



Insurance Matters and Legal Background for Railway Undertakings

Montenegro, 09.06.2010

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MISSION



„DVA´s mission encompasses trust and long-standing client relationships, integrated monitoring of risks and stringent requirements regarding quality of insurance cover.“



Prof. Dr. Rainer Freise



Dr. Peter Hoechst



Hans-Jürgen Allerdissen



SCOPE OF ACTIVITIES:

Insurance brokers for industrial and commercial risks and reinsurance brokers

ESTABLISHED:

1992 in advance of the Deutsche Bahn AG privatisation

HEAD-COUNT:

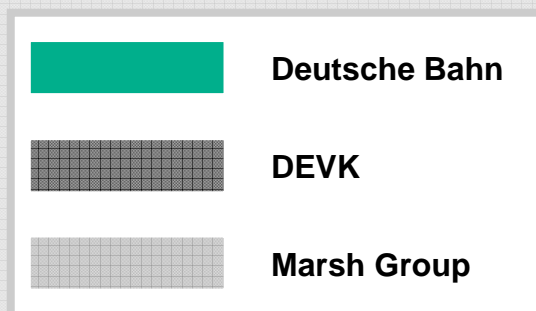
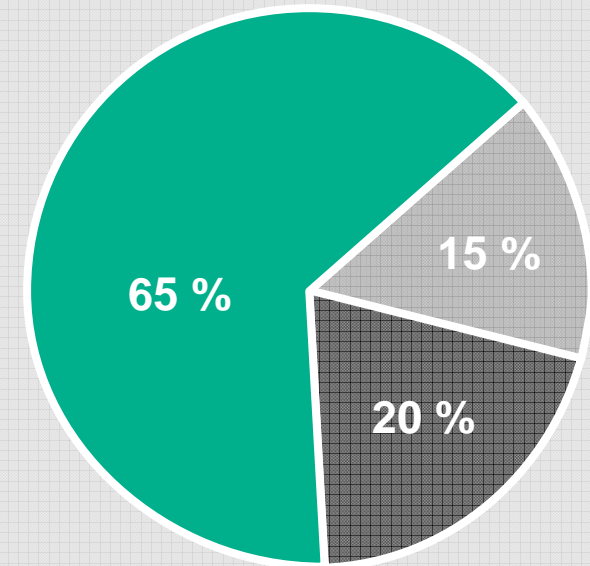
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REGISTERED OFFICE:

Bad Homburg/Hesse

BRANCH OFFICE:

Berlin

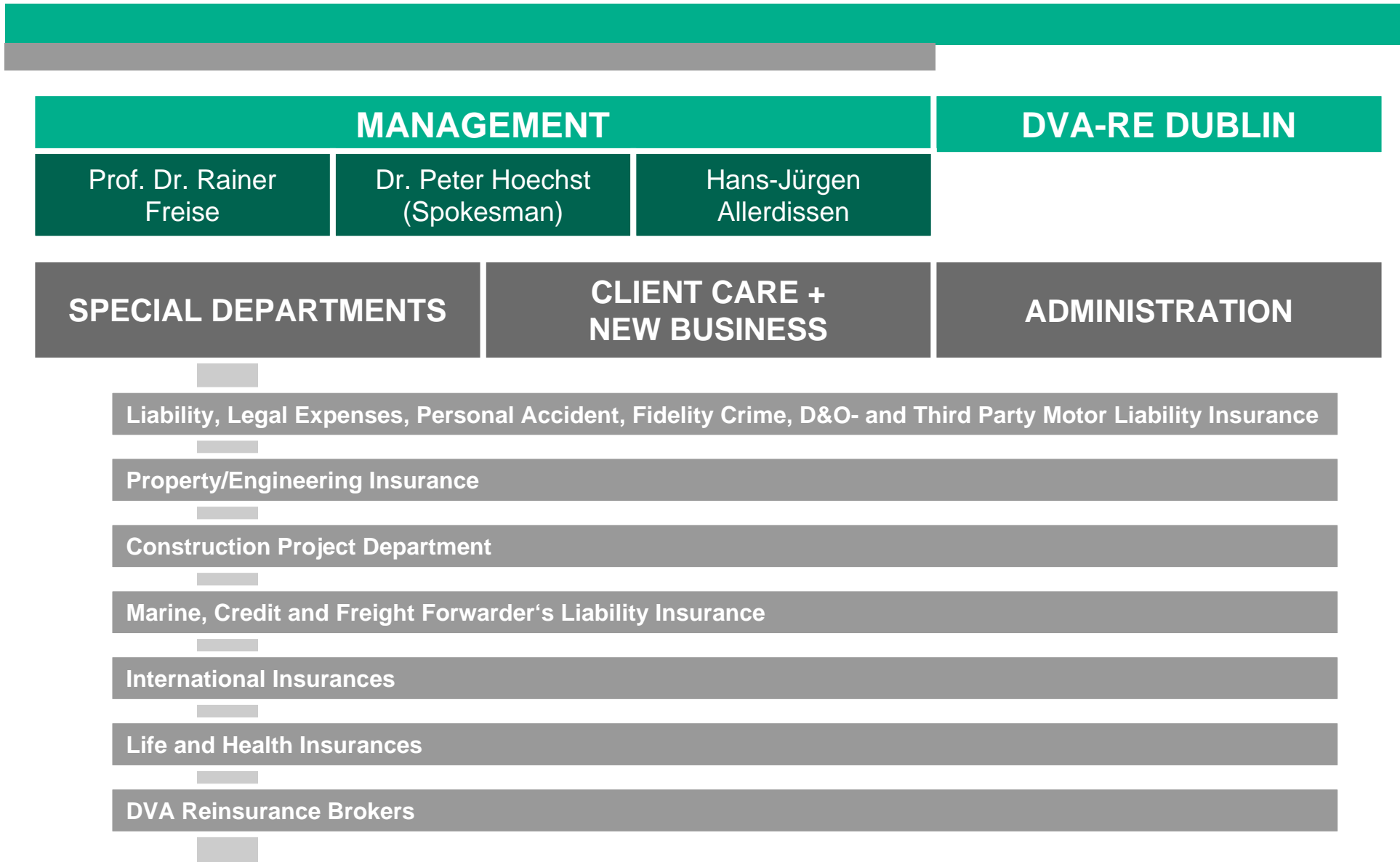


- **railway undertakings**
- **railway infrastructure companies**
- **logistics entities**
- **construction**
- **industrial companies**
- **service sector enterprises**
- **municipal organisations and federal agencies**
- **construction companies**
- **residential property development companies**
- **accountants, auditors**
- **major law firms**
- **public services providers**



Bild: DB AG / Max Lautenschläger

DVA – COMPANY STRUCTURE



DVA'S FOREIGN CLIENTS



	BELGIEN	SNCF Benelux ATC, IFB
	DÄNEMARK	CFL Denmark
	FRANKREICH	Schenker Joyau ECR SAS
	GROSSBRITANIEN	EWS Beacon Rail Leasing Limited RBS Asset Finance Europe
	ITALIEN	Ambrogio Trasporti S.p.A. DB Schenker Rail Italia S.r.l./NordCargo Lotras srl
	LETTLAND	SIA Schenker
	LUXEMBURG	CB Rail Alpha Trains Luxembourg
	NIEDERLANDE	ERS Railways B.V. ACTS Nederland B.V. Mitsui Rail Capital
	ÖSTERREICH	Schenker & Co AG CA Immobilien Anlagen AG STLB
	POLEN	PKP Cargo S.A. DB Schenker Rail Polska S.A.
	RUMÄNIEN	Reva
	SCHWEIZ	Rexwal
	SLOWAKEI	EEWS spol. s.r.o Zeleznicna spolocnost Cargo
	SPANIEN	Spain TIR ECR
	SCHWEDEN	Net Rail
TSCHECHIEN	RYKO PLUS CD Cargo a.s.	
UNGARN	MASPED AG	

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- **Review of existing insurance policies**
- **Updating and/or designing insurance cover to comply with specific needs and basic legal requirements of the company**
- **Identifying likely opportunities for reductions in premium**
- **Monitoring financial standing and performance of insurers**
- **Review of insurance documents, premium invoices and monitoring important deadlines**
- **Identifying priority issues regarding claims and supporting the risk management team in your organisation**
- **For the procurement of insurance cover a standardised questionnaire has to be completed building the basis for insurer's audit to underwrite the risk. Please see as an example a very brief and simplified version of a liability questionnaire.**

PRINCIPLES OF BROKER'S SERVICES



QUESTIONNAIRE - For the International Insurance Programme of XYZ Group of Companies

1. **Country:**
2. **Company name, Address + contact details**
3. **Business Description – Description of Operations, Main Products and Services**
 - a) **Passenger Traffic (Railway, Bus, Tram, Subway, Mountain-railway/ cable car)**
 - b) **Goods Traffic (Railway or Lorry / Forwarding agent)**
 - c) **Infrastructure (Infrastructure manager)**

Key figure is the turnover for the respective operation plus the number of passengers / passenger kilometres / freight kilometres / number

of vehicles; additional information to be provided is referred to any other activity e.g.:

- **Goods carried (split into Fluent, Solid, Hazardous materials, Nature of materials)**
- **Travel (split into No. of travel agencies, no. of branches and No. of passengers as Tour operators)**
- **Shunting activities (nature and amount)**
- **Track work for third parties (nature and amount)**
- **Repairs/ Servicing (split into turnover for Lorries, for locomotives/ wagons and the percentage of maintenance of third party vehicles)**
- **Transshipment (turnover figures for: Rail/ road, Rail/ water, Water/ road, Water/ rail)**
- **Letting/ hiring out of Real estate (gross and annual rental) and locomotives/ wagons (No. and turnover)**
- **Track operations (amount/ turnover on third party rails and by third parties on own tracks)**
- **Foreign activities – Trips (nature and amount), Production plants (nature/ amount / turnover), Real Estate (gross annual rental) and Sales e.g. locomotives (nature/ amount/ turnover)**
- **Production risks (split into Fabrication, Revision for third parties e.g. axles, wheels etc., Restoration and Others)**

4. Existing Covers / Claims Experience

- a) Liability Insurance (details about insurer, scope of cover and amount of cover)
- b) Previous claims experience of the last three or five years (No. of claims and claims amount)

5. Risk Analysis

- Damage to rented property (value) – Information about neighbouring objects
- Loading / unloading
- Holding and operation of fork-lifts, cranes or hoist gears
- Environmental risks, e.g. petrol tank stations, heating oil tanks, etc.

6. Infrastructure Manager

- Which root network is used?
- Length of railway system
- Who is incumbent of the operating control?
- Who provides the driver?
- Is there any contractual liability stipulated (please attach wording of the contract, for example General Contract for the Use of Wagons CUU/ CGU/ AVV)?
- Is there any real estate rented, leased or purchased? Please describe the condition of the site/size of real estate.
- Is the real estate used by other persons and employees of the railway company? Please explain which persons and for which purpose if applicable.
- Are repair works completed? Where, which kind of and who is completing such? Which safety installations are available (oil separator, collect pans or the like – please provide details). Please provide risk analysis form determination of environmental exposures if applicable.
- Please describe the on site condition, especially in the workshop and the shed.
- Have any ground surveys been carried out? Please provide finding or copy of the survey report.

BENEFITS OF DVA'S APPOINTMENT



SECURITY

Design of policy conditions

Tailor-made insurance cover

Avoidance of over-insurance

Reviewing financial standing of insurers

DVA expertise



COSTS

Evaluation of insurance needs

Relieving your administration of cumbersome tasks

Avoidance of double insurance

Speeding up claims settlement and investigation of ex-gratia payment opportunities

Economy of scale

International benchmarking of insurance terms and conditions

PROCUREMENT OF INSURANCE COVER



Adjustment of insurance contracts to the true risk situation

Insurance procurement subject to markets available

Assessment and avoidance of loss accumulation areas

Regular risk assessment on your premises in the future

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Buying insurance is always commercially sensible:

- **if its not a pound swapping exercise**
- **if it covers risks which are considered to be unquantifiable**
- **if the lack of insurance would have an intolerable negative impact on the P/L position or shareholders funds**



In Times of State-owned Train Operating Companies

- **Instead of Insurance, continuous coverage by the national budget.**
- **Even vis-à-vis private vehicle keepers, appearance as quasi-insurer by assumption of third party liability against the payment of a flat-rate (comparable to an insurance premium).**





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COTIF 1999 considers new liability relationships between a larger number of parties:

- **Liability to customers**
- **Liability to other train-operating companies**
- **Liability for the use of third party wagons**
- **Liability between train-operating companies and rail infrastructure companies**
- **Liability to third parties**





COTIF 1999 Convention concerning International Carriage by Rail

Appendix A	Appendix B	Appendix C	Appendix D	Appendix E	Appendix F	Appendix G
Uniform Rules concerning the Contract of International Carriage of Passengers by rail CIV	Uniform Rules concerning the Contract of International Carriage of Goods by rail CIM	Regulation concerning the international Carriage of Dangerous Goods by Rail RID	Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic CUV	Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic CUI	Uniform Rules concerning the validation of Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in international Traffic APTU	Uniform Rules concerning the Technical Admission of Railway Material, used in International Traffic ATMF



CIV - Liability to the passengers

- **Liability in case of death of, or personal injury to, passengers (Art. 26 CIV)**
- **Liability in case of cancellation, late running of trains or missed connections (Art. 32 CIV)**
- **Liability in respect of articles or animals the injured or killed passenger had on him or with him as hand luggage (Art. 33 CIV)**

CIM – Liability in case of carriage of goods

Liability of the carrier for the loss or damage resulting from the total or partial

- loss of the goods
- damage to the goods

(Art. 23 CIM)

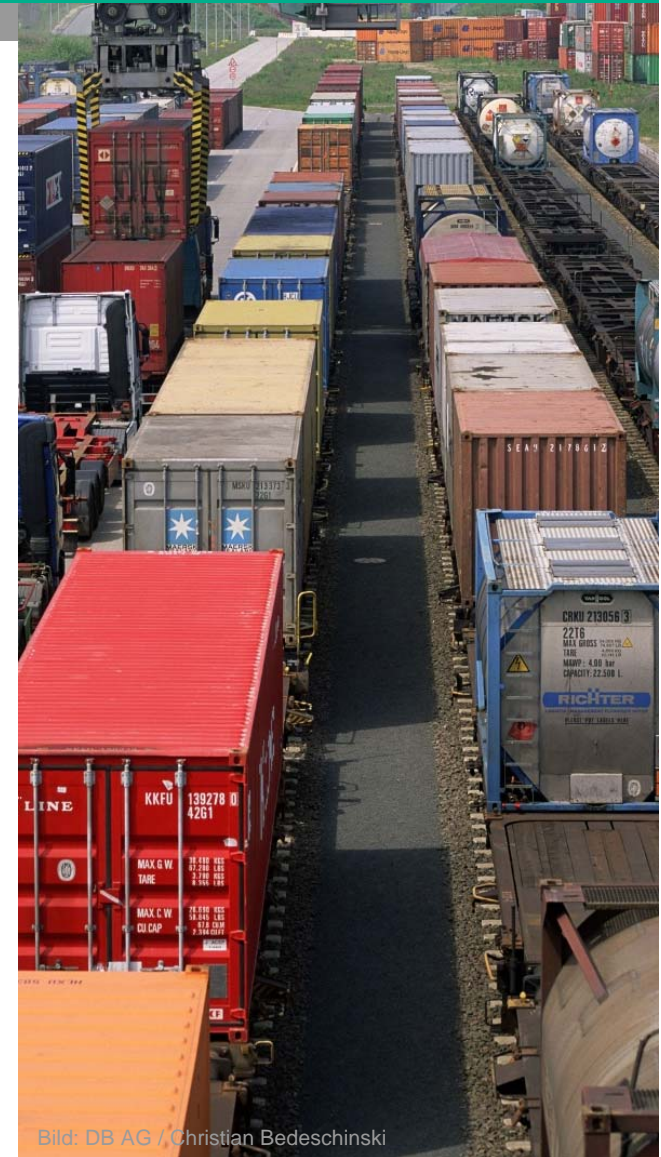


Bild: DB AG / Christian Bedeschinski

CUV – Liability to the vehicle keeper

Liability for

- **the loss of the vehicle**
- **the damage of the vehicle or its accessories**

(Art. 4 CUV)

In case the General Contract of Use (GCU) applies also compensation for the loss of use.



CUI – Liability to the Infrastructure Manager and its auxiliaries

Liability for

- **bodily loss or damage (death, injury or any other physical or mental harm)**
- **loss of or damage to property (destruction of or damage to movable or immovable property)**

caused by

- **the RU**
- **means of transport used by the RU**
- **persons or goods carried by the RU**

when using the infrastructure.

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Principles of EU Directive 95/18 on licencing of railway undertakings

- **Mandatory insurance for RU**
Not for IM or keepers of rolling stock

- **Cover of liabilities in the event of accidents for**
 - **bodily loss or damage**
 - **loss of or damage to property****not for pure financial loss**

- **Cover applies to passengers, luggage, freight, mail and third parties**

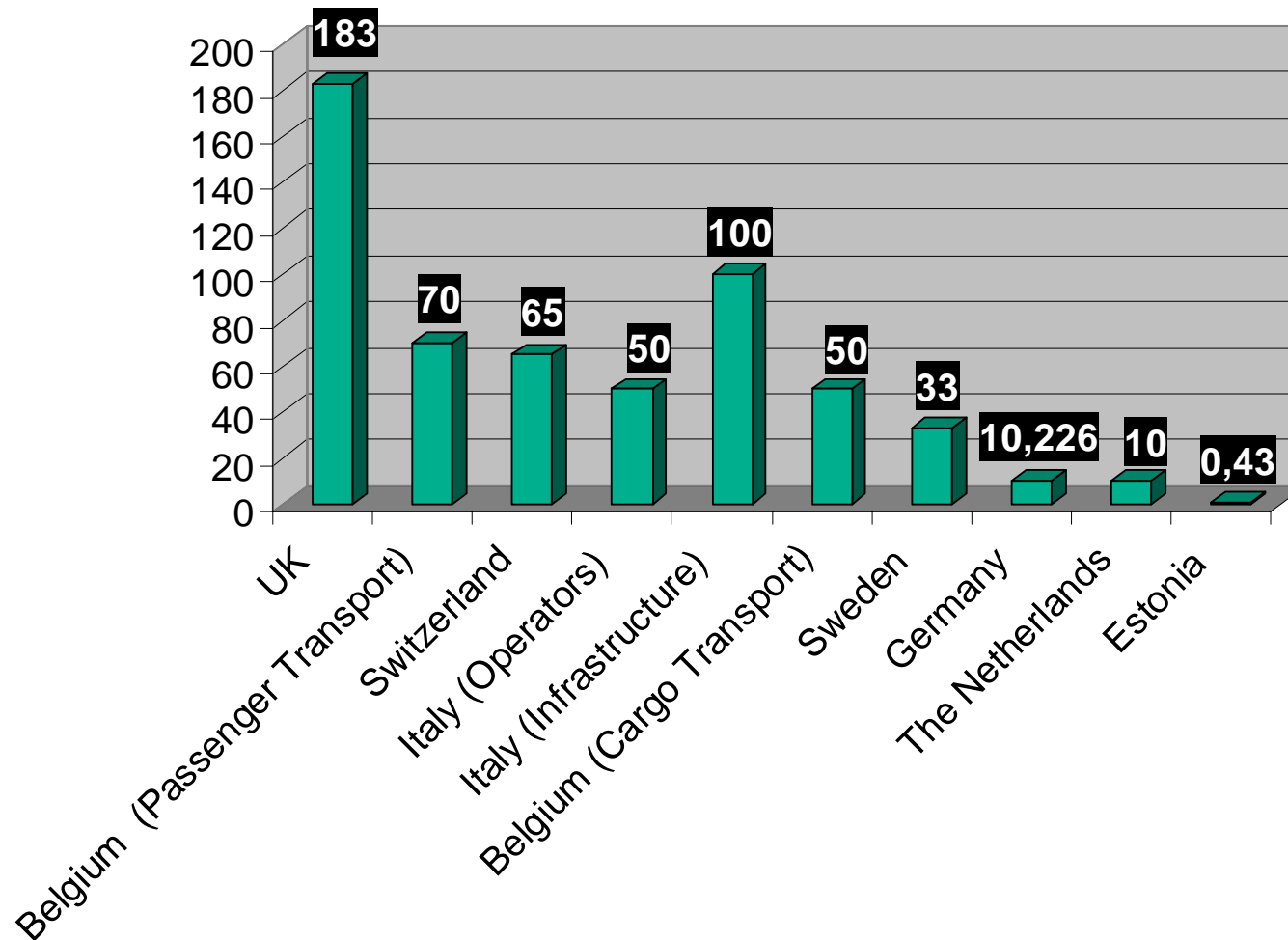
- **Cover must be in accordance with national and international law**

- **The RU should be „adequately“ insured**
 - Minimum insurance levels are not stipulated
 - Questionable in case of large deductibles
 - Questionable in case of exclusions of main risks

INSURANCE – LIABILITY LIMITS REQUIRED IN THE EU



Minimum limits required in Million EUR





- **Insurance or equivalent arrangements for cover**
 - E.g. captive solutions, bank guarantees
 - State guarantees may be problematic in terms of competition law

- **Regulation 1371/2007/EC on rail passengers' rights and obligations affirms that a RU is obliged to be adequately insured or to make equivalent arrangements for cover of its liabilities for passengers.**

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- **Liability insurance is mandatory for**
 - RU
 - IM
 - keepers of rolling stock**operating or using the public railway network**

Some of the aforementioned undertakings, belonging to the Public, are allowed to form an organisation sharing risks/claims expenditure.

- **Cover must be provided for**
 - bodily injury or death
 - loss of or damage to property**in the event of accidents**

No mandatory cover for financial loss and loss of or damage to luggage, freight and mail.



- **Insurers must be authorised to write liability insurance in Germany and have to have a branch office in Germany.
Nevertheless: no obligation to contract for the insurer**
- **Minimum limit to cover: EUR 10,226 m, twice in the aggregate**
- **Proof of insurance coverage towards The Federal Railway Authority and towards the IM.**

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Federal Railway Authority

- **Independent supervisory and authorising authority for domestic and foreign railroad traffic**
- **Issues licences for new railroad companies if the company**
 - is reliable (certificate of good conduct)
 - has a good financial performance
 - has the necessary expertise (safety certificate)
 - has taken out mandatory insurance coverage

Federal Network Agency

- **Provides for a further development of the rail infrastructure market by liberalisation and deregulation**
- **Ensures fair competition regarding the use of the infrastructure**
- **Has the right to get access to the premises, the vehicles and documents**

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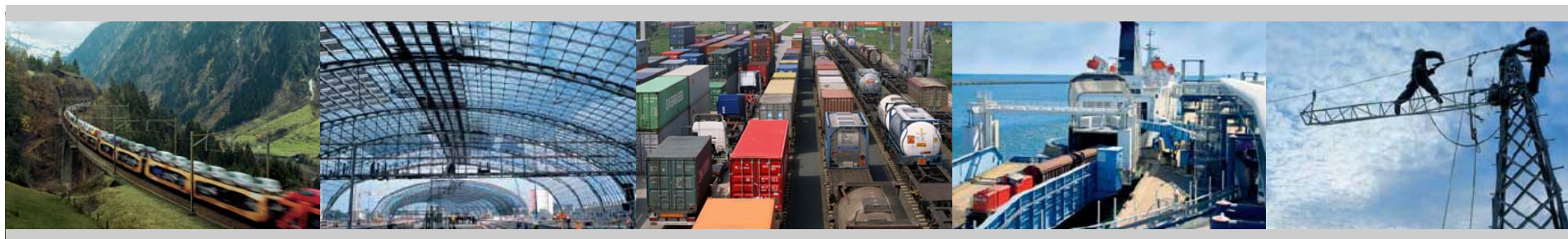


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General Liability Insurance €25 m
(Public Liability for premises, product Liability etc.)

Mandatory Liability Insurance
€10,226 m

Liability
without
Insurance



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