



RAIL BALTIC JOINT VENTURE STUDY

ANNEXES

TO THE FINAL REPORT

February 2013
Tallinn, Estonia



Co-financed by the European Union
Trans-European Transport Network (TEN-T)

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1. Comparison of legislation

Analysis of the respective legislation in three Baltic States outlining the main arguments speaking pro and against establishment of such company in Estonia, Latvia, and Lithuania. A comparative table outlining pros and cons in every category.

In the below table are the advantages or disadvantages of different jurisdictions:

	Estonia	Latvia	Lithuania
CORPORATE LAW	NEUTRAL	NEUTRAL	NEUTRAL
Minimum share capital for joint stock company	Neutral 25 000 EUR	Neutral ~35 572 EUR	Neutral ~43 500 EUR
What is the time and cost of foundation?	Neutral 3-7 days, EUR 750-1250	Neutral ~3 working days, EUR 900 - 1400	Neutral 1-3 days, EUR 700 – 1200
Net Equity requirements	Neutral Company must always maintain net equity of at least 50 % of the share capital or statutory minimum share capital	Neutral Company must always maintain net equity of at least 50 % of the share capital or statutory minimum share capital	Neutral Net equity must be maintained over 50 % of share capital
Management bodies	Neutral In essence similar structures available in all three countries	Neutral In essence similar structures available in all three countries	Neutral In essence similar structures available in all three countries, addition of the General Manager
Reliance on the signing authority of Board members	Neutral	Neutral	Minor disadvantage ¹
RAILWAY REGULATION	MINOR DISADVANTAGE	MINOR ADVANTAGE	MINOR DISADVANTAGE
Ownership of railway infrastructure or land underneath the infrastructure	Material advantage ²	Material advantage ³	Material disadvantage ⁴
Licensing of Railway Infrastructure	Minor disadvantage ⁵	Minor advantage ⁶	Minor advantage ⁷
Safety Authorizations	Neutral	Neutral	Neutral

¹ In Estonia and Latvia the reliance on the signing authority of the management board members is clear. Even in case internal limitations are imposed, these do not have significance with respect to third persons. In Lithuania this principle is not clearly written into law.

² No explicit prohibition for a foreign-owned legal entity to own railway infrastructure in Estonia. Transfer and encumbering of land underneath railway infrastructure requires prior consent of TSA.

³ No explicit prohibition for a foreign-owned legal entity to own railway infrastructure in Latvia. Legal entities from other EU countries may acquire land underneath the infrastructure with the consent of relevant municipality.

⁴ Railroad infrastructure of Strategic importance to national security and is also exceptional ownership of State. Usage rights can be issued only to JSC "Lietuvos Geležinkeliai" ("Lithuanian railroads")

⁵ Management of public railways subject to licences issued by the ECA (Estonian Competition Authority) based on eligibility criteria (incl. mandatory insurance, financial capability, professional skill etc.) set forth by the law, foreign IM management licences not recognised. In order to be eligible for any rail related operating licence, registration of a subsidiary company or a branch in Estonia is required.

⁶ Licence for IM not required (registration of RI objects and safety certification required);

⁷ Management of public railways in LT trusted to JSC "Lithuanian Railways". For management of private or any other public railway infrastructure, licence is not required, however, the certificate for authorization in traffic safety is required.

Capacity allocation	Material disadvantage ⁸	Material disadvantage	Material disadvantage
Infrastructure Fees	Material disadvantage ⁹	Material disadvantage	Material disadvantage
TAX	MINOR DISADVANTAGE¹⁰	NEUTRAL	NEUTRAL
In case single company structure is used:	NEUTRAL	MATERIAL DISADVANTAGE ¹¹	NEUTRAL
COMPULSORY EXPROPRIATION	MATERIAL ADVANTAGE	MATERIAL DISADVANTAGE	MINOR ADVANTAGE
Length of the expropriation proceedings	Material advantage 1,5 years from the thematic general plan	Minor disadvantage 2-3 years	Minor disadvantage 2-3 years
Can JV carry out compulsory expropriations?	Neutral No	Neutral No	Neutral No
Can State carry out expropriations and transfer the assets to JV	Minor advantage Yes	Minor advantage Yes	Minor disadvantage Only right of use can be transferred
Who will make the final decision of expropriation ?	Neutral The Government of the Republic	Material disadvantage Parliament by adopting special law	Minor advantage National Land Service
Will dispute regarding the amount of compensation affect the process?	Minor advantage No	Neutral Unclear, most likely does not affect delivery access for construction	Minor advantage No
PUBLIC PROCUREMENT	MATERIAL ADVANTAGE	MATERIAL DISADVANTAGE	MINOR DISADVANTAGE
Minimum value of contracts requiring procurement	Minor advantage Domestic thresholds: 40 000 EUR or 250 000 EUR depending on the type	Minor advantage Domestic thresholds: ~28 457 EUR or ~170 745 EUR depending on the type	Minor disadvantage Domestic thresholds: If less than ~28962 EUR or ~144810 EUR depending on the type, procurement is still required but with simplified procedure
Types of procurement proceedings available	Neutral	Neutral	Neutral

⁸ Materially different regulations in all three countries. Unified principles on allocation of capacity, issuing of windows, network plans, co-ordination procedures etc with respect to Rail Baltica need to be adopted.

⁹ Materially different regulations in all three countries.

¹⁰ As of 2013 it is not tax efficient to hold an Estonian company as pan-Baltic holding structure parent company. The change of laws concern the treatment of profit from the sale of subsidiaries, in case of Latvian or Lithuanian parent-companies, sale of subsidiaries is tax-neutral, in Estonia in case of sale of a subsidiary, then at the point of payment of dividend the Estonian company shall have tax obligation.

¹¹ Under Latvian tax laws, taxes paid on profit by the branch offices of the JV shall be deducted from the yearly payable income tax of the Latvian head office. However as in Estonia income tax is payable only upon distribution of profit, then there will be a time difference resulting in double taxation of Estonian profits, e.g. where in year X the Latvian head office pays profit also on the profits of the Estonian branch and on year X+1, the Estonian branch would distribute profit to Latvian head office and would be subject to taxes in Estonia (double-taxation problem).

Disputing before the contract	Minor advantage After signing the contract, bidder cannot generally lodge an appeal, but there are some exemptions in law. Namely: if negotiated procedure without prior notification is used or in case of illegal direct award. In the first case the deadline for lodging an appeal is 30 days after publication of the contract notice and in the second case it is 6 months after the conclusion of the contract.	Neutral 10 days or 15 days depending on how the results were delivered	Neutral 5-15 days (depending on the procedure)
Disputing after the contract	Material advantage After signing the contract, bidder cannot lodge an appeal	Minor disadvantage 30 days to 6 months	Material disadvantage within 6 months from the award
Percentage of public procurements resulting in disputes	Minor advantage 4-5%	Material disadvantage 13-14%	Minor advantage 4%
Average length of a public procurement dispute	Material advantage 5-6 months in urgent cases, where signing the contract is pending. In less urgent cases it may take a couple of months longer.	Material disadvantage 2-5 years	Minor advantage The current practice shows that the case takes about 6 months in two court levels until the decision of the appeal court. In cases where a cassation is also lodged, it takes couple of months longer.
Changing contract after signing	Neutra	Neutral	Neutral
PPP	MATERIAL DISADVANTAGE ¹²	MATERIAL ADVANTAGE	MATERIAL ADVANTAGE

¹² Estonia has practically no legislation governing PPP, whereas Latvia and Lithuania have special laws regulating this particular field

2. Comparison of jurisdictional suitability

An analysis of the place of residence and future law governing the company operations in the future. Analysis of the respective legislation in three Baltic States outlining the main arguments speaking pro and against Estonia, Latvia, and Lithuania.

In the below the advantages or disadvantages of different jurisdictions:

	Estonia	Latvia	Lithuania
LEGAL	NEUTRAL	NEUTRAL	NEUTRAL
Registration of a company and starting business¹³	Neutral	Neutral	Neutral
TAX	In case holding structure is used: MINOR DISADVANTAGE ¹⁴	In case holding structure is used: NEUTRAL	In case holding structure is used: NEUTRAL
	In case single company structure is used: NEUTRAL	In case one company structure is used: MATERIAL DISADVANTAGE ¹⁵	In case one company structure is used: NEUTRAL
Ease of tax reporting	Minor advantage On average 85 hours are spent per year on tax reporting	Neutral On average 264 hours are spent per year on tax reporting	Neutral On average 175 hours are spent per year on tax reporting
Implicit tax rates in % - Labour¹⁶	Minor disadvantage 37,0%	Minor advantage 32,5%	Minor advantage 31,7%
GEOGRAPHIC	MINOR DISADVANTAGE	MATERIAL ADVANTAGE	NEUTRAL
Land connection	Material disadvantage Tallinn to Vilnius 601 km = journey time 7 h 12 minutes Tallinn to Riga 309 km = journey time 3 h 59 minutes	Material advantage Riga to Tallinn 309 km = journey time 3 h 59 minutes Riga to Vilnius 294 km = journey time 3 h 29 minutes	Material disadvantage Vilnius to Riga 294 km = journey time 3 h 29 minutes Vilnius to Tallinn 601 km = journey time 7 h 12 minutes ¹⁷
Air connection	Minor disadvantage 29 direct connections ¹⁸	Material advantage 65 direct connections	Neutral 39 direct connections ¹⁹

¹⁴ As of 2013 it is not tax efficient to hold an Estonian company as pan-Baltic holding structure parent company. The change of laws concern the treatment of profit from the sale of subsidiaries, in case of Latvian or Lithuanian parent-companies, sale of subsidiaries is tax-neutral, in Estonia in case of sale of a subsidiary, then at the point of payment of dividend the Estonian company shall have tax obligation.

¹⁵ Under Latvian tax laws, taxes paid on profit by the branch offices of the JV shall be deducted from the yearly payable income tax of the Latvian head office. As in Estonia income tax is payable only upon distribution of profit, then there will be a time difference resulting in double taxation of Estonian profits, e.g. in year X Latvian head office pays profit on profits of the Estonian branch, in year X+1, Estonian branch would distribute profit to Latvian head office resulting in taxes in Estonia (double-taxation).

¹⁶ „Taxation trends in the European Union” http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm

¹⁷ <https://maps.google.com/>

¹⁸ Flight timetable, Vilnius Airport http://www.vno.lt/lt/tvarkarastis/pusmetinis-tvarkarastis/sezoninis-skrydziu_tvarkarastis.pdf?t=1355398143

¹⁹ Winter timetable, Tallinn Airport <http://www.tallinn-airport.ee/tallinn-airport-flightplan-winter-13.pdf>

FINANCIAL-ECONOMIC ASPECTS	MINOR ADVANTAGE	NEUTRAL	NEUTRAL
Ability to obtain EU financing ²⁰	Neutral	Neutral	Neutral
Ability to obtain third party financing (EIB, NIB) ²¹	Neutral	Neutral	Neutral
Vicinity to Clients (Commodity Flows)	Material advantage ²²	Neutral	Neutral
Labour cost	Minor disadvantage 1071 EUR per month ²³	Minor advantage 794 EUR per month	Minor advantage 802 EUR per month
Cost of office space ²⁴	Neutral A 10,5 - 16 EUR B1 7,5 - 10,6 EUR B2 3,2 - 6,5 EUR	Neutral A 9 - 14 EUR B1 6 - 10 EUR B2 5-7 EUR	Neutral A 11,2 - 15 EUR B1 7,9 - 11 EUR B2 5,8 -9,5 EUR

²⁰ The location of the seat of the Joint Venture shall not effect the possibility to apply for EU financing

²¹ EIB and NIB will not look at the country risk per country, but as state guarantees will be most likely required from all three Baltic States, then the country risk is effectively taken into account for all three Baltic states and consequently the jurisdiction of the JV does not affect that

²² As noted in the AECOM Study, the key to the success of Rail Baltica will be its ability to capture a significant percentage of the international trade between the Baltic States and the surrounding countries particularly that percentage of the overall trade moving in a north/south direction (page 36 of the Final Report). As set forth in the table 9 on the same page, in 2008 out of the 9 659 thousand tonnes of commodity flows on the north-south-north bound trade 78,7 % either originated from or ended up in Finland.

²³ In 2010, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00173&plugin=1>

²⁴ Asking rent rates (EUR/sqm/month) excluding VAT and operating expenses in 2011. Colliers Real Estate Market Reviews respectively for Estonia, Latvia and Lithuania

3. Comparative analysis of RIF

Comparative analysis of railway infrastructure use fee calculation methodology in EE, LV, LT and PL

1. NATIONAL LEGAL ACTS

providing Principles and Methodology for the Pricing of the railway infrastructure (RI) fees (RIF)

- EE**
- Railways Act (*raudteeseadus, RdtS*)
 - Regulation No. 32 dated 28.04.2008 by the Minister of Economic Affairs and Communications (**MKM**) establishing the Methodology for Calculation of the User Fees for Railway Infrastructure (**Methodology**)
- LV**
- **Railway Law** (*Dzelzceļa likums*), dated 1 April 1998, as amended;
 - **Law on Regulators of Public Utilities** (*Par sabiedrisko pakalpojumu regulatoriem*), dated 19 October 2000, as amended;
 - The Methodology for Calculating Fees for the Use of Public Railway Infrastructure, dated 21 September 2011, Public Utilities Commission's decision Nr.1/21 (*Metodika maksas aprēķināšanai par publiskās lietošanas dzelzceļa infrastruktūras izmantošanu pārvadājumiem*);
 - Modality of Fees for Use of the Public Railway Infrastructure, dated 16 June 2011, Public Utilities Commission's decision Nr.1/11 (*Maksas par publiskās lietošanas dzelzceļa infrastruktūras izmantošanu piemērošanas kārtība*);
 - Settlement Arrangements for Fees for Use of the Public Railway Infrastructure, dated 16 June 2011, Public Utilities Commission's decision Nr.1/10 (*Maksas par publiskās lietošanas dzelzceļa infrastruktūras izmantošanu norēķinu kārtība*).
- LT**
- The following acts partially implement Directive 2001/14/EC (as amended):
- Law on the Principles of the Activities of Transport;
 - Railway Transport Code;
 - Rules of calculation of fees for the use of public railway infrastructure.
- PL**
- Legal acts:
 - Railway Act of 28 March 2003 (Journal of Laws of 2007, no. 16, item 94) (**PL Railway Act**);
 - Regulation of the Minister of Infrastructure of 27 February 2009 on the conditions of accessing and using railway infrastructure (Journal of Laws of 5 March 2009) (**PL Access Regulation**);
 - IM's regulations (the IM in the PL context, means PKP PLK S.A., which managing approximately 98% of regular railway lines in Poland):
 - **Network Statement** – Regulations concerning allocation and use of train paths on available railway lines by licensed railway undertakings within timetable 2012/2013 (**PL IM Rules**). According to the PL Railway Act, the PL IM Rules have to be issued by the IM, and under the PL Access Regulation, the PL IM Rules should be consulted with RUs. A new edition of the Rules is issued every year in connection with a new Annual Timetable being introduced, so their provisions may differ in the future editions;
 - Tariff of unit rates for using the rail infrastructure managed by the IM, in force from 9 December 2012 (**Tariff**). Under the PL Railway Act, the Tariff has to be issued by the IM. A new edition of the Tariff is issued every year in connection with a new Annual Timetable, so the rates will be different in future editions.
 - Implementation of the EC Directives:
 - The European Commission that has filed a complaint against Poland with the CJEU (case C-512/10) in connection with the implementation of the First Railway Package. The EC raised four allegations against Poland, one of which is that Poland did not provide the IM with incentives to reduce the costs of providing infrastructure and the level of access charges (as required under article 6 of Directive 2001/14/EC). Another allegation is that Poland did not undertake the measures necessary to ensure that the RIFs are set at the level of costs directly incurred as a result of operating the train service (as required under article 7 section 3 of Directive 2001/14/WE). Besides, Poland has not introduced a mechanism that allows checking whether various market segments can bear higher RIFs (as required under article 8 section 1 of Directive 2001/14/EC).
 - The case is now in progress, no judgment has yet been issued.
 - RUs claiming that the IM's RIFs are too high as the basis for their calculation, as they also include indirect costs and depreciation, which is contrary to the provisions of the Directives.

2. ARE THERE ANY MATERIAL AMENDMENTS PROPOSED OR CURRENTLY ON PROCESS OF ADOPTION?

EE: Not currently, change of RIF methodology likely in future to follow new EU legislation;

LV: Technical amendments in process;

LT: None;

PL: The Office of Rail Transportation (**Office**) has established a "Rates Team" consisting of the Office's representatives, IMs and RU organisations and tasked to create unified rules for calculation of unit rates for all IMs and to ensure that those rules are transparent.

Observations: National methodologies for RIFs are likely to change, EU developments presently unclear.

3. BASIS OF CALCULATION OF RIFS

- EE RIF = Fee for Basic or Extra Services + reasonable profit, where
- Fee for Basic or Extra Services = direct costs of service + capital expenditure + proportionate part of overheads;
 - **Formula for Basic Service fee** (T_o) = $P_o + M_o$, where
 - P_o – portion of monthly fixed costs of RIF;
 - M_o – portion of monthly variable costs of RIF.Fixed/variable costs portions are further adjusted according to the passenger/cargo ratio
 - **Fee for Extra Services** (L_o) = total expense of the particular Extra Service in given month / total volume of the particular Extra Service in that month
 - Costs are allocated to causing services, cost accounting must ensure that unnecessary costs are not included;
 - If IM operates also as provider of rail transport services or in any other business area, the costs of joint operating structures are regarded as overheads only if separate cost allocation is impossible on the basis of accounting records;
 - Overheads are distributed proportionally to all services provided.
 - **Fee for support services** (A_o) = total expense of the particular Support Service in a given month / total volume of the particular Support Service in that month

- LV $M = (M_i \times V_k) + N$, where
- M – carrier's payment for the use of public RI;
- M_i – fee set by the performer of the essential functions for the use of the public railway infrastructure (lats per train km, without VAT);
- V_k – actual km-s covered by the RU's relevant trains in the given billing period;
- N – taxes and duties mandatory for the RU under Latvian law.

- LT Calculation rules of RIFs for the **minimum access package and the access to railway infrastructure objects** (Basic Services), based on the type of service:

Capacity reservation fee (determined on the length of reserved train paths):

$P = R \times p$, where:

P - the payable capacity reservation fee in LTL;

R - the actual length of train paths reserved by a railway company (carrier), i.e. the distance travelled by reserved trains in train kilometres (hereinafter referred to as train km);

p - the capacity reservation fee rate in LTL for reserved train-kilometres (hereinafter - LTL / train km) (see below).

Capacity reservation fee rates (p):

$p = \frac{30\% I}{R}$, where:

p - capacity reservation fee rate (LTL / train km);

I - projected public railway infrastructure manager costs directly incurred in providing the services, which make up the minimum access package, and track access to service objects, for the calendar year of the entry into force of the working timetable; direct costs of provision of such services are calculated in accordance with the methodology specified in the Rules of calculation of fees for the use of public railway infrastructure;

R - projected total distance travelled by trains in the calendar year of the entry into force of the working timetable (total length of the train paths subject to reservation), in train km.

Rail traffic fee (based on the actual performance of trains and is expressed in gross tkm):

$T = A \times t$, where:

T - payable rail traffic fee (LTL);

A - actual performance of trains of a railway company (carrier) (gross tkm);

t - rail traffic fee rate (LTL per gross tonne-kilometre (hereinafter - LTL / tkm gross) (see below).

Rail traffic fee rate (t):

$t = \frac{70\% I}{A}$, where:

t - train traffic fee rate (LTL / tkm gross);

I - projected public railway infrastructure manager costs directly incurred while providing the services, which make up the minimum access package, and access to railway infrastructure objects, in the calendar year of the entry into force of the working timetable; direct costs of provision of such services are calculated in accordance with the methodology specified in the Rules of calculation of fees for the use of public railway infrastructure;

A - projected total train performance in the calendar year of entry into force of the working timetable (gross tkm).

Passenger transit fee (determined by the performance of transit passenger trains in gross tkm):

$$T_{\text{tranz.kel}} = A_{\text{tranz.kel}} \times t_{\text{tranz.kel}}, \text{ where:}$$

- $T_{\text{tranz.kel}}$ - payable passenger transit fee (LTL);
- $A_{\text{tranz.kel}}$ - actual performance of transit passenger trains (gross tkm);
- $t_{\text{tranz.kel}}$ - passenger transit fee rate (LTL / tkm gross) (see below).

Passenger transit fee rate ($t_{\text{tranz.kel}}$):

$$t_{\text{tranz.kel}} = \frac{V \times A_{\text{kel}}}{A} (A_{\text{kel}} - A_{\text{tranz.kel}}), \text{ where:}$$

- $t_{\text{tranz.kel}}$ - passenger transit fee rate (LTL / tkm gross);
- V - average amount of state funds (including EU funds, municipal funds) used to cover IM's annual costs (LTL). The average annual amount of public funds is determined by the actual and projected 5-year data: i.e. on the basis of the data of 2 calendar years preceding the year of entry into force of the working timetable, year of the entry into force of the working timetable and 2 calendar years following the year of the entry into force of the working timetable;
- A_{kel} - projected performance of passenger trains in the calendar year of the entry into force of the working timetable (gross tkm);
- A - projected performance of all trains in the calendar year of the entry into force of the working timetable (gross tkm);
- $A_{\text{tranz.kel}}$ - projected performance of transit passenger trains in the calendar year of the entry into force of the working timetable (gross tkm).

Goods transit fee (determined by the volume of transit freight trains in tkm net):

$$T_{\text{tranz.krov}} = K_{\text{tranz.krov}} \times t_{\text{tranz.krov}}, \text{ where:}$$

- $T_{\text{tranz.krov}}$ - the payable amount of goods transit fee (LTL);
- $K_{\text{tranz.krov}}$ - the actual transit freight volume (tkm net);
- $t_{\text{tranz.krov}}$ - goods transit fee rate (LTL / tkm net) (see below).

Goods transit fee rate ($t_{\text{tranz.krov}}$):

$$t_{\text{tranz.krov}} = \frac{V \times A_{\text{krov}}}{A} (K - K_{\text{tranz}}), \text{ where:}$$

- $t_{\text{tranz.krov}}$ - goods transit fee rate (LTL / tkm net);
- V - average amount of state funds (including EU funds, municipal funds) used to cover IM's annual costs (LTL). The average annual amount of public funds is determined by the actual and projected 5-year data: i.e. on the basis of the data of 2 calendar years preceding the year of entry into force of the working timetable, year of entry into force of the working timetable and 2 calendar years following the year of the entry into force of the working timetable;
- A_{krov} - projected performance of passenger trains in the calendar year of the entry into force of the working timetable (gross tkm);
- A - projected performance of all trains in the calendar year of the entry into force of the working timetable (gross tkm);
- K - projected transportation volume of all goods in the calendar year of the entry into force of the working timetable (net tkm);
- K_{tranz} - projected scope of transportation of transit goods in the calendar year of the entry into force of the working timetable (net tkm).

Goods transport fee

Goods transport fee is determined by transportation volume of the goods in tonne-kilometres (hereinafter - tkm net) attributed to a particular market segment of freight transportation by railways stipulated in the Rules of calculation of fees for the use of public railway infrastructure:

$$Kr_i = K_i \times kr_i, \text{ where:}$$

- Kr_i - payable goods transport fee for transportation of the goods attributed to a particular market segment of freight transportation by railways (LTL);
- K_i - actual transportation volume of goods by a railway company (carrier), attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules (tkm net);
- kr_i - rate of the goods transport fee (LTL / tkm net) for the transported goods attributed to a particular market segment of freight transportation by railways (see below).

For calculation of the rate the goods transport fee (LTL / tkm net) for the transported goods attributed to a particular market segment of freight transportation by railways (kr_i) see **Annex 3**.

Overhead electricity network usage fee (determined by the actual kilometres of electric tractive trains):
 $E = R_e \times e$, where:

E - payable overhead electricity network usage fee (LTL);

R_e - actual kilometres covered by the electric tractive trains (el. train km);

e - overhead electricity network usage fee rate (LTL / train km), determined by the following formula:

Overhead electricity network usage fee rate (e):

$$e = \frac{T_e}{R_e}, \text{ where:}$$

e - overhead electricity network usage fee rate (LTL / train km);

T_e - projected public railway infrastructure manager costs directly incurred in providing the overhead electricity network usage services; direct costs of provision of such services are calculated in accordance with the methodology specified in the Rules of calculation of fees for the use of public railway infrastructure.

R_e - projected distance to be travelled by electric tractive trains in the calendar year of entry into force of the working timetable (train km).

Calculation rules of RIFs for the Extra Services:

RIFs for extra services are based on direct, indirect, activities costs. SRI sets the RIFs for extra services in accordance to the costs of provision of additional services including profit of 5 per cents.

PL For composition of RIFs , see Section 4 of Annex 1.

4. RIFS FOR SINGLE RAILWAY CAPACITY FOR COMMERCIAL PURPOSES (SINGLE CAPACITY):

EE RIF for the Single Capacity consists of:

- Transport for commercial purposes - total expenses for this service, incl. direct expenses, the capital expenditure, a proportional part of the overheads and reasonable operating profit;
- Transport for other than commercial purposes, incl. for practical driving test or driving practice, -only the direct expense of the use of such capacity.

LV No special methodology specified in the Rules of calculation of fees for the single commercial use of RI. General calculation rules are applicable.

LT No special methodology specified in the Rules of calculation of fees for the single commercial use of RI. General calculation rules are applicable.

PL For composition of RIFs , see Section 4.3 of Annex 1.

5. HOW ARE RIFS DETERMINED AND COLLECTED IN CASE OF DEPLETED CAPACITY?

EE On general principles, except that according to Article 56(5) RdT, the IM has the right to allocate capacity to the RU making highest bid of the RIF auction.

LV If the railway infrastructure is over loaded (at least 75 per cent of the maximum capacity is used), an increased RIF may be set. The exact amount of increased RIF is determined by an auction and may last for the term set by the auction.

LT Special rules of distribution of capacity are applicable in case of depleted capacity. In such cases there is no regulation concerning determination of RIFs. However, 6 months after the announcement of depleted capacity in the part of RI, the IM shall perform analysis of depleted capacity and publish the programme for capacity increase. The programme shall stipulate possibilities to increase RIFs in the part of infrastructure.

PL RIFs can be increased for the period of congestion. In the course of preparation of timetable for congested RI, the IM may, under the supervision of the Office, hold auction for RIFs.

6. RIF COMPONENTS – CORRESPONDING TOTAL EXPENSES (CTE)

EE $CTE = (I/(I+V)) \times \ddot{U}$, where

I = direct costs of an access service (costs of maintenance, raw materials, procured services and employment costs associated with a particular service);

V = direct costs of all other commercial activities (based on prognosis for a calendar year according to the data provided for the financial year preceding the timetable period plus CPI_{max} for the last audited financial year, as specified further in the Methodology);

\ddot{U} = overhead costs of an IM.

Exclusions from CTE:

- Capital expenditure for and reasonable profit earned from fixed assets acquired through non-refundable financial aid;
- Cost of unrealistic claims;
- Sponsorships, donations;
- Change of value of the assets (e.g. loss from liquidation of fixed assets etc.);
- Fines and late payment penalties arising from the law;
- Any unrelated costs, such as costs not related to management of public railway, unused resources etc.
- Costs from sale of fixed assets used for Basic, Extra or Support Services to extent covered by profit from such sale.

LV $I = (I_{uzt} - I_{valsts}) + I_{kap} + I_n + I_{kor}$, where

I – total costs of RI;

I_{uzt} – costs of maintenance of RI objects and costs related to organization of train movement and management of the RI;

I_{valsts} – funds from the state budget appropriated to the maintenance of the RI;

I_{kap} – RI costs related to capital investments that will be covered by the anticipated IM's revenue from the usage of the RI for transportation;

I_n – taxes and stamp duties payable by the IM in the Latvian state budget, excluding VAT;

I_{kor} – correction of costs related to deviations from the previous year prognosis.

- LT
- Rules of calculation of fees for the use of public RI stipulates what costs (direct, indirect, activities') shall be included calculating each of services, *i.e.*:
 - **minimum access package and the access to RI objects.** RIFs for services of minimum access package and the access to railway infrastructure objects are based on direct cost providing these services. However direct costs do not include RI amortization expenses, costs for the management and administration of investments and credits; Direct costs consisting of various expenses depending **on the kind of service** of minimum access package and the access to railway infrastructure objects;
 - **extra services.** RIFs for extra services are based on direct, indirect, activities costs. SRI sets the RIFs for extra services in accordance to the costs of provision of additional services including profit of 5 per cents.
 - Calculation of the costs (expenses) of the services is based on activity-based cost accounting method. IM shall provide detailed cost allocation for the each group of services (minimum access package and the access to railway infrastructure objects, and extra services). The IM cost allocation method is validated and periodically (at least every 5 years) updated to comply with the best international practice.

PL According to the PL Access Regulation, to calculate unit rates for RI to which the IM plans to give access, the IM assumes:

- Direct costs covering:
 - maintenance costs,
 - costs of managing railway traffic,
 - depreciation;
- Indirect costs of operations covering other reasonable costs of the IM, different from those listed as direct costs or financial costs:
 - financial costs connected with handling bank loans taken out by the IM for development and modernisation of the infrastructure being made available;
 - operating work specified for particular line categories, passenger trains and freight trains.

Under the Railway Act, while setting basic RIF unit rates IM decreases the amount of the planned costs of RI being made available to RUs by the expected subsidy for RI repairs and maintenance obtained from the State Budget and/or local government units, and by the expected funds obtained from the Railway Fund. The detailed methodology of calculating unit rates by the IM is not publicly available.

7. RIF COMPONENTS – CAPITAL EXPENDITURE (CAPEX)

- EE
- Defined as expenses for acquisition of fixed assets, to be returned through provision of services thereby;
 - Based on fixed assets depreciation model, if existing;
 - If fixed assets are not accounted for at acquisition costs, then based on linear method according to the following formulas:
 - For CapEx to be included in RIF:

$$A_{infratasu} = A_{enne p.a} + A_{pärast p.a}$$
 where:
 - $A_{infratasu}$ means CapEx to be included in RIF
 - $A_{enne p.a}$ means capital expenditure for assets acquired before 2004;
 - $A_{pärast p.a}$ means capital expenditure for assets acquired after 2004;
 - Capital expenditure for assets acquired before 2004 is calculated as follows:

$$A_{enne p.a} = PVjääkm_{enne p.a} \times norm_{enne p.a}$$
 where
 - $PVjääkm_{enne p.a}$ – means residual cost of assets acquired before 2004;
 - $norm_{enne p.a}$ – means capital expenditure norm for assets acquired before 2004;
 - Capital expenditure for assets acquired after 2004 is calculated as follows:

$$A_{pärast p.a} = (PVsoetusm_{pärast p.a} + 0,5 I) \times norm_{pärast p.a}$$
 where:
 - $PVsoetusm_{pärast p.a}$ – means acquisition cost of assets acquired after 2004;
 - I – means fixed assets acquired or improved on current year;
 - $norm_{pärast p.a}$ – means capital expenditure norm for assets acquired before 2004, and
 - the investments of the calendar year of the beginning of the timetable period shall be included at 50%.
 - Fixed assets used for provision of RI services shall be allocated either to Basic or Extra Services only. Fixed assets used only for Support Services shall be allocated thereto only.

LV $I_{kap} = I_{not} + P$, where

I_{kap} – costs of railway infrastructure related to capital investment and are covered by expected revenues from the use of railway infrastructure;
 I_{not} – depreciation of the manager's fixed assets that are included in the regulated asset base and amortization of tangible assets;
 P – manager's profit.

LT N/A

PL N/A

8. RIF COMPONENTS - FIXED AND VARIABLE COSTS OF BASIC SERVICES

- EE
- Fees for Basic Services shall consist of:
 - fixed cost component based on ordered train kilometres;
 - variable cost component based on actual gross tonne kilometres (train weight (t) multiplied by distance (km));
 - Proportions of fixed/variable costs (per financial year):
 - 70/30 in networks where the portion of ordered train/km for public passenger transport services is at least 75% of total ordered train/km, whereas RIF for cargo transport may only contain the variable cost;
 - 30/70 where the same is less than 75%, whereas RIF for public passenger transport may only contain the variable cost;
- in networks where the portion of ordered train/km for public passenger transport services is at least 75% of total ordered train/km
- Fixed costs are costs independent of the volume of services provided and payable regardless of actual use of train paths;
 - Fixed costs are **limited** to 6.39 €/train km (max) and 4.15 €/train km (min);
 - Variable costs depend of the volume of services provided and are not payable in case of unused capacity, unless otherwise provided in the contract.

LT See Section 6.
 Calculation of the costs (expenses) of the services is based on activity-based cost accounting method. IM shall provide detailed cost allocation for the Basic and Extra Services each. The IM cost allocation method is validated and periodically (at least every 5 years) updated to comply with the best international practice.

LV N/A

PL N/A

9. RIF COMPONENTS – REASONABLE OPERATING PROFIT

EE Reasonable operating profit may not exceed weighted average cost of capital (WACC), calculated as:

$$WACC = r_e \times \frac{E}{D + E} + r_d \times \frac{D}{D + E}, \text{ where:}$$

r_e – means weighed average cost of equity (%);

r_d – means weighed average cost of interest bearing external debt (%), based on weighted average of IM's debt (to credit institutions) interest rates during the financial year preceding the timetable period. If none exist, average interest rate of a similar IM shall be used. Further, debts to credit institutions

E – total equity;

D – total external interest bearing debt (at least 50% of total capital).

Cost of equity shall be calculated on the basis of the cost of equity of the owners of similar infrastructure in similar market position and risk and profitability indicators of financial markets. IM shall calculate (r_e) on the basis of CAPM model:

$r_e = r_f + \beta \times rm$, where:

r_f – means risk-free profit margin (last 5 years average of highest rated Eurozone long-term bond (Germany 10-year bonds);

β – Beta of IM share (average of the Betas of world IMs' shares, adjusted to the IM's specific risks);

rm – risk premium (average of European and US long term premiums).

- IM may request the use of operating profit rate lower than WACC;
- Reasonable Profit for Basic Services = WACC rate x adjusted value of the allocated fixed assets;
- Reasonable Profit for Extra Service = WACC rate x adjusted value of the fixed assets allocated to such particular Extra Service;
- Reasonable Profit for Support Service = WACC rate x adjusted value of the fixed assets allocated to such particular Support Service.

LV $P = RAB \times wacc$, where

P – infrastructure manager's profit;

RAB – expected value of the regulated capital base at the end of the relevant calendar year;

$wacc$ – the average weighted rate of return on capital.

LT SRI sets the RIFs for extra services in accordance to the costs of provision of additional services with profit of 5 per cents.

PL See Annex 1, Section 4.2.

- Observations:**
- **General.** EE, LV, LT and PL have provided overview of the national methodologies for the calculation and charging of RIFs. It may be summarised from the onset, that the national methodologies are different and primarily aimed at controlling the RIFs established by the incumbent (formerly national or state owned) IMs which control the existing public RI almost entirely. In this light, it is questionable whether they are applicable in case of new Rail Baltic infrastructure. The Joint Venture will face considerable administrative burden, if subject to the current national RIF regulations in EE, LV, LT and PL;
 - **Upcoming Amendments.** In EE, there are no amendments to the existing methodology currently processed, however, in the coming years the current methodology is likely to be changed completely. In LV, certain amendments concerning technicalities are in the process of adoption. In LT, the RIF methodology has been recast only very recently. In PL, amendments are discussed, but not yet publicized, while there are several ongoing court disputes pertaining to the present regulation. Further, on the EU level, the recast of the 1st (Railways) Regulatory Package may bring along further amendments to the national regulation for RIFs.

10. PROCEDURAL STEPS FOR IMPLEMENTING RIFs, DISPUTES

EE Data submissions to the TSA:

- 7 months prior to time table period – calculations and data concerning WACC as set forth in the Methodology;
- 5 months prior to time table period – forecast of gross tonne kilometres for the timetable period;
- 4 months prior to time table period – forecast of RIFs for Basic, extra and Support Services for the timetable period;
- 20th date each month – total monthly tonne kilometres transported on the RI and the RIFs for Extra and Support Services calculated during the preceding month.

Determination of the RIFs:

- In general, by TSA 45 days before the timetable period.

Charging of RIFs from the RUs:

- RIFs are charged on the basis of monthly forecast based on the total number of gross tonne kilometres transported in the month preceding the determination of the specified use fee, and, in the case of allocation of additional capacity, the growth in the number of train kilometres;
- TSA to adjust the RIFs based on monthly data from the IM within 5 working days;
- Set-offs within 30 days from adjustment of RIFs by TSA.

Supervision, Disputes:

- Supervision by TSA, decisions by TSA may be appealed with ECA;
- Decisions by ECA subject to judicial review (administrative court procedure).

LV Independent Authority:

- If the total cost of RI have changed more than 5% or amount of train kms have changed more than 10% compared to the estimates used for the calculation of the RI costs, the IM is entitled to submit information for calculation of new RI cost to the authority who determines infrastructure fees, *i.e.* performer of the essential functions of the IM (AS "LatRailNet").
- Performer of the essential functions of the infrastructure manager (AS "LatRailNet") sets the amount of RIFs in accordance with the methodology and formulas provided by Public Utilities Regulator, which shall be informed about the new RIFs.
- Public Utilities Regulator is entitled to review the fees, if these are challenged by carriers or infrastructure manager.
- The new RIFs are published in the official newspaper and are applicable from the date stated in the publication (usually from the 1st of January until 31st of December).

Charging of RIFs from the RUs:

- Carrier pays the RIFs in accordance with the invoice issued by IM.
- For the freight carriers the invoice is issued twice a week (Monday and Wednesday), for passenger carriers – three times a month (10th, 15th and 25th day of each month). Amount indicated in the invoice is payable within 5 working days.

Supervision, Disputes:

- RU can dispute the RIF established by IM's performer of the essential functions within a month after the fees are published in the official newspaper, filing a relevant claim with the Public Utilities Regulator.
- The Regulator resolves the issue within two months; the decision is binding upon the parties involved.
- The decision of the Regulator can be appealed in the Administrative Regional Court.

LT Establishing the RIFs:

- IM shall present to the SRI costs of extra services and any other information require to set the RIFs for extra services no later than 17 months before the working train timetable takes effect.
- IM shall present to the SRI all necessary data for setting the rates for the services of the minimal package.
- The rates are subject to approval by the SRI no later than 16 months before the working train timetable takes effect.

Supervision, Disputes:

- Upon request of RU IM shall provide RU with the information justifying amounts provided in the invoices.
 - Any disagreement concerning the amount of the payments is examined in line with the pre-court dispute settlement procedure under the Rules for examination of complaints by RUs;
 - Disputes shall be examined by the Competition Council;
 - A complaint is to be submitted to the Competition Council no later than 1 month after the disputed decision of the IM or the SRI;
 - The Competition Council's decision may be appealed in court (administrative court procedure).
-

PL Establishing the RIFs:

- No later than 9 months before the train timetable enters into effect, to which the rates are to apply (the train timetable is changed annually, on the second Saturday of December), the IM files for approval by the Office President of the unit rates of basic RIF and extra RIFs together with calculations of their amounts, all RUs should be enabled to familiarise itself with the draft rates;
- Within 30 days of receiving the rates, the Office President approves them or refuses such approval if they do not comply with the principles referred to in the Railway Act and the PL Access Regulation. In practice, in the case of refusal, the Office President gives in his decision reasons for the refusal to approve the rates, which enables the IM to submit an adjusted application. The IM may also appeal against this decision (see below);
- The IM is obliged to publish amounts and types of unit rates for basic RIF and extra RIFs in a habitually accepted manner, separately for the transport of persons and transport of goods;
- The IM may decrease the basic RIF unit rates anytime, increase no earlier than after 6 months pass from their announcement.

Supervision:

- The Office President is the regulatory body whose competences include the regulation of the rail transport market, licensing rail transport, passenger rights, and safety of the rail market. The tasks of the Office President in connection with RIFs are as follows:
 - approving and co-ordinating RIFs for allocated train paths (in terms of being compliant with the regulation applicable to RIFs);
 - supervising equal treatment of all RUs, in particular in terms of reviewing applications for provision of access to train paths, and charging RIFs;
 - supervising correctness of setting by the IM of basic and extra RIFs;
 - examining RUs' complaints concerning the rules, the allocation of train paths and RIFs;
 - supervising execution of RI access agreements;
 - co-operating with appropriate authorities in terms of counteracting the use of monopolistic practices by IMs and RUs and in terms of co-ordinating the operations of the railway transport market and observance of passengers rights;
 - imposing cash penalties based on principles set out in the PL Railway Act (in the range up to 2% of the annual revenue generated in the preceding calendar year or up to EUR 5,000 per each day that an IM delays with enforcement of a court judgment applicable to RI access matters).

RUs' complaints filed with Office President

- The Office President's duties cover examination of RUs' complaints about the rules, allocation of train paths and fees for using RI;
- Proceedings before the Office President concerning the aforesaid complaints are governed by the Code of Administrative Proceedings. After the Office President's decision is received, the RU is entitled to a motion being filed with the Office President for re-examining the case, following which the complaint can be referred to the administrative court.

Approval of rates presented by IM

- Within 30 days of receiving the rates, the Office President by way of an administrative decision approves them or refuses their approval;
 - The IM may appeal against the decision of the Office President to the Regional Court in Warsaw – the competition and consumer protection court, within 14 days of the decision being received (civil court procedure).
-

3.1. Regulation of RIFs in Poland

1. NATIONAL LEGAL ACTS providing Principles and Methodology for the Pricing of the railway infrastructure (RI) fees (RIFs)

1.1. Legal acts:

- a) Railway Act of 28 March 2003 (Journal of Laws of 2007, no. 16, item 94) (hereinafter referred to as the "Railway Act");
- b) Regulation of the Minister of Infrastructure of 27 February 2009 on the conditions of accessing and using railway infrastructure (Journal of Laws of 5 March 2009) (hereinafter referred to as the "Regulation").

1.2. Infrastructure Manager's regulations (the Infrastructure Manager, hereinafter referred to as "IM", means PKP PLK S.A. managing approximately 98% of regular railway lines in Poland):

- a) Network Statement – Regulations concerning allocation and use of train paths on available railway lines by licensed railway undertakings within timetable 2012/2013 (hereinafter referred to as the "Rules"); According to the Railway Act, the Rules have to be issued by the IM, and under the Regulation the Rules should be consulted with railway undertakings (hereinafter referred to as the "RUs"). A new edition of the Rules is issued every year in connection with a new Annual Timetable being introduced, so their provisions may differ in the future editions;
- b) Tariff of unit rates for using the rail infrastructure managed by the IM, in force from 9 December 2012 (hereinafter referred to as the "Tariff"); Under the Railway Act, the Tariff has to be issued by the IM. A new edition of the Tariff is issued every year in connection with a new Annual Timetable being introduced, so the rates will be different in future editions.

1.3. Implementation of the EC Directives:

Both Directives have been implemented in the Railway Act and the Regulation, however the correctness of the implementation is being challenged by:

- a) The European Commission that has filed a complaint against Poland with the CJEU (case C-512/10) in connection with the implementation of the First Railway Package. The EC raised four allegations against Poland, one of which is that Poland did not provide the IM with incentives to reduce the costs of providing infrastructure and the level of access charges (as required under article 6 of Directive 2001/14/EC). Another allegation is that Poland did not undertake the measures necessary to ensure that the RIFs are set at the level of costs directly incurred as a result of operating the train service (as required under article 7 section 3 of Directive 2001/14/WE). Besides, Poland has not introduced a mechanism that allows checking whether various market segments can bear higher RIFs (as required under article 8 section 1 of Directive 2001/14/EC). The case is now in progress, no judgment has yet been issued.
- b) RUs claiming that the IM's RIFs are too high as the basis for their calculation, as they also include indirect costs and depreciation, which is contrary to the provisions of the Directives. In the Office of Rail Transportation (hereinafter referred to as: the "Office"), a "Rates Team" has been established. It consists of Office's representatives, infrastructure managers and RUs' organisations. Its task is to create unified rules for calculation of unit rates for all infrastructure managers and to ensure that those rules are transparent.

2. ARE ANY MATERIAL AMENDMENTS PROPOSED OR CURRENTLY IN ADOPTION?

There are no amendments currently in the formal adoption process, however there are signals, e.g. press information, that pricing methodology for accessing RI is discussed (e.g. within Rates Team referred to above).

3. SCOPE OF RI ACCESS SERVICES:

According to the Railway Act, access to the RI consists in train paths being allocated to RUs on railway lines (based on applications filed by the RUs with the IM in line with the provisions of the Rules) and in RUs being enabled to use the necessary RI, while observing the principle of non-discriminatory treatment of the RUs by the IM.

Under the Railway Act, RUs are entitled to a minimum access to RI (see point 3.1. below) and to access to the facilities connected with train service and provision of this service on the rail network, described in part I of the Attachment to the Railway Act (see point 3.2. below).

3.1. Basic services (minimum package)

According to part I section 1 of the Attachment to the Railway Act, minimum access to RI entails:

- a) handling an application on allocating RI's traffic capacity;
- b) right of using the allocated RI;
- c) use of railway crossings and junctions as needed for a train to pass along the path allocated;
- d) control of train movement, including signalling, inspection, train handling, communications and provision of train movement information;
- e) provision of access to information needed to introduce and/or carry out rail transport operations for which RI's traffic capacity was allocated;
- f) provision of access to overhead line equipment, if available.

Regulations on minimum access to RI were particularized in the Rules, § 16 section 1.

3.2. Basic services (access to facilities and services connected to train service)

According to part I section 2 of the Attachment to the Railway Act, access to the facilities connected with train service and provision of this service entails the use of:

- a) fuel provision equipment;
- b) passenger stations, their buildings and other facilities;
- c) rail terminals;
- d) marshalling yards;
- e) railroad tracks and train formation facilities;
- f) storage sidings;
- g) maintenance and other technical facilities.

Regulations on access to the facilities connected with train service and provision of this service were particularized in the Rules, § 16 section 2.

The IM cannot deny access to the facilities connected with train service and provision of this service within the scope described in part I section 2 of the Attachment to the Railway Act, unless there are other entities providing access to those facilities and services based on market rules.

3.3. Additional and ancillary services

According to part II of the Attachment to the Railway Act, additional and ancillary services entail in particular:

- a) use of overhead line power;
- b) heating of passenger train sets;
- c) supply of fuel, manoeuvre work, and other equipment handling services;
- d) customised contracts consisting of:
 - i) exercising control over transport of hazardous materials;
 - j) providing assistance in running extraordinary trains;
- e) access to telecommunications network;
- f) supply of supplementary information;
- g) technical inspection of rolling stock.

Regulations on additional and ancillary services were particularized in the Rules, § 17.

The IM renders additional and ancillary services if they are included in the Rules and were requested by an RU.

2 IM's profit margin

According to the Regulation, IM's profit margin added to the basic RIFs and the extra RIFs cannot exceed 10%.

According to § 28 section 6 of the Rules, the IM adds the following profit margins to the RIFs:

- a) 1 % – for train journeys within the Annual Timetable and for services connected with train operations, also for additional services;
- b) 8 % – for train journeys within Individual Timetable (timetable not included in the Annual Timetable, prepared by the IM based on the application submitted by the RU) and PLK Catalogue (offer of train paths with timetable prepared for the duration of the Annual Timetable based on parameters assumed by the IM).

3 VAT tax

VAT is added to the fees based on separate regulations.

4.2.2. – basic formula for RIF for the minimum access to RI

According to the Railway Act, basic RIF for minimum access to RI is calculated as a product of train journeys and unit rates set conditional on the railway line category and train type, separately for carrying persons and goods. (basic RIF for minimum access) = (unit rate for railway line category/type of train/train gross weight) x (train journey)

Adequate discounts on and increases of the basic RIF for minimum access to RI can be applied by the IM, in accordance with § 29 and § 30 of the Rules, which are based on Article 34 of the Railway Act.

a) Discounts

During the period from 9 December 2012 to 14 December 2013, the IM awards 25% discount on basic RIF for minimum access to RI for a journey of block train composed exclusively of wagons carrying intermodal units. IM has a right to allow a discount of up to 25% on basic RIF for minimum access to RI at the request of the RU justified by:

- development of new services, not provided so far, resulting from transferring goods from other modes of transport to railway or in the case of new freight flows appearing, resulting from service of newly-founded enterprises,
- restoration of passenger transport on these operated railway lines where passenger trains were not running in the last Annual Timetable.

b) Increases

Increases of basic RIF for minimum access to RI are applied in the case of trains with extraordinary goods and in periods of infrastructure congestions (see point 4.4 below).

4.2.3. – basic RIF – for facilities connected with train service and providing this service

Basic RIF for access to the facilities connected with train service and provision of this service is calculated as a product of the services ordered and corresponding unit rates set separately for types of services set out in part I section 2 of the Attachment to the Railway Act (see point 3.2).

(Basic RIF for access to facilities connected with train service) = (unit rate for specific facility) x (quantity of facilities)

Example:

(RIF for use of storage sidings) = (unit rate defined in the Tariff for use of storage sidings) x (number of storage sidings used x number of hours)

Example:

(RIF for access and use of marshalling yards) = (unit rate defined in the Tariff for access and use of marshalling yards) x (number of wagons marshalled)

Adequate discounts on and increases of the basic RIF for access to facilities connected with train service can be applied by the IM, in accordance with § 29 and § 30 of the Rules (e.g. increase in a period of infrastructure congestion), however the Rules do not currently provide for discounts on or increases of basic RIF for access to facilities connected with train service.

4.2.4. – extra RIF – for extra facilities/services

Extra RIFs are calculated based on the unit rates contained in the Tariff separately for different types of additional services (see point 3.3).

(Extra RIF) = (unit rate for the particular additional or ancillary service) x (quantity of services)

Example:

(RIF for preparation and allocation of train path not included in Annual Timetable) = (unit rate defined in the Tariff for preparation and allocation of train path not included in Annual Timetable) x (train-kilometres of the path).

4.2.5. reservation RIF

If the RU does not use the ordered and allocated train path, the basic RIF (which is a sum of the RIF for minimum access and the RIF for access to facilities connected with train service) is decreased accordingly, and the IM charges only its part referred to as the reservation RIF (save for a situation where the train path is not used due to the IM's fault, or an extraordinary situation occurs, where no reservation RIF is charged).

Reservation RIF amounts (as defined in the Rules and according to the Regulation):

- a) 10% of the sum of cost taken for calculation of basic RIF for planned train journey on allocated train path in the case of its cancellation later than 30 days before planned date of execution (if the journey is cancelled before this date, reservation RIF is not charged by the IM);
- b) 25% of the sum of cost taken for calculation of basic RIF for planned train journey on allocated train path in the case of its cancellation later than 72 hours before planned date of execution or when allocated path is unused.

4.3. RIFs for single railway capacity for commercial purposes.

Basic RIF unit rates for minimum access to RI [PLN/train-kilometre]

A. Railway line sections on which overhead line equipment is not available

Passenger trains	Gross weight M [t]	Railway line category			
		1	2	3	4
	M≤60	2.05	2.80	3.82	5.41
	60<M≤150	2.39	3.23	4.35	6.12
	150<M≤300	3.00	3.98	5.30	7.37
	300<M≤450	4.01	5.23	6.88	9.45
	450<M≤600	5.02	6.49	8.45	11.54
	M>600	7.41	9.47	11.59	16.25

Freight trains	Gross weight M [t]	Railway line category		
		1	2	3
	M≤60	2.05	2.80	3.82
	60<M≤150	2.39	3.23	4.35
	150<M≤300	3.00	3.98	5.30
	300<M≤450	4.01	5.23	6.88
	450<M≤600	5.02	6.49	8.45
	600<M≤1100	7.41	9.47	11.59
	1100<M≤1500	11.45	14.33	16.7
	1500<M≤2100	15.30	19.06	22.37
	2100<M≤3000	19.14	23.79	27.88
	M>3000	22.35	27.73	32.47

B. Railway line sections on which overhead line equipment is available

Passenger trains	Gross weight M [t]	Railway line category				
		1	2	3	4	5
	M≤60	3.20	3.96	4.97	6.56	8.65
	60<M≤150	3.55	4.39	5.51	7.27	9.59
	150<M≤300	4.16	5.14	6.46	8.52	11.24
	300<M≤450	5.17	6.39	8.03	10.61	13.99
	450<M≤600	6.18	7.65	9.61	12.69	16.74
	M>600	8.56	10.63	12.75	17.41	22.69

Freight trains	Gross weight M [t]	Railway line category				
		1	2	3	4	5
	M≤60	3.20	3.96	4.97	6.56	8.65
	60<M≤150	3.55	4.39	5.51	7.27	9.59
	150<M≤300	4.16	5.14	6.46	8.52	11.24
	300<M≤450	5.17	6.39	8.03	10.61	13.99
	450<M≤600	6.18	7.65	9.61	12.69	16.74
	600<M≤1100	8.56	10.63	12.75	17.41	22.69
	1100<M≤1500	12.60	15.48	18.02	22.87	25.65
	1500<M≤2100	16.45	20.21	23.53	29.86	33.49
	2100<M≤3000	20.30	24.94	29.04	36.85	41.33
	M>3000	23.51	28.89	33.63	42.67	47.86

4.4. How are RIFs determined and collected in case of depleted capacity?

According to the Railway Act, basic RIF can be increased in the period of infrastructure congestion. Congestion is deemed to be demand for traffic capacity of a railway line or its section, which demand cannot be fully satisfied in the given period, even if different requests for capacity are co-ordinated (e.g. even if priorities specified in the Railway Act are taken into account, such as a priority for the transport of persons).

In order to ensure preparation of a timetable using a congested railway line or its part, the IM supervised by the President of the Office of Rail Transportation (hereinafter referred to as **"Office President"**) holds an auction of non-allocated traffic capacity with the participation of the interested RUs, as a result of which, increased basic RIF unit rates for minimum access to RI are determined.

Under Annex 7 to the Rules, applicants interested in using congested railway infrastructure are invited, after they file uniform applications for allocating train paths. An auction consists of a verbal bidding of the amount by which the basic RIF unit rate will be increased, the minimum amount bid is PLN 0.10 net/train-kilometre. Train path is allocated to the RU that offers the highest amount by which the rate will be increased, or was the only auction participant.

5. RIF COMPONENTS

5.1. According to Article 8 of the Regulation, to calculate unit rates for RI to which the IM plans to give access, the IM assumes:

- a) direct costs covering:
 - maintenance costs,
 - costs of managing railway traffic,
 - depreciation;
- b) indirect costs of operations covering other reasonable costs of the IM, different from those listed as direct costs or financial costs,
- c) financial costs connected with handling bank loans taken out by the IM for development and modernisation of the infrastructure being made available;
- d) operating work specified for particular line categories, passenger trains and freight trains.

Under the Railway Act, while setting basic RIF unit rates IM decreases the amount of the planned costs of RI being made available to RUs by the expected subsidy for RI repairs and maintenance obtained from the State Budget and/ or local government units, and by the expected funds obtained from the Railway Fund. The detailed methodology of calculating unit rates by the IM is not publicly available.

6. INSPECTION, DISPUTES

6.1. Procedural steps and timeframe for imposing RIF's

No later than 9 months before the train timetable enters into effect, to which the rates are to apply (the train timetable is changed annually, on the second Saturday of December), the IM files for approval by the Office President of the unit rates of basic RIF and extra RIFs together with calculations of their amounts. Under article 16 section 3 of the Regulation, at a RU's request the IM should enable the RU to familiarise itself with the draft rates.

Within 30 days of receiving the rates, the Office President approves them or refuses such approval if they do not comply with the principles referred to in the Railway Act and the Regulation. In practice, in the case of refusal, the Office President gives in his decision reasons for the refusal to approve the rates, which enables the IM to submit an adjusted application. The IM may also appeal against this decision (see point 6.3 below).

The IM is obliged to publish amounts and types of unit rates for basic RIF and extra RIFs in a habitually accepted manner, separately for the transport of persons and transport of goods.

The IM may introduce changes in basic RIF unit rates:

- a) at any time – if the change means a decrease;
- b) no earlier than after 6 months pass from their announcement – if the change means an increase.

6.2. Regulatory Bodies authorised to inspect, revise, approve or effect the RIF

The Office President is the regulatory body whose competences include the regulation of the rail transport market, licensing rail transport, passenger rights, and safety of the rail market. The Office President performs his duties within the Office of Rail Transportation established on 1 June 2003; over the years of its existence, the scope of its activities has been gradually extended by the legislator.

The Office President's tasks connected with RIFs are in particular as follows:

- a) approving and co-ordinating fees for using allocated paths of railway infrastructure in terms of being compliant with the fee setting principles;
- b) supervising equal treatment of all RUs by the IM, in particular in terms of reviewing applications for provision of access to train paths, and charging fees;
- c) supervising correctness of setting by the IM basic RIFs for accessing RI and extra RIFs for rendering additional services;
- d) examining RUs' complaints concerning the rules, the allocation of train paths and charges for using RI;
- e) supervising execution of RI access agreements;
- f) co-operating with appropriate authorities in terms of counteracting the use of monopolistic practices by IMs and RUs and in terms of co-ordinating the operations of the railway transport market and observance of passengers rights;
- g) imposing cash penalties based on principles set out in the Railway Act (possible resignation from a penalty, if contravention consequences were by the given entity repaired within the deadline set in the Office President's decision)
 - a penalty of 2% of the annual revenue generated in the preceding calendar year may be imposed on the IM e.g. if: a rates tariff is not developed or published, RI access fees are used following calculation made in contravention of the applicable principles, RUs are not provided with equal access to RI, no rules are timely prepared or published, and also if such rules do not specify all the requirements provided for in the Railway Act;
 - a penalty of up to 2% of the annual revenue in the preceding calendar year may be imposed on a RU which contravenes the deadline for filing an application for allocation of train paths provided for in the Railway Act;
 - a penalty of up to EUR 5 000 may be imposed on the IM for each day of delaying enforcement of a court judgment applicable to RI access matters.

6.3. Dispute resolution procedure related to the RIF

RUs' complaints filed with Office President

Under article 13 of the Railway Act, the Office President's duties cover examination of RUs' complaints about the rules, allocation of train paths and fees for using RI.

Proceedings before the Office President concerning the aforesaid complaints are governed by the Code of Administrative Proceedings. After the Office President's decision is received, the RU is entitled to a motion being filed with the Office President for re-examining the case, following which the complaint can be referred to the Voivodship administrative court.

Approval of rates presented by IM

Under article 33 section 8 of the Railway Act, within 30 days of receiving the rates, the Office President by way of an administrative decision approves them or refuses their approval if non-compliances are found with the principles referred to in the Railway Act and in the Regulation.

The IM may appeal against the decision of the Office President to the Regional Court in Warsaw – the competition and consumer protection court, within 14 days of the decision being received.

The proceedings are pending under provisions of the Polish Code of Civil Procedure applicable to railway transport.

3.2. Overview of the EU railway markets in general

General

The European railways have experienced major changes over recent years, connected both to a generally unfavourable economic situation and the development of the regulatory framework, particularly at European level.

All Member States with rail networks have transposed the directives contained in the 1st Railway Package. However, incorrect transposition, to varying degrees and with regard to sometimes different aspects, has resulted in the Commission initiating infringement proceedings against most Member States since 2008.

Regulatory Framework: Recast of 1st Railway Package, Anticipated 4th Railway Package

In addition, the Commission has proposed a recast of the 1st Railway Package. In terms of form, this involves simplifying the regulatory framework in the rail sector by merging, harmonising, clarifying and updating the 3 directives into one text. In terms of content, 3 objectives are pursued: (i) ensuring adequate financing and charging for railway infrastructure; (ii) guaranteeing fair competitive conditions for operators and (iii) reinforcing the effectiveness of supervisory bodies.

The European Commission announced several new rail transport initiatives in its White Paper in March 2011. The Commission intends to propose a 4th Railway Package with the objective of opening up domestic passenger transport to competition, improving access to infrastructure and associated services, as well as extending the European Railway Agency's tasks in the area of safety certification. The regulation on freight corridors provides for the establishment of six corridors by 10 November 2013 and three others by 10 November 2015.

International Passenger Transport

As regards international passenger transport, which was opened up to competition by European legislation on 1 January 2010, alliances between incumbent operators remains the most common operating mode. However, services are gradually appearing on several routes which are in competition with the services provided by the incumbent operator of one of the countries served.

With regard to cross-border regional services, a multiplication of new services can be observed, some of which are operated by incumbent operators and others by new entrants. It is important to note in this context that increasing the number of competitor operators has not had a detrimental impact on the high level of safety of this transport mode.

Passenger transport numbers are increasing, but rapid increases are hindered by considerable differences that still remain between the Member States with railway networks. Freight volumes have been increasing, but are not yet on the level of 2008.

Many developments speak in favour of long-term commitment in the railway sector, as the proportion of long-term contracts has increased, thus rendering a beneficial impact on investment.

Railway Infrastructure Fees

The level of network access charges varies very significantly from one infrastructure manager to the next. Nevertheless, it would appear that these differences are set to decrease, as several EU-

12 countries where charges are usually high have announced or even embarked on a reduction of their tariffs. It should be noted that charges may also vary significantly within one national network depending on the lines or time slots involved.

The European Commission considers that multi-annual contracts between infrastructure managers and railway undertakings are conducive to ensuring a good level of service and the requisite financial balance. Multi-annual contracts have been signed in some fifteen Member States.

The 2009 economic crisis has had a significant impact on rail freight traffic. Despite a significant rebound, 2010 levels have remained some 15% below those recorded in 2008 in most Member States. At EU level, it nevertheless appears that the rail sector's modal share is now comparable with pre-crisis levels. The effects of the crisis have been much less pronounced for rail passenger transport.

3.3. Key elements of the EU Directive on Single European Railway Area regarding the RIFs

Implementation Schedule

- Implementation by Member States by 16 June 2015.

Charging Framework

- Member States shall establish a charging framework based on the IR management independence (from the state) and separation (from operation) principles and establish specific charging rules or delegate such powers to the IM;
- Member States shall ensure that the network statement contains the charging framework and charging rules or indicates a web site where the charging framework and charging rules are published;
- The infrastructure manager shall determine and collect the charge for the use of infrastructure in accordance with the established and published charging framework and charging rules over the whole network;
- The charges shall be equivalent and non-discriminatory for different railway undertakings that perform services of an equivalent nature in a similar part of the market and that the charges actually applied comply with the rules published in the network statement.

Costs & Accounts

- Incentives for cost reduction based on min 5 year contractual arrangements with IMs or reasoned regulatory measures should be implemented by the member States;
- IMs shall develop and maintain a register of their assets for purposes of assessing the financing needed to repair or replace them. This shall be accompanied by details of expenditure on renewal and upgrading of the infrastructure;
- Infrastructure managers shall establish a method for apportioning costs to the different categories of services offered to RUs. Member States may require prior approval. That method shall be updated from time to time on the basis of the best international practice.

Principles of charging

- Charges for the use of (RIFs) RI and of service facilities shall be paid to the IM and to the service facility operator respectively and used to fund their business. The IM and the service facility operator shall demonstrate to RUs that the RIFs comply with the methodology, rules, and, where applicable, scales laid down in the network statement;
- The RIFs for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service;
- By 16 June 2015, the Commission shall adopt measures setting out the modalities for the calculation of the cost that is directly incurred as a result of operating the train. The IMs have 4 years to adapt as of the entry into force of such acts;
- The Commission shall further adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects;
- Charging of environmental costs which results in an increase in the overall revenue accruing to the IM shall be allowed on the condition that such charging is applied to road freight transport;
- The charge imposed for track access within service facilities and the supply of services in such facilities shall not exceed the cost of providing it, plus a reasonable profit;
- Where additional and ancillary services are offered by only one supplier the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit;
- Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the IM;

- Exemptions enumerated by the Directive (such as mark-ups, higher charges for costs of carrying goods to different gauge width, higher charges according to long-term investment projects, incentives aimed at equipment of trains with ETCS) shall be allowed in accordance with the terms set forth in the Directive.

Compensations of Costs, Cross-Border Cooperation

- Member States may put in place a time-limited compensation scheme for the use of RI for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail;
- IMs may levy a reservation charge for allocated but unused capacity;
- Member States shall ensure that IMs cooperate to enable the application of efficient charging schemes, and associate to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the EU.

Calculation of the rate the goods transport fee (LTL / tkm net) for the transported goods attributed to a particular market segment of freight transportation by railways (kr_i)

Goods transport fee rates for transported goods attributed to a particular market segment of freight transportation by railways specified in the Rules of calculation of fees for the use of public railway infrastructure are established on the basis of the freight market conditions, that is, the average level of profitability of transport service of transported goods attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules of calculation of fees for the use of public railway infrastructure. Rate of the goods transport fee for transported goods attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules are determined by the following formula:

$$kr_i = \frac{0,95 Pa_{j_i} - San_i}{K_i} - (p_i + t_i + tranz_i + e_i), \text{ where:}$$

kr_i - freight transport fee (LTL / tkm net) for transported goods attributed to a particular market segment of freight transportation by railways specified in the Rules of calculation of fees for the use of public railway infrastructure (hereinafter – the Rules)

Pa_{j_i} - actual revenues gained by RU, who have submitted the data to the SRI, for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules in the previous calendar year (LTL);

San_i - actual costs incurred by RU, who have submitted the data to the SRI, in the carriage of goods attributed to a particular market segment of freight transportation by railways specified in Rules in the previous calendar year (LTL); excluding specified costs;

K_i - actual volume of goods transported by RU, who have submitted the data to the SRI, in the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules in the previous calendar year (tkm net);

p_i - the projected average rate of the capacity reservation fee for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the calendar year of entry into force of the working timetable (LTL / tkm net) (see below);

t_i - the projected average rate of the train traffic fee for the carriage of goods attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules, in the calendar year of entry into force of the working timetable (LTL / tkm net) (see below);

$tranz_i$ - the projected average goods transit fees for the carriage of goods, attributed to a particular market segment of freight transportation by railways in specified in the Rules, in the calendar year

of entry into force of the working timetable (LTL / tkm net), (see below);

e_i - the projected average rate of the overhead electricity network usage fee for the carriage of goods, attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules, in the calendar year of entry into force of the working timetable (LTL / tkm net) (see below).

The projected average rate of the capacity reservation fee for the carriage of goods attributed to a particular market segment of freight transportation by railways in accordance with Annex to the Rules (LTL / tkm net) is determined by the following formula:

$$p_i = \frac{p}{(Vi_{krauti} - Vi_{tušti}) \times a_i \times b}, \text{ where:}$$

p - capacity reservation fee rate (LTL / train km);

Vi_{krauti} - the actual average weight of a loaded wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t gross);

$Vi_{tušti}$ - the actual average weight of an empty wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t gross);

a_i - the actual average share of the distance travelled by wagons loaded in the last calendar year which were used for the goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the overall distance travelled by these wagons;

b - actual average number of wagons making up a freight train in the last calendar year (units).

The projected average rate of the train traffic fee for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules (LTL / tkm net) is determined by the following formula:

$$t_i = \frac{t \times (Vi_{krauti} \times a_i + Vi_{tušti} \times (1 - a_i))}{(Vi_{krauti} - Vi_{tušti}) \times a_i}, \text{ where:}$$

t - rail traffic fee rate (LTL / tkm gross);

Vi_{krauti} - the actual average gross weight of a loaded wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t gross);

$Vi_{tušti}$ - the actual average weight of an empty wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t);

a_i - the actual average share of the distance travelled by wagons loaded in the last calendar year which were used for the goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the overall distance travelled by these wagons.

The projected average rate of the goods transit fee for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules (LTL / tkm net) is determined by the following formula:

$$tranz_i = t_{tranz.krov} \times c_i, \text{ where:}$$

$t_{tranz.krov}$ - goods transit fee rate (LTL / tkm net);

c_i - the actual average share of the transit of goods attributed to a particular market segment of

freight transportation by railways specified in the Rules, in the last calendar year, in the total volume of goods of the respective segment transported.

The projected average rate of the overhead electricity network usage fee for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules (LTL / tkm net) is determined by the following formula:

$$e_i = \frac{e \times d_i}{(Vi_{krauti} - Vi_{tušti}) \times a_i \times b}, \text{ where:}$$

e - overhead electricity network usage fee rate (LTL / train km);

d_i - the actual average share of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, which were transported using electric traction in the last calendar year, in the total volume of goods of the respective segment transported;

Vi_{krauti} - the actual average weight of a loaded wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t gross);

$Vi_{tušti}$ - the actual average weight of an empty wagon used for the carriage of goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the last calendar year (t gross);

a_i - the actual average share of the distance travelled by the wagons loaded in the last calendar year which were used for the goods attributed to a particular market segment of freight transportation by railways specified in the Rules, in the overall distance travelled by these wagons;

b - actual average number of wagons making up a freight train in the last calendar year (units).

3.4. Setup of regulatory bodies

1. NATIONAL LEGAL ACTS PROVIDING THE REGULATORY BODIES AND THEIR AUTHORITY (*)

EE Regulation concerning railway infrastructure (RI) and operations thereon as well as the composition and authority of the regulatory bodies is provided in the **Railways Act (RdtS)** and the secondary (implementing) regulations in the form of Governmental (total 5) or ministerial (by Ministry of Economic Affairs and Communications) regulations (total 12).

Specific issues are also addressed in legislation addressed to other areas such as Traffic Act, Planning Act, Chemicals Act, Fire Safety Act, environmental legislation etc., and the secondary legislation arising therefrom.

Amendments

Extensive amendments for RdtS are currently in the process of preparation. The amendments concern primarily (i) unification and clarification of terminology (in line with Directives 2001/14/EC, 2004/49/EC, 2008/57/EC and 2008/110/EC; (ii) simplification and clarification of licencing, safety certification and railway construction procedures (also in view of the Rail Baltic project), and (iii) clarification of the authority of the Technical Surveillance Authority and the Safety Investigation Bureau.

LV Applicable regulation is provided in the **Railways Act, Carriage by Rail Act, Regulators of Public Utilities Act, and Public Transport Services Act** and 2 **essential** governmental regulations (the "Railway Construction Regulations" and the "Railway Technical Operation Rules") and about 35 additional governmental regulations implementing the above Acts.

LT Applicable regulation is provided by several acts of law:

1. Law on Basis of Transport Activities of Republic of Lithuania;
2. Law on Transport Privileges of Republic of Lithuania;
3. Railways' Code of Republic of Lithuania;
4. Law on Noise control of Republic of Lithuania;
5. Law on Railways Traffic Safety of Republic of Lithuania;
6. Law on Transportation of Dangerous Freights by Roads, Rails and Inland waterways;

and 41 items of material secondary legislative acts.

(*) "Regulatory Bodies" herein designate all public agencies tasked with various regulatory functions in connection with railways (incl. market supervision and safety)

Observations:

- The regulatory areas in LV and LT are addressed in several acts of law, which may complicate the amendment procedures. More detailed legal technical analysis of any proposed amendment shall be required;
- The regulation areas related to construction, management and use of RI and provision of railway services are diverse and detailed, further comparative studies of national and EU regulation for specific topics is recommended;
- Amendments to the existing regulation are being prepared in EE. Further, the EU legislation in the railways sector is likely to be revised (concerning also e.g. rail infrastructure use fees, allocation of capacity and safety certification) in the near future (the Commission is likely to propose the 4th Regulatory Package within coming months). The regulatory environment needs therefore further review as the Rail Baltic project develops into next phases.

2. GENERAL STRUCTURE OF REGULATORY BODIES AND THEIR AUTHORITY

EE. Government of the Republic (pursuant to the RdtS):

- Regulatory Authority:
 - Procedures for designation of RI for public use;
 - Procedures for designation of RU as a provider of public passenger transport service;
 - Health requirements and routine medical examinations for railway employees;
 - Procedures for temporary restrictions and closures for the duration of more than 24 hours;
 - Statutes for public Railway Traffic Register;
- Individual Decisions:
 - Exclusion RI from public use, incl. the right not to grant such exclusion, if the RI is required for public passenger transport service;
 - Designate, in exchange for just compensation, RI for public use, if required for the provision of public passenger transport service.

Ministry of Economic Affairs and Communication (MKM):

- Designation of RI for public use;
- Designation of RU as provider of public passenger transport service;
- Inspection of compliance with the requirements of account separation and use of state subsidies as applicable to the RUs providing public passenger transport service;
- Ensuring the performance of the obligations arising from international agreements and representation of Estonia in international railway organisations;
- Advance approval of and monitoring of compliance with contracts between public railways and railways or railway organisations of other states, if such contracts provide for rights and obligations for third parties;
- Enact such further regulation and perform other as arise from the law.

Technical Surveillance Agency (TSA):

- TSA functions as governmental agency in the authority area of the MKM with the task to implement the public policies for improvement of safety, expedient use of limited resources and increased reliability of industrial products, railway and electronic communications. In the area of railways, TSA functions as independent authority in cases of capacity allocation and RI use fees and notified body in technical and safety matters;
- In connection with railways, TSA is specifically authorised to:
 - Approve disposition of immovables on which RI objects are located;
 - Issue and extend safety certificates;
 - Audit mandatory reports on verification of compliance;
 - Issue and extend licences for locomotive drivers, and arrange driving tests (in co-operation with the Road Administration);
 - Approve detailed plans and design criteria for the building design documentation for RI and perform state supervision over RI construction works;
 - Issue and revoke building permits, written consents and use permits for RI construction works;
 - Approve (rail) transport rules, operating rules and amendments thereto;
 - Allocate capacity in cases where the IM is not independent or impartial;
 - Approve RI capacity enhancement plans;
 - Perform the obligations of the Republic of Estonia related to technical supervision of railways which arise from international agreements, and represent Estonia in international railway organisations (TSA represents Estonia inter alia in the European Railways Agency).

Estonian Competition Authority (ECA), in railway-related issues authorised to:

- Inspect the compliance with the requirements set for institutional and accounting separation, as applicable;
- Issue, suspend and revoke the railway-related operating licences;
- Process complaints concerning allocation of capacity;
- Monitor the competitive situation in rail service markets (i.e. as the regulatory body set forth in Article 10(7) of the Directive 91/440/EEC), incl. processing of complaints from RU's regarding the TSA' actions in the capacity allocation process or issuing, amending or refusals to issue safety certificates;
- ECA is also a member of the IRG-Rail.

Other:

Roads Agency, Customer Protection Board, Labour Inspectorate – within their specific areas.

LV Latvian Transport Ministry:

- Effects the state policy in the rail transport sector.

Regulator of Public Utilities:

- oversees the railway passenger transport market (responsible for implementation of Regulation No. 1371/2007);
- enacts methodologies for calculating railway infrastructure fees;
- promote competition in the rail passenger transport;
- promotes the development of the public railway infrastructure.

State Railway Administration:

- Negotiates rail freight transport order contracts, registers the contracts and oversees the performance;
- Registers RI, rail vehicles (RVs);
- Oversees the independence of the performer of the essential functions of the IM;
- Issues carrier's licences for freight transport;
- Oversees the freight transport market and competition, resolves disputes between IMs and carriers;
- develops railway environmental protection policy, which shall be approved by the Minister for Transport, develops and approves action programmes, and maintains a self-operating system for regulation of environmental protection.

The State Railway Technical Inspectorate:

- Controls the performance of technical and safety requirements in operating the railway, investigates railway accidents and keeps the relevant records, examines the rail infrastructure construction projects and makes relevant decisions, issues building permits and control their execution, issues safety certificates to the carriers, etc..

Transport Accident and Incident Investigation Bureau:

- Investigates serious railway accidents.

LT Government:

- Formation of railway transport policies;
- Coordination of transport policies of different kinds of transport.

Ministry of Transport and Communications of the Republic of Lithuania (MTC):

- Implementation of the railway transport policy;
- Organisation of development, modernisation programs of strategic railway facilities;
- Organisation of preparation of traffic safety and environment programs and implementation of such programs;
- Coordination of international relationships in the area of railway transport;
- Representation of Lithuania in international organizations.

State Railway Inspectorate (SRI, functions under the MTC):

- Legal control on how activities of various persons correspond traffic safety requirements provided by laws and regulations;
- Issuing, suspension and abolishing of licences;
- Issuing of safety certificates;
- Regulation on allocation of capacity;
- Pricing of the railway infrastructure fees (RIFs).

Competition council:

- Regulation of railway transport market, i.e. Competition council performs monitoring of the competition in the railway transport sector and regulates relationships between the RIs and RUs.

Transport Investment Directorate:

- In EU funding administration performance of all the functions of the implementing agency;
- Within its competence in accordance with the procedure prescribed by law for drafting and implementation of other transport infrastructure development projects;
- Preparing monthly and quarterly reports of monitoring implementation of transport sector program of state investment projects.

3. OPERATING LICENCES FOR RI MANAGEMENT

EE Note. Licencing requirements, procedures and the division of authority between TSA and ECA are subject to change according to the proposed amendments to the RdtS.

Licence Name:	Operating Licence for the management of railway infrastructure (<i>raudteeinfrastruktuuri majandamise tegevusluba</i>).
Issuing Authority:	ECA
Eligibility Criteria:	<ul style="list-style-type: none"> • Solvency and lack of previous offences; • Sufficient professional skill; • Qualified locomotive drivers; • No history of revocation of licence due to breach; • No tax debts and good financial status (financial capabilities for at least 12 months); • Existence of mandatory liability insurance coverage; • Sufficient technical capability (applicable for RV servicing, repair and manufacturing licences); • Registration in Estonia - foreign undertakings have registered a subsidiary or a branch in Estonia; • Registration in the Register of Economic Activities; • Payment of state fee (€1,917.34) for processing of the application.
Term:	Indefinite
Issuing Time:	Generally 30 days as of submission of the application and all mandatory (enumerated in the RdtS) documents, in reality may take longer, if further approvals or documents are required in the process.
Transferability:	Non-transferable
Mandatory Insurance:	Yes, terms provided by the RdtS (minimum amount for railway exceeding 50,000m is €3,195,582). <u>Note.</u> Proposed amendments clarify mandatory insurance requirements further (incl. lowered minimum amounts).
Requirement of registration for a company:	Yes, a foreign IM/RU shall register a subsidiary or a branch (<i>filiaal</i>).
Recognition of foreign licences:	Foreign company may operate in the areas of subject to railway-related operating licences only if a subsidiary or a branch (<i>filiaal</i>) registered in Estonia. A foreign railway undertaking need not hold an operating licence in order to enter a railway border station in case there are international agreements between the states.

LV Operation licence for management of RI is not required, instead registration of RI objects and safety authorisation is required

Requirement of registration for a company:	IM must be registered as a company with a share capital (e.g SIA, AS etc.), no specific requirement for registration in LV.
Recognition of foreign licences:	Based on agreements with foreign states, licences issued by other EU member states recognised;

LT **Public railway infrastructure and the land occupied by its facilities is owned, used and disposed under trust by a public railway infrastructure manager – Joint Stock Company “Lithuanian Railways” (AB “Lietuvos geležinkeliai”)**, which is also providing public railway infrastructure management and maintenance-related services to RUs.
Private railway infrastructure managers are not subject to licencing, a **certificate for authorization in traffic safety**, issued by SRI, is required for both private and public railway infrastructure managers to run the infrastructure.

- Observations:**
- Licencing Requirements for Management of Public Infrastructure. Notable differences exist for licencing requirements for the management of public railways:
 - EE: management of public railways subject to licences issued by the ECA based on eligibility criteria (incl. mandatory insurance, financial capability, professional skill etc.) set forth by the law, foreign IM management licences not recognised. In order to be eligible for any rail related operating licence, registration of a subsidiary company or a branch in Estonia is required;
 - LV: Licence for IM not required (registration of RI objects and safety certification required);
 - LT: Management of public railways in LT trusted to JSC "Lithuanian Railways". For management of private or any other public railway infrastructure, licence is not required, however, the certificate for authorization in traffic safety is required.
 - Effect on the Joint Venture. In the light of the regulations applicable to IM licencing, the Joint Venture would be required to obtain a IM management licence in EE and some legal arrangement with JSC "Lithuanian Railways" to manage the Rail Baltic infrastructure in all Baltic Countries.
 - Possible Solution.
 - EE: IM licencing requirement abolished or exception for Joint Venture from IM licencing requirement could be considered;
 - LT: exception for Joint Venture to be able to manage Rail Baltic RI independently from JSC "Lithuanian Railways" could be considered;
 - Licencing requirement to be avoided entirely by setting up the Joint Venture on a basis of an international agreement between the stakeholder states.

4. SAFETY AUTHORISATIONS (SA) FOR IM

EE	<p>Issuing Authority: TSA (as Estonian safety authority).</p> <p>Types / Format: RdtS provides currently for:</p> <ul style="list-style-type: none"> • Certificate for safety management system (System Certificate, broadly corresponds to SC Part A as set forth in Directive 2004/49/EC ("the Safety Directive") – to be issued to an undertaking which has a safety management system compliant with the applicable regulation; • Operating safety certificate (Operating Certificate, broadly corresponds to SC Part B as set forth in the safety Directive) shall be issued to an undertaking which RI, traffic management, RV and staff comply with the applicable regulation and which is capable of operating in compliance with the safety requirements; • 3 types SCs: SC for IMs, SCs for passenger and cargo transport. <p>Note Amendment proposal for the RdtS provides for replacing the current system with regulation more in line with the Safety Directive terminology and regulation, incl. in the format and according to the procedures set forth in Commission Regulations No. 653/2007 and No. 445/ 2011. Inter alia, IMs will be issued safety authorisations, consisting of two parts (Part A regarding the safety management system and part B regarding compliance with RdtS) in the meaning of Article 11 of the Safety Directive.</p> <p>Term: 5 years</p> <p>Recognition of Foreign SAs: Current regulation (Art. 20(8) RdtS):</p> <ul style="list-style-type: none"> • RU of an EU Member State, if operating in Estonia, must have a System Certificate of its state of origin (Estonian System Certificate will not be issued); • Estonian Operating Certificate shall be issued by the TSA on the basis of the existing EU member State System Certificate, the applicant shall submit only such data which concerns operations in Estonia. <p>Note Amendment proposal for the RdtS provides explicit rules for the validity of Part A of the safety certificate issued by another EU member state, but leaves it unclear, if the same applies to the safety authorisations required from IMs.</p>
LV	<p>Issuing Authority: State Railway Technical Inspectorate</p> <p>Types / Format: Safety Certificate issued in accordance with the Cabinet regulations No. 57 (dated 18 January 2011) "Regulations Regarding the Criteria and Procedure for the Issuance, Suspension of Operation and Revocation of a Safety Certificate". These Regulations in general correspond to the Safety Directive, Art.11.</p> <p>Term: 5 years</p> <p>Recognition of Foreign SAs: No specific regulation in place.</p>

LT	Issuing Authority:	SRI
	Types / Format:	<p>Safety authorisation for IM consists of:</p> <ul style="list-style-type: none"> • Authorization certifying that the IM complies with its own established safety management system meeting the requirements as per the Law on Railway Transport Traffic Safety of the Republic of Lithuania (Authorization in traffic safety part A); • Authorization certifying that the IM meets the requirements for railway transport traffic safety. The IM is considered to be in compliance with the requirements indicated herein provided that it is able to ensure safe management of RI, its maintenance and use, as well as the traffic management and organization (Authorization in traffic safety part B). <p>Safety authorisation shall be issued in accordance with Safety Directive and issued in accordance with Commission Regulation No. 1169/2010.</p> <p>SRI shall within 3 days check whether all required documents have been submitted. In case of lack of any documents, SRI may establish a period of 30 days for submission of the required documents. The decision shall be made no later than 4 months from the day of receipt of the application and the documents. Decision shall be presented to the applicant within 5 days after adoption of decision.</p>
	Term:	Certificate for authorization in traffic safety is issued for an indefinite period of time. Authorization in traffic safety shall be renewed after each five years.
	Recognition of Foreign SAs:	N/A

5. RAILWAY CONSTRUCTION

Requirements for undertakings performing RI construction works

EE:

- Registration in the Commercial Register and in the Register of Economic Activities;
- Contract with a consultant who has professional skills for construction, design, or site investigations related to RI objects (Specialist in Charge, subject to further qualifications);
- Mandatory insurance coverage min. €639,116.

LV:

- Prior to commencement of the construction works, person must obtain a building permit from the State Railway Technical Inspectorate.

LT:

- RI objects considered as constructions of exceptional significance;
- Qualification certificate (issued by Certification Centre of Building Products, subject to fulfilment of further eligibility criteria) required from undertaking engaged in construction works of constructions of exceptional significance.

Regulatory Bodies authorised to issue and supervise:	Permits for construction undertakings	Construction Permits, Use Permits	Notes
<ul style="list-style-type: none"> • permits and qualifications of an undertaking performing railway construction works; • design, construction or use permits or request expert opinions for RI objects 	EE: TSA, Registrar of the Register of Economic Activities;	TSA	Proposed amendments to the RdtS aim to simplify the design phases of the construction works (requirement of preliminary design will be abolished).
	LV: State Railway Technical Inspectorate;	State Railway Technical Inspectorate	
	LT: Certification Centre for Building Products (CCBP)	Technical project of construction has to be revised by number of authorities (including SRI). Construction permits are issued by municipal administrations; Construction allowed after approval of Commission of completion of construction.	

- Observations:**
- Construction of RI objects is subject to specific national requirements regarding both the undertakings performing the construction works as well as the planning, design, construction supervision and acceptance into use;
 - Specific comparative study of the regulations and the procedural aspects applicable to the construction process of the Rail Baltic infrastructure is recommended in order to establish workable time schedule and budget for the planning, design and construction phases of the Rail Baltic infrastructure objects as well as public procurement terms and conditions.

6. REGULATORY BODIES FOR SAFETY INVESTIGATIONS, RAILWAY TRAFFIC REGISTERS, DRIVING LICENCES

Regulatory Body tasked with conducting safety investigations:	<p>EE: Safety Investigation Bureau (<i>Ohutusjuurdluse Keskus, SIB</i>) of the MKM LV: State Railway Technical Inspectorate, Transport Accident and Incident Investigation Bureau LT: SRI</p>
Railway-related registers, their main functions and registration obligations:	<p>EE:</p> <ul style="list-style-type: none"> • Railway Traffic Register (MKM as data controller, TSA as authorised processor): <ul style="list-style-type: none"> - Railways (as RI objects); - Rail vehicles (RVs) used in rail traffic; - Locomotive drivers, special railway vehicle drivers and assistant locomotive drivers and their licences. • Subject to Obligatory Registration: <ul style="list-style-type: none"> - Organisation of rail transport on railways or use of RVs which have not been registered in a EU member state, is prohibited unless registered in the Railways Traffic Register (unless the right to use unregistered RV arises from an international agreement or in exceptional cases under the supervision of the TSA). <p>LV:</p> <ul style="list-style-type: none"> • The RI in Latvia is subject to registration and inventory in the Register of Railway Infrastructure (the State Railway Administration as registrar); • Use of unregistered RI is prohibited; • Contracts – orders for freight carriage by rail have to be registered with and the performance thereof must be controlled by the State Railway Administration; • RVs registered by the State Railway Administration; • RV drivers' licences registered by State Railway Technical Inspectorate. <p>LT:</p> <ul style="list-style-type: none"> • Register of locomotive drivers - individuals in possession of a locomotive driver's licence (SRI as a registrar); • Register of rolling stock and containers - RVs, containers, railway cranes, special RVs (SRI as a registrar); • Licences for railway transport economic activity are registered in a separate SRI register; • Register of RI – RI objects for 1435 mm and 1520 mm gauges (SRI as a registrar)
Regulatory Bodies tasked with licencing of RV drivers	<p>EE: TSA LV: State Railway Technical Inspectorate LT: SRI, IM and carriers</p>
Rules pertaining to recognition of foreign locomotive driver's licences	<p>EE:</p> <ul style="list-style-type: none"> • If a locomotive driver has been issued a locomotive driver's licence in another EU member state and in compliance with Directive 2007/59/EC, the IM shall, instead of recognition of professional qualifications, issue to the locomotive driver (after passing a practical driving test) a certificate of the compliance of the skills of the locomotive driver with the requirements as set forth in the RdtS; • A person who holds a locomotive driver's licence issued in another foreign state, may work as a locomotive driver or assistant locomotive driver in Estonia only if his or her professional qualifications are recognised according to the Recognition of Foreign Professional Qualifications Act; • With the consent of an IM, the locomotive driver, who has a locomotive driver's licence with restrictions, may drive RVs from the point of connection to the public railway to the nearest railway station on the public railway. <p>LV:</p> <ul style="list-style-type: none"> • If a locomotive driver has been issued a locomotive driver's licence in another EU member state and in compliance with Directive 2007/59/EC, it is valid, and the IM shall issue to the locomotive driver a complementary certificate in accordance with the EU Regulation 36/2010 (knowledge of Latvian might be required - up to 3rd level (from 5)). <p>LT:</p> <ul style="list-style-type: none"> • SRI recognizes the documents, enabling activities of management of rolling stock, issued in foreign countries, however recognition procedure is not regulated.
<p>Observations:</p> <ul style="list-style-type: none"> • Specific regulation for recognition of locomotive drivers' licences (right to drive RVs) issued abroad apparently not existing in LV and LT; • For Rail Baltic, a separate uniform procedure, or an agreement for mutual recognition of the rights to drive RVs (on "one stop" principle) is needed. 	

7. ACCESS TO PUBLIC RAILWAY AND ALLOCATION OF CAPACITY

7.1. National legal acts providing rules and procedures for access and allocation of capacity

- EE RdtS, Articles 50–63
Regulation No. 32 dated 28.04.2008 by MKM establishing the Methodology for Calculation of the User Fees for Railway Infrastructure
- LV Railway Act;
Cabinet regulations No. 539 “Rules for the Public Railway Infrastructure Capacity Allocation”.
- LT Railway Transport Code of the Republic of Lithuania; Rules on the allocation of the public railway infrastructure capacity

7.2 Formulation of the obligation to grant access and priority rules

- EE
- RUs have the right to use public railways on non-discriminating terms with regard to RI user fees, time and other conditions of RI use, IMs shall satisfy applications for capacity to the widest possible extent;
 - Priorities:
 - 1st - train paths necessary for the provision of public passenger transport services in international direct connection, if applied by RUs who provide such services in compliance with international agreements;
 - 2nd - train paths necessary for the provision of domestic public passenger transport services (on the basis of public service contracts with the MKM as notified last date of August preceding the timetabling period);
 - For operation of train paths which run through more than one rail network, IMs shall co-operate with other IMs, TSA and the regulating bodies of other states authorised to supervise the allocation of capacity;
 - The law defines the volume of the capacity and the contents of the basic, extra and support services for access.
- LV
- If possible, the operator has to be given all the capacity required in the request.
 - Priority
 - (a) international passenger trains;
 - (b) speed (international) freight trains;
 - (c) domestic passenger trains;
 - (d) freight trains in closed routes;
 - (e) collecting and removal trains;
 - (f) other trains.
- LT
- Public railway infrastructure must be used with maximum efficiency and cost-effectiveness to ensure the interests of the railway service customers;
 - Discrimination of the applicants is prohibited;
 - Competition in the field of railway transport services has to be promoted;
 - Reasonable demands of the applicants on further development of their activities shall be taken into account;
 - Capacity is allocated by the State Railway Inspectorate for the duration of 1 working timetable;
 - Priority:
 - Please see below in Section 7.6.

7.3 Timetabling period, publication of access terms

- EE **Timetabling Period:**
From last Sunday of May to Saturday preceding last Sunday of May next year (see below in Section 7.4 for timetabling procedure);

Publication of access terms

- IM shall publish Network Statement to be by last day of June;
- Draft Network Statement to be submitted for TSA’s approval 1 year before the commencement of the timetable period;
- Prior to publication, the Network Statement needs to be consulted with RUs, regulatory bodies involved in capacity allocation procedures (ECA, TSA) and all interested persons;
- Network Statement shall provide content set forth by the RdtS;
- Network Statement is subject to inspection/verification by TSA and ECA, which may request additional information from the IM and issue precepts to correct the Network Statement (within 5 days) and notification of such corrections to the persons which have already received the incorrect Network Statement.

- LV **Timetabling period:**
From last Sunday of May until the last Saturday of May next year.

Publication of access terms:

- IM shall establish and notify carriers of schedule (timetable) no later than one month before its entry into force.
- IM prepares an annual Network Statement on the planned services for the next timetable period by 15 June.

LT Timetabling Period:

From second Saturday of December to last Friday preceding second Saturday of December next year (The new working train timetable takes effect on the second Saturday of December of each year, at midnight).

Publication of access terms:

- Applications for allocation of capacity, shall be submitted to the SRI not later than 12 months before the timetable takes effect;
- Interested persons (except the applicants) no later than in 2 months after the deadline to submit applications for allocation of capacity shall inform SRI about their intention to provide their comments and (or) proposals about the draft train traffic timetable;
- Public railway infrastructure manager, after performing the technical assessment of applications for allocation of capacity, not later than within 4 months after the deadline to submit applications for the capacity, shall prepare a draft train traffic timetable and submit it to SRI and interested persons;
- Public railway infrastructure manager provides the information to SRI, and SRI publishes on its website the information on the availability of spare capacity not intended for the use of applicants or being under repair, as well as reserve capacity that can be used for satisfying "last-minute" applications;
If after the adjustment the public railway infrastructure manager is unable meet all applications for capacity in any part of public railway infrastructure due to insufficient capacity in that part, he must immediately inform VGI that a part of the public railway infrastructure, in which the situation occurred, is congested. VGI shall announce such information on its website. A part of the public railway infrastructure which, as can be reasonably expected, shall be congested in the near future can also be announced as congested.

7.4. Procedure and time span for applying for and granting of access

- EE**
 - Applications for capacity for the next capacity allocation period to be submitted to the IM by the last day of August;
 - 1st or 2nd priority RUs shall be granted capacity before other applications are reviewed;
 - A draft timetable shall be completed and published by the last day of December;
 - Timetable shall be approved by the last day of March;
 - Draft Network Statement shall be provided to TSA for review at least 1 year before the timetable period;
 - Applications for single capacity shall be reviewed and planned within 5 working days.
- LV**
 - Applications for capacity for the next capacity allocation period until 15 October;
 - Capacity of public-use RI shall be allocated so that in relation to RU the principle of equality is observed, as well as the optimal utilisation of the RI is ensured;
 - The priority of the allocation is to those service providers that operate on the basis of state or local government carriage by rail order contracts, including for the support of foreign armed forces or National Armed Forces, and to services which fully or in part are provided by utilising public RI intended or constructed for special purposes (express, freight and similar carriage);
 - Capacity shall be allocated on the basis of applications, submitted to the IM by RUs;
The IM decides on allocation of capacity by 15 December.
- LT**
 - Applications for allocation of capacity, shall be submitted to the SRI not later than 12 months before the timetable takes effect;
 - No later than within 1 month after the application deadline, the SRI shall transfer the applications to the IM (i.e. JSC "Lithuanian Railways") for technical evaluation;
 - Interested persons (except the applicants) shall inform (via SRI) about their intention to provide comments to the draft timetable no later than in 2 months after the application deadline;
 - No later than 11 months before the timetable takes effect, the IM shall establish preliminary train lines (in co-operation with the IMs or regulatory bodies of the EU Member states);
 - No later than within 4 months after the application deadline, the IM shall prepare a timetable and submit it to the SRI and interested persons;
 - The SRI and interested persons shall be entitled to submit to the IM their requests, comments and suggestions in 1 month period after receiving the draft timetable;
 - Within 7 months after the application deadline, the SRI shall examine the applications and decide on allocation of capacity;
 - No later than 35 calendar days before the timetable takes effect, the IM shall prepare a timetable, submit it to the applicants and inform SRI about the remaining spare capacity and approve it no later than 30 days before the timetable takes effect;
 - The timetable takes effect on the second Saturday of December of each year, at midnight;
 - IM notifies the SRI, and the SRI shall publish on its website the information on the availability of spare capacity (not intended for the use of applicants or being under repair), as well as reserve capacity that can be used for satisfying "last-minute" applications.

Procedure for applying for the single (special purpose) capacity:

Applications for the maintenance or repair of public RI shall be submitted to the SRI before the timetable takes effect. IM shall assess the impact of the capacity to maintenance or repair of infrastructure and if the another applicant will not be able to carry out the commercial activities due to the maintenance or repair, IM has to offer other capacity or compensate the applicant's losses in compliance with legal acts. Capacity for the single (special purpose) can be reserved submitting "last-minute" applications.

-
- Observations:**
- The regulation and procedural schedule for timetabling and allocation of capacity on public RI is not unified in in EE, LV and LT. Notably, the timetabling period in EE and LV differ from that of LT. Further, in EE and LV, the capacity allocation of performed, in general, by the IM itself, whereas in LT, this is done by the State railways Inspectorate;
 - As a minimum option for Rail Baltic, the timetabling and capacity allocation procedures in EE, LV and LT should be unified. If that becomes impossible or impractical due to the established practices on the existing public railways of EE, LV and LT, an *ad hoc* transparent and efficient procedures based on the EU applicable regulation should be established for the Rail Baltic. Further analysis is recommended in order to establish the optimal details for such procedure (such as timetable periods, timing of the application procedures, inspection and review *etc.*).

7.5. Co-ordination procedure

- EE**
- Defined as the activities of the IM for adjusting the requested capacities to the timetable by negotiation with the applicants;
 - IM to follow the procedure provided in the Network Statement;
 - IM to organise in such manner that possible depletion of capacity on certain RI elements could be foreseen at least 10 months before the beginning of the next timetabling period;
 - IM makes, after consulting the applicants, the best possible proposal (providing after evaluating the effect to the applicant's business reasonably limited capacity) to the applicants;
 - IM is authorised to make a co-ordination decision, i.e. to satisfy the applications and settle the disputes taking into account, as far as possible, the financial interests of all applicants.

LV See below in Section 7.6.

LT See above in Section 7.4 concerning timetable and capacity allocation procedure.

7.6. Procedures in case of depleted capacity

- EE**
- IM shall declare the capacity depleted if, in the course of co-ordination procedure, all the reasoned applications cannot be satisfied;
 - IM shall conduct an analysis of actual use of the capacity, incl. evaluation of transported or foreseeable cargo volumes and growth in the demand for the offered rail transport services;
 - IM shall forthwith notify the TSA and the ECA of its decision concerning declaration of capacity as depleted;
 - IM shall provide the criteria and procedure for distribution of depleted capacity in the Network Statement;
 - Depleted capacity shall be distributed in a manner that the maximum number of applicants will be granted capacity, reasonable limits may be applied;
 - IM may allocate depleted capacity by auctioning the RI use fees (RIFs);
 - RIFs for depleted capacity may only be used for implementation of the enhancement plan (as approved by TSA in advance), use of such funds is subject to inspection by the ECA;
 - IM shall lose the right to collect other fees except IR use fees if the IM fails to prepare or perform the enhancement plan within set deadline.
- LV**
- If the required capacity is larger than can be allocated, an operator is offered:
 - (a) to choose another time for the requested train route (if time is indicated in the application);
 - (b) to choose another route than the one indicated in the application;
 - (c) to reduce duration of passenger train run by reducing the number of stops or otherwise;
 - (d) to reduce total weight of passenger train or use traction unit with better traction parameters;
 - (e) to increase total weight of freight train or use traction unit with better traction parameters;
 - (f) to disclaim some capacity applied for.
 - Co-ordination procedure:
 - If an operator agrees to modify its application, it will be granted the agreed capacity;
 - If an operator does not agree to modify its application, a capacity allocator proposes to reach an agreement with other operators, who have applied for capacity in the same district, in 2 weeks' time. If operators reach an agreement, it is submitted to the capacity allocator.
 - If operators cannot reach an agreement in 1 month, a capacity allocator allocates the capacity according to the priority rules regarding timetables.

- If RI is congested, an IM performs an analysis of its use with the purpose to set capacity limitations and offer solutions for alleviating the congestion. The IM may offer to the RUs to take part in activities which increase capacity in the particular RI sections. If RI is congested, the capacity allocator has the right to reduce the capacity or refuse from granting capacity to those operators whose train technical parameters do not ensure effective use of RI.
 - Any disagreements that arise between IM and an RU regarding access to and allocation of capacity on public RI, the network statement and its contents or alleged discriminating use conditions of RI, are reviewed by the State Railway Administration.
- LT**
- If after the adjustment the IM is unable meet all applications for capacity in any part of public RI due to insufficient capacity, he must immediately inform SRI of congested RI.
 - SRI shall announce such information on its website. A part of the public RI which can reasonably be expected to become congested in the near future, can also be announced as congested.
 - By announcing a part of the public RI as congested, SRI shall allocate the capacity in the area of the congested RI to one or more applicants in accordance with the rules approved by the Minister of Transport and Communication.
 - SRI, after consulting the interested persons, provided there are alternative routes, may establish that a particular RI can be used for certain types of traffic. In this case SRI shall be entitled to issue a **pre-emption right** to obtain capacity for these types of traffic. The RI can be used for other types of traffic, provided there are spare capacity and rolling stock meeting the required specification.
 - By announcing a part the public RI congested, SRI shall allocate the capacity in the congested parts in accordance with the following criteria:
 - If the same capacity is requested by both an applicant who is licensed to the carriage of passengers and luggage, and an applicant who is licensed to the carriage of freights, the capacity shall be allocated to an applicant in possession of the license enabling the carriage of passengers and luggage;
 - If the same capacity is requested by more than one applicant in possession of identical licenses enabling carriage of passengers and luggage, the capacity shall be allocated to the applicant according to the train type in the following sequence:
 - 1) international express;
 - 2) local express;
 - 3) international high-speed trains;
 - 4) local high-speed trains;
 - 5) other passenger trains;
 - If the same capacity is requested by more than one applicant licensed to the carriage of freight, the capacity shall be allocated to the applicant according to the train type in the following sequence:
 - 1) military echelons;
 - 2) freight trains:
 - 3) high-speed freight trains;
 - 4) other freight trains;
 - 5) locomotives without cars.
 - Upon failure to allocate capacity in accordance with the procedure, the capacity shall be allocated to an applicant who had already used the requested capacity under the previously valid timetable;
 - Upon failure to align applications in above order, the capacity shall be allocated to an applicant which has paid more for reservation of the capacity (i.e. initial payment).

Observations:

- There is no uniform co-ordination procedure and the procedure for allocation of depleted capacity in in EE, LV and LT. Notably, in LT the capacity is allocated by the State Railways Inspectorate, and not the IM;
- As Rail Baltic will be a new railway of different gauge, a unified capacity allocation procedure should be devised in line with the EU legislation as in effect by the time Rail Baltic becomes operable. Also, in order to avoid differences in administrative practices, an independent regulator should be set up to supervise the allocation of capacity on a “one stop” basis.

7.7. Contracts for use of railway infrastructure

- EE**
- Duration: up to 5 consecutive timetabling periods, for 10 time table periods with TSA’s approval;
 - To be entered in writing by last day of May;
 - Includes the conditions for use of IR, which shall take account of the nature and duration of the service, the market situation, the degree of depreciation of the RI, the composition, condition and operating velocity of the RVs;
 - RU may not transfer the allocated capacity further under the penalty of withdrawal of the capacity and losing the right to apply for it in the future;
 - In the case of capacity depletion, the IM has the right to withdraw such capacity which the RU has failed to use within at least 1 month due to reasons arising dependent of such RU.

- LV** In respect of the utilisation of public RI in conformity with the allocated capacity, the relevant IM and RU shall enter into a contract, which regulates administrative and financial issues. If the operation of the contract time period exceeds one effective traffic time reference period, an agreement shall be entered into regarding the long-term utilisation of RI taking into account the commercial needs of the RU.
- LT**
- Contract is concluded for duration of 1 working train timetable and shall be concluded and updated annually, even in case of a framework agreement.
 - In the contract the IM shall specify:
 - general characteristics of the RI allocated to the applicant for use, the terms and scope of use of the capacity (date, route, duration);
 - the purpose of the public RI;
 - restrictions on the use of public RI;
 - rights and obligations of the applicant and the IM by using the public RI, responsibility for violations of the terms of the contract;
 - penalties for the failure to perform a contract or defective performance;
 - procedure for compensation for damage caused by the use of allocated capacity;
 - actions to be taken by the parties in the event of force majeure;
 - other essential terms of the contract.
 - The IM and an applicant may enter into a framework agreement establishing the rights and obligations of the applicant and the public railway infrastructure manager for allocation of capacity for the duration of more than one working train timetable. The train line is not defined under the framework agreement aimed at meeting justified commercial needs of the applicant.
-

Observations: The level of details concerning the terms and of set of rules concerning contracts for the use rail infrastructure use is different in EE, LV and LT. As for Rail Baltic, the requirements concerning the use contracts should be unified.

7.8. The role of the Regulating Bodies in granting access to and allocation of capacity on the public RI

- EE**
- TSA - IM shall transfer performance of the capacity allocation proceedings to the TSA, if the IM itself is using its RI for provision of transport services, or if the IM is unable to allocate capacity impartially due to the fact that an applicant an RU belonging to the same group or there exists a control relationship with the IM;
 - ECA - processes complaints of unjust or discriminatory treatment in connection with Network Statements, timetables, capacity allocation, co-ordination proceedings, depleted capacities or RI use fees or safety certificates.
- LV** State Railway Administration to review disputes pertaining to allocation of capacity and access by IM and allocate capacity, if the IM is also a carrier, decision may be appealed in court.
- LT** SRI functions as the body allocating capacity on public RI.
-

Observations:

- In EE and LV, the allocation of capacity is carried out by the IMs under the supervision by the independent public authority, unless the IM is not independent of the applicants. In LT, the capacity allocation of public RI is performed by the State Railways Inspectorate;
- As the powers and structure of the national Regulatory Bodies in EE, LV and LT are different in respect of capacity allocation (incl. in case of depleted capacity), the possibility to set up a specific independent supra-national body in charge of the capacity allocation and access procedures for the Rail Baltic should be studied further.

4. An overview of compulsory expropriation

Which governmental or local authorities have the right to carry out compulsory expropriation proceedings?

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> • Expropriation of immovable property is regulated by Immovables Expropriation Act (hereinafter also referred to as IEA). • Any state or local municipality institution or agency (hereinafter also referred to as an initiator) may initiate expropriation if the purpose is in public interests according to the law. • As a rule an expropriation decision of immovable property must be made by the Government of the Republic of Estonia. In the events provided by law (e.g. local roads), expropriation of immovable property may be decided by other state agencies or a local authority. • State agencies and rural municipality or city governments may be expropriation applicants and expropriating authorities. 	<ul style="list-style-type: none"> • State administrative institution or municipality (Institution) whose competence covers the field of public needs that will be fulfilled utilizing the immovable property which is going to be expropriated (Property) • Regarding the construction of the public railway infrastructure the competent Institution will be the Ministry of Transport. 	<p>Provided that “Rail Baltic” was announced the project of the national importance by Lithuanian Parliament, special regulation on compulsory expropriation proceedings is applicable. According to the Law on land expropriation for the projects of national importance and other legal acts, the following authorities participate in carrying out compulsory expropriation proceedings:</p> <ul style="list-style-type: none"> • Lithuanian Ministry of Transport which is nominated as the implementing body of Rail Baltic project. • Lithuanian Parliament whose basic role is to announce the particular project as the project of national importance. • The Government of Lithuanian Republic, whose basic function is to adopt a decision to starting compulsory land expropriation proceedings for public needs. • National Land Service, whose basic function is to adopt a decision of land expropriation for public needs.

Rights of the Joint Venture to carry out compulsory expropriation proceedings? I.e. can a private company acquire the land needed for the railway infrastructure directly from the land owners? If, not, what laws need to be changed in order to facilitate such a right?

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> Private company cannot acquire the immovable directly from the subject of expropriation via expropriation procedure. However, the expropriator may transfer the right of ownership of an expropriated immovable to third person (incl. also private company) in order to attain the purpose of the expropriation. It is also important to note that the owner's right of pre-emption, as set forth in § 46 of IEA (the pre-emptive right to buy the expropriated land back once it will be sold) does not apply to this transfer. In order to facilitate the right to expropriate the immovable directly from owners to private companies, the IEA must be changed accordingly. 	<ul style="list-style-type: none"> A private entity is not allowed to carry out compulsory expropriation under the Law on Acquiring the Immovable Property Required for Public Needs (<i>Sabiedrības vajadzībām nepieciešamā nekustamā īpašuma atsavināšanas likums</i>, dated 14 October 2010, in force since 1 January 2011). This statutory instrument needs to be amended to give a private entity rights to carry out compulsory expropriation of the Property. However, amending the above law might be insufficient because the compulsory expropriation is regulated also by the Clause 105 of the Constitution of Latvia (Satversme). If the Property's owner does not agree to sell the Property, ensuring the right of the Joint Venture to carry out expropriation directly might require amending the Satversme. Therefore it is our recommendation that the Property be expropriated by the Ministry of Transport and then it might be transferred to the Joint Venture. It should be noted that the Institution is allowed to delegate separate tasks related to the expropriation procedure to other entities, e.g. a state owned company. 	<ul style="list-style-type: none"> No public or private entities other than above are allowed to carry out compulsory expropriation proceedings for public needs in Lithuania. However, expropriated land belonging to the State can be later on trusted, given for free possession or leased to a public or private entity (Joint Venture) but only for those purposes, for which it has been expropriated. In our opinion the entire legal system, regulating land and property law should be changed as well as conception of ownership and possession of State property. In order to respond to this question separate legal study should be prepared. On the other hand, there is no inevitable need to change present regulation, since compulsory expropriation proceedings performed by State institutions under present regulation should go quite fluently. Note, that once land and other property is expropriated by State, it can be later on trusted given for free possession or leased to a joint venture in order to implement Rail Baltic project.

Brief overview of the procedures in connection with the compulsory expropriation.

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> • Initiator will start/do preliminary works (if necessary for determining the suitability of the immovable for the purpose of the expropriation). • After preliminary the initiator will inform the owner about the intention to submit an expropriation application. • Initiator will submit the expropriation application to the minister whose area of government includes the field for which expropriation is applied. In case of expropriating an immovable for the purpose of construction of public railway an expropriation application must be submitted to the Minister of Economic Affairs and Communication (hereinafter referred to as MEAC). • The minister shall submit the application to the Government of the Republic along with the minister's opinion. • Government of the Republic will adopt the expropriation decision. • On the basis of an expropriation decision, an initiator may submit an application to the land registry for entry of an expropriation notation in the land register, which will prohibit the transfer or encumbrance of an immovable. • After adopting the expropriation decision the initiator shall submit an application of carrying out a special valuation the county governor. In case of expropriating an immovable for the purpose of construction of public railway, an application for a special valuation shall be submitted to MEAC. • The county governor or, in case of expropriating an immovable for the purpose of construction of public railway, MEAC, shall order an enforcement officer (bailiff) to record, value and, where necessary, administer the immovable. The outcome will be an evaluation report. 	<ul style="list-style-type: none"> • Institution proposes the expropriation of Property if it is necessary to carry out the project that will ensure satisfying the relevant public needs which are within the Institution's competence. • Cabinet of Ministers or municipality takes a decision to carry out the relevant (infrastructure) project. • The Institution identifies the Property required to carry out the project and determines the amount of compensation payable to its owner (Compensation). • Cabinet of Ministers or municipality takes a decision to propose expropriation for the set Compensation. • A prohibition to alienate the Property without consent of the Institution is registered in the Land book. • The Institution informs the owner about the possibility to sell the Property voluntarily for the Compensation; if the owner agrees, a relevant agreement is concluded. • If the agreement is not concluded, Institution drafts a Law for expropriation (Law), files it with the Cabinet of Ministers for submitting it to the Parliament (Saeima). • After Saeima has adopted the Law and (a) no Constitutional claim has been filed, or (b) the submitted claim has been rejected, or (c) the Constitutional Court has ruled that the Law is valid, the Institution pays the Compensation to the owner. • State (or relevant municipality) is registered as the owner of the Property in the Land book. • The former owner of the Property vacates it. If not, the Institution submits a relevant application to the court, bailiff ensures the transfer of Property's possession. 	<ul style="list-style-type: none"> • The compulsory expropriation procedure in relation with the project of national importance shall be as follows: • Lithuanian Parliament announces the particular project as the project of national importance (note: Rail Baltic has been announced as the project of national importance by Parliament on the 11.10.2011). • Implementing body (in this case Ministry of Transport) organizes and prepares Special plan according to procedures prescribed by Lithuanian Law on territory planning of the territory wherein the land has to be expropriated for public needs. • Implementing body submits the Special plan for approval to the Government of Lithuania and asks to adopt a decision to start the land expropriation procedure for public needs; Implementing body also submits the list of land plots (or their parts) which shall be expropriated, and list of leased state land plots, where lease contracts shall be terminated. • Government approves the Special plan and adopts the decision to start expropriation procedures. • Implementing body informs State Register of Real Estate of the decision to start expropriation procedures. Register enters a respective record to the register of every land plot in whose respect the expropriation procedures shall be applicable. • After Government's decision to start expropriation procedures comes into force, owners of land to be expropriated cease a right to transfer, mortgage or otherwise encumber these land plots, as well as to divide or merge them. • Implementing body sends notifications to land owners and users that Government's decision to expropriate land came into force.

- After evaluation procedure and report the county governor will immediately initiate agreement procedure. **In case of** expropriating an immovable for the purpose of construction of **public railway** the agreement procedure will be initiated by MEAC. **The owner may voluntarily sell the land to expropriator in the agreement procedure.**
- If agreement procedure fails, the county governor will adopt a decision setting the expropriation price. **In case of** expropriating an immovable for the purpose of construction of **public railway** the decision setting the expropriation price will be adopted by MEAC.
- After successful agreement procedure or, in case of failed agreement procedure, after setting the expropriation price by county governor or MEAC (**in case of** expropriating an immovable for the purpose of construction of **public railway**), an enforcement officer shall draw up a deed concerning the takeover and handover of the possession of an immovable (signed by all involved parties).
- The expropriator must pay the expropriation price either directly to the owner or to an escrow account of an enforcement officer; an enforcement officer forwards expropriation price to the owner.
- An initiator will submit an application for initiating takeover of possession of expropriated immovable to county governor. **In case of** expropriating an immovable for the purpose of construction of **public railway** the application will be submitted to MEAC.
- An enforcement officer will take over the possession of an expropriated immovable and hand it over to the expropriator.
- The land registry department shall register the immovable in the ownership of the expropriator.
- Implementing body prepares Land expropriation projects and organizes the evaluation of expropriation objects. Land expropriation project is a special territory planning document, which is prepared in order to project the land plot which will be expropriated for public needs and (or) land plot(s) which shall remain to the owner after the division of the land plot to be expropriated.
- After Land expropriation project and property evaluation report are prepared, Implementing body addresses to the National Land Service with a request to adopt the decision on land expropriation for public needs. This decision is formalized by Land expropriation act.
- Implementing body informs the land owner and (or) user of the adopted Land expropriation act and invites him to sign it within 30 days. If the owner signs Land expropriation act, Implementing body pays him the price of expropriated property. If the owner refuses to sign, the Implementing body has to apply to the court in order to justify the legitimacy of Land expropriation act.
- National Land Service registries expropriated land as the ownership of State after Implementing body makes final settlement with the owner or after court's decision to justify the legitimacy of Land expropriation act comes into force.

Timing of the compulsory expropriation procedures

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> Decision for preliminary works (if necessary for determining the suitability of the immovable for the purpose of the expropriation and if such works require a consent of the owner of the expropriated immovable and the owner will not give such consent voluntarily) – 2 weeks from the moment of receiving an application from initiator (IEA § 7 lg 2). The decision must be delivered to the owner of expropriated immovable – this may take 3 days to 1 month depending on availability of owners (IEA § 7 lg 5). The initiator will inform the owner about the intention to submit an expropriation application – within 6 months after the completion of preliminary works (IEA § 10 lg 1). Owner can give opinion and objections within 2 weeks from receipt of decision about starting expropriation procedures (IEA § 10 lg 3). The initiator will submit an expropriation application to the minister whose area of government includes the field for which expropriation is applied – depends on the initiator (IEA § 11 lg 4). Minister will submit the expropriation application to the Government of the Republic within – 1 month (IEA § 11 lg 4). The Government will make the decision within reasonable time – ca 1 week (Vabariigi Valitsuse reglement, § 11 lg 1). Evaluation will be made by enforcement officer (bailiff) pursuant to the procedure provided for in the Code of Enforcement Procedure – max 2 months (IEA § 16 lg 8). Announcing about commencement of agreement procedure in daily newspaper – min 2 weeks (IEA § 23 lg 1). Simultaneously inform owner in person; owner can give opinion and objections – 2 weeks from receipt of notification (IEA § 23 lg 2). Term for entry in agreement – max 30 days (IEA § 25 lg 1). 	<ul style="list-style-type: none"> Within 3 months after the Compensation for the Property is determined and the Cabinet of Ministers (or municipality) takes a decision to propose expropriation. The Institution within 10 days after the above decision requests the Property's owner to inform the Institution on the possibility to acquire the Property for the set Compensation, giving the owner 30 days to reply. The time limit for entering into the agreement must be at least 2 months after the owner has received a draft agreement. After the Law has entered into force, the Institution pays the Compensation, but not before a term for filing a constitutional claim has expired (i.e. 6 months after the Law has entered into force) or the Constitutional court has resolved on the validity of the Law. The timing for adoption of the Law in Saeima is not regulated. Proceedings at the Constitutional court can take about 1 year after the claim is filed. 	<ul style="list-style-type: none"> Preparation of the Special plan: speaking generally, timeline is not regulated by law. However, in relation to Rail Baltic project, on 26.09.2012 Lithuanian Government approved the plan for preparatory works, where it was stated that Special plan and Environmental Impact Assessment for the Rail Baltic line from Kaunas to Lithuanian-Latvian border should be finished by 31.12.2015. Approval of the Special plan by Government: not regulated by law. However it should not take long if the Special plan is prepared correctly. Notification to land owners about Government's decision to start expropriation procedures: within 5 days after Government's decision comes into force. Preparation of Land expropriation project and property evaluation report: general time limit for preparation of Land expropriation projects is not regulated by law. Preparation of this project depends on skills of involved persons and authorities as well as on complexity of Land expropriation project. Once the Land expropriation project is ready it has to be publicly announced. Publication of the project takes up to 22 days (including responses to community's proposals). After this it has to be coordinated with other related institutions within 15 days. Adoption of the Land expropriation act: National Land service adopts Land expropriation act within 30 days after the submission of prepared Land expropriation project and evaluation report, provided that the plan is prepared according to procedures prescribed by Law. Notification of Land owners: land owner (user) must be notified of the Land expropriation act and is given 30 days term to sign it. If the owner signs the expropriation act, Implementing body transfers compensation within 5 days. After the compensation is paid, expropriated property is registered as State ownership.

- Additional evaluation – 1 month (IEA § 27 lg 3).
 - Further steps have no specific terms set by law; nevertheless, such procedures may take from 1 week to several months.
 - If the owner does not sign the expropriation act, Implementing institution transfers compensation to notary's, banks or other credit institution's deposit account and within 60 days applies to the court for justification of the legitimacy of Land expropriation act. Owner is given 30 days term to submit his response to the claim. Court decides the legitimacy of expropriation act within 14 days after owner's response or after the expiration of the given term. Court's decision regarding the legitimacy of expropriation act can be appealed within 7 days and appeal court adopts the final decision within 30 days. After the final court's decision comes into force, expropriated property is registered as State ownership.
 - Vacating of expropriated property: by Land expropriation act the owner is given a reasonable term to vacate the expropriated property. This term cannot be shorter than 3 months and is established considering to owner's (user's) opinion.
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Principles for determining the price for the object of expropriation.

Estonia	Latvia	Lithuania
<p>Two-steps procedure: I – evaluating the immovable II – determining the expropriation price</p> <p>I – Value of the immovable:</p> <ul style="list-style-type: none"> • is ascertained by a special valuation (special valuation shall follow the procedure established on the basis of subsection 8 (2) of the Land Valuation Act) (IEA § 16 lg 1) • shall be evaluated by enforcement officer (bailiff) in cooperation with licensed land evaluator <p>II – Expropriation price:</p> <ul style="list-style-type: none"> • must be based on the value of an immovable (IEA § 17 lg 1) • shall not be lower than the usual value of the immovable at the moment of passing the expropriation decision (IEA § 16 lg 1) • shall not be affected by a change in the value of an immovable in the period between passing the expropriation decision and the special valuation, or its possible change in the future (IEA § 16 lg 3) • must cover the expenses to be incurred by the owner due to expropriation, incl. the value of the accessories and fruits expropriated together with the immovable, unless otherwise provided by law (IEA § 17 lg 1) • However, it is also allowed to settle the expropriation price upon agreement of parties. 	<ul style="list-style-type: none"> • The Compensation is determined by a special commission composed by the Institution. The Compensation must be set in accordance with a Property's valuation from a certified (licensed) appraiser and considering the losses caused to the owner by the expropriation. The general principle is to set the Compensation equal to the difference between the owner's financial status before and after the expropriation. • The Compensation must include the highest value from (a) Property's market value, and (b) Property's residual value of replacement. One must consider Property's structure, available communications, level of improvement, technical condition, 'wear and tear', location, usage, encumbrances, yield, etc. • Relocation expenses, expenses related to acquisition of other property (stamp duties, legal and notarization expenses) must be considered, while assessing losses caused by the expropriation. 	<ul style="list-style-type: none"> • Land owner must be fairly compensated for the expropriated property at market value. Monetary compensation must be paid for plantations on the expropriated land, lost harvest, investments made in order to grow agricultural production and forest in the expropriated land and all other owner's (user's) losses incurred due to expropriation of the land plot, buildings, equipment, plants etc. for public needs. • Value of the expropriated property and losses incurred due to property expropriation are determined according to Law on property and business evaluation. Evaluation must be performed by impartial certified valuator; every piece of expropriated property must be evaluated individually. Evaluation method should be chosen considering criteria established in Methodology of property evaluation, approved by Lithuanian Government.

Rights of the owner to dispute the compulsory expropriation

Estonia	Latvia	Lithuania
<p>The owner is entitled to dispute: an expropriation decision any decision made or any step taken in the course of an expropriation procedure decision of determining the expropriation price</p>	<ul style="list-style-type: none"> The owner can challenge the Law by filing a constitutional claim with the Constitutional Court (Satversmes tiesa) within six months after the Law has come into force. The owner/former owner can dispute the amount of Compensation by filing a relevant claim with the court under the usual civil procedure – within 20 days after (a) the amount of Compensation is set by the Cabinet of Ministers' decision or by municipality's decision, or (b) the Constitutional Court's decision on the Law is adopted, or (c) the term for filing a constitutional claim has expired. The civil procedure sets specific (shorter) timing for the first court hearing to take place, i.e., within 15 days after the respondent's explanation is received or the preparatory hearing has been held. 	<p>Owner can dispute:</p> <ul style="list-style-type: none"> the Special plan and decisions or acts made within the Special planning procedure derivative issues (amount of compensation etc.); this is not limited and it can continue as long as it takes <p>Public (anyone, including land owners) can dispute:</p> <ul style="list-style-type: none"> land expropriation project <p>The Implementing body must address to administrative court if:</p> <ul style="list-style-type: none"> the owner refuses to sign Land expropriation act

Does the dispute affect the timing of the compulsory enforcement proceedings? Can the ownership and possession of the object under compulsory expropriation be taken over while the dispute is ongoing (incl dispute on the cost of the land).

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> Disputes on any expropriation decision or a decision made or a step taken in the course of an expropriation procedure (including regarding the preliminary building design documentation or building design documentation of a public road or public railway) will not affect the time-limits of the expropriation procedure. However, in the event of contestation of such a decision or step, the possession of the immovable or the right of ownership shall not be transferred to the expropriating authority prior to entry into force of the court decision. Contestation of a decision on determining the expropriation price shall be reviewed separately from the aforementioned contestations and it will not affect the time-limits of the expropriation procedure. NB! Such contestation does not impede the transfer of the possession or the right of ownership of the expropriated immovable to the expropriating authority. 	<ul style="list-style-type: none"> The compulsory expropriation cannot be finalized prior to the resolving of the constitutional claim (if any) and the set Compensation is paid to the owner. We believe that a claim regarding the amount of the Compensation should not affect the Property's expropriation procedure. However, it should be noted that since no expropriation has occurred after the adoption of the new Law and the Clause regarding the moment of transfer of the Property's ownership is not absolutely clear, it might be also interpreted in a way that the transfer of ownership might occur only after the Compensation is paid in full, i.e. including the amount set by the court (after the dispute is resolved). If the former owner does not vacate the Property, the Institution submits a relevant application to the court that decides on transferring the possession of the Property to the new owner (Court's ruling is effected by a bailiff) 	<ul style="list-style-type: none"> If the dispute arises in relation to procedures of the preparation of the Special plan or land expropriation plan, the court has a power to stop planning procedures under certain circumstances. However, due to short terms for the court to make a final decision in such case, planning procedures are likely to be stopped for a relatively short period (up to 5-6 months). If the owner refuses from signing expropriation act, procedure is stopped for a period until the court confirms legitimacy of such act, which may take roughly 5 months. The owner can continue litigations regarding amount of compensation or any other issues concerning expropriation act, but such derivative litigations do not affect compulsory expropriation.

The consultant shall propose what shall be the documents and works (in terms of elements of spatial and territorial planning, land reservation and acquisition, design and construction, financial engineering and pre-marketing) that the Joint Venture should start from, in order to save time and finances in each partner country.

Estonia	Latvia	Lithuania
<ul style="list-style-type: none"> • The Joint Venture (or any other interested or authorized body) should proceed with territorial planning procedures (including necessary lobbying on local government and county levels as well as with related geological researches etc.) according to Planning Act § 29¹ (line structure going through several local governments' territories) in order to finish those works within the shortest possible time, preferably by the end of 2014. • To carry out possible geological works regarding potentially suitable plots. • Raising public awareness of the importance and the benefits of Rail Baltic among all the mapped stakeholders. • To ensure open and timely publication of the chosen route with relevant details pertinent to land use for the planned track in order to avoid land speculation and hostility. 	<ul style="list-style-type: none"> • Prepare a well-grounded draft decision on the project (for the Latvian Cabinet of Ministers); • Determine the Property that needs to be acquired depending on chosen route; • Inform the relevant municipalities and state institutions on the required properties for changes in the territorial planning (if necessary); • Inform the owners of the Property asking to participate in the valuation process, submit information on the Property's encumbrances; • Acquire the documents relating to the ownership of the Property (from Cadastral Registry, Land book, municipalities), its usage; • Prepare and effect the public procurement for the valuation services of the Property, other services regarding the expropriation. 	<ul style="list-style-type: none"> • Following works could be done in Lithuania in order to save time and finances: • Draft documentation for acquisition of Special planning services and Project's environmental impact assessment services; • Initiate preparation of technical projects for rail lines construction; • Draft documentation required for acquisition of future construction services; • If prospective rail lines are determined, respective municipalities should be informed about it in order to reserve land for future project, i.e. municipalities should be asked not to issue planning conditions for those land plots which are likely to be expropriated in the future or otherwise prevent these territories from development. National Land Service should also be informed in order not to lease, sell or otherwise encumber State's land which is likely to be used for Rail Baltic project.

5. An overview of public procurement procedures

Governing law

Estonia	Latvia	Lithuania
Estonian Public Procurement Act	Latvian Public Procurement Law	Lithuanian Law on Public Procurement

Which public entities are covered by the law (as purchasers)?

Estonia	Latvia	Lithuania
<p>a) the state or state authorities;</p> <p>b) local authorities, local authority agencies and associations of local authorities;</p> <p>c) other legal persons governed by public law and agencies of legal persons governed by public law.</p>	<p>a) state and municipal institutions;</p> <p>b) municipalities;</p> <p>c) other derived public entities and their institutions.</p>	<p>a) state or local authority;</p> <p>b) any public legal person (with the exception of political parties), if all or part of its activities is intended for meeting the needs of general interest, not having an industrial or commercial character, and meets at least one of the following conditions:</p> <p>(I) the activities thereof are financed, by more than 50%, with state or municipal budget resources, or with resources of other state or municipal funds, or with the resources of other public or private legal persons specified herein;</p> <p>(II) it is subject to control (management) by the state or local authorities, or other public or private legal persons specified herein;</p> <p>(III) it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the state or local authorities or by the public or private legal persons specified herein;</p> <p>c) any association of state or local authorities and/or of public or private legal persons meeting the requirements set in paragraphs (I) – (III);</p> <p>d) any public legal persons engaged in water, energy, transport or telecommunication activity.</p> <p><i>The Minister of Economy of the Republic of Lithuania annually approves the lists of contracting authorities (public entities and legal persons engaged in water, energy, transport or telecommunication activity).</i></p>

Are any private entities covered by law (as purchasers)

Estonia	Latvia	Lithuania
<p>a) foundations where the state is one of the founders or where more than half of the founders are other public purchasers</p> <p>b) foundations where more than half of the members of the supervisory board are appointed by public purchasers</p> <p>c) non-profit associations where more than half of the members are public purchasers</p> <p>d) a legal person governed by private law:</p> <ul style="list-style-type: none"> - which has been founded for the purpose of performing or which performs, as its primary or ancillary activity, functions in the public interests and has no industrial or commercial character, <p>and</p> <ul style="list-style-type: none"> - which is mainly financed by other purchasers <p>or</p> <ul style="list-style-type: none"> - where more than half of the members of the management body, administrative body supervisory body are appointed by purchasers <p>or</p> <ul style="list-style-type: none"> - where the management is otherwise jointly or severally controlled by purchasers <p><i>(The respective persons of any other state that is a contracting party to the EEA Agreement are also considered here as purchasers)</i></p> <p>e) entities operating in the fields of related to gas and thermal energy, electricity, water, transport services, postal services, surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels, ports and airports</p> <ul style="list-style-type: none"> - who have received the special or sole right to act in this field <p>or</p> <ul style="list-style-type: none"> - that are companies where more than a half of the share capital belongs to or where more than a half of the votes represented by shares are controlled by or where more than a half of the members of the management board or supervisory board are appointed directly or indirectly by the purchasers named in a-d or by such persons jointly with the respective persons of another Member State of the European Union. 	<p>Legal entities which concurrently:</p> <ol style="list-style-type: none"> 1) are established or operate in order to ensure the needs of the public, which are not of commercial or industrial nature, <p>and</p> <ol style="list-style-type: none"> 2) are <ol style="list-style-type: none"> (I) subordinate or subject to the decisive influence of a state or municipal institution, a municipality, other derived public entity or institution, <p>or</p> <p>subject to the decisive influence of a legal entity conforming to the (a) and (b) criteria</p> <p><i>(The decisive influence means the majority of voting rights re: election of the supervisory or executive authority members or appointment of the administration);</i></p> <p>or</p> <ol style="list-style-type: none"> (II) more than 50% of the legal entities funding comes from state, municipality, other derived public entity or institution, or another legal entity conforming to these criteria. <p><i>Public service providers, e.g. public railways are subject to the public procurement requirements as well.</i></p>	<p>a) any private legal person, if all or part of its activities is intended for meeting the needs of general interest, not having an industrial or commercial character, and meets at least one of the following conditions:</p> <ol style="list-style-type: none"> (I) the activities thereof are financed, by more than 50%, with state or municipal budget resources, or with resources of other state or municipal funds, or with the resources of other public or private legal persons specified herein; (II) it is subject to control (management) by the state or local authorities, or other public or private legal persons specified herein; (III) it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the state or local authorities or by the public or private legal persons specified herein; <p>b) any association of state or local authorities and/or of public or private legal persons meeting the requirements set in paragraphs (I) – (III);</p> <p>c) any private legal persons engaged in water, energy, transport or telecommunication activity.</p>

- f) persons purchasing the following works to be financed to the extent of more than 50 percent by the purchasers named in a-d:
- 1) construction of civil engineering works or buildings for medical or educational establishments, administrative buildings or sports, recreational or leisure facilities specified under class 45.21 in Annex V of the CPV Regulation and the estimated value of these works net of value added tax is equal to or exceeds the public procurement threshold applicable to public works contracts, or
 - 2) the services related to the works specified in clause 1) and the estimated value of these services net of value added tax is equal to or exceeds the public procurement threshold applicable to public supply contracts and public service contracts.

What minimum value of contracts require public procurement?

Estonia	Latvia	Lithuania
International thresholds are enacted in EU legislation.	International thresholds are enacted in EU legislation.	International thresholds are enacted in EU legislation.
The domestic threshold of the value of organising a public procurement procedure is: 40 000 euros in the event of a public supply contract, a public service contract and a design contest and 250 000 euros in the event of a public works contract and a public works concession, provided that the public procurement procedure has been launched in 2008 or later.	Domestic thresholds: LVL 20,000 (approx. EUR 28,457) for public supply or service contracts; LVL 120,000 (approx. EUR 170,745) for public construction works; A simplified procedure is established for public supply or service contracts from LVL 3,000 (approx. EUR 4,269) and for public construction works from LVL 10,000 (approx. EUR 14,229)	Domestic thresholds: In public procurement a minimum value is not defined by the laws. The Law on Public Procurement only regulates that if the contract value net of VAT is less than LTL 100000 (EUR 28 962) for supplies or services, or less than LTL 500000 (EUR 144 810) for works, the procurement shall be deemed as small value public procurement, therefore the simplified procurement procedures could be applied.
The threshold of organisation of a simplified procurement procedure shall be <u>10 000</u> euros in the event of a public supply contract and a public service contract and <u>30 000</u> euros in the event of a public works contract.	For public service providers the thresholds generally are in line with the amounts set by the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (with the necessary modifications).	International threshold values are established by Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004

What are the main options for public procurement procedures (open, restricted, negotiated procedure etc)?

Estonia	Latvia	Lithuania
<p>1) Open procedure –any interested person compliant with the requirements provided for the tenderer according to the Public Procurement Act and with possible restrictions established on the basis of the same law may submit a tender</p> <p>2) Restricted procedure - any interested person may submit a request to participate in the procurement procedure, but a tender may be submitted only by candidates selected by the contracting authority on the basis of objective and non discriminatory criteria, to whom the contracting authority submits an invitation to tender.</p> <p>3) Competitive dialogue –any interested person may submit a request to participate in the procurement procedure and whereby the contracting authority conducts negotiations with the candidates selected on the basis of objective and non discriminatory criteria with the aim of identifying one or more of the most suitable solutions capable of meeting the contracting authority’s needs in terms of the properties of use and functional requirements. The contracting authority submits an invitation to tender to the candidates selected as a result of the negotiations and selects the successful tender on the basis of the tender evaluation criteria laid down in the contract notice or in the invitation to tender.</p> <p>4) Negotiated procedure with prior publication of contract notice - any interested person may submit a request to participate in the procurement procedure and the contracting authority submits an invitation to tender to at least three candidates selected by it on the basis of objective and non discriminatory criteria and negotiates the tenders with them in order to adjust the tenders submitted by them to the requirements established in the contract documents and select the successful tender.</p> <p>5) Negotiated procedure without prior publication of a contract notice - a contracting authority negotiates the terms of a public contract with one or more interested persons at its own choice, having previously submitted the contract documents to them.</p>	<p>1) an open tender;</p> <p>2) a closed/restricted tender;</p> <p>3) a competitive dialogue;</p> <p>4) a negotiated procedure;</p> <p>5) a design competition.</p>	<p>1) open procedure - a procurement procedure whereby any interested supplier may submit a tender;</p> <p>2) restricted procedure - a procurement procedure in which any supplier may request to participate and whereby only those suppliers invited by the contracting authority may submit a tender;</p> <p>3) competitive dialogue - a procurement procedure in which any supplier may request to participate and whereby the contracting authority conducts a dialogue with the selected candidates with the view to developing one or more suitable alternatives meeting its requirements, on the basis of which the selected candidates are invited to submit tenders;</p> <p>4) negotiated procedure with or without publication of a contract notice - a procurement procedure whereby the contracting authority consults the suppliers of its choice and negotiates the terms of contract with one or more of these</p> <p>The open or restricted procedures are the main types of award procedures and could be applied in any public procurement.</p>

A contracting authority is required to organise a procurement procedure as an open procedure or a restricted procedure, unless the premises provided for other procedures are met.

What are the basic principles for determining the best bidder?

Estonia	Latvia	Lithuania
<p>There are two different evaluation procedures the purchaser can choose.</p> <p>A contracting authority shall specify in contract documents whether it awards the public contract on:</p> <p>a) the basis of the most economically advantageous tender or</p> <p>b) solely on the basis of the lowest price to determine the best bidder as the most economically advantageous tender, the contracting authority shall also specify the tender evaluation criteria enabling objective evaluation relating to the object of the public contract, including above all, quality, price, technical value, aesthetical and functional properties, properties influencing the environment, operating expenses, feasibility, post-sales maintenance and technical assistance and the cost thereof, specific proven skills or experience of the persons directly responsible for the provision of services or performance of public works, on which the quality of the works performed or services provided directly depends, and the term of performance of the public contract.</p> <p>A contracting authority may award a public contract only on the basis of the lowest price if the economical advantageousness of the tender for the contracting authority depends only on the price of the tender and all other terms of the future public contract, including the criteria relating to the object of the public contract, have been exhaustively specified in the contract documents.</p>	<p>a) the economically most advantageous tender (criteria include the deadlines; operational and other costs; the effectiveness, the quality of works, goods or services; the aesthetic and functional description; observation of the environmental requirements; technical advantages; accessibility of spare parts; safety of supplies; the price and other factors associated with the subject of a contract, which must be specifically expressed and objectively comparable or assessable)</p> <p>b) the tender with the lowest price.</p> <p>The purchaser shall select the economically most advantageous tender as a criterion for the comparison and evaluation of tenders, but when the purchaser considers it more effective to select the tender with the lowest price and the technical specification prepared by the purchaser is detailed, the purchaser is entitled to use this second criterion for the comparison and evaluation of tenders.</p>	<p>a) the most economically advantageous tender, when the award is made to the tenderer which has submitted the most economically advantageous tender from the point of view of the contracting authority selected on the basis of the criteria specified by it and linked to the subject-matter of the contract, usually quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date, delivery period or period of completion, or</p> <p>b) the lowest price</p>

What remedies are there available for bidders who deem that their rights have been infringed?

Estonia	Latvia	Lithuania
<p>1) lodging an appeal against an activity of the contracting authority to the Public Procurement Appeals Committee (<i>Appeals Committee</i>). An appeal may be lodged against the documents or decisions of the contracting authority:</p> <p>Lodging an appeal to the Appeals Committee is an obligatory first step for the bidder to use its remedies. The bidder can lodge appeal until the purchaser has concluded a procurement contract. The purchaser shall not conclude the contract during the appeals procedure, otherwise it is void. After the judgment by the Appeals Committee, the bidder may file a complaint to the Administrative Court, then appeal to the Appeals Court and then it may also turn to the Supreme Court.</p> <p>2) lodging an application for compensation of loss with the Appeals Committee within one year from the award of the public contract. The purchaser shall only pay the damages, arising from the fact that the bidder bore costs to participate in the public procurement.</p> <p>3) Filing a complaint to the Estonian Ministry of Finance. The Ministry of Finance supervises the public procurement proceedings in Estonia and can declare the public procurement procedure void if there were certain infringements.</p>	<p>1) filing a complaint with the Procurement Monitoring Bureau regarding the procurement documentation (the requirements provided for in the procurement documentation) if it is unlawful and infringes the candidate's (a person interested in acquiring the rights to enter into a procurement contract) rights and/or lawful interests;</p> <p>2) filing a complaint with the Procurement Monitoring Bureau regarding the actions of the purchaser or its procurement commission during the procurement procedure;</p> <p>3) Challenging the Procurement Monitoring Bureau's decision regarding the complaint (in the Administrative Court);</p> <p>4) Disputing the validity of the procurement contract, its terms, requesting the Administrative Court to amend the contract, and claiming losses (optional).</p>	<p>A supplier who believes that the contracting authority has not complied with the requirements of the Law on Public Procurement and violated or will violate his legitimate interests shall have the right to refer to a court for:</p> <p>(I) annulment or amendment of the decisions of the contracting authority which do not meet the requirements of the Law on Public Procurement;</p> <p>(II) compensation for damage;</p> <p>(III) nullification of the public contract;</p> <p>(IV) imposition of alternative sanctions.</p> <p>The supplier may also refer to court for application of interim protection measures in accordance with the procedure laid down by the Code of Civil Procedure of the Republic of Lithuania.</p>

Which judicial bodies are authorised to deliberate public procurement disputes?

Estonia	Latvia	Lithuania
<p>The first instance body is the Public Procurement Appeals Committee (<i>Appeals Committee</i>). After the judgment by the Appeals Committee, the bidder may file a complaint to the Administrative Court, then appeal to the Appeals Court and then it may also turn to the Supreme Court</p>	<p>1) Procurement Monitoring Bureau</p> <p>2) Administrative Court (regional Administrative Court – 1st instance; and the Supreme Court (<i>Senate's Administrative department</i>) – Cassation).</p>	<p>Public procurement disputes are heard in a regional court as a court of first instance.</p>

What is the timing in case a party intends to apply for the remedies?

Estonia	Latvia	Lithuania
<p>An appeal shall be lodged with the Appeals Committee within seven working days from the day when the appellant became aware of or had to become aware of the violation of its rights or harming of its interests, but not after the award of the public contract.</p> <p>An appeal against the procurement source document shall be delivered not later than three working days before the due date of submission of request to participate in the procurement procedure, tenders, conceptual designs or concession applications.</p> <p>An application for compensation of loss may be lodged with the Appeals Committee within one year from the award of the public contract.</p>	<p>1) 10 days – if the bidder is notified on the results of the procurement procedure via email or fax, 15 days – if the results are delivered by post.</p> <p>2) 4 working days – 10 days (depending on the procurement procedure) before the deadline set for the filing of the tender – if the complaint is filed regarding the procurement documentation.</p>	<p>A supplier shall have the right to file a claim with the contracting authority, file a request or bring a lawsuit before court (with the exception of an action for nullification of a public contract):</p> <p>(I) within 15 days from dispatch to suppliers of a written notice of the contracting authority of the decision adopted by it;</p> <p>(II) within 10 days (in the case of simplified procurement procedures – within 5 working days) from publication of a decision adopted by the contracting authority, where the Law on Public Procurement does not require to give suppliers a written notice of the decisions adopted by the contracting authority.</p> <p>Where the contracting authority fails, within the specified time limit, to examine a claim filed with it, the supplier shall have the right to file a request or bring a lawsuit before court within 15 days from the day on which the contracting authority ought to have given a written notice of the taken decision to the supplier which has filed the claim, interested candidates and interested tenderers.</p> <p>According to the Civil Code abridged 3 year prescription shall be applied with respect to claims for the compensation of damage.</p>

What timing is available after signing of the contract?

Estonia	Latvia	Lithuania
<p>After signing the contract, the bidder cannot generally lodge an appeal against the activity of the purchaser to the Appeals Committee. There are still some exemptions. Namely: if negotiated procedure without prior notification is used or in case of illegal direct award. In the first case the deadline for lodging an appeal is 30 days after publication of the contract notice and in the second case it is 6 months after the conclusion of the contract.</p> <p>Still, if the procurement contract is changed unlawfully, the interested persons shall have the opportunity to file a complaint to the court and then this contract should be declared void.</p> <p>Within one year from the award of the public contract, an application for compensation of loss may be lodged to the Appeals Committee.</p>	<p>1) One month for filing a claim to the court – to challenge the Procurement Monitoring Bureau’s decision;</p> <p>2) 30 days to 6 months – to dispute the procurement contract, its terms and conditions (exact timing depends on the conditions how the bidder was informed about the contract, or rejection of his tender).</p>	<p>A supplier shall have the right to bring a lawsuit for nullification of a public contract within 6 months from awarding of the public contract.</p>

How often are public procurements disputed?

Estonia	Latvia	Lithuania
About 4-5 percent of public procurements are disputed	13-14% of all public procurements are disputed, but 90% of the largest projects involving public procurement in the general interest of the public are disputed.	According to the statistics of the Public Procurement Office for year 2011, received under contract with the National Courts Administration, the total number of public procurement cases was about 383. Courts of first instance examined 378 cases, 221 of simplified procurement procedure and 157 of international threshold. Higher courts examined 223 complains, 133 of simplified procurement procedure and 100 of international threshold.

How long would an average public procurement dispute take?

Estonia	Latvia	Lithuania
<p>The Appeals Committee proceedings generally takes about 30 days from filing an appeal to reaching a decision.</p> <p>In case the dispute is taken to the administrative court after the judgment of the Appeals Committee, the procedure lasts approximately 1,5 – 2 months in the Administrative Court, approximately 1 additional month in the Appeals Court and approximately 1 additional month in the Supreme Court if the case is urgent (concluding the contract is pending). In less urgent cases, it may take a couple of months more. Thus the whole dispute would take approximately 5 – 6 months but in most cases it ends up by the ruling of the Appeals Committee.</p>	<p>1-4 months at the Procurement Monitoring Bureau;</p> <p>2-5 years in court (considering all instances).</p>	<p>The current practice shows that the case takes about 6 months until the decision of the appeal court, although, according to law it should take 4 months. When a cassation is lodged, the dispute takes some months longer.</p>

What is the possibility to change the contract after the signing?

Estonia	Latvia	Lithuania
<p>A contracting authority may agree on the amendment of an awarded public contract only if those 3 premises are fulfilled</p> <ul style="list-style-type: none"> - the amendment is caused by objective circumstances that the contracting authority could not foresee during the award of the public contract - in the event of leaving the public contract unamended, the achievement of the objective sought with the public contract would be fully or to a material extent in jeopardy. - the objective sought with amendment cannot be achieved with the award of a new public contract. 	<p>In general just minor (insubstantial) changes are allowed.</p> <p>Substantial changes are permissible only</p> <ol style="list-style-type: none"> 1) when the contract expressly provides for: <ol style="list-style-type: none"> (a) a possibility to change it, (b) the conditions, under which the changes are permissible, and (c) the scale and nature of the amendments; 2) the contracting party is changed due to reorganization (e.g. merger) of the relevant party or due to a transfer of an undertaking (enterprise) under the Commercial law. 	<p>The terms and conditions of a public contract during the contract period may not be changed, with the exception of the terms of the public contract whose changing would be without prejudice to the principles and goals specified in the Law on Public Procurement, and subject to consent of the Public Procurement Office to such changes of the terms and conditions of the public contract.</p> <p>The consent of the Public Procurement Office shall not be required where, in the case of the simplified procurement procedure, the value of the awarded contract is less than LTL 10000 (EUR 2896) net of VAT or when a public contract is concluded following a small value procurement.</p>

6. Analysis of SE, EEIG and EGTC

Type of a company	SE	EEIG	EGTC
Legislative basis	Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)	Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)	Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)
Founders/ Members	<p>Formation in one of four ways:</p> <ol style="list-style-type: none"> 1. Merger – available only to public limited companies from different Member States. 2. Formation of a holding company – available to public and private limited companies with their registered offices in different Member States or having subsidiaries or branches in Member States other than that of their registered office. 3. Formation of a joint subsidiary – available to any legal entities governed by public or private law with their registered offices in different Member States or having subsidiaries or branches in Member States other than that of their registered office. 4. Conversion of a public limited company previously formed under national law – a public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State. 	<p>Formation in one of two ways:</p> <ol style="list-style-type: none"> An EEIG can be formed by companies, firms and other legal entities governed by public or private law which have been formed in accordance with the law of a Member State and which have their registered office in the European Union (EU). It can also be formed by individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services in the EU. An EEIG must have at least two members from different Member States. 	<p>An EGTC is made up of Member States, regional authorities, local authorities and/or bodies governed by public law. An EGTC must have members in at least two Member States. The members decide whether their EGTC should be a separate legal entity, or whether its tasks should be delegated to one of their number. EGTC acts on behalf of its members.</p>
Minimum Share Capital	EUR 120 000	An EEIG does not necessarily have to be formed with capital. Members are free to use alternative means of financing.	No share capital requirement. Members shall be liable for the EGTC's debts whatever their nature, each member's share being fixed in proportion to its contribution.
Management Structure	The Statutes of the SE must provide as governing bodies the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (single-tier system).	<p>The EEIG must have at least two organs:</p> <ol style="list-style-type: none"> The members acting collectively; The manager or managers. The managers represent and bind the EEIG in its dealings with third parties even where their acts do not fall within the objects of the grouping. 	<p>An EGTC shall have at least the following organs:</p> <ol style="list-style-type: none"> An assembly, which is made up of representatives of its members; A director, who represents the EGTC and acts on its behalf.

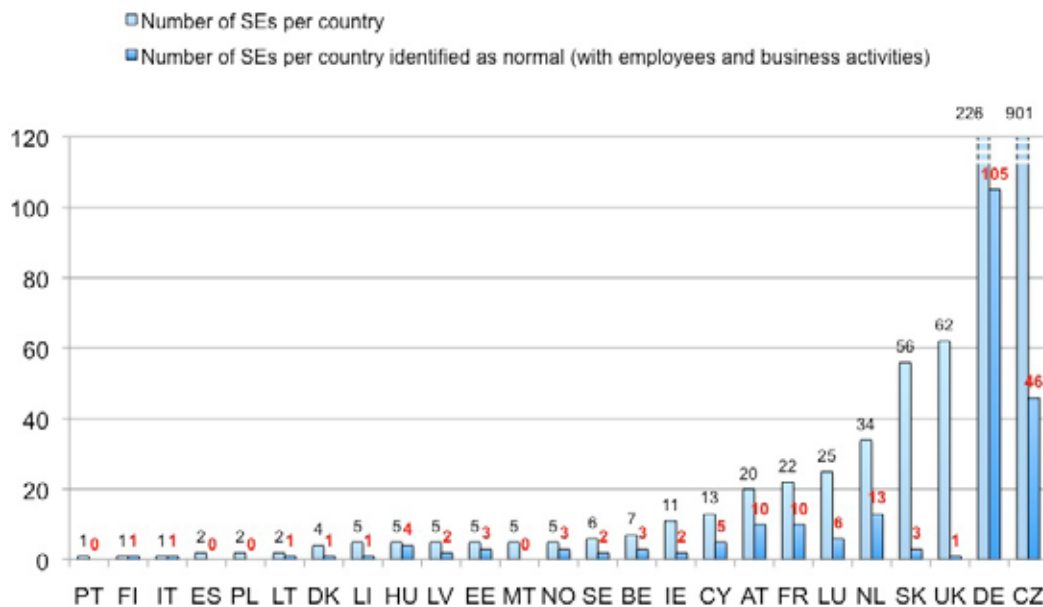
Employee Participation	<p>Several models of participation are possible:</p> <ol style="list-style-type: none"> 1. A model in which the employees form part of the supervisory board or of the administrative board; 2. A model in which the employees are represented by a separate body; 3. Other models to be agreed between the management or administrative boards of the founder companies and the employees in those companies, the level of information and consultation being the same as in the case of the second model. 	<p>Employee participation is not required under the Regulation. An EEIG cannot employ more than 500 persons.</p>	<p>Employee participation is not required under the Regulation.</p>
Laws Applicable	<p>Law of the Member State in which SE has its registered office. The order of precedence of the laws applicable to the SE is clarified. When carrying out business in another country, with respect to such operation the laws of that country will apply</p>	<p>Law of the Member State in which the official address is situated, as laid down in the contract for the formation of the grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons.</p>	<p>Law of the Member State where the EGTC has its registered office. EGTC enjoys the legal capacity accorded to legal entities by national law.</p>

European company (SE)

Council Regulation (EC) No 2157/2001 as of 8 October 2001 on the Statute for a European company (SE) (hereinafter – the Regulation)²⁵ states that European company (*Societas Europaea* or SE) is a legal person (entity) whose authorized capital is divided into shares. SE is established and regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office. No shareholder of the SE shall be liable for more than the amount he has subscribed.

It should be noted, that SE is the equivalent to public limited-liability company, but not private limited liability company, thus the activities hereof are governed by the legal requirements and rules applicable to public limited-liability companies of the Member State in which it has its registered office. EU company law is not uniformly regulated, and although there are several directives harmonizing Member States' company law, a considerable part of the law applicable to the SE remains the subject of national legislation. So, for example, for the activities of SE registered in Lithuania, in addition to the Regulation and national legal act on SE – Law on European Companies, Law on Companies would be applied.

1426 European Companies (SEs), registered in 25 countries



²⁵ Official Journal L 294 , 10/11/2001 P. 0001 - 0021

Establishment of European company (SE)

Regulation provides that the SE can be established in one of four ways:

1. **Merger:** public limited-liability companies, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States;
2. **Establishment of management (holding) SE:** public and private limited-liability companies, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them: (a) is governed by the law of a different Member State, or (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State;
3. **Establishment of a subsidiary SE:** companies and firms or other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them: (a) is governed by the law of a different Member State, or has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State;
4. **Restructuring of operating public limited-liability company into the SE:** a public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.

Clear type of a company

Due to the differences between the languages of Member States every state differently identifies and calls its legal entities. Knowing only the abbreviated form of the name is quite difficult to distinguish whether the company is public limited-liability company or private limited liability company, moreover it is not always easy to predict its state of origin. Whereas the name of an SE always shall be preceded or followed by the abbreviation SE and only SEs may include the abbreviation SE in their name. This abbreviation is neutral in the national sense and is recognized throughout the whole EU. This provides for the certainty in at least the legal form of the company, as well as other key issues (e.g., management structure or minimum share capital).

Management structure

Member States differently regulate corporate management structure: national laws may allow only a single (only management body) or only a two-tier (management and supervisory bodies) system or both of them. SE Regulation allows both management systems, thus the company may choose the most suitable one.

Under the two-tier system the day-to-day business of the SE is managed by a management board and the activities of the management board is supervised by the supervisory board. The member or members of the management board have the power to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the supervisory board. No person may be a member of both the management board and the supervisory board of the same company at the same time.

Under the single-tier system, the SE is managed by an administrative board.

The following operations require the authorization of the supervisory board or the deliberation of the administrative board:

- any investment project requiring an amount more than the percentage of subscribed capital;
- the setting-up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital;
- the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or suretyship for a third party where the total money value in each case is more than the percentage of subscribed capital;
- the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year;
- the percentage referred to above is to be determined by the Statutes of the SE. It may not be less than 5 % nor more than 25 %.

Common regulations and management structure

Establishment of the SE practically means that different company's established and operating in different member states may form a single legal entity and thus operate throughout the whole EU under a single system of rules. The SE operates in all 27 EU Member States with one corporation rules and using advantages of a single management structure.

Formation of the SE involves at least two companies from different Member States, in which these companies act as independent entities governed by their national legal systems, different legal environment. Whereas after merger of such companies and combination of their businesses into the single SE, activities of the SE would be governed by the Regulation and national laws of only one Member State in which it is registered. This often significantly reduces legal costs resulting from differences in the legal environment, multiple accounting systems.

The uniform structure allows the company to have a coordinated and thus more efficient management. SE does not act as partnership or cooperation of a several legal entities, but it is an independent entity with its own structure. This allows having an integrated management and a clear organizational system.

However, it is necessary to bear in mind that many questions remain regulated by the national laws of state in which the SE is registered, or, in regard to some issues, of the state in which the SE actually operates. Thus, the activities of SE established in different member states would be the subject to different national legal rules. To be specific, issues of taxation, intellectual property, competition,

insolvency and liquidation, the responsibilities of the management bodies for the breach of their duties, etc. would be governed under national law.

Another frequently stressed advantage of SE is the possibility to avoid significant financial resources and lengthy procedures of establishing subsidiaries in different legal systems. However, this advantage is a somewhat overestimated. It is true that the establishment of subsidiaries includes a number of legal actions (the formation of statutory capital, election of management bodies, company registration, etc.). But it is also true that the subsidiary is a good way to limit the liability, to have a clear structure of each subsidiary and their tax status, easier possibilities to transfer the assets.

Moreover, Regulation does not deal with SE's tax issues, thus the profits of branch offices of SE in different Member States remain taxable according the laws of their place of business. This means that the establishment of SE does not allow avoiding the duty to pay the taxes according to the place of activities. As a result, in case the activities of the part of SE's branch offices were unprofitable, the remaining branch offices would not be exempt from the obligation to pay income tax, regardless that the activities of other offices were unprofitable.

Possibility to combine business

SE provides for the possibility to combine companies registered in different countries into one legal entity – the SE. Even though national laws of different Member States may provide for different ways of joining the existing business (joint venture, selling assets, etc.), after analysis of the specific situation and taking into account the taxes applicable to every company participating in the business and their regulatory framework, establishment of the SE may seem to be the most suitable solution.

Amount of capital

The authorized capital of SE is expressed in Euros and shall not be less than 120,000 EUR. Note, that the laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

The amount of minimum capital requirement presupposes that SE is more suitable for larger businesses, larger companies. Although, even though at a first glance this sum would appear to be quite high, in case of formation of the SE by merging of several existing companies, in most cases, this sum would be smaller than the sums of minimal authorized capitals of the said companies established by national laws. So it can be said that, in specific cases, the requirement to have the authorized capital of at least 120,000 EUR may be even less strict than in case of the operation of more than one national company.

Transfer of registered office

Another advantage of is the fact that the registered office of SE may be easily transferred from one Member State to another, which could not be done under the national laws, and such a transfer does not result in the winding up of the SE or in the creation of a new legal person.

Along with the increasing mobility of people and single market opportunities, the aim to optimize tax issues, comes an increasing need to relocate company's office from one state to another. Since the SE foresees the transfer of the registered office, this enable the company to transfer its registered office and the location of management bodies to the Member State which is more favorable in regard to the legal, tax and business environment issues. Whereas to move the national company's registered office into another Member State, the one would be forced to liquidate the company in one country and then re-registered it in another, thus creating a new legal entity and eliminating the previous one. This procedure requires a lot of funds and time, also causes problems with the recognition of the entity.

Filially, it should be noted that even though the SE can be registered in any selected Member State, its registered office shall be in the same state where the head office of its permanent management body is set up.

Employee participation in SE

This question is probably the most delicate in process of establishing the SE, as a great number of businesses do not like the idea of employees' participation in management of the company.

Member States differently regulate participation of the employees in corporate governance (e.g. it is not binding in the Baltic States), thus this shall be kept in mind while deciding to establish the SE. The Directive 2001/86/EC requires the involvement of employees in decision making, thus the incorporation of the SE depends on employees' decisions to accept or reject hereof - the SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

7. Restrictions on state participation in private companies

Estonia	Latvia	Lithuania
Regulatory Framework		
State Property Act	State Administration Structure Act, Public Entity's Property Alienation Act, Act on State and Municipal Shares and Corporations	Law on the Management, Use and Disposal of State and Municipal Assets
Does the law restrict participation in non-domestic registered companies?		
Yes, according to the law, the participation in foreign private legal person can be acquired only where foreseen in the State Property Act, however respective provisions basically non-existent in this Act.	Although there is no explicit prohibition, the law stipulates that a public entity may alienate its property <i>inter alia</i> by investing it in the share capital of a corporation, i.e. Akciju sabiedrība (AS, Joint stock company) or Sabiedrība ar ierobežotu atbildību (SIA, Limited liability company) that are regulated by the Latvian Commercial Code. This implies that investment in foreign companies is not allowed.	Yes. The law provides an exhaustive list of legal entities in which the state is allowed to invest its assets as a contribution into legal entity's ownership and no participation in foreign private legal person is foreseen hereof. This restriction could only be evaded by adoption of a separate law.
Does the law restrict participation in legal persons regulated by EU regulations (SE, EEIG, EGTC), even if registered in domestic register?		
The list of types of legal persons where the State can participate is not open-ended and does not refer to SE, EEIG and EGTC. In addition given that EEIG involves full liability of the members, the State can not participate in an EEIG.	Not explicitly, but as indicated above, only AS or SIA are listed as suitable for state or municipal investment. Investment in EEIG is explicitly prohibited due to its partnership status.	As it is indicated above, the law provides an exhaustive list of legal entities in which the state is allowed to invest and this list does not refer to SE, EEIG and EGTC. However, as the law, with some restrictions, allows the state to participate in public limited liability company, theoretically, the state could participate in SE indirectly through already established public limited liability company.
Does the law establish a minimum percentage of shares and/or votes that the State must hold?		
The law does not establish a minimum percentage a State must own, but establishes that the participation of the State must be such as to be able to block „supermajority decisions“ (defined as decisions of changing an articles of association, increase or decrease of share capital, merger, liquidation etc)	No minimum percentage established.	The law states that the state may invest the assets by acquiring shares of a public limited liability company or a private limited liability company which is being established or which is increasing its authorized capital, which grant over 50 per cent of votes for the state at a general meeting of shareholders. Note, that according to current legislation the only possible state's participation in private national company is the establishment hereof or increasing of its authorized capital and no state's participation in secondary market is allowed.

8. PPP (Public-Private Partnership) and Concessions

Estonia	Latvia	Lithuania
Law governing the PPP (Public-Private Partnership)		
Estonian Public Procurement Act	Law on Public-Private Partnerships; Public Procurement Law, Commercial Code (regarding incorporation of a partnership) and Civil Code	Law on Investments; Law on Concessions (not reflected in this table)
Areas of PPP-sv		
<p>a) public works</p> <p>b) services while</p> <p>1) the purpose of cooperation is the performance of public works or the provision of a service in public interests;</p> <p>2) cooperation lasts for at least 20 years;</p> <p>3) the contracting authority and the tenderer jointly use the means required for cooperation, such as supplies, money, expertise and experience;</p> <p>4) the contracting authority and the tenderer share the liability and risks relating to cooperation.</p>	<p>a) construction works</p> <p>b) provision of services</p>	<p>The private entity may be granted the right to carry out the activities related to</p> <p>a) design,</p> <p>b) construction,</p> <p>c) reconstruction,</p> <p>d) repairs,</p> <p>e) renovation, f) management,</p> <p>g) usage and maintenance of infrastructure,</p> <p>h) newly created assets or the state-owned or municipal assets transferred thereto for management and usage,</p> <p>i) provision of public services in the following areas:</p> <ul style="list-style-type: none"> - transport; - education; - health care and social security; - culture; - tourism; - public order and public protection, - other areas stipulated by laws and covering the activities and functions of a public entity. <p>Please note that a PPP contract shall be concluded for a period of at least three years, but not exceeding 25 years.</p>

Relevant procedure

<p>“Public-private partnership” means performance of public works or provision of services on the basis of a public contract awarded by way of a procurement procedure or on the basis of an awarded public works concession or a service concession.</p>	<p>The Law on PPP is quite detailed. It stipulates:</p>	<p>a) Prior to taking a decision to enter into public and private entities’ partnership, a public entity must draft an investment project feasibility study.</p>
<p>a) when awarding a public works concession as a PPP, a public purchaser shall follow the rules provided for public works concessions in the Public Procurement Act if the total estimated value of the concession is equal to or exceeds the public procurement threshold - the contracting authority shall submit a notice of public works concession to the register.</p>	<p>a) the procedure under which public partners and their representatives shall act if they jointly enter into one PPP agreement;</p> <p>b) the procedure for taking the decision on inception of a PPP procedure;</p> <p>c) the information to be included in a PPP agreement, as well as the procedure according to which the PPP agreement can be amended or terminated prior to its expiry;</p> <p>d) the compensation payment procedure when terminating a PPP agreement prior to its expiry;</p>	<p>b) Submitting the drafted feasibility study to the Ministry of Finance.</p> <p>c) The Ministry of Finance shall evaluate, the proposed partnership project within 30 working days of the receipt of appropriate documents, and shall issue its conclusion or separate opinion to the central public entity</p>
<p>b) In accordance with the terms provided for in the notice of public works concession, all interested persons are entitled to submit a concession application.</p>	<p>e) the procedure for establishment of a special purpose entity and the procedure according to which a PPP agreement is concluded with this special purpose entity;</p>	<p>d) The services and works which are the subject of a public and private entities’ partnership agreement shall be procured in compliance with the Law on Public Procurement.</p>
<p>b) When granting a service concession, a public purchaser shall follow the rules of the public procurement procedure (<i>open procedure or negotiated procedure with prior publication of a contract notice</i>) if the estimated total value of the services to be provided on the basis of the service concession is equal to or exceeds the public procurement threshold</p>	<p>f) the procedure for entering into an information exchange agreement and exercising of the lender’s intervention rights;</p> <p>g) the procedure for registration and availability of PPP agreements; and</p> <p>h) regulations for activities with the public partner resources transferred to a private partner.</p>	
<p>c) A private entity operating in sectors related to gas and thermal energy, electricity, water, transport services, postal services, surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels, ports and airports when awarding public works concessions, follows the rules of simplified procedure when awarding the contract in the same sector.</p>	<p>Regarding the concessions the Law on PPP stipulates:</p> <p>a) exceptions to the application of the Law on PPP;</p> <p>b) the procedure for information exchange, concession procedure documentation and document preservation;</p>	
<p>d) when awarding the PPP contract on the basis of public procurement, the relevant public procurement procedure must be followed</p>	<p>c) the procedure for establishment of the Concession Procedure Commission and its activities;</p> <p>d) the procedure for establishment of the Application Review Commission and its activities;</p> <p>e) concession procedures and the procedure for their application; and</p> <p>f) special conditions for the construction works concession procedure.</p>	
	<p>In the field of institutional partnership the Law on PPP prescribes:</p> <p>a) the procedure for selection of a private shareholder of a joint venture;</p>	

- b) the procedure for the establishment of a joint venture, particularities of the activity and the regulations for terminating the activity thereof;
- c) the procedure according to which a PPP agreement is entered into, amended or terminated in case of institutional partnership;
- d) the compensation payment procedure when terminating a PPP agreement prior to the expiry thereof in case of institutional partnership; and
- e) the procedure of entering into an information exchange agreement and exercising of the lender's intervention right in case of institutional partnership.

Content of the PPP contract

<p>The rules of the public procurement procedure must be followed – the content and object of the contract must be published in the contract notice/notice of concession.</p>	<p>Under the Law on PPP a PPP agreement must include:</p>	<p>Although provisions of Civil code and Law on Public Procurement shall be applicable on public and private entities' partnership agreement, some specific details must be covered by agreement:</p>
<p>The technical specification must include:</p> <ul style="list-style-type: none"> 1) set of the characteristics and technical requirements for public works constituting the object of a public works contract; 2) list of the characteristics and essential properties of supplies or services constituting the object of a public supply contract or a public service contract 	<ul style="list-style-type: none"> 1) subject of the agreement including the amount, content, quality and manner of construction works or services; 2) financial conditions of the agreement; 3) set of rights each public partner transfers to the private partner; 4) public partner resources each public partner transfers to the private partner and the procedure for transferring such resources; 5) property rights of the contracting parties to the tangible property newly created during the validity period of the agreement, as well as intangible assets related thereto – licences, permits and other documentation. 6) validity period of the agreement; 7) terms for performance of construction works or provision of services and the conditions for the revision thereof; 8) the procedure according to which the public partner resources and the property newly created during the execution of the agreement requested for further provision of services or management of property, will be transferred to the public partner in case of early termination of the agreement or upon expiry of the agreement; 	<ul style="list-style-type: none"> 1) the activity carried out by the private entity for the benefit of the public sector, the nature and scope of works performed and/or services provided; 2) sources of investments and the estimated amount of investments; 3) the period of validity of the agreement and a mechanism of its extension, if agreed upon; 4) the time limits within which the works indicated in the agreement must be completed, the mechanism of extension thereof, the time limit within which the provision of services must be commenced and the mechanism of extension thereof, if agreed upon; 5) the circumstances and conditions under which the public entity may, for the purpose of ensuring a continuous supply of services and/or performance of works, temporarily take over and/or transfer to third parties the fulfilment of any obligation of the private entity (in case the agreement is implemented by a group of persons), where any person of the group implementing the agreement is temporarily unable to carry out this obligation under the agreement;
<p>All the terms of the contract and requirements for the private partner must be relevant and proportional to the nature, quantity and purpose of the supplies, services or public works that constitute the object of the public contract.</p>		

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| <p>9) restrictions or conditions referring to changes in the equity capital of the private partner or to the decisive influence of the private partner in the commercial company, or to any changes in the commercial companies over which the private partner has a decisive influence;</p> | <p>6) the right of the parties to the agreement to exercise their rights for the purpose of fulfilling the obligations under the public and private entities' partnership agreement and the terms and conditions of such exercise;</p> |
| <p>10) risks each public partner transfers to the private partner;</p> | <p>7) ways of securing the fulfilment of the private entity's obligations;</p> |
| <p>11) payments the contracting parties make to each other during the validity period of the agreement and the conditions for the revision thereof (if such are provided for);</p> | <p>8) the requirement for the private entity to conclude insurance contracts in respect of the state-owned or municipal assets transferred thereto for management and usage or newly created assets;</p> |
| <p>12) the right (if it is necessary) for the private partner to collect payments from end-users for any services, the amount of the payment of the service recipient for the relevant service during the validity period of the agreement and the conditions for the revision thereof ;</p> | <p>9) the private entity's liability for fulfilment of third legal entities' obligations, when third parties are engaged by the private entity in fulfilment of obligations under the agreement;</p> |
| <p>13) duties of the private partner (if necessary) to ensure an uninterrupted access to third parties to the object used or service provided during the validity period of the agreement;</p> | <p>10) the rights of the parties to the agreement to assets, i.e., the terms and conditions of management and usage of the state-owned or municipal assets transferred to the private entity for management and usage, as well as the terms and conditions of transferring the private entity's newly created assets into ownership of the State or a municipality;</p> |
| <p>14) the right of the contracting parties to transfer their rights and duties within the framework of the agreement to third parties and conditions that restrict such a right;</p> | <p>11) qualitative and quantitative (suitability) requirements for the assets indicated in the public and private entities' partnership agreement and for the services provided;</p> |
| <p>15) a condition regarding the fact whether the private partner is obliged to acquire an insurance for the risks related to execution of the agreement and if such is required – the risks and the amount thereof to be insured;</p> | <p>12) risk sharing among parties related to their obligations stipulated in the public and private entities' partnership agreement;</p> |
| <p>16) duties of the private partner as regards environmental protection and cultural heritage protection (if it is necessary);</p> | <p>13) the procedures for and terms and conditions of performance of settlements and payments among the parties to the agreement;</p> |
| <p>17) duties of the contracting parties as regards ensuring, transfer or purchase of real estate, equipment and other property requested for execution of the agreement and other conditions referring to these duties (if such are provided for);</p> | <p>14) the civil liability of the parties to the agreement for a failure to comply with the binding terms and conditions of the agreement;</p> |
| <p>18) the procedure according to which each public partner will verify execution of the agreement;</p> | <p>15) the right of the public entity to control the carrying out of the private entity's obligations, the agreement on the assessment of carrying out of the obligations and the information submission procedure;</p> |
| | <p>16) provisions on the extraordinary events arising within the period of validity of the agreement;</p> |

- 19) *force majeure* circumstances and action of the contracting parties if such have occurred;
 - 20) cases of early termination of the agreement, procedures for early termination of the agreement, procedure for determination of the amount of compensations for the contracting parties and the payment thereof in these cases;
 - 21) cases when a contracting party may unilaterally demand early termination of the agreement;
 - 22) intervals for amendment of the provisions of the agreement, the permissible limits and the procedure;
 - 23) relation of the agreement to other previously entered into agreements (or obligations against third parties if such exist), the obligations to be taken over from such agreements;
 - 24) conditions, upon occurrence of which the public partner or the lender may take over execution of any duties of the private partner in order to ensure efficient and uninterrupted performance of construction works or provision of services provided for in the agreement;
 - 25) a certification on the right of the public partner representative to receive information from the lender on private partner financing conditions and on the fact that the private partner complies with the financing conditions;
 - 26) procedure according to which the agreement shall be continued if the legal person as a public partner terminates its activity (if the legal person is a public partner);
 - 27) dispute settlement procedure; and
 - 28) other provisions ensuing from the Public Procurement Law or the Law on PPP or that are considered by the contracting parties as necessary and that are not in contradiction to regulatory enactments.
- 17) the terms and conditions of amendment of the agreement, if the terms of tender provide for such a possibility, and its termination.
 - 18) the procedure for settling disputes.

Other notes

The Public Procurement Act stipulates that “public-private partnership” means performance of public works or provision of services on the basis of a public contract, whereby all the following criteria have been met:

- 1) the purpose of cooperation is the performance of public works or the provision of a service in public interests;
- 2) cooperation lasts for at least 20 years;
- 3) the contracting authority and the tenderer jointly use the means required for cooperation, such as supplies, money, expertise and experience;
- 4) the contracting authority and the tenderer share the liability and risks relating to cooperation.

The Law also stipulates quite detailed procedure regarding amending, terminating the PPP agreements, mandatory registration of the PPP agreements with the PPP agreement register (held by the Latvian Enterprise Registry).

Public and private entities’ partnership means a form of public-private partnerships whereby a private entity, under the terms and conditions specified in a public and private entities’ partnership agreement, invests in the areas of activities assigned to the functions of a government (public) entity and the state or municipal assets required for carrying out the activities and pursues in those areas the activity specified by the Law on Investments for which the private entity is paid remuneration by the public entity.

Law on Investments also specifies parties’ rights to the assets transferred to the private entity or created during partnership period.

9. Comparison of one-stage vs two-stage implementation

Joint Venture

Pros	Cons
<ul style="list-style-type: none"> • The planning, construction and maintenance is managed by the same entity thus the quality of the construction will be extensively analyzed. • When the party in charge of maintenance is present from the start of the project, it will be designed and built considering maintenance efficiency. • The money is spent and generated by the same entity • EU funding would be centrally applied for and managed • The process could utilize the best practices from all legislation (more flexibility) • Ensures streamlined interoperability between the countries • A single reference point and coordinated project management • Clear responsibilities and focus • Encourages the development of competences necessary for later operation • May utilize existing technical competence of railway companies and relevant authorities • Shareholders to gain experience of the joint venture co-operation model immediately • Earlier detection of possible cultural/political/financial problems and availability of neutral mitigation techniques via corporate governance 	<ul style="list-style-type: none"> • The competences for the project phases are different, e.g. one will not have a need for the construction/same team after the infrastructure is built. • Risk of too much bureaucracy due to centralisation. • Joint Venture would demonstrate negative cash-flows for the first 15 years • No transfer of risks • Establishing the Joint Venture takes resources (time, consensus, money) that could otherwise be used for the execution of initial phases • Higher costs of the preliminary extensive learning curve, hiring, training and investing in the early phases

PSG*

Pros	Cons
<ul style="list-style-type: none"> • When the maintenance and operational considerations are left out of the construction phase, tenders could focus on more competitive pricing. • Makes it easier to out-source different tasks to private sector, as they can focus on the part they are more efficient in. • Existing technical competence in relevant authorities from inception • Direct links to sponsors (governments) • Does not require cash injections into a separate entity until the end of the construction period • Would give the Joint Venture a fresh start with earnings and a positive cashflow • Wider involvement of stakeholders • Phase I tasks can be undertaken immediately without delays caused by the set-up of the Joint Venture • Less overhead costs due to the use of existing organisations and competences 	<ul style="list-style-type: none"> • More effort will have to be put in supervising the construction to ensure quality. • If the infrastructure is not built with maintenance focus it could imply higher costs later eating out any gains from lower construction costs. • Funding would apply direct pressure on national budgets • Funds allocation subject to periodic review and possibility of discrepancies in the political prioritization of the project and its phases • Dilution of competences and responsibilities between the many layers (IPO, PSG, railway companies) • Lack of control over project development across the borders • Insufficient resources for dividing competences between existing (rail) projects and Rail Baltic • Majority of the everyday functions of the designated PSG officials are likely not to be with the RB project • VAT on purchased goods and services not refundable.

*Project Steering Group.

10. Overview of Rail Baltica implementation in Lithuania

The Government of Lithuania has by its resolution No. 1273 of 11 November, 1999, approved the solutions of the special plan for building the European gauge line Lithuania-Poland border-Marijampolė-Kaunas (0-85.1 km). The linkage place of two railway systems was determined in the approved special plan.

On 9th of December 2003, the Government of Lithuania determined the measure plan of the general plan of Lithuania. One of the tasks of the general plan is the modernisation of the railway line Warsaw-Kaunas-Riga-Tallinn.

On July 2007, Lithuania, Latvia and Estonia drafted and coordinated the schedules of implementation actions; in order to implement those actions, they applied for financial support from the TEN-T programme for 2007-2013. The main principles of "Rail Baltica" project implementation were agreed during the Baltic transport ministers meeting in Tallinn.

On July 7, 2009, the Transport Investment Directorate and SC "Lithuanian Railways" signed the agreement on the division of functions. According to this agreement, SC "Lithuanian Railways" became the project's developer.

The directorate of the Rail Baltica project (as a structural part of SC "Lithuanian Railways") was established on 6 April 2009.

On 23 December 2009, the plan of urgent actions due to be carried out in the implementation of the Rail Baltica project was approved by decision No. 1802 of the Government of the Republic of Lithuania. This decision also states that the Ministry of Transport and Communication is responsible for the coordination of the Rail Baltica project. The Ministry was assigned to prepare the project of decision approval for the development measures plan for the Rail Baltica project until 1 March 2010 and submit it to the Government of the Republic of Lithuania; this project shall indicate the scope of work, deadlines and resources. Also the Ministry shall prepare and submit to the Government the project of decision regarding the recognition of "Rail Baltica" as an economic project of importance for the state. It was decided to submit the potential schemes of the financing model of the Rail Baltica project to the Government until 1 May 2010, considering the opportunity of strategic investor participation in the project. The Ministry of Foreign Affairs addressed the European Commission regarding the possibility of using funds provided for the Rail Baltica project for the implementation of the urgent actions plan.

While executing this plan, it is provided to prepare the feasibility studies (one of the studies – the study prepared by the French companies group c in accordance with the agreement signed on 14 August 2009), the assessments of the impact on environment, technical, design and tender documents which would provide design, reconstruction, construction and maintenance works. Document preparation terms: August 2009 – June 2011. Construction works: June 2011 – December 2013. These terms do not coincide with those established by the Government in the decision of 31 March 2005, and with the terms which are indicated in the Treaty of Accession to the European Union.

On 23 July 2009, the Transport Investment Directorate, by performing the functions of the initiator of the required document preparation for the Rail Baltica project, requested the Marijampolė County Governor's Administration to allow the launch of procedures for taking land for public needs un-

der the project „The preparation and implementation of the project on the railway line Lithuanian / Polish state border’s and its related infrastructure’s land acquisition for the public needs in Kalvarija municipality, in the Old Radiškės, Brukai and Mockai cadastral areas“. On 23 September 2009, the head of Marijampolė County took the order, which allows to start the procedure of expropriating land for public needs in the indicated areas for the construction of European standard railway route Lithuanian-Polish border –Marijampolė–Kaunas. On 3 October 2009, the planning conditions for the preparation of planning documents in the territory of Kalvarijos municipality were approved.

The decision No. 1802 made by the Government of the Republic of Lithuania on 23 December 2009 was very significant for the implementation of the Rail Baltica project because it determined that during the first stage of the implementation of the global Rail Baltica project, the European gauge railway will be laid to Kaunas on the existing railway track formation (in the existing land corridor). It was confirmed that Kaunas Central Station will be the end point of the track for passenger trains, and Kaunas public logistics center with the intermodal terminal will be such an end point for freight trains. The location of the logistics center will be determined by the „Kaunas Public Logistics Center Feasibility Study“ which is currently being carried out. The agreement for this study was signed on 26 April 2010 between JSC „Lithuanian Railways“ and the consortium of „Ernst & Young Baltic“, „Wagener&Herbst Management Consultants“ GmbH and „IPG Infrastruktur-projekten-twicklungsgesellschaft“ GmbH. The source of funding will be the financial support of EU structural funds for 2007–2013 (Cohesion Fund) and the funds of JSC „Lithuanian Railways“.

On 10 May 2010, the first real step was made towards the linkage of Lithuania with Poland via the European gauge railway, and through Poland – with the central EU countries – there have been started the reconstruction works of the railway line on the section Mockava–Šeštokai darbai – track formation renovation, rail and sleeper replacement, the erection of small radius curves, which are limiting the speed, signalling system and communication modernization. **The works were finished in July 2011.**

On 12 May 2010, the Government of the Republic of Lithuania with the decision No. 541 decided to change the decision No. 1802 of the Government of the Republic of Lithuania of 23 December 2009 ‘On the approval of the plan on the urgent actions which must be carried out in implementing the Rail Baltica project’ and **submitted a new version of the plan, which outlines measures which will be executed during the implementation of the Rail Baltica project”, indicates the terms (deadlines) of implementation, financing needs and sources.**

The main steps determined by the plan are the preparation of design projects, reports of assessment of impact to environment, as well as reconstruction works on the railway line Poland/Lithuania border – Kaunas – Šiauliai. The plan also includes territorial planning and the technical design of the railway line Kaunas – Lithuania/Latvia border.

In June 2010 the declaration on freight transportation by rail corridor No. 8 „Benelux countries–Germany–Poland“ was signed in Rotterdam. The siding Kaunas–Warsaw of the Rail Baltica railway became an integral part of the railway freight transportation corridor Rotterdam–Warsaw–Kaunas. Under the order No. 3-607 of the Minister of Transport and Communication of 5 October 2010, the new version of the order No. 3-208 of 14 May 2009 „Regarding the approval for the strategic use of Lithuanian structural support for 2007-2013 from the European Union for Economic Growth Action Programme 5th priority „Trans-European transport networks development“ measure

No. VP2-5.1-SM-02-V „The modernization and development of Trans-European railway lines, the creation of necessary infrastructure for the establishment of public logistics centers“ state project list No. VP2-5.1-SM-02-V-01“, with which the list of projects was supplemented with relating Rail Baltica projects: 7 projects for construction works and the installation of alarm systems in the main list, and 3 projects, including the construction of an intermodal terminal in Kaunas – in the reserve list of projects.

On June 2010, the declaration on freight transport through railway corridor No. 8 “Benelux countries-Germany-Poland” was signed in Rotterdam. **The railway route Kaunas-Warsaw as a constituent part of the “Rail Baltica” project became a part of the corridor.**

On 29 July 2011, the contracted works for the installation of the first section of “Rail Baltica” Šeštokai-Mockava were completed.

On 11 September 2011, the ceremony of completion of the contracted works on the first section of “Rail Baltica” between Šeštokai-Mockava took place near the first railway intersection on the road Kalvarija-Lazdijai.

In October 2011, European Transport Commissioner Siim Kallas presented the offered Plan for the Development of TEN-T Transport Corridors for 2014-2020. **The Plan lists “Rail Baltica” as an integral part of the priority transport corridor “Adriatica-Baltica”.**

On 25th of July 2012, JSC Lithuanian Railways registered the trademark “Rail Baltica” with the Lithuanian Trademark Register, bearing the following logo:



The Government of the Republic of Lithuania adopted on 26th September, 2012 resolution No. 1195 “**The European Standard of railway track from Kaunas to Lithuanian and Latvian state border pre-construction work plan**”.

The main steps determined by the plan are as follows:

- preparation of financial programme (plan) of special planning and strategic assessment of the impact to the environment;
- preparation of the programme of special planning;
- communicate with the Republic of Latvia concerning coordination of the actions during strategic assessment of the impact to the environment;
- preparation of the programme of public procurements of strategic assessment of the impact to the environment;
- preparation of tender documents for purchase of special planning services;
- preparation of special planning and strategic assessment of the impact to the environment (**till 2015-12-31**). SC “Lithuanian Railways” is responsible for this step.
- to initiate amendments of the general plan of Lithuania in case the route of “Rail Baltica” must be changed.

10.1. Overview of the works on the Rail Baltica project in Lithuania

Completed projects	Current projects
<p>Reconstruction of railway section Mockava – Sestokai was completed on 29/07/2011 resulting in a construction of new 7.5 km dual railway track (two overlapping pairs of rails on one sleeper).</p>	<p><i>(Please note that some of the projects described in the cells below may already be completed. Lack of public information does not allow us to confirm dates of completion of projects.)</i></p>
<p>To reconstruct the railway district Kaunas (Palemonas)–Gaižiūnai . On 11-10-2010 a purchase agreement for design services was signed with Ardanuy Ingenieria S.A. The agreement is going to be discharged in 10 months. On 17-02-2011 the 1st stage of design (design suggestions) was completed; 2nd stage of design is under implementation; it was going to be completed in 5 months, i.e. till 17-07-2011. On 20-07-2011 the designer submitted a technical project for coordination, assessment is in progress.</p>	<p>Feasibility study of the Rail Baltic section Rokai – Palemonas – Kaunas reconstruction by constructing either dual (1435/1520 mm gauge) railway track or laying new additional 1435mm gauge railway track along the existing 1520mm gauge railway track.</p>
<p>2011-09 reconstruction design of railway district Kaunas (Palemonas) – Gaižiūnai was completed. The reconstruction design was carried out by Ardanuy Ingenieria S.A. under the agreement concluded on 2010-10-11.</p>	<p>On 25-08-2010 a purchase agreement for design services was signed with Scott Wilson LTD. Design is in progress. The agreement is going to be discharged in 22 months. Design suggestions (1st stage of design) were approved on 18-11-2010. The 2nd stage was approved on 18-03-2011. Currently the 3rd stage, technical project is under implementation (the completion of this stage is planned on 16-05-2012) (reconstruction of the railway line in the international segment Siauliai–Joniskis–Lithuanian/Latvian border).</p>
<p>12-08-2010 the feasibility study of railway line reconstruction and gauge connection or construction in the segment Marijampolė (Baragine)–Kazlų Rūda–Kaunas was completed.</p> <p>The study was carried out by SYSTRA SA (France) under the agreement concluded on 14-08-2009.</p>	<p>On 14-06-2011 an agreement was signed with the winner of public tender, the Scott Wilson LTD, Ardanuy Ingenieria S. A. and JSC Kelprojektas consortium. The winner was announced on 17-05-2011. The term for service provision is 720 days (~ 2 years) from the beginning of design (07-07-2011). The 1st stage of design (construction research, design suggestions (solutions), measurements and collection and assessment of specifications of Gudžiūnai–Gimbogala and Radviliskis (Linkaiciai yard) - Silenai district) should be completed on 04-11-2011.</p>
<p>15-07-2011 the work on the preparation of the feasibility study and environmental impact assessment (EIA) of the reconstruction of the line Sestokai – Marijampolė was completed.</p> <p>The work was carried out by Ernst and Young Baltic under the agreement concluded on 28-09-2010 (partnership agreement with Eisenbahn-und Bauplanungsgesellschaft MBH Erfurt and JSC Tilt ekspert centras).</p>	<p>Construction design of secondary railway roads in the districts of Zeimiai–Luksiai and Gimbogala–Linkaiciai</p> <p>On 19-07-2010 a purchase agreement for design services was signed with Ardanuy Ingenieria S.A. Design is in progress. The agreement is going to be discharged in 16 months. Design suggestions (1st stage of design) were approved on 24-11-2010. The 2nd stage was approved on 19-03-2011. Currently the 3rd stage, technical project is under implementation (the completion of this stage is planned on 20-10-2011)</p>
<p>20/10/2011 prepared conception of special plan has been of the territories in municipalities of Jonava, Kėdainiai and Radviliskis.</p>	<p>Construction of secondary railway roads in the districts Gaižiūnai–Jonava, Silainiai–Kėdainiai, and modernization of signal system in Jonava and Gaižiūnai railway stations Following the purchase agreement for design services, signed on 19-07-2010 with JSC Kelprojektas, the design is in progress. The agreement is going to be discharged in 28 months. Design suggestions (1st stage of design) were approved on 28-12-2010. The 2nd stage was completed on 21-03-2011. Currently the 3rd stage (territory planning) shall be implemented till 12-11-2011)</p>

28/10/2011 a special plan of the track Šilainiai – K dainiai has been approved by council of municipality of K dainiai city.

Construction design of secondary railway roads in the districts of Gaižiūnai–Jonava, Silainiai–Kedainiai Following the purchase agreement for design services, signed on 19-07-2010 with JSC Kelprojektas, the design is in progress (). The agreement is going to be discharged in 28 months. Design suggestions (Ist stage of design) were approved on 28-12-2010. The IInd stage was completed on 21-03-2011. Currently the IIIrd stage (territory planning) is under implementation.

Reconstruct the railway district Kaunas (Palemonas)–Gaižiūnai

On 11-10-2010 a purchase agreement for design services was signed with Ardanuy Ingenieria S.A. The agreement is going to be discharged in 10 months. On 17-02-2011 the Ist stage of design (design suggestions) was completed; IInd stage of design is under implementation; it was going to be completed in 5 months, i.e. till 17-07-2011. On 20-07-2011 the designer submitted a technical project for coordination, assessment is in progress.

Modernization works

To specify and change (if needed) the design „Modernization works of signaling of Kaunas– Kybartai (in the district Kazlų Rūda–Kaunas)”, in considering of setting up a parallel railway track of 1435 mm/1520 mm width of gauge or building the track of 1435 mm width of gauge along the present railway line of 1520 mm width of gauge.

The tenders are going to be announced after the preparation of technical designs of reconstruction. The work group was established for the preparation of the technical task. The work group prepared the concept of signaling for the entire district of PL/LT-Kaunas. It is expected to get a technical design of track part up to 01-09-2011 and carry out further procedures.

To perform design works of the present railway district Kazlų Rūda - Kaunas and to reconstruct it – to set up a parallel railway track of 1520 mm/1435 mm width of gauge or to build an additional track of 1435 mm width of gauge along the present railway line; implementing this measure will be needed to perform procedures of public procurement for selection of the contractor, to prepare designs and to reconstruct (and/or generally overhaul) the current track line, to perform technical maintenance.

On 17-11-2010 the Agreement with tender winner JSC Kelprojektas was signed. JSC Kelprojektas operating under joint activity with of the EPG is preparing a technical design of the district Marijampolė - Kazlų Rūda - Kaunas. The period for the service performance is 11 months since the official start of the works. On 01-05-2010 works of the Ist Stage were completed (researches, measurements, technical data collection and evaluation). Works of the IInd Stage were performed by 100% (design proposals were submitted and approval for them was received). Total value of the work performed (Ist and IInd Stages) since the commencement of implementation of the Agreement compose 30% of the total value of the Agreement.

Services (of engineer – technical supervisor) of the district Marijampolė - Kazlų Rūda – Kaunas designing maintenance.

On 17-11-2010 the Agreement with a public tender winner company JSC Kelvista was signed. The period of the service performance is 11 months. Works of the 1st Stage were completed (researches, measurements, technical data collection and evaluation) and works of the 2nd Stage were performed by 100%.

To perform design works of the railway district Šeštokai -Kalvariija -Marijampolė and to reconstruct it – to set up a parallel railway track of 1520 mm/1435 mm width of gauge or to build an additional track of 1435 mm width of gauge along the present railway line; implementing this measure will be needed to perform procedures of public procurement for selection of the contractor, to prepare designs and to reconstruct (and/or generally overhaul) the current track line, to perform technical maintenance.

On 19-12-2011 the Agreement with tender winner was signed with JSC „Sweco Lietuva“ operating in a partnership with Eisenbahn-und Bauplanungsgesellschaft mbH Erfurt and JSC „Tilt ekspert centras“. JSC Kelprojekta operating under joint activity with of the EPG is preparing a technical design of the district Marijampolė - Kazlų Rūda - Kaunas. The period for the service performance is 10 months since the official start of the works. Services (of engineer – technical supervisor) of the district Šeštokai-Kalvariija-Marijampolė designing maintenance.

On 03-04-2012 the Agreement with a public tender winner was signed with JSC „UPA“Kelvista operating in a partnership with JSC „Hidrostatybos projektai“.

To reconstruct railway line of Lithuanian and Poland state border –Marijampolė-Kazlų Rūda systems of signaling, communication, electricity supply, traffic control and railway stations.

The public tenders are going to be announced after the preparation of technical designs of reconstruction of these districts. Currently, the work group has been established for the preparation of the technical task. The work group prepared the concept of signaling for the entire district of Poland - Lithuania state border - Kaunas. Currently, analysis of the current situation is in progress and collection of technical information. It is expected to get a technical design of track part up to 01-09-2011 and carry out further procedures.

On 04/07/2012 tender for reconstruction works of railway line Mockava – Poland/Lithuania border was announced.

On 14/05/2012 construction agreement with JSC “Eurovia Lietuva” was concluded regarding reconstruction of railway line Kaunas (Palemonas) – Galžiūnai.

END OF ANNEX TO FINAL REPORT