

Task Force Licensing and Insurance

Synoptic view of the questionnaires returned

Date: 30 November 2004

The present text provides an overview of the information returned by means of completed questionnaires in October and November 2004. Members are invited to inform the chairman of any incomplete or wrong information put forward here.

Question 1 ¹

The requirement for railway undertakings to be insured and the legal instrument by which the requirement has been established, with comparison to other modes of transport.

Most countries have an obligation for railway undertakings (RU) to get insured, but the legal instruments of implementation are different.

CZ, DK, DE, FI, LU, NO, SE and SI have put this obligation into a law, while DA, FR, LV and LU have used a ministerial decree to implement. PL law allows also to bank guarantee or deposit alternatively to insurance.

LV regulation allows the RU undertakings to insure itself to the extent it has sufficient financial resources and to cover the remaining amounts by an insurance.

The UK have requirements also for infrastructure managers (including stations etc) and for maintenance facilities.

While the principle requirement to have insurance or adequate coverage is stipulated in the law of most MS, the amounts are often fixed in decrees or administrative practice only. In some countries the rails regulator seems to decide on a case by case basis whether or not the provide coverage is sufficient. Several countries derived their minimum insurance amounts

¹ Questionnaires received and included in the present synoptic report: AT Austria, BE Belgium, CZ Czech Republic, DE Germany, DK Denmark, FI Finland, FR France, IT Italy, LU Luxemburg, LV Latvia, NO Norway, PL Poland, SE, Sweden, SI Slovenia, UK United Kingdom

Question 2.

Minimum insurance levels required and basis

AT and DE oblige their RU to contract insurance at a minimum coverage of over 10 mill € per occurrence to be made available at least twice a year.

In BE there is a minimum amount imposed by administrative practice. CZ, FI, FR, LU and PL have not fixed a minimum amount, but only an obligation to be insured, or as in case of LU, to dispose of sufficient financial viability to cover for damages. DA has fixed a minimum amount for commercial railways at 300 mill DKr, and a lower lower amount for vintage railways.

Coverage that the French railway undertakings have contracted range from 8 mill per occurrence to as much as 100 mill per occurrence, depending on an incumbent or a new entrant railway being awarded a license. The premiums were based on a risk assessment. Main risk determinants considered were territorial extension of the operation (local, regional, national) and the number of trains operated.

IT is the only country where the infrastructure manager fixes the minimum insurance coverage (based on risk assessment) and then publishes it in the network statement. Art. 3 of 2001(14) requires the IM to be independent of the operator, which might be in conflict with such a procedure. Third party is 100 mill per accident and year, and 5 mill is minimum coverage for rail freight undertakings.

In LV, no minimum insurance level is fixed in the law. A licensing commission has to assess to what extent own resources need to be complemented with insurance. The amount to be covered is derived from the damage calculated on the basis of rail accident as they happened during the 15 previous years within LV.

The NO railway inspectorate requires minimum coverage at NOK 240 mill, corresponding to the same levels in SE and DA. Alternatively NO railway undertakings have to provide adequate guarantee for all risk from operation including third party. Similarly, PL railways may offer bank deposits or bank guarantee as an alternative to insurance.

SE's minimum insurance level has been fixed in agreement of the national railway regulator and Banverket as IM. The minimum insurance coverage was, among other things, derived from a comparison with road transport.

SI (default)

The UK's rail regulator SRA has set and published minimum insurance requirements in a document on the web. Their minimum insurance amount is £155 mill pounds sterling (about €23 mill) to cover for third party liability. If part of the insurance amount is exhausted, the regulator will make sure that the RU and the insurance agree to reinstate the exhausted amount.

Question 3

Differences in insurance requirements according to types of rail transport (passenger vs. goods, urban vs. regional, commercial vs. non-commercial)

Countries without differences: AT, CZ, DE (for national railway network), FR, IT, LU, NO (for national railway network), PL, SE (for national rail network), SI

BE has lower amounts for operators of goods trains, i.e. 50 mill € than for passenger trains (75 mill €). DA only distinguishes with regards to vintage trains. DE insurance is obligatory only for traffic on public rail network. FI fixes insurance amount on a case by case basis, while for heritage railways they accept 2 mill €. SE has lower demands for sidings and operations exclusively on separate infrastructure.

LV differentiates the level of coverage by the type of service: Transports of dangerous goods will require a rather high coverage, while passenger transport a lower one.

The UK accepts lower cover levels provided an independent risk assessment supports this. Several railway undertakings make use of this provision, e.g. operators on single track lines, low speed operations, infrastructures separated from the mainline network.

Question 4

Procedure to check whether holders of licenses awarded in another MS² meet domestic insurance requirements

AT, CZ and DE: Allocation body (= IM³) has to check and, in case of non-compliance, to deny access.

Countries having no standing procedure to check compliance: BE (but they are reflecting on a procedure),

In DE, the regulatory body verifies when a RU takes up operations for the first time. If regulatory body learns about non-compliance, it can impose sanctions, e.g. a fine.

The Danish regulator withdraws the safety certificate unless the RU submits insurance information.

FI: IM has to check and, in case of non coverage, has to deny allocation of a slot. But there are no foreign operators in FI as yet.

FR: IM to alert ministry of transport if it deems coverage insufficient.

IT: IM not to conclude access contract in case insurance coverage is not provided.

As yet, there are no RU undertakings from other MS operating in LV. Once the relevant EU directive are applied, LV plans to check compliance of financial and insurance rules at the moment of granting the safety certificate.

LU: RU undertaking has to submit a certificate issued by a certified auditor to proof that it disposes of the financial capability to cover possible damage, when applying for a safety certificate in LU.

NO and SE: The railway inspectorate has to check upon issuing of safety certificate whether insurance obligations were met.

PL procedures not yet in place, but under preparation.

SI: IM has to check insurance upon issuing of safety certificate.

UK: procedure not yet chosen and not put in operation.

² MS Member State(s)

³ IM Infrastructure Manager(s)

Question 5

State guarantees

Countries without state guarantees: AT, BE, DA, DE, FI, FR, IT, LU, LV, PL, SE, SI

AT: not specifically to cover for liability. BE has no state guarantee, but is considering it to cover for terrorist attacks.

In CZ, the state guarantees for the obligations resulting from the provision of railway infrastructure (with certain legal exceptions). No state guarantee for RUs.

The Danish IM is state owned and self-insured, otherwise no guarantees.

NO: not for RU, but the national IM is state owned and insured.

SE: RU may (but do not have to) contract an insurance from the state when concluding the network access contract with the national IM.

UK: No. But the government represented by the Strategic Railway Agency (SRA) has an obligation to continue a passenger service, when the franchiser drops out and there is no other replacement.

Question 6

Functioning insurance market

AT does not think so, there is only one insurer presently.

BE: few insurances imposing high premiums. Difficult for small RU in particular.

CZ feels there is a good supply. Presently, 58 RU are insured. This should be seen in the light of the low insurance levels required in CZ. Where railway undertakings form part of an industrial company, insurance is included in a policy on risk not stemming from railway operations.

DA: difficult to obtain insurance despite full harmonisation with other Nordic countries, but reasons are not clear.

DE there is a market, which supplies also coverage for operation on foreign networks.

FI: Contracting insurance for environmental damage (dangerous goods, fires etc) is difficult. The threat of terrorism gave significant rise to the insurance premiums (three or four fold). Foreign insurance companies cannot easily access the Finnish market, because they would need local agents and Finnish language abilities. Also, the absence of risk assessment data renders difficult the calculation of premiums and thus tends to increase them. The level of the premiums will be particularly high for new comers in the national railway market, because of the fixed elements in the cost structure of an insurance, the insurance tax on the absence of a contract running over many years without claims (similarly to rebates on premiums for insurance of road vehicles).

FR there are several insurance companies supplying such a service.

LV feels there is a sufficiently viable market for insurance of risks of railway undertakings in their country.

There is no functioning insurance market yet in PL. But apart from insurance, there are other ways of compliance.

NO and SE do not really a functioning market yet, as there are only one or two insurance companies. Difficulties assessing the risk is more of a pretence, because there is ample knowledge on that available in SE. Cost for re-insurance (often contracted from abroad) has boosted over recent years, in the wake of 9/11. NO there are complaints from small RUs.

SI competitive market is in place- telling from own judgement.

In the UK, the re premiums and seem to drop again after the boost of 9/11. The number of companies providing coverage for rail risks, which was at a low of five, seems to rise again.