



Deregulation of Railway Transport in Europe Liability and Insurance iro Train Operating Companies / Infrastructure Managers

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Deutsche Verkehrs-Assekuranz-Vermittlungs-GmbH
Industrieversicherungsmakler

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A. Initial situation

- State-owned railways with network and transport monopoly
- Shared handling of international rail traffic by cooperation between state-owned railways

B. Chronology of European reform legislation

- CD 91/440/EEC: Adaptation of Community railways to the needs of the Single Market and increase in their efficiency
- CD 95/18/EC: The licensing of train-operating companies
- CD 95/19/EC: Allocation of railway infrastructure capacity and the charging of infrastructure fees
- CD 2001/12-14/EC: Extension of access rights to rail networks, stricter requirements for the separation of infrastructure and transport services, further regulation of licensing regulations and, inter alia, regulations on access to networks and the levying of fees.
(= "first railway package")

C. Current situation

- Deregulation has since continued with the European Commission's second and third railway packages.
- These also regulate access to the entire European rail network for internationally operative train-operating companies which carry freight across national borders.
- 1 January 2010: Rail networks will be opened up for international passenger transport and cabotage.

Overview

liability in the days of state-owned railways	liability in liberalised rail traffic
<ul style="list-style-type: none">• use of wagons	<ul style="list-style-type: none">• use of wagons• liability between train operating companies and railway infrastructure managers

A. Fundamental liability relationships in the days of state-owned railways

- Liability to the customer
- Liability to other train-operating companies
- Liability for the use of third party wagons
- Liability to third parties

B. Liability for the use of third party wagons

I. Legal Basis

- Private goods wagons

RIP, Regulation concerning the International Carriage of private wagons

UIC Leaflet 433 V: standard general conditions for the introduction into service and operation of P-wagons

UIC Leaflet 992 V: division between railways of compensation for damage or injury resulting from the use or running of private owners' wagons

- RU wagons

RIV 2000: agreement governing the exchange and use of wagons between railway undertakings

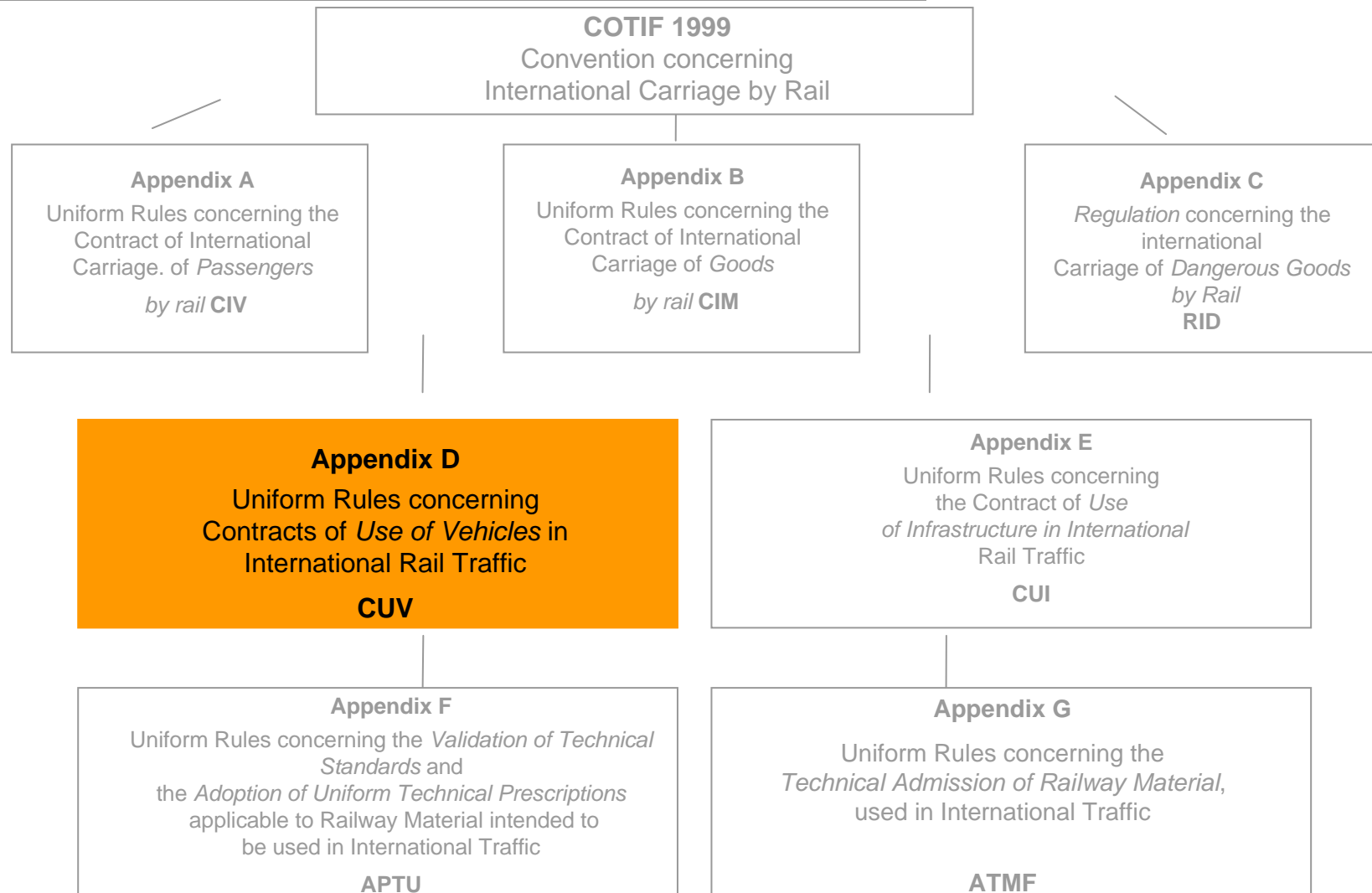
II. Scope of Liability

1. For damages to wagons:
Liability held by the damaging company
2. For damages by wagons:
The owner's liability is assumed by the registering company (liability agreement to UIC leaflet 433)

B. Fundamental liability relationships in liberalised rail traffic

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



C. Liability for the use of third party wagons

Under COTIF/CUV (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic)

- Applicable when wagons are used as means of transport (not as goods)
- Equal treatment of private wagons and third party railway vehicles

I. Liability regulations for damages to wagons

- Liability for presumed fault (Article 4 CUV)
- Compensation for the fair market value on loss or the cost of repair in case of damage
- No compensation for loss of use of damaged wagons

II. Liability for damages caused by wagons

- Liability of the keeper for proven fault (while the train-operating company using the wagons is strictly liable to injured third parties in many systems of law)

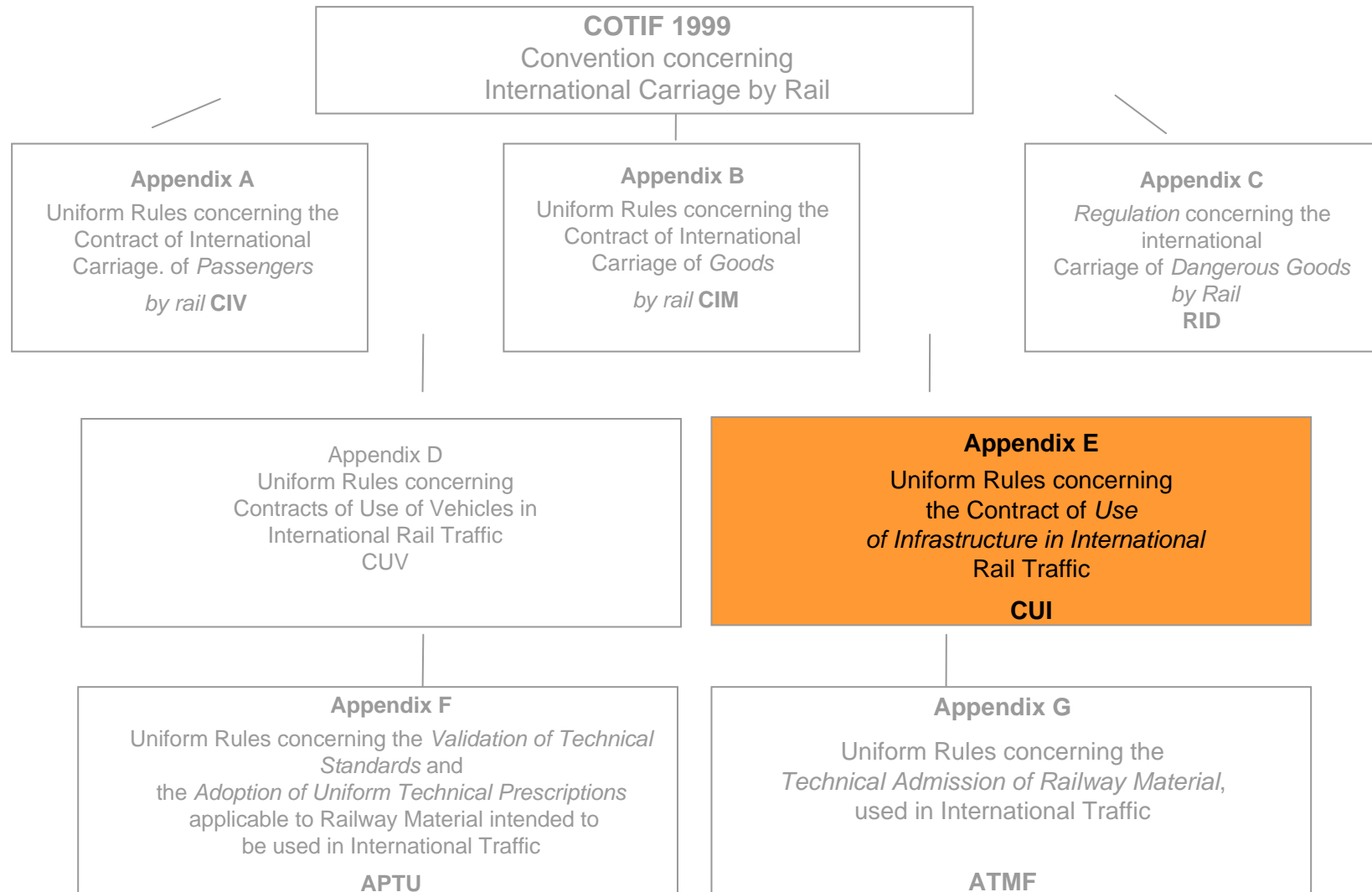
D. General Contract of Use (GCU)

I. Damages to wagons

- Liability principles same as in CUV:
- Liability of the train-operating company using the wagon for presumed fault (Article 22.1 GCU).
- A catalogue of damages introduced to facilitate the handling of damages; the catalogue assigns typical damages to the keeper or train-operating company (Article 22.4 GCU). If damages are typically assigned to a train-operating company, the company using the wagon can only offer evidence in exoneration if the damage exceeds a defined threshold limit (750 euros).
- If a wagon is damaged, flat-rate compensation is also provided for loss of use (Article 23.2 with Article 13.3 GCU).

II. Damages by wagons

- Liability principles same as in CUV:
Liability of the keeper or previous user for proven fault (Article 27.1)
- Recommendation to the train-operating company only to claim for damages against the keeper (or previous user) if a threshold limit (recommended: EUR 17,000) is exceeded (Article 27.4).



E. Liability between train-operating companies and rail infrastructure companies

I. Based on legal regulations

At the international level under COTIF/CUI

New: Infrastructure manager is the train-operating company's agent in performance (Article 51 CIV and 40 CIM)

1. Liability of the rail infrastructure company (Article 8 CUI)

The rail infrastructure company is strictly liable to the train-operating company for

- bodily injury and material loss or damages suffered by the RU or its auxiliaries, and
- the financial losses which arise if the train-operating company is required to pay compensation to its customers to cover their claims for bodily injury, damage to property or financial losses under CIV or CIM.

Provided that:

- The train-operating company suffers the damages when using the infrastructure
- The cause of the damages lies in the infrastructure itself.

However: No liability in cases specified in Article 8, No. 2 CUI

2. Liability of the train-operating company (Article 9 CUI)

The train-operating company is strictly liable to the rail infrastructure company for bodily injury and material loss or damage suffered by the rail infrastructure company or its auxiliaries

- caused by the train-operating company
- by the means of transport used by the train-operating company or
- by the persons or goods carried by the train-operating company

when using the infrastructure.

However: No liability in cases specified in Article 9, No. 2 CUI



II. Based on terms of business/contracts

Such as the European GTC (European General Terms and Conditions of use of the railway infrastructure) which is based on the liability rules in the CUI.

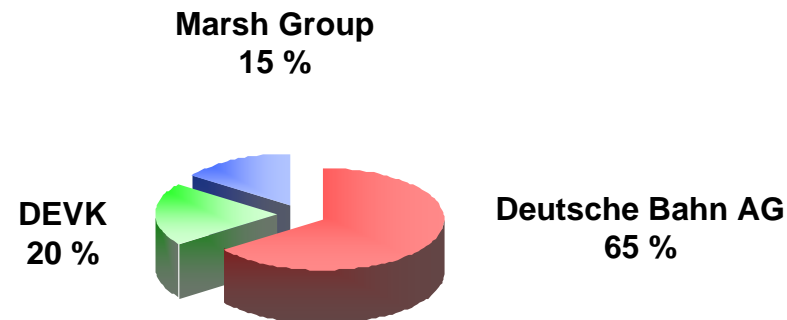
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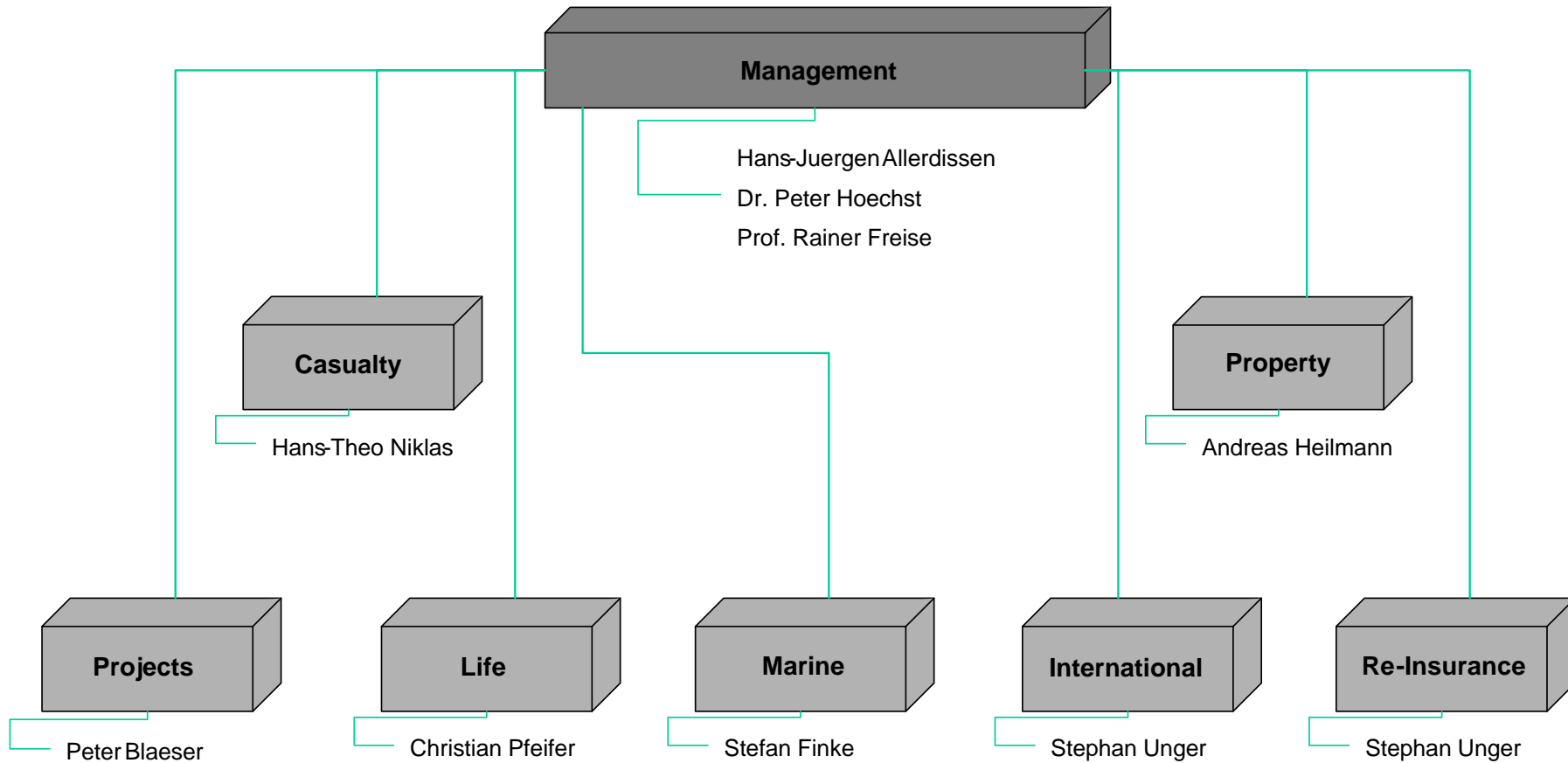
- I. Legal Background
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- Insurance brokers to Deutsche Bahn AG and for non-corporate business
- Founded in November 1992
- Employees: > 90
- Head office: Norsk-Data-Strasse 3, 61352 Bad Homburg (near Frankfurt/ Main)
- Branch: Friedrichstraße 61, 10117 Berlin
- Origin based on the privatisation of German railways
- Shareholder structure:



Structure



Client Base:

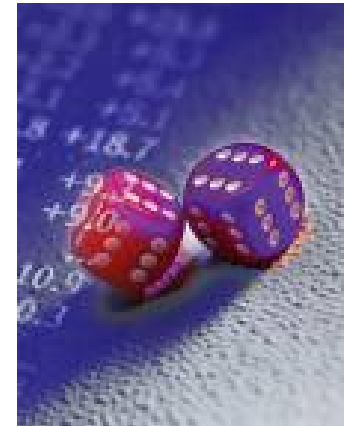
- **Railway operators**
- **Infrastructure enterprises**
- **Logistics providers**
- **Major construction projects**
- **Building contractors**
- **Transportation companies**
- **Real estate industry**
- **Industrial enterprises**
- **Service sector enterprises**
- **Federal offices**
- **Local authorities**
- **Consultants**



- **Protection of its customers balance sheet**
- **Risk identification**
- **Risk assessment**
- **Risk control**
- **Risk transfer (national and international markets)**
- **Detection of interfaces - closing gaps in cover**
- **Tender procedures, world-wide**
- **Procurement / management of insurances**
- **Claims management**
- **Market security / market overview**



- **Property**
- **Casualty**
- **Environmental Risk**
- **Director's and Officer's Liability**
- **Construction-/ Erection All Risk**
- **Crime**
- **Political Risk**
- **Marine**
- **Credit Risk**
- **Errors & Omissions**
- **Employee Benefits**
- **ART**
- **Captive**





DVA being lead insurance brokers for Vehicle Keeper Liability Insurance®

- **Currently more than 150,000 vehicles insured**
- **More than 110 policyholders in 15 European countries**
- **One insurance contract taking into account all national, European and international legal provisions**
- **Covers risks like**
 - **Bodily injury**
 - **Damage to third-party property**
 - **Environmental damage**

- **DVA being the lead insurance brokers for construction projects in Germany**
- **More than 1.300 major projects serviced p.a.**
- **Well-experienced in the range of :**
 - **CAR**
 - **EAR**
 - **Liability**



What do Customers Expect From Insurance?



...in case of...



What do Customers Expect From Insurance?



- **Satisfactory compensation in case of an incident**
- **Claims management to be:**
 - **swift**
 - **reliable**
 - **competent**
- **Protection of interests**



What's our Commitment?



- **Attendance of customers during the whole claims settlement**
- **Coordination and control of claims handling**
- **Monitoring insurers claims surveys**
- **Recommendation of expert third-party**
- **Arrangement of partial payments**



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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**





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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).

Insurance in a Deregulated Environment

Source: EU Directive 95/18

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.

Statutory Insurance for Train Operating Companies

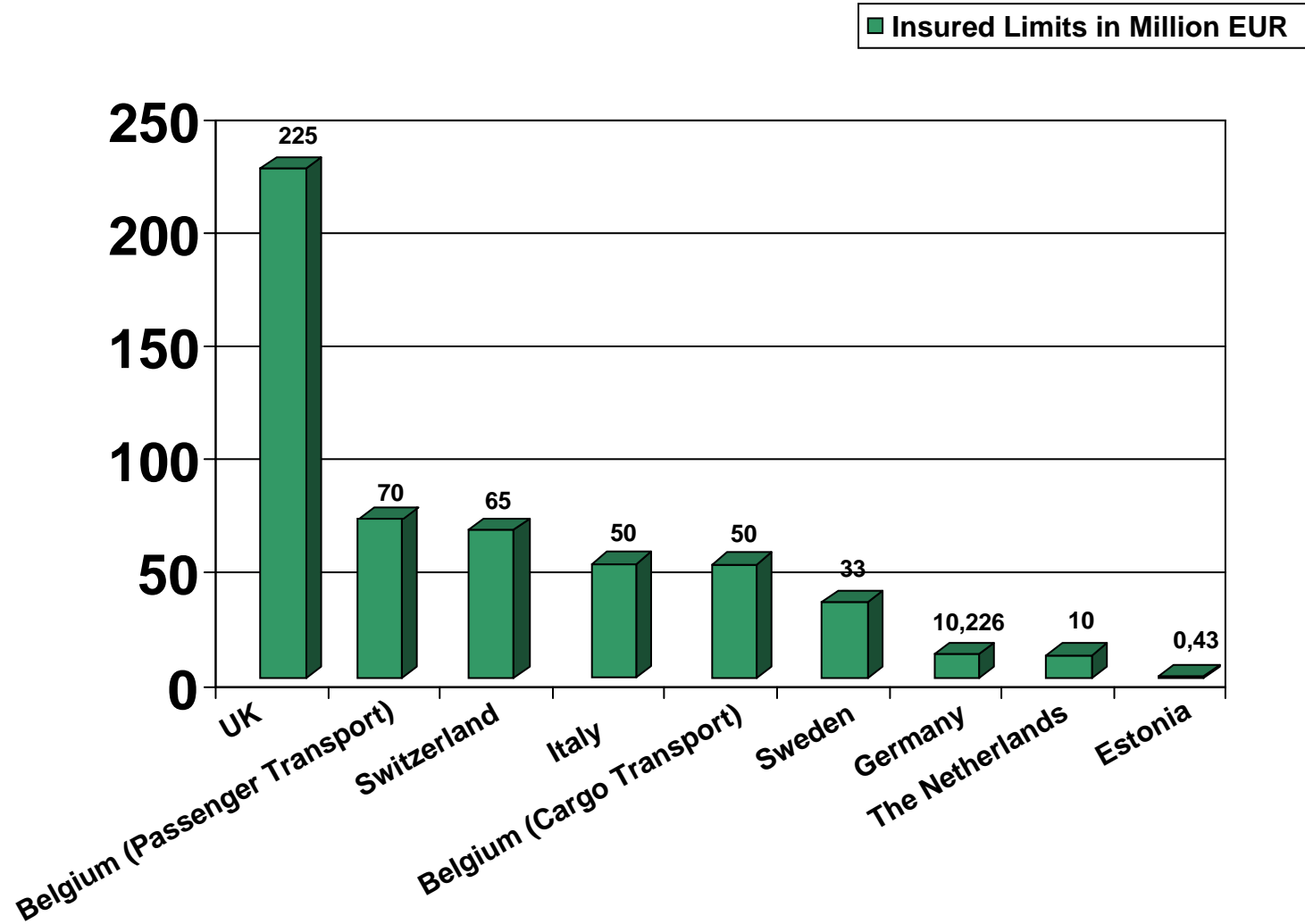
(not for infrastructure managers and vehicle keepers)

- for bodily injury
- for property damage
- does not apply: for pure financial loss; e.g. loss due to delay

Requested is „Adequate“ Insurance Cover

- questionable in case of large deductibles
- questionable in case of gaps in cover

So far there is no Pan-European agreement upon standard minimum insurance limits





Proposition

Policy Holder

The train operating company and/or infrastructure manager including all its existing and/or future legally dependent branch, auxiliary and ancillary enterprises within the respective country and in foreign countries - with the exception of e.g. USA/Canada.

Description of Operation

Provision of rail transport (passenger rail transport and goods rail transport within the respective country and on other European rail networks), and also shipping services and alternative services to rail transport, including all activities, equipment etc. associated therewith, and as owner / occupier of real estate used for these purposes.



Insured Risk

Insured is the policy holders legal liability under private law resulting from all characteristics, legal relationships and activities listed in the description in accordance with the e.g. standard conditions for third-party liability insurance and any other additional agreements.

Any increase of risk, resulting inter alia from a revision of individual liability acts or other railway related acts are automatically covered during the insurance period in which such revisions become final.



Coverage for Natural Persons

Also insured under this policy is the personal legal liability of the policy holders legal representatives and persons delegated by them to manage or supervise of all or part of the insured operation;

all other employees (including employees of other companies working in the policy holders operation) in performance of their duties.



Environmental Damage

Ideally cover should exist under this policy for liability claims relating to environmental pollution of soil, air or water and all further damage resulting there from (environmental damage).



Occurrence Based Policy

The loss must have occurred during the period of the insurance policy.
It is not a claims-made based policy.

Commissioning of sub-contractors:

Also covered under this policy is the policy holder's legal liability arising from commissioning of sub-contractors.

The personal legal liability of the sub-contractor and his employees is not insured.



Contractual Liability

Also included in the insurance cover are liability claims relating to rolling stock (including waggons) belonging to third parties during their use in the policy holder`s railway operation in accordance with the rules and/or agreements on cross-frontier rail traffic.



Risk not Insured for Example

- Political risks/force majeure,
- Asbest,
- Urea-Formaldehyde – foam,
- Illegal employment practices,
- D&O liability,
- Offshore risks,
- Transported goods,



Insured Limits

e.g. EUR 10m for any one insured event.

EUR 20m in the annual aggregate for all losses occurred in any single insurance period.

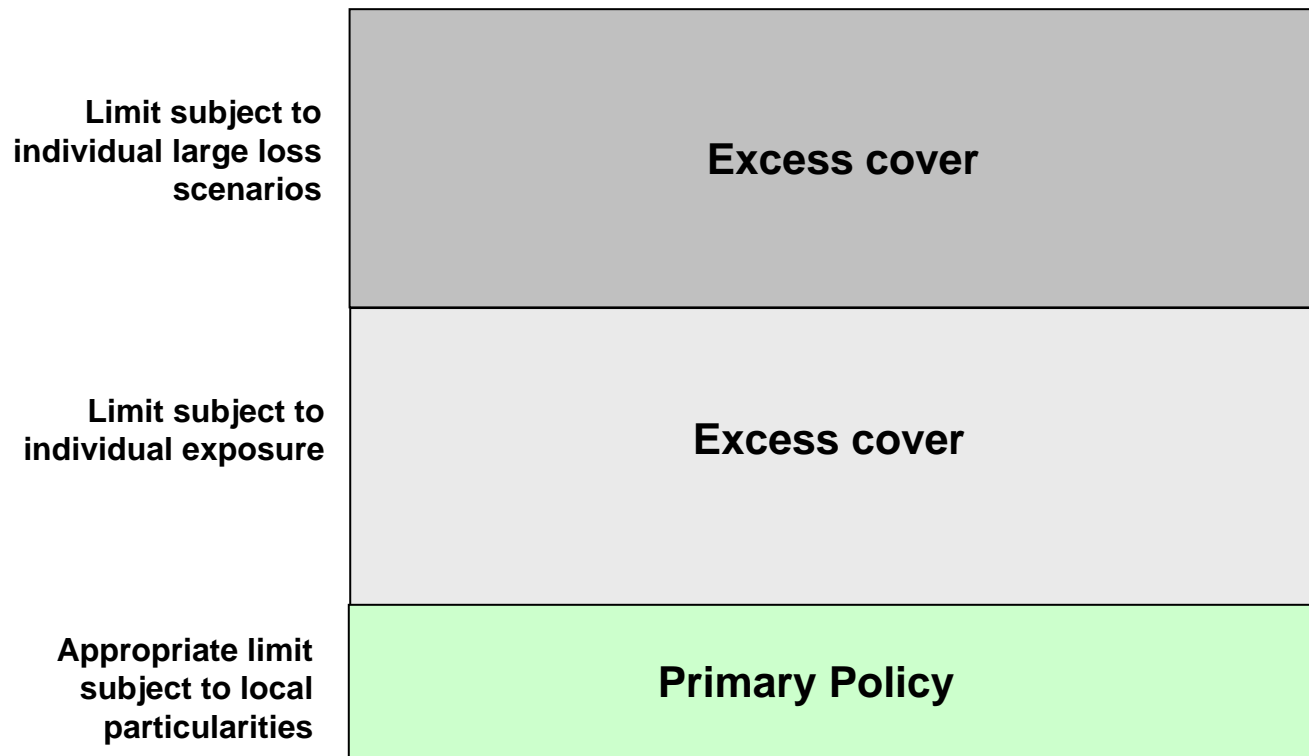
Deductibles

- Nil -

General Liability Insurance



Possible concept e.g. in line with minimum standards set by authorities and/or the insured's risk transfer philosophy





Potential Risks

- Fire, Lightning, Explosion, falling Aircrafts
- malicious mischief
- Impact
- Storm
- Hail
- Earthquake
- Flooding/Inundation

Besides insurance cover on a named perils basis, All Risk Insurance can be obtained.
Demand determines supply.



Insured Limits

- Basis = Reinstatement Value

Deductibles

- appropriate
- Avoid Pound Swapping

Property Insured

- Buildings, technical and commercial Equipment, Owned Stocks, Rolling Stock, etc.

Rolling Stock All Risk Insurance (RSA®)



Cover

All Risk insurance for rail-bound vehicles, e.g. locomotives

Insured Interests

Considered are the interests of all involved parties, e.g. owner (bank, lessor) and user

Indemnification

The maximum indemnification is the reinstatement value

Geographical Scope

Europe

Governing Law

Only German law will apply



Special features

- For locomotives – not older than 15 years – in case of a total loss, the indemnification is the value as new (regardless of wear and tear);
 - Waiver of underinsurance and waiver of subrogation will apply;
 - The insurer has to pay in advance – regardless of the causer;
 - No automatic annual premium increase
- The following extensions are insured with a special limit:
 - Sundry expenditures and cost (e.g. salvage expenses, loss locating costs, costs for clean up, decontamination and disposal, etc.);
 - Costs incurred due to special requirements (e.g. from the Federal Railway Office, the Manufacturer or Lessor);
 - Sundry extra expenses



