Position Paper

Transport Policy

Full attainment of the European Railway Area –
Retaining flexible and economic solutions for the
organisation, management und operation of railway services

Official Statement by the Association of German Transport Companies (VDV)
on the Fourth EU Railway Package

March 2013

Verband Deutscher Verkehrsunternehmen (VDV)

VDV and its members

The Association of German Transport Companies (VDV) organises companies active in the German passenger transport and rail freight sectors. Its members comprise passenger rail and rail freight operators, rail infrastructure companies, as well as bus, tram and light rail service providers, public transport authorities (PTAs) and public transport associations or alliances. In the rail sector, VDV represents approx. 85 companies providing passenger rail services, approx. 140 rail freight operators and approx. 140 rail infrastructure companies. Approx. 300 of the companies organised in the VDV association provide local public transport services by bus, tram, as well as by light and metro rail.

In proportion to the market share of its members, VDV achieves almost total market coverage in Germany as regards both the passenger rail and rail freight sectors.

Full attainment of the European Railway Area – retaining flexible and economic solutions for the organisation, management and operation of railway services

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Key statements relating to the proposals of the EU Commission

- The results of liberalisation to date provide no grounds for the creation of new legal structures to split the existing plurality of organisational forms adopted by railway undertakings, or, as a pan-European extreme case, from now on to permit only the model based on complete structural separation of the infrastructure and transport sectors. At VDV, effective regulation both of the "essential facilities" of rail infrastructure and of a transport policy framework is considered vital. Irrespective of the management and organisational structures at the rail infrastructure undertakings, this will ensure that market demands on quality and the extent of operational performance can be fulfilled in terms of transport policy and commercial considerations.

- Opening of networks to all types of passenger transport services by rail is an essential component in attaining a fully integrated European railway market.

- VDV rejects the amendment of Regulation (EC) No 1370/2007 (Regulation 1370) proposed by the European Commission as part of the fourth railway package; this applies in terms both of timing and content. Particular criticism may be levelled at the fact that, under the heading "Railway Transport", numerous general provisions included in Regulation 1370 are to be amended which also affect services by bus, tram, and light rail or metro.

- We support the efforts being undertaken to further improve the high level of safety achieved in rail operations. In their daily competition with other – less safe - transport modes, however, the railway companies are impeded in their operations by the high regulatory burden with which they are encumbered. There is no indication that this situation will change in any way as a result of the amended safety directive. Certain provisions included in the draft safety directive in fact are more than capable of actually extending the bureaucratic red tape imposed on the rail sector.

- VDV fundamentally endorses the intention of the Commission to implement operational and technical interoperability. On this background, those undertakings intending to provide cross-border services are to be supported. Explicit and co-ordinated European legislation is thus essential. At the same time, it is important to ensure that such undertakings will be able to recognise the mid- and/or long-term advantages of any measure selected.

- Should any competencies be transferred to the jurisdiction of the ERA, it is imperative to ensure that applicants will retain the option of conducting an entire procedure in the German language and that the costs of the procedure as such will not increase. As an additional requirement, it must be possible - as is currently the case - for an applicant, if required, to meet a contact partner at the respective authority for discussions in person on the basis of a day trip, generally by train.

- The opinion held at VDV is that repeal of Regulation (EEC) No 1192/69 will negatively impact the financial compensation currently granted for expenditure incurred both by federally and non-federally owned railway companies on level crossing facilities. Thus any repeal of Regulation (EEC) No 1192/69 cannot be accepted unless an equivalent obligation, based on European legislation and under which the member states agree to grant financial compensation for expenditure incurred by railway companies on level crossing facilities, is anchored elsewhere.

General observations

On 30. January 2013, the European Commission published the draft for a fourth EU railway package. This package contains major, in certain cases extensive changes, not only in terms of market regulation and company organisation, but also of the competencies held by the supervisory and safety institutions and the collaboration between these institutions.

In detail, the proposals of the Commission aim at amendment of the following legislative acts:

- Directive 2012/34/EU of the European Parliament and Council of 21 November 2012 establishing a single European railway area (recast of the first railway package),

  Regulation (EC) No 1370/2007 of the European Parliament and Council of 23 October 2007 concerning the provision of passenger transport services by rail or road,
- Regulation (EC) No 881/2004 of the European Parliament and Council of 29 April 2004 for the establishment of a European Union Agency for Railways ,
- Directive 2004/49/EC of the European Parliament and Council of 29 April 2004 on safety on the Community's railways,
- Directive 2008/57/EC of the European Parliament and Council of 17 June 2008 on the interoperability of the rail system within the European Union
- Proposal for the repeal of Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings.

VDV has analysed each of the proposals separately and in detail. Comments on and suggestions for amendment of the proposed legislative acts are documented and justified in the following sections.

On the part of the member companies within VDV, increasing criticism is being levelled at the fact that their requirement for a stable and reliable legal framework is being fulfilled less and less successfully as a result of frequent and substantial amendment or recasting of legislative acts. More often than not, amendment of existing provisions is announced at points in time which no longer admit reliable assessment derived from extensive practical experience to serve as a basis for the subsequent formulation of any need for amendment.

With the exception of Regulation 1192/69 EEC, none of the legislative acts designated for recasting, or revision in the case of substantial passages, has yet been in force for 10 years. If the time required to implement the provisions of national legal systems is taken into account in such directives, very few years remain during which experience may be gained on the basis of the rules in question. Whether any substantial, practice-related conclusions may thus be derived for amendment of European legislation is open to critical scrutiny, at least in the case of certain items.

Systematic overburdening of the undertakings affected with excessive demands is to be feared in any event. In economic terms, not only the need for permanent preoccupation with new rules integrating detailed modification plays a key role in this respect. At least partially, continual amendment of individual rules can lead to a standstill insofar as the competent persons are occupied in adapting operational know-how to the modified legal provisions. VDV is not explicitly advocating renunciation of any essential amendment of the legal framework as required for the creation of a European Railway Area – to a large degree this relates to key sections of the proposals for amendment of Directive 2012/34/EU. In addition, the member companies within VDV also see no alternative, in terms of economic, transport and environ-

mental policy, to the objective targeted by the Commission of strengthening the position of rail transport. For the above-mentioned reasons, however, we categorically reject permanent revision of the European legal framework as a means of attaining a theoretically ideal regulatory background. In previous legislative processes, it was not, or only partly possible to achieve this objective.

In addition, we suggest that the following overarching aspects be taken into account when the fourth railway package is addressed in its entirety by the decision-making bodies or, if required within the context of a so-called trilogue:

- In order to avoid misunderstandings and any misinterpretation, the terms used should be consistently defined in an identical manner and the same terminology consistently used for comparable facts and situations. A specific example is revealed when comparing the subject matter and scope of the Safety Directive (Articles 1 and 2) with the definition provided in the Interoperability Directive (summarised in Article 1). Many of the definitions used in these directives (Safety Directive Article 3, Interoperability Directive Article 2) are at variance, such as is the case with the term “rail system “. The fundamental terminology should be defined identically in both directives, despite the fact that, as regards the Interoperability Directive, further details are required with regard to the TSIs. As various concepts with identical application continue to be described in differing verbal terms, varying interpretation cannot be ruled out.

- As regards the definitions in the individual directives, only the terminology actually used in the directive text should be defined. As a case in question, the term (vehicle) “type“ is used in Article 2 (22) of the Interoperability Directive on the one hand, whereas the term “series“ has been selected in Article 2 (23). Only the term “type“ should apply in this case, as it is also used in the corresponding registers.

Proposal for amendment of Directive 2012/34/EU establishing a single European railway area as regards opening of the market for domestic passenger transport services by rail and governance of the railway infrastructure

Under the proposals of the EU Commission (COM), Directive 2012/34/EU (recast of the first EU railway package), adopted in December 2012, is to be amended in certain respects. The proposed amendments affect

- the organisation of the railway undertakings (unbundling und essential functions of the infrastructure manager) and
- the opening of networks to domestic passenger transport services by rail.

Separation of infrastructure and transport and development of the governance structures adopted by the infrastructure managers

The COM is of the opinion that the governance structures at integrated railway undertakings obstruct development of the rail markets. According to the COM, integrated corporate structures are not only responsible for the creation of market barriers. In addition, the COM claims, they complicate the separation of accounts between the transport operators and the infrastructure managers and result in less transparency as regards financial flows.

From this perspective, the proposals of the COM for organisation of the railways fundamentally require strict institutional separation of rail-transport operations and infrastructure management. Simultaneous property rights, control powers or other rights granted to both the infrastructure managers or rail-transport operators are to be excluded by the member states. The same applies as regards overlapping staff activities performed in the corporate bodies (Article 7 (1) to (4)). Existing vertically integrated companies at which the infrastructure manager has been established as a distinct legal entity are to be granted the right of continuance under restrictive conditions and subject to sanction options (Article 7 (5)). In particular, these conditions relate to the autonomous and independent financial circuits of the infrastructure manager, the prohibition of funding-capital procurement and provision by and/or for other entities within the vertically integrated company, and the invoicing of intra-corporate services and performance on the basis of market prices (Article 7a). In addition, provisions have been formulated to ensure the independence of staff employed by the infrastructure manager within vertically integrated companies (Article 7b). Article 7c sets out the control structures and defines under which circumstances the member states may deprive railway undertakings incorporated in the integrated companies concerned of access rights to networks within their territories. Lastly, the COM proposals foresee the obligatory establishment of committees in which infrastructure managers are to obtain institutionalised advice from users and end customers, and also co-operation between the infrastructure managers within a European network for realisation of the trans-European transport network (Articles 7d and e).

Ahead of the fourth railway package, VDV and its members dealt intensively with issues in connection with the future organisation of railways in Europe. Initial consideration focused on demands placed on rail infrastructure by the railway undertakings. Market opportunities for the railway undertakings depend not only on anti-discriminatory access to rail infrastructure and service facilities throughout the entire European rail network, or on the transparency and

plausibility of financial flows between the infrastructure managers and companies with which they are linked, but also – and especially – on adequate capacities and market-oriented efficiency, as well as on competitive and predictable infrastructure usage charges. Working on the basis of such demands placed on railway infrastructure by the railway undertakings, VDV was unable to detect any empirical evidence to affirm a clear correlation between fulfilment of these requirements and specific organisational forms adopted by railway undertakings. The regulatory advantages of separate structures are more than balanced by the distinct efficiency benefits in overall economic terms arising from integrated structures. Against the background of specific political and economic cultures in the member states, these benefits and disadvantages can be compared and optimised further in various organisational models by way of adjustment of the existing regulatory framework based on European rules. The results of liberalisation to date therefore provide no grounds for the creation of new legal structures to split the existing plurality of forms at railway undertakings or, as a pan-European extreme case, from now on only to permit the model based on complete separation of the infrastructure and transport sectors. [1]

As regards Germany, account must also be taken of the wide range of medium-sized and smaller rail infrastructures which, although mainly organised as integrated undertakings, are of no strategic importance for efficient functioning of the European rail-transport market. Although strict separation of infrastructure and transport would not influence the demand for train paths in the case of such companies, the required duplication of structures alone would necessitate a considerable measure of additional organisational and operational effort. In view of the mainly precarious economic situation as regards the provision and management of regional rail infrastructures, not only their continuing viability would be under substantial threat, but also, as a consequence, the rail-transport services provided in the region.

VDV simultaneously considers effective regulation both of the “essential facilities“ of rail infrastructure and of a transport policy framework to be vital. Irrespective of the governance and operational structures adopted at the rail-infrastructure undertakings, this will ensure that market demands on quality and the extent of operational performance can be fulfilled in terms of transport policy and commercial considerations. In order that this may be achieved, VDV has formulated concrete requirements as regards arrangement of European railway law which, if implemented, would fulfil the demands imposed on railway infrastructure by the markets.

Against this background, VDV sees particular room for improvement of the proposal submitted by the COM for amendment of Directive 2012/34/EU in respect of the following aspects:

- In principle, express consent may be granted to the view held by the COM that, in the case of major railway infrastructures which are strategically important for the development of competition, the respective infrastructure companies are to be managed, both in legal and organisational terms, as independent entities which must take independent decisions as regards the functions to be performed by an infrastructure manager. In principle, however, both integrated and separate corporate structures should be assigned equal status as options for the organisation of European railway undertakings. With regard to the proposal of the COM for recasting of Article 7 of Directive 12/34/EU, the paragraphs 2, 3 and 5 are therefore to be deleted without substitution.

[1] In this connection we refer to the Position Paper “Requirements set by VDV for the organisation of railway companies in Europe” of November 2012 which is available in both German and English versions

- The independence of all infrastructure managers should be secured by way of the following requirements:
  - As a means of avoiding conflicts of interest, domination contracts in which the share-holders of rail-infrastructure companies are granted influence in decisions taken at such undertakings on issues such as track access and usage charges, or on the general terms and conditions for usage of infrastructure, will not be admissible.
  - Charges for the use of railway infrastructure are to be approved ex ante by the respective regulatory authority. At the same time it is important to ensure that, by way of market-compatible returns and a continuous increase in efficiency, the managers of railway infrastructure will play their part in safeguarding the competitiveness of rail transport undertakings on the transport markets. High standards in legal protection for these rail transport undertakings are to be set throughout Europe with respect to the appropriateness and non-discrimination of access-charge pricing.
  - Financial flows generated at integrated companies from charges for the use of railway infrastructure are to be disclosed within the framework of external reporting. This is to include demands on the return on capital of the infrastructure managers.
  - Costs incurred by the infrastructure managers for internal services rendered are to be charged appropriately and in line with market prices.
  - The planned development of average usage charges for the individual transport modes (rail freight, long-distance passenger rail and regional passenger rail) including any foreseeable developments is to be disclosed within fluctuation margins for a five-year planning period and updated annually. Major deviations in the updates from planning for the previous year are to be indicated separately and justified. Major deviations in the development of usage charges from the development of production prices for the rail infrastructure sector require special examination by the respective rail infrastructure manager.
  - It is important to ensure that, on a multi-annual average, any profits arising at the infrastruture companies do not exceed the costs of the capital injected into these companies. The balance between equity and external capital is to be taken into account. The maximum return on capital is subject to regulation.
  - In addition to the other sources of funding intended for investment in railway infrastructure, dividend payments made by the railway companies to the respective member states are to be used by the relevant levels of government for the purpose of investment in railway infrastructure.

  The proposal submitted by the COM on the addition of Articles 7a und 7b is to be adapted on the basis of these requirements.
- In this connection, we expressly point out that the deadlined prohibition relating to the transfer of senior staff between an infrastructure manager and a transport operator within the framework of an integrated undertaking, as proposed by the COM, is unsuitable in practical terms. On the one hand, empiric experience reveals that the independence and non-discrimination of decisions taken by the infrastructure managers have not been violated by such a transfer of staff. Due to the close operational links between the infrastructure and transport operations, however, the rail sector expects a high level of know-how, particularly from management staff, in aspects relevant to safety, combined with long-term professional

experience in all operational sectors. The termination of professional opportunities on a company-wide and inter-sectoral basis would lead to a considerable loss of know-how and, as a consequence, a drop in safety and efficiency.

- VDV is also of the opinion that the implementation of requirements relating to the independence of rail-infrastructure managers must be constantly and effectively examined. The supervisory role may not be exercised by the COM, however, and responsibility instead transferred exclusively to independent regulatory authorities. Periodically, however, the regulatory authorities, if necessary, are to report to the Commission on whether requirements with respect to deficits have been correctly specified by the regulatory authorities and their effects on the markets represented. Article 7c is to be adapted accordingly.
- VDV supports the proposal made by the COM that rail-infrastructure managers co-operate within a European network with the aim of fully attaining a trans-European transport network. The obligation of participating in this network should, however, apply exclusively and explicitly to those infrastructure managers whose infrastructures, at least partially, are components of the trans-European transport network. Unilateral adoption by the COM of measures for the definition of common principles and approaches is rejected by VDV. Such measures can only be established by agreement between the infrastructure managers and the COM.
- Small and medium-sized rail-infrastructure undertakings with insignificant track lengths and operational performance which are not of strategic importance for functioning of the European rail-transport market should be exempted from application of Article 7 and 7a to e. Managers of infrastructure networks with track lengths of under 350 km are to be defined as small undertakings. In principle, all continuous track lengths of the trans-European transport network (TEN) are of strategic importance for efficient functioning of the European rail-transport market.

<u>Performance of all tasks and functions by the infrastructure manager</u>

In addition to proposals for thorough separation of rail-infrastructure management and rail-service operations, the COM is also urging that all tasks and functions relating to rail-infrastructure management actually be performed by the respective manager. The previously admissible option of externally delegating essential tasks to other entities (e.g the charging body) would thus no longer apply.

VDV is of the opinion that the objective inherent in this provision of ensuring entrepreneurial unification of all essential functions relating to the management of infrastructure is entirely appropriate. With regard to co-operation between infrastructure managers in the case of cross-network operations, however, recent years have revealed the emergence of structures which, at least partially, involve the delegation of specific tasks and functions to cross-company entities (e.g co-operation structures when cross-network rail paths are to be awarded). From the point of view of the customer, the dissolution of such structures by way of the proposed amendment of EU legislation is undesirable. Particularly in view of the desired continuation of the plurality of organisational forms, VDV believes that the option of also delegating certain tasks required in infrastructure management to institutionalised co-operation structures should in any case be retained.

Opening of the networks to all types of passenger-transport services by rail

The COM proposals for the opening of networks to all types of passenger transport services by rail provide for access throughout the EU to rail infrastructure, inclusive of service facilities, for all types of rail passenger services (Article 10 (2)). Restrictions are only possible if, on examination and confirmation by the responsible regulatory authority, the economic equilibrium of a public service contract were to be endangered. (Article 11). In addition, the COM proposes that member states be granted the right of obliging companies which provide domestic passenger transport services by rail to participate in the joint ticketing and reservation system.

Opening of the networks to all types of passenger transport services by rail is an essential component in the targeted realisation of an integrated European railway market. As VDV had already requested a corresponding provision within the framework of the discussion on recasting of the first EU railway package, the association has positively evaluated the resultant proposals submitted by the COM. The practical implementation of provisions relating to the safeguarding of public service contracts, with which the member states have been entrusted, should be examined with regard to their appropriateness on expiry of a five-year period.

Proposed amendment of Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail

Basic observations

VDV rejects the amendment of Regulation (EC) No 1370/2007 (Regulation 1370) proposed by the European Commission as part of the fourth railway package; this applies in terms both of timing and content.

A transitional period to run until 2019 is in fact foreseen in Regulation 1370. In the creation of this regulation, effective since 2009, the compromise agreed upon after years of political discussion also included the provisions on the transitional period. The proposed amendments, which would considerably alter the overall structure of the regulation, do not conform with this compromise. Regulation 1370 stipulates that, on expiry of half of the transitional period, the member states are to submit progress reports (Art. 8 (2)). The fact that the Commission has not even allowed this deadline to expire reveals its unwillingness to accept the political compromise then reached.

Particular criticism may be levelled at the fact that, under the heading "Railway Transport", numerous general provisions included in Regulation 1370 are to be amended which also affect services by bus, tram, and light rail or metro.

In view of Regulation 1370, the passenger transportation act (PBefG) in Germany was amended accordingly and subsequently came into force as recently as 1. January 2013. The German public transport sector must first familiarise itself with this new legislation. The key current priority in Germany should therefore be to ensure practical application of Regulation 1370, not to undertake fundamental revision at such short notice after the regulation has taken effect and prior to expiry of the transitional deadlines.

Many of the proposed modifications relating to Regulation 1370 – particularly on the background of the compromise mentioned above which preceded this more or less balanced regulation – are greatly exaggerated from a regulative standpoint and would create new obstacles and uncertain legal terminology from which no added value in terms of legal certainty could be obtained.

Remarks on the individual provisions

These general statements notwithstanding, the content of the individual proposals is also to be rejected in terms of its subject matter:

1. Contrary to the assertion of the Commission, the proposed amendment of the definition as to the competent local authority (Article 2c) does not lead to more, and instead to less legal certainty. Usage of the newly proposed, although unclear terms "urban agglomeration" or "rural district" will not achieve uniform European understanding. At worst, further legislation with detailed definition based on factors such as population data and surface area would be required. Moreover, the proposed amendment of the definition would also infringe against the principle of subsidiarity. It is with good reason that the member states assume responsibility for determining the size and and extent of local authorities and/or administrative units. For this reason a regulation, simply via the detour of definition, may not oblige the member states to adopt a specific organisational form or size for the competent authorities.
2. The proposed amendment of the definition of a public service obligation (Art. 2 e) results in unreasonable restriction of the discretion of the member states to determine the extent of

public service obligations. In particular, this amendment is also not required if the notion of network effects is to be anchored within the regulation. Point 2 of the Annex to the current version of Regulation 1370 clarifies already that public service obligations may also be set for a transport network; this fact must not be obscured.

3. The proposed provisions relating to public transport plans set out in Art. 2a are to be rejected. Public transport plans can serve as an important and useful instrument when determining political specifications in terms of public transport. A European-wide obligation to compile public transport plans for local and long-distance services and valid for all transport modes which are so detailed that, for example, "operational requirements such as the conveyance of bicycles"(!) are to be regulated within them, is to be firmly rejected and in no way corresponds with the principle of subsidiarity. In this respect, the question arises as to whether competence for such regulation in fact applies on a European level.

   Instead of providing a means of attaining better and long-term public transport planning, the proposal of the Commission in fact gives rise to a further bureaucratic instrument with which the awarding process conducted by a competent authority (in practice primarily the PTA) can be controlled. Accordingly, therefore, the additional rules relating to specification of public service obligations under Article 2a are also to be rejected. If Article 2a (3) and (6) are taken as a basis, the regulatory body as per Article 55 of Directive 2012/55/EU, i.e the Bundesnetzagentur (Federal Network Agency) in Germany could, for example, intervene against an award by a PTA for rail services with the argument that parts of the intended transport contract are not "appropriate" for realisation of the local public transport plan. This example reveals that, in disregard of democratic structures in the member states, the Commission is attempting to create additional control mechanisms.

4. The additional obligation of providing and disclosing information as per Article 8(4) (new) is unnecessary and disregards the justified interests of companies as regards their operational and commercial secrecy.

5. The proposed deletion of Article 5 (6) on direct award of rail services is also to be rejected. The slightly increased threshold values proposed by the Commission in respect of the direct awarding of rail services, apparently as a substitute for the current provision under Article 5 (6), are far too low to play any really relevant role in practice. In a detailed argumentative paper, VDV set forth its viewpoint on the issue of direct awarding and competitive tendering in the rail sector for the eventuality of any amendment of this provision in the regulation (Statement Direct Award of Aug./Sept. 2012 under www.vdv.de → Positionen).

6. Access to rolling stock is an important component of an effectively functioning competitive process. Legal regulation is not required, however. Experience gained on the German rail market reveals that, if considered necessary, the public transport authorities are also able to take measures without need of European-wide regulation. This notwithstanding, the proposed provisions under the new Article 5a are especially problematic in view of the fact that an individual company is entitled to insist on amendment of the conditions of tender.

   In any event, a clear statement indicating that this provision is not to apply in the case of tram, light-rail and metro systems is also absolutely essential.

7. The proposed amendment of the transitional provisions in Article 8 has been formulated in an ambiguous manner as the impression is created that, until 3. December 2019, only Article 5(3) on competitive tendering is to apply , whilst the options for direct awarding provided in the regulation are no longer to apply. Furthermore, it is also inappropriate to modify a transitional provision prior to its expiry.

Proposal for a Directive on Railway Safety (recast)

Disproportionate burden of standards imposed on the railways:

Amendment of the safety directive is being compiled within the context of the already extremely high level of safety attained in the rail sector. We support the efforts being taken to further improve this high level of safety on the railways. In their daily competition with other – less safe – transport modes, however, the railways are impeded by the disproportionate regulatory burden with which they are confronted. There is no indication that amendment of the safety directive will change this situation in any way. In recent years, various cross-border transport services previously in operation have been discontinued and not many new services introduced. The draft of the fourth railway package provides no evidence as to how this trend may be reversed.

Appropriate exemptions are to be defined:

With over 400 licensed railway undertakings, over 150 managers of regional public infrastructure and over 500 service facilities, the German rail market in particular provides ample evidence of how small and medium-sized undertakings can contribute to the effective functioning of intermodal competition – without any subsequent drop in the safety level. In our opinion, the fourth railway package lacks concepts as to how such undertakings should be supported in order that, despite enormous bureaucratic requirements, they may operate successfully on the railway market. With this in mind, we request harmonisation of the scope of application in which the safety and interoperability directives are to apply as a means of establishing a clear legal framework for all parties concerned. On principle, exemptions from the scope of application of these directives should be possible for those small and medium-sized undertakings or infrastructures which are not of strategic importance for effective operation of the European rail transport market. The exceptions formulated in Article 2 are basically a step in the right direction. In Article 2(2)(b), however, the criterion of “functional separation” should be deleted. On the basis of the subsidiarity principle, responsibility for many such infrastructures and undertakings lies at regional or local level – even if no “functional separation” from the rest of the rail system exists.

The operating regulations are not to be called into question:

The safety of rail operations – also on the basis of the risk-oriented approach formulated in Directive 2004/49/EC – is ensured by way of clear and unambiguous operating regulations adapted to the technology implemented in each particular case. The definition as to “national rules” expounded in the drafted amendment of the safety directive is too imprecise. It is important to clarify that, essentially, these relate only to laws and regulations on an abstract level. It is to be ensured that the creation of operating regulations on a national level may be continued, also on a cross-company basis. We are therefore of the opinion that it is highly expedient for these operating regulations to remain effective in the rail sector. Many years of experience in Germany have more than confirmed the wisdom of leaving the creation of such operating regulations to the self-organisation of the railway undertakings and infrastructure managers, and not to governmental authorities.

Native language to apply as the language of proceedings and translations:

The requirement postulated in the fourth railway package that railway undertakings providing cross-border transport services only once require approval of their safety management system is at least initially to be welcomed. Should any competencies be transferred to the jurisdiction of the ERA, however, it is imperative to ensure that the applicant will retain the right of conducting the entire procedure in the German language and that the procedural costs as such will not increase. The need for translation would considerably increase these costs and can never entirely preclude the risk of mistranslation or inaccuracy. An example which confirms our doubts on the translation of documents is already furnished in the published German draft of the safety directive. The term *"safety performance"* is translated as "Sicherheitsleistung" – *"security deposit"*, which is incorrect in our opinion. We consider "Erfüllung der Sicherheitsanforderungen", for example, to be a more accurate translation.

Restriction of the bureaucratic requirements impeding operational start-ups:

The new system of awarding safety certificates applied by the ERA should in no way result in the introduction of new procedures which would over-complicate the railway system and generate higher expenses. We already anticipate that procedures will suffer from increased expenditure as a result of the new ERA interfaces which, in future, would apply in addition to interfaces with the (national) safety authority (-ies) already in existence. The provision included in Article 10(4) requiring the submission of detailed documentation to the National Safety Authority prior to each operational start-up would emburden the railway system with further expenditure and noticeably restrict the flexibility of railway undertakings to react swiftly to the requirements of rail customers. The railways of today are a safe transport system – even without regulatory assessment on a case-by-case basis prior to an operational start-up. As regards road transport, for example, we wish to point out that the authorities with jurisdiction for such transport are in no way provided with the resources necessary to examine, even partially, the companies active in that sector, let alone conduct any ex-ante examination of safety precautions prior to commencement of new transport services. There is therefore no reason for the railways, in contrast to other transport modes, to be subjected to such intensive preliminary scrutiny. Any inadequacies in the current system notwithstanding, we do not detect any viable solution in the proposals submitted.

Harmonisation of the administrative charges imposed by the safety authorities:

The safety directive delegates various tasks to the safety authorities and ERA. It remains unclear as to how the safety authorities are to be financed. In this respect great differences currently exist within Europe. Whilst certain member states such as Germany require that "cost-covering" charges be collected from the applicant (100,-- € /hour, which in individual cases can result in costs of over 20,000 € per decision), other member states merely charge stamp duty (10-30 EUR) per decision. In the United Kingdom, on the other hand, the safety authority is financed by way of a levy on track-access charges. As a result, no harmonised conditions have yet been established in this connection. As regards member states in which charges are imposed by a safety authority, the railway undertakings are at a disadvantage both in comparison with their counterparts in other member states and with other transport modes which are not obliged to assume such charges. We subsequently see the need for urgent action on the part of the EU leading to harmonised and fair conditions.

Detailed VDV proposals on amendment of the recast of the safety directive proposed by the Commission are set forth in Annex 1.

Proposal for a Directive on the Interoperability of the Rail System within the European Union (recast)

VDV principally endorses the intention of the European Commission of achieving operational and technical interoperability. As a consequence, support should be given to those undertakings wishing to provide cross-border transport services. Clear, co-ordinated European regulations will thus be required. At the same time, it is imperative to ensure that, in the mid or long term, companies will recognise the benefits of the measure selected.

Avoidance of fresh cost expenditure resulting from interoperability requirements:

On the basis of experience so far gained by the railway undertakings and infrastructure managers organised in the VDV Association, any benefits and opportunities resultant from efforts being undertaken to harmonise technical requirements and entry-into-service procedures are, as yet, barely visible. The increased costs which will be incurred in implementing higher technical standards or regulations are already making themselves fully felt and are thus endangering the economic efficiency and/or competitiveness of the railway undertakings and/or railway system. Despite identification by the Commission of many of the problems to be encountered in the implementation of an integrated and interoperable European Railway Area, VDV is nevertheless of the opinion that the opportunities for further development of the existing systems have not yet been fully exploited in this respect.

Release of companies active on a strictly national basis from overburdening due to interoperability requirements:

In order to release companies operating on a strictly national basis (these include the majority of our members) from also having to face the complexity of implementing these requirements, we propose a dual strategy: Although any obstruction to interoperable transport services is to be eliminated, those companies active on a strictly national basis should not be emburdened with unjustified requirements which would necessitate great effort for their fulfillment. Should these European requirements also prove to be economically viable for nationally operating companies, such undertakings will immediately adopt the respective regulations as it is in their own interest to increase the competitive position of their companies. As this key to automatic efficiency has not yet been achieved, however, and, judging from the current situation, is not likely to do so in the near future, we reject this manner of implementation, but not the fundamental targets.

Detailed VDV proposals on amendment of the recast of the interoperability directive proposed by the Commission are set forth in Annex 2.

Proposal for a Regulation on the European Agency for Railways and repealing of Regulation (EC) No 881/2004

Native language to apply as the language of proceedings and translation:

Should any competencies be transferred to the jurisdiction of the ERA, it is imperative to ensure that applicants will retain the right of conducting an entire procedure in the German language and that the procedural costs as such will not increase. The need for translation would considerably increase these costs and can never entirely preclude the risk of mistranslation or inaccuracy.

From the viewpoint of the railway undertakings, Article 67 initially seems acceptable under consideration of Regulation No 1 of 15.04.1958. Attention is drawn to the following excerpt from Article 2 of this regulation: "Documents sent to institutions of the Community by a member state or person subject to the jurisdiction of a member state may be drafted in any one of the official languages selected by the sender. The reply is to be drafted in the same language." It seems highly doubtful, however, as to whether the translation costs subsequently incurred were taken into account from an economic standpoint. An example to confirm our doubts on the translation of documents is already furnished in the published German draft of the safety directive: The term *"safety performance"* is translated as „Sicherheitsleistung" – *„security deposit",* which is incorrect in our opinion. We consider "Erfüllung der Sicherheitsanforderungen", for example, to be a more accurate translation.

The ensured availability of regional contact partners:

As an additional requirement, it must be possible – as is currently the case – for an applicant, if required, to meet a contact partner at the respective authority for discussions in person on the basis of a day trip, generally by train. This issue remains unaddressed in the draft directive. In other words: If the ERA is in fact to assume a large measure of competencies and tasks from the national authorities, the ERA must ensure that regional contact partners are at hand and capable of conducting proceedings in the language of the applicant so as to ensure that costs remain financially and economically viable. We therefore urge that Article 67 be clarified in such a manner that, at least initially, any proceedings (in writing or orally) are, on principle, conducted in the official language in which the application has been lodged, unless the applicant agrees to management of these proceedings in another language.

Staffing of the ERA:

We should like to draw particular attention to the staff planning concept attached to this draft which relates to the ERA and specifically to the section assigned with the task of issuing safety certificates: It seems highly doubtful as to whether the ERA will be in a position to process applications for safety cerificates for the whole of Europe on the basis of 5 established posts: Given that approx. 1,000 companies must lodge an application every five years, this means that, per year, the ERA will have to process 200 applications, i.e 40 per ERA employee, when issuing safety certificates. On the basis of 200 available annual working days , each employee might thus require approx. 5 working days to process an application. The EBA (Federal German Railway Authority) currently charges 20,000 € (a cost ratio of 100,-- €/h) for 25 working days per safety certificate.

On the assumption of accurate calculation by the EBA, 20 working days per case would thus remain uncovered by the ERA; assuming that the EBA is currently working “too thoroughly“, approx. 10 working days might thus remain uncovered by the ERA. Presumably these would have to be examined within the framework of new procedures in conformity with Art. 10 (4) of the recast safety directive. This would not result in any cost savings for the applicant. It also seems doubtful as to whether an understaffed authority can contribute to swifter implementation of procedures.

Financing of the registers:

In accordance with Art. 33 of the draft, the ERA has been appointed as the system authority for various registers. We do not deny that some of the respectively specified registers are of great relevance to the railway sector. As long as financing of these registers has not been clarified, however, the appointment of a system authority hardly seems purposeful.

Proposal for repealing of Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings

The opinion held by VDV is that repealing of Regulation (EEC) No 1192/69 will negatively impact the financial compensation granted for expenditure incurred both by federally and non-federally owned railways on level crossing facilities.

- Taken separately, the federally-owned railway undertakings in Germany affected by Regulation (EEC) No 1192/69 together received financial compensation for such crossing facilities to the total amount of 72.8 million EUR in the year 2010. On repeal of Regulation (EEC) No 1192/69, the financial compensation accordingly granted would cease to apply. Immediate negative consequences would first of all be felt by the federally owned railways.
- The proposed repeal of Reg. (EEC) No 1192/69 is justified inter alia on the grounds that, even on repeal of this regulation, financial compensation could still continue to be granted. This would be admissible under Article 8 of Directive 2012/34/EU. Although correct, this advice, masks one essential aspect: Article 8 of Directive 2012/34/EU merely justifies the fact that financial compensation to federally owned railways raises no problems in terms of state aid legislation. In contrast to Reg. (EEC) No 1192/69, the directly enforceable Commission legislation which obliges the member states to balance accounts, Article 8 of Directive 2012/34/EU appears not to include any obligation for the member states to reimburse expenditure incurred for level crossing facilities. Furthermore, as Article 8 of Directive 2012/34/EU is yet to be implemented, the member states could meanwhile exploit the existing scope for flexibility and decide on restrictive application as regards financial compensation for such crossing facilities. Thus consideration of Article 8 in Directive 2012/34/EU also contributes to the direct negative impact on the federally owned railways which would result from repeal of Regulation (EEC) No 1192/69.
- Pursuant to Section 16 (1) Sentence 1 No 3 AEG (General Railways Act), non-federally owned railway companies receive financial compensation for the maintenance and operation of level crossings. Repeal of Regulation (EEC) No 1192/69 would have no immediate influence in this respect. Nevertheless, cancellation of the obligation to pay compensation on the basis of Reg. (EEC) 1192/69 could also encourage German legislature to reduce compensatory payment granted under Section 16 (1) Sentence 1 No 3 AEG. Similar action was already taken in respect of financial compensation paid in accordance with Section 16 (1) Sentence 1 Nos 1 und 2 AEG (cf. Section 16 (1) Sentences 2 and 3 AEG). In perspective, therefore, negative consequences of a repeal of Reg. (EEC) No 1192/69 are also not to be ruled out in the non-federally owned railway sector.

Thus any repeal of Regulation (EEC) No 1192/69 cannot be accepted unless an equivalent obligation, based on European legislation and under which the member states agree to grant financial compensation for investment in such level crossing facilities, is anchored elsewhere.

Annex 1

Detailed proposals concerning the COM draft for a directive on railway safety (recast)

Comment on Art. 2 (2 b)

We request deletion of the words “that are functionally separate from the rest of the railway system“.

Grounds: On principle, exclusion from the scope of application should be possible for those small or medium-sized undertakings and infrastructures which are not of strategic importance for the effective functioning of the European rail-transport market. The exceptions formulated in Article 2 are a step in the right direction. In Article 2(2)(b), however, the criterion of “functional separation“ should be deleted. On the basis of the subsidiarity principle, responsibility for many such infrastructures and companies lies at regional or local level – even if no “functional separation“ from the remaining network exists.

Comment on Art. 3 h

“national rules“ apply not only to to the railway undertaking, but also, possibly, to the infrastructure manager or other involved parties, e.g those responsible for maintenance facilities. This is to be taken into account when formulating the definition.

Comment on Art. 4 (7)

Due to their all-encompassing expectations, the requirements formulated here could very well lead to a stifling of the railway system under the weight of the documents to be exchanged. An exchange of documents is only required in the event of lasting transfer (acquisition, rent, leasing). A transitional provision is necessary for all vehicles currently registered, which would dispense with the need for complete traceability into the past.

In our opinion it would suffice for the directive to specify that all parties shall be required to exchange any information considered essential for safe operations. The freight documents and information on loading operations are only to apply to the current trip and, if required, to a period extending back by X days. Within the rail-freight sector, it must generally be admissible, for the protection of market competitiveness, to forego the need to distribute certain data.

Comment on Art. 7 (5)and Art. 8 (1)

The draft specifies that a member state shall have the exclusive obligation of ensuring the observation and adoption of national rules. Under Art. 8 (2) of Directive 2004/49/EC, reference is made to other entities and organisations which until now have also been responsible for drawing up national rules. In Germany, positive results have been achieved whenever the rail sector as a whole has been entrusted with the task of elaborating standards. This option must be retained. In addition, we consider it essential that clear indication be provided as to when a technical or operational provision and/or standard can be said to meet the criterion of being a “national rule“. We assume that this refers to rules with the status of laws or regulations, and not to operating rules for the concrete implementation of rail transport.

Comment on Art. 9 (2)

We request that the provisions concerning options for risk control of other involved parties previously specified in Art. 3 (2) and (3) of Regulation (EU) No 1158/2010 already be integrated into the Safety Directive here in Art. 9.

Comment on Art. 10 (2)

Irrespective of the general concerns raised in connection with the procedures described in Art. 10, we wish to stress that - should the Agency in fact assume tasks in direct legal contact with the railway undertakings – every applicant should be entitled, on principle, to conduct the entire procedure in the official language of the member state in question. The need for translation would considerably increase procedural costs and cannot entirely preclude the risk of mistranslation or inaccuracy.

As an additional requirement, it must be possible – as is currently the case – for an applicant, if required, to meet a contact partner at the respective authority for discussions in person on the basis of a day trip, generally by train. This question remains unaddressed in the draft directive

Comment on Art. 10 (4)

We expressly reject this provision. Particularly as regards rail-transport services provided on a strictly national basis, a two-stage procedure currently applies: Authorisation of the railway undertaking and the issue of a safety certificate, whereby the German safety authority (EBA), on receipt of applications from Germany, always examines Parts A and B of the safety certification in one process. Under certain circumstances, the proposed procedure set out in Art. 10 (4) would indeed reduce the scale of examination involved during application for a safety certificate. Instead, however, the procedure set out in Art. 10 (4) would be implemented. In our view the scale of examination appears to be noticeably more extensive than is required for the current processing of safety-certificate applications. Several of the examinations to be conducted by the safety authority specified here are currently performed at a later date within the framework of the technical rail supervision process – without resultant safety problems in Germany.

In Art. 10 (4) the question as to which national safety authority is to serve as the “relevant national safety authority“ is left open. Should this imply that, for example, planning for the operational start-up of a service SE – DK – DE would necessitate the participation of the national safety authorities of the three countries concerned, implementation of the envisaged measure would not lead to any remedial impact greater than that currently attained.

Moreover, we consider the requirement

- of Art. 10 (4) “managing all risks “ as a duplication of Art. 9 (2) Sentence 2

and

- of Art. 10 (4 c) as a duplication of Art. 10 (4 a) as non-examinable ex-ante.

It also remains unclear as to which additional interfaces (and the corresponding transaction costs) will arise between the Agency and the national safety authority.

Should the notion that the ERA is to assume responsibility for issuing safety certificates be pursued further, we can imagine that, instead of applying the procedure set out in the draft to Art. 10, a railway company commencing its activities in a member state would first inform the relevant national safety authority. Steps would have to be taken to ensure that the control

activities of the safety authorities are conducted proportionately at all companies and not intensified unless concrete suspicion has arisen in company-specific cases.

Comment on Art. 10 (5)

The obligation of informing the Agency in terms of "new types of rolling stock" is a distinct tightening of the provision currently applicable of merely indicating "new series of rolling stock". We reject this intensification as it necessitates effort without recognisable benefit on the part of the companies concerned.

Comment on Art. 10 (8)

We can imagine that the provisions incorporated in Art. 10 (8) could prove appropriate when a safety certificate is issued by the safety authorities. Self monitoring by the Agency itself would not seem to be particularly beneficial.

Comment on Art. 11

As already stated above, a provision is required in terms of the official language to be adopted. In the case of services on a strictly national level or cross-border services which will affect two or not many more member states, it must be possible to conduct application and the processing of applications in an official language admissible in such countries.

The draft remains unclear as to whether it foresees that each application for safety certification submitted to the Agency shall involve the participation of all national safety authorities in terms of Art. 16 (2d). As comparison reveals that, although very few companies actually perform operations in all of the member states, very many are active in one or two member states, avoidable effort would be required as regards many of the applications.

Comment on Art. 16 (2 h)

The national safety authority should also be assigned the task of keeping and maintaining the National Vehicle Register. A clear utilisation scheme for the National Vehicle Register is required. A statement on financing must be formulated.

Comment on Art. 16 (3)

As if to highlight the doubts we have already expressed (cf. Art. 10 (4)) regarding the translation of documents, the term "safety performance" is translated with "Sicherheitsleistung" – "security deposit", which is incorrect in our opinion. We consider "Erfüllung der Sicherheitsanforderungen" to be a more accurate translation.

Comment on Art. 18 (f)

We very much doubt whether information on "all inspections or audits" is necessary. We doubt whether similar provisions apply in the case of other transport modes.

Comment on Art. 20 (3)

If this is intended, it is necessary to clarify that what is meant here is that the findings of the Accident Investigation Body may not be used in courts of law (in criminal or civil proceedings).

Comment on Art. 22 (3)

Sentence 2 is to be modified so that all parties concerned will have the fundamental opportunity of being "allowed to comment".

Article 25

Greater clarification is required in specifying which scope for action is available to the member states when reacting to a safety recommendation.

Annex 2

Detailed proposals for amendment of the COM draft for a directive on the interoperability of the rail system within the European Union (recast)

Comment on Explanatory Statement 2

Analysis of costs has led to results which, in the case of smaller undertakings, are more likely to have a detrimental effect. In part, however, analysis reveals that the large undertakings will also be affected. Here the issue "TSI Energy" should be cited as an example: In this instance the Commission expects that all catenaries in Germany shall be retrofitted/converted to a pantograph width of 1,600 mm (currently 1,950 mm). These measures would result in costs amounting to several billion euros and, at railway hubs, to several months of disruption.

Comment on Recitals (2) to (6)

Recital (2) requires the interoperability of networks, i.e of infrastructure and/or network-related facilities. No mention is made of vehicles here; they must conform to the circumstances. Certain TSIs nevertheless apply to vehicles and these formulate more requirements than are demanded by the infrastructure or the interfaces between the vehicles. These requirements are not conducive to interoperability and should be deleted.

Particular comment on Recital (15)

Vehicles will always be subject to national rules if these are justified for economic reasons. With particular regard to the TSIs, the scope of application of the directive and/or its interpretation is again decisive. In this respect clarity should already be provided at the European level. **A clear definition in this directive / in all directives is essential.**

Comment on Recitals (18) and (19)

As no financial contribution is to be expected from the EU Commission, the benefit of the TSIs must first be confirmed before deadlines for their implementation are set. Activities by the member states will also be kept at a minimum and mainly focus on projects demanded by the population such as noise abatement and PRM measures. All other measures will automatically result in increased costs. **Whenever a measure is likely to result in cost advantages, it will be implemented promptly by the undertakings in their own economic interest.**

Comment on Recital (21)

If the measures are implemented successfully and in the interest of the undertakings, the national rules will automatically (and voluntarily) be removed. As long as this cannot be ensured, however, the regional rail operators in particular should remain exempt from application of the TSIs. In this case the national rules will still be required.

Comment on Recital (25)

See the above explanatory comments on Recitals (15), (18) und (19). Exactly how the term "inadmissible" is to apply must be defined. This is a legal and not a commercial term.

Comment on Recital (32)

In the last sentence *"As far as possible and in order to promote industrial development it is appropriate to draw up the procedures involving a system of quality assurance."*

Previously the last sentence ended as: *"the procedures for quality assurance are to be further developed as far as possible."*

As numerous defined, co-ordinated and implemented quality assurance systems already exist, only such improvement as is revealed in the course of application would seem necessary in specific cases. A fundamentally new debate in this connection is therefore to be rejected.

Comment on Recital (42)

The rail operators order vehicles from the manufacturers, as a rule inclusive of the placing into service, and in accordance with the criteria set forth in the specification. This procedure must be stringently adhered to without deviation.

On further application of the vehicles, the rail operator must carry out adjustment with the infrastructure in alignment with the Infrastructure Register. In this case the formulation is applicable.

A distinction is definitely to be made between both cases.

Comment on Recital (49)

In this case an accurate process is to be described which, on discovery of deficiencies, will also lead to immediate suspension of the corresponding paragraphs. Until now this extemely sluggish process has left the parties involved with no scope for flexibility and, in accordance with legislation, obliged them knowingly to take wrong decisions. At the least, immediate notification to the member states is required here.

Comment on Recital (51)

As regards this recital, the conclusion may be drawn that the EU Commission will directly intervene in the process. A further interface is thus created and additional bureaucracy with a contrary effect to the original intention of cutting red tape.

General remark:

Transferring tasks away from the member states and in the direction of the EU Commission/ ERA gives rise to new interfaces which generate more rather than less bureaucracy. The cost issue has also not been clarified: In Germany, high costs are already being incurred for the provision of such services.

Comment on Article 1 (3)

Although this measure is to be welcomed, clear definition is required of the systems which will consequently be exempted.

Comment on Article 1 (4a)

The term “privately owned“ should be amended into “not owned by an infrastructure manager“. This provision relates to connecting railways such as those operated by industrial undertakings. As some of these industrial undertakings are in governmental and/or public ownership, they should not be disadvantaged. Moreover, the connecting railways operated by the Armed Forces must indisputably benefit from this exemption as such operations are also not in private ownership.

Comment on Article 1 (4b)

The term “strictly local use“ must also incorporate larger networks such as those of the S-Bahn rapid transit rail systems in Germany. These are characterised by their 960 mm platform height and wider vehicles which, in addition to enabling passage along interoperable lines, also enable commercially viable operations since additional facilities such as sliding steps need not be integrated. These S-Bahn services are defined as a “specific case“ in the TSI PRM; as such they are a recognised system.

Comment on Article 2 (11)

Although requiring a greater loading gauge, certain S-Bahn systems or double-decker coaches are also to count as special cases since it is possible to use their infrastructure both separately and, in other cases, in an interoperable manner. Thus no contravention to the requirements on interoperability arises in this case as a cost-effective extension is in fact provided. The subsystems are to be considered **independently**. Although most of the infrastructure in Germany is interoperable, this does not yet apply to the vehicles operating along it. On the basis of a corresponding operational concept which does not contravene the requirements on interoperability or result in additional expenditure, vehicles which do not, or only partially meet the requirements of the TSI can therefore also be deployed. This applies both to the existing fleet (in operation over the next 50 years) and to the corresponding new rolling stock.

Comment on Article 2 (22) and (23)

Comment on Article 2 (25)

"Light Rail" means an urban and/or suburban rail transport system with lower capacity and lower speeds than heavy rail or metro systems but higher capacity and higher speeds than tram systems. Light rail systems may have their own right of way or share it with road traffic and usually do not exchange vehicles with long-distance passenger or freight traffic.

Railways operating only at low speeds in fact exist and no increase in speed thereof is foreseen. As S-Bahn vehicles travel at up to 160 km/h in Germany and TramTrains in part at over 100 km/h with comparatively high capacity and triple traction units (partially exceeding levels in metro rail systems), this definition is inappropriate. Both parameters provide no criteria for the corresponding services and are therefore to be deleted.

Comment on Article 2 (32)

The distinction between "technical specification" und "technical specification for interoperability" is not clearly evident to the user. Another term should be adopted here but with the same meaning. If the term "specification" alone is used here, the operational parameters can, as usual, be incorporated.

Comment on Article 4 (6)

See comments on Article 2 (11)

Comment on Article 5 (10)

" Any renewal or conversion/retofitting of existing sub-systems will require a new EC Declaration of Verification in accordance with Article 15 (4)."

This is to be amended into "Any renewal or conversion/retrofitting of existing subsystems will require a new EC Declaration of Verification **for the corresponding subsystem** in accordance with Article 15 (4)."

Comment on Article 23

As regards the term "notification", differing views exist as to its implementation. The member state reports a derogation and/or the corresponding national legislation to the EU Commission and/or the ERA.

- Alternative 1: If no objection is lodged within a short time period, this procedure shall be deemed as confirmed.
- Alternative 2: The member state is to await confirmation, in part requiring a lengthier time lapse, from the EU Commission and/or ERA.

As entry into the relevant database currently involves a considerable time delay, no reliable statement for the railway company or infrastructure manager is to be obtained here.

In addition, a response to the procedure adopted is required at short notice.

Comment on Annex I, 1. Indent

This definition leads to constant discussion as the speed range is usually defined as “up to 250 km/h“ and not, as is here the case, as “greater than 250 km/h“.

Comment on Annex I (1) Page 2

Each of these categories may be sub-divided as follows:

- Vehicles for cross-border operations,
- Vehicles for national operations.

The requirements to be met in ensuring safe rail operations on the various line categories are to be specified in the TSIs.