

European Commission IAIEX

Civil liability regulations in the European Union

Challenges and recommendations for a legal act on civil liability insurance for the railway sector

Skopje, 8 November 2010

Klaus-Jürgen Uhl
Chief Executive Officer
Vienna Consult Verkehrsberatungsg mbH

1

IAIEX

Basic definitions of insurance terms

- **Liability:** legal obligation to perform specified act(s). In insurance, the concern is on the circumstance in which
 1. one party's property is damaged or destroyed, or
 2. that party incurs bodily injury as the result of the negligent acts or omissions of another party.

2

IAIEX

Insurance terms (2)

- **Civil liability :** tort (negligence) or breaches of contract, but not crimes.
- **Liability insurance :** coverage for all sums which the insured becomes legally obligated to pay.
- **Claim:** request by an insured for indemnification by an insurance company for loss incurred from an insured peril

3

IAIEX

Insurance terms (3)

- **Coverage:** protection under an insurance policy.
- **Third party:** individual other than the insured or insurer
- **Third party insurance :** Liability insurance purchased by the insured from an insurance company for protection against possible suits brought by another

4

IAIEX

EU rules on insurance

Liability in the days of state-owned railways	Liability in liberalised rail traffic
<ul style="list-style-type: none"> •Liability to the customer •Liability to other train-operating companies •Liability for the use of third party wagons •Liability to third parties 	<ul style="list-style-type: none"> •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

5

IAIEX

EU rules on insurance (2)

Liability insurance in times of state-owned train operating companies	Liability insurance in a deregulated environment
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).	The prerequisite for obtaining a concession as a train operating company is the proof of coverage for accident liability, in particular for passengers, luggage, freight, post and third party according to territorial and international legislation. Source: EU Directive 95/18

6



Other international conventions/agreements (1)

- COTIF and its annexes
 - regulates the liability rules for private wagon owners in the annex CUV.
 - obligations vis-à-vis the EU prevail over those vis-à-vis COTIF.
 - The keeper is liable for damage caused by the wagon only in case of his own negligence. Contractual liability does not exceed the scope of his statutory third party liability

7



Other international conventions/agreements (2)

- RID and ADR:
 - RID and ADR are agreements set up and developed under the auspices of the United Nations Economic Commission for Europe (UNECE). They stipulate rules on the transport of dangerous goods by rail. These agreements do not contain rules on liability (including environmental liability) or insurance.

8



Other international conventions/agreements (3)

- GCU/CUU/AVV
- regulates, on a private and voluntary basis the relationship between the keeper of a wagon.
- liability principles for 3 cases:
 - Damage to the wagon
 - Damage caused by the wagon
 - Liability for staff and other persons

9



Legal obligations for insurance

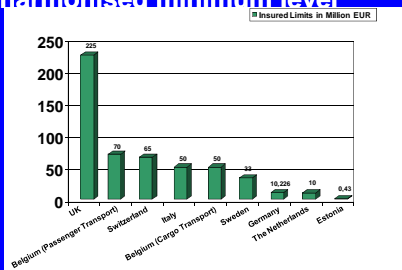
- MS have an obligation for RUs to get insured, legal instruments of implementation not harmonised.
- insurance amounts are often fixed in decrees or administrative practice only.
- rail regulator or the licensing authority decides on a case by case if provided coverage is sufficient → discrimination

10



Minimum insurance levels in EU Member States

- **No harmonised minimum level**



11



Classification of EU practice

- In EU MS wide range of classification and evaluation criteria
- Most MS have opted for:
 - **Occurrence** basis instead of the "Anglo-American" claims basis
 - **One single minimum insurance** level for the national rail network rather than case-by-case levels

12



Implementation issues

- Verification procedure
 - Not harmonised: IM, path allocation body, regulatory body, safety authority
- State guarantees
 - Most MS no state guarantee for either IM or RU

13



Challenges for EU market railway insurance (1)

- New market
- Different national approaches
- “The higher the required coverage, the higher the costs of finding adequate coverage with the consequent implications on competitiveness”
- 95/18/EC itself – not clear nor precise

14



Challenges for EU market railway insurance (2)

- Insurance market nationally structured – problem international rail traffic
- For insurance companies: train operation = bad risk (Accident Eschede/Germany)
- Additional claims through separation infrastructure and operations

15



Market situation in EU

- Insurance actors
 - **Primary insurance companies**
 - Insurance brokers
 - **Re-insurance companies**
- National markets overview

16



New entrants

- high insurance cost → lack of historic exposure data.
- Cost reduction by industrial policy or civil liability insurance (f.e. a port) possible
- Civil liability insurance → serious barrier
- **Market Regulator to closely monitor rail insurance market → measures to reduce insurance cost and barriers**

17



Thank you.

18