

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 17.9.2010  
COM(2010) 475 final

2010/0253 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a single European railway area**

**(Recast)**

SEC(2010) 1043

SEC(2010) 1042

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Background

After enjoying great prosperity during the 19<sup>th</sup> century and the first half of the 20<sup>th</sup> century, the railway sector fell into decline due to the increasing popularity of cars and air travel from 1970 onwards. In order to halt this decline the European Community has adopted a number of legislative measures aimed at reviving the railways by gradually creating a “single European railway area”. The first railway package presented by the Commission in 1998 and adopted at the end of 2000 signalled the desire of both national and European policymakers to reform the regulatory framework to ensure the railway sector's integration at European level and to enable it to face up to the competition from other transport modes on the best possible terms.

The first railway package consists of three Directives:

- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001<sup>1</sup>, which amended a pre-existing Council Directive of 29 July 1991 on the development of the Community's railways<sup>2</sup>;
- Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001<sup>3</sup>, which amended a pre-existing Council Directive of 27 June 1995 on the licensing of railway undertakings<sup>4</sup>; and
- 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<sup>5</sup>.

The entry into force of these Directives in 2003 has had a far-reaching impact on how to do rail business in the European Union (EU). There are two distinct actors – railway undertakings and infrastructure managers. Railway undertakings licensed in accordance with EU criteria should be able to access railway infrastructure on fair, non-discriminatory terms and to offer pan-European services. Infrastructure managers may charge for the use of their networks and must supply a minimum level of service including access to certain facilities.

---

<sup>1</sup> OJ L 75, 15.3.2001, p. 1, as amended by Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 (OJ L 164, 30.4.2004, p. 164), Council Directive 2006/103/EC of 20 November 2006 (OJ L 363, 20.12.2006, p. 344), Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 (OJ L 315, 3.12.2007, p. 44) and by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

<sup>2</sup> Council Directive 91/440/EEC (OJ L 237, 24.8.1991, p. 25).

<sup>3</sup> OJ L 75, 15.3.2001, p. 26, as amended by Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 (OJ L 220, 21.6.2004, p. 16).

<sup>4</sup> Council Directive 95/18/EC (OJ L 143, 27.6.1995, p. 70).

<sup>5</sup> OJ L 75, 15.3.2001, p. 29, as amended by Commission Decision 2002/844/EC of 23 October 2002 (OJ L 289, 26.10.2002, p. 30), Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 (OJ L 164, 30.4.2004, p.44) and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 (OJ L 315, 3.12.2007, p. 44).

The Directives define access rights for rail freight and passenger services and certain safeguards with respect to the management of railway undertakings to ensure that competitors have non-discriminatory access to the network. The Directives also provide guidance on how independent national rail regulatory bodies should be set up in order to ensure non-discriminatory access and to monitor competition on the rail markets.

With this new regulatory framework, the railway industry has managed to stabilise the volumes transported and, in some Member States, to recover market share from the roads. The fall in employment had also slowed down before the onset of the crisis. However, the growth of rail freight in terms of tonnes transported during recent years has not been strong enough to recover the market share of 2.3 percentage points lost between 1995 and 2003. If the observed trend continues, the overall modal share of rail freight will not improve. For rail passenger transport the decline over the last three decades has been less dramatic than for freight. Rail's share of the total passenger transport market decreased from 10.2% in 1970 to 6.1% in 2003 in the EU-15 (in terms of passenger-kilometres). In the EU-27, the share of rail passenger transport dropped from 6.6% in 1995 to 5.9% in 2003. Since then it has recovered slightly and stabilised.

The current economic climate is exacerbating the weak performance of the rail market. Freight services (including rail) have recently suffered a significant drop in activity (between 20% and 50% depending on the market segment) and passenger service activity has also slowed. Stakeholders have indicated that national recovery plans are not producing investment as rapidly as had been hoped and that major job cuts are anticipated, particularly in the freight sector.

## **1.2. Problems to be addressed**

The development of the railway sector and its capacity to compete viably with other modes of transport are still hampered by serious problems related to (a) inadequate financing and pricing of the infrastructure, (b) persistent barriers to competition and (c) lack of appropriate regulatory oversight.

- (a) The level of investment in rail infrastructure development and maintenance remains insufficient in a large number of Member States. In many cases, the quality of the existing infrastructure continues to decline. The underinvestment observed at national level is partly due to the absence of clear investment plans and long-term strategies. Poor maintenance, slow modernisation and increasing bottlenecks on the network have a direct effect on rail undertakings as they fail to keep pace with other modes of transport and to attract investment. The inadequate level and structure of infrastructure access charges in many Member States tends to aggravate these difficulties.
- (b) Competition between railway undertakings is limited by various factors. Insufficient transparency of market conditions and a poorly functioning institutional framework continue to make it difficult for new entrants to provide competitive rail services. Another important element is the persistent discrimination faced by new entrants in gaining access to rail-related services which are often owned and operated by the incumbent rail undertakings. And discrimination can still be found in the conditions of access to the infrastructure (path allocation and charging).

The problems mentioned above are aggravated by difficulties which regulatory bodies encounter in carrying out their oversight duties, in particular to ensure non-discrimination between rail undertakings and to check whether charging principles are properly applied or whether separation of accounts is fully respected. These difficulties are often due to a lack of qualified staff and other resources. In several cases, insufficient independence from the infrastructure managers, the incumbent rail undertaking or the ministry which exerts ownership rights over the incumbent operator is an aggravating factor.

Full implementation of the existing legislation will contribute very substantially towards resolving these problems. The Commission has therefore moved to ensure that the existing legislation is enforced by bringing infringement procedures against Member States who have incorrectly or incompletely transposed it.

However there are weaknesses, ambiguities and gaps in the current regulatory framework which need to be addressed to meet fully the initial objectives of the legislation. A recast of the first railway package is considered by the Commission as one of the ways to tackle them.

## **2. OBJECTIVES OF THE PROPOSAL**

### **2.1. General Objectives**

The main objective of the European Union's transport policy is to establish an internal market by developing common policies to promote a high degree of competitiveness and the harmonious, balanced and sustainable development of economic activities. Complementing and strengthening existing measures adopted at EU level in the rail sector, the proposal to recast the first railway package will contribute to this objective by facilitating the integration and development of the European rail market.

The creation of a genuine internal market is fundamental to the revitalisation of the railway sector and will help to boost the competitiveness of rail freight and passenger transport services, thereby increasing their attractiveness and modal share. Because of rail transport's higher energy efficiency (especially when compared to road transport), a shift in the modal share of transport from road to rail will result in fewer CO<sub>2</sub> emissions and reduce other pollutants.

### **2.2. Horizontal Objectives**

The aim of simplifying, clarifying and modernising the regulatory environment in Europe is central to the work of the Commission. With this cross-cutting strategic objective in mind, the Commission is pursuing a far-reaching Better Regulation agenda with a view to making progress towards the Europe 2020 strategy.

Legal **simplification** through consolidation and merger is the first horizontal objective underpinning this recast initiative. Elimination of existing cross-references of the three Directives through restructuring and merging into a single rail access code would be instrumental in attaining this objective.

Secondly, the Commission considers that **clarification** of some provisions of rail access legislation would facilitate proper transposition and efficient implementation of European Union law in all Member States. As noted above, some provisions of the first railway package are ambiguous and do not sufficiently define means of implementation.

Finally, there is a need to **modernise** the legislation by eliminating outdated provisions (which were historically relevant prior to full market-opening and may be connected to the traditional fusion of operator and infrastructure manager) and by introducing new provisions which respond more appropriately to the functioning of the market today (for instance, relating to new entrants and full or partial State ownership of infrastructure).

### **2.3. Specific Objectives**

The proposed recast of the first railway package encompasses (a) the adequate financing of and charging for rail infrastructures, (b) the conditions of competition on the railway market, and (c) the organisational reforms needed to ensure appropriate supervision of the market.

- (a) Ensuring adequate, transparent and sustainable funding of the infrastructure and, thanks to better predictability of the infrastructure development and access conditions, facilitating investments by railway undertakings, together with a more appropriate level and structure of infrastructure charging, improving the competitiveness of rail operators vis-à-vis other transport modes and contributing to the internalisation of environmental costs constitute the first objective of the proposed recast.
- (b) Avoiding distortions of competition due to the use of State funds for commercial activities, preventing commercially sensitive information from being collected by incumbents and used against their potential competitors, eliminating conflicts of interest in the management of rail-related services and increasing their availability for new entrants as well as increasing market transparency to ensure effective competition are a second set of objectives.
- (c) Regarding regulatory oversight, the proposed recast intends to ensure that regulatory bodies are in a position to carry out their duties effectively, thanks to reinforced independence, extended competencies, and additional means at their disposal.

## **3. IDENTIFICATION OF THE PROPOSED MODIFICATIONS**

### **3.1. Preliminary Screening**

Based on extensive research and evaluation, the Commission identified a range of measures that could potentially contribute to achieving each of the objectives outlined in the above section. On the basis of studies carried out over several years<sup>6</sup> and taking into account input from stakeholders, the Commission came up with 37 measures. A thorough pre-screening of these 37 measures resulted in the selection of a package of 26 measures. The pre-screening process involved two steps – first, taking into account the results of the stakeholders' consultation and second, carrying out an independent assessment of the measures based on five criteria (effectiveness, implementation time, efficiency, administrative feasibility and consistency with the existing legal framework).

---

<sup>6</sup> Notably, the Report from the Commission on the implementation of the first railway package (cited above), Communication of the Commission on monitoring development of the rail market, studies on multi-annual contracts and rail related services.

### **3.2. External expertise and stakeholders' consultation**

Following the decision to carry out an impact assessment for an initiative to recast the first railway package, an external study was commissioned to PriceWaterhouseCoopers Advisory (PWC) in the context of DG TREN's Framework Contract TREN/A2/143-2007 regarding Impact Assessment and Evaluations.

A stakeholders' consultation involving almost 380 organisations from the EU-25 (EU-27 excluding Cyprus and Malta, which have no railways) was carried out in the context of the external study undertaken by PWC. Stakeholders were asked to highlight specific barriers that, from their point of view, hinder the full opening of the international rail market and the development of rail-related services. In addition, stakeholders were invited to identify areas of the EU legislative framework that could be improved and to give their opinions on the potential effectiveness of the measures envisaged.

### **3.3. Impact Assessment**

Based on the external study mentioned above as well as the conclusions of the stakeholders' consultation process, the Commission made a quantitative and qualitative assessment of the impact of the whole package of pre-selected measures. Where they had not previously been subject to impact assessment, this evaluation examined alternative options for the new measures envisaged to modernise the existing regulatory framework.

### **3.4. Subsidiarity**

Problems affecting the railway sector involve transnational aspects that require action to be taken at EU level. The lack of coordination in the relationships between Member States and other actors reduces the efficiency of international rail transport, risking a shift from rail traffic to road transport which would result in increased congestion and pollution. Clarification of the regulatory framework for rail market access in order to facilitate market entry and competition as well as to develop rail service markets including those linked to rail transport provision can be better achieved by the Union than by Member States individually.

## **4. COMMENTS ON THE MAIN MODIFICATIONS PROPOSED**

### **4.1. Separation of accounts (Article 6)**

The new provisions clarify the necessary separation in railway undertaking accounts to ensure appropriate transparency. They make it compulsory to have separate accounts for activities that enjoy a legal monopoly in contrast to activities that are subject to competition. This measure is a safeguard against State funds devoted to unprofitable activities being shifted to subsidise commercial activities and is thereby necessary for avoiding distortion of competition.

### **4.2. Independence of essential functions (Article 7)**

The proposed deletion abolishes the possibility to assign to railway undertakings the collection of rail infrastructure charges. This measure would contribute to fair competition by preventing certain railway undertakings (incumbents) from obtaining access to commercially sensitive information about train path specifications from the invoice for competing railway

undertakings (new entrants). It also provides an additional incentive for sound and non-discriminatory financial management of infrastructure.

#### **4.3. Infrastructure development strategy (Article 8)**

Under this article Member States will be obliged to publish medium to long-term railway sector development strategies that make it possible to meet future mobility needs and are based on sound and sustainable financing of the railway system. It will stimulate long lifecycle investments on which the rail industry relies. Long-term commitments are necessary for attracting new actors to the market and for developing new services.

#### **4.4. Rail-related services (Article 13)**

The proposed changes relate to the modernisation of rail-related services and are twofold.

Firstly, independence requirements (i.e. legal, organisational and decision-making independence) for the management of service facilities and for rail transport provision are introduced to eliminate conflicts of interest between, on the one hand, the rail-related service providers or owners of the service facilities and, on the other hand, incumbent railway undertakings. This measure will help to ensure non-discriminatory access to service facilities.

The second measure proposed in Article 13 is the introduction of 'Use-it-or-lose-it' provisions for the management of rail-related service facilities. If a service facility is not in use, it must be made available by its owner (on a rent or lease basis) to another interested party. This measure increases the availability of facilities in the market by avoiding problems of artificial saturation.

#### **4.5. Cross-border agreements (Article 14)**

The proposed provisions clarify general principles applying to cross-agreements between rail undertakings, between Member States and between Member States and third countries. They also entail notification and cooperation procedures allowing the Commission to ensure that agreements comply with European Union law.

#### **4.6. Market monitoring (Article 15)**

The aim is to make it clear that the rail market monitoring tasks of the Commission will cover items such as rail infrastructure investments, price developments and quality of rail transport services and public service obligations for rail passenger transport, and that relevant data must therefore be supplied by Member States as detailed in the new Annex IV. This measure will help identify bottlenecks of the service market.

#### **4.7. Network Statement Publication (Article 27)**

The proposed provisions clarify the appropriate ways and means for publication of network statements by infrastructure managers. Publishing network statements in a second official EU language and in an electronic form on the portal of the European Railway Agency (ERA) will enhance the accessibility of network statements and thereby improve transparency.



#### **4.8. Information on charging systems (Article 29)**

To increase transparency in the use of State funds, it is proposed to require that Member States' charging frameworks and rules be published in network statements.

#### **4.9. Contracts between competent authorities and infrastructure managers (Article 30)**

The proposed changes detail the process for developing and managing contractual agreements between the national competent authorities and infrastructure managers on infrastructure costs and access charges. In particular the regulatory body is empowered to assess the appropriateness of the envisaged medium to long-term budgetary envelope for the high-level infrastructure output specifications for the same period (performance targets). Such independent assessment can diminish the risk of the incumbent railway undertakings using their political strength to influence the agreements.

#### **4.10. Principles of charging (Article 31)**

The content of Article 31 is modified to introduce two separate measures:

The first measure has to do with differentiation of track access charges based on the noise emission characteristics of the rolling stock making up the train. This will constitute a clear incentive to modernise the infrastructure and in particular to invest in more sustainable rail technologies.

To improve transparency of charges, it is made clear that service providers must also provide information on charges for rail-related services to be published by infrastructure managers in their network statement.

#### **4.11. Exceptions to charging principles (Article 32)**

To improve the coherence of national track access charging schemes, the introduction of common criteria for identifying "market segments" on which services might be able to pay mark-ups is proposed. The criteria in question are set out in Annex VIII, paragraph 3.

To shorten the transition period during which lines are equipped with both national signalling systems and the European Train Control Systems (ETCS) and thereby reduce the infrastructure maintenance costs, it is proposed to lower infrastructure access charges for ETCS equipped trains.

#### **4.12. Cooperation between infrastructure managers (Article 37)**

As for the allocation of infrastructure capacities under Article 40, the new Article 37 proposes to introduce new measures to ensure that infrastructure managers cooperate for the setting of charging systems on more than one network.

#### **4.13. Regulatory bodies (Article 55)**

It is proposed to modernise the provisions on regulatory bodies' independence by stipulating clearly that they must be independent from any other public authority. Ensuring independence of regulatory bodies, in particular from the public authority that exercises the ownership rights

of the incumbent railway undertaking, will reduce the potential for conflict of interest and thereby enhance their oversight capacity and credibility.

#### **4.14. Functions of the regulatory body (Article 56)**

Three measures proposed in Article 56 consist in extending the competencies of regulatory bodies. (1) Their competences will explicitly cover decisions related to access to and charging for rail-related services which are essential to allow market entry and ensure fair competition. (2) To improve accounting separation, prevent State funds devoted to unprofitable activities from being shifted to finance commercial activities and thereby avoid unfair competition; regulatory bodies will also have the power to carry out audits or to initiate external audits with the railway undertakings and infrastructure managers to verify compliance with accounting separation provisions. (3) Finally, to allow regulatory bodies to operate more effectively, cost-accounting data are to be provided by infrastructure managers in an aggregated and standardised format as 'regulatory accounts'.

#### **4.15. Cooperation between regulatory bodies (Article 57)**

To enhance cross-border cooperation and improve market entry conditions, regulatory bodies will have to cooperate for the adoption of decisions on access or charging issues relating to international services. In this context, the decision-making process must allow regulatory bodies to exchange information in due time.

#### **4.16. Classification of rail-related services (Annex III)**

The definition of the use of electrical supply equipment for traction current as part of a minimum access package would ensure that such services are subject to non-discrimination requirements. In addition the obligation to show separately the charges for using the electrical supply equipment and for traction current will provide more transparency in the costs of network operation and therefore will give more incentive for the infrastructure managers to reduce the cost of provision of infrastructure.

#### **4.17. Content of the network statement (Annex VI)**

The measures proposed in Annex VI clarify the content of network statements in order to strengthen their effectiveness and enhance transparency within the railway market. The new provisions stipulate in particular that infrastructure managers must publish (1) a template form for capacity requests, (2) detailed information about international path allocation procedures, (3) information relating to railway licence and rail safety certificate applications, (4) information about procedures for dispute resolution and appeal relating to market access and (5) information on access to rail-related service facilities (beyond the tariff information currently required).

#### **4.18. Contractual agreements (Annex VII)**

The new Annex VII clarifies the content and functioning of the contractual agreements provided for under Article 30 to stimulate the introduction of long-term strategies for the development of railways.

#### **4.19. Infrastructure costs and charges requirements (Annex VIII)**

To contribute to sound and sustainable financing of railway systems, the new Annex VIII clarifies certain provisions of Article 31. This includes detailing (1) the costs that must not be included in the calculation of direct costs of the minimum access package and track access services (as defined in Annex III, paragraphs 1 and 2) and the criteria for identification of market segments on which services might be able to pay mark-ups, (2) the requirements for differentiation of track access charges based on the noise emission characteristics, (3) how infrastructure managers will define market segments to evaluate the possibility of introducing mark-ups, and (4) the main characteristics and general principles of performance regimes.

#### **4.20. Regulatory accounts (Annex X)**

The new Annex X details the common standardised format for the submission of regulatory accounts. This measure would ensure that regulatory bodies are in a position to analyse infrastructure managers' information in detail and facilitate their supervisory activities.

---

↓ 2004/49/EC Art. 30.1 (adapted)

2010/0253 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**⊗ establishing a single European railway area ⊗**

**(Recast)**

**(Text with EEA relevance)**

---

↓ 2001/14/EC (adapted)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⊗ on the Functioning of the European Union ⊗, and in particular Article ⊗ 91 ⊗ thereof,

Having regard to the proposal from the ⊗ European ⊗ Commission ,

⊗ After transmission of the draft legislative act to the national Parliaments, ⊗

Having regard to the opinion of the ⊗ European ⊗ Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the ⊗ ordinary legislative ⊗ procedure,

Whereas:

---

↓ new

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>9</sup>, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings<sup>10</sup> and 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<sup>11</sup> have been substantially amended in 2004 and 2007. Since further amendments are necessary and

---

<sup>7</sup> OJ C [...], [...], p. [...].

<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> OJ L 237, 24. 8.1991, p. 25.

<sup>10</sup> OJ L 143, 27.6.1995, p. 70.

<sup>11</sup> OJ L 75, 15.3.2001, p. 29.

given the link between these legal provisions, those Directives should be recast and merged into a single act in the interest of clarity.

---

↓ 91/440/EEC recital 1 (adapted)

- (2) Greater integration of the  Union  transport sector is an essential element of the  completion of the  internal market, and the railways are a vital part of the  Union  transport sector  moving towards achieving sustainable mobility .
- 

↓ 91/440/EEC recital 2

- (3) The efficiency of the railway system should be improved, in order to integrate it into a competitive market, whilst taking account of the special features of the railways.
- 

↓ 95/18/EC recital 5 (adapted)

- (4) Regional, urban and suburban services  as well as  transport activities in the form of shuttle services through the Channel Tunnel  should be  excluded from the scope of  this  Directive.
- 

↓ 91/440/EEC recital 3 (adapted)

- (5) In order to render railway transport efficient and competitive with other modes of transport, Member States  should ensure  that railway undertakings  have the  status of independent operators behaving in a commercial manner and adapting to market needs.
- 

↓ 91/440/EEC recital 4 (adapted)

- (6)  In order to ensure  the future development and efficient operation of the railway system, a distinction  should be  made between the provision of transport services and the operation of infrastructure. Given this situation, it is necessary for these two activities to be managed  separately  and  to  have separate accounts.
- 

↓ 95/18/EC recital 2

- (7) The principle of freedom to provide services should be applied to the railway sector, taking into account that sector's specific characteristics.
- 

↓ 91/440/EEC recital 5 (adapted)

- (8) In order to boost competition in railway service management in terms of improved comfort and the services provided to users, Member States  should  retain general responsibility for the development of the appropriate railway infrastructure.

---

↓ 91/440/EEC recital 6 (adapted)

- (9) In the absence of common rules on allocation of infrastructure costs, Member States should, after consulting the infrastructure manager, lay down rules providing for railway undertakings to pay for the use of railway infrastructure. Such rules should not discriminate between railway undertakings.
- 

↓ 91/440/EEC recital 7 (adapted)  
→<sub>1</sub> Corrigendum, OJ L 305,  
6.11.1991, p. 22

- (10) Member States should ensure that infrastructure managers and existing publicly owned or controlled railway transport undertakings are given a sound financial structure having due regard to the Union rules on state aids.
- 

↓ 2001/14/EC recital 8 (adapted)

- (11) An efficient freight sector, especially across borders, requires action to open up the market.
- 

↓ 95/18/EC recital 4 (adapted)

- (12) In order to ensure that access rights to railway infrastructure are applied throughout the Union on a uniform and non-discriminatory basis, it is appropriate to introduce a licence for railway undertakings.
- 

↓ 2007/58/EC recital 7 (adapted)

- (13) In the case of journeys with intermediate stops, new market entrants should be authorised to pick up and set down passengers along the route in order to ensure that such operations are economically viable and to avoid placing potential competitors at a disadvantage to existing operators.
- 

↓ 2007/58/EC recital 8 (adapted)

- (14) The introduction of new, open-access, international passenger services with intermediate stops should not be used to open up the market for domestic passenger services, but should merely be focused on stops that are ancillary to the international route. The principal purpose of the new services should be to carry passengers travelling on an international journey. When assessing whether that is the service's principal purpose, criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service should be taken into account. The assessment of the service's principal purpose should be carried out by the respective national regulatory body at the request of an interested party.

---

↓ 2007/58/EC recital 9 (adapted)

- (15) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road<sup>12</sup> authorises Member States and local authorities to award public service contracts  which  may contain exclusive rights to operate certain services. It is therefore necessary to ensure that the provisions of that Regulation are consistent with the principle of opening up international passenger services to competition.
- 

↓ 2007/58/EC recital 10 (adapted)

- (16) Opening up international passenger services to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the  option of limiting  the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 55 of this Directive on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.
- 

↓ 2007/58/EC recital 12 (adapted)

- (17) The assessment of whether the economic equilibrium of the public service contract could be compromised should take into account predetermined criteria such as the impact on the profitability of any services which are included in a public service contract, including consequential impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops on both sides of the border and timing and frequency of the proposed new service.  In accordance with  such an assessment and the decision of the relevant regulatory body, Member States  may  authorise, modify or deny the right of access for the international passenger service sought, including the levying of a charge on the operator of a new international passenger service, in line with the economic analysis and in accordance with  Union  law and the principles of equality and non-discrimination.
- 

↓ 2007/58/EC recital 13

- (18) In order to contribute to the operation of passenger services on lines fulfilling a public service obligation, Member States should be able to authorise the authorities responsible for those services to impose a levy on passenger services which fall within the jurisdiction of those authorities. That levy should contribute to the financing of public service obligations laid down in public service contracts.

---

<sup>12</sup> OJ L 315, 3.12.2007, p. 1.

---

↓ 2007/58/EC recital 14

- (19) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts.
- 

↓ 2007/58/EC recital 16 (adapted)

- (20) In order to ☒ invest in ☒ services using specialised infrastructure, such as high-speed railway lines, applicants need legal certainty ☒ given ☒ the substantial long-term investment involved.
- 

↓ 2007/58/EC recital 17

- (21) The national regulatory bodies should exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.
- 

↓ new

- (22) In order to ensure fair competition between railway undertakings, a distinction should be made between the provision of transport services and the operation of service facilities. Given this situation, it is necessary for these two types of activity to be managed independently in distinct legal entities. Such independence need not imply the establishment of separate body or firm for each service facility.
- 

↓ 95/18/EC Recital 9 (adapted)

- (23) In order to ensure dependable and adequate services, it is necessary to ensure that ☒ ,at all times, ☒ railway undertakings meet certain requirements in relation to good repute, financial fitness and professional competence.
- 

↓ 95/18/EC Recital 10 (adapted)

- (24) For the protection of customers and third parties concerned it is important to ensure that railway undertakings are sufficiently insured ☒ against ☒ liability.
- 

↓ 95/18/EC Recital 12 (adapted)

- (25) A railway undertaking ☒ should ☒ also be required to comply with national and ☒ Union ☒ rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety ☒ and with due regard to health, social conditions and the rights of workers and consumers ☒ on specific stretches of track.



---

↓ 95/18/EC Recital 14 (adapted)

- (26) The procedures for granting, ☒ maintaining ☒ and ☒ amending ☒ operating licences ☒ for ☒ railway undertakings should ☒ be transparent and in accordance with the principle of ☒ non-discrimination.
- 

↓ 2001/14/EC recital 5 (adapted)

- (27) To ensure transparency and non-discriminatory access to rail infrastructure ☒ and rail-related services ☒ for all railway undertakings, all the information required to use access rights ☒ is ☒ to be published in a network statement.
- 

↓ 2001/14/EC recital 6

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

↓ 2001/14/EC recital 7

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

↓ 2001/14/EC recital 10 (adapted)

- (30) Appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators ☒ should ☒ result in an optimal balance of different transport modes ☒ on a sustainable basis ☒.
- 

↓ 2001/14/EC recital 11

- (31) 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.
- 

↓ 2001/14/EC recital 16

- (32) The charging and capacity allocation schemes should allow fair competition in the provision of railway services.
- 

↓ 2001/14/EC recital 12

- (33) Within the framework set out by Member States, charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.

---

↓ 2001/14/EC recital 13

- (34) Railway undertakings should receive clear and consistent signals from capacity allocation schemes which lead them to make rational decisions.
- 

↓ 2001/14/EC recital 35

- (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.
- 

↓ 2001/14/EC recital 14

- (36) In order to take into account the needs of users, or potential users, of railway infrastructure capacity to plan their business, and 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.
- 

↓ 2001/14/EC recital 15

- (37) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption and improve performance of the network.
- 

↓ 2001/14/EC recital 9 (adapted)

- (38) Member States  should have the option of allowing  purchasers of railway services to enter the capacity-allocation process  directly .
- 

↓ 2001/14/EC recital 17

- (39) It is important to have regard to the business requirements of both applicants and the infrastructure manager.
- 

↓ 2001/14/EC recital 18 (adapted)

- (40) It is important to maximise the flexibility available to the infrastructure managers with regard to the allocation of infrastructure capacity, but this  should  be consistent with  satisfying  the applicant's reasonable requirements.
- 

↓ 2001/14/EC recital 19

- (41) 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.

---

↓ 2001/14/EC recital 21

- (42) 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.
- 

↓ 2001/14/EC recital 23 (adapted)

- (43) ☒ As ☒ different users and types of users will frequently have a different impact on infrastructure capacity, the needs of different services need to be properly balanced.
- 

↓ 2001/14/EC recital 24

- (44) Services operated under contract to a public authority may require special rules to safeguard their attractiveness to users.
- 

↓ 2001/14/EC recital 25

- (45) The charging and capacity allocation schemes must take account of the effects of increasing saturation of infrastructure capacity and ultimately the scarcity of capacity.
- 

↓ 2001/14/EC recital 26 (adapted)

- (46) The different time-frames for planning traffic types ☒ should ☒ ensure that requests for infrastructure capacity which are made after the completion of the process ☒ for establishing the annual working timetable ☒ can be satisfied.
- 

↓ 2001/14/EC recital 28

- (47) 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.
- 

↓ 2001/14/EC recital 29 (adapted)

- (48) In view of ☒ their ☒ monopolistic position, infrastructure managers ☒ , should be required to examine ☒ the available infrastructure capacity, and methods of enhancing it when the capacity allocation process is unable to meet the requirements of users.
- 

↓ 2001/14/EC recital 30 (adapted)

- (49) A lack of information about other railway undertakings' requests ☒ and ☒ about the constraints within the system may make it difficult for railway undertakings to seek to optimise their infrastructure capacity requests.

---

↓ 2001/14/EC recital 31 (adapted)

- (50) It is important to ensure better coordination of allocation schemes ☒ in order ☒ to improve ☒ the ☒ attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic.
- 

↓ 2001/14/EC recital 32

- (51) 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.
- 

↓ 2001/14/EC recital 33

- (52) 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.
- 

↓ 2001/14/EC recital 34 (adapted)

- (53) Investment in railway infrastructure is ☒ necessary ☒ and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive.
- 

↓ 2001/14/EC recital 36 (adapted)

- (54) To enable the establishment of appropriate and fair levels of infrastructure charges, infrastructure managers need to record and establish the ☒ value ☒ of their assets and develop a clear understanding of cost factors in the operation of the infrastructure.
- 

↓ 2001/14/EC recital 37

⇒ new

- (55) It is desirable to ensure that account is taken of external costs when making transport decisions ⇒ and that rail infrastructure charging can contribute to the internalisation of external costs in a coherent and balanced way across all modes of transport ⇐ .
- 

↓ 2001/14/EC recital 38

⇒ new

- (56) It is important to ensure that charges for ⇒ domestic and ⇐ 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.

---

↓ 2001/14/EC recital 39 (adapted)

- (57) 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. However, any infrastructure charging scheme ☒ should allow ☒ traffic which can at least pay for the additional cost which it imposes ☒ to use the rail network ☒.
- 

↓ 2001/14/EC recital 40

- (58) Railway infrastructure is a natural monopoly. It is therefore necessary to provide infrastructure managers with incentives to reduce costs and manage their infrastructure efficiently.
- 

↓ 2001/14/EC recital 41 (adapted)

- (59) ☒ The development of railway transport should be achieved ☒ by using *inter alia* the ☒ Union ☒ instruments available, without prejudice to priorities already established.
- 

↓ 2001/14/EC recital 42 (adapted)

- (60) Discounts which are allowed to railway undertakings must relate to actual administrative cost savings ☒ made, in particular transaction costs savings ☒. Discounts may also be used to promote the efficient use of infrastructure.
- 

↓ 2001/14/EC recital 43

- (61) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network.
- 

↓ 2001/14/EC recital 44

- (62) The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required.
- 

↓ 2001/14/EC recital 46 (adapted)

- (63) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of ☒ the ☒ rules ☒ set out in this Directive ☒ and acts as an appeal body, notwithstanding the possibility of judicial review.
- 

↓ 2001/14/EC recital 47 (adapted)

- (64) Specific measures are required to take account of the specific geopolitical and geographical situation of certain Member States ☒ and the particular organisation ☒

of the railway sector in various Member States while ensuring the integrity of the internal market.

---

↓ new

(65) The Commission should be empowered to adapt the Annexes to this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted as delegated acts in accordance with Article 290 of the Treaty.

---

↓ 2001/14/EC recital 48

(66) 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<sup>13</sup>.

---

↓ 2001/13/EC Recital 7 (adapted)

(67) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union, the objectives of this Directive, namely to foster the development of the Union railways, to set out broad principles for granting licences to railway undertakings and to coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof, cannot be sufficiently achieved by the Member States on account of the manifestly international dimensions of issuing such licences and operating significant elements of the railway networks, and in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure and the objectives can therefore, by reason of their trans-national implications, be better achieved by the Union. This Directive does not go beyond what is necessary to achieve those objectives.

---

↓ new

(68) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are substantively unchanged arises under the earlier Directives.

---

↓ 2007/58/EC Recital 21  
(adapted)

(69) A Member State which has no railway system, and no immediate prospect of having one, would be subject to a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such Member States should be exempted from that obligation.

---

<sup>13</sup> OJ L 184, 17.7.1999, p. 23.

---

↓ 2007/58/EC Recital 23  
(adapted)

(70) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>14</sup>, Member States are encouraged to draw up, for themselves and in the interests of the ☒ Union ☒, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

---

↓ new

(71) This Directive should be without prejudice to the time limits set out in Annex XI, Part B within which the Member States are to comply with the preceding Directives,

---

↓ 2001/14/EC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### ☒ GENERAL ☒ PROVISIONS

---

↓ 91/440/EEC (adapted)

#### *Article 1*

#### ☒ Subject-matter and Scope ☒

1. This Directive ☒ lays down: ☒

(a) ☒ the rules applicable ☒ to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State ☒ as set out in Chapter II ☒.

---

↓ 2001/13/EC Art. 1(1) (adapted)

(b) the criteria applicable to the ☒ issuing ☒, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the ☒ Union as set out in Chapter III ☒;

---

<sup>14</sup> OJ C 321, 31.12.2003, p. 1.

---

↓ 2001/14/EC (adapted)

- (c) the principles and procedures applicable to the setting and collecting of railway infrastructure charges and the allocation of railway infrastructure capacity as set out in Chapter IV .

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

---

↓ Corrigendum, OJ L 305,  
6.11.1991, p. 22 (adapted)

*Article 2*

**Exclusions from the scope**

1. Chapter II does not apply to railway undertakings which only operate urban, suburban or regional services.

---

↓ 2001/13/EC Art. 1(1) (adapted)

2. Member States may exclude the following from the ~~scope of this Directive~~ application of Chapter III :

---

↓ 2001/13/EC Art. 1(1)

- (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;
- 

↓ 2001/13/EC Art. 1(1) (adapted)

- (c) railway undertakings which only operate regional rail freight services;
- (d) undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.
- 

↓ 2001/14/EC (adapted)

3. Member States may exclude the following from the application of Chapter IV :

- (a) local and regional stand-alone networks for passenger services on railway infrastructure;
- (b) networks intended only for the operation of urban or suburban rail passenger services;



- (c) regional networks which are used for regional freight services solely by a railway undertaking that is not covered  under paragraph 1  until capacity on that network is requested by another applicant;
- 

↓ 2001/14/EC

- (d) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations;
- 

↓ 2007/58/EC Art. 2.1 (adapted)

- (e) transport operations in the form of railway services which are carried out in transit through the  Union .
- 

↓ 2001/12/EC Art. 1.3 (adapted)

4.  This Directive does not apply to  undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel  and transport operations in the form of shuttle services for road vehicles through the Channel Tunnel,  except Articles 6(1), 10, 11, 12 and 28.
- 

↓ 2007/58/EC Art. 1.1 (adapted)

5. Member States may exclude from the  application  of Articles 10, 11, 12 and 28 any railway service carried out in transit through the  Union  and which begins and ends outside the  Union  territory.
- 

↓ 91/440/EEC (adapted)

### Article 3

#### Definitions

For the purpose of this Directive  , the following definitions apply  :

---

↓ 2001/12/EC Art. 1.4(a)  
(adapted)

- (1) ‘railway undertaking’  means  any public or private undertaking licensed according to  this Directive , 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 ensure traction; this also includes undertakings which provide traction only;
- (2) ‘infrastructure manager’  means  any body or  firm  responsible in particular for establishing  , managing  and maintaining railway infrastructure  , including traffic  management  and control-command and signalling ; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or  firms .

---

↓ 91/440/EEC (adapted)  
⇒ new

- (3) ‘railway infrastructure’ ☒ means ☒ all the items listed in Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70 of 4 June 1970<sup>15</sup> ⇒ which for reasons of clarity are included in Annex I to this Directive ☒, ~~with the exception of the final indent which, for the purposes of this Directive only, shall read as follows: ‘Buildings used by the infrastructure department’;~~
- 

↓ 2001/12/EC Art. 1.4(b)  
(adapted)

- (4) ‘international freight service’ ☒ means a ☒ transport service 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;
- 

↓ 2007/58/EC Art. 1.3 (adapted)

- (5) ‘international passenger service’ ☒ means ☒ a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;
- 

↓ 91/440/EEC (adapted)

- (6) ‘urban and suburban services’ ☒ means ☒ transport services operated to meet the transport needs of an urban centre or conurbation, ☒ together with ☒ transport needs between such ☒ a ☒ centre or conurbation and surrounding areas;
- (7) ‘regional services’ ☒ means ☒ transport services operated to meet the transport needs of a region;
- 

↓ 2007/58/EC Art. 1.4 (adapted)

- (8) “transit” ☒ means ☒ crossing territory ☒ of the Union ☒ without loading or unloading goods, and/or without picking up passengers or setting them down in territory ☒ of the Union ☒ ;

---

<sup>15</sup> OJ L 278, 23.12.1970, p. 1.

---

↓ 95/18/EC (adapted)

- (9) “licence” means an authorisation issued by a Member State to an undertaking, by which its capacity to provide rail transport services is recognised; that capacity may be limited to the provision of specific types of services;
- (10) “licensing authority” means the body responsible for granting licences within a Member State ;
- 

↓ 2001/14/EC

- (11) ‘allocation’ means the allocation of railway infrastructure capacity by an infrastructure manager;
- 

↓ 2001/14/EC (adapted)

- (12) ‘applicant’ means a railway undertaking and other persons or legal entities, such as competent authorities under Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;
- (13) ‘congested infrastructure’ means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;
- (14) ‘capacity enhancement plan’ means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of infrastructure as ‘congested infrastructure’;
- (15) ‘coordination’ means the process through which the infrastructure manager and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;
- (16) ‘framework agreement’ means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;
- 

↓ 2001/14/EC

- (17) ‘infrastructure capacity’ means the potential to schedule train paths requested for an element of infrastructure for a certain period;
- 

↓ 2001/14/EC (adapted)

- (18) ‘network’ means the entire railway infrastructure managed by an infrastructure manager;

- (19) ‘network statement’ means the statement which sets out in detail the general rules, deadlines, procedures and criteria  for  charging and capacity allocation schemes,  including  such other information as is required to enable applications for infrastructure capacity;
- (20) ‘train path’ means the infrastructure capacity needed to run a train between two places over a given period;
- 

↓ 2001/14/EC

- (21) ‘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;
- 

↓ 91/440/EEC (adapted)

## CHAPTER II

### DEVELOPMENT OF THE UNION RAILWAYS

#### SECTION 1

---

↓ 2001/12/EC Art. 1.5

#### MANAGEMENT INDEPENDENCE

---

↓ 2001/12/EC Art. 1.6 (adapted)

#### *Article 4*

##### Independence of railway undertakings and infrastructure managers

1. Member States shall ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings  directly or indirectly owned or controlled by the Member States  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 charging and allocation  framework and the specific  rules established by the Member States, the infrastructure manager shall  be responsible  for its own management, administration and internal control.

---

↓ 91/440/EEC (adapted) → <sub>1</sub> Corrigendum, OJ L 305, 6.11.1991, p. 22
---

*Article 5*

**⊗ Management of the railway undertakings according to commercial principles ⊗**

1. Member States shall enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Railway undertakings shall be managed according to the principles which apply to commercial companies ⊗, irrespective of their ownership. ⊗ This shall also apply to ⊗ the ⊗ public ⊗ service ⊗ obligations imposed ⊗ on them ⊗ by ⊗ Member States ⊗ and to public ⊗ service ⊗ contracts which they conclude with the competent authorities of the State.

2. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and other technical, commercial and financial management objectives; →<sub>1</sub> they must also ⊗ indicate ⊗ the means ⊗ of obtaining ⊗ these objectives. ←

3. ⊗ With reference to ⊗ the general policy guidelines ⊗ issued ⊗ by ⊗ each Member ⊗ State and taking into account national plans and contracts (which may be multi-annual) including investment and financing plans, railway undertakings shall, in particular, be free to:

---

↓ 91/440/EEC
--------------

- (a) establish their internal organisation, without prejudice to the provisions of Articles 7, 29 and 39 ;
- (b) control the supply and marketing of services and fix the pricing thereof, without prejudice to Regulation (EC) No 1370/2007 ;
- (c) take decisions on staff, assets and own procurement;
- (d) expand their market share, develop new technologies and new services and adopt any innovative management techniques;

---

↓ 91/440/EEC (adapted)
------------------------

- (e) establish new activities in fields associated with ⊗ the ⊗ railway business.

---

↓ new

4. If the Member State directly or indirectly owns or controls the railway undertaking, its controlling rights in relation to management shall not exceed the management-related rights that national company law grants to shareholders of private joint-stock companies. Policy guidelines, as mentioned in paragraph 3, which the State may set for companies in the context of exercise of shareholder control, may only be of a general nature and shall not interfere with specific business decisions of the management.

---

↓ 91/440/EEC (adapted)  
⇒ new

## SECTION 2

### SEPARATION OF INFRASTRUCTURE MANAGEMENT AND TRANSPORT OPERATIONS AND OF DIFFERENT TYPES OF TRANSPORT OPERATIONS

---

↓ 2001/12/EC Art. 1.7 (adapted)

#### *Article 6*

#### Separation of accounts

1. Member States shall 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  shall  not be transferred to the other.

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

---

↓ 2001/12/EC Art. 1.10 (adapted)

3.  Member States shall 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 rail freight transport services  and, on the other, for activities relating to the provision of passenger transport services .  Public  funds paid for activities relating to the provision of transport services as public-service remits must be shown separately  for each public service contract  in the relevant accounts and  shall  not be transferred to activities relating to the provision of other transport services or any other business.

---

↓ 2001/12/EC Art. 1.7 (adapted)  
⇒ new

4. The accounts for the ☒ different ☒ areas of activity ☒ referred to in paragraphs 1 and 3 ☒ shall be kept in a way that ~~reflects this prohibition~~ ⇒ allows monitoring of the prohibition on transferring public funds paid to one area of activity to another ⇐.

#### Article 7

#### ☒ Independence of essential functions of an infrastructure manager ☒

1. Member States shall 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 organisational structure, this objective must be shown to have been achieved.

---

↓ new

Annex II may be amended in the light of experience, in accordance with the procedure referred to in Article 60.

---

↓ 2001/12/EC Art. 1.7 (adapted)

Member States may, however, assign to railway undertakings or any other body the responsibility for ☒ contributing to the development of ☒ the railway infrastructure, ☒ for example through ☒ investment, maintenance and funding.

~~4. The application of paragraph 3 shall be subject to a report by the Commission in accordance with Article 10 11 b, to be submitted by 15 March 2006.~~

---

↓ 2001/14/EC (adapted)

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 Sections 3 and 4 of Chapter IV shall be performed ☒ respectively ☒ by a charging body ☒ and by an allocation body ☒ that ☒ are ☒ independent in ☒ their ☒ legal form, organisation and decision-making from any railway undertaking.

---

↓ new

3. When the provisions of Chapter IV, Sections 2 and 3 refer to essential functions of an infrastructure manager, they shall be understood as applying to the charging body or the allocation body for their respective competencies.

---

↓ 91/440/EEC

## SECTION 3

### IMPROVEMENT OF THE FINANCIAL SITUATION

---

↓ 2001/12/EC Art. 1.8 (adapted)  
⇒ new

#### Article 8

#### ⊗ Sound financing of the infrastructure manager ⊗

1. Member States shall ⊗ develop ⊗ their national railway infrastructure ⊗ by ⊗ taking into account, where necessary, the general needs of the ⊗ Union ⊗. ⇒ For this purpose, they shall publish at the latest two years after the entry into force of this Directive a rail infrastructure development strategy with a view to meeting future mobility needs based on sound and sustainable financing of the railway system. The strategy shall cover a period of at least five years and be renewable. ⇐

2. Having due regard to Articles ⊗ 93, 107 and 108 ⊗ of the Treaty, ⊗ Member States may also provide the infrastructure manager with ⊗ financing consistent with ⊗ its ⊗ tasks, ⊗ the ⊗ size ⊗ of the infrastructure ⊗ and financial requirements, in particular in order to cover new investments.

3. Within the framework of general policy determined by the State ⇒ and taking into account the rail infrastructure development strategy referred to in paragraph 1 ⇐, the infrastructure manager shall ⊗ adopt ⊗ a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use ⊗, provision ⊗ and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved. ⇒ The infrastructure manager shall ensure that applicants are consulted before the business plan is approved. The regulatory body referred to in Article 55 shall issue a non-binding opinion on whether the business plan is appropriate to achieve these objectives. ⇐

---

↓ 2001/14/EC (adapted)  
⇒ new

4. Member States shall ensure that, under normal business conditions and over a reasonable period ⇒ of no more than three years ⇐, 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 ⊗, including advance payments from the State, where appropriate ⊗.



---

↓ 2001/14/EC

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 31 and 32, a Member State may require the infrastructure manager to balance his accounts without State funding.

---

↓ 91/440/EEC

~~Article 78~~

~~The manager of the infrastructure shall charge a fee for the use of the railway infrastructure for which he is responsible, payable by railway undertakings using that infrastructure. After consulting the manager, Member States shall lay down the rules for determining this fee.~~

~~The user fee, which shall be calculated in such a way as to avoid any discrimination between railway undertakings, may in particular take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilization of the infrastructure.~~

---

↓ 91/440/EEC (adapted)  
→<sub>1</sub> Corrigendum, OJ L 305,  
6.11.1991, p. 22  
⇒ new

Article 9

⊗ Transparent debt relief ⊗

1. ⇒ Without prejudice to the Union rules on state aids and in accordance with Articles 93, 107 and 108 of the Treaty ⇐ ~~In conjunction with~~ →<sub>1</sub> ~~the existing publicly owned or controlled railway undertakings~~ ←, Member States shall set up appropriate mechanisms to help reduce the indebtedness of ⊗ publicly owned or controlled railway ⊗ undertakings to a level which does not impede sound financial management and to improve their financial situation.

2. ⊗ For the purposes referred to in paragraph 1 ⊗, Member States ⊗ shall require ⊗ a separate debt amortisation unit to be set up within the accounting departments of such undertakings.

The balance sheet of the unit may be charged, until they are extinguished, with all the loans raised by the undertaking both to finance investment and to cover excess operating expenditure resulting from the business of rail transport or from railway infrastructure management. Debts arising from subsidiaries' operations ⊗ shall ⊗ not be taken into account.

---

↓ new

3. Paragraphs 1 and 2 shall not apply to debts or interest due on such debts incurred by undertakings after 15 March 2001 or the date of accession to the Union for Member States which joined the Union after 15 March 2001.

---

↓ 2001/12/EC Art. 1.9

~~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.~~

---

↓ 91/440/EEC (adapted)

## SECTION 4

### ACCESS TO RAILWAY INFRASTRUCTURE ☒ AND SERVICES ☒

---

↓ 2001/12/EC Art. 1.11 (adapted)

#### Article 10

#### ☒ Conditions of access to railway infrastructure ☒

~~2. Railway undertakings within the scope of Article 2 1 shall be granted, on equitable conditions, access to the infrastructure in other Member States for the purpose of operating international combined transport goods services.~~

---

↓ 2004/51/EC Art. 1.2(a)  
(adapted)  
⇒ new

~~3. Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the Trans-European Rail Freight Network defined in Article 10 a and in Annex I and, at the latest by 1 January 2006, to the entire rail network, for the purpose of operating international freight services.~~

1. ~~In addition, at the latest by 1 January 2007,~~ Railway undertakings within the scope of ☒ this Directive ☒ shall be granted, on equitable, ☒ non-discriminatory and transparent ☒ conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services. ⇒ This shall include track access to ports. ⇐

---

↓ 2007/58/EC Art. 1.8 (adapted)

2. Railway undertakings within the scope of ☒ this Directive ☒ shall be granted ~~by 1 January 2010~~ the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an

international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

---

↓ 2007/58/EC Art. 1.8

The right of access to the infrastructure of the Member States for which the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 31 December 2011.

---

↓ 2007/58/EC Art. 1.8 (adapted)

⊗ Following the request from the relevant competent authorities or interested railway undertakings, the relevant regulatory body or bodies referred to in Article 55 shall determine whether ⊗ the principal purpose of the service is to carry passengers between stations located in different Member States.

---

↓ new

The Commission may adopt implementing measures setting out the details of the procedure and criteria to be followed for the application of this paragraph. Those measures, designed to ensure the implementation of this Directive under uniform conditions, shall be adopted as implementing acts in accordance with Article 63(3).

---

↓ 2007/58/EC Art. 1.8 (adapted)

#### ⊗ Article 11 ⊗

#### ⊗ Limitation of the right of access and of the right to pick up and set down passengers ⊗

1. Member States may limit the right of access ⊗ provided for ⊗ in Article 10 on services between a place of departure and a destination which are covered by one or more public service contracts conforming to the ⊗ Union ⊗ legislation in force. Such limitation ⊗ shall ⊗ not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

2. Whether the economic equilibrium ⊗ of a public service contract ⊗ would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 55 on the basis of an objective economic analysis and based on pre-determined criteria, ⊗ after ⊗ a request from ⊗ any of the following ⊗ :

---

↓ 2007/58/EC Art. 1.8

(a) the competent authority or competent authorities that awarded the public service contract;

- (b) any other interested competent authority with the right to limit access under this Article;
- (c) the infrastructure manager;
- (d) the railway undertaking performing the public service contract.

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within two months of receipt of all relevant information.

↓ 2007/58/EC Art. 1.8 (adapted)

3. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which  any of the following may request a reconsideration of the decision  ,

↓ 2007/58/EC Art. 1.8

- (a) the relevant competent authority or competent authorities;
- (b) the infrastructure manager;
- (c) the railway undertaking performing the public service contract;
- (d) the railway undertaking seeking access.

↓ new

4. The Commission may adopt implementing measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

↓ 2007/58/EC Art. 1.8 (adapted)

5. Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of  Union  law. This limitation may continue for the original duration of the contract, or 15 years, whichever is shorter.

~~3d. The provisions of this Directive shall not require a Member State to grant, before 1 January 2010, the right of access referred to in paragraph 3a to railway undertakings and their directly or indirectly controlled subsidiaries, licensed in a Member State where access rights of a similar nature are not granted.~~

6. Member States shall ensure that the decisions referred to in paragraphs 1, 2, 3 and 5 are subject to judicial review.

⊗ Article 12 ⊗

⊗ Levy on railway undertakings providing passenger services ⊗

---

↓ 2007/58/EC Art. 1.8

1. Without prejudice to Article 11(2) , Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

In that case, railway undertakings providing domestic or international rail passenger transport services shall be subject to the same levy on the operation of routes which fall within the jurisdiction of that authority.

---

↓ 2007/58/EC Art. 1.8 (adapted)

2. The levy is intended to compensate the authority for public service obligations laid down in public service contracts awarded in conformity with ⊗ Union ⊗ law. The revenue raised from such a levy and paid as compensation ⊗ shall ⊗ not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

3. The levy shall be imposed in accordance with ⊗ Union ⊗ law, and shall respect in particular the principles of fairness, transparency, non-discrimination and proportionality, in particular between the average price of the service to the passenger and the level of the levy. The total levies imposed pursuant to this paragraph shall not endanger the economic viability of the rail passenger transport service on which they are imposed.

---

↓ 2007/58/EC Art. 1.8

4. The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.

---

↓ 2001/12/EC Art. 1.11

~~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 55 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.~~

↓ 2004/51/EC Art. 1.2(c)

~~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 and transparent manner and requests by railway undertakings may be subject to restrictions only if viable alternatives by rail under market conditions exist.~~

↓ 2001/14/EC (adapted)

⇒ new

### Article 13

#### ⊗ Conditions of access to services ⊗

1. Railway undertakings shall, on a non-discriminatory basis, be entitled to the minimum access package ⊗ laid down ⊗ in Annex III, point 1.

2. The services referred to in Annex III, point 2, shall be ⊗ supplied ⊗ ⇒ by all operators of service facilities ⇐ 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.

↓ new

Where the operator of the service facility belongs to a body or firm which is also active and holds a dominant position in at least one of the railway transport services markets for which the facility is used, the operator shall be organised in such a way that it is independent, in legal, organisational and decision-making terms, of this body or firm .

Requests by railway undertakings for access to the service facility may only be rejected if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same route under economically acceptable conditions. The burden of proving for the existence of a viable alternative lies with the operator of the service facility.

When the operator of the service facility encounters conflicts between different requests, he shall attempt the best possible matching of all requirements. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the regulatory body referred to in Article 55 shall on its own initiative or on the basis of a complaint take appropriate action to ensure that an appropriate part of the capacity is devoted to railway undertakings other than the ones which are part of the body or firm to which the facility operator also belongs. However newly built maintenance and other technical facilities developed for specific new rolling stock may be reserved to the use of one railway undertaking for a period of five years from the start of their operation.

Where the service facility has not been in use for at least two consecutive years its owner shall publicise the operation of the facility as being for lease or rent.

↓ 2001/14/EC (adapted)

3. Where the infrastructure manager offers any of the range of services described in Annex III, point 3 as additional services, he shall supply them upon request to railway ~~⊗~~ undertakings ~~⊗~~ in a non-discriminatory manner ~~⊗~~ .

↓ 2001/14/EC

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

↓ new

5. Annex III may be amended in the light of experience in accordance with the procedure referred to in Article 60.

↓ 2001/12/EC Art. 1.12

#### ~~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.~~

## SECTION 5

### CROSS-BORDER AGREEMENTS

#### Article 14

##### General principles for cross-border agreements

1. Any provisions contained in cross-border agreements between Member States which discriminate between railway undertakings, or which restrict the freedom of railway undertakings to operate cross-border services are hereby superseded.

These agreements shall be notified to the Commission. The Commission shall examine the compliance of such agreements with this Directive and decide in accordance with the procedure referred to in Article 64(2) whether the related agreements may continue to apply. The Commission shall communicate its decision to the European Parliament, the Council and the Member States.

2. Without prejudice to the division of competencies between the Union and the Member States, in accordance with Union law, the negotiation and implementation of cross-border agreements between Member States and third countries shall be subject to a cooperation procedure between Member States and the Commission.

The Commission may adopt implementing measures setting out the details of the procedure to be followed for the application of this paragraph. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

## SECTION 6

### MONITORING TASKS OF THE COMMISSION

#### Article 15

##### ⊠ Scope of market monitoring ⊠

1. ~~Not later than 15 September 2001~~ The Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments ⊠ in ⊠ 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,  to  assess the effect of the measures adopted and  to  analyse the impact of the measures planned by the Commission.

3. The Commission shall monitor the use of the networks and the evolution of framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, ~~safety regulation~~  investments in railway infrastructure, developments as regards prices and the quality of rail transport services, rail transport services covered by public service contracts,  licensing and the degree of harmonisation  between Member States . It shall ensure active cooperation between the appropriate regulatory bodies in the Member States.

↓ 2001/12/EC Art. 1.13  
 new

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

(a) the evolution of the internal market in rail services;

↓ 2001/12/EC Art. 1.13 (adapted)

(b) the framework conditions  , including for public passenger transport services by rail;

↓ 2004/51/EC Art. 1.3

(c) the state of the European railway network;

↓ 2001/12/EC Art. 1.13

(d) the utilisation of access rights;

(e) barriers to more effective rail services;

(f) infrastructure limitations;

(g) the need for legislation.

↓ new

5. For the purposes of the Commission's market monitoring, Member States shall supply on an annual basis the information indicated in Annex IV, as well as all other necessary data requested by the Commission.

Annex IV may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/13/EC Art. 1(3) (adapted)

## ⊗ CHAPTER III ⊗

### ⊗ LICENSING OF RAILWAY UNDERTAKINGS ⊗

#### ⊗ SECTION 1 ⊗

##### ⊗ BODY RESPONSIBLE FOR ISSUING LICENCES ⊗

###### *Article 16*

##### ⊗ Body responsible for railway licensing ⊗

---

↓ 2001/13/EC Art. 1(3)

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by this Chapter .

---

↓ 2001/13/EC Art. 1(3) (adapted)

The ⊗ designated ⊗ body ⊗ shall ⊗ not provide rail transport services itself and ⊗ shall be ⊗ independent of ⊗ firms or entities ⊗ that do so.

---

↓ 95/18/EC (adapted)

#### SECTION 2

##### ⊗ CONDITIONS FOR OBTAINING A LICENCE ⊗

###### *Article 17*

##### ⊗ General requirements ⊗

---

↓ 95/18/EC  
⇒ new

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established ⇒ , provided that Member States or nationals of Member States own in total more than 50% of this railway undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where an agreement with a third country to which the European Union is a party provides otherwise ⇐.

2. Member States shall not issue licences or extend their validity where the requirements of this Chapter are not complied with.
3. A railway undertaking which fulfils the requirements imposed in this Chapter shall be authorised to receive a licence.
4. No railway undertaking shall be permitted to provide the rail transport services covered by this Chapter unless it has been granted the appropriate licence for the services to be provided.

---

↓ 95/18/EC (adapted)

However, such a licence shall not ☒ , in ☒ itself, entitle the holder to access the railway infrastructure.

---

↓ new

5. The Commission may adopt implementing measures setting out the details of the procedure to be followed for the application of this Article including the use of a common template for the licence. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

---

↓ 95/18/EC (adapted)

#### *Article 18*

##### ☒ **Conditions for obtaining a licence** ☒

---

↓ 95/18/EC

A railway undertaking must be able to demonstrate to the licensing authorities of the Member State concerned before the start of its activities that it will at any time be able to meet the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability listed in Articles 19 to 22 .

---

↓ 95/18/EC (adapted)

For ☒ these ☒ purposes , each applicant shall provide all relevant information.

#### *Article 19*

##### ☒ **Requirements relating to good repute** ☒

---

↓ 95/18/EC

Member States shall define the conditions under which the requirement of good repute is met to ensure that an applicant railway undertaking or the persons in charge of its management:

---

↓ 95/18/EC Art. 5 and 6

- (a) have not been convicted of serious criminal offences, including offences of a commercial nature;
- (b) have not been declared bankrupt;
- (c) have not been convicted of serious offences against specific legislation applicable to transport;

---

↓ 2001/13/EC Art. 1(5) (adapted)

- (d) 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 the case of a company seeking to operate cross-border  freight  transport subject to customs procedures.

---

↓ 95/18/EC (adapted)

#### Article 20

##### Requirements relating to financial fitness

---

↓ 95/18/EC

The requirements relating to financial fitness shall be met when an applicant railway undertaking can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months.

---

↓ 95/18/EC (adapted)

For  these  purposes , each applicant shall give at least the particulars listed in Annex V .

---

↓ new

Annex V may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2004/49/EC Art. 29(1)  
(adapted)

#### Article 21

##### Requirements relating to professional competence

The requirements relating to professional competence shall be met when an applicant railway undertaking  can demonstrate that it  has or will have a management organisation which

possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

---

↓ 95/18/EC (adapted)

#### Article 22

#### ⊗ Requirements relating to civil liability ⊗

---

↓ 95/18/EC  
⇒ new

⇒ Without prejudice to Chapter III of Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>16</sup>, ⊗ a railway undertaking shall be adequately insured ~~or make equivalent arrangements~~ for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of ~~passengers, luggage,~~ freight, mail and third parties.

---

↓ 95/18/EC (adapted)

### SECTION 3

#### VALIDITY OF THE LICENCE

#### Article 23

#### ⊗ Spatial and temporal validity ⊗

---

↓ 2001/13/EC Art.1(4) (adapted)

1. A licence shall be valid throughout the territory of the ⊗ Union ⊗.

---

↓ 95/18/EC (adapted)

2. A licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Chapter. A licensing authority may, however, make provision for a regular review. ⊗ If so, the review shall be made at least every five years. ⊗

---

↓ 95/18/EC

3. Specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.

---

<sup>16</sup> OJ L 315, 3.12.2007, p. 14.

---

↓ 95/18/EC (adapted)

*Article 24*

**⊗ Temporary licence, suspension and approval ⊗**

1. If there is serious doubt that a railway undertaking which it has licensed complies with the requirements of Sections 2 and 3 of this Chapter, and in particular ⊗ those of ⊗ Article 18, the licensing authority may, at any time, check whether that railway undertaking does in fact comply with those requirements.

Where a licensing authority is satisfied that a railway undertaking can no longer meet the requirements, it shall suspend or revoke the licence.

---

↓ 95/18/EC

2. Where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Chapter on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.

3. Notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the re-organisation of the railway undertaking, provided that safety is not jeopardised. A temporary licence shall not, however, be valid for more than six months after its date of issue.

---

↓ 95/18/EC Art. 11 (adapted)

4. When a railway undertaking has ceased operations for six months or has not started operations ⊗ within ⊗ six months ⊗ of ⊗ the grant of a licence, the licensing authority may decide that the licence shall be ⊗ resubmitted ⊗ for approval or be suspended.

---

↓ 95/18/EC

As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.

5. In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardised. In that event, the grounds for such a decision shall be given.

6. Where a railway undertaking intends significantly to change or extend its activities, its licence shall be resubmitted to the licensing authority for review.

---

↓ 95/18/EC Art. 11 (adapted)

7. A licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings ~~☒~~ have ~~☒~~ commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.

---

↓ 2001/13/EC Art.1(6)

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.

---

↓ 2001/13/EC Art. 1(7)

#### ~~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 shall observe the relevant customs and tax provisions.~~

---

↓ 95/18/EC (adapted) ⇒ new
-------------------------------

*Article 25*

**⊗ Procedure for granting licences ⊗**

1. The procedures for granting licences shall be made public by the ~~Member State~~ ⇒ licensing authority ⇐ concerned, which shall inform the ~~Commission~~ ⇒ European Railway Agency ⇐ thereof.

2. The licensing authority shall take a decision on an application as soon as possible, but not more than three months after all relevant information, notably the particulars referred to in Annex V, has been submitted. ⊗ The licensing authority shall take into account all the available information. ⊗ The decision shall be communicated to the applicant railway undertaking ⇒ without delay ⇐ . A refusal shall state the grounds ⊗ on which it is based ⊗.

3. Member States shall ensure that the licensing authority's decisions are subject to judicial review.

---

↓ 2001/14/EC (adapted)
------------------------

## **CHAPTER IV**

### **⊗ LEVYING OF CHARGES FOR THE USE OF RAILWAY INFRASTRUCTURE AND ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY ⊗**

#### **SECTION 1**

##### **⊗ GENERAL PRINCIPLES ⊗**

*⊗ Article 26 ⊗*

##### **⊗ Effective use of infrastructure capacity ⊗**

---

↓ 2001/14/EC
--------------

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.



---

↓ 2001/14/EC (adapted)  
⇒ new

*Article 27*

**Network statement**

1. The infrastructure manager shall, after consultation with the interested parties ☒, including the regulatory body referred to in Article 55, ☒ develop and publish a network statement obtainable against payment of a ☒ fee ☒ which ☒ shall ☒ not exceed the cost of ☒ publication of ☒ that statement. ⇒ The network statement shall be published in at least two official languages of the Union. The content of the network statement shall be made available free of charge in electronic format through the web portal of the European Railway Agency. ⇐

---

↓ 2001/14/EC  
⇒ new

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 ⇒ and to service facilities ⇐. The content of the network statement is laid down in Annex VI.

---

↓ new

Annex VI may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC (adapted)

3. The network statement shall be kept up to date and ☒ amended ☒ as necessary.

---

↓ 2001/14/EC

4. The network statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.

---

↓ 2004/51/EC Art. 1.2(b)  
(adapted)

☒ *Article 28* ☒

**☒ Agreements between railway undertakings and infrastructure managers ☒**

Any railway undertaking engaged in rail transport services shall conclude the necessary agreements ☒ under ☒ public or private law with the infrastructure managers of the railway infrastructure used. The conditions governing such agreements shall be non-discriminatory and transparent, in conformity with the provisions of this Directive.

---

↓ 2001/14/EC (adapted)

## SECTION 2

### INFRASTRUCTURE AND SERVICES CHARGES

---

↓ 2001/14/EC

#### *Article 29*

#### **Establishing, determining and collecting charges**

1. Member States shall establish a charging framework while respecting the management independence laid down in Article 4.

---

↓ 2001/14/EC Art. 4

Subject to the condition of management independence, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager.

---

↓ new

Member States shall ensure that the charging framework and charging rules are published in the network statement.

---

↓ 2001/14/EC (adapted)  
⇒ new

The  infrastructure manager shall determine and collect  the charge for the use of infrastructure.

2.  The Member States shall ensure that  infrastructure managers cooperate to  enable  the  application of  efficient  charging schemes for the  operation of train services which cross more than one infrastructure network.  Infrastructure managers  shall, in particular, aim to guarantee the  optimal  competitiveness of international rail freight  services  and ensure the efficient  use  of the  railway networks .

---

↓ new

Member States shall ensure that representatives of infrastructure managers whose charging decisions have an impact on other infrastructures associate to coordinate the charging or to charge for the use of relevant infrastructure at international level.

---

↓ 2001/14/EC

3. Except where specific arrangements are made under Article 32(2), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.

---

↓ 2001/14/EC (adapted)

4. 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  an  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.

---

↓ 2001/14/EC

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

---

↓ 2001/14/EC (adapted)

### Article 30

#### Infrastructure cost and accounts

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

2. Member States shall ensure that paragraph 1 is implemented through a contractual agreement between the competent authority and  the  infrastructure manager covering a period of not less than  five  years which provides for State funding ~~or through the establishment of appropriate regulatory measures with adequate powers.~~

3. ~~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  contractual  period.

---

↓ new

Basic principles and parameters of such agreements are set out in Annex VII which may be amended in the light of experience in accordance with the procedure referred to in Article 60.

Member States shall consult interested parties at least one month before the agreement is signed and publish it within one month of concluding it.

The infrastructure manager shall ensure that its business plan is consistent with the provisions of the contractual agreement.

The regulatory body referred to in Article 55 shall assess the appropriateness of the envisaged medium to long-term income of the infrastructure manager for meeting the agreed performance targets and shall make relevant recommendations, at least one month before the agreement is signed.

The competent authority shall give justifications to the regulatory body if it intends to deviate from these recommendations.

4. Infrastructure managers shall develop and maintain an inventory of assets that they manage, which shall contain their current valuation as well as details of expenditure on renewal and upgrading of the infrastructure.

↓ 2001/14/EC (adapted)

⇒ new

5. ⇒ The infrastructure manager and the operator of service facilities shall establish a methodology for apportioning costs to the different services offered in accordance with Annex III and to types of rail vehicles, based on the best available understanding of cost causation and the principles of charging referred to in Article 31. ⇐ ~~A method for apportioning costs shall be established.~~ Member States may require prior approval. This method ⊗ shall ⊗ be updated from time to time to ⊗ match ⊗ the best international practice.

↓ 2001/14/EC (adapted)

⇒ new

### Article 31

#### Principles of charging

1. Charges for the use of railway infrastructure ⊗ and of service facilities ⊗ shall be paid to the infrastructure manager ⊗ and to the service facility operator respectively ⊗ and used to fund ⊗ their ⊗ business.

2. Member States ⇒ shall ⇐ require the infrastructure manager ⊗ and the service facility operator ⊗ to provide ⇒ the regulatory body with ⇐ all necessary information on the charges imposed. The infrastructure manager ⊗ and the service facility operator ⊗ must, in this regard, be able to ⊗ demonstrate ⊗ ⇒ to each railway undertaking ⇐ that infrastructure ⊗ and service ⊗ charges actually invoiced to ⊗ the railway undertaking ⊗ pursuant to Articles 30 to 37, comply with the methodology, rules, and, where applicable, scales laid down in the network statement.

3. Without prejudice to paragraphs 4 or 5 of this Article or to Article 32, 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 ⊗, according to Annex VIII, point 1 ⊗.

---

↓ new

Annex VIII, point 1 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC (adapted)

4. The infrastructure ~~⊗~~ charges ~~⊗~~ may include a charge which reflects the scarcity of capacity of the identifiable ~~⊗~~ section ~~⊗~~ of the infrastructure during periods of congestion.

---

↓ new

5. When charging for the cost of noise effects is allowed by Union legislation for road freight transport, the infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train in accordance with Annex VIII, point 2.

Annex VIII, point 2 may be amended in the light of experience, in accordance with the procedure referred to in Article 60, in particular to specify the elements of differentiated infrastructure charges.

---

↓ 2001/14/EC (adapted)  
⇒ new

The infrastructure ~~⊗~~ charges ~~⊗~~ may be modified to take account of the cost of ~~⊗~~ other ~~⊗~~ environmental effects caused by the operation of the train ⇒ not referred to in Annex VIII, point 2 ⇐ . ~~⊗~~ Any such ~~⊗~~ modification ⇒, which may ensure the internalisation of external costs of air pollutants emitted as a result of operating the train service, ⇐ shall be differentiated according to the magnitude of the effect caused.

Charging of ⇒ other ⇐ 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 ⇒ allowed by Union legislation ⇐ ~~at a comparable level~~ ⇒ for road freight ⇐ ~~to competing modes of~~ transport. ~~In the absence of any comparable level of~~ ⊗ If the ~~⊗~~ charging of ~~⊗~~ these ~~⊗~~ environmental costs ~~in other competing modes of~~ ⇒ for road freight ⇐ transport ⇒ is not allowed by Union legislation ⇐ , such modification shall not result in any overall change in revenue to the infrastructure manager.

If ~~a comparable level of~~ charging ⊗ for ⊗ environmental costs generates additional revenue, it shall be for Member States to decide how the revenue ⊗ is to ⊗ be used.

---

↓ new

The relevant authorities shall keep the necessary information to ensure that the origin of the charging of environmental costs and its use can be traced. Member States shall provide the Commission with this information on a regular basis.

---

↓ 2001/14/EC

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 charge shall be related to the costs attributable to the services.

---

↓ 2001/14/EC (adapted)  
⇒ new

7. The supply of services referred to in Annex III, point 2, shall not be covered by this Article. ~~⊗ In any event ⊗, ⇒ the charge imposed for such services shall not exceed the cost of providing it, plus a reasonable profit ⇐ 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 III, points 3 and 4, as additional and ancillary services are offered by ~~⊗ only ⊗~~ one supplier the charge imposed for such a service shall ~~⇒ not exceed ⇐ relate to the cost of providing it, ⇒ plus a reasonable profit ⇐ calculated on the basis of the actual level of use.~~

---

↓ 2001/14/EC

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.

---

↓ new

10. The operator of the facility for supply of the services referred to in Annex III, points 2, 3 and 4 shall provide the infrastructure manager with the information on charges to be included in the network statement according to Article 27.

---

↓ 2001/14/EC (adapted)

## Article 32

### 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 ~~⊗~~ optimal ~~⊗~~ competitiveness in particular of international rail freight. The charging system shall respect the productivity increases achieved by railway undertakings.

---

↓ 2001/14/EC

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.

---

↓ new

These market segments shall be established in accordance with the criteria laid down in Annex VIII, point 3 subject to the prior approval of the regulatory body. For market segments for which there is no traffic, mark-ups shall not be included in the charging system.

Annex VIII, point 3 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC (adapted)

⇒ new

2. For specific  future  investment projects, or  specific investment projects  that have been completed ~~not more than 15 years before the entry into force of this Directive~~ ⇒ after 1988 ⇐, 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 or cost-effectiveness  or both  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.

---

↓ new

3. Trains equipped with the European Train Control System (ETCS) running on lines equipped with national command control and signalling systems shall enjoy a temporary reduction of the infrastructure charge in accordance with Annex VIII, point 5.

Annex VIII, point 5 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC Art. 8 (adapted)

4. To prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of  its  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.

---

↓ 2001/14/EC  
⇒ new

5. 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 ⇒ of the deadline for the publication of the network statement according to Article 27(4) ⇐.

---

↓ 2001/14/EC (adapted)

### *Article 33*

#### **Discounts**

1. Without prejudice to Articles ☒ 101, 102, 106 and 107 ☒ of the Treaty and notwithstanding ☒ the direct cost principle laid down in ☒ Article 31(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.

---

↓ 2001/14/EC  
⇒ new

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. ⇒ Discount schemes shall be applied in a non-discriminatory manner to any railway undertaking. ⇐

### *Article 34*

#### **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.

---

↓ 2001/14/EC (adapted)

2. Where ☒ a railway undertaking ☒ receiving compensation enjoys an exclusive right, the compensation must be accompanied by comparable benefits to users.



---

↓ 2001/14/EC

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.

---

↓ 2001/14/EC (adapted)

4. Member States shall ensure that the scheme is compatible with Articles ☒ 93, 107 and 108 ☒ of the Treaty.

---

↓ 2001/14/EC (adapted)

### Article 35

#### Performance scheme

1. Infrastructure charging schemes shall encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network ☒ through a performance scheme ☒ . 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.

---

↓ 2001/14/EC  
⇒ new

2. The basic principles of the performance scheme ⇒ as listed in Annex VIII, point 4 ⇐ shall apply throughout the network.

---

↓ new

Annex VIII, point 4 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC (adapted)  
⇒ new

### Article 36

#### Reservation charges

Infrastructure managers may levy an appropriate charge for capacity that is ☒ allocated ☒ but not used. This charge shall provide incentives for efficient use of capacity. ⇒ If there is more than one applicant for a train path to be allocated under the annual timetable exercise, a reservation charge shall be levied. ⇐

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

---

↓ new

#### Article 37

### Cooperation in relation to charging systems on more than one network

Member States shall ensure that infrastructure managers cooperate to enable mark-ups as referred to in Article 32 and performance schemes as referred to in Article 35 to be efficiently applied, for traffic crossing more than one network. With a view to optimising the competitiveness of international rail services, infrastructure managers shall establish appropriate procedures, subject to the rules set out in this Directive.

---

↓ 2001/14/EC

## SECTION 3

### ALLOCATION OF INFRASTRUCTURE CAPACITY

---

↓ 2001/14/EC (adapted)

#### Article 38

### Capacity rights

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

---

↓ 2001/14/EC

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

---

↓ 2001/14/EC (adapted)

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

---

↓ 2001/14/EC

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 42 for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

---

↓ 2001/14/EC (adapted)

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

---

↓ 2007/58/EC Art. 2.3 (adapted)

4. When an applicant intends to request infrastructure capacity with a view to operating an international passenger service as defined in Article 2 , it shall inform the infrastructure managers and the regulatory bodies concerned. In order to enable  them to assess whether  the purpose of the international service  is  to carry passengers between stations located in different Member States, and  what  the potential economic impact on existing public service contracts  is  , regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service  on that route  defined in a public service contract, any other interested competent authority with a right to limit access under Article 9(3) and any railway undertaking performing the public service contract on the route of  that  international passenger service is informed.

---

↓ 2001/14/EC (adapted)

#### Article 39

### Capacity allocation

1. Member States may  lay down  a framework for the allocation of infrastructure capacity  subject to  the  condition of  management independence laid down in Article 4. Specific capacity allocation rules shall be  laid down  . 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  Union  law.

---

↓ 2001/14/EC

~~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.~~

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

#### Article 40

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

---

↓ 2001/14/EC (adapted)  
⇒ new

1. ☒ Member States shall ensure that ☒ infrastructure managers cooperate to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network ⇒ , including under framework agreements referred to in Article 42 ⇐ . ~~They shall organise international train paths, in particular within the framework of the Trans-European Rail-Freight Network.~~ ☒ Infrastructure managers ☒ shall establish ☒ appropriate ☒ procedures, ☒ subject to the rules set out in this Directive ☒ ⇒ , and organise international train paths accordingly ⇐ .

⇒ Member States shall ensure that representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers associate in order ⇐ to coordinate the allocation of ☒ or to allocate all relevant ☒ infrastructure capacity at an international level ⇒ , without prejudice to the specific rules contained in Union legislation on rail freight oriented networks ⇐ . ~~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 ☒ third countries ☒ may be associated with these procedures.

2. The Commission ⇒ and representatives of the regulatory bodies, which co-operate according to Article 57, ⇐ shall be informed ☒ of ☒ and invited to attend ⇒ as observers all meetings at which common principles and practices for the allocation of infrastructure are developed. In the case of IT-based allocation systems, the regulatory bodies shall receive sufficient information from these systems to allow them to perform their regulatory supervision in accordance with the provisions of Article 56 ⇐ .

---

↓ 2001/14/EC

3. 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.

4. The participants in the cooperation referred to 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.

5. 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 48.

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

---

↓ 2001/14/EC (adapted)

*Article 41*

**Applicants**

1. ☒ Requests ☒ for infrastructure capacity may be made by applicants ☒ within the meaning of this Directive ☒ .

---

↓ 2001/14/EC

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.

---

↓ new

3. The Commission may adopt implementing measures setting out the details of the criteria to be followed for the application of paragraph 2. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

---

↓ 2001/14/EC (adapted)

*Article 42*

**Framework agreements**

1. Without prejudice to Articles ☒ 101, 102 and 106 ☒ of the Treaty, a framework agreement may be concluded between ☒ an infrastructure manager and ☒ an applicant. Such a framework agreement ☒ shall specify ☒ 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 ☒ shall ☒ be such as 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 55 of this Directive.

---

↓ 2001/14/EC

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.

---

↓ 2007/58/EC Art. 2.4

5. Framework agreements shall in principle cover a period of five years, renewable for periods equal to their original duration. 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.

6. For services using specialised infrastructure referred to in Article 49 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

---

↓ 2007/58/EC Art. 2.4 (adapted)

⊗ In such exceptional cases, the framework agreement may set out the ⊗ detailed characteristics ⊗ of the capacity ⊗ which ⊗ is ⊗ to be provided to the applicant for the duration of the framework agreement. ⊗ These characteristics may include the frequency, volume and quality of train paths. ⊗ The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 52.

---

↓ 2007/58/EC Art. 2.4

As from 1 January 2010, an initial framework agreement may be drawn up for a period of five years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 55 shall be responsible for authorising the entry into force of such an agreement.

---

↓ 2001/14/EC

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

---

↓ 2001/14/EC

#### *Article 43*

### **Schedule for the allocation process**

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

---

↓ new

Annex IX may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC

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.

---

↓ 2001/14/EC (adapted)

#### *Article 44*

#### **Application**

1. Applicants may apply  under  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 IV, Section 2 .

2. Requests relating to the regular working timetable  shall comply with  the deadlines set out in Annex IX.

---

↓ 2001/14/EC  
⇒ new

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

4. Applicants  shall  ~~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  , such as a one-stop-shop for rail corridors  .

#### *Article 45*

#### **Scheduling**

---

↓ 2001/14/EC

1. The infrastructure manager shall as far as 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.

---

↓ 2001/14/EC Art. 20

2. The infrastructure manager may give priority to specific services within the scheduling and coordination process but only as set out in Articles 47 and 49.

---

↓ 2001/14/EC (adapted)

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 ☒ and ☒ 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.

---

↓ new

4. The infrastructure manager shall, upon request, within a reasonable time and in due time for the coordination process referred to in Article 46, make the following information available free of charge to applicants in written form for review:

- (a) train paths requested by all other applicants on the same routes,
  - (b) train paths allocated to all other applicants and outstanding train paths requests for all other applicants on the same routes,
  - (c) train paths allocated to all other applicants on the same routes as in the previous working timetable,
  - (d) remaining capacity available on the relevant routes,
  - (e) full details of the criteria being used in the capacity allocation process.
- 

↓ 2001/14/EC

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

#### *Article 46*

### **Coordination process**



---

↓ 2001/14/EC (adapted)

1. During the scheduling process referred to in Article 45, when the infrastructure manager encounters conflicts between different requests it shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.

---

↓ 2001/14/EC Art. 21

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.

---

↓ 2001/14/EC (adapted)

⇒ new

3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to resolve any conflicts.

4. The principles governing the coordination process shall be set out 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. Where 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 Article 56, in the event of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. This system shall be set out in the network statement. If this system is applied, a decision shall be reached within a time limit of 10 working days.

#### Article 47

### Congested infrastructure

---

↓ 2001/14/EC (adapted)

1. Where after coordination of the requested train paths and consultation with applicants it is not possible to satisfy requests for infrastructure capacity adequately then the infrastructure manager must immediately declare that section of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which can be expected to 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 provided for in Article 50, unless a capacity enhancement plan as provided for in Article 51 is already being implemented.

---

↓ 2001/14/EC

3. When charges in accordance with Article 31 (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.

---

↓ 2001/14/EC (adapted)

In order to guarantee the development of adequate transport services  within this framework  , 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  second  subparagraph.

These measures and compensations  shall include taking account of the effect of this exclusion in other Member States.

---

↓ 2001/14/EC

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

---

↓ 2001/14/EC (adapted)

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

---

↓ 2001/14/EC

#### *Article 48*

#### ***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 49

### 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.

---

↓ 2001/14/EC (adapted)

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 101, 102 and 106 of the Treaty, where 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.

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

## Article 50

### Capacity analysis

1. The objective of capacity analysis is to determine the constraints 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 services, re-timing services, speed alterations and infrastructure improvements.

---

↓ 2001/14/EC

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

## Article 51

### 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.

---

↓ 2001/14/EC (adapted)  
⇒ new

On the basis of a cost benefit analysis of the possible measures identified, it shall also determine the action to be taken to enhance infrastructure capacity, including a timetable for implementing the measures.

The plan may be subject to prior approval by the Member State. ⇒ The regulatory body referred to in Article 55 may issue an opinion on whether the actions identified in the plan are appropriate. ⇐

3. The infrastructure manager shall cease to levy any charges which are levied for the relevant infrastructure under Article 31(4) in cases where:

- (a) it does not produce a capacity enhancement plan; or
- (b) it does not make progress with the actions identified in the capacity enhancement plan.

However, the infrastructure manager may, subject to the approval of the regulatory body referred to in Article 55 continue to levy the charges if:

- (a) the capacity enhancement plan cannot be realised for reasons beyond its control; or

---

↓ 2001/14/EC

- (b) the options available are not economically or financially viable.

---

↓ 2001/14/EC (adapted)

## *Article 52*

### **Use of train paths**

1. ☒ In the network statement, the ☒ infrastructure manager ☒ shall ☒ specify conditions whereby it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.

☒ 2. For congested infrastructure in particular, 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. ☒

#### Article 53

### Infrastructure capacity for ~~scheduled~~ maintenance ☒ work ☒

1. Requests for infrastructure capacity to enable maintenance ☒ work ☒ 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 ☒ work ☒ on applicants.

---

↓ new

3. The infrastructure manager shall inform in due time interested parties about ~~unscheduled~~ maintenance work.

---

↓ 2001/14/EC (adapted)

#### Article 54

### 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 ☒ it ☒ shall draw up a contingency plan listing the various 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 ☒ train ☒ paths allocated may be withdrawn without warning for as long as is necessary to repair the system.

The infrastructure manager may, if ☒ it ☒ deems ☒ this ☒ necessary, require railway undertakings to make available to ☒ it ☒ the resources which ☒ it ☒ 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 ☒ with ☒ the safety standards and rules.

## SECTION 4

### ⊠ REGULATORY BODY ⊠

↓ 2001/14/EC (adapted)  
⇒ new  
→<sub>1</sub> 2007/58/EC Art. 2.5

#### Article 55

#### Regulatory body

1. ⊠ Each ⊠ Member State shall establish a ⇒ single national ⇐ regulatory body ⇒ for the railway sector ⇐. This body, ~~which can be the Ministry responsible for transport matters or any other body,~~ shall ⇒ be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public authority. It shall also ⇐ be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. →<sub>1</sub> It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract. ← ~~The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.~~

↓ new

2. Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated regulatory authorities fulfil the independence requirements set out in paragraph 1.

3. The president and governing board of the regulatory body for the railway sector shall be appointed for a fixed and renewable term under clear rules which guarantee independence. They shall be selected from among persons who have had no professional position or responsibility, interest or business relationship, directly or indirectly, with the regulated undertakings or entities for a period of three years before their appointment, and during their term of office. Afterwards, they shall have no professional position or responsibility, interest or business relationship with any of the regulated undertakings or entities for a period of not less than three years. They shall have full authority over the recruitment and management of the staff of the regulatory body.

↓ 2001/14/EC (adapted)  
⇒ new

#### ⊠ Article 56 ⊠

#### ⊠ Functions of the regulatory body ⊠

1. ~~⊗~~ Without prejudice to Article 46(6), ~~⊗~~ an applicant shall have ~~⊗~~ the ~~⊗~~ 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 ~~⇒~~ or the operator of a service facility ~~⇐~~ concerning:

↓ 2001/14/EC

(a) the network statement;

↓ 2001/14/EC (adapted)

(b) ~~⊗~~ the ~~⊗~~ criteria ~~⊗~~ set out in ~~⊗~~ it;

↓ 2001/14/EC

(c) the allocation process and its result;(d) the charging scheme;

↓ 2001/14/EC (adapted)

(e) ~~⊗~~ the ~~⊗~~ level or structure of infrastructure ~~⊗~~ charges ~~⊗~~ which it is, or may be, required to pay;

↓ 2004/49/EC Art. 30.2

(f) arrangements for access in accordance with Articles 10, 11 and 12;

↓ new

(g) access to and charging for services in accordance with Article 13.

2. The regulatory body shall also have the power to monitor the competition in the rail services markets and review points (a) to (g) of paragraph 1 on its own initiative and with a view to preventing discrimination between applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate between applicants. The regulatory body shall have the necessary organisational capacity to carry out these tasks.

↓ 2001/12/EC Art. 1.11

~~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.~~

---

↓ 2001/14/EC (adapted)

⇒ new

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with Chapter IV, Section 2 and are non-discriminatory. ☒ Negotiations ☒ 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 Chapter .

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. ☒ Information requested ☒ must be supplied without undue delay. ⇒ The regulatory body shall be enabled to enforce such requests with the appropriate sanctions, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes. ⇐

---

↓ 2001/14/EC

⇒ new

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. ⇒ Where appropriate, it shall decide on its own initiative on appropriate measures to correct undesirable developments in these markets, in particular with reference to points (a) to (g) of paragraph 1. ⇐

---

↓ 2001/14/EC

⇒ new

A decision of the regulatory body shall be binding on all parties covered by that decision ⇒ , and shall not be subject to the control of another administrative instance. The regulatory body must be able to enforce its decisions with the appropriate sanctions, including fines. ⇐

---

↓ 2001/14/EC

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.



---

↓ 2001/14/EC

⇒ new

6. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. ⇒ The appeal may have suspensive effect on the decision of the regulatory body only when the court hearing the appeal establishes that the immediate effect of the regulatory body's decision may cause irretrievable damages for the appellant. ⇐

---

↓ new

7. Member States shall ensure that information about conflict resolution and appeal procedures related to decisions of infrastructure managers and providers of services listed in Annex III are published by the regulatory body.

8. The regulatory body shall have the power to carry out audits or initiate external audits with infrastructure managers and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6.

Member States shall ensure that infrastructure managers and all undertakings or other entities performing or integrating different types of rail transport or infrastructure management as referred to in Article 6(1) and (2) shall provide detailed regulatory accounts to the regulatory body so that it can carry out its different tasks. These regulatory accounts must contain at least the elements set out in Annex X. The regulatory body may also draw conclusions from these accounts concerning state aid issues which it shall report to the authorities responsible for resolving these issues.

Annex X may be amended in the light of experience in accordance with the procedure referred to in Article 60.

---

↓ 2001/14/EC (adapted)

⇒ new

#### Article 57

### Cooperation ☒ between ☒ regulatory bodies

1. The national regulatory bodies shall exchange information about their work and decision-making principles and practice ☒ and otherwise cooperate ☒ for the purpose of coordinating their decision-making across the ☒ Union ☒. ⇒ For this purpose they shall work together in a working group that convenes at regular intervals. ⇐ The Commission shall support ☒ the regulatory bodies ☒ in this task.

---

↓ new

2. The regulatory bodies shall be enabled to cooperate closely, including through working arrangements, for purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3. In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition

on the market related to international rail transport services, the regulatory body concerned shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and request all necessary information from them before taking its decision.

4. The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national legislation. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5. The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

6. Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. This regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph 3.

7. Regulatory bodies shall develop common principles and practices for making decisions for which they are empowered under this Directive. The Commission may adopt implementing measures setting out such common principles and practices. Those measures designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

Regulatory bodies shall also review decisions and practices of associations of infrastructure managers as referred to in Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

---

↓ 91/440/EEC

## CHAPTER V

### FINAL PROVISIONS

---

↓ 2001/12/EC Art. 1.14

#### ~~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).~~

---

↓ 2007/58/EC Art. 1.11

~~2. Measures designed to amend non-essential elements of this Directive and relating to the adaptation of the Annexes thereto shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11a(3).~~

---

↓ 91/440/EEC (adapted)

#### Article 58

The provisions of this Directive shall be without prejudice to  Directive 2004/17/EC of the European Parliament and of the Council <sup>17</sup>.

---

↓ 2001/14/EC  
⇒ new

#### Article 59

##### Derogations

1. ~~For a period of five years from~~ ⇒ Until ⇐ 15 March ~~2003~~ ⇒ 2013 ⇐, ~~the following Member States:~~

---

↓ 2001/14/EC (adapted)

Ireland, as a Member State located on an island, with a rail link to only one other Member State,  and  the United Kingdom, in respect of Northern Ireland, on the same basis

---

↓ 2001/14/EC

~~Greece, as a Member State that does not have any direct rail link to any other Member State,~~

---

↓ 2001/14/EC (adapted)

- (a) do not need to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 7(1) first subparagraph, in so far as that Article obliges Member States to establish independent bodies performing the tasks referred to in Article 7(2);
- (b)  do not need to apply the requirements set out in  Articles 27, 29(2), 38, 39, 42, 46(4), 46(6), 47, 49(3), 50 to 53, 55 and 56 on condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal,  if  so requested in writing by a railway undertaking, before an independent

---

<sup>17</sup> OJ L 134, 30.4.2004, p. 1.

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.

2. Where more than one railway undertaking licensed in accordance with Article 17, 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  or  Northern Ireland ~~or Greece~~, the continued applicability of this derogation  shall  be decided upon in accordance with the procedure referred to in Article 64(2).

The derogations referred to in paragraph 1 shall not apply where  a railway undertaking operating railway services in Ireland or Northern Ireland submits an official application to operate railway services on, to or from the territory of another Member State,  with the exceptions  of Ireland  for railway undertakings operating in Northern Ireland and  the United Kingdom  for railway undertakings operating in Ireland .

Within one year from the receipt of either the decision referred to in the first subparagraph of this paragraph or notification of the official application referred to in the second subparagraph of this paragraph, the Member State or States concerned (Ireland  or  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  that  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 procedure referred to in Article 64(2).  That  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  that  requested the renewed derogation.

---

↓ 2001/14/EC

~~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.~~

↓ new

#### Article 60

#### Exercise of delegation

1. Powers to adopt the delegated acts referred to in Articles 7(1) second subparagraph, 13(5) second subparagraph, 15(5) second subparagraph, 20 third paragraph, 27(2), 30(3) second subparagraph, 31(5) second subparagraph, 32(1) third subparagraph, 32(3),

35(2), 43(1) and 56(8) third subparagraph shall be conferred on the Commission for an indeterminate period of time.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. Powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 61 and 62.

#### *Article 61*

### **Revocation of delegation**

1. The delegation of powers referred to in Article 60(1) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for such revocation.

3. The revocation decision shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or on a later date specified therein. It shall not affect the validity of delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

#### *Article 62*

### **Objections to delegated acts**

1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. On the initiative of the European Parliament or the Council this period shall be extended by one month.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force on the date stated in its provisions.

3. If the European Parliament or the Council objects to an adopted delegated act, it shall not enter into force. The institution concerned shall state the reasons for objecting to the delegated act.

---

↓ 2001/14/EC
--------------

#### *Article 63*

### **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 procedure referred to in Article 64(2).

---

↓ 2004/49/EC Art. 30.4 (adapted)

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  the  provisions  of this Directive , and within two months of receipt of such a request decide in accordance with the procedure referred to in Article 64(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.

---

↓ 2001/14/EC (adapted)

Without prejudice to Article  258  of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month  from the date of the decision . The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month  from the date of the referral .

---

↓ 2007/58/EC Art. 2.6 (adapted)

3. Measures designed to  ensure the implementation of the Directive under uniform conditions  shall be adopted  by the Commission as implementing acts  in accordance with the procedure ~~with scrutiny~~ referred to in Article 64(3).

---

↓ 2001/14/EC

#### *Article 64*

#### **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.
- 

↓ 2007/58/EC Art. 2.7

3. Where reference is made to this paragraph, Article 5~~a(1) to (4)~~, and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

---

↓ 2001/14/EC

#### *Article 65*

#### **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.~~

---

↓ 2007/58/EC Art. 1.9

~~8. By 1 January 2009, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of this Directive.~~

~~This report shall address:~~

~~— the implementation of this Directive in the Member States, and in particular its impact in the Member States as referred to in the second subparagraph of paragraph 3a and the effective working of the various bodies involved;~~

~~— market developments, in particular international traffic trends, activities and market share of all market actors, including new entrants.~~

---

↓ 2007/58/EC Art. 1.10 (adapted)

By 31 December 2012 ☒ at the latest ☒ , the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of Chapter II.

---

↓ 2007/58/EC Art. 1.10 (adapted)

This report shall also assess the development of the market, including the state of preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission shall, if appropriate, propose complementary measures to facilitate any such opening, and shall assess the impact of any such measures.

#### Article 66

#### ☒ Transposition ☒

---

↓ new

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annexes [...] by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a table showing the correlation between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative

provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

↓ 2007/58/EC Art. 2.8

The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

↓ new

#### Article 67

##### Repeal

Directives 91/440/EEC, 95/18/EC and 2001/14/EC, as amended by the Directives listed in Annex XI, Part A, are repealed with effect from [...], without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex XI, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

↓ 2001/14/EC (adapted)

#### Article 68

##### Entry into force

This Directive shall enter into force on the ☒ twentieth day following that ☒ of its publication in the *Official Journal of the European Union*.

↓ new

Articles [...] and Annexes [...] shall apply from [...].

↓ 2001/14/EC

#### Article 69

##### Addressees



This Directive is addressed to the Member States.

Done at [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

---

↓ 2001/12/EC Annex I

**ANNEX I**

**PORTS**

**BELGIE/BELGIQUE**

Antwerpen/Anvers

Gent/Gand

Zeebrugge/Zeebruges

---

↓ 2006/103/EC Art. 1 and  
Annex B

**БЪЛГАРИЯ**

Варна

Бургас

Русе

Лом

Видин

---

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

**ČESKÁ REPUBLIKA**

---

↓ 2001/12/EC Annex I

**DANMARK**

Ålborg

Århus

Esbjerg

Fredericia

København

Nyborg

Odense

## **DEUTSCHLAND**

Brake

Bremen/Bremerhaven

Brunsbüttel

Cuxhaven

Emden

Hamburg

Kiel

Lübeck

Nordenham

Puttgarden

Rostock

Sassnitz

Wilhelmshaven

Wismar

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

## **EESTI**

Muuga sadam

Paljassaare sadam

Vanasadam

Paldiski põhjasadam

Paldiski lõunasadam

Kopli põhjasadam

~~Kopli-Iõunasadam~~

~~Bekkeri-sadam~~

~~Kunda-sadam~~

---

↓ 2001/12/EC Annex I

~~ΕΛΛΑΣ~~

~~Αλεξανδρούπολη~~

~~Ελευσίνα~~

~~Πάτρα~~

~~Πειραιάς~~

~~Θεσσαλονίκη~~

~~Βόλος~~

~~ESPAÑA~~

~~Algeciras~~

~~Almería~~

~~Barcelona~~

~~Bilbao~~

~~Cartagena-Escombreras~~

~~Gijón~~

~~Huelva~~

~~Tarragona~~

~~Valencia~~

~~Vigo~~

~~FRANCE~~

~~Bayonne~~

~~Bordeaux~~

~~Boulogne~~

~~Calais~~

~~Cherbourg~~

~~Dunkerque~~

~~Fos-Marseille~~

~~La Rochelle~~

~~Le Havre~~

~~Nantes~~

~~Port-la-Nouvelle~~

~~Rouen~~

~~Sète~~

~~St-Nazaire~~

## ~~IRELAND~~

~~Cork~~

~~Dublin~~

## ~~ITALIA~~

~~Ancona~~

~~Bari~~

~~Brindisi~~

~~C. Vecchia~~

~~Genova~~

~~Gioia Tauro~~

~~La Spezia~~

~~Livorno~~

~~Napoli~~

~~Piombino~~

~~Ravenna~~

~~Salerno~~

~~Savona~~

~~Taranto~~

~~Trieste~~

~~Venezia~~

---

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

~~KYΠΡΟΣ~~

~~LATVIJA~~

~~Rīga~~

~~Ventspils~~

~~Liepāja~~

~~LIETUVA~~

~~Klaipėda~~

---

↓ 2001/12/EC Annex I

~~LUXEMBOURG~~

---

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

~~MAGYARORSZÁG~~

~~MALTA~~

---

↓ 2001/12/EC Annex I

~~NEDERLAND~~

~~Amsterdam-Zeehaven~~

~~Delfzijl/Eemshaven~~

~~Vlissingen~~

~~Rotterdam-Zeehaven~~

~~Terneuzen~~

## ~~ÖSTERREICH~~

---

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

## ~~POLSKA~~

~~Szczecin~~

~~Świnoujście~~

~~Gdańsk~~

~~Gdynia~~

---

↓ 2001/12/EC Annex I

## ~~PORTUGAL~~

~~Leixões~~

~~Lisboa~~

~~Setúbal~~

~~Sines~~

---

↓ 2006/103/EC Art. 1 and Annex  
.B

## ~~ROMÂNIA~~

~~Constanța~~

~~Mangalia~~

~~Midia~~

~~Tulcea~~

Galati

Braila

Medgidia

Oltenița

Giurgiu

Zimnicea

Calafat

Turnu Severin

Orșova

---

↓ Act of Accession  
(OJ L 2003/236)  
Art. 20 and Annex II, p. 456

~~SLOVENIJA~~

~~Koper~~

~~SLOVENSKO~~

---

↓ 2001/12/EC Annex I

~~SUOMI/FINLAND~~

~~Hamina~~

~~Hanko~~

~~Helsinki~~

~~Kemi~~

~~Kokkola~~

~~Kotka~~

~~Oulu~~

~~Pori~~

~~Rauma~~



~~Tornio~~

~~Turku~~

~~SVERIGE~~

~~Göteborg-Varberg~~

~~Helsingborg~~

~~Luleå~~

~~Malmö~~

~~Norrköping~~

~~Oxelösund~~

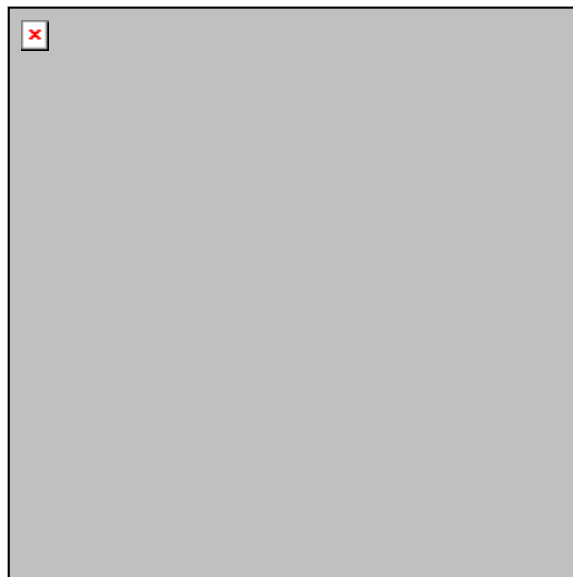
~~Stockholm~~

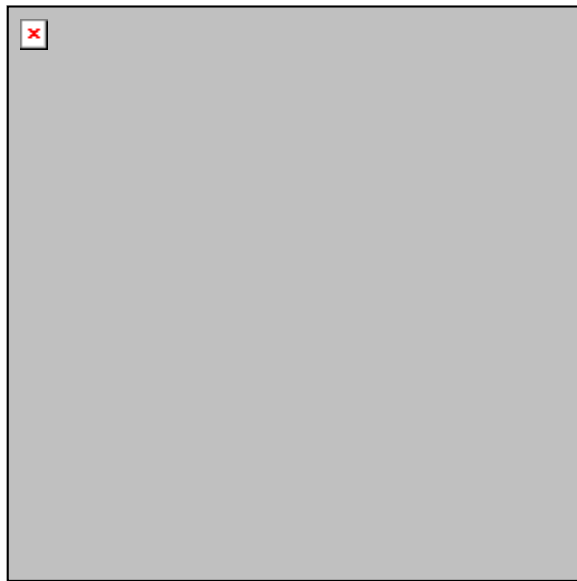
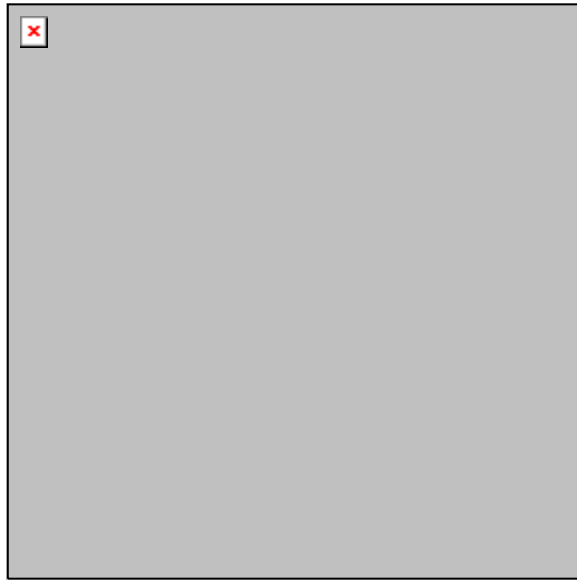
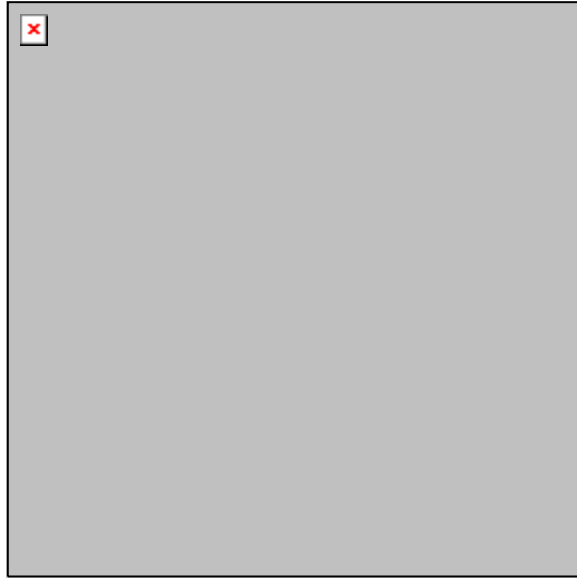
~~Trelleborg-Ystad~~

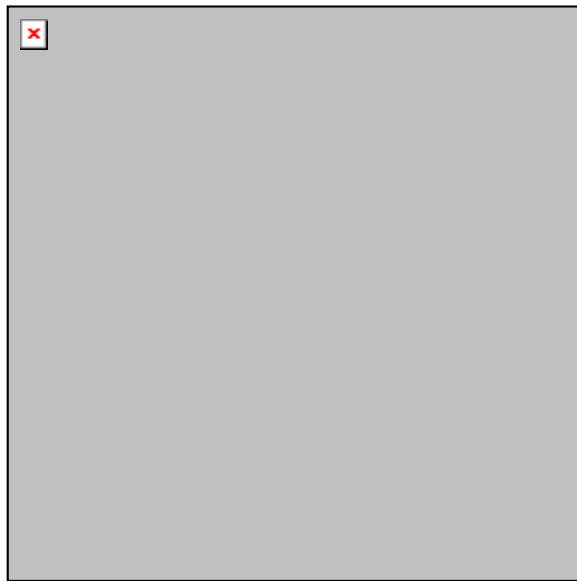
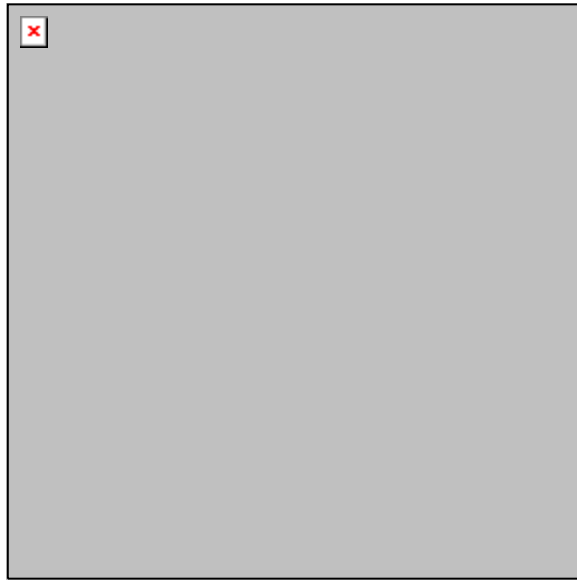
~~Umeå~~

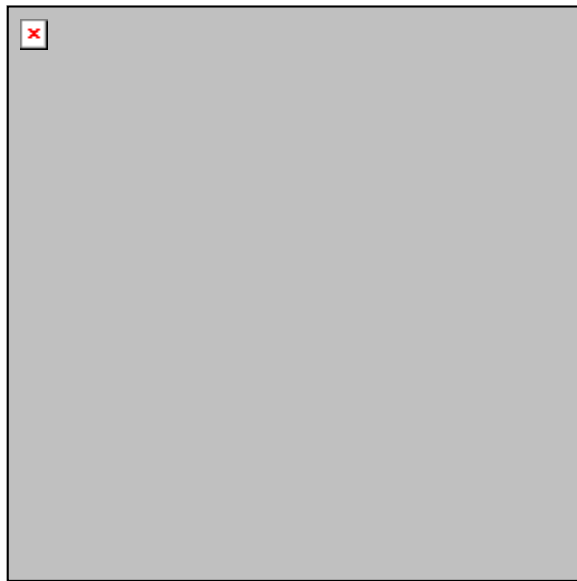
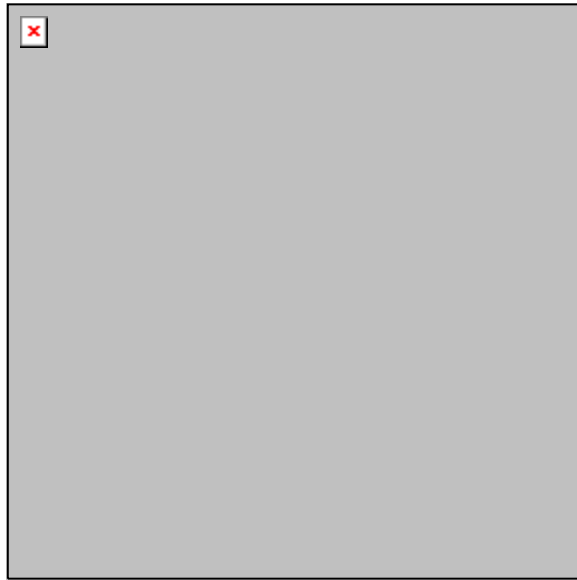
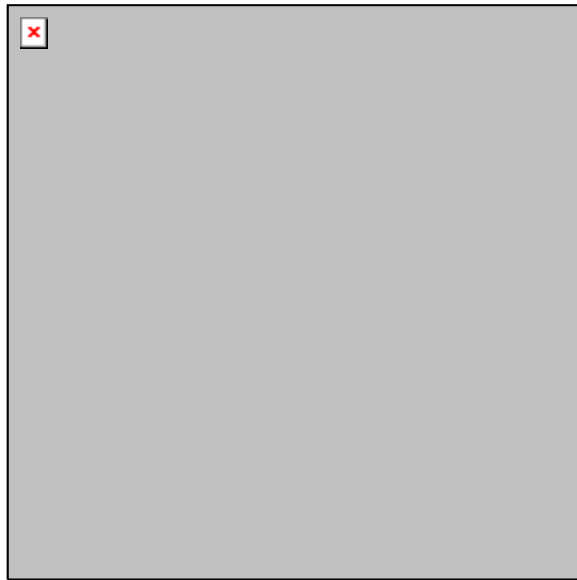
~~UNITED KINGDOM~~

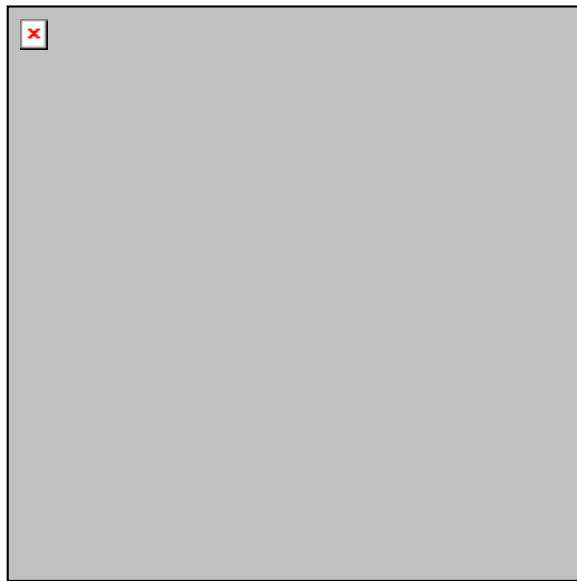
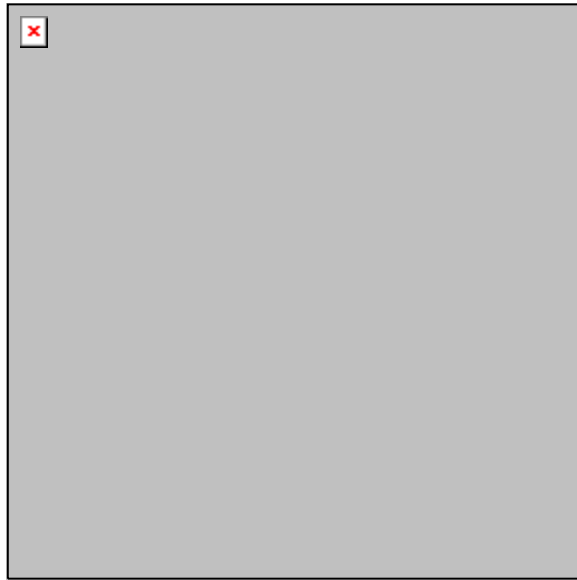
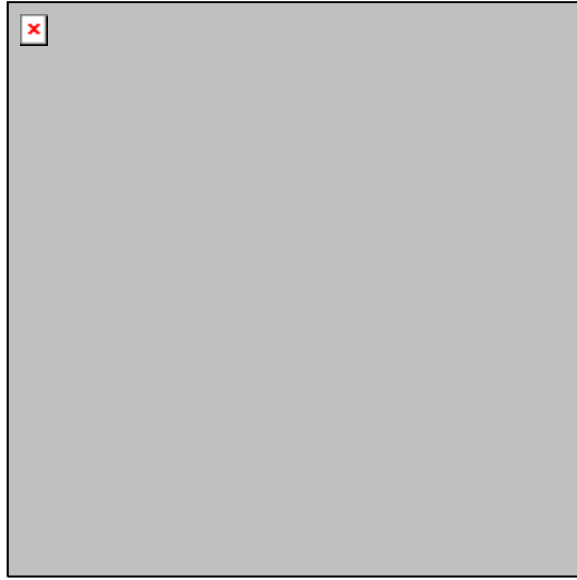
~~All rail-connected ports~~

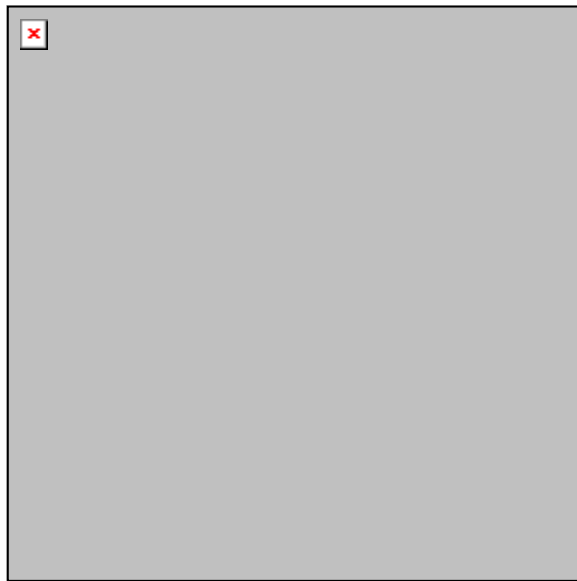
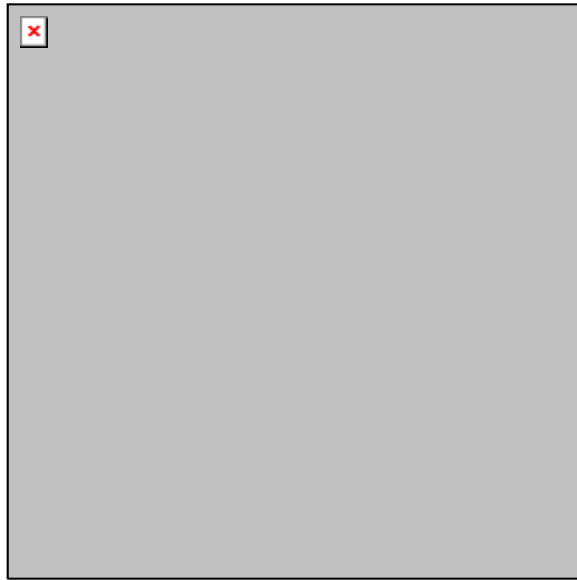
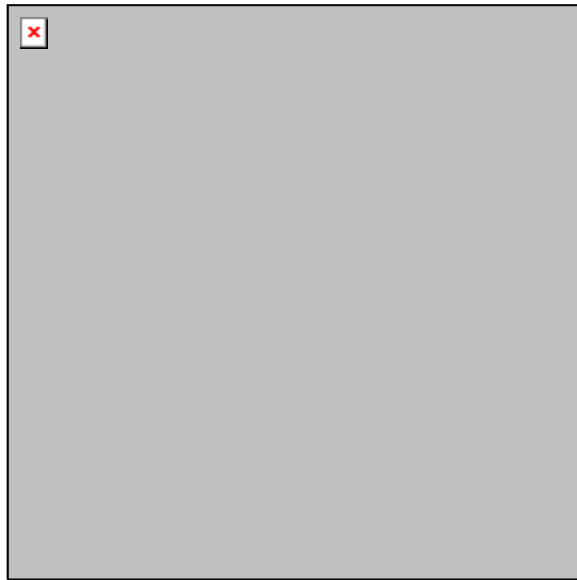


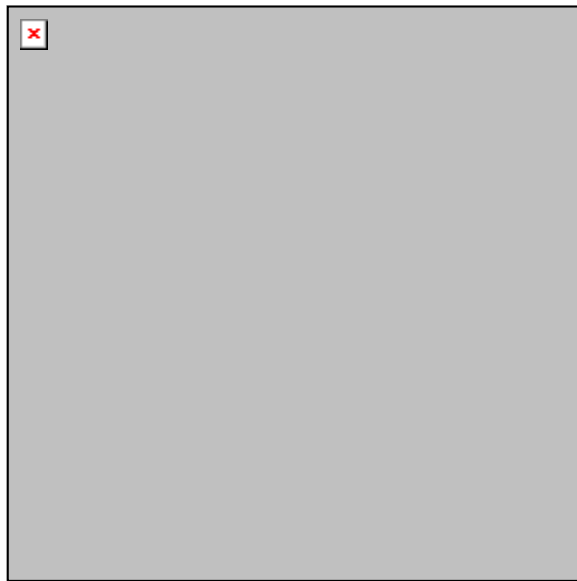
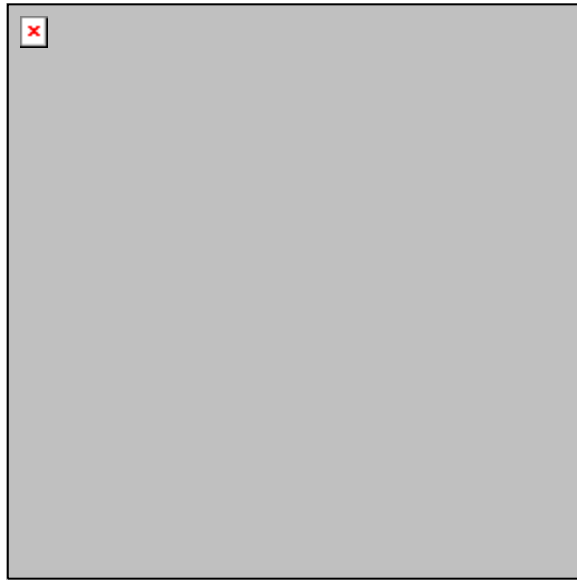
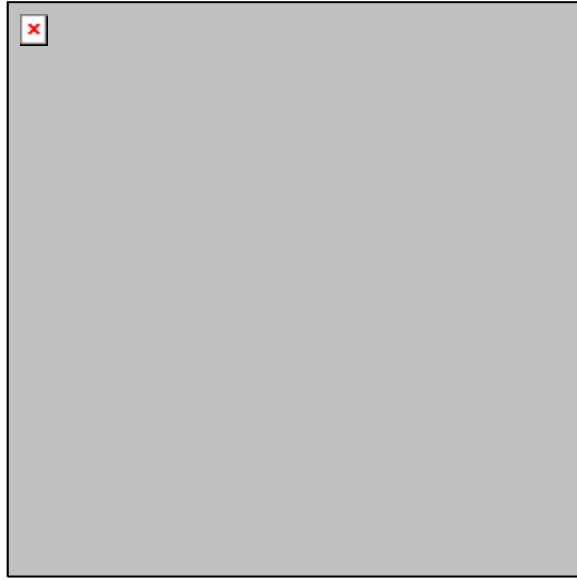


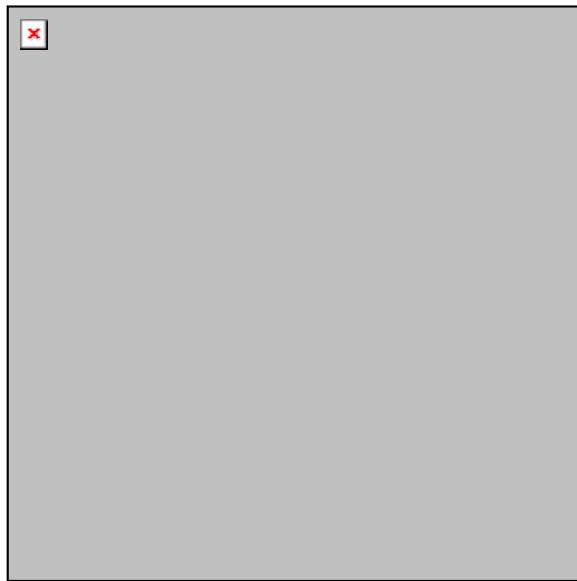
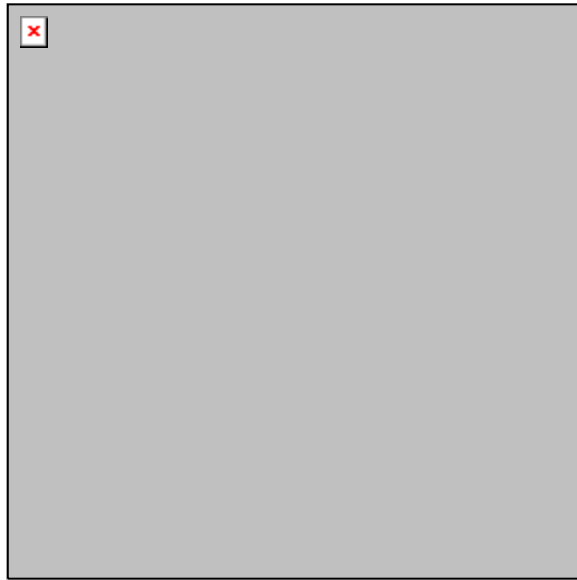




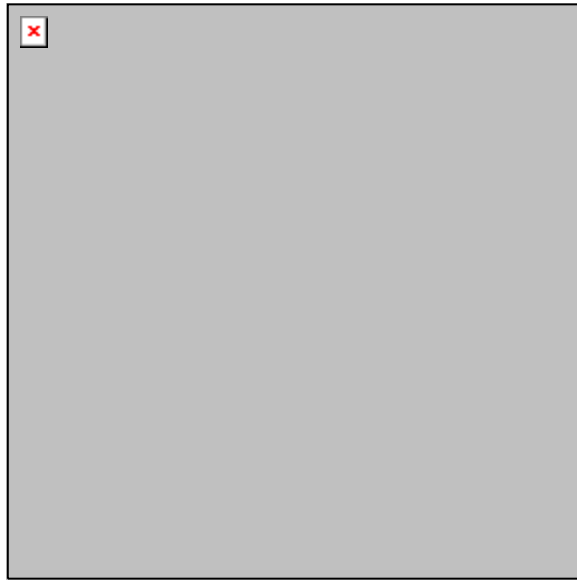
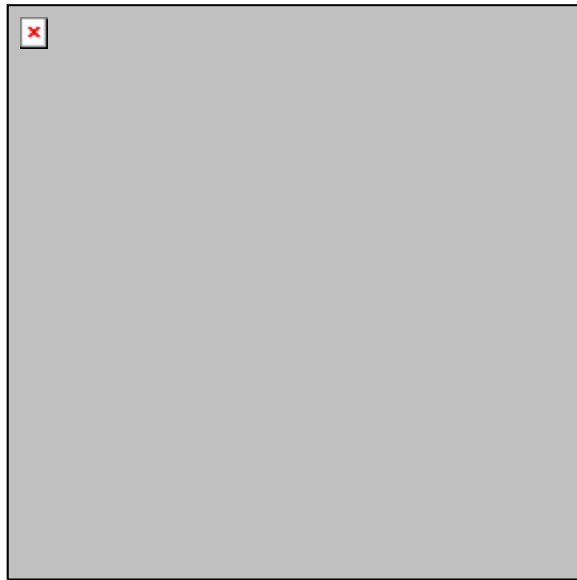












## **ANNEX I**

### **List of railways infrastructure items**

Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:

- Ground area;
- Track and track bed, in particular embankments, cuttings, drainage channels and trenches, masonry trenches, culverts, lining walls, planting for protecting side slopes etc.; passenger and goods platforms; four-foot way and walkways; enclosure walls, hedges, fencing; fire protection strips; apparatus for heating points; crossings, etc.; snow protection screens;
- Engineering structures: bridges, culverts and other overpasses, tunnels, covered cuttings and other underpasses; retaining walls, and structures for protection against avalanches, falling stones, etc.;
- Level crossings, including appliances to ensure the safety of road traffic;
- Superstructure, in particular: rails, grooved rails and check rails; sleepers and longitudinal ties, small fittings for the permanent way, ballast including stone chippings and sand; points, crossings, etc.; turntables and traversers (except those reserved exclusively for locomotives);
- Access way for passengers and goods, including access by road;
- Safety, signalling and telecommunications installations on the open track, in stations and in marshalling yards, including plant for generating, transforming and distributing electric current for signalling and telecommunications; buildings for such installations or plant; track brakes;
- Lighting installations for traffic and safety purposes;
- Plant for transforming and carrying electric power for train haulage: sub-stations, supply cables between sub-stations and contact wires, catenaries and supports; third rail with supports;
- Buildings used by the infrastructure department.

---

↓ 2001/12/EC Art. 1.7 (adapted)

**ANNEX II**

**⊗ Essential functions of an infrastructure manager ⊗**

⊗ (referred to in Article 7) ⊗

---

↓ 2001/12/EC Art. 1.7

List of essential functions referred to in Article 7 :

~~– preparation and decision making related to the licensing of railway undertakings including granting of individual licenses,~~

---

↓ 2001/12/EC Art. 1.7 (adapted)

⇒ new

- decision making ⊗ on train ⊗ path allocation, including both the definition and the assessment of availability and the allocation of individual train paths,
  - decision making ⊗ on ⊗ infrastructure charging, ⇒ including determination and collection of the charges, ⇐
- 

↓ 2001/12/EC Art. 1.7

~~– monitoring observance of public service obligations required in the provision of certain services.~~

---

---

↓ 2001/14/EC (adapted)

**ANNEX III**

**Services to be supplied to the railway undertakings**

⊗ (referred to in Article 13) ⊗

---

↓ 2001/14/EC

1. The minimum access package shall comprise:

---

↓ 2001/14/EC (adapted)

(a) handling of requests for ⊗ railway ⊗ infrastructure capacity;

---

↓ 2001/14/EC

- (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;
- 

⇩ new

- (e) use of electrical supply equipment for traction current, where available;
  - (f) refuelling facilities, where available;
- 

↓ 2001/14/EC

g) all other information required to implement or operate the service for which capacity has been granted.

---

↓ 2001/14/EC  
⇒ new

2. Access ⇒ shall also be given ⇐ to services facilities and the supply of services ⇒ in the following facilities ⇐ ~~shall comprise~~:

---

↓ 2001/14/EC  
⇒ new

- ~~a) use of electrical supply equipment for traction current, where available;~~
- ~~b) refuelling facilities;~~

- (a) passenger stations, their buildings and other facilities ⇒ , including ticketing and travel information ⇐ ;
  - (b) freight terminals;
  - (c) marshalling yards;
  - (d) train formation facilities;
  - (e) storage sidings;
  - (f) maintenance and other technical facilities;
- 

↓ new

- (g) port facilities which are linked to rail activities;
  - (h) relief facilities, including towing.
- 

↓ 2001/14/EC  
⇒ new

3. Additional services may comprise:

- (a) traction current ⇒ , charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment ⇐ ;
- (b) pre-heating of passenger trains;
- (c) supply of fuel, ⇒ charges for which shall be shown on the invoices separately from charges for using refuelling facilities ⇐ , ~~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 networks;
  - (b) provision of supplementary information;
  - (c) technical inspection of rolling stock.
-

↓ new

**ANNEX IV**

**Information for Rail Market Monitoring**

(referred to in Article 15)

**1. Evolution of rail transport performance and compensation of Public Service Obligations (PSO):**

	2007	%-variation compared to previous year	2008	%-variation compared to previous year
Freight (in tkm) total				
International				
Transit				
National				
Passengers (in pkm) total				
international				
Transit				
national				
of which under PSO:				
Paid compensation for PSO (in euro):				

**2. Shares of railway undertakings in total transport performance at the end of 2008 (listing railway undertakings with market shares in tkm/pkm  $\geq$  1%):**

Railway undertakings (FREIGHT)	Share (% of tkm)	Total market share of non-incumbents

Railway undertakings (PASSENGERS)	Share (% of pkm)	Total market share of non-incumbents

**3. Regulatory Bodies:**

	last year	Year before
No of staff dealing with regulatory issues related to rail market access:		
No of complaints dealt with:		
No of ex officio investigations dealt with:		
No of decisions taken		
- on complaints:		
- on ex officio investigations:		

**4. National legislation and regulatory acts relevant to railway transport issued last year.**

**5. Relevant developments as regards restructuring of the incumbent railway undertaking and adoption/implementation of national transport strategies over the past year.**

**6. Important training initiatives/measures in the field of railway transport taken in your country last year.**

**7. Employment of railway undertakings and infrastructure managers at the end of last year.**

Total staff of railway undertakings	
- of which train drivers	
- of which other mobile staff working cross-border	
Total staff of infrastructure managers	
Other staff including in rail related service companies (e.g. maintenance workshops, terminal operators, training, train driver leasing, energy supply)	

**8. Status of the multi-annual infrastructure management contracts (MAC) in force last year:**

Infrastructure manager	Length of the network covered by the contract	Time span of the contract starting from [date]	Definition of performance indicators agreed (Y/N)? If yes, please specify.	Total compensation paid (in euro/year)	

**9. Infrastructure expenditure (conventional network and high-speed network):**

	Maintenance	Renewals	Enhancements
Conventional lines last year: (in euro)			
(in km worked on)			
Forecast for this year (in euro)			
(in km worked on)			
High-speed lines last year (in euro)			
(in km worked on)			
Forecast for this year (in euro)			
(in km worked on)			

**10. Estimated infrastructure maintenance backlog at the end of last year.**

Conventional lines last year (in euro)	
(in km to be worked on)	
High-speed lines last year (in euro)	
(in km to be worked on)	



**11. Investments in the high-speed rail network:**

Lines	Km of lines put into service last year	Km being put into service at a conventional planning horizon (in 10/20 years)

**12. Length of railway network at the end of last year:**

Conventional lines (in km)	
High-speed lines (in km)	

**13. Track access charges last year.**

Train category	Average charge in €/train km, excluding cost of the use of electricity
1 000 gross tonne freight train	
500 gross tonne intercity passenger train	
140 gross tonne suburban passenger train	

**14. Existence of a performance regime set up according to Article 35 of this Directive (if yes, its main features).****15. Number of active licences issued by competent national authority**

	Active licences on 31 December, last year	Licences withdrawn	New licences issued	Active licences on 31 December, one year before
<b>Total</b>				
thereof:				
- for freight transport				
- for passenger transport				

**16. Status of ERTMS deployment.****17. Other relevant developments**

**ANNEX V**

**⊗ Financial fitness ⊗**

⊗ (referred to in Article 20) ⊗

1. Financial fitness will be verified by means of ⊗ a railway ⊗ undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. Detailed particulars must be provided, in particular on the following aspects:

- (a) available funds, including the bank balance, pledged overdraft provisions and loans;
  - (b) funds and assets available as security;
  - (c) working capital;
  - (d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;
  - (e) charges on an undertaking's assets.
2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.
3. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents must include information concerning the matters referred to in point 1.

---

↓ 2001/14/EC (adapted)

## ANNEX VI

### Contents of the network statement

⊗ (referred to in Article 27) ⊗

---

↓ 2001/14/EC  
⇒ new

The network statement referred to in Article 27 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. ⇒ The information in this section shall be consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC. ⇐
- 

↓ 2001/14/EC Annex I  
⇒ new

2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges ⇒ as well as other relevant information on access applying ⇐ to the services listed in Annex III which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Articles 31 ~~(4) and (5)~~ ⇒ to 36, as regards both costs and charges ⇐. It shall contain information on changes in charges already decided upon or foreseen ⇒ in the next five years ⇐.
- 

↓ 2001/14/EC  
⇒ new

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 ⇒ and the procedures which shall be followed to request information on the scheduling in accordance with Article 45(4) ⇐;
  - (d) the principles governing the coordination process ⇒ and the dispute resolution system made available as part of this process ⇐;

- (e) the procedures which shall be followed and criteria used where infrastructure is congested;
  - (f) details of restrictions on the use of infrastructure;
- 

↓ 2001/14/EC  
⇒ new

- (g) 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 adequate treatment of freight services, international services and requests subject to the *ad hoc* procedure. ⇒ It shall contain a template form for capacity requests. The infrastructure manager shall also publish detailed information about the allocation procedures for international train paths. ⇐

---

↓ new

4. A section on information relating to the application for a licence referred to in Article 25 and rail safety certificates issued in accordance with Directive 2004/49/EC<sup>18</sup>.
  5. A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 35.
  6. A section on information on access to and charging for service facilities referred to in Annex III. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement.
  7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.
- 

<sup>18</sup> OJ L 164, 30.4.2004, p. 44.

## **ANNEX VII**

### **Basic principles and parameters of contractual agreements between competent authorities and infrastructure managers**

(referred to in Article 30)

The contractual agreement shall specify the provisions of Article 30 including:

1. the scope of the agreement as regards infrastructure and service facilities, structured according to Annex III. It shall cover all aspects of infrastructure development, including maintenance and renewal of the infrastructure already in operation. Construction of new infrastructure may be included as a separate item;
2. the structure of agreed payments apportioned to the infrastructure services listed in Annex III, to maintenance, to construction of new infrastructure and to dealing with existing maintenance backlogs;
3. user-oriented performance targets, in the form of indicators and quality criteria covering:
  - (a) train performance and customer satisfaction,
  - (b) network capacity,
  - (c) asset management,
  - (d) activity volumes,
  - (e) safety levels, and
  - (f) environmental protection;
4. the amount of possible maintenance backlog, the expenditure earmarked for dealing with it and the assets which will be phased out of use and therefore trigger different financial flows;
5. the incentives in accordance with Article 30(1);
6. minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;
7. a mechanism that ensures that a significant share of cost reductions is passed on to users in the form of a reduced level of charges;
8. the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, and the charging framework and rules set by the State;
9. rules for dealing with major disruptions of operations and emergency situations, including a minimum service level in case of strikes, if any, and early termination of the contractual agreement, and information of users;

10. remedial measures to be taken if either of the parties is in breach of its contractual obligations; this includes conditions and procedures for renegotiation and early termination, including the role of the regulatory body.



## **ANNEX VIII**

### **Requirements for costs and charges related to railway infrastructure**

(referred to in Articles 31(3) and (5); 32(1) and (3) and Article 35)

1. Direct costs of the train service referred to in Article 31(3), which are related to infrastructure wear and tear, shall exclude the following items:
  - (a) Network-wide overhead costs, including salaries and pensions;
  - (b) Interest payable on capital;
  - (c) More than one tenth of costs related to scheduling, train path allocation, traffic management, dispatching and signalling of a train run;
  - (d) Depreciation of information, communication or telecommunication equipment;
  - (e) Costs related to real estate management, in particular acquisition, selling, dismantling, decontamination, recultivation or renting of land or other fixed assets;
  - (f) Social services, schools, kindergartens, restaurants;
  - (g) Costs related to acts of God, accidents, service disruptions.

When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network calculated on the basis of a train kilometer run, the infrastructure manager shall justify this in detail to the regulatory body. The average costs calculated for this purpose shall exclude cost elements referred to in points (e), (f) or (g).

2. Noise-differentiated infrastructure charges referred to in Article 31(5) shall meet the following requirements:
  - (a) The charge shall be differentiated to reflect the composition of a train of vehicles respecting limit values for noise set by Commission Decision 2006/66/EC<sup>19</sup> (TSI Noise).
  - (b) Priority shall be given to freight wagons.
  - (c) Differentiation according to the noise emission levels of freight wagons shall allow the payback of investments within a reasonable period for retrofitting wagons with the most economically viable low-noise braking technology available.
  - (d) Further elements to differentiate charges may be considered such as:
    - i) time of day, in particular night-time for noise emissions;

---

<sup>19</sup> OJ L 37, 8.2.2006, p.1.

- ii) train composition with an impact on the level of noise emissions;
- iii) sensitivity of the area affected by local emissions;
- iv) further classes for noise emissions significantly lower than the one referred to under point (a).

3. The infrastructure manager shall demonstrate to the regulatory body the ability of a train service to pay mark-ups according to Article 32(1), whereby each of the services listed under a single one of the following points shall belong to different market segments:

- (a) Passenger vs freight services;
- (b) Trains carrying dangerous goods vs other freight trains;
- (c) Domestic vs international services;
- (d) Combined transport vs direct trains;
- (e) Urban or regional vs interurban passenger services;
- (f) Block trains vs single wagon load trains;
- (g) Regular vs occasional train services.

4. The performance scheme as referred to in Article 35 shall be based on the following basic principles:

- (a) In order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time;
- (b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;
- (c) All delays shall be attributable to one of the following delay classes and sub-classes:
  - 1. Operation/planning management attributable to the infrastructure manager
    - 1.1. Time-table compilation
    - 1.2. Formation of train
    - 1.3. Mistakes in operations procedure
    - 1.4. Wrong application of priority rules



- 1.5. Staff
- 1.6. Other causes
- 2. Infrastructure installations attributable to the infrastructure manager
  - 2.1. Signalling installations
  - 2.2. Signalling installations at level crossings
  - 2.3. Telecommunications installations
  - 2.4. Power supply equipment
  - 2.5. Track
  - 2.6. Structures
  - 2.7. Staff
  - 2.8. Other causes
- 3. Civil engineering causes attributable to the infrastructure manager
  - 3.1. Planned construction work
  - 3.2. Irregularities in execution of construction work
  - 3.3. Speed restriction due to defective track
  - 3.4. Other causes
- 4. Causes attributable to other infrastructure managers
  - 4.1. Caused by previous infrastructure manager
  - 4.2. Caused by next infrastructure manager
- 5. Commercial causes attributable to the railway undertaking
  - 5.1. Exceeding the stop time
  - 5.2. Request of the railway undertaking
  - 5.3. Loading operations
  - 5.4. Loading irregularities
  - 5.5. Commercial preparation of train
  - 5.6. Staff
  - 5.7. Other causes

- 6. Rolling stock attributable to the railway undertaking
  - 6.1. Roster planning/ re-rostering
  - 6.2. Formation of train by railway undertaking
  - 6.3. Problems affecting coaches (passenger transport)
  - 6.4. Problems affecting wagons (freight transport)
  - 6.5. Problems affecting cars, locomotives and rail cars
  - 6.6. Staff
  - 6.7. Other causes
- 7. Causes attributable to other railway undertakings
  - 7.1. Caused by next railway undertaking
  - 7.2. Caused by previous railway undertaking
- 8. External causes attributable to neither infrastructure manager nor railway undertaking
  - 8.1. Strike
  - 8.2. Administrative formalities
  - 8.3. Outside influence
  - 8.4. Effects of weather and natural causes
  - 8.5. Delay due to external reasons on the next network
  - 8.6. Other causes
- 9. Secondary causes attributable to neither infrastructure manager nor railway undertaking
  - 9.1. Dangerous incidents, accidents and hazards
  - 9.2. Track occupation caused by the lateness of the same train
  - 9.3. Track occupation caused by the lateness of another train
  - 9.4. Turn-around
  - 9.5. Connection
  - 9.6. Further investigation needed

- (d) Wherever possible, delays shall be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.
- (e) The calculation of payments shall take into account the average delay of train services of similar punctuality requirements.
- (f) The infrastructure manager shall as soon as possible communicate to the railway undertakings a calculation of payments due under the performance scheme. This calculation shall encompass all delayed train runs within a period of at most one month.
- (g) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.
- (h) Once a year, the infrastructure manager shall publish the annual average level of service quality achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

5. The temporary reduction of the infrastructure charge for ETCS equipped trains, as referred to in Article 32(3) shall be established as follows:

For freight transport:

Year	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Discount	5%	5%	5%	5%	5%	5%	4%	3%	2%	1%

For passenger transport:

Year	2020	2021	2022	2023	2024
Discount	5%	5%	5%	5%	5%



---

↓ 2001/14/EC (adapted)

**ANNEX IX**

**Schedule for the allocation process**

⊗ (referred to in Article 43) ⊗

---

↓ 2001/14/EC

1. The working timetable shall be established once per calendar year.
- 

↓ 2002/844/EC Art. 1

2. The change of working timetable shall take place at midnight on the second Saturday in December. Where a change or adjustment is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it shall take place at midnight on the second Saturday in June 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 if international traffic may be affected.
- 

↓ 2001/14/EC  
⇒ new

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 ⇒ infrastructure managers ⇐ ~~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.
-

## **ANNEX X**

### **Regulatory accounts to be supplied to the regulatory body**

(referred to in Article 56(8))

The regulatory accounts to be provided to the regulatory body according to Article 56(8) shall contain at least the following elements:

#### **1. Account separation**

The regulatory accounts, to be supplied by infrastructure managers and all undertakings or other entities performing or integrating different categories of rail transport or receiving public funds, shall:

- (a) include separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;
- (b) give detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cashflows in order to determine in what way these public funds and other forms of compensation have been used;
- (c) include cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the regulatory body;
- (d) contain a sufficient level of detail as deemed necessary and proportionate by the regulatory body;
- (e) be accompanied by a document which sets out the methodology used to allocate costs between different activities.

Where the regulated firm is part of a group structure, regulatory accounts shall be prepared for the group as a whole, and for each subsidiary. In addition, full details of inter-company payments shall be included in the regulatory accounts in order to ensure that public funds have been appropriately used.

#### **2. Monitoring of track access charges**

Regulatory accounts, to be supplied by infrastructure managers to the regulatory bodies, shall

- (a) set out different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that infrastructure charges can be monitored;
- (b) provide sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the regulatory body, this information shall contain data on volumes of individual services, prices for

individual services and total revenues for individual services paid by internal and external customers;

- (c) state costs and revenues for individual services (or groups of services) using the relevant cost methodology, as required by the regulatory body, to identify potentially anti-competitive pricing (cross-subsidies, predatory pricing and excessive pricing).

### **3. Indication of financial performance**

Regulatory accounts, to be supplied by infrastructure managers to the regulatory bodies, shall include:

- (a) a statement of financial performance;
- (b) a summary expenditure statement;
- (c) a maintenance expenditure statement;
- (d) an operating expenditure statement;
- (e) an income statement;
- (f) supporting notes that amplify and explain the statements where appropriate.

### **4. Other issues**

In the case of infrastructure managers, the regulatory accounts shall be audited by an independent auditor. The auditor's report shall be annexed to the regulatory accounts.

The regulatory accounts shall contain profit and loss accounts and balance sheets and shall be reconciled to the company's statutory accounts and explanations shall be given for all reconciling items.

\_\_\_\_\_



## ANNEX XI

### Part A

#### **Repealed Directives with list of successive amendments** (referred to in Article 67)

Council Directive 91/440/EEC  
(OJ L 237, 24.8.1991, p. 25)

Directive 2001/12/EC of the European  
Parliament and of the Council  
(OJ L 75, 15.3.2001, p. 1)

Directive 2004/51/EC of the European  
Parliament and of the Council  
(OJ L 164, 30.4.2004, p. 164)

Council Directive 2006/103/EC  
(OJ L 363, 20.12.2006, p. 344)

only Point B of the Annex

Directive 2007/58/EC of the European  
Parliament and of the Council  
(OJ L 315, 3.12.2007, p. 44)

only Article 1

Council Directive 95/18/EC  
(OJ L 143, 27.6.1995, p. 70)

Directive 2001/13/EC of the European  
Parliament and of the Council  
(OJ L 75, 15.3.2001, p. 26)

Directive 2004/49/EC of the European  
Parliament and of the Council  
(OJ L 164, 30.4.2004, p. 44)

only Article 29

Directive 2001/14/EC of the European  
Parliament and of the Council  
(OJ L 75, 15.3.2001, p. 29)

Commission Decision 2002/844/EC  
(OJ L 289, 26.10.2002, p. 30)

Directive 2004/49/EC of the European  
Parliament and of the Council  
(OJ L 164, 30.4.2004, p. 44)

only Article 30

Directive 2007/58/EC of the European  
Parliament and of the Council  
(OJ L 315, 3.12.2007, p. 44)

only Article 2

### Part B

#### List of time-limits for transposition into national law (referred to in Article 67)

Directive	Time-limit for transposition
91/440/EEC	1 January 1993
95/18/EC	27 June 1997
2001/12/EC	15 March 2003
2001/13/EC	15 March 2003
2001/14/EC	15 March 2003
2004/49/EC	30 April 2006
2004/51/EC	31 December 2005
2006/103/EC	1 January 2007
2007/58/EC	4 June 2009



**ANNEX XII**

**CORRELATION TABLE**

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
Article 2(1)	Article 1(1)	Article 1(1) subparagraph 1	Article 1(1)
		Article 1(2)	Article 1(2)
Article 2(2)			Article 2(1)
	Article 1(2)		Article 2(2)
		Article 1(3)	Article 2(3)
Article 2(3)	Article 1(3)	Article 1(4)	Article 2(4)
Article 2(4)			Article 2(5)
Article 3			Article 3(1) to (8)
	Article 2(b) and (c)		Article 3(9) and (10)
		Article 2	Article 3(11) to (21)
Article 4			Article 4
Article 5			Article 5
Article 6(1) and (2)			Article 6(1), (2)
Article 9(4)			Article 6(3)
Article 6 (1) second subparagraph			Article 6(4)
Article 6(3)			Article 7(1)
		Articles 4(2) and 14(2)	Article 7(2)
Article 7(1), (3) and (4)			Article 8(1), (2) and (3)
		Article 6(1)	Article 8(4)
Article 9(1) and (2)			Article 9(1) and (2)

Article 10(3) and (3a)		Article 10(1) and (2) , first, second and third subparagraph
Article 10(3b)		Article 11(1), (2) and (3)
Article 10(3c) and (3e)		Article 11(4)
Article 10(3f)		Article 11(5) and (6)
		Article 12
	Article 5	Article 13
		Article 14
Article 10b		Article 15
	Article 3	Article 16
	Article 4(1) to (4)	Article 17(1) to (4)
	Article 5	Article 18
	Article 6	Article 19
	Article 7	Article 20
	Article 8	Article 21
	Article 9	Article 22
	Article 4(5)	Article 23(1)
	Article 10	Article 23(2) and (3)
	Article 11	Article 24
	Article 15	Article 25
		Article 26
	Article 1(1) subparagraph 2	Article 27
	Article 3	Article 28
Article 10(5)		Article 29
	Article 4(1) and (3) to (6)	Article 30
	Article 6(2) to (5)	

Article 7	Article 31
Article 8	Article 32
Article 9	Article 33
Article 10	Article 34
Article 11	Article 35
Article 12	Article 36
Article 13	Article 38
Article 14(1) and (3)	Article 39
Article 15	Article 40
Article 16	Article 41
Article 17	Article 42
Article 18	Article 43
Article 19	Article 44
Article 20(1), (2) and (3)	Article 45(1), (2) and (3)
	Article 45(4)
Article 20(4)	Article 45(5)
Article 21	Article 46
Article 22	Article 47
Article 23	Article 48
Article 24	Article 49
Article 25	Article 50
Article 26	Article 51
Article 27	Article 52
Article 28	Article 53
Article 29	Article 54
Article 30(1)	Article 55

		Article 30(2)	Article 56(1)
		Article 31	Article 57
Article 12			Article 58
Article 14a		Article 33(1),(2) and (3)	Article 59
			Article 60
			Article 61
			Article 62
Article 11		Article 34	Article 63
Article 11a		Article 35(1),(2) and (3)	Article 64
Article 10(9)			Article 65
		Article 38	Article 66
			Article 67
	Article 17	Article 39	Article 68
Article 16	Article 18	Article 40	Article 69
			Annex I
Annex II		Annex II	Annex II
			Annex III
			Annex IV
	Annex		Annex V
		Annex I	Annex VI
			Annex VII
			Annex VIII
		Annex III	Annex IX
			Annex X