for the costs related to translations and interpretations.

The 4th RP Programme Manager gave some examples of the time needed for the translation of new documents and the related costs, in case a linguistic regime was not adopted by the Board. It was explained that the Agency would have to spend 82 € per page per language for a "standard translation request" and 102, 5 € per page per language for an "urgent translation request" and that the average waiting time for the translation of a "standard" document was 10 working days.

Consequently, 8.200 € and 33 working days would have to be spent in order for a document of 100 pages, e.g. an application for SMS Vehicle Authorisation (VA), to be translated during the pre-engagement phase, whereas the average cost and time for translating the same document for formal assessment purposes would be 10.200 € and 20 working days respectively, which in practice meant that approximately 25% of the time within which the Agency would be legally required to deliver its work during the formal assessment phase, i.e. 4 months in total, would just be spent on having the document(s) translated, let alone the time for reviewing and re-discussing the translation with the Commission's translation services mainly due to the extremely technical nature of the documents to be translated.

As far as the costs for interpretation were concerned, it was noted that the costs for having interpretation to one language amounted to nearly 1.200 € on a daily basis and that if the Agency intended to use interpreting services for all six NSAs plenary meetings of two-days duration and three MB meetings of one-day duration per year, the annual direct costs for the Agency would be more or less 35.000 €, without taking into account any indirect costs incurred solely for the purpose of organising the procurement and the service itself as well as practical constraints inevitably linked to the organisation of such meetings e.g. availability of meeting rooms with interpretation booths.

Moreover, the 4th RP Preparation Programme Manager informed the MB members that the Agency had received comments on its proposal from Finland, Germany, Italy, Spain and the Group of Representative Bodies (GRB). On overview of the replies to those comments was given in detail.

The Commission presented the views of its Legal Service which had just delivered an opinion on the language rules that the Agency proposed. The Board members were reminded that the EU legislator explicitly required,

by virtue of Article 74(1) of the new Agency Regulation, that the adoption of a language policy for the Agency had to be done by the MB and emphasised that, in dealing with the related issues, the MB performed the role with which it had been entrusted by the EU legislator.

Secondly, the Commission acknowledged the highly political nature of the issues discussed, but agreed with the point made by the Executive Director regarding the need to enhance efficiency and added that the Agency had been, after all, given the mandate to do so under the 4th RP.

The Commission considered that the Agency had the power, if the MB agreed to decide in that sense, to adopt a language policy with English as reference working language which would further provide for the use of French as a reference working language specifically for administrative purposes.

On the issue of the possibility to include provisions related to linguistic arrangements in an implementing act, it was confirmed by the Legal Service of the Commission that both the Railway Safety Directive[1] and the Interoperability Directive[2] provided a solid legal basis for introducing such provisions in the implementing acts for Single Safety Certificates and Vehicle Authorisations.

It was concluded that the Agency could proceed to implement the choices which it had already made with regard to the language issues, since those choices were indeed legally sound and it was suggested that efforts should be made in order to reach a commonly agreed solution among the members of the MB.

Denmark welcomed the great efforts that the Agency had put on drafting the current proposal and went on to make some further comments recognising the politically sensitive character of the matter at issue.

The first comment concerned the provision of Article 2(b) of the draft MB decision; Denmark proposed to introduce in the relevant text the possibility not only to develop, but also to update the glossary referred to therein, but considered that the relevant wording, as it stood at that time, seemed to serve the above-mentioned purpose as well.

Moreover, Denmark challenged the necessity of the provision of Article 2(c), although it was eventually admitted that a draft MB decision could cover such issues as staff recruitment.

Thirdly, Denmark suggested that a definition of the terms “reference” and “operational” working language(s) should be included in the opening of Article 1, but added that this was just a proposal and could not be imposed as a requirement in order for the proposal to be accepted by it.

Finally, it was recommended that the Agency should reformulate the wording of Article 3 fourth indent, so that the latter would, from then onwards, read as follows: “Specificities like e.g. the need for Railway Undertakings to have their Safety Management System in their operational languages accepted by the Member States will need to be detailed in appropriate acts to complement this decision”. It was highlighted, in that respect, that the prior approval of the Member States would be necessary were it for the very purpose of the relevant provision not to be impaired.

The representative of the Railway Industry (RI) expressed satisfaction with the proposal made by the Agency, found that the summary on the position taken by the GRB in a note that was sent recently, among others, to the Commission, described very well the situation and noticed that the final approval of the 4th RP was mainly due to the fact that serious efforts had already been made towards the direction of raising the competitiveness of the Sector while cutting costs.

RI agreed in principle with the current proposal put forward by the Agency, reminded that some suggestions had been made with a further view to improving the contact with the local authorities in French. It was observed that, although the fact that in some Member States there might be experts who did not master

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[1]. Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (Text with EEA relevance), OJ L 138, 26.5.2016, p. 102–149, hereinafter referred to as the “Railway Safety Directive”.

[2]. Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (Text with EEA relevance), OJ L 138, 26.5.2016, p. 44–101, hereinafter referred to as the “Interoperability Directive”.

English should also be taken into account, all efforts should nevertheless be put into maintaining English as the reference working language to be used in relation to most of the activities on technical matters and urged for a compromise to be found on the matter.

Germany highlighted the importance of two points in the current proposal made by the Agency. First, it was mentioned that all meetings, as from the date of the adoption of the proposed linguistic arrangements, would have to be carried out in English.

As regards the second point, which was related to the possibility given to applicants to file their requests in any of the EU official languages of their own choice, Germany proposed that the Agency should cooperate more with the NSAs and strive to ensure that those requests would indeed be received and treated in the languages selected by the applicants themselves.

Furthermore, Germany made a comment on the following provision of the current draft MB decision: "In function of the items at the agenda, the Agency will have to specify the language(s) which will be used during the meeting in the draft agenda". More specifically, it was proposed that the Agency should inform the participants, well in advance of the meeting, of its decision to hold it in a specific language, since the languages(s) to be used during that meeting would have to be defined by the participants themselves.

Germany made also a point in relation to Article 3, reminding to the Board members that the Agency had been requested to delete the following indent: "Specificities like e.g. the need for Railway Undertakings to have their Safety Management System in their operational languages accepted by the Member States will need to be detailed in appropriate acts to complement this decision". It was explained that Germany agreed in principle with the substance of the reference, but considered that the scope of the application of the rule included therein was much wider and suggested that either the relevant text should be deleted as a whole or that an additional reference to VAs and ERTMS pre-testing should be included therein.

Finally, Germany advocated that the following reference, which it had requested to be added at the end of the provision of Article 3, could be included either in the body of the current draft MB decision or in the practical arrangements: "This does furthermore not restrict the right of NSAs to have those parts of the application which is provided to prove the fulfilment of national safety rules translated in the language of the respective Member State".

The representative of Infrastructure Managers (IM) expressed strong support for the current proposal, emphasised that the IM would be the first ones to be affected by a potential MB decision on the linguistic arrangements, announced that a joint position had been adopted together with the GRB on the matter and urged for a final decision to be made during the meeting on the topic, so as to be finally able to proceed with the application of the 4th RP in many aspects e.g. as regards the application of the ERTMS components.

Italy welcomed the current proposal of the Agency and, in particular, expressed its satisfaction with the interest of the Agency in safeguarding the right of any EU citizen to address it using his/her own language and declared its support for the project of the Agency's glossary.

However, as regards the provision of Article 2(a), Italy reminded that it had suggested to delete the phrase "or in the two reference working languages" therefrom, since it found that the possibility to choose from other languages as well during the meeting was already envisaged by the following phrase included in the same provision: "except if other common working language(s) can be agreed between all involved participants to the meetings".

Moreover, Italy claimed that, despite the fact that, according to the opinion delivered by the Legal Service of the Commission, the choice of the Agency to use French as the reference working language for administrative purposes was legally sound, English should be maintained as the sole reference working language in relation to administrative matters to be discussed during the meetings organised by Agency, including the meetings of the MB, the EB and the NSA, NIB and NRB plenaries, without any prejudice whatsoever to the right of the Agency to use French as a reference working language for contacting local authorities and wished to confirm its understanding that, for reasons of cost reduction, efficiency and clarity and with due respect to the

principles of equity and equality, English would be the sole reference working language to be used by the Agency in the above-mentioned case.

Finland thanked the Agency for its proposal, reminded to the Board members that, during the MB meeting in June 2016, it had raised serious concerns about the proposal which had been forwarded at that point, admitted that the revised proposal reflected a slightly different approach which was considered improved and expressed its gratitude for all the explanations given by the Agency in relation to the suggestions which had been made through a continuous exchange of emails during the previous two months and for the progress made in the meantime.

Finland recalled that one of its main concerns, which had already been expressed during the MB meeting in June 2016, revolved around the issue of the equal treatment of applicants and, in particular, the right of the applicants to submit to the Agency applications or supporting documents, including any annexes thereto, in any of the EU official languages–which could be a language other than English– and the need to balance the above-mentioned right against the principle of cost-effectiveness.

More specifically, Finland explained that it had expressed serious concerns, during the MB meeting which was held in June 2016, over the potential need for some applicants using "smaller" [sic] languages to bear themselves the costs for translating the documents submitted to the Agency in comparison to the users of "bigger" [sic] languages who would have no costs to bear at all, since those costs would be simply internalised in the Agency's daily routine.

Finland admitted that the Agency had made considerable progress with its current proposal, but went on to draw the attention on the issue of the possibility for further language requirements to be introduced through the implementing acts on practical arrangements. However, the Finnish experts believed that it was not possible for the implementing acts for SSCs and VAs to include standalone provisions dealing with language issues mainly due to the restrictions already imposed by the Regulation No. 1/1958[3].

Finland pointed out that should the MB decide on a specific language to be used, it would then be possible to make further linguistic arrangements in the implementing acts and repeated that the latter could not contain any standalone provisions whatsoever in that regard other than provisions directly linked to the relevant MB decision to be adopted on a language policy.

Finland sought to confirm whether its understanding that the Commission's Legal Service agreed with the aforementioned interpretation, i.e. that the implementing acts could consist of no standalone rules on linguistic arrangements which would limit the applicants' right to use a language of their own choice when submitting to the Agency their applications, including any annexes thereto, was correct and went on to underline its satisfaction with such an interpretation and its belief that the Agency, when presenting the upcoming set of draft implementing acts, would make sure to have any such rules deleted therefrom.

Finland underlined, in particular, the importance of the Executive Director's reference to the principle of fairness and added that "equality" was an additional element to be emphasised as well. Nevertheless, Finland made the observation that the Agency's language policy and the issues related thereto continued to be two-sided and explained that the MB decision on the one hand and the implementing act on fees and charges on the other hand were supposed to represent the two sides of the same coin.

Finland called for the introduction of a clearer and more robust set of measures or rules which could be relied upon when a decision on language issues needed to be made and put a lot of emphasis on the fact that, once a MB decision on linguistic arrangements was adopted, it would be then difficult to reverse thereafter the choices already made mainly due to the rule of unanimity, the application of which could be requested by any MB member; this meant, in fact, that if the MB adopted a final decision on the matter, the linguistic

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

arrangements finally approved by the MB as such could not be revised in case that any MB member felt more satisfied with the language regime in force than with a possible proposal for its revision.

It considered that a MB decision, regardless of whether the proposed linguistic arrangements included therein were worthy or not as such, had the obvious disadvantage of rendering the "revision clause" incorporated in Article 4 of the current draft MB decision more or less void. It was pointed out that, on the contrary, the "sunset clause" which Finland had already suggested to include in the body of the draft MB decision, made it possible for the MB to revise the text of the relevant decision upon expiration of its validity.

Finland concluded that, although the Agency had made, with the current draft proposal, a significant step in the right direction, it was difficult for it, following the interpretation given by the Legal Service of the Commission, to vote in favour of such a proposal and went on to suggest that the adoption of a MB decision on the matter should be postponed for two months in order to allow for a better assessment and to ensure that a solid and robust language regime would be put in place and continue to be applicable even after the publication of the implementing acts e.g. on fees and charges and/or on practical arrangements.

Although it understood that postponing the adoption of a final decision on the matter by two months would inevitably cause a serious delay and, most probably, create additional costs for the Agency during that period, since the old language regime would continue to be applicable, Finland insisted on the need to be provided with a clearer picture on the whole set of rules on linguistic arrangements, including both the draft MB decision and the draft implementing acts –even if the latter had not yet been finalised– and to reach a final conclusion on the matter not earlier than the next MB meeting in January 2017.

The Commission intervened to clarify the point which it had previously made in relation to the possibility of including language arrangements in the implementing acts, repeated that both the Railway Safety and the Interoperability Directives provided a sufficient legal basis for making language arrangements by means of the implementing acts on SSCs and VAs and explained that this was the correct interpretation which should be given and not the interpretation which had been previously suggested by Finland.

Finland admitted that maybe it misunderstood the views of the Commission's Legal Service, asked to be provided with the full explanation of the position taken, because it considered that this position clearly contradicted the opinion given by the Finnish legal experts on the possible links between Regulation No. 1/1958 and the implementing acts and found that this was an additional reason for which the adoption of a final decision on the matter had to be postponed.

The Commission read (in French) to the Board members the relevant text which summarised the position of its Legal Service: "The provision of art. 21(9)(a) of the Interoperability Directive confers the power on the Commission to adopt by means of implementing acts practical arrangements specifying how the requirements for the vehicle authorisation for placing on the market and for vehicle type authorisation are to be fulfilled by the applicants, i.e. through acts necessary for the implementation of the point 2.6 of Annex IV to the Directive. The Legal Service is of the opinion that the legal basis for the above-mentioned implementing acts is rather widely formulated and, thus, provides the Commission with a sufficient legal basis to adopt through implementing acts the practical arrangements determining the type of documents which will have to be translated into the internal reference working language of the Agency".

Austria expressed its support for the approach followed by the Agency, which would help simplify the existing linguistic regime and agreed with the position taken by Germany.

It recalled that, when building-up a system of "reference working languages", due consideration should be given to "what is a reference working language" and "how it is to be defined".

Austria considered that the suggestion put forward by Italy, namely to use a single reference working language for all meetings of working groups organised by the Agency, could easily be followed and proposed that English should be the reference working language for this purpose and that a certain margin of manoeuvre should be recognised in order for the Agency to be given the possibility to decide *ad hoc* on the necessity of introducing more working languages.

Austria found that it would be easier to hold the meetings of both Boards –EB and MB– as well as of the working groups in English and drew the attention to the fact that, without such an arrangement, no agreement could be reached on the language issues. It was recognised that this suggestion did not promote respect for language diversity and it was pointed out that there was still room for agreement on additional languages to be used in relation to other meetings.

Austria identified also the need to respect the right of the applicants to submit to the Agency applications or supporting documents in any of the EU official languages selected by them and to save a certain budget amount exclusively for translation costs in order to make it possible for the Agency to receive and process such applications in all EU official languages, depending on the choice of the applicant.

Belgium thanked the Agency for the updated version of its proposal on the linguistic arrangements to be made and, in particular, for all the work delivered in order to produce a document which could alleviate the concerns raised by the Member States and stated that it was difficult to understand the reasoning to be found behind the opinion given by the Legal Service of the Commission.

Belgium agreed with the view that the Railway Safety and Interoperability Directives served as a sufficient legal basis in order for the Commission to determine in the implementing acts the type of documents which could be requested by the Agency in its own language, but doubted seriously whether those implementing acts could be used for determining the languages to be used, not only in relation to the applications to be submitted to the Agency, but also during its meetings.

While reiterating her understanding that the opinion of the Commission's Legal Service would not be further circulated to the Member States, the representative of Belgium expressed her disagreement with the conclusions drawn therefrom and declared her support for the position taken on the issue by Finland mainly as regards the need to reflect seriously on the possible consequences of the decision that the Board members would be called on to adopt that day.

More specifically, Belgium was seriously concerned about the proposal to include linguistic arrangements in the body of the implementing act for fees and charges and sought to confirm whether the Agency intended or not to cover the total amount of costs incurred by the applicant, i.e. whether the total amount of costs, including any translation costs, to be borne by the Agency, represented the final cost that the applicant would have to pay and reminded that this was an argument which had been repeatedly used in support of the need to put a language policy in place.

Belgium found that the sole consequence of the adoption of a language policy by the MB would be that the applicants would have to bear any translation costs themselves and pointed to the inconsistency of the suggestion to introduce linguistic arrangements in the implementing acts with the position previously followed by the Agency on the matter.

Belgium wondered whether the Agency could propose a solution other than that according to which the applicant would have to bear all the costs of translating the documents included in his/her application.

As regards the "revision clause", Belgium reminded that it had supported the suggestion of Finland to insert an "expiration clause", i.e. a rule providing that the adopted MB decision would cease to be valid on the date explicitly specified therein, which meant that the MB would have to revise the adopted language policy after a certain period of time and confirmed its agreement with Finland's proposal on the issue.

Although it understood that the Legal Service of the Commission did not share that view, Belgium considered that the "expiration clause" could serve as the sole guarantee which would give the MB the possibility to review its decision on the basis of the experience already gained from the application of the previous linguistic regime.

As far as the glossary was concerned, it was noted that the Agency should take into consideration whether the work delivered by the UIC on that field was already covered by intellectual property rights which should not be violated.

Finally, Belgium agreed with the suggestion made by Finland to postpone the adoption of a final decision on the matter and concluded that, despite the progress made by the Agency, as reflected in its current proposal, there were issues which still needed to be discussed especially in view of the opinion delivered by the Legal Service of the Commission, the conclusions of which were, in its view, strongly debatable.

Finland agreed with Belgium and insisted on its initial suggestion to postpone the adoption of a decision by the MB on the matter.

Germany wished to clarify the meaning of Article 3 of the current draft MB decision and, more specifically, the issue of the languages which could be used by the railway industries and the vehicle manufacturers when submitting their application to the Agency. The point was made that, according to the wording of the provision, it was clear that the applicants enjoyed the full right to select the language in which they wished to submit to the Agency their applications and that it was for the Agency to ensure, in close cooperation with the NSAs, that those applications would be treated in any of the languages selected by the applicants, without any translation of such applications being necessary in that regard.

Germany considered that both Articles 2 and 3 of the current MB draft decision, including its comments, could be adopted during that meeting and did not see any point in postponing the adoption of the proposed linguistic arrangements, especially in view of the need for the Member States to take seriously and to respect the explicit request already made by the Sector and to come to a final decision at least on the issue of the languages which the applicants would be allowed to use in their applications.

The representative of France emphasised that the language issues were always regarded as an extremely sensitive matter by the French authorities and explained that this was the main reason for which the instructions that he had received from the French Ministry had to be strictly followed.

It was pointed out that the national authorities of France disagreed with the current proposal put forward by the Agency mainly due to the fact that the proposed linguistic arrangements seemed to disregard the principle of respect for multi-linguism which had long been established in the context of the EU regulatory framework.

France suggested that a balance should be sought by means of a compromise to be achieved and stated that its intention was not to prevent the MB from reaching a final decision on the matter; France warned that, if a compromise could not be reached within the MB, it would make use of its right to request for a unanimous adoption of a decision on that point by the MB.

It was suggested that the linguistic arrangements already applied in practice within the Commission's services, according to which three internal working languages, i.e. English, French and German, were to be used could be considered also applicable within the Agency.

France added that, except for the above-mentioned proposal, it could provide the Agency with detailed comments and suggestions for the purpose of re-drafting the provisions contained in Article 1(a), 1(b) –in its previous version– and Article 2(a) which could be further discussed during that meeting, should the Agency wish to do so at that time.

France agreed with Finland's suggestion and found that it was necessary to postpone the adoption of a final decision on the matter for two months in order for the Board to be given some time to come to an agreement on the main points of a new compromise solution.

The Commission made the observation that the long discussions held within the MB on the issue did not pay off anymore and that the aim was to reach a final agreement which would promote cost-efficiency and would help alleviate the concerns that Member States had raised in relation to such sensitive issues so as to avoid a potentially harmful delay in the implementation of the 4th RP. The Board members were reminded that a linguistic regime had been established in many EU institutions and agencies a long time before.

It was also confirmed that the existing practice of the use of three internal working languages within the Commission, to which France had referred, was not a legally formalised one and that, in any case, that

solution would not move the discussions any further, since it could not be considered as "appropriate rules for the implementation of that Regulation" as provided for in Article 74 of the new Agency Regulation.

More specifically, the Commission expressed the view that the solution of the "three internal working languages" was not an adequate response to the problems which had already been identified during the MB discussions; it would not help keep down the costs and the legitimate concerns which some Member States had already raised, e.g. in relation to the languages to be used by the applicants when submitting their applications for authorisation to the Agency, would still not be alleviated.

The Commission recalled that it was third time that discussions were being held within the MB on that point and wondered which would be the purpose of postponing the adoption of a final MB decision, warning that a delay at that stage could have as a consequence not to have a decision on the language policy this year.

The Commission outlined that, apart from translation costs, there were also other types of costs which should be taken into account, i.e. costs related to a possible delay in obtaining additional human resources due to the lack of an official linguistic regime within the Agency and invited the Executive Director to provide explanations on the consequences of a possible postponement in the adoption of a final decision by the MB mainly in terms of the need for recruiting additional staff members and moving forward with the implementation of the work programme, explaining that, up until then, both the SPD 2017 and the related budgetary planning had been drafted with the assumption that the Agency, as from 2017, could rely upon an officially adopted linguistic regime.

The Executive Director thanked the Commission for its statement and went on to confirm that he had made the relevant planning under the assumption that a final decision would be reached by the MB during this meeting.

It was explained that the Agency had been working on its proposal for a linguistic regime since January 2016 and that it had been involved in constructive discussions with the Member States which had already been reflected in the current proposal and announced that the intention was to adjust the proposal by providing further explanations on the concerns raised by Germany and Italy.

The Executive Director recalled the responsibility of the MB which represented on the one hand the interests of the Member States, but was clearly under the obligation to act on the other hand also in the interest of the Agency. He repeated that the provision of Article 74 of the new Agency Regulation stated that the decision of a linguistic regime had to made by the MB and stressed that, in the absence of an officially adopted linguistic regime, the Agency would have to face the resulting negative consequences; in practical terms, the recruitment plan, according to which, in order to fulfil the tasks envisaged under the 4th RP, 19 new staff members would have to be recruited from end of 2016 until the end of next year, was already heavily influenced not only by the cost of translating all the vacancy notices in all official EU languages but also by a potential delay in the recruitment of the staff needed for the performance of the new tasks.

The Executive Director proposed that the Agency should start to document and to record all extra cost (e.g. translation costs) and other consequences which would be incurred due to the absence of an formally adopted linguistic regime and to present a summary thereof in each MB meeting.

Reference was also made to the fact that the Agency was expected not only to publish the vacancy notices in all official EU languages but also to carry out the whole recruitment process in all official EU languages and that this was the idea that the Executive Director had conveyed from the meeting of the Heads of the EU Agencies in he participated in October 2016.

The Executive Director highlighted that the current proposal put forward by the Agency, with the necessary amendments to be done following certain comments made by some Member States, had already received the support of the vast majority of Member States and of the entire Sector as well and explained that, although the aforementioned comments would be taken into account for the purpose of improving the clarity of the current draft, there was no point in making further efforts to introduce changes to the most

fundamental points of the present language policy, since this would take the Agency several steps backwards to the starting point and would suspend permanently the adoption of a decision on the matter.

Therefore, he urged the Board members to take initiative in order to limit the harm that would be caused to the Agency in many respects and insisted on the central role the MB had in ensuring that the Agency could contribute to making the railway system work better of society.

Sweden asked the Commission, Belgium, Finland and France whether it would be possible for them to vote in favour of the current proposal of the Agency if the latter accepted to include a "sunset clause" therein.

The Commission replied in the affirmative to the question made by Sweden.

Finland intervened to clarify that what it had requested the Agency to do was not to include a "sunset clause" as such, but rather to provide for additional guarantees with the ultimate purpose of safeguarding the right of the applicants to use their own language without having to bear extra costs.

It was explained that, in reality, the cases where the Agency should have recourse to translation services would be extremely rare; the point was to understand the content of the application or of its supporting documents or of any annexes thereto and not just have the relevant documentation translated.

Finland expressed the view that, for the above-mentioned purpose, both the Agency and the NSAs should establish a network of agreements covering the cases in which the Agency would be in need of linguistic assistance and suggested that a point should be added in the policy specifying that no extra cost would be imposed upon the applicants who wished to submit to the Agency applications or supporting documents in any of the EU official languages. It was stressed that the users of "smaller" [sic] languages should not be placed at a disadvantage simply because of the need to move to an EU-wide system of authorisation or licencing.

Finland reiterated also the view that all applicants should be equally treated regardless of the choice made in relation to the language to be used when submitting their applications to the Agency.

The Executive Director declared that he was fully aware of the risk of discriminating against the "smaller" [sic] languages, but pointed out that, at the same time, the total costs for fees and charges would have to be covered by the Agency. It was explained that the Agency was aiming to achieve a fair allocation of costs and that although no discrimination was made against the users of "smaller" [sic] languages, the main intention was to restrain the practice of submitting to the Agency documents in any official EU language simply because there would be no costs involved therein for the applicants.

The Executive Director promised that the Agency would work, together with the Commission, on a fair solution which would guarantee that the applicants would have to pay no costs, other than that which they already had to bear under the applicable regime. However, he disagreed with the suggestion previously made by Finland that the phrase "at no extra cost" should be added in the provisions of the linguistic arrangements text proposed to the MB.

The Netherlands expressed its support for the current proposal put forward by the Agency, agreed with the views expressed by Germany and declared that it had no objection to voting in favour of a language policy which would retain its validity for only one year if no compromise could be otherwise found.

The representative of Rail Freight Customers (RFC) emphasised that the objective of the Agency was to bring about the integration and improvement to rail for customers. It was explained that if the discussions held on the matter within the MB could be brought to the attention of the passengers, the Agency would suddenly find itself in a rather difficult position to face the challenge to promote and get people to maximise the use of rail and it was added that the current situation of uncertainty did not help the Agency make any progress on the issue of developing a stable relation with the customers.

The Chair summarised the discussions on the proposal made by the Agency and the comments received from Member States prior to the MB meeting, the majority of which could be accepted by the Agency as points simply adding to the clarity of the already existing draft.

It was noted that one of the fundamental issues raised by the Member States related to the possible links which could be drawn between the MB decision to be adopted and the provisions on language arrangements to be potentially included in the implementing acts on practical arrangements and it was pointed out that some Member States were not convinced by the opinion given on the matter by the Legal Service of the Commission.

The Chair added that, although the proposal of the Agency to introduce mainly English as the reference working language had received a strong support from most of the MB members and from the Sector, France insisted on a different proposal in terms of the reference working languages.

He emphasised the obligation of the MB to take a decision on the language policy issue, warned that any delay in the adoption of that decision would cause, either directly or indirectly, additional costs to the work of the Agency and agreed with the Executive Director that the subsequent additional financial costs for the Agency had to be documented and reported to the MB so as to have an idea of what would be the exact consequences should the adoption of a final decision on the issue be postponed.

The Chair expressed his disappointment over the outcome of the discussions held within the MB and, although he admitted that some of the concerns and doubts raised by the Member States were reasonable, he recommended that the adoption of a final decision on the matter should not be postponed and that the Agency's proposal, as it stood at that time, should be put to the vote already during that meeting in order for the Agency to be able to identify, at that stage, which were the main points of disagreement, if any, and what were the future challenges to be met, if it was decided that a final agreement would have to be reached during the next MB meeting in January 2017.

Germany suggested that the Agency should try to work on and produce, during the break, a new draft proposal which would reflect the comments made during the discussions held on that day and that the MB should come back to the relevant agenda point after the break and hold a vote thereon.

Denmark agreed with the solution put forward by Germany and requested the Agency to introduce in Article 3 of the updated version of the draft MB decision to be prepared the additional requirement that the operational languages to be used by the RU should be accepted by the Member States as well.

Finland, Belgium and Italy also supported the idea of re-drafting the current proposal and coming back again to the issue after the break.

IM highlighted once again that there was an urgent need for a decision to be taken on the matter during that meeting and reminded that, in the absence of such a decision, there would be no ERTMS guides for instance.

The Chair thanked Germany for its suggestion and the other MB members for their contributions, proposed that the Agency should work on its current proposal during the break and come back in the second part of the meeting with a revised version which would reflect as much as possible the comments made by the Member States in the meantime and could be put to the vote before the end of the MB meeting. He expressed his confidence that the MB would finally come up with a solution on the issue.

Before the break, the Executive Director announced that the 4th RP Preparation Programme Manager had already prepared an updated version of the proposed linguistic arrangements and invited the Board members who were interested in consulting this new version or in making final adjustments to it, to contribute to the preparation of a final text which would be presented to all Board members during the following session of the MB meeting.

The Chair thanked the 4th RP Preparation Programme Manager and all the Board members involved in the work done during the break for their contributions.

The 4th RP Preparation Programme Manager thanked also all the Board members who helped to improve the text of the current proposal put forward by the Agency.

It was outlined that the rules contained in Article 1 of the current proposal remained intact, whereas the comments made by Italy, Spain and Germany were taken into account mainly for the purpose of re-drafting Article 2(a). It was added that the proposal made by Germany that prior information should be given by the Agency to the participants in meetings in case there was agreement on the common working language to be used was also taken into account and that the updated version of point (a) of Article 2 would read, from that point onwards, as follows: "All meetings including the meetings of the Management Board and the Executive Board and the NSA, NIB and NRB plenaries organised by the Agency will be in English except if other common working language(s) can be agreed between all involved participants to the meetings. If (a) common working language(s) can be agreed, the Agency will inform about the language(s) which will be used during the meetings in the draft agenda".

As regards the point (b) of Article 2, it was analysed that the Agency had taken on board the comments of Denmark and that the relevant provision had been rephrased as follows: "A glossary providing the correspondence between technical terms in all EU languages will be developed and kept updated by the Agency to ensure that the very specific railway terms used during meetings and in the Agency documents are understood."

It was also pointed out that, following the discussions previously held within the MB on the need to identify potential links between the MB decision on linguistic arrangements to be adopted and the implementing acts on practical arrangements and to put in place a fair and non-discriminatory mechanism for treating applications in case of no commonly agreed language to be used, the Agency had decided to modify the fourth indent of Article 3 so that the relevant text would read as follows: "Practical details and a fair and non-discriminatory mechanism for translation costs of applications when no commonly agreed language can be found will need to be detailed in appropriate acts to complement this decision."

Moreover, a fifth point was added in the recitals of the draft MB decision, according to which the Agency and the NSAs would cooperate for the purpose of minimising the cost and of covering the need for translations as much as possible from fees and charges.

Finally, the Agency had chosen to amend the provision of Article 4 of the current draft MB decision, on the basis of the comment previously made during the discussions by Finland, as follows: "This decision shall take effect on the day after its adoption and shall expire after five years following this day. After five years the Management Board shall decide either to extend [its validity] or to amend this decision".

France explained that, as already stated during the discussions held previously, it had proposed to amend Article 1(a) as well as points 3 and 4 included under the recitals and repeated that any formulation which would simply have the effect of placing French in a different level than any other official EU language could not be considered acceptable in any way whatsoever.

The Chair summarised that, except for the proposal which had been originally put forward by the Agency, as updated during the break with the input provided by some of the Board members, i.e. the joint proposal prepared during the break, there was also a suggestion made by France concerning the amendment of Article 1(a) and of points 3 and 4 of the recitals.

The Commission thanked all the Board members who helped to revise the original proposal of the Agency. As far as that updated version of the Agency's proposal was concerned, the Commission disagreed with the "sunset clause" included therein but expressed its willingness to accept it if the agreement of all the other Board members on the updated proposal as a whole was guaranteed.

The UK admitted that it would be very cautious about contributing to that debate and was very well aware of the privileged position of the English language and of the special honour given to the British people in that sense.

However, the UK considered that it was clear from the "sunset clause" what the default position of the MB would be and wished to find out what might be the consequences if the MB did not decide either to amend the original linguistic arrangements or to extend their validity as prescribed in the second indent of the amended version of Article 4.

It was proposed, in that regard, to the Agency to have the word "shall" in the second indent of Article 4 replaced by "may" so that the relevant text would, after that amendment, read as follows: "After 5 years, the Management Board may decide either to extend [its validity] or amend this decision." The meaning of this amendment was to allow the Agency to re-apply the provisions of Regulation No. 1/1958 in case the MB did not make a decision on the matter immediately after the expiration of the validity of the current draft MB decision, i.e. after five years following its formal adoption by the Board.

The Chair suggested that a vote should be eventually held on the current proposal put forward by the Agency, including any updates made following the comments made by the Board members.

All the Board members voted in favour of the proposal except for France which voted against and requested that the decision in that regard should be taken by unanimity as stipulated in Article 74(1) third indent of the new Agency Regulation.

The Chair suggested, in view of the firm position taken by France, that a vote should also be held on the proposal made by the latter which mainly required the amendment of Article 1 of the initial proposal put forward by the Agency.

Germany intervened to point out that the MB should reflect first on which meetings it would be necessary, or at least useful, for the Agency to have recourse to interpretation services. It was explained that the need for interpretation would be different according to the type of each meeting. For instance, during the EB and MB meetings, where important decision-making functions needed to be exercised, a clear need for interpretation services would arise, whereas as regards the NSA, NIB and NRB plenaries, it was not absolutely necessary to make use of interpretation services due to the fact that those meetings were to be seen as a simple exchange of information between the participants therein.

Germany identified the need for the Agency to come up with a more balanced solution and proposed that Article 1(a) should be amended so as to allow for the use of English, French and German as reference working languages to be used in relation to the MB meetings.

The Chair requested the Board members to confirm whether they agreed or not with the proposal made by France, according to which points 3 and 4 of the recitals and Article 1(a) of the relevant draft MB decision would have to be amended accordingly.

Austria, Belgium, Finland, Italy, the Netherlands, Romania, Spain and Sweden voted against the linguistic arrangements proposed by France; the application of the unanimity clause enshrined in Article 74(1) third indent was also triggered by the above-mentioned Board members.

The Chair thanked the Agency and all the Board members for their contributions and summarised that, even though the MB did not reach a final decision on the matter, a significant step forward had nonetheless been made and recommended that the Agency should work more on proposing a wording for Article 1 that would be considered acceptable by all MB members and come up with another proposal to be discussed and hopefully agreed upon during the next MB meeting in January 2017.

The Executive Director thanked the Board members for the constructive discussions and expressed his disappointment by the fact that no practical solution could be reached due to the strict position taken by one Board member against the proposed linguistic arrangements even though all the other Board members agreed with the Agency's proposal.

He reported that, from then onwards, the Agency would make sure to have the MB regularly updated on the potential consequences which the continued absence of a decision on the matter would entail and identified

the need for the Agency to reflect on the mitigating measures which could be put in place with a further view to keeping down the costs.

Finally, the Board members were requested once more to come together in order to find a common position on the way forward and it was guaranteed that the Agency would try to support their efforts as much as possible. It was emphasised that it was for the MB to take the final responsibility and to work out a solution which would be in the interests of the Agency.

The representative of Germany suggested that the position taken by France should be respected and wondered whether the Agency could learn from the best practices followed within the other EU Agencies.

As far as the languages to be used during meetings were concerned and in view of the apparent difficulty to come up with a satisfactory solution on that point, it was proposed that the relevant language policy should be divided into two sections and it was explained that such an arrangement would practically enable the MB to definitively deal with the issue of the language(s) to be used in relation to applications during its meeting in January 2017 and to postpone any decision to be made on the issue of the language(s) to be used in the meetings organised by the Agency for later.

The Executive Director reminded that the 4th RP Preparation Programme Manager had presented a detailed overview of the language regime applicable within other EU Agencies and it was pointed out, for instance, that EASA did not have a language policy in place for exactly the same reason as the Agency did not.

Germany insisted that meetings were organised by EASA as well and that the Agency could maybe follow the example of EASA on the languages to be used during such meetings.

The Executive Director explained that EASA had been also applying so far the same linguistic rules as the Agency due to the absence of a language policy in place which would specify, for example, that English, French and German were the languages to be used in all meetings to be organised by that Agency.

The Chair thanked Germany for its constructive comments and for its valuable input to the discussions held on the relevant issues.

5. Single Programming Document 2017

The Chair explained that the relevant item had been included in the agenda as a “decision point” and that the Board members would be presented, before being called on to decide on the issue, some of the latest comments which had been received by the Agency.

The Strategy and Business Planning Officer of the Agency recalled that the work for the SPD 2017 had started over a year ago and that, in the meantime, several drafts had been shared with the Board members. Two main consultation phases had been held, the most important being the Consultation Workshop in March 2016 and the Agency had received in total 146 comments.

The Board members were reminded that, in April 2016, the Agency had sent draft 3 of the SPD 2017, which formed the basis for the Commission’s official opinion and that, at the end of October 2016, the Agency produced a draft 4 of the SPD 2017 which aimed at reflecting the improved objectives. The draft 4 included the updated Risk Register 2017 and Procurement Plan 2017, as well as any other updates, e.g. those related to the financial and human resources, and that the relevant texts had been amended mostly in light of the comments made by the Commission and by France.

The Strategy and Business Planning Officer drew also the attention of the Board members to the document which had been sent out before the MB meeting and was supposed to provide an overview not only of the changes and amendments that had been made to draft 4 of the SPD 2017, following the EB meeting on November 10th 2016, but also of the changes suggested by DG MOVE on November 24th 2016. It was explained that all those changes were eventually reflected in draft 4.1 which had been forwarded to the Board members ten days before the MB meeting.

It was announced that, in the meantime, the Agency had received further comments from DG MOVE and that some comments on the international relations strategy had been received the day before the meeting and it was noted that all those last-minute changes, including the updates introduced in the procurement table, were already highlighted in the above-mentioned "overview of changes" document which had been distributed to the Board members before the meeting.

Finally, the Board members were requested to take into consideration, while casting their vote on the adoption of the SPD 2017, not only draft 4.1 but also the comments which had been included in the "overview of changes" document which was produced before the MB meeting.

The Commission thanked the Agency for taking into account its comments, expressed its gratitude for the way in which this exercise was managed by the Agency, found that the updated structure of the objectives was spot-on and welcomed warmly the work done by the Agency on that.

The Chair repeated that a discussion on the SPD 2017 had already been held during the EB meeting in November 2016 and that, in general, the feedback which had been received from the EB members was positive and went on to express his support for the work delivered by the Agency on that and to thank the Strategy and Business Planning Officer for the outcome.

Denmark agreed with the Commission that the Agency had produced an excellent work, made the observation that all its comments had been taken into account by the Agency and proposed a slightly different formulation to be included in the SPD 2017 for the ERTMS-related issues which would be sent to the Agency in writing concerning the requests for changes to the relevant specifications and the work to be produced by the Agency in that regard during the summer 2017.

Railway Industry (RI) thanked the Agency for the document which was produced and presented to the Board members and went on to comment on the following excerpt from the foreword of the Executive Director to the SPD 2017: "The European Union Agency for Railways faces a difficult situation in terms of low and stagnating market share, both for freight and passengers, it suffers from significantly higher production costs than competing modes of transport, and it shows poor customer satisfaction. As a mitigation, European legislation and the activities of the European Union Agency for Railways intend to actively contribute to improving this situation". More specifically, it was proposed that the Agency should delete the paragraph cited above on the grounds that it was not the Agency which in fact was facing the crisis, but the Sector exclusively.

RI added that the Association of the European Rail Industry (UNIFE) and the Community of European Railway and Infrastructure Companies (CER) would be really interested in sponsoring for some of the Activities included in the Agency's work programme.

The Executive Director admitted that, taking into consideration the Agency's moto, i.e. "making the railway system work better for society", he had been taken by surprise with the statement made on behalf of the GRB during the November 2016 EB meeting. He added that, as per the Agency's moto, he supported fully the meaning of it and explained that the role of the Agency was not just to define new technical specifications for interoperability (TSIs) or new common safety methods (CSMs) or to create any other new technical regulations but also to improve the current situation of the railway system in that way, and to evaluate the consequences in terms of cost and benefits for the sector on all the activities mentioned.

It was emphasised that the railway sector was facing difficult times at the moment and that it was seriously suffering not only from huge competition coming from the other transport sectors, i.e. the automotive industry, aviation and maritime sectors, but also from competition within the railway sector itself.

It was pointed out that the Agency should make efforts in order to have the effects of this crisis mitigated as much as possible and contribute effectively to the improvement of the railway sector and that this should be the starting point for building up the Agency's work programme.

The UK commented on the point (D) on "gender and geographical balance" which had been added to the Annex IV to draft 4.1 of the SPD 2017 and reminded that, during the discussions held within the EB in November 2016, the Commission had made the observation that the gender balance within the Agency and, in particular, the gender balance within its MT, was quite poor and had requested the Agency to make a reference to those issues.

The UK appreciated the additional point made by the Agency in that regard, but suggested that the Agency, instead of simply enumerating the relevant actions and measures to be taken in that regard, should have opted for a different wording which would reflect the issue of the gender balance as a strategic priority. More specifically, it was recommended that the Agency should place a lot more emphasis on the fact that both gender and geographical balance constituted an important priority and maybe include some thoughts on the issue of whether it intended to open up the market place and to have staff members selected from as wide a geographical basis as possible, i.e. from Member States all over the EU.

Moreover, the example of the UK experience was cited and it was noted that diversity in general, including gender diversity, was good for the business, since the choice would have to be made from a much wider pool of people and it was proposed that the Agency should stress more the strategic nature of that priority.

In response to the proposal made by the UK, the Executive Director added that the Agency could redraft the relevant text so that the gender and geographical balance would be clearly identified as a key priority and include also a list with the measures to be taken in order to achieve this type of balance within the Agency.

Germany made a point in relation to the reference to Automatic Train Operation (ATO) included in p. 18 of draft 4.1 of the SPD 2017. More specifically it found, taking into account its experience in that field at the national level, the plan to have the technical specifications related thereto agreed upon until 2018 too ambitious and wondered whether the time schedule specified in the SPD 2017 was realistic or not.

Moreover, Germany commented on the proposed amendments included in the "overview of changes" document which was distributed the day of the meeting to the Board members. First of all, it was considered necessary to put in place a procedure for guaranteeing that the possibilities for mutual recognition of standards, certifications and authorisations with non-EU partners could be further developed, enhanced and exploited.

It was explained that, should the Agency give the possibility to non-EU countries to have their standards, certifications and authorisations recognised in the EU, the recognition of the EU standards, certifications and authorisations was something which would have to be guaranteed as well, otherwise no truly "mutual recognition" could be achieved in that sense. The example of the bilateral discussions which were already held with countries of the Ural region, whereby the condition of "mutual recognition" was not so obviously put, was also mentioned.

Germany highlighted that, if a genuinely "international platform" was to be created, it was absolutely necessary for the Agency to require the recognition of the EU authorisations and certifications by the non-EU partners in return for the recognition of certifications and authorisations issued by third countries in the EU and stressed that a non-mutual recognition of standards, certifications and authorisations would place the EU industry at a disadvantage.

Finally, Germany made a remark regarding the need for the Agency to build a "global platform". It was pointed out that, account being taken of the fact that the Agency would have to play, at the EU level, the role of an NSA, i.e. to act as EU Safety Authority, a close cooperation scheme should be established between the Agency and the EU Member States NSAs, which had been already involved in discussions with the NSAs of third (non-EU) countries so that what had already been achieved at the national level could be aimed at the EU level as well.

The Executive Director fully agreed with the remark made by Germany that the principle of reciprocity in the recognition of standards, certifications and authorisations between the Agency and its non-EU partners was

truly essential, suggested that the relevant text of the SPD 2017 could be amended accordingly so as to reflect this need and emphasised the added value of creating a platform for all rail agencies worldwide.

As regards the comment made by Germany on the ATO, it was proposed that the Agency should maybe clarify in the relevant text that the reference made therein concerned mainly a grade of automation 1 and 2 and that the Agency was committed to have the relevant technical specifications issued in 2018.

The UK thanked Germany for bringing the above-mentioned matters to the attention of the MB. It was added that the ATO was fundamental to improving efficiency and enhancing performance and the Agency was urged to adopt the already existing standards in the UK with regard to ATO.

On the issue of the Agency's approach vis-à-vis its non-EU partners, UK announced that it should actively participate to the relevant discussions and that the idea of involving also the NSAs in that would be endorsed as well.

The Executive Director noted that a large conference centre had been built in Valenciennes, something which would enable the Agency to accommodate all possible requests for participation.

The Chair summarised that, in addition to the proposed draft version of the SPD 2017 for adoption, there was an explanatory note with an overview of the changes made to the SPD 2017 following the November 2016 EB meeting and the suggestions made by DG MOVE.

Furthermore, the UK had proposed some modifications mainly as regards gender and geographical balance, which had been accepted by the Agency along with the remarks made by Germany on the ATO and the need for mutual recognition of standards, certifications and authorisations with non-EU partners.

The MB adopted unanimously the SPD 2017, including the changes proposed by the UK and by Germany.

The Chair congratulated the Agency on the work done and stated that he was looking forward to seeing the implementation of the SPD 2017.

6. Budget and establishment plan 2017

The Head of Finance and Procurement Sector of the Agency recalled that, during the 38th Administrative Board (AB) meeting held on March 31st 2016, the statement of estimates and establishment plan for 2017 had been presented to the Board. The statement included an EU contribution of 31 million € with 145 Temporary Agents (TAs), 36 Contract Agents (CAs) and 4 Seconded National Experts (SNEs).

He explained that the amount initially included in the budget was higher than the amount indicated in the Commission Communication COM (2013) 519 of 10.07.2013 and that this divergence was mainly due to the fact that the amounts corresponding to certain projects, mainly those related to the One-Stop Shop (OSS), the Safety Occurrence Reporting (SOR) and other projects forming the essential basis for the implementation of the 4th RP, had not been taken into account during the preparation of the budget, because they were not yet known at that stage.

It was announced that, after the discussions on the 2017 budget between DG MOVE and DG BUDGET, it had been concluded that the Agency's budget for 2017 would be 30 million € following the Commission's intervention rather than 31 million € as it had been initially requested by the Agency and that the front-loading of 700.000 € had been approved in 2016 for the OSS development, something which alone accounted for a decrease of budget line B03030 "One-Stop-Shop" by the same amount.

He reported that, at the same time, it had been decided to respect the limits set by the aforementioned Communication, which meant that the total number of the TAs would be reduced to 139, whereas the total number of the SNEs would remain the same as that requested by the Agency and the total number of CAs would be 42, i.e. the Agency would receive six posts of CAs on top of those initially requested from the Commission.

The Board members were invited to adopt the budget and establishment plan 2017 subject to the adoption by the budgetary authority of the general EU budget and of the subsidy and establishment plan for ERA contained therein.

The UK supported the efforts made by both the Agency and the Commission to promote a sensible arrangement on the matter in securing additional human and financial resources and considered very successful the way in which the Agency had managed those issues.

Denmark expressed its full support for the work done by the Agency. However, on the issue of recruitment, which was also mentioned in the relevant documents, it was pointed out that reference was made to the need for 16 additional staff members and that different figures had been proposed during the discussion of previous agenda items at that meeting, i.e. around 40 staff members which would be needed in order for the Agency to be able to perform the tasks envisaged under the 4th RP. For that reason, it was proposed that the Agency should perhaps try to demonstrate in the following budget and establishment plan 2018, the full picture and provide explanation on the figures presented and the choices made in relation to those figures, since the workload would be rather heavy for the Agency to manage even despite the recruitment of 16-18 additional staff members.

The Head of Finance and Procurement Sector replied that the aforementioned Commission Communication contained the establishment plan for each year, which meant that in 2018 the Agency would hire 9 additional TAs and that discussions were still on-going with the Executive Director on the precise number of posts for CAs which would have to be filled in 2018.

It was also clarified that the Agency's request for 40 additional staff members was not finally approved, taking into account that the Agency was still running through the phase of the preparatory work needed for the implementation of the 4th RP and that no income could be gained from fees and charges, at least for the time being. It was highlighted that any additional human resources to be acquired in excess of the total number of 148 posts which had already been included in the establishment plan for 2018 should be considered as financed by the income that the Agency would obtain from fees and charges.

Regarding the procedure to be followed for the recruitment of the additional staff members, it was explained that the Agency was in the process of identifying a certain number of job profiles which would be needed at that stage in order to contribute to the preparatory work which would enable the Agency to perform in due time the new tasks of issuing the SSCs and VAs.

The intention was to launch the relevant calls for applications and to create a sufficient number of reserve lists so that the Agency could proceed immediately afterwards to the recruitment of the staff needed. For instance, if a certain job profile was defined, the Agency would make available a reserve list of around 5-10 persons which could be used should a specific need for recruiting staff with the relevant profile arise.

The Head of Finance and Procurement Sector warned that if a final decision on the linguistic arrangements was not adopted during that meeting, due account should also be taken of the costs of translation of the vacancy notices to all official EU languages or of the need to create panels of interpreters or external experts for the performance of the recruitment procedures in all EU official languages, something which would inevitably cause serious delays and bring about further implications in the recruitment process as a whole. It was concluded that the Agency had made a recruitment planning, but there were several external factors which could render necessary the review of that planning at any time.

The Chair proposed to proceed to the adoption of the budget and establishment plan 2017.

The MB adopted unanimously the budget and establishment plan 2017, subject to the adoption of the budgetary authority of the general EU budget 2017.

7. Public access to documents – practical measures

The Board members were requested to consider the Agency's proposal on the amendment of the "Arrangements to be applied by the Agency for Public Access to Documents" which had been forwarded to them after the relevant discussions held within the EB during its meetings in September and November 2016. It was explained that all the changes made following the aforementioned discussions were already highlighted in the document which was circulated to the MB members before the meeting.

It was summarised that no other changes had been made to the Agency's proposed amendment of the "Arrangements to be applied by the Agency for Public Access to Documents" since the discussions held within the EB during its two previous meetings, including the comments received thereafter, with the exception of a comment received by Denmark on November 24th 2016, which was not included in the version 3 sent out to the MB members before that meeting.

More specifically, it was announced that, following the comment made by Denmark, the Agency had decided to review the wording used in Article 5(2) and to modify the relevant provision so that it would, from then onwards, read as follows: "If, after that examination, it is clear that access to the document must be refused under one of the exceptions provided for by Article 4 of Regulation (EC) No. 1049/2001[4], the Agency shall send a negative answer to the applicant without consultation of the third-party author."

It was explained that the relevant text of the provision had been rephrased in line with the wording already used in the Regulation (EC) No. 1049/2001 and, in particular, Article 4(4) thereof and that, consequently, the relevant amendment could not be considered incompatible with the already existing legal framework on public access to documents.

The Board members were asked to confirm their agreement on whether they agreed to have this last-minute change proposed by Denmark and adopted by the Agency included in the draft MB decision to be adopted.

The Board members were also reminded that the Agency's current proposal should simply be considered as an amendment of the current legal framework on public access to documents which was already applicable within the Agency, i.e. the "Arrangements to be applied by the Agency for Public Access to Documents", a document defining the policy of the Agency concerning the public access to documents, adopted on October 28th 2004 and amended on November 17th 2009 as implementing rules to the Regulation (EC) No. 1049/2001.

It was outlined that, following the entry into force of the new Agency Regulation, the Agency was called on to introduce, by virtue of Article 77(2) and (3) thereof, further measures in order to ensure transparency as regards public access to documents. In other words, the aforementioned provisions of the new Agency Regulation stipulated the Agency's obligation to publish on its website recommendations, opinions, studies, reports and outcomes of impact assessments as well as the obligation for the Agency to make public the declaration of interests of the members of its management and administrative structure.

It was concluded that these were the new developments that led to the proposed amendment to the above-mentioned "arrangements" which the MB would have to adopt and it was added that any measures which the Agency would have to adopt, according to Article 77(4) of its new Regulation, in order to ensure the provision of efficient, user-friendly and easily accessible information on its website about railway interoperability and safety processes and about other relevant railway documents were not supposed to form part of those "arrangements" and of the proposed amendment thereto, but would be included in a separate document and developed in relation to the Agency's communication and dissemination plans.

The Board members were invited to adopt the proposed amendment to the already existing policy of the Agency concerning the public access to documents, taking also into account the comment made by Denmark in relation to Article 5(2) thereof which led to the reformulation of the relevant text of the provision.

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

France agreed with the changes made to the proposal presented to the MB members and wished to confirm that the term "Member State" which was mentioned in Article 5(4) and (5) of the draft MB decision should be viewed as encompassing not only the national ministries, but also other national authorities such as the NSAs and the NIBs as well.

France went on to make a second point in relation to two terms included in the provision of Article 8(1), which, in its view, were not given a sufficiently precise meaning. More specifically, the Agency was asked to clarify the scope of the terms "opinions issued by the Agency" and "reports issued by the Agency".

As far as the issue of the "reports issued by the Agency" was concerned, France explained that there was a huge difference, for instance, between reports drafted in reply to a request of the Commission for comments on a new legislative proposal –which could be published– and the reports drawn up on the findings of the NSAs monitoring.

It was pointed out that some elements of the proposal put forward by the Agency on NSAs monitoring were inconsistent with the current proposal of the Agency on the amendment of the above-mentioned "arrangements" for public access to documents mainly in view of the reference which had been included in the proposed policy for NSAs monitoring on the "publication of anonymised reports", a point for which no relevant reference was made in the current draft MB decision.

The Netherlands welcomed the fact that the amended rules on public access to documents to be applied by the Agency had been brought to the attention of the MB for adoption during that meeting, highlighted the importance of the relevant arrangements mainly in view of the new tasks to be performed by the Agency and the need for the EU citizens to be made fully aware of the new role of the Agency under the 4th RP.

It also appreciated the possibility given to the MB to have an overview, in the form of a report to be presented by the Executive Director, of the way in which the Agency intended to apply those arrangements and, in particular whether there would be a timely and accurate handling of the requests for access to documents by the latter and thanked the Agency for including a relevant point in Article 2 of the draft MB decision which had been proposed for adoption.

Belgium reminded, in response to the first remark made by France on Article 5 and the term "Member States" mentioned therein, that during the discussions previously held on the issue of linguistic arrangements, it had been suggested to replace the term "Member States" with the phrase "Member States authorities" in Article 3 third indent of the relevant draft MB decision so as to ensure that the new formulation of that provision would also cover NSAs, NIBs and other national authorities and proposed to modify accordingly the wording used in Article 5(4) and (5) of the proposed draft amending MB decision.

Furthermore, Belgium wished to clarify whether the Agency would have to comply with the opinion given by the Commission at its request in accordance with the procedure described in the new provision of Article 5a or whether it would be free to make its own choice even in complete disregard of the conclusions drawn in the requested opinion.

The Commission thanked the Agency for taking into account its comments on the draft proposal, considered that the suggestions made by France and Belgium were fairly put and answered to the comment made by Belgium regarding the potentially binding character of the Commission's opinion referred to in Article 5a of the current draft MB decision pointing out that the main intention of the Commission, when issuing such opinions, would be to provide to the Agency the necessary guidance on the potential risks related to the disclosure of the requested document and the existence of an overriding public interest in its disclosure and not to create legal impediments to the process of public access to documents.

As regards the question made by Belgium on the issue of the legally binding nature of the opinion issued by the Commission at the request of the Agency in accordance with Article 5a of the proposed draft amending MB decision, it was pointed out that, in some cases, the opinion was supposed to serve the purpose of providing clarifications to the Agency mainly on whether the latter could refuse or grant full or partial access to the requested document originating from a third party. The need to maintain a consistent approach in the

application of the Regulation (EC) No. 1049/2001 through a prior consultation of the Commission on the relevant issues was also emphasised.

The Legal Advisor of the Agency intervened to clarify, in reply to the first remark made by France, that the term "Member States" which was mentioned in Article 5 of the proposed draft amending MB decision had exactly the same meaning and scope as that given to the relevant term mentioned in the text of the Regulation (EC) No. 1049/2001 and confirmed that any reference to "Member States" included in the relevant provisions should be regarded as aimed at covering all national authorities without making any distinction whatsoever.

On the second point of France, which concerned the type of opinions and reports that could be published by the Agency on its website under Article 5(1) of the amended "arrangements", it was explained that, according to Article 77(2) of the new Agency Regulation, the Agency was under the obligation to publish its recommendations, opinions, studies, reports and outcomes of impact assessments on its website without prejudice to the provisions of the Regulation (EC) No. 1049/2001 –which would continue to apply to the documents held by the Agency– and after all confidential material would have been removed therefrom.

It was explained that, taking into account the aforementioned provision and following the relevant comments made by the Commission, the Agency had decided to add a fourth paragraph in Article 8 introducing the requirement to make a prior check as to whether the information included in the documents to be published should or not be disclosed and made publicly available and it was pointed out that this provision intended, among others, to alleviate the concerns which had just been raised by France in that regard.

The Chair suggested that the Agency should adopt the current proposal put forward by the Agency on the amendment of its already existing policy concerning public access to documents.

The amendment to the "Arrangements to be applied by the Agency for Public Access to Documents" was adopted unanimously by the Board.

8. Policy for visits to Member States

The Board members were informed that the aim of the proposal was to amend the already existing policy for visits to Member States which had been adopted by the AB under the old Agency Regulation and that the text was discussed twice during the EB during its meetings held in September and November 2016.

It was added that, following the entry into force of the new Agency Regulation, the already existing legal framework governing visits to Member States had to be revised in light of the modifications introduced by the new Agency Regulation.

It was pointed out that a version 3 of the relevant draft MB decision had been forwarded to the Board members and it was explained that after the remarks made during the discussions at the EB meetings and the comments received thereafter, it had been decided to introduce some further changes to the initial proposal of the Agency.

The MB members were asked to consider point (a) of the "Conditions for a visit" of the policy, which had been amended in line with the comments received from the Commission and had, thus, been formulated as follows: "the expected information gained from a visit must be an important and necessary part of the preparation of the tasks according to Articles 14, 20, 21, 25, 26, 31, 32, 33, 34, 35 and 42 of the Agency Regulation […]".

It was also explained that, following a request made by Denmark, the last point of the information to be provided by the Member State to the Agency, i.e. "relevant documentation requested by the Agency", had been deleted and replaced by the following: "other information relevant to the visit requested by the Agency complied with by the Member States".

The Board members were invited to adopt the updated –and consolidated– version of the policy for visits to Member States considering also the two changes introduced and presented to them following the comments received from the Commission and Denmark.

Denmark apologised for requesting the Agency to make last-minute changes to the relevant document and expressed its satisfaction with the suggestions that the Agency counter-proposed to its remarks and the constructive dialogue developed in that regard.

Italy suggested that the Agency should rectify the error made as regards the date on which the original policy for visits to Member States had been amended so that the relevant text on p. 4 of the draft consolidated version of the policy would read as follows: "The following policy for visits to Member States has been decided by the Administrative Board of the Agency on the 9th of March 2006, and lately updated at the meeting of 17 November 2009 […]."

France thanked the Agency for the work done on that proposal and the outcome delivered so far and went on to make a remark on the point of the policy which was related to "confidentiality". More specifically, France had the impression, by reading the relevant text of the provision, that the reports of visits were not, in principle, confidential and that, if exceptionally, some elements included therein were considered to be confidential, these should be explicitly defined and treated by the Agency in accordance with the rules on access to documents in force.

It was pointed out that, according to the French legislation, the principle was that such documents were to be considered as confidential and that, exceptionally, some elements thereof could be taken as non-confidential and it was suggested that the drafting of the relevant provision should be reviewed in order to reflect that point.

The Legal Advisor of the Agency replied to France that the Agency was legally bound by the provisions of Regulation (EC) No. 1049/2001 which was also directly applicable in all Member States and that the approach followed by the above-mentioned Regulation allowed the disclosure of a document unless there were exceptions, including those mainly related to confidentiality, for its non-disclosure.

It was analysed that, according to Article 4 of Regulation (EC) No. 1049/2001, access to a document could be refused on the basis that disclosure could undermine the protection of, among others, public security, defence and military matters, international relations, the financial, monetary or economic policy of the EU or of a Member State, the privacy and integrity of the individual, mainly in accordance with EU legislation regarding the protection of personal data, court proceedings and legal advice, as well as the very purpose of inspections, investigations and audits, unless there was an overriding public interest in disclosure.

It was concluded that, in view of the direct applicability of Regulation (EC) No. 1049/2001 not only in the Member States but also to the Agency, any policies or procedures elaborated by the Agency, including its policy on visits to Member States which was under discussion, should be read and interpreted in light of the rules enshrined in the provisions of the aforementioned Regulation.

The Chair suggested that the Agency's proposal should be put up for adoption by the MB.

The representative of France raised his objections to the adoption of the current proposal put forward by the Agency, since the relevant item had been described in the agenda as a "discussion point" and, consequently, he was not prepared to cast a vote on the issue.

The Agency acknowledged the point made by France, apologised for the error and explained that, despite the error made when indicating the relevant agenda item as a "discussion point" –and not as a "decision point"– the relevant issues had been included in Part A of version 02 of the draft agenda of the 40th MB meeting and formed already part of the list under which all the decision points were supposed to be enumerated.

The Chair recommended to adopt the policy by written procedure so that a situation where the representative of France would find himself in a difficult position vis-à-vis his national authorities would be avoided.

He apologised for the error in the column indicating the action to be taken in relation to that specific agenda point and reminded that, as a general rule, every issue which fell within the scope of Part A of the MB meetings draft agenda should be taken automatically as a "decision point".

During the second session of the meeting, the Chair announced that no decision could be made on the relevant agenda item and asked whether there was any formal disagreement to be expressed on the current proposed policy for visits to Member States and whether it would be possible to launch a written procedure for the adoption of the Agency's proposal.

The representative of France admitted that he could not vote in favour of the current proposal put forward by the Agency, as discussed previously during that meeting, since there were still objections to be raised on some points thereof and found that the suggestion to hold a written procedure for the adoption of the above-mentioned policy would in all probability give him the time needed to come up with a final answer.

The Chair invited France to send to the Agency any comments and remarks it might wish to make on the text of the draft proposal which had been presented during the meeting as soon as possible in order for a written procedure for the adoption of the policy to be launched immediately afterwards.

9. Procedures for the adoption of the Single Programming Document (SPD), including stakeholders' consultation, and of the Annual Activity Report (AAR)

The Chair clarified that the relevant agenda item did not concern the substance of the SPD or of the AAR, but was rather related to the procedures which had to be followed for the preparation of those documents and their final adoption by the MB.

The Strategy and Business Planning Officer recalled that, according to Article 52(1) third indent of the new Agency Regulation, the MB was required to establish "appropriate procedures" to be applied for the adoption of the programming document, including for the consultation of the relevant stakeholders.

It was explained that the Agency had developed so far two procedures; the first one concerned the procedures for the adoption of the SPD ("Single Programming Document procedure") and the second one was related to the procedures for the adoption of the AAR ("Annual Activity Reporting procedure").

It was pointed out that, although, according to the new Agency Regulation, it was only the SPD procedure – and not the AAR procedure– which needed to undergo a formal adoption process, the Agency had chosen to present also to the MB the AAR procedure which was inextricably linked to and formed a cycle with the SPD procedure.

The Board members were reminded that both draft procedures had been presented to the EB (ex-Sub-Committee) and to the MB during their meetings in June 2016 and that an extensive deadline to provide comments and feedback on these procedures had been provided until early October 2016. It was noted that, in the meantime, the Agency was also given the opportunity to revise the documents and to launch an internal consultation phase.

Germany made a point in relation to step 6 (point 3.6) of the draft SPD consultation procedure. More specifically, it was highlighted that the MB would have to give its approval on the draft SPD even though the necessary information on the budget or the objectives would not yet be available at that stage and it was suggested that the Agency should replace the term "endorsement" used in the text of that point with the term "discussion", since the draft SPD should not be considered as "approved" by the Board before the above-mentioned information could be made available to its members.

Moreover, Germany outlined that the first sentence of step 5 contained a minor error and that it should be re-drafted so that it would read as follows: "The SBPO prepares the consultation workshop to be taken place with the MB, EC and other stakeholders, such as the railway sector, in January of year n for SPD year n+1."

Denmark said that those procedures had been looked at in great detail and expressed satisfaction with the outcome, which was a very helpful step in getting things more functional, and thanked the Agency for all the efforts put on this.

The Commission disagreed with the point made by Germany and expressed some doubts as whether the wording already used in the formulation of step 6 (point 3.6) of the SPD procedure could be changed, since the term "endorsement" was considered necessary for the precise definition of the action which the MB had to make in relation to draft 2 of the SPD and suggested that a compromise solution might have to be reached in that case.

Germany requested the Commission to explain the reasons for which it insisted on the use of such a term.

The Commission, in reply to the question raised by Germany, clarified that draft 2 of the SPD was the final and definitive version of the SPD which would have to be forwarded by the Agency to the Member States, the Parliament, the Council and the Commission after its adoption by the MB and explained that a formal "endorsement" of that document by the MB –and not by the ED– was necessary in order for draft 2 of the SPD to be considered as the formal version of the SPD issued by "the Agency".

Germany was not convinced by the argument advanced by the Commission. However, if the Commission insisted on the need to maintain the wording already used in the relevant step of the procedure, the representative of Germany suggested to make an effort to seek the consent of his competent national authorities on that and to put to the attention of the Commission any questions or further objections that might be raised following the discussions on the issue with those authorities.

The Chair suggested that the MB should adopt a decision on both procedures which the Agency had just presented.

The procedures for the adoption of the SPD, including consultation of relevant stakeholders, and of the AAR as well, were endorsed unanimously by the MB.

10. Single Programming Document 2018 Draft 1.1 – consultation and sponsors

The new milestones for developing the SPD 2018 were presented as well as the steps for the preparation of the consultation workshop of January 2017. The MB members were reminded that a draft 1.1 had already been circulated at the end of October 2016 and that a presentation of that draft had been made during the EB meeting in November 2016.

The Strategy and Business Planning Officer pointed out that draft 1.1 of the SPD 2018 contained the core ideas and objectives, which were in line with SPD 2017.

It was added that the Agency planned to send to the MB and EB members, by December 21st 2016, a draft 1.2 and that the Agency had been already working during the past month and would continue to work on that draft version of SPD 2018 until December 15th 2016 when it was expected to have the final approval by the Agency's MT.

It was highlighted that draft 1.2 would form the basis of the consultation workshop to be held in January 2017 and that any comments from the Board members should be sent before January 20th 2017 in order to enable the Agency to take their feedback into account and to present it to the stakeholders during the consultation workshop.

It was also recalled that the consultation workshop had been scheduled to take place on January 30th 2017 and that the Agency intended to prepare and to forward draft 2 of the SPD 2018 to the MB, the Commission, the Parliament and the Council on the day after the consultation workshop, i.e. on January 31st 2017. It was

clarified that prior to the circulation of Draft 2 to the Commission, the Parliament and the Council, the MB would have to endorse on January 31th 2017 the final version of draft 2, which would be already available at that stage, possibly subject to the changes made during the consultation workshop.

It was outlined that the deadline for the Commission to provide the Agency with its comments on draft 2 of the SPD 2018 would be July 1st 2017 and that a draft 3 of the SPD 2018 would then be circulated to the EB and to the MB until the end of October 2017 and it was announced that the MB would be called on to formally adopt the SPD 2018 on November 29th 2017.

It was announced that the consultation workshop would be held on January 30th 2017 in the afternoon and reminded that the MB Chair had sent out an invitation for sponsors in October 2016.

The Strategy and Business Planning Officer thanked all those who responded to the request made by the Chair and offered to be sponsors.

It was pointed out that any feedback and comments to be received from the Board members on draft 1.2 of the SPD 2018 would be welcome until January 20th 2017 at the latest.

Furthermore, the MB members were informed about the proposal of the Agency to maintain the same format and structure for the consultation workshop to be held on January 30th 2017 as that of the previous consultation workshops.

The Chair thanked the Agency for the presentation and wondered whether the Board members should be invited to send to the Agency any comments and/or remarks they might wish to make already in relation to draft 1.1.

The Strategy and Business Planning Officer recommended that the Board members should provide the Agency with their feedback on draft 1.1 of SPD 2018 as soon as possible and, at the latest, by January 20th 2017.

The Executive Director clarified that the Agency intended to change the approach to be followed during the consultation workshop and to make it more strategic in nature in order to avoid a situation where the workshop would end up in a mere discussion of a linear list of comments.

The Chair revealed that his first reactions on draft 1.1 of the SPD 2018 were quite positive and promised to come back with more feedback on the template to be used and the general orientation of the document.

The Commission expressed its support with the approach chosen by the Agency, which was to give, at that stage, the wider picture of activities and objectives for 2018, including the financial, budget and human resources information, while trying to refine and detail them in future drafts throughout the year, agreed with the point made by the Executive Director and guaranteed that it would fully cooperate with the other Board members in order to enable the Agency to meet the deadlines for the finalisation of comments and to pass successfully through all the required approval stages.

Germany asked the Agency to clarify the meaning of the term “TAF TSI data for safety-related purpose (interface ERTMS – TAF)” which was mentioned in the draft 1.1 of SPD 2018, to confirm whether there was an interface between TAF TSI and ERTMS, to explain what such an interface should look like and to define the added value of using TAF TSI data for safety-related purposes.

Railway Industry (RI), in reply to the point made by Germany on the relevance of the TAF TSIs for safety, gave the example of the markings to be used on the freight wagons and explained that the current legislative framework placed a lot more emphasis on the information to be provided on the wagons than on the information which was accessible via databases. The importance of using what was provided via TAF TSI functions on the assessment of, for instance, technical compatibility, was also highlighted.

Infrastructure Managers (IM) welcomed the idea of the sponsorship, found that it was a quite brilliant collaborative approach, suggested that the Agency should maybe invest further on the strategic aspects thereof and encouraged the Agency to continue following that approach in the future as well.

11. International Relations Strategy

The Head of Strategy, Research and International Standards Unit made a presentation on the Agency's International Relations Strategy (IRS).

First of all, it was explained why the Agency needed to build up such a strategy. More specifically, it was pointed out that, according to Article 44(1) of its new Regulation, the Agency was given the possibility to strengthen coordination with international organisations on the basis of concluded agreements and to develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries competent in matters covered by Agency activities in order to keep up with scientific and technical developments and to ensure promotion of the Union railways legislation and standards, whereas Article 44(3) of the aforementioned Regulation stipulated that it was for the MB of the Agency to adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency was competent and that this strategy should be included in the SPD with a specification of associated resources.

It was pointed out that the Agency had already been involved in such activities increasingly over the years and that the proposed strategy would also include any other tasks to be performed by the Agency in the field of international relations at the request of the Commission or for the purpose of providing assistance to the latter.

The Board members were presented an overview of the activities currently undertaken by the Agency with actors outside the EU and it was pointed out that staff members involved in those activities were to be found spread across all the Units of the Agency and that the main focus of the Strategy, Research and International Standards Unit was to use the International Relations Strategy as a tool in order to ensure a consistent approach in all those activities and to prioritise the most important amongst them accordingly.

It was stated that the liaison with OTIF, the provision of assistance to the Commission in liaison with OSJD, the liaison with the European Standardisation Bodies (CEN/CENERLEC/ETSI) and with the International Standardisation Bodies (ISO/IEC), the provision of support to the European Neighborhood Instrument Project and to Accession Countries, the provision of assistance to the Commission in discussions with China, the preparation of draft MoUs with the Gulf Cooperation Council, with the Federal Railroad Administration in the USA and with ANTT Brazil and the liaison with the Commission and Shift2Rail with out of EU partners in defining research needs and reviewing projects were some of the main IRS initiatives on which the Agency had already started investing.

The Agency intended to formulate its IRS as a global approach to frameworks, rules, standards and processes that will help make rail more cost effective, safer and more competitive. The IRS aimed also to support the Union's global climate goals, by promoting rail as a low carbon transport mode and needed to describe how the Agency would contribute to this.

It was therefore necessary to develop a strategy to exercise influence over the development of international standards and to determine the optimal relationship between EU Technical Regulation, EU standards and global standards.

In addition, the aim was to foster opportunities both to export European practice and to import better practice from out of the EU thereby helping European suppliers in the world market, improving the EU framework and generating opportunities for the Agency to market its training, database, authorisation and certification services to non-EU organisations. The legal base required for this will be the IRS.

The Head of Strategy, Research and International Standards Unit announced that the Agency intended to include a one-page description of its IRS in the SPD 2018 and that the Agency's draft IRS would be submitted to the Commission and to the MB for discussion, and hopefully for adoption, during its January 2017 meeting.

RI thanked the Agency for supporting the railway industry on all of these international matters and identified the two main priorities of the Agency's IRS, i.e. the promotion of European technical specifications for

interoperability (TSIs) and standards and the implementation of the 4th RP. On the latter, it was clarified that, despite the obvious absence of an international dimension, the implementation of the 4th RP remained crucial for the Sector.

Rail Freight Customers (RFC) expressed their satisfaction with the document presented by the Agency mainly as regards the importance attached thereby to the best practices worldwide and suggested that the Agency should include in the list of non-EU actors to open dialogue with the Council of Europe countries, i.e. 47 countries, and give a broader perspective to its IRS in that regard.

Furthermore, it was recommended that the Agency should prepare a two-page document which would give an overview of the legislative framework governing the use of rail freight, help rail operators familiarise themselves with the different features of such a legislation and contribute to the promotion of rail freight more effectively.

The Chair reminded that the IRS would be discussed again within the MB in January 2017 and that a decision could be potentially made thereon and pointed out that the key question to be answered, at least at that stage, related to what were the next steps to be taken in the meantime.

The Commission thanked the Agency for its document on the IRS, embraced the idea of RFC on the expansion of the Agency's international perspective so that Council of Europe countries could be involved in the dialogue as well was, but recommended that the Agency should rather maintain the already existing broad reference to the need to consult as widely as appropriate with the neighbouring countries.

The Commission observed that, despite the adoption of the Agency's IRS which had been scheduled for the next MB meeting in January 2017, the Board members should be given some time to examine the relevant papers and come up with suggestions, comments and remarks in the meantime.

The Chair announced that any comments and/or remarks which the Board members wished to make on the draft documents presented should be sent in writing to the Agency no later than December 6th 2016.

12. Planning of the MB decisions for the implementation of the 4th Railway Package (RP)

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

The proposed timetable and approach in terms of governance would allow for the timely decision-making in relation to some very important points related to the 4th RP implementation for which the Agency had made a detailed planning; it was added that there was an absolute need for respect of the deadlines set therein, otherwise the Agency would run the risk of not being able to deliver its new tasks in due time.

As regards the adoption of 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, it was pointed out that the adoption of the relevant decision was envisaged to be done by May 2018, according to the programme planning already made, so as to give to the Agency the necessary time to enter into such agreements with each NSA.

It was announced that the Agency had already been involved in the development of the cooperation agreements framework together with the NSA network, mainly through the NSA subgroup established by the Agency, and that the main intention was to include in the scope of that framework all the technical and legal matters which could not be dealt with either at the level of the CSM or of the practical arrangements, i.e. details or requirements which were not harmonised and would need to be further discussed in the context of the cooperation agreements.

It was proposed that the Agency should provide more information on the progress of the work done in cooperation with the NSAs on the establishment of the relevant cooperation agreements framework during the January 2017 MB meeting, that detailed feedback would be provided on all the legal clauses to be included in the cooperation agreements during the June 2017 meeting and that a first complete draft of the cooperation agreements, including any provisions related to the non-harmonised elements of the practical

arrangements, would be made available in September 2017. This meant that the above-mentioned first draft would be subject to discussions and, if necessary, to review during the first MB meeting of 2018, and that the MB members would be given some time to deliver their comments until mid-March, in order for the Agency to be able to send out the final draft by the end of April 2018.

It was underlined that, in view of the difficulty of the topic, the Agency would make an effort to keep the Board members always updated on the progress of the work done and to get their feedback in every MB meeting, if possible.

On the issue of the definition of the OSS functional and technical specifications, it was explained that the adoption of the relevant decision should be done by September 2017, according to the programme planning. For this purpose, the Agency had already started elaborating on that point not only in the framework of the workshops on the development of the SSCs and VAs but also in the framework of specific OSS workshops and that the OSS specifications formed the subject-matter of discussions with the NSAs and with the Sector representatives.

In order for the Board to be able to adopt the relevant decision according to the proposed time schedule, the Agency would make sure that the Board members would be provided in time with the list of the main functionalities of the OSS features as well as with the proposed high-level requirements (e.g. web application, security, availability, etc.) and that traceability to business requirements and to the practical arrangements as well should be guaranteed so that the Board members would be provided with a better understanding of the OSS functioning.

It was announced that detailed information on the OSS specifications would be given to the Board members during their next meeting in January 2017 where the Board would be asked to agree on which information was necessary in order for the latter to be able to adopt the relevant decision by September 2017.

The 4th RP Preparation Programme Manager wondered whether it would be appropriate to arrange an EB meeting specifically for discussing OSS, depending on the level of the details of the specifications, by end of March 2017, taking into account that the Agency's final draft was expected to be forwarded to the MB members by the end of April 2017 and that their comments would have to be received by the Agency until the end of May 2017 so that a final review of and discussion on those comments would be made during the MB meeting of June 2017 and that the final specifications for adoption would be sent to the MB by the end of August 2017.

He acknowledged indeed that the Agency proposed a very challenging time frame in particular in view of the fact that the level of detail which the MB would require to be made available in order for it to be able to make a decision, was not yet known to the Agency and he took the opportunity to invite the MB members to consult a first proposal which was presented to the NSAs and the Sector representatives by the Agency in a relevant workshop in order to get a glimpse of the level of details included therein and to be well prepared for the adoption of the decision on the OSS specifications within the deadline proposed by the Agency.

Furthermore, it was announced that the adoption of a decision on the establishment of a framework model for the financial apportionment for fees and charges payable by applicants would have to be completed by February 2018. It was explained that the Agency was already in the process of providing its input on the preparation, within the Commission Expert and Support group, of a first draft of the implementing act on fees and charges to be presented on January 22nd 2017 on which the RISC would have to give its opinion on January 17th 2018. It was pointed out that the fees and charges model approved by the RISC was supposed to serve as a basis for the creation of the draft framework model for the financial apportionment for fees and charges.

On the proposed approach to be followed for the adoption of the relevant MB decision, it was suggested that a first draft of the implementing act for fees and charges as well as of the requirements for the apportionment for fees and charges would be presented to the Board members to be agreed on mainly as regards the general principles embodied therein, during their meeting in September 2017, that a final draft would be then

forwarded to the MB by mid-December 2017 after the submission of the proposed implementing act for fees and charges for approval by the RISC in order to ensure that the Agency's proposal would be in line with the one submitted to the RISC and that the Agency planned to send its final draft to the MB by the end of January 2018 on the basis of the RISC opinion and the comments received from the MB members until mid-January 2018.

It was observed that, despite the low technical complexity of the topic, there might be issues raised in relation to the content of the relevant document and it was proposed that the Board would be kept regularly updated on the progress made in that regard.

Finally, it was explained that although the Rules of Procedure (RoP) of the Board of Appeal (BoA) would be adopted through the means of an implementing to be issued by the Commission, the Agency had to prepare a consultation of the MB on the relevant aspects of those rules before their final adoption.

It was announced that a first draft of the BoA RoP would be presented to the MB members already during this meeting and the intention was to have a final draft prepared by the end of 2016 on the basis of the discussions to be held within the MB and the comments received thereafter from the Board members in order for the Agency to be able to hold a consultation during the first MB meeting of 2017.

The 4th RP Preparation Programme Manager highlighted that the proposed time schedule required from the Board members to be actively involved in the process for the implementation of the 4th RP and invited them to give their feedback on whether they agreed with the planning made by the Agency and whether they considered that additional meetings should be organised in order to facilitate the timely adoption of the relevant decisions.

The Chair appreciated the fact that the Board members were given the opportunity to get informed and be involved in the preparatory work that the Agency would have to deliver at an early stage in the process.

It was explained that, in the case of the development of the OSS functional and technical specifications for instance, it was crucial for the Agency to be informed in advance on whether the MB agreed to proceed with the adoption of the related decision in September 2017 and which type of information the MB considered necessary to include in the decision to be adopted. The importance of the exchange of information on a regular basis with the MB in order to get prepared in due time for the adoption of the decision on the OSS technical and functional specifications in September 2017 was also highlighted.

The Chair was pleased with the work done by the Agency on the planning of the MB decisions, promised to make sure that the MB members would be also made aware of the need to reach an agreement on the approach and timetable proposed by the Agency and highlighted the key importance of the planning made by the Agency in order to ensure that the decision-making procedure would not be put at risk in any way whatsoever.

Belgium thanked the 4th RP Preparation Programme Manager for his presentation, emphasised on the importance of the relevant issues for the future mission of the Agency and wished to make a point in relation to the technical specifications of the OSS. More specifically, Belgium reminded that it had been decided, during a first specific OSS workshop, that the issue of the language(s) to be used for that purpose should not be dealt with at that stage and requested more information on whether, in view of the outcome of the debate previously held within the MB on the linguistic arrangements issues, the discussion on the language(s) to be used in relation to the OSS would be further postponed or whether the intention was to discuss the relevant matters within the aforementioned specific workshops.

The Executive Director clarified that the current approach allowed for the use of all official EU languages in relation to the OSS inasmuch as the possibility for all applicants to submit their applications in the language of their own choice was also guaranteed.

France underlined the interdependence between the practical arrangements, the CSM and the cooperation agreements mainly as regards the issue of the delivery of the SSC and that a similar conclusion could be

drawn by analogy in relation to VAs as well. It was suggested that all those interrelated topics should be treated as a whole mainly with a view to ensuring consistency between the relevant provisions included in the different legal acts. Reference was also made to the need for caution in coordinating the time schedule for finalising the drafts of different legal acts which would be subject to different procedures for adoption.

Moreover, France seriously doubted whether there was such an urgent need for a consultation of the MB on a first draft of the BoA RoP to be held already during its next meeting in January 2017 and suggested that the planning made in relation to that point should be more flexible.

The Netherlands appreciated the planning of the MB decisions for the implementation of the 4th RP which had been presented and, in particular, the early involvement of the MB members in the process, suggested that it would be useful for the Board members to consider on a case-by-case basis whether there would be a need for a workshop to be organised in relation to a specific issue and gave the example of the workshops which could possibly be organised on cooperation agreements to help the Agency identify as early as possible the major strategic points for the MB to focus its work on.

The 4th RP Preparation Programme Manager agreed with the point made by France on the possible links to be drawn between different types of texts such as, for instance, between the guidelines and the main elements for cooperation agreements, the CSM and the practical arrangements. However, he considered that the proposed detailed planning would facilitate the coherent approach of all the relevant issues; the need to discuss those matters in the context of workshops and network meetings was particularly highlighted and should be regarded as one of the main challenges to be met in that respect.

As far as the actual need for a prior consultation of the MB on the BoA RoP, it was explained that it was necessary to have the feedback of the MB on those rules as soon as possible and, in any case, not later than January 2017 not only in order for the Commission to be given adequate time to prepare its implementing act on the basis of that information but also in order to allow for a series of tasks to be performed thereafter. It was mentioned, for example, that one of the prerequisites for the establishment of the BoA was the creation by the Commission, in close cooperation with the Agency, of a ‘’list of experts” on the basis of the existence of a possible conflict of interests or not after a first presentation and discussion of the draft BoA RoP during the RISC meeting.

Finally, the 4th RP Preparation Programme Manager replied to the Netherlands that his presentation was aiming at giving to the Board members an overview of the different forums of discussion of the different topics (e.g. the OSS) and at urging them to further reflect on the need for specific additional workshops and/or meetings to be organised and to notify the Agency accordingly.

13. 4th Railway Package (RP) follow-up – implementing and delegated acts planning

The Commission made some introductory remarks on the re-organisation of DG MOVE which took place in October 2016.

More specifically, it was explained that a new Directorate (Directorate C) for land transport had been created and that rail transport was to be considered as falling within the competencies of that specific Directorate. However, in view of the heavy workload in relation to rail issues which was partly due to the 4th RP implementation, it had been considered wise to split the work into two separate Units, the Single European Rail Area Unit and the Rail Safety and Interoperability Unit.

The Rail Safety and Interoperability Unit was responsible, among other tasks, for the aspects related the implementation of the 4th RP, for ensuring that the work done by Shift2Rail was fully aligned with the work done by the Agency and that the results already delivered in the field of research could be rapidly used in the EU railways with a further view to achieving the aims of increased competitiveness and cost-reduction to which the Executive Director had previously made reference.

The Board members were given a detailed overview of the Commission's role in the implementation of the 4th RP. First of all, there were a number of important delegated and implementing acts to be issued by the Commission in relation to the implementation of the 4th RP.

On the SSC project, it was mentioned that a series of workshops between the Agency, the Member States and, in particular the NSAs, had been organised so far as a tool for the development of the proposals to be made, the most recent among them being scheduled to take place in the beginning of December 2016, and that, as a consequence, the relevant Agency proposal was expected to be submitted to the Commission by the end of December 2016.

It was pointed out that both the delegated act on common safety method on conformity assessment and supervision and the implementing act on practical arrangements on SSC would be brought together for a first consultation to the attention of the RISC during its meeting in June 2017 (RISC 79). The above-mentioned delegated act would then have to be approved by the RISC during its meeting in November 2017 (RISC 80) and formally adopted by the Commission in March 2018 and that the same procedure should be followed for the final adoption by the Commission of the implementing act on practical arrangements on SSC.

The Commission found that the proposed timetable was quite ambitious in many aspects but reminded that the deadline imposed by the legislation for the adoption of all those legal acts was June 2018.

It was also outlined that, despite the fact that the procedure for the adoption of those acts was supposed to be a two-step process, which meant that the Agency made proposals to the Commission and that the latter had to go through the relevant formal processes to adopt them, the Agency and the Commission were already working closely on the adoption of those acts and, as agreed with the Legal Service of the Commission, the Agency would be involved rather earlier in the process so as to avoid possible delays in the procedure.

The Commission recommended, for reasons of efficiency of the whole process, that the input given by the experts in working groups should also be reflected in the input provided by the Member States in RISC and that any points which would have been agreed upon during the workshops should not be raised again during the RISC meetings so that the RISC would be able to concentrate its work on other important issues which would have emerged in the meantime or on issues of coherence between different documents which perhaps did not happen to be apparent earlier in the process.

It was added that a similar procedure had been put in place as regards the part of the implementation of the 4th RP which mainly concerned the VA project, i.e. the adoption of the implementing act on practical arrangements on VA. More specifically, the Agency should submit its proposal to the Commission by the end of December 2016, the RISC would be called to cast its vote on that proposal during its meeting in June 2017 (RISC 79) and the final adoption of the related implementing act had been scheduled for September 2017.

Moreover, it was pointed out that the fees and charges project had to be treated as a rather sensitive issue which was vital to the functioning of the Agency itself. It was explained that a lot of efforts had already been put by consultants into understanding fees and charges arrangements and mechanisms across EU Member States as a basis for the work that the Agency would have to perform in setting up the implementing act.

The Commission observed that, even though the adoption of the framework model for the financial apportionment of fees and charges had been scheduled for February 2018, the relevant implementing act would have to go through the RISC, first for a discussion during its meeting in June 2017 (RISC 79) and then for a formal vote during its meeting in January 2018 (RISC 81) before its official adoption by the Commission in April 2018, as initially planned.

On the issue of the BoA RoP, the Commission, partly in response to the point previously raised by France on the timing of the MB consultation, clarified that the main reason for which the MB was called on to provide the Agency with its feedback on the first draft RoP before end 2016 was to be found in the procedure which had to be followed by the Commission in relation to the adoption of the relevant implementing act; according to the proposed time schedule, background information on the draft implementing act would have to be given during the RISC meeting in June 2017 (RISC 79), whereas the formal vote on that act would have to be

cast in January 2018 (RISC 81) and the final adoption of the implementing act by the Commission should be completed by April 2018 so that the Agency could proceed thereafter to taking the necessary measures with regard to the selection of the BoA members, which was a time-consuming process with many steps to be followed.

As far as the delegated act on TSIs was concerned, the Commission expressed the view that this act should be considered as the basis for the adoption of all the other implementing and delegated acts and, as a consequence, needed to be adopted rather quickly. The Board members were informed that a first consultation had already been held with the Member States and the Sector on a first draft during September 2016. It was announced that, once the internal consultation procedures were completed, the RISC would be called on to give its opinion during its meeting in January 2017 and that the plan was to have the draft delegated act adopted by the second quarter of 2017.

Finally, as regards the recommendation on ERTMS trackside approval, which was to be regarded as one of the most important innovations of the 4th RP, it was explained that a first workshop had already been held successfully on November 22nd 2016 during which important issues were discussed, that a second workshop was scheduled to take place on February 22nd 2017 and that the Agency should provide its proposal by March 2017 in order not only for the RISC to be given feedback on the Commission's recommendation during its meeting in June 2017 (RISC 79) and to be consulted on the draft of that recommendation during its meeting in January 2018 (RISC 81) but also for the Commission to proceed to the final adoption of its recommendation in March 2018.

The Commission summarised that a lot of work had to be delivered during the preparatory phase of the implementation of the 4th RP and that a close cooperation between the Agency and the Commission in getting that work done had to be maintained, suggested that the Member States and the NSAs should also get actively involved in that work and admitted that he was looking forward to working with the Agency and the Board members throughout that period.

The Chair thanked the Commission for its presentation and appreciated the fact that the Board members were given the opportunity to identify the approach with which two different actors, i.e. the Agency and the Commission, intended to join efforts for the implementation of the 4th RP.

Germany wished to make a point on the implementing act on practical arrangements on VA. According to the planning proposed by the Commission, the last workshop was supposed to take place in December 2016, the discussion within RISC would be held in January 2017, whereas the formal adoption of the relevant act by the RISC would have to be completed in June 2017. It was suggested that, although not included in the planning already made by the Commission, an additional workshop should be organised during the period from January to June 2017 for the purpose of discussing the draft of the implementing act which would then be submitted for adoption during the RISC meeting in June 2017, taking into account that the experts of the Member States would not, most probably, be given enough time to consult the draft implementing act in the meantime.

Furthermore, Germany admitted that it had been taken by surprise when it was announced that the final draft of the delegated act on TSIs would be put forward for discussion during the RISC meeting in January 2017 and found that this planning was quite ambitious in particular in view of the high number of comments made in relation to the previous draft.

The UK thanked both the Agency and the Commission for their valuable input on the planning made for the implementation of the 4th RP and appreciated the reference to specific meetings which was envisaged therein for the first time.

The observation was also made that the Board members had just been presented some of the points which were actually subject to two separate governance processes and suggested caution in the choice of the next steps to be taken. More specifically, the need was identified for the Board members –and potentially the RISC members– to be better provided with the whole set of decisions which happened to be interdependent

through two separate governance arrangements and to be given some reassurance that this joint effort made by the Agency and the Commission would not end up in a failure.

The Executive Director replied to the UK that the Agency had put in place a detailed programme plan including all the activities in which the Commission would be involved and all the interdependencies between the legal acts to be issued by the Commission and the decisions to be adopted by the MB and announced that an updated programme plan would be presented to the Board members during their meeting in January 2017 with a further view to enabling them to track the progress and suggest mitigation measures, if needed.

The Commission, in response to the concern raised by Germany on the tight time frame for the adoption of the delegated act on TSIs, confirmed that, as already indicated during the working group meeting which had taken place just before the previous RISC meeting, an additional experts group meeting would be scheduled to take place, most probably, in early April 2017 for discussing the proposal on the delegated act for TSIs and on the implementing act for fees and charges. Although it was admitted that there were difficulties stemming from the necessity of a speedy adoption of the delegated act on TSIs, it was pointed out that, for the time being, there was no other choice than to go ahead with what might be a quite complex discussion of the relevant issues within the expert group linked to the RISC meeting in January 2017.

Germany thanked both the Agency and the Commission for their clarifications and recommended that, if that was the case, the draft on the delegated act for TSIs should be sent to the Member States as soon as possible in order for them to be given adequate time to discuss it with their industries and to be at least somewhat prepared for the working group meeting in January 2017; it was pointed out that this would also be helpful for the Commission in the sense that it would be prevented in time from putting into force a legal act which would have no value for the work that needed to be done afterwards.

14. Policy for the monitoring of NSAs

The Head of Safety Unit reminded that the documents which had been forwarded to the MB members for that meeting were the same as those which had already been submitted to the EB members and discussed by them during their meeting in November 2016.

The proposed approach for the NSAs monitoring, i.e. a new task of the Agency prescribed under Article 33 of the new Agency Regulation which provided that the monitoring of the NSAs should be performed by the Agency, on behalf of the Commission, by means of audit and inspections, with the aim of identifying possible deficiencies, was presented to the Board members.

It was explained that the audit teams should include qualified auditors from the NSAs as was already the case with the NSA cross-audit programme and that the audit reports needed to be provided, according to the above-mentioned provision of the new Agency Regulation, to the audited NSA, the Member States concerned and the Commission; it had also been proposed that the audit report could be shared with the NSAs network, something which had been commonly the practice under the NSA cross-audit programme.

It was pointed out that any deficiencies identified, by means of audits and inspections, should be tackled in a mutually agreed time limit and, in case no agreement was reached, there was a specific procedure to be followed to escalate the issue both to the Member State concerned and to the Commission for a further discussion.

The Head of Safety Unit outlined that the proposal put forward by the Agency on a draft policy on monitoring the performance and decision-making of the NSAs had been the result of discussions held and agreement reached within the NSA Cross-Audit Committee –the Audit Committee of NSAs which ran the cross-audit programme and had thus acquired a certain level of experience on that– as well as of the lessons drawn from the audit regime applicable by EASA and of the experience gathered by the Agency through the performance of similar activities in the past, mainly from the NSA cross-audit programme.

It was stressed that the Agency's target was to operate an audit/inspection cycle of three years covering all NSAs and that, although that was a quite ambitious planning, it could be more effective in the long-term than a seven-year cycle.

Furthermore, it was proposed that the Agency would make an effort to manage the resource implications of the above-mentioned three-year cycle by adjusting the scope of the audit, which was mainly intended to be targeted to areas of importance compared to the "broad-sweeping" scope of the NSA cross-audit programme which included potentially all NSAs activities relating to safety and interoperability.

The need for the MB to adopt, in its future meetings, the scheme on NSAs monitoring proposed by the Agency was also highlighted.

It was also clarified that the Agency intended to incorporate into the relevant policy, the comments from the Board members made before the meeting as well as some other really helpful editorial remarks.

On the proposed next steps, the Head of Safety Unit suggested that the Agency should firstly review the policy which had been initially put forward in search of a further simplification of the scheme and then engage in discussions with the NSA Cross-Audit Committee in order to get its re-approval on the updated scheme.

On the issue of the references to the languages to be used in relation to and the translation costs involved in the NSAs monitoring scheme, it was explained that the intention was to align any references on language issues included in the policy with the Agency's overall language regime and it was recommended that the relevant issues should be regarded as an "open point" until the adoption of a final MB decision on the matter of the linguistic arrangements to be applied within the Agency. The Board members were, by the way, informed that the annual expenditures for translation/interpretation amounted to 450.000 € just for Safety Unit and it was commented that this was not an insubstantial amount of money to be spent on translation.

The Head of Safety Unit announced that the revised NSAs monitoring scheme would be presented to the MB during the second quarter of 2017 and that the Agency had already discussed with some NSAs the option of making further efforts to introduce an implementation plan with a pilot phase of one or two NSAs in order to test the new scheme and check if it actually worked and to provide a report on that at a later stage to the MB.

Furthermore, he promised that he would make an effort to confirm that the start date of the monitoring could be the originally proposed one from a legal point of view.

Finally, on the issue of the confidentiality of the audit reports, the Head of Safety Unit highlighted, from the audit perspective, the requirements set by the Regulation (EC) No. 1049/2001. More specifically, it was pointed out that, according to the relevant provisions, it was clear that the Agency should refuse access to the requested audit reports since those documents clearly fell within the remit of the definition of "audits" and "inspections" of Article 4(2) of the above-mentioned Regulation, unless there was an overriding public interest in disclosure, but this was something to be decided according to the special circumstances of each case and after taking into account the already existing case law on the "overriding public interest" test.

Italy thanked the Head of Safety Unit for his presentation, apologised for having sent its comments not earlier than the day before that MB meeting, expressed its satisfaction that some of those points had already been taken on board by the Agency and asked whether there was any deadline to be met by the Board members who wished to send their remarks to the Agency and whether the latter intended to make use of a template for responding to the comments made.

The Netherlands thanked the Head of Safety Unit for providing the Board members with an extensive overview of the progress made in relation to the proposed NSAs monitoring scheme and repeated that the draft policy should be considered as an updated reflection of the work done through the NSA cross-audit programme.

However, it was recommended that the Agency's policy should also provide some details on the possible methods of supervision which the NSAs were supposed to use, e.g. audits, inspections or other similar activities, by specifying the type, the content and the number of those methods of supervision as well.

Although the Netherlands admitted that the draft policy included a reference to "competencies", it failed to indicate the number of inspectors and auditors which were needed in view of the workload of each NSA.

The Netherlands underlined that this was a rather sensitive issue, which had already been discussed without success within some working groups and that there were compelling reasons for which this matter should be looked at. More specifically, it was explained that a consistent approach to safety should be maintained in each Member State and all over the EU and it was assumed that the proposal to provide more guidance on the NSAs work would help build a higher level of trust.

It was also added that this guiding tool would serve as a reference point for the work to be performed by the Agency in the field of the NSAs monitoring, since it would be easier for the Agency to identify any deviations from the guidance proposed.

Additionally, the Netherlands recalled that the Member States already worked on drafting cooperation agreements with neighbouring countries and that the task of adjusting different supervision programmes was quite challenging and it was noted that the recommended guidance could be helpful in that regard as well.

Moreover, it was suggested that the guidance offered to the NSAs could at least help them identify the real needs in human resources and successfully address those needs even after an internal reorganisation.

Finally, the Netherlands stated that, as the Board members would be informed later on, the requirements for the functioning of NoBos were really strict, it was observed that, account being taken of the fact that NoBos were performing activities quite similar to those of the NSAs, the difference in the treatment of those two types of monitoring, i.e. monitoring of NoBos and the NSAs monitoring, could not be justified in any way whatsoever and it was suggested that the NSAs should be provided with guidance at least on some of the above-mentioned aspects of their functioning.

Belgium thanked the Agency for providing the Board members with an extensive proposal on the policy for NSAs monitoring, reminded that it had already made use of the possibility to make some comments on it following the discussions held within the EB and wished to make two additional remarks.

Firstly, on the issue of the scope of application of the policy on NSAs monitoring, Belgium wondered whether those additional tasks with which the NSAs would be entrusted by the Member States by virtue of the Railway Safety Directive, would be subject to monitoring as well and gave the example of the Belgian NSA which had been entrusted with tasks which clearly fell outside the scope of application of the Railway Safety Directive, e.g. those related to touristic trains.

The Agency was also requested to confirm whether the NSAs monitoring was supposed to cover those tasks which the NSAs performed on behalf of the Agency, taking into account that such tasks were to be considered as tasks to be performed by the Agency typically in the context of the "pool of experts" and, in particular, whether the Agency intended to have the experts included in the "pool of experts" audited as well for their skills, level of education, performance, etc.

Moreover, the Belgium made a comment on point 2.5 "occupational health and safety" of Annex V of the proposed policy on NSAs monitoring. More specifically, Belgium considered that the text proposed was not clear on the level of responsibility of the hosting organisation, i.e. the RU or the IM, for the protection of the Agency staff during an on-site visit and pointed out that, for instance, in Belgium, the relevant measures of safety were to be agreed upon by the IM and not by the NSA.

It was also noted that the series of measures which could be put in place by the NSAs for the purpose of safeguarding the occupational health and safety of the auditors were considered to be insufficient and the example of serious shortages in protective clothing in some of the NSAs was mentioned in that regard.

France made a similar point with Belgium and stated that it had understood that the scope of application of the proposed policy was as wide as to comprise not only the "mandatory" tasks to be performed by the NSAs, e.g. the supervision of a railway industry, but also the "optional" ones, namely those which could be conferred on the NSAs at the discretion of the Member States, e.g. the supervision of an entity in charge of maintenance. It was proposed, in that regard, that those two types of tasks could not be treated in the same manner and it was suggested that should the Agency wish to include both of them in the scope of application of the NSAs monitoring, this should be explicitly mentioned in the relevant policy, since the legal basis to be used was different for each type of tasks.

As regards the activities which were to be performed by the Agency on behalf of the NSAs, France was of the opinion that such activities could be subject to a type of monitoring other than NSAs monitoring and should not, at least, form part of the proposed draft policy for NSAs monitoring.

The Agency was also asked to inform the Board members on whether there would be any deadline for them to submit their comments and remarks on the proposed draft policy.

Trade-Union organisations (TU) agreed with the point previously made by the Head of Safety Unit that the NSAs monitoring should be mainly focused, at least in its initial stages, on supervision and competency management and added that it was considered absolutely necessary for the Agency to perform additional checks in order to verify whether the NSAs implemented or not their supervision tasks, in particular as regards competency management. Moreover, the Agency was asked to include in the scope of its audits the issue of monitoring compliance with the applicable driving and rest-time rules.

The Commission underlined the significance of the draft policy on NSAs monitoring, especially from the point of view of the 4th RP implementation, in the sense that it was absolutely vital to create a space of mutual confidence between the Agency and all the NSAs –the proposed policy being one of the methods in which this mutual trust and respect could be gradually built up– and to ensure that there were not anymore issues related to the NSAs processes which could hinder the access of railway operators to some Member States, since the access to the railway market was a fundamental part of the 4th RP.

On the highly debated issue of the start date of the monitoring, the Commission confirmed that, according to its understanding, the Agency could already avail of the monitoring powers conferred on it by virtue of Article 33 of the new Agency Regulation, which was directly applicable in all Member States as from the date of its entry into force.

The Commission highlighted that it was crucial to make use of those powers already at that moment in order to allow for the development of a common understanding well ahead before the entry into force of the provisions of the 4th RP related to the authorisation processes and urged the MB to proceed to the adoption of the proposed policy as soon as possible.

Germany thanked the Agency for the presentation and found that a certain number of legal issues should be clarified specifically in the case of participation of auditors/inspectors and technical experts from the NSAs in the audit/inspection team of the Agency during on-site visits such as the issue of the specific permissions which might be needed in order for the Agency inspection/audit team to be able to access certain parts of the railway network and the need to provide the auditors and technical experts of the Agency with adequate safeguards which would help guarantee that they would not be exposed to accidents during on-site visits in the railway network. It was emphasised that all those issues needed to be clarified before the Agency was allowed to perform such types of visits.

France intervened to point out that the French NSA was not responsible for regulating occupational health and safety matters, as well as the conditions for the use of human resources and, as a consequence, working time was an element which could not be subject to monitoring.

Sweden challenged whether the use of monitoring tools would be a better way to solve the problems identified during an audit/inspection than the provision of guidelines, the organisation of education activities, etc., highlighted the importance of giving a description of the problems to be solved and a justification of the

need to tackle those problems within a given time frame and urged the Agency to work more on that aspect of the NSAs monitoring policy.

The Trade-Unions organisations (TU), in response to the remark made by France, explained that the new Railway Safety Directive stated clearly that Member States should designate a competent authority for monitoring the compliance with the applicable working, driving and rest-time rules and that, in case that this body was not the relevant NSA, a close cooperation should nevertheless be maintained between that monitoring body and the NSA concerned and repeated that the NSAs monitoring policy proposed by the Agency should include the auditing of that aspect as well.

The Head of Safety Unit suggested that the MB should send its feedback, if possible, until the end of January 2017, in order for the Agency to be given adequate time to adjust the proposal on the basis of the comments received.

He fully agreed with the point raised by the Netherlands on the guidance to be provided on what an acceptable standard should look like and pointed out that the key question mainly concerned the stage at which this guidance ought to be given, because, although the relevant document clearly identified the need for all those standards to be "translated" to ISO referentials in order for the monitoring process to be more effective, this process would require some time and the NSAs seemed to consider the cross-auditing process beneficial even in the absence of specific referentials to be used.

On the issue of the actual scope of the NSAs monitoring, it was explained that, as a matter of fact and in view of the duration of the audit/inspection cycle, the Agency would have to target its audits, that the work to be done was already heavy even if the monitoring was limited to the core activities performed by the NSAs and that the intention was to focus almost entirely the audits/inspections on the main activities of the NSAs on the main railway network.

On the points raised in relation to occupational health and safety, the Head of Safety Unit recognised the complexity of performing trackside visits in terms of safety requirements and qualifications, but did not consider that the Agency would perform such visits in the near future, since most of the railway networks imposed specific requirements in relation to the competency to go trackside and that compliance with those requirements should be guaranteed prior to the organisation of such kind of visits.

Furthermore, the Head of Safety Unit appreciated the support given by the Commission and agreed with the point made that the NSAs monitoring should start as soon as possible.

In response to the comment made by Germany, the Agency agreed that the effort to access infrastructure in non-public areas carried with it several complications, but he thought that this was something to be further reflected upon and addressed at a later stage should the need to go trackside and access infrastructure for supervision purposes arise.

Moreover, the Head of Safety Unit agreed with the point made by the Trade-Union organisations' representative and added that compliance with applicable driving and rest-time rules had been clearly identified as an area of improvement in many studies which the Agency had done.

It was also pointed out that the Agency intended to involve the NSAs experts in its monitoring process and to build on the lessons learned from the NSA cross-audit programme and it was reminded that experts from the NSAs who participated to that programme had previously undergone training by the Agency's team.

The Head of Safety Unit guaranteed that he would make an effort to include a more detailed reference to the problems which needed to be solved in his updated proposal to be sent to the Board members and explained that this was the main reason for which it had been decided to concentrate the monitoring work on supervision.

Finally, he asked the Board members to give their support to the Agency on that and admitted that he would be very happy to include in the proposed policy the obligation for the Agency to provide a follow-up report

to the MB in order for the Board members to be given some information on the work performed by the Agency on the NSAs monitoring, the findings and the potential benefits of that work.

The Chair appreciated the proposal put forward by the Agency and, especially, the last point made by the Head of Safety Unit on the possibility for the Board members to be provided regularly with information on the progress made. He noted that there were a number of documents coming in the work stream of the 4th RP which were definitely more policy-oriented and found that the establishment of a regular reporting procedure to the Board on such issues was sometimes required.

It was summarised that the deadline for comments to be sent out was January 31st 2017 and that, as a consequence, the relevant draft policy would be brought to the attention of the MB for a final decision during their meeting in June 2017.

15. Policy on the monitoring of Notified Conformity Assessment Bodies (NoBos)

The Head of Interoperability Unit explained that the monitoring of NoBos, the backbone of the system of certification, was clearly one of the new tasks of the Agency prescribed under Article 34 of its new Regulation, announced that it was the first time that the Agency would present to the MB its proposal on the monitoring of NoBos and thanked Italy and the Netherlands for the comments which they had already sent to the Agency.

The Board members were given a general overview of the suggested structure of the Agency's proposal on the monitoring system for NoBos which would include a mutually influenced scheme of provision of assistance to Member States and of audits and inspections. More specifically, it was pointed out that the proposal would be composed of three parts, i.e. part 1, which would contain some introductory remarks on the proposed monitoring system, part 2 which would include the assessment scheme consisting of a description of the framework and of the requirements for the functioning of NoBos and part 3 on the audits and inspections which would be further sub-divided to three parts related to the policy, the procedure and the working methods respectively.

In addition, a detailed planning on the next steps to be taken in relation to the proposal put forward by the Agency was presented. It was announced that the Agency intended to bring again this proposal to the attention of the Board members during their meeting in January 2017 for adoption and it was suggested that a clause which would allow the Board members to re-consider the related policy after the first year of its application would be included in the relevant MB decision. During the period immediately following the adoption of the Agency's proposal, i.e. from January to September 2017, measures of internal organisation should be taken by the Agency in many aspects e.g. IMS procedure, training, practical arrangements, templates, etc., so that the Agency would be fully equipped with competent personnel to start performing the monitoring of NoBos as from January 2018.

Therefore, the plan was that a first revision of the monitoring NoBos system could be scheduled for January 2019 on the basis of the experience gained and the feedback received from the Board members during the first year of the implementation of the scheme.

According to a first estimation, a basic team of 11 staff members with different competencies would be needed in order for the Agency to be able to perform this new task, that this team would consist of one Agency assessment programme manager, two lead auditors and eight technical experts, i.e. two technical experts per subsystem (ENE, INF, RST, CCS) and that each assessment needed to be performed jointly by one lead auditor and one technical expert.

However, it was pointed out that the following three factors should also be taken into account on the human resources management for the performance of the monitoring of NoBos, i.e. the potential synergies which could be developed with the NSAs monitoring, the experience which would be gained over the time on the scheme and the existence of staff members within the Agency who could be assigned multiple roles, e.g. program manager and lead auditor.

The Head of Interoperability Unit underlined the need for the monitoring scheme to be implemented as soon as possible mainly due to the important role of the NoBos in view of the new tasks to be performed by the Agency under the 4th RP and the subsequent need to increase the trust in the work of NoBos. She explained that this was the main reason for which a detailed plan had been proposed by the Agency, including a first estimation of the resources which would be needed and the efforts which would have to be made in order to make the monitoring system work.

The UK found the presentation of the Agency really helpful, but wondered whether, particularly in the case of the accredited NoBos, the Agency would have to perform the monitoring for the purpose of checking the accreditation process itself or just to verify that the standards set by the Agency were met.

Germany thanked also the Agency for the presentation and admitted that it was surprising that, although the Member States and the NSAs had been working with the NoBos for over ten years, it was only at that time, when the Agency was assigned the task of issuing VAs, that the need to monitor the NoBos' work quality became urgently apparent.

Moreover, on the issue of sub-contracting, Germany agreed with the point made by the Agency that the problem of outsourced inspection activities had not yet been solved and went on to remind that the issue of verification of the railway components was still very much interrelated with the issue of competencies of railway operators and manufacturers.

It was explained that the third-party monitoring alone was not adequate and that it was necessary to identify what an "inspection" should actually entail according to the 4th RP and the accreditation scheme, i.e. whether the inspection involved simply the testing of a product or meant that the NoBos should also make use of the findings of this monitoring.

Germany elaborated on the point made by the UK and suggested that the Agency should clarify the precise nature of the NoBos monitoring. It was added that, in the case of accredited NoBos, there was no point in performing the same monitoring procedure over and over again and it was proposed that the Agency should coordinate its monitoring activities with those of the accreditation bodies.

Belgium did not embrace the idea of developing a possible limited scope of notification and recommended that the Agency should try to maintain the scope of notification as broad as possible. Belgium also expressed its disagreement with the proposed outsourcing to type B inspection bodies, something which had already been discussed within the EB during its meeting in November 2016 and went on to request more information on the opinion of the Commission's Legal Service on that issue.

France, in line with the comments already made by Germany and Belgium, pointed out that its railway sector had expressed serious concerns over the limitation of outsourced inspection activities to type A inspection bodies and that the relevant matter, although it would be subject to further examination, formed the subject of a heated debate in many countries.

Ireland stated that the assessment scheme proposed by the Agency had been discussed with the relevant national authorities and that the Irish NSA considered type A inspection through a third party as the only acceptable option.

RI stated that UNIFE was concerned on the potential impact that the exclusion of in-house inspection, as suggested under point 6.1. of the proposed scheme "resource requirements", could bear on the quality of expertise and the business of its members, agreed with the points made by both Germany and France and reminded that, although the intention was to have the reply of the Agency to a letter which had been sent to it carefully examined, this issue remained a rather sensitive point for the railway industry.

Romania intervened to clarify that there was one Romanian recognised NoBos and that a recognition scheme, which included monitoring activities, had been put in place at the national level. Moreover, it was pointed out that technical experts alone were not enough, that a technical expert should be, at the same time, lead auditor and member of the pool of auditors at the European level and that the Agency would have to spend

at least two years working on the training of the staff and the relevant practical arrangements before being able to perform the monitoring of NoBos.

The Executive Director, in response to the remark made by Germany, emphasised the need to include a precise definition of "inspection" and to draw a distinction line between "inspections" and "testing", in the sense that, while the testing could not be performed without the involvement of an in-house body, when it came to stricto sensu inspection, the NoBs should always be considered as an independent third-party.

Moreover, it was explained that it was Article 34 of the new Agency Regulation which stipulated the obligation of the Agency to establish appropriate procedures for monitoring NoBos and delineated the scope of the relevant scheme and it was outlined that the monitoring powers of the Agency were subtly different depending on whether the monitoring concerned an accredited or a recognised NoBo and that those powers were also defined under the aforementioned provision of the Agency Regulation.

The UK insisted on whether the monitoring of an accredited NoBos was intended to be a general inspection or whether the purpose was to inspect or audit the relevant accreditation process.

The Executive Director repeated that the text of the relevant provision of the new Agency Regulation clearly provided for the assessment of NoBos and not for the monitoring of the accreditation process.

The Head of Interoperability Unit agreed with the point made by Romania on the additional skills with which the Agency's staff should be equipped for the performance of the NoBos monitoring and for this, urged for the adoption of the proposed scheme by the MB as soon as possible.

On the issue of the imperative need to put in place such a monitoring scheme, it was added that, apart from the new Agency Regulation which clearly required that the Agency should perform the monitoring of NoBos, this scheme would have a very significant impact in the future particularly as regards the VAs process.

It was clarified that it was not the Agency's intention to repeat the same monitoring activities which would have already been performed within the Member States but simply to provide a complementary monitoring scheme and gave the example of the cooperation which had already been established in the case of the accreditation scheme between the Agency and the European co-operation for Accreditation (EA).

Finally, the Board members were presented a timetable for the adoption of the Agency's proposal. More specifically, they were informed that a new version, i.e. version 0.6, would be issued by the Agency on December 9th 2016 and that a template for comments would be provided to them. By that date, the Agency would also send to the Netherlands and to Italy its reply to the comments already received by them. It was announced that any comments and/or remarks on the updated version of the Agency's proposal to be sent out on December 9th 2016 would be welcome by the Board members until January 2nd 2017. On the basis of the feedback received from the Board members, the Agency would make available the final version, i.e. version 1.0, of the document which would be discussed within the EB during its meeting on January 12th 2017 and hopefully adopted by the MB during its meeting on January 31st 2017.

The Commission, in reply to the request made by Belgium, explained its position on the use of in-house NoBos. More specifically, it was recognised that, although Article 34 of the new Agency Regulation clearly allowed subcontracting by NoBos, the latter would have in fact to subcontract bodies which themselves had to meet the requirements set in Articles 30-32 of the above-mentioned Regulation and that, according to Article 31 thereof, any NoBos should be considered an impartial third-party and therefore not an in-house body. It was pointed out that this was the reasoning behind the view taken by the Commission that subcontracting of essential parts of the conformity assessment was not possible to an in-house body.

The Chair suggested, given that the adoption of the decision on the NSAs monitoring policy had been postponed for June 2017, that the adoption of the Agency's proposal on the monitoring scheme for NoBos should also be postponed for that time and wondered whether a discussion, mainly in the form of a workshop to take place, preferably around February-March 2017, could be held on both monitoring policies in order for the MB to be better prepared for the adoption of the relevant proposals in June 2017.

The Executive Director agreed that both the NSAs monitoring policy and the proposed policy for the assessment of NoBos were supposed to be considered as key elements of the 4th RP and agreed with the suggestion of the Chair on the need to organise a workshop for discussing those issues and aligning the position of the Agency with the position of all the actors involved. He promised that a revised planning will be given which will take into consideration these aspects.

16. Board of Appeal (BoA) Rules of Procedure (RoP) – 1st draft for consultation

The Agency's Legal Advisor pointed out that the prior consultation of the MB on the Agency's proposal on the RoP of the BoA was envisaged under Article 55(5) of the new Agency Regulation as a step required in the process for the adoption of the relevant implementing act by the Commission.

According to the above-mentioned provision, the BoA RoP were supposed to establish, among others, voting rules, the procedures for filing an appeal and the conditions for the reimbursement of expenses of their members.

The Board members were reminded that a first draft for consultation prepared by an external consultant, on the basis of the already existing BoA RoP within other EU Agencies (ECHA, EASA, CVPO, ex-OHIM) as well as the RoP of the EU Courts (CJEU, GC), had been forwarded to them in the beginning of November 2016 and that preliminary discussions with the Commission on that draft had already been held.

On the issue of the establishment of the BoA, the Board members were informed that a permanent structure was proposed mostly due to the fact that such a structure would be more efficient in terms of consistency of the decisions to be taken and easier to manage in terms of administrative workload; the fact that additional members (two and their alternates) could be appointed upon request, when the nature of the appeal required so, was a further argument for a permanent Board (or Boards), but the issue remained still open for discussion.

As regards the language issue, it was explained that the provisions proposed were indicative pending the results of the discussion on the Agency's linguistic arrangements in general and in particular on vehicle authorisation and safety certification.

As far as the conditions for the reimbursement of the expenses of the BoA members were concerned, it was reported that there was no provision included in the current draft. The Agency was in the process of analysing the related aspects as the intention was to propose a comprehensive provision to be included in the implementing act which could allow the MB to define in detail the reimbursement of expenses related to travel, subistence allowance, accomodation, etc. and that the fees to be paid to the BoA members should be considered in relation to the implementing act on fees and charges, which was, at that moment, still under discussion.

Finally, the Board members were invited to send their comments on the first draft which had already been circulated before the meeting until December 9th 2016. A second draft of the BoA RoP would be made available before the 41st MB meeting and the 3rd EB meeting which had been scheduled to take place on January 31st and on January 12th 2017 respectively.

Infrastructure Managers, speaking on behalf of the CER, expressed serious concerns over the potential non-legally binding nature of the decisions to be delivered by the BoA.

Germany thanked the Agency for providing detailed explanations on the draft BoA RoP, pointed out that the relevant texts had been scrutinised by its legal team and drew the attention of the Agency to the provision of Article 60(2) of the new Agency Regulation which read as follows: "If the decision is not rectified within 1 month after receipt of the appeal the Agency shall forthwith decide whether or not to suspend the application of its decision and shall refer the appeal to one of the Boards of Appeal."

Germany pointed out that the provision of Article 76 of the draft BoA RoP did not seem to be in line with the above-mentioned provision of the Regulation, suggested that it should be amended accordingly in order to

reflect the possibility provided for thereunder and promised to provide the Agency with more feedback on its remark in writing as well.

The Chair repeated that the deadline for the Board members to send their comments and/or remarks would be December 9th 2016 and announced that the relevant issues would be discussed within the MB during the meeting in January 2017.

17. Budget execution 2016 and transfer of appropriations, follow-up discharge, audits, communication and dissemination plans, Implementing Rules to Staff Regulations

The Chair announced that all information points listed under Part C of the agenda would not be discussed and invited the Board members who wished to be provided with more clarifications or explanations on the relevant issues to do so during the break and, in case that a specific question, remark or comment needed to be discussed within the MB, this would be done during the second session of the meeting.

As regards the agenda item which related to the Agency's communication/dissemination plan, the Head of Corporate Management and Evaluation Unit announced that the Agency intended to organise, jointly with the Commission, a series of medium-sized regional conferences in 2017, in particular in view of the voting procedure which was expected to be held within the RISC in June 2017 in relation to a series of implementing acts, including the implementing act on practical arrangements on VA.

The draft plan on the SERA Regional Conferences included five regional conferences, i.e. the Central Europe Conference in Berlin on March 14th 2017, the West Mediterranean Conference in Palma de Mallorca on March 21st 2017, the North Sea Conference in Amsterdam on April 7th 2017, the East Mediterranean Conference in Athens on April 19th 2017 and the Baltic-Scandinavian Conference in Stockholm on May 10th 2017 and it was outlined that the big SERA Convention Conference had been scheduled to take place in Brussels on June 14th 2017.

It was also explained that the Board members would be the contact point of the Agency for the purpose of facilitating the organisation of those conferences in which the NSAs, the ministries and the industries of the different Member States would be also kindly invited to participate, the maximum number of the participants for each regional conference being estimated at approximately 100-120 persons.

18. AOB

The Chair pointed out that some members and alternates had not yet submitted their CVs and declarations of interest (DoIs) to the Agency, kindly invited the Board members who had not yet responded to the request made by the Agency to send the requested documents as soon as possible and warned that, in case that the Board members did not respond to the Agency's request within the time limits set, the relevant appointing authorities would have to be notified in writing by the Agency's secretariat.

Furthermore, the Board members were requested to confirm or not whether they agreed that the Chair should be given the discretion to deviate from the existing rules on the reimbursement of the travel costs of the Board members under exceptional circumstances if he considered that such derogation would be to the benefit of the Agency.

The Board agreed with the proposal.

19. Meeting dates

The next MB meeting will take place on January 31st 2017 in Lille and the consultation workshop on SPD 2018 one day before, i.e. on January 30th 2017.