



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 May 2011**

**Interinstitutional File:  
2010/0253 (COD)**

**10406/11**

**LIMITE**

**TRANS 150  
CODEC 856**

**REPORT**

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from: General Secretariat of the Council

to: COREPER

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No. prev. doc. : 9834/11 TRANS 134 CODEC 772

No Cion prop. : 13789/10 TRANS 238 CODEC 862 + COR 1

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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 16 June 2011***

Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast)

- *General approach*

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**A. INTRODUCTION**

1. On 20 September 2010, the Commission submitted to the European Parliament and the Council the above mentioned proposal with the aim of recasting the first railway package in order to simplify, clarify and modernise the regulatory environment in Europe's railway sector whilst making progress towards the Europe 2020 strategy.

2. The objective of the recast initiative is to provide legal simplification through consolidating and clarifying the legislation on access to the rail market. This would facilitate proper transposition and efficient implementation of Union law in all Member States. Furthermore, the intention is to update the legislation by eliminating outdated provisions and by introducing new provisions which respond more appropriately to the functioning of the railway market today.
3. The proposal of recasting the first railway package encompasses mainly:
  - (a) the financing and charging of the railway infrastructure;
  - (b) the conditions of access to and competition on the railway market; and
  - (c) the regulatory supervision of the railway market.
4. The Council Working Party on Land Transport (hereinafter referred to as the Working Group) started its examination of the above proposal in September 2010, under the Belgian Presidency. In line with the Inter-institutional Approach to Impact Assessments<sup>1</sup>, the Working Group also discussed and evaluated the Commission's impact assessment. Furthermore, the opinion on the above proposal by the Consultative Working Group of the respective legal services of the European Parliament, the Council and the Commission, dated 15 November 2010, was considered during the examination of the file.
5. Following an initial discussion of the provisions regarding financing and charging of the railway infrastructure, the Belgian Presidency decided to submit a progress report to the TTE Council on 2 December 2010 (doc.6308/10) and to hold a policy debate, at the Council meeting, based on three questions related to the investment in the railway sector, noise-differentiated infrastructure charges and temporary reduction of track access charges for vehicles equipped with European Train Control System (ETCS).

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<sup>1</sup> Better Regulation: Inter-Institutional Common Approach to Impact Assessment (IA)  
14901/05 JUR 486 COMPET 263

6. The examination of the above proposal was pursued since January 2011, under the Hungarian Presidency. The discussion at the level of the Working Group has since the beginning revealed different views among Member States on main aspects of the proposal. The Presidency has therefore been seeking compromise solutions to those issues which would form a basis of a draft general approach. However, a number of issues still remain unresolved.
7. The Presidency has now decided to submit this file to Coreper for a first examination. However, given the situation above and the number of outstanding issues, the Presidency considered it appropriate to limit the examination to the following main aspects of the proposal:
- Article 13 (Conditions of access to services);
  - Article 30 ( Infrastructure cost and accounts) and Article 31 (Principles of charging);  
and
  - Article 60 (Exercise of delegation).
8. The result of the work done by the Working Group appears in annex to this report. Changes with regard to the previous version are indicated in bold and by underlining the insertion and including it within Council tags: ☞\_☛. Deleted text is indicated within underlined square brackets as follows: ☞ [ ... ] ☛.
9. The vote on the above proposal by the European Parliament's Committee for Transport and Tourism (TRAN Committee) is scheduled for 12 July 2011 and the plenary vote is planned to take place during September 2011.

## **B. OUTSTANDING ISSUES**

### **Key issues:**

#### **1. Conditions for access to services (Article 13, pages 57-60, footnotes 24, 25 and 26)**

Article 13 of the recast proposal lays down the conditions for access by railway undertakings to service facilities, such as rail stations and freight terminals, and to the services to be supplied to railway undertakings in such facilities. The different categories of services are specified in Annex III of the proposal. According to the Commission initial proposal, in case the operator of a 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, this operator shall be independent, in legal, organisational and decision-making terms.

Furthermore, requests by railway undertakings for access to the service facility could only be rejected if there were viable alternatives allowing them to operate the rail service concerned on the same route under economically acceptable conditions. The burden of proof for the existence of a viable alternative should lie with the operator of the service facility.

If it would not be possible to accommodate all requests for capacity for the relevant facility, the regulatory body should on its own initiative or on the basis of a complaint take appropriate action to ensure that an appropriate part of the capacity was devoted to railway undertakings other than the ones which were part of the body or firm to which the facility operator also belonged.

Finally, the Commission initially proposed that, where the service facility had not been in use for at least two consecutive years, its owner should publicise the operation of the facility as being for lease or rent.

During the discussion at the Working Group, several delegations raised a concern on the requirement of legal independence as described above. According to these delegations, this requirement would be too excessive and inflexible and would create a bureaucratic burden for Member States. Furthermore, some delegations indicated a problem with the strict obligation for the operator of the service facility to provide proof of the existence of viable alternatives when rejecting the above requests by the railway undertakings. The proposed right for the regulatory body to ensure on its own initiative that an appropriate part of the capacity was devoted to the railway undertakings concerned was also questioned. Finally, a number of delegations indicated that they could not accept the obligation to publicise the operation of a service facility as being for lease or rent when it had not been used for two consecutive years.

Following the concerns raised by delegations, the Presidency prepared a compromise text for Article 13 which appears in the Annex. Firstly, the Presidency suggests the deletion of the reference to "legal independence". Furthermore, the strict obligation for the operator to provide proof of the existence of viable alternatives is converted into a less rigid method by which the operator will have to justify its negative decisions. Regarding the role of the regulatory body in this context, it shall only have the right to examine a case on the basis of a complaint by the applicant. Finally, where the service facility has not been in use for at least two consecutive years, the operator shall have the right to prevent the lease and rent of that facility by demonstrating that a process of reconversion is on-going.

**2. Infrastructure cost and accounts and principles of charging** (Articles 30 and 31, pages 86-95, footnotes 28, 29, 30, 31 and 32)

Infrastructure managers shall, according to paragraph 1 of Article 30, be given incentives to reduce the costs of providing infrastructure and the level of access charges. The Commission initially proposed that the implementation of these incentives would have to be done only through a contractual agreement between the competent authority and the infrastructure manager. Thus, the Commission had deleted the option to use "appropriate regulatory measures with adequate powers".

Following certain concerns expressed by several Member States on this proposal, the Presidency decided, as a compromise solution, to introduce in the legislative text (paragraph 2a) the option to apply regulatory measures for the implementation of the above incentives, as an alternative to contractual agreements. Moreover, in order to accommodate some delegations which use specific arrangements instead of contractual agreements, the Presidency suggests to introduce a new definition of "contractual agreement" which includes such arrangements (Article 3(10a)).

According to paragraph 3 of Article 31, the charges for the "minimum access package" shall be set at the cost that is directly incurred as a result of operating the train service. When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network, the infrastructure manager shall justify this in detail to the regulatory body.

The above provision was discussed extensively at the Working Group. Some delegations wish a derogation from this provision for vehicles/service running on a different rail system. Another delegation wishes to include a right of derogation to be applied when the infrastructure manager carries out a restructuring activity. Several delegations have also expressed a wish to delete the 35 % limit mentioned above. The Presidency has tried to strike a proper balance in the text, specially with regard to the provision that infrastructure manager shall have to justify direct costs only when they exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network.

According to the proposed text of paragraph 5 of Article 31 of the initial Commission proposal, when charging for the cost of noise effects is allowed by Union legislation to road freight transport, infrastructure charge should be modified to take account of the cost of noise effects caused by the operation of the train.

One of the main issues discussed at the Working Group was the above provision concerning noise-differentiated infrastructure charges. Several Member States underlined the need to ensure equal treatment between rail and road transport. However, other Member States opposed the link to road freight transport (Eurovignette) arguing that this could lead to an imbalance since environmental costs for road freight transport are of a different nature. Furthermore, some delegations prefer to apply noise-differentiated infrastructure charges only to rail freight transport and to give priority to the process of retrofitting the existing freight wagons. Some delegations also wish to ensure that the adoption of implementing measures by the Commission will not prevent Member States from applying or developing their own differentiation schemes.

The Presidency has submitted several compromise solutions on this issue in order to strike a balance between the different concerns raised by Member States. In the end, it was not possible to agree on a compromise text and the Presidency therefore decided to revert back to the current legislation, as regards the substance of this provision. However, following concerns raised by some delegations, the Presidency suggests to introduce in the text the possibility for the Commission to adopt implementing measures to set out the modalities to be followed for the application of the charging for the cost of noise effects ensuring that differentiation of charges takes into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions.

### **3. Exercise of delegation, (Article 60, page 139, footnote 51)**

The use of delegated acts was, in the initial Commission proposal, proposed as an appropriate method to amend various annexes, including their sections. However, during the examination by the Working Group, the annexes/sections for which the Commission should be empowered to adopt delegated acts were reduced and would now be limited to certain amendments to Annex V (Financial fitness), Annex VI (Contents of the network statement), Annex VII (Basic principles and parameters of contractual agreements between competent authorities and infrastructure managers), Annex VIII (Requirements for costs and charges related to railway infrastructure), Annex IX (Schedule for the allocation process) and Annex X (Accounting information to be supplied to the regulatory body upon request).

Although the Presidency issued compromise texts clearly specifying and/or limiting the scope for the use of delegated acts, as well as withdrawing delegated acts and introducing implementing measures for the adoption of uniform conditions of application of certain elements in the annexes/sections. The vast majority of delegations still have a reservation on the use of delegated acts for the above purposes.

## **Other issues:**

Other concerns and reservations expressed by delegations appear in the footnotes of the Annex. If necessary, Coreper will be invited to examine other outstanding issues at one of its future meetings.

All delegations have a general scrutiny reservation on the new Presidency compromise proposals. PL has a specific reservation on the amendments regarding financing and charges.

DK, LT, SI and UK have a parliamentary reservation.

## **C. CONCLUSION**

The Permanent Representatives Committee is invited to examine the text as set out in the Annex to this report and, if possible, resolve the above mentioned outstanding issues with a view to preparing a general approach on the text, to be reached by the TTE Council at its meeting on 16 June 2011.

↓ 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)**

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↓ 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>2</sup>,

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<sup>2</sup> OJ C [...], [...], p. [...].

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ☒ ordinary legislative ☒ procedure,

Whereas:

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↓ new

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>4</sup>, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings<sup>5</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>6</sup> have been substantially amended in 2004 and 2007. Since further amendments are necessary and given the link between these legal provisions, those Directives should be recast and merged into a single act in the interest of clarity.

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↓ 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 ☒ .

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↓ 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.

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<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ L 237, 24. 8.1991, p. 25.

<sup>5</sup> OJ L 143, 27.6.1995, p. 70.

<sup>6</sup> OJ L 75, 15.3.2001, p. 29.

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↓ 95/18/EC recital 5 (adapted)

⇒ Council

⇒ [...] ⇐

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↓ 91/440/EEC recital 3 (adapted)

⇒ Council

- (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.

⇒ (5a) Shareholders of railway undertakings should be able to, within the rights that national company law allows for supervisory bodies of private joint-stock companies, require prior approval for major business management decisions such as on acquisitions, investments, strategy. Competences of supervisory bodies under national company law such as the appointment of board members, should not be affected by this directive. ⇐

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↓ 91/440/EEC recital 4 (adapted)

⇒ Council

- (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.

⇒ Provided that these separation requirements are met, infrastructure managers should have the possibility to delegate specific administrative tasks, such as the collection of charges, to other entities. ⇐

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 91/440/EEC recital 7 (adapted)

→<sub>1</sub> Corrigendum, OJ L 305, 6.11.1991,  
p. 22

☉ Council

- (10) Member States should ensure that ☒ infrastructure managers and ☒ →<sub>1</sub> existing publicly owned or controlled ← railway transport undertakings are given a sound financial structure ☒ having due regard to the Union rules on state aids ☒. ☉ [...] ☉

☉ [...] ☉

☞ (10a) Applicants should be given the opportunity to express their views on the content of the business plan as far as the use, provision and development of the infrastructure are concerned. This should not necessarily imply full disclosure of the business plan developed by the infrastructure manager.

(10aa) Since private branch lines and sidings, such as sidings and lines in private industrial facilities, are not part of the ☞ [...] ☹ railway infrastructure as defined by this Directive, managers of such infrastructures should not be subject to the obligations imposed on infrastructure managers ☞ [...] ☹ under this Directive. However non discriminatory access to branch lines and sidings should be guaranteed, irrespective of their ownership, when ☞ [...] ☹ they are needed to get access to services facilities which are essential for the provision of transport services and when serving or potentially serving more than one final customer.

(10b) A Member State should be able to decide to cover infrastructure expenditure through means other than direct State funding, such as Private Public Partnership **and private sector financing**.

(10c) Accounts of an infrastructure manager should be balanced over a reasonable time period which, once established, ☞ [...] ☹ might be exceeded ☞ [...] ☹ under exceptional circumstances, such as a major and sudden deterioration in the economic situation in the Member State ☞ [...] ☹ affecting substantively the level of traffic on its infrastructure or ☞ [...] ☹ **the level of available public financing.** ☹

☞ [...] ☹

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↓ 2001/14/EC recital 8 (adapted)

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

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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>7</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.

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<sup>7</sup> OJ L 315, 3.12.2007, p. 1.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.
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↓ new

↻ Council

- (22) In order to ensure fair competition between railway undertakings ↻ and guarantee full transparency and non-discriminatory access to and supply of services ☹, 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 ↻ [...] ☹ ↻ when the operator of the service facility belongs to a body or firm which is also active and holds a dominant position at national level in at least one of the railway transport markets for which the facility is used. **Such independence should not imply the requirement of the establishment of a separate body or firm for service facilities.** ☹ ↻ [...] ☹

↻ [...] ☹

- ↻ (22a) Cross-border agreements between Member States and third countries should facilitate in providing an equal market access for EU railway undertakings and those of third countries on a reciprocal basis. ☹

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↓ 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.
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↓ 95/18/EC Recital 10 (adapted)

☞ Council

- (24) For the protection of customers and third parties concerned it is important to ensure that railway undertakings are sufficiently insured ☞ [...] ☞ ☒ against ☒ liability ☞ [...] ☞. ☞ Coverage of its liability in the event of accidents through guarantees provided by banks or other undertakings should also be allowed, provided that such coverage is offered under market conditions, ☞ [...] ☞ does not result in a State aid and does not contain elements of discrimination against railway undertakings ☞
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↓ 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.

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↓ 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.

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↓ 2001/14/EC recital 5 (adapted)

↻ Council

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

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↓ 2001/14/EC recital 6

↻ Council

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

↻ [...] ☒

↻ (28a) Infrastructure managers should be given incentives to reduce the level of access charges and the costs of providing infrastructure, such as bonuses for managing directors

↻ [...] ☒.

- (28b) The obligation of Member States to ensure that the infrastructure manager performance targets and medium to long term incomes are implemented through a contractual agreement between the competent authority and the infrastructure manager should be without prejudice to the competence of the Member States regarding planning of and financing for railway infrastructure. ☒

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↓ 2001/14/EC recital 7

↻ Council

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

↻ (29a) Methods for apportioning costs established by infrastructure managers should be based on the best available understanding of cost causation and should apportion costs to the different services offered to railway undertakings ↻ [...] ↻ and, where relevant, to types of rail vehicles. ↻

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↓ 2001/14/EC recital 10 (adapted)

↻ Council

- (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 ☒.

↻ (30a) When levying mark ups, distinct market segments should be defined by the infrastructure manager when the costs of providing the transport services, their market prices or their requirements for service quality differ considerably. ↻

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↓ 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.

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↓ 2001/14/EC recital 16

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

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↓ 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.

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↓ 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.

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↓ 2001/14/EC recital 35

⇒ Council

- (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.

☞ (35a) Rolling noise caused by brake blocks with cast iron technology, used on freight wagons, is one of the causes of noise emissions that could be reduced with appropriate technical solutions ☞ [...] ☞. Noise differentiated infrastructure charges should primarily<sup>8</sup> address the freight wagons that do not fulfill the requirements of Commission Decision 2006/66/EC<sup>9</sup> (TSI Noise). When such differentiation results in a loss of revenues for the infrastructure manager, it should be without prejudice to Union rules on State aids.<sup>10</sup>

☞ [...] ☞

(35b) Infrastructure managers ☞ [...] ☞ may modify the charging system through a temporary ☞ [...] ☞ differentiation for trains equipped with European Train Control System (ETCS) in order to accelerate its installation onboard the locomotives. The infrastructure managers should be able to ensure that such a ☞ [...] ☞ differentiation does not result in a loss of revenues. ☞

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↓ 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.

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↓ 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.

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<sup>8</sup> AT and DE wish to delete "*primarily*".

<sup>9</sup> OJ L 37, 8.2.2006, p.1.

<sup>10</sup> PL has a reservation on recital 35a.

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↓ 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 .
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↓ 2001/14/EC recital 17

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

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↓ 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.
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↓ 2001/14/EC recital 24

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

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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 ⇐.

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↓ 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.
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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2001/14/EC recital 46 (adapted)

☞ Council

- (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. ☞ **Such regulatory body should be able to enforce its information requests and decisions with appropriate administrative sanctions.** ☞

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↓ 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

☞ Council

- (65) ☞ [...] ☞ ☞ In order to [objective], the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of [content and scope]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.<sup>11</sup> ☞
- 

↓ 2001/14/EC recital 48

☞ Council

- (66) ☞ [...] ☞ ☞ In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.<sup>12</sup> ☞

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<sup>11</sup> To be completed once the content of the delegated powers has been determined.

<sup>12</sup> OJ L 55, 28.2.2011, p.13.

(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.

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(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.

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↓ 2007/58/EC Recital 21 (adapted)

→ Council

(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 ☒ Chapters II and IV of ☒ this Directive ☒ . Therefore, such Member States should be exempted from ☒ that ☒ obligation.

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↓ 2007/58/EC Recital 23 (adapted)

(70) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>13</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.

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↓ 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,

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<sup>13</sup> OJ C 321, 31.12.2003, p. 1.

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↓ 2001/14/EC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### ⊗ GENERAL ⊗ PROVISIONS

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↓ 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 ⊗ .

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↓ 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 ⊗ ;

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↓ 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.

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

*Article 2*

**Exclusions from the scope**

1. Chapter II shall not apply to railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks for services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.

Notwithstanding the first subparagraph, when such a railway undertaking  $\Rightarrow$  [...]  $\Leftarrow$  is under the direct or indirect control of  $\Rightarrow$  [...]  $\Leftarrow$  an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services, Articles 4 and 5  $\Rightarrow$  [...]  $\Leftarrow$  shall apply. Article 6 shall also apply to such a railway undertaking with regard to the relation between the railway undertaking and the undertaking or entity of which the railway is under direct or indirect control.  $\Leftarrow$ <sup>14</sup>

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↓ 2001/13/EC Art. 1(1) (adapted)

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

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↓ 2001/13/EC Art. 1(1)

$\Rightarrow$  Council

- (a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
- (b)  $\Rightarrow$  [...]  $\Leftarrow$  undertakings which only operate urban or suburban rail passenger services;

---

<sup>14</sup> DE suggests the following revised text: "*Chapter II does not apply to railway undertakings which only operate urban, suburban or regional services ~~on local and regional stand-alone networks for services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services. When such railway undertakings belong to an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services, Notwithstanding, Articles 4, 5, and 6 and 10 shall apply.~~*"

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↓ 2001/13/EC Art. 1(1) (adapted)

↻ Council

- (c) ↻ [...] ↻ 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)

↻ Council

3. Member States may exclude ☒ the following ☒ from the ☒ application of ↻ Articles 7, 8, 13 and ↻ 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;

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↓ 2001/14/EC

- (d) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations;
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↓ 2007/58/EC Art. 2.1 (adapted)  
⇒ Council

⇒ [...] ⇐

⇒ (3a) Without prejudice to paragraph 3, Member States may exclude local and regional railway infrastructures which do not have any strategic importance for the functioning of the rail market ⇒ [...] ⇐ from the application of Article 8(3) and local railway infrastructures which do not have any strategic importance for the functioning of the rail market from the application of Chapter IV. Member States shall notify the Commission their intention to exclude ⇒ [...] ⇐ such railway infrastructures ⇒ [...] ⇐. In accordance with the advisory procedure referred to in Article 64(2), the Commission shall decide whether such railway infrastructure may be considered without any strategic importance taking into account the length of railway lines concerned, their level of use and the traffic volume potentially impacted. ⇒ [...] ⇐

(3b) Member States may exclude from the application of Article 31(5) ⇒ [...] ⇐, vehicles operated or intended to be operated from and to third countries, running on a network whose track gauge is different from the main rail network within the Union.

(3c) Member States may decide time periods and deadlines for the schedule for capacity allocation different from those referred to in Article 43(2), Annex VIII point 4(b) and Annex IX points 3, 4 and 5 for international train paths to be established in cooperation with infrastructure managers of third countries  [...]  on a network whose track gauge is different from the main rail network within the Union.

(3d) Member States may exclude from the application of Chapter IV railway infrastructure, whose track gauge is different from the main rail network within the Union, connecting cross-border stations of a Member State to the territory of a third country.

↓ 2001/12/EC Art. 1.3 (adapted)

Council

4.  This Directive  [...]  shall  not apply to  undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through  undersea tunnels  [...]   and transport operations in the form of shuttle services for road vehicles through  such tunnels  [...]   except Articles 6(1),  6 (4),  10, 11, 12 and 28.

↓ 2007/58/EC Art. 1.1 (adapted)

Council

5. Member States may exclude from the  application  of  [...]   Chapter II, with the exception of Article 14, and Chapter IV of this Directive  any railway service carried out in transit through the  Union   [...].

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↓ 91/440/EEC (adapted)

*Article 3*

⊗ **Definitions** ⊗

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

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↓ 2001/12/EC Art. 1.4(a) (adapted)  
⇒ Council

- (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  
⇒ Council

- (3) ‘railway infrastructure’ ⊗ means ⊗ ⇒ [...] ⊗ the items listed in Annex I ⇒ [...] ⊗  
⇒ 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’;

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↓ 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;
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↓ 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;
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↓ 91/440/EEC (adapted)

☞ Council

- (6) ‘urban and suburban services’ ☒ means ☒ transport services ☞ whose principal purpose is ☞ ☞ [...] ☞ to meet the transport needs of an urban centre or conurbation ☞, including a cross-border conurbation, ☞ ☒ together with ☒ transport needs between such ☒ a ☒ centre or conurbation and surrounding areas;
- (7) ‘regional services’ ☒ means ☒ transport services ☞ whose principal purpose is ☞ ☞ [...] ☞ to meet the transport needs of a region ☞, including a cross-border region ☞ ;

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↓ 2007/58/EC Art. 1.4 (adapted)

→ Council

(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 ☒;

→ (8a) “service facility” means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in Annex III, points (2) to (4);

(8b) “operator of service facility” means any public or private entity responsible for managing → [...] ☒ one or more service facilities → [...] ☒ or supplying one or more services to railway undertakings referred to in Annex III, points (2) to (4);

(8c) “cross-border agreement” means any → [...] ☒ agreement between two or more States intended to facilitate the provision of cross-border rail services; ☒

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↓ 95/18/EC (adapted)

→ Council

(9) “licence” ☒ means ☒ an authorisation issued by a → [...] ☒ → licensing authority ☒ to an undertaking, by which its capacity ☒ to provide rail transport services → as a railway undertaking ☒ ☒ 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 ☒ ;

☞ (10a) **"contractual agreement" means an agreement or, *mutatis mutandis*, an administrative arrangement.**

(10aa) "reasonable profit" means a rate of return on own capital that takes account of the risk **including that to revenue**, or the absence of **such risk**, incurred by the operator of the service facility and ☞ [...] ☒ **is in line with** the average rate for the sector concerned in recent years. ☒<sup>15</sup>

↓ 2001/14/EC

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

↓ 2001/14/EC (adapted)  
☞ Council

(12) ‘applicant’<sup>16</sup> means a railway undertaking ☞ **or an international grouping of railway undertakings** ☒ ☞ [...] ☒ ☞ **or** ☒ ☞ [...] ☒ 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 ☒ ☞ [...] ☒ ;

<sup>15</sup> DE wishes to delete this definition.

<sup>16</sup> DK, supported by CZ, suggests the following revised text: "*applicant' means a railway undertaking ~~or an international grouping of railway undertakings or 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. In Member States which so allow applicants might encompass shippers, freight forwarders and combined transport operators.~~*" AT and LU also have a reservation on this definition. FI, NL, SE, SI, SK and UK support the current text.

- (13) ‘congested infrastructure’ means  $\boxtimes$  an element  $\boxtimes$  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  $\boxtimes$  which aim  $\boxtimes$  to alleviate the capacity constraints  $\boxtimes$  which led  $\boxtimes$  to the declaration of  $\boxtimes$  an element  $\boxtimes$  of infrastructure as ‘congested infrastructure’;
- (15) ‘coordination’ means the process through which the  $\boxtimes$  infrastructure manager  $\boxtimes$  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  $\boxtimes$  under  $\boxtimes$  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;
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 2001/14/EC

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

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↓ 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;

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↓ 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;

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↓ 91/440/EEC (adapted)

## ⊗ CHAPTER II ⊗

### ⊗ DEVELOPMENT OF THE UNION RAILWAYS ⊗

#### SECTION 1

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↓ 2001/12/EC Art. 1.5

#### MANAGEMENT INDEPENDENCE

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↓ 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.

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↓ 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:

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↓ 91/440/EEC

↻ Council

- (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 **↻ [...] ↻**;
- (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)

↻ Council

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

**↻ This paragraph is without prejudice to Regulation (EC) No 1370/2007. ↻**

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↓ new

↻ Council

**↻ [...] ↻**

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↓ 91/440/EEC (adapted)

⇒ new

## SECTION 2

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

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↓ 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 .

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↓ 2001/12/EC Art. 1.10 (adapted)

⇒ Council

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 [...] in consistency with Article 7 of Regulation (EC) No 1370/2007 in the relevant accounts and shall not be transferred to activities relating to the provision of [...] other transport services or any other business.

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↓ 2001/12/EC Art. 1.7 (adapted)

⇒ new

⇒ Council

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 essential functions determining equitable and non-discriminatory access to infrastructure, [...] are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structures, this objective must be shown to have been achieved.<sup>17</sup>

The essential functions shall be:

- decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and
- decision making on infrastructure charging, including determination and collection<sup>18</sup> of the charges, without prejudice to Article 29(1).

↓ new

↻ Council

↻ [...] ↻

<sup>17</sup> LV suggests to delete the last sentence of paragraph 1 in order to eliminate burden of practically unrealizable task to prove the achievement of independence without clearly set criteria.

<sup>18</sup> LT, LV and UK wish to delete "...and collection". FR, IT and Cion oppose such a deletion.

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↓ 2001/12/EC Art. 1.7 (adapted)  
→ Council

Member States may, however, assign to railway undertakings or any other body<sup>19</sup> → [...] ← 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.~~

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↓ 2001/14/EC (adapted)  
→ Council

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 → 2 and ← 3 → [...] ← of Chapter IV<sup>20</sup> → [...] ← 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.

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↓ 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.

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<sup>19</sup> UK, supported by LT and LV, suggests to add: "*the collecting of charges and*". FR, IT and Cion oppose this suggestion.

<sup>20</sup> UK, supported by LT and LV, suggests to add: "*other than collecting the charges*". FR, IT and Cion oppose this suggestion.

## SECTION 3

### IMPROVEMENT OF THE FINANCIAL SITUATION

↓ 2001/12/EC Art. 1.8 (adapted)

⇒ new

↻ Council

#### Article 8

#### ↻ ↻ [...] ↻ 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 ↻ , including the need to cooperate with neighbouring third countries ↻ ↻. ⇒ For this purpose, they shall publish at the latest two years after the entry into force of this Directive ↻ [...] ↻ ↻ an indicative ↻ rail infrastructure development strategy with a view to meeting future mobility needs ↻ in terms of maintenance, renewal and development of the infrastructure ↻ based on ↻ [...] ↻ 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 ↻ as referred to in Article 3(2) ↻, ↻ the ↻ size ↻ of the infrastructure ↻ and financial requirements, in particular in order to cover new investments. ↻ Member States may decide to cover these investments through means other than direct State funding. ↻

3. Within the framework of general policy determined by the ~~Member~~ State ~~and~~ and taking into account the ~~[...]~~ strategy referred to in paragraph 1 ~~and the financing provided by the Member States referred to in paragraph 2~~ ~~,~~, the infrastructure manager shall ~~adopt~~ adopt ~~a~~ a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use ~~,~~ , provision ~~and~~ and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved. ~~The infrastructure manager shall ensure that [...]~~ ~~known applicants and, upon their request, potential applicants [...]~~ have access to the information and are given the opportunity to express their views on the content of the business plan as far as the conditions for access and use, the nature, provision and development of the infrastructure are concerned ~~before [...]~~ ~~its approval by the infrastructure manager~~ ~~.~~ ~~[...]~~ ~~.~~

↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

4. Member States shall ensure that, under normal business conditions and over ~~a~~ ~~[...]~~ ~~reasonable~~ ~~reasonable~~ period ~~⇒ [...]~~ ~~which shall [...]~~ ~~not exceed the period of the contractual agreement referred to in Article 30(2)~~ ~~<sup>21</sup>~~ ~~,~~, the accounts of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities and State ~~and private~~ funding on the one hand, ~~including advance payments from the State, where appropriate,~~ and infrastructure expenditure, ~~including for long-term asset renewals and enhancements~~ on the other ~~[...]~~ ~~.~~

<sup>21</sup> DE and LV wish to delete the link to contractual agreements. FR, IT and Cion oppose such deletion.

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↓ 2001/14/EC

↻ Council

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. ↻ [...] ↻

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↓ 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  
⇒ Council

*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 ⊗ ⇒ [...] ⇐ ⇒ may ⇐ require ⊗ a separate debt amortisation unit to be set up within the accounting departments of such ⇒ railway ⇐ undertakings.

The balance sheet of the unit may be charged, until they are extinguished, with all the loans raised by the ⇒ railway ⇐ 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.

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↓ new

→ Council

3. Paragraphs 1 and 2 shall → [...] ← apply → only ← to debts or interest due on such debts incurred by → publicly owned or controlled railway ← undertakings → [...] ← → by the date of market opening for all or part of rail transport services in the Member State concerned → [...] ← and in any case at the latest by ← 15 March 2001 or the date of accession to the Union for Member States which joined the Union after 15 March 2001.

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↓ 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.~~

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↓ 91/440/EEC (adapted)

## SECTION 4

### ACCESS TO RAILWAY INFRASTRUCTURE ☒ AND SERVICES ☒

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↓ 2001/12/EC Art. 1.11 (adapted)

#### *Article 10<sup>22</sup>*

#### ☒ 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.~~

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↓ 2004/51/EC Art. 1.2(a) (adapted)

⇒ new

↻ Council

~~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.~~

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<sup>22</sup> IT has a reservation on Article 10.

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  railway  infrastructure in all Member States for the purpose of operating all types of rail freight services.  This shall include  [...]  access to  [...]  infrastructure connecting maritime and inland  ports  and other service facilities referred to in Annex III, point 2, and to infrastructure serving or potentially serving more than one final customer.

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↓ 2007/58/EC Art. 1.8 (adapted)  
 Council

2. Railway undertakings within the scope of  this Directive  shall be granted ~~by 1 January 2010~~ the right of access to  [...]  railway  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.  This shall include access to infrastructure connecting service facilities referred to in Annex III, point 2.

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↓ 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.

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↓ 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.

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↓ new

→ Council

→ Based on the experience → [...] → of regulatory bodies, competent authorities and railway undertakings and on the activities of the working group referred to in Article 57(1) → the Commission may adopt → [...] → measures setting out the details of the procedure and criteria to be followed for the application of this paragraph. Those → implementing acts → [...] → shall be adopted → [...] → in accordance with → the examination procedure referred to in → Article → 64 → [...] → (3).

⊗ 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 ⊗ :

- (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.

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↓ 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  ,

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↓ 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.

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↓ new

→ Council

4. → Based on the experience → [...] ← of regulatory bodies, competent authorities and railway undertakings and on the activities of the working group referred to in Article 57(1) ← the Commission may adopt → [...] ← 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 → [...] ← → implementing acts ←, → [...] ← shall be adopted → [...] ← in accordance with → the examination procedure referred to in ← Article → [...] ← → 64 ← (3).

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↓ 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 ⊗

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↓ 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.

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↓ 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.

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↓ 2007/58/EC Art. 1.8

☉ Council

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.

☉ 5. Based on the experience of regulatory bodies, competent authorities and railway undertakings and on the activities of the working group referred to in Article 57(1) the Commission may adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64(3). <sup>23</sup>

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↓ 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.~~

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<sup>23</sup> DK wishes to delete paragraph 5.

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↓ 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.~~

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↓ 2001/14/EC (adapted)

↻ Council

*Article 13<sup>24</sup>*

⊗ **Conditions of access to services** ⊗

1. ↻ Infrastructure managers shall supply to ↻ railway undertakings ↻ [...], on a non-discriminatory basis, ↻ [...] the minimum access package ↻ [...] ⊗ laid down ⊗ in Annex III, point 1.
2. ↻ Operators of service facilities shall supply to railway undertakings ↻ the services referred to in Annex III, point 2, ↻ [...] ↻ 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.~~

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<sup>24</sup> LT and LU have a reservation on Article 13.

↓ new

→ Council

→ 2a<sup>25</sup> To guarantee full transparency and non-discrimination of access to the → [...] → service facilities referred to in Annex III, point 2 **items (a), (b), (c), (e) and (g)** and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of → [...] → a body or firm which is also active and holds a dominant position → [...] → in → [...] → **national** → railway transport services markets for which the facility is used, the operators **of these service facilities** shall be organised in such a way that → [...] → **they are** independent → [...] → of this body or firm → in organisational and decision-making terms. **Such independence shall not imply the requirement of the establishment of a separate body or firm for service facilities.**

**For all service facilities referred to in Annex III, point 2, the → [...] → operator and this body or firm shall have separate accounts, including separate balance sheets and profit and loss accounts.** → [...] →

When operation of the service facility is ensured by an infrastructure manager or the operator of the service facility → [...] → is under direct or indirect control of an infrastructure manager compliance with these independence requirements shall be deemed demonstrated by **the fulfilment of the requirements set out in Article 7.**

2b → Requests by railway undertakings for access to → , and supply of services in → 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 → or alternative routes → [...] → under economically acceptable conditions. → This shall not oblige the operator of the service facility to make investments **in resources or facilities** in order to accommodate all requests by railway undertakings.

<sup>25</sup> AT has a reservation on paragraph 2a.

When requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of service facility referred to in paragraph 2a, **the operator of the service facility shall justify any negative decision and demonstrate that there is no viable alternative in other facilities**.

2c When an operator of the service facility referred to in Annex III, point 2, encounters conflicts between different requests, it 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 applicant may complain to** the regulatory body referred to in Article 55 **which** shall **examine the case and** take action, **where appropriate,** to ensure that an appropriate part of the capacity is devoted to **such applicant**.

2d Where a service facility referred to in Annex III, point 2, 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 **as a rail service facility**, as a whole or in part, unless the operator of such service facility demonstrates that an on-going process of reconversion prevents its use by any railway undertaking.<sup>26</sup>

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<sup>26</sup> AT, CZ, DE, EL, NL and PL have a reservation on paragraph 2d.

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↓ 2001/14/EC (adapted)

↻ Council

3. Where the **↻ [...] ↻ operator of the service facility ↻** offers any of the range of services described in Annex III, point 3 as additional services **↻ to others, ↻ [...] ↻ it ↻** shall supply them upon request to railway  undertakings  in a non-discriminatory manner .

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↓ 2001/14/EC

↻ Council

4. Railway undertakings may request a further range of ancillary services, listed in Annex III, point 4 from the infrastructure manager or from other **↻ [...] ↻ operators of service facility ↻**. The **↻ [...] ↻ operator of the service facility ↻** is not obliged to supply these services.

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↓ new

↻ Council

**↻ [...] ↻**

**↻ 5. Based on the experience of regulatory bodies and operators of service facilities and on the activities of the working group referred to in Article 57(1) the Commission may adopt measures setting out the details of the procedure and criteria to be followed for access to the services to be supplied in the service facilities referred to in Annex III, points 2 to 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64(3). ↻**

~~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.~~

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↓ new

→ Council

## SECTION 5

### CROSS-BORDER AGREEMENTS

#### *Article 14*

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

1. → Member States shall ensure that → [...] → provisions contained in cross-border agreements → [...] → do not → discriminate between railway undertakings, or → [...] → restrict the freedom of railway undertakings to operate cross-border services → [...] →.

→ [...] → 1a. Member States → [...] → shall → [...] → notify → [...] → the Commission → of any cross-border agreement at the latest six months after the entry into force of this Directive for agreements concluded before this date and → [...] → before their conclusion for new or revised agreements between Member States →. The Commission shall → decide whether such agreements are in → [...] → compliance → [...] → with → [...] → Union law within → [...] → nine months from notification for agreements concluded before the entry into force of this Directive and within four months from notification for new or revised agreements between Member States. → [...] → Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 64(2). → [...] →

2. Without prejudice to the division of competencies between the Union and the Member States, in accordance with Union law,  [...]   Member States shall notify the Commission of their intention to enter into  negotiations  on and to conclude  [...]  new or revised  cross-border agreements between Member States and third countries  [...] .

2a. If within two months of the receipt of the notification of a Member State intention to enter into negotiations referred to in paragraph 2, the Commission concludes that the negotiations are likely to undermine the objectives of Union negotiations under way with the third countries concerned and/or to lead to an agreement which is incompatible with Union law, it shall inform the Member State accordingly.

Member States shall keep the Commission  [...]  regularly informed of any such negotiations and, where appropriate, invite  [...]  it to participate as an observer.

2aa.  [...]  Member States  [...]  shall be authorised to  [...]  apply provisionally and/or to conclude new or revised cross-border agreements  [...]  with third countries, provided that they are compatible with EU law and do not harm the object and purpose of the transport policy of the Union. The Commission shall adopt such authorisation decisions. Those implementing acts shall be adopted in accordance with the  [...]  advisory procedure referred to in Article 64 (2).

[...]

[...]

↓ 2001/12/EC Art. 1.13 (adapted)

⇒ new

↻ Council

## SECTION 6

### MONITORING TASKS OF THE COMMISSION

#### *Article 15*

#### ⊗ Scope of market monitoring ⊗

- ~~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.~~
- 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.
- 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~~ ⇒ ↻ [...] ↻ 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 ⊗. ↻ [...] ↻

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↓ 2001/12/EC Art. 1.13

⇒ new

↻ Council

4. The Commission shall report ⇒ ↻ [...] ↻ ↻ at least every two years ↻ ⇐ to the European Parliament and the Council on:

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

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↓ 2001/12/EC Art. 1.13 (adapted)

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

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↓ 2004/51/EC Art. 1.3

(c) the state of the European railway network;

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↓ 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.

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↓ new

→ Council

5. For the purposes of the Commission's market monitoring, Member States shall supply → to the Commission ◐ on an annual basis the → necessary ◐ information → on the use of the networks and the evolution of framework conditions in the rail sector. → [...] ◐

5a The Commission may adopt measures to ensure consistency in the reporting obligations of Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64(3). ◐

→ [...] ◐

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↓ 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 ⊠

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↓ 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 .

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↓ 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.

## SECTION 2

### ⊗ CONDITIONS FOR OBTAINING A LICENCE ⊗

#### *Article 17*

#### ⊗ General requirements ⊗

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↓ 95/18/EC

⇒ new

↻ Council

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established ⇒ ↻ [...] ↻ ⇐.
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.

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↓ 95/18/EC (adapted)

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

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↓ new

→ Council

5. The Commission may adopt → [...] ← measures setting out the details → **for the use of** ← → [...] ← a common template for the licence → **and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of this Article.** ← Those → [...] ← → implementing acts ← → [...] ← shall be adopted → [...] ← in accordance with → the examination procedure referred to in ← Article → [...] ← → 64 ←(3).

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↓ 95/18/EC (adapted)

### *Article 18*

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

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↓ 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 .

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↓ 95/18/EC (adapted)

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

*Article 19*

**☒ Requirements relating to good repute ☒**

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↓ 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:

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↓ 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;

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↓ 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.

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↓ 95/18/EC (adapted)

*Article 20*

⊗ Requirements relating to financial fitness ⊗

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↓ 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.

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↓ 95/18/EC (adapted)  
→ Council

→ The licensing authority shall verify financial fitness especially by means of a railway undertaking's annual accounts or, in the case of applicant railway undertakings unable to present annual accounts, a balance sheet. [...] Each applicant railway undertaking shall [...] provide at least the [...] information listed in Annex V.

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↓ new  
→ Council

→ The licensing authority shall not consider an applicant railway undertaking financially fit if considerable or recurrent arrears of taxes or social security [...] are owed as a result of [...] that undertaking's activity [...].

The licensing authority may require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents shall include the information listed in Annex V.

The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex V. Thus Annex V may be amended to specify the information to be provided by applicant railway undertakings or supplement it in the light of the experience gained by licensing authorities or the evolution of the rail transport market [...]

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↓ 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.

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↓ 95/18/EC (adapted)

↻ Council

*Article 22*

⊗ Requirements relating to ↻ cover for ↻ civil liability ⊗

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↓ 95/18/EC

↻ Council

↻ [...] ↻ Without prejudice to the Union rules on state aids and in accordance with Articles 93, 107 and 108 of the Treaty, ↻ a railway undertaking shall be adequately insured ~~or make equivalent arrangements~~ ↻ or have guarantees under market conditions ↻ for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of ~~passengers, luggage,~~ ↻ passengers, luggage, ↻ freight, mail and third parties. ↻ [...] ↻

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↓ 95/18/EC (adapted)

### SECTION 3

#### VALIDITY OF THE LICENCE

##### *Article 23*

##### Spatial and temporal validity

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↓ 2001/13/EC Art.1(4) (adapted)

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

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↓ 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.

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↓ 95/18/EC

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

*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.

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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2001/13/EC Art.1(6)

↻ Council

8. When a licensing authority issues, suspends, revokes or amends a licence, ~~it~~ shall immediately inform the ~~European Railway Agency~~ accordingly. The ~~European Railway Agency~~ shall inform the ~~licensing authorities of~~ other Member States forthwith.

~~it~~

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↓ 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

⇒ Council

### Article 25

#### ⊗ Procedure for granting licences ⊗

1. The procedures for granting licences shall be made public by the ~~Member State~~ ⇒ [ ... ]  
⇒ Member State ⇐ concerned, which shall inform the ~~Commission~~ ⇒ [ ... ]  
⇒ Commission ⇐ 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.

## 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** ⊠

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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.

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↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

*Article 27*

**Network statement**

1. The infrastructure manager shall, after consultation with the interested parties ☒ ⇒ [...] ☒ 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 ⇒ on the web portal of the ⇒ [...] ☒ infrastructure manager and accessible ☒ through ⇒ [...] ☒ ⇒ a common ☒ web portal ⇒ [...] ☒ ⇒ which infrastructure managers shall set up in the framework of their cooperation in accordance with Articles 37 and 40 ☒. ⇐

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↓ 2001/14/EC

⇒ new

⇒ Council

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 ⇒ It shall also contain information setting out the conditions for access ☒ ⇒ ⇒ [...] ☒ to service facilities ⇒ connected to the network of the infrastructure manager ⇐ and for supply of services in these facilities or indicate a web ⇒ [...] ☒ site where such information is made available free of charge in electronic format. ☒ The content of the network statement is laid down in Annex VI.

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↓ new

☞ Council

☞ The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VI. Thus ☹ Annex VI may be amended ☞ to specify the content of **its sections** ☞ [...] ☹ or supplement ☞ [...] ☹ **the sections** with additional elements. ☞ [...] ☹ These amendments shall be based on what is necessary in the light of experience to ensure transparency of market access conditions for railway undertakings and the possibility for ☞ [...] ☹ infrastructure managers to provide such information. ☹

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↓ 2001/14/EC (adapted)

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

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↓ 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.

⊗ *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.

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↓ 2001/14/EC (adapted)

## SECTION 2

### INFRASTRUCTURE AND SERVICES CHARGES

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↓ 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.

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↓ 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.

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↓ new

→ Council

Member States shall ensure that the  [...]  network statement  contains the charging framework and charging rules or indicates a web site where the charging framework and charging rules are published <sup>27</sup>.

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<sup>27</sup> *LV*, supported by *LT*, wishes to add the following sentence: "In cases, resulting from the conditions of competition with third countries, charging principles and charging rules are not published in the network statement, but are published separately no later than [XX] months before the date of entry into force of the new timetable."

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↓ 2001/14/EC (adapted)

↻ Council

The ☒ infrastructure manager shall determine and collect ☒ the charge for the use of infrastructure ↻ in accordance with the established charging framework and charging rules.

Without prejudice to the management independence laid down in Article 4 and provided that this right has been directly conferred by constitutional law at least two years before the date of entry into force of this Directive, the national parliament may have the right to scrutinize and, when appropriate, review the level of charges determined by the infrastructure manager. Such review, if any, shall ensure that charges comply with this Directive, the established charging framework and charging rules. ↻

↻ [...] ↻

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↓ new

↻ Council

↻ [...] ↻

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↓ 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.

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↓ 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.

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↓ 2001/14/EC

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

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↓ 2001/14/EC (adapted)

↻ Council

### *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. ~~Without prejudice to their competence regarding railway infrastructure planning and financing, and to the budgetary principle of annuality, where applicable,~~ Member States shall ensure that ~~[...]~~ a contractual agreement ~~,~~ fulfilling the basic principles and parameters set out in Annex VII, is concluded ~~between the competent authority and the~~ infrastructure manager covering a period of not less than ~~three~~ years ~~or through the establishment of appropriate regulatory measures with adequate powers~~

~~[...]~~

~~[...]~~

2a. Member States shall implement the incentives ~~[...]~~ referred to in paragraph 1 ~~[...]~~ either through the contractual agreement referred to in paragraph 2 or **through regulatory measures** ~~[...]~~ or ~~[...]~~ **through** ~~[...]~~ a combination of incentives to reduce costs in the contractual agreement and the level of charges through regulatory ~~[...]~~ **measures.**

2b. ~~[...]~~ **If** a Member State decides to implement ~~[...]~~ the incentives ~~[...]~~ referred to in paragraph 1 ~~[...]~~ through regulatory measures, ~~[...]~~ **this shall be based on an analysis of the achievable cost reductions** ~~[...]~~. This is without prejudice to the powers of the regulatory body to review charges according to Article 56.<sup>28</sup>

3. ~~Where a contractual agreement exists,~~ The terms of the ~~[...]~~ ~~contractual agreement~~ **referred to in paragraph 2,** 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.

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<sup>28</sup> BE, DK, ES, FR, IT, SE and SK have a reservation on paragraphs 2a and 2b.

↓ new

→ Council

→ 3a → [...] → The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VII. Thus Annex VII → [...] → may be amended in the light of → the evolution of the rail market and → experience → gained by the competent authorities and the infrastructure managers. → [...] → When amending Annex VII the Commission shall take account of what is necessary for the practical application of the agreements. →

→ 3b → [...] → The competent authority and the infrastructure manager → shall → jointly → [...] → inform → [...] → known applicants and, upon their request, potential applicants and give them the opportunity to express their views on the content of the contractual agreement → at least → [...] → three months → before → [...] → it → is signed and publish it within one month of concluding it.

The infrastructure manager shall ensure → [...] → consistency between → the provisions of the contractual agreement → and the business plan →.

→ [...] →

4. Infrastructure managers shall develop and maintain → [...] → a → [...] → register of their assets and the → [...] → assets they are responsible for managing which would be used to assess the financing needed to repair or replace them. → [...] → This shall be accompanied by → details of expenditure on renewal and upgrading of the infrastructure.

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↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

5. ⇒ ⇒ [...] ⇐ ~~A method for apportioning costs shall be established.~~ ⇒ Infrastructure managers shall establish a method for apportioning costs ⇒ [...] ⇐ ⇐. Member States may require prior approval. This method ☒ shall ☒ be updated from time to time ⇒ [...] ⇐ ⇐ on the basis of ⇐ the best international practice.

⇒ [...] ⇐

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↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

### 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 ⇒ in order to allow the regulatory body to perform its tasks as referred to in Article 56. ⇐ The infrastructure manager ☒ and the service facility operator ☒ must, in this regard, be able to ☒ demonstrate ☒ ⇒ ⇒ [...] ⇐ ⇐ 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.<sup>29</sup> Without prejudice to paragraphs 4 or 5 of this Article or to Article 32, the charges for the minimum access package ~~and for access to infrastructure connecting service facilities and track access to service facilities~~ shall be set at the cost that is directly incurred as a result of operating the train service ~~[...]~~.

↓ new

☞ Council

☞ When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network ~~[...]~~, the infrastructure manager shall justify this in detail to the regulatory body.<sup>30</sup>

☞ [...]

The Commission may adopt ~~[...]~~ measures setting out the methodology for the calculation of the cost that is directly incurred as a result of operating the train ~~[...]~~. Those ~~[...]~~ implementing acts ~~[...]~~ shall be adopted ~~[...]~~ in accordance with the examination procedure referred to in Article ~~[...]~~ 64 (3).

<sup>29</sup> EE, LT, LV and PL have a reservation on paragraph 3. LT and LV wish to add the following new sub-paragraph: "*Member States may choose not to apply this requirement to transportation of freight from third countries*". EE, LT and LV wish a derogation for vehicles/services running on a 1520 mm rail system. PL wishes to add the following new paragraph: "*11. When the infrastructure manager carries out a restructuring of its activities it may decide – subject to prior authorization by the regulatory body referred to in Article 55 - not to apply paragraph 3 of this Article and Annex VIII point 1 during this restructuring period. The Member State shall promptly inform the Commission of any such authorization.*"

<sup>30</sup> UK, supported by AT, DK, LT, PL, SI and SK, suggests the following text: "*Without prejudice to paragraphs 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities ~~and track access to service facilities~~ shall be set at the cost that is directly incurred as a result of operating the train service. **Direct costs calculated by the infrastructure manager shall be subject to justification to the regulatory body.***"

*When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network and by excluding costs **related to real estate management, and social services and acts of God**, the infrastructure manager shall justify this in detail to the regulatory body*". DE also has a reservation on 35 %.

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↓ 2001/14/EC (adapted)

↻ Council

4. The infrastructure ☒ charges ☒ ↻ referred to in paragraph 3 ☒ may include a charge which reflects the scarcity of capacity of the identifiable ☒ section ☒ of the infrastructure during periods of congestion.

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↓ new

↻ Council

↻ [...] ☒

↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

⇒ 5. <sup>31</sup> The infrastructure ~~⊗~~ charges ~~⊗~~ ⇒ referred to in paragraph 3 ~~⊗~~ may be modified to take account of the cost of ~~⊗~~ ⇒ [...] ~~⊗~~ environmental effects caused by the operation of the train ⇒ [...] ~~⊗~~ Any such ~~⊗~~ modification ⇒ [...] ~~⊗~~ shall be differentiated according to the magnitude of the effect caused.

⇒ [...] ~~⊗~~

<sup>31</sup> DE, PL and UK have a reservation on paragraph 5. DE suggests the following revised text: "*Before the deadline for transposition set in Article 66(1), the Commission shall adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects and ensuring that differentiation of charges takes into account **the costs incurred through modification of rolling stock or railway infrastructure to prevent serious noise effects. At least Member States should apply noise differentiated infrastructure charges by which existing freight wagons that do not fulfill the requirements of Commission Decision 2006/66/EC (TSI Noise) have to pay higher charges than new or retrofitted freight wagons.** the sensitivity of the area affected, in particular in terms of the size of population affected, the time of the day and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64 (3). Charging of environmental costs which result in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is applied to road freight transport in accordance with Union legislation.* NL suggests the following revised text: "*Before the deadline for transposition set in Article 66(1), the Commission shall The Commission may adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects including its duration of application and ensuring that differentiation of charges takes into account the sensitivity of the area affected, in particular in terms of size of population affected, time of day and the train composition with an impact on the level. Member States or a group of Member States that implement Noise differentiated Track access schemes in line with the directive before EC implementing measures are effective, have a derogation from these implementing measures for the duration of their scheme.*"

Based on the experience gained by infrastructure managers, railway undertakings, regulatory bodies and competent authorities, the Commission may adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects including its duration of application and enabling the differentiation of infrastructure charges to take into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64 (3).

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

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

Council

Member States shall ensure that the necessary information is kept and that the origin of the charging of environmental costs and its application can be traced. Member States shall<sup>32</sup> provide the Commission with this information upon its request.

<sup>32</sup> DE wishes to add: "when necessary".

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↓ 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.

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↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

7. ~~⇒ [...] ⇒ The charge imposed for ⇒ track access within service facilities referred to in Annex III, point 2, and the supply of services in such ⇒ [...] ⇒ facilities ⇒ 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.~~

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↓ 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.

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↓ new

↻ Council

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  or shall indicate a web  [...]  site where such information is made available free of charge in electronic format  according to Article 27.

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↓ 2001/14/EC (adapted)

↻ Council

### *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  [...]  services . The charging system shall respect the productivity increases achieved by railway undertakings.

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↓ 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.

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↓ new

→ Council

→ [...] → Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs → [...] listed in Annex VIII, point 3 and retaining the relevant ones. → [...] The list of market segments defined by infrastructure managers shall contain at least the three following ones: freight services, passenger services within the framework of a public service contract and other passenger services. Infrastructure managers may further distinguish → [...] market segments according to commodity or passengers transported.

Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for these market segments.

The list of market segments → [...] shall be published in the network statement and shall be reviewed at least every five years.

The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VIII. Thus → Annex VIII, point 3 may be amended → to add, specify or withdraw pairs to be considered by infrastructure managers → in the light of → the evolution of rail market and → experience → gained by the infrastructure managers. → [...] →

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↓ 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.

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↓ new

⇒ Council

3. ⇒ [...] ⇐ The infrastructure ⇐ charge ⇒ s ⇒ [...] ⇐ may be differentiated to ⇒ [...] ⇐ give incentives to equip ⇒ [...] ⇐ trains with the European Train Control System (ETCS) compliant with the version adopted by the Commission on 23 April 2008 and successive versions. ⇒ [...] ⇐

⇒ [...] ⇐

⇒ [...] ⇐ Following an impact assessment, the Commission ⇒ [...] ⇐ may adopt ⇒ [...] ⇐ measures setting out the modalities to be followed for the application of the ⇒ [...] ⇐ differentiation of the infrastructure charge including its duration of application. Those ⇒ [...] ⇐ implementing acts ⇒ [...] ⇐ shall be adopted ⇒ [...] ⇐ in accordance with the examination procedure referred to in Article ⇒ [...] ⇐ 64 (3). ⇐

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↓ 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.

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↓ 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) ⇐.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2001/14/EC (adapted)

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

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↓ 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.

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↓ 2001/14/EC

⇒ new

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

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↓ new

⇒ Council

⇒ The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VIII, point 4. Thus ⇐ Annex VIII, point 4 may be amended in the light of ⇒ the evolution of the rail market and experience gained by regulatory bodies referred to in Article 55, infrastructure managers and railway undertakings. ⇒ [...] ⇐ Such amendments shall specify the basic principles of the performance scheme or adapt the classes of delay to the best practices developed by industry. ⇐ ⇒ [...] ⇐

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↓ 2001/14/EC (adapted)

⇒ Council

### *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. ⇒ [...] ⇐ ⇒ Payments for this charge shall be made by either the applicant or the railway undertaking appointed in accordance with Article 41(1). ⇐ ⇐

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.

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↓ new

➡ Council

*Article 37*

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

➡ 1. ☒ The Member States shall ensure that ☒ infrastructure managers cooperate to ☒ enable ☒ the ☒ application of ☒ efficient ☒ charging schemes ➡ and associate to coordinate the charging or to charge ☒ for the ☒ operation of train services which cross more than one infrastructure network ➡ of the rail system within the Union ☒. ☒ 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 ☒. ➡ To this end they shall establish appropriate procedures, subject to the rules set out in this Directive.

2. For the purpose of paragraph 1, ☒ 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 ➡ of the rail system within the Union ☒. ➡ [...] ☒<sup>33</sup>.

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<sup>33</sup> DE and PL wish to delete paragraph 2.

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↓ 2001/14/EC

### SECTION 3

#### ALLOCATION OF INFRASTRUCTURE CAPACITY

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↓ 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.

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↓ 2001/14/EC

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

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2007/58/EC Art. 2.3 (adapted)

↻ Council

4. When an applicant intends to request infrastructure capacity with a view to operating an international passenger service as defined in Article ↻ [...] ↻ 3, ↻ 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 ↻ [...] ↻ 11 ↻ and any railway undertaking performing the public service contract on the route of ☒ that ☒ international passenger service is informed.

*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.

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~~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

⇒ Council

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 ⇒ of the rail system within the Union ☒ ⇒ , 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 ⇒ [...] ☒ train paths ⇒ crossing more than one network ☒ 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,<sup>34</sup> ⇐ shall be informed ☒ of ☒ and invited to attend ⇒ as observers ☹ [...] ☹  
☹ main ☹ 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 ⇐.<sup>35</sup>

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↓ 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.

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<sup>34</sup> DK, supported by ES, LU and SK, wishes to delete: "*and representatives of the regulatory bodies, which co-operate according to Article 57*".

<sup>35</sup> PT has a reservation on paragraph 2. DE wishes to add: "*may be*" before "*invited*" in the second line.

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↓ 2001/14/EC (adapted)

↻ Council

*Article 41*

**Applicants**

1. ☒ Requests ☒ for infrastructure capacity may be made by ↻ [...] ↻<sup>36</sup> applicants ☒ within the meaning of this Directive ☒. ↻ [...] ↻ ↻ In order to use such infrastructure capacity, applicants shall appoint a railway undertaking to conclude an agreement with the infrastructure manager in accordance with Article 28. This is without prejudice to the right of applicants to conclude agreements with infrastructure managers under Article 44(1). ↻

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↓ 2001/14/EC

↻ Council

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. They shall be specified in the network statement as referred to in point 3 (b) of Annex VI. ↻ ~~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~~ ↻ They ↻ 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.

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<sup>36</sup> DK suggests the following alternative text: "*Requests for infrastructure capacity may be made by applicants within the meaning of this Directive. **In Member States which allow shippers, freight forwarders and combined transport operators as authorised applicants, these applicants shall** in order to use such infrastructure capacity, ~~applicants shall~~ appoint a railway undertaking to conclude an agreement with the infrastructure manager in accordance with Article 28. This is without prejudice to the right of applicants to conclude agreements with infrastructure managers under Article 44(1).*"

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↓ new

→ Council

3. → Before the deadline for transposition set in Article 66(1), → the Commission → [...] → shall → adopt implementing measures setting out the details of the criteria to be followed for the application of paragraph 2. Those → [...] → → implementing acts → shall be adopted → [...] → in accordance with → the examination procedure referred to in → Article → [...] → → 64 → (3).

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2001/14/EC

↻ Council

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

↻ 8. Based on the experience of regulatory bodies, competent authorities and railway undertakings and on the activities of the working group referred to in Article 57 (1) the Commission may adopt measures setting out the details of the procedure and criteria to be followed for the application of this article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 64 (3). ↻

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↓ 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.

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↓ new

↻ Council

↻ The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex IX. Thus, after consultation of all infrastructure managers, ↻ Annex IX may be amended ↻ [...] ↻ ↻ to take into account operational considerations of the allocation process. ↻ [...] ↻ These amendments shall be based on what is necessary in the light of experience to ensure an efficient allocation process and reflect the operational concerns of the infrastructure managers. ↻

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↓ 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.

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↓ 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.

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↓ 2001/14/EC

↻ Council

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

4. ↻ [...] ↻ For train paths crossing more than one network infrastructure managers shall ensure that applicants may apply to a one-stop shop that is either ↻ [...] ↻ a joint body established by the infrastructure managers ↻ [...] ↻ or ↻ [...] ↻ one single infrastructure manager ↻ [...] ↻ involved in the train path. Such infrastructure manager shall be permitted to act on behalf of the applicant to seek capacity with other relevant infrastructure managers. This requirement is without prejudice to Regulation (EU) No 913/2010. ↻

↻ [...] ↻

*Article 45*

**Scheduling**

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↓ 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.

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↓ 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.

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↓ 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.

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↓ new

↻ Council

↻ [...] ↻

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↓ 2001/14/EC

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

*Article 46*

**Coordination process**

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↓ 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.

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↓ 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.

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↓ 2001/14/EC (adapted)

⇒ new

⇒ Council

3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to  resolve  any conflicts.  Such consultation shall be based on the disclosure of the following information within a reasonable time, free of charge and in written or electronic form:

(a)  train paths requested by all other applicants on the same routes.

(b)  train paths allocated on a preliminary basis to all other applicants on the same routes.

(c)  alternative train paths proposed on the relevant routes in accordance with paragraph 2.

(d)  full details of the criteria being used in the capacity allocation process.

In accordance with Article 39(2), this information shall be provided without disclosing the identity of other applicants, unless applicants concerned have agreed to such disclosure.

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

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↓ 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.
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↓ 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.

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↓ 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.

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↓ 2001/14/EC

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

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↓ 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.

*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.

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↓ 2001/14/EC (adapted)

↻ Council

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.

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.

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.   [...]

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

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2001/14/EC

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

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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.
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↓ new

→ Council

3. The infrastructure manager shall inform →, as soon as possible, ← → [...] ← interested parties about → the unavailability of infrastructure capacity due to ← unscheduled maintenance work.

*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

↻ Council

#### Article 55

#### Regulatory body

1. ⊠ Each ⊠ Member State shall establish a ⇒ single national ⇐ regulatory body ⇒ for the railway sector ⇐ . ↻ Without prejudice to paragraph 2, ⇐ 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 ↻ private or ⇐ public ↻ [...] ⇐ ↻ entity ⇐.<sup>37</sup> 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. → 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. ↻ [...] ⇐~~<sup>38</sup>

<sup>37</sup> SK wishes to delete the second sentence. LU has a reservation.

<sup>38</sup> LV wishes to add: "*Member State may pass certain functions of the regulatory body to another body, which meets the criteria mentioned herewith. In this case, the regulatory body shall coordinate the performance of these functions*".

↓ new

↻ Council

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.

↻ The ↻ [...] ↻ regulatory body for the rail sector ↻ [...] ↻ may also be ↻ [...] ↻ ↻ joined in organisational term with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 of 16 December 2002<sup>39</sup>, the licensing authority referred to in Chapter III or the safety authority established under Directive 2004/49/EC of 29 April 2004<sup>40</sup>, if this joint body fulfils the independence requirements set out in paragraph 1. ↻

3.<sup>41</sup> ↻ Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence. They shall in particular ensure that ↻ the ↻ [...] ↻ ↻ persons ↻ [...] ↻ in charge of decisions to be taken by ↻ ↻ [...] ↻ the regulatory body ↻ [...] ↻ ↻ in accordance with Article 56, such as members of its ↻ [...] ↻ executive board, where relevant, ↻ [...] ↻ act independently from any market interest **related to the railway sector** and do not seek or take ↻ [...] ↻ instructions from any government or other public or private entity when carrying out the functions of the regulatory body.

The persons ↻ [...] ↻ in charge of decisions to be taken by the regulatory body in accordance with Article 56 shall have no professional position or responsibility, interest or business relationship with any of the regulated undertakings or entities during a reasonable period after their term of office. They shall have full authority over the recruitment and management of the staff of the regulatory body. ↻

↻ [...] ↻

<sup>39</sup> OJ L 1, 04.01.2003, p.1-25.

<sup>40</sup> OJ L 164, 30.04.2004.

<sup>41</sup> SE, supported by DE, DK and SK, suggests to keep only the first sentence of paragraph 3.

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↓ 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:

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↓ 2001/14/EC

↻ Council

(a) the network statement ⇐ in its provisional and final versions ⇐;

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↓ 2001/14/EC (adapted)

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

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↓ 2001/14/EC

(c) the allocation process and its result;

(d) the charging scheme;

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↓ 2001/14/EC (adapted)

- (e) ☒ the ☒ level or structure of infrastructure ☒ charges ☒ which it is, or may be, required to pay;
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↓ 2004/49/EC Art. 30.2  
→ Council

- (f) arrangements for access in accordance with Articles 10, 11, → [...] ← 12 → **and 13** ←;
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↓ new  
→ Council

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

2. → Without prejudice to the competences of the national competition authorities for securing competition in the rail services markets, ← the regulatory body shall → [...] ← have the power to monitor the → [...] ← → competitive situation ← in the rail services markets and → shall, in particular, → [...] ← control ← points (a) to (g) of paragraph 1 on its own initiative and with a view to preventing discrimination → [...] ← → against ← applicants.<sup>42</sup> 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 → [...] ← → against ← applicants.

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<sup>42</sup> DK and LU have a reservation on the first sentence of paragraph 2.

2a. Member States may decide that the regulatory body [...] is given the task to adopt non-binding opinions on the provisional versions of the business plan referred to in Article 8(3), the contractual agreement referred to in Article 30(2) [...] and the capacity enhancement plan referred to in Article 51 [...] to indicate in particular whether these instruments are [...] consistent with the competitive situation in the rail services markets.

2b The regulatory body shall have the necessary organisational capacity to carry out [...] its tasks.<sup>43</sup>

↓ 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.~~

<sup>43</sup> DK wishes to delete this paragraph.

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↓ 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. ⇐<sup>44</sup>

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<sup>44</sup> DK wishes to delete: "*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.*"

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↓ 2001/14/EC

⇒ new

⇒ Council

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. ⇒ ⇒ Without prejudice to the competences of the national competition authorities for securing competition in the rail service markets ⇒ [...] ⇒ the regulatory body ⇒ shall ⇒ , where appropriate, ⇒ 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. ⇐<sup>45</sup>

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↓ 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.<sup>46</sup> The regulatory body must be able to enforce its decisions with the appropriate sanctions, including fines. ⇐

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↓ 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.

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<sup>45</sup> DK and UK have a reservation on this paragraph. DE wishes to add: "*with a view to preventing discrimination between applicants*".

<sup>46</sup> DE wishes to delete: "*and shall not be subject to the control of another administrative instance*".

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↓ 2001/14/EC

⇒ new

⇒ Council

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 immediate effect of the regulatory body's decision may cause irretrievable ⇒ or manifestly excessive damages for the appellant.<sup>47</sup> ⇒ This provision is without prejudice to the powers of the court hearing the appeal as ⇒ [...] conferred by constitutional law, **where applicable.** ⇐

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↓ new

⇒ Council

7. ⇒ [...] Member States shall ensure that decisions taken by the regulatory body are published. ⇐

8. The regulatory body shall have the power to carry out audits or initiate external audits with infrastructure managers ⇒, **operators of service facilities** ⇐ and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6. ⇒ In this respect, the regulatory body shall be entitled to ask for any relevant information. In particular the regulatory body shall have the power to request infrastructure manager, **operators of service facilities** 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) and **Article 13** to provide all or part of the accounting information listed in Annex X with a sufficient level of detail as deemed necessary and proportionate. ⇐<sup>48</sup>

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<sup>47</sup> DE wishes to delete this sentence.

<sup>48</sup> DE, DK and LU have a reservation on paragraph 8.

☞ [...] ☹ 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. ☞ This is without prejudice to the existing competences of the authorities responsible for state aid issues.

The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex X. Thus ☹ Annex X may be amended ☞ [...] ☹ ☞ to adapt it to the evolution of accounting and oversight practices and/or to supplement it with additional elements necessary to verify separation of account. ☹

↓ 2001/14/EC (adapted)

⇒ new

☞ Council

#### 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 ☞ participate and ☹ work together in a working group that ☞ [...] ☹ convenes at regular intervals. ⇐ ☞ To ensure active cooperation between the appropriate regulatory bodies, ☹ the Commission shall ☞ [...] ☹ support ☞ them in this task. ☹ ☞ [...] ☹.

---

↓ new

↻ Council

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.<sup>49</sup> Regulatory bodies shall develop common principles and practices for making decisions for which they are empowered under this Directive. Based on the experience [...] of regulatory bodies and on the activities of the working group referred to in paragraph 1, **and if needed to ensure efficient cooperation of regulatory bodies** the Commission may adopt [...] measures setting out such common principles and practices. Those [...] implementing acts [...] shall be adopted [...] in accordance with the examination procedure referred to in Article [...] 64 (3).

8. Regulatory bodies shall [...] review decisions and practices of associations of infrastructure managers as referred to in Article s 37 and 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

---

<sup>49</sup> EL has a reservation on paragraph 7. SE wishes to start this paragraph as follows:  
*"Regulatory bodies shall, in accordance with national law, develop..."*.

---

↓ 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>50</sup>.

---

<sup>50</sup> OJ L 134, 30.4.2004, p. 1.

---

↓ 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 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

↻ Council

*Article 60*

**Exercise of delegation<sup>51</sup>**

↻ [...] ↻

---

<sup>51</sup> AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LU, NL, PL, PT, SE and UK have a reservation on the use of delegated acts.

➡ 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article[s] [X] shall be conferred on the Commission for a period of five years from the entry into force of this Directive. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of powers referred to in Articles {X} may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article [X] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council. ⌚

➡ [...] ⌚

---

↓ 2001/14/EC

↻ Council

*Article 63*

↻ [...] ↻ **Measures ↻ of application ↻**

↻ [...] ↻

---

↓ 2004/49/EC Art. 30.4 (adapted)

↻ Council

↻ [...] ↻ At the request of a Member State or on its own initiative the Commission shall ↻ [...] ↻ examine ↻ specific measures adopted by national authorities in relation with ↻ the application ↻ [...] ↻ of  the  provisions  of this Directive , ↻ concerning the conditions of access to railway infrastructure and services, the licensing of railway undertakings, infrastructure charging and capacity allocation within twelve months after adoption. The Commission shall ↻ ↻ [...] ↻ decide in accordance with the procedure referred to in Article 64(2) whether the related measure may continue to be applied ↻ within four months of receipt of such a request ↻. ↻ [...] ↻

---

↓ 2001/14/EC (adapted)

↻ Council

↻ [...] ↻

---

↓ 2007/58/EC Art. 2.6 (adapted)

↻ Council

↻ [...] ↻

---

↓ 2001/14/EC  
↻ Council

*Article 64*

**Committee procedures**

1. The Commission shall be assisted by a committee . ↻ That committee shall be a committee within the meaning of Regulation (EU) N° 182/2011 of 16 February 2011 ↻
2. Where reference is made to this paragraph, Article ↻ 4 of Regulation (EU) N° 182/2011 of 16 February 2011 ↻ [...] ↻ shall apply ↻ [...] ↻.

---

↓ 2007/58/EC Art. 2.7  
↻ Council

3. Where reference is made to this paragraph, Article ↻ 5 of Regulation (EU) N° 182/2011 of 16 February 2011 ↻ [...] ↻ shall apply ↻ [...] ↻. ↻ When the committee delivers no opinion, the Commission shall not adopt the draft implementing act. ↻<sup>52</sup>

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↓ 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.~~

---

<sup>52</sup> Cion has a reservation on the last sentence.

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↓ 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)

↻ Council

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 65bis

#### Obligations on Member States

Member States shall take the necessary measures to ensure that undertakings, operators, applicants, authorities and other entities concerned comply with the provisions set out in this Directive. <sup>53</sup>

#### *Article 66*

⊠ **Transposition** ⊠

---

<sup>53</sup> AT, DE, ES and LV have a reservation on Article 65bis. IT and SE support this article.

---

↓ new

→ Council

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annexes [...] by → [24 months<sup>54</sup> from the entry into force of this Directive] ← at the latest. They shall forthwith communicate to the Commission the text of those provisions → [...] ←.

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.

**→ Article 55(1) shall apply from 60 months from the entry into force of this Directive. ←**

---

↓ 2007/58/EC Art. 2.8

→ Council

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

---

<sup>54</sup> BG, CZ, LU and PL prefer 36 months.

---

↓ 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)  
→ Council

*Article 68*

**Entry into force**

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

---

↓ new  
→ Council

→ [...] ←

*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~~

~~Дом~~

~~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~~

---

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

~~EESTI~~

~~Muuga sadam~~

~~Paljassaare sadam~~

~~Vanasadam~~

~~Paldiski põhjasadam~~

~~Paldiski lõunasadam~~

~~Kopli põhjasadam~~

~~Kopli lõunasadam~~

~~Bekkeri sadam~~

~~Kunda sadam~~

↓ 2001/12/EC Annex I

~~ΕΛΛΑΣ~~

~~Αλεξανδρούπολη~~

~~Ελευσίνα~~

~~Πάτρα~~

~~Πειραιάς~~

~~Θεσσαλονίκη~~

~~Βόλος~~

~~ESPAÑA~~

~~Algeiras~~

~~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**

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↓ 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~~

**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~~

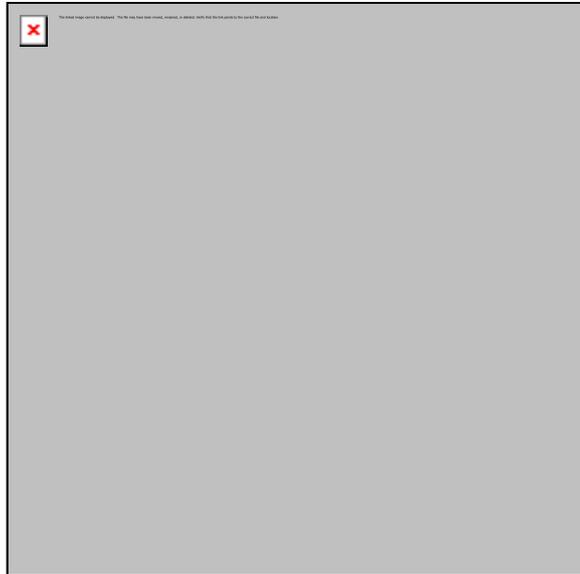
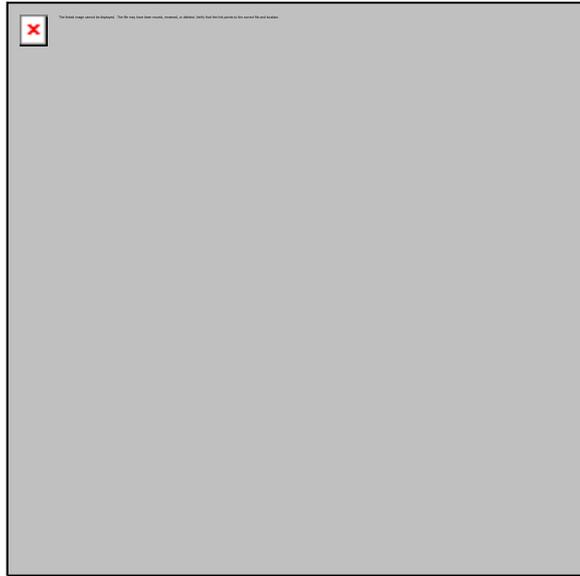
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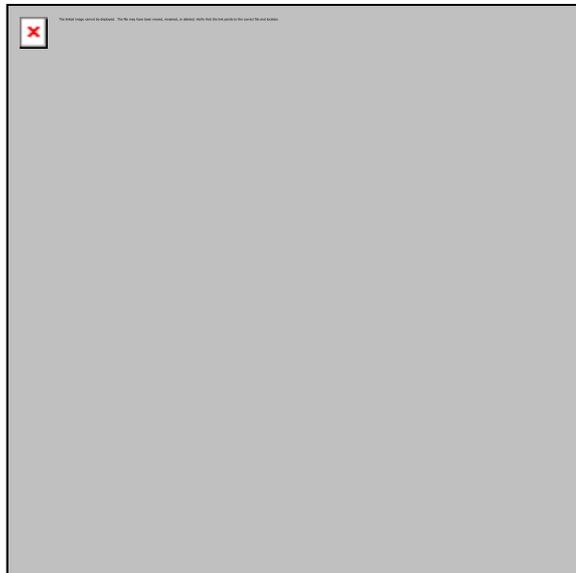
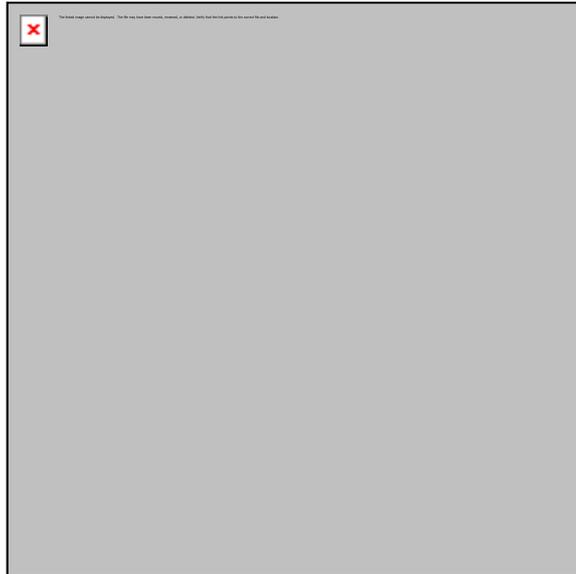
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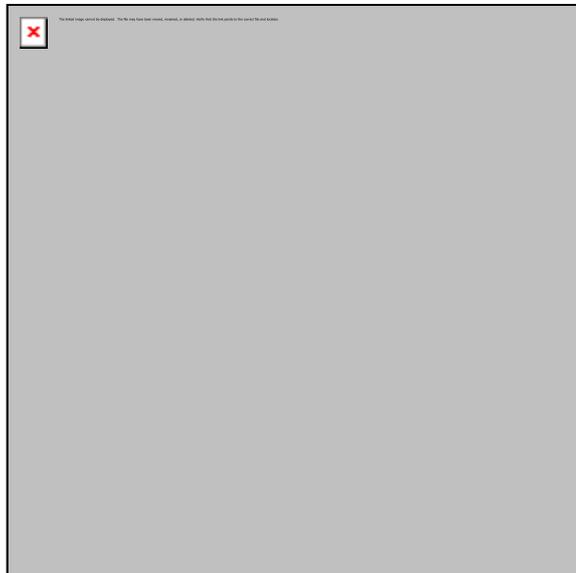
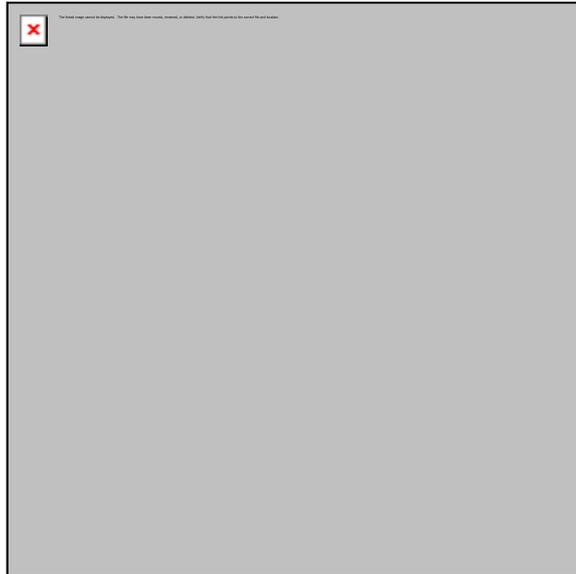
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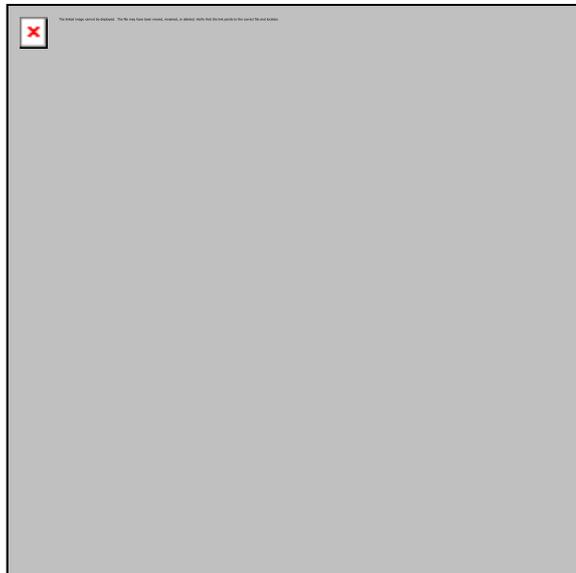
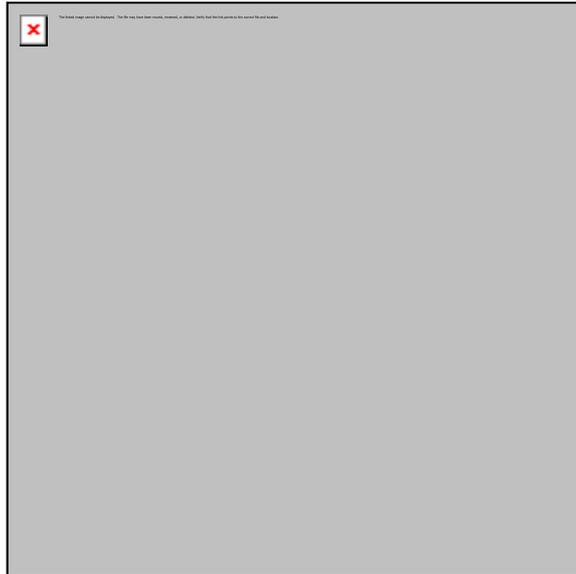
~~UNITED KINGDOM~~

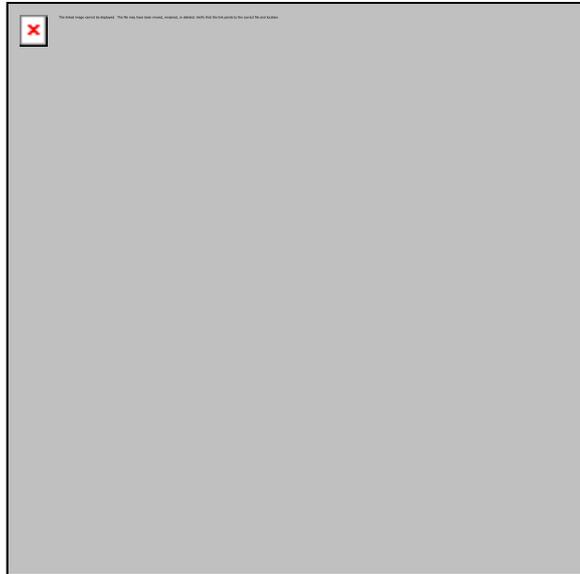
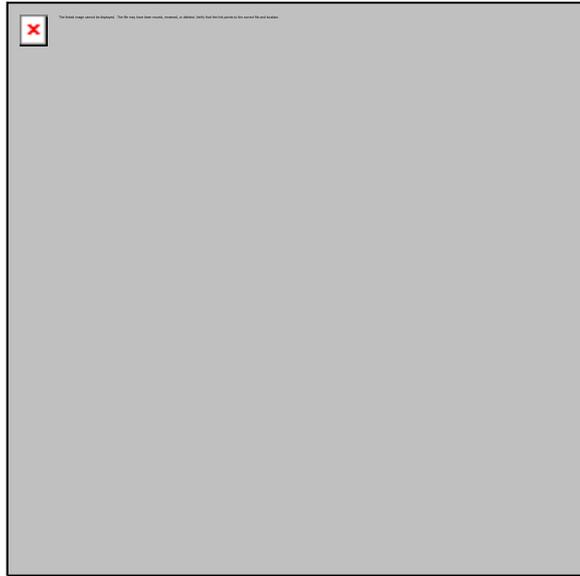
~~All rail-connected ports~~

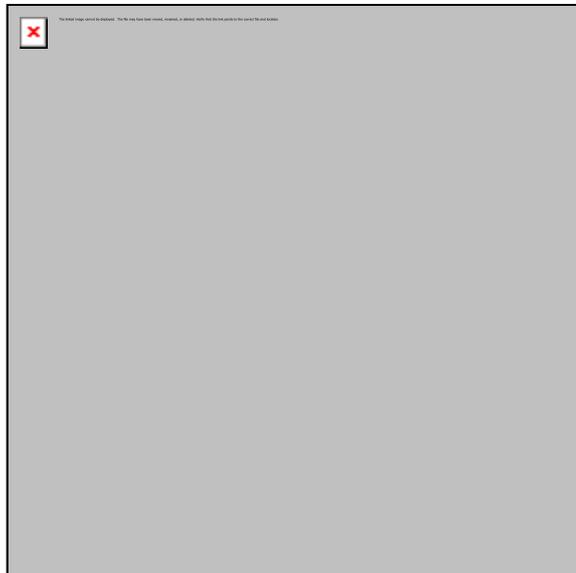
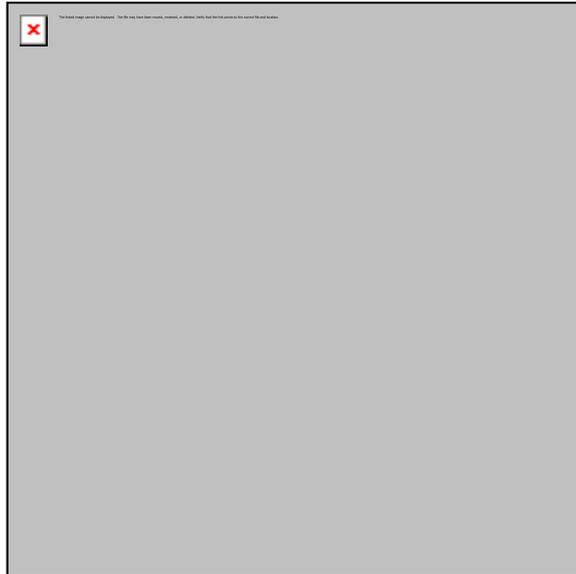


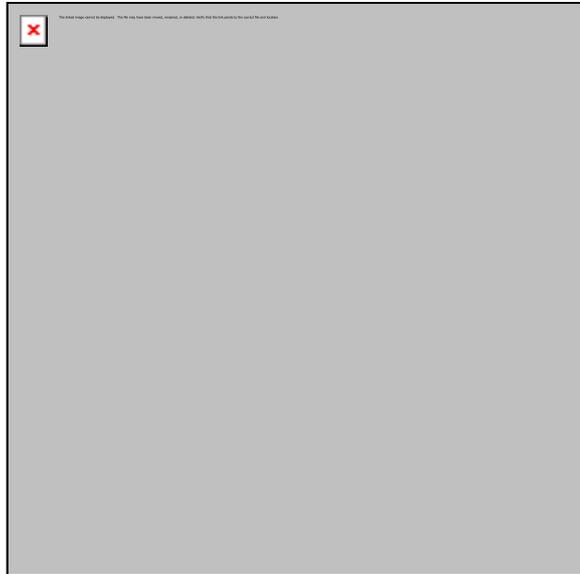
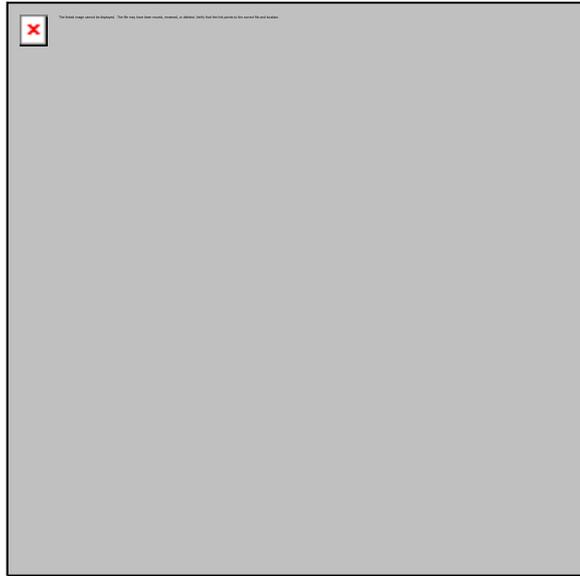


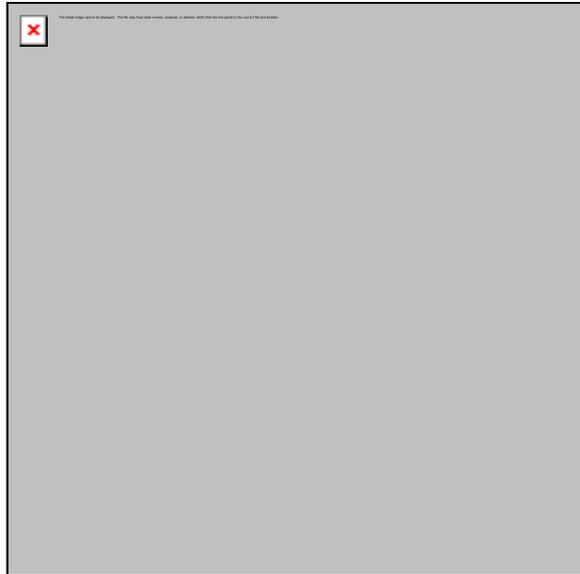
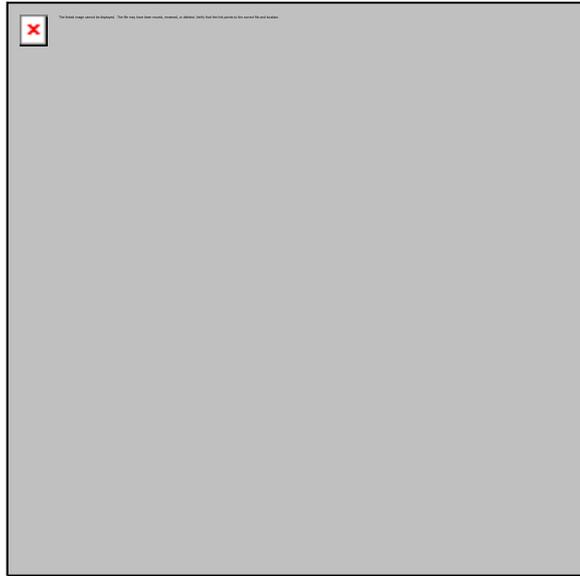


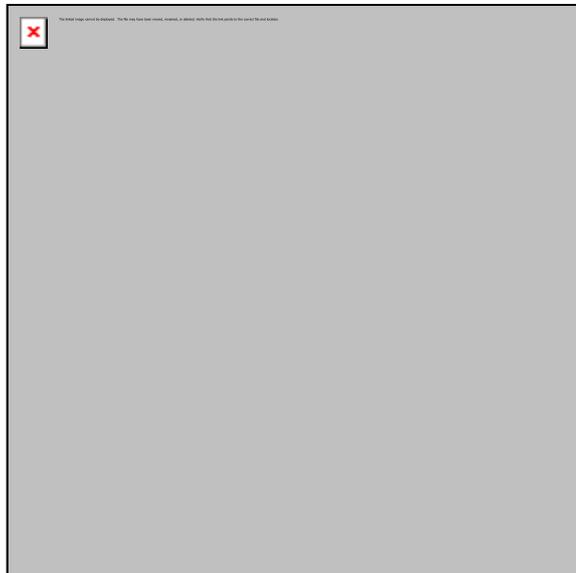
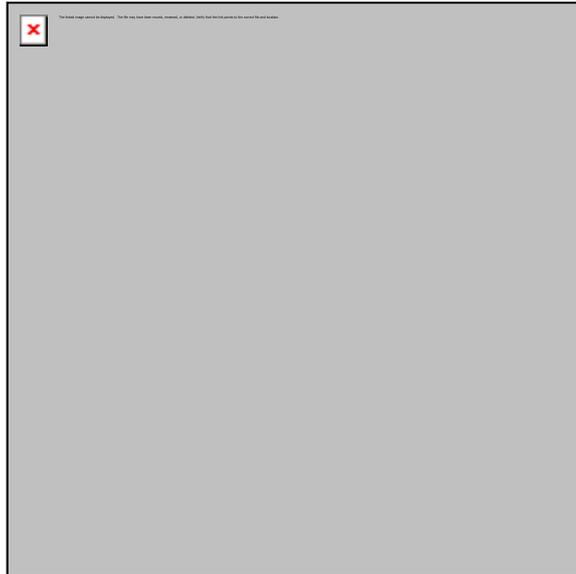


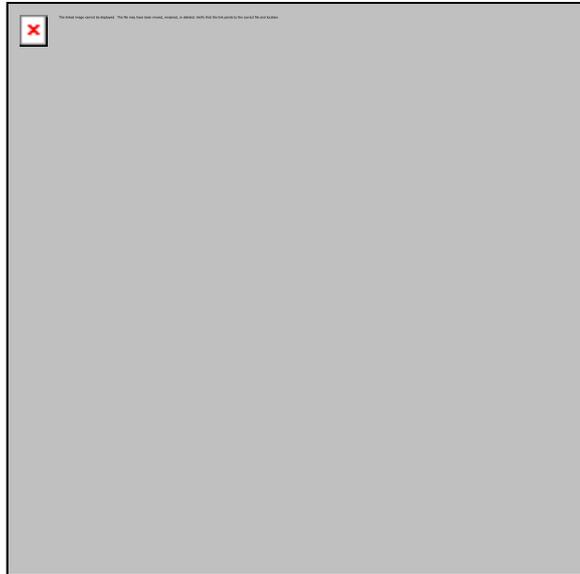
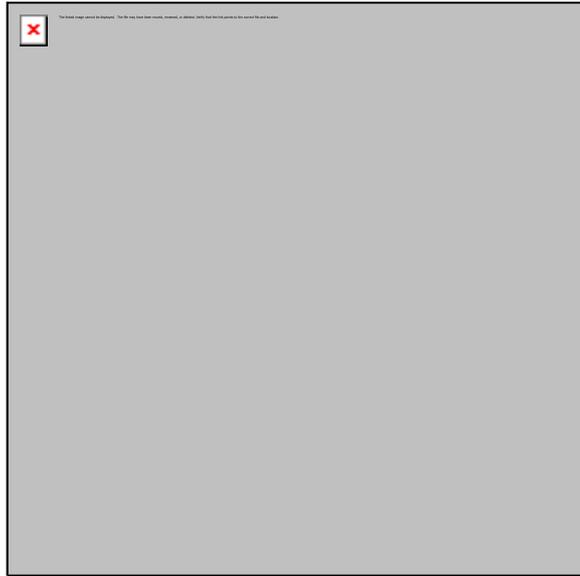


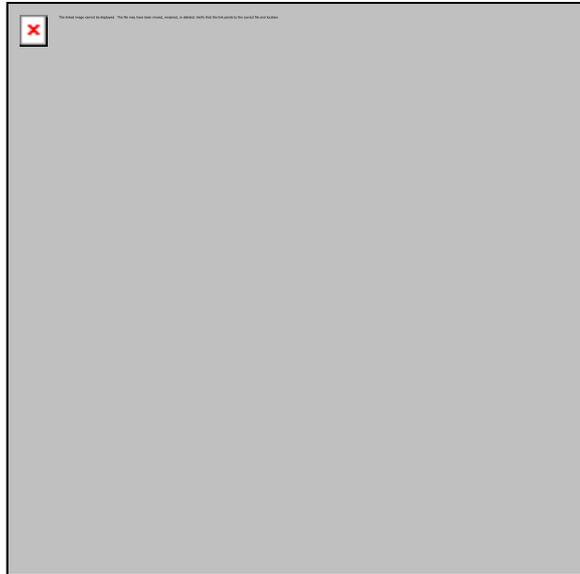
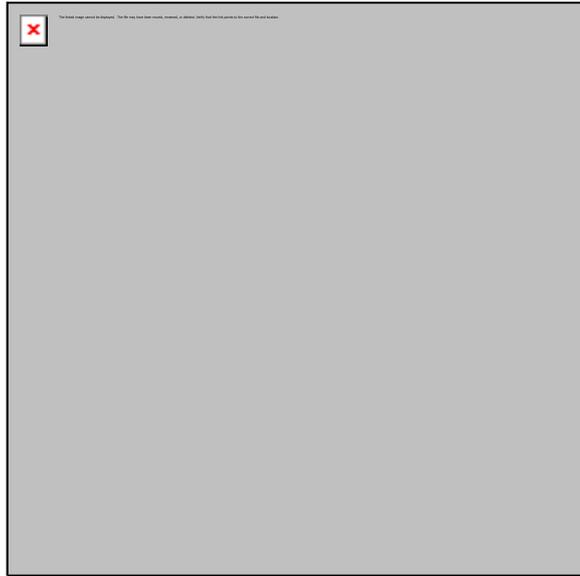


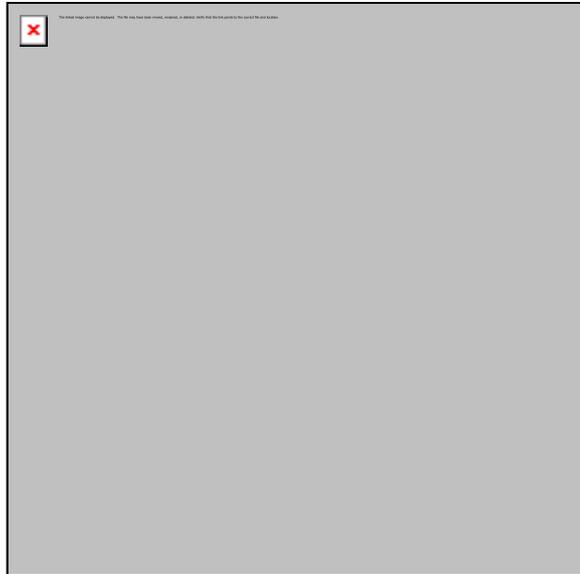
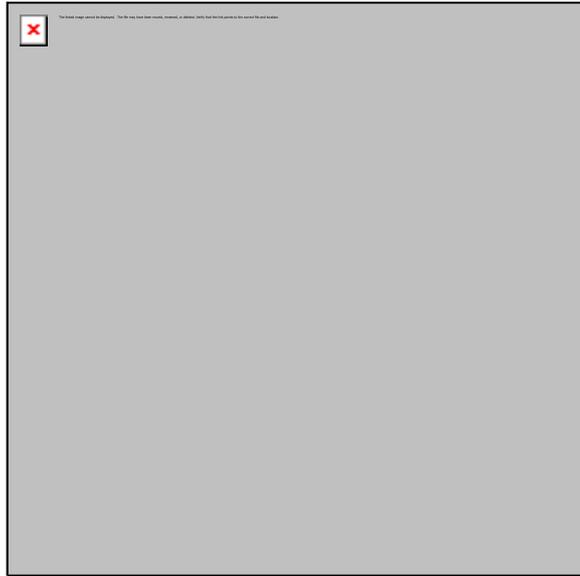












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↓ new

↻ Council

## **ANNEX I**

### **List of railway 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 ↻, including in passenger stations and freight terminals ↻; 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 ➔, including a proportion of installations for the collection of transport charges Ⓢ.
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↓ 2001/12/EC Art. 1.7 (adapted)

↻ Council

↻ [...] ↻

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↓ 2001/14/EC (adapted)

**ANNEX III**

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

⊗ (referred to in Article 13) ⊗

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↓ 2001/14/EC

1. The minimum access package shall comprise:

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↓ 2001/14/EC (adapted)

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

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↓ 2001/14/EC

↻ Council

(b) the right to utilise capacity which is granted;

(c) use of ↻ the railway infrastructure, including ↻ running track points and junctions;

(d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;

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↓ new

↻ Council

(e) use of electrical supply equipment for traction current, where available;

↻ [...] ↻

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↓ 2001/14/EC

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

---

↓ 2001/14/EC

⇒ new

↻ Council

2. Access ↻, including track access, ↻ ⇒ shall ↻ [...] ↻ be given ⇐ to ↻ the following ↻ services facilities and ↻ to ↻ the ↻ [...] ↻ services ↻ [...] ↻ ↻ supplied ↻ ⇒ in ↻ these ↻ ↻ [...] ↻ facilities ↻ [...] ↻ ⇐ ~~shall comprise~~.

↓ 2001/14/EC

⇒ new

⇒ Council

~~a) use of electrical supply equipment for traction current, where available;~~

~~b) refuelling facilities;~~

(a) passenger stations, their buildings and other facilities ⇒ , including ⇒ travel information ⇒ [...] ⇄ display and location for ⇄ ticketing ⇒ [...] ⇄ services ⇄<sup>55</sup>⇄;

(b) freight terminals;

(c) marshalling yards ⇒ and train formation facilities, including shunting facilities ⇄;

⇒ [...] ⇄

(e) storage sidings;

(f) maintenance ⇒ facilities, with the exception of heavy maintenance services supplied in maintenance facilities exclusively dedicated to specific types of rolling stock for passenger services ⇄ ⇒ [...] ⇄ and other technical facilities ⇒ including cleaning and washing facilities ⇄;<sup>56</sup>

<sup>55</sup> LU has a reservation on point (a). UK suggests the following revised text:  
"(a) passenger stations, their buildings and other facilities , including travel information ~~display and location for ticketing [...] services~~ **those which are used to comply with obligations contained in Regulation EC No 1371/2007**".

<sup>56</sup> FR wishes to generally exclude heavy maintenance.

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↓ new

↻ Council

(g) ↻ maritime and inland ↻ port facilities which are linked to rail activities;

(h) relief facilities ↻ [...] ↻;

↻ (i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately. ↻

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↓ 2001/14/EC

⇒ new

↻ Council

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) ticketing services in passenger stations; ➔<sup>57</sup>

- (d) tailor-made contracts for:
- control of transport of dangerous goods,
  - assistance in running abnormal trains;

➔ (e) heavy maintenance services supplied in maintenance facilities exclusively dedicated to specific types of rolling stock for passenger services. ➔<sup>58</sup>

4. Ancillary services may comprise:
- (a) access to telecommunication networks;
  - (b) provision of supplementary information;
  - (c) technical inspection of rolling stock.

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<sup>57</sup> DE and FR wish to delete (c).

<sup>58</sup> DE and FR wish to delete (e).

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☞ [...] ☞

↓ new

☞ Council

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↓ 95/18/EC (adapted)

→ Council

**ANNEX V**

**⊗ Financial fitness ⊗**

⊗ (referred to in Article 20) ⊗

1. **→ [...] ←** **→ The information to be provided by applicant railway undertakings in accordance with Article 20 covers ←** **→ [...] ←** the following aspects:

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↓ 95/18/EC

→ Council

- (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;

**→ [...] ←**

**→ (f) taxes and social security contributions. ←**

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↓ 2001/14/EC (adapted)

**ANNEX VI**

**Contents of the network statement<sup>59</sup>**

⊗ (referred to in Article 27) ⊗

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↓ 2001/14/EC

⇒ new

↻ Council

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 made consistent ↻ , on an annual basis, ↻ with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC. ⇐

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<sup>59</sup> ES has a reservation on Annex VI.

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↓ 2001/14/EC Annex I

⇒ new

⇒ Council

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 ⇒, if available ⇐.
- 

↓ 2001/14/EC

⇒ new

⇒ Council

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 ⇌ [...] ⇌ and the procedures for scheduling planned and unforeseen maintenance work. ⇌ ⇌;
  - (d) the principles governing the coordination process ⇒ and the dispute resolution system made available as part of this process ⇌;<sup>60</sup>
  - (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. ⇌

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<sup>60</sup> PL considers d) and f) as being essential elements.

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↓ new

☞ Council

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>61</sup> ☞ or indicating a web ☞ [...] ☞ site where such information is made available free of charge in electronic format. ☞
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 ☞ or shall indicate a web ☞ [...] ☞ site where such information is made available free of charge in electronic format. ☞
7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.
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<sup>61</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 and<sup>62</sup> include at least the following elements:

1. the scope of the agreement as regards infrastructure and service facilities, structured according to Annex III. It shall cover all aspects of infrastructure **management**, including maintenance and renewal of the infrastructure already in operation;
2. the structure of payments or funds allocated to the infrastructure services listed in Annex III, to maintenance and to dealing with existing maintenance backlogs;
3. user-oriented performance targets, in the form of indicators and quality criteria covering:
  - (a) train performance, such as in terms of line speed and reliability, and customer satisfaction,
  - (b) network capacity,
  - (c) asset management,
  - (d) activity volumes,
  - (e) safety levels, and
  - (f) environmental protection;

---

<sup>62</sup> AT, LT and DE wish to add: "may".

4. the amount of possible maintenance backlog ➡ [...] and the assets which will be phased out of use and therefore trigger different financial flows;
5. the incentives ➡ [...] ➡ referred to in Article 30(1), ➡ with the exception of those incentives implemented through regulatory decisions in accordance with Article 30(2a) ➡ [...];
6. minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;  
  
➡ [...];
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, ➡ where appropriate, and the charging framework and rules set by the State;
9. rules for dealing with major disruptions of operations and emergency situations, including ➡ contingency plans ➡ [...] 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, ➡ or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination ➡ [...];

## ANNEX VIII

### Requirements for costs and charges related to railway infrastructure <sup>63</sup>

(referred to in Articles 32(1) and 35)

3. The pairs to be considered by infrastructure managers when they define a list of market segments with a view to introducing mark-ups in the charging system according to Article 32(1) <sup>64</sup> include at least the following ones:

- (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.

---

<sup>63</sup> EE and PT have a reservation on Annex VIII.

<sup>64</sup> DE and LT wish to add: "*may*".

4.<sup>65</sup> 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 ~~...~~ **performance** and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants ~~...~~ 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 ~~...~~. The infrastructure manager may apply a shorter notice period in case of force majeure or late alterations of the timetable;
- (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

---

<sup>65</sup> SE wishes to delete point 4 and, instead, give the Commission the right to adopt implementing acts.

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 56, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. This dispute resolution system shall be impartial towards the parties involved. 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 performance achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.

➤ [...] ◀

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↓ 2001/14/EC (adapted)

**ANNEX IX**

**Schedule for the allocation process**

⊗ (referred to in Article 43) ⊗

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↓ 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.

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↓ new

↻ Council

## **ANNEX X**

↻ [...] ↻ **Accounting information** ↻ **to be supplied to the regulatory body** ↻ **upon request** ↻ <sup>66</sup>

(referred to in Article 56(8))

↻ [...] ↻

### **1. Account separation**

↻ [...] ↻

- (a) ↻ [...] ↻ separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;
- (b) ↻ [...] ↻ 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) ↻ [...] ↻ 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;

↻ [...] ↻

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<sup>66</sup> DE, DK and ES have a reservation on Annex X.

(e) ➡ [...] Ⓞ methodology used to allocate costs between different activities.

➡ (f) Ⓞ where the regulated firm is part of a group structure, ➡ [...] Ⓞ full details of inter-company payments ➡ [...] Ⓞ.

## 2. Monitoring of track access charges

➡ [...] Ⓞ

(a) ➡ [...] Ⓞ 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) ➡ [...] Ⓞ 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) ➡ [...] Ⓞ 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

➡ [...] Ⓞ

- (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.

☞ [...] ☞

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## 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 11(4)
Article 10(3c) and (3e)		Article 11(5) and (6)
Article 10(3f)		Article 12
	Article 5	Article 13
		Article 14

Article 10b

Article 3

Article 4(1) to (4)

Article 5

Article 6

Article 7

Article 8

Article 9

Article 4(5)

Article 10

Article 11

Article 15

Article 15

Article 16

Article 17(1) to (4)

Article 18

Article 19

Article 20

Article 21

Article 22

Article 23(1)

Article 23(2) and (3)

Article 24

Article 25

Article 26

Article 27

Article 28

Article 29

Article 30

Article 1(1)  
subparagraph 2

Article 3

Article 4(1) and  
(3) to (6)

Article 6(2) to (5)

Article 10(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