

Making the railway system
work better for society.

Minutes of 44th Meeting

Management Board

Valenciennes / 29 November 2017

The meeting opened at 10.15. In the absence of the Chair, Ms. Clio Liégeois, the meeting was chaired by the Deputy Chair, Mr. Hinne J.Y. Groot. The secretariat was provided by the European Union Agency for Railways. The Agency Management Team, the Executive Director, Mr. Josef Doppelbauer, and Agency staff were present.

Attendance list

MEMBERS OF THE MANAGEMENT BOARD		
EU MEMBER STATES (with voting rights, one vote per member state)		
Mr. Klaus Gstettenbauer	Austria	Present
Alt: Mr. Wolfgang Catharin		Excused
Ms. Clio Liégeois CHAIRPERSON	Belgium	Excused
Alt: Ms. Valérie Verzele		Excused
Mr. Veselin Vasilev	Bulgaria	Excused
Alt: Ms. Gabriela Tsvetanova Tsekova		Excused
Appointment pending	Croatia	Excused
Alt: Ms. Ljiljana Bosak		Excused
Ms. Chrystalla Mallouppa	Cyprus	Excused
Alt: Ms. Elpida Epaminonda		Excused
Mr. Jindřich Kušnír	Czech Republic	Excused
Alt: Mr. Luboš Knizek		Present
Mr. Kåre Clemmesen	Denmark	Present
Alt: Mr. Leif Funch		Present
Mr. Indrek Laineveer	Estonia	Excused
Alt: Mr. Heigo Saare		Present
Mr. Yrjö Mäkelä EB DEPUTY CHAIRPERSON	Finland	Present
Alt: Mr. Risto Saari		Excused
Ms. Anne-Emmanuelle Ouvrard	France	Present
Alt: Mr. Hubert Blanc		Excused
Mr. Wolfram Neuhöfer	Germany	Excused
Alt: Mr. Michael Schmitz		Present
Mr. Triantafyllos Papatriantafyllou	Greece	Present
Alt: Mr. Grigoris Sampatakakis		Excused
Mr. László Mosóczi	Hungary	Excused
Alt: Mr. Tamás Alscher		Present

Ms. Mary Molloy	Ireland	Excused
Alt: Ms. Caitriona Keenahan		Present
Mr. Eugenio Martino	Italy	Excused
Alt: Mr Giorgio Morandi		Present
Mr. Patriks Markēvičs	Latvia	Excused
Alt: Ms. Linda Gailite		Present
Ms. Giedrė Ivinskienė	Lithuania	Excused
Alt: Mr. Justas Rašomavičius		Excused
Mr. André Bissen	Luxembourg	Present
Alt: Mr. Marc Östreicher		Excused
Appointment pending	Malta	Excused
Appointment pending		Excused
Mr. Hinne J.Y. Groot DEPUTY CHAIRPERSON	Netherlands	Present
Alt: Mr. Marnix Van der Heijde		Excused
Mr. Ignacy Góra	Poland	Excused
Alt: Mr. Pawel Rolek		Present
Mr. Eduardo Feio	Portugal	Excused
Alt: Ms. Ana Miranda		Excused
Ms. Mihaela Carabineanu	Romania	Present
Alt: Ms. Ana Maria Dascalu		Excused
Mr. Mikuláš Sedlák	Slovakia	Excused
Alt: Mr. Miroslav Dorčák		Excused
Mr. Boris Živec	Slovenia	Present
Alt: Mr. Benjamin Steinbacher Pušnjak		Excused
Ms. Paloma Iribas Forcat	Spain	Present
Alt: Mr. Eduardo Santiago González		Excused
Appointment pending	Sweden	Excused
Alt: Mr. Carl Silfverswärd		Present
Mr. Jeremy Hotchkiss	United Kingdom	Present
Alt: Mr. Ian Jones		Excused
EUROPEAN ECONOMIC AREA STATES (EEA) (no voting rights)		
Mr. Øystein RAVIK	Norway	Excused
Alt: Mr. Erik Ø. REIERSØL-JOHNSEN		Excused
ETFA Surveillance Authority	Observer	
Mr. Gaspar Ebrecht	ESA	Present
EUROPEAN COMMISSION (voting rights: 2 votes in total)		
Mr. Henrik Hololei		Excused
Alt: Ms. Elisabeth Werner		Present
Ms. Agnieszka Kázmierczak		Excused
Alt.: Mr. Keir Fitch		Present
Ms. Teresa Pereira-Coutinho (Adviser)		Present
SECTOR REPRESENTATIVES (no voting rights)		
Mr. Libor Lochman	Railway Undertakings	Excused
Alt: Mr. Markus Vaerst		Present
Ms. Monika Heimig	Infrastructure managers	Present
Alt: Mr. Maurizio Gentile		Excused

Mr. Philippe Citroën	Railway industry	Excused
Alt: Mr. Gilles Peterhans		Present
Mr. Guy Greivelding	Trade-Union Organisations	Excused
Alt: Ms. Sabine Trier		Present
Mr. Josef Schneider	Passengers	Present
Alt: Mr. Maurice Losch		Excused
Mr. Ralf-Charley Schültze	Rail Freight Customers	Present
Alt: Mr. Gavin Roser		Excused

The Deputy Chair welcomed the newly appointed representatives of Denmark, Estonia, Hungary and Romania, Mr. Leif Funch, Mr. Heigo Saare, Mr. Tamás Alscher and Ms. Mihaela Carabineanu respectively, as well as the newly appointed representative of the Commission and Director of Directorate C “Land” at the Directorate-General for Mobility and Transport (DG MOVE) of the Commission, Ms. Elisabeth Werner.

SUMMARY OF DECISIONS

The Management Board:

- 1) adopted the minutes of the 43rd meeting held on September the 26th 2017,
- 2) appointed the representative of Austria, Mr. Klaus Gstettenbauer, as alternate to the Executive Board (EB),
- 3) appointed the Deputy Chair and the representative of Slovenia, Mr. Boris Živec, as EB rapporteurs in relation to the first topic of the EB Strategic Rolling Calendar 2017-2018 on the evaluation of the impact of the Agency's work on costs of railway sector in the short, medium and long-term and the EB Deputy Chair as EB rapporteur with regard to the second topic listed thereunder on the follow-up to the Internal Audit Service (IAS) and the European Court of Auditors (ECA) recommendations, including issues related to financial compliance,
- 4) appointed the representative of Spain, Ms. Paloma Iribas Forcat, as member to the 4th Railway Package Steering Group (4th RP SG),
- 5) adopted a policy on monitoring the performance and decision-making of National Safety Authorities (NSAs),
- 6) adopted rules for the prevention and management of conflicts of interest in respect of its members,
- 7) adopted the Single Programming Document (SPD) 2018,
- 8) adopted the budget and establishment plan 2018,
- 9) agreed to meet again on January the 25th 2017.

Voting members present or represented by proxy: 22

Votes: Decisions under points 1, 2, 3, 4, 6 and 7 above were taken unanimously. The decisions on the adoption of a policy on monitoring the performance and decision-making of NSAs as well as the decision on the adoption of the budget and establishment plan 2018 were taken both with twenty-one (21) votes in favour and one (1) abstention.

MINUTES

1. Adoption of the agenda

The agenda was adopted with the points on the headquarters agreement approval being for discussion and not for decision.

Upon Commission's request, the item on fees and charges concerning in particular the reimbursement principles applicable to experts working under the Pool of Experts (PoE) scheme was also taken up as a discussion and not as a decision point.

2. Adoption of the minutes of the 43rd Management Board (MB) meeting

The minutes of the 43rd MB meeting were adopted.

3. Appointment of Executive Board (EB) alternate

The Board members were informed that the representative of Finland, Mr. Yrjö Mäkelä, had been appointed Deputy Chair of the EB during the 7th EB meeting in November 2017 and that, despite the recent appointment of some MB representatives as members and/or alternates to the EB, one vacant seat of an EB alternate had yet to be filled.

Upon invitation from the Deputy Chair, it was only the representative of Austria, Mr. Klaus Gstettenbauer, who put his name forward as a candidate for the vacant seat of EB alternate.

No other candidacies were announced for the vacant post. The appointment procedure was held on a show of hands.

The representative of Austria, Mr. Klaus Gstettenbauer, was unanimously appointed as EB alternate.

4. Appointment of Executive Board (EB) rapporteurs

The Deputy Chair made the introductory remark that it was in the paper on the role of EB adopted during the 42nd MB meeting in June 2017 that the idea of appointing EB rapporteurs who would be proactively involved in the work of the Agency on topics of special importance at horizontal level was firstly reflected.

He announced that EB rapporteurs had yet to be appointed in relation to the first two topics listed under the EB Strategic Rolling Calendar 2017-2018 on the assessment of the impact of the Agency's work on railway sector costs in a short, medium and long-term mainly through the use of Key Performance Indicators (KPIs) and on the follow-up to the recommendations issued by the Internal Audit Service (IAS) and by the European Court of Auditors (ECA) respectively and clarified that, although only EB members were eligible for the role of EB rapporteurs, it was the MB which had been vested with the appointing authority powers.

The Board members were informed that both the Deputy Chair and the representative of Slovenia had already expressed their interest in the role of EB rapporteur for the first topic identified above and that it was only the EB Deputy Chair who had announced thus far his candidacy for the vacant post of EB rapporteur with regard to the second topic listed under the EB Strategic Rolling Calendar 2017-2018.

The EB Deputy Chair placed emphasis on the main rationale behind the idea of EB rapporteurs, i.e. the need to strengthen added value of the EB for the MB decision-making process and to create more opportunities for interaction between the Agency and the EB.

The Board members were assured that the intention was neither to add a layer of bureaucracy nor to favour micromanagement but rather to make it easier for the MB to follow more closely and, if necessary, play a more proactive role in the progress of the Agency's work.

The Deputy Chair confirmed that there were no other candidacies to be announced for either of the two first topics listed under the EB Strategic Rolling Calendar 2017-2018 and that both he and the representative of Slovenia had agreed to be appointed joint EB rapporteurs for the topic for which they had put forward their candidacy.

The representative of Slovenia admitted that it was mainly for the purpose of forming a clearer view of the added value of the Agency's work for the railway sector that he had decided to put his name forward for the role of EB rapporteur. However, he proposed that his role as EB rapporteur should only be complementary to the role of the Deputy Chair who would, therefore, be appointed as the main EB rapporteur in charge of delivering the outputs required under the first topic of the EB Strategic Rolling Calendar 2017-2018.

All candidates were unanimously appointed by the MB as EB rapporteurs with regard to the topics for which they had put forward their candidacies.

The Board members were informed that the next appointment procedure for EB rapporteurs in relation to the other topics listed under the EB Strategic Rolling Calendar 2017-2018 for which no EB rapporteur had been appointed yet was envisaged to take place during the 45th MB meeting in January 2018 following a discussion on those topics to be held during the 8th EB meeting in December 2017. The Board members who participated also in the EB either as members or as alternates were invited to express their interest in taking on the role of EB rapporteur for any of the remaining topics listed under the EB Strategic Rolling Calendar 2017-2018.

5. Appointment of MB members to the 4th Railway Package Steering Group (4th RP SG)

The Board members were reminded of the recent adoption by the MB of a decision on the re-establishment of the already existing 4th RP SG which would be mandated to oversee and report directly to the MB on the progress made by the Agency in the preparatory work to be performed for the implementation of the 4th RP.

The EB Deputy Chair announced that the MB would be called to appoint one or two of its members as members to the 4th RP SG.

The Executive Director recalled that he had set up the 4th RP SG in 2015 upon launching the programme on the implementation of the 4th RP and appointing Mr. Thierry Breyne as 4th RP Preparation Programme Manager. He stated that, at least at that point, the 4th RP SG was supposed to be mainly an Agency-driven initiative and that the meetings of the 4th RP SG were held with NSAs and Sector representatives and chaired by him.

He added that, following the discussions during the June 2017 Board meetings on the proposal put forward by the Netherlands on the assessment of the Agency's readiness in view of the impending implementation of the 4th RP, it had been considered appropriate to proceed with the revision of the Terms of Reference (ToRs) of the 4th RP SG as a first step.

The Executive Director pointed to the nature of the currently re-established 4th RP SG as a MB-driven initiative and, therefore, to the need to appoint two MB members as representative of the MB to the 4th RP SG and mentioned that, during the meeting of the 4th RP SG held in September 2017, it had been decided that the meetings of the 4th RP SG –not more than four per year– would be chaired by the MB Chair.

The Board members were reminded of the new composition of the 4th RP SG. The Deputy Chair outlined briefly that the 4th RP SG would be composed of the MB Chair as its Chair, one Commission representative who was the Deputy Head of Rail Safety and Interoperability Unit (C.4.) of DG MOVE, two Sector representatives who were representatives of the Railway Undertakings (RU) and of the Railway Industry (RI) on the MB respectively, as well as of NSAs representatives from Germany, France, Hungary and the Netherlands and of one EASA representative. He added that the intention was to have the Agency's Management Team (MT) represented on the 4th RP SG as well.

The Commission was also assured that the 4th RP SG would provide support to its work on the delivery by June 16th 2018 of the report mentioned in Article 53 of the Directive (EU) 2016/797 (hereinafter referred to as the "Railway Interoperability Directive") on the progress made in the preparatory work to be done in view of the Agency's enhanced role as an Authority under the 4th RP.

Upon invitation from the Chair addressed in particular to Member States representatives, it was only the representative of Spain who expressed her interest in being appointed as MB representative to the 4th RP SG.

The appointment procedure was held on a show of hands. The representative of Spain was appointed unanimously as representative of the MB to the 4th RP SG and invited by the Executive Director, immediately upon her appointment, to the next meeting of the 4th RP SG scheduled to take place by the end of 2017.

6. Monitoring of National Safety Authorities (NSAs) Policy

The Board members were provided with a synopsis of the updated Agency's proposal on NSAs monitoring.

The Project Officer of the Agency explained that, contrary to its previous proposals and following the explicit request of the Board members during the 43rd MB meeting, the Agency had put forward a proposal which provided the Member States with a real choice between the maturity model and the compliance-based approach by allowing them to opt for the use of either of those models.

It was also clarified that, following the Board meetings of June 2017, the Agency had decided, in response to the requests made mainly by Germany and France, to add among the set of documents to be made available to the MB in view of its meeting in September 2017 Annex III bis as the reference document to be used for the performance of audits in accordance with the compliance model.

Furthermore, it was highlighted that, following the discussions held during the 7th EB meeting in November 2017 on the updated proposal put forward by the Agency, it had been considered appropriate to reformulate Section 5 of Annex I to the draft MB decision on the “revision for the second three-year cycle” in such a way so that the relevant text would clearly reflect from that point onwards that the Agency planned to have its first report on the evaluation of the implementation of the NSAs monitoring scheme during the initial three-year cycle delivered to the MB already in September 2021.

Moreover, the Board members were informed that care had been taken so that the latest version of the Agency’s proposal and, in particular, of Annex I to the draft MB decision on the NSAs monitoring policy, would bring more clarity on any confidentiality issues arising in relation to any documents to be produced in the context of the NSAs audits, including the final audit reports. The Agency had also made efforts to fine-tune its final proposal by aligning Annex III bis with the detailed comments submitted by France.

The EB Deputy Chair reported briefly on the progress made in the discussions held during the EB meeting of November 2017 on the matter. He summarised that the EB members seemed to support generally the Agency’s revised proposal as representing in their view, a balanced option which offered the best of both worlds by affording the NSAs the genuine opportunity to choose between two audit models and considered that the proposal was mature enough to be put forward already at that point for adoption by the MB despite the fact that some more detailed points still needed to be further reflected upon prior to its formal adoption.

It was recalled that, according to the planning made by the Agency, all NSAs were envisaged to be monitored in the course of the first three-year cycle, that around nine or ten NSAs would be monitored per year and that those NSAs which had never been audited before by the Agency would be given priority and, therefore, would be among the first ones to be monitored during the first three-year audit cycle.

It was emphasised that, as pointed out during the 7th EB meeting, the successful and timely implementation of the scheme relied partly on the availability of sufficiently qualified and experienced auditors which would be placed by the NSAs at the Agency’s disposal to participate on a voluntary basis in its audit teams. For that purpose, the Agency had considered appropriate to prepare and duly bring to the attention of the NSAs a rather flexible timetable to be followed during the first three-year cycle so as to ensure, at as early a stage as possible, the availability of experts experienced in cross-audits to take part in the Agency’s audit teams.

The EB Deputy Chair referred also to the discussions held within the EB on the issue of whether the Agency should afford the MB the possibility to review its initial decision, if necessary, in the future by means of a revision clause which would be formulated in such a way as to allow the revision, if needed, of the adopted scheme after the end of the first audit cycle on the basis of return of experience as reflected in the evaluation report to be delivered by the Agency by then and in view of the second three-year cycle from 2022 to 2024.

The Deputy Chair pointed to the pressing need for an agreement to be reached by the MB on the approach to be followed on NSAs monitoring so that the necessary preparations which needed to be done prior to the start of the scheme implementation, including with regard to the availability of NSAs auditors, would be completed in a timely manner and, in any case, before the beginning of the first audit cycle in 2019.

The Commission welcomed the efforts put by the Agency into coming up with a quite pragmatic dual approach giving the NSAs the opportunity to choose out of the two proposed audit models their preferred one. However, the Commission emphasised that it was crucial for the Agency to put its scheme to the test already during the first three-year audit cycle with a view to drawing a reliable conclusion on whether the initially proposed approach should be adjusted or not after the end of that cycle.

Sweden noted with appreciation that the Agency had made sure to include in Annex I of its proposal a revision clause in view of the second three-year audit cycle but voiced its serious concerns over the use of the term “deficiencies” by the Agency. More specifically, Sweden found that such terminology was rather controversial in and of itself when used in the context of NSAs monitoring and could be easily construed as meaning that the NSA concerned either had not fulfilled specific legal obligations or had failed to effectively fulfil such

obligations or, at least, to meet the Agency's expectations when fulfilling them and advised the Agency to consider replacing the term "deficiencies" with the phrase "minor or major observations".

Italy reminded that it had clearly expressed from the outset its preference for the initial proposal of the Agency which had been based exclusively on the maturity model but announced its intention to support as well the Agency's revised proposal which provided the Member States with a real choice between the two proposed audit models.

While acknowledging the concerns raised by Sweden, the Head of Safety Unit pointed out that the term "deficiencies" was already explicitly provided for under Article 33 §§ 3-4 of Regulation (EU) 2016/796 (hereinafter referred to as "the Agency Regulation") which stipulated the obligation of the Agency to send the final audit report, including "a list of any deficiencies identified" as well as "recommendations for improvement" not only to the NSA and to the Member State concerned but also to the Commission.

He assured Sweden that the proposed audit process had been designed in such a manner so as to allow both NSAs and Agency representatives to come to a joint conclusion on the list of potential deficiencies identified. It was analysed in particular that, despite the fact that it would be the audit team which would make the final decision on the matter, both the audit team and the NSA concerned should participate in the discussions envisaged to be held on audit findings in an effort to develop a common understanding of the potentially identified deficiencies and to agree on the next steps to be taken for tackling those deficiencies.

It was added that it was in the role of the Commission to reflect on whether there was any "deficiency" in the sense described above, to determine, if necessary, the scale of such deficiency and to decide if it made sense to take enforcement action to address such deficiencies, the Agency being only in charge of bringing to the attention of the Commission concerns on alleged failure of the NSAs to comply with EU law.

The Head of Safety Unit guaranteed that, as was already the case in the past, the Agency would show great caution when flagging potential deficiencies but considered that, given the importance of the concern raised by Sweden, the discussion on the relevant issues should rather be postponed until after the end of the first three-year audit cycle.

The Deputy Chair agreed with the Head of Safety Unit that the use of the term "deficiencies" by the Agency had been dictated by Article 33 §§ 3-4 of the Agency Regulation. He sensed that the Agency should have good reasons for deviating from the wording used under the text of the Agency Regulation itself.

The Executive Director admitted that there was some merit in the position taken by Sweden on the matter and proposed that the term "deficiencies" should be maintained in the current proposal. However, the Agency should add to its proposal a clarification that the scope of the term "deficiencies" intended to cover "minor and major observations" which defined more clearly the gravity of the deficiency identified as such.

Sweden accepted with the suggestion made by the Executive Director and agreed with the point made by the Head of Safety Unit that such issues could be more effectively dealt with after the end of the first cycle.

Although the significant deficiencies were already clearly differentiated from the minor ones in the text of the current Agency's proposal, the Head of Safety Unit guaranteed that the term "minor deficiencies" would be replaced by the term "minor observations" in line with Sweden's comment to describe better those types of deficiencies which were of minor importance and should not, as such, be identified and highlighted as key areas of attention. However, he pointed out that, from an audit perspective, contrary to any deviations from best practices which could be simply reflected in the Agency's findings, potential instances of non-compliance with legal obligations identified as such would have to be clearly recorded as deficiencies.

Germany appreciated that the current proposal put forward by the Agency gave the NSAs the right to choose between the maturity model on the one hand and the compliance-based approach on the other hand. The importance of drawing a clear distinguishing line between those two models was underlined, all the more so since the implementation of the NSAs monitoring was highly likely to trigger an infringement procedure.

While Germany found that the Agency had improved substantially its proposal, it made reference to some of the comments which had already been submitted to –but not yet addressed by– the Agency.

Germany held the view that the self-assessment which the NSAs would be asked to perform prior to being audited by the Agency should be given due weight by the Agency in the audits to follow. More specifically, Germany thought that by following such approach the whole audit process would be performed in a much more timely and cost-effective manner since the NSAs would be in a position to identify, since the beginning of the process, which documents would have to be translated for audit purposes and to provide the Agency with a foretaste of their self-evaluation.

Germany found that the arguments put forward by the Agency in support of the opposite view on the matter which pointed to the need to avoid as much as possible a situation whereby the auditors would be made aware of the findings of the self-evaluation report prior to the start of the audit process and would thus be biased or appear to be biased in the audits to be subsequently performed was not convincing; the audit team could and should carry out the audit process and base its findings on objective criteria.

On the scope of the audits, Germany referred to Article 33 § 2 of the Agency Regulation according to which the Agency was empowered to audit, among others, the capacity of the NSAs to execute tasks relating to railway safety and interoperability and inferred that the scope of the NSAs monitoring should not extend beyond the tasks listed under Article 16 § 2 of Directive (EU) 2016/798 (hereinafter referred to as the “Railway Safety Directive”). Germany mentioned that other types of audits performed, for instance, in relation to Common Safety Methods (CSMs), should be considered as definitely excluded from the scope of the NSAs monitoring as defined in the aforementioned provision of the Agency Regulation and urged the Agency to re-adjust the scope of its current proposal accordingly.

The U.K. welcomed the Agency’s current proposal and, in particular, the possibility for revision in view of the second three-year cycle which was at that point clearly reflected in the relevant text but wished to draw the Agency’s attention on the resource-related aspects of the scheme. The Agency was requested in that regard to include a clear reference to the need to ensure the efficient use of the resources required for the performance of NSAs monitoring through the effective targeting of audits both under section 1 on the background and under section 5 on the revision for the second three-year cycle (2022-2024) of Annex I to the draft MB decision.

In response to the comments made by Germany, the Head of Safety Unit recalled firstly that the Agency was already aware, mainly on the basis of the matrix evaluations performed in the past, of the value of the self-assessment tool for the auditees who were given the opportunity to check in advance the referentials against which their capacity would be measured and to gather the necessary evidence to be presented to the audit team as a proof of compliance with the requirements prescribed by the law.

However, he insisted on the need for the NSAs to be monitored with a “fresh pair of eyes” by auditors who would not be tempted in any way whatsoever to rely beforehand on the findings of the self-evaluation report prepared by each NSA prior to the start of the audit process; instead, they would be entitled to make use of the self-assessment only at a later stage for the purpose of making a meaningful comparison between the conclusions reflected in the self-evaluation report and their findings.

Moreover, the Head of Safety Unit reiterated his view that the wording of Article 33 § 2 of the Agency Regulation was such that it did not seem to limit the scope of the NSAs monitoring by placing within its remit only the items placed under the indicative list of Article 16 § 2 of the Railway Safety Directive. Consequently, any tasks allocated to the NSAs at national level by virtue of other legal acts drawing their authority directly either from the Agency Regulation or from the Railway Safety and Interoperability Directives, such as the Commission Regulation (EU) No 445/2011 (hereinafter referred to as the “ECM Regulation”) clearly fell within the scope of the NSAs monitoring even if those tasks had not been explicitly listed under Article 16 § 2 of the Railway Safety Directive.

Finally, the Head of Safety Unit assured the U.K. that he had taken, already at that point, good note of its suggestions on targeted resources and declared his commitment to introduce in the scheme through the review process the requirement of a more targeted risk-based approach to be adopted in view of the second audit phase and on the basis of the return of experience from its implementation during the first audit cycle.

The U.K. assumed that there was broad agreement within the MB on the necessity of targeted resources and agreed with the way forward proposed by the Head of Safety Unit.

Denmark informed the Agency of its preparedness to support both audit models proposed under its revised proposal but raised the concern that the interoperability-related aspects did not seem to have been included only in the scope of the compliance-based approach and not in the scope of the maturity model as currently put forward by the Agency. Denmark warned the Agency that in such a cases, it had no choice but to withdraw its support from the matrix model which could also turn out eventually to be more resource-demanding than initially expected and feared that the implementation of both models at the same time might require the investment of more Agency resources already since the beginning of the first three-year audit cycle.

Denmark expressed its preference for the compliance-based approach as the single audit method to be used for the performance of the monitoring and the evaluation of all NSAs. It noted also its agreement with the remarks made by Germany on the use of the NSA self-evaluation report and added that were it for such self-assessment to be useful for the audit process itself, it was an element which should be taken into account by the audit team prior to the start of the audits.

Spain noted with appreciation that the current proposal put forward by the Agency gave the possibility to the NSAs to make a real choice between the two audit models but considered that some aspects reflected in that proposal were still problematic from its point of view.

Along the lines of the remarks made by Germany, Spain pointed out that the Agency's proposal went beyond the limit set by Article 33 § 2 of the Agency Regulation. The Agency was advised, in that regard, to avoid deviating from the wording used under the Agency Regulation by sticking to the use of the term "monitoring" instead of the term "audits" as much as possible.

Moreover, Spain seriously challenged whether it would be possible for the Agency to evaluate the NSAs against each other if it applied different audit models to monitor each of them and wondered whether the Agency intended to assess the findings by using an average figure or by comparing them against each other.

It was mentioned, for instance, that the Agency should indicate whether it intended to compare the results of the visit it had made recently to Spain on the basis of Article 35 § 5 of the Agency Regulation with the results of other similar visits to other Member States and it was highlighted that this request had already been discussed between the European Commissioner for Mobility and Transport and the Spanish Minister of Transport and Infrastructure.

Spain recalled that it had already voiced its concerns on the potential resource-related implications of the envisaged implementation of the scheme during the EB meeting in November 2017. It was repeated that a cycle of nine or ten audits per year seemed quite ambitious amounting already to a great deal of work. The example was given that the Agency had formed a team of eighteen staff members to visit several entities in Spain for a period ranging from one to three weeks and that it had requested during its visit to check documents of a total volume of more than 500 pages which were in Spanish and had to be translated.

The representative of Spain thanked the Agency for its constructive cooperation thus far, pointed to the positive outcome of the Agency's visit to Spain not only for the Agency itself but also for Spain and for the other Member States. However, given the detailed nature of the work to be done by the Agency and the great amount of resources which would have to be used for the performance of the NSAs monitoring, she seriously doubted whether the Agency would manage to have nine or ten audits per year completed on time.

Finally, Spain understood that the final audit reports would be made publicly available after a certain point in time and that the NSAs should be somehow kept informed about the performance of other NSAs. However,

it noted that such reports might contain very sensitive information which could be used in a biased way from third parties if published and suggested that the Agency should strive to achieve in its proposal a better balance between the need for transparency and the principle of confidentiality.

The Head of Safety Unit responded to Denmark by reminding to the Board members that the interoperability-related aspects had already been included, upon their request, in the compliance based approach proposed by the Agency. However, he seriously challenged the value of adjusting at that point the current proposal in order to cover explicitly those aspects as well given the duration of the first audit cycle from 2019 to 2021 and the imminent change of the legal bases either in 2019 or in 2020. He wondered whether it made sense to have the NSAs monitored on processes which were, in any case, subject to significant changes in the near future and what would be the appropriate response to be given by the NSAs to “deficiencies” potentially identified by the Agency in those cases.

It was also pointed that the Railway Interoperability Directive did not provide explicitly that the NSAs had a specific role to play in relation to interoperability-related aspects and that the primary responsibility for promoting railway interoperability lied more with the Member States than with the individual NSAs which, apart from playing a role in the authorisation process, did not enjoy any decision-making powers similar to those of the Member States. The decisions of the Member States e.g. on policy on the deployment of ETCS were not as such supposed to be covered by the scope of NSAs monitoring.

The Head of Safety Unit confirmed that the matrix evaluation referred to previously by Denmark was in fact closely related to the maturity model which was regarded, at that moment, as reflecting the state of the art in the field of auditing and capacity-checking. He assured Denmark that the maturity model would allow the Agency to take closer look on broader monitoring issues which were closely linked to the general capacity, decision-making and leadership of the organisation concerned and were most probably of relevance to the topics related to railway interoperability as well.

The Head of Safety Unit sensed that, despite the great efforts put by the Agency into finding a compromise solution which would satisfy both those from amongst the Board members who were in favour of the maturity model and those who supported use of the compliance-based approach, there were still some MB members who did not seem to be completely satisfied with the Agency’s current proposal although each of them for different reasons.

He also tried to alleviate the concern raised by Denmark by repeating that the self-assessment exercise was supposed to be mostly of use to the auditee rather than the members of the audit team itself and confirmed that, on the basis of its previous experience with matrix assessments and cross-audits, the Agency had drawn the conclusion that the matrix model required less resources than the compliance-based model. However, the efficiency of both models would be tested during the initial three-year trial phase.

While it was acknowledged that the planning of nine or ten audits per year was rather ambitious, it was explained that the individual assessment of each NSA needed to be completed in as short a period as possible given that the Agency relied on the additional expertise to be provided by the NSAs as a supplement to its audit team.

The Head of Safety Unit pointed to the added value of including NSAs experts in the Agency’s audit team and expressed his hope that the proposed yearly audit cycle would allow the Agency to follow a much tighter schedule and, therefore, to tackle potential issues arising in relation to the availability of resources in a more efficient and timely manner than in the past under the cross-audits scheme. The aim was to ensure that the trained NSAs auditors would participate, if not in the original audit initially foreseen for them to participate, to another audit which fitted with their schedule.

The Head of Safety Unit referred to his previous statements and the arguments which he had already put forward in support of the scope of the Agency’s current proposal in response to the relevant Spain’s concerns. Spain was also assured that the Agency did not intend to benchmark the NSAs against each other but rather viewed the NSAs monitoring process as an individual assessment of each NSA which was mostly of concern

to the audited NSA and the respective Member State and could be brought to the attention of the Commission in case of potentially identified deficiencies.

While it was acknowledged that the use of two different models made it much more difficult to compare the findings of each individual assessment to one another, a scenario whereby the NSAs would be assessed against each other was excluded.

The Head of Safety Unit took the opportunity to refer to the peer review process to be performed internally within the Agency through the use, among others, of the self-assessment mentioned earlier mainly for the purpose of verifying whether there was consistency in the audit approach followed by the different audit teams. The importance of such internal peer review process was stressed given in particular that, contrary to its opinions, advice and recommendations, the Agency did not intend to make the final audit reports publicly available if the NSAs did not wish to have them published.

On the aspects related to confidentiality, it was recalled that the Agency was not allowed to deviate much from the limits prescribed under Article 33 § 3 of the Agency Regulation. It was highlighted in that regard that the final audit reports as such fell within the scope of the exceptions to public access to documents under Article 4 § 2 of Regulation (EC) No. 1049/2001 and that, therefore, their content would not normally be disclosed and made publicly available unless there was an “overriding public interest” in their disclosure to be assessed on a case-by-case basis and with due consideration of the case law developed thus far on the matter by the Court of Justice of the EU (CJEU) and the guidance given by the European Ombudsman.

The MB were also reminded of its decision on the arrangements to be applied by the Agency for public access to documents which provided the most appropriate framework within which to treat the confidentiality issues identified by Spain and were assured that the Agency intended to put in place an internal process which would ensure the treatment of the final audit reports in absolute confidentiality.

The Head of Safety Unit informed Spain that, despite the difficulties of the exercise which proved to be quite resource-demanding, the feedback received from the project team which had been sent on behalf of the Agency to make the visit was quite positive and thanked the Spanish team for its kind cooperation. However, he clarified that the report to be produced on the basis of such visit was much broader in scope than the final audit reports to be drawn up under the NSAs monitoring scheme and stated that the plan was to have each NSA monitored not by teams of eighteen persons or so but by quite smaller audit teams.

Denmark agreed with the point made by the Head of Safety Unit that the legal bases, at least as regards the interoperability-related aspects, would be subject to significant changes over the course of the coming years, but pointed out that the safety-related aspects were subject to imminent changes as well. While Denmark admitted that it was primarily incumbent upon the Member State itself to decide on interoperability matters, it nevertheless insisted on the significance of railway interoperability as such, mentioned that the main rationale behind the 4th RP was to push more towards the development of railway interoperability at Union level and concluded that the interoperability-related aspects should be included among the main points to be monitored in the context of the scheme proposed by the Agency.

The Deputy Chair sought to confirm whether his understanding that the Agency feared that the audits might not lead to consistent findings on the interoperability-related processes currently performed by the NSAs until their full transition to the new processes under the 4th RP would have been completed was correct. He assumed that, if that were the case, the relevant open points could still be dealt with effectively after the end of the first three-year audit cycle when the audit scheme would be reviewed.

The Executive Director reminded that the MB was required under the Agency Regulation to adopt a policy on the monitoring of the performance and decision-making of the NSAs and found that the implementation of the different aspects of the Railway Interoperability Directive was not normally supposed to fall within the remit of the decision-making powers of the NSAs and that it was not, therefore, to be regarded as a core element of the NSAs monitoring exercise which was directly linked to the tasks to be performed by the NSAs

and did not intend to monitor neither the Member States nor the state of railway interoperability at Union level.

Moreover, he seriously doubted whether the conclusions to be drawn on the basis of an audit which would cover the interoperability-related aspects despite the anticipated transition to the new regime and the imminent changes in the processes to be brought as a result of such transition would be as reliable as expected.

The Deputy Chair asked the Agency whether the intention was to further reflect on the issue of whether the interoperability aspects would be covered by the scheme at least after the end of the first audit cycle.

The Head of Safety Unit replied that the interoperability aspects would be subject to monitoring during the second three-year audit cycle when all Member States would be supposed to have completed the process of transposition of the Railway Safety and Interoperability Directives into their national laws but insisted that the development of railway interoperability across the EU did not fall within the core tasks of the NSAs.

France expressed its satisfaction with the Agency's current proposal which allowed the NSAs to choose to be audited in accordance with either the maturity model or the compliance-based approach and thanked the Agency for having taken its comments on board.

However, France recalled that it had already expressed its views that the scope of the NSAs monitoring should be determined on the basis of Article 16 of the Railway Safety Directive which set forth a list of tasks common to all NSAs and informed the Agency that good note had been taken to the explanations provided previously in response to Germany's concerns.

Germany insisted on the need for the self-assessment to be taken into account by the audit team prior to the audits although it was added that this did not relieve the Agency of the obligation to check the NSAs against the requirements of both the Railway Safety and Railway Interoperability Directives.

Germany held the view that the NSAs monitoring process needed to be designed in such a way so as to ensure a better coordination between all the parties involved, including first and foremost the Agency and the NSAs, by facilitating, among others, the necessary preparatory work to be carried out prior to the audits and by making, therefore, the audit process itself as cost-efficient as possible.

Germany advised the Agency to offer to the NSAs envisaged to be monitored during the first three-year audit cycle the possibility to have their self-evaluation report taken into consideration by the audit team prior to the start of the audits and to reflect on whether such practice would rather be discontinued or not after the end of the three-year audit cycle and on the basis of sufficient return of experience from the initial phase.

Germany regretted that its stance on the scope-related matters was completely different from the Agency's position and admitted that it would be extremely difficult to reach a common agreement on those issues. More specifically, Germany analysed that, apart from the main processes which related to ECM certification, independent CSM control and recognition and were provided for under the Railway Interoperability Directive, there were several additional processes to be undertaken in support of those main processes.

Germany identified the need for a step-by-step approach to be followed on the matter and did not exclude the possibility of verifying whether the coordination between all the actors concerned, i.e. the NSAs, the ECM certification bodies, the independent review bodies and the recognition bodies, would be working well in practice at least during the first audit cycle and of revisiting the scope-related issues in view of the second cycle.

The Head of Safety Unit reiterated the Agency's view that Article 33 of the Agency Regulation as such did not seem to impose any limitation on the scope of its proposal on NSAs monitoring. However, he pointed out that this alone did not prevent the MB from placing such restrictions as may be deemed necessary on the scope of the decision under adoption on the basis of the tasks listed under Article 16 of the Railway Safety Directive.

While he agreed with the observations made by Germany on the role of the different bodies in the railway sector, he noted that it was one thing to have the NSAs carrying out a particular task on a different legal basis

and another thing to have different controls to be applied and particular functions to be performed by a recognised or accredited body NSA.

The Board members were warned that some Member States had chosen to assign directly specific tasks to a NSA and that the NSAs monitoring was the only process available to check the performance of such tasks by the NSAs in those cases but were reminded that it was up to the MB to decide whether the scope of the NSAs monitoring would be as broad as to cover those additional tasks or limited to the tasks listed under Article 16 of the Agency Regulation.

Moreover, the Head of Safety Unit referred to his previous experience with self-assessments done by bodies audited by the Agency over the last few years. He explained that, contrary to the organisations which usually performed well in the maturity audit scheme and scored themselves much harder than the audit team, other organisations which were not used to applying the maturity levels, tended to score themselves much higher than the audit team in almost all the activities. Consequently, although the MB had the power to decide otherwise, it was highly doubted whether the feedback reflected on the pre-assessments would be indeed useful for the audit team in practice and whether it would bring any added value to the audit process as such.

The Deputy Chair stressed the significance of the resource-related issues already highlighted by the U.K. and by Spain in light also of the report envisaged to be produced on the implementation of the scheme in September 2021. He recommended that it was particularly at that point, i.e. after the end of the first three-year audit cycle, that it was mostly appropriate to reflect on whether the interoperability-related aspects should be included in the scope of the NSAs monitoring in view of the second three-year audit cycle.

He also observed that the Agency had not raised any objections to allowing the audit team to be informed of the results of the self-assessment of the NSAs prior to launching the audit process but seriously challenged whether such pre-assessment should, in any case, be brought to the attention of the audit team ex ante.

The Executive Director accepted Germany's suggestions on the self-assessment and proposed to reflect further, after the end of the three-year cycle, whether the pre-evaluation of the NSAs should continue to be taken into account ex ante or whether it should be brought to the attention of the audit team only ex post. The possibility of allowing the audit team to pronounce itself on the relevant issues was also put on the table.

The Commission made reference to the "single audit" concept which favoured the idea of basing the audit on other audits done previously. Although it was recognised that this principle was of limited applicability in the context of the NSAs monitoring, it was stated that, along the lines of Spain's comments on the use of the term "monitoring" instead of the term "audit" and on the basis of a pragmatic approach, a well-done self-assessment would obviously turn out to be useful mainly in terms of facilitating the preparatory work to be done prior to the audits. However, it should not lead per se to final conclusions but rather be used as one of the many elements to be considered by the audit team.

The Head of Safety Unit clarified that the self-assessment was not excluded from the elements which should be looked at and guaranteed that the intention was not to limit the evidence to be used by the audit team.

According to Germany, it would be sufficient to add a clarification in the flowcharts included in the Annexes of the proposal without the revision of the text of the draft MB decision being necessary in that regard.

The Deputy Chair agreed with the way forward proposed by Germany. He also held the view that any issues related to confidentiality issues would most probably have to be dealt with under the specific framework on public access to documents applicable to the Agency and not in the context of the NSAs monitoring policy although they should definitely be included among the points to be reflected the implementation report which the Agency intended to produce after the end of the first three-year audit cycle.

He summarised that, following the remarks made mainly by Germany, France and Denmark on the scope of the proposed NSAs monitoring policy, it was up to the MB to decide whether the monitoring powers of the Agency should extend to all the tasks possibly incumbent upon the NSAs or whether the scope of the NSAs monitoring should be limited to the tasks of the NSAs listed under Article 16 of the Railway Safety Directive.

Slovenia intervened to express its clear preference for a rather limited approach to be adopted as regards the scope of the NSAs monitoring at least during the initial three-year audit cycle.

Following a request for clarifications on the possible limitation of the scope of the Agency's proposal to the NSAs tasks listed under Article 16 of the Railway Safety Directive, the Head of Safety Unit repeated that in some Member States the NSAs performed additional tasks and mentioned the example of some NSAs which had been also designated as bodies responsible for checking conformity with national rules or performed functions under the ECM Regulation.

The point was made that, although it was primarily for the Member States to decide whether such functions should be performed by the NSAs or not, the performance of those tasks by the NSAs should be checked through NSAs monitoring so as to avoid potential gaps in the monitoring process. It was stressed that this was main reason for which the Agency had decided not to limit the scope of its proposal only to those tasks explicitly mentioned in Article 16 of the Railway Safety Directive.

The Head of Safety Unit considered that if the EU legislator wished to place restrictions upon the scope of the NSAs monitoring by limiting the Agency's monitoring powers to those already listed under the relevant provision of the Railway Safety Directive, he would have made an explicit reference to that effect in the relevant text of the Agency Regulation.

The representative of the U.K. shared with the Board members the information that the British NSA carried out a number of processes which had been assigned to it under national law such as enforcement and prosecution and played also a role with regard to occupational health and safety issues. However, he opted for a restricted approach according to which the scope of the NSAs monitoring would be limited to those tasks of the NSAs arising directly from the Railway Safety and Interoperability Directives on the grounds that such approach would help ensure consistency in the practice to be applied by the Agency across the EU.

The U.K. considered that a practice according to which the Agency would subject to much more detailed audits those NSAs which happened also to perform a range of additional functions was not only inconsistent but also unfair.

The representative of Romania confirmed the statement previously made by the Head of Safety Unit by explaining that in some Member States, including Romania, the NSAs had also been assigned the role of ECM certification bodies and found that in those cases the NSAs should be subject to monitoring in respect of their additional tasks only if there was no monitoring policy in place applicable at national level to ECM certification bodies like NSAs.

The Deputy Chair understood that both the U.K. and Romania were in favour of limiting the scope of the NSAs monitoring policy to the tasks listed under Article 16 of the Railway Safety Directive.

The Head of Safety Unit wondered whether this was more an issue to be left at the discretion of the NSAs which could decide for themselves whether they wished to have those additional tasks covered by the scope of the NSAs monitoring policy as well rather than to be dealt with in the context of the MB decision to be adopted on the NSAs monitoring policy.

In response to the comment made by the U.K., the Head of Safety Unit pointed out that it was apparent from its proposal that the Agency did not intend to extend the scope of the NSAs monitoring policy beyond those elements which were either already covered under the Railway Safety and Railway Interoperability Directives or had their source in the secondary legislation which in turn drew its authority from those Directives. He also assured the U.K. that in particular as regards the British NSA which performed additional tasks directly allocated to it by the Member State concerned under other pieces of legislation, the Agency did not intend to include those additional tasks in the scope of its proposal on NSAs monitoring policy.

However, the Head of Safety Unit sensed that a clear separation line would have to be drawn between the restriction of the monitoring powers of the Agency mentioned previously and the proposed limitation of the scope of the NSAs monitoring policy only to the tasks listed under Article 16 of the Railway Safety Directive

which resulted in fact in restricting the already limited scope of the NSAs monitoring in the sense described above to a smaller subset of tasks performed by the NSAs.

The Board members were assured, in that regard, that the scope of the NSAs monitoring policy, which was currently reflected in the Agency's proposal as covering all the tasks to be carried out by the NSAs under the Railway Safety and Interoperability Directives, would not extend as far as to cover also the tasks related, for instance, to occupational health and safety carried out by the British NSA. They were warned that a limitation of the NSAs monitoring policy to the subset of tasks listed under Article 16 of the Railway Safety Directive would lead to a different scope than that already envisaged in the current proposal put forward by the Agency.

Moreover, the Head of Safety Unit stated that he was not really in favour of affording the NSAs a margin of appreciation as wide as to allow them to design their own audit scheme, believed that such a practice could be prone to misinterpretation. However, he admitted the scope-related issues were to be finally decided upon by the MB notwithstanding that some of its members were NSAs representatives.

Germany argued that, despite the fact that some tasks had been allocated to the NSAs directly by the Member States, the responsibility for having such tasks properly fulfilled by the NSAs continued to lie with those Member States. Moreover, the mere delegation of tasks to NSAs did not imply that there was no monitoring mechanism in place to check whether the NSA performed well the delegated tasks; on the contrary, in those cases the NSAs were being directly monitored by the competent national authorities, e.g. national ministries, which had decided to allocate to them those additional tasks in the first place and were not thus relieved from the obligation to ensure that the NSAs would be provided with the necessary resources to fulfil those additional tasks.

The Head of Safety Unit raised serious objections to the position held by Germany on the matter and referred to the findings of the audits performed by the Agency thus far. He insisted that in most cases, although the Member States had directly allocated additional tasks to a body, they had not made sure to place at its disposal sufficient resources which would allow this body to adequately perform such tasks, whereas in other cases the Agency had identified significant gaps between the scale of the work to be done and the available resources for the performance of such work.

The Head of Safety Unit insisted that the fact that a Member State had decided to allocate tasks to a body did not guarantee in and of itself that such body had been properly resourced to perform those tasks as evidence from the current state of play in many Member States across the EU.

Denmark reminded that the Agency had promised earlier during that day that it would not question any decisions issued at the level of the individual Member States on interoperability-related aspects and advised the Agency to follow the same approach also with regard to the choices made by the Member States on the allocation of tasks which fell outside the scope of Article 16 of the Railway Safety Directive.

Denmark expressed its preference for a limitation to be placed upon the scope of the NSAs monitoring policy on the basis of Article 16 of the Railway Safety Directive.

Austria pointed out that Article 16 of the Railway Safety Directive did not contain an exhaustive list but rather described the minimum tasks that the NSAs were required to perform, noted that the wording used implied that the tasks to be carried out by the NSAs could be more than those already listed there and found that the Agency's position that the scope of the NSAs monitoring policy could go beyond the list of tasks of Article 16 of the Railway Safety Directive had its own merit.

However, Austria sensed that, given the fact that the tasks already mentioned under Article 16 of the Railway Safety Directive were numerous, the position according to which the Agency should consider limiting the scope of its proposal to those tasks at least during the initial trial phase and to further reflect upon, at a later stage, on the basis of a step-by-step approach and provided that the resources available at that point would be sufficient, whether such scope could be extended beyond those limits did not seem to be mistaken either.

Austria recommended that the Agency should clearly identify those tasks which were, as such, not explicitly mentioned under Article 16 of the Railway Safety Directive but could be possibly covered by the scope of the NSAs monitoring policy in the future.

The Executive Director pointed out that, since the tasks to be performed by the NSAs were not the same in all Member States, the minimum requirements prescribed under Article 16 of the Railway Safety Directive seemed to provide a valid starting basis for the Agency's proposal to rely upon at least during the first audit cycle. He added that the initial audit phase represented a great opportunity for the Agency to gain overview of the additional tasks performed by the NSAs beyond the scope of the above-mentioned provision and to further reflect on whether it was worth subjecting those tasks to monitoring as well as closely linked to the performance and decision-making of the NSAs by reviewing, if necessary and on the basis of a step-by-step approach, the scope of its initial proposal in the implementation report to be produced in September 2021.

The Deputy Chair summarised that the Agency had agreed to clarify in the text of its proposal itself that the scope of the NSAs monitoring policy would be focused, at least during the first audit cycle, on the tasks listed under Article 16 of the Railway Safety Directive, that the scope-related issues would be revisited in any case in September 2021 and that the application of the limitation proposed by the Board members in practice would be put to the test during the first two pilot audits scheduled to take place in 2018.

Germany agreed with the compromise proposed by the Executive Director regarding the scope of the NSAs monitoring policy. The Agency was also requested to share with the NSAs concerned its findings on potential deficiencies identified, if possible, prior to the start of the second three-year audit cycle. Germany explained that the Agency was already aware of the poor performance of the risk assessment bodies or of the NoBos or AsBos in some Member States and that it would be useful for them to start working on any weak points identified thus far by the Agency at as early a stage as possible.

In response to the last point raised by Germany, the Executive Director confirmed that the relevant issues had also been dealt with during the discussions on the adoption of the NoBos monitoring policy. He admitted that Germany's request maintained its relevance as regards concrete authorisation cases and should rather be reflected upon not in the context of the NSAs monitoring policy but as a separate point for discussion.

The Deputy Chair concluded that the Agency should make adjustments to its current proposal in line with the remarks made by the Board members regarding the limitations upon the scope of the NSAs monitoring policy on the basis of Article 16 of the Railway Safety Directive and the need to make available ex ante to the members of the audit team the self-assessment report to be completed by the NSAs prior to the audits. He also invited the Agency to fine-tune the relevant document by replacing the term "deficiencies" with the term "minor or major observations" as requested by the Board members.

The Board members were provided with a brief overview of the updated proposal of the Agency as revised on the basis of the input received from the Board members in particular as regards the issues the role of the self-assessment, the use of the term "deficiencies" and the scope of the NSAs monitoring scheme.

The Head of Safety Unit confirmed that the Agency had already introduced the requested changes on the scope under the relevant section of Annex I on the NSAs monitoring policy by removing the relevant wording which reflected the view that Article 33 did not place any limitations in any way whatsoever on the Agency's monitoring powers. A paragraph was also added which clearly stipulated that for the pilot phase as well as for the first three-year audit cycle the scope of the NSA monitoring should be limited to the NSAs tasks listed under Article 16 of Directive 2004/49/EC and Article 16 and 17 of Directive (EU) 2016/798 and that additional tasks might be included under the scope of the NSA monitoring upon agreement between the NSA concerned and the Agency.

It was also pointed out that the updated text of section 3 of Annex I to the draft MB decision provided that, after the end of first NSA monitoring cycle, the opportunity to extend the scope of the NSA monitoring to all the tasks allocated to NSAs would be evaluated and reported in the review report mentioned under section 5 of Annex I on the "revision for the second three-year cycle (2022-2024)".

The Head of Safety Unit guaranteed that, following the concern raised by Sweden, the relevant terminology used in the proposal had been reviewed and that it had been considered appropriate to replace in the relevant parts of Annex II on the NSA monitoring evaluation procedure the distinction between “minor” and “major” deficiencies with the distinction between “deficiencies” and “observations” and that the flowchart under section 2 had been amended in such a way as to indicate more clearly that one of the inputs to the preparation of the Opening Meeting (OM) would be the self-evaluation form completed by the NSAs.

The Deputy Chair thanked the Head of Safety Unit for his presentation and considered that the updated proposal was very much in line with the points raised by the Board members earlier during that day.

Germany thanked the Agency for its updated proposal but went on to recall that, during the discussions held previously on the scope of the proposal, the Agency had been requested to identify the additional tasks performed by the NSAs beyond the scope of Article 16 of the Railway Safety Directive which could possibly be subject to monitoring by the Agency with a view to further reflecting at a later stage on whether it was actually worth extending the scope of its initial proposal to those additional tasks taking also into account the risks related to the performance of such tasks.

The Executive Director repeated that the report on the evaluation of the implementation of the scheme to be produced at the end of the first three-year audit cycle would deal, among others, with the issue of whether the monitoring could possibly cover other areas as well. He added that, although it had not been explicitly mentioned that the risks were also envisaged to be addressed under the evaluation report, it should be understood that the Agency should identify in its report not only the additional tasks to be possibly covered by the NSAs monitoring but also the reasons for which the initial scope of the scheme should be extended.

Although the Executive Director thought that the wording used in the Agency’s proposal was already in line with the remark made by Germany, he nevertheless did not object to having an explicit reference to that effect added to the text of the current proposal.

The Head of Safety Unit added that, as far as the first three-year audit cycle was concerned, it was apparent from the text of Agency’s proposal itself that only the tasks listed under Article 16 of Directive 2004/49/EC and Articles 16-17 of Directive (EU) 2016/798 were envisaged to be included in the scope of the NSAs monitoring. He assured Germany that the MB decision proposed for adoption did not predetermine in any way whatsoever the scope of the scheme during next audit cycle(s) but only the scope of the scheme during the first audit cycle.

It was guaranteed that no automatic extension of the initial scope of the scheme proposed for adoption was foreseen to take place since the current proposal stipulated clearly that the Agency was under the obligation to submit the report on the evaluation of the implementation of the scheme at the end of the first three-year audit cycle to the MB and that it was then up to the latter to verify whether the scheme as initially proposed had functioned properly and to further reflect on whether the approach followed during the first three-year audit cycle was the appropriate one or needed to be reviewed.

The Deputy Chair wished to confirm whether he had correctly understood that, despite the limitation of the initial scope of the NSAs monitoring to the tasks listed under the provisions previously mentioned by the Head of Safety Unit, the Agency would make an effort to verify, from the outset and in close cooperation with the NSAs, whether additional tasks performed by them could be possibly be included in the future scope of the monitoring scheme.

The Head of Safety Unit made reference to Annex I to the draft MB decision proposed for adoption which explicitly provided under section 3 on the scope of the scheme that additional tasks could be included in the scope of the NSAs monitoring upon agreement between the Agency and the NSA(s) concerned and explained that only if the NSAs agreed to have the scope of the NSAs monitoring extended to other tasks performed by them beyond the scope of Article 16 of the Railway Safety Directives as well would the Agency be entitled to start monitoring those additional tasks.

The Board members were invited to adopt the Agency's proposal on NSAs monitoring as revised in line with the comments and remarks made by the Board members earlier during that day.

The policy on monitoring the performance and decision-making of NSAs was adopted with twenty-one (21) votes in favour. Spain abstained from the vote.

The Deputy Chair thanked the Board members for their support and the Agency for the great work done and found that the adoption of the NSAs monitoring scheme was a challenging but very rewarding exercise on the basis of which quite useful lessons could be drawn with regard to future cooperation between the Agency and the Member States.

7. Conflicts of Interest (Col) rules for Management Board (MB) members update

It was recalled that according to Article 51 § 1 point (s) of the Agency Regulation, the MB should adopt rules for the prevention and management of conflicts of interest in respect of the MB members.

The MB was given a brief outline of the Agency's proposal which envisaged to establish a framework for the handling of conflicts of interest in respect of its members on the basis of the principles already embodied in the Administrative Board Conflicts of Interest Policy (AB Col Policy) adopted in March 2015 and currently applicable to the MB members and the requirements set under the new Agency Regulation and following benchmarking against Col rules applicable to the members of the governing boards of other EU Agencies.

The Board members were informed that an updated version of the initial proposal put forward by the Agency and revised on the basis of the comments received from Belgium, France and Finland had been brought to their attention following the 7th EB meeting in November 2017.

The EB Deputy Chair confirmed that most of the remarks which had been made during the 7th EB meeting in November 2017 had been taken on board by the Agency and that the need to revise the currently applicable AB Col Policy had also been clearly identified by and discussed amongst the EB members as well.

It was also reported that, during the relevant discussions on the matter within the EB, it had been considered appropriate to avoid a situation whereby the Agency would downgrade the process of handling the conflicts of interest in respect of the MB members to a mere bureaucratic exercise by placing upon the Board members the heavy administrative burden to submit an updated Public Declaration of Interest (PDol) on an annual basis.

For this purpose, the Agency had been advised by the EB to consider putting in place a system according to which the Board members would be required to update the PDol submitted by them upon their appointment not necessarily on an annual basis but only if deemed appropriate and where necessary and, in particular, in case the information initially provided in the PDol needed to be changed due to circumstances giving rise to additional interests which could not have been declared at an earlier point in time by the MB member concerned. However, it had been decided that, at the same time, a notification should be sent to all MB members annually as a kind reminder to keep them aware of their duty to update their PDols if necessary.

The EB Deputy Chair guaranteed also that, as discussed during the previous EB meeting in November 2017, any PDols already submitted until the formal adoption the new MB Col Rules would retain their validity until replaced by an updated PDol on the initiative of the MB member(s) concerned. Moreover, he stated that, following a concern raised by France on the need to respect the right to privacy of the close family members of the Board members, it had been made clear that the PDol form had been drawn up in such a manner so that only the interests –and not the names– of the close family members holding declarable interests would be declared and, therefore, published on the Agency's website.

Finally, it was reported that, in response to a concern voiced by France on potential contradiction between the statements contained in the provisions of Articles 6 § 5 and 15 § 3 of the draft MB Col Rules, the Agency had acknowledged that the safeguard provided under the latter was a bit redundant in view of the mandatory publication of all PDols and, therefore, would have to be removed from the text of the MB Col Rules.

France thanked the Agency for taking its comments on board but preferred to have in the text of the proposed MB CoI Rules itself and, in particular under the provision of Article 6 § 3, clearly stipulated that no names of the close family members holding declarable interests as such would be indicated in the PDol form by the MB member(s) concerned.

The Agency assured France that care had been taken to formulate the PDol form in such a manner so that the MB members would not be required to detail the names of their close family members holding declarable interests. It was recalled that this was the case up until that point and that any declarations already submitted by the Board members under the old regime did not contain any such names.

The proposed rules for the prevention and management of conflicts of interest in respect of the MB members were unanimously adopted by the MB.

8. Fees and charges – Reimbursement principles for experts (under the “Pool of Experts” scheme)

The Deputy Chair reminded that, following the request made by the Commission at the beginning of the meeting, no decision was envisaged to be taken on the agenda item earlier than the coming MB meeting of January 2018 and that the relevant issues would simply be discussed, at that point, within the MB

The Board members were provided with a brief overview of the Agency’s proposal on the main principles to be applied to the reimbursement of experts who would be working for the Agency under the “Pool of Experts” (PoE) scheme.

The Board members were presented the two options available to choose from on the reimbursement of the PoE experts. They were invited to indicate whether they preferred to have such reimbursement based on an individual hourly rate, i.e. the rate applied by the NSA concerned in the case of a NSA expert, or whether they considered more appropriate to apply to the reimbursement of PoE experts a common hourly rate which would be the same as the one to be used for the calculation of the fees and charges payable by applicants.

The 4th RP Preparation Programme Manager provided the MB members with an impact assessment analysis of the advantages and disadvantages of each one of the two options identified above. He also wished to draw their attention to the financial impact related to the risk of under-absorption of overheads which the Agency would be potentially faced with in either case.

It was summarised that, according the Agency’s proposal, the experts who would be working for the Agency under the PoE scheme should be reimbursed on the basis of an hourly rate to be defined individually by each NSA mainly for the purpose of ensuring that the NSAs would place at the Agency’s disposal the necessary expertise in a timely manner.

It was highlighted in that regard that, were it for the option of the individual hourly rate to be finally agreed upon by the MB as the most cost-efficient solution, the relevant MB decision should also contain sufficient safeguards against the risk of significant under-absorption of the costs to be reimbursed to the NSAs experts by holding the Commission directly responsible to provide financial support to the Agency in such a case.

The EB Deputy Chair reported that both options had been presented and discussed during the 7th EB meeting in November 2017 and that most of the EB members seemed to be in favour of the option of the NSA individual hourly rate. However, he shared with the MB the serious concerns raised by the Commission over the potentially significant risks of under-absorption related to the option proposed by the Agency.

The strong interdependencies between the MB decisions to be adopted on the above-mentioned aspects of the fees and charges payable by applicants and on the main elements and guidelines to be included in the cooperation agreements on the one hand and the draft Implementing Act (IA) on fees and charges payable by applicants on the other hand were also stressed in line with a comment made by the Commission during the previous EB meeting in November 2017 on the need to take good note of the time constraints in order to ensure a better coordination between the relevant decision-making processes.

Italy expressed its preference for the option of the NSA individual hourly rate but agreed with the Commission that such decision should be adopted by the MB as much as possible in parallel with the adoption by the RISC of the draft IA on the fees and charges payable by applicants.

Italy referred to the future apportionment of the fees and charges payable by the applicants as between the Agency and the NSAs and noted that the Italian NSA which, in its capacity as a public body was subject to controls carried out by the competent authorities at national level, would also be subject to controls by OLAF and ECA for the portion of the fees and charges received for the work that its experts would perform on behalf of the Agency.

Italy warned in particular against the risk of potential duplication of controls on NSAs which could entail not only additional administrative burdens and but also cumbersome bureaucratic obligations incumbent upon the NSAs and cause further delays in the process. Emphasis was also placed on the potentially significant negative impact which the NSAs would have to bear in case of delays in their reimbursement by the Agency.

Germany firstly asked the Agency whether it was aware of the individual hourly rates currently applicable by each of the NSAs. Germany thought that, were it for the option of the NSA individual hourly rate to be finally chosen, the Agency should consider whether, following a reliable assessment of the related risk of under-absorption, it made sense to define the applicable hourly rate at a higher level than the individual hourly rates used by the NSAs with a view to minimising the risk of under-absorption identified above as much as possible.

Germany also pointed out that, although the 4th RP Preparation Programme Manager had referred only to NSAs experts in his presentation, use could be made also of external experts not employed by NSAs.

According to Germany, experience showed that such experts were normally reimbursed on the basis of individual hourly rates higher than those applied by the NSAs. However, as the risk of under-absorption which the Agency might be faced with in those cases was significantly high, Germany suggested that this type of external experts should be reimbursed on the basis of the hourly rate of the Agency.

Moreover, Germany doubted whether the Member States would eventually agree upon on the application of a model for the reimbursement of the experts working for the Agency under the PoE scheme which they could foresee, already at that point, that it would most likely result in creating a risk of under-absorption to be borne by the Agency. The need to come up with a solution reliable enough to guarantee from the outset that any financial risks would be avoided as much as possible was underlined in that regard.

The 4th RP Preparation Programme Manager firstly thanked Italy for its support but considered that it was during the discussion on the Agency's proposal on the guidelines and main elements to be included in the cooperation agreements in the coming MB meeting of January 2018 that the two points raised by Italy would be more efficiently addressed.

In response to Italy's first question on the potential duplication of controls to be performed upon the NSAs, he reported that, following discussions on the matter within the NSA Subgroup on the cooperation agreements, it had been proposed to subject the NSAs to the control of OLAF but promised that the relevant issues would be certainly revisited during the coming MB meeting in January 2018.

On the concern raised by Italy with regard to possible delays in the reimbursement of the NSAs, it was stated that the current proposal on the draft IA on the fees and charges payable by applicants envisaged a deadline of sixty (60) days within which the applicants should deliver the payment to the Agency and that the Agency intended to have the same deadline applied with regard to the reimbursement of the NSAs as well.

Moreover, the 4th RP Preparation Programme Manager replied to Germany that, despite the useful information provided through the SDG study, the Agency had not yet managed to gain a complete overview of the individual hourly rates applied by all NSAs but identified the need for such information to be made available to the Agency at the latest when the draft IA on the fees and charges payable by the applicants would be put to the vote at RISC.

The Board members were also informed of the Agency's intention to "feed" the PoE mainly with NSAs experts and that, for such purpose the NSAs had been kindly requested to provide the Agency not later than the beginning of 2018 with a first estimation of the number of experts who would participate in the PoE scheme, including details on the areas of expertise covered by those experts.

It was added that the Agency intended to use the feedback received from the NSAs for the purpose of making a gap analysis to identify whether there was lack of expertise as regards specific areas and whether a procurement procedure would have to be launched to fill the identified gaps. However, it was noted that, in such a case, the Agency would be in a position to set the reimbursement rate at the level of its own choice. The possibility of using the Agency's hourly rate in the calls for expressions of interest to be addressed to external experts was not excluded in that regard.

On the risk of under-absorption highlighted by Germany, the 4th RP Preparation Programme Manager made the hypothesis that, if the assumptions on the different hourly rates applied by some NSAs could be certainly relied upon by the Agency and on the condition that the Agency's hourly rate would be defined as the common hourly rate to be applied at least in the first steps of the exercise, a proper balance could be achieved between the risk of under-absorption and the possibility of over-absorption. He also recalled that the draft IA on the fees and charges payable by applicants envisaged the review of the rates applied on an annual basis and concluded that this alone served as a guarantee that the risk of under-absorption to be borne by the Agency was within acceptable limits.

Spain wondered whether the fees and charges payable by the applicants would be the same in all cases and regardless of the individual hourly rates applied by the specific NSAs involved and mentioned, for example, that, contrary to the individual hourly rates applied by the NSAs of Finland and Sweden, the hourly rates used by its NSA and by the NSA of Portugal were lower than the average NSA hourly rate and/or the Agency hourly rate. Spain considered as unfair a practice according to which the applicants would have to bear the same amount of fees and charges despite the differences in the individual hourly rates applied by the NSAs concerned and, thus, the actual costs incurred for the work done by their experts on the Agency's behalf.

Spain held the view that when adopting the relevant decision on the reimbursement principles for PoE experts the MB should give due consideration to the model proposed under the draft IA for the determining the fees and charges payable by applicants. Spain expressed its preference for the option of the common hourly rate also out of fear that the option proposed by the Agency could lead to discriminatory practices against different NSAs experts.

The Commission agreed with the concern raised by Spain on the initial time frame set for the adoption of the relevant MB decision and wished to have such adoption postponed at least until the coming MB meeting in January 2018 due to the strong interdependencies between the MB decision and the related draft legal act on fees and charges payable by the applicants to be adopted by the RISC.

The importance of building up a PoE with experts who would cover different areas of expertise in as balanced and simplified a manner as possible taking also into account geographical and linguistic criteria was also stressed. The possibility of having recourse to external consultants depending on the type and level of expertise required in each case was not excluded.

In response to the first question raised by Italy, the Commission confirmed that the controls applied by OLAF or ECA in such cases would be mainly aimed at verifying whether the fees paid by applicants corresponded to the actual costs incurred with a view to limiting as much as possible the risk of overcompensating the NSAs.

The Commission noted that, were it for the option of NSA individual hourly rate to be finally agreed upon by the MB as the appropriate way forward, the audited NSAs would have to provide solid evidence of the exact amount of the hourly rates applicable at national level, whereas if the option of the common hourly rate was to be chosen, the OLAF or the ECA would limit itself to checking whether the number of hours charged to the applicant corresponded to the number of hours actually worked by the NSAs experts on behalf of the Agency.

The Executive Director emphasised that the MB should reach an agreement on one of the options presented by the Agency prior to deciding on other interrelated matters such as those arising mainly in respect of the cooperation agreements. However, he insisted that, although, upon the Commission's request, the adoption of the final decision had been postponed at a later stage, the Board members should at least make sure to provide the Agency, already at that point, with as a consistent and mature input as possible in view of the imminent adoption by the RISC of the draft IA on fees and charges payable by the applicants

Luxembourg requested further clarifications on the precise budgetary implications of the options put forward by the Agency. Along the lines of the concern raised by Spain, Luxembourg wondered whether, on the condition that it was the option of the NSA individual hourly rate which would be finally agreed upon by the MB, the intention was to differentiate the amount of the fees and charges payable by the applicants on the basis of the individual hourly rates applied to the reimbursement of the NSAs experts given that the applicable rates varied from NSA to NSA and, therefore, were different in each Member State.

The Executive Director replied to Luxembourg that the current model debated within RISC in the context of the discussions on the draft IA on the fees and charges payable by applicants favoured, mainly for reasons of consistency and simplicity, the application of a uniform rate for the calculation of the fees and charges payable by the applicants which did not vary depending on the Member State of origin of the experts deployed by the Agency. He inferred from this that the responsibility to deal effectively with potential risks of under-absorption of over-absorption in such cases lied solely with the Agency.

Germany announced its intention to support the application of the NSA individual hourly rate as the only option which could ensure to a certain extent that the necessary expertise would be finally made available to the Agency in the form of either NSAs experts or external consultants.

However, Germany considered that, in the case of a procurement procedure, it should be specified in the call for expressions of interest itself that hourly rates of reimbursement should be defined in accordance with the hourly rates applied for determining the fees paid by the specific applicant. Germany insisted that only under exceptional circumstances and provided that the number of the experts who would have expressed their interest thus far was not sufficient should the Agency be allowed to apply higher hourly rates.

However, while Germany acknowledged that the amount of 120 € as the Agency hourly rate was reasonable –and applicable also by the German NSA– it nevertheless advised the Agency to re-assess whether such amount represented the best way forward in light also of the higher hourly rates applied by some NSAs and warned the Agency of the serious difficulties it could be faced with when seeking for experts to work at such low hourly rate.

Italy wondered whether the option of a fixed hourly rate applicable to all NSA which was already covered under the Commission's proposal on the draft IA on the fees and charges payable by applicants should be considered as falling within the scope of the option of the NSA individual hourly rate favoured by the Agency.

Moreover, Italy reported that, despite the use of the fixed hourly rate at national level, its NSA was still subject to audits by the competent national authorities and wished to obtain further clarifications on the frequency of future controls to be performed either by OLAF or by ECA on the NSAs.

Slovenia referred to the quite extensive discussions held within the relevant Ministry on the matter, admitted that the experts who had been nominated by the Slovenian NSA to participate in the PoE scheme were not as supportive of the option of the NSA individual hourly rate as proposed by the Agency as initially expected.

Slovenia considered that it was not in the role of the MB to adopt decisions which could bear tremendous impact on the Agency's resources all the more so since the Commission was hesitant, for the time being, to reiterate in advance its commitment to offer its support to the Agency in the event of a significant under-absorption of the costs paid to the NSAs/experts.

Moreover, Slovenia agreed with Spain that the option of the NSA individual hourly rate could raise issues of discrimination against some NSAs experts mainly on account of the different hourly rates used by the NSAs.

The Executive Director replied to Slovenia that any reimbursement issues arising in respect of the NSAs experts should be clearly distinguished from those related to the reimbursement of external experts which would be recruited by the Agency from the free market by means of a procurement procedure launched specifically for that purpose. In the latter case, the Agency intended, in line with the suggestions previously made by Germany, to apply its own hourly rate as a first step and to consider raising such hourly rate only in exceptional cases of limited availability of experts across the whole EU.

The Commission explained to Italy that, according to the current version of its proposal on the draft IA on the fees and charges payable by applicants, were it for the NSAs to set a fixed amount of charge for the work to be done under the 4th RP Directives with regard to the assessment of national rules and other issues falling within their competence, the same amount would be passed on to the Agency which in turn would eventually and transparently pass it on to the applicant for that work.

However, the Commission wished to draw the attention of the Board members to the different scope of the decision which they would be called to adopt in relation to the fees and charges payable by the applicants which concerned in particular those cases where NSAs experts could possibly assist the Agency with the work that the latter was required to perform at Union level. The Commission clarified that the relevant issues were not dealt with under the draft IA on the fees and charges payable by applicants and warned against the risk of under-compensation which could materialise should the hourly rates to be applied to the reimbursement of experts working for the Agency not match the rates applicable for the calculation of the fees and charges payable by the applicants.

The Commission invited the Agency to provide the Board members with an overview of the different hourly rates applicable by the NSAs in each Member State as well as with feedback from the NSAs of the highest-cost Member States on the actual implications in case the Agency was faced with a major shortfall in meeting its obligations.

The Commission opted for the option of a common, pre-defined hourly rate as a much simpler solution both from a legal and administrative point of view, the only concern being that the Agency might not be able to find the necessary experts in particular areas and/ or in relation to specific languages.

It was also pointed out that any arrangements to be made by the Agency for the use of external experts not employed by the NSAs would have to be previously reflected upon with the Commission. The Agency was advised, already at that point, to consider seeking additional experts other than the NSAs experts either by establishing a pool of experts similar to the one used for “Horizon 2020” where the experts would be reimbursed in a non-discriminatory manner at a fixed rate or by launching a call for tenders where the rate to be applied to the experts finally awarded the tender would flow from the tender itself.

In response to the request for feedback previously raised by the Commission on the applicable hourly NSAs rates, Sweden agreed with the views expressed by Germany and clearly excluded the scenario of supporting the option of the common hourly rate presented by the Agency.

The Deputy Chair sensed that, despite some divergence of views within the MB, the option of the NSA individual hourly rate was supported by most of the Board members thus far. He also identified the need for the Agency to further reflect on some particularly complex issues already identified by the Board members, such as those related to the handling of the financial implications for the Agency in case of significant under-absorption of the costs paid to the NSAs/experts, the definition of the rates applicable to the reimbursement of external experts working for the Agency, the scope of the potential OLAF and/or ECA audits to which the NSAs would be potentially subject and the possibility of aligning the relevant decision-making process within the MB with the imminent adoption by the RISC of the draft IA on the fees and charges payable by applicants.

The Deputy Chair wished to confirm whether the option of the NSA individual hourly rate proposed by the Agency was in line with the practice followed by other EU Agencies when dealing with such issues as charging.

The Executive Director replied to the Deputy Chair that, according to the SDG study referred to previously by the 4th RP Preparation Programme Manager, not all EU Agencies had opted for the same approach when it

came to the reimbursement of experts deployed by them. He mentioned the example of EASA which had put in place a different model of hourly rates although not as standardised as the one envisaged to be established by the Agency and admitted that market specifics was among the factors to be taken into account when making the relevant choice.

Moreover, the Board members were assured that the Agency intended to minimise, at least in the first phase of the scheme, its exposure to financial loss risks as much as possible and informed that the recently established “liaison office” had provided the Agency with a quite accurate overview of the projects it would have to work on as of 2019 and that further feedback would be received during the pre-engagement phase.

The Executive Director identified the need to set, at a certain point in time starting from 2019 onwards, the hourly rate to be applied to the reimbursement of experts working for the Agency at a fixed rate but did not exclude the possibility of applying that a higher hourly rate than the currently applicable one. He emphasised that it was only by increasing such hourly rate that the Agency would manage to minimise significantly the risks of under-absorption and avoid any financial loss potentially resulting therefrom.

The Deputy Chair suggested that the Agency would further elaborate its proposal on the option of the NSA individual hourly rate in view of the coming MB meeting in January 2018.

9. Single Programming Document (SPD) – Budget and establishment plan 2018

The Board members were firstly provided with an overview of the main steps followed in the process for the development of SPD 2018 as well as with a non-exhaustive list of the objectives to be achieved by the Agency regarding the various activities included in the SPD both from a multi-annual perspective –starting from 2018 an extending as far as 2020– as well as from a purely annual perspective already reflected in SPD 2018.

The Strategy and Business Planning Officer of the Agency took the opportunity to remind the Board members that Draft 4 of SPD 2018 proposed for adoption by them had already been made available on October 27th 2017. However, the Agency had considered appropriate to update such draft in the meantime in line with the additional budgetary comments received from the Commission with regard to the expenditure table and the procurement plan and to introduce some editorial changes to the current version.

The Board members were invited to adopt Draft 4 of SDP 2018 including the amendments highlighted above.

The EB Deputy Chair announced that the draft budget 2018 proposed for adoption had decreased by 610.000 € compared to the statement of estimates 2018 presented and adopted during the 41st MB meeting in January 2017. He regretted the fact that, as a result of such budget cut, the implementation of SPD 2018 would have to be carried out eventually with slightly less resources than initially envisaged and invited the Agency to give further clarifications on the precise implications of such budget decrease mainly from a practical point of view.

The Head of Resources and Support Unit confirmed the announcement made by the EB Deputy Chair and made the preliminary remark that the Agency had decided to undertake a revision of all Titles under draft budget 2018 in an effort to identify the best ways to make amends for the budget decrease of 610.000 €.

The Head of Resources and Support Unit presented a brief synopsis of the Agency’s proposal on the draft budget and establishment plan 2018 which had been put forward for adoption by the MB.

More specifically, it was explained that the different amounts listed under the different budget lines in Title 3 of draft budget 2018 had been re-allocated so that the costs related to some unforeseen additional needs linked mainly to the preparatory work to be done for the 4th RP implementation could be covered by savings made under the same Title. The Board members were informed on the planned reduction of the costs related to the number of missions, the number of meetings or meeting days, the number of experts to be reimbursed, the provision of interpretation services during some meetings, the provision of support for NIB meetings and the translation of documents, if necessary.

The Head of Resources and Support Unit invited the MB to adopt both the draft SPD 2018 as well as the draft budget and establishment plan 2018 subject to the adoption by the budgetary authority of the general EU budget, including establishment plan for the Agency, which had been scheduled for mid-December 2017.

The Commission thanked the Agency for taking on board its comments which were mainly aimed at helping the Agency fine-tune the relevant document prior to its adoption by the MB but asked the Agency to delete, if possible, the clarification on the re-classification of Contract Agents (CAs).

The Strategy and Business Planning Officer of the Agency guaranteed that the Commission's remarks on SDP 2018, including the last-minute comment which had just been made on the re-classification of CAs, would be taken on board by the Agency and that the relevant text of SPD 2018 would be amended accordingly.

Italy reacted to the planned reduction of costs related, among others, to meetings, as previously announced by the Head of Resources and Support Unit by raising the concern that the budget available for meetings might not be sufficient enough to allow the Agency to hold as many meetings as required by the importance of the issues to be discussed. It was also suggested that the envisaged cost-reduction on the provision of interpretation services could extend to Board meetings by introducing English as the only language to be used during the discussions held amongst the MB members.

The representative of Railway Industry (RI) agreed with Italy's proposal which represented a fair practice considering in particular that some Member States representatives were, in any case, required to use English as interpretation services were only available from French and German to English and vice versa.

Moreover, RI wished to clarify whether the amount of 1.000.000 € listed under budget line 3030 concerning the "One-Stop Shop (OSS)" in Title 3 of the draft budget 2018 annexed to the draft MB decision proposed for adoption was supposed to cover not only meeting-related costs but also development of the OSS IT tool as this was not apparent from the text of the related budgetary comment itself.

The Head of Resources and Support Unit assured the Board members that the amount foreseen under the relevant budget line intended to cover the costs for the development of the OSS tool, including the relevant IT platform as well as other OSS-related registers.

RI insisted that the budgetary comment related to the budget line 3030 should be updated so as to reflect more clearly that the amount of budget listed thereunder would cover the costs not only for the organisation of OSS-related meetings as such but also for the delivery of the concrete outputs of the discussions held during those meetings.

The Head of Resources and Support Unit intervened to point out that, to his understanding, it was apparent from the wording used in the relevant budgetary comment and, in particular, from the phrase "studies and consulting services", that the costs related to the development of the OSS tool as such fell within the scope of the budget amount of 1.000.000 € listed under the budget line 3030.

However, both he and the Deputy Chair guaranteed that the relevant text of the budgetary comment would be amended in line with the proposal made by RI.

In response to the concern raised by Italy, it was promised that the Agency did not intend to go about cutting blindly on the number of meetings; it was mainly upon the forecasts of the meetings of different working parties or groups of the Agency which had been given by the Heads of Units (HoUs) of the Agency since the beginning of 2017.

More specifically, it was explained that, when revising the draft budget 2018, the issue of whether some decisions could be made on the basis of discussions to be held in fewer meetings than those initially foreseen had been reflected upon. However, the scenario of holding as many meetings as necessary but with no reimbursement of experts for instance was not excluded either but the need to monitor closely the envisaged cost-reduction at least as regards the number of meetings and meeting days by focusing, among others, on the outcome that the Agency was expected to deliver in close cooperation with the Member States, was clearly identified.

The Head of Resources and Support Unit was also open to Italy's proposal on the future reduction of the costs related to the provision of interpretation services during the Board meetings.

The Executive Director recalled that the provision of interpretation services during the Board meetings was not required by any legal provision and shared with the MB members the information that the interpretation-related costs for all the Board meetings amounted to around 50.000 € per year. He stated that it was up to the MB itself to decide whether they wished to have the provision of interpretation services during their meetings terminated.

Although, the Deputy Chair was personally in favour of Italy's proposal, he sensed that some preparation would have to be done prior to the adoption of a decision on the matter by the MB and did not exclude the possibility of making such decision within the limits of the current budget 2018 at a later stage, i.e. in the beginning of 2018.

Germany advised the Board members to avoid entering, at least at that stage and in the context of the adoption of the draft budget 2018, into detailed discussions on the issue of whether the Agency should continue to have recourse to interpretation services during the Board meetings and to postpone the relevant debate to a later date.

France expressed its support for the position taken by Germany.

The Deputy Chair agreed that it might not be the most appropriate time to deal with the issue of the reduction of the costs related to the provision of interpretation services during Board meetings but insisted that it might still be worth to revisit the matter within the limits of budget 2018 in the beginning of the new year.

The Single Programming Document (SPD) 2018 was adopted unanimously by the MB. The Deputy Chair congratulated the Agency on the great work done on the adopted SPD 2018.

The budget and establishment plan 2018 was adopted by the MB with twenty-one (21) votes in favour. Slovenia abstained from the vote and explained its choice by referring to the concerns it had raised during the discussion on the previous agenda item on the principles of reimbursement of the experts working for the Agency under the PoE scheme.

Although the Deputy Chair admitted that the fees and charges regime would not yet be applicable in 2018, he assured Slovenia that the Agency had certainly taken good note of its point.

10. Headquarters agreement

The Board members were reminded that no decision would be adopted on the relevant agenda point and were provided with a brief overview of the state of play regarding the discussions currently held on the conclusion of the headquarters agreement between the Agency and France.

The Executive Director explained that, given that the Agency had received the final draft of the headquarters agreement only after mid-November 2017, it had been considered appropriate not to bring it to the attention of the MB for approval on such short notice and while the internal review of the draft headquarters agreement by the legal services of both the Agency and of the Commission was still pending.

Although the Executive Director seriously doubted whether the necessary preparatory work to be carried out by the Agency prior to the approval of the draft headquarters agreement by the MB would have been completed until the coming MB meeting in January 2018, he promised that all efforts would be put into ensuring that the relevant issues would be treated in as timely a manner as possible and that the MB would, at least, be updated on the progress of the work done towards finalisation of the headquarters agreement during the coming MB meeting of January 2018.

It was emphasised that it should be mainly the quality of the final draft to be agreed upon between the parties which would rather be carefully looked into at that point as the process leading to the conclusion of the headquarters agreement between the Agency and France had already reached its final stage.

The Executive Director thanked the French authorities and, in particular, the representative of France on the MB, for their quite constructive cooperation on the matter.

The Deputy Chair noted with appreciation the significant progress made in the discussions between the Agency and the French authorities on the conclusion of the headquarters agreement. He repeated that the Agency would make its best to ensure that the Board members would be provided with a final version of the draft headquarters agreement well in advance of the meeting when their approval would be requested and, if possible, the coming MB meeting of January 2018.

11. Procedure for cooperation with national authorities in judicial proceedings

The Board members were provided with a brief outline of the current version of the Agency's proposal on the procedure for cooperation by the Agency and its staff in national judicial proceedings involving the Agency by reason of the Agency having exercised its powers in relation to VAs, SSCs issued by it and decisions for the approval of ERTMS trackside equipment projects as required under Article 51 § 1 point (v) read in conjunction with Article 73 and recital No. 11 of the Agency Regulation.

It was firstly recalled that an initial version of such proposal had been duly brought to the attention of the MB members and discussed during the 43rd MB meeting in September 2017.

The information provided to the MB mostly focused on the envisaged scope of the proposed procedure *ratione materiae* and *ratione personae* as well as on the main principles embodied therein. Specific reference was also made to the comments submitted thus far from Spain, the Netherlands and Bulgaria and to the input received from the Commission.

In anticipation of the comments which had yet to be sent to the Agency by France, the Board members were kindly requested to indicate whether they agreed to have the initial deadline for the submission of comments extended until December the 11th 2017 and an updated version of the proposed procedure revised on the basis of the comment and remarks which would have been sent in the meantime to the Agency circulated to them until January 15th 2018 and put forward for adoption during the coming MB meeting in January 2018. Alternatively, the Agency could extend the initial deadline for the submission of additional comments until the end of February 2018 with the intention to make the revised version of the proposed procedure available to the Board members around the end of March 2018 and to propose it for formal adoption either during the 46th MB meeting of June 2017 or by means of written procedure to be launched in April or May 2018.

France confirmed that its comments on the proposed procedure would be submitted within the deadline of December 11th 2017.

The Deputy Chair concluded therefrom that the proposed procedure could be put forward for adoption by the MB during its coming meeting in January 2018.

12. Implementation of the 4th Railway Package (RP) – Decisions and strategic perspective

The Board members were given a detailed insight into the most important aspects of the strategic perspective towards the implementation of the 4th RP.

The Executive Director announced that a successful vote had been held on the proposed IA on Practical Arrangements (PAs) for VA during the RISC meeting on November the 16th 2017. He thanked all the Member States representatives who were present during that meeting and had thus actively contributed to this major achievement which would be used as a solid basis for further progress in view of the significant challenges lying ahead and in particular for the work to be done with regard to the nineteen (19) authorisation projects which had had already been shortlisted through the recently established liaison office of the Agency.

A revised version of the planning prepared by the Agency with particular focus on the decisions which were envisaged to be adopted by the MB for the implementation of the 4th RP for the remainder of 2017 as well as during 2018 was also presented to the Board members.

Particular emphasis was given on the timely adoption by the MB of the decision on the list of main elements and guidelines to be included in the cooperation agreements which had been scheduled for the 46th MB meeting of June 2018 and should, in any case, have been completed by mid-next year so as to allow the Agency sufficient time for negotiating and concluding subsequently the specific cooperation agreements with each individual NSA, including the additional multilateral arrangements to be signed with the NSAs of the Baltic countries.

A point was also made on the planned changes in the internal organisation of the Agency which were envisaged to be introduced at a certain point in time between June and September 2018 so that the new organisational structure could be put to the test already during the shadow-running phase and, if necessary, adjusted at a later stage.

The Agency took also the opportunity to inform the Board members that, given the advanced status of the discussions in RISC on the issues related to the Board(s) of Appeal (BoA) which would be debated during the RISC meeting in January 2018, the Agency had considered appropriate to add an item on the conditions for reimbursement of expenses of BoA members in the agenda of the coming 45th MB meeting of January 2017 for discussion and to circulate a first draft of its relevant proposal to the MB in advance of that meeting.

The Commission thanked also all the Board members who had been directly involved in the successful vote on the IA on PAs for VA and noted with appreciation the Agency's great contributions to this achievement which was, in its view, a major milestone towards the 4th RP implementation.

The Board members were informed that an additional Expert Group meeting would be held with particular focus on the other implementing acts in the pipeline which had yet to be adopted by the RISC during January 2018 and prior to the next RISC meeting with a view to holding detailed discussions on the BoA-related issues –which were currently going through a process of inter-service consultation within the Commission– as well as on the topic of the fees and charges payable by the applicants.

The Commission wished to draw the attention of the Board members on two additional points which were not as such directly linked to the process towards the 4th RP implementation.

More specifically, the Commission identified to focus its future efforts in close cooperation with the Agency on the implications arising out of the Rastatt railway crisis. It was added that the language requirements in particular for train drivers would have to be examined more closely taking into account the need to establish the use of standardised messages for the purpose of facilitating either cross-border or emergency journeys and the principle of flexibility and that the issues related to intermodal gauging would also have to be further explored in that context.

The Executive Director confirmed that the Agency had already been involved in multimodality-related activities, pointed to the strong linkages between the matters discussed and the TSI OPE which the Agency had also started working on and announced that a workshop would be organised in close cooperation with UIRR on December the 11th 2017 in Lille on topics related to multimodality and codification of combined transport.

Germany pointed out that it was only the issues related to the BoA and the fees and charges payable by the applicants which were expected to be debated during the coming RISC meeting in January 2018. Having said that, Germany sought to confirm whether its understanding that the additional aspects previously identified by the Commission as flowing directly from the Rastatt railway incident would also be dealt with during the Expert Group meeting which had been scheduled for January the 15th 2018 was correct.

Austria stressed the importance of the point raised by Germany and made reference to the implementing measures already put in place on the issues related to the language requirements for train drivers in particular as regards in cross-border journeys in the context of the proposal to recast of Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community (hereinafter referred to as the "Train Drivers Directive").

The Board members were informed that a stakeholder meeting had taken place in July 2016 and that a public consultation process already had been launched with particular focus on the language-related issues.

Austria asked whether the above-mentioned initiatives were somehow linked to the envisaged discussion on the matter previously referred to by the Commission.

The Commission confirmed that a public consultation had indeed been held on the evaluation of the Train Drivers Directive and that the results of such consultation would be published in the beginning of 2018.

Although the Commission did not exclude the possibility of a recast Train Drivers Directive to be issued, it made the hypothesis that such development was highly likely to occur at least in the near future based on the assumptions that an impact assessment would have to be carried out before the text of an envisaged recast Directive could be agreed upon and that such impact assessment would take place during 2018.

While the Commission acknowledged that these aspects were amongst the main lessons to be learnt from the Rastatt railway incident, it nevertheless insisted on the need for an immediate response which would be much quicker than the future adoption of a recast Train Drivers Directive to be given by placing special emphasis on the added value of standardised messages in that regard.

More specifically, it was analysed that the future work on the aspects identified above as directly related to the Rastatt railway incident should focus on the development in the broader context of the TSI OPE of a set of standardised messages to be used either within a single language or in international traffic particularly in emergency situations the purpose of enhancing the quality of communication.

The Commission recommended that the option of the standardised messages could provide a reliable short-term solution in order to deal at least with some –and not the whole range– of the Rastatt-related aspects by giving full effect to the provisions of the Train Drivers Directive currently in force on the use of non-international train drivers' licenses until a long-term balance could be achieved in the longer term between the requirements set by safety standards and the need to facilitate operational work by raising, among others, the level of the language requirements imposed by the above-mentioned Directive.

The Executive Director agreed with the point made by the Commission on the potential linkages between the Train Drivers Directive and the work to be done on TSI OPE in the sense that the aspects previously described by the Commission should play a key role in the development of the TSI OPE which indeed was expected to be completed in much less time than the envisaged update of the Train Drivers Directive.

The Deputy Chair summarised that the follow-up to the Rastatt railway crisis could already be undertaken in 2018 despite the fact that any proposal on the recast Train Drivers Directive was expected to be made at a quite later stage and, in any case, not earlier than 2019.

13. Framework model for the financial apportionment of the fees and charges payable by applicants

The Board members were reminded that the MB was required to adopt, by virtue of Article 51 § 1 point (u) of the Agency Regulation, a framework model for the financial apportionment of the fees and charges payable by applicants which was envisaged to be taken into account, under Article 76 § 2 of that Regulation, for determining the manner in which the fees payable by applicants were to be apportioned as between the Agency and the NSAs in the text of the cooperation agreements itself.

It was explained that, according to the Agency's proposal, the NSAs should be integrally reimbursed for that portion of the fees and charges payable by applicants which would be related to the work performed within their scope, i.e. with regard to the assessment of national rules. They were also assured that the MB would be explicitly given the possibility to review its decision, if necessary and in the case of revision of the model currently proposed under the draft IA on the fees and charges payable by applicants which envisaged the transition, on the basis of a step-by-step approach, to a unique fee applicable to each specific type of VA.

The U.K. warned the Agency that it would raise objections to any proposal which sought to have the Agency relieved from the obligation to reimburse the NSAs in case of non-payment of the fees and charges payable by applicants.

The 4th RP Preparation Programme Manager clarified that it was under the discussions on the cooperation agreements that any issues arising in respect of potential non-payment of the fees and charges payable by the applicants were primarily envisaged to be dealt with.

While the representative of the U.K. took good note of the point made by the 4th RP Preparation Programme Manager he wished to draw in advance the attention of the Agency to the fact that some Member States representatives, including himself, would most likely not be very pleased were it for such approach to be chosen by the Agency on the matter.

The 4th RP Preparation Programme Manager stated that it was up to the MB to agree on a different approach to be followed and to decide that it would be the Agency which would have to bear the entire risk of non-payment of the fees and charges payable by applicants.

14. Update on the implementation of the Communication Plan 2017 – Draft Communication Plan 2018

The Deputy Chair made the introductory remark that the draft Communication Plan 2018 would be discussed during that meeting and put forward for adoption during the coming 45th MB meeting in January 2018.

The Board members were given a short report on the implementation of the adopted Communication Plan 2017 and on the next steps to be taken mainly in the form of a follow-up to the 2015 Communication Strategy Action Plan as reflected in the draft Communication Plan 2018.

Particular emphasis was placed, among others, on the quite successful organisation by the Agency during 2017 of the five SERA Regional Conferences and of the SERA Convention Conference which had been organised in close collaboration with DG MOVE and were to be viewed as the key asset of the Agency's communication strategy for that year and in the context of the 4th RP campaign.

The Board members were presented a list of the milestone events which had already taken place or had been scheduled to take place during the period from mid-2017 until mid-2019, with particular emphasis on 4th RP-related workshops organised by the Agency at national level as a follow-up to the SERA Regional Conferences upon specific requests received from the NSAs and Sector stakeholders in the individual Member States.

Information was also given about the most important events in which the Agency had already participated since the beginning of 2017 or envisaged to participate during the remainder of 2017 as well as during 2018.

The Communication Officer of the Agency highlighted that the scope of the communication strategy of the Agency for the years 2017-2018 was as broad as to cover not only the topics linked to the 4th RP but also issues related to multimodality, digitalisation, innovation, ERTMS and cybersecurity. He also made a brief synopsis of the editorial plan followed for the preparation of the Agency's newsletter and invited the MB members to express their interest in working with the Agency on some of the topics to be dealt with in future newsletters.

The Head of Corporate Management and Evaluation Unit announced that the next newsletter of the Agency would be sent out in the beginning of December 2017 and thanked the Sector for its valuable contributions to turning the "spotlight on the customer" into a permanent section of the Agency's newsletter.

The Deputy Chair stressed the importance of the communication aspects of the Agency's work in particular in view of the impending implementation of the 4th RP and noted with appreciation its efforts to provide an adequate follow-up to the events organised that year and to ensure that dissemination on the 4th RP would even go beyond the "usual" stakeholders, such as NSAs experts and Member States representatives.

RI wished to share with the Board members the position of the Group of Representative Bodies (GRB) according to which the Sector should not only be kept regularly updated and informed on time on any future 4th RP-related events to be organised by the Agency but also invited to participate directly and actively involved in the planning of and coordination of the different inputs to those events.

The Agency was kindly requested to ensure that the Sector representatives would, from that point onwards, be notified in advance of such events and, in any case, in as timely a manner as possible.

The Communication Officer guaranteed that the Agency would make more efforts to have the Sector involved at as an early stage as possible in the planning and organisation of its future events.

The Commission agreed with both points made by the Deputy Chair on the significance of the Agency's work in the field of communication and, in particular, on the need to communicate the Agency's message as far as possible and even beyond the initially targeted stakeholders.

It was announced that the events planning prepared by the Agency had also brought to the attention of the Communication Unit of DG MOVE in order to allow for a more efficient coordination of efforts between the Commission and the Agency by avoiding potential duplication of work and by promoting mutual messaging.

The Commission suggested that the Agency should rather proceed with caution to the next steps envisaged to be taken with regard to its social media activity and wished to draw the attention of the Agency on the potentially hefty resource-implications of the related issues. Moreover, the Agency was warned of the potential counter effects of the adoption of measures aiming at the development of a dress code for staff on the grounds that such measures were controversial and could create more problems than they solved.

While the Head of Corporate Management and Evaluation Unit agreed in essence with the concern raised by the Commission, he insisted that it was not possible to postpone further the implementation of specific actions which had been included in the Communication Strategy Action Plan and, thus, had been approved by the MB already since 2015 and that it was about time that the Agency moved ahead with those delayed actions.

Germany made reference to the training activities which were organised by the German NSA and targeted, among others, experts who would be working for the Agency in the future and thanked the Agency for coordinating its efforts with those of the German NSA on the exchange of training participants.

Italy wondered whether the future planning of the Agency could be adjusted in such a way so that important events, such as the ERTMS Conference, and RISC meetings do not fall on the same date as much as possible.

The representative of Infrastructure Managers (IM) congratulated the Agency for the significant improvement of its outputs in the area of communication over the years, welcomed in particular the Agency's activity on Twitter and noted with appreciation the great work done on the Agency's newsletters.

IM also announced the imminent publication of a guide which had been prepared by the Sector on the 4th RP-related reforms and invited the Agency to join efforts with the Sector on the future preparation of an updated version of such guide for advanced readers in order to promote its work and disseminate even further the message on the transition to the 4th RP.

The Communication Officer admitted that he was looking forward to the publication of the 4th RP guide as announced by IM, considered that the exchange of trainees between the German NSA and the Agency was an excellent initiative and stated that he was open to proposals on the potential extension of its future scope.

In response to Italy's request, while he admitted that it was difficult for the Agency to change the dates of big events in case of conflict with the dates announced for the RISC meetings mainly due to the fact that such events were being planned almost one year in advance, he promised that more efforts would be put into avoiding situations of conflicting dates as much as possible in the future.

15. Report on access to documents requests

It was recalled that the Executive Director was required to provide the MB, on an annual basis, with a report including the list of all requests for access to documents received by the Agency during a specific year, their date of submission as well as the decision taken by the Agency in the case of each request. It was noted that it was the first time that such report was produced and made available to the Board members.

The Board members were presented the list containing all the requests for access to documents which the Agency had dealt with from November 2016 until October 2017.

More specifically, it was reported that the Agency had received and treated in total approximately forty (40) requests for access to documents and that in almost all cases the Agency had decided to grant access to the applicants by disclosing the requested document in full except for one case where the Agency had decided to proceed to a partial disclosure of the requested document on the basis of the exceptions stipulated under Article 4 of Regulation (EC) 1049/2001 on the protection of personal data and of commercial interests.

It was also explained that, in some cases, the refusal of the Agency to grant to the applicants total or partial access to the requested documents had been mainly justified on the grounds that such documents – originating either from the Agency or from other institutions – were still, at the time when the request was made, in draft form subject to discussion within the Agency working groups. It was added that, in those cases, the Agency had proposed to make available to the applicants the requested documents only upon finalisation either on its website or on Extranet and had shared with them additional information about the envisaged date of publication of the finalised document.

It was pointed out that, upon recommendation made by the EB, any future report to be prepared by the Agency on access to documents requests should, apart from the minimum requirements described above, indicate also whether the Agency had responded to the requests received within the applicable time-limits and whether the responses provided to such requests had met the applicants' expectations or not.

The Deputy Chair noted with appreciation that all the requests for access to documents received during the period covered by the report had been successfully managed by the Agency which had decided, in most of the cases, to provide in a timely manner access to the requested documents.

16. Update on the implementation of the Anti-Fraud Strategy

The Board members were updated on the state of play regarding the implementation of the specific actions envisaged under the Anti-Fraud Strategy of the Agency. They were reminded that the Anti-Fraud Strategy had been adopted during the 35th MB meeting on March 24th 2015 and was mainly focused on prevention and awareness raising on issues related to ethics and anti-fraud in the day-to-day work of the Agency staff.

It was announced, in that regard, that particular attention was expected to be given, during the coming months and in the context of the implementation of the 4th RP, to the development of a Code of Conduct in the form of a comprehensive set of rules on the prevention and management of conflicts of interest not only in respect of the Agency staff but also with regard to experts participating in the working parties of the Agency, including, among others, internal rules on whistleblowing.

The Executive Director underlined that the Code of Conduct which was currently under preparation should reflect as much as possible a balanced and pragmatic approach which would ensure that no staff member or external expert would be excluded from a specific VA or SSC-related process a priori and on unjustified grounds.

The Deputy Chair found that the observation made by the Executive Director was more crucial than ever in the sense that it was by virtue of its future role as an Authority that the Agency would be required to engage more directly with the business world.

17. Rules on Seconded National Experts (SNEs)

It was stated that Article 69 second indent of the Agency Regulation stipulated that the MB should adopt a decision laying down rules on the secondment to the Agency of national experts, including rules on the prevention and management of conflicts of interests and on relevant restrictions for cases in which national experts' independence and impartiality could be undermined without prejudice to the rules laid down in the relevant Commission decision on the secondment of national experts applicable to the Agency.

It was recalled that the Executive Director had issued in 2009 a decision on the policy and the procedures governing the recruitment and use of SNEs in the Agency which had been drawn up on the basis of the Commission decision on "general implementing provisions laying down rules on the secondment of national experts to the Commission C(2006) 2033" of June 1st 2006 which was still in force.

The Head of Resources and Support Unit suggested that the MB would be called to adopt formally already during its coming meeting in January 2018 the existing rules governing the secondment of SNEs to the Agency as reflected in the Executive Director Decision No. 237/2009. However, the issues related to the prevention and management of conflicts of interest in respect of SNEs would form the subject matter of a separate decision to be adopted by the MB; those issues were envisaged to be dealt with under the Code of Conduct which was currently under preparation and would be presented to the Board members under the immediately following agenda point.

The Deputy Chair wished to clarify whether the above-mentioned Code of Conduct was supposed to be adopted by means of a MB decision.

The Agency pointed out that it was under the Framework on Independence and Impartiality annexed to the Code of Conduct referred to previously by the Head of Resources and Support Unit that any rules for the prevention and management of conflicts of interest in respect of Agency staff –including SNEs– as well as external experts participating in working parties and groups mentioned in Article 5 § 2 of the Agency Regulation and other staff not covered by the Staff Regulations and CEOS who would take part in the process leading to the issuing of SSCs or VAs or decisions for the approval of ERTMS trackside equipment projects would be primarily dealt with. It was emphasised that any such rules were quite similar in nature regardless of the different staff categories envisaged to be covered by them.

18. Conflicts of interest rules for working parties experts

The Board members were given a detailed insight into the Agency's proposal on the establishment of a Framework of Good Administrative Behaviour (FGAB) which, as already pointed out previously, would include, among others, the conflicts of interest set of rules to be introduced in respect of experts participating in working parties and groups of the Agency and other staff not covered by the Staff Regulations and CEOS.

It was announced that the Code of Conduct, which would be the backbone of the FGAB and would reflect the principles embodied in the European Code of Good Administrative Behaviour developed by the European Ombudsman in 2015 would mainly consist of the following four Annexes: the Framework on Independence and Impartiality, the Framework on Gifts and Hospitality, the Framework on Whistleblowing and the Social Media Guidelines.

The Board members were also informed about the timetable proposed to be followed by the Agency for the adoption of the FGAB which would be hopefully circulated in its final form to the Board members around mid-December and put forward for adoption by the MB during its 45th meeting in January 2018.

The Deputy Chair asked whether the Staff Committee of the Agency had already been involved or was envisaged to be involved at a certain point in the process leading to the formal adoption of the FGAB.

The Agency confirmed that a first draft of the FGAB had already been shared with the Staff Committee and informed the Board members that an internal consultation process on such draft had been launched and that comments were expected to be received through this process until December the 8th 2017.

19. Report of the Executive Director: main achievements 2017

The Executive Director reported to the Board members on the key milestones of the work carried out by the Agency during 2017 both from an internal as well as from an external perspective with particular emphasis on the preparatory work undertaken in view of the implementation of the 4th Railway Package (RP).

The Executive Director took also the opportunity to announce that the Head of Corporate Management and Evaluation Unit, Mr. Jens Engelmann, would cease to perform his duties as of the end of January 2018 when interim arrangements would be made until the new organisational structure of the Agency is put in place.

He thanked the Head of Corporate Management and Evaluation Unit for his significant contribution for more than six years to the work of the Agency and informed the Board members that the coming MB meeting of January 2018 would be the last one during which the outgoing HoU would be present.

The Board members were reminded of the successful votes held in RISC both on the IA on PAs for SSCs in July 2017 as well as on the IA on PAs for VA in November 2017 and thanked the Commission for its constructive cooperation and the Agency team for its great work on the preparation of the adopted legal acts.

Specific reference was made in that regard to the work of the “liaison office” which had been established by the Agency since June 2017 as a means of informal interaction with potential applicants in anticipation of the formal adoption of the IA on PAs for VA by the RISC. More specifically, it was highlighted that the Agency had established through the “liaison office” a list of nineteen concrete authorisation projects which would have to be dealt with already in 2019 and had allocated forty-six (46) highly qualified staff members to each of those projects.

The Board members were provided with a brief overview of the dissemination activities which had already been undertaken –including but not limited to the five SERA Regional Conferences and the SERA Convention Conference– and any events to be organised in the future by the Agency, mainly in the form of stakeholder workshops with a particular focus on the work carried out in relation to the implementation of the 4th RP.

A summary was also given on the main achievements of the Agency in the work carried out both in the field harmonised railway safety framework as well as with regard to railway interoperability. As far as the ERTMS-related aspects of the Agency’s work were concerned, the Board members were reminded of the successful organisation of the ERTMS CCRCC Conference held on November the 15th and 16th 2017 in Valenciennes where information was shared, among others, on the progress made regarding the development of the ERTMS Stakeholder Platform and the finalisation of the ERTMS Deployment Plan.

On the aspects related to evaluation, management and resources, reference was made, among others, to the finalisation of the discussions on the conclusion of the headquarters agreement between the Agency and France announced earlier during that meeting, the ISO 9001:2015 certification awarded to the Agency in July 2017 and the use of the MS Project as the main internal planning and reporting tool already in the beginning of 2017.

The Board members were also given an idea of the main achievements of the Agency in the international sphere as well as on research-related issues with particular emphasis on the framework of cooperation between the Agency on the one hand and S2RJU, OTIF and the Gulf Cooperation Council on the other hand.

The Deputy Chair noted that the Executive Director had just given to the MB a foretaste of what was expected to be reflected in the future Annual Activity Report 2017 to be produced by the Agency in due course of time.

Austria wished to obtain an update on the state of play regarding the discussions currently held on the possible participation of Switzerland to the work of the Agency.

In response to Austria’s question, the Executive Director identified the need to involve Switzerland in the work of the Agency and, in particular, in the preparatory work to be performed for the implementation of the 4th RP mainly on account of strategic geographical position in the middle of Europe.

It was explained that, in parallel with and with a view to facilitating the formal actions to be undertaken at a political level by the Commission on the establishment of a future regime of cooperation with Switzerland, the Agency had already started interacting informally with the Federal Office of Transport (FOT) and had decided to involve the FOT in three or four of the learning cases identified thus far.

It was also emphasised that Switzerland had already been made aware that its future participation in the work of the Agency entailed financial obligations quite similar to those currently imposed upon Norway.

The Commission intervened to inform the Board members that prior to taking the formal steps referred to previously by the Executive Director it would have to receive a formal negotiating mandate from the Council which was currently examining the Commission's proposal and intended to treat the matter as a priority.

The Commission announced that the invitation for a working group to be held within a week's time had already been forwarded and, judging from the nature of the relevant discussions which were not expected to be particularly complex, it assumed that the requested negotiating mandate would most probably be given until the end of the Estonian Presidency.

RI intervened to report briefly on the progress made in the meantime on the Swiss side. It was stated that, following discussions held with the Federal Office of Transport two weeks before, the proposal currently put on the table envisaged not only the future participation of Switzerland in the work of the Agency but also its direct involvement in the preparations for the 4th RP implementation and that the Federal Office of Transport intended to support the Agency's efforts in delivering the 4th RP as a means of ensuring its future participation to the work of the Agency.

20. Cooperation Agreements – State of Play

The Deputy Chair welcomed Mr. Hubert Blanc and Ms. Heidi Nemimuukko, representatives of the French and of the Finnish NSA respectively, who had been invited to participate in the meeting as co-Chairs of the NSA Subgroup on cooperation agreements.

It was firstly recalled that, in accordance with Article 76 § 1 of the Agency Regulation, the Agency should negotiate and conclude cooperation agreements in relation to the implementation of Articles 14, 20, 21 on SSCs and VAs and that the guidelines and the list of the main elements to be included in such cooperation agreements should be adopted by the MB as explicitly provided for under Article 51 § 1 point (t).

The Board members were given by the co-Chairs of the NSA Subgroup a brief update on the progress made in the discussions currently held within the NSA Subgroup on the development of the guidelines and of the list of the main elements to be included in the cooperation agreements both from a technical as well as from a legal point of view.

It was emphasised that, although the Agency had been continuously involved in the discussions within the NSA Subgroup, it nevertheless undertook to submit to the MB the final proposal on the guidelines and main elements to be included in the cooperation agreements on behalf of the NSAs. However, it was noted that any such proposal did not presuppose the future discussions to be held between the Agency and each of the NSAs on the conclusion of the specific cooperation agreements.

The Board members were informed that, while a few more detailed open points had yet to be resolved as regards the technical aspects of the cooperation agreements and a common ground understanding had already been established amongst the members of the NSA Subgroup on the list of the main legal elements to be included in the cooperation agreements, it would be much more difficult to reach consensus on the guidelines corresponding to those main legal elements mainly due to the existing divergences between the different national legal systems across the EU.

The possibility that the MB would be eventually called to decide upon a proposal which might, where necessary, reflect more than one possible options for some highly debated items included in the list of the main legal elements was not excluded.

Finally, it was announced that the last meeting of the NSA Subgroup had been scheduled to take place on December the 19th and 20th 2017 and that during that meeting the NSA Subgroup would be called to deal definitively with any pending issues with regard to both the technical and legal aspects of its proposal.

The Deputy Chair inferred from the presentation made by the co-Chairs of the NSA Subgroup that a lot of efforts had been put into the cooperation agreements project but admitted that he was not in a position to assess, already at that point and without any additional information on the options available with regard to some of the main elements, whether consensus could be finally achieved or not within the NSA Subgroup.

Moreover he wished to confirm whether the Agency intended to make also available its position on the issues referred to above as soon as the Board members would be informed about the relevant NSAs position and announced that a specific MB Workshop on cooperation agreements had been scheduled to take place in March 2018.

The 4th RP Preparation Programme Manager stated that that it was Belgium, Germany, Italy, the Netherlands, Norway, Slovenia and Spain which had submitted comments up until that point to the Agency on the document reflecting the understanding developed thus far on the potential scope of the “guidelines” and of the “main elements” to be included in the cooperation agreements.

The Board members were provided with a short summary of the main points raised by the above-mentioned MB members and of the replies given in response to those comments by the Agency which were envisaged to be further reflected upon and discussed in more detail during the coming meeting of the NSA Subgroup in December 2017.

The 4th RP Preparation Programme Manager summarised that the progress achieved thus far on the technical aspects in the relevant discussions within the NSA Subgroup would allow the Agency and the NSAs to come up with a common proposal on most of the main elements and guidelines to be included in the cooperation agreements with the exception of one or two items on which no harmonised solution had been found yet. On the contrary, as far as the legal aspects of the cooperation agreements were concerned, the way towards achieving consensus on a final proposal was much more challenging and complicated in the sense that for some items more than one different options seemed to be available to choose from. It was explained that this was the main reason for which the Subgroup of lawyers had been recently requested to identify the advantages and disadvantages of each of the different options and examine its possible consequences on future projects on which the Agency would cooperate with the NSAs.

The 4th RP Preparation Programme Manager expressed his hope that the Commission’s input which was still expected to be received, upon the Agency’s request, on some highly debated open points would be provided soon and would help the Subgroup of lawyers progress further on the work to be done regarding the different options available in respect of some of the legal main elements.

The Board members were invited, already at that point, to express their views on whether they objected or not to be provided with a final proposal on the basis of which they would be potentially called to decide upon the different options which had been identified in relation to some of the items included in the list of main elements and guidelines taking into account, among others, that the Agency would have to enter into, as of June 2018, individual negotiations for the conclusion specific cooperation agreements with each NSA.

The Deputy Chair concluded that the issue of the extent to which the content of the cooperation agreements should be harmonised was one of the most highly debated topics in the discussions held within the NSA Subgroup on the matter. However, he pointed out that it would also be worth to further explore and reflect upon the binding effect of a future decision to be adopted by the MB on the list of main elements and guidelines to be included in the cooperation agreements upon the Member States as well as upon the NSAs.

The EB Deputy Chair noted that, following in particular some discussions which he had held, among others, with one of the co-Chairs of the NSA Subgroup, the NSAs representatives who participated in the NSA Subgroup should focus their efforts on narrowing down as much as possible the list of possible options available for some of the items to be included in the cooperation agreements taking into account which of

those options was more likely to find each way into the text of the specific cooperation agreements to be concluded between the Agency and each NSA.

For this purpose, the EB Deputy Chair urged the participants in both Subgroups to concentrate on building up a framework cooperation agreement which would be as harmonised as possible by coming forward and expressing openly, already at that point, their preference for one option over another. Put otherwise, were it for the MB to adopt a range of equivalent options which the NSAs would be free to choose from, the Agency would end up concluding a different cooperation agreement with each of the twenty-eight different NSAs.

The need for the framework cooperation agreement to be developed in a timely manner and in such a way as to achieve greater clarity and certainty with regard to those particularly complex issues which could only be dealt with by means of a formal agreement between the parties concerned was also underlined.

The EB Deputy Chair announced that as representative of Finland on the MB he intended to indicate which of the options available he was leaning towards more at that point.

Slovenia agreed with the previously point made by the EB Deputy Chair. However, it assumed that the MB would be faced with difficulties if called to adopt a decision without having received any additional feedback on the different options available to choose from and sensed that it would be useful for the Board members to be given some preliminary information on the extent to which it was possible for the Agency to enter into individual arrangements in the specific cooperation agreements to be concluded with each of the NSAs as well as on the potential consequences of such approach.

The U.K. stressed the importance of the work carried out within the NSA Subgroup on the project of cooperation agreements on which further progress was necessary in order to ensure that the establishment of cross-party cooperation would not be significantly hindered by delays.

However the U.K. feared, in line with the concern previously raised by the Deputy Chair, that the Board members might have a hard time understanding the issues at stake with regard to the different possible options which they would be provided with and called to choose from without having acquired a clear overview of those options prior to the adoption of the relevant decision. Moreover, the U.K. recommended that the framework cooperation agreement should not be formulated in a detailed manner and that the wording used should be as generic as possible.

Germany recalled that it was only the list of the main points and related guiding principles which the MB was required to formally agree upon by virtue of Article 51 § 1 point (t) of the Agency Regulation. It was up to Agency and the NSA concerned to negotiate subsequently the details by reflecting further on how those aspects would be dealt with under the specific cooperation agreements to be concluded between them.

It was also clarified that the consequences of the adoption by the MB of the list of main elements and guidelines to be included in the cooperation agreements were foreseen under Article 76 of the Agency Regulation which made explicit reference to Article 51 § 1 point (t) of that Regulation and concluded that there was no doubt that the NSAs would be bound by such MB decision.

More specifically, Germany wondered whether the scope of the future MB decision should be limited to a list of the main topics to be covered under the cooperation agreements or whether the MB would be called to define also the content of the specific cooperation agreements as such. Germany held the view that the precise content of each specific cooperation agreement to be concluded would rather be agreed upon on an individual basis between the Agency and the NSA concerned.

However, Germany pointed out that, were it not for the scope of the future MB decision to be limited to the minimum elements identified above, it should be at least commonly agreed that whenever a specific issue was already governed by EU law the applicable law under the cooperation agreement would be the EU law unless a deviation of the EU legal framework could be justified especially in cases of conflict between the EU law and the relevant provisions of national law.

Along the lines of the remark made by Germany, the Executive Director observed that, when compared to the wording used in Article 51 § 1 point (t) of the Agency Regulation, Article 76 of the Agency Regulation seemed to provide greater flexibility with regard to the scope of the future cooperation agreements to be concluded between the Agency and the NSAs. In support of his argumentation, he mentioned the example of the wording used under the third indent of the second paragraph of Article 76 of the Agency Regulation which stipulated that the framework model referred in point (u) of Article 51 § 1 of that Regulation should be taken into account in the apportionment as between the Agency and the NSAs of the fees payable by the applicants.

The Executive Director agreed also with the point made by the U.K. that the wording used for formulating the main elements and guidelines to be submitted to the MB for approval should not be too detailed but rather as generic as possible so as to ensure greater flexibility in the subsequent negotiations between the Agency and each individual NSA by allowing the adopted main elements and guidelines to be taken into consideration in the specific cooperation agreements to be concluded.

The Deputy Chair emphasised that the MB was already aware of the tremendous efforts put into the work to be carried out on the cooperation agreements project and admitted that his was looking forward to a more in-depth discussion to be held on any open points within the MB during its coming meeting in January 2018. As far as the discussions envisaged to be held during the MB Workshop of March 2018 were concerned, the Deputy Chair sensed that, in view of the envisaged adoption of the MB final decision on the main elements and guidelines during the 46th MB meeting in June 2018, the debate should be mainly aimed at identifying the main rationale behind and the real scope of the cooperation agreements.

He also stated that the position of the NSA Subgroup on the relevant issues was expected to be made available by the end of December 2017 and expressed his hope that the Agency would, as far as possible, respond to such input in a supportive manner.

The Commission intervened to confirm the statement previously made by the 4th RP Programme Manager on the submission by the Agency of a request for input on a list of questions concerning the legal aspects of the cooperation agreements. The Board members were informed that the Commission had already drafted an opinion which was currently going through a process of internal consultation with its legal services and that it intended to make such opinion available to the Agency as soon as possible.

The Commission took the opportunity to underline that it was crucial to pay attention to and stick to the initial timeframe within which the negotiation and conclusion of the cooperation agreements between the Agency and the NSAs would have to be completed and that the cooperation agreements should, therefore, be already in place in particular when the responsibilities resulting from the performance of the new tasks envisaged under the 4th RP e.g. as regards VAs would have started to kick in.

The Commission proposed that, in such a case, the efforts should be either concentrated on discussing and coming up with a framework cooperation agreement which could then be adjusted relatively easy in the context of each specific cooperation agreement to be signed between the Agency and each individual NSA or devoted at a later stage to the negotiation and conclusion of the specific cooperation agreements which meant that any issues related to the framework cooperation agreement should be dealt with rather quickly at that point.

The Commission warned that a worst-case scenario whereby a lot of time and efforts would be spent both on discussions on the general framework of the cooperation agreements and on the individual tailor-making to be done subsequently in the context of each specific cooperation agreement to be signed between the Agency and each individual NSA should be avoided as the overall timetable might, in such a case, slip.

The Deputy Chair inferred from Commission's intervention that any efforts invested, already at that point, in the development of the framework cooperation agreement should pay off at a later stage when the Agency would be subsequently called to negotiate and conclude the specific cooperation agreements individually with each NSA.

The Board members were reminded once more of the MB Workshop on cooperation agreements which had been scheduled to take place in March 2018. It was highlighted in that regard that the discussions during the MB Workshop should mainly focus on those open issues which the Board members would already have been given the opportunity to gain a clear overview of during the coming MB meeting of January 2018.

21. Budget execution 2017 and transfers of appropriations

The Head of Resources and Support Unit provided to the MB members information about the execution of the Agency's budget 2017 as of October 30th 2017 and about the transfers which the Executive Director had made in accordance with Article 27 § 1 of the Agency's Financial Regulation since the beginning of the year.

22. Language arrangements follow-up: update on budget impact

The Board members were provided with an updated overview of the budgetary impact of the absence of a formally adopted language regime mainly in terms of the additional costs related to the translation of the calls for applications, including the horizontal multi-field call for applications for posts of Administrators in the Operational Units envisaged to be published by the end of that year.

23. Staff-related issues state of play

The Board members were firstly updated on the current state of play regarding the Implementing Rules to the Staff Regulations to be adopted –or not– by the MB. They were reminded, in that regard, of the recent adoption by analogy and by means of a written procedure of Commission Decision on mission expenses and on authorised travel.

Additionally, the Board members were informed about the turn-over rates of the Agency staff as well as the recruitment plan for 2017. Some preliminary feedback was also shared with them about the first calls for applications envisaged to be launched in 2018.

24. Follow-up audits

The Board members were given a brief overview of the current state of play as regards the IAS audits.

It was announced that the final IAS audit report on HR and competency framework at the Agency had been received one day after the 7th EB meeting of November 2017.

The Head of Resources and Support Unit provided the MB with some background information on the context in which the above-mentioned audit report had been produced by the IAS.

It was analysed that final audit report contained seven recommendations concerning the following aspects of the Agency's work on HR matters: reclassification and promotion, organisational structure, staff allocation and competency framework, selection and recruitment procedure, performance appraisal, HR strategy and reporting and learning and development.

The Head of Resources and Support Unit found that the IAS audit report still represented a great opportunity for the Agency to focus its future efforts on improving the HR-related aspects of its work and that it was with this intention that the Agency had already started developing an action plan to be presented in response to the IAS recommendations identified above even before receiving the final IAS audit report.

It was announced that the Agency intended to send out a first draft of the action plan by December the 8th 2017.

The Head of Resources and Support Unit took the opportunity to refer to the HR Strategy which had been recently produced by the Agency and made available to the Board members under the relevant agenda point.

It was added that two points still remained open in relation to the performance by the Accounting Officer of the Agency of the tasks of Head of Finance and Procurement Sector and the incompatibility of the supervision

model of the Agency with MB Decision No. 122 on the appraisal of TAs mainly due to the fact that CDRs were currently being drafted by Head of Sectors (HoSs) and not, as required by the above-mentioned MB decision, by Heads of Units. The Board members were informed about the Agency's intention to deal with the first open point in the future review of its internal organisation and to assess, with regard to the second open point and in close cooperation with the Commission, whether the procedure envisaged under Article 110 of the Staff Regulations and CEOS could be launched for the revision of Article 3 § 4 of the above-mentioned MB decision.

The Board members were informed that, at least as regards the 2017 appraisal exercise, it had been suggested that the relevant CDRs would be prepared by the HoSs on behalf of the HoUs, that the Executive Director would be the counter-signing officer and that the MB would function as an Appeal Body.

The Deputy Chair wondered whether the role of the MB as an Appeal Body to which the Head of Resources and Support Unit had just referred was already envisaged under the legal framework governing the relevant issues.

The Head of Resources and Support Unit replied that, although this option had been put forward following the recommendations made by the IAS on the establishment of an independent body to deal with appeal procedures on performance appraisal matters, the issue of whether such a supervision model would eventually turn out to be a workable solution for the Agency was still open to debate. He sense that, when functioning as an Appeal Body, the MB should be represented only by its Chair.

The Executive Director pointed out that, as already discussed within the EB during its 7th meeting in November 2017, it would be useful for the MB members to be given a more direct insight into the IAS findings and announced the Agency's intention to invite IAS representatives to one of the coming MB meetings for that purpose.

Moreover, he acknowledged that some of the IAS recommendations had been mainly formulated on the basis of the Commission's needs and could not, therefore, be considered much suitable for the Agency from a practical point of view given the small size of its workforce compared to that of the Commission. However, he admitted that HR-matters remained a key area of attention for future efforts to focus upon in particular in view of the imminent transition of the Agency to its new role under the 4th RP and assured the Board members that any open points would be tackled in as a rapid and reasonable manner as possible.

25. AOB

The Board members were informed that the opening ceremony of the initiative launched by the European Economic and Social Committee (EESC) on "Women and transport – Platform for Change" had been held on November the 27th 2017 in Brussels with the presence of both the President of the TRAN Committee of the European Parliament, Ms. Karima Delli and of the European Commissioner for Transport, Ms. Violeta Bulc.

The Executive Director reported that he had participated, together with the MB Chair, in the opening ceremony and that he had signed on behalf of the Agency a declaration on equal opportunities for women and men in the transport sector and considered that this was a significant first step towards raising awareness on gender balance and promoting the role of women in transport, including in the railway sector

The Commission pointed out that the text of the above-mentioned declaration was still open for signature and invited the MB members to disseminate further this information with any employer active in the field of transport who would be interested in supporting the initiative by signing such declaration.

26. Meeting dates

It was agreed that the next MB meeting would take place on January the 25th 2018 in Lille.

Following a request for clarification made by Austria, it was confirmed that, whereas the 11th EB meeting had been scheduled to take place on September the 6th 2018 in Brussels, the 47th MB meeting would be held on September the 25th 2018 in Lille.