

EUROPEAN COMMISSION
DG TREN

SIXTH FRAMEWORK PROGRAMME
THEMATIC PRIORITY 1.6

SUSTAINABLE DEVELOPMENT, GLOBAL CHANGE & ECOSYSTEMS
INTEGRATED PROJECT – CONTRACT N. TREN-06-FP6TR-S07.70077-S07.69821



Retrack

REorganization of Transport networks by advanced RAIL freight Concepts

Deliverable no.	D2.7
Title	Legislative requirements
Dissemination level	PU
Work Package	WP 2
Author(s)	Oddgeir Osland and Annelene Holden Hoff
Co-author(s)	Phil Mortimer
Status (F: final, D: draft)	F-14012008
File Name	D2.7-Public-Legislative Requirements-Final v2.1-Osland and Hoff-14012008
Project Start Date and Duration	01 May 2007 - April 2011

TABLE OF CONTENTS

1	Focus in this report – legislative requirements for seamless rail freight transport	6
2	The Netherlands	7
2.1	Legal and administrative structure	7
2.1.1	Transposition of EC legislation into national law	7
2.1.2	Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.	7
2.2	Transparency and non-discrimination procedures in areas important for achieving seamless rail freight	7
2.2.1	Infrastructure charging principles	7
2.2.2	Train path allocation	7
2.2.3	Access to terminals	7
2.2.4	Licensing and safety certificates	8
2.2.5	Network statement	8
2.2.6	Handling of complaints	8
2.3	Other specific problems	8
2.4	Summary	8
3	Germany	8
3.1	Legal and administrative structure	8
3.1.1	Transposition of EC legislation into national law	8
3.1.2	Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent Deutsche Bahn (DB)	9
3.2	Transparency and non-discrimination procedures in areas important for achieving seamless rail freight	9
3.2.1	Infrastructure charging principles	9
3.2.2	Train path allocation	9
3.2.3	Access to terminals	9
3.2.4	Licensing and safety certificates	9
3.2.5	Network statement	9
3.2.6	Handling of complaints	10
3.3	Other specific problems	10
3.4	Summary	10
4	Austria	10
4.1	Legal and administrative structure	10
4.1.1	Transposition of EC legislation into national law	10
4.1.2	Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.	10
4.2	Transparency and non-discrimination procedures in areas important for achieving seamless rail freight	11
4.2.1	Infrastructure charging principles	11
4.2.2	Train path allocation	11
4.2.3	Access to terminals	11
4.2.4	Licensing and safety certificates	12
4.2.5	Network statement	12
4.2.6	Handling of complaints	12
4.3	Other specific problems	12
4.3.1	Access to new entrants	12
4.3.2	Supply of intermodal services	13
4.3.3	Summary of transport network problems, especially in relation to cross-border traffic	13
	<i>Network</i>	13

<i>Locomotive drivers</i>	13
<i>Rolling stock</i>	13
4.4 Summary	13
5 Hungary	14
5.1 Legal and administrative structure	14
5.1.1 Transposition of EC legislation into national law	14
5.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.	14
5.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight:	15
5.2.1 Infrastructure charging principles	15
5.2.2 Train path allocation	15
5.2.3 Access to terminals	15
5.2.4 Licensing and safety certificates	16
5.2.5 Network statement	16
5.2.6 Handling of complaints	16
5.3 Other specific problems	17
5.3.1 Supply of intermodal services	17
5.3.2 Fair/equal transport market conditions of rail versus other modes	17
5.3.3 Technical interoperability requirements according to TSIs	17
5.3.4 Problems related to the transport network	18
Network Links	18
Terminals/Transfer Points (TP)	19
Border Crossings (BC)	19
Rolling Stock (RS)	20
5.4 Recent developments and summary	20
6 Slovakia	20
6.1 Legal and administrative structure	20
6.1.1 Transposition of EC legislation into national law	20
6.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent ZSSK.	21
6.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight:	21
6.2.1 Infrastructure charging principles	21
6.2.2 Train path allocation	22
6.2.3 Access to terminals	22
6.2.4 Licensing and safety certificates	22
6.2.5 Network statement	23
6.2.6 Handling of complaints	23
6.3 Other specific problems	23
6.3.1 Access to new entrants	23
6.3.2 Supply of intermodal services	24
6.3.3 Technical interoperability requirements according to the TSIs	24
6.3.4 Problems related to the transport network	24
Network Links	24
<i>Configuration and alignment</i>	24
<i>The electrification system causes interoperability problems:</i>	25
Border Crossings (BC)	25

Rolling Stock (RS)	26
6.4 Summary	26
7 Romania	26
7.1 Legal and administrative structure	26
7.1.1 Transposition of EC legislation into national law	26
7.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent	27
7.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight	27
7.2.1 Infrastructure charging principles	27
7.2.2 Train path allocation	28
7.2.3 Access to terminals	28
7.2.4 Licensing and safety certificates	29
7.2.5 Network statement	29
7.2.6 Handling of complaints	29
7.3 Other specific problems	29
7.3.1 Access to new entrants	29
7.3.2 Supply of intermodal services	30
7.3.3 Technical interoperability requirements according to TSIs	30
7.3.4 Problems relating to the transport network	30
Network Links	30
Technical interoperability	30
7.4 Summary	30
8 Summary of the country-by-country findings in the suggested Retrack corridor and general conclusions.	30
9 Sources and references	32

1 Focus in this report

In this part of Work Package 2 we will investigate to which extent the legislative framework for achieving seamless freight transport is developed and implemented in The Netherlands, Germany, Austria, Hungary, Slovakia and Romania. The focus in this report is on the status of the relevant EU-directives in relation to the legislative practise and implementation in these countries. These are the directives 2001/12/EC, 2001/13/EC, 2001/14/EC and 2001/16/EC on market opening and interoperability (Technical Specifications for Interoperability, referred to as TSIs). This report also presents selected organisational and procedural requirements, and requirements regarding market opening and business perspectives. The relationship between infrastructure manager (IM) and railway undertaking (RU) is given attention.

Where it is of relevance, this report also remarks on barriers to implementation, which as a consequence, possibly distort transparency and interoperability.

This report is mostly based on information gathered regarding the relevant countries in previous studies. The information was updated where new data sources have been available. Most of the data collection is from earlier research through the Reorient project (latest data collection autumn 2005). Elements of this data were updated through contacts with stakeholders in these countries. Furthermore, information was gathered from NewRail/Retrack partners meetings with the relevant countries' railway sector contacts. Finally some information is obtained from written documents from other EU projects (ERAIL, TREND, RAILIMPLEMENT etc)

During the information gathering process less detailed attention was directed towards The Netherlands, as there are no major signals of perceived barriers for new rail freight entrants. Also, due to the continuing uncertainty of whether the Retrack corridor will pass through Slovakia, there was less emphasis on updating the information about conditions in the Slovak railway sector.

2 The Netherlands

2.1 Legal and administrative structure

2.1.1 Transposition of EC legislation into national law

The directives 2001/12, 2001/13 and 2001/14 are all fully transposed into Dutch law and put into force.

2.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.

ProRail is the infrastructure manager by management concession. The organisation's responsibilities are capacity allocation, management and development of the infrastructure and network and traffic control. The Ministry of Transport has a procedure of giving out the concession, and also the ability to withdraw it. ProRail is the current franchisee until 2014.

There is now no nationally owned rail freight organisation in The Netherlands. The former state owned freight company (NS Cargo) was sold to Deutsche Bahn and now operates as Railion (Benelux). This company retains about 80% of the market share in bulk commodities, whereas new market entrants dominate (international) inter-modal freight transport (80%).

The major passenger operations company, NS Reizigers, is as a consequence in no way linked to the major freight operator. NS Reizigers is a limited company owned by the state and operates throughout the country.

2.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight

2.2.1 Infrastructure charging principles

ProRail is responsible for setting the infrastructure charges. After the new railway law (2006) the infrastructure charges are decided upon by ProRail after negotiations with the sector.

2.2.2 Train path allocation

In the annual planning cycle the cut-off dates for international path bids is April 10th, after this date applications are treated ad-hoc. There is no train path application fee in The Netherlands. No grandfather rights apply. The process of application through ProRail is transparent. A maximum lead-time of two months is specified in the Network Statement, which spans from initial application to the designation of a train path that accord with the operator's needs.

2.2.3 Access to terminals

We have not received information regarding difficulties with open access to terminals.

2.2.4 Licensing and safety certificates

IVW (Netherlands Railway Safety Authority) is the organisation responsible for licensing railway undertakings and issuing safety certificates to operators. This process is decided and implemented in Dutch law, and procedures and criteria are described in supplementary legislation.

2.2.5 Network statement

A network statement of capabilities, capacity, resources and intentions is available. It is a licence requirement for the infrastructure owner/manager to produce this document.

2.2.6 Handling of complaints

The regulator (NMa) handles competition complaints. NMa has since 2005 evolved from a competition agency to a fully-fledged sector specific regulatory body.

2.3 Other specific problems

This project has not discovered any major obstacles regarding track access or seamless rail freight transport in or through The Netherlands. The business case has the possibility to take full advantage of the advanced and open Dutch rail facilities, where neighbouring countries to some extent have lagged behind and hindered potential rail freight expansion in the Community.

One should note however, that some concerns are expressed over the possible risk of time impact of inland customs clearance if transport demands are rising considerably. The same applies to the issue of future competent driver availability. There are concerns over longer-term capacity issues as the major port, Rotterdam, continues to expand. The ability to get cargo to and from the port in the volumes projected suggest there will be a need for a major expansion of port rail links and terminal capacity linked to changes in operating practices for the train operators and the infrastructure manager.

2.4 Summary

No major obstacles for new entrants have been observed.

3 Germany

3.1 Legal and administrative structure

3.1.1 Transposition of EC legislation into national law

The directives 2001/12, 2001/13 and 2001/14 are all transposed into German law and put into force.

3.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent Deutsche Bahn (DB)

There is a separation of accounts, responsibilities and duties between the infrastructure managers/maintainers and the train operators. Passenger activity is separated from freight functionally, although there is detailed interchange at planning and operational levels about train paths, routing and service levels.

The model adopted in Germany (the situation that DB is a holding company comprising all these functions) may be considered as to not fulfil requirements regarding transparency and fair competition. However the Rail Regulator is in a position to investigate and adjudicate any identified or notified cases of discrimination on access issues and will increasingly take action on any identified commercial discrimination and pricing issues.

3.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight

3.2.1 Infrastructure charging principles

There is a regime of transparency and non-discrimination on access charges although there are anomalies on paths being sourced nationally and through the RailNetEurope/OneStopShop vehicle, which may produce different outcomes. This may be advantageous to prospective train operators.

3.2.2 Train path allocation

Train path allocation depends on the bidding process and the application made for a formal schedule or whether to operate on an ad-hoc basis. It is not clear whether pricing then varies if ad-hoc paths are taken up in low demand periods. 99% of the applicants get their requested train path from the infrastructure manager. The rail regulator is known to be proactive.

Concerns have been expressed regarding the infrastructure managers' notification to the railway undertakings about track construction and maintenance. It is argued this is often done in the private operator's allocated time and with limited or no prior notice. As this does not appear to happen at times when the incumbent, Railion, have track access, it is a possible discriminatory behaviour.

3.2.3 Access to terminals

Terminal access needs to be planned/booked as part of any new train plan and includes holding positions for main line traction whilst the train is being serviced in the freight terminals.

3.2.4 Licensing and safety certificates

Licensing and safety certificates are granted against a specification.

3.2.5 Network statement

Network statements are required annually.

3.2.6 Handling of complaints

Complaints can be made directly to the Rail Regulator (RR) for investigation. The RR is required to respond rapidly (< 4 weeks). Longer deliberation and litigation can then flow and could include competition authorities. The RR can also instigate their own investigations if they are identifying patterns of complaint or regular repeat issues. The RR is intending to broaden the scope of activities into possible commercial discrimination and any cross subsidization, which could discriminate against new entrants.

3.3 Other specific problems

This project has not revealed any other major legislative or bureaucratic obstacles regarding track access or seamless rail freight transport through Germany. The previous problems involving power supply for a new rail operator proved to be a long term and fluctuating position that ultimately went against the complainant.

There are concerns over capacity and the quality of train paths on the Rhine section of the RETRACK corridor that the project will need to be aware of and monitor as service profiles develop.

3.4 Summary

When it comes to the relations between key actors, the situation is still characterized by separation of accountings and responsibilities, but all major functions are still within one holding company. The full consequences of such a situation for new entrants are unclear, but there are no clear indications that this may cause problems, as procedures appear transparent and non-discriminatory.

4 Austria

4.1 Legal and administrative structure

4.1.1 Transposition of EC legislation into national law

The directives are already implemented or being worked on. There are no apparent problems regarding this.

TSI's are only partly implemented, but implementation is being planned and prepared. No problems regarding market opening were reported, and no reason for the lack of implementation can be identified.

4.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.

There is a separation between IM and RU within the holding structure of the Austrian Railways (ÖBB-Holding AG). The infrastructure manager is now operating as an independent stock holding company with an independent board. There is also a separation for private

infrastructure. The ÖBB Holding does, however, operate both trains (passenger and freight) and infrastructure in Austria, which is a cause for concern over real transparency.

It should be noted that the national model of infrastructure separation from the operating entity appears to be working, although there are concerns that the linkage back to the parent company could be used as an anti-competitive lever. The infrastructure operators are commercially focused and are eager to increase rail traffic on the network as a source of commercial revenue.

4.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight

4.2.1 Infrastructure charging principles

The Ministry of Finance determinates the access charges, and neither the regulator nor infrastructure manager, as is normally the case in other countries. The charges relate to the levels of subsidy for rail services. This may be open to manipulation. Furthermore, it is in some way interrelated with the level of return on investments governed by EU rules.

It should also be noted that there are differences in the regulatory regime in relation to energy tariffs here compared with the position in other possible countries where RETRACK may operate.

4.2.2 Train path allocation

OBB Infrastruktur Betrieb (IB) is required to act as an impartial supplier of train paths as requested by train operators. It is also required to identify route and schedule options for international traffic under the Rail Net Europe (RNE) umbrella or to offer ad-hoc routes and schedules, which could then be amalgamated. IB also leads on timetable and schedule changes and other long term scheduling initiatives. This includes the improved alignment of path availability with market needs and the minimization of conflict or the dilution of train path quality. It has also a role in terms of the protection of capacity for new market entrants on a fair basis and to respond on this through the availability of capacity as required by the market.

IB is to be receptive to significant new traffic flows on the network as a source of additional revenue and act as a neutral infrastructure player recognising the requirements for open access. IB is effectively marketing track capacity and train paths in Austria and seeking to maximise its income under the regulated environment in which it operates. It presents itself as an open operation despite the organizational linkages to OBB. Any concerns over discrimination could invoke the intervention of the rail regulator on this specific issue. At a strategic level the routing via Austria is under competitive threat from other options that could completely miss out the use of the national network so aggressive positions on capacity and pricing are not appropriate.

The Ministry of Transport has indirectly a role in development of new services due to its involvement in planning and commissioning of new infrastructure capacity.

4.2.3 Access to terminals

Access, prices and procedures in relation to independent terminals seems to be unproblematic. However, on the many terminals owned by ÖBB-Cargo there appears to be problems mainly for new railway undertakings. It is argued that prices are too high and

procedures are not transparent. ÖBB seems to consider ownership issues as irrelevant. Terminal access for main line traction needs to be planned as well as the access for wagons.

4.2.4 Licensing and safety certificates

No problems are reported. Duration of the procedures is largely dependent on the quality of the applications. The Ministry of Finance is ultimately responsible for the verification of new market entrant licence-holder compliance with licence stipulations to operate on the rail network in Austria.

4.2.5 Network statement

The Network statement is not self-explanatory and to some extent incomplete. It is not however, reported as a major obstacle for the railway undertakings.

4.2.6 Handling of complaints

Until recently, the rail regulator has dealt with all complaints without formal procedures and protocols. It is not clear whether this is good in the sense of transparent and non-discriminatory or not. There is also the risk of differentiation in treatment by appellants.

The rail regulator is involved in cases where there are disputes, investigation and resolution. This also includes accusations of predatory or discriminatory action by the main incumbent rail freight company.

4.3 Other specific problems

There are no major discrepancies between EU-legislation and current practice. The reported obstacles for new entrants or for railway undertakings in general are partly due to EU-legislation (delays due to separation infrastructure manager – railway undertaker), or will not be solved by current EU railway legislation (passenger vs. freight). Despite this there are successful new market entrants involved in international traffic flows.

Procedures and prices at terminals owned by ÖBB are the most important problem in this category. This could be an obstacle for new entrants. To what degree it prevents potential new entrants from entering the Austrian market, and what kind of barrier prevents a solution to this problem cannot be concluded from the interviews.

4.3.1 Access to new entrants

Competition is starting only very slowly. The development in the rail freight sector is behind the expectations. Rail is however heavily involved with international freight flows and this type of traffic has attracted new entrants.

Exclusive contracts exist between the incumbent RU for easier EU customs clearance. This may pose discrimination in competition. It has been argued that there is a high cost for market entry and that ÖBB-terminals pricing is non-transparent and expensive. Further investigation by the EC could verify or dismiss these concerns.

It is reported that Rail Cargo Austria (RCA) appears to be prepared to use price dumping in the market as a tool to secure, regain or defend traffic against new entrants. If so, this would illuminate possible lack of intervention powers by the rail regulator on commercial (such as pricing) issues.

Since ÖBB presently operates both road and rail freight transports, this can cause problems for fair and equal competition. The incumbent RU dominates the freight transport market. New entrants could also be multi-modal operators to balance the capability of the incumbent operator.

4.3.2 Supply of intermodal services

ÖBB operates both road and rail freight transport. This might be a problem for competition rail – road. The problem in general is the lack of transparency. ÖBB receives funding for public service obligation while undertaking road freight transport. Other hauliers in Austria complain that road transports done by ÖBB do have an advantage against the other competitors.

4.3.3 Summary of transport network problems, especially in relation to cross-border traffic

Network

- Different electrification system in Austria and in neighbouring Eastern European countries (CZ, SK, H, SL)
- Different signalling systems in Austria and in neighbouring Eastern European countries. This problem will ease with the introduction of ERTMS and related common train control technologies and protocols

Locomotive drivers

- Knowledge of locomotive driver for the specific rail tracks in the foreign country is necessary (i.e. specific training needs).
- Change of engine drivers at the border still is necessary. It would be an advantage if there was no need to change locomotive driver at the border.

Rolling stock

- Multi-current engines are necessary for seamless cross-border rail freight transport to eastern European countries. These engines are more expensive.
- The rolling stock of eastern European countries partly is old and therefore not state-of-the-art, which could hamper seamless international rail freight.
- Discriminating regulation for new RUs at the EU-border, which is due to the fact that there exist contracts between the incumbent RUs only for easier customs clearance. These contracts are not valid for other RUs. This type of discrimination and the problems it generates are already under discussion within the EU.

4.4 Summary

Also in Austria there is a holding company structure comprising IM and RUs in passenger transport and freight. RCA has a dominant position in the freight market, and there are some concerns that RCA will use its dominant position in the market against new entrants, e.g. by

predatory pricing policies. There are also some concerns that the linkage back to the parent company may be used to reduce competition.

5 Hungary

5.1 Legal and administrative structure

5.1.1 Transposition of EC legislation into national law

The Railway Act has been in effect since 2006. The first railway reform package was effectively skipped and Hungary adopted the third package directly. This has led to necessary changes in the traditionally state-owned, integrated Hungarian Railway Company (MAV), that will be described in the following.

However, it seems like a number of structural and legal adjustments are currently taking place, so one should be aware that some information about Hungary may be overtaken by imminent changes in structure and methods of operation.

5.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent.

Two companies, MAV and Gyôr-Sopron-Ebenfurt Vasút (GySEV) have managed the rail network (infrastructure managers) and also provided rail services on their network (railway undertaking). MAV has been split into various business units (BUs) with separate accounts. The Director General of MAV is responsible for all the BUs, e.g. IM within MAV; thus the IM is not fully independent from the RU.

Both passenger and freight transport are separate business branches within MAV Co.

It is reported that the cooperation and communication between IM's of MAV and GySEV is working well (establishment of timetable, solving operational problems in line with traffic management, handling of conflicting train path requests). It is also reported that there is good cooperation and communication with respect to freight transport between the infrastructure managers (MAV and Gysev) and other railway undertakings (freight and passenger) operating on their network in relation to negotiations on prices (once a year) and negotiations on Network Statement.

The structural adjustments in response to the EC packages are nominally in place and evolving as the market position also develops for both passenger and freight. MAV has been split functionally and the freight sector is being prepared for sale to the private sector.

5.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight:

5.2.1 Infrastructure charging principles

According to information gathered in 2005, the charge-formula applied in the Network Statement did not meet the requirement of the Pareto-effectiveness or the requirement of the second best pricing. Its structure was disadvantageous for smaller shipments and smaller companies. The Network Statement did not guarantee public access to some facilities (industrial-lines, bottlenecks) and the pricing of this infrastructure has been under the influence or done by the incumbent MÁV Cargo. This position may be changing after the appointment of the Rail Regulator in 2007.

It was also reported that the charging system for the use of stations didn't seem to be founded economically. Several charges for the use of the infrastructure stay outside the price regulation of the state (e.g. weighing). However, this may be subject to change after the appointment of the Rail regulator in 2007.

In theory the infrastructure charging system is efficient and non- discriminatory. However, it was reported in 2005 that there have been experiences that the negotiation process of infrastructure charges resulted in the incumbent RU's interests being incorporated into the new fees.

5.2.2 Train path allocation

In 2005, the path allocation was a mixed solution. The capacity allocation body (VPE) was reported to work as a daytime "service", meaning that not all path allocation could be made by it. Furthermore, it was reported that the VPE was not really equipped with the necessary software to handle all requests (especially the big number of requests from MAV Cargo). It is not clear whether these issues should still be a matter of concern. Information indicates however, that VPE is still linked to the incumbent operator, and this may lead to uneven treatment.

The roles of the ministry and the capacity allocation authority overlap and there is still a high level of involvement by the incumbent operator in the planning of train paths. There is no obvious separation of duties and responsibilities.

5.2.3 Access to terminals

Terminals are in a number of ownership models:

- wholly owned by an existing service provider
- a subsidiary of an existing enterprise
- private-property

The owners are responsible for the operation of freight terminals. All railway undertakings have in principle non-discriminatory access to terminals. However, some find the access to terminals discriminatory and complaints were filed in Brussels. The reason is that the Railway Law is unclear about the definition of terminals, industrial tracks, *etc.* There is in principle a fair and non-discriminatory pricing policy for the use of terminal services, but the system has not been transparent (not knowing what others are paying), hence its difficult to verify whether that is actually the case.

The network statement does not fully handle the question of terminals. The ownership structure of the terminals is diverse; some of them are in the control of MAV Cargo. Others (like the transshipment area in Zahony) will be regulated in the network statement.

In summary, the terminal ownership issue can be a hindrance for new entrants and this area needs to be addressed by the regulator to minimise the sort of inconsistencies highlighted above.

5.2.4 Licensing and safety certificates

All freight, passenger and infrastructure services have to be licensed. The Hungarian Rail Office is a licensing authority under the scope of Council Directive 95/18/EC and is a successor of previous licensing authorities. Similar national licensing schemes exist for regional, suburban, local and private railways and for the two national infrastructure managers, MÁV Zrt and GySEV Zrt (Raaberbahn). The Hungarian Rail Office is the only market regulator in rail and the Transport Inspectorate is responsible for all safety related regulation in all transport modes. All parties have to comply with the same regulations (no discrimination). In Decree 15/2002, the Safety Regulations were published; qualification is a requirement to operate. Decree 20/2003, homologation, regulates the certification of rolling stock. The type of authorization is similar to that requested by the EU.

5.2.5 Network statement

According to the 2005 data, the Network Statement did not guarantee the public access to the facilities listed in Annex II/2 of the Directive 2001/14/EC. Charges published in the Network Statement did not meet entirely the expectations of the Community directives. One of the reasons was that before 2007 there was no regulatory body in operation, which could supervise the administration of regulated prices, and the capacity allocation body (VPE) had to rely significantly on MÁV when preparing the Network Statement. On the basis of these, conditions for access for the use of the infrastructure are not wholly transparent. The Network Statement did not apply to the whole network.

5.2.6 Handling of complaints

In the past there have been some problems concerning complaints. According to information from autumn 2005, competitors of MÁV (Floyd Kft. and MMV Rt.) applied for 43 train paths all together in the first year of the market, but they could run only 7 business trains. In 5 of the 7 cases, they had to appeal with the Competition Authority and they had several complaints. On the other hand, MÁV-Hajdú Kft, which (contrary to its name is not linked to MÁV any more) is not a competitor on the freight transport market as it carries out transportation only for its own purposes, applied 45 train paths and could run 41 of them. The two independent undertakings Floyd and MMV had difficulties reaching their end-stations due to delayed access to essential railway facilities or limited access to the network. In the absence of a regulatory body all these cases were referred to the Competition Office.

According to the ERAIL information (2007), the Hungarian Competition Authority (GVH) is the organisation responsible for handling complaints related to competition. The Rail regulator has powers to intervene in cases of discrimination or constrained access to the network.

5.3 Other specific problems

5.3.1 Supply of intermodal services

There are in general no technical or organizational interoperability problems with respect to the handling of freight at terminals. Not all terminals, however, are capable of handling all types of intermodal transportation units. Until the arrival of private railway undertakings, the necessity of these facilities was not evident. The terminal management takes the decision whether or not a technical extension is needed for handling different intermodal units. This is, however, not the case at the BILK Container Terminal, which is a central point for international services for intermodal block train services. The terminal was developed as a Public Private Partnership with a mix of private and state investments, of which 60 percent came from MAV cargo.

According to earlier information, there have been situations where entrants were excluded from access to intermodal services in Hungary.

5.3.2 Fair/equal transport market conditions of rail versus other modes

European Conference of Ministers of Transport's study (2005) shows that among the average freight train access charges Hungary have the fifth highest in Europe in 2005. In contrast, tolls on Hungarian roads are low or they do not exist

5.3.3 Technical interoperability requirements according to TSIs

Information as late as autumn 2005, indicated that the apparatus of the railway legislation, enforcement, and control has remained to a decisive degree within the organization of MÁV Rt. This solution has caused several conflicts since new companies appeared, because MÁV often modifies essential regulations and instructions (e.g.: maintenance order and examination of vehicles) taking into account only its own economic interests.

TSI is looked after by a professional body within the Hungarian State Railways (MAV Co.). There is no exact timetable available, but a priority order exists:

1. Traffic operation and management
2. Control/command and signalling
3. Rolling stock – freight wagons
4. Telematic applications for freight.

This priority order represents also the effort from the MAV Co that is made to comply with the standards.

TSIs are in a planning/theoretical stage in Hungary. Ongoing steps that can be observed:

- Control/command and signalling interfaces: it was reported in 2005 that the standardization of controlling and commanding reached a satisfactory level. The automation of these between neighbour countries is still a challenge.
- Telematic applications for freight services: This has been treated with marginal importance. There appear to be far more important problems of MAV Cargo (like the lack of ordinary wagons) to invest money in. The position may change after the disposal of MAV cargo into the private sector.

- Infrastructure: infrastructure level is far below the desired value. It was reported in 2005 that speed and axle load limits represent a real barrier for both internal and international freight services.
- Energy: according to data from 2005. It was only the measurement of the consumption of a single electric engine that constituted a problem. The network's consumption and power characteristics were reported to be well maintained
- Maintenance: both infrastructure and freight wagon maintenance. These are highly discussed, acute problems, which suffer, and really hinder the competitiveness of existing railway freight services.

5.3.4 Problems related to the transport network

Network Links

- *Configuration and alignment:* The failure to upgrade secondary rail lines and the rolling stock for long distance traffic means road traffic is predicted to grow faster and thus contribute to unsustainable development overall. The current network density corresponds to the EU average. There are in general no density problems, however bottlenecks have been identified at border crossings and on some route sections e.g. around Budapest at morning and evening rush hours In 1989 the freight transport volume was 2.7 times higher than now, and the network was able to cope with this. Only the maintenance level might be important, since in the last decade a lot of maintenance works have been postponed.

- *Physical capacity:* Specific problems with respect to the configuration, capacity, or operations on the rail network links for the Hungarian part of the corridor that hamper seamless international rail freight transport could be (as a result of the increased demand):

Some capacity resources were anyhow reported to be scarce. This mainly applies to low shipping speed, especially along the TER Corridor IV. The neighbouring two-track lines can however temporarily "store" the traffic, resulting in a relatively higher level of traffic i.e. better capacity utilization. It is not known if there are any plans of capacity enhancement in this region. There is a development plan to reconstruct the line Hegyeshalom - Budapest (part of Corridor IV). The main purpose of the development is the low line speed. MAV Co wants to shorten the time-interval for reaching Vienna from Budapest. The bottleneck on the Hungarian part of Corridor IV is the bridge over the Danube at the southern part of Budapest. It is very intensely used, and therefore hardly any free capacity left. New capacity planning methods and asset management systems are required.

The whole of Corridor X through Hungary is single track. Since Hungary experienced a large decrease in exports and imports before and after the war in Yugoslavia, the capacity of the mentioned line is above the required level. Only very long term development plans (after 2015) refer to a capacity enhancement. Other specific problems on the Hungarian part of Corridor X are marginal problems, and not major ones from the corridor point of view.

- *Condition/quality:* The network can manage the current volume, but the service level (forwarding speed, axle load, etc.) is questioned many times. If the doubling of the volume is paired with an increased need for a better service level, significant problems might occur.

Terminals/Transfer Points (TP)

- *Number, location and types of transfer points:* Terminals are at proper points. Only if the increased traffic on terminals mean the increased road traffic in the surroundings. In this case maybe new terminal equipment is needed further away from residential areas.
- *Physical characteristics:* Rail rehabilitation projects are included in the Instrument for Structural Pre-Accession (ISPA) contracts, the Hungarian national budget and state railway documents. The National Development Plan (NDP) and the national transport policy draft also contain details of projects. The government is funding a large logistical centre (BILK) just south of Budapest that has a good motorway connection but the rail connection consists of a single-track line leading into the centre from one direction only at present. There are not enough rail tracks inside the terminal. The terminal is being expanded with a bi-directional approach. It is already handling container and RoLa trains very competently. Additional cranes, tracks and other items of equipment are being phased in 2008/9.

The capacity fits the current need. If the demand increases, capacity enhancement is needed. With relatively low investment the capacity could be increased by 50% but 100% or more capacity increase would mean more serious investment. This is planned for 2008/9.

- *Condition/quality (age, maintenance situation):* As the investment have been done a couple of years ago the condition and quality should be good. Terminal equipment is relatively new compared to the network in general (no real maintenance problems). The available condition could serve the increased need.

Border Crossings (BC)

- *Number, location and types of border crossings:* Current border crossings can handle the traffic. The absolute number of border crossings seems to be adequate. However, no analysis is made to examine the possibilities of establishing a new international link (cross-border link).
- *Physical characteristics:* Mostly, technical and administrative congestions occur when crossing borders. Administrative formalities on the borders are: changing driver and crew, changing locomotive, filling out the composition form, checking documents, making up the train, labelling the wagons, checking the rear lights. Railways are also facing the problem of losing hours on borders as a result of police and custom controls. The border controls also lead to excessively long stops due to the veterinarian inspections measures for agricultural protection. However, these delays particularly occur at the exterior borders of the non-EU member countries.

The infrastructure is available, and can deal with the current volume. Although the infrastructure layout would be able to do the task, the actual maintenance level might not be enough: sidings, marshalling tracks may need to be re-activated and renovated to be available as desired.

- *Technical interoperability:* There are no technical or organizational interoperability problems with freight trains at border crossings. Technical inspection and customs operation can create delays. The electricity voltage standard in Hungary differs from the standard in Austria and Slovakia. Multi current locomotives are available. This plus stopping the train at a border station is taken into account in the timetabling. The technical problems of this matter are solved in the direction of Austria. At present there is a locomotive change when crossing into with Austria, and always towards Slovakia (but not because of the electric power difference). If the engine change is needed, more hours of delay can be expected, especially if the train is off schedule or the available engine is not in a proper condition.

Rolling Stock (RS)

- *Technical interoperability*: There are technical interoperability problems related to rolling stock: the number of adequate railcars/freight wagons is low. A lot of maintenance is needed because of the old age of the freight wagons.

5.4 Recent developments and summary

While working on this deliverable, the privatization tender of MAV Cargo was introduced. Information indicates that the tender will be won by a consortium of Rail Cargo Austria and GySEV.

The information provided in this section shows that Hungary to a great extent has implemented EC-regulations and the *formal* administrative changes that follows such regulations. However, close relations between the incumbent and the infrastructure manager MAV prevail. The data gathered in autumn 2005, indicated obstacles for new entrants in several areas, e.g. in terms of pricing structure, train path allocation, no transparent pricing of access to terminals. Hence, at that time ownership to terminals as well as opaque relations between IM and incumbent could cause problems for new entrants in to this market.

The major new development in Hungary is twofold, and may have different consequences for new entrants. One the one hand, there have been new administrative changes the last couple of years. These improve transparency and non-discrimination. On the other hand, a possible new constellation of Rail Cargo Austria, GySEV and MAV Cargo may become a major challenge for endeavours of governments who aim at establishing an equal playing ground for operators.

6 Slovakia

Note: Information about Slovakia has been collected both before and after the changes 1st of January 2006

6.1 Legal and administrative structure

6.1.1 Transposition of EC legislation into national law

In 2004 the ERAIL study reported the following transposition of the railway directives in Slovakia:

- Directive 2001/12: Partly transposed through amendments to Act no. 164/1996 Coll. on Railroads.
- Directive 2001/13: Transposed through amendments to Act no. 164/1996 Coll. on Railroads.
- Directive 2001/14: Partly transposed through amendments to Act no. 164/1996 Coll. on Railroads.
- Directives 98/46/EC and 2001/16/EC: Transposed through Act no. 109/2005.

Since then, transposition has been completed:

Directives 2001/12/EC and 2001/14/EC are fully implemented in national legislation since February 2005 together with the new railway legislation in Slovakia. A specific working group on interoperability is currently working on its practical implementation. Act no. 9/2005.

With the establishment of the new rail regulator, which has been in operation since 1st of January 2006, Slovakia has met the EU requirements.

6.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent ZSSK.

There is separation of accounts since ŽSSK (railway undertaking) was separated from ŽSR (infrastructure manager) on 1st of January 2002. 1st of January 2005 ŽSSK was split into two independent companies, ŽSSK who operates passenger transport and ŽSSK Cargo who operates freight transport. (It is not evident from the RAILIMPLEMENT Annex whether accounting was separate before the split.)

Earlier SDÚ issued operating licenses and had the function of a national rail regulator, but, according to RAILIMPLEMENT, did not yet conform to the provisions of Directive 2001/14/EC in terms of tasks and competences. A new regulatory body, the URZD, is now in place. The URZD started its work on Jan 1st 2006. The Railway Regulatory Authority, URZD, is the state administrative body responsible for tasks like defining tariffs for passenger transport, RU licences and RU safety certificates. All its competences are stated in the national law 9/2005. The national railway law is based on law 164/1996.

The division of roles in the railway sector is found by all informants to be distinct and working satisfactorily, and is said to be in accordance with EU legislation. The co-operation is stated in the national railway law. The establishment of URZD is important. Division of roles (from the point of view of the URZD) is generally distinct, but the practical life will probably bring some questions and it is possible that changes may be needed in the future as experience with the current structures builds up.

6.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight:

6.2.1 Infrastructure charging principles

Charges are regulated, set and collected by ŽSR. There is no entry charge. On the basis of the Decision of the Ministry of Finance in Slovakia the charge for the use of rail infrastructure is included in the list of regulated price items and was published in the price decision of the MF SR no. 01/R/2003, valid since January 1st, 2004. It represents the maximum price applicable for all potential RUs authorized to carry out their business activities in Slovakia.

All informants except one think charging are transparent and non-discriminatory towards RUs. The last informant also thinks the official charging structure is stated clearly as regards regular charging. But there exist special price reductions to specific conditions, which are not transparent to all RUs. E.g., there exist charging discounts in case of higher transport volumes which favour ŽSSK-Cargo.

Rail charging is perceived as being discriminatory in comparison with road transport. There is no infrastructure use charging for road transport. IM says the overall aim is to lower the charges due to competition with road transport.

6.2.2 Train path allocation

Development of capacity allocation framework is the responsibility of ŽSR. There is a One-Stop-Shop contact point for all RUs, and according to the One-Stop-Shop there are uniform train path allocation procedures for all RUs.

Standard contracts are used between RUs and the IM for all types of transport. In case of capacity bottlenecks, attempts are made to co-ordinate requests in consultation with the applicants. Currently, prioritisation is not a critical topic as there is sufficient capacity on the rail network, with the possible exception of the Bratislava conurbation at peak hour. There has not been a conflict yet about prioritisation, but in general the time of ordering a train path is decisive in conflicting requests.

According to the law every applicant must be treated on non-discriminatory basis. Even though, the applicant may feel he has not been treated that way. In that case the applicant can now appeal to the URZD.

6.2.3 Access to terminals

Non-discriminatory access is in principle guaranteed since it is the infrastructure manager who supplies the services to the railway undertakings.

Informants do not expect that access to terminals will become a capacity problem with the increase in the number of railway undertakings in freight transport within the coming years. In Slovakia combined transport is on a very low level: it makes just about 2 % of rail transport. Sufficient capacity is available. Furthermore, terminals are in general used rarely.

6.2.4 Licensing and safety certificates

The railway undertaking willing to operate in Slovakia has to hold EU license, which is valid in Slovakia. It also has to meet the technical requirements of the Slovak rail system – this is communicated with the infrastructure manager. Currently there are about 20 RUs in Slovakia. Procedures for licensing of new entrants are found by all informants to be transparent and non-discriminatory.

A new RU has mentioned two obstacles in the licensing and certification procedures. Firstly, there are high costs for an RU license in Slovakia. Costs have increased dramatically since January 2006. Related to this, the new RU calls for higher transparency in political decision processes and earlier information for RU on planned adaptations of rail specific rules by the state. Secondly, there is a need for technological solutions that would make the certification procedure for new locomotives faster. Stronger criteria exist for new locomotives than for very old ones.

An informant remarked that Slovak licenses for locomotive drivers are not valid in other countries. There is a need for a common EU license for locomotive drivers. This is being pursued as an EU initiative to reflect international acceptance of driving licences.

6.2.5 Network statement

The Network Statement is available in Slovak, English and German on the website of ŽSR. The RAILIMPLEMENT study found that the Network Statement is easily accessible and shows transparency and openness.

6.2.6 Handling of complaints

Before 1 January, 2006 the appeal body regarding charging and capacity allocation was SDÚ. Since 2001 the Antimonopoly Office has considered four cases related to ŽSR's potential abuse of its dominant position. In none of these cases was there a decision against the IM.

There is no experience in practice yet with the newly established URZD. Interviewees expect procedures to be transparent and non-discriminatory. No complaints have been lodged so far (since 1/1/2006).

6.3 Other specific problems

6.3.1 Access to new entrants

There seems to be agreement that on the legal/procedural level there are no barriers for new entrants (RUs) into the market. After gaining the relevant licenses according to the valid regulations there should not be any barriers. Further, in Slovakia shunting is done under competence of ŽSR and works very well (from the new RU's point of view).

There are, however, examples of technical aspects that may represent barriers:

- Need for multi-current locomotives
- Technical problems that affect certification: New multi-current locomotives produce interfering current on the track. For this reason the Austrian "Taurus-loco" was in 2005 not yet certified for the Slovak rail network.

It was reported in 2006 that there were also examples of perceived barriers for new entrants related to the market position of the incumbent RU as well as to lack of predictable framework conditions:

- ŽSSK-Cargo serves about 99 % of rail freight in Slovakia. Major rail clients already have negotiated long-term agreements with the incumbent RUs. Companies in industry in Slovakia strongly hesitate to cooperate with new RUs as these companies mostly have to expect as a consequence worse conditions in negotiations with the incumbent RU ŽSSK-Cargo. As a consequence there is only a small transport volume available for the new RUs.
- It has been said that specific private RUs in Slovakia still have very good relations/connections/ informal contacts to the regional and state administration, which results also in discriminating situations for other RUs (e.g. less or no rail infrastructure charge; no fines to be paid for).
- Since January 1st 2006 the license fee for RUs to operate in Slovakia increased dramatically from 10,000 SKK (268,- EUR) to 1,800,000 SKK (48,234,- EUR).

Summing up, there is an uncertainty especially as regards the future regulative framework. For this, the recently initiated Rail Regulator will play a potential role in the future in Slovakia.

There are different views on the significance of ownership structure in Slovakia. On the one hand, terminals are hardly used and sufficient capacity is available. On the other hand, a new RU thinks ownership structures do make a difference and that the incumbent RU is not very willing to co-operate with private RUs.

6.3.2 Supply of intermodal services

Rail transports are integrated with other transport modes to a low degree. From the Danube harbour in Bratislava there exist some ship freight transports on the Danube to Linz in Austria.

6.3.3 Technical interoperability requirements according to the TSIs

A high-level workgroup has been installed since January 2006 in Slovakia. Tasks of this workgroup are interoperability in general and TSI in particular. For this, the overall aim of the working groups is to check which norms already exist and which norms have to be renewed. There exists an active participation in the TSI process; furthermore, the TAF-TSI proposal has already been approved in Slovakia in December 2005.

There is a group working on an implementation plan for the following TSIs:

- Control/command and signalling
- Traffic operation and management (is part of the strategy of the modernisation plan)
- Telematic applications for freight

In ŽSR a working group has been established to solve implementation of ETCS and GSM-R systems on the ŽSR tracks. ŽSR has worked out a study for implementation of TSI TAF and a study of registration of infrastructure.

Rail interoperability / technical harmonisation is very cost intensive. For this the most important barrier is the financial barrier. Financial support for rail infrastructure (e.g. signalling) is needed.

6.3.4 Problems related to the transport network

Network Links

Configuration and alignment

The central location of the country makes it interesting for transit. The railway network has a total line length of 3661 kilometres, of which 42.5 percent is electrified. Single lines constitute 2493 kilometres and double lines 1020 kilometres. Most of the network has standard gauge, while about 50 km are narrow gauge and about 100 km broad gauge. The lines Košice – Žilina, Žilina – Bratislava and Bratislava – Zvolen – Košice are a double-tracked triangle that constitutes 22.8 percent of the network and carries 75 percent of total ton-km in rail freight.

Informants do not see any specific problems with respect to the configuration, capacity, or operations on the rail network links that hamper seamless international rail freight transport.

Competitiveness of rail is good for longer distances. But generally there is a lower degree of flexibility in rail transport in comparison to road transport which therefore results in a lower degree of rail competitiveness. This barrier could be overcome by:

- Focus on sidings (i.e. possibly public funding for construction of new sidings)

- Focus on rail specific goods plus use of special wagons for specific goods
- Modernisation of tracks and signalling

The electrification system causes interoperability problems:

- A specific need for multi-current locos at the border to Austria which are compatible with the Slovak rail infrastructure (problem of interfering circuits). At the Slovakia - Hungary border this problem does not exist, due to the same electrification system. The signalling between Slovakia and Hungary is different.
- Multi-current engines are needed in Slovakia because in the Slovak rail network there exist two different current systems, for historical reasons. Multi-current engines are more expensive. In cross border transport with the Czech Republic there is no problem, as ŽSSK multi-current locos can serve the Czech rail network as well as vice versa.
- These technical problems also cause a lengthy process for the certification of multi-current locomotives.

Composition of trains and working procedures in marshalling yards: The composition of trains is very time consuming. Barriers could be overcome by:

- Telematic support which will ease this procedure, e.g. the future Galileo system will ease this process for RUs
- Block trains
- Importance of transports in time (i.e. increase of punctuality) and not necessarily of higher speed (though a certain basic speed is useful of course)

Border Crossings (BC)

Physical characteristics

No specific problems have been identified with respect to the configuration, capacity, or operations at border crossings for the Slovak part of the corridor that hamper seamless international rail freight transport. Especially to Austria there is sufficient capacity available now since the renewal of a track on the Austrian side to Bratislava Petržalka.

Capacity and skills of personnel

Currently there are no common languages for international rail communication. There will be communication problems in particular if engine drivers from foreign countries undertake services in Slovakia without knowing the Slovak language. Introduction of a common rail language and adequate training may solve the communication problems.

Technical interoperability

There are no technical or organisational interoperability problems with freight trains at border crossings, according to our informants. There exists a common agreement between Austria and Slovakia as regards common handling for clearance of cross border freight trains in Bratislava and in Vienna. Time savings are a result of this common cooperative measure. It is based on a contract between ÖBB Cargo and ŽSSK Cargo.

Rolling Stock (RS)

Physical capacity

No specific problems are identified with respect to the capacity or operation of rolling stock on the Slovak part of the corridor that hamper seamless international rail freight transport.

ŽSSK-Cargo is planning to implement ETCS on a certain number of locos. ERTMS will be in service between Trnava and Bratislava by 2007.

Condition/quality

A technical interoperability problem related to rolling stock is that the rolling stock in Slovakia mainly encloses older vehicles. In general the technical shape of ŽSSK vehicles is objectively worse than the “western” rolling stock.

6.4 Summary

There are few indicators in our material of obstacles for new entrants due to lack of administrative changes and discriminatory practices from governmental agencies. However, the incumbent, ZSSK Cargo’s dominant position in the market has been considered a problem for new entrants.

7 Romania

7.1 Legal and administrative structure

7.1.1 Transposition of EC legislation into national law

Railway reform was initiated in the period 1991-1998 with a re-orientation of activity and the development of initiatives for privatisation. In the period 2003-2006 the first and second railway packages were accommodated. Railway reforms have been focused on institutional, organizational, financial, regulatory, personnel and privatisation issues in combination.

The existing incumbent was in 1998 converted into company structures. The structure and modus operandi was aligned with EU railway legislation (directives) to allow for separation, capacity allocation and infrastructure charging. New company activities (former CFR) were defined and the RRA (Romanian Railway Authority) was brought into being with defined rules of engagement. All railway activity was to be governed by licenses.

In 2003-2004 national legislation modified definitions and relationships but re-emphasised agreements between train operators and the IM. Charging, capacity allocation, safety certification and regulation were also re-defined. RSC (Railway Supervision Council) came into being for the allocation of infrastructure capacity, charging for infrastructure use and safety certification as an independent body but it is still embedded within the Ministry of Transport.

Safety laws and a safety authority (AFER) were established in 2007 to oversee the certification and registration of vehicles, safety issue compliance and safety authorizations. A railway investigation body was also set up for crash and incident response.

7.1.2 Separation between infrastructure management and operations, and between passenger and freight operations in the incumbent

Full separation between the various actors. In 1998 there was a restructuring (split) of the rail transport sector organization in Romania. 3 new companies were made: a) CFR S.A. is the manager of the infrastructure, track, traffic, capacity of the rail transport b) CFR Marfa S.A., is the railway undertaking for rail freight transport and c) CFR Calatori S.A. is for the rail passenger transport. They are all separate entities, with different roles, different management and business plans and different accounts.

CFR S.A. was established in 1998 as Infrastructure Manager of the railway network of Romania on the basis of Government Decision No 581/1998, through the reorganisation of National Company of Railways. CFR SA represents Romanian juridical identity and has the status of commercial joint-stock company. The National Company for Freight Railway Transport, "CFR Marfa"-SA was set up on October 1st 1998, after the reorganization through division of The Romanian Railways National Company and has the status of a commercial company. CFR-Marfa is presently planned to be sold into the private sector.

7.2 Transparency and non-discrimination procedures in areas important for achieving seamless rail freight

7.2.1 Infrastructure charging principles

The railway undertakings pay infrastructure access charges (TUI) to CFR that uses them to finance its activities. TUI is levied for:

- the minimum service package
- the network access to service facilities and is in principle equal to the direct costs of train operation

In 2006, it was reported that TUI, for any traffic section, independently of the train tonnage, accounted for the following:

- for freight traffic: TUI = EUR 3.6 /train km
- for passenger traffic: TUI = EUR 2.4 /train km

CFR may introduce discount systems for all the infrastructure users on certain traffic sections, for limited periods of time, with the aim to encourage the supply of new railway services or for the lines which are operated below their capacity. CFR applies similar discount systems to similar services.

Access charges are based on train/km. Sometimes there is room for negotiated rates. The level of access charges does not differ between CFR Marfa S.A. (incumbent railway undertaking) and the private operators, as the law does not allow it. There are different charges between passengers and freight transport.

Similar discounts are given to the national freight operator (CFR Marfa S.A.) and new entrants. There are normally no differences between actual infrastructure charges for domestic rail freight services and international rail freight services. If negotiation exists, these will be done with transparency. Actual infrastructure charges are for the time being in all cases independent of the tonnage and length of a train. It is planned that from 2006-2007 will be depended on tonnage and type of trains. We have not received information of whether this has now been put into practice.

There have been several complaints about Marfa, regarding its monopoly policy as well as its policy of establishment of tariffs. There is no obligation (e.g. by the law) for justification of tariffs; the only obligation is to make these tariffs public.

7.2.2 Train path allocation

RSC (Railway Supervision Council) established in 2003-2004 is responsible for the allocation of infrastructure capacity, charging for infrastructure use and safety certification as an independent body. It is still, however, embedded within the Ministry of Transport.

There are no priority criteria: allocation depends on the suggested itinerary. It is reported that priority is given to passenger services over requests for (international) freight services, even in the local (domestic) itineraries.

7.2.3 Access to terminals

Information from 2006 states that terminals are controlled by CFR Marfa, while marshalling yards by CFR. Good communication exists between Romanian rail organizations and rail organizations from other countries at border crossings because clear agreements are made between them. The second EU railway package has been absorbed allowing all certified freight operators equitable access to the national network on a transparent and non-discriminatory basis. This also includes track access to and the supply of services in terminals and rail linked ports.

There are 8 network marshalling yards, belonging to public infrastructure; traffic is organized by CFR and the humps are operated by CFR Marfa; maintenance of lines and signalling is ensured by CFR..It was reported in 2006, that private RU's do not use the marshalling yards, choosing to operate mainly closed trains (shuttle), the manoeuvres being performed in stations.

Law no 155/2005 states that:

- Starting on the date of accession of Romania to EU (1 January 2007), railway undertakings shall be granted, on equitable conditions, access to the Romanian infrastructure for the purpose of operating all types of rail freight services
- The conditions governing such agreements shall be non-discriminatory and transparent, in conformity with the provisions of GO 89/2003 - Directive 2001/14/EC
- Track access to, and supply of services in, the terminals and ports linked to rail activities, shall be provided to all railway undertakings in a non-discriminatory and transparent manner

According to the law mentioned above, terminal and track access issues should be solved in a non-discriminatory way. However, when it comes to access to terminals, information indicate that the ownership has been used to discriminate against new entrants.

7.2.4 Licensing and safety certificates

The Romanian Railway Authority (RRA) deals with licensing, technical vetting and the certification of new entrants. Licences are issued by the Romanian Railway Licence Body that was set up in 2007. Safety laws and a safety authority (Romanian Railway Safety Authority) were established in 2007 to oversee the certification and registration of vehicles, safety issue compliance and safety authorizations. For the railway undertakings licensed in the EU member states, the railway transport license issued by an authority responsible for the state licensing shall be valid for issuing the safety certificate for supplying railway transport services on the Romanian network, upon mutual agreement, in accordance with the international provisions of the agreements and conventions to which Romania is a party.

7.2.5 Network statement

The Network Statement is made public and accessible to everyone through CFR Marfa website.

7.2.6 Handling of complaints

Government Ordinance no. 89/2003 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, approved by Law no. 8/2004, established Railway Supervision Council (Regulatory body) in the framework of the Ministry of Transport, according to the Directive 2001/14/EC. The Railway Supervision Council (Regulatory body) is independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant.

The regulatory body's tasks and powers in order to achieve non-discrimination are, i.e. settling of appeals, supervising charges, authorizing negotiations and monitoring competition.

7.3 Other specific problems

7.3.1 Access to new entrants

There were (in 2006) already ten private railway enterprises for freight and passengers transport. The system is however complicated; many actors appear, and their relations become sometimes difficult. The system needs further changes in order to be harmonized with the EU provisions (especially with the provisions of 2001/14).

After the split of CFR, new private operators were in operation. In 2006, 30 private railway undertakers exist in Romania (only 1-2 operate in passenger transportation, the rest in freight). The Ministry of Transport is in communication only with CFR, providing funds for infrastructure and rolling stock. CFR makes contracts with Marfa and Calatori. The private operators make contracts with Marfa. There have been many complaints from other railway undertakers, as 75% of freight transport is for Marfa and the rest 25% is for the private operators. This is also hampered by the fact that new entrants have no access to the terminals. Terminals are controlled by CFR Marfa.

7.3.2 Supply of intermodal services

The competitiveness of rail versus other modes is constantly increased and it is independent on the EU legislation. An advantage of the road over rail is that the maintenance cost of road transport is lower than the relevant for rail. But Romania has an intermodal transport corridor called Ro-La (transportation of wagons on trains) and in this way they hope to attract more customers. This Ro-La is used in the Arad-Austria route. (The Hungarian railways MAV uses the same route).

CFR Marfa owns ferry ships, which transport freight in the Black Sea going to Turkey.

7.3.3 Technical interoperability requirements according to TSIs

- *Rolling stock: freight wagons and traction units:* There is no implementation plan although the legal framework exists.
- *Noise:* There is no implementation plan. The legal framework does however exist.

7.3.4 Problems relating to the transport network

Network Links

The first priority is corridor IV. Most of it has already been reconstructed. From 2006, the part from Bucharest to Constansa will be rehabilitated. The PHARE program provides funds for this. It is reported that the project will be complete in 2008/9

The major problem is the bridge in Calafat, at corridor IV. 7 billion Euros will be spent for modernisation. Priority is given now in corridor IV. It is already double line, mostly electrified and in good shape.

Technical interoperability

There are bilateral agreements between neighbouring countries in order to accept wagons not fully compatible with the EU legislation.

7.4 Summary

The situation in this country is similar to that in Austria and Hungary. There may be problems for new entrant due to ownership of terminals, and its not quite clear whether there is established a level playing ground for new entrants.

Summary of country findings. Conclusions and recommendations

8 Summary of the country-by-country findings in the suggested Retrack corridor and general conclusions.

WP 2.7 addresses the legislative and regulatory requirements for the Retrack rail freight service by examining the legislative and actual status in the countries in terms of issues such as division of responsibilities between governmental agencies and operators, and

transparent and non-discriminative principles and procedures necessary for competition in the market. The information is based on written documents and interviews, partly done by the research group in earlier projects, in particular Reorient, yet updated and revised in the RETRACK project.

The countries are similar in many aspects. Most countries seem to have implemented EU legislation and provide an adequate network for domestic as well as international traffic. In general they have made the necessary *formal* legislative and administrative changes. This is also the case for the Eastern countries in the corridor, whose time-schedule for implementation has been relatively short, and resources more limited.

However, when one look behind the formal changes, some remaining problems can be observed. The exemption seem to be **The Netherlands**, where no major obstacles for new entrants have been observed.

In **Germany** Deutsche Bahn is characterized by separation of accountings and responsibilities, but all major functions are still within one holding company. The consequences of such a situation for new entrants are unclear, but there are no clear indications of problems that this may cause, as the procedures seem transparent and non-discriminatory.

Also, in **Austria** there is a holding company structure which comprises IM and RUs in passenger transport and freight. Rail Cargo Austria has a dominant position in the freight market, and there are some concerns that RCA will use its dominant position in the market against new entrants, e.g. by predatory pricing policies. There are also some concerns that the linkage back to the parent company may be used to reduce competition.

Moreover, in **Hungary** all necessary formal legislative and administrative changes have been made. However, the data gathered during the autumn 2005, indicates that new entrants experience obstacles in several areas, e.g. in terms of pricing structure, train path allocation, no transparent pricing of access to terminals. Hence, both ownership to terminals, opaque relations between IM and incumbent can cause problems for new entrants in this market. However, evidence suggests that organizational adjustments, such as the establishment of the Rail Regulator in 2007 will contribute to overcome these difficulties and EU legislation will be monitored. On the other hand, the privatization of MAV Cargo may create additional problems for new entrants, depending on the new ownership.

In **Slovakia** there are few indicators of obstacles for new entrants due to lack of administrative changes and discriminatory practices from governmental agencies. However, the incumbent ZSSK Cargo's dominant position in the market has been considered a problem for new entrants.

In several aspects the situation in **Romania** is similar to the Austrian and Hungarian situation. There may be problems for new entrants due to ownership of terminals, and its not quite clear whether a level playing ground for new entrants is established.

To sup up, there does not seem to be any difficulties regarding open access and transparency in the Netherlands. Although formal legislative changes have been made in all countries, the combination of holding structure/cross ownership in IMs and incumbent rail freight and possibility of informal relations between key actors, may imply problems for new

entrants in several of the countries, especially in Hungary, Austria and Romania. In addition, problems of access to terminals due to ownership structure may be a problem for new entrants along the corridor.

A key challenge in the proposed corridor seems to be the dominating position of the incumbents in Austria, Hungary, Romania and Germany. In several of the countries this situation is combined with lack of transparency, due to either company ownership structure and/or the possible existence of informal relationships between stakeholders. While working on this deliverable, indications suggest that the tendering of MAV Cargo will be won by Rail Cargo Austria and GYSEV. If that is the case, concerns about transparency and equal competition in this part of the corridor increases.

9 Sources and references

The main sources of this document are:

- Data gathered and analysed in the REORIENT-project (see www.reorient.org.uk)
- Information provided by NewRail/Retrack colleagues based on stakeholder interviews

Other sources:

- European Conference of Ministers of Transport (2005). Rail Transport. Railway Reform and Charges for the Use of Infrastructure. Conclusions and Recommendations. <http://www.cemt.org/online/council/2005/CM200506e.pdf>
- European Railways Administrations, Institutions, and Legislation (2005). ERAIL Monograph Romania. NEA Transport Research and Training. Rijswijk, the Netherlands.
- NEA Transport Research (2005). European Railways Administrations, Institutions, and Legislation (ERAIL). Country Monographs. Rijswijk, the Netherlands.
- Steer Davis Gleave (2005). RAILIMPLEMENT. Study on the Implementation of the Rail Infrastructure Directives 2001/12/EC, 2001/13/EC and 2001/14/EC. Bologna, Italy.