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I Acts whose publication is obligatory

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I

(Acts whose publication is obligatory)

DIRECTIVE 2001/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 February 2001
amending Council Directive 91/440/EEC on the development of the Community's railways

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal of the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 ⁽⁴⁾ of the Treaty in the light of the joint text approved on 22 November 2000 by the Conciliation Committee,

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ should be amended to take account of experience with its implementation and of developments in the railway sector since its adoption, in order to ensure that its objectives are achieved.
- (2) Fair and non-discriminatory access to the infrastructure needs to be guaranteed through the separation of certain essential functions and/or the creation of a rail regulator fulfilling the control and implementation functions as well as through the separation of profit and loss accounts and the balance sheets.

- (3) Fair and non-discriminatory access to the infrastructure needs to be guaranteed also through the separation of safety related functions and/or the creation of a rail regulator fulfilling the control and implementation functions. In any case railway undertakings may be involved in a non-discriminatory way in enforcement and monitoring of safety standards.

- (4) Extension of access rights should, as with other modes of transport, proceed in conjunction with the parallel implementation of the necessary accompanying harmonisation measures.

- (5) In accordance with the objective of completing the internal market, which will include the possibility for all licensed railway undertakings meeting the safety conditions to provide services, access rights should, for a transitional period of up to seven years, be extended to licensed railway undertakings for the international transport of goods on a defined network, called the Trans European Rail Freight Network, including access to, and supply of, services in major terminals and ports. After this transitional period, the Trans-European Rail Freight Network should cover the entire European rail network and the railway undertakings should be granted rights of access thereto for international freight transport.

- (6) Access right is guaranteed to the licensed railway undertaking meeting the safety conditions and seeking access, whatever the mode of operation.

⁽¹⁾ OJ C 321, 20.10.1998, p. 6, and OJ C 116 E, 26.4.2000, p. 21.

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 115), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 56), Council Common Position of 28 March 2000 (OJ C 288, 11.10.2000, p. 1) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 20 December 2000.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25.

- (7) Member States remain free to grant access rights that are more extensive than access for railway undertakings operating international combined transport to international groupings operating international services and to railway undertakings operating international freight services within the Trans-European Rail Freight Network. The use of these more extensive access rights may be limited to railway undertakings licensed in

Member States where access rights of a similar nature are granted, provided that this limitation is compatible with the Treaty.

- (8) To promote efficient management of infrastructure in the public interest, infrastructure managers should be given a status independent of the State, and freedom to manage their internal affairs, while Member States should take the necessary measures for the development and the safe use of railway infrastructure.
- (9) To promote the efficient operation of passenger and freight transport services and to ensure transparency in their finances, including all financial compensation or aid paid by the State, it is necessary to separate the accounts of passenger and of freight transport services.
- (10) It is necessary to implement a number of measures in order better to monitor the development of the railway sector and the evolution of the market, assess the effect of the measures adopted and analyse the impact of the measures envisaged by the Commission.
- (11) Bodies should be established with a sufficient degree of independence to regulate competition on the rail services market where there are no entities performing that function.
- (12) The Commission should report on the implementation of this Directive and make appropriate proposals.
- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (14) Specific measures are required to take account of the specific geopolitical and geographical situations of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.
- (15) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to develop the Community's railways, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the

manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

- (16) Directive 91/440/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC is hereby amended as follows:

- 1) the title of Section I shall be replaced by the following: 'Scope and Definitions';
- 2) Article 1 shall be repealed;
- 3) the following paragraph shall be added to Article 2:

'3. Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive except Articles 6(1), 10 and 10a.'
- 4) Article 3 shall be amended as follows:
 - a) the first and second indents shall be replaced by the following:

— "railway undertaking" shall mean any public or private undertaking licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;

— "infrastructure manager" shall mean any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings';

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- b) the following indent shall be inserted after the fourth indent:

— “international freight service” shall mean transport services where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border”;

- 5) the title of Section II shall be replaced by the following: ‘Management independence’;
- 6) Article 4 shall be replaced by the following:

‘Article 4

1. Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

2. While respecting the framework and specific charging and allocation rules established by the Member States, the infrastructure manager shall have responsibilities for its own management, administration and internal control”;

- 7) Article 6 shall be replaced by the following:

‘Article 6

1. Member States shall take the measures necessary to ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity may not be transferred to the other.

The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

2. Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure shall be managed by a separate entity.

3. Member States shall take the measures necessary to ensure that the functions determining equitable and

non-discriminatory access to infrastructure, listed in Annex II, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of the organisational structures, this objective must be shown to have been achieved.

Member States may, however, assign to railway undertakings or any other body the collecting of the charges and the responsibility for managing the railway infrastructure, such as investment, maintenance and funding.

4. The application of paragraph 3 shall be subject to a report by the Commission in accordance with Article 10b, to be submitted by 15 March 2006.”;

- 8) Article 7 shall be replaced by the following:

‘Article 7

1. Member States shall take the necessary measures for the development of their national railway infrastructure taking into account, where necessary, the general needs of the Community.

2. Member States shall ensure that safety standards and rules are laid down, rolling stock and railway undertakings are certified accordingly and accidents investigated. These tasks shall be accomplished by bodies or undertakings that do not provide rail transport services themselves and are independent of bodies or undertakings that do so, in such a way as to guarantee equitable and non-discriminatory access to infrastructure.

Railway undertakings shall apply these safety standards and rules. Unless Member States mandate independent bodies with enforcement and monitoring, they may require or allow railway undertakings to be involved in ensuring the enforcement and monitoring of the safety standards and rules while guaranteeing the neutral and non-discriminatory execution of these functions.

3. Member States may also accord the infrastructure manager, having due regard to Articles 73, 87 and 88 of the Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments.

4. Within the framework of general policy determined by the State, the infrastructure manager shall draw up a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved.”;

9) Article 9(3) shall be replaced by the following:

‘3. Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 73, 87 and 88 of the Treaty.’;

10) the following paragraph shall be added to Article 9:

‘4. In the case of railway undertakings profit and loss accounts and either balance sheets or annual statement of assets and liabilities shall be kept and published for business relating to the provision of rail freight-transport services. Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.’;

11) Article 10 shall be replaced by the following:

‘Article 10

1. International groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established.

2. Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the infrastructure in other Member States for the purpose of operating international combined transport goods services.

3. Whatever the mode of operation, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, the access that they are seeking to the Trans-European Rail Freight Network defined in Article 10(a) and in Annex I after 15 March 2008, to the entire rail network, for the purpose of operating international freight services.

4. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of this Article, and within two months of receipt of such a request and after consulting the Committee referred to in Article 11a(2), decide whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

Without prejudice to Article 226 of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

5. Any railway undertaking engaged in rail transport services under paragraphs 1, 2 and 3 shall conclude the necessary administrative, technical and financial agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning that transport. The conditions governing such agreements shall be non-discriminatory and, if applicable, in conformity with the provisions of Directive 2000/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification⁽¹⁾.

6. Track access to, and supply of, services in the terminals and ports linked to rail activities referred to in paragraphs 1, 2 and 3, serving or potentially serving more than one final customer, shall be provided to all railway undertakings in a non-discriminatory manner, and requests by railway undertakings may be subject to restrictions only if viable alternatives under market conditions exist.

7. Without prejudice to Community and national regulations concerning competition policy and the institutions with responsibility in that area, the regulatory body established pursuant to Article 30 of Directive 2000/14/EC, or any other body enjoying the same degree of independence shall monitor the competition in the rail services markets, including the rail freight transport market.

That body shall be set up in accordance with the rules in Article 30(1) of the said Directive. Any applicant or interested party may lodge a complaint with this body if it feels that it has been treated unjustly, has been the subject of discrimination or has been injured in any other way. On the basis of the complaint and, where appropriate, on its own initiative, the regulatory body shall decide at the earliest opportunity on appropriate measures to correct undesirable developments in these markets. In order to ensure the necessary possibility of judicial control and the requisite cooperation between national regulatory bodies, Article 30(6) and Article 31 of the said Directive shall apply in this context.

8. In accordance with Article 14 which provides for a report on the implementation of this Directive, accompanied by suitable proposals on continuing Community action to develop the railway market and the legal framework governing it, and in any case seven years after 15 March 2008, the Trans-European Rail Freight Network defined in Article 10a and Annex I, granting access for the international transport of goods to the railway undertakings defined in Article 3, shall be extended to cover the entire European rail network. The

⁽¹⁾ See page 29 of this Official Journal.

railway undertakings shall be granted, over that entire network and on fair conditions, guaranteed access and transit for the international transport of goods.’;

- 12) in Section V ‘Access to railway infrastructure’ the following Article shall be added:

‘Article 10a

1. The Trans-European Rail Freight Network consists of the following elements:

- a) Railway lines as indicated in the maps in Annex I.
- b) Diversionary routes, where appropriate, particularly around congested infrastructure within the meaning of Directive 2000/14/EC. When these routes are offered, overall journey times shall be safeguarded as far as this is feasible.
- c) Track access to terminals serving or potentially serving more than one final customer and to other sites and facilities, including feeder lines to and from these.
- d) Track access to and from ports as listed in Annex I, including feeder lines.

2. The feeder lines mentioned in paragraph 1(c) and (d) cover at either end of the journey 50 km or 20 % of the length of the journey on the railway lines referred to in paragraph 1(a), whichever is greater.

Belgium and Luxembourg, as Member States with a relatively small or concentrated network, may limit the length of the feeder lines in the first year after 15 March 2003 to at least 20 km and until the end of the second year to at least 40 km.’;

- 13) after Section V ‘Access to railway infrastructure’, the following section shall be added:

‘SECTION Va

Monitoring tasks of the Commission

Article 10b

1. Not later than 15 September 2001 the Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments of European rail transport. The Commission shall ensure that adequate resources are made available to enable the effective monitoring of this sector.

2. In this context, the Commission shall closely involve representatives of the Member States and of the sectors

concerned in its work, including users, so that they are able better to monitor the development of the railway sector and the evolution of the market, assess the effect of the measures adopted and analyse the impact of the measures planned by the Commission.

3. The Commission shall monitor the use of the networks and the evolution of the framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, safety regulation and licensing and the degree of harmonisation that evolves. It shall ensure an active cooperation between the appropriate regulatory bodies in the Member States.

4. The Commission shall report to the European Parliament and the Council on:

- a) the evolution of the internal market in rail services
- b) the framework conditions
- c) the state of the Trans-European Rail Freight Network
- d) the utilisation of access rights
- e) barriers to more effective rail services
- f) infrastructure limitations, and
- g) the need for legislation.’

- 14) Article 11 shall be replaced by the following:

‘Article 11

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted by use of the advisory procedure referred to in Article 11a(2).

2. The amendments necessary to adapt the Annexes shall be adopted by use of the regulatory procedure referred to in Article 11a(3).’;

- 15) the following Article shall be inserted:

‘Article 11a

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.;

16) Article 14 shall be replaced by the following:

'Article 14

By 15 March 2005 the Commission shall submit to the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Council a report on the implementation of this Directive accompanied by suitable proposals on continuing Community action to develop the railway market and the legal framework governing it.;

17) the following Article shall be inserted:

'Article 14a

1. For a period of five years from 15 March 2003, the following Member States:

- Ireland, as a Member State located on an island with a rail link to only one other Member State
- the United Kingdom, in respect of Northern Ireland, on the same basis, and
- Greece, as a Member State that does not have any direct rail link to any other Member State,

do not need to apply the requirement to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 6(3), first subparagraph and the tasks set out in Article 7(2), first subparagraph, in so far as those Articles oblige Member States to establish independent bodies performing the tasks referred to in the said Articles.

2. However, where:

- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and of Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway

services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to out in Article 11a(2); or

- b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogation referred to in paragraph 1 shall not apply.

Within one year from the receipt of either the decision referred to in point (a) adopted in accordance with the advisory procedure referred to in Article 11a(2), or notification of the official application referred to in point (b), the Member State or States concerned (Ireland, the United Kingdom with respect to Northern Ireland, or Greece) shall put in place legislation to implement the Articles referred to in paragraph 1.

3. A derogation referred to in paragraph 1, may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of such derogation may address a request to the Commission for a renewed derogation. Any such request must be substantiated. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 11a (2). The said advisory procedure shall apply to any decision related to the request.

When adopting its decision the Commission shall take into account any development in the geopolitical situation and the development of the rail market in, from and to the Member State having requested the renewed derogation.

4. Luxembourg as a Member State with a relatively small rail network does not need to apply until 31 August 2004 the requirement to award to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 6(3), first subparagraph, in so far as it obliges Member States to establish independent bodies performing the tasks referred to in that Article.'

Article 2

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 15 March 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 3

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH

ANNEX I

PORTS

BELGIE/BELGIQUE	Cartagena-Escombreras	LUXEMBOURG
Antwerpen/Anvers	Gijón	
Gent/Gand	Huelva	NEDERLAND
Zeebrugge/Zeebruges	Tarragona	Amsterdam Zeehaven
	Valencia	Delfzijl/Eemshaven
	Vigo	Vlissingen
DANMARK		Rotterdam Zeehaven
Ålborg	FRANCE	Terneuzen
Århus		
Esbjerg	Bayonne	
Fredericia	Bordeaux	ÖSTERREICH
København	Boulogne	
Nyborg	Calais	PORTUGAL
Odense	Cherbourg	Leixões
	Dunkerque	Lisboa
DEUTSCHLAND	Fos-Marseille	Setúbal
	La Rochelle	Sines
Brake	Le Havre	
Bremen/Bremerhaven	Nantes	SUOMI/FINLAND
Brunsbüttel	Port-la-Nouvelle	
Cuxhaven	Rouen	Hamina
Emden	Sète	Hanko
Hamburg	St-Nazaire	Helsinki
Kiel		Kemi
Lübeck	IRELAND	Kokkola
Nordenham		Kotka
Puttgarden	Cork	Oulu
Rostock	Dublin	Pori
Sassnitz		Rauma
Wilhelmshaven	ITALIA	Tornio
Wismar	Ancona	Turku
	Bari	
ΕΛΛΑΣ	Brindisi	SVERIGE
Αλεξανδρούπολις	C. Vecchia	Göteborg-Varberg
Ελευσίνα	Genova	Helsingborg
Πάτρα	Gioia Tauro	Luleå
Πειραιάς	La Spezia	Malmö
Θεσσαλονίκη	Livorno	Norrköping
Βόλος	Napoli	Oxelösund
	Piombino	Stockholm
ESPAÑA	Ravenna	Trelleborg-Ystad
Algeciras	Salerno	Umeå
Almería	Savona	
Barcelona	Taranto	UNITED KINGDOM
Bilbao	Trieste	
	Venezia	All rail-connected ports

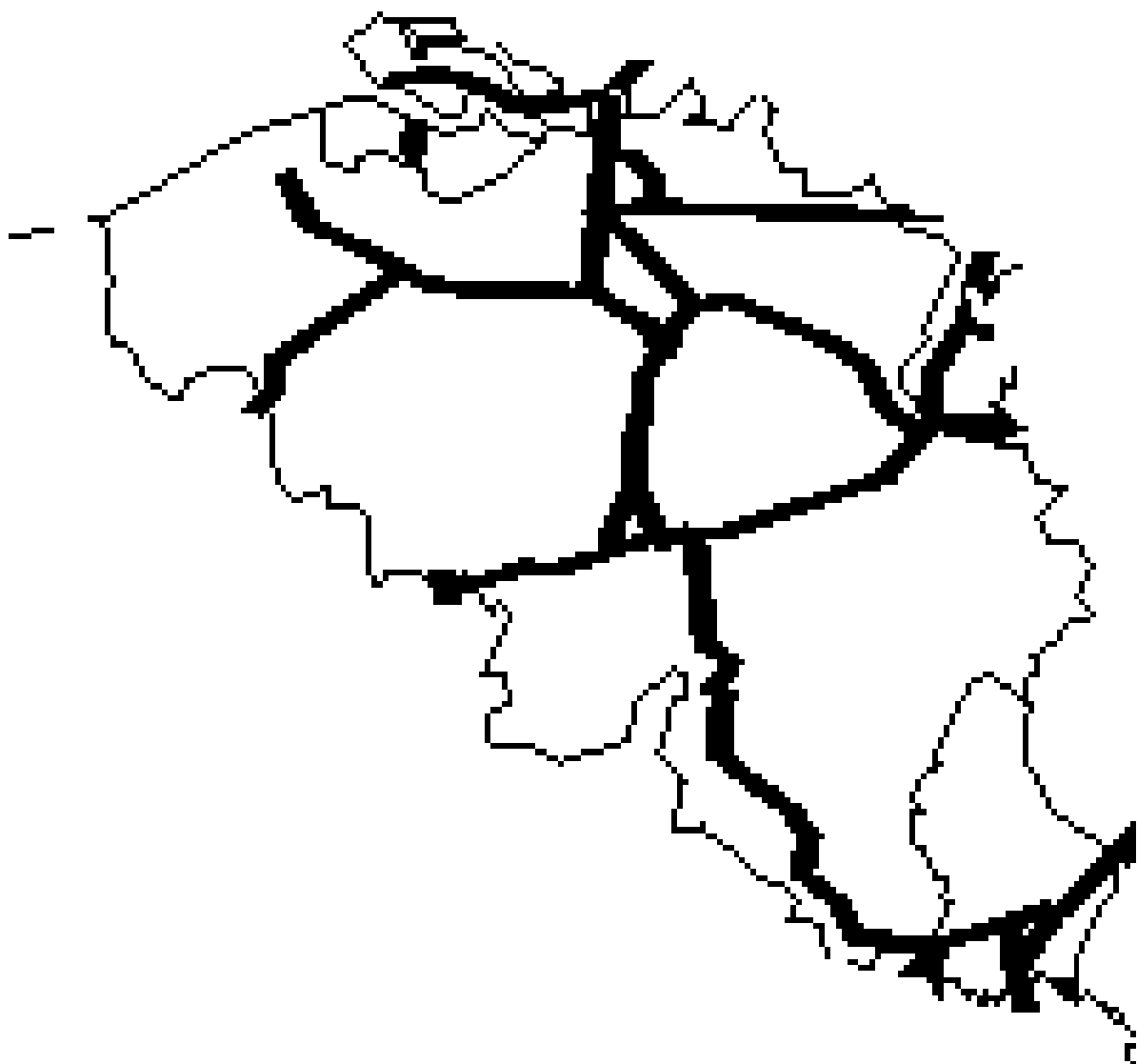


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BELGIQUE/BELGIË



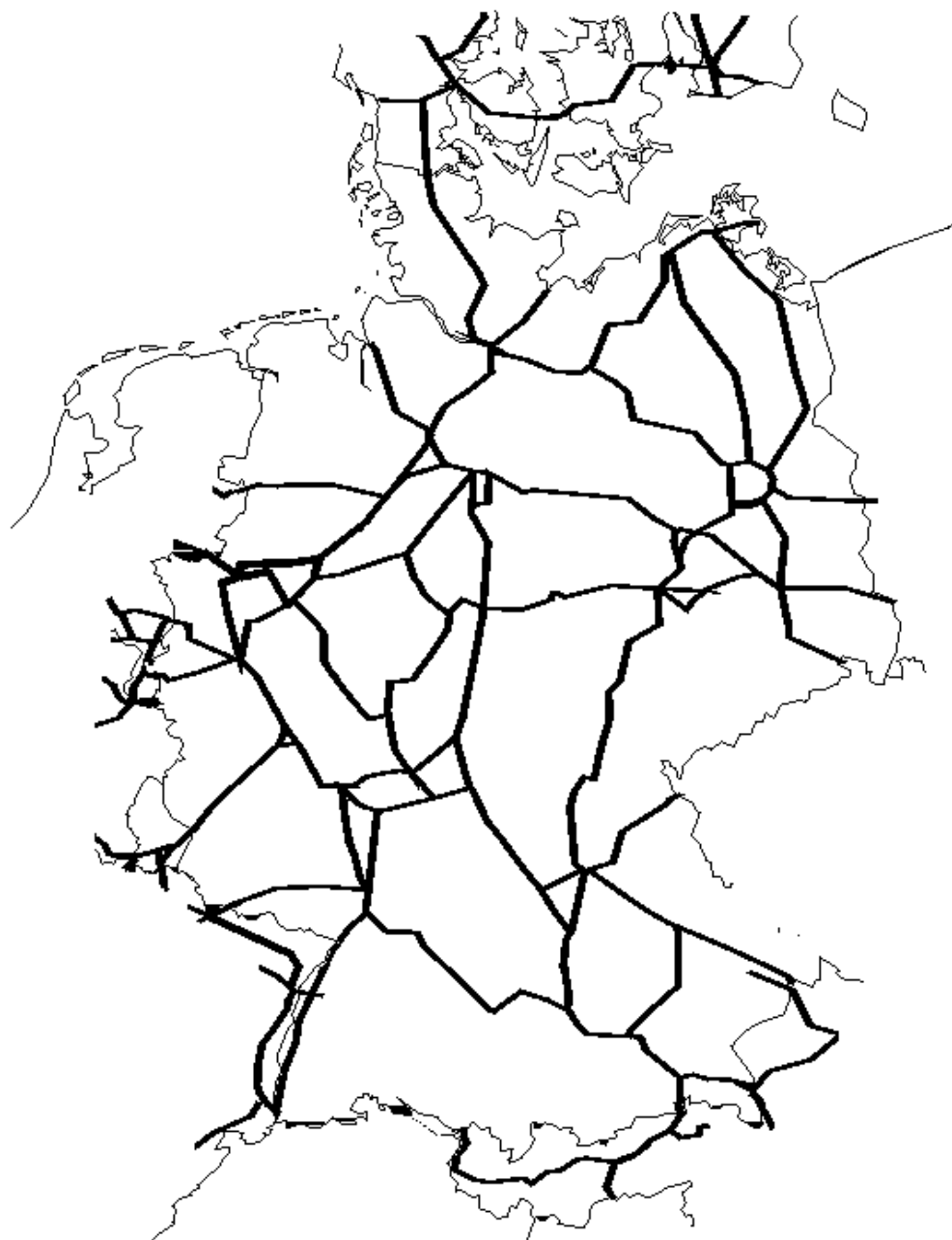


DANMARK





DEUTSCHLAND





ΕΛΛΑΣ



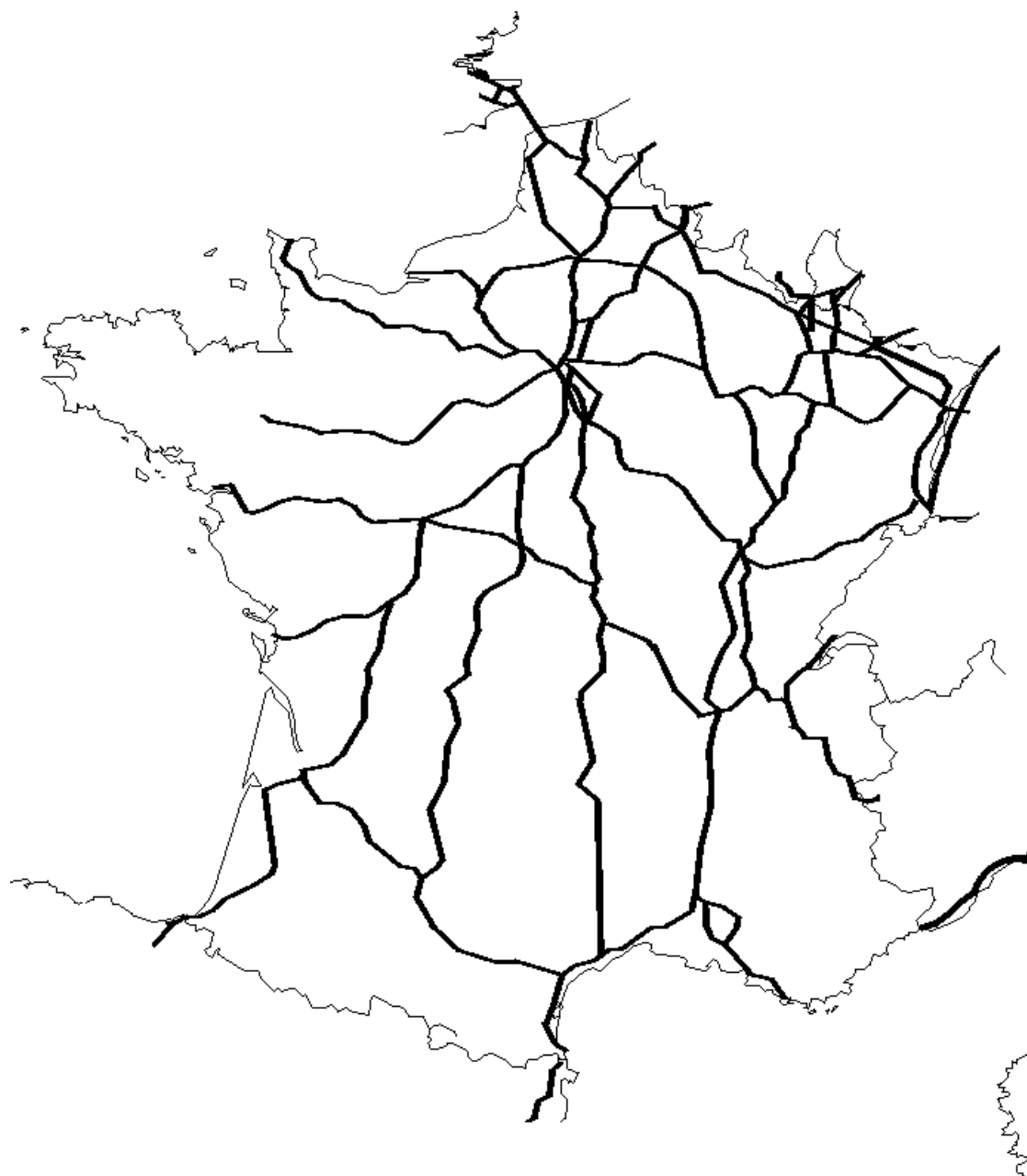


ESPAÑA



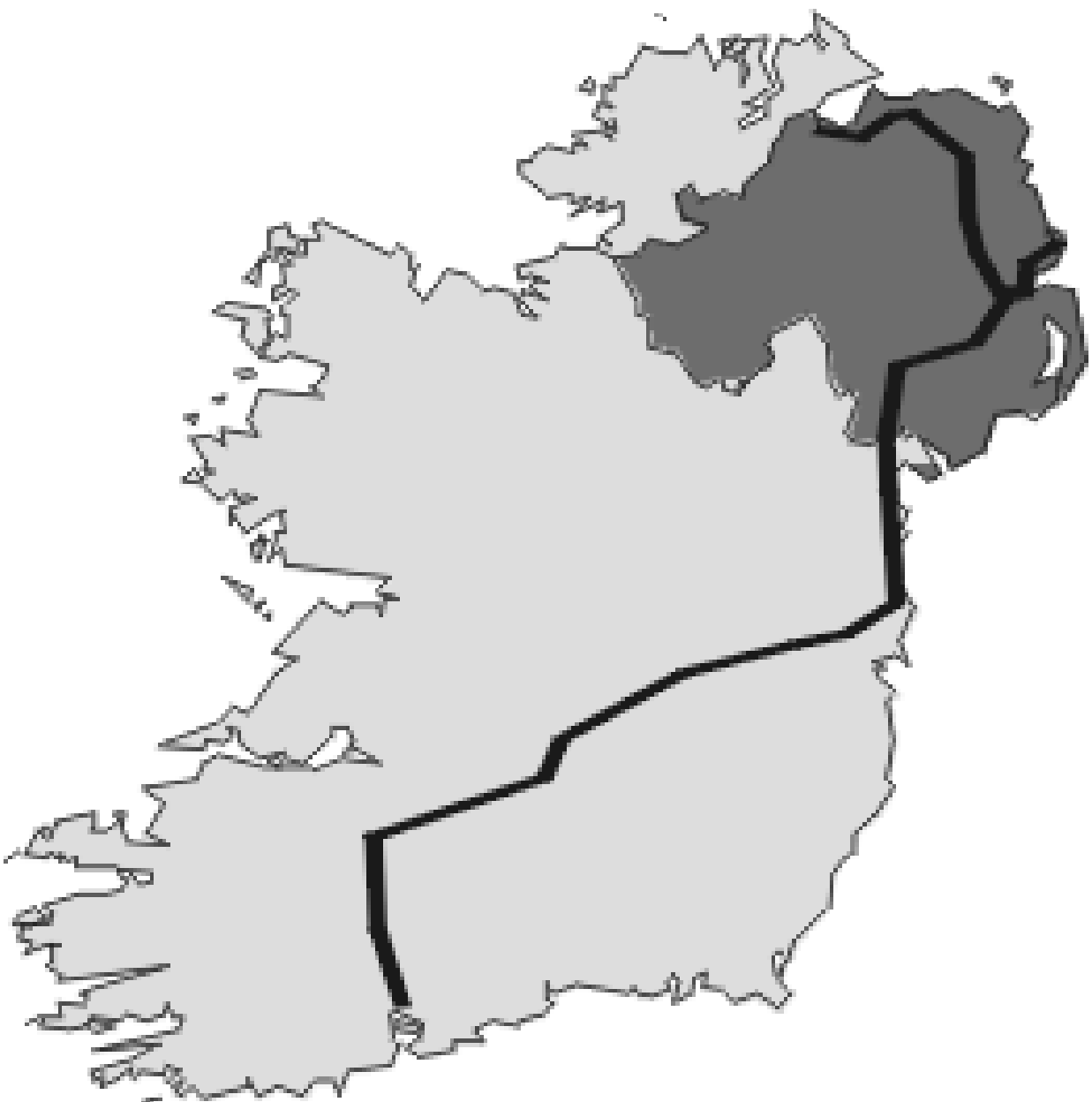


FRANCE





IRELAND





ITALIA





LUXEMBOURG



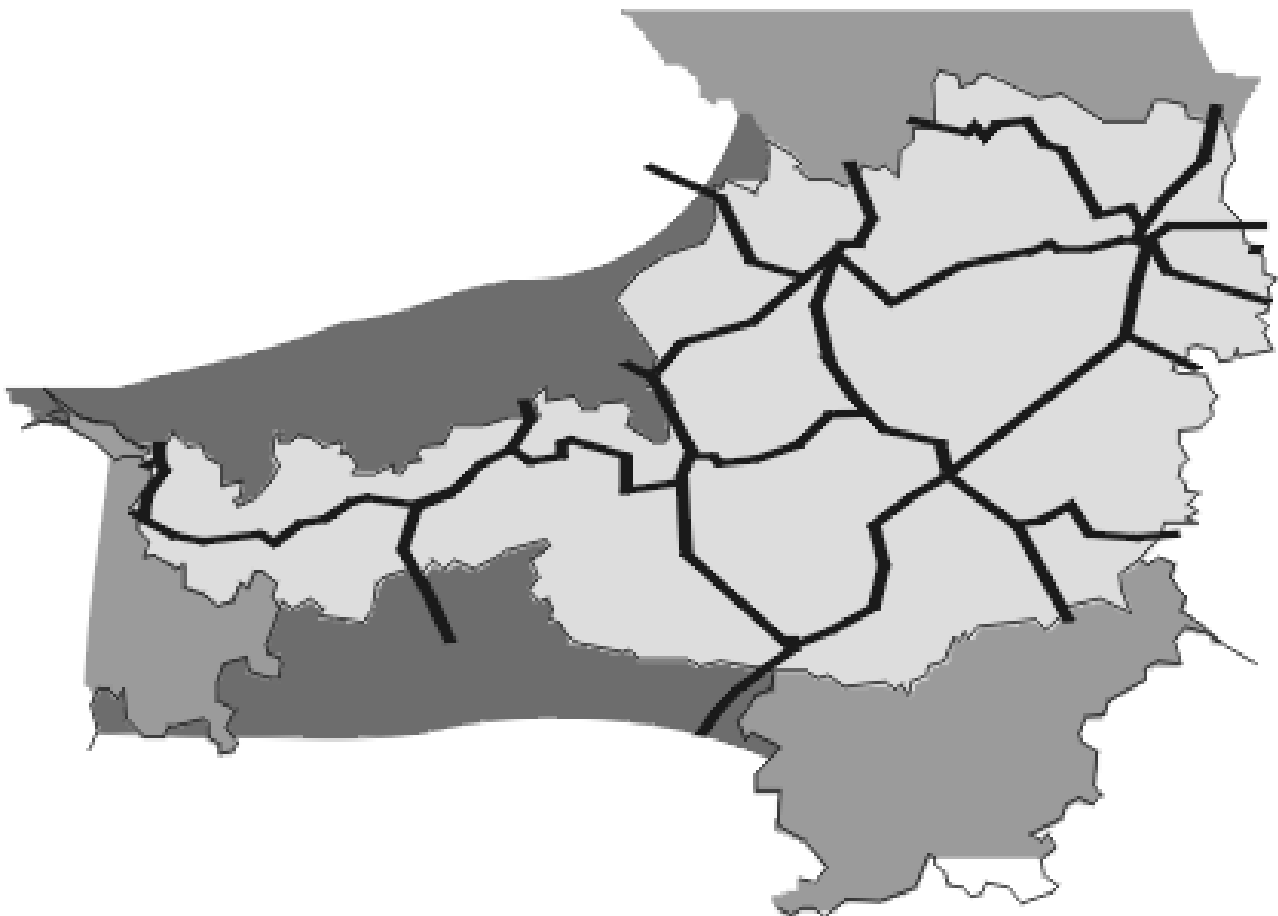


NEDERLAND



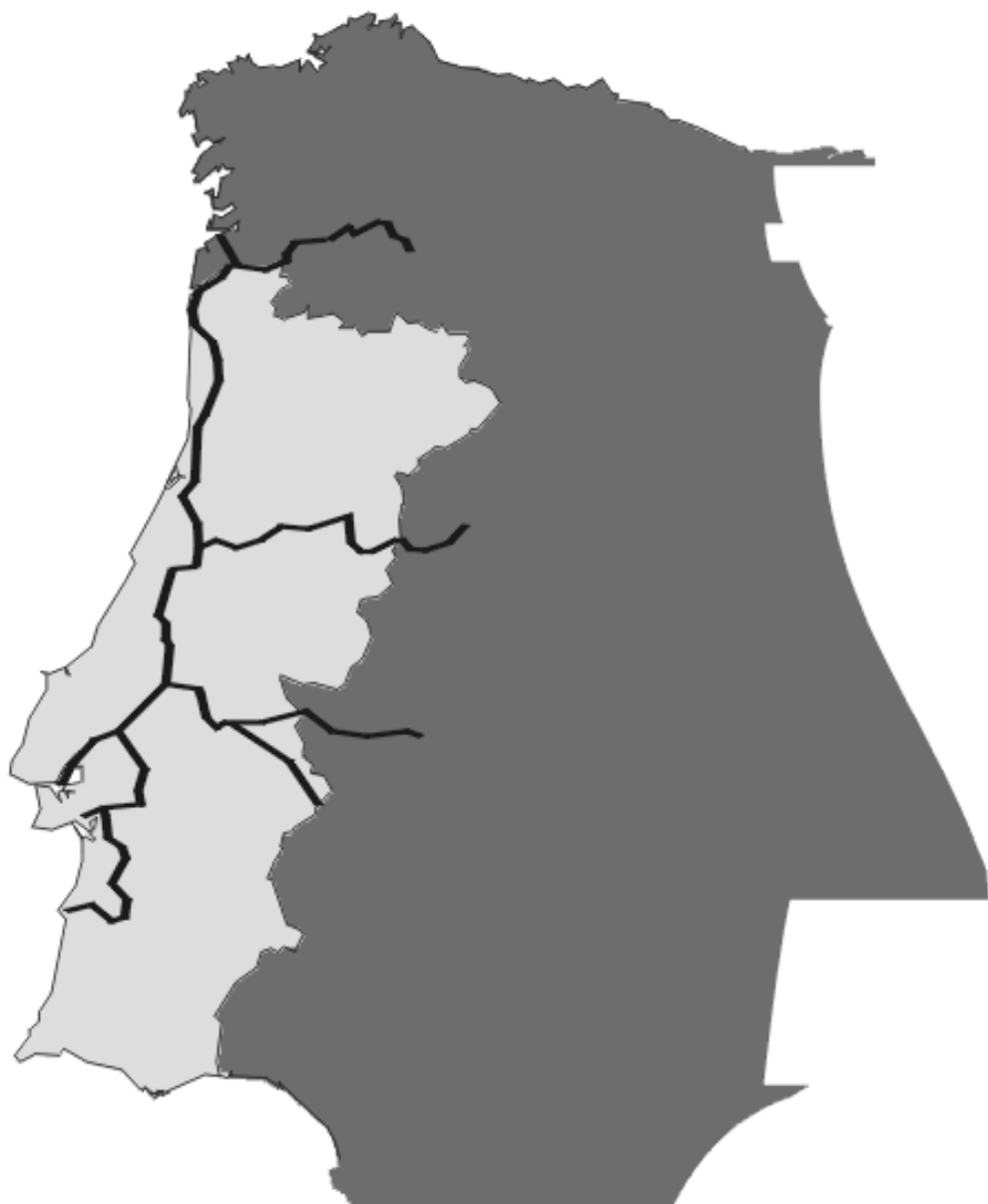


ÖSTERREICH



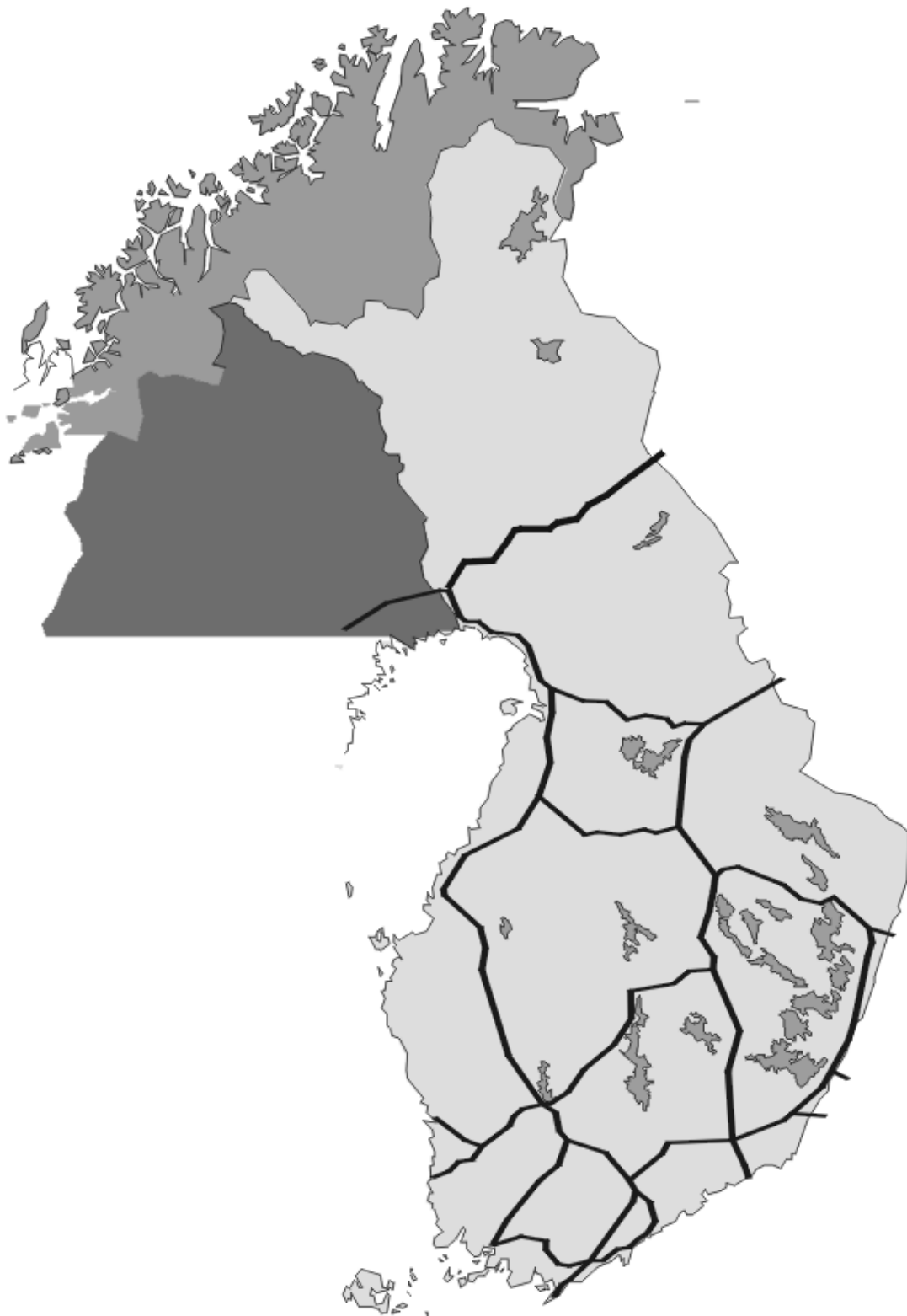


PORTUGAL



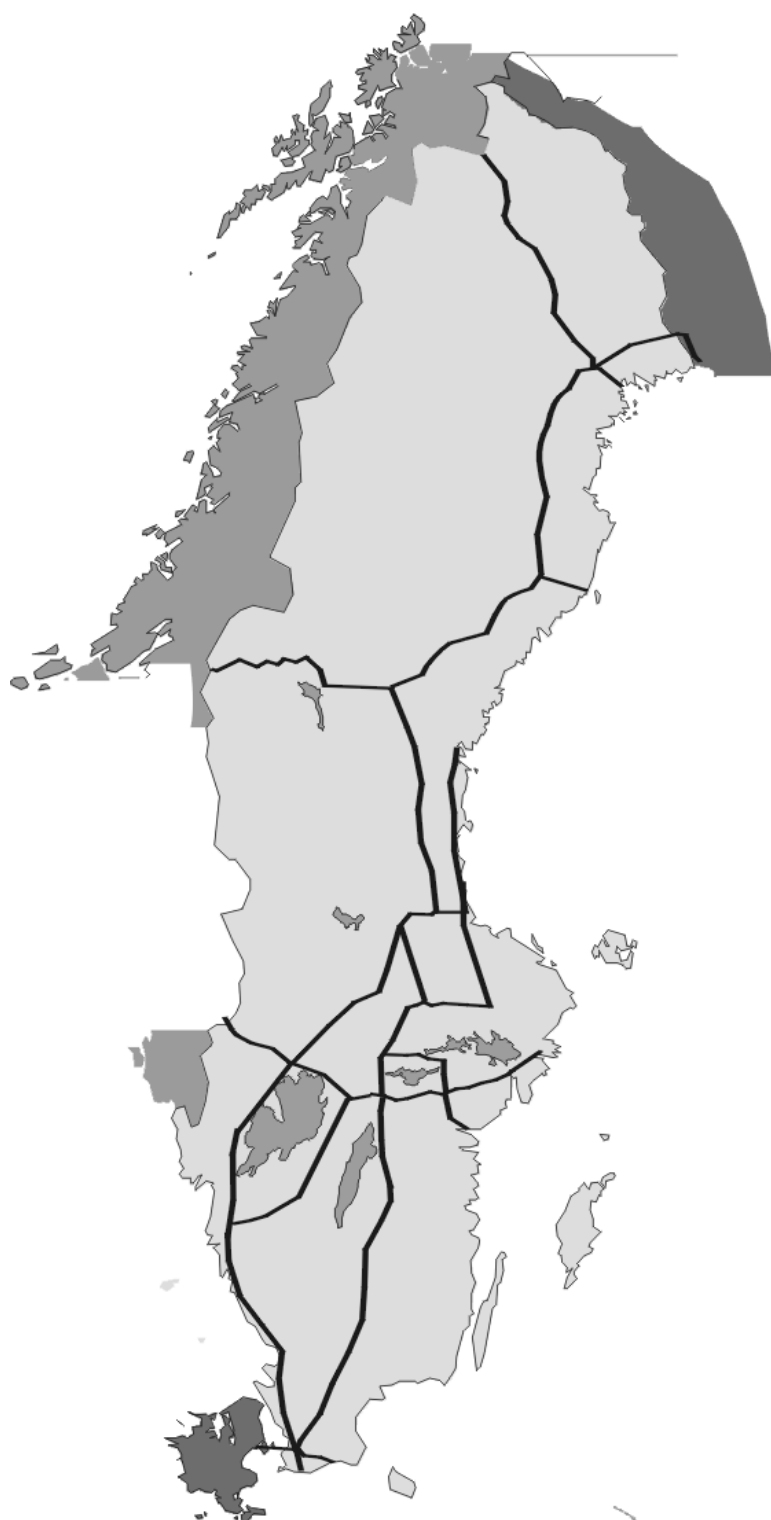


SUOMI/FINLAND



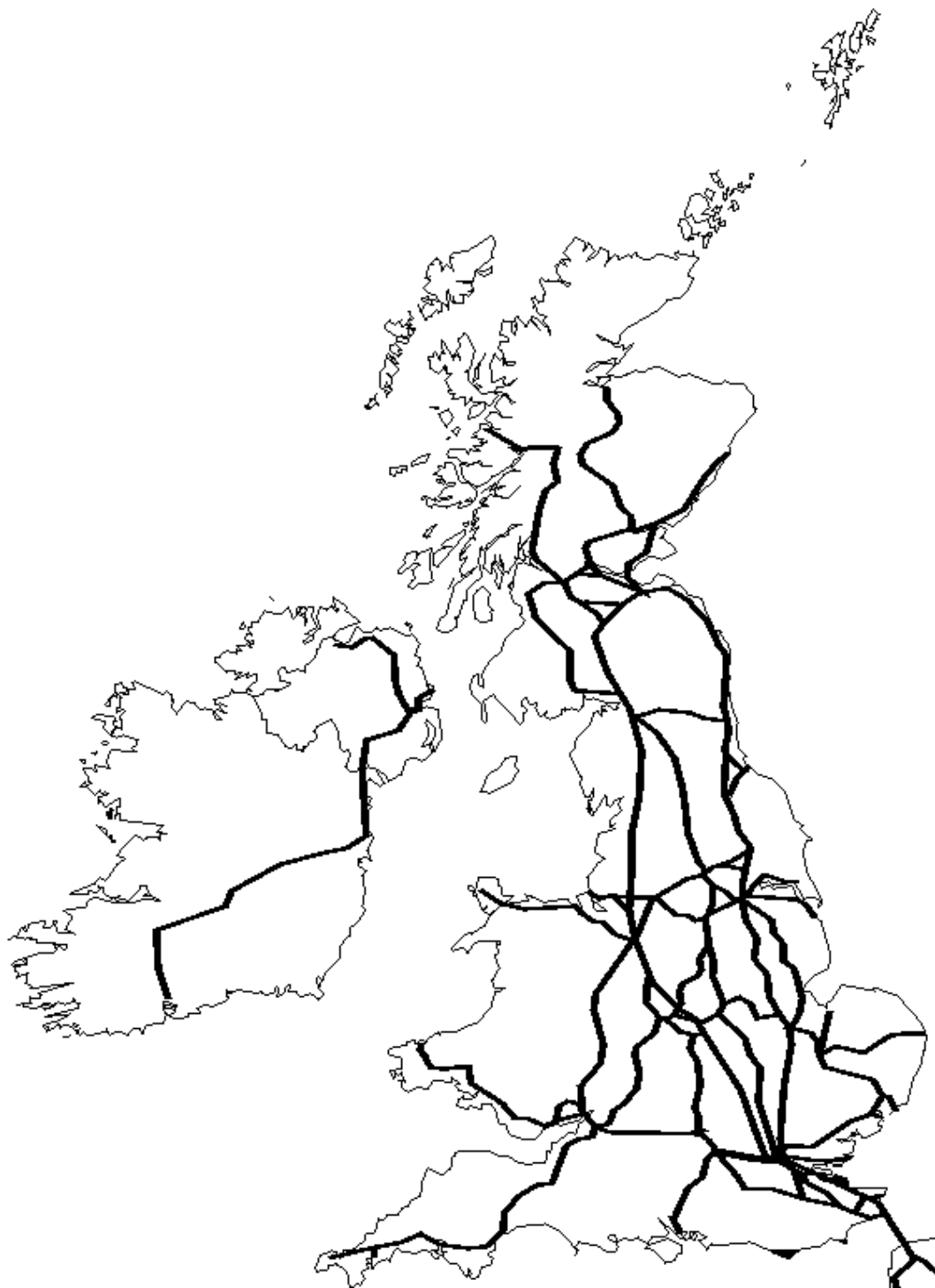


SVERIGE





UNITED KINGDOM



ANNEX II

List of essential functions referred to in Article 6(3):

- preparation and decision making related to the licensing of railway undertakings including granting of individual licenses,
 - decision making related to the path allocation including both the definition and the assessment of availability and the allocation of individual train paths,
 - decision making related to infrastructure charging,
 - monitoring observance of public service obligations required in the provision of certain services.
-

DIRECTIVE 2001/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 26 February 2001****amending Council Directive 95/18/EC on the licensing of railway undertakings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Having regard to the opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾, in the light of the joint text approved on 22 November 2000 by the Conciliation Committee,

Whereas:

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁵⁾ provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings.

(2) To ensure dependable and adequate services, a common licensing scheme is necessary to ensure that all railway undertakings meet at any time certain requirements in relation to good repute, financial fitness and professional competence in order to protect customers and third parties and offer services observing a high standard of safety.

(3) In order to ensure that access rights to railway infrastructure are applied throughout the Community on a uniform and non-discriminatory basis, Council Directive 95/18/EC⁽⁶⁾ introduced a licence for railway undertakings providing the services referred to in Article 10 of Directive 91/440/EEC, this licence being obligatory for the operation of such services and valid throughout the Community.

(4) Since some Member States have extended access rights going beyond Directive 91/440/EEC, it seems necessary to ensure fair, transparent and non-discriminatory treatment of all railway undertakings that may operate in this market by extending the licensing principles laid down by Directive 95/18/EC to all companies active in the sector.

(5) In order better to fulfil the information obligations, Member States and the Commission should ensure better information for all Member States and the Commission. Following common practice and a logical interpretation of Directive 95/18/EC, the information to be given by Member States and the Commission should also cover licenses issued.

(6) It is desirable to ensure that licensed railway undertakings that operate international goods transport respect the relevant customs and tax provisions applicable, in particular regarding customs transit.

(7) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to set out broad principles for the licensing of railway undertakings and the mutual recognition of such licences throughout the Community, cannot be sufficiently achieved by the Member States on account of the manifestly international dimension of issuing such licences and can therefore, by reason of its trans-national implications, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

(8) Directive 95/18/EC should be amended accordingly,

⁽¹⁾ OJ C 321, 20.10.1998, p. 8, and
OJ C 116 E, 26.4.2000, p. 38.

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 119), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 56), Council Common Position of 28 March 2000 (OJ C 178, 27.6.2000, p. 23) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 20 December 2000.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (see page 1 of this Official Journal).

⁽⁶⁾ OJ L 143, 27.6.1995, p. 70.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/18/EC is hereby amended as follows:

1) Article 1 shall be replaced by the following:

'Article 1

1. This Directive concerns the criteria applicable to the issue, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Community.

2. Member States may exclude from the scope of this Directive:

- a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
- b) railway undertakings which only operate urban or suburban rail passenger services;
- c) railway undertakings whose activity is limited to the provision of regional rail freight services that are not covered by the scope of Directive 91/440/EEC;
- d) undertakings which only carry out freight operations on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

3. Undertakings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive.'

2) Article 2(a) shall be replaced by the following:

- 'a) "railway undertaking" shall mean any public or private undertaking the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only';

3. Article 3 shall be replaced by the following:

'Article 3

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by this Directive. The task of issuing licences shall be carried out by a body which does not provide rail transport services itself and is independent of bodies or undertakings that do so.'

4) The following paragraph shall be added to Article 4:

'5. A licence shall be valid throughout the territory of the Community.'

5) Article 6, fourth indent shall be replaced by the following:

'— has/have not been convicted of serious or repeated failure to fulfil social- or labour-law obligations, including obligations under occupational safety and health legislation, and customs-law obligations in case of a company seeking to operate cross-border goods transport subject to customs procedures';

6) Article 11(8) shall be replaced by the following:

'8. When a licensing authority issues, suspends, revokes or amends a licence, the Member State concerned shall immediately inform the Commission accordingly. The Commission shall inform the other Member States forthwith'.

7) Articles 12 and 13 shall be replaced by the following:

'Article 12

1. In addition to the requirements of this Directive, a railway undertaking shall also comply with national law and regulatory provisions which are compatible with Community law and are applied in a non-discriminatory manner, in particular:

- a) specific technical and operational requirements for rail services;
- b) safety requirements applying to staff, rolling stock and the internal organisation of the undertaking;
- c) provisions on health, safety, social conditions and the rights of workers and consumers;
- d) requirements applying to all undertakings in the relevant railway sector designed to offer benefits or protection to consumers.

2. A railway undertaking may at any time refer to the Commission the question of the compatibility of the requirements of national law with Community law and also the question of whether such requirements are applied in a non-discriminatory manner. If the Commission considers that the provisions of this Directive have not been fulfilled, it shall deliver an opinion on the correct interpretation of the Directive without prejudice to Article 226 of the Treaty.

Article 13

Railway undertakings shall respect the agreements applicable to international rail transport in force in the Member States in which they operate. They also shall observe the relevant customs and tax provisions.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 March 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such

reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH

DIRECTIVE 2001/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 26 February 2001****on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾ in the light of the joint text approved on 22 November 2000 by the Conciliation Committee,

Whereas:

- (1) Greater integration of the Community railway sector is an essential element of the completion of the internal market and moving towards achieving sustainable mobility.
- (2) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ provides for certain access rights in international rail transport for railway undertakings, and international groupings of railway undertakings; these rights mean that railway infrastructure can be used by multiple users.
- (3) Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees ⁽⁶⁾ set out a broad framework for the allocation of railway infrastructure capacity.

(4) Those Directives have not prevented a considerable variation in the structure and level of railway infrastructure charges and the form and duration of capacity allocation processes.

(5) To ensure transparency and non-discriminatory access to rail infrastructure for all railway undertakings all the necessary information required to use access rights are to be published in a network statement.

(6) Appropriate capacity-allocation schemes for rail infrastructure coupled with competitive operators will result in a better balance of transport between modes.

(7) Encouraging optimal use of the railway infrastructure will lead to a reduction in the cost of transport to society.

(8) An efficient freight sector, especially across borders, requires action for the opening up of the market.

(9) It should be possible for Member States to allow purchasers of railway services to enter directly the capacity-allocation process.

(10) The revitalisation of European railways by means of extended access for international freight on the Trans-European Rail Freight Network requires fair intermodal competition between rail and road, particularly by taking appropriate account of the different external effects; appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators will result in an optimal balance of different transport modes.

(11) The charging and capacity allocation schemes should permit equal and non-discriminatory access for all undertakings and attempt as far as possible to meet the needs of all users and traffic types in a fair and non-discriminatory manner.

⁽¹⁾ OJ C 321, 20.10.1998, p. 10, and OJ C 116 E, 26.4.2000, p. 40.

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 120), confirmed on 27 October 1999 (OJ C 154, 5.6.2000, p. 22), Council Common Position of 28 March 2000 (OJ C 178, 27.6.2000, p. 28) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal), Decision of the European Parliament of 1 February 2001 and Council Decision of 20 December 2000.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (see page 1 of this Official Journal).

⁽⁶⁾ OJ L 143, 27.6.1995, p. 75.

- (12) Within the framework set out by Member States charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.
- (13) Railway undertakings should receive clear and consistent signals from capacity allocation schemes which lead them to make rational decisions.
- (14) In order to take into account the needs of users, or potential users, of railway infrastructure capacity to plan their business, and to the needs of customers and funders, it is important that the infrastructure manager ensures that infrastructure capacity is allocated in a way which reflects the need to maintain and improve service reliability levels.
- (15) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption and improve performance of the network.
- (16) Charging and capacity allocation schemes should allow for fair competition in the provision of railway services.
- (17) It is important to have regard to the business requirements of both applicants and the infrastructure manager.
- (18) It is important to maximise the flexibility available to the infrastructure managers with regard to the allocation of infrastructure capacity, but this must be consistent with satisfaction of the applicant's reasonable requirements.
- (19) The capacity allocation process must prevent the imposition of undue constraints on the wishes of other undertakings holding, or intending to hold, rights to use the infrastructure to develop their business.
- (20) It is desirable to grant some degree of flexibility to infrastructure managers to enable a more efficient use to be made of the infrastructure network.
- (21) Capacity allocation and charging schemes may need to take account of the fact that different components of the rail infrastructure network may have been designed with different principal users in mind.
- (22) The requirements for passenger services may often conflict with the requirements for freight; the requirements for passenger services may result in a network which is more costly to build and maintain than one designed solely for freight; the increasing speed differential between freight and passenger rolling stock can lead to an exacerbation of the conflict between these two types of traffic.
- (23) Different users and types of users will frequently have a different impact on infrastructure capacity and the needs of different services need to be properly balanced.
- (24) Services operated under contract to a public authority may require special rules to safeguard their attractiveness to users.
- (25) The charging and capacity allocation schemes must take account of the effects of increasing saturation of infrastructure capacity and ultimately the scarcity of capacity.
- (26) The different time-frames for planning traffic types mean that it is desirable to ensure that requests for infrastructure capacity which are made after the completion of the timetabling process can be satisfied.
- (27) The use of information technology can enhance the speed and responsiveness of the timetabling process and improve the ability of applicants to bid for infrastructure capacity, as well as improving the ability to establish train paths which cross more than one infrastructure manager's network.
- (28) To ensure the optimum outcome for railway undertakings, it is desirable to require an examination of the use of infrastructure capacity when the coordination of requests for capacity is required to meet the needs of users.
- (29) In view of the monopolistic position of the infrastructure managers it is desirable to require an examination of the available infrastructure capacity, and methods of enhancing it when the capacity allocation process is unable to meet the requirements of users.
- (30) A lack of information about other railway undertakings' requests as well as about the constraints within the system may make it difficult for railway undertakings to seek to optimise their infrastructure capacity requests.
- (31) It is important to ensure the better coordination of allocation schemes so as to ensure the improved attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic.

- (32) It is important to minimise the distortions of competition which may arise, either between railway infrastructures or between transport modes, from significant differences in charging principles.
- (33) It is desirable to define those components of the infrastructure service which are essential to enable an operator to provide a service and which should be provided in return for minimum access charges.
- (34) Investment in railway infrastructure is desirable and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments where they are economically attractive.
- (35) Any charging scheme will send economic signals to users. It is important that those signals to railway undertakings should be consistent and lead them to make rational decisions.
- (36) To enable the establishment of appropriate and fair levels of infrastructure charges, infrastructure managers need to record and establish the valuation of their assets and develop a clear understanding of cost factors in the operation of the infrastructure.
- (37) It is desirable to ensure that account is taken of external costs when making transport decisions.
- (38) It is important to ensure that charges for international traffic are such as to permit rail to meet the needs of the market; consequently infrastructure charging should be set at the cost that is directly incurred as a result of operating the train service.
- (39) The overall level of cost recovery through infrastructure charges affects the necessary level of government contribution; Member States may require different levels of overall cost recovery through charges including mark-ups or a rate of return which the market can bear while balancing cost recovery with intermodal competitiveness of rail freight. However, it is desirable for any infrastructure charging scheme to enable traffic to use the rail network which can at least pay for the additional cost which it imposes.
- (40) A railway infrastructure is a natural monopoly. It is therefore necessary to provide infrastructure managers with incentives to reduce costs and manage their infrastructure efficiently.
- (41) Account should be taken of the fact that for a great many years the level of investment in infrastructure and technology has not made it possible to create the conditions for any real development of railway transport. It is therefore advisable, against this background, for appropriate upgrading to be carried out, in particular in the context of setting up the Trans-European Rail Freight Network, by using *inter alia* the Community instruments available, without prejudice to priorities already established.
- (42) Discounts which are allowed to railway undertakings must relate to actual administrative cost savings experienced; discounts may also be used to promote the efficient use of infrastructure.
- (43) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network.
- (44) The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required.
- (45) Measures are needed to ensure that all railway undertakings licensed under Community law are required to hold an appropriate safety certificate before operating on the territory of a Member State; the granting of safety certificates must comply with Community law.
- (46) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of these Community rules and acts as an appeal body, notwithstanding the possibility of judicial review.
- (47) Specific measures are required to take account of the specific geopolitical and geographical situation of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.
- (48) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (49) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof as well as safety certification, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the manifestly international dimensions involved in the operation of significant

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

- (50) Council Regulation (EEC) No 2830/77 of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings⁽¹⁾, Council Regulation (EEC) No 2183/78 of 19 September 1978 laying down uniform costing principles for railway undertakings⁽²⁾, Council Decision 82/529/EEC of 19 July 1982 on the fixing of rates for the international carriage of goods by rail⁽³⁾, Council Decision 83/418/EEC of 25 July 1983 on the commercial independence of the railways in the management of their international passenger and luggage traffic⁽⁴⁾, and Directive 95/19/EC are superseded by this Directive and should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Scope

1. This Directive concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.

Member States shall ensure that charging and capacity allocation schemes for railway infrastructure follow the principles set down in this Directive and thus allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity.

⁽¹⁾ OJ L 334, 24.12.1977, p. 13. Regulation as last amended by the 1994 Act of Accession.

⁽²⁾ OJ L 258, 21.9.1978, p. 1. Regulation as last amended by the 1994 Act of Accession.

⁽³⁾ OJ L 234, 9.8.1982, p. 5. Regulation as last amended by the 1994 Act of Accession.

⁽⁴⁾ OJ L 237, 26.8.1983, p. 32. Regulation as last amended by the 1994 Act of Accession.

2. This Directive applies to the use of railway infrastructure for domestic and international rail services.

3. Member States may exclude from the scope of this Directive:

- a) stand-alone local and regional networks for passenger services on railway infrastructure;
- b) networks intended only for the operation of urban or suburban passenger services;
- c) regional networks which are used for regional freight services solely by a railway undertaking that is not covered by the scope of Directive 91/440/EEC until capacity on that network is requested by another applicant;
- d) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

4. Transport operations in the form of shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive.

Article 2

Definitions

For the purpose of this Directive:

- a) 'allocation' means the allocation of railway infrastructure capacity by an infrastructure manager;
- b) 'applicant' means a licensed railway undertaking and/or an international grouping of railway undertakings, and, in Member States which provide for such a possibility, other persons and/or legal entities with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No 1191/69⁽⁵⁾ and shippers, freight forwarders and combined transport operators, for the operation of railway service on their respective territories;
- c) 'congested infrastructure' means a section of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;

⁽⁵⁾ Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1). Regulation as last amended by Regulation (EC) No 1893/91 (OJ L 169, 29.6.1991, p. 1).

- d) 'capacity enhancement plan' means a measure or series of measures with a calendar for their implementation which are proposed to alleviate the capacity constraints leading to the declaration of a section of infrastructure as 'congested infrastructure';
- e) 'coordination' means the process through which the allocation body and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;
- f) 'framework agreement' means a legally binding general agreement on the basis of public or private law, setting out the rights and obligations of an applicant and the infrastructure manager or the allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;
- g) 'infrastructure capacity' means the potential to schedule train paths requested for an element of infrastructure for a certain period;
- h) 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
- i) 'network' means the entire railway infrastructure owned and/or managed by an infrastructure manager;
- j) 'network statement' means the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes. It shall also contain such other information as is required to enable application for infrastructure capacity;
- k) 'railway undertaking' means any public or private undertaking, licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;
- l) 'train path' means the infrastructure capacity needed to run a train between two places over a given time-period;
- m) 'working timetable' means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.

Article 3

Network statement

1. The infrastructure manager shall, after consultation with the interested parties, develop and publish a network statement obtainable against payment of a duty which may not exceed the cost of publishing that statement.
2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure. The content of the network statement is laid down in Annex I.
3. The network statement shall be kept up to date and modified as necessary.
4. The network statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.

CHAPTER II

INFRASTRUCTURE CHARGES

Article 4

Establishing, determining and collecting charges

1. Member States shall establish a charging framework while respecting the management independence laid down in Article 4 of Directive 91/440/EEC.

Subject to the said condition of management independence, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager. The determination of the charge for the use of infrastructure and the collection of this charge shall be performed by the infrastructure manager.

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions, described in this chapter, other than collecting the charges shall be performed by a charging body that is independent in its legal form, organisation and decision-making from any railway undertaking.

3. Infrastructure managers shall cooperate to achieve the efficient operation of train services which cross more than one infrastructure network. They shall in particular aim to guarantee the optimum competitiveness of international rail freight and ensure the efficient utilisation of the Trans-European Rail Freight Network. They may establish such joint organisations as are appropriate to enable this to take place. Any cooperation or joint organisation shall be bound by the rules set out in this Directive.

4. Except where specific arrangements are made under Article 8(2), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.

5. Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

6. An infrastructure manager or charging body shall respect the commercial confidentiality of information provided to it by applicants.

Article 5

Services

1. Railway undertakings shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in Annex II. The supply of services referred to in Annex II, point 2 shall be provided in a non-discriminatory manner and requests by railway undertakings may only be rejected if viable alternatives under market conditions exist. If the services are not offered by one infrastructure manager, the provider of the 'main infrastructure' shall use all reasonable endeavours to facilitate the provision of these services.

2. Where the infrastructure manager offers any of the range of services described in Annex II, point 3 as additional services he shall supply them upon request to a railway undertaking.

3. Railway undertakings may request a further range of ancillary services, listed in Annex II, point 4 from the infrastructure manager or from other suppliers. The infrastructure manager is not obliged to supply these services.

Article 6

Infrastructure cost and accounts

1. Member States shall lay down conditions, including where appropriate advance payments, to ensure that, under normal business conditions and over a reasonable time period, the accounts of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities and State funding on the one hand, and infrastructure expenditure on the other.

Without prejudice to the possible long-term aim of user cover of infrastructure costs for all modes of transport on the basis

of fair, non-discriminatory competition between the various modes, where rail transport is able to compete with other modes of transport, within the charging framework of Articles 7 and 8, a Member State may require the infrastructure manager to balance his accounts without State funding.

2. Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.

3. Member States shall ensure that the provision set out in paragraph 2 is implemented, either through a contractual agreement between the competent authority and infrastructure manager covering a period of not less than three years which provides for State funding or through the establishment of appropriate regulatory measures with adequate powers.

4. Where a contractual agreement exists, the terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contract period.

5. A method for apportioning costs shall be established. Member States may require prior approval. This method should be updated from time to time to the best international practice.

Article 7

Principles of charging

1. Charges for the use of railway infrastructure shall be paid to the infrastructure manager and used to fund his business.

2. Member States may require the infrastructure manager to provide all necessary information on the charges imposed. The infrastructure manager must, in this regard, be able to justify that infrastructure charges actually invoiced to each operator, pursuant to Articles 4 to 12, comply with the methodology, rules, and where applicable, scales laid down in the network statement.

3. Without prejudice to paragraphs 4 or 5 or to Article 8, the charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

4. The infrastructure charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.

5. The infrastructure charge may be modified to take account of the cost of the environmental effects caused by the operation of the train. Such a modification shall be differentiated according to the magnitude of the effect caused.

Charging of environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is applied at a comparable level to competing modes of transport.

In the absence of any comparable level of charging of environmental costs in other competing modes of transport, such modification shall not result in any overall change in revenue to the infrastructure manager. If a comparable level of charging of environmental costs has been introduced for rail and competing modes of transport and that generates additional revenue, it shall be for Member States to decide how the revenue shall be used.

6. To avoid undesirable disproportionate fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of train services and times. Nevertheless, the relative magnitudes of the infrastructure charges shall be related to the costs attributable to the services.

7. The supply of services referred to in Annex II, point 2, shall not be covered by this Article. Without prejudice to the foregoing, account shall be taken, in setting the prices for the services set out in Annex II, point 2, of the competitive situation of rail transport.

8. Where services listed in Annex II, points 3 and 4 as additional and ancillary services are offered only by one supplier the charge imposed for such a service shall relate to the cost of providing it, calculated on the basis of the actual level of use.

9. Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the infrastructure manager caused by the maintenance.

Article 8

Exceptions to charging principles

1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimum competitiveness in particular of international rail freight. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

2. For specific investment projects, in the future, or that have been completed not more than 15 years before the entry into force of this Directive, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/or cost-effectiveness and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

3. To prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of his infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

4. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1, it shall make them public at least three months in advance.

Article 9

Discounts

1. Without prejudice to Articles 81, 82, 86 and 87 of the Treaty and notwithstanding Article 7(3) of this Directive, any discount on the charges levied on a railway undertaking by the infrastructure manager, for any service, shall comply with the criteria set out in this Article.

2. With the exception of paragraph 3, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

3. Infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

4. Discounts may relate only to charges levied for a specified infrastructure section.
5. Similar discount schemes shall apply for similar services.

Article 10

Compensation schemes for unpaid environmental, accident and infrastructure costs

1. Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.
2. Where an operator receiving compensation enjoys an exclusive right, the compensation must be accompanied by comparable benefits to users.
3. The methodology used and calculations performed must be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided and to ensure that the scheme is granted on non-discriminatory terms to undertakings.
4. Member States shall ensure that such a scheme is compatible with Articles 73, 87 and 88 of the Treaty.

Article 11

Performance scheme

1. Infrastructure charging schemes shall through a performance scheme encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network. This may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better than planned performance.
2. The basic principles of the performance scheme shall apply throughout the network.

Article 12

Reservation charges

Infrastructure managers may levy an appropriate charge for capacity that is requested but not used. This charge shall provide incentives for efficient use of capacity.

The infrastructure manager shall always be able to inform any interested party of the infrastructure capacity which has been allocated to user railway undertakings.

CHAPTER III

ALLOCATION OF INFRASTRUCTURE CAPACITY

Article 13

Capacity rights

1. Infrastructure capacity shall be allocated by an infrastructure manager, and once allocated to an applicant may not be transferred by the recipient to another undertaking or service.

Any trading in infrastructure capacity shall be prohibited and shall lead to exclusion from the further allocation of capacity.

The use of capacity by a railway undertaking when carrying out the business of an applicant who is not a railway undertaking shall not be considered a transfer.

2. The right to use specific infrastructure capacity in the form of a train path may be granted to applicants for a maximum duration of one working timetable period.

An infrastructure manager and an applicant may enter into a framework agreement as laid down in Article 17 for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

3. The definition of respective rights and obligations between infrastructure managers and applicants in respect of any allocation of capacity shall be laid down in contracts or legislation.

Article 14

Capacity allocation

1. Member States may establish a framework for the allocation of infrastructure capacity while respecting the management independence laid down in Article 4 of Directive 91/440/EEC. Specific capacity allocation rules shall be established. The infrastructure manager shall perform the capacity allocation processes. In particular, the infrastructure manager shall ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis and in accordance with Community law.

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions is not independent of any railway undertaking, the functions referred to in paragraph 1 and described in this chapter shall be performed by an allocation body that is independent in its legal form, organisation and decision-making from any railway undertaking.

3. Infrastructure managers and allocation bodies shall respect the commercial confidentiality of information provided to them.

Article 15

Cooperation in the allocation of infrastructure capacity on more than one network

1. Infrastructure managers shall cooperate to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network. They shall organise international train paths, in particular within the framework of the Trans-European Rail Freight Network. They shall establish such procedures as are appropriate to enable this to take place. These procedures shall be bound by the rules set out in this Directive.

The procedure established in order to coordinate the allocation of infrastructure capacity at an international level shall associate representatives of infrastructure managers for all railway infrastructures whose allocation decisions have an impact on more than one other infrastructure manager. Appropriate representatives of infrastructure managers from outside the Community may be associated with these procedures. The Commission shall be informed and invited to attend as an observer.

2. At any meeting or other activity undertaken to permit the allocation of infrastructure capacity for trans-network train services, decisions shall only be taken by representatives of infrastructure managers.

3. The participants in the cooperation referred to in paragraph 1 shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating infrastructure capacity be made publicly available.

4. Working in cooperation as referred to in paragraph 1, infrastructure managers shall assess the need for, and may where necessary propose and organise international train paths to facilitate the operation of freight trains which are subject to an *ad hoc* request as referred to in Article 23.

Such prearranged international train paths shall be made available to applicants via any of the participating infrastructure managers.

Article 16

Applicants

1. Applications for infrastructure capacity may be made by railway undertakings and their international groupings and, in the territories of those Member States which so allow, by other applicants complying with the definition in Article 2(b). Member States may also allow other applicants to apply for infrastructure capacity on their territories.

2. The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published as part of the allocation principles in the network statement, and the Commission shall be informed.

3. The requirements in paragraph 2 may only include the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant, and assurance of the capability to prepare compliant bids for infrastructure capacity.

Article 17

Framework agreements

1. Without prejudice to Articles 81, 82 and 86 of the Treaty, a framework agreement may be concluded with an applicant. Such a framework agreement specifies the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period. The framework agreement shall not specify a train path in detail, but should be such as to seek to meet the legitimate commercial needs of the applicant. A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 30 of this Directive.

2. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.

3. A framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.

4. The framework agreement may contain penalties should it be necessary to modify or terminate the agreement.

5. Framework agreements shall in principle be for a period of five years. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

Any period longer than 10 years shall be possible only in exceptional cases, in particular, where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments.

6. While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

Article 18

Schedule for the allocation process

1. The infrastructure manager shall adhere to the schedule for capacity allocation set out in Annex III.

2. Infrastructure managers shall agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary.

Article 19

Application

1. Applicants may apply on the basis of public or private law to the infrastructure manager to request an agreement granting rights to use railway infrastructure against a charge as provided for in chapter II.

2. Requests relating to the regular working timetable must adhere to the deadlines set out in Annex III.

3. An applicant who is a party to a framework agreement shall apply in accordance with that agreement.

4. Applicants may request infrastructure capacity crossing more than one network by applying to one infrastructure manager. That infrastructure manager shall then be permitted to act on behalf of the applicant to seek capacity with the other relevant infrastructure managers.

5. Infrastructure managers shall ensure that, for infrastructure capacity crossing more than one network, applicants may apply direct to any joint body which the infrastructure managers may establish.

Article 20

Scheduling

1. The infrastructure manager shall as far as is possible meet all requests for infrastructure capacity including requests for train paths crossing more than one network, and shall as

far as possible take account of all constraints on applicants, including the economic effect on their business.

2. The infrastructure manager may give priority to specific services within the scheduling and coordination process but only as set out in Articles 22 and 24.

3. The infrastructure manager shall consult interested parties about the draft working timetable and allow them at least one month to present their views. Interested parties shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.

4. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.

Article 21

Coordination process

1. During the scheduling process referred to in Article 20, when the infrastructure manager encounters conflicts between different requests he shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.

2. When a situation requiring coordination arises, the infrastructure manager shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.

3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to achieve a resolution of any conflicts.

4. The principles governing the coordination process shall be defined in the network statement. These shall in particular reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.

5. When requests for infrastructure capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.

6. Without prejudice to the existing appeal procedures and to the provisions of Article 30, in case of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.

Article 22

Congested infrastructure

1. Where after coordination of the requested paths and consultation with applicants it is not possible to satisfy requests for infrastructure capacity adequately then the infrastructure manager must immediately declare that element of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which it can be foreseen will suffer from insufficient capacity in the near future.

2. When infrastructure has been declared to be congested, the infrastructure manager shall carry out a capacity analysis as described in Article 25, unless a capacity enhancement plan as described in Article 26 is already being implemented.

3. When charges in accordance with Article 7(4) have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the infrastructure manager may in addition employ priority criteria to allocate infrastructure capacity.

4. The priority criteria shall take account of the importance of a service to society, relative to any other service which will consequently be excluded.

In order to guarantee within this framework the development of adequate transport services, in particular to comply with public-service requirements or promote the development of rail freight, Member States may take any measures necessary, under non-discriminatory conditions, to ensure that such services are given priority when infrastructure capacity is allocated.

Member States may, where appropriate, grant the infrastructure manager compensation corresponding to any loss of revenue related to the need to allocate a given capacity to certain services pursuant to the previous subparagraph.

This shall include taking account of the effect of this exclusion in other Member States.

5. The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority criteria.

6. The procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement.

Article 23

Ad hoc requests

1. The infrastructure manager shall respond to *ad hoc* requests for individual train paths as quickly as possible, and in

any event, within five working days. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.

2. Infrastructure managers shall where necessary undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable *ad hoc* requests for capacity. This shall also apply in cases of congested infrastructure.

Article 24

Specialised infrastructure

1. Without prejudice to paragraph 2, infrastructure capacity shall be considered to be available for the use of all types of service which conform to the characteristics necessary for operation on the train path.

2. Where there are suitable alternative routes, the infrastructure manager may, after consultation with interested parties, designate particular infrastructure for use by specified types of traffic. Without prejudice to Articles 81, 82 and 86 of the Treaty, when such designation has occurred, the infrastructure manager may give priority to this type of traffic when allocating infrastructure capacity.

Such designation shall not prevent the use of such infrastructure by other types of traffic when capacity is available and when the rolling stock conforms to the technical characteristics necessary for operation on the line.

3. When infrastructure has been designated pursuant to paragraph 2, this shall be described in the network statement.

Article 25

Capacity analysis

1. The objective of capacity analysis is to determine the restrictions on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied. This analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.

2. The analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity. Measures to be considered shall include in particular re-routing of services, re-timing services, speed alterations and infrastructure improvements.

3. A capacity analysis shall be completed within six months of the identification of infrastructure as congested.

Article 27

Use of train paths

Article 26

Capacity enhancement plan

1. Within six months of the completion of a capacity analysis, the infrastructure manager shall produce a capacity enhancement plan.

2. A capacity enhancement plan shall be developed after consultation with users of the relevant congested infrastructure.

It shall identify:

- a) the reasons for the congestion;
- b) the likely future development of traffic;
- c) the constraints on infrastructure development;
- d) the options and costs for capacity enhancement, including likely changes to access charges.

It shall also, on the basis of a cost benefit analysis of the possible measures identified, determine what action shall be taken to enhance infrastructure capacity, including a calendar for implementation of the measures.

The plan may be subject to prior approval by the Member State.

3. The infrastructure manager shall cease to levy any fees which are levied for the relevant infrastructure under Article 7(4) in cases where:

- a) he does not produce a capacity enhancement plan; or
- b) he does not make progress with the action plan identified in the capacity enhancement plan.

However, the infrastructure manager may, subject to the approval of the regulatory body referred to in Article 30 continue to levy those fees if:

- a) the capacity enhancement plan cannot be realised for reasons beyond his control; or
- b) the options available are not economically or financially viable.

1. In particular for congested infrastructure the infrastructure manager shall require the surrender of a train path which, over a period of at least one month, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the operator's control.

2. An infrastructure manager may specify in the network statement conditions whereby it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.

Article 28

Infrastructure capacity for scheduled maintenance

1. Requests for infrastructure capacity to enable maintenance to be performed shall be submitted during the scheduling process.

2. Adequate account shall be taken by the infrastructure manager of the effect of infrastructure capacity reserved for scheduled track maintenance on applicants.

Article 29

Special measures to be taken in the event of disturbance

1. In the event of disturbance to train movements caused by technical failure or accident the infrastructure manager must take all necessary steps to restore the normal situation. To that end he shall draw up a contingency plan listing the various public bodies to be informed in the event of serious incidents or serious disturbance to train movements.

2. In an emergency and where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the paths allocated may be withdrawn without warning for as long as is necessary to repair the system.

The infrastructure manager may, if he deems it necessary, require railway undertakings to make available to him the resources which he feels are the most appropriate to restore the normal situation as soon as possible.

3. Member States may require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance of the safety standards and rules.

CHAPTER IV

GENERAL MEASURES*Article 30***Regulatory body**

1. Without prejudice to Article 21(6), Member States shall establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.

2. An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

- a) the network statement;
- b) criteria contained within it;
- c) the allocation process and its result;
- d) the charging scheme;
- e) level or structure of infrastructure fees which it is, or may be, required to pay;
- f) safety certificate, enforcement and monitoring of the safety standards and rules.

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.

4. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

5. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.

Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

6. Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.

*Article 31***Cooperation of regulatory bodies**

The national regulatory bodies shall exchange information about their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

*Article 32***Safety certification**

1. The arrangements for safety certification for railway undertakings which are or will be established in the Community and the international groupings which they form shall be in accordance with this Article.

2. The Member States shall provide for their respective territories that a safety certificate in which the railway undertakings' safety requirements are set out be submitted in order to ensure safe service on the routes concerned.

3. In order to obtain the safety certificate, the railway undertaking shall comply with the regulations under national law, compatible with Community law and applied in a non-discriminatory manner, laying down the technical and operational requirements specific to rail services and the safety requirements applying to staff, rolling stock and the undertaking's internal organisation.

In particular, it shall provide proof that the staff whom it employs to operate and accompany the trains has the necessary training to comply with the traffic rules applied by the infrastructure manager and to meet the safety requirements imposed on it in the interests of train movement.

The railway undertaking shall also prove that the rolling stock making up the trains has been approved by the public authority or by the infrastructure manager and checked in accordance with the operating rules applicable to the infrastructure used. The safety certificate shall be issued by whichever body is designated for the purpose by the Member State in which the infrastructure used is situated.

*Article 33***Derogations**

1. For a period of five years from 15 March 2003, the following Member States:

- Ireland, as a Member State located on an island, with a rail link to only one other Member State,
- the United Kingdom, in respect of Northern Ireland, on the same basis, and
- Greece, as a Member State that does not have any direct rail link to any other Member State,

do not need to apply the requirements set out in:

- a) Articles 3, 4(2), 13, 14, 17, 21(4), 21(6), 22, 24(3), 25 to 28 and 30 on the condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal, when so requested in writing by a railway undertaking, before an independent body which shall take its decision within two months of the submission of all relevant information and whose decision shall be subject to judicial review, and
 - b) Article 32 in so far as rail transport services falling outside the scope of Article 10 of Directive 91/440/EEC are concerned.
2. However, where:
- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and Northern Ireland, a railway company so licensed elsewhere submits an official application to operate competing railway services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to in Article 35(2); or
 - b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogations referred to in paragraph 1 shall not apply.

Within one year from the receipt of either the decision referred to in point (a) adopted in accordance with the advisory procedure referred to in Article 35(2), or notification of the official application referred to in point (b), the Member State or States concerned (Ireland, the United Kingdom with

respect to Northern Ireland, or Greece) shall put in place legislation to implement the Articles referred to in paragraph 1.

3. A derogation referred to in paragraph 1 may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of such derogation may address a request to the Commission for a renewed derogation. Any such request must be substantiated. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 35(2). The said advisory procedure shall apply to any decision related to the request.

When adopting its decision the Commission shall take into account any development in the geopolitical situation and the development of the rail market in, from and to the Member State having requested the renewed derogation.

4. Luxembourg as a Member State with a relatively small rail network does not need to apply until 31 August 2004 the requirement to award to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Articles 4 and 14 in so far as they oblige Member States to establish independent bodies performing the tasks referred to in those Articles.

CHAPTER V

FINAL PROVISIONS*Article 34***Implementing measures**

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

2. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of provisions concerning charging, capacity allocation and safety certification, and within two months of receipt of such a request decide in accordance with the advisory procedure referred to in Article 35(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

Without prejudice to Article 226 of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

3. The amendments necessary to adapt the Annexes shall be adopted in accordance with the regulatory procedure referred to in Article 35(3).

Article 35

Committee procedures

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.

Article 36

Report

The Commission shall by 15 March 2005 submit to the European Parliament and to the Council a report on the implementation of this Directive, accompanied if necessary by proposals for further Community action.

Article 37

Repeals

Regulation (EEC) No 2830/77, Regulation (EEC) No 2183/78, Decision 82/529/EEC, Decision 83/418/EEC and Directive 95/19/EC are hereby repealed.

Article 38

Implementation

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 March 2003. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 39

Entry into force

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 40

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH

ANNEX I

Contents of the network statement

The network statement referred to in Article 3 shall contain the following information:

1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it.
2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Article 7(4) and (5) and Articles 8 and 9. It shall contain information on changes in charges already decided upon or foreseen.
3. A section on the principles and criteria for capacity allocation. This shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:
 - a) the procedures according to which applicants may request capacity from the infrastructure manager;
 - b) the requirements governing applicants;
 - c) the schedule for the application and allocation processes;
 - d) the principles governing the coordination process;
 - e) the procedures which shall be followed and criteria used where infrastructure is congested;
 - f) details of restrictions on the use of infrastructure;
 - g) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.

It shall detail the measures taken to ensure the adequate treatment of freight services, international services and requests subject to the *ad hoc* procedure.

ANNEX II

Services to be supplied to the railway undertakings

1. The minimum access package shall comprise:
 - a) handling of requests for infrastructure capacity;
 - b) the right to utilise capacity which is granted;
 - c) use of running track points and junctions;
 - d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
 - e) all other information required to implement or operate the service for which capacity has been granted.
 2. Track access to services facilities and supply of services shall comprise:
 - a) use of electrical supply equipment for traction current, where available;
 - b) refuelling facilities;
 - c) passenger stations, their buildings and other facilities;
 - d) freight terminals;
 - e) marshalling yards;
 - f) train formation facilities;
 - g) storage sidings;
 - h) maintenance and other technical facilities.
 3. Additional services may comprise:
 - a) traction current;
 - b) pre-heating of passenger trains;
 - c) supply of fuel, shunting, and all other services provided at the access services facilities mentioned above;
 - d) tailor-made contracts for:
 - control of transport of dangerous goods,
 - assistance in running abnormal trains.
 4. Ancillary services may comprise:
 - a) access to telecommunication network;
 - b) provision of supplementary information;
 - c) technical inspection of rolling stock.
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ANNEX III

Schedule for the allocation process

1. The working timetable shall be established once per calendar year.
 2. The change of working timetable shall take place at midnight on the last Saturday in May. Where a change or adjustment is carried out after the summer it shall take place at midnight on the last Saturday in September each year and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates and in this case they shall inform the Commission thereof.
 3. The final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the entry into force of the working timetable.
 4. No later than 11 months before the working timetable comes into force, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant allocation bodies as set out in Article 15. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.
 5. No later than four months after the deadline for submission of bids by applicants, the infrastructure manager shall prepare a draft timetable.
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