

Implementation of the **Rail Baltica** project

Cooperative
Audit by
National Audit Office
of Estonia,
State Audit Office of the
Republic of Latvia,
and National Audit
Office of Lithuania

*Is there a plan for financing and a framework
in place for procurement and contract
management for the implementation of the
Rail Baltica project?*



riigikontroll
National Audit Office of Estonia



Latvijas Republikas
Valsts kontrole

DECEMBER
2019

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The report shall come into effect and be published only after signing by the Auditor General of each Contracting party also fulfilled procedures specified in the Law on the State Audit Office adopted by the Saeima of the Republic of Latvia.

Executive summary

The Rail Baltica project is the largest infrastructure project in the history of the independent Baltic States. The 870-kilometre railway line from Tallinn to the Lithuanian-Polish state border is currently estimated to cost 5.78 billion euros¹, 1.35 billion of which is the estimated cost for the Estonian section, 1.97 - for the Latvian section and 2.47 – for the Lithuanian section. The Global Project is co-financed by the European Union from the Connecting Europe Facility by approximately 85%².

What did we audit?

One of the biggest milestones in the implementation of the Rail Baltica project was reached in 2017 when the governments of the three Baltic States signed and the three Parliaments ratified an Intergovernmental Agreement³ with which they took on the obligation to implement and fund the implementation of the Rail Baltica project and to finalise the project by 2026. Since most of the construction activities in the project have been estimated to start in 2019 or later, the Supreme Audit Institutions of Estonia, Latvia and Lithuania decided to audit whether the project's internal control system, including division of roles and responsibilities, reporting, supervision, change and risk management, for conducting procurements and managing contracts ensures effective and economic delivery of the project. The implementation of the project within each state was audited by each Supreme Audit Institution individually and will be discussed in separate audit reports. This audit report focuses on the implementation of the Global Project and the functioning of the internal control system within RB Rail AS. Furthermore, the availability of finances for the Rail Baltica project was analysed. In addition, the European Court of Auditors will publish their report that focuses on the European Commission's role in the Rail Baltica project, among other key European Union transport projects, in the first half of 2020.

Why is it important for taxpayers?

For the taxpayers, it is important that the project will be delivered on time and public money is spent economically and effectively when implementing the project. The Rail Baltica project implementation

¹ According to the Cost-Benefit Analysis of the Rail Baltica Global Project carried out by Ernst & Young Baltic AS, published on 30.04.2017, available at: http://www.railbaltica.org/wp-content/uploads/2017/04/RB_CBA_FINAL_REPORT_0405.pdf As stated in the CBA, the assumptions used in the calculations are subject to a detailed review during the further stages of Rail Baltica project development. According to project parties, the next estimation of project costs will be performed after the finalization of all the detailed technical designs.

² The European Union budget programme (CEF) only co-finances up to 85% from the financial gap of projects with a negative financial net present value. The CBA analysis conducted by EY estimated the financial gap for the RB project to be 94.18%. Nevertheless, the current three CEG Grant Agreements were signed prior to the CBA and the Activities in these GAs are financed by 81% or 85%, depending on the type of Activity. That means that the Commission co-finances approximately 80-82% of the whole RB project.

³ Agreement between the Government of the Republic of Latvia, the Government of the Republic of Estonia and the Government of the Republic of Lithuania on the Development of the Rail Baltic/Rail Baltica Railway Connection, signed by the Prime Ministers of the three Baltic States on 31.01.2017, available at: https://www.riigiteataja.ee/aktiis/2040/7201/7002/kokkulepe_allkirjadega.pdf#

structure is complex, as there are many actors involved – RB Rail AS, national Beneficiaries and Implementing Bodies.

What did the Supreme Audit Institutions conclude?

The regulations for conducting procurements and managing contracts, including supervision, were mostly in place and followed in RB Rail AS. Nevertheless, the project management, especially change and risk management procedures are currently lacking on the Global Project level. This has caused the risk that the project will exceed both the budget of the Grant Agreements and go over the agreed-upon timeline, if the existing system is not enhanced to be more effective. Furthermore, the Baltic States do not have official forecasts or financial estimations and decisions in place for project financing until the end of the project, including contingency plans or scenarios in case the project ends up costing more or European Union co-financing is less than estimated.

Global Project management, especially managing changes, should be enhanced in order to have effective implementation of the project

- Supreme Audit Institutions found no procedures for managing changes, including in the Global Project cost and schedule. It is not clear who takes decisions concerning the Global Project and who has to follow these decisions. The project implementers have not managed to keep the Activities agreed in the Grant Agreements within the timeline and initially estimated budget for individual Activities. According to the latest Action Status Reports⁴ for 2018, the budget for the first signed Connecting Europe Facility Grant Agreement is estimated to be exceeded by 59.3 million euros, while the second Grant Agreement is 231 thousand euros under budget and the third Grant Agreement is on budget.
- RB Rail AS estimated in one of the timeline scenarios in June 2019 that the completion of the project could be delayed up to March 2030 if foreseeable risks realize. The Supreme Audit Institutions also analysed the estimated end dates of Activities in the Actions Status Reports and found that the Activities in the three signed Grant Agreements are projected to be in average 1.5 years over the agreed-upon timeline. Nevertheless, the budget estimated in the cost-benefit analysis and the official deadline have not been changed as of October 2019. The Beneficiaries warrant that the railway construction will be finalized in 2025 and operations will commence in 2026. Furthermore, the timeline scenario analysis is constantly changing and all new information and developments in the project affect the projected timeline either positively or negatively.

Created implementation structure could generate risks that threaten the effectiveness of the project implementation

- Supreme Audit Institutions found that the division of roles and responsibilities is mostly clear, but still the efficiency of the project management, especially decision-making processes could be

⁴ Compiled by RBR annually for each CEF Grant Agreement, in cooperation with the Implementing Bodies and Beneficiaries, the most recent ASR-s were sent to INEA and the European Commission in Spring 2019.

enhanced in order to speed up the project delivery. Though there are rules in place in relation to responsibility by types of procurements, project parties have still struggled at times to find consensus about who should procure which type of works and services. For example, there have been disagreements because both RB Rail AS and national Implementing Bodies are responsible for procuring studies. Furthermore, there is no effective mechanism for solving deadlock situations where the Beneficiaries cannot agree on a common solution. This is also true in case of reaching solutions in the Supervisory Board of RB Rail AS. Since the Baltic countries have had different visions for the project governance, the difficulties in reaching decisions have led to time waste.

RB Rail AS has developed rules and procedures for conducting procurements and managing contracts, and the rules were mainly followed, however, Supreme Audit Institutions found areas for improvement

- Supreme Audit Institutions found that the rules and procedures for conducting procurements and managing contracts were mostly in place and have become more comprehensive over time. The rules which were in place at the time of conducting the case-study procurements were mostly followed in the analysed procurements and contracts. The improvement areas that Supreme Audit Institutions found were mostly related to enhancing the quality of the procurement and contracting process.

Risks have been identified, assessed and prioritized but the risk management system, including for the Global Project, is still under development

- Although project implementation risks have been identified, the risk management system of RB Rail AS is still under development. Though RB Rail AS and national Implementing Bodies either have a risk management system in place or are in the process of developing one, the Global Project risks are not managed throughout the project. Risk management needs to involve all project levels, including the Beneficiaries.

RB Rail AS has established a quality control system that includes monitoring and reporting lines for conducting procurements and managing contracts, but more attention should be paid to the quality of reporting

- RB Rail AS has established a quality control system for conducting procurements and managing contracts and improved the internal regulations during the audit. The established system has mostly been followed. Though there are rules in place for regular reporting concerning project implementation progress and issues that have occurred, the quality of the reports was insufficient, as the information required in the reports was, at times, missing or outdated. Thus, the reporting system needs to be further developed to enhance

the making of informed decisions and enable more efficient supervision.

The Baltic countries have taken the Rail Baltica project into account in the medium-term State budget strategies and financial planning but there is no long-term planning

- All three Baltic countries have included the Rail Baltica project in State budget planning but have not made long-term plans for project financing until the end of the project. Nor do the countries have formally approved plans to guarantee self-financing for the project in case the cost of project implementation is higher than estimated and/or European Union co-financing smaller than estimated. The Supreme Audit Institutions found that the inherent uncertainty of European Union funding along with the gaps in long-term financial planning from the side of the Baltic States, can encompass a risk to the project implementation.

Recommendations

The Supreme Audit Institutions made recommendations to the project Beneficiaries and Shareholders of RB Rail AS for improving project implementation and financial planning. The audit report will also be presented to the Parliaments of Estonia, Latvia and Lithuania. The recommendations are the following:

- The Beneficiaries should agree on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project timeline and budget.
- The Beneficiaries should develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.
- In order to guarantee the effective and timely implementation of the project, Beneficiaries need to agree on functioning rules in relation to the responsibility for types of procurements between the Implementing Bodies, in order to avoid disagreements in the future.
- Beneficiaries need to agree on a decision-making matrix to reach decisions more effectively and Shareholders need to find ways for the Supervisory Board to work more efficiently, in order to avoid delays in the project implementation.
- To ensure the transparency and quality of the preparation and the process of procurement, the reasons for choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts should be documented by RB Rail AS.

- RB Rail AS, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.
- Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.
- Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures
- The Beneficiaries and RBR should enhance the quality of the reporting, as quality and timely information is essential for making informed decisions.
- Beneficiaries should forecast the long-term availability of national funding for the project, including in case the project costs rise or European Union funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.

Auditees' answers:

- RB Rail AS mostly agrees with the conclusions and recommendations made by the Supreme Audit Institutions and expresses the Management's constructive approach towards any practical recommendations made by the Supreme Audit Institutions in order to improve the development and implementation of the Global Project going forward. The full answer of RB Rail AS and proposed actions for fulfilling the Supreme Audit Institutions' recommendations can be found in Annex C.
- The Estonian Ministry of Economic Affairs and Communications mostly agreed with the conclusions and recommendations made by the Supreme Audit Institutions, though argues that the ministry constantly forecast the budget of the Rail Baltica project, but these forecasts are not official. The full answer of the Ministry can be found in Annex D.
- The Latvian Ministry of Transport agrees with the conclusions and recommendations made by the Supreme Audit Institutions but adds that Latvia incorporates required co-financing in its state budget as soon as the next financing agreement is signed. Furthermore, the Ministry of Transport informs the Cabinet of Ministers through Informative Reports and Parliament through presentations on latest financial developments and progress made at least once per year. The full answer of the Ministry and proposed actions for fulfilling the Supreme Audit Institutions' recommendations can be found in Annex E.

- The Ministry of Transport and Communications of the Republic of Lithuania agrees with the conclusions and recommendations made by the Supreme Audit Institutions but adds that Lithuanian State funds for the implementation of the Rail Baltica project are planned according to the procedure defined in the Law of the Republic of Lithuania on Budget Structure. The full answer of the Ministry and proposed actions for fulfilling the Supreme Audit Institutions' recommendations can be found in Annex F.
- Rail Baltic Estonia OÜ agrees with the recommendation made by the Supreme Audit Institutions and that the efficiency of the work of the Supervisory Board of RB Rail AS should be increased but notes that the approval of the Latvian and Lithuanian Shareholders and all the ministries acting as Beneficiaries is needed to fulfil the recommendation. The full answer of Rail Baltic Estonian OÜ can be found in Annex G.
- AB Lietuvos Geležinkeliai mostly agrees with the conclusions and recommendations made by the SAIs. The full answer of AB Lietuvos Geležinkeliai and proposed actions for fulfilling the Supreme Audit Institutions' recommendations can be found in Annex H.

The Supreme Audit Institutions note that the answers and actions proposed to implement the recommendations are somewhat different due to the differences in the institutions and the governance structure of the Rail Baltica project. The Supreme Audit Institutions encourage the Beneficiaries and Implementing Bodies to cooperate and find common solutions for improving the implementation of the Rail Baltica project.

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Glossary

Activity – Project parts stated in the CEF Grant Agreements for which the European Union provides co-financing. Each Activity has a timeline, indicative budget and milestones. According to the Grant Agreements, Beneficiaries are responsible for the implementation of the Activities, nevertheless, ministries responsible for transport of Estonia, Latvia and Lithuania have designated National Implementing Bodies to implement the Activities.

ASR – Action Status Report, annual report compiled by RBR and sent to INEA, as referred in CEF Grant Agreements Article II.23.1.

Beneficiary – The ministries in each of the project countries responsible for the project implementation and RB Rail AS in accordance with the respective Grant Agreements.

CBA – Cost-benefit analysis, in this report the Cost-Benefit Analysis of the Rail Baltica Global Project carried out by Ernst & Young Baltic AS, published on 30.04.2017, is referred to.

CEF – Connecting Europe Facility, the EU fund from which the Rail Baltica project is co-financed.

CPSG – Common Procurement Standards and Guidelines for the Rail Baltica Project.

CSA – Agreement on the contracting Scheme for the Rail Baltic/Rail Baltica between RB Rail AS, Ministry of Economic Affairs and Communications of the Republic of Estonia, Ministry of Transport of the Republic of Latvia, Ministry of Transport and Communications of the Republic of Lithuania, Estonian Technical Regulatory Authority, Rail Baltic Estonia OÜ, Eiropas Dzelzceļa līnijas SIA, Lietuvos Geležinkeliai AB and Rail Baltica Statyba UAB, 30 September 2016.

EU – European Union

GA – Grant Agreement, signed by the Beneficiaries and INEA in relation to the granting of European Union support for a specific Activities.

Global Project⁵ – the activities undertaken by the project parties in order to build, render operational and commercialize the Rail Baltica railway and related railway Infrastructure in accordance with the agreed definition (see definition under “RB”).

IBA – Inter-Beneficiary Agreement between RB Rail AS and Ministry of Economic Affairs and Communications of the Republic of Estonia and Ministry of Transport of Latvia and Ministry of Transport and communications of the Republic of Lithuania, 16 June 2016.

IGA – Agreement between the Government of the Republic of Latvia, the Government of the Republic of Estonia and the Government of the Republic of Lithuania on the Development of the Rail Baltic/Rail Baltica Railway Connection, signed by the Prime Ministers of the three Baltic States on 31.01.2017. Available at: https://www.riigiteataja.ee/aktiis/2040/7201/7002/kokkulepe_allkirjadega.pdf#.

INEA – Innovation and Networks Executive Agency, the European Union Agency in charge of managing the CEF programme implementation.

Milestone Report – Annual performance report compiled by RBR and presented to the RBR Supervisory Board, as required by Shareholders’ Agreement Clause 5.6.

⁵ Definition brought out in the Cost-Benefit Analysis of the Rail Baltica Global Project carried out by Ernst & Young Baltic AS, published on 30.04.2017, available at: http://www.railbaltica.org/wp-content/uploads/2017/04/RB_CBA_FINAL_REPORT_0405.pdf

MB – Management Board of RB Rail AS

National Implementing Body – Companies implementing the project in each of the three Baltic States: Rail Baltic Estonia OÜ⁶, SIA Eiropas Dzelzceļa līnijas, AB Lietuvos Geležinkeliai and UAB Rail Baltica Statyba.

PDO – Project Delivery Organisation. The Rail Baltica Steering Group was set up in October 2017, in order to analyse the way forward, propose concretely a series of measures to be taken and reach rapid agreement on them, in order to recuperate as far as possible the current delays, to pave the way for an enhanced implementation of the project. All three Baltic States, the Joint Venture, as well as the Implementing Bodies have been contributing to the analysis and proposals formulated. The Steering Group came up with a package of measures designed to enhance project delivery.

RB – Rail Baltica, project for establishing the new fast conventional double track electrified railway line from Tallinn through Pärnu-Rīga-Panevėžys-Kaunas to Lithuanian-Polish state border with a connection of Vilnius-Kaunas as a part of the railway, with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the route to be completed in accordance with uniform technical parameters based on the Technical Specifications for Interoperability, as defined in the relevant legal acts of the European Union .

RBR – RB Rail AS, joint venture between the three Baltic States established in October 2014 by signing the SHA.

SAI – Supreme Audit Institution, plural is used to refer to the SAIs of Estonia, Latvia and Lithuania.

SB – Supervisory Board of RB Rail AS.

SHA – Shareholders’ Agreement relating to RB Rail AS between OÜ Rail Balti Estonia, SIA “Eiropas Dzelzceļa līnijas” and UAB “Rail Baltica Statyba”, 28 October 2014.

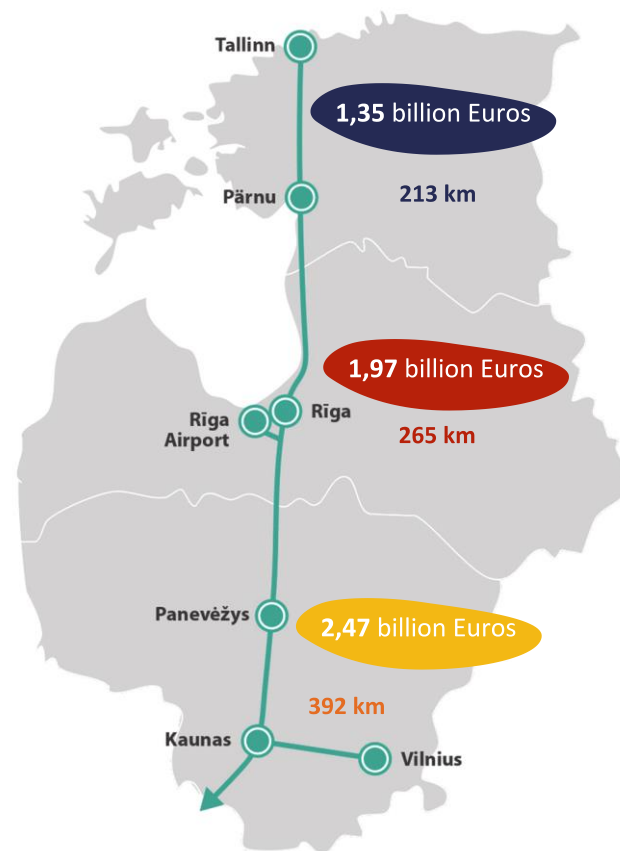
⁶ The Consumer Protection and Technical Regulatory Authority of Estonia and Tallinna Linnatranspordi AS are named as Implementing Bodies in some of the GAs as well, but no longer perform such duties

Introduction

What is Rail Baltica?

1. Rail Baltica (*hereinafter referred to as RB*) project is the largest cross-border infrastructure project in the history of the independent Baltic States. The estimated cost of the 870 km long railway project is 5.78 billion euros according to the project cost-benefit analysis (*hereinafter referred to as CBA*)⁷ (See Figure 1 for railway length and cost per country) and the railway is planned to start operations in 2026⁸. The project is co-financed by up to approximately 81%⁹ by the European Union (*hereinafter referred to as EU*) from the Connecting Europe Facility (*hereinafter referred to as CEF*).

Figure 1. Route and length of railway and project budget in Baltic States according to the CBA



Source: SAls according to CBA

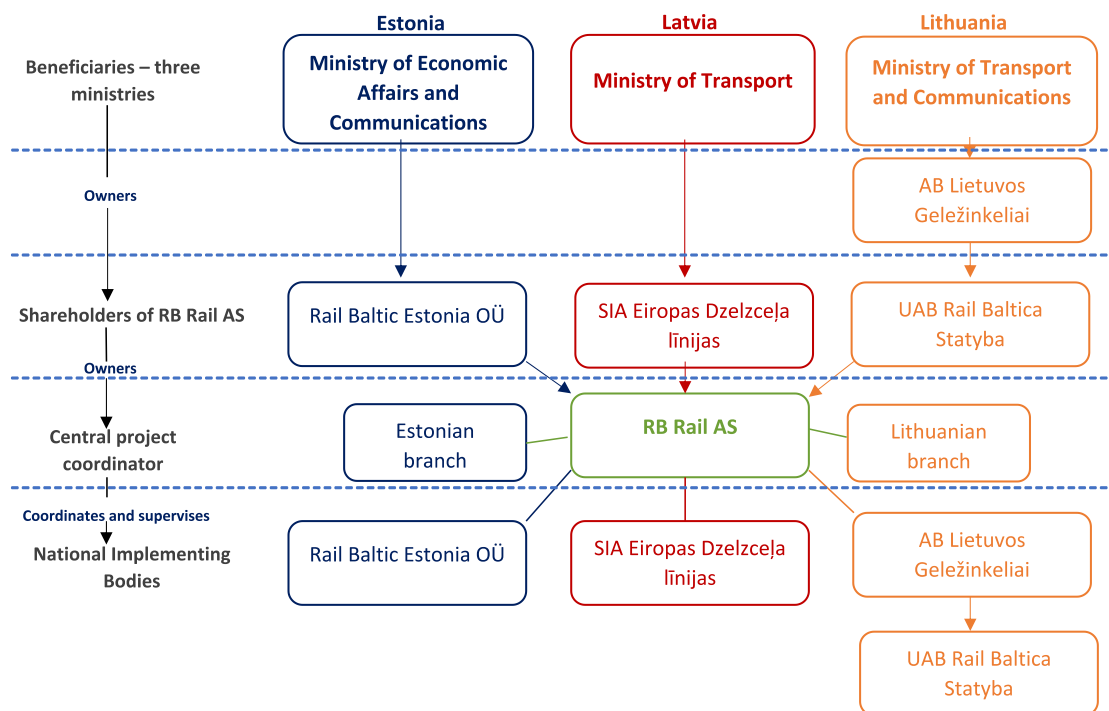
⁷ According to the Cost-Benefit Analysis of the Rail Baltica Global Project carried out by Ernst & Young Baltic AS. As stated in the CBA, the assumptions used in the calculations are subject to a detailed review during the further stages of Rail Baltica project development. According to project parties, the next estimation of project costs will be performed after the finalization of all the detailed technical designs.

⁸ According to the IGA.

⁹ The European Union budget programme (CEF) only co-finances up to 85% from the financial gap of projects with a negative financial net present value. The CBA analysis conducted by EY estimated the financial gap for the RB project to be 94.18%. Nevertheless, the current three CEF Grant Agreements were signed prior to the CBA and the Activities in these GAs are financed by 81% or 85%, depending on the type of Activity. That means that the Commission co-finances approximately 81-82% of the whole RB project.

2. In order to coordinate the implementation of the project, the three Baltic countries formed the RB Rail AS (*hereinafter referred to as RBR*) joint venture with headquarters in Latvia. For this purpose, Estonia and Latvia each established a state-owned limited liability company which became the Shareholder of the joint venture while in Lithuania the Shareholder is a subsidiary of the state-owned enterprise AB Lietuvos Geležinkeliai (*See also project implementation structure below in Figure 2*). The purpose of the joint venture is to coordinate the project implementation, in addition to acting both as a Beneficiary and Implementing Body.

Figure 2. The RB project implementation structure (as of 2019)



Source: SAls based on RBR

3. To receive a financing grant from CEF, project applications should be submitted through calls for proposals announced by the Innovation and Networks Executive Agency (*hereinafter referred to as INEA*). Successful applicants must then sign a Grant Agreement (*hereinafter referred to as GA*) with INEA. The GAs include concrete Activities to be carried out, the expected results, timeline and budget for the Activities within each GA, and the overall eligibility period for implementing the GA. Though, in the framework of a single GA, the budget allocation can be transferred between Activities and Beneficiaries, provided that the Actions are implemented according to the description in the GA. The total amount of CEF support per GA is not increased. In case the activities cost more to achieve the expected results as defined in the GA, the additional part of cost should be covered outside the CEF contribution, i.e. by the Beneficiaries.

4. Furthermore, according to the GAs, the European Commission has the right to demand all unused funds back at the end of the GA term. Each activity within the GAs is under responsibility of a certain Beneficiary. Thus, if Activities are not completed in accordance with the

GA, the Beneficiaries may be requested to return the respective part of CEF support to the CEF budget. The Beneficiaries can, nevertheless, apply for the money for the next phases of these Activities during future calls for proposals, competing with other EU project applications for the grant, based on the criteria defined in the CEF Regulation.

5. The Baltic ministries responsible for transport and RBR have, as of December 2019, signed three CEF GAs with INEA for the total amount of approximately 823.5 million euros (including both CEF support and the own contribution of Beneficiaries). Additionally, there is a GA including partly RB project related Activities signed between INEA and the Lithuanian Beneficiary for the amount of 124.6 million euros. That means that at present the GAs cover around 16.4% of the whole project cost estimated in the CBA (*see Table 1 for CEF GA allocated co-financing and co-funding periods*). According to the timeline scenario analysis conducted by RBR, there will be approximately twelve GAs in total.

Table 1. Co-funding from CEF GAs by Beneficiary (M EUR)

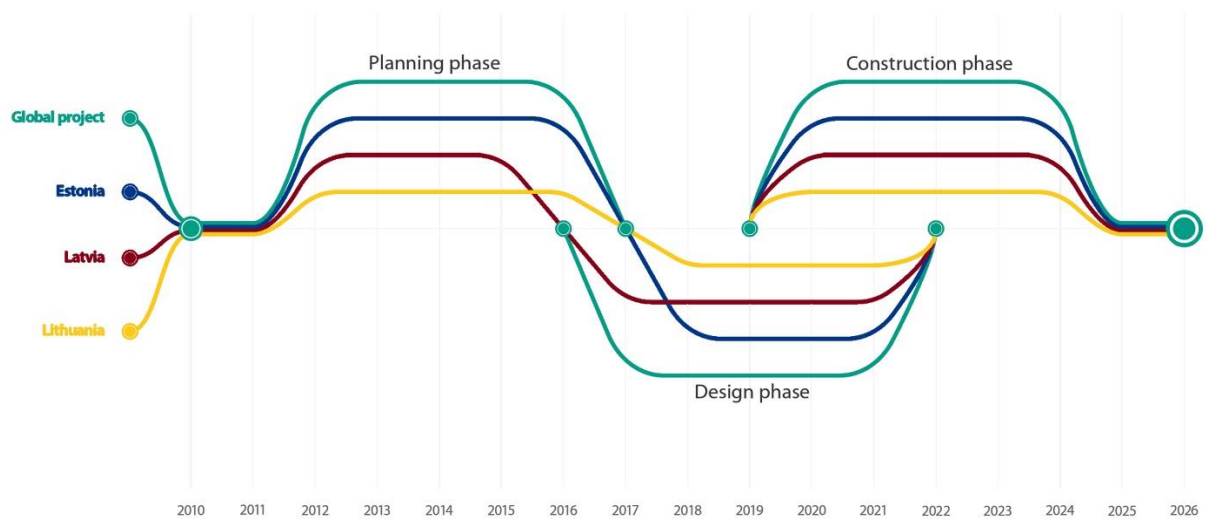
GA	Period	Estonia		Latvia		Lithuania		RBR		Total	
		CEF	Ben	CEF	Ben	CEF	Ben	CEF	Ben ¹⁰	CEF	Bens
CEF LT	2015-2020	-	-	-	-	105.9	18.7	-	-	105.9	18.7
CEF I	2015-2020	175.4	38.1	237.5	54.2	23.4	4.8	5.9	1.1	442.2	98.2
CEF II	2016-2020	11.0	2.0	0.5	0.09	118.7	20.9	0.05	0.009	130.2	23.0
CEF III	2017-2023	1.7	0.3	3.5	0.6	94.9	16.7	10.4	1.8	110.5	19.4
Total		188.1	40.4	241.5	54.9	342.9	61.1	16.3	2.9	948.1	

Source: SAls according to CEF GAs

6. As of the end of 2019, the project is in the design phase (*See also project timeline below on Figure 3*), though some construction activities are already ongoing or completed. As of December 2019, RBR is in the process of conducting procurements for the detailed technical designs for the RB mainline railway with 6 contracts signed, 3 procurements launched and 2 procurements yet to be launched.

¹⁰ RBR's financial contribution is provided equally by the three Shareholders

Figure 3. Timeline of the RB project implementation



Source: SAIs based on RBR

What is the role of the SAIs?

7. Supreme Audit Institutions (*hereinafter referred to as SAI*) play an important role by auditing government accounts and operations, providing the legislature and society with necessary information to hold governments accountable. SAIs are independent, non-political, and fact-based in their work. Governments' financial management, compliance with national laws and international agreements, policy implementation, and performance are in the focus of Supreme Audit Institutions.

8. The Supreme Audit Institutions of Estonia, Latvia and Lithuania have actively monitored the Rail Baltica railway project since 2014 when the Auditors General of the Baltic States first discussed the necessity for cooperation and information sharing. In 2016 this cooperation was formalized with the creation of the Rail Baltica Task Force which consists of representatives from the Supreme Audit Institutions of Estonia, Latvia and Lithuania, as well as Finland and Poland for information sharing purposes, as parties influenced by the Rail Baltica project.

9. On 6 September 2018 the Auditors General signed the Agreement between the Supreme Audit Institutions of Estonia, Latvia and Lithuania on conducting the Cooperative Audit on the Rail Baltica project.

What did the SAIs do?

10. The Supreme Audit Institutions of Estonia, Latvia and Lithuania sought to assess whether there is a functioning internal control system in place assuring the effective, efficient and economic implementation of the Rail Baltica project. For this, the SAIs analysed the multilateral agreements between the project parties, internal regulations of RBR, documentation of the case-study procurements and project reports to assess whether RBR has put in place a functioning internal control system within the company to assure the quality of procurements and contracts and whether the internal control system is also functioning on the Global Project level. The SAIs expected an effective internal control system to assure that the RB project is within the agreed-upon budget and timeline. Thus, the efficiency and economy of the system was assessed based on whether the created system has managed to keep the project within the

agreed-upon budget and timeline. The effectiveness and efficiency of the internal control system was further assessed during the case-study analysis that illustrated whether the created system works in practice. Furthermore, the SAIs analysed whether national governments have made plans to ensure financing for the project. The main criteria for evaluating these questions are brought out at the beginning of each key message in the audit report as the SAIs' expectations. For further information concerning the methodology used, please refer to Annex B. Henceforth, the key findings of the SAIs are presented.

1. Global Project management, especially change management, should be enhanced in order to have effective implementation of the project

Why is it important to stay within the project timeline and budget?

Criterion: The SAIs expected the project to be within the agreed-upon timeline and budget, and in case of deviations, clear project management, especially change management rules would be followed, including rules stipulating who takes the decision to accept the deviations and/or to apply alleviation measures.

11. EU co-financing for the RB project sets strict rules for both the timeline and budget of GA Activities, as well as for staying within the GA budget. By signing the CEF GAs with INEA the Beneficiaries take upon themselves the responsibility to assure that the Activities that are covered by the respective CEF GAs are within the timeline and budget agreed-upon in the GAs. They are responsible for all reimbursements and extra costs in case Activities or the GA as a whole go over the agreed-upon timeline or budget.

12. As during project implementation unexpected situations, e.g. delays and cost-overrun may occur, it is crucial for the effective and efficient implementation of the project that clear change management procedures are in place. It should be clear, which entity is responsible for taking decision on whether deviations in the agreed project implementation are acceptable or there should be alleviation measures developed and employed to stay within the planned schedule, budget, parameters, etc.

13. Though, there is no agreed-upon budget until the end of the project and the estimations are bound to get more precise as the project evolves; there have been various estimations concerning the project budget.

14. The budget of the Global Project has been estimated in the EY CBA and the budget for each Activity is agreed in CEF GAs. According to the latest Action Status Reports¹¹ (*hereinafter referred to as ASR*) of CEF I-III GAs, the budget for the Activities in CEF I GA are estimated to exceed the agreed budget by 59.3 million euros, CEF II Activities are 231 thousand euros under budget and CEF III Activities are on budget¹² (*See Table 2 below for estimates per CEF GA*).

¹¹ Compiled by RBR and sent to INEA and the European Commission in Spring 2019.

¹² This takes into account the fact that some Activities have been under budget – these have been subtracted.

Table 2. Estimated total cost overrun in CEF I, II and III GA¹³ Activities according to the latest ASRs (M EUR)

Beneficiary	Number of Activities per Beneficiary in total	CEF I GA	CEF II GA	CEF III GA
Estonia	27	30.0	1.6	0.1
Latvia	17	26.2	-0.3	0.0
Lithuania	10	-0.8	-0.0	-0.1
RBR	14	3.9	-1.5	0.0
Entire Project ¹⁴	71	59.3	-0.2	0.0

Source: SAls according to the ASRs

What are the reasons for the cost increase according to RBR?

15. According to RBR, the main reason for the Activities being projected to be over budget is the fact that the estimations for the GAs were done as long ago as 2014 when the CEF GA proposals were drawn up. The prices on the market have thus changed and after each project phase there is more information about the project parameters, meaning that the scope of the agreed Activities, as well as the budgetary needs, have changed. Therefore, the cost of some Activities has proved to be higher than initially estimated.

Observation – The budget of the Estonian part of the railway has been updated

In December 2018, the Government of Estonia announced that the new estimated budget for the Rail Baltica railway in Estonia is 18% higher compared to the estimates made by EY. The announcement came after the budget recalculation was made based on the finalized preliminary design for the Estonian part of the railway project. The cost estimations have not been updated since the EY cost-benefit analysis in Latvia and Lithuania, though. Major procurements of Activities by the Latvian Beneficiary also show significant cost increase, but the total cost estimations will be updated after the finalization of the detailed technical design of the whole railway, which is planned to happen in 2022, according to the Latvian Ministry of Transport.

Is the project within the agreed-upon timeline?

16. The timeline of the project has been agreed in the Inter-Governmental Agreement (*hereinafter referred to as IGA*) which was ratified by the Parliaments of Estonia, Latvia and Lithuania in 2017. According to the agreement, the construction of the railway should be finished by 2025 and the railway should start operating in 2026.

17. The timeline for each Activity is set in CEF GAs. According to the latest ASRs, the deadline for the Activities agreed in the three signed CEF GAs is estimated to be overrun by 571 days or 1.5 years on average (*see Table 3 below for deadlines according to Beneficiaries*). The longest delay is 1800 days or almost 5 years and one Activity is 780 days or a bit more than 2 years ahead of schedule. Though this does not mean, that the overall RB project timeline will be overrun by 1.5 years, this shows the current tendency for implementing CEF GA Activities.

¹³ Does not include the separate GA signed by the Lithuanian Beneficiary.

¹⁴ Includes Activities that are implemented by all of the Beneficiaries together.

Table 3. Delays in CEF I, II and III GA¹⁵ Activities according to the latest ASRs

Beneficiary ¹⁶	Number of Activities per Beneficiary in total	Number of Activities that have delays in actual or estimated end date	Average delay in days
Estonia	27	23	815
Latvia	17	16	632
Lithuania	10	9	540
RBR	14	9	169
Entire Project ¹⁷	71	57	571

Source: SAIs according to the ASRs

18. Nevertheless, Beneficiaries can negotiate with INEA to amend the GAs. For example, CEF II GA has been amended to exclude two Activities concerning signalling, traffic control and other railway systems that could not be completed in the GA period of the original GA. Beneficiaries have also applied for an extension until 2022 for CEF I GA.

19. Furthermore, RBR has compiled different scenarios for the whole Global Project timeline that depend on the potential delays in Activity implementation, availability of financing and other risks of project implementation. For example, as of June 2019 the Global Project timeline scenarios indicated that the completion of the project could be delayed up to March 2030, if risks, such as planning risk and availability of resources and financing, realize. It is worth mentioning, though, that the timeline scenario is in constant change and any new information can affect the scenarios either positively or negatively.

20. Nevertheless, none of the timeline estimations has been agreed-upon to be the new deadline for the project. The official deadline is still, as stipulated in the IGA and *Commission Implementing Decision*¹⁸, 2026, and all of the Beneficiaries, including RBR, have warranted that the railway will be operational in 2026. Furthermore, the Supervisory Board (*hereinafter referred to as SB*) of RBR has asked the Management Board (*hereinafter referred to as MB*) to prepare an acceleration plan with measures devised to speed up the project implementation and reach the agreed-upon timeline. According to the Estonian Beneficiary, the plan has not yet been fully finalized at the time of publishing this report and SAIs were not able to get acquainted with this plan.

What are the main reasons for delays?

21. The main reasons for delays mentioned in the monthly reports and the ASRs were, for Activities under Beneficiaries, delays in a prior Activity, procurements failing due to overly strict terms and lack of competition. In the case of procurements conducted by RBR, one reoccurring reason for delays was also difficulty and delays in getting the necessary approvals from the SB. According to the Lithuanian SB members, non-approvals of

¹⁵ Does not include the separate GA signed by the Lithuanian Beneficiary.

¹⁶ The Activities are listed according to which Beneficiary is responsible for the Activity is the GA, nevertheless, the Activities are implemented by either RBR or national Implementing Bodies.

¹⁷ Also includes Activities that are the responsibility of all the Beneficiaries together.

¹⁸ Commission Implementing Decision on the Rail Baltica cross-border project on the North Sea-Baltic Core Network Corridor, available at: <http://www.railbaltica.org/wp-content/uploads/2018/10/c-2018-6969-rail-baltica.pdf>

the SB result from unprepared materials, incomplete alignment with the Beneficiaries or other objective reasons, whereby acting as prudent and conscientious managers, the members of the SB could not agree with the proposed decisions. According to RBR, key reasons for the delays were also the fact that at the time of submitting the proposals for grants, a clear project implementation timeline was not available. RBR also brought out insufficient staffing of RBR. Though the MB of RBR requested the headcount of the company to be increased, the SB did not approve the requests. Furthermore, according to RBR the project structure has also caused delays, including the fact that up to Spring 2018, the SB had to approve all costs and procurements starting from five thousand euros which, in the opinion of RBR, significantly increased bureaucracy.

22. Though delays in some Activities, such as local point objects, might not have a significant impact on the Global Project timeline, there are such Activities that, if delayed, impact the whole project. They are called the critical path Activities. For example, the common technical standards are the basis for all the design procurements which, in turn, are necessary for construction. Hence, there is a risk that the whole project will be late, since the common technical standards were late more than two years.

How have the changes been managed?

23. In the case of national Implementing Bodies, it is up to the responsible Beneficiaries to assure that the Activities are within the timeline and budget of the GA and to decide on the appropriate reaction to deviations. In the case of RBR, the approval power over MB decisions lies with the SB or the Shareholders. According to the SB members, the SB regularly discusses issues that occur and decides on alleviation measures. The SAIs could not verify this, since the discussions and decisions of the SB are not fully documented in the SB meeting minutes. Though the agenda of the meeting, as well as the main points discussed, are brought out in the minutes, the SAIs did not find discussions of risk, issues, mitigation measures or any decisions being agreed-upon.

24. Nevertheless, SAIs found no mechanisms for Global Project change management, including for time and budget management. RBR monitors the progress of the project through the project timeline scenario analysis, but it is not clear who decides whether deviations in the Global Project timeline and budget are acceptable or there should be alleviation measures developed to stay within the agreed-upon timeline and budget.

25. According to RBR, the project also faced decisions where a decrease in the project budget can bring about a prolonged timeline or more spending during the project implementation could potentially bring considerable savings during operation of the railway. According to the project parties, the decision-making matrix of the project, i.e. who takes decisions concerning which issues and for whom these decisions are binding, is still missing.

What did the SAIs conclude?

26. SAIs found that the efficiency of the project management could be improved, as the project parties have not managed to keep the GA Activities within the timeline and budget of the GAs. Furthermore, SAIs found no mechanism for managing Global Project changes, including in the project cost and schedule. It is not clear whose decisions concerning the Global Project are binding to the other project parties. While the day-to-day running of both RBR and the national Implementing Bodies is quite clear, there is no decision-making matrix for decisions that concern

all of them. For example, if a critical path Activity that affects the timeline of the Global Project is about to be over the CEF GA timeline, it is not clear who should decide if that is acceptable, alleviation measures should be taken to keep the Activity in the timeline or the timelines of other Activities should be brought forward for the whole project to be on time.

27. Recommendations:

- The Beneficiaries should improve project management, in particular, agree on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project time and budget.
- The Beneficiaries develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.

2. Created implementation structure could generate risks that threaten the effectiveness of the project implementation

Criterion: The SAIs expected the roles and responsibilities of the parties involved in the project to be clearly defined and followed.

Why is it important?

28. In a cross-border project with three neighbouring countries as owners of the project, four national Implementing Bodies and a coordinator who is also a Beneficiary and Implementing Body, it is crucial that each party understands its role and responsibilities for the effective project management. Ambiguity in roles and responsibilities can lead to disagreements and delays in the project timeline, as well as the lack of decisions being made. Thus, it is important that the national Beneficiaries, national Implementing Bodies and RBR know what their mandate and tasks are in the project.

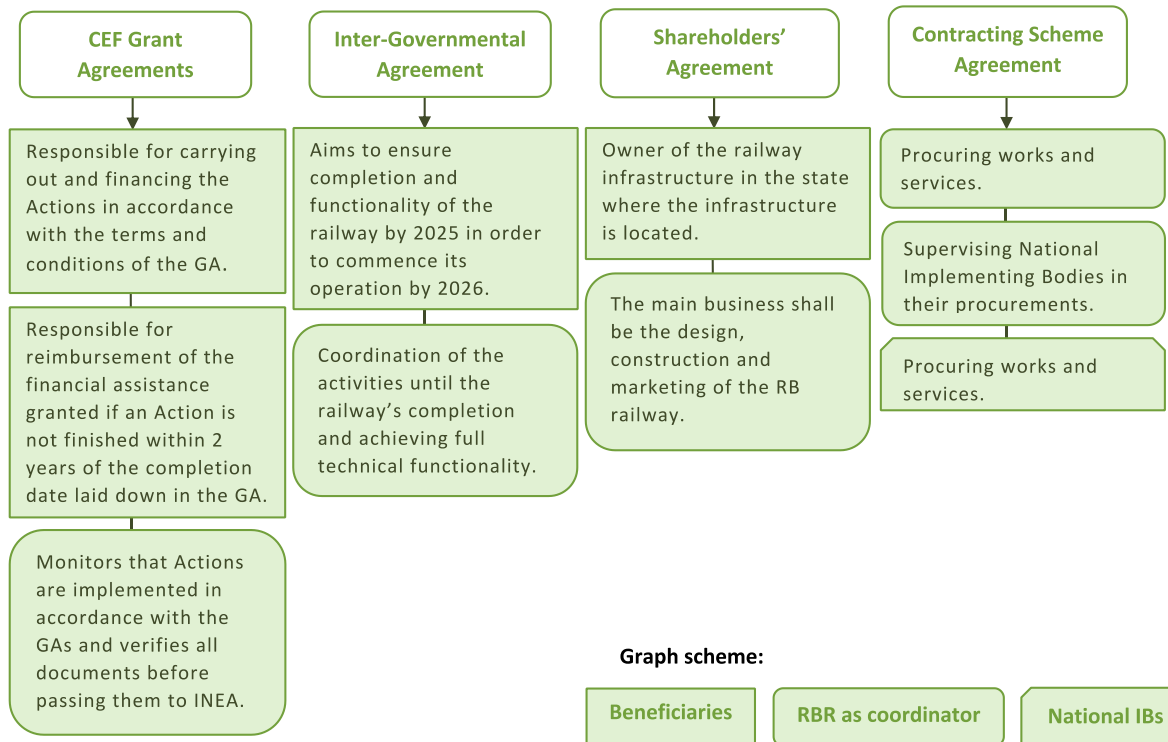
Are the roles for implementing the Global Project divided clearly?

29. The division of roles and responsibilities between the Global Project parties has been stipulated in CEF Grant Agreements and multilateral agreements between project parties and is mostly clear (*See Figure 4 below*). The legal analysis showed that the project implementation structure does not conflict with the legislation of the Baltic States and found no inherent conflict of interest in the governance structure, according to law.

30. Nevertheless, the European Commission found that there is a possible conflict of interest within the SB of RBR. In the PDO package of measures documents, it is stated that the composition of the SB of the RBR shall thus forwards be such that not more than half of the representatives nominated by each Shareholder are employed by either a national Implementing Body or a daughter company of a national Implementing Body, since they might have competing interests in terms of resource allocation (*See also Figure 2*). RBR commissioned a study from the Baltic Institute of Corporate Governance to analyse the situation

and to serve as an input to the PDO discussion. According to RBR the conflict of interest still exists. The SAIs, though, did not analyse whether there are conflicts of interests inherent in the project implementation structure from the perspective of project management best practices or good governance.

Figure 4. Main roles and responsibilities of the Global Project parties



Source: SAIs

31. CEF GAs set out which Beneficiary is responsible for which Activity. Furthermore, the *Contracting Scheme Agreement* specifies what entity is responsible for what type of procurements. According to the CSA, RBR is responsible for procuring¹⁹ works and services for:

- Business development, marketing, branding and communication;
- Design elements, such as design guidelines, preliminary designs and detailed technical design;
- Studies for the Global Project;
- Control-command, energy and signalling subsystems;
- Procurement of such main raw ballast materials and key components that will bring about economies of scale;
- Construction of the cross-border track and track bed.

¹⁹ The case of the last three works and services are procured in the form of consolidated procurements which means that Beneficiaries are represented in the Procurement Commission.

National Implementing Bodies are responsible for procuring works and services for:

- Railway track and bed;
- Major engineering structures, such as bridges and tunnels;
- Local facilities, such as passenger, freight and rolling stock maintenance terminals;
- Urban node sections of the railway infrastructure;
- Works and services needed for the implementation of the RB project only in one State.

32. Nevertheless, in the Milestone Report of March 2019²⁰, the lack of “ability to clarify roles and responsibilities between Stakeholders” is brought out as a high impact risk.

Are the roles and responsibilities for implementing Activities followed?

33. Though, the CSA was signed in September 2016, there have still been disagreements about which entity is responsible for conducting certain procurements that have led to time waste. For example, there were disputes between the project parties regarding the “Pärnu Freight Terminal Study” and “Ülemiste-Vanasadam Tramline Study” and whether the studies should be procured by RBR, as they are studies that, according to RBR, impact the operations of the Global Project, or the Estonian national Implementing Body, as they physically concern only Estonia.

34. All of the disputes were eventually solved, but according to RBR, further disputes are likely to arise when dividing responsibilities in the future. According to them, there is a risk that RBR and other Beneficiaries may have differing visions about what constitutes the cross-border sections of the railway and to what extent the raw materials should be procured by RBR. Contrary, the Estonian Beneficiary noted that after the completion of the “Supplier Market study”²¹, RBR has been tasked with analysis of the main conclusions of the study and analysis of which materials could be procured as consolidated procurements so as to bring about the benefits of economies of scale. According to the Estonian Beneficiary, it is up to the Beneficiaries then to decide what will be procured by RBR and what by national Implementing Bodies.

What kind of other risk are entailed in the current implementation structure of the RB project?

35. The risk register²² also brings out the risk of “Over supervision and bureaucracy” which is brought about, among other things, by the SB taking too much time for reaching decisions.

36. The duties of the SB are stated in the Shareholders’ Agreement which is the basis for the functioning of RBR. According to the SHA, there are 32 matters reserved for the SB of RBR and 31 matters according to the

²⁰ Rail Baltica Annual Milestone Report, approved by RB Rail Management Board on 29.04.2019.

²¹ Tender RBR2018/27, published on 23.11.2018, contract signed with TÜV SÜD Rail GmbH on 07.05.2019.

²² Risk Management Frame Work, Risk Register, Final Report, 22.01.2019, GrECo International AG.

Statutes of RBR. These include, among others, entering into railway design and construction contracts, approving the terms and scope of railway design and construction procurements, allowing to organize railway design and construction procurement, etc.

37. Furthermore, for the SB decision to take effect, the majority of the SB members and at least one member from each of the three countries have to vote for the decision.

38. The legal analysis of the SAIs showed that there is no effective mechanism created to solve the deadlock in cases where the SB cannot come to a decision. According to the legal analysis, the solution in cases where the SB members cannot agree is to refer the decision to the Steering Committee which consists of representatives of the States. If the Steering Committee also cannot reach a unanimous decision, the only option is an exit, meaning, ultimately, that the company will be liquidated. Since all three countries need to agree both in the SB and the Steering Committee, there is no effective mechanism for solving deadlock situations. The complexity of reaching decisions on the Beneficiaries level is also present.

39. The European Commission sought to solve this problem in the *Project Delivery Organization*, resulting, *inter alia*, in restarting the RB Task Force that consists of representatives from the relevant Ministries of each Baltic country and European Commission, as well as other involved parties including RBR, national IBs and representatives from Poland and Finland without the right to vote, on a regular basis. The Task Force is chaired by the European Coordinator of the North Sea-Baltic TEN-T Corridor. According to the *RB Task Force Rules of Procedure*, the Task Force meets at least four times per year and shall ensure exchange of information and joint decision making on a strategic level. The Task Force is intended to also serve as a conflict resolution body where project implementers and Beneficiaries could not find solutions via other mechanisms in place.

40. Decisions of the Task Force are taken by consensus and if no common approach is reached, the chair may refer the matter to the appropriate political level. That entails a risk that disagreements of political origin might reach a deadlock also in the Task Force.

41. In addition to the Task Force, an additional measure agreed during the PDO process was the establishment of dedicated Reference Groups (technical, procurement, operational, etc.) that have to provide expert level input for decision making.

42. The above-mentioned failure to agree on the division of roles, as well as the lack of mechanisms for solving disagreements between parties, has led to time waste in the implementation of the project. This issue is also brought out in the risk register as the "Governance issue". According to the explanation brought out in the register, there are different visions on how the project should be managed. The audit conducted by the SAIs also showed that the national Beneficiaries among themselves and with RBR have had differing opinions about the best governance structure and methods, which has, at times, complicated reaching agreements and, thus, caused delays in the Global Project implementation.

What has it led to?

43. As the Baltic countries will be the owners of the completed railway infrastructure and responsible to the European Commission for proper spending of the EU co-financing, it is natural that the Baltic countries have to decide on fundamental question regarding project implementation. On the other hand, RBR is the coordinator of the project, a Beneficiary responsible for implementing the GAs and must assure that all the three national parts are coherent. All three countries and RBR have a vision for the future of the railway project, but these visions do not always match.

44. For example, Beneficiaries have not been able to agree on a long-term financing model for RBR. The SHA and CSA envisioned the financing of RBR via share capital contributions until the end of 2017, from 2018 the Shareholders should have agreed on a new sustainable solution for funding RBR. The Beneficiaries, though, according to the Estonian Beneficiary, have not yet fully agreed on the new financing solution and have thus far extended the share capital payment on a yearly basis.

Example – Disagreements between a Beneficiary and RBR about a Lithuanian railway section

The purpose of the Upgrade study was „Reconfirmation that the works along the section Kaunas – RRT Palemonas are on the alignment of the Global Project as well as to analyse the feasibility of, and measures required to, upgrade the existing 1435 mm gauge railway line from the Polish / Lithuanian State border to Kaunas and Palemonas to achieve full compliance with the Rail Baltica Global Project definition and key technical parameters”. This task agreed in the GA was assigned to RBR. The Lithuanian Beneficiary and RBR could not agree how to best deal with the already built Lithuanian railway section that adheres to different parameters, e.g. does not have the capacity to facilitate trains as fast as 249 km/h, number of tracks and same grade-crossings. The interest of the Lithuanian state was to ensure that the already spent 341 million euros were utilized efficiently and the existing infrastructure would remain operational. This study had to be the basis for the subsequent stage of implementation and the preparation of the special plan. The procurement for this study was conducted by RBR, but, according to the Lithuanian Beneficiary, alignment of technical specification and consultation procedure were not completed with the Lithuanian Beneficiary, therefore, the Beneficiary was not satisfied with the result of the study, since all the options in it cut through the existing railway, making it partly unusable. As the SB of RBR has to accept the results of this procurement, as stated in the GA, the acceptance of this report was stalled due to the differing view of the parties. The Lithuanian Ministry of Transport and Communications is procuring territorial planning services to determine the precise route alignment plan and technical solutions for this issue, including assessment of the identified options in the study for upgrade. Following the conclusions of the procedures, the upgrade solutions will be implemented.

45. The Baltic States cannot agree on the best solution for infrastructure management. The European Commission’s *Implementing Decision* set the date for deciding on the model of infrastructure manager for June 2019, the countries did not meet this deadline. According to the Latvian Beneficiary, the States cannot agree on the infrastructure management model, because the “Infrastructure Management Study” does not provide sufficient information for reaching the decision. In the opinion of the Lithuanian Beneficiary, the expectation for the study was to have a similar level of detail and comparison of the different concepts for infrastructure management models, including an in-depth description and proposed contractual framework for the implementation of the model, which the study did not provide. Nevertheless, in the opinion of RBR, the

extensive more than 500-page study provided a very detailed and competent analysis of all the key elements necessary for informed and objective political decision-making.

What did the SAIs conclude?

46. SAIs found that the division of roles and responsibilities is mostly clear, but still the efficiency of the project management, especially decision-making processes could be enhanced in order to speed up the project delivery. Although there are rules in place for dividing procurements, project parties have still at times struggled to find consensus on who should procure which works and services. Furthermore, there is no effective mechanism to solve deadlock situations where the four Beneficiaries cannot agree on a common solution. This is also true in case of reaching solutions in the SB of RBR. Since the three Baltic countries have partly had different visions than the RBR Management Board for the project governance (see p. 44-45), reaching decisions has led to time waste.

47. Recommendations:

- Beneficiaries need to agree on the decision-making matrix to reach decisions more effectively and Shareholders need to find ways for the SB to work more efficiently, in order to avoid delays in the project implementation.
- In order to guarantee the effective and timely implementation of the project, Beneficiaries need to agree on working rules for dividing the procurements between the Implementing Bodies.

3. RBR has developed rules and procedures for conducting procurements and contracts, and the rules were mainly followed, however, SAIs found areas for improvements

Criterion: The SAIs expected there to be rules and procedures in place within the organisational structure of RBR for carrying out procurement activities and managing contracts, and these rules and procedures have been followed.

Why is it important to develop internal rules and procedures for conducting procurements and managing contracts?

48. Common standards and rules give every Implementing Body a joint vision of key principles to promote the implementation of the project in high quality, within the planned timeline and budget. They assure that the railway meets the same parameters in each country and guarantee the interoperability of the parts constructed by each of the Baltic countries.

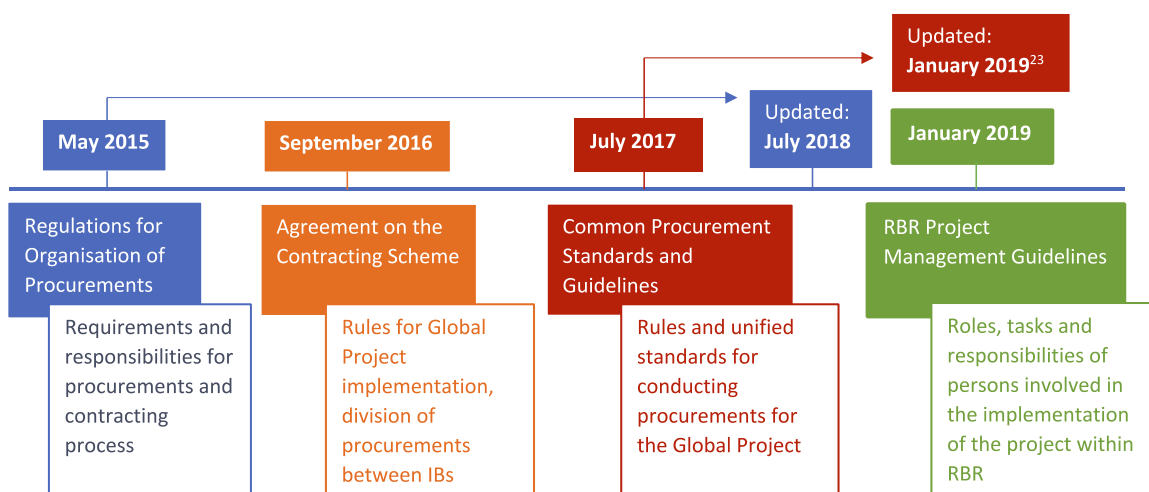
49. A comprehensive and functioning procurement and contracting model within the RB project is necessary and should be followed in order to enable effective and economic delivery of the RB project. Clear rules are a prerequisite to make sure that the fundamental principles of conducting public procurements – transparency, integrity, fairness and accountability – are ensured. A lack of rules for conducting procurements and managing contracts can lead to corruption, ineligible costs for the project, suppliers not fulfilling their contractual obligations, lawsuits, as well as time waste due to poorly prepared documents and failed procurements.

Have the rules and procedures to carry out procurement and contracting activities been established?

50. The requirements of the *Latvian Public Procurement Law* are binding to RBR and set requirements - for both procurements and contracts. The *Public Procurement Law* sets requirements and rules for the entire procurement process, as well as documenting the process.

51. RBR has put in place both internal regulations and regulations intended as standards and guidance for all Implementing Bodies to be followed. The regulations have been updated and elaborated over time. As the examined case-study procurements were mostly published before 2018, the SAIs checked if all measures and rules specified in regulations which were in force at the period of conducting the procurements were in place and had been followed. The main documents that determine rules and procedures on how to carry out procurement and contract activities are set out in Figure 5 below.

Figure 5. Main documents in place for conducting RBR procurements and managing contracts



Source: SAIs

Were the rules followed?

52. The majority of the examined RBR’s audited procurements adhered to the internal and external regulations and established procedures.

53. Nevertheless, in the case of “Legal services”²⁴ procurement, SAIs found a non-compliance to the *Public Procurement Law* requirements with regards to contract price and terms in the contract management phase. RBR concluded the framework agreements for legal services in June 2016 with the total contract price of 120 000 euros. SAIs found that RBR was still paying for these framework agreements until their termination in May 2019, although the agreed value had already been exceeded in 2016 (*See also Table 4 below*). The Latvian Procurement Monitoring Bureau informed²⁵ the SAIs that further solicitation of legal services under this framework agreement is unlawful. RBR terminated the last framework agreement on 31 May 2019. The main reason for this situation lasting as long, was that the RBR SB did not provide an

²³ Supersedes the following documents: Procurement policy for implementation of the Rail Baltic/Rail Baltica project (in force from 13.01.2017); Minimum set of requirements for the qualifications of economic operators (in force from 24.07.2017).

²⁴ Tender P2016-2 “Legal Services for Rail Baltica Project”, published on 14.01.2016.

²⁵ Latvian Procurement Monitoring Bureau 11.07.2019. letter No.9-2/1149 ”Regarding the examination of the application and the decision taken“.

approval to conclude the agreement with the new service provider in October 2017 when new procurement was undertaken.

Table 4. Payments made by RBR for framework agreements in the case of “Legal services”²⁶ (euros)

	2016	2017	2018	2019	Total
Supplier A	25 290	52 615	14 580	-	92 485
Supplier B	3 000	-	-	-	3 000
Supplier C	68 235	46 024	15 948	-	130 207
Supplier D	24 109	31 386	31 278	11 088	97 861
Total	120 634	130 025	61 806	11 088	323 553

Source: SAls according to the information from RBR²⁷

54. The examined case-studies showed that the reasons for choosing the members of procurement committee, namely why each member is best suitable and/or adds value to the concrete procurement, were not documented. RBR has explained that this involves additional administration for the limited resource available within the company. While not directly requiring the documentation of the reasons, the *Public Procurement Law* stipulates that contracting authority shall ensure that procurement committee is competent in the field where the procurement contract is being awarded. Also, the legal analysis of the project implementation brought out that the Management Board can indirectly affect public procurements by choosing procurement committee members. For both transparency and selecting specialists in the procurement committee who are competent in procurement object, the *Guide for Auditing Public Procurements*²⁸ recommends documenting all measures and decisions taken in a procurement process therefore the selection of procurement committee members should be documented and clear.

Example – The “Legal services” procurement Regulation terms were limiting competition

In December The “Legal services”²⁹ procurement was terminated. Regarding this procurement, the Latvian Procurement Monitoring Bureau received two complaints from tenderers which pointed out the possible restriction of competition in Regulation terms. The Latvian Procurement Monitoring Bureau admitted that these complaints are justified. Taking into account that there was no possibility to amend the procurement documents, because the deadline for submitting bids had expired, the Latvian Public Procurement Monitoring Bureau asked RBR to terminate this procurement.

55. The CPSG states that, in order to enhance the quality of procurements and to determine whether the intended procurement requirements do not unduly restrict competition, Implementing Bodies must conduct market research whenever feasible and/or required by the applicable national procurement law. However, preliminary market research or consultations were conducted only for the “Legal Services” procurement from the examined case-study procurements. Though RBR continuously collects

²⁶ Tender P2016-2 “Legal Services for Rail Baltica Project”, published on 14.01.2016.

²⁷ 28.05.2019 e-mail from RBR Eligibility Manager.

²⁸ Public Procurement Audit, Lisboa 2018, available:

http://www.tcontas.pt/pt/publicacoes/public_procurement.shtm

²⁹ Tender RBR 2017/25, published on 15.11.2017.

information about the trends and performance of the market, this market research is not documented for each procurement.

56. Furthermore, the examined case-studies showed that, though it is stated in the CPSG that appropriate independent experts, in particular – technical experts, should be involved in the preparation of procurement documents, to the maximum extent possible, external independent experts were not involved. In some cases, there were internal experts involved and in some cases procurement documents were prepared without any involvement of experts. The involvement of independent experts could help to assure that the procurement Regulations are of high quality and lessen the risks of the procurement being terminated, as was the case in the “Legal Services” procurement.

57. The examined case-studies showed that there were minor deficiencies in some cases. These are described in the Table 5 below.

Table 5. Fulfilment of case-study criteria³⁰ in selected case-studies³¹

Criteria	Infrastructure Management Study ³²	Ülemiste-Vanasadam feasibility study ³³	Legal services ³⁴	Business plan ³⁵	Upgrade study ³⁶	Operational plan ³⁷
The established guides have been followed	Partly. Rules were mostly followed. Preliminary market research or consultations ³⁸ and the selection of the Procurement Commission members were not documented.					
The requirements for documentation have been followed	Yes. No significant discrepancies.			Partly. Most of the requirements for documentation were followed, but there is lack of information in SB and MB meeting minutes about all the obstacles of contract execution along with the measures used to overcome them.		Yes. No significant discrepancies.
The requirements for information exchange have been followed	Partly. All the necessary reports have been fulfilled, but the risks and problems that occurred, such as delays, were not always described or described in a timely manner in the reports.					

³⁰ Criteria created by the SAIs, the fulfilment of the criteria was assessed based on the adherence to the rules and regulations set out in the Public Procurement Law of the Republic of Latvia, guidelines by RBR and the project Beneficiaries.

³¹ The evaluation criteria are explained in the methodology part in Annex B.

³² Tender RBR 2017/26 “Rail Baltica Infrastructure Management Study”, published on 08.11.2017 (additionally previous tender RBR 2917/18, published on 07.07.2017, terminated on 31.10.2017).

³³ Tender RBR 2017/22 „Feasibility and technical framework study for a rail bound (light rail or tram) connection from RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old City Harbour/Vanasadam)”, published on 21.08.2017.

³⁴ Tender RBR 2018/9 “Legal Services”, published 26.02.2018 (additionally two previously terminated tenders – RBR 2017/20 “Legal Services”, published on 09.07.2017 and RBR 2017/25 “Legal Services”, published on 15.11.2017. - were analysed, as well as, framework agreement from tender P/2016-2, published on 14.01.2016).

³⁵ Tender RBR 2017/9 “Preparation of Business plan”, published on 07.04.2017.

³⁶ Tender RBR 2017/2 „Polish/Lithuanian state border-Kaunas-RRT Palemonas Upgrade”, published on 01.02.2017.

³⁷ Tender RBR 2017/19 “Preparation of the operational plan of the railway”, published on 23.08.2017.

³⁸ However, in the case-study “Legal services” (RBR 2017/20) preliminary market consultations were conducted and documented. According to RBR preliminary market consultations was done for procurements RBR 2016/2 and for RBR 2017/20, which is attributable to procurements RBR 2017/25 and RBR 2018/9.

The reporting lines have been followed in case of significant changes	Yes. All the significant changes and problems have been reflected in the reports.	Partly. All the significant changes and problems have been reflected in the reports, but there was no information in the reports on which grounds the procurement was split and how the decision was made.	Yes. All the significant changes and problems have been reflected in the reports, if so required. However, in one case, monthly reports did not include information on the conflict between SB and MB on the results of the Legal services 2nd part ³⁹ , as this procurement was out of the scope of the CEF GAs and Beneficiaries are required to add information concerning only GA Activities to the monthly reports.			
Change management guidelines and reporting lines have been followed in case of risks materializing	Yes. The risks are discussed regularly during MB meetings and appropriate actions were taken in cases where risks materialized.	Not Applicable. No significant risks materialized.	Yes. The risks are discussed regularly during MB meetings and appropriate actions were taken in cases where risks materialized.	Not Applicable. No significant risks materialized.	Not Applicable. No significant risks materialized. There were delays in the implementation of the contract but, according to RBR, these were due to RBR activities and disapprovals from the SB.	Yes. According to RBR MB meeting minutes the MB is regularly being informed of the risks and problems that occur in projects and MB took the actions to minimize delay
Quality control measures have been followed	Yes. All the necessary deeds of transfer and acceptance of services were signed. SB has approved the final report. Internal technical experts were included.		Partly. The regulations that were in place were mostly followed. All the necessary deeds of transfer and Acceptance-Delivery Acts were signed. In all the necessary cases, SB has approved the final report. In some cases, there were internal experts involved but no external experts were involved in the preparation of the procurement documents, though it is recommended in the CPSG			
	The regulations that were in place were mostly followed. Beneficiaries, as		Procurement ⁴⁰ was terminated, because <i>Latvian Public Procurement Bureau</i> received two	Penalties have been imposed for delays.		Important stakeholders and Beneficiaries were involved in the appraisal of the deliverables in the

³⁹ Tender RBR 2017/20, published on 09.07.2017.

⁴⁰ Tender RBR 2017/25, published on 15.11.2017.

	well as external experts were involved in the appraisal of the deliverables and law firm SORAINEN was involved in the preparation of the procurement Regulations.		complaints from tenderers which pointed out the possible restriction of competition in Regulation terms. Complaints were admitted, justified and taking into account that there was no possibility to amend procurement documents, procurement was terminated.			Technical Working Group.
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Source: SAls based on case-study analysis

What did the SAIs conclude?

58. The SAIs found that the rules for conducting procurements and managing contracts were mostly in place in RBR. Also, the rules and regulations have become more comprehensive over time. These rules were mostly followed in the analysed case-study procurements and contracts. However, in some cases it was not possible to ascertain whether the internal rules were followed to the full extent or not because the appraisal of the necessity to involve or not to involve external experts and conduct preliminary market research was not documented. Thus, though the CPSG state that both should be done to the maximum extent possible and whenever feasible, due to the lack of documentation, the SAIs could not assess whether not involving experts and not conducting preliminary market research was justifiable or not. Hence, SAIs found that in some cases better documentation would enhance transparency of the decisions made. This is also true in the case of choosing procurement committee members. In one case SAIs found a non-compliance to the *Public Procurement Law* in the contract management phase.

59. Recommendations:

- To ensure the transparency and quality of the preparation and the process of procurement, the reasons for choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts should be documented by RBR.

4. Risks have been identified, assessed and prioritized but the risk management system, including for the Global Project, is still under development

Criterion: The SAIs expected that there is a risk management system in place to identify, assess, prioritize and alleviate risks associated to project implementation.

Why is it important to assess risks?

60. Risk management as a part of the management process gives clearer insight of the risks what can endanger the effective project implementation and results. In order to ensure effective decision making and project implementation, all project parties should be aware of risks, and the risks should be mitigated wherever possible.

61. During project execution unexpected situations and developments can in specific cases lead to ineffectiveness, i.e. delays and cost overruns. Risks of delays and cost overrun have already materialized according to the SAIs' analysis of the project timetable and budget. Organizational risks may be realized in cases where RBR and other Beneficiaries are not able to agree and ensure necessary decisions in a timely manner.

Are the risks identified, assessed and prioritized and mitigation measures found?

62. The Global Project risks have been identified in a number of studies. Risk and sensitivity analyses have been conducted as part of the cost-benefit analysis in 2017. Also, main risks and possible mitigation measures are listed in the final report of "Risk Management Frame Work, Risk Register" accepted by RBR in January 2019. In the Frame Work report a risk register was created and recommendations on the risk management cycle were given. According to RBR, the risk register was also updated in Spring 2019, identified risks were moved into the temporary database and risk owners were assigned.

63. A general overview of risks by Activities is also one part of the Milestones Report and through the report the risks are communicated to the SB, Beneficiaries and the European Commission. The Milestones Report for 2018⁴¹ includes the description of the main risks and mitigation measures addressed both to RBR and other Beneficiaries.

64. Though according to RBR, the primary reporting mechanism works through the MB and information about risks and mitigation measures are regularly provided to the SB, the risks for each Activity should be also updated in monthly reports. In the case of many Activities, though, risks are not described in the monthly reports at all. In other cases, the description of risks is general or problems that have already occurred are described rather than risks. For example, in all of the case-study procurements delays occurred, with the initial “Infrastructure Management Study” and “Legal Services” procurements also being terminated, but no risks related to procurements were described in the monthly reports.

65. When it comes to procurement contracts, though, the SAIs found that risk mitigation measures were in place, namely appropriate clauses for necessary remedies in case of delay or breach of contract. Contractual risks are addressed in the contract clauses and these include reporting requirements, insurance requirements, liabilities, penalties, etc.

66. According to RBR, risks are also mitigated by Reference Groups consisting of participants from national Implementing Bodies and Beneficiaries where information is exchanged, problems and issues are identified and recommendations for implementing further mitigation measures are made to the MB of RBR.

67. Nevertheless, the risk management system has not been developed fully. After accepting the final report of the aforementioned “Risk Management Frame Work”, RBR launched the procurement for a risk management software. The aim of the procurement is to have a software solution for planning, scheduling, cost management, risk analysis, change control and reporting in one system. The software solution should ensure that the changes, potential issues and risks are quickly anticipated, easily understood and managed more effectively. Once the risk management system is fully developed, all of the above-mentioned separate risk management tools should be integrated into the risk management system.

68. The risk management manual proposes procedures for how information about risks should be communicated and reported and to whom, including what risks need to reach which governance levels and how often they should be reported. Nevertheless, reporting lines and responsibilities for risk management have not been transposed into the internal rules and regulations of RBR yet. As of the end of 2019, the position of risk managers is also not yet filled at RBR, though RBR is planning to appoint a risk manager in the beginning of 2020.

69. The developed risk register also includes information on who should be responsible for managing each identified risk and implementing the

⁴¹ Rail Baltica Annual Milestone Report, approved by RB Rail Management Board on 29.04.2019.

Are the responsibilities for management in place?

identified mitigation measures. It also defines at which levels of the project a certain risk should be managed.

70. In some cases, risks can be managed in RBR but, in other cases, other Beneficiaries and national Implementing Bodies need to mitigate the risks. For example, risks related to land acquisition can be managed and decisions taken at the level of each state, organizational risks like unclear procedures within the project must be managed by the management of RBR together with national Beneficiaries.

71. The SAIs found that the risk management at the three levels – national Implementing Bodies, RBR and other Beneficiaries – is not coherent with one another. Though, RBR has procured a risk register and manual for the entire Global Project, there is no unified risk management system. The Risk Manual emphasises that within RBR, as well as the national Implementing Bodies, risk management is an integral responsibility of all decision makers.

72. Risk management in RBR cannot function on a standalone basis. For example, the national Implementing Body of Estonia has procured a separate risk analysis study to map the risks during the planning, design and construction phases in Estonia. According to the national Implementing Body of Estonia, they are planning to align their system with RBR's once the latter is finalized. A system has also been created in the national Implementing Body of Lithuania that is, according to AB Lietuvos Geležinkeliai, already partly integrated with the risk management system of RBR and will be fully integrated by means of the abovementioned software solution. According to RBR, though, RBR has not seen the system in place in the national Implementing Body of Lithuania.

73. Furthermore, in accordance with the RBR SB regulations, an Audit and Risk Committee has been established. Nevertheless, as of the end of 2019, the Audit and Risk Committee has only convened to discuss budgetary issues and has not dealt with risks. Risks should be acknowledged also at the SB level to understand what can endanger the progress of the project.

What did the SAIs conclude?

74. SAIs found that, although risks have been identified, the risk management system is still under development and the risks management software has not been taken into use yet, as of October 2019. Though, RBR and national Implementing Bodies either have a risk management system in place or are in the process of developing one, the Global Project risks need to be managed throughout the project, including the Beneficiaries.

75. Although the risks are assessed and the assessments indicate that high risks are related to the project timeline and exceeding the budget, continued insufficient risk management can lead to further delays in the project, overruns of the budget or poor quality of works.

76. Recommendations:

- RBR, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation

measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.

- Beneficiaries should, taking into account the previous recommendation, ensure that the risk management system at all levels works based on the same principles.
- Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures.

5. RBR has established a quality control system that includes monitoring and reporting lines for conducting procurements and managing contracts, but more attention should be paid to the quality of reporting

Criterion: The SAIs expected a quality control system to be in place that includes monitoring and reporting lines, so RBR can effectively monitor procurements and contracts, and these lines have been followed.

Why is it important to monitor procurements and contracts effectively?

77. According to ISO 9001:2015 the organization determines the processes needed for the quality management system and their application throughout the organization. Among others, the organization should determine methods of quality control (monitoring of performance), the sequence of the processes in the organization, assign responsibilities and evaluate the process and the quality management system. Regular and systematic checks of quality ensure that all procedures and activities are implemented both in the RBR and national Beneficiaries level according to the agreed regulations and best possible practices. Quality control in procurements and contracts is essential for avoiding errors and finding room for improvement.

78. A monitoring and reporting system is necessary for project parties to be able to effectively monitor procurements and contracts to make sure the quality of the implementation of the project is assured and all activities are done in accordance with the relevant laws and regulations and within the agreed-upon timeline and budget.

Has a quality control system been created?

79. Quality control measures and rules for monitoring procurements and contracts have been mostly established. Part of significant documents that set the quality control measures and responsibilities were either adopted or updated in 2017 or later (*See also Figure 5 above*). For example, *Regulations for Organisation of Procurements* provide guidance on the rules that apply to RBR employees who are involved in procurement activity, including information about organisation of procurement procedures and tendering process. *Common Procurement Standards and Guidelines for the Rail Baltica Project* give key principles and outline standards and guidelines which are applicable to Global Project procurements to guarantee the best result in the implementation of the RB project.

80. In order to assure high quality of procurements RBR, for example:

- has determined roles and responsibilities, as well as margins of discretion, for conducting procurements and managing contracts;
- has created a minimum set of requirements for the qualification of economic operators;
- has created the requirements to carry out preliminary market research whenever feasible and/or required by the applicable national procurement law;
- reviews supplier feedback to assess the quality of procurements;
- set the requirement to involve independent experts, in particular – technical experts, to the maximum extent possible in the preparation of procurement documents.

81. Furthermore, the *Inter-Beneficiary Agreement*, CEF Grant Agreements, as well as RBR’s internal documents, set requirements for reporting, including about conducting procurements and contracts (*see Annex A for the reporting system*). According to these agreements RBR has to make supervision of national Implementing Bodies and the national Beneficiaries can supervise RBR as it uses state budget funds of Estonia, Latvia and Lithuania.

82. The established reporting system requires reporting on the progress of the Activities and sub-activities, including milestones, identified issues and risks, detailed cash-flow forecast for each Activity, execution of internal procurement plan etc. Reporting takes place on a regular basis – weekly, monthly, quarterly and annually.

83. Although RBR was established in October 2014, the position of internal auditor was filled starting from October 2019. The appointment of an internal auditor can help assure the quality of the internal control system and improve RBR’s operations by bringing a systematic and disciplined approach to the effectiveness of risk management, control and governance processes.

Have the quality control requirements been followed?

84. SAIs found that the existing quality control measures were mostly followed, though there were some discrepancies. In some examined case-studies it was not possible to ascertain whether the internal rules were followed to the full extent or not because necessity to involve or not to involve external experts and conducting of preliminary market research were not documented (*for further information, see part about rules and procedures starting from point 54*).

85. The established reporting system had mainly been followed, however, in some cases the quality of the information presented in the reports of both the national Beneficiaries and RBR was either outdated or problems that had already occurred were described instead of risks (*for further information, see part about risks starting from point 64*).

86. SAIs found that the responsibilities of the Activity/Contract Manager⁴² had not been sufficiently clearly defined in the internal regulations of RBR. GrECo International AG brought out in the risk register that there is a lack of procedures for checks and approval at the planning phase, the consequence of which can be a lack of clarity as to who exactly does what, when and how. The SAIs also found that it was unclear if and in which cases the Activity/Contract Manager was competent to take a decision regarding contract supervision on his/her own and how Contract Manager's information and/or notes on contract progress are used further. In the course of the audit, though, RBR has improved the internal regulations for project management and in the Project Management Guidelines, which are in force from 2019, there is now given a definition for Project Owner, Project Manager, Contract Manager and other positions, the responsibilities and tasks of each position are defined, and procedures are in place for reporting risks of delays.

What did the SAIs conclude?

87. RBR has established a quality control system for conducting procurements and contracts and improved their internal regulations during the audit. Also, the quality control measures were mostly followed.

88. Though there are rules in place for regular reporting, the quality of the reports was insufficient, and the reporting system needs to be further developed to make better informed decisions and to enable more efficient supervision.

89. Recommendation:

- The Beneficiaries and RBR should enhance the quality of the reporting, as quality and timely information is essential for making informed decisions.

Further recommendations for enhancing quality control are brought out under Chapter 3 and 4.

6. The three Baltic countries have taken the RB project into account in the medium-term state budgets and financial planning but there is no formally approved long-term planning

Criterion: The SAIs expected long-term plans for financing the RB project to be in place in each of the countries, including for scenarios in which the project ends up costing more than planned.

Why is it important to plan long-term project funding?

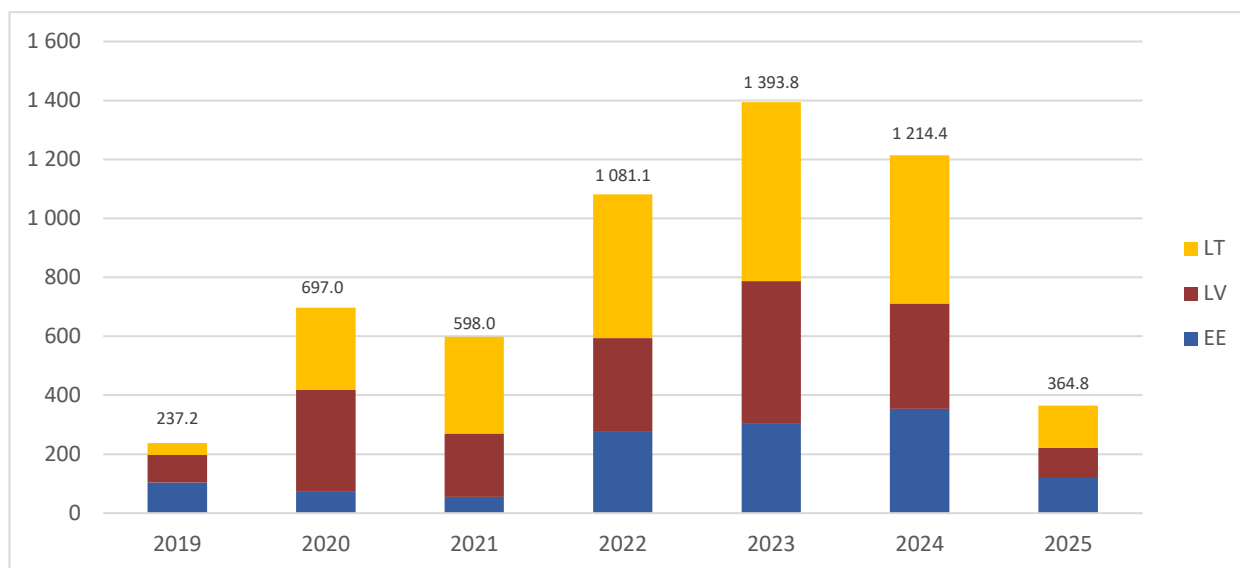
90. The three Baltic countries have committed to financing the project through multilateral agreements, most importantly the IGA which was ratified by the Parliaments of the three states.

91. The majority of the project costs have been estimated to be incurred in the later stages of the project when building works commence.

⁴² According to RBR, the Activity Manager is assigned with the overall responsibility of delivery/management of a task, whereas the Contract Manager's role would be more specifically addressing direct contractual/commercial issues.

According to the CBA, the highest costs of the RB are expected in 2023 and 2024 (See also Figure 6 below).

Figure 6. Forecast investments for the RB per country 2019-2025 (M EUR) based on 2017 CBA



Source: Rail Baltica Global Project CBA

Have the countries incorporated the RB project into national financial plans?

92. In accordance with the existing national budget planning processes, the Baltic countries make medium-term financial planning: Latvia, Lithuania for 3 years, Estonia for 5 years⁴³. Each state budget is planned for the next financial year and budget strategies for the additional two or three years respectively. State budgets and budget strategies provide for financing of the RB project, both EU co-financing and national parts, however, the duration of the currently approved plans cover less than approximately 20% of the finances needed for getting the RB project completed (See Table 6 below).

Table 6. Costs under CEF I-III Activities and financing planned in state budgets and budget strategies (M EUR)⁴⁴

	CEF GA cost until 2018 ⁴⁵	2019	2020	2021	2022	2023	Unplanned investments ⁴⁶
Estonia	14.1	28.8	49.0	83.0	141.3	99.7	79.6%
Latvia	4.7	32.3	69	95.2	-	-	89.8%
Lithuania	21.6	46.6	156.4	56.7	-	-	88.6%

Source: Estonian, Latvian, Lithuanian state medium-term budget plans as of 2019, ASR and CBA

93. Countries do not have procedures in place for planning long-term financial commitments in state budgets or budget strategies. Though the three Baltic countries have made a commitment in the IGA to finance the RB project implementation, there are no official scenarios in place for project financing until the end of the project, nor the full life cycle of the project. The national financial planning regulations do not foresee a

⁴³ The state budget of Estonia is planned for one year and the State Budget Strategy for the following four years.

⁴⁴ All costs include national own-financing and EU co-financing.

⁴⁵ Actual costs up 2015-2018 (included) according to the 2018 ASR from Spring 2019.

⁴⁶ Percentage of all investments forecasted in the CBA that are not covered by the investments made in 2015-2018 according to the 2018 ASR and investments planned in state budgets and budget strategies.

requirement for long-term planning or estimations for the entirety of the RB project implementation.

Do the countries have a contingency plan for financing?

94. By signing the CEF Grant Agreements, the Beneficiaries have made a commitment to bear the extra cost incurred if the budget agreed in the Grant Agreement is exceeded.

95. The SAIs have drawn attention to the lack of alternatives for mobilising funds and impact on the national budgets also in 2017. In March 2017, the National Audit Office of Estonia published an overview concerning the obligation taken on with the signing of the IGA and brought out that the Government of Estonia has no long-term plan for financing the RB project nor is the availability of self-finances guaranteed until the end of the project. Furthermore, the SAI noted that it is not known how the project would be financed if the EU support for the project were to decrease and/or the project cost were to increase and/or the project proved to be less profitable than expected. These plans are still not in place.

96. In June 2017 the Latvian SAI wrote to the Foreign Affairs Committee of the Latvian Parliament that, in the opinion of the State Audit Office of the Republic of Latvia, the legislator and the executive should re-verify whether the project implementers have a specific action plan to mitigate risks such as the lack of co-financing by the EU at the planned level.

97. In December 2018, the Lithuanian SAI performed an audit titled "Management of public railway infrastructure" and noted that until 2017 the RB project was mainly co-financed by AB Lietuvos Geležinkeliai company. As the need for co-financing of the project will increase significantly, it is stated that the Ministry of Transport and Communication should contribute more to the co-financing of the project.

98. According to the IGA, the project parties shall seek support at the highest permissible European Union co-financing rates, however, if future EU financing is less than 85%, countries are entitled to review their commitments to finance and implement the project by the deadline. Since EU financing is not guaranteed until the end of the project nor in the amount of 85%, it's important for the governments of the three Baltic countries to prepare concrete plans of actions for possible situation when EU financing is not at the rate of 85% until project implementation deadline.

99. Different own-financing ratios were analysed in the RB project CBA. The CBA brings out the need for national self-financing in cases where EU co-financing decreases to 80, 60, 40, 20 and even 0%. Despite that, the three Baltic States have no unilateral nor separate agreed plans of action for implementing the RB project in cases where the EU co-financing ratio is any other than the expected 85%.

What did the SAIs conclude?

100. The implementation of the RB project is financed from CEF according to grant applications on an Activity-basis throughout different EU multiannual financial frameworks. Thus, there is no certainty as to the extent of possible EU co-financing until the end of the project and co-financing in bigger ratio would be a significant burden for national budgets. All three Baltic countries have included the RB in state financial planning but have not formally approved long-term plans for project

financing. Nor do the countries have a plan of action to guarantee implementation of the project in case the cost of project implementation is higher than estimated or EU co-financing smaller than estimated. The SAIs found that the inherent uncertainty of EU funding along with the lack of long-term financial planning from the side of the three Baltic States, could encompass a risk to the project implementation. A situation where financing is not available for the project, in turn, can lead to the project timeline and budget being further overrun

101. Recommendation:

- Beneficiaries should estimate the long-term availability of national funding for the project, including in case the project costs rise, or the EU funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.

Annex A. Reporting system for the Rail Baltica project



- report



- giving the input



- submit information

Abbreviations:

RBR SB – RBR Supervisory Board

EC – European Commission

INEA – Innovation and Networks Executive Agency

PDO – Towards an Integrated Project Delivery Organization. A package of Measures

ABIB – Agreements between Beneficiaries and national Implementing Bodies

IBA – Inter-Beneficiary Agreement

MRP – RBR Management Reporting Procedure

CEF GA – Grant Agreement under CEF (Connecting Europe Facility)

ID – Commission Implementing Decision of 26.10.2018

SHA – Shareholders Agreement

SB decision – RBR SB 22.03.2018 meeting decision

Annex B. Methodology

The Supreme Audit Institutions of Estonia, Latvia and Lithuania analysed the implementation of the Rail Baltica project on both national level and international level. For that, the Supreme Audit Institutions developed a questionnaire which was used both when analysing the workings of the national Implementing Body and the project coordinator, RB Rail AS. The audit questions were as follows:

1. Is the RB procurement model efficient and enables effective and economic delivery of the RB project?
 - 1.1. Have the roles and responsibilities and main activities for effective and economic project procurement management been established?
 - 1.2. Is RB procurement model efficiently followed by RB Rail and Holding companies?
 - 1.3. Are procurement risks efficiently managed by RB Rail AS and Holding companies?
 - 1.4. Are RB procurements monitored by RB Rail AS and Holding companies effectively?
 - 1.5. Are RB procurements generating competition for economic implementation of RB⁴⁷?
2. Is the RB contracting model efficient and enables effective and economic delivery of the RB project?
 - 2.1. Have the roles and responsibilities and main activities for effective contract management been established?
 - 2.2. Is RB contracting model efficiently followed by RB Rail and Holding companies?
 - 2.3. Are the risks associated with contracts efficiently managed by RB Rail AS and Holdings?
 - 2.4. Are RB contracts monitored by RB Rail AS and Holding companies effectively?
3. Is the funding of the RB Global Project effectively secured by the national governments?
 - 3.1. Is the funding of RB Global projects secured by Estonian, Latvian and Lithuanian States?
 - 3.2. Is the risk that RB Global project ends up costing more than planned or EU financing decreases managed by Estonia, Latvia and Lithuania?

In order to assess these questions, the Supreme Audit Institutions checked:

- First, whether the roles and responsibilities for the implementation of the RB Global project were clearly defined and secured the timely and economic delivery of the project. This included the assessment of whether the project was in time and on budget.
- Second, whether there were internal rules and regulations in place in RBR for conducting procurements and managing contracts.

⁴⁷ Due to the complexity of receiving the necessary information concerning the number of bids in each stage of all the procurements conducted by RBR, the SAIs took the decision to exclude this sub-question from the audit report.

- Third, whether there were financial plans in place in all Baltic States until the end of the project, including scenarios for situations when the project ends up costing more, taking more time or EU support is lower than anticipated.

The most important criteria assessed, are brought out in the beginning of each key message.

The implementation of the project within each state was assessed by each SAI individually. National Audit Office of Estonia published the audit report of the implementation of the Rail Baltica project in Estonia on 5 December 2019. State Audit Office of the Republic of Latvia included the Rail Baltica project in their audit of major railway projects “Is the process of planning and implementing investment projects and measures in the rail sector effective and focused on the development of the railway sector?” which will be published in January 2020. National Audit Office of Lithuania published an audit report “Management of the public railway infrastructure” in December 2018.

The Supreme Audit Institutions also conducted case-studies of the procurements and contracts of RB Rail AS to test the functioning of the internal control system. For the case-study analysis, the Supreme Audit Institutions compiled a list of criteria the procurements and contracts should adhere to the Latvian public procurement regulations, multilateral agreements between the project parties and internal regulations within RB Rail AS and best practice of SAIs for appraising public procurements.

The SAIs chose the six procurements with the highest contract value or procurements where there had been alterations to initial plans that were completed by RB Rail AS in the period from 2015 until June of 2018. The procurements analysed were:

- Tender RBR 2017/2 “Polish/Lithuanian state border-Kaunas-RRT Palemonas Upgrade”, published on 01.02.2017
- Tender RBR 2017/9 “Preparation of Business plan”, published on 07.04.2017
- Tender RBR 2017/19 “Preparation of the operational plan of the railway”, published on 23.08.2017
- Tender RBR 2017/22 “Feasibility and technical framework study for a rail bound (light rail or tram) connection from RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old City Harbour/Vanasadam)”, published on 21.08.2017
- Tender RBR 2017/26 “Rail Baltica Infrastructure Management Study”, published on 08.11.2017 (additionally previous tender RBR 2917/18, published on 07.07.2017, terminated on 31.10.2017)
- Tender RBR 2018/9 “Legal Services”, published on 26.02.2018 (additionally two previously terminated tenders – RBR 2017/20 “Legal Services”, published on 09.07.2017 and RBR 2017/25 “Legal Services”, published on 15.11.2017. - were analysed, as well as, framework agreement from tender P/2016-2, published on 14.01.2016)

Furthermore, the Supreme Audit Institutions commissioned a legal analysis to assess the legality of the project organisation and the implementation structure of the Rail Baltica project. The aim on the legal analysis was to determine how the complex implementation structure of the Rail Baltica project could potentially influence the timely and effective implementation of the project according to the legal framework in place in the Baltic States. The legal analysis did not assess the effectiveness of Rail Baltica project implementation structure according to project management best practice, neither did the legal analysis to assess whether the implementation framework is the best possible framework. The legal analysis was conducted by Law Office NOVE. The results of the legal analysis were taken into account when writing this report.

Interviews conducted in the course of the audit:

Interviewee	Date of the interview
RB Rail AS	09.10.2018
RB Rail AS	12.04.2019
RB Rail AS	27.08.2019
Interviews conducted by National Audit Office of Estonia⁴⁸	
Rail Baltic Estonia OÜ	09.08.2018
Ministry of Economic Affairs and Communications, including Estonian SB member of RBR	14.08.2018
Ministry of Finance	06.09.2018
Rail Baltic Estonia OÜ	15.01.2019
Rail Baltic Estonia OÜ, including	20.02.2019
Ministry of Economic Affairs and Communications	28.03.2019
Ministry of Economic Affairs and Communications Ministry of Finance	15.08.2019
Rail Baltic Estonia OÜ, including Estonian SB member of RBR	16.08.2019
Ministry of Economic Affairs and Communications, including Estonian SB member of RBR	22.10.2019
Interviews conducted by State Audit Office of the Republic of Latvia	
Ministry of Transport	22.02.2019
Ministry of Transport	12.09.2019
Interviews conducted by National Audit Office of Lithuania	
AB Lietuvos Geležinkeliai	30.01.2019
Ministry of Finance of the Republic of Lithuania	27.02.2019
Ministry of Transport and Communications of the Republic of Lithuania	25.06.2019
AB Lietuvos Geležinkeliai and Lithuanian members of the SB of RBR	17.10.2019
Ministry of Transport and Communications of the Republic of Lithuania	30.10.2019

Documents analysed in the course of the audit:

- Commission Implementing Decision on the Rail Baltica cross-border project on the North Sea-Baltic Core Network Corridor
- Inter-Beneficiary Agreement between RB Rail AS and Ministry of Economic Affairs and Communications of the Republic of Estonia and Ministry of Transport of the Republic of Latvia and Ministry of Transport and Communications of the Republic of Lithuania, 16.06.2016
- Common procurement standards and guidelines for Rail Baltica project, 21.04.2017 and 03.08.2018
- CEF Grant Agreements
- RBA Rail AS Shareholders' Agreement
- Agreement on the Contracting Scheme for the Rail Baltic

⁴⁸ The interviews were conducted as part of the national audit concerning the RB project, at the same time the cooperative audit issues were discussed.

- Statutes of RB Rail AS
- RB Rail AS Procurement Policy
- The Project Delivery Organisation package of measures and Implementation plan of the Project Delivery Organisation package of measures
- Regulations for Organisation of Procurements
- Regulation of Representative Rights
- Terms of Reference of the Steering Group
- Procurement Work Group Regulations
- Rail Baltica Global Project Cost-Benefit Analysis Final Report, 30.04.2017
- Risk Management Frame Work, Risk Register Final report Rail Baltica, 22.01.2019
- Reports listed in Annex A
- State budgets and budgetary strategies of the Baltic States
- Documentation concerning the selected six case-studies
- RBR Management Board and Supervisory Board meeting minutes
- Other internal documents regulating the workings within RBR

Members of the audit team:

Steering Committee members	
SAI Estonia	Ines Metsalu-Nurminen, Director of Audit Department
SAI Latvia	Inese Kalvāne, Director of 1 st Audit Department
SAI Lithuania	Julius Lukošius, Director of Economy Audit Department
Team members	
SAI Estonia	Kaire Kuldpere, Audit Manager and Coordinator of Cooperative Audit Silja Einberg, Auditor Merje Kurm, Auditor Kristiina Visnapuu, Auditor
SAI Latvia	Larisa Reine, Head of Sector Laila Kikuste, Auditor and Audit Team Leader Karina Baranovska, Auditor
SAI Lithuania	Vaida Barizienė, Chief Advisor of Economy Audit Department Arūnas Zabulionis, Principal Auditor and Audit Team Leader Rimantė Sabutytė, Senior Auditor

Previous works on the topic:

SAI	Title	Date of release
SAI Estonia	“National Audit Office’s overview of the agreement between the governments of Estonia, Latvia and Lithuania for the development of the Rail Baltic/Rail Baltica rail connection”	24.05.2017
SAI Lithuania	“The Management of Public Railway Infrastructure”	12.12.2018

All audits conducted by the SAIs are available on the webpages of the SAIs:

- SAI Estonia – www.riigikontroll.ee
- SAI Latvia – www.lrvk.gov.lv
- SAI Lithuania – www.vkontrole.lt

Annex C. Auditee's answer – RB Rail AS

	Reply of the Management of the auditee
<p>General comments</p>	<p>It is important to state that the aim of RB Rail AS, as the project lead implementer, coordinator and beneficiary, similarly to Supreme Audit Institutions (SAIs), is to deliver a report which reflects the true challenges of the implementation of the Rail Baltica megaproject and we trust that the recommendations issued as a result of this report will aid further development of the Global Project to deliver the European added value and transformational socio-economic benefits for the people of Estonia, Latvia and Lithuania as well as the rest of the European Union.</p> <p>The Audit Report's title is "Implementation of the Rail Baltica project". However, the objective of the cooperative audit in accordance with the "Agreement between the supreme audit institutions of Estonia, Latvia and Lithuania on the cooperative audit" was to evaluate the management of internal control systems and public procurement of the Rail Baltica project. It should be noted that while the report covers multiple topics, it does not cover all the aspects critical for efficient and sustainable implementation and further operation of the Rail Baltica Project. Therefore, the report's title might create expectations that report would allow the wider society to actually understand the current state of play of the project implementation. We also note that, in essence, the report does not focus on the current state of play, but rather looks back in history, <i>inter alia</i>, by evaluating the decision-making mechanism on procurements, reporting and risk assessment and management. Thus, RB Rail AS would like to invite the SAIs to reconsider the title of the report and choose a more appropriate title which would better allow to understand the content of it without inadvertently creating diverging expectations.</p> <p>While seemingly out of scope of this particular audit exercise, we would like to draw your attention to other important project development priorities that in our view deserve your further supervision and assessment, including e.g. the importance of efficient multimodal integration of Rail Baltica in the wider connectivity and spatial ecosystems via intelligent design based on best practice benchmarking and innovation/digitalisation, enabling functionalities and seamless services for future freight and passenger services, thus giving the necessary importance to the full lifecycle perspective.</p> <p>The Management of RB Rail AS would also like to stress that the draft Audit Report still has multiple misleading facts and by reading the report the society and decision-makers might not gain a full overview of the situation and thus, the SAIs view of the assessment e.g. on whether there is a functioning internal control system in place that assures the effective, efficient and economic implementation of the Rail Baltica project.</p> <p>The SAIs have stated that this audit will cover all organisations which are responsible for the Rail Baltica Project implementation, however the report itself concentrates mainly on the analysis of RB Rail AS procedures not addressing in full the procedures and the role of national Beneficiaries and Implementing Bodies. While indeed, national, their role and actions directly impact the Rail Baltica project implementation, including recognising the transformational nature of Rail Baltica and its potential to enable a new economic corridor, beyond the national borders. The report e.g. does not analyse and explain in detail the issues related to the current organisational aspects and the issue of the "conflict of interests" where e.g. RB Rail AS in its capacity as the project coordinator is tasked to supervise national Beneficiaries and Implementing Bodies on the one hand, while the Supervisory Board which supervises RB Rail AS and, <i>inter alia</i>, approves RB Rail AS budget - is composed in separate cases of the same individuals being at the same time the head of RB Rail AS shareholder and also a national implementing body. On this matter, we would propose to investigate the matter in more detail, including taking into account the professional assessment of good corporate governance experts, such as the independent views expressed by the Baltic Institute of Corporate Governance.</p>

RB Rail AS also considers that the report may have afforded more attention to the critical importance of a life-cycle approach, i.e. while the report recognises the need for the national beneficiaries to monitor and plan the CAPEX contributions, it draws no attention to potential budgetary impacts on future Rail Baltica operational (OPEX) costs (including maintenance, renewals, etc.) and the required national subsidies whose likelihood and scope are directly related to the maintainability, forward-looking commercialization and cross-sectoral synergies of Rail Baltica. The result of the infrastructure design in our assessment has to ensure resource (including financial) efficiency also after the start of operations, *inter alia*, due to the fact that the EU funds do not cover operational costs.

Moreover, the draft report analyses the infrastructure management study as one of its review cases, but only from the procedural point of view, i.e. without recognising the critical impact that the choice of infrastructure management model will have in achieving (or not achieving) a well-functioning future market (and thereby likely reducing (or increasing) the need or scale of national budget contributions). Also, the audit scope limitations may have prevented a due consideration of the ongoing process of negotiating the infrastructure management model among the national beneficiaries, including the risks related to the potential departure from the conclusions and recommendations of the independent infrastructure management study, as well as lack of engagement of critical private logistics and investment sector stakeholders in this process.

And finally, the report almost entirely overlooks the highly damaging impact of the persistent understaffing and underfunding of RB Rail AS as one of the key project-driving organisations. For example, even though the report recognises the failure of national beneficiaries to agree on a long-term financing model for RB Rail AS (SAI report paragraph No. 43), it offers neither an assessment of its impact on Joint Venture operation, nor any recommendations (under SAIs report's paragraph No. 46) to address this issue. c

With regards to the procurement procedures reviewed in the draft Audit Report, the Management of RB Rail AS is of the opinion that considering the following aspects, RB Rail AS has been able to ensure, overall, an internationally very high level and high-quality procurement practice application, with no or minimal concerns relating to its procurement procedures:

- RB Rail AS has been established relatively recently;
- RB Rail AS exists in a highly complex environment in terms of legislative requirements spanning multiple countries and stakeholders, as well as technical requirements and challenges, whilst no such infrastructure as is intended to be delivered by the Rail Baltica Global Project currently exists in the Baltic Countries;
- Taking into account the limited resource and constantly changing dynamics of the project (due to project development through planning, studies and design, towards the construction phase), RB Rail AS has been establishing, implementing and continuously developing the policies, processes and practice within the organisation.

Noting the afore-mentioned, the Management of RB Rail AS would like to thank the SAIs for the open communication and the ability to express our views for the benefit of the Rail Baltica Global Project. The Management of RB Rail AS would like to signal its constructive approach towards any practical recommendations made by the SAIs in order to improve the development and implementation of the Global Project going forward. We further remain at your disposal in our joint effort to ensure that Rail Baltica is delivered in a transparent, professionally managed and efficient manner for the benefit of the people in the Baltic and beyond.

No	Recommendation by Estonian, Latvian and Lithuanian SAIs	Reply of the Management of the auditee	
		Action	Deadline
1	The Beneficiaries should decide on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project timeline and budget.	<p>RB Rail AS will summarise all existing legal acts to see what is defined on decision-making roles and responsibilities, including those of national governments (when they need to be involved and on what topics their decisions are needed). This summary will also identify any gaps.</p> <p>All 4 parties to decide how to proceed.</p> <p>For the time being, all parties should follow the existing change management procedures.</p>	15.12.2020
2	The Beneficiaries should develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.	<p>All parties involved should, first, agree on the baseline in all areas of the Global Project: time plan (Gantt chart), budget, technical standards and implementing activities.</p> <p>The change management plan should cover all above aspects.</p> <p>Activity: Reaching agreement on baselines.</p> <p>Preparation of the change management plan.</p> <p>Result: The baseline is approved by the Task Force.</p> <p>The change management plan is approved by the Task Force.</p>	15.12.2020
3	In order to guarantee the effective and timely implementation of the project, Beneficiaries need to agree on functioning rules in relation to the responsibility for types of procurements between the Implementing Bodies, in order to avoid disagreements in the future.	<p>Sign agreement on the Common Procurement Standards and Guidelines (CPSG), which is in signing process for over 1.5 years.</p> <p>Activity: Sign the CPSG agreement.</p> <p>Result: Signed CPSG agreement.</p>	31.03.2020
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	<p>Shareholders agreement and the statutes of RB Rail AS, including amendments on types and thresholds for decision making process, should be amended.</p> <p>Activity: Shareholders agreement and Statutes of RB Rail AS amended.</p> <p>Result: The amended Shareholders Agreement and the Statutes agreed and approved by the shareholders.</p>	30.06.2020
5	To ensure the transparency and quality of the preparation and the process of procurement, the reasons for choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts should be documented by RB Rail AS.	<p>RB Rail AS will develop internal procedure on choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts.</p> <p>Activity: Develop internal procedure.</p> <p>Propose the update of the CPSG.</p> <p>Result: Internal procedure approved by the Management Board of RB Rail AS.</p>	31.03.2020

		Updated CPSG.	
6	RBR, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.	<p>RB Rail AS have procured unified risk management system, which will include all stakeholders. The procurement was completed on 30 October 2019. The procurement is pending SB approval.</p> <p>Nomination of representative by LT BEN to participate in the training and implementation of the system.</p> <p>Activity: Approval of entering into contract by the SB.</p> <p>Contract signed for the system development.</p> <p>Agreement between all parties (nominated BEN representatives) on reporting lines and system set-up.</p> <p>Result: System deployed and fully operational.</p>	30.06.2020
7	Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.	Please see 6) above.	30.06.2020
8	Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures.	<p>Implementation of the risk IT system will solve this recommendation.</p> <p>Activity: See 6) above.</p>	30.06.2020
9	Beneficiaries and RBR should enhance the quality of the reporting, as quality and timely information is essential for making informed decisions.	<p>The entire reporting system needs to be reviewed and overhauled, and reports should be prepared quarterly, not monthly. Reporting principles should be aligned with ASR principles.</p> <p>Activity: RB Rail AS to propose new reporting approach.</p> <p>Result: Improved quality of reporting to enhance decision-making and ASR preparation.</p>	30.06.2020
10	Beneficiaries should estimate the long-term availability of national funding for the project, including in case the project costs rise, or the EU funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.	<p>(1) RB Rail AS has proposed to develop long-term financing scenarios of the Global Project, but the national BENs are reluctant to do this analysis. Global Project financing is the responsibility of the implementing Ministries, Ministries of Finance and national governments of all 3 Baltic States.</p> <p>Activity: RB Rail AS to develop long-term financing scenarios for the Global Project, subject to the available financing of RB Rail AS.</p> <p>Result: Long-term financing scenarios of the Global Project developed by RB Rail AS submitted to implementing ministries and governments for decision making.</p> <p>(2) Availability of the national long-term funding should include also the long-term financing principles for the Project coordinator RB Rail</p>	30.06.2020

		<p>AS. These principles should not impose additional administrative burden on RB Rail AS. It is the responsibility of the implementing Ministries, Ministries of Finance and national governments of all 3 Baltic States.</p> <p>Activity: Approve long-term financing model and amounts for funding RB Rail AS which would allow to implement activities based on the IGA, SHA, CSA and GAs.</p> <p>Result: Long-term financing model and limits for funding RB Rail AS agreed among all 4 parties is submitted by RB Rail AS to the implementing ministries for obtaining government resolutions, where needed.</p>	
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Annex D. Auditee's answer – Estonian Ministry of Economic Affairs and Communications

	Reply of the Management of the auditee
General comments	<p>Please note that this written opinion does not approach suggestions for correction of the inappropriate statements found in the text during the checking of facts, to which we have already drawn the attention of the National Audit Office. However, I would like to point out that the National Audit Office has not corrected some of such mistakes in this draft.</p> <p>I would also like to point out that the list of documents does not include a reference to the agreement made between the states about Rail Baltic (RB) (the Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia, and the Government of the Republic of Lithuania on the Development of the Rail Baltic/Rail Baltica Railway Connection; inter-governmental agreement, IGA), referring to RB and the joint venture RB Rail AS (RBR) as the object of the audit creates confusion (has the audit been carried out only in respect of RBR or the RB project).</p> <p>The roles of the holding companies as the shareholders of RB and the roles of the shareholders as the implementers of the RB project have constantly been confused. It's possible that the latter is the reason why it is stated in point 23 that <i>"In the case of national Implementing Bodies, it is up to the Beneficiaries to assure that the Activities are within the timeline and budget of the GA and to decide on the appropriate reaction to deviations. In the case of RBR, this is the task of the SB"</i>. According to the shareholders agreement (SHA) and in consideration of good management practice, the responsibility for making operative decisions (including for the performance of activities according to the schedule and the budget) rests primarily with the Management Board of RBR, not just the Supervisory Board.</p> <p>Also, in order to improve the legibility of the report, I suggest adding a summary of the written opinions of the various parties to the summary of each finding made by the National Audit Office in the introductory part of the report.</p>
Comments in the Executive Summary	<p>The following statement can be found on page 2 of the report: <i>"RB Rail AS estimated in June 2019 that the project could be delayed up to March 2030"</i>. Please note that in said point, the summary of the draft audit report does not correspond to the content of the draft audit report. The statement made in the respective part of the content of the report is that said opinion is only one of the possible scenarios and the parties continue making efforts to complete RB by the deadline set in the IGA. This is why the summary clearly misleads the readers.</p> <p>The paragraph on page 3, which states that <i>"The regulations for conducting procurements and managing contracts, including supervision, were mostly in place and followed in RB Rail AS. Nevertheless, the project management, especially change and risk management procedures are currently lacking on the Global Project level"</i>, is misleading. Please also note that RBR coordinates the implementation of the entire RB project. As RBR is only one of the implementers of the RB project, readers may be left with the impression that the statements made also apply to the other implementers of the project (e.g. RB Estonia OÜ).</p> <p>The comments we made to the draft of the National Audit Office's audit report "Funding and Implementation of the Rail Baltic Project in Estonia from 2014 to 2019" (submitted in letter no 1.1-14/2019/8222 of 6.11.2019) also apply to the following sections on the same page: <i>"Furthermore, the Baltic States do not have official forecasts or financial estimations and decisions in place for project financing until the end of the project, including contingency plans for scenarios in case the project ends up costing more or EU co-financing is less than estimated"</i> and <i>"The Baltic countries have taken the Rail Baltica project into account in the medium-term State budget strategies and financial planning but there is no long-term planning"</i>. We have</p>

	<p>explained that we're regularly updating the long-term budget forecast of the RB project. The fact that the forecast scenarios are not officially approved is no reason to claim that no long-term forecasting is done at all.</p> <p>In respect of the opinion on page 5 that "<i>The Supreme Audit Institutions found that the inherent uncertainty of European Union funding along with the gaps in long-term financial planning from the side of the Baltic States, can encompass a risk</i>", I will reiterate the position presented in my letter no 1.1-14/2019/8222 that making new decisions concerning official funding alternatives (e.g. by the Riigikogu) would jeopardise the receipt of a grant from the CEF. In a situation where the expenses of RB could have largely been covered with other funds in addition to the CEF grant and the required self-financing according to the approved document, the INEA would have no reason to approve applications for the grant, as the existence of financial resources outside the CEF grant would make the allocation of EU grants in the requested amount and at the requested rate unjustified. The point of EU grants is to finance the achievement of the results of such projects that are necessary in the common interests of the EU, which would otherwise not be achieved due to the lack of financial resources/funding options.</p>
<p>No</p> <p>Recommendation by Estonian, Latvian and Lithuanian SAIs</p>	<p>Reply of the Management of the auditee</p>
<p>1</p> <p>The Beneficiaries should decide on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project timeline and budget.</p>	<p>The persons responsible for the activities pursuant to the RB CEF grant agreement (GA) is defined for each activity under the GA, and therefore there is no need to decide who these persons are again in another document, such as the decision-making matrix recommended by the audit institutions. If the person responsible pursuant to the GA delegates a part of its responsibility for the implementation of the activities, the responsibility will be defined in the relevant agreement. The Contracting Scheme also regulates the responsibility of the parties for the implementation of the project activities.</p>
<p>2</p> <p>The Beneficiaries should develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.</p>	<p>We agree that although the agreements that regulate the goals related to the establishment of the RB, incl. the implementation of the RB project, the tasks of the parties, etc. have been made at different levels (incl. the IGA), a separate responsibility and decision-making matrix has not been developed yet. However, it's clear that decisions about specific activities under the GA and the amendment of the budget can be made by the person in charge of the activity, unless otherwise agreed.</p> <p>We agree in principle that it would be practical to prepare an overview of the decisions in the existing agreements and the provisions that define responsibility in the interests of making the further implementation of the project smoother and, if necessary, add explanations of the decisions (their scope and impact) about which the other parties to the project must be informed before they are made, or in the case of which the decision proposals must be discussed and agreed on. For example, the IGA should be amended in order to change the main parameters of the RB agreed in the IGA, which is in the competence of the governments and parliaments. In the case of proposed amendments that affect the planned track of the RB – county plans of RB Estonia according to the example of Estonia – the amendments should not be decided without the decisions of the relevant authorities of Estonia, as otherwise it's likely that a building permit will not be issued on the basis of the results of the further process (that does not consider the established plan). In order to be able to grant the building permits required for the construction of RB, the decision-maker (the Consumer Protection and Technical Regulatory Authority; TTJA) must consult the persons concerned (e.g. local governments, the Environmental Board and other competent authorities) upon the preparation of changes to be made in the track corridor established with the county plan and as an unavoidable precondition to the decisions made about them, and receive approvals if necessary.</p> <p>In principle, we agree that it would be practical to document the decisions made by the relevant implementers and/or grant recipients during the implementation of the RB GAs better than before in the project implementation reports. Assessing the impact of the possible solutions from the viewpoint of the risks related to the achievement of the project goals would also be appropriate when these changes are discussed. In our opinion, it would be practical to link the approval of changes to</p>

		<p>negotiations about them and the level of informing other project parties about and to the impact of the change (incl. whether it has an impact on the achievement of the aggregated results of the project (incl. the further usability of the railway and the related restrictions, the options for mitigating and/or avoiding them), the results of the activities for which the other parties are responsible, the deadlines and/or the increase in costs).</p> <p>Changes at the level of the project and the activities must be distinguished when changes are managed. Managing changes at the level of the project has been taken to the international level into the framework of the task force of the ministries. At the level of activities, possible changes are considered and decided inside Estonia according to the level of difficulty of the issue to be resolved either at the level of the steering group of the project or at the level of the management boards of the implementing agencies in the case of specific procurements.</p>
3	In order to guarantee the effective and timely implementation of the project, Beneficiaries need to agree on functioning rules in relation to the responsibility for types of procurements between the Implementing Bodies, in order to avoid disagreements in the future.	<p>The efficiency of the work of the RB Supervisory Board could be improved if the shareholders agreed on higher cost rates than the currently effective procurement limits, up to which the decisions about the activities of RBR and the services and work to be procured are made by, and are the responsibility of, the Management Board of the RBR. If an amendment of the SHA is initiated, it would be practical to agree and decide on the reduction of the decisions in the competence of the Supervisory Board by assigning some of the competence from the Supervisory Board to the Management Board, and maintaining the supervisory function of the Supervisory Board in the classic sense of the Supervisory Board of a company. However, it is important to keep in mind that a member of the Supervisory Board appointed by a shareholder is independent in their decisions. The decision-making matrix specified in the recommendation makes it possible to describe the decision-making process better, but no matrix as such would have any direct impact on the construction and launch of the RB railway.</p>
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	<p>The division of responsibility for the procurements carried out within the scope of the RB project has been negotiated and agreed in the RB contracting scheme (CS).</p> <p>As for the conclusion made in point 45 of the same chapter, we point out that it is not appropriate to say about the activities of a company with public sector holdings of three states that the root of the problems lies in the fact that the vision of the owners differs from that of the company's Management Board. The agreement of the shareholders regarding the company's tasks has been agreed and stipulated in the SHA and the task of the Management Board is to organise compliance with the provisions of the SHA. Reviewing this decision is subject to the amendment of the SHA, which may be suggested by the parties.</p>
5	To ensure the transparency and quality of the preparation and the process of procurement, the reasons for choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts should be documented by RB Rail AS.	<p>In our opinion, the public procurement act effective in Latvia is more restrictive than the Estonian Public Procurement Act. Among others, it doesn't give the MEAC as the beneficiary of the CEF GAs or the Supervisory Board of RBR the option to monitor the RBR procurements, incl. to obtain a clear overview of the documents related to a procurement before the announcement of a procurement (considering confidentiality requirements). This creates the situation where, in the case of the activities delegated to RBR but for which Estonia is responsible – e.g. design of the Estonian part of the track – the Estonian beneficiary or implementer (RBE that is responsible for organising the construction of RB) cannot make an adequate or timely or appropriate contribution to the definition of the specific parameters of the object of procurement and upon the discussion and definition of the other appropriate terms and conditions of the procurement (incl. qualification requirements and tender assessment criteria).</p> <p>The procurement processes for which RBR is responsible and which are carried out pursuant to Latvian law are not transparent to the Management Board or Supervisory Board of RBR either; however, the Management Board of RBR submits the final results of a procurement to the Supervisory Board for approval.</p>

		Because of this and in order to make the processing of the procurements related to the activities for which Estonia is responsible smoother in the future and make the control of the responsible beneficiary more efficient, it would be reasonable to carry out the procurements required for the implementation of the activities for which Estonia is responsible according to the Estonian Public Procurement Act and via the Estonian Public Procurement Register.
6	RBR, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.	We agree with the recommendation in principle and would like to point out that the risk management system of the Estonian RB project has already been developed as a result of the activities of the RB project and it would be practical to consider this as one of the systems that the system covering the entire RB project is based on. Covering the circumstances related to risks in the project implementation reports more consistently would be practical.
7	Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.	
8	Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures.	
9	Beneficiaries should estimate the long-term availability of national funding for the project, including in case the project costs rise, or the EU funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.	As the Estonian beneficiary of the RB project, the MEAC has updated the budget forecast regularly at least twice a year (in the state budget strategy and the state budget process). The MEAC has introduced the preconditions of the project also to the other beneficiaries of the RB project (incl. RBR) in recent years as well and requested feedback from them. As the Estonian beneficiary of the RB project, we also regularly inform the Riigikogu, pursuant to the Ratification Act of the Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia, and the Government of the Republic of Lithuania on the Development of the Rail Baltic/Rail Baltica Railway Connection (adopted on 19 June 2017), about everything relating to the construction of Rail Baltic and submits an interim project report on the implementation of the RB project, incl. its funding, to the Economic Affairs Committee of the Riigikogu. Also, the positions we presented about the same topic in the written opinion of the draft audit report of the National Audit Office "Finding and Implementation of the Rail Baltic Project in Estonia from 2014-2019" (in our letter no 1.1-14/2019/8222 of 6 November 2019) remain valid and repeating them in this written response would not be practical.

Annex E. Auditee's answer – Latvia Ministry of Transport

		Reply of the Management of the auditee	
General comments		<p>In reply to the question raised in the letter of the State Audit Office of Latvia:</p> <p>1. <i>Whether the facts set out in the Draft Audit Report are true and, where appropriate, the factual findings that have not been taken into account in the audit.</i> The Ministry informs that the facts set out in the Draft Audit Report are true and the comments voiced by Latvia during the consultation process of the Draft Audit Report have been taken into account;</p> <p>2. <i>Regarding the audit conclusions by summarising the opinion of the Ministry of Transport on the causes of the problems identified by the State Audit Office of Latvia.</i> The Ministry admits that the implementation of the Rail Baltica Project is complicated, in which several parties are involved. Thus, there is room for enhanced cooperation and synergies to build on. In addition, identified challenges are related to not timely solved project management issues and internal processes of RB Rail AS not being in place in due time.</p> <p>In general, the Draft Audit Report provides an actual situation, recommendations are sufficiently clear, and the Ministry shall undertake the actions stipulated in the Timeframe for the Implementation of the Audit Recommendations and notify on the progress of implementing the recommendations promptly.</p> <p>The Ministry extends its gratitude to the State Audit Office of Latvia for the contribution made and provided recommendations, which shall be taken into account for ensuring good governance.</p>	
No	Recommendation by Estonian, Latvian and Lithuanian SAIs	Reply of the Management of the auditee	
		Action	Deadline
1	The Beneficiaries should decide on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project timeline and budget.	<p>Although responsible entities are well described and task assigned within the legal framework of the Rail Baltica project, a decision-making matrix is missing, when it comes to RB Rail activities or Beneficiaries are not aware of it. We fully agree that RB Rail shall work out the decision-making matrix in cooperation with Beneficiaries.</p> <p>Activity: Preparation of the decision-making matrix.</p> <p>Result: The decision-making matrix approved by Beneficiaries.</p>	15.12.2020
2	The Beneficiaries should develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.	<p>A change management plan should cover all involved stakeholders namely all 4 Beneficiaries, all 4 implementing bodies and a coordinator. It shall have at least 4 sections: time deviations; technical deviations; financial deviations and at least 2 subsections: deviations affecting the Global Project and deviations affecting national activities.</p> <p>Activity: Preparation of the change management plan.</p> <p>Result: The change management plan is approved by the Task Force.</p>	15.12.2020
3	In order to guarantee the effective and timely	Types of procurement (consolidated / national) are well described in the Contracting scheme, functioning rules are described in the	30.06.2020

	implementation of the project, Beneficiaries need to agree on functioning rules in relation to the responsibility for types of procurements between the Implementing Bodies, in order to avoid disagreements in the future.	Common Procurement Standards and Guidelines (CPSG), which are suggested to be updated. Activity: Update of the CPSG in parallel with the update of the Procedure of Rail Baltica Procurement Reference Group (PPRG). Result: Updated CPSG and PPRG approved by Beneficiaries.	
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	In order to enable the Supervisory Board to work more efficiently Shareholders shall amend statutes of RB Rail AS, including amendments on types and thresholds for decision making process. Activity: Internal Regulations of RB Rail AS amended. Result: The Internal Regulations agreed and approved by Beneficiaries.	30.09.2020
5	To ensure the transparency and quality of the preparation and the process of procurement, the reasons for choosing the procurement committee members, preliminary market research and decision to involve or not to involve experts should be documented by RB Rail AS.	Updated Common Procurement Standards and Guidelines (CPSG) shall have a section on selection of the procurement committee members, a section on the preliminary market research and a section on recording rules. Activity: Update of the CPSG. Result: Updated CPSG approved by Beneficiaries.	30.06.2020
6	RBR, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.	RBR is about to procure unified IT based risk management system, which will include all stakeholders. Activity: Procurement of the IT based risk management system. Result: IT based risk management system is fully operational.	15.12.2020
7	Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.	Please see the above (item 6) actions and results.	15.12.2020
8	Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures.	Reporting system as such must be revised and updated. All stakeholders involved in reporting must have rights to see a whole picture rather than their own section. A manual on reporting must be updated. Activity: Reporting system is revised and a manual on reporting is updated. Result: Reporting templates and a manual on reporting are approved by Beneficiaries.	30.06.2020

9	<p>Beneficiaries should estimate the long-term availability of national funding for the project, including in case the project costs rise, or the EU funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.</p>	<p>Latvia incorporates required co-financing in its state budget as soon as next in order financing agreement is signed. Already very first studies identified that the project is feasible only if EU provides max intensity financial support that is either 85 % or 81 % financing rate depending on nature of the activity.</p> <p>However, the Ministry of Transport informs the Cabinet of Ministers through Informative Reports and Parliament through presentations on latest financial developments and progress made at least once per year. This year Cabinet of Ministers already 4 (four) times, Parliament twice.</p> <p>Upon completion of the detailed technical designs to prepare the project cost update and financing plan proposal to be presented to the Parliament</p>	15.12.2022.
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Annex F. Auditee's answer – Lithuanian Ministry of Transport and Communications

No	Recommendation by Estonian, Latvian and Lithuanian SAIs	Reply of the Management of the auditee	
		Action	Deadline
1	The Beneficiaries should decide on the Global Project decision-making matrix, including who and when can take decisions that concern the Global Project timeline and budget.	<p>Currently, documents defining Rail Baltica project implementation clearly set out the roles and responsibilities of the different actors involved in the project.</p> <p>To structure this information and clarify the entities responsible for decision making, it is appropriate to develop a decision-making matrix for the Rail Baltica project.</p> <p>Target result: "Rail Baltica" project decision-making matrix.</p>	Until 30 September 2020
2	The Beneficiaries should develop a clear change management plan for when deviations occur. This plan should be interlinked with the Global Project risk management system to ensure that all deviations are recognised in a timely manner. It should be documented what decisions and mitigation measures are taken to alleviate the impacts of changes.	<p>Currently the procedure for the change in the "Rail Baltica" project parameters is defined in the Guidelines for the Rail Baltica project.</p> <p>The date of completion of the implementation of the "Rail Baltica" project is set on 31 January 2017 in the International agreement on the Development of Rail Baltica project (hereinafter referred to as "the international agreement"). Should the end date of the project be changed, the international agreement should also be amended in accordance with the procedure laid down by law.</p> <p>In order to structure these processes and ensure their proper implementation, it is appropriate to initiate the setting up of the dedicated format for beneficiaries (the Executive Committee), that would be responsible for adoption of Key decisions relating to the implementation of the project, including management of change in the project parameters, budget, deadlines.</p> <p>Target result: Setting up of a dedicated format of beneficiaries (Executive Committee) to adopt key decisions related to the implementation of the project.</p>	Until 30 September 2020
3	In order to guarantee the effective and timely implementation of the project, Beneficiaries need to agree on functioning rules in relation to the responsibility for types of procurements between the Implementing Bodies, in order to avoid disagreements in the future.	<p>Distribution of the roles and responsibilities among the "Rail Baltica" Implementing Bodies in the area of project procurement is set out in the Agreement on the Contracting Scheme for Rail Baltic/Rail Baltica project.</p> <p>In the event of a dispute between the different project Implementing Bodies regarding the function attributable to them, the decision should be taken by the Beneficiaries who are responsible for the proper implementation of the project.</p> <p>For this reason, it is appropriate to initiate the setting up of a format for Beneficiaries (Executive Committee) that would be responsible for decisions relating to the implementation of the project, including distribution of functions of Implementing Bodies in the area project procurement.</p>	Until 30 September 2020

		Target result: Setting up of a dedicated format of beneficiaries (Executive Committee) to adopt key decisions related to the implementation of the project.	
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	See Recommendation 1 and 2	See Recommendation 1 and 2.
6	RBR, together with the other Beneficiaries, should continue developing a unified risk management system for the Global Project which includes responsibilities, reporting lines and mitigation measures, to avoid further risks to project objectives, and incorporate it into the everyday operations of the company.	<p>1. For RB Rail AS to complete the contract for an integrated project software for planning, reporting and risk management.</p> <p>2. To Install integrated project software for planning, reporting and risk management that will enable the development of an integrated risk management system.</p> <p>Target result: An integrated risk management system has been put in place.</p>	Until 30 October 2020
7	Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.		
8	Beneficiaries responsible for reporting must assure that the description of risk and mitigation measures in the project reports are more precise, in order to make it possible for decision makers to analyse the reported risks and to take decisions about mitigation measures.	<p>1. For RB Rail AS to complete the contract for an integrated project software for planning, reporting and risk management.</p> <p>2. To Install integrated project software for planning, reporting and risk management that will enable to ensure higher quality of project reports.</p> <p>Target result: Revised project reporting system.</p>	Until 30 October 2020
9	Beneficiaries should estimate the long-term availability of national funding for the project, including in case the project costs rise, or the EU funding is lower than planned. These estimations should be presented and explained regularly to the national Parliaments of each country.	<p>State funds for the implementation of the Rail Baltica project are planned according to the procedure defined in the Law of the Republic of Lithuania on Budget Structure.</p> <p>According to the International agreement of the countries implementing the project, countries committed to the full implementation of the Rail Baltic/Rail Baltica project, have the right to revise their commitments to finance and implement the project by the deadline referred to in Article 3, if the long term funding for the general interest of the project is significantly reduced and this has a significant impact on the viability of the project.</p>	

Annex G. Auditee's answer – Rail Baltic Estonia OÜ

No	Recommendation by Estonian, Latvian and Lithuanian SAIs	Reply of the Management of the auditee
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	<p>The recommendation is relevant. The efficiency of the work of the Supervisory Board of RB Rail AS should be increased.</p> <p>Shareholders can try to find ways for increasing the efficiency of the work of the Supervisory Board of RB Rail AS. This can be done as follows:</p> <ol style="list-style-type: none"> 1. by decreasing the state's right to make decisions. The main solution to increasing the efficiency would be to restrict the competency of the Supervisory Board by leaving many of the decisions that currently require the approval of the Supervisory Board in the competence of the Management Board of RB Rail AS. Although the Commercial Code of Latvia allows the shareholders to adopt the relevant resolution, the issue is whether the shareholders want to do this and have the mandate to decision on the state's control in the activities of RB Rail AS. Rail Baltic Estonia OÜ does formally have this decision-making freedom (could be restricted on the basis of clause 88 (1) 5) of the State Assets Act), but in essence (as the respective amendment would have a significant impact on the control of the project by the state), the approval of the Ministry of Economic Affairs and Communications is required in the opinion of Rail Baltic Estonia OÜ; 2. by changing the decision-making quorum of the Supervisory Board. The shareholders agreement of RB Rail AS stipulates that the Supervisory Board can adopt resolution with a simple majority of votes of the Supervisory Board members and one vote in favour must come from each state. This basically means that every decision requires the consensus of the states but achieving this takes a lot of time and compromises. This is the main factor that influences the work of the Supervisory Board. This could be changed with an amendment of the shareholders agreement, which could formally take place at the level of shareholders, but in the opinion of Rail Baltic Estonia OÜ requires the consent of the state, i.e. the approval of the Ministry of Economic Affairs and Communications. <p>Thus, the given recommendation could also be aimed at the ministries. The approval of the Latvian and Lithuanian partners is also required in the case of both solutions.</p>

Annex H. Auditee's answer – AB Lietuvos Geležinkeliai

No	Recommendation by Estonian, Latvian and Lithuanian SAIs	Reply of the Management of the auditee	
		Action	Deadline
4	Shareholders need to find ways for the Supervisory Board to work more efficiently and Beneficiaries to agree on a decision-making matrix to reach decisions more effectively, in order to avoid delays in the project implementation.	To review of the Rules of Procedure for the Supervisory Board of RB Rail AS by also establishing standard templates for issue (item) submission to the Supervisory Board, including a requirement to agree the provided information with beneficiaries/implementing bodies if such an agreement is required.	Until 30 June 2020
7	Beneficiaries and Implementing Bodies together should ensure that the risk management system at all levels is based on the same principles.	<ul style="list-style-type: none"> For the RB Rail As: to complete a purchase of Planning, Scheduling, Reporting and Risk management software supply, implementation and maintenance. To introduce Planning, Scheduling, Reporting and Risk management software enabling the creation of an integrated risk management system. 	1. Implemented by RB Rail AS 2. Until 30 October 2020