4. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to arrange for its publication in the *Official Journal of the European Union*;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Single European railway area ***I

P7_TA(2011)0503

European Parliament legislative resolution of 16 November 2011 on the proposal for a directive of the European Parliament and of the Council establishing a single European railway area (recast) (COM(2010)0475 – C7-0268/2010 – 2010/0253(COD))

(2013/C 153 E/41)

(Ordinary legislative procedure – recast)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0475),

— having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0268/2010),

— having regard to Article 14 of the Treaty on the Functioning of the European Union and Protocol No 26 thereto on Services of General Interest,

— having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

— having regard to its resolution of 17 June 2010 on the implementation of the first railway package Directives ([1]),

— having regard to the reasoned opinion submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Chambre des Députés of Luxembourg, asserting that the draft legislative act does not comply with the principle of subsidiarity,

— having regard to the opinion of the European Economic and Social Committee of 16 March 2011 ([2]),

— having regard to the opinion of the Committee of the Regions of 28 January 2011 ([3]),

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ([4]),

— having regard to the letter of 26 May 2011 from the Committee on Legal Affairs to the Committee on Transport and Tourism in accordance with Rule 87(3) of its Rules of Procedure,

— having regard to Rules 87 and 55 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A7-0367/2011),

([1]) OJ C 236 E, 12.8.2011, p. 125.
([2]) OJ C 132, 3.5.2011, p. 99.
([3]) OJ C 104, 2.4.2011, p. 53.
([4]) OJ C 77, 28.3.2002, p. 1.

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2010)0253

Position of the European Parliament adopted at first reading on 16 November 2011 with a view to the adoption of Directive 2011/…/EU of the European Parliament and of the Council establishing a single European railway area (recast)

(Text with EEA relevance)

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 [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways [3], Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings [4] 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 [5] 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.

[1] OJ C 132, 3.5.2011, p. 99.
[2] OJ C 104, 2.4.2011, p. 53.
[3] OJ L 237, 24.8.1991, p. 25.
[4] OJ L 143, 27.6.1995, p. 70.
[5] OJ L 75, 15.3.2001, p. 29.

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(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.

(2a) The railway sector's share in transport has not been increasing over the last decade, contrary to the objectives of the 2001 railway package ("the first railway package", namely Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways [1]***, Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings*** [2] ***and Directive 2001/14/EC), demonstrating the need to further improve current legislation in order to support the sector. It follows that the current reorganisation is essential.*** **[Am. 1]**

(2b) The numerous infringement procedures against Member States demonstrate that the current legislation gives rise to differences of interpretation and that the first railway package needs to be clarified and improved in order to ensure a genuine opening up of the European rail market. **[Am. 2]**

(2c) Investment in the development and upkeep of railway infrastructure remains insufficient to guarantee the sector's development and capacity to compete. **[Am. 3]**

(2d) The Directives which comprise the first railway package have not prevented a considerable variation in the structure and level of railway infrastructure charges and the form and duration of capacity allocation processes. **[Am. 4]**

(2e) Non-transparent market conditions are an obvious obstacle to competitive railway services. **[Am. 5]**

(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.

(3a) The coexistence in the Member States of different social security schemes in the railway sector poses a risk of unfair competition between new railway operators and incumbent undertakings, and requires harmonisation while respecting the specific characteristics of the sector and of the Member States. **[Am. 6]**

(3b) Guarantees must be provided that the regulatory bodies will carry out their supervisory duties, in order to ensure non-discrimination between railway undertakings, the implementation of suitable charging policies and compliance with the principle of the separation of accounts. **[Am. 7]**

(3c) In order to complete the European railway area, complete interoperability of the rail system at European level is necessary. The European Railway Agency should be assigned the appropriate powers and resources to attain this objective more quickly, inter alia as regards the development of common standards for certification of rolling stock and safety and signalling systems. **[Am. 8]**

(4) Regional, urban and suburban services as well as transport activities in the form of shuttle services through the Channel Tunnel should be excluded from the scope of this Directive. ***Heritage and museum railways running on their own track should also be exempt from the scope of the Directive.*** **[Am. 9]**

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[1] OJ L 75, 15.3.2001, p. 1.
[2] OJ L 75, 15.3.2001, p. 26.

(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.

(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***, guaranteeing transparency which ensures that no public funds are diverted to other commercial activities***. **[Am. 10]**

(6a) The strict separation of accounts between infrastructure manager and railway undertaking must be ensured. Public funds allocated to one of these fields of activity should not be transferred to another field of activity. This prohibition should be clearly displayed in the accounting rules of each field of activity. The Member State and the national regulatory body should ensure the effective application of this prohibition. **[Am. 11]**

(6b) Whatever the type of undertaking, all rail operators must respect legislation on social protection and health so as to avoid the practice of social dumping and unfair competition. **[Am. 12]**

(6c) In order to enable rail transport to compete with road transport, the differing sets of national rules, such as those on rail transport safety, on the use of accompanying documents, on the marshalling of trains and the relevant documentation related thereto, on the signals and marks used to guide trains, on the measures and checks implemented in connection with shipments of hazardous goods and on uniform procedures for registering and monitoring shipments of waste, should be standardised. **[Am. 13]**

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

(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.

(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.

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

(10a) The Union should explore alternative sources of funding European rail projects through innovative financial instruments, such as Union project bonds, to encourage private investment and to improve access to venture capital. By the same token, the railway market must be made attractive to alternative, private investors via clear, transparent legal frameworks. **[Am. 14]**

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(10b) Member States and infrastructure managers should be able to fund infrastructure investment through means other than direct State funding such as private sector financing. **[Am. 15]**

(11) An efficient ***passenger and*** freight sector, especially across borders ***and in particular in instances where different track gauges still constitute a physical barrier to competition***, requires ***urgent*** action to open up the ~~market~~ ***markets in the individual Member States and generate competition***. **[Am. 16]**

(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.

(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 compared to existing operators.

(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~~ ***focus*** on stops that are ancillary to the international route. The principal purpose of ~~the new~~ ***such*** 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. **[Am. 17]**

(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 [1] 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.

(15a) Regulation (EC) No 1370/2007 allows Member States to ensure that workers' employment rights are maintained in the context of the separation of the provision of transport services from the management of the infrastructure, which could involve a transfer of an undertaking. **[Am. 18]**

(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 ***and where applicable the network of regulatory bodies as set out in Article 57,*** of this Directive on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract. **[Am. 19]**

[1] OJ L 315, 3.12.2007, p. 1.

(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.

(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.

(18a) Market developments have shown that a crucial concern is to strengthen the role of the regulatory bodies. If they are to play a key role in ensuring a fair environment with equitable access conditions, they need to receive the financial means as well as appropriate staffing and logistic equipment to fulfil this role. **[Am. 20]**

(18b) The national regulatory body must be an independent regulatory authority with the power to take up matters on its own initiative and to undertake investigations, and capable of issuing opinions and enforceable decisions with a view to ensuring an open market without barriers in which competition is exercised freely and without distortion. **[Am. 21]**

(19) The national 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***, without prejudice to the option of this body being funded from the national budget or from levies on the rail sector and to the publication of the relevant information***. 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. **[Am. 22]**

(19a) The national regulatory body should be fully independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. The national regulatory body has to have the necessary administrative capacity in terms of staff and resources to ensure that the railway market is open and transparent. The required level of staff should be directly linked to the market needs and vary accordingly. It should be required to take a decision on any complaints, act on its own initiative, investigate in cases of dispute and monitor the development of the market. It should be supported by a regulatory department of the Commission. Furthermore the national regulatory body should maintain a database of their draft decisions accessible to the Commission. **[Am. 23]**

(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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(21) The national regulatory bodies should***, under the auspices of the Commission, create a network to strengthen their cooperation through the development of common principles and the*** exchange ***of best practices and*** information ~~and~~***. They should also***, 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 ***at European level common*** guidelines based on their experience. ***Based on the experience of that network of regulatory bodies the Commission should come forward with a legislative proposal for the setting up of a European regulatory body.*** **[Ams 24 and 25]**

(22) In order to ensure fair competition between railway undertakings, ~~a distinction should be made between~~ the provision of transport services and the operation of service facilities~~. Given this situation, it is necessary for these two types of activity to~~ ***should*** be managed ~~independently in distinct legal entities. Such independence need not imply the establishment of separate~~ ***in a transparent and non-discriminatory manner by the regulatory*** body ~~or firm for each service facility~~ ***in accordance with the procedures laid down in this Directive.*** **[Am. 26]**

(22a) Improved access to travel information and ticketing services in passenger stations should complement other regulatory initiatives aiming to facilitate the creation and development of telematic applications for passengers. **[Am. 138]**

(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***, social standards*** and professional competence. **[Am. 27]**

(24) For the protection of customers and third parties concerned it is ~~important~~ ***essential*** 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 State aid and does not contain elements of discrimination against other railway undertakings.*** **[Am. 28]**

(25) ~~A~~ ***All*** railway ~~undertaking~~ ***undertakings*** should also be required to comply with ***both*** national and Union rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that ~~it~~ ***they*** can carry on ~~its activity~~ ***their activities*** in complete safety and with ~~due~~ ***full*** regard to ~~health,~~ ***existing obligations in relation to*** social conditions***, health*** and the rights of workers and consumers on ~~specific~~ ***all*** stretches of track. **[Ams 29 and 30]**

(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.

(26a) It is still the case that, too often, the granting of licences for railway undertakings' rolling stock is unjustifiably impeded, which distorts market access. A strong remit for the European Railway Agency in this respect is therefore appropriate. The Commission is therefore called upon, as part of the review of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ([1]), to investigate whether the European Railway Agency's remit can be expanded in this regard. **[Am. 31]**

([1]) OJ L 164, 30.4.2004, p. 1.

(27) To ensure transparency and non-discriminatory access to rail infrastructure and rail-related services for all railway undertakings, all the information required to use access rights is to be published in a network statement***, including formats which are accessible for people with disabilities or reduced mobility***. **[Am. 32]**

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

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

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

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

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

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

(35) Any charging scheme will send economic signals to users. It is important that those signals to railway undertakings should be consistent and ***clear, and*** lead them to make rational ***and sustainable*** decisions. **[Am. 33]**

(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.

(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.

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

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

(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.

(40a) Applicants offering single-wagon-load services need to be encouraged in order to enlarge the potential market for new rail clients. It is therefore important that these applicants are being taken into account by the infrastructure manager when allocating capacity in order to allow them to fully benefit from this legal framework and enlarge the rail market share for new sectors. **[Am. 34]**

(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.

(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.

(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.

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

(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.

(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.

(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.

(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.

(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.

(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. ***In that context, it would appear desirable ultimately to create a European regulatory body.*** **[Am. 35]**

(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.

(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.

(53) ~~Investment~~ ***Increased investment*** in railway infrastructure ***– in particular existing infrastructure –*** is necessary and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive ***and environmentally sustainable***. **[Am. 36]**

(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.

(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.

(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.

(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.

(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.

(58a) With the aim of increasing the proportion of goods and passenger traffic carried by rail in relation to other modes of transport, it is desirable that, when internalising external costs, Member States should ensure that the differentiated levies do not have any adverse impact on the financial equilibrium of the infrastructure manager. If the infrastructure manager were nonetheless to suffer a loss due to this differentiation, it is advisable that Member States should adjust this difference, with due regard to the rules on State aid. **[Am. 37]**

(59) ~~The development of railway transport should be achieved by using *inter alia* the Union instruments available, without prejudice to priorities already established.~~ **[Am. 38]**

(60) Discounts which are granted 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.

(61) ~~It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network.~~ **[Am. 39]**

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(62) ~~The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required.~~ **[Am. 40]**

(63) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of ~~a~~ ***national*** regulatory ~~body~~ ***bodies*** that ~~oversees~~ ***oversee*** the application of the rules set out in this Directive and ~~acts~~ ***act*** as an appeal body, notwithstanding the possibility of judicial review. **[Am. 41]**

(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.

(65) ~~The Commission should be empowered to adapt the Annexes to this Directive. Since those measures are of general scope and are designed to amend non essential elements of this Directive, they must be adopted as delegated acts in accordance with Article 290 of the Treaty.~~ ***In order to ensure proper monitoring of the rail market and good regulation with regard to the levying of charges for the use of railway infrastructure and allocation of railway infrastructure capacity, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the criteria and procedure to be followed as the scope of market monitoring, certain elements of the network statement, certain principles of charging, the temporary reduction for European Train Control System (ETCS), certain elements of the performance scheme, the criteria to be followed for the requirements with regard to applicants for infrastructure, the schedule for the allocation process, the regulatory accounts and common principles and practices for making decisions developed by regulatory bodies. 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 to the Council.*** **[Am. 42]**

(66) ~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).~~ ***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*** (2)**. [Am. 43]**

(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.

~~(1) OJ L 184, 17.7.1999, p. 23.~~
(2) *OJ L 55, 28.2.2011, p. 13.*

(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.

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

(70) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], 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.

(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.

(71a) Further to the resolutions of the European Parliament of 12 July 2007 [2]***and 17 June 2010*** [3]***on the implementation of the first railway package and further to the implementation of Directive 2001/12/EC, the Commission should present a legislative proposal on the separation of the infrastructure manager and the operator by the end of 2012. As the railway sector is not fully opened until now, the Commission should present a legislative proposal on the opening up of the market by that date,*** **[Am. 44]**

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

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;

(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;

(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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[1] OJ C 321, 31.12.2003, p. 1.
[2] OJ C 175 E, 10.7.2008, p. 551.
[3] OJ C 236 E, 12.8.2011, p. 125.

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Article 2

Exclusions from the scope

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

2. Member States may exclude the following from the application of Chapter III:

(a) railway undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;

(b) railway undertakings which only operate urban or suburban rail passenger services;

(c) railway undertakings which only operate regional rail freight services;

(d) railway 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.

2a. Member States may exclude the following from the application of Articles 6, 7, 8 and 13 and Chapter IV:

— ***railway undertakings which only operate rail-freight services on railway infrastructure managed by these undertakings before …*** (*)***, and which has a gauge different from the main rail network within the Member State, and is connected to a railway infrastructure on the territory of a third country - as long as the managed infrastructure is not identified in Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network*** [1]**. [Ams 134 and 135]**

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

(a) local and regional stand-alone networks for passenger services on railway infrastructure;

(b) networks intended only for the operation of urban or suburban rail passenger services;

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

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

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

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 from third countries on a network whose track gauge is different from the main rail network within the Union. **[Am. 45]**

(*) Date of entry into force of this Directive.
([1]) OJ L 204, 5.8.2010, p. 1.

3a. 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. **[Am. 46]**

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

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

Article 3

Definitions

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

(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***, in compliance with applicable safety rules***; the ***essential*** functions of the infrastructure manager ***are: the decision making*** on ~~a network or part of a network may be allocated to different bodies or firms~~ ***train path allocation, including both the definition and the assessment*** of ***availability and the allocation of individual train paths and the decision making on infrastructure charging, including determination and collection of the charges, and investments in infrastructure***; **[Am. 47]**

(2a) 'regulatory body' means a body which supervises the correct application of the relevant regulations in a Member State, is not in any way involved in policy making, and is completely separate from firms, particularly the firms referred to in points 1 and 2; **[Am. 48]**

(3) 'railway infrastructure' means all the items listed in ~~Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70 of 4 June 1970 (*)which for reasons of clarity are included in~~ Annex I to this Directive; **[Am. 49]**

(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;

(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;

~~(*) OJ L 278, 23.12.1970, p. 1.~~

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(6) 'urban and suburban services' means transport services operated to meet the transport needs of an urban centre or conurbation, together with transport needs between such a centre or conurbation and surrounding areas;

(7) 'regional services' means transport services operated to meet the transport needs of ~~a~~ ***one*** region ***or of border regions***; **[Am. 50]**

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

(9) 'licence' means an authorisation issued by a Member State to an undertaking, by which its capacity to provide rail transport services is recognised; that capacity may be limited to the provision of specific types of services;

(10) 'licensing authority' means the body responsible for granting licences within a Member State;

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

(12) 'applicant' means a railway undertaking and other persons or legal entities, such as competent authorities under Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;

(13) 'congested infrastructure' means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;

(14) 'capacity enhancement plan' means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of infrastructure as 'congested infrastructure';

(15) 'coordination' means the process through which the infrastructure manager and applicants will attempt to resolve situations in which there are competing applications for infrastructure capacity;

(16) 'framework agreement' means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;

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

(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;

(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.

CHAPTER II

DEVELOPMENT OF THE UNION RAILWAYS

SECTION 1

Management independence

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.

2a. The infrastructure manager shall manage its own IT services, to ensure that commercially sensitive information is adequately protected. **[Am. 51]**

2b. Member States shall also ensure that both railway undertakings and infrastructure managers which are not completely independent of one another are responsible for their own staff policies. **[Am. 52]**

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 (PSOs) 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; they must also indicate the means of attaining 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:

(a) establish their internal organisation, without prejudice to the provisions of Articles 7, 29 and 39;

(b) control the supply and marketing of services and fix the pricing thereof, without prejudice to Regulation (EC) No 1370/2007;

(c) take decisions on staff, assets and own procurement;

(d) expand their market share, develop new technologies and new services and adopt any innovative management techniques;

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

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

SECTION 2

Separation of infrastructure management and transport operations and of different types of transport operations

Article 6

Transparent 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 ***in order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector***.

3. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services. Public funds paid for activities relating to the provision of transport services as public-service remits must be shown separately for each public service contract in the relevant accounts and shall not be transferred to activities relating to the provision of other transport services or any other business.

4. ***In order to ensure full transparency of infrastructure costs,*** the accounts for the different areas of activity referred to in paragraphs 1 and 3 shall be kept in a way that allows monitoring of ~~the prohibition on transferring public funds paid to one area of activity to another~~ ***compliance with those paragraphs and monitoring of the use of income from infrastructure charges, surpluses from other commercial activities of and public and private funding paid to the infrastructure manager. The revenues of the infrastructure manager shall in no way be used by a railway undertaking or a body or firm controlling a railway undertaking as this may strengthen its market position or enable it to gain economic advantages over other railway undertakings. This paragraph shall not prevent, under the supervision of the regulatory body as referred to in Article 55, reimbursement, including interest payment under market conditions, of the capital employed made available by the body or firm controlling the railway undertaking to the infrastructure manager***. **[Am. 53]**

Article 7

Independence of essential functions of an infrastructure manager

1. Member States shall ensure that the functions determining equitable and non-discriminatory access to infrastructure~~, listed in Annex II,~~ ***as defined by Article 3(3)*** are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structure, this objective must be shown to have been achieved. ***However, in managing the traffic on the network, effective cooperation between railway undertakings and infrastructure managers is essential.***

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

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

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions described in Sections 3 and 4 of Chapter IV shall be performed respectively by a charging body and by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking.

3. When the provisions of Sections 2 and 3 of Chapter IV 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.

3a. The Commission shall no later than 31 December 2012 present a proposal for a Directive containing provisions relating to the separation of infrastructure management and transport operations as well as a proposal for opening up the domestic rail passenger market which does not detract from the quality of rail transport services and safeguards PSOs. **[Ams 54 and 137]**

SECTION 3

Improvement of the financial situation

Article 8

Sound financing of the infrastructure manager

1. Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union. For this purpose, they shall publish not later than … (*) ***and after consultation of interested parties and stakeholders, including local and regional authorities concerned, trade unions, sectoral unions and users' representatives,*** a rail infrastructure development strategy with a view to meeting future mobility needs based on sound and sustainable financing of the railway system. The strategy shall cover a period of at least ~~five~~ ***seven*** years and be renewable.

2. ***Whenever revenues are not sufficient to cover the financing needs of the infrastructure manager, without prejudice to the charging framework of Articles 31 and 32 of this Directive, and*** having due regard to Articles 93, 107 and 108 TFEU, Member States ~~may~~ ***shall*** also provide the infrastructure manager with financing commensurate with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments.

(*) Two years after the entry into force of this Directive.

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

4. Member States shall ensure that, under normal business conditions ~~and over a period of no more than three years,~~ the accounts of ~~an~~ ***the*** infrastructure manager shall ***over a period of no more than two years*** at least balance income from infrastructure charges, surpluses from other commercial activities, ***non refundable grants from private sources*** and State funding***, including advance payments from the State where appropriate,*** on the one hand, and infrastructure expenditure on the other, including ~~advance payments from the State~~ ***sustainable financing of long-term asset renewals***, where appropriate. **[Am. 55]**

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 its accounts without State funding.

Article 9

Transparent debt relief

1. Without prejudice to the Union rules on State aids and in accordance with Articles 93, 107 and 108 TFEU, Member States shall set up appropriate mechanisms to help reduce the indebtedness of publicly owned or controlled railway undertakings to a level which does not impede sound financial management and to improve their financial situation.

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

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

3. Paragraphs 1 and 2 shall not apply to debts or interest due on such debts incurred by undertakings after **…** (*) ~~15 March 2001 or the date of accession to the Union for Member States which joined the Union after 15 March~~. **[Am. 56]**

SECTION 4

Access to railway infrastructure and services

Article 10

Conditions of access to railway infrastructure

1. Railway undertakings within the scope of this Directive shall be granted, on equitable, non-discriminatory and transparent conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services. This shall include track access to ports.

(*) Date of entry into force of this Directive.

2. Railway undertakings within the scope of this Directive shall be granted the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

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.

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.

In no event must the conditions of access to railway infrastructure result in it being impossible for passengers to obtain information on, or to purchase a ticket for, travel from one location to another, regardless of the number of railway transport operators providing, in whole or in part, passenger transport services between those two locations. **[Am. 57]**

The Commission ~~may~~ ***shall*** adopt***, on the basis of the experience gained by the regulatory bodies, by …*** (*) implementing measures setting out the details of the procedure and criteria to be followed for the application of this paragraph. Those measures, designed to ensure the implementation of this Directive under uniform conditions, shall be adopted as implementing acts in accordance with ***the examination procedure referred to in*** Article 64(3). **[Am. 58]**

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 law 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.

(*) 18 months after the entry into force of this Directive.

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~~ ***one month from the*** receipt of ~~all relevant information~~ ***the request referrred to in paragraph 2***. **[Am. 59]**

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,

(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.

4. The Commission ~~may~~ ***shall*** adopt***, on the basis of the experience gained by the regulatory bodies, by …*** (*)implementing measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with ***the examination procedure referred to in*** Article 64(3). **[Am. 60]**

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.

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

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.

2. The levy is intended to compensate the authority for PSOs laid down in public service contracts awarded in accordance 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 PSOs taking into account the relevant receipts and a reasonable profit for discharging those PSOs.

(*) 18 months after the entry into force of this Directive.

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.

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.

The Commission shall prepare a comparative analysis of the methods for the setting of the amounts of the levies in the Member States in order to establish a uniform method of calculation to determine the amount of the levies. **[Am. 61]**

Article 13

Conditions of access to services

1. ***Infrastructure managers shall supply to all*** railway undertakings ~~shall~~, on a non-discriminatory basis, ~~be entitled to~~ the minimum access package laid down in point 1 of Annex III.

2. ~~The services~~ ***Operators of service facilities shall supply to all railway undertakings access, including track access, to the facilities*** referred to in point 2 of Annex III, ~~shall be supplied by all operators of service~~ ***and to the services supplied in these*** facilities in a non-discriminatory manner ***under the supervision of the regulatory body as provided under Article 56***.

Where the operator of ~~the~~ ***a*** service facility ***referred to in point 2 of Annex III*** belongs to a body or firm which is also active and holds a dominant position in at least one of the railway transport services markets for which the facility is used, the operator shall be organised in such a way that it is independent, in ~~legal,~~ organisational and decision-making terms, of this body or firm. ***The operator of a service facility and this body or firm shall have separate accounts, including separate balance sheets and profit and loss accounts.***

Requests by railway undertakings for access to the service facility ***shall be answered within a fixed time limit set by the national regulatory body and*** may only be rejected if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same route under economically acceptable conditions. ~~The burden of proving for the existence of a~~ ***When refusing access to its service facility, the operator of the service facility shall propose an economically and technically*** viable alternative ~~lies with the operator of the service facility~~ ***and justify its refusal in writing. The refusal shall not oblige the operator of the service facility to make investments in resources or facilities in order to accommodate all requests from railway undertakings***.

When the operator of the service facility encounters conflicts between different requests, ~~he~~ ***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 regulatory body referred to in Article 55 shall on its own initiative or on the basis of a complaint ***by an applicant*** take appropriate action***, bearing in mind the needs of all stakeholders concerned,*** to ensure that an appropriate part of the capacity is devoted to railway undertakings other than the ones which are part of the body or firm to which the facility operator ~~also~~ belongs. However newly built maintenance and other technical facilities developed for ~~specific~~ new ***high-speed*** rolling stock***, referred to in Commission Decision 2008/232/EC of 21 February 2008 concerning a technical specification for interoperability relating to the rolling stock sub-system of the trans-European high-speed rail system*** ***([1])***, may be reserved to the use of one railway undertaking for a period of ~~five~~ ***ten*** years from the start of their operation.

([1]) OJ L 84, 26.3.2008, p. 132.

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Where the service facility has not been in use for at least ~~two consecutive years~~ ***one year and interest by railway undertakings for access to this facility has been expressed to the operator of such a facility on the basis of demonstrated needs,*** its owner shall publicise the operation of the facility as being for lease or rent ***for use for activities related to the railway sector unless the operator of such facility demonstrates that an on-going process of reconversion prevents its use by a railway undertaking***.

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

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

~~5. Annex III may be amended in the light of experience in accordance with the procedure referred to in Article 60.~~ **[Ams 62 and 162]**

SECTION 5

Cross-border agreements

Article 14

General principles for cross-border agreements

1. ~~Any provisions contained in cross-border agreements between~~ Member States ~~which discriminate between~~ ***shall ensure that the cross-border agreements they conclude do not discriminate against certain*** railway undertakings~~,~~ or ~~which restrict~~ ***constitute restrictions on*** the freedom of railway undertakings to operate cross-border services~~are hereby superseded~~. **[Am. 63]**

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

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

The Commission may adopt implementing measures ~~setting out the details of the~~ ***specifying the procedural modalities of the cooperation*** procedure ~~to be followed for the application of this paragraph~~ ***referred to in the first subparagraph***. Those ***implementing*** measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with ~~Article 63(3)~~ ***the advisory procedure referred to in Article 64(2)***. **[Am. 64]**

SECTION 6

Monitoring tasks of the Commission

Article 15

Scope of market monitoring

1. TheCommission shall make the necessary arrangements to monitor technical***, social and*** economic conditions and market developments***, including the evolution of employment, as well as compliance with relevant Union law*** on European rail transport.

2. In this context, the Commission shall closely involve representatives of the Member States***, including representatives of the regulatory bodies referred to in Article 55***, and of the sectors concerned in its work, including ***local and regional authorities concerned, the railways sector's social partners and*** 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 also involve the European Railway Agency where appropriate.***

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

4. The Commission shall report ~~on a regular basis~~ ***every two years*** to the European Parliament and the Council on:

(a) the evolution of the internal market in rail services ***and rail-related services including the degree of market opening***;

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

(ba) the development of employment, working and social conditions in the sector;

(c) the state of the European railway network;

(d) the utilisation of access rights;

(e) barriers to more effective rail services;

(f) infrastructure limitations;

(g) the need for legislation.

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

(a) the evolution of rail transport performance and compensation for PSOs;

(b) the degree of market opening and fair competition in each Member State, and the modal share of railway undertakings in total transport performance;

(c) the resources and activities of regulatory bodies dedicated to their function as appeal bodies;

(d) the relevant developments as regards restructuring of the incumbent railway undertaking and adoption/implementation of national transport strategies over the previous year;

(e) the important training initiatives/measures in the field of railway transport taken in a Member State during the previous year;

(f) the employment and the social conditions of railway undertakings, infrastructure managers and of other companies active in the railway sector at the end of the previous year;

(g) the investments in the high-speed rail network during the previous year;

(h) the length of the railway network at the end of the previous year;

(i) the track access charges during the previous year;

(j) the existence of a performance scheme set up in accordance with Article 35 of this Directive;

(k) the number of active licences issued by the competent national authority;

(l) the status of European Rail Traffic Management System (ERTMS) deployment;

(m) the number of incidents, accidents and serious accidents as defined by Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways [1] ***which occurred on the network during the previous year;***

(n) other relevant developments;

(o) the development of the maintenance markets and the degree of opening of the market for maintenance services.

Annex IV may be amended in the light of experience ***in order to update the information needed for the rail market monitoring*** in accordance with the procedure referred to in ~~Article 60~~ ***Article 60a***. **[Am. 65]**

CHAPTER III

LICENSING OF RAILWAY UNDERTAKINGS

SECTION 1

Body responsible for issuing licence

Article 16

Body responsible for railway licensing

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

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

[1] OJ L 164, 30.4.2004, p. 44.

SECTION 2

Conditions for obtaining a licence

Article 17

General requirements

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

2. Member States shall not issue licences or extend their validity where the requirements of this Chapter are not complied with.

3. A railway undertaking which fulfils the requirements imposed under 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.

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

5. The Commission ~~may~~ ***shall*** adopt implementing measures ~~setting out the details of the procedure~~ ***specifying the procedural modalities*** to be followed for the ~~application of this Article including the use~~ ***issuing of licences and setting up*** of a common template for the licence ***in accordance with the requirements set out in Section 2***. Those ***implementing*** measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with ~~Article 63(3)~~ ***the advisory procedure referred to in Article 64(2)***. **[Am. 66]**

Article 18

Conditions for obtaining a licence

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.

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

Article 19

Requirements relating to good repute

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:

(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;

(d) have not been convicted of ~~serious or repeated~~ ***any*** failure to fulfil social or employment law obligations, including obligations under ***safety,*** 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. **[Am. 67]**

Article 20

Requirements relating to financial fitness

1. 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 12 months. ***The licensing authority shall verify financial fitness by means of the railway undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet.*** **[Am. 68]**

2. For these purposes, each applicant shall ~~give at least the~~ ***provide detailed*** particulars ~~listed in Annex V.~~ ***on the following aspects:***

(a) available funds, including the bank balance, pledged overdraft provisions and loans;

(b) funds and assets available as security;

(c) working capital;

(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;

(e) charges on an undertaking's assets;

(f) taxes and social security contributions. **[Am. 69]**

3. The licensing authority shall not consider an applicant financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity. **[Am. 70]**

4. The licensing authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. Those documents must include information concerning the aspects referred to in points (a) to (f) of paragraph 2 of this Article. **[Am. 71]**

~~Annex V may be amended in the light of experience in accordance with the procedure referred to in Article 60.~~ **[Am. 72]**

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. ***The undertaking shall also demonstrate at the time of the application that it holds a safety certificate as defined in Article 10 of Directive 2004/49/EC.*** **[Am. 73]**

Article 22

Requirements relating to civil liability

Without prejudice to Chapter III of Regulation (EC) No 1371/2007 of the European Parliament and of the Council ***of 23 October 2007 on rail passengers' rights and obligations*** [1], a railway undertaking shall be adequately insured***, or have adequate 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 freight, mail and third parties. ***The level of coverage deemed adequate may be differentiated to take into account the specificities of services, in particular for railway operations for cultural or heritage purposes running on the rail network for the general public.*** **[Am. 140]**

SECTION 3

Validity of the licence

Article 23

Spatial and temporal validity

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

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.

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.

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.

[1] OJ L 315, 3.12.2007, p. 14.

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.

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.

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

Article 25

Procedure for granting licences

1. The procedures for granting licences shall be made public by the licensing authority concerned, which shall inform the European Railway Agency thereof.

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

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

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

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.

Article 27

Network statement

1. The infrastructure manager shall, after consultation with the interested parties, including the regulatory body referred to in Article 55, develop and publish a network statement obtainable against payment of a fee which shall not exceed the cost of publication of that statement. The network statement shall be published in at least two official languages of the Union***, one of which shall be English***. The content of the network statement shall be made available free of charge in electronic format through the web portal of the European Railway Agency. **[Am. 75]**

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain ***the following*** information setting out the conditions for access to the relevant railway infrastructure and to service facilities~~. The content of the network statement is laid down in Annex VI.~~:

(a) a section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it;

(b) a section on charging principles and tariffs;

(c) a section on the principles and criteria for capacity allocation. 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;

(d) 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;

(e) 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;

(f) a section on information on access to and charging for service facilities referred to in Annex III;

(g) a model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.

The information in the network statement shall be annually updated and consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community [1]***. Infrastructure that is not appropriately maintained and its quality declining shall be reported in a timely manner to users;***

The information in points (a) to (g) may be amended and specified by the Commission in accordance with Annex VI in the light of experience following the procedure referred to in Article 60a. **[Am. 76]**

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

[1] ***OJ L 191, 18.7.2008, p. 1.***

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

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 accordance with the provisions of this Directive.

SECTION 2

Infrastructure and services charges

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.

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

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

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 scrutinise 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. **[Am. 141/rev]**

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

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

Member States shall ensure that representatives of infrastructure managers whose charging decisions have an impact on other infrastructures associate to ***jointly*** coordinate the charging or to charge for the use of relevant infrastructure at international level. **[Am. 77]**

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.

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.

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

Article 30

Infrastructure cost and accounts

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

2. Member States shall ensure that paragraph 1 is implemented by means of a contractual agreement between the competent authority and the infrastructure manager covering a period of not less than ~~five~~ ***seven*** years which provides for State funding.

3. The terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contractual period.

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

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

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

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

~~The competent authority shall give justifications to the regulatory body if it intends to deviate from these recommendations.~~ **[Am. 78]**

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

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

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Article 31

Principles of charging

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

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

3. Without prejudice to paragraphs 4 or 5 of this article or to Article 32, the charges for the minimum access package shall be set at the cost that is directly incurred as a result of operating the train service, according to point 1 of Annex VIII.

Point 1 of Annex VIII may be amended in the light of experience in accordance with the procedure referred to in ~~Article 60~~ ***Article 60a***.

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

5. ~~When charging for the cost of noise effects is allowed by Union legislation for road freight transport, the~~ Infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train in accordance with point 2 of Annex VIII. ***Such modification of infrastructure charges shall allow for compensation for investments in retrofitting rail vehicles with the most economically viable low-noise braking technology available. Member States shall ensure that the introduction of such differentiated charges shall not have any adverse effect on the financial equilibrium of the infrastructure manager. The rules for European co-funding shall be modified so as to allow for the co-funding for retrofitting rolling stock to reduce noise emissions as is already the case for ERTMS.***

Point 2 of Annex VIII may be amended in the light of experience, in accordance with the procedure referred to in ~~Article 60~~ ***Article 60a***, in particular to specify the elements of differentiated infrastructure charges ***provided that this does not lead to a distortion of competition within the rail transport sector or with road transport to the detriment of rail transport***.

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

Charging of other environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is ~~allowed~~ ***applied*** by Union law on road freight transport. If the charging of these environmental costs for road freight transport is not allowed by Union law, such modification shall not result in any overall change in revenue to the infrastructure manager.

If charging for environmental costs generates additional revenue, it shall be for Member States to decide how the revenue is to be used ***for the benefit of transport systems***. The relevant authorities shall keep the necessary information to ensure that the origin of the charging of environmental costs and its use can be traced. Member States shall provide the Commission with this information on a regular basis. **[Am. 79]**

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.

7. The supply of services referred to in point 2 of Annex III shall not be covered by this Article. In any event, the charge imposed for such services shall not exceed the cost of providing it, plus a reasonable profit.

8. Where services listed in points 3 and 4 of Annex III as additional and ancillary services are offered by only one supplier the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit.

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.

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

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 ***authorise the infrastructure manager***, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness ~~in particular of international rail freight~~ ***of the railway sector***. The charging system shall respect the productivity increases achieved by railway undertakings.

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

Before approving the levy of such mark-ups, a Member State shall ensure that the infrastructure manager evaluates their relevance for specific market segments. 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.

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.

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

~~These~~ ***Additional*** market segments shall be established in accordance with Annex VIII, point 3~~subject to the prior approval of the regulatory body. For market segments for which there is no traffic, mark upsshallnot be included in the charging system~~.

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

1a. For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full cost recovery of the costs incurred.

2. For specific future investment projects, or specific investment projects that have been completed 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.

3. Trains equipped with the ETCS running on lines equipped with national command control and signalling systems shall enjoy a temporary reduction of the infrastructure charge in accordance with Annex VIII, point 5. ***The infrastructure manager shall be able to ensure that such a reduction does not result in a loss of revenue. This reduction shall be offset by higher charges on the same railway line for trains not equipped with ETCS.***

Annex VIII, point 5 may be amended in the light of experience in accordance with the procedure referred to in ~~Article 60~~ ***Article 60a in order to further promote ERTMS***.

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.

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).

Member States may decide to publish the charging framework and charging rules applicable specifically to international freight services from and to third countries operated on a network whose track gauge is different from the main rail network within the Union with different instruments and deadlines than those provided under Article 29(1) when this is required to ensure fair competition. **[Am. 80]**

Article 33

Discounts

1. Without prejudice to Articles 101, 102, 106 and 107 of the TFEU 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.

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.

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

3. The methodology used and calculations performed must be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided and to ensure that the scheme is granted on non-discriminatory terms to undertakings.

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

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.

2. The basic principles of the performance scheme ~~as listed in Annex VIII, point 4~~ ***include the following elements which*** shall apply throughout the network~~.~~***:***

(a) In order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays and 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;

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(b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;

(c) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days;

(d) Once a year, the infrastructure manager shall publish the annual average level of service quality achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme. **[Am. 81]**

Point 4 of Annex VIII ***containing further elements regarding the performance scheme*** may be amended in the light of experience in accordance with the procedure referred to in ~~Article 60~~ ***Article 60a***. **[Am. 82]**

Article 36

Reservation charges

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. This charge shall provide incentives for efficient use of capacity. If ~~there is~~ ***two or*** more ~~than one applicant for a~~ ***applicants request overlapping*** train ~~path~~ ***paths*** to be allocated under the annual timetable exercise, a reservation charge shall be levied ***on the applicant to which the entire train path or a part of it was allocated but not used.*** **[Am. 83]**

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.

Article 37

Cooperation in relation to charging systems on more than one network

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

SECTION 3

Allocation of infrastructure capacity

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.

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

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

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

An infrastructure manager and an applicant may enter into a framework agreement as laid down in Article 42 for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

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.

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

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.

2. Infrastructure managers shall respect the commercial confidentiality of information provided to them.

Article 40

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

1. Member States shall ensure that infrastructure managers cooperate to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network, including under framework agreements referred to in Article 42. Infrastructure managers shall establish appropriate procedures, subject to the rules set out in this Directive, and organise international train paths accordingly.

Member States shall ensure that representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers associate in order to coordinate the allocation of or to allocate all relevant infrastructure capacity at an international level, without prejudice to the specific rules contained in Union law on rail freight oriented networks. ***Participants in this cooperation 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.*** Appropriate representatives of infrastructure managers from third countries may be associated with these procedures. **[Am. 85]**

2. The Commission and representatives of the regulatory bodies, which co-operate in accordance with Article 57, shall be informed of ~~and invited to attend as observers all meetings at which~~ common principles and practices for the allocation of infrastructure ~~are developed~~. In the case of IT-based allocation systems, the regulatory bodies shall receive sufficient information from these systems to allow them to perform their regulatory supervision in accordance with the provisions of Article 56. **[Am. 86]**

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.

Article 41

Applicants

1. Requests for infrastructure capacity may be made by 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.*** **[Am. 84]**

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 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.

3. ~~The Commission may adopt implementing measures setting out~~ The details of the criteria to be followed for the application of paragraph 2~~. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts~~ ***may be amended in the light of experience*** in accordance with ~~Article 63(3)~~ ***the procedure referred to in Article 60a***. **[Am. 87]**

Article 42

Framework agreements

1. Without prejudice to Articles 101, 102 and 106 TFEU, 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.

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

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.

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.

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.

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

Article 43

Schedule for the allocation process

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

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

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 ***and must be duly justified***. **[Am. 88]**

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 Section 2 of Chapter IV.

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

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

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

5. Infrastructure managers shall ensure that, for infrastructure capacity crossing more than one network, applicants may apply directly to any joint body which the infrastructure managers may establish, such as a one-stop-shop for rail corridors.

Article 45

Scheduling

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.

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.

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.

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

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

(b) train paths allocated to all other applicants and outstanding train path requests for all other applicants on the same routes;

(c) train paths allocated to all other applicants on the same routes as in the previous working timetable;

(d) remaining capacity available on the relevant routes;

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

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

Article 46

Coordination process

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.

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

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

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

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

6. Without prejudice to the existing appeal procedures and to Article 56, in the event of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. This system shall be set out in the network statement. If this system is applied, a decision shall be reached within a time limit of 10 working days.

Article 47

Congested infrastructure

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.

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.

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, ***particularly international 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. **[Am. 89]**

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

5. ~~The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority~~ ***Priority*** criteria ***shall include freight services and in particular international freight services***. **[Am. 90]**

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.

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 TFEU, 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. The regulatory body referred to in Article 55 ~~may issue an opinion on whether the actions identified in the plan are appropriate~~ ***shall supervise the consultation process to ensure that it is carried out in a non-discriminatory manner***. **[Am. 91]**

Where a trans-European network or a train path having a significant impact on one or several trans-European networks is congested, the network of regulatory bodies set out in Article 57 may issue an opinion on whether the actions in the plan are appropriate. **[Am. 92]**

3. The infrastructure manager shall cease to levy any charges 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

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

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 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.

3. The infrastructure manager shall inform ~~in due time~~ interested parties about unscheduled maintenance work ***at least one week prior to it commencing***. **[Am. 93]**

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 an accident the infrastructure manager must take all necessary steps to restore the situation to normal. 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.

1a. Infrastructure managers shall have action plans to deal with accidents or technical failures. **[Am. 94]**

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 situation to normal 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.~~ ***Save in the case of force majeure, including urgent safety-critical work, a train path allocated to a freight operation pursuant to this article may not be cancelled less than two months before its scheduled time in the working timetable if the applicant concerned does not give its approval for such cancellation. In such a case the infrastructure manager concerned shall make an effort to propose to the applicant a train path of an equivalent quality and reliability which the applicant has the right to accept or refuse. If the applicant refuses, he shall be entitled at least to reimbursement of the corresponding charge.*** **[Am. 95]**

SECTION 4

Regulatory body

Article 55

National regulatory ~~body~~ ***bodies***

1. Each Member State shall establish a single national regulatory body for the railway sector. This body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public authority. It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract. ***The regulatory body shall have the necessary organisational capacity in terms of human and material resources, which shall be adequate for the level of activity of the rail sector of the Member State, such as the volume of traffic, and for the size of the network, in order to carry out the tasks assigned to it by Article 56.***

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

3. The president and governing board of the regulatory body for the railway sector shall be appointed ***by the national or other competent parliament*** for a fixed and renewable term under clear rules which guarantee independence. They shall be selected from among persons who have ***knowledge of and experience in the regulation of the railway sector, or knowledge of and experience in the regulation of other sectors, and preferably among persons who have*** had no professional position or responsibility, interest or business relationship, directly or indirectly, with the regulated undertakings or entities for a period of ~~three~~ ***at least two*** years ***or any longer period defined in accordance with the national law*** before their appointment, and during their term of office. ***They shall explicitly state this by an appropriate declaration of interests.*** Afterwards, they shall have no professional position or responsibility, interest or business relationship with any of the regulated undertakings or entities for a period of not less than ~~three~~ ***two*** years ***or any longer period defined in accordance with the national law***. They shall have full authority over the recruitment and management of the staff of the regulatory body. ***They must act entirely independently and may under no circumstances be influenced by instructions from a government or a private or public undertaking.*** **[Am. 96]**

Article 56

Functions of the ***national*** regulatory ~~body~~ ***bodies***

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:

(a) the network statement;

(b) the criteria set out in it;

(c) the allocation process and its result;

(d) the charging scheme;

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

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

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

(ga) licensing decisions, in cases where the regulatory body is not also the body issuing licences in accordance with Article 16.

1a. The regulatory body may take action on its own initiative and shall be required to take a decision on any complaints to remedy the situation within a maximum period of one month from the receipt of the complaint. 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.

The Commission shall on its own initiative examine the application and enforcement of the provisions of this Directive related to the mandate of the regulatory bodies and their decision-making deadlines in accordance with the advisory procedure referred to in Article 64(2).

2. The regulatory body shall ~~also~~ have the power to monitor competition***, to stop discriminatory and market distortion developments*** in the rail services markets and ***to*** review ~~points (a) to (g)~~ ***points (a) to (ga)*** of paragraph 1 on its own initiative and with a view to preventing discrimination between applicants***, including through appropriate corrective measures***. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate between applicants. ~~The regulatory body shall have the necessary organisational capacity to carry out these tasks.~~ ***To this end, the regulatory body shall also cooperate closely with the national safety authority responsible for assessing the conformity or suitability for use of interoperability constituents or for appraising the 'EC' procedure for verification of subsystems in accordance with Directive 2008/57/EC. At the request of applicants in procedures before the national safety authority which may have consequences for market access the national safety authority shall inform the regulatory body of the relevant aspects of the procedure. The regulatory body shall make recommendations. The national safety authority shall give justifications to the regulatory body if it intends to deviate from these recommendations.***

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with Section 2 of Chapter IV 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.

3a. The regulatory body shall verify that railway undertakings' and infrastructure managers' accounting is in compliance with the accounting separation provisions laid down in Article 6.

3b. The regulatory body shall determine, if provided by national law, in accordance with Article 10(2) whether the principal purpose of a service is to carry passengers between stations located in different Member States and in accordance with Article 11(2) whether the economic equilibrium of a public service contract is compromised by services provided for in Article 10 between a place of departure and a destination which are covered by one or more public service contracts.

3c. The regulatory body shall communicate to the Commission any complaint related to a decision by a regulatory body pursuant to paragraphs 1 to 3b. Within two weeks after the receipt of the complaint the Commission shall, if necessary, request changes to the decision in question in order to ensure its compatibility with Union law. The regulatory body shall modify its decision, taking account of the changes requested by the Commission.

3d. The regulatory body shall consult, at least once a year, the representatives of the users of the rail freight and passenger transport services, to take into account their views on the rail market, including the service performance, the infrastructure charges, the amount and the transparency of the rail service prices. **[Am. 97]**

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.

5. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information. Where appropriate, it shall decide on its own initiative on appropriate measures to correct undesirable developments in these markets, in particular with reference to ***points (a) to (ga)*** of paragraph 1.

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

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

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

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

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

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

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

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Article 56a

Powers of the national regulatory bodies

1. In order to carry out the tasks listed in Article 56 the regulatory body shall have the power to:

(a) enforce its decisions with appropriate sanctions, including fines. 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 national administrative instance.

(b) request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned and to enforce such requests with 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 competition in the rail services markets. This includes data which are necessary for statistical and market observation purposes. Information requested must be supplied without undue delay.

(c) carry out audits or initiate external audits with infrastructure managers and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6.

2. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal shall not have a suspensive effect on the decision of the regulatory body.

3. In the event of conflicts concerning decisions by the regulatory bodies for cross-border transport services, the concerned parties may appeal to the Commission to obtain a binding decision on the compatibility of the decisions with Union law within one month after the receipt of the appeal.

4. Member States shall ensure that decisions taken by the regulatory body are published.

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

Annex X may be amended in the light of experience in accordance with the procedure referred to in Article 60a. **[Am. 98]**

Article 57

Cooperation between ***national*** regulatory bodies ***and powers of the Commission***

1. The national regulatory bodies shall exchange information about their work and decision-making principles and practice and otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose they shall work together in a ~~working group~~ ***formally established network*** that convenes at regular intervals~~. The Commission shall support the regulatory bodies in this task.~~ ***at the invitation of and chaired by the Commission. To this aim the Commission shall ensure active cooperation between the regulatory bodies and shall take action in the event that regulatory bodies fail to fulfil their mandate.***

The Commission representatives shall comprise representatives from both the services in charge of transport and competition.

The Commission shall set up a database to which national regulatory bodies shall provide data on all complaint procedures, such as the dates of complaints, start of own-initiative procedures, all draft and final decisions, parties involved, main issues of the procedures and problems of interpretation of railway law and own-initiative investigations on issues of access or charging relating to international rail services.

2. The regulatory bodies shall cooperate closely, including through working arrangements, for the 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 ***notify the Commission and*** 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. ***The network of regulatory bodies shall also deliver an opinion.***

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.

6a. The Commission may on its own initiative participate in the activities listed under paragraphs 2 to 6 on which it shall keep the network of regulatory bodies mentioned in paragraph 1 informed.

7. ***The network of*** regulatory bodies ***established pursuant to paragraph 1*** shall develop common principles and practices for making decisions for which they are empowered under this Directive. The Commission may adopt ~~implementing measures setting out~~ ***and supplement*** such common principles and practices~~. Those measures designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts~~ in accordance with ~~Article 63(3)~~ ***the procedure referred to in Article 60a***.

The network of regulatory bodies shall also review decisions and practices of associations of infrastructure managers as referred to in Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport. **[Am. 99]**

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Article 57a

European regulatory body

In light of the experience acquired through the network of regulatory bodies, the Commission shall, no later than … (*)***, draw up a legislative proposal establishing a European regulatory body. This body shall have a supervisory and arbitration function to deal with cross-border and international problems and to hear appeals of decisions taken by national regulatory bodies.*** **[Am. 100]**

CHAPTER V

FINAL PROVISIONS

Article 58

The provisions of this Directive shall be without prejudice to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ([1]).

Article 59

Derogations

1. Until 15 March 2013, Ireland, as an island Member State with a rail link to only one other Member State, and the United Kingdom, in respect of Northern Ireland, on the same basis

(a) do not need to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in the first subparagraph of Article 7(1) 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 Article 27, Article 29(2), Articles 38, 39 and 42, Article 46(4), Article 46(6), Article 47, Article 49(3), Articles 50 to 53, Article 55 and Article 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, the continued applicability of this derogation shall be decided upon in accordance with the advisory 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) shall put in place legislation to implement the Articles referred to in paragraph 1.

(*) Two years after the publication of this Directive.

([1]) OJ L 134, 30.4.2004, p. 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 advisory 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.

Article 59a

Article delegating power

The Commission shall be empowered to adopt delegated acts in accordance with Article 60a concerning the scope of market monitoring in accordance with Article 15(5), certain elements of the network statement in accordance with Article 27(2), certain principles of charging in accordance with Article 31(3) and (5), the temporary reduction of the infrastructure charges for ETCS in accordance with Article 32(3), certain elements of the performance scheme in accordance with Article 35(2), the criteria to be followed regarding the requirements with regard to applicants for infrastructure in accordance with Article 41(3), the schedule for the allocation process in accordance with Article 43(1), the regulatory accounts in accordance with Article 56a(5) and common principles and practices for making decision developed by regulatory bodies in accordance with Article 57(7). **[Am. 101]**

~~Article 60~~

~~Exercise of delegation~~

~~1. Powers to adopt the delegated acts referred to in Articles 7(1) second subparagraph, 13(5) second subparagraph, 15(5) second subparagraph, 20 third paragraph, 27(2), 30(3) second subparagraph, 31(5) second subparagraph, 32(1) third subparagraph, 32(3), 35(2), 43(1) and 56(8) third subparagraph shall be conferred on the Commission for an indeterminate period of time.~~

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

~~3. Powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 61 and 62.~~ **[Am. 102]**

Article 60a

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56a(6), 57(7) shall be conferred on the Commission for a period of five years from … (*). 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.

(*) Date of entry into force of this Directive.

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3. The delegation of power referred to in Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56a(6), 57(7) 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 Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56a(6), 57(7) 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 2 months at the initiative of the European Parliament or the Council. **[Am. 103]**

~~Article 61~~

~~Revocation of delegation~~

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

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

~~3. The revocation decision shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or on a later date specified therein. It shall not affect the validity of delegated acts already in force. It shall be published in the *Official Journal of the European Union*.~~ **[Am. 104]**

~~Article 62~~

~~Objections to delegated acts~~

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

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

~~3. If the European Parliament or the Council objects to an adopted delegated act, it shall not enter into force. The institution concerned shall state the reasons for objecting to the delegated act.~~ **[Am. 105]**

Article 63

Implementing measures

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted in accordance with the advisory procedure referred to in Article 64(2).

2. At the request of a ~~Member State~~ ***national regulatory body and other competent national authorities*** or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of the provisions of this Directive~~, and within~~***. The national regulatory bodies shall maintain a database accessible to the European Commission of their draft decisions. Within*** two months of receipt of such a request ***the European Commission shall*** decide in accordance with the advisory procedure referred to in Article 64(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States. **[Am. 106]**

~~Without prejudice to Article 258 of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month from the date of the decision. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month from the date of the referral.~~ ***At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of the provisions of this Directive, and adopt a decision thereon in accordance with the examination procedure referred to in Article 64(3).*** **[Am. 107]**

3. ~~Measures designed~~ ***The Commission shall adopt implementing acts in accordance with Articles 10(2), 11(4), 14(2) and 17(5)*** to ensure the implementation of the Directive under uniform conditions***. Those implementing acts*** shall be adopted ~~by the Commission as implementing acts~~ in accordance with the ***examination*** procedure referred to in Article 64(3). **[Am. 108]**

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) No 182/2011.*** **[Am. 109]**

2. Where reference is made to this paragraph, Article ~~3 and 7~~ ***4*** of ~~Decision 1999/468/EC~~ ***Regulation (EU) No 182/2011*** shall apply~~, having regard to the provisions of Article 8 thereof~~. **[Am. 110]**

3. Where reference is made to this paragraph, Article 5~~, and Article 7~~ of ~~Decision 1999/468/EC~~ ***Regulation (EU) No 182/2011*** shall apply~~, having regard to the provisions of Article 8 thereof~~. **[Am. 111]**

Article 65

Report

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.

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.

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Article 66

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles […] and Annexes […] by ~~[…]~~ ***(*)***. They shall forthwith communicate to the Commission the text of those provisions and a table showing the correlation between those provisions and this Directive. **[Am. 112]**

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.

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

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 Part B of Annex XI.

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.

Article 68

Entry into force

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

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

Article 69

Addressees

This Directive is addressed to the Member States.

Done at […]

For the European Parliament	*For the Council*
The President	*The President*

(*) 12 months from the entry into force of this Directive.

ANNEX I

List of railways infrastructure items

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

— Ground area;

— Track and track bed, in particular embankments, cuttings, drainage channels and trenches, masonry trenches, culverts, lining walls, planting for protecting side slopes etc.; passenger and goods platforms; four-foot way and walkways; enclosure walls, hedges, fencing; fire protection strips; apparatus for heating points; crossings, etc.; snow protection screens;

— Engineering structures: bridges, culverts and other overpasses, tunnels, covered cuttings and other underpasses; retaining walls, and structures for protection against avalanches, falling stones, etc.;

— Level crossings, including appliances to ensure the safety of road traffic;

— Superstructure, in particular: rails, grooved rails and check rails; sleepers and longitudinal ties, small fittings for the permanent way, ballast including stone chippings and sand; points, crossings, etc.; turntables and traversers (except those reserved exclusively for locomotives);

— Access way for passengers and goods, including access ***for pedestrians and*** by road; **[Am. 113]**

— 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.

~~ANNEX II~~

~~Essential functions of an infrastructure manager~~

~~(referred to in Article 7)~~

~~List of essential functions referred to in Article 7:~~

~~decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths,~~

~~decision making on infrastructure charging, including determination and collection of the charges,~~ **[Am. 114]**

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ANNEX III

Services to be supplied to the railway undertakings

(referred to in Article 13)

1. The minimum access package shall comprise:

(a) handling of requests for railway infrastructure capacity;

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

(c) use of running track points and junctions;

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

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

~~(f) refuelling facilities, where available;~~

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

2. Access shall also be given to ***the following*** services facilities ~~and the supply of~~***, when they exist, and to the*** services ***supplied*** in ~~the following~~ ***these*** facilities:

(a) passenger stations, their buildings and other facilities, including ***travel information services and a suitable common location for*** ticketing ~~and travel information~~ ***services***;

(b) freight terminals;

(c) marshalling yards;

(d) train formation facilities;

(e) storage sidings;

(f) maintenance and other technical facilities;

(g) port facilities which are linked to rail activities;

(h) relief facilities, including towing;

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

3. Additional services may comprise:

(a) traction current, ***the supplier of which a railway undertaking shall be free to choose; where the supplier of traction current is identical to the operator of the facility*** charges for ~~which~~ ***traction current*** shall be shown on the invoices separately from charges for using the electrical supply equipment;

(aa) conditions and prices for the use of power supply and transmission lines which shall be equitable for all operators;

(b) pre-heating of passenger trains;

~~(c) supply of fuel, charges for which shall be shown on the invoices separately from charges for using refuelling facilities;~~ **[Ams 115 and 165]**

(d) tailor-made contracts for:

— control of transport of dangerous goods,

— assistance in running abnormal trains.

4. Ancillary services may comprise:

(a) access to telecommunication networks;

(b) provision of supplementary information;

(c) technical inspection of rolling stock.

ANNEX IV

Information for Rail Market Monitoring

(referred to in Article 15)

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

	2007	%-variation compared to previous year	2008	%-variation compared to previous year
Freight (in tkm ([1])) total				
International				
Transit				
National				
Passengers (in pkm ([2])) total				
international				
Transit				
national				
of which under PSO:				
Paid compensation for PSO (in euro):				

([1]) Tonne-kilometre.
([2]) Passenger-kilometre.

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

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

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

3. Regulatory Bodies:

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

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

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

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

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

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

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

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

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

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

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

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

11. Investments in the high-speed rail network:

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

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

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

13. Track access charges last year.

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

14. Existence of a performance regime set up according to Article 35 of this Directive (if yes, its main features).

15. Number of active licences issued by competent national authority

	Active licences on 31 December, last year	Licences withdrawn	New licences issued	Active licences on 31 December, one year before
Total				
thereof:				
— for freight transport				
— for passenger transport				

16. Status of ERTMS deployment.

16a. Incidents, accidents and serious accidents in accordance with Directive 2004/49/EC which occurred during the previous year. **[Am. 116]**

17. Other relevant developments

~~ANNEX V~~

~~Financial fitness~~

~~(referred to in Article 20)~~

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

~~(a) available funds, including the bank balance, pledged overdraft provisions and loans;~~

~~(b) funds and assets available as security;~~

~~(c) working capital;~~

~~(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;~~

~~(e) charges on an undertaking's assets.~~

~~2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.~~

~~3. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents must include information concerning the matters referred to in point 1.~~ **[Am. 117]**

ANNEX VI

Contents of the network statement

(referred to in Article 27)

The ***sections of the*** network statement referred to in Article 27 shall contain the following information: **[Am. 118]**

~~1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it. The information in this section shall be consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC.~~ **[Am. 119]**

2. ~~A~~ ***The*** 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 to 36~~ ***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. **[Am. 120]**

3. ~~A~~ ***The*** 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: **[Am. 121]**

(a) the procedures according to which applicants may request capacity from the infrastructure manager;

(b) the requirements governing applicants;

(c) the schedule for the application and allocation processes and the procedures which shall be followed to request information on the scheduling in accordance with Article 45(4);

(d) the principles governing the coordination process and the dispute resolution system made available as part of this process;

(e) the procedures which shall be followed and criteria used where infrastructure is congested;

(f) details of restrictions on the use of infrastructure;

(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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~~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 (1).~~

~~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.~~ **[Am. 122]**

~~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.~~ **[Am. 123]**

~~7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.~~ **[Am. 124]**

~~(1) OJ L 164, 30.4.2004, p. 44.~~

ANNEX VII

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

(referred to in Article 30)

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

1. the scope of the agreement as regards infrastructure and service facilities, structured according to Annex III. It shall cover all aspects of ~~infrastructure development, including~~ maintenance and renewal of the infrastructure already in operation. Construction of new infrastructure may be included as a separate item;

2. the structure of agreed payments, ***including indicative forecasts of the expected level thereof,*** apportioned to the infrastructure services listed in Annex III, to maintenance~~, to construction of new infrastructure~~ ***including renewal and upgrading,*** and to dealing with existing maintenance backlogs; ***payments to new infrastructure may be included as a separate item;***

3. user-oriented performance targets, in the form of indicators and quality criteria covering:

   (a) train performance and customer satisfaction, ***in particular the effect of infrastructure quality on train reliability***,

   (b) network capacity ***and the availability of infrastructure***,

   (c) asset management,

   (d) activity volumes,

   (e) safety levels,

   (f) environmental protection;

4. the amount of possible maintenance backlog, the expenditure earmarked for dealing with it and the assets which will be phased out of use and therefore trigger different financial flows;

5. the incentives in accordance with Article 30(1);

6. minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;

7. a mechanism that ensures that a significant share of cost reductions is passed on to users in the form of a reduced level of charges, ***in accordance with the requirements of Article 30(1), without compromising the balancing of the infrastructure manager's accounts as required under Article 8(4)***;

8. the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, and the charging framework and rules set by the State;

9. rules for dealing with major disruptions of operations and emergency situations,~~including a minimum service level in case of strikes, if any,~~ and early termination of the contractual agreement, and ***timely*** information of users; **[Am. 125]**

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

ANNEX VIII

Requirements for costs and charges related to railway infrastructure

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

1. Direct costs of the train service referred to in Article 31(3), which are related to infrastructure wear and tear, shall exclude the following items:

   (a) Network-wide overhead costs~~, including salaries and pensions~~;

   (b) Interest payable on capital;

   ~~(c) More than one tenth of costs related to scheduling, train path allocation, traffic management, dispatching and signalling of a train run;~~

   (d) Depreciation of information, communication or telecommunication equipment;

   (e) Costs related to real estate management, in particular acquisition, selling, dismantling, decontamination, recultivation or renting of land or other fixed assets;

   (f) ~~Social services,~~ Schools, kindergartens~~, restaurants~~; **[Am. 126]**

   (g) Costs related to acts of God, accidents, service disruptions.

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

2. Noise-differentiated infrastructure charges referred to in Article 31(5) shall meet the following requirements:

   (a) The charge shall be differentiated to reflect the composition of a train of vehicles respecting limit values for noise set by Commission Decision 2006/66/EC of 23 December 2005 concerning the technical specification for interoperability relating to the subsystem rolling stock — noise of the trans-European conventional rail system [1].

   (b) Priority shall be given to freight wagons.

   (c) Differentiation according to the noise emission levels of freight wagons shall allow the payback of investments within a reasonable period for retrofitting wagons with the most economically viable low-noise braking technology available.

[1] OJ L 37, 8.2.2006, p. 1.

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(d) Further elements to differentiate charges may be considered such as:

(i) time of day, in particular night time for noise emissions;

(ii) train composition with an impact on the level of noise emissions;

(iii) sensitivity of the area affected by local emissions;

(iv) further classes for noise emissions significantly lower than the one referred to under point (a).

3. ***The infrastructure manager shall define homogeneous market segments and corresponding mark-ups in the sense of Article 32(1), on the basis of a market study and after consultation of the applicants. With the exception of carriages referred to in Article 32(1a),*** the infrastructure manager shall demonstrate to the regulatory body the ability of a train service to pay mark-ups according to Article 32(1)~~, whereby each of the services listed under a single one of the following points shall belong to different market segments:~~ ***In the event that the infrastructure manager levies mark-ups, it shall develop a list of market segments to which the regulatory body shall give its prior approval.***

~~(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.~~ **[Am. 127]**

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

~~(a) In order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the value of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time;~~ **[Am. 128]**

~~(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;~~ **[Am. 129]**

(c) All delays shall be attributable to one of the following delay classes and sub-classes:

1. Operation/planning management attributable to the infrastructure manager

1.1. Time-table compilation

1.2. Formation of train

1.3. Mistakes in operations procedure

1.4. Wrong application of priority rules

1.5. Staff

1.6. Other causes

2. Infrastructure installations attributable to the infrastructure manager

2.1. Signalling installations

2.2. Signalling installations at level crossings

2.3. Telecommunications installations

2.4. Power supply equipment

2.5. Track

2.6. Structures

2.7. Staff

2.8. Other causes

3. Civil engineering causes attributable to the infrastructure manager

3.1. Planned construction work

3.2. Irregularities in execution of construction work

3.3. Speed restriction due to defective track

3.4. Other causes

4. Causes attributable to other infrastructure managers

4.1. Caused by previous infrastructure manager

4.2. Caused by next infrastructure manager

5. Commercial causes attributable to the railway undertaking

5.1. Exceeding the stop time

5.2. Request of the railway undertaking

5.3. Loading operations

5.4. Loading irregularities

5.5. Commercial preparation of train

5.6. Staff

5.7. Other causes

6. Rolling stock attributable to the railway undertaking

6.1. Roster planning/ re-rostering

6.2. Formation of train by railway undertaking

6.3. Problems affecting coaches (passenger transport)

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6.4. Problems affecting wagons (freight transport)

6.5. Problems affecting cars, locomotives and rail cars

6.6. Staff

6.7. Other causes

7. Causes attributable to other railway undertakings

7.1. Caused by next railway undertaking

7.2. Caused by previous railway undertaking

8. External causes attributable to neither infrastructure manager nor railway undertaking

8.1. Strike

8.2. Administrative formalities

8.3. Outside influence

8.4. Effects of weather and natural causes

8.5. Delay due to external reasons on the next network

8.6. Other causes

9. Secondary causes attributable to neither infrastructure manager nor railway undertaking

9.1. Dangerous incidents, accidents and hazards

9.2. Track occupation caused by the lateness of the same train

9.3. Track occupation caused by the lateness of another train

9.4. Turn-around

9.5. Connection

9.6. Further investigation needed

(d) Wherever possible, delays shall be attributed to a single organisation, considering both the responsibility for causing the disruption and the ability to re-establish normal traffic conditions.

(e) The calculation of payments shall take into account the average delay of train services of similar punctuality requirements.

(f) The infrastructure manager shall as soon as possible communicate to the railway undertakings a calculation of payments due under the performance scheme. This calculation shall encompass all delayed train runs within a period of at most one month.

~~(g) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.~~ **[Am. 130]**

~~(h) Once a year, the infrastructure manager shall publish the annual average level of service quality achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.~~ **[Am. 131]**

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

For freight transport:

Year	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Discount	~~5 %~~ ***20 %***	~~5 %~~ ***20 %***	~~5 %~~ ***20 %***	~~5 %~~ ***15 %***	~~5 %~~ ***10 %***	~~5 %~~ ***8 %***	~~4 %~~ ***6 %***	~~3 %~~ ***4 %***	~~2 %~~ ***3 %***	~~1 %~~ ***3 %***

For passenger transport:

Year	***2015***	***2016***	***2017***	***2018***	***2019***	2020	2021	2022	2023	2024
Discount	***10 %***	***10 %***	***10 %***	***10 %***	***10 %***	~~5 %~~ ***8 %***	~~5 %~~ ***6 %***	5 %	~~5 %~~ ***4 %***	~~5 %~~ ***2 %***

[Am. 132]

ANNEX IX

Schedule for the allocation process

(referred to in Article 43)

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

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.

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. 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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ANNEX X

Regulatory accounts to be supplied to the regulatory body

(referred to in Article 56(8))

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

1. Account separation

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

(a) include separate profit and loss accounts and balance sheets for freight, passenger and infrastructure management activities;

(b) give detailed information on individual sources and uses of public funds and other forms of compensation in a transparent and detailed manner, including a detailed review of the businesses' cashflows in order to determine in what way these public funds and other forms of compensation have been used;

(c) include cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of ***Article 6 and as deemed necessary and proportionate by*** the regulatory body; **[Am. 133]**

(d) contain a sufficient level of detail as deemed necessary and proportionate by the regulatory body;

(e) be accompanied by a document which sets out the methodology used to allocate costs between different activities.

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

2. Monitoring of track access charges

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

(a) set out different cost categories, in particular providing sufficient information on marginal/direct costs of the different services or groups of services so that infrastructure charges can be monitored;

(b) provide sufficient information to allow monitoring of the individual charges paid for services (or groups of services); if required by the regulatory body, this information shall contain data on volumes of individual services, prices for individual services and total revenues for individual services paid by internal and external customers;

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

3. Indication of financial performance

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

(a) a statement of financial performance;

(b) a summary expenditure statement;

(c) a maintenance expenditure statement;

(d) an operating expenditure statement;

(e) an income statement;

(f) supporting notes that amplify and explain the statements where appropriate.

4. Other issues

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

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

ANNEX XI

Part A

Repealed Directives with list of successive amendments

(referred to in Article 67)

Council Directive 91/440/EEC (OJ L 237, 24.8.1991, p. 25)	
Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1)	
Directive 2004/51/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 164)	
Council Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344)	only Point B of the Annex
Directive 2007/58/EC of the European Parliament and of the Council (OJ L 315, 3.12.2007, p. 44)	only Article 1
Council Directive 95/18/EC (OJ L 143, 27.6.1995, p. 70)	
Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26)	
Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44)	only Article 29
Directive 2001/14/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 29)	
Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30)	
Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44)	only Article 30
Directive 2007/58/EC of the European Parliament and of the Council (OJ L 315, 3.12.2007, p. 44)	only Article 2

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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)

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
		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 15
	Article 3		Article 16
	Article 4(1) to (4)		Article 17(1) to (4)
	Article 5		Article 18
	Article 6		Article 19
	Article 7		Article 20
	Article 8		Article 21
	Article 9		Article 22
	Article 4(5)		Article 23(1)
	Article 10		Article 23(2) and (3)
	Article 11		Article 24
	Article 15		Article 25
		Article 1(1) subparagraph 2	Article 26
		Article 3	Article 27
Article 10(5)			Article 28
		Article 4(1) and (3) to (6)	Article 29
		Article 6(2) to (5)	Article 30
		Article 7	Article 31
		Article 8	Article 32

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Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
		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

Directive 91/440/EEC	Directive 95/18/EC	Directive 2001/14/EC	This Directive
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