ANNEX A – THE INSTITUTIONAL CONTEXT FOR THE RAILWAY SECTOR

THE *ACQUIS COMMUNAUTAIRE*

175. The institutional framework for the railway sector in the Western Balkans region is shaped by the European Union, because the countries wish to take on the "obligations of membership" in the EU. This requires aligning domestic laws, rules and procedures to the body of community legislation, the *acquis communautaire*, in such a way that ensures that the relevant EU law is fully incorporated within their domestic legal framework.

176. The transport *acquis communautaire* contains all the relevant EU Directives, Regulations and Decisions, together with all principles of law and interpretations of the European Court of Justice, all international transport agreements to which the EU is a party, including what is now termed as the ECMT *acquis*[77], and all relevant Declarations and Resolutions of the Council of Ministers. The following sections outline the current content of the *acquis communautaire*, as it pertains to transport, within three broad areas:

i. The early EU legislation from 1990 – 2001;
ii. The EU White Paper and the Subsequent Railway Packages; and
iii. The ECMT *Acquis.*

THE EARLY EUROPEAN UNION LEGISLATION 1990-2001

177. The rail liberalization process was formally initiated by directives issued in 1991 and 1995. Since that time, the EU has progressively built a large body of legislation which focuses on gradual opening of the rail market by regulating access to the infrastructure, interoperability of the European rail network, separation of infrastructure from transport operations, and a common approach on rail safety. This body of legislation includes a diversity of acts, which are binding on all member, accession and applicant countries unless specific derogations have been agreed. The following paragraphs contain a summary of the key acts, and the key mandatory requirements associated with each:

77 Which has recently been slimmed down to an essential 120 Resolutions, Declarations, Conclusions and Recommendations etc. See ECMT, (2003) for more information.

178. **Directive 1991/440/EEC**[78] on the development of the community railways is the parent piece of legislation for the opening of the rail market. According to this directive:

- There **must be** separate accountability for management of infrastructure and transport operations. Organization and institutional separation is **optional.**

- Railway undertakings must be administered on a commercial basis. Public service obligations (PSO) and public service contracts (PSC) must also be defined on a commercial basis.

- Railway undertakings **must** design their business plans—which **must** contain their investment and financing programs—to reach financial balance.

- Member States **must set up** appropriate mechanisms to help reduce the indebtedness of railway undertakings so as to permit them to reach financial viability. Specifically, Article 9 states that 1. In conjunction with the existing publicity owned or controlled railway undertakings, Member States **shall set up** appropriate mechanisms to help reduce the indebtedness of such undertakings to a level which does not impede sound financial management and to improve their financial situation. 2. To that end, Member States **may take** the necessary measures requiring a separate debt amortization unit to be set up within the accounting departments of such undertakings

- Railway undertakings **must** be independent from the State in management, administration and internal control over administrative, economic and accounting matters. Assets, budgets and accounts must be separate from those of the State.

- Railway undertakings **must** be free to establish international groupings and internal organization, set tariffs, and control staff, assets and management.

- Under certain conditions, rail companies from member states **must** be provided access to the national market for international combined freight transport; and the freight and passenger intra-union market must be opened to international holdings.

- The infrastructure manager **must** charge a track access fee for the use of the railway infrastructure. Member States **must** lay down the rules for determining this fee, after consultation with the infrastructure manager.

78 Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways Official Journal L 237 , 24/08/1991 Pages 25 -28.

- The user fee **must** be calculated in a non discriminatory manner and, **may** take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilization of the infrastructure.

179. In 1995, two subsequent directives were issued to complete the 1991 legislation by: (i) setting common criteria for the licensing of railway undertakings established in the European Union[79]; and (ii) laying down the first rules for the allocation of infrastructure capacity and for infrastructure access charging.[80] Directive 95/18 states that railway undertakings meeting a series of conditions laid out in the directive, can apply for a license that would be valid throughout the EU territory, with the intention of facilitating international access and hence competition.

180. Directive 95/19, which has recently been replaced by Directive 2001/14, states that each member state **must** design an allocation body that will allocate infrastructure on a fair and non-discriminatory basis. In addition a safety certificate **must** be issued for each operator.

181. The first step towards interoperability was the adoption of Directive 96/48/EC on the interoperability of the trans-European high-speed rail system.[81] The directive requires that this network **must** meet a common set of essential requirements, called Technical Specifications for Interoperability (TSI) so as to achieve interoperability, improved safety, and reduced environmental nuisance. The six areas of the network covered by those specifications are called subsystems, and are the following

1. infrastructure;
2. energy;
3. maintenance;
4. control and command and signaling;
5. rolling stock;
6. traffic operation and management; and
7. telematics applications for passenger and freight services.

182. The Commission adopted TSI for the six subsystems in May 2002[82]. The texts of the TSIs were published in the Official Journal L245 of 12 September 2002. They have since been replaced by the legislation based on the proposals of the first rail infrastructure package of 1998 which consolidates the rail liberalization process: In particular in the controlling and signaling subsystem, Directive 96/48/EC required a unified control system, the European Rail Traffic Management System (ERTMS), on the high speed Trans -European network. The rationale for proposing a uniform control system was the recognition that more than 15 different signaling systems

[79] Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings.
[80] Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees.
[81] Defined in Annex 1 of the same directive.
[82] Commission Decisions 2002/730,731,732,733,734,735/EC.

currently operate on the European network. For example, from Paris to Brussels, the driver has to face 7 different signaling standards, which create transition costs and safety issues.

183. The proposal to establish the ERTMS, set up by European Signaling suppliers, was intended to overcome these problems and provide a common rail traffic management system across the entire network. The system has a number of components, combining:

- ETCS (European Train Control System); a train based computer (Eurocab) which compares the train speed as transmitted by the track with the maximum permitted speed, and automatically brakes the train if the latter is exceeded; and.
- The GSM-R is a radio communication system based on GSM but using frequencies specific to rail, which will enable to exchange information (voice and data) between trackside and the train.

184. The Commission Decision of April 29 2004 established specifications of the ERTMS for both the Trans-European high speed system and the Trans-European conventional rail system. The cost[83] of installing the ETCS module on board depends on the type of locomotive or train set, but is estimated at US$120,000 for new equipment. Prices would vary between US$240,000 and US$360,000 when existing equipment has to be adapted.

185. The cost of installing ETCS on the infrastructure is difficult to estimate, because it depends on the traffic density and the way that costs are attributed. Since ETCS installation is very often coupled with complete overhaul of the line, cost estimates range from US$36,000 to US$360,000 per track km. The tentative cost estimate for installing ETCS on a 'significant part of the network' is over US$700 million per year for the next 10 years. Furthermore, a recent study by the UIC found the required investments to be unviable in economic terms even on the Western European Railways[84].

The EU White paper: European Transport Policy for 2010: Time to Decide

186. In 2001, the European Commission proposed its white paper on transport policy. [85] The strategy of the white paper is based on the assessment of ten years of transport policy and the intention to address the following issues:

[83] Cost Estimates are extracted from the Memo/05/235 The ERTMS in 10 Questions, published on http://mct.sbb.ch/mct/en/infrastruktur_innovationen_etcs-eumemo-05-235_en.pdf.
[84] UIC (2004).
85 Brussels, 12.9.2001 COM(2001) 370 : White Paper, European transport policy for 2010: Time to decide

- The road market has been largely opened but the rail sector lags behinds in terms of modernization and liberalization. Today, the modal split is increasingly dominated by road;
- Congestion caused partly by this imbalance between modes is reported to cost to the Community 0.5 percent of GDP and an estimated 1 percent by 2010;
- Road safety is still not guaranteed at an acceptable level;
- It is crucial to construct a sustainable transport network, in particular to reduce dependence on energy, and reduce external cost on the environment and health. In particular the commission regrets that external costs are not well integrated in transport pricing; and
- The enlargement will remodel transport flows, and trigger high integration costs.

187. The white paper contains over 60 proposals which mainly aim to: (i) encourage modal switching to a more balanced modal split; (ii) eliminate the bottlenecks on the European network; (iii) improve quality of services and safety conditions for users; (iv) improve policy coordination and technical interoperability so as to achieve a single European transport network; (v) adopt an effective charging policy for transport; (vi) develop a high quality urban transport; and (vii) reduce environmental costs.

188. Rail transport is presented, within the white paper, as being an environmental friendly, long distance efficient mode but also a mode lagging behind road in terms of modern operational performance, operational management, transparent governance, and degree of liberalization. With only 6 percent market share in passenger and 8 percent in freight, revitalizing the rail mode is a top European priority. The White Paper identifies rail as '**literally the *strategic* sector, on which the success of the efforts to shift the balance will depend, particularly in the case of goods.**'[86]

189. For the EC the dynamism of the rail sector will be spurred by introducing competition and by solving the main problems that are 'holding back its development: (i) infrastructure not suitable for modern transportation and interoperability; (ii) poor information systems; (iii) opaque costing; (iv) uneven productivity; and (v) mediocre reliability. The white paper makes a number of proposals which are classified under the following objectives; (i) create an integrated rail transport market; (ii) use the infrastructure more efficiently; (iii) improve quality and safety for users; (iv) prepare for enlargement; and (v) reduce congestion.

190. The specific measures discussed under each of the headings include: opening national rail freight and passenger markets to cabotage and increasing the members' allocation of train slots to freight rather than passenger, which should be more efficiently served by a high speed rail network. In addition, the white paper proposes

[86] From EC, (2001), page 16.

to include some sections of the European Rail Freight Network (TERFN)[87] into the Trans European Network[88] (TEN) so has to have them eligible for European and national funding.

191. Directive 2001/12[89] amended the 91/440 directive, on the development of the Community's railways. In particular, it makes the following additions:

- The infrastructure manager **must** have responsibility for its own management, administration and internal control.

- The infrastructure manager **must** have established a business plan which includes the investment program and which is designed so as to ensure financial equilibrium and optimum use of infrastructure.

- So as to create a non-discriminatory access to infrastructure, capacity allocation, infrastructure licensing and charging **must** be undertaken by an organization which does not provide transport operations.

- The member states **must** ensure that the compliance with safety standards are verified, rolling stock and railway undertakings certified and, accidents investigated. This verification **must** be done by bodies independent from rail undertakings.

- In the financial statements of railway undertakings, revenues from PSO's **must** be shown distinctively and not be transferred to another item.

- Member states established railway undertakings **must** be granted access to the Trans European Rail Freight Network (TERFN) and to all the rail network by March 15 2008, for the purpose of operating international freight services.

- The Trans European Rail Freight Network (TERFN), granting access to EC licensed railway undertakings for international freight services **must** be extended to the entire rail network by 15 March 2015.The railway undertakings **must** be granted access and transit on that network, for the purpose of operating international freight services.

192. Directive 2001/13[90] amends council directive 95/18, and according to the directive:

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[87] Directive 2001/12/EC defines a 500,00km long network to be opened to European freight service in 2003.
[88] Decision 1692/96 defines the Trans European network and its eligibility for European and national funding.
[89] Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.

- The license issuing body **must** be independent from railway undertakings.

- A railway undertaking can also refer to the commission if he claims that the national requirements are applied in a discriminatory manner. In case of such an appeal, the Commission must issue a statement.

193. The key Directive 2001/14[91] replacing directive 95/19, defines the conditions for capacity allocation for infrastructure capacity and management, as well as access charges rule and applies to the entire network, and according to the directive:

- The infrastructure manager **must** publish a network statement, which describes the condition and limitation of the network, details of the charging scheme, rules governing the capacity allocation, priority rules which apply in case of conflicting demand[92].

- Member states **must** establish a charging framework and its specific rules. This task can be performed by the infrastructure manager

- The calculation of the charge and the collecting of that charge **must** be performed by the infrastructure manager. If the infrastructure manager is not independent from a railway undertaking, these functions other than the collect of the fees must to be performed by an independent body.

- The infrastructure managers **must** cooperate to ensure the effectiveness of cross member states transport operations,

- The railway undertakings **must** be provided a minimum access package and services described in annex II of that directive.

- Track access fees **must** be paid to the infrastructure manager and used to fund its business.

- Member States **must** also establish an independent regulatory body with the responsibility, among others, to receive claims and appeals to the decisions of the infrastructure manager.

- The directive also introduces compulsory safety certificates for railway undertakings.

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[90] Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, Official Journal L 075 , 15/03/2001 P. 0026 – 0028

[91] Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, Official Journal L 075 , 15/03/2001 P. 0029 - 0046

[92] The contents of the network statement are defined in Annex 1.

194. This first rail package was introduced on the February 21st 2001, and member states and Member States must implement the provisions of the Directives in national legislation by 15 March 2003 at the latest. Subsequently, based on the contents of the 2001 white paper, the Commission released a second rail package in 2002 in order to speed up the integration of the European rail market. It contained five significant proposals, which were followed in 2004 by the adoption of related directives and regulation. So as to develop a common approach to rail safety, Directive 2004/49/EC stipulates the following;

- Each member state **must** establish binding national safety rules. Member states must annually collect standard safety indicators defined in Annex I of the same directive.

- Member states **must** establish a safety authority independent from any railway undertaking, infrastructure manager, or applicant and procurement entity. It must issue, renew and amend the safety certificates.

- Member states **must** establish an investigating body independent from any railway undertaking, infrastructure manager, or charging or allocating body. It **must** investigate any serious accident and publish an annual report following the template described in annex V of the same directive.

- Any railway undertaking **must** hold a standard safety certificate defined in the same directive.

- Any infrastructure manager **must** obtain a safety authorization defined in the same directive.

195. To achieve the opening of entire European market to national freight services no later than January 1st 2006. EC Directive 2004/51 amending EC. Directive 91/440 states that:

- Railway undertakings established in member states **must** be granted access to the Trans-European Rail Freight Network and to the whole network for international freight services by January 1, 2006 (instead of 2008 as stipulated by EC. Directive 91/440 amended by EC. Directive 2001/12).

- Access rights to the whole network must be granted to Railway undertakings established in member states by 2007 for all freight services.

196. To complete the interoperability principles, EC. Directive 2004/50 amends EC Directive 96/48 relative to the high speed rail system and EC. Directive 2001/16 relative to the trans-European conventional rail system. It harmonizes the two, taking into account the new legislation of the 2nd rail package, and extends the application to the whole rail network.

197. On March 3, 2004, the European Commission proposed a third railway package, the main contents of which are the following:

- A proposal for a directive requiring the opening of the market for international passenger services in 2010.[93] Railway undertakings established in member states must, by 1 January 2010 be granted the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings must, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

- A proposal of directive concerning the certification of locomotive and train drivers which operate passenger and freight services within the Union.[94] This proposal of directive defines the conditions and procedures for the certification of train crew operating locomotives and trains on the Community's network. It also specifies the tasks for which the competent authorities of the Member States, the train drivers and other stakeholders in the sector, the railway undertakings, infrastructure managers and training centers are responsible.

- A proposal for a regulation concerning passenger rights for international transport, requiring minimum information for passengers, and establishing a minimum set of rules concerning delays and treatments of complaints[95]. This proposal sets minimum requirements for information to be provided to passengers relative to their journey, contract conditions, and the liability of railway undertakings in cases of accidents, delays or cancellations of services.

- A proposal for a regulation concerning the quality of rail freight services, requiring certain minimum clauses in contracts[96]. According to this regulation: railway undertaking must pay compensation calculated according to the market price at the place and at the moment of the loss or damage, partial or total of goods. In case of a delay in relation to the arrival time agreed in the contract, railway undertakings must pay the compensation laid down in the contract. The parties must define in the transport contract the amount of compensation by mutual agreement in case of the cancellation of a train by the railway undertaking or by a rail freight customer. The contracting

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[93] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the Development of the Community's Railways COM(2004)139 final of March 3,2004.

[94] Proposal for a directive of the European parliament and of the council on the certification of train crews operating locomotives and trains on the Community's rail network- COM(2004)142 final of March 3, 2004.

[95] Proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers' Rights and Obligations COM(2004)143 final of March 3, 2004.

[96] Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services - COM(2004) 144.

railway undertaking, which has accepted goods for transport, must be responsible for the transport over the entire route up to arrival, including handling and/or transshipments of the wagons or the trains.

THE ECMT *ACQUIS*

198. Since 1953, the council of ministers of ECMT, throughout conferences and working groups, agreed on a series of recommendations relative to inland transport and addressed to governments and transport undertakings. The major recommendations, gathered in Principal Acts of the ECMT 1953-2003[97] represent the ECMT *acquis*.

199. The core text of the ECMT *acquis* is resolution 2002/1, which makes a number of recommendations in respect to interoperability, border crossing, market liberalization (regulation, infrastructure charge and access, infrastructure/operation interface). It is consistent with EU directives, and aims to covers the whole European network. In particular, the ministers agreed:

- To develop simplified custom procedures for new entrants in the international markets;
- To encourage European cooperation between infrastructure managers and railway undertakings;
- To take the measures necessary to ensure transparent and non discriminatory competition framework;
- To ensure that track access is granted on a non discriminatory basis;
- That access fee should take into account train characteristics and market segments;
- To coordinate their investment policy in view to promote international traffic;
- To eliminate cross subsidies from freight to passenger operations and request from railway operators to run unprofitable operations only against adequate financial compensation; and
- To consider providing funds to infrastructure manager and transport providers so as to compensate the current discrepant incorporation of external costs in road pricing.

Other regulations included in the ECMT *Acquis*

200. The Intergovernmental Organization for International Carriage by Rail (OTIF)[98] was established in May 1985 as a consequence of the Convention of 9 May 1980 (COTIF). The objective of this organization is to develop a uniform system of

[97] ECMT, 2003, Principal Acts of the ECMT 1953-2003.
[98] Convention concerning International Carriage by Rail of 9 May 1980 version applicable as from 1st November 1996 amended by Protocol of Vilnius of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF).

law which applies to the carriage of passengers, luggage and freight in international through traffic by rail. These legal rules, which have been in operation for many years, are the CIV and CIM Uniform Rules. The following uniform rules applicable to international carriage by rail are contained in the Appendices:

- Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)
- Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM), including
    - Regulations concerning the International Carriage of Dangerous Goods by Rail (RID)
    - Regulations concerning the International Haulage of Private Owner's Wagons by Rail (RIP)
    - Regulations concerning the International Carriage of Containers by Rail (RICo)
    - Regulations concerning the International Carriage of Express Parcels by Rail (RIEx).

201. As of April 7 2005 the convention /protocol was ratified in Albania, Serbia and Montenegro, Croatia, Romania, Bulgaria, FYROM and signed by Bosnia and Herzegovina[99].

202. The UNECE major convention relevant to rail is the European Agreement on Main International Railway Lines (**AGC**), of 31 May 1985 which sets minimum technical standards for the proposed railway network "International E-railway network." The table below, extracted from annex II of AGC, lists the parameters agreed upon by the contracting parties (which includes the countries of Bulgaria, Romania, Bosnia, Serbia and, Montenegro, FYROM, and Croatia).

[99] OTIF, April 7 2005.State of the signatures, ratifications, acceptances, approvals, accessions and entry into force.

INFRASTRUCTURE PARAMETERS FOR MAIN INTERNATIONAL RAILWAY LINES

	A **Existing lines which meet the infrastructure requirements and lines to be improved or reconstructed**	**B** **New lines**	
		B_1 **For passenger traffic only**	**B_2** **For passenger and goods traffic**
1. Number of tracks	-	2	2
2. Vehicle loading gauge	UIC */ B	UIC C1	UIC C1
3. Minimum distance between track centres	4.0 m	4.2 m	4.2 m
4. Nominal minimum speed	160 km/h	300 km/h	250 km/h
5. Authorized mass per axle: Locomotives (≤ 200 km/h)	22.5 t	-	22.5 t
Rail cars and rail motor sets (≤ 300 km/h)	17 t	17 t	17 t
Carriages	16 t	-	16 t
Wagons ≤ 100 km/h	20 t	-	22.5 t
120 km/h	20 t	-	20 t
140 km/h	18 t	-	18 t
6. Authorized mass per linear metre	8 t	-	8 t
7. Test train (bridge design)	UIC 71	-	UIC 71
8. Maximum gradient	-	35 mm/m	12.5 mm/m
9. Minimum platform length in principal stations	400 m	400 m	400 m
10. Minimum useful siding length	750 m	-	750 m
11. Level crossings	None	None	None

*/ UIC: International Union of Railways

Source: Reproduced from Annex II of the UNECE AGC Agreement.

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203. A similar agreement for Important International Combined Transport Lines and Related Installations (**AGTC**), of 1 February 1991, exists whereby the

contracting parties agree a set of railway lines of importance for international combined transport[100].

204. According to the agreement the above mentioned railway lines must comply with the specifications laid out in annex III of the agreement (which is inserted below). In addition the parties must undertake the adequate measures in order to achieve performance parameters and minimum standards for combined transport trains laid out in annex IV of the agreement. At this time, only Croatia is a contracting party in the Western Balkans region.

INFRASTRUCTURE PARAMETERS FOR THE NETWORK OF IMPORTANT INTERNATIONAL COMBINED TRANSPORT LINES

	A		B
	Existing lines which meet the infrastructure requirements and lines to be improved or reconstructed		New lines
	at present	target values	
1. Number of tracks	(not specified)	(not specified)	2
2. Vehicle loading gauge		UIC B 2/	UIC C 2/
3. Minimum distance between track centres 1/		4.0 m	4.2 m
4. Nominal minimum speed	100 km/h 3/	120 km/h 3/	120 km/h 3/
5. Authorized mass per axle:			
Wagons ≤ 100 km/h	20 t	22,5 t	22,5 t
≤ 120 km/h	20 t	20 t	20 t
6. Maximum gradient 1/	(not specified)	(not specified)	12.5 mm/m
7. Minimum useful siding length	600 m	750 m	750 m

1/ Not of immediate relevance for combined transport, but recommended for efficient international combined transport.

2/ UIC: International Union of Railways.

3/ Minimum standards for combined transport trains (see annex IV).

Source: Reproduced from Annex III of the AGTC Agreement.

[100] Contained in annex I of the AGTC agreement.