

Making the railway system  
work better for society.

# Minutes of 39<sup>th</sup> Meeting

## Management Board

Valenciennes / 23 June 2016

The meeting opened at 09.15, Mr. Mats Andersson was in the Chair. The Chairman of the Sub-Committee, Mr. Robin Groth, was also present. The secretariat was provided by the European Union Agency for Railways. The Agency Management Team, Mr. Josef Doppelbauer, Executive Director and Agency support staff were present.

The Chair welcomed the Director-General of the Directorate-General for Mobility and Transport (DG MOVE), Mr. Henrik Hololei and the new representative of Romania, Mr. Dragos Floroiu.

### Attendance list

<b>MEMBERS OF THE MANAGEMENT BOARD</b>		
<b>EU MEMBER STATES (with voting rights, one vote per member state)</b>		
Mr. Klaus Gstettenbauer	Austria	Present
Alt: Mr. Wolfgang Catharin		Excused
Ms. Clio Liegeois	Belgium	Excused
Alt: Ms. Valérie Verzele		Present
Mr. Veselin Vasilev	Bulgaria	Present
Alt: Ms. Giulietta Marinova-Popova (Adviser – Chief Expert at RAEA)		Excused
Ms. Lyuba Angelova (translator)		Present
Mr. Krešimir Raguž	Croatia	Present
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: Mr. Tero Jokilehto		Excused
Mr. Benoît Chevalier	France	Present
Alt: Mr. Hubert Blanc		Present
Mr. Wolfram Neuhöfer	Germany	Present

Alt: Mr. Michael Schmitz		Excused
Mr. Triantafyllos Papatriantafyllou	Greece	Present
Alt: Mr. Grigoris Sampatakakis		Excused
Mr Gábor Rácz	Hungary	Present
Alt: Ms. Helga Nemeth		Excused
Ms. Mary Molloy	Ireland	Excused
Alt: Ms. Caitriona Keenahan		Present
Mr. Antonio Parente	Italy	Excused
Alt: Mr Giorgio Morandi		Proxy Spain
Mr. Māris Riekstiņš	Latvia	Proxy Lithuania
Alt: Mr. Juris Krastiņš		Excused
Mr. Martynas Čekanauskas	Lithuania	Excused
Alt: Ms. Giedrė Ivinskienė		Present
Mr. André Bissen	Luxembourg	Present
Alt: Mr. Marc Östreicher		Excused
Appointment pending	Malta	Excused
Appointment pending		Excused
Mr. Hinne J.Y. Groot	Netherlands	Present
Alt: Mr. Marnix Van der Heijde		Excused
Mr. Ignacy Góra	Poland	Proxy Croatia
Alt: Mr. Pawel Rolek		Excused
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		Excused
Mr. Boris Živec	Slovenia	Present
Alt: Mr. Benjamin Steinbacher Pušnjak		Excused
Mr. Jorge Ballesteros Sánchez	Spain	Excused
Alt: Mr. Eduardo Santiago González		Present
Mr. Mats Andersson <b>CHAIRPERSON</b>	Sweden	Present
Alt: Mr. Carl Silfverswärd		Present
Mr. Robin Groth	United Kingdom	Present
Alt: Mr. Chris Angell		Excused
<b>EUROPEAN ECONOMIC AREA STATES (EEA) (no voting rights)</b>		
Mr. Øystein RAVIK	Norway	Present
Alt: Mr. Erik Ø. REIERSØL-JOHNSEN		Excused
<b>ETFA Surveillance Authority</b>	<b>Observer</b>	
Mr. Gaspar Ebrecht	ESA	Excused
<b>EUROPEAN COMMISSION (voting rights: 2 votes in total)</b>		
Mr. Henrik Hololei		Present
Alt: Ms. Sian PROUT		Excused
Ms. Agnieszka Kázmierczak		Excused
Alt.: Ms. Paloma Aba Garrote		Present

<b>SECTOR REPRESENTATIVES (no voting rights)</b>		
Mr. Libor Lochman	Railway undertakings	Present
Alt: Mr. Markus Vaerst		Excused
Ms. Monika Heiming	Infrastructure managers	Present
Alt: Mr. Andreas Matthä		Excused
Mr. Philippe Citroën	Railway industry	Excused
Alt: Mr. Gilles Peterhans		Present
Mr. Guy Greivelding	Trade-Union	Excused
Alt: Ms. Sabine Trier	Organisations	Excused
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 38<sup>th</sup> meeting held on 31 March 2016
- 2) adopted its Rules of Procedure
- 3) adopted the Executive Board Rules of Procedure
- 4) adopted an opinion on the Annual Accounts 2015
- 5) agreed to meet on 29 November 2016
- 6) adopted an Amendment n°2 to the Programming Document 2016
- 7) adopted an Amendment n°2 to the Budget 2016
- 8) appointed the members of the Executive Board for a term of office of four years. The members are the following:  
Mr. Robin Groth (the UK) – Alternate Mr. Gábor Rác (Hungary), Mr. Hubert Blanc (France) – Alternate Ms. Clio Liegeois (Belgium), Mr. Wolfram Neuhöfer (Germany) – Alternate Mr. Boris Živec (Slovenia), Mr. Hinne Groot (The Netherlands) – Alternate Mr. Yrjö Mäkelä (Finland) for the first half of the term of office, Mr. Yrjö Mäkelä (Finland) – Alternate Mr. Hinne Groot (The Netherlands) for the second half of the term of office.

Votes: All decisions under points 1-6 were taken unanimously. The decision on the amendment No. 02 of the Budget 2016 was taken with 2 abstentions: from Germany and Sweden.

The votes on the appointment of the Executive Board members were as follows:

<b>N. of Votes</b>	<b>Executive Board members</b>
24	GROTH Robin
14	BLANC Hubert
14	NEUHÖFER Wolfram
12	GROOT H.J.Y. (Hinne)
12	MÄKELÄ Yrjö
10	ŽIVEC Boris
9	LIEGEOIS Clio
5	RÁCZ Gábor

<b>Pairs</b>	<b>Member</b>	<b>Alternate</b>
1st with 8th	GROTH Robin	RÁCZ Gábor
2nd with 7th	BLANC Hubert	LIEGEOIS Clio
3rd with 6th	NEUHÖFER Wolfram	ŽIVEC Boris
4th with 5th	GROOT H.J.Y. (Hinne)	MÄKELÄ Yrjö

## MINUTES

### 1. Introduction on the new Management board

The Chair announced the publication on May 26<sup>th</sup> in the Official Journal of the European Union of the three legislative texts of the 4<sup>th</sup> Railway Package (RP), i.e. the new Agency Regulation<sup>1</sup>, the Railway Safety Directive<sup>2</sup> and the Interoperability Directive<sup>3</sup> and informed the Board that the date of their entry into force was 15 June 2016.

He mentioned that the Agency was from then onwards officially renamed to “European Union Agency for Railways” and that the Administrative Board (AB) was succeeded by the Management Board (MB).

The AB members remained in office as members of the MB unless otherwise decided by the Member States, and all decisions previously taken by the AB would retain their validity unless they were repealed by the Board.

He also said that there would be further explanations about the future decisions to be taken by the MB and that additional information on the issue had already been included in the note distributed before the meeting to the members.

### 2. Adoption of the Agenda

The agenda was adopted.

### 3. Adoption of the minutes of the 38<sup>th</sup> Administrative Board meeting

The minutes of the 38<sup>th</sup> AB meeting were adopted.

### 4. Rules of procedure (RoP) of the Management Board (MB) and Rules of Procedure (RoP) of the Executive Board (EB)

The Board Secretariat gave an overview of the extensive discussions that had already been held on the issue of the RoP of the MB and those of the EB since January, during the last two Sub-Committee (currently EB) meetings and also during the March AB meeting.

A summary was given of the comments made by the Member States and it was pointed out that they were also reflected in version 04 of the draft RoPs.

Provisions in both draft MB and EB RoP texts relating to the mandate to be given to the Executive Board, participation of the sector to the EB meetings, written procedures, etc. were debated and, more specifically, the need to make the appointing authorities aware of the possible existence of an on-going written procedure.

The Board was informed that, as far as the issue of the written procedure (which was raised by Denmark) was concerned, the Sub-Committee considered that it was not absolutely necessary for the appointing authorities to be informed of the launching of a written procedure and that the relevant provision had been taken away from the text of the draft version 04.

Furthermore, it was added that the issue of the mandate of the Executive Board and, more specifically, its power to take provisional decisions in case of urgency, had been discussed within the Sub-Committee, which

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<sup>1</sup>Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (Text with EEA relevance), OJ L 138, 26.5.2016, p. 1–43, hereinafter referred to as the “new Agency Regulation”.

<sup>2</sup> 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”.

<sup>3</sup> 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”.

thought that no further limitations should be imposed to the mandate other than those already foreseen in the Financial Regulation of the Agency<sup>4</sup>.

Regarding the issue of the presence of representatives from the Railway Sector to the Executive Board meeting it was confirmed that it had already been included in the RoP and that it had been proposed that the Sector should be represented to all EB meetings. It was clarified that this would mean that one of the representatives of the railway Sector on the MB would participate in every EB meeting upon invitation by the Chair without any previous appointment of a specific person (and his/her alternate) for that purpose being necessary.

As far as the EB establishment was concerned, it was confirmed that its four members (and alternates), which represented the Member States, had to be appointed before the end of the meeting.

It was recalled that the composition of the EB included the MB Chair, four of the other representatives of Member States in the MB and one of the representatives of the Commission. It was also pointed out that the duration of the mandate of the EB members should be the same as that of the term of office of the MB members, unless the MB decided that it had to be shorter. Furthermore, it was explained that the text of the RoP itself did not establish a specific duration, in order to allow more flexibility to the MB to determine the duration of the mandate of the EB members, in case the latter decided that it should be shorter than its own members' mandate.

Railway Industry wondered if the members representing the Railway Sector in the EB meetings had to be specifically appointed by the Sector or whether each different Railway Sector organisation would be given the right to appoint its own representative.

The Chair replied that the intention was to include in the RoP a provision which would make it possible for the Sector to choose one representative among the ones of the Sector organisations represented in the MB.

The Netherlands expressed its satisfaction with the current content of the draft RoP and wished to know how the implementation of the provision of the new Agency Regulation on the EB powers to take provisional decisions in case of urgency, in particular on administrative and budgetary matters, subject to a mandate given by the MB would be addressed.

It was explained that, according to the proposed Article 11(2) of the draft MB RoP, the mandate given by the MB to the EB to take provisional decisions on its behalf, where necessary on grounds of urgency, in particular on administrative and budgetary matters, was included in the text of the RoP.

It was indicated that, in practice, should a matter be treated as urgent, the Chair of the MB would be informed by the Executive Director (ED) and the EB, in case there was an upcoming meeting, which had already been scheduled, would assess the urgency of the matter at issue, decide on whether (or not) to proceed to take a provisional decision on behalf of the MB and bring to the attention of the MB any provisional decision taken on its behalf so that a final decision on the matter be taken at the next MB meeting or by written procedure.

It was further analysed that the fourth paragraph of Article 3 had been included in the draft EB RoP in order to allow the EB to assess, before taking any provisional decision, the grounds of urgency on the basis of the specific elements of each case where a decision might be necessary and act accordingly and that the MB should be informed on the outcome of the assessment, including the reasoning behind the Board's action.

France wished to clarify whether the alternate members in the EB would be from the same Member State as the members of the EB or whether there could also be representatives from different Member States, other than the ones already represented by the EB members. France admitted that it would support both options.

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<sup>4</sup>. Decision No. 93 of the Administrative Board of the European Railway Agency adopting the financial regulation of the Agency, ERA AB Decision No. 93, ERA AB WP 02-2013.

The Chair stated that the text of the new Agency Regulation was not clear on that, making it thus necessary for the Board to reach an agreement on the matter, i.e. whether the alternates on the EB should represent the same Member States as the members of the EB.

The Commission expressed its strong preference for including a provision in the text specifying that both members and their alternates should be appointed by the same Member State.

Railway Industry wondered whether there was any change introduced in the MB RoP text in particular as regards the composition of the MB other than that concerning the issue of the appointment of alternates and the length of the term of office of the Board members.

The Chair confirmed that there was no other significant change related to the formation of the MB except for the fact that the total number of the Commission's representatives on the MB was reduced to two.

The UK made the remark that the current MB (the previous AB) was a very large organisation and that, on the contrary, the Sub-Committee, which had been chaired by the UK over the past few years, was a small group which worked better and had the ability to hold the Management Team (MT) of the Agency into account in order to perform the necessary work. A point was made towards the view that a smaller number of representatives from Member States would make the EB a more functional body and help focus the debate.

It was further suggested that, when discussing on the issues related to the EB, a right balance should be struck between the need to maintain a smaller group, which would be able to keep the ED and the whole MT on course and the ambition to get as many people as possible from different Member States actively engaged in the governance of the Agency.

The UK reminded that the practice of involving as many actors as possible from different Member States had, in fact, been followed within the Sub-Committee, where the alternates were appointed by Member States other than those who had appointed the members.

It was finally concluded that the whole discussion revolved around the issue of whether the Agency intended to move forward the EB as a smaller, but focused, team of persons or simply wished to guarantee the involvement of as many Member States as possible in order to ensure a wider "buy-in" from all the actors involved across the EU in terms of what the Agency's governance should look like.

It reminded that the same topic had already been discussed twice within the Sub-Committee, whereby both sides of the argument had been effectively presented, and recommended to go on and seek the opinion of all the Board members on the issue.

The Netherlands agreed with both options and underlined that there were a number of arguments in favour of allowing also the participation in the EB of alternates coming from Member States other than those already represented by the members. First of all, those alternates formed already part of the MB composition. Moreover, it was highlighted that the EB members were not chosen for the sole purpose of representing the opinions of their individual Member States; they were appointed to serve also the interests of the Agency.

The UK added that, due account being taken of the fact that the members of the EB were representing the members of the MB, it was crucial that the persons appointed as EB members (and their alternates) were already endowed with the trust of the MB members to handle some issues in more detail and to play a significant role in the Agency's governance in that respect.

Slovenia expressed its satisfaction with both options, but considered that, in terms of the need to enhance the cooperation among all the actors involved, improve the efficiency of the work produced and strengthen the trust between the representatives of Member States both in the Management and Executive Board, the best solution would be to make room for a wider participation of Member States in the EB, in the sense that alternates on the EB should be representing Member States other than those already represented by the members.

Hungary observed that, whereas the alternate(s) on the MB could only come from the same Member State(s) as the member(s), when it came to the EB, it was absolutely necessary to allow the participation of alternates from different Member States, since this would contribute to the creation of a more diversified set of opinions and really doubted whether a strict limitation on the participation of alternates in the EB would be, as such, an effective solution.

France concluded that, on account of the above-mentioned discussion, the option of allowing the participation in the EB of representatives from different Member States would be highly recommended.

Finland was interested in finding out whether there would be any particular constraints from a purely legal point view that should be taken into consideration when deciding on the composition of the EB and asked if the view that the Commission expressed in favour of placing on the EB both member and alternate from the same Member State was based on a legal consideration or was simply related to issues of practicality.

Germany subscribed initially to both options, but went on to express its preference for the solution of allowing the participation in the EB meetings of alternates representing Member States other than those already represented by the EB members.

Moreover, Germany commented on the special amendment related to art. 11(2) of the draft MB RoP, introduced following its request, and announced that, as a result of the discussions carried out and, more specifically, the Commission's challenges on the necessity of that amendment, it would desist from further attempts to maintain that amendment in the text of the draft MB RoP.

The Commission confirmed that, as regards the issue of the participation of the EB alternates, there was no particular legal constraint imposing the adoption of the solution it proposed and that the option of allowing the participation in the EB meetings only of alternates coming from the same Member States as the members had been recommended for the purpose of achieving greater efficiency level within the EB.

Railway Industry suggested not to shift the discussion on balancing every interest within the EB and reminded that the option of having both member and alternate coming from the same Member State (which had been the practice up until that time) could cause serious functional problems to the EB itself, if both member and alternate were absent or unable to attend the meeting, for instance in case of strikes, etc. Thus, it would be more advisable to promote a wider representation on the EB and to avoid creating any excessive complexity with respect to that issue.

The Chair agreed with the point made by the Railway Industry as regards the commitment of the representatives on the Board and added that, should the participation in the EB be limited to only four Member States, a stronger interaction between the member and its alternate on the MB would be necessary so that both of them are kept equally updated on the matters at issue.

Denmark mentioned its support for both options, but felt that the solution proposed by the Commission, whereby both the member and its alternate should be sent by the same Member State, was more efficient and straightforward, since it was the same Member State which should be relied upon, in any case, for guaranteeing the presence of its representatives during the EB meetings.

The Chair summarised the positions of the Member States and proposed to come to a decision on the issue of EB alternates when discussing Agenda point A3 on the "appointment of the members of the Executive Board".

France suggested to explore the possibility of maintaining both options, in the sense that the relevant provision could allow for the participation in the EB as an alternate either of a representative of the same Member State as that represented by the member or of a representative of a different Member State.

Hungary intervened to propose a compromise solution which would give the four newly appointed members of the EB the power to take a decision on the matter and make their own choice of alternates at a later stage.

The Chair noted that this option would lead to the alternates being eventually appointed by the EB members themselves and not by the MB in spite of the clear wording of the relevant provisions of the new Agency Regulation.

France agreed with the position taken by the Chair, recalling that the new Agency Regulation explicitly stipulated that it was the MB which had the authority to appoint the four representatives of the Member States and their alternates on the EB.

Finland raised a question with regard to the issue of proxies, making reference to the provision of Article 10(2) third indent, which read as follows: *“The proxy shall be notified to the Chairperson at the beginning of the meeting”*. It was outlined that the proposed draft provision could not accommodate the situation where an MB member had to leave the meeting before the end and needed to authorise a proxy for the purpose of exercising his/her right to vote.

Therefore, Finland suggested to draw inspiration from the approach of the EASA MB RoP and proposed to extend the possibility of submitting the proxy to the Chairperson after the beginning of the meeting and, in any case, not later than the start of the voting procedure.

It was proposed to write the text of the relevant provision in such a way as to allow the notification of the proxies to the Chairperson *“in advance”*.

The Chair found that the MB RoP should be adopted without any change, except for the provision of Article 10(2) third indent which should be amended, following the proposal put forward by Finland, so that it reads as follows: *“The proxy shall be notified to the Chairperson in advance”*. Also, the provision of Article 11(3) of the MB RoP, which restricted the decision-making powers of the EB, should be removed from the text.

He added that the draft EB RoP should be adopted as well, but, in order to ensure consistency with the text of the draft MB RoP, where the obligation for a previous consultation of the appointing authorities had been waived, following a remark made by Denmark, Article 11(1) of the draft EB RoP should be amended and the phrase *“and their appointing authorities”* should be removed from the relevant text.

The RoP of the MB and the RoP of the EB, as discussed, were adopted unanimously.

The Chair pointed out that the unanimous adoption of the MB and EB RoP was the first decision ever adopted by the Board in its capacity as MB of the European Union Agency for Railways.

## 5. Appointment of the members of the Executive Board

The Chair announced the list with the Member States which had put forward their representatives' names in order to be elected (and appointed) as EB members: France (Mr. Benoît Chevalier, Mr. Hubert Blanc), the Netherlands (Mr. Hinne Groot), Finland (Mr. Yrjö Mäkelä), Hungary (Mr. Gábor Rácz), the UK (Mr. Robin Groth), Slovenia (Mr. Boris Živec) and Germany (Mr. Wolfram Neuhöfer).

He summarised that there were, in total, seven (7) Member States which were interested in having their representatives appointed as members of the EB and that eight (8) representatives had offered to put their name forward for nomination as EB members.

France clarified that it had chosen to put forward the names of two (2) candidates, i.e. its representatives on the MB, because it wished to propose a member and an alternate and recommended the appointment of four (4) persons as members and four (4) persons as alternates on the EB in order to reach the maximum number of eight (8) persons as provided for in the relevant provisions of the new Agency Regulation.

The Chair observed that if both representatives of France were nominated to be appointed as EB members, the other Member States, which were also represented on the EB, would be excluded from the possibility of appointing an alternate.

Belgium proposed Ms. Clio Liegeois as an alternate of Mr. Benoît Chevalier on the EB.

The Chair announced that, following Belgium's proposal, the total number of Member States which had proposed candidates for appointment as EB members were eight (8).

He suggested that the MB should strive to appoint alternates which could represent Member States other than those already represented by the EB members, because this option would be the most suitable course of action, not only from a practical point of view, but also in order to encourage opinion diversity within the EB and give the opportunity to more Member States representatives who usually act as alternates in the MB to get actively involved in the process as well.

The Chair reminded that the decision on the appointment of the EB members (and alternates) should be taken by a two-third majority of the MB members entitled to vote and explained the two-step election process that would be followed.

The Board was informed that the four (4) candidates with the highest number of votes would be appointed as members of the EB, whereas any candidates ranking in positions 5-8 would be appointed as alternates. In other words, the candidate who would be elected in the fifth position should be appointed as alternate to the candidate who would receive the highest number of votes and so on and so forth.

France agreed to limit the number of its nominees for appointment as members of the EB and decided to put forward only the name of Mr. Hubert Blanc.

Denmark made the proposal to indicate in the ballots which Member State would be represented by each candidate whose name had been put forward for election as an EB member (or alternate).

The voting procedure for the appointment of the EB members started. Austria's representative as well as a representative from the Sector were appointed as tellers.

The Chair announced the final results of the voting procedure, according which Mr. Robin Groth (the UK) – Alternate Mr. Gábor Rácz (Hungary), Mr. Hubert Blanc (France) – Alternate Ms. Clio Liegeois (Belgium), Mr. Wolfram Neuhöfer (Germany) – Alternate Mr. Boris Živec (Slovenia), Mr. Hinne Groot (the Netherlands) – Alternate Mr. Yrjö Mäkelä (Finland) had been appointed as EB members.

It was clarified that due to a tie between Mr. Hinne Groot (The Netherlands) and Mr. Yrjö Mäkelä (Finland), the Board had to come to a compromise solution whereby Mr. Hinne Groot would be appointed as an EB member for the first half of the term of office (two years), with Mr. Yrjö Mäkelä as an alternate, and Mr. Yrjö Mäkelä would be appointed as an EB member for the second half of the term of office (two years), with Mr. Hinne Groot as an alternate.

The Chair proposed to afford the EB a four-year mandate, with the exception of the above-mentioned representatives who were elected in a tie, in order give them full power to act as representatives of the MB members on the EB, congratulated the newly appointed EB members on their election and admitted that he was looking forward to attend the first meeting of the EB which would take place in September 2016.

## **6. Delegation of Appointing Authority (AA) powers to the Executive Director (ED)**

The Chair recalled that the issue of the delegation to the Executive Director had already been discussed during the March Board meeting and that the Board had given the ED the mandate to send the proposal for a delegation decision to the Commission for formal opinion.

The Board was also informed that, before taking its final decision on the matter, it was necessary to receive the Commission's opinion.

The Commission explained that the internal proceedings had taken more time than originally expected mainly due to the fact that its Legal Service had been asked to give some clarifications on any potential inconsistencies and confirmed that the anticipated decision had not been taken yet. Therefore, it was suggested that the Agency should arrange a written procedure as soon as the Commission's decision on the issue was delivered.

The Chair thanked the Commission for providing an update on the developments so far, but expressed his concern, in the sense that this prolonged delay would prevent the ED from signing any contract whatsoever and from performing any other similar functions, thus putting him in a difficult situation.

The Commission was challenged to provide further information on the main reason(s) causing the above-mentioned delay, replied that there were no problems in terms of the substance of the decision to be taken, assured the Board that it was only a matter of procedural delay and, while taking full note of the possible limitations on the powers of the ED that this delay caused, expressed its hope that the decision would be adopted in the coming days.

The Executive Director (ED) admitted that this situation impacted seriously on the operational efficiency of the Agency and encouraged the Commission to adopt the decision as soon as possible, explaining that during the time that had elapsed since June 15<sup>th</sup> 2016, he had not been able to sign leaves, missions, etc. as requested by the Agency's staff members.

The Chair agreed with the ED and recommended the adoption of the decision on the issue by the Board through a short (one-week) written procedure due to the urgency of the matter, making reference to the relevant clause which had been included in the draft MB RoP and could be of some use at that stage.

Denmark wished to clarify whether the text of the Staff Regulations, as applied up until that time, would impede the ED from making the final decision in the process of appointment and dismissal of the leading staff of the Agency, i.e. Heads of Units, etc.

Furthermore Denmark needed some further explanation (in the form of examples) on the reasoning behind the drafting of the provision of par. 6 of art. 3 of the proposed MB Decision (on the delegation of the powers conferred by the Staff Regulations and the CEOs on the AECC to the ED) which authorised the sub-delegation of specific powers conferred thereby to the ED to a temporary agent of another European institution or body.

The Commission noted that the question made by Denmark was mainly related to HR matters and pointed out that the wording of the provision was so clear that the powers of the ED in that respect could not be called into question.

Denmark clarified that it doubted whether an ED decision on the matters of appointment and dismissal, as mentioned above, would not run the risk of being overruled by a different MB decision on the matter and expressed the view that the ED should not be deprived of the power to have the last word in that process.

The Commission explained that the debated provision allowed the ED to sub-delegate specific powers to another person, which meant that it was the latter (and not the ED) who would make the final decision on the matter in relation to which the powers have been sub-delegated.

Denmark sought to confirm whether, in case the ED decided not to proceed to sub-delegation of the powers conferred to him, he could still make full use of those powers, i.e. whether those AA powers remained fully with him.

The Commission confirmed Denmark's reading of the provision as such.

The Chair proposed that the Agency should launch an urgent written procedure immediately after the Commission's decision has been delivered.

The Executive Director demanded the adoption by the Board of an "emergency procedure", whereby the latter would take up its role as AA, should the Agency find itself in need of appointing or dismissing staff, without having to wait until the next MB meeting in November and proposed the introduction of a short written procedure on all those aspects.

The Chair identified the need to examine whether, in case of urgency, those powers could be exercised by him and suggested that the written procedure could serve as an alternative option.

## 7. Opinion on the Annual Accounts 2015

The Accounting Officer of the Agency reported that the final annual accounts had not changed compared to the provisional ones which had already been presented during the previous Board meeting in March.

The Board was informed that a clean opinion had already been delivered by the external auditors and that a clean opinion was expected to be delivered by the Court of Auditors on the matter.

The Accounting Officer urged the Board members to give their favourable opinion on the annual accounts 2015, which should be submitted afterwards to the Commission, the Court of Auditors, the Council and the Parliament.

The Chair repeated that the topic of the annual accounts had already been discussed during the Board meeting in March and noted that the Sub-Committee (currently EB) had also discussed the matter two weeks before.

The UK confirmed that they had been involved in in-depth discussions on the issue within the Sub-Committee, went on to congratulate the Agency on receiving a clean opinion and urged for a wide approval of the Agency's annual accounts by the Board, in particular in view of the two-thirds (majority) rule which established by the new Agency Regulation for the adoption of a decision on that matter.

The Chair pointed out that the draft decision of the MB adopting an opinion on the Annual Accounts 2015 should refer to the Agency as the "European Union Agency for Railways" and pointed out that the text of the draft opinion should read as follows:

"The Management Board of the European Union Agency for Railways, having taken note of the European Court of Auditors preliminary observations on the Agency's provisional accounts and having examined the final accounts presented to it by the Accounting Officer has considered the 2015 annual accounts as annexed to this decision.

The Management Board has concluded, that the said accounts, taken as a whole, and drawn up under the responsibility of the Agency's Executive Director, reflect the implementation of the Agency's 2015 budget and the activities undertaken by it during this year."

The Board adopted unanimously the Opinion on the Agency's Annual Accounts 2015 with the proposed changes as regards the reference to the Agency's new identity.

## 8. Amendment No. 02 of the Programming Document 2016 – Annex VIII (Procurement Plan)

The Board adopted each year the Single Programming Document (SPD), formally known as the "Work Programme", for the following year and explained that the Procurement Plan (PP) for the following year formed also part of the SPD.

It was explained that any change either to the SPD (or to the PP) needed to be previously approved by the Board.

The Board was asked to decide on an amendment to the PP related to the IMS and added that the Agency was interested in contracting an external certification body in order to have its compliance with ISO 9001 verified.

It was mentioned that this work had been scheduled to take place during 2017, but the procurement process would have to be launched already in 2016. The payment would also be completed in 2017, with a maximum cost of 60.000 € spread over a time period of six (6) years.

The Board was informed that the above-mentioned contract would be initially signed for a period of one (1) year and that it could be automatically renewed five (5) times.

The Board was requested to adopt the proposed amendments to the PP 2016.

The UK reminded that within the Sub-Committee and the Board it had been discussed that it was important for the Agency, mostly in view of the 4<sup>th</sup> RP, to have in place an externally certified IMS.

Taking as a starting point the long duration of the whole process needed for the finalisation of the Work Programme, the UK made a point about the nature of the Work Programme as a “living document”, which was open to changes, depending on the circumstances, but went on to urge the Agency to think ahead as much as possible on the planning aspects of the work that needed to be delivered.

Finally the UK observed that, sometimes, activities of the Agency that needed to be started in the beginning or in the course of a year had to be planned and approved already during the previous year, recognised the need for some flexibility in that respect and recommended the adoption of the proposed amendment to the SPD 2016, reminding that a two-third majority votes of the MB members would be needed in order for the amendment to be considered valid and to be given effect.

The Commission, after being invited by the Chair to express any concerns it might still have on the matter, after the debate within the Sub-Committee, confirmed that the issue had been clarified on a bilateral basis and that it did not maintain any objection to the final adoption of the amendment.

The proposed amendment to the SPD and the PP 2016 was adopted by the Board unanimously.

## **9. Amendment No. 02 Budget 2016 – Statement of estimates 2017: State of play**

The Head of Finance and Procurement Sector said 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 was initially requested by the Agency.

He reported that, at the same time, the total number of the Agency’s temporary agents (TAs) would be reduced to 139, that there would be 12 additional contract agents (CAs) and estimated that the balance in terms of staff would be ensured.

It was explained that the decision on the reduction of 1 million € for the 2017 budget had been taken after discussions and with the support of DG MOVE and proposed that this reduction could be counterbalanced from the Budget 2016, since some activities which were linked to the 4<sup>th</sup> RP, and thus would have to be anticipated, had been pre-scheduled and included in the budget allocations for 2016.

In addition, the Board was informed that, two days before, a confirmation from DG MOVE and the Commission services had been received, according to which the Agency could frontload 700.000 € already in 2016.

Therefore, the Agency proposed to the Board to adopt an amendment to the Budget 2016, either during the meeting or by written procedure, in order for the additional amount of 700.000 €, which was intended to be allocated budget line 3110 on computer development, to be included as well.

The UK thanked the Commission for doing an impressive work in securing an increase in the budget of the Agency, including the number of its staff members and noted that the view, according to which the Agency had been given significant additional tasks, gained more and more recognition and concluded that this process of “transformation” of the Agency’s role required more staff and resources.

It was, furthermore, highlighted that the approval of the additional amount, although it fell short of what the Agency had initially asked for, was still quite close to the Agency’s initial requests and should be regarded as an achievement of the dialogue between the Commission and the Agency.

The UK believed that the more the work to be delivered by the Agency as early as possible the better the planning and the overall performance of its new tasks.

Finally, UK expressed its support to this achievement and urged the Board members, who had the ability and the flexibility to do so, to adopt the budget change already at that meeting.

The Chair agreed with the UK.

Germany admitted that a lot of effort had been put on that achievement, but asked for the adoption of the amendment through a written procedure, since a prior consent by the German Ministry of Finance would have to be sought on the matter.

The Commission intervened to clarify that the extra amount of money were not additional to the EU budget and that it would have to be considered as a transfer from one of the Commission budget lines to the Agency's subsidy budget lines due to savings from some actions which would have taken place.

Railway Industry wished to have some more details regarding the allocation of this additional amount of money for a dedicated IT system.

The Executive Director explained that this system would be called the One Stop Shop (OSS).

Belgium expressed its preference to proceed immediately to the voting procedure on the additional amount for the budget 2016.

The Chair proposed to come to a decision on the additional amount of 700.000 € with the subsequent amendment of the Budget 2016.

The MB adopted the proposed amendment to the Budget 2016 with the abstentions of Germany and Sweden.

## 10. Language policy

The Chair recalled that the issue of language policy had already been discussed not only within the Board during its previous meeting in March, but within the Sub-Committee as well.

The Executive Director thanked the MB members for their constructive contributions to the draft language policy and gave an overview of the main reasons for which the adoption of a language policy would make the Agency's work more effective.

It was explained that, first of all, as regards purely technical matters, there were a lot of ambiguities when translating from one language to another and that there were some concrete examples where translation errors could develop critical consequences bearing an impact on safety.

It was added that reasons related to efficiency and the cost factor should also be taken into account and reminded that the Agency had already reacted to some recent judgments rendered by the Court of Justice of the EU in relation to the issue of publication of vacancy notices.

The Executive Director considered the Agency's current proposal on language policy as multifaceted, taking into account some suggestions put forward by Member States.

The 4<sup>th</sup> RP Task Force Leader made a reference to the paper which had been forwarded before the meeting to all the Board members and outlined that the Board would be presented the main changes introduced in the document, already discussed during the Board meeting in March, either on the basis of comments made by the Board in the March meeting or received in written form in the meantime or after discussion within the Sub-Committee the previous week.

He commented, first of all, on item No. 1 of the draft MB decision on the "language arrangements in the European Union Agency for Railways", which read as follows: *"For cost reduction, efficiency and clarity reasons English to be the reference working language to be used in relation to all technical matters"*.

It was reminded that, although the March document included some considerations on the language policy issues in relation to the SMS, the latest proposal did not include any relevant considerations. This was mainly due to the fact that the Agency had received some comments pointing out that the language policy should deal neither with the SMS nor with the vehicle authorisation issues and that any considerations related

thereto should be dealt with by means of another act, e.g. through the implementing act on practical arrangements for Single Safety Certificates and Vehicle Authorisation.

The 4<sup>th</sup> RP Taskforce Leader mentioned that the previous proposal on the adoption of a language policy did not explicitly address the issue of the language(s) to be used in meetings and announced that, according to the current proposal, a “reference language” would be used in all meetings (MB, EB, NSA, NAB, NRB plenaries) organised by the Agency, should all the involved participants not come to an agreement on a common working language to be used during the meeting.

Furthermore, the Board was reminded that, on the issue of the vacancy notices for calls for applications in the field of recruitment, the March proposal mentioned that those notices would be only available in English. The 4<sup>th</sup> RP Task Force Leader explained that, due account being taken both of the location of the Agency (in France) and of the need for some staff members to interact directly with the French authorities, the updated proposal allowed for the publication of the above-mentioned vacancy notices in a reference language, which should also be used, at the request of the Agency, by the applicants for the purpose of reducing translation costs.

Along the same lines, due to the Agency’s location in France, the current proposal indicated that French was to be considered a reference working language for administrative purposes (e.g. procurement by local providers, contact with local authorities, etc.).

Furthermore, it was pointed out that the word “should” in item No. 5 was replaced by the word “shall” in order to accommodate the concern raised by Germany during the Board meeting in March as regards the language to be used by tenderers in procurement procedures, emphasising that, in any case not already covered by the previous items, the Agency would be under the obligation to respect the right of any EU citizen to address any EU institution/body using his/her own language.

Finland repeated the position it had taken during the last discussion on the language policy paper prepared by the Agency and highlighted the problems stemming from a potentially unequal treatment of EU languages vis-à-vis the applicants, the customers, etc.

For instance, the current proposals on making the reference languages the Agency’s languages would end up keeping the cost internal to the benefit of those applicants who would choose to make use of those languages in their applications, while externalising, at the same time, the costs of using any other languages to the other applicants who would not make use of the reference languages and, thus would inevitably find themselves under the obligation to pay in full all the necessary translation costs involved therein.

It was explained that the users of “smaller” [sic] languages in the fields of Vehicle Authorisation and ERTMS, i.e. languages other than those already defined as “reference languages”, would have to pay twice: initially all applicants paid their share of the use of the reference languages as internal costs of the Agency, but those applicants who would have chosen to use their own language (and not the “reference language”) or would have their documentation in their own language had to bear themselves the costs of translation.

Finland expressed the concern that this practice did not allow for the elimination of the translation costs; it simply shifted the costs from the Agency (or the EU system in general) to the applicants and could lead to unequal treatment of the applicants in that respect.

Finland noted that the glossary issue and the promise of the Agency to make use of as many languages as possible in the field of recruitment could be taken as examples of the “good will” of the Agency towards the applicants – users of “smaller” [sic] languages, but did not solve the cost driver issue for them.

While admitting that the use of a couple of reference languages would prove to be more efficient, taking into account that most of the applications on Vehicle Authorisation and ERTMS would, most frequently, be made in those reference languages, Finland doubted whether the cost of accepting the use of other “smaller” [sic] languages, other than the reference languages, would put such a huge burden on the EU system compared

to the burden placed on the individual applicants who would otherwise have to bear all the translation costs themselves.

Finland thought that the Agency intended to solve the issue e.g. through the nomination of a pool of experts, in order to avoid taking a rushed decision in the current meeting, expressed its reluctance to make a decision without even knowing which type of Vehicle Authorisation procedures would be put in place and what kind of fees and charges would be imposed on the applicants and without having previously clarified many issues which were interlinked with each other and proposed to accommodate the language policy discussion through different options that would strike the appropriate balance between the equal treatment of applicants and cost efficiency for the EU system at large, citing the “pool of experts” solution.

Finland recommended to stay focused, for the time being, on the issues that were not of a controversial nature, e.g. the issue of the language policy in the field of recruitment or the language arrangements related to the location and the administrative needs of the Agency, and repeated its reluctance to deal with more complex issues that were closely tied to the applicants rights or to EU citizens’ rights in general. It was explained that this part of the language policy could not form the subject of a compromise, unless the other parts of the “final deal” that would be on the table were made available.

Finland’s representative specified that he was speaking not only for himself, but also on behalf of the Finnish government, mainly because another position would run counter or would exceed the limits of the mandate which had been given from the Finnish parliament for the purpose of negotiating in the context of the 4<sup>th</sup> RP on the condition that the current situation of the Finnish applicants would not run the risk of being compromised in any way whatsoever during the transition from a “purely national” to a “partially EU” system.

Finland announced that, before accepting the Agency’s proposal, it would have to seek the consent of both the Finnish government and the Finnish parliament which would allow a deviation from the instructions included in the initial mandate and went on to admit that it was taken by surprise when realising that this agenda point was not anymore a “discussion” but a “decision” point.

Finally, it was suggested that the Agency should withdraw the current version of the document in order to deal in a definitive manner with the issues that seemed to be uncontroversial and leave the more “difficult topics” open to further discussion and re-drafting.

The Executive Director thanked Finland for providing a detailed explanation of its position and challenged whether the Commission would also adopt the same position as Finland on the seemingly uncontroversial nature of certain issues, e.g. the language arrangements in the field of recruitment.

He noted that the EU Court of Justice had issued judgments stating that the selection of specific languages for the recruitment procedures had not been properly justified and concluded that, for this reason, a language should be defined as “reference language” in the Agency’s language policy in order to be legitimately used in the vacancy notices for call of applications in the field of recruitment.

The Executive Director commented on Finland’s remark on the unequal treatment between “small” [sic] and “big” [sic] languages, clarifying that efficiency was not the only concern of the Agency when adopting a language policy; ambiguities and related safety risks were also taken into account.

It was mentioned that, in practice, the Agency maintained cooperation with a broad range of suppliers (e.g. in ERTMS or railway vehicles) and that none of them was based in Finland or used Finnish as working language.

The Executive Director concluded that the proposed language policy was not a “zero-sum game”; on the contrary, it would help take translation costs out of the system and not just transfer them from the Agency to some of the applicants.

He suggested also that Finland shared its experience on the way it had chosen to deal with similar language issues within EASA.

Finland explained that it was established in its national law that English could be the working language as regards aviation matters and, in certain circumstances, the use of English was mandatory even within the Finnish territory and concluded that this was a matter governed by law on which prior approval by the Finnish Parliament would have to be sought before casting its vote for the adoption of the Agency's proposed language policy.

The Commission, although it fully understood the position of Finland and all the challenges related thereto, confirmed its agreement with the adoption of a working language and considered this to be a more efficient solution.

However, on the issue of vacancy notices in the field of recruitment, the Commission declared that it would not be supportive of any consequent limitation to the use of one language in the recruitment procedures mainly due to recent developments in the jurisprudence of the EU Court of Justice. It was explained that the Court of Justice rulings were currently examined by the Commission Legal Service, which tried to assess the implications of such judgments and to figure out whether the publication of the vacancy notices in a working language, chosen by the Agency, provided that a summary of the vacancy notice available in the other 23 EU official languages would be a viable solution under the present circumstances.

Finally, the Commission summarised that, unless its Legal Service would come up with a final opinion on the matter, it could not approve the adoption of any decision deviating from the principle of publication of the vacancy notices in all 24 EU official languages.

Slovenia agreed with the position of Finland and opted for a more detailed consideration of the matter at that stage and the adoption of a unanimous decision at a later stage.

The Chair informed the Board that it was his proposal to make the agenda item a "decision" point and admitted that the time was not yet ripe for a final decision on the matter.

However, he underlined the need for the Board to stay focused and reach an agreement as soon as possible on the matter, since the language policy of the Agency had been an issue which had not been dealt with for over 10 years or so.

He urged the members of the Board to express any objections/disagreement they might maintain with regard to the proposed language arrangements and not leave them for the last minute in order to prevent the unanimity prerequisite from completely paralysing the decision-making procedure.

The Executive Director, in response to the remarks made by Finland, reminded that the Agency had already embarked upon the preparatory process for the implementing acts including the practical arrangements for Vehicle Authorisation and Safety Certificates and warned that the language issue would be raised there as well.

He wished to know which parts precisely would have to be taken out of the proposed language policy document, adding that the issues related thereto would be clarified in the implementing acts, although he admitted that this would only postpone the discussion for some months, since the Agency would have to submit its proposal on the practical arrangements until the end of the year so that the Commission could be in a position to prepare those acts in due course during the first half of 2017.

The Executive Director recommended to focus on the steps needed to be taken by each Member State in order to reach an agreement which would lead to a situation similar to the one applicable in the aviation sector and expressed the view that the language issues should not create serious impediments to the adoption of the implementing acts.

The Agency could continue to make use of the already existing language formalities in the field of recruitment or the language arrangements that have been informally agreed between the Member States for the meetings, but any delay in the adoption of the implementing acts on account of language policy issues would not be acceptable.

The Netherlands realised that further work needed to be done before a full decision would be taken on the issue, underlined that the Board should have a clear picture of the cost impact of the language policy both for the Agency and for the Member States, including the national railway sectors, in order to have a better understanding before adopting a decision on all the aspects of the matter and agreed with the position of Finland to finalise, during the current meeting, the discussion on any issues that might still seem uncontroversial as regards the Agency's draft language policy.

Austria expressed its support for the position taken by Finland, put a lot of emphasis on the difficulties related to the establishment of a single "reference language" and went on to characterise the notion of the "reference language" as a slightly "dangerous" one.

Austria admitted that the Agency could afford the cost of organising the meetings in English, pointing to similar practice which already existed with regard to the language requirements for meetings within the Commission.

However, it declared that it was not in a position to approve the Agency's current proposal at that meeting, suggested that the Board should proceed with a further analysis of the different elements that the Agency's proposed language policy consisted of and reminded that it was difficult to take a decision on the same day.

More specifically, Austria made the proposal to elaborate a list including all different types of future applications in order to identify the documents for which it would be necessary to agree on a specific language and for which of them it would be possible to allow the use of more languages, providing concrete and detailed explanation as to the language arrangements made in that respect.

Moreover, Austria expressed the view that, in order to mitigate the consequences of the "dangerous" concept of the "reference language", the applications for Safety Certificates, registrations, calls for tenders, etc. could be drafted in any language and not necessarily in a single "reference language" and recommended that the Agency should work on – and complete by the end of the year – a cost-benefit analysis, identifying the points in relation to which it seemed necessary to compress the perspective of its language policy and impose a single reference language and the points with respect to which the possibility for use of other languages as well could be left wide open.

The Executive Director repeated its concern about the need for the Agency to prepare the implementing acts and noted that language issues would form an essential element thereof. It was announced that the Agency had already adopted an approach on the language arrangements with regard to the Single Safety Certificates by reference to the SMS of the Railway Undertakings which allowed the use of the language of the respective Member State and outlined that a different approach should be adopted in relation to the language regime for Vehicle Authorisations.

It was explained that the matter was suddenly brought to the attention of the Board for the decision out of concern that the recent developments in the jurisprudence concerning the language regime might seriously impact on the adoption of the implementing acts.

Finally, the Executive Director cited authority from the new Interoperability Directive provisions which stipulated that the NSAs could select their own language when working on a certain process and drew the conclusion therefrom that neither the Agency was obliged to use all EU official 24 languages in that respect.

Denmark expressed its full support for the consideration made by Finland and noted the importance of the choice to be made, in particular as regards the implementing acts. However, it recommended that all Board members should be given adequate time to get advice on the issue and come up with written comments as soon as possible on the entire language "package deal" proposed by the Agency, without making any distinction whatsoever between controversial and uncontroversial issues, in order for the Board to be able to deliver a swift decision on the matter and to avoid further repercussions on the implementing acts.

France wished to define the exact scope of application of the EU Court of Justice rulings. More specifically, the Commission's Legal Service was asked to clarify whether, in the absence of a legal regime in place within

the EU institutions, Regulation No. 1/1958<sup>5</sup> applied, which meant that all 24 EU official languages could be used and whether, in the case of the adoption of a language regime which deviated from the aforementioned Regulation, the EU Court of Justice judgments did not apply whatsoever, since they were applicable only if no language policy was already in place.

Furthermore, it fully understood the concern of Finland and proposed that the Agency should work more on the identification of the translation costs involved. However, it could not guarantee that it would accept, in the future, an identical proposal by the Agency mainly due to the sensitivity of the issue and the need to take into account several aspects, including the UK referendum, and apologised in advance for a potential decision to withdraw its support in the future.

The Chair thanked France for the intervention and added that uncertainties was something that they had to consider when redrafting documents on such issues.

Sweden underlined the request for a better description of the translation costs before making a decision on the matter and warned that, if no language policy was officially adopted, Regulation No. 1/1958 would continue to be the only applicable legal framework in relation to the Agency's language regime. Moreover, the Agency was asked to come up with a document estimating the costs and benefits and invite the Board members to comment upon in view of the upcoming adoption of the implementing acts.

Germany found that, when it came to language policy, there were always new ideas to be presented and noted that the Board was not yet in the position to reach an agreement.

It expressed its interest towards the solution of limiting the costs and, in that respect, it agreed with using English as a reference language with regard to procurement, working groups, etc. However, in the area of the railway sector it opted for a language regime which would allow each applicant to use its own language when making the application; if English was to be chosen as a reference language, "smaller" [sic] railway operators who did not have adequate knowledge of English, would be inevitably brought to a difficult position, so it would be important to guarantee that they could also participate in the process.

Finally, Germany made reference to the possibility for some sections of the applications addressed to the Agency to be drafted in the applicant's own language and some sections translated in one of the Agency's working languages and proposed to perform an overall evaluation of such an application.

The UK recognised that the language issue was a complex one and suggested that account should be taken of the fact that the use of different languages could enforce cultural diversity, which remained one of the strengths of the EU system. It agreed with the remark made by Finland and added that a dividing line should be drawn between efficiency and differentiated cost allocation.

Moreover, it was proposed to break the language topic down into different points for reasons of clarity, in order to be able to identify whether the issues arose in relation to recruitment, to authorisations and interoperability or to authorisations and SMS, and to seek further evidence on the actual costs related to each option.

The UK mentioned that the Agency should establish some criteria dictating the choice of the "reference language" and asked the sector organisations present in the Board to confirm or not, by bringing supporting evidence, the above-mentioned assumption that English had already been widely used among manufacturers as their working language.

Finally, the UK stressed the possibility of discussing the language issues, as the debate evolved, through the implementing acts, i.e. within the RISC, even though language and administrative issues, mainly in relation to the Board's decision-making, were closely interdependent on one another, and requested the input of the Commission as to whether the MB or the RISC was the proper forum to hold discussions on language policy issues.

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<sup>5</sup>EEC Council: Regulation No. 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385-386.

Finland considered that the language issues should be definitely dealt with along the lines of the current Agency's proposal. It reiterated the assumption that English was already used as the reference language in 90% of the cases and wondered what would be the real cost for the EU system as regards the remaining 10% of cases or so. It emphasised the need for an impact assessment of the solution before it is implemented.

In this regard, it was suggested to look further and explore any other available options, different than those already proposed in the original Agency's language policy.

The representative of Rail Freight Customers outlined that the high-level issue of language policy should be looked at in the context of the global transport, recalling the serious safety problems which arose from time to time in the maritime sector and giving the example of the incidents which occurred in Indonesia mainly due to lack of an adequate knowledge of the English language.

It was highlighted that English remained a widely used language in both aircraft and maritime sectors and were used as a point of reference in the safety context as well.

The general point made was that English should be the proposed reference language for purely safety reasons. It was also reported that English was already commonly accepted as a working language in the global supply chain.

Hungary proposed to introduce translation arrangements that would help reduce the cost especially in relation to Single Safety Certificates, where most of the documentation would be submitted in the language of the respective Member State and the Agency would have to examine the documents submitted together with the NSAs.

The Commission, in reply to the comment made by the UK regarding the link between the Agency's language policy and governance, reminded that Article 74 of the new Agency Regulation, which was entitled "language requirements", read as follows: *"If necessary, the Management Board shall adopt appropriate rules for the implementation of that Regulation"*.

It was noted that the issue of how the applicants would interact with the Agency remained open with respect to the solution to be adopted in the implementing act on detailed rules and practical arrangements.

It was an issue that had already been discussed and would form the subject of further discussions during the meeting of the working group of the RISC, which was scheduled to take place on July 6<sup>th</sup>, in order for a "light" impact assessment on the issue of languages to be presented.

The Commission observed that, given the competence of both the MB and the RISC to discuss the language issues, the opinions expressed by the above-mentioned bodies on the matter would have the advantage of dealing with both aspects, i.e. the way of interacting with applicants for the certification of vehicles and railway undertakings and the impact from a financial point of view, which was mainly a question for the MB to answer.

It was also remarked that the disagreement with the document presented by the Agency that day mainly stemmed from the mixing of completely different issues which concerning, on the one hand, the recruitment procedures to be applied by the Agency for the appointment of new staff members and, on the other hand, the matters related to the new role of the Agency as an Authority, which, in the view of the Commission, meant that the language of the applicant would have to be respected.

The Commission reminded that, when preparing the 4<sup>th</sup> RP legislation, efforts had been made to overcome the problems related to this issue and proposed, in view of the number of implementing acts to be adopted and the impact of the language issues on several aspects, including fees and charges, to agree, after the discussion of the issue by both bodies, on a general principle, which would subsequently be adopted by the MB and applied in a more specific manner through the implementing acts to be subsequently adopted.

The final suggestion to the Board from the Commission was to come back to the issue of the Agency's language policy at the next Board meeting, after the discussions to be held in the Working Group of the RISC,

and provide a clearer picture of the different aspects that this language policy would deal with, making a distinction between recruitment and interaction with applicants.

Furthermore, it was clarified that, as regards the advisory role of the Agency, which still remained intact after the entry into force of the new Agency Regulation, recommendations were provided in English and, also the meetings of the working groups were held in English, a practice which could be followed in the future as well, whereas a discussion on the light impact assessment would have to be performed in regard to the new role of the Agency as Authority, as was already the case within the 4<sup>th</sup> RP Task Force.

The Executive Director agreed with the point made by the Commission on the motivation behind the drafting of the language policy presented to the Board and added that the introduction of the concept of a “reference language”, i.e. the language in which the Agency would work, for technical matters, was a fundamental principle which should be respected.

It was noted that the consequences of the adoption of a language policy by the Agency touched a lot of aspects, including that of the recruitment, and admitted that the issues identified in the draft Agency’s proposal could not be separated one from another mainly due to the Court of Justice judgments, which, in the absence of officially adopted language arrangements, made the justification for the adoption of a specific language for a specific procedure strictly necessary.

The members of the Board were asked to deliver their comments on the Agency’s proposal as soon as possible. It was suggested that the Agency could alternatively propose a rather “slim” [sic] language policy, defining one language as the “reference language” and regulating the details through an implementing act, but this would not make any difference in substance, it would simply postpone the solution to the problem and move the discussion of the matter from the MB to the RISC.

The Executive Director insisted on having the Member States’ comments as soon as possible and explained that those comments would form a solid basis for the Workshop on practical arrangements for VA, which would be held on July 19<sup>th</sup> 2016, two weeks after the RISC Workshop, and reminded that the issuing and approval of the implementing acts could not be delayed.

The Chair summarised the comments that were made during the discussion. He pointed out that the Member States were mainly concerned not only about costs on different aspects, but also about respect of the equality in the treatment of all EU official languages. Some concerns on the exact time-schedule for the decision on the matter and on the lack a mandate to approve the draft presented by the Agency without prior authorisation by the Member States were also expressed, especially in view of the absence of an impact assessment, which could include, as requested, some examples supporting the conclusions drawn thereby.

The Board members were reminded of the issue raised by the Commission and the UK on the possible links between the RISC and the MB and the need for some coordination between the two bodies.

The Chair asked the Agency to keep on working on the draft language policy document, taking into account the previous discussion, urged the Member States to deliver any comments and remarks they might wish to make on the draft Agency’s proposal as soon as possible and, in any case before July 8<sup>th</sup> 2016, so as to help the Agency to make a synthesis of all these divergent views on the matter and come to a conclusion which the Board would decide upon.

## **11. 4th Railway Package and Shift2Rail state of play**

The Commission welcomed the entry into force of the technical pillar of the 4th RP, noting that this was an important element in the process towards the removal of the remaining technical barriers in order to achieve the progressive establishment of a single European railway area.

The increased role of the Agency as the OSS for issuing Vehicle Authorizations and Single Safety Certificates would help reduce costs and speed up the procedures by eliminating the need to submit multiple applications and contribute to a more competitive railway sector.

The Commission congratulated the Executive Director and the Agency staff on the preparatory work for the implementation of the 4<sup>th</sup> RP, in particular as regards the cleaning up of the national rules and occurrence reporting, which were already underway and served as examples of the new work and expressed its satisfaction for the work that had finally yielded a positive outcome.

The Executive Director thanked the Commission for its kind wishes and reminded that the 4<sup>th</sup> RP was already in force, which meant that all the imaginary visions of the past had turned into a concrete reality.

The Board was reminded that the internal preparation for the 4<sup>th</sup> RP had already started more than one year before. The Executive Director stressed also the fact that the cooperation was a “key success-factor” for the 4<sup>th</sup> RP, and that the technical pillar of the 4<sup>th</sup> RP could not be achieved by the Commission or by the Agency without the pro-active involvement of the Member States.

To this end, the Executive Director made reference to a meeting held in Rotterdam with the participation of the heads of administration in charge of transport issues at the national level, where it was pointed out that, in order for the Agency to be able to carry out the tasks related to Vehicle Authorization and Safety Certification by June 16<sup>th</sup> 2019 at the latest, i.e. three years after the entry into force of the new Agency Regulation, it was necessary to ensure that an effective regime of cooperation was in place. Therefore, he urged the Member States to start the preparations as soon as possible and not wait for the practical arrangements to come into force and looked forward to working with them especially during the shadow-running phase, which would start in 2018.

On the issue of the state of play in relation to the Shift2Rail, the Commission expressed its full satisfaction for the fact that the Shift2Rail joint undertaking became fully operational and autonomous in May 2016 and informed the Board that the recruitment procedures had already started in order to ensure that the size of the joint undertaking would be in line with the tasks and the expectations of the Sector and that the work was mainly focused on the conclusion of grant agreements for the projects which would enable research activities to be undertaken as soon as possible.

The Commission expressed its hope that the work on the new projects would successfully complement the already on-going activities with the Shift2Rail, e.g. in-house projects which were awarded as a result of the 2014 call e.g. Road2Rail, IT2Rail, etc.

The Board was informed that, in parallel with the preparation of the grant agreements, the Commission was very willing to engage in discussions with the private members of Shift2Rail joint undertaking for the purpose of further clarifying the strategy and high-level approach of the joint undertaking as such.

The Commission concluded that all these developments were as important as the entry into force of the 4<sup>th</sup> RP itself and would serve as a complementary part of the work that needed to be done towards creating a single European railway area and increasing the competitiveness of the railway sector.

The Chair wished to clarify whether any developments with respect to the political pillar would be also mentioned and explained that it would be interesting for the Board members to get an overview of how the process was moving from that point onwards.

The Commission analysed that an agreement had been reached under the Dutch presidency and that there were meetings on-going in the Council on the finalisation of various recitals of the legal acts concerned and announced that the acts on the market pillar would probably be published by the end of 2016.

Moreover, it was added that the most significant part of the work had been completed, that there was no need to come back to open issues which had already been settled and that it was only the issue of the legislative cleaning up which was still pending.

Rail Freight Customers made a comment in relation to the mission statement of the Agency, which read as follows: “The European Rail Sector, with its different cultures and languages, remains largely fragmented. Its cultural and linguistic harmonisation has only partially been achieved”.

The entry into force of the technical pillar was welcomed but the need to convince people to use rail and to increase the railway market share was strongly emphasised.

More specifically it was proposed that the Agency should adopt a document which would explain its activities and objectives, present the commercial benefits and promote the market-friendly approach of the railways in order to turn all these developments into a real commercial success. The Board was reminded, in this regard, of the TEN-T project which remained largely unknown to the public despite its huge success.

For that, it was recommended to promote the Agency to the commercial world, be it freight customers or passengers, in order to convey the message across the market that the Agency formed a very integral part of European competitiveness and that this could be turned into a “commercial dynamo”.

The Executive Director agreed with the point made by the Rail Freight Customers, confirmed that the level of public awareness of the role of the Agency and, in particular, of the impact of its work was very limited and informed the Board that, after discussion with the Commission on this point, it was agreed, as a first step, to make the world aware of the ten most important consequences of the 4<sup>th</sup> RP.

The Executive Director added that the Agency would firstly have to convey the message that it was aiming at enhancing the competitiveness of the rail sector, by taking cost out of the system, to a narrow audience, i.e. the users and shippers, and then proceed to make the broader public aware that the Agency is actually promoting a sustainable way of transport.

Rail Freight Customers asked whether this information could be made also available on a short, single-page leaflet, which would be prepared by the Agency until its next meeting in November, so that this information could be further diffused.

The Executive Director confirmed that the Communication team of the Agency would make sure to have this information available by that time.

## **12. 4th Railway Package transition: Communication and dissemination plans (1<sup>st</sup> draft for consultation)**

The Head of Corporate Management and Evaluation Unit reminded that, under the new Agency Regulation, the MB had to adopt communication and dissemination plans. He noted that, with the exception of 2016, the communication plans would be adopted in the future during each Board meeting in the beginning of the year.

The Board was reminded that the Agency had never been asked to prepare such a document before and thus there was no template to follow or previous example to rely upon on the plan to be adopted. A first presentation of this document was made during the last Sub-Committee meeting, although the comments received thereafter had not been included in the version that was about to be presented to the Board, with a further view to combining them with any comments made to this version by the Board members for the preparation of an updated version of the document.

The Head of Corporate Management and Evaluation Unit announced that the communication plan was structured as a follow-up to the communication strategy including an action plan which had been adopted by the Board some time before.

The Board was presented the different clusters of this strategy. It was explained that as regards the academic aspects the main idea was for the Agency to get more involved in the academic world and, in particular, to participate in the training of young people including engineers, and to contribute to the transmission of European knowledge through the relevant undergraduate and/or postgraduate degree programmes. The example of the University of Valenciennes, where training input had been systematically provided to master classes by the Agency was also mentioned. It was recalled that the European Training Centre for Railways (ETCR), in cooperation with the College of Europe (Bruges, Belgium), offered a two-week summer seminar to

around 20-30 persons per year and that representatives from the Agency actively participated in the training by means of shaping and designing its content.

Furthermore, it was explained that the Agency was committed to offer much more audio-visual support for its future communication actions and announced that a video for ERTMS had already been prepared and that something similar would be put in place for InnoTrans later on.

As far as the Agency's corporate design and re-branding was concerned, the Board was reminded that, in view of the recent entry into force of the new Agency Regulation, the Agency needed to change its logo, flags, totem, electronic documents (around 200 forms and templates), business cards, etc. so that the new legal identity of the Agency be adequately reflected in them.

On the issue of events, it was recommended that the Agency should adopt a stable annual plan for any future events to be organised throughout the year. The Board was informed that the following events had been scheduled to take place until the end of 2016: the Florence Digitalisation Forum, the Rotterdam TEN-T days, the Valenciennes 4<sup>th</sup> RP Celebration, the regional workshops on matters such as TAF/TAP and dangerous goods, the Berlin InnoTrans, where an MoU with other international counterparts of the world would be signed by the Commissioner Violeta Bulc, as well as a conference in Warsaw which would be organised by the Agency with a view to strengthening its presence in the eastern parts of Europe.

Moreover, the Head of Corporate Management and Evaluation Unit explained, on the issue of external services, that the procedures for the conclusion of framework contracts for audio-visual and supporting graphic providers under the EU procurement rules had been launched that the evaluation of the offers was already underway. As far as internal communications were concerned, it was pointed out that the Agency had launched a "think tank" for putting together what was needed in terms of internal communication and that the Agency staff was regularly briefed by the ED and the 4<sup>th</sup> RP Task Force Leader on the 4<sup>th</sup> RP and the developments related thereto.

On the editorial side of the communication plan, the Board was informed that the Agency had already a plan, which, taking into account the comments previously made by the Rail Freight Customers, would be reviewed by the Communication team and further discussed with the Board members. It was also added that the representation of the Agency in the social media had improved since the beginning of the strategy: the Agency had already an active Twitter account with 602 followers in total and preparations for an official Facebook page were already underway.

As far as stakeholder relation management was concerned, it was highlighted that the Agency had been requested to move towards the implementation of its Extranet structure, something which was of interest mainly for the working parties, and added that a stakeholder relation management database would be established, as an audit requirement, during that year.

The Board was informed that a first draft of the site had already been approved by the ED and would possibly go out on the public for InnoTrans and that the 4<sup>th</sup> RP campaign was also in progress focusing mostly on internal communications during 2016, since the Agency planned to proceed with external communications in 2017. A table was presented to the Board including a list of the events which had been scheduled to take place during 2016, with the Agency participating or acting as a speaker, and which would be published on a regular basis on its website.

The Executive Director intervened to add that he had already given around 110 speeches until the end of June 2015 and that throughout the whole year 2015 he had participated, on average, in one meeting per day.

The Head of Corporate Management and Evaluation Unit announced the publication, during 2016, of the last editions of the Interoperability and Safety reports, as well as of the first pilot edition of the "one Agency Report", which would mainly contain the so-called "railway indicators" and present the impact of the various legislative acts on real life.

Finally, the Board members were presented the proposed structure of the Agency's monthly newsletter, which would be published on top of the Agency's regular news and its first edition would consist of an editorial top story, an interview, and a discussion about the main players of the EU railway area, a section dedicated to customers and some news from the Agency.

The Chair appreciated the strong resemblance that the proposed communication plan bore to the strategy that had already been adopted by the Board and encouraged the Agency to provide any updates to the Board during the meeting beginning 2017.

Denmark welcomed the Agency's communication plan and asked more information on how much time the Board members would be given when the next communication plan would be presented. Taking the comment that was made by the Rail Freight Customers one step forward, Denmark advised the Agency to upload the information related to its new role and tasks on its official website and, if possible, ask all the customers and other organisations to put the relevant information on their websites as well.

The Netherlands appreciated the presentation on the Agency's communication and dissemination plan and recommended that the Agency should strive to reach out as many stakeholders as possible. Moreover, the Agency was asked whether its new website would include a precise overview of the legislative updates, which, in the Netherlands' view, was an important information for the stakeholders. Finally a comment was made with regard to the possible participation of the Agency to the EU Rail Freight Days that would be organised by the Commission in December 2016, since the declaration which was signed during the TEN-T days explicitly mentioned the need for cooperation with the Agency.

The UK highlighted the importance of implementing activities in the field of communication, remarked that the communication plan for each year would normally follow from the Agency's communication strategy and be structured in the form of an implementing plan of this strategy and encouraged the Agency to keep on disseminating the relevant information.

The Head of Corporate Management and Evaluation Unit replied that the aim of the communication plan was to offer at least a general overview for the whole year, apologised for some last-minute events that might pop up and had to be organised by the Agency and assured the Board members that the structure of the next annual communication plan would definitely be improved. Finally, in reply to the request put forward by the Netherlands, it was noted that the Agency would take into account the need to provide an update on the legislative developments on its website, but this was something that had to be previously discussed with the Commission.

The Netherlands repeated that, during the adoption of the Ministerial Declaration at the Rotterdam TEN-T days, a statement was made in relation to the event on the railway sector that would be organised by the Commission and recommended that the Agency should also participate in that event.

The Head of Corporate Management and Evaluation Unit confirmed that the point raised by the Netherlands would be taken into account.

The Chair thanked the Agency for the presentation and mentioned that he was looking forward to see the "one Agency Report" which would include the implications of the Agency's work on the railway sector.

### **13. 4th Railway Package Transition: Procedures to be applied for the adoption of the Programming Document including consultation of relevant stakeholders (1<sup>st</sup> draft for consultation)**

The Strategy and Business Planning Project Officer reminded that the new Agency Regulation required the MB to establish appropriate procedures for the adoption and consultation of the Single Programming Document (SPD) and presented the two relevant procedures in this regard, one on the development of the SPD and another on the Annual Activity Report (AAR), noting that, whereas the latter was not legally required to be adopted by the Board, the Agency still wished to keep the Board regularly updated on any

developments related thereto, since both procedures were indeed very closely interwoven and formed a strong attachment of the whole cycle of the Agency's planning and reporting.

It was stated that the purpose of both procedures was to give an overview of the legal requirements, activities, responsibilities and deadlines for both planning and the reporting, the output of the first one being the SPD and the outcome of the second one being the AAR. It was repeated that the legal basis for the SPD was to be found in the new Agency Regulation, whereas the legal basis for the AAR should be sought in the Agency's Financial Regulation.

It was confirmed that the Agency would always ensure the timely delivery of the drafts in line with the timetable that would be presented to the Board, usually during its November meeting, reminding that each one of them would be subject to a formal approval process within the Agency and thus would have the approval of the MT before being forwarded to the Board members.

On the SPD issue, the Board was reminded that the whole process for its adoption was a rather lengthy one, about one year and a half, and noted that there were a total of four drafts with different consultation possibilities, the main one of them being the Consultation Workshop in March. It was added that the procedure also included the distribution and the publication of the SPD and defined what needed to be done when the Board needed to formally adopt an amendment of the SPD.

It was clarified that the proposed deadlines were in line with the time schedule followed during the previous years, with the exception of draft No. 1, which would be due in November 2016, with the aim of getting the initial feedback of the Board members on this first draft which, in that case, would form the basis for SPD 2018 and would have to be further forwarded to the Council, the Parliament, the Commission and the two Boards, MB and EB, by the end of January 2017. Contrary to what had been done in the previous years, the Commission's opinion on the January draft would be due by 1<sup>st</sup> of July, so that the final adoption of the SPD could take place during the Board meeting in November.

It was pointed out that the process for the adoption of the AAR, which remained quite similar to what had been the practice during the previous years, was a lot shorter, starting at the end of the year and lasting no more than six months in total and it was highlighted that the main work was carried out internally aiming at the adoption of the AAR by July of the following year.

Finally, it was concluded that the Sub-Committee members had already provided their feedback on those two procedures and the Board members were urged to share with the Agency any further comments so as to enable the preparation of a version No. 2 for internal consultation within the Agency and the approval of a final draft in the next Board meeting in November. The Board was finally reminded that those procedures, as described above, would be implemented for the SPD 2018 and the AAR 2016.

The Chair made a point that the proposed procedure for the adoption of the SPD had actually formalised the process that had been followed all these years by the Agency. He repeated that, to his understanding, there was no provision requiring the Board to render a decision on the AAR, although the Board preferred that both AAR and SPD issues were discussed together and went on to clarify that the deadline for the comments to be submitted to the Agency for its consideration was end of June 2016.

The Commission firstly welcomed the new SPD structure, noting that the proposed structure was well in line with the requirements set in the guidelines and appreciated the fact that the document clearly indicated the way in which the Agency's tasks had evolved since the previous year and formed part of the overall multiannual programming.

Secondly, the Commission expressed its satisfaction with the Agency's comprehensive objectives as regards the preparatory work that needed to be performed for the implementation of the 4<sup>th</sup> RP and the creation of the single European railway area, in particular the objectives related to the development of the safety culture as provided for in the technical pillar, the completion of the cleaning up of the national rules, the development of the OSS database and the provision of assistance to the Commission in the establishment of common processes and documentation for Vehicle Authorizations, Safety Certificates and the ERTMS

trackside approval and concluded that the document was well-prepared and in line with the objectives which had been identified as “long-term goals” as well.

Denmark congratulated the Agency on the document, noting that it was enormously helpful for the process to be followed, however it expressed its concern on whether the possibility for the ED or the Commission or the Board members to change or revise the proposed procedures would be open and went on to propose, in that respect, the introduction in the draft decision to be adopted by the Board on the matter of a final provision, (Art. 3), which could read as follows: *“The present decision will be valid for three years and may be renewed by the Management Board for a further period of three years”*.

Furthermore the Agency was asked to give further details on the “MT” that was mentioned on page 7 of the document and requested to include, on page 13 of the document, in the section of Annex V “Building Policy”, a reference to the issue of meeting rooms and, most importantly, not only for the MB, but also for the working groups, the facilities provided for meetings between the Agency and external partners.

The Executive Director replied to Denmark that behind the nexus between the SPD and the AAR there was a newly structured management system supported by the implementation of Microsoft project, whereby all SPD objectives were related to the so-called “programmes”, i.e. to projects, so that a direct link between what the Board agreed and how the Agency worked could be traced.

On the issue of possible changes to the Agency’s multiannual perspective, he suggested that the Board dealt with this in the context of the annual update of the SPD by following the normal process, which allowed the Agency to establish a long-term vision with objectives, and depending on the results of the annual work, to reconsider some objectives and set higher performance targets.

The UK added that the management system itself would require any review of the procedure to be formally approved by the MB and considered that they did not need to add a separate provision on that in the draft decision, as Denmark had suggested, since this would run the risk of putting an excessive burden to the MB in case a more frequent and closer reviewing of the procedure had to be done.

The Strategy and Planning Project Officer pointed out that Agency had added a procedural step which would describe in more detail the process to be followed for the amendment of the SPD and agreed with the point made by the UK that if a substantial amendment needed to be made, it would nevertheless have to be formally adopted by the MB.

The Chair thanked the Agency for drafting the proposed document, urged the Board members to send their comments in writing by mid-July and wished to have a final document for adoption in the Board meeting in November.

#### **14. 4th Railway Package transition – NSA monitoring**

The proposed approach for the NSA monitoring related to a new task of the Agency 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 Agency.

The Board was reminded that the Agency had already gathered some experience through the performance of similar activities in the past, e.g. the NSA cross-audits, the Matrix, etc. Nevertheless, it was noted that the Agency had gradually moved from a voluntary and softer approach to a more stringent monitoring that was required by the EU legislation, although the intention still focused on creating (and maintaining) a space of collaboration with the NSAs as much as possible. It was stressed that the Agency’s target was to operate an audit/inspection cycle of three years and to establish an audit/inspection duration of three months.

On the reasons behind the NSA-monitoring policy, it was mentioned that the Agency had the responsibility of issuing Single Safety Certificates, something which was done with the support of the NSAs, and the NSA

monitoring, which, in that case, bore a strong resemblance to a second-party audit or an audit of suppliers, would help enhance the Agency's confidence on the NSAs support.

A second reason for the NSA monitoring was the need to ensure that the EU framework on safety and interoperability was functioning properly, whereas a third reason was related to the Agency's contribution to the harmonisation of the NSAs activities and to the opening of the market mainly by means of providing an image of the current situation based on actual data and information, supporting the Agency's tasks in the case of a request (e.g. advice or opinion) made by the Commission and helping the NSAs to develop and improve their organisation.

As far as the methodology issues were concerned, it was pointed out that the scope of the NSA monitoring was very broad, including potentially all the NSAs activities relating to safety and interoperability and it was suggested to follow a risk-based approach which would help prioritising the NSAs monitoring by identifying which NSA, which activities and which kind of monitoring should be followed. A number of criteria would be set for the prioritisation, along with a process and a plan to be developed.

The Agency recommended the adoption of a flexible approach, which would entail the possibility not only to adapt the scope of the audit or inspection to the special circumstances of each case, for instance by including feedback from the NSAs stakeholders namely NIBs, RU, IM, etc., but also to make arrangements regarding the size of the inspection/audit team on a strictly case-by-case basis.

On the issue of the audit/inspection method and the referentials, it was reported that, for the time being, the Agency would use the already available tools and the ISO referentials with adaptations for the railway sector and that the intention was to develop additional referentials in several thematic modules by topic at a later stage.

Moreover, it was clarified that the current presentation was simply aiming at providing information to the Board on the NSA monitoring and that the approval of the deliverables by the Agency MT had been scheduled to take place in October, so that the final draft could be proposed to the Board for decision at its next meeting in November. The proposal for decision by the MB on the NSA monitoring would include information on the following topics: policy, process for prioritisation, methodology (referential, processes for performing audits/inspections, definition of roles and responsibilities), requirements for competences – auditors/inspectors and the processes for management and continuous improvement.

Finally, it was concluded that the plan for 2017 was to proceed to the implementation of the monitoring in a transitional phase, preparing the first plan for NSA monitoring and starting with its execution.

The UK reminded that, according to the text of the new Agency Regulation, the policy working methods and procedures should be adopted by the MB and considered that the proposed policy should be clear on how the Agency wished to operate and use the available resources, so that the "buy-in" of the Board on that could be guaranteed. The Agency was asked to give the Board members an overview of the proposed policy as early as possible not only because the MB would be later be called on to adopt the "policy working methods and procedures", but also in order to enable them to diffuse further the message to the stakeholders in their Member States.

The Executive Director confirmed that the Agency was aware of the point raised by the UK and promised it would make its best to meet the expectations.

The Chair mentioned that this was a sensitive issue for the Member States, in particular in view of the cooperation regime between the Agency and the NSAs.

Railway Undertakings made the remark that it would be difficult for the new Agency Regulation to be already in place within the following two years, whereas the Interoperability and Safety Directive would still have to be transposed into Member States' national law and wondered whether it would be possible for the Agency, and the Commission to cooperate with the NSAs, account being taken of the fact that the activities of the

latter would not yet be governed by the proper national legislative framework which would allow them to enter into such form of cooperation with the Agency.

Denmark welcomed the duly fine planning proposed by the Agency, declared that it was looking forward to have the Danish NSA audited, suggested that the Agency should have the main results of the audit uploaded on its website, in order to encourage everybody to learn and to improve and to promote harmonisation in the field and highlighted the importance of the issue from a communication point of view also.

Rail Freight Customers clarified that bridges and tunnels, for instance, could easily come under the heading of “safety” and asked the Agency whether it would be involved in the monitoring and auditing of this kind of aspects as well.

Norway considered the audit cycle planning really ambitious and asked the Agency to elaborate more on the ways in which the lessons learned from the cross-audit cycling could be useful for this procedure.

The Executive Director, in response to the question made by Norway, confirmed that the Agency was fully built on cross-audits and continued to use resources that were made available by the NSAs, since in reality this was supposed to be more like a “learning and sharing best practices” exercise than a strict supervision and informed the Board that this was the spirit that should prevail in the new procedure as well. The importance of making frequent audits, taking corrective measures and reviewing the impact of those measures was also stressed. The possibility of deviating from the three-year audit cycle and making more frequent visits in case there was a need to take many corrective actions was left open.

Moreover, the Executive Director replied to the comment made by the Rail Freight Customers, pointing out that the scope of the monitoring was strictly limited to the supervision of the NSAs. In reply to the request made by Denmark, it was noted that a possible publication of the audit results on the website could create data protection issues and proposed to put on the website a list of corrective actions including anonymised data in order to enable the exchange of best practices.

The Commission confirmed that, from the entry into force of the new Agency Regulation, all provisions included therein were immediately applicable, with the exception of those related to the tasks of certification and authorisation, which would be fully performed after three years, and mentioned that there was also a transposition deadline of three years for the Interoperability and Safety Directives, without excluding the possibility for the Member States to ask for a one-year extension of this deadline.

It was also noted that some of the activities could be immediately implemented, e.g. the OSS and the participation of the Agency in international activities in support of the Commission’s work, because their legal basis was to be found in immediately applicable provisions.

The Board was informed that the cooperation agreements with the NSAs needed to be signed within three years, although the necessary preparations to have them in place a lot earlier had already started. However, this was to be decided on a case-by-case basis, since not all the NSAs were in favour of signing the cooperation agreements before the official transposition of the Directives into their national law.

Therefore, it was announced that the Commission would try to define an activity and to work together with the Member States e.g. by developing guides, organising workshops, etc., in order to help them understand which provisions should be transposed and in which way and to avoid possible delays in the transposition process.

France suggested, following the proposal of Denmark, that the Agency should take advantage of the practice that already existed in the field of cross-audit, according to which the members of each cross-audited NSA presented to their colleagues the main conclusions of the cross-audit and the measures they would take in respect thereof.

Railway Industry affirmed that the Agency should strive to ensure that the working principles were understood and applied and not limit its focus to guaranteeing the functioning of the NSAs. As regards the possible contribution to the harmonisation of the NSAs activities, it was suggested to work more on

harmonising the decision-making and not just the actions of NSAs, for the benefit of the railway sector as well.

## 15. Budget Execution 2016 and transfers of appropriations

The Head of Finance and Procurement Sector commented that the Budget Execution 2016 was more or less in line with that of the previous year and noted that more budget had been executed in Title 3 compared with the same period of the previous year mainly due to the investments made in the OSS. The Board was informed on the budget transfers 2016 which had been approved by the ED. On the budget execution itself, it was highlighted that the monthly budget execution had been added to the EB Extranet and that this could be done for the MB Extranet as well, if the Board members wished so.

The UK sought to confirm whether the management team felt confident that the reduction of the communications budget by 27.000 € would not affect the activities that the Agency would like to perform in that respect.

The Head of Finance and Procurement Sector underlined that this was only a matter of using the right budget lines and went on to clarify that the website budget line was directly related to communication, which in fact meant that there was no change made to the communications budget as such.

## 16. Follow-up discharge, audits

The Head of Finance and Procurement Sector announced that the discharge was currently on-going, and that the Agency had to wait for the Parliament to give its feedback. It was reported that a meeting with the IAS was scheduled to take place after two weeks with the purpose of making a full risk assessment of the Agency's activities and decide, at a later stage, where specifically to focus the audits on.

The Head of Corporate Management and Evaluation Unit reminded that the issue of audits had been a regular point of information for the Board since two years and outlined that the structure of the report would be the same each time, including both IAS recommendations that were completed and those that were still "on-track". He announced that, as regards the 2009 IAS recommendation on the reinforcement of the recruitment procedure, a request for closure had already been made to IAS, since the internal work on the procedure had been finalised and close follow-up reports had been issued for every procedure by the Agency's Internal Control Coordinator in order to ensure full process-compliance, and expressed his confidence that the case was about to be closed soon by the IAS.

Furthermore, the Board was informed that there were also three recommendations related to stakeholder relationship management and external communication with emphasis on safety (2014). Two of them, which recommended that the Agency should undertake a review of the tools and procedures for recording and maintaining stakeholder information and of the procedures for handling information requests, were already included in the list of completed IAS recommendations and the Agency had requested their closure.

Finally, it was pointed out that the third recommendation, which had been included in the list of IAS recommendations "on-track" and required the Agency to establish an inventory of the existing procedural framework applicable to stakeholder management and external communication and to take the necessary steps to complete the documentation of procedures where gaps were identified, was related to some procedures outstanding in the frame of the communication strategy. It was added that the Agency had managed to cover only 20% of the recommendation requirements introduced by the IAS and would continue to progress in order to complete the remaining parts until September 2016.

## 17. Implementing Rules to the Staff Regulations

The Head of Finance and Procurement Sector presented to the Board a document which described all the Implementing Rules to the Staff Regulations that were being discussed with the Commission and promised to give more details on these Implementing Rules when the MB would be requested to adopt them formally.

It was explained that some of the Implementing Rules would not be definitely adopted, since it was impossible to implement them in practice within the Agency, whereas some other Implementing Rules were “pending”, either because the Agency was waiting to be provided with a draft model/guide by the Commission or because they were still under discussion.

The Chair reminded that, during the previous MB meeting, the possibility of dealing with this topic through a written procedure had been discussed and proposed to include this item on the agenda for the EB meeting in September so that the Agency could come up with a formal proposal which would then be discussed in the next MB meeting in November 2016.

## **18. Meeting dates**

The Chair stated that it was planned initially to have a two-day meeting on 29<sup>th</sup> and 30<sup>th</sup> November 2016 and announced that no Board meeting would take place during September 2016.

The Board was informed that the next Board meeting would take place on 29<sup>th</sup> November 2016.

Finally, the Chair informed the Board that there might be some changes in 2017, as regards the deadlines for the submission of the statement of estimates, decisions on activity reports, etc., identified the need for further reflection on the issue of the optimum planning of the meeting dates for the next year and did not exclude the possibility of deviating from the current practice of holding, on an annual basis, a first meeting in March, a second one in June and a third one in November.

He reminded that, according to the new Agency Regulation, the MB should meet at least twice a year, mentioned that the need to hold the March meeting could be reviewed and promised to come back to the issue with a more formal proposal.