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**DETERMINATION OF RAILWAY INFRASTRUCTURE CAPACITY INCLUDING
ASPECTS RELATED TO THE FEE FOR THE USE OF THE INFRASTRUCTURE***

Transmitted by the European Commission

1. This note gives an overview of current cooperation between the EU, DG TREN and the European Railway Agency (ERA), and the Organization for the Cooperation of Railways (OSJD).

* The UNECE Transport Division has submitted the present document after the official document deadline due to technical reasons.

2. The European Railway Agency (ERA) has set up a work party dealing with convergence of the 1,435 mm and the 1,520/1,524 mm gauge networks. It is envisaged that this Working Party will issue a final report on the analysis of the relationship between the 1,435mm and the 1,524/1,520 mm railway systems by mid 2008 and propose recommendations on technical and operational aspects concerned.

3. The Commission launched a study on the compatibility of EU railway law and OSJD law. The final report is not yet available. A decision whether the final report of the study will be published will be taken later this year (see also http://ec.europa.eu/transport/rail/studies/index_en.htm). Following some background information on the scope and outcome of the study:

- The scope of the study is limited firstly to a comparison of the regulations of the OSJD with the entire relevant and already implemented legislative acts of the EU. In some relevant areas, there is either no EU law at all which corresponds to the OSJD convention, or EU regulations are still in the legislative or implementation process. Therefore, the regulations of the OSJD are compared with the corresponding rules of the OTIF, in particular with the relevant annexes to the COTIF. The comparison is limited to the area of rail traffic including competition law issues. Technical issues have not been taken into account.
- European Community and OSJD have a fundamentally different role. EC has a legislative role, whereas OSJD does not.
- OSJD emphasizes on harmonization of standards, while EC, in addition, aims at creating competitive services markets. Market opening and competition are not treated by OSJD.
- EC legislations define management independence of railways from the state, whereas OSJD does not have such rules.
- Differences between the European Community and the OSJD also exist in the area of tariffs. The EU does not fix transport tariffs, as this is up to railway undertakings. Ticket prices may need approval by of Member States, especially if the service is under public service obligation. Prices for transport of goods are subject to agreement with the railway undertakings. With the MPT agreement, the OSJD presents binding guidelines for passenger transport including tariffs and terms and conditions for passengers and luggage.
