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DETERMINATION OF RAILWAY INFRASTRUCTURE CAPACITY INCLUDING
ASPECTS RELATED TO THE FEE FOR THE USE OF THE INFRASTRUCTURE

Proposal for a Council Directive relating to the allocation of railway
capacity and the levying of charges for the use of railway infrastructure and
safety certification (included in COM(1998)480 final)

Transmitted by the European Commission

Note: At its fifty-second session, the Working Party asked the European Commission (EC) to provide pertinent reports for consideration at its next session on the elements for the determination of railway infrastructure capacity, including also aspects related to the fee for the use of the infrastructure.

The Working Party may wish to consider the information transmitted by the EC, concerning its proposal for a Council Directive on these issues. This proposal is a part of the EC's communication COM(1998)480 final, which will be available at the meeting room as an informal paper.

Please note that the distribution of documentation for the Working Party on Rail Transport (SC.2) is no longer "restricted". Accordingly, the secretariat has adopted a new numbering system whereby all working documents other than Reports and Agendas will be numbered as follows: TRANS/SC.2/year/serial number. Reports, Agendas, resolutions and major publications will retain their previous numbering system (i.e. TRANS/SC.2/189).

Proposal for a
COUNCIL DIRECTIVE

relating to the allocation of railway infrastructure capacity
and the levying of charges for the use of railway infrastructure
and safety certification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission²⁵,

Having regard to the opinion of the Economic and Social Committee²⁶,

Acting in accordance with the procedure laid down in Article 189c of the Treaty in cooperation with the European Parliament²⁷,

1. Whereas greater integration of the Community railway sector is an essential element of the completion of the internal market and moves toward achieving sustainable mobility;
2. Whereas Council Directive 91/440/EEC²⁸ of 29 July 1991 on the development of the Community's railways provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings; whereas these rights mean that railway infrastructure can be used by multiple users;
3. Whereas Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees²⁹ set out a broad framework for the allocation of railway infrastructure capacity;
4. Whereas those Directives have permitted a considerable variation in the structure and level of railway infrastructure charges and the form and duration of capacity allocation processes;
5. Whereas appropriate capacity-allocation schemes for rail infrastructure coupled with competitive operators will result in a better balance of transport between modes;

²⁵ OJ C

²⁶ OJ C

²⁷ OJ C

²⁸ OJ L 237, 24.8.1991, p. 25.

²⁹ OJ L 143, 27.6.1995, p. 75.

6. Whereas encouraging optimal use of the railway infrastructure will lead to a reduction in the cost to society of transport;
7. Whereas there are a small but growing number of undertakings seeking to make use of the Community's rail infrastructure;
8. Whereas it is desirable for purchasers of railway services to be able to enter the capacity-allocation process direct;
9. Whereas the charging and capacity-allocation schemes should permit equal and non-discriminatory access for all undertakings and attempt as far as is possible to meet the needs of all users and traffic types in a fair and non-discriminatory manner;
10. Whereas charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure for society as a whole;
11. Whereas railway undertakings should receive clear and consistent signals from capacity-allocation schemes which lead them to make rational decisions;
12. Whereas it is desirable to grant some degree of flexibility to infrastructure managers to enable a more efficient use to be made of the infrastructure network;
13. Whereas 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;
14. Whereas the requirements for passenger services may often conflict with the requirements for freight; whereas the requirements for passenger services may result in a network which is more costly to build and maintain than one designed solely for freight;
15. Whereas the needs of different services need to be properly balanced;
16. Whereas the increasing speed differential between freight and passenger rolling stock can lead to an exacerbation of the conflict between these two types of traffic;
17. Whereas services operated under contract to a public authority may require special rules to safeguard their attractiveness to users;
18. Whereas different users and types of users will frequently have a different impact on capacity;
19. Whereas the charging and capacity-allocation schemes must take account of the effects of increasing saturation of capacity and ultimately the scarcity of capacity;
20. Whereas the different time-frames for planning traffic types mean that it is desirable to ensure that requests for capacity which are made after the completion of the timetabling process can be satisfied;
21. Whereas the use of information technology can enhance the speed and responsiveness of the timetabling process and improve the ability of applicants to

bid for capacity, as well as improving the ability to establish train paths which cross more than one infrastructure manager's network;

22. Whereas, to ensure the optimum outcome for operators and traffic types, it is desirable to require an examination of the use of capacity when the coordination of infrastructure capacity is required to meet the needs of users;
23. Whereas, in view of the monopolistic position of the infrastructure manager, it is desirable to require an examination of the available capacity and methods of enhancing it when the infrastructure capacity allocation process is unable to meet the requirement of users;
24. Whereas a lack of information about other railway undertaking's requests as well as about the constraints within the system may make it difficult for railway undertakings to seek to optimise their capacity requests;
25. Whereas it is important to ensure the better coordination of allocation schemes so as to ensure the improved attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic;
26. Whereas 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;
27. Whereas 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;
28. Whereas investment in railway infrastructure is desirable and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments where they are economically attractive;
29. Whereas any charging scheme will send economic signals to users; whereas it is important that those signals to railway undertakings should be consistent and lead them to make rational decisions;
30. Whereas appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators will result in an optimal balance of different transport modes;
31. Whereas it is desirable to allow some degree of flexibility to infrastructure managers to vary charges so as to encourage more efficient use of the infrastructure network for example the ability to vary train paths or a long-term commitment by operators;
32. Whereas, to enable the establishment of appropriate and fair levels of infrastructure charges, infrastructure managers should record and establish the valuation of their assets and develop a clear understanding of cost factors in the operation of the infrastructure;

33. Whereas it is desirable to ensure that account is taken of external costs when making transport decisions as outlined in the Commission's Green Paper on Fair and Efficient Pricing³⁰;
34. Whereas it is desirable for any infrastructure charging scheme to enable traffic to use the rail network which can at least pay for the additional cost which it imposes on society;
35. Whereas while negotiations for individual train paths could reflect the market value of the access, disparity of information may result in poor outcomes and the burden of the negotiations may be excessive;
36. Whereas a railway infrastructure is a natural monopoly; whereas it is therefore necessary to provide infrastructure managers with incentives to reduce costs and manage their infrastructure efficiently;
37. Whereas it is important to ensure that charges for international traffic are not such as to prevent rail from meeting the needs of the market;
38. Whereas the overall level of cost recovery through infrastructure charges will affect the necessary level of government contribution;
39. Whereas discounts which are allowed to operators must relate to actual cost savings experienced;
40. Whereas it is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network;
41. Whereas the allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required;
42. Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of this Directive, namely to coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community; whereas this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose;
43. Whereas Council Regulation (EEC) No 2830/77 of 12 December 1977 on the measures necessary to achieve comparability between the accounting systems and annual accounts of railway undertakings³¹, Council Regulation (EEC) No 2183/78 of 19 September 1978 laying down uniform costing principles for railway undertakings³², and Council Decision 82/529/EEC of 19 July 1982 on the fixing of

³⁰ COM(95) 691 final.

³¹ OJ L 354, 24.12.1977, p. 13.

³² OJ L 258, 21.9.1978, p. 1.

rates for the international carriage of goods by rail³³, all of which were last amended by the Act of Accession of Austria, Finland and Sweden, are now superseded and should therefore be repealed;

44. Whereas the requirements of Directive 95/19/EC relating to safety certification should be replicated in this Directive; whereas Directive 95/19/EC should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Introductory provisions

Article 1

Scope

1. This Directive concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity. Member States shall ensure that charging and capacity-allocation schemes for relevant railway infrastructure follow the principles set down in this Directive and allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity.
2. This Directive applies to main-line railway infrastructure used for domestic or international rail services.
3. Stand-alone local passenger networks, and networks such as tram or light rail which can solely be used for the provision of urban and suburban passenger services, are excluded from the scope of this Directive.

Privately owned networks that exist solely for the use by the owner for its own freight operations are also excluded from the scope of this Directive.
4. Railway undertakings and international groupings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive.

Article 2

Definitions

For the purpose of this Directive:

- (a) 'Allocation' means the allocation of railway infrastructure capacity by an infrastructure manager or allocation body.

³³ OJ L 234, 9.3.1982, p. 5.

- (b) **'Authorised applicant'** means a person or legal entity with a commercial or public service interest in procuring infrastructure capacity for the operation of a railway service, who has complied with the necessary requirements to enable him to seek to book capacity and who wishes to reserve the use of capacity on the relevant railway infrastructure. This shall include licensed railway undertakings.
- (c) **'Capacity-constrained infrastructure'** means a section of infrastructure for which demand for capacity cannot be fully satisfied even after coordination of the different request for capacity.
- (d) **'Capacity enhancement plan'** means a measure or series of measures with a timetable for their implementation which are proposed to alleviate the capacity constraints leading to the declaration of a section of infrastructure as "capacity constrained infrastructure".
- (e) **'Coordination'** means the process through which the allocation body and authorised applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity.
- (f) **'Framework agreement'** means a general agreement setting out the railway infrastructure capacity needs of an authorised applicant over a period longer than one timetable period.
- (g) **'Infrastructure capacity'** means the potential to schedule train paths on an element of infrastructure.
- (h) **'Infrastructure manager'** means any body or undertaking that is responsible for establishing and maintaining railway infrastructure.
- (i) **'Network'** means the entire railway infrastructure owned and managed by an infrastructure manager.
- (j) **'Network statement'** means the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity-allocation schemes. It shall also contain such other information as is required to enable application for capacity.
- (k) **'Railway undertaking'** means any public or private undertaking the business of which is to provide rail services for the transport of goods and/or passengers with a requirement that the undertaking must ensure traction.
- (l) **'Regulatory body'** means the organisation which is charged with overseeing the processes of railway infrastructure capacity allocation and charging schemes.
- (m) **'Scheduling process'** means the process which begins with applications for infrastructure capacity and is completed with the production of the working timetable.
- (n) **'Short notice request'** means a request for capacity which, because the requirement is not known sufficiently far in advance, cannot be requested through the normal scheduling process.

- (o) 'Train path' means the infrastructure capacity needed to run a train between two places over a given time-period.
- (p) 'Working timetable' means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.

Article 3

Network statement

1. The infrastructure manager shall, in consultation with authorised applicants and other interested parties, develop and publish a network statement.
2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure. It shall contain a separate section setting out charging principles, and tariffs where appropriate, as specified in Article 7 and a section setting out capacity allocation criteria and rules as specified in Article 17. It shall also contain detailed information on procedures and deadlines to be followed.
3. The network statement shall be made available to all parties that are or may wish to be authorised applicants, at a charge not exceeding its cost of publication.
4. The network statement shall be kept up to date, and modified as necessary.

CHAPTER II

Infrastructure charges

Article 4

Establishing, determining and collecting charges

1. Member States may establish a charging framework while respecting the managerial independence laid down in Article 7 of Directive 91/440/EEC. The establishing of specific charging rules, the determination of charges for the use of infrastructure and the collection of those charges shall be performed by the infrastructure manager.
2. Where the infrastructure manager, in its legal form, organisation and decision-making functions, is not independent of any railway undertaking, the function referred to in paragraph 1 and described in this Chapter shall be performed by a charging body that is independent in its legal form and organisation and decision-making from any railway undertaking.
3. Infrastructure managers shall collaborate to achieve the efficient operation of train services which cross more than one infrastructure network. They may establish such joint organisations as are appropriate to enable this to take place. Any collaboration or joint organisation shall be bound by the rules set out in this Directive.

4. Except where specific arrangements are made under Article 9(1), infrastructure managers shall ensure that the charging system in use is based on the same principles over the whole of their network.
5. Infrastructure managers shall ensure that the application of the charging system results in objective, equivalent and non-discriminatory charges for different railway undertakings that perform services of equivalent nature in a similar part of the market.
6. An infrastructure manager or charging body shall respect the commercial confidentiality of information provided to it by authorised applicants.

Article 5

Services

1. Railway undertakings shall be entitled to the package of services that are described in the Annex as the minimum access package as well as those of the services described in the Annex as access services which are required.
2. To ensure the safe operation of the network, railway undertakings may be required by the infrastructure manager to procure a number of services. These services are described in the Annex as mandatory services and may be supplied by the infrastructure manager or by some other body approved by an independent regulatory body.
3. Where the infrastructure manager offers any of the range of services described in the Annex as additional services he shall supply them upon request to an authorised applicant.
4. Railway undertakings may request a further range of ancillary services, listed in the Annex, from the infrastructure manager or from other suppliers. The infrastructure manager is not obliged to supply these services.

Article 6

Infrastructure cost and accounts

1. Member States shall lay down conditions, including where appropriate advance payments, to ensure that the accounts of an infrastructure manager shall, under normal business conditions over a reasonable time period, at least balance income from infrastructure charges, surplus from other commercial activities and State aid, on the one hand, and infrastructure expenditure on the other. Such aid shall be made in accordance with Articles 77, 92 and 93 of the Treaty.
2. Infrastructure managers shall, due regard being had to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.
3. Member States shall ensure that the provision set out in paragraph 2 is implemented, either through a contractual agreement between the competent authority and infrastructure manager covering a period of not less than three years

- which provides for State aid as referred to in paragraph 1, or through the establishment of an appropriate regulatory scheme with adequate powers.
4. Where a contractual agreement as described in paragraph 3 exists, the terms of the contract and the structure of the payments agreed to provide financial support to the infrastructure manager shall be agreed in advance to cover the whole of the period of the contract.
 5. 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 enhancement and renewal of the infrastructure.
 6. The infrastructure manager shall establish a methodology for apportioning costs between different types of rolling stock and operations, based upon the best available understanding of cost causation.

Article 7

Statement of charges and charging schemes

1. The infrastructure manager shall, in consultation with the authorised applicants and other interested parties, prepare a statement of charges and charging schemes for inclusion in the network statement.
2. The statement shall contain appropriate details of the charging scheme and sufficient information on charges that apply to the services listed in the Annex which are provided by only one supplier. The statement shall contain information on the charging scheme in force as well as indications of likely changes in charges for the following five years. It shall contain a general analysis of sales and income which does not permit identification of the charges payable by an undertaking for specific services.
3. Where an infrastructure manager implements a discount scheme as defined in Article 10, a performance scheme as defined in Article 12, or reservation charges as defined in Article 13, then details of these schemes shall be included in the statement of charges.
4. Upon receiving a reasonable request from an authorised applicant, the regulatory body shall require infrastructure managers to make available to the regulatory body within one month and free of charge, sufficiently detailed costing information used for infrastructure charge calculations as well as data illustrating the basis on which they establish and apportion costs between different types of rolling stock and services to enable that applicant to satisfy himself that the charges comply with the requirements of this Directive.
5. To permit the assessment of the feasibility of operation of a service an infrastructure manager shall provide free of charge, within one month of a request from an authorised applicant, information on charges which would apply for rolling stock types or services which are not covered in the published information.

Principles of charging

1. Charges for the use of railway infrastructure shall be paid to the infrastructure manager and used to fund his business.
2. Member States may require the infrastructure manager to provide all necessary information on the charges imposed to satisfy them that the charges are levied on a non-discriminatory basis.
3. Without prejudice to paragraph 5, the infrastructure charge for the use of railway infrastructure, which comprises the minimum access package and any of the access services required, shall be set at the cost that is directly incurred as a result of the operation of the train.
4. The infrastructure manager shall include in the infrastructure charge a sum which reflects the scarcity of capacity. This charge shall only be levied on identifiable segments of the infrastructure which are subject to capacity constraints. The determination of the level of this charge shall be based on a methodology about which interested parties shall be consulted in advance. The methodology employed shall be described in the statement of charging principles.
5. The infrastructure charge may be modified by a charge to take account of the cost of the external effects arising from the operation of the train. Such a charge shall be differentiated as a function of the magnitude of the effect caused. The level of these charges shall be based on a published methodology on which railway undertakings that are either using or may wish to use the infrastructure have been consulted. In the absence of any comparable level of charging of external costs in other, competing modes of transport, any such charges shall result in no overall change in revenue to the infrastructure manager. In situations where the incorporation of an external charge component leads to additional revenue, it is for Member States to decide how the revenue shall be used.
6. To avoid undesirable excessive fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of trains and times. Nevertheless, the relative magnitudes of the infrastructure charges shall be related to the relative difference in costs between services.
7. Where services listed in the Annex as additional, mandatory and ancillary services may only be supplied by one supplier then the charge imposed for the service shall relate to the cost of their provision based upon the actual level of usage.
8. Charges shall be levied for capacity used for the purpose of infrastructure maintenance. These charges shall not exceed the net revenue loss to the infrastructure manager due to the effects of the maintenance.

Article 9

Exceptions to charging principles

1. In exceptional circumstances and for specific projects, charging arrangements for the use of infrastructure or improvements to existing infrastructure may be based

on the long-run additional costs arising from the investment made, including a reasonable rate of return. Charges may only be set on this basis on the condition that the infrastructure manager demonstrates to the regulatory body that:

- (a) the investment required would not otherwise have been made; and
- (b) the investment and the charging scheme together result in an improvement in economic efficiency.

2. Member States should in principle seek to ensure that any service which is able to pay at least the cost which it gives rise to, is not prevented by the charging scheme from utilising infrastructure capacity. Where a charging body wishes to recover a higher level of costs than that permitted by Article 8(3), (4) and (5), then it may only do so, for services other than freight, by imposing additional charges following one of the sets of rules laid down in paragraphs 3, 4 and 5.
3. A fixed charge may be levied on the railway undertaking making greatest use of an element of infrastructure and a system of fixed and variable charges levied on other railway undertakings. For this purpose, the network may be divided into elements; each element of the infrastructure shall be no less than 1 000 km in length. The charge shall be based upon, and shall not exceed, the costs which are associated with the infrastructure element but which are not covered by the charges set out in Article 8(3). Where a fixed charge is levied, the charging body shall ensure that, when performing an equivalent service at the same time in the same market, other railway undertakings shall not face an average charge or a charge for running an additional service either of which is more than 10% greater than that which is paid by the railway undertaking making the greatest use of the element.
4. Charges may be increased and modulated through negotiation in relation to the elasticity of demand for different services or types of services. This may only be permitted under the close supervision of a regulatory body and where safeguards are in place which ensure that charges to users who are dependent on rail transport are not excessive. Regulatory bodies shall, after consultation, prepare and publish rules to be followed. Charges defined in this way shall be included in a contract between the infrastructure manager and the authorised applicant.
5. The infrastructure manager may publish tariffs, distinguishing between different clearly defined traffic types, which reflect the willingness to pay more than the costs that they impose. This may only be permitted in circumstances where safeguards are in place which ensure that charges to users who are dependent on rail transport are not excessive and that arrangements are in place to ensure that traffic which can at least pay the additional costs which it imposes may be accepted. Regulatory bodies shall supervise the tariffs for different traffic types and ensure that they are appropriate.

Article 10

Discounts

1. Without prejudice to Articles 85, 86 and 90 of the Treaty, 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 paragraphs 2, 3 and 4.
2. Discounts shall not exceed the actual cost saving to the infrastructure manager from the operation in comparison with a single isolated equivalent journey. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.
3. Discounts may only relate to charges levied for a specified infrastructure section.
4. Separate discount schemes shall apply for different types of service.

Article 11

Compensation schemes for unpaid marginal external and infrastructure costs

1. Member States may put in place a time-limited scheme to compensate for the use of railway infrastructure for the demonstrably unpaid marginal external and infrastructure costs of other transport modes in so far as these exceed the marginal external and infrastructure costs of rail.
2. 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.
3. Member States shall ensure that such a scheme is compatible with Articles 77, 92 and 93 of the Treaty.

Article 12

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. This shall be achieved through a performance scheme which provides for penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better than planned performance.
2. The basic principles of the performance scheme shall apply throughout the network.

Article 13

Reservation charges

1. Infrastructure managers may levy a charge for capacity that is requested but not used according to the principles set out in paragraphs 2 to 6.
2. The charge shall be utilised in such a manner as to provide incentives for efficient use of capacity.
3. Where all requests for capacity can be satisfied without coordination, the charge shall, as a maximum, be no greater than the costs of providing the path.
4. Where coordination is required, the charge shall, as a maximum, reflect the value of the capacity requested.
5. Special arrangements may be made where an undertaking has an agreement to enable it to run one or more trains without specifying the exact times of operation.
6. Reservation charges shall not be collected until after the time of the capacity requested.

CHAPTER III

Allocation of capacity

Article 14

Capacity rights

1. The right to permit train operations on railway infrastructure shall belong to the infrastructure manager of that network.
2. Capacity shall be allocated by an infrastructure manager and, once allocated to an authorised applicant, may not be transferred by the recipient to another undertaking or service. The use of capacity by a railway undertaking when carrying out the business of an authorised applicant who is not a railway undertaking shall not be considered a transfer.
3. The right to use specific railway infrastructure capacity in the form of a train path may be granted to authorised applicants for a maximum duration of one timetable period.
4. An infrastructure manager and an authorised applicant may enter into a framework agreement for the use of capacity on the relevant railway infrastructure for a longer term than one timetable period, in the manner laid down in Article 20.
5. Infrastructure managers and authorised applicants shall enter into contracts that define their respective rights and obligations in respect of any allocation of capacity.

Article 15

Capacity allocation

1. Member States may establish a framework for the allocation of railway infrastructure capacity while respecting the managerial independence laid down in Article 7 of Directive 91/440/EEC. The infrastructure manager shall establish the specific capacity allocation rules and shall perform the capacity allocation processes. In particular, the infrastructure manager shall ensure that railway infrastructure capacity is allocated on a fair and non-discriminatory basis and in accordance with Community law.
2. Where the infrastructure manager is not independent in its legal form and organisation and decision-making from any railway undertaking, then the allocation function shall be performed by an allocation body. Such an allocation body shall be independent from any railway undertaking in its legal form and organisation and decision making.
3. Infrastructure managers and allocation bodies shall respect the commercial confidentiality of information provided to them.

Article 16

Collaboration to allocate capacity on more than one network

1. Infrastructure managers shall collaborate to enable the efficient creation and allocation of capacity which crosses more than one network. They may establish such joint organisations as are appropriate to enable this to take place. Any collaboration or joint organisation shall be bound by the rules set out in this Directive.

In particular, they shall establish an organisation to coordinate the allocation of capacity at an international level that includes representatives of infrastructure managers for all railway infrastructures whose allocation decisions have an impact on more than one other infrastructure manager. This organisation may include appropriate representatives of infrastructure managers from outside the Community. The Commission shall be informed and shall be invited to attend meetings of the organisation as an observer.
2. At any meeting or other activity undertaken to permit the allocation of infrastructure capacity for trans-network train services, decisions shall only be taken by representatives of infrastructure managers.
3. The participants in the collaboration referred to paragraph 1 shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating capacity be made publicly available.
4. Working in collaboration as referred to in the first subparagraph of paragraph 1, infrastructure managers may assess the need for, and may where necessary organise and request the creation of international train paths to facilitate the operation at short notice of freight trains.

Such pre-arranged international train paths shall be made available to authorised applicants via any of the participating infrastructure managers.

Article 17

Network statement - capacity allocation

1. The infrastructure managers in consultation with authorised applicants, other interested parties and, where appropriate, other infrastructure managers, shall prepare a statement of capacity allocation principles and criteria which shall form part of the network statement.
2. This statement 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.
3. The statement shall specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:
 - (a) the modalities according to which authorised applicants may request capacity from the infrastructure manager;
 - (b) the requirements governing authorised applicants;
 - (c) the schedule for the application and allocation processes;
 - (d) the principles governing the coordination process;
 - (e) the procedures which shall be followed and criteria used where infrastructure is capacity constrained; and
 - (f) details of specialised infrastructure designations;
 - (g) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.
4. The statement shall detail the measures taken to ensure the adequate treatment of freight services, international services and short-notice requests.
5. The statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.

Article 18

Principles of allocation

In determining its statement on capacity allocation, the infrastructure manager shall have regard to the necessity or desirability of factors such as:

- (a) sharing the capacity and securing the development of the infrastructure for the carriage of passengers and goods for domestic and international traffic in the most efficient and economical manner in the interests of all users of railway services;

- (b) prevention of discrimination between undertakings or classes of undertakings;
- (c) promotion of competition in the provision of railway services;
- (d) maintaining and improving service reliability levels;
- (e) satisfaction of reasonable requirements of authorised applicants and the infrastructure manager with regard to the future development of their businesses;
- (f) maximisation of the flexibility available to the infrastructure managers with regard to the allocation of capacity, but consistent with satisfaction of the authorised applicant's reasonable requirements;
- (g) prevention of any imposition of undue constraints on the wishes of other undertakings holding, or intending to hold, rights to use the infrastructure to develop their business;
- (h) appropriate regard to the financial interests of providers of public funds for the purchase of passenger services;
- (i) providing incentives for good performance.

Article 19

Authorised applicants

1. Applications for railway infrastructure capacity may only be made by an authorised applicant.
2. The infrastructure manager may set requirements with regard to authorised applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published as part of the allocation principles in the network statement, and the Commission shall be informed.
3. The requirements in paragraph 2 may only include the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the authorised applicant, and assurance of the capability to prepare compliant bids for capacity.

Article 20

Framework agreements

1. Without prejudice to Articles 85, 86 and 90 of the Treaty, an authorised applicant and an infrastructure manager may enter into a framework agreement that specifies the characteristics of the railway infrastructure capacity required by the authorised applicant over a period of time exceeding one timetable period. The framework agreement shall not specify a train path in detail, but should be such as to seek to meet the legitimate commercial needs of the authorised applicant.

2. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other authorised applicants or services.
3. A framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.
4. The parties to a framework agreement may agree penalties in the event of its being necessary to modify or terminate the agreement.
5. Framework agreements shall in principle be no longer than five years. The infrastructure manager may agree to a longer period in specific cases. Any such exemption shall be justified by the existence of commercial contracts, specialised investments or risks.
6. While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.
7. Users with specific needs may wish to define aspects of capacity in the framework agreement more closely than is normally permitted, in recognition of its economic or social importance. Infrastructure managers may take account of such requirements for more specifically defined capacity, provided that it is purchased through a contract that recognises the cost of this to the infrastructure manager and that it is compatible with the principles set out in the network statement.

Article 21

Schedule for the allocation process

1. The infrastructure manager shall adhere to the schedule for capacity allocation set out in paragraphs 2 to 7.
2. The working timetable shall be established once per calendar year.
3. The timetable change shall take place at midnight on the last Saturday in May. Where a change or adjustment is carried out after the summer it shall take place on the last Saturday in September each year and at such other intervals between these dates as are required.
4. 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 timetable.
5. 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 collaboration with other relevant allocation bodies as set out in Article 16. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.
6. Infrastructure managers shall agree international train paths to be included in the working timetable, with the other relevant infrastructure managers concerned before commencing consultation on the draft timetable. Adjustments shall only be made if absolutely necessary.

7. No later than four months after the deadline for submission of bids by authorised applicants, the infrastructure manager shall prepare a draft timetable.

Article 22

Application

1. Authorised applicants may apply to the infrastructure manager to request an agreement granting rights to use railway infrastructure against a charge as laid down in Chapter II.
2. Requests relating to the regular timetable must adhere to the deadlines set out in Article 21.
3. An authorised applicant who is a party to a framework agreement shall apply in accordance with that agreement.
4. Authorised applicants may request 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 authorised applicant to seek capacity with the other relevant infrastructure manager.
5. Infrastructure managers shall ensure that, for capacity crossing more than one network, authorised applicants may apply direct to any joint body which the infrastructure managers establish.

Article 23

Scheduling

1. The infrastructure manager shall as far as is possible meet all requests for capacity including requests for train paths crossing more than one network, and shall as far as possible take account of all constraints on authorised applicants, including the economic effect on their business.
2. The infrastructure manager shall ensure that, except as set out in Articles 20(7), 25(3) and 27, no priority is given to any type of service or authorised applicant within the scheduling and coordination process.
3. The infrastructure manager shall consult interested parties about the draft timetable and allow them at least one month to present their views. Interested parties shall include all those who have requested capacity as well as other parties who wish to have the opportunity to comment on how the timetable may affect their ability to procure rail services during the currency of the timetable.
4. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.

Article 24

Coordination process

1. During the scheduling process, when the infrastructure manager encounters conflicts between different requests then he shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.
2. When a situation requiring coordination arises, the infrastructure manager shall have the right, within reasonable limits, to propose capacity that differs from that which was requested.
3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to achieve a resolution of any conflicts in the light of the principles set out in Article 18.
4. The principles governing the coordination process shall be defined in the network statement. These shall in particular reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.
5. When requests for capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.

Article 25

Scarcity of capacity

1. Where after coordination of the requested paths and consultation with applicants it is not possible to adequately satisfy requests for capacity then the infrastructure manager must immediately declare that element of infrastructure on which this has occurred to be capacity constrained infrastructure. This shall also be done for infrastructure which it can be foreseen will suffer from insufficient capacity in the near future.
2. When infrastructure capacity has been declared to be constrained, the infrastructure manager shall carry out a capacity analysis as described in Article 28, unless a capacity enhancement plan as described in Article 29 is already being implemented.
3. When charges levied under Article 8(4) have not achieved a satisfactory result and the infrastructure capacity has been declared to be constrained, the infrastructure manager may in addition employ priority criteria to allocate 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. This shall include taking account of the effect in other Member States.
5. The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority criteria.

6. For capacity-constrained infrastructure, the infrastructure manager shall, to an appropriate degree, take sufficient steps to ensure that it can accommodate short-notice requests which are foreseen or foreseeable at the time of the scheduling process. It shall ensure that the ability to satisfy these requests is comparable with that for requests within the timetabling process.
7. The procedures which shall be followed and criteria used where infrastructure is capacity-constrained shall be set out in the network statement.

Article 26

Short-notice requests

1. The infrastructure manager shall ensure that at any time it is able to respond to short-notice requests for individual train paths in no more than five days. The average response time for this type of request shall be less than two days.
2. Infrastructure managers shall where necessary undertake an evaluation of the need for spare capacity to be kept available within the final scheduled timetable to enable them to rapidly respond to foreseeable short-notice requests for capacity.
3. The infrastructure manager shall ensure that information on spare capacity which may be used to satisfy short-notice requests is made available to all authorised applicants who may wish to use this capacity.
4. General statistics of response times to short-notice requests and the outcome of the requests shall be published for each timetable period referred to in Article 21.

Article 27

Specialised infrastructure

1. Unless suitable alternative routes exist, railway 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 line.
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 85, 86 and 90 of the Treaty, when such designation has occurred, the infrastructure manager may give priority to this type of traffic when allocating capacity.

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

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

Article 28

Capacity analysis

1. The objective of a capacity analysis referred to in Article 25(2) is to determine the restrictions on 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 constraints and what measures might be taken in the short and medium term to ease the constraints.
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 capacity. Any measures proposed include in particular re-routing of services, re-timing services, speed alterations and infrastructure improvements.
3. A capacity analysis shall be performed by the infrastructure manager in consultation with current and prospective users of the relevant infrastructure.
4. A capacity analysis shall be completed within two months of the identification of infrastructure as capacity constrained.

Article 29

Capacity enhancement plan

1. Within six months of the completion of a capacity analysis described in Article 28, the infrastructure manager shall propose a capacity enhancement plan.
2. A capacity enhancement plan shall be developed in consultation with users of the relevant capacity constrained infrastructure. It will identify the reasons for the capacity constraint, the options for enhancement, the likely future development of traffic, constraints on infrastructure development, the cost of options including likely changes to access charges and a cost benefit analysis of the possible measures identified to enhance capacity.
3. The proposed plan shall contain a plan of the action that shall be taken and a timetable for implementation of the measures.
4. Unless it is for reasons beyond his control, where an infrastructure manager does not make progress with the action plan identified in the capacity enhancement plan, then he shall, on request of railway undertakings using the relevant infrastructure, cease to levy any fees which are levied in respect of the shortage of capacity for the relevant infrastructure.

Article 30

Use of train paths

1. Infrastructure managers shall impose conditions concerning the utilisation of train paths which they grant to authorised applicants as set out in paragraphs 2, 3 and 4.

2. For capacity constrained infrastructure, the infrastructure manager shall require the surrender of a train path which, over a period of at least one month, has been used on less than 75% of the occasions for which it has been booked.
3. For infrastructure sections where coordination was required, but which are not capacity constrained, the infrastructure manager may require the surrender of a train path which, over a period of at least one month, has been used on less than 75% of the occasions for which it has been booked.
4. In the network statement, an infrastructure manager may specify conditions by which it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.

Article 31

Infrastructure capacity for maintenance

1. Requests for infrastructure capacity to enable maintenance to be performed, shall be submitted during the scheduling process.
2. Adequate account shall be taken by the infrastructure manager of the effect of capacity reserved for track maintenance on other authorised applicants.

Article 32

Arbitration

1. The infrastructure manager shall ensure that an arbitration procedure capability which can reach a decision on a dispute within ten working days is available when it allocates railway capacity or participates in a joint organisation to allocate international railway capacity. The arbitration shall assist in the resolution of disputes relating to the allocation of infrastructure capacity. The procedures and method of operation shall be agreed in consultation with authorised applicants and shall be published as part of the network statement.
2. Where arbitration is required, each participant shall pay its own costs. Additional costs of the arbitration shall be shared equally between the parties.
3. When authorised applicants and an infrastructure manager or joint organisation of infrastructure managers request arbitration, they shall commit themselves to provide all information required to reach a decision and shall agree to be bound by the decision of the arbitration body.

CHAPTER IV

General measures

Article 33

Regulatory body

1. Without prejudice to Article 32, Member States shall establish a regulatory body. This body shall be independent in its organisation, funding, legal structure and

decision-making from any infrastructure manager, charging body, allocation body or authorised applicant. The body shall function according to the principles outlined in paragraphs 2 to 8 below.

2. An undertaking shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager concerning:
 - (a) the network statement;
 - (b) criteria contained within it;
 - (c) the allocation process and its result;
 - (d) the charging scheme;
 - (e) level or structure of infrastructure fees which they are, or may be, required to pay.
3. The regulatory body shall ensure that charges set by the infrastructure manager comply with Chapter II and are non-discriminatory. Negotiation between undertakings and an infrastructure manager concerning the level of infrastructure charges in as provided for in Article 9(4) shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.
4. The regulatory body shall have the power to request relevant information from the infrastructure manager, authorised applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.
5. The regulatory body shall be required to determine any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.
6. A decision of the regulatory body shall be binding on all parties covered by that decision.
7. In the event of an appeal on a refusal to grant capacity, or on the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.
8. Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.

Article 34

Safety certification

1. The arrangements for safety certification for railway undertakings which are or will be established in the Community and the international groupings which they

form, where such undertakings and groupings carry out services referred to in Article 10 of Directive 91/440/EEC under the conditions laid down in that Article shall be in accordance with paragraphs 2 and 3 of this Article.

2. The Member States shall provide that a safety certificate in which the railway undertakings' safety requirements are set out be submitted in order to ensure safe service on the routes concerned.
3. In order to obtain the safety certificate, the railway undertaking shall comply with the regulations under national law, compatible with Community law and applied in a non-discriminatory manner, laying down the technical and operational requirements specific to rail services and the safety requirements applying to staff, rolling stock and the undertaking's internal organisation.

In particular, it shall provide proof that the staff whom it employs to operate and accompany the trains providing services referred to in Article 10 of Directive 91/440/EEC has the necessary training to comply with the traffic rules applied by the infrastructure manager and to meet the safety requirements imposed on it in the interests of train movement.

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

Article 35

Report

The Commission shall, four years after entry into force of this Directive, submit to the Council a report, accompanied if necessary by proposals for further Community action.

Article 36

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive from 1 January 2000. They shall forthwith inform the Commission thereof.

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

Article 37

Repeals

Regulation (EEC) No 2830/77, Regulation (EEC) No 2183/78, Decision 82/529/EEC, and Directive 95/19/EC are hereby repealed with effect from the date laid down in Article 36.

Article 38

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 Communities*.

Article 39

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

The minimum access package shall comprise:

- (a) handling of requests for capacity;
- (b) the right to utilise track capacity which is granted;
- (c) use of running track points and junctions;
- (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
- (e) all other information required to implement or operate the service for which capacity has been granted.

Access services shall comprise:

- (a) access to refuelling facilities;
- (b) access to passenger stations, their buildings and other facilities;
- (c) access to freight terminals;
- (d) access to marshalling yards;
- (e) access to train formation facilities;
- (f) access to storage sidings;
- (g) access to maintenance and other technical facilities.

Mandatory services shall comprise:

- (a) assistance in the case of serious incidents or serious disturbance to normal train movements;
- (b) police intervention where necessitated;
- (c) monitoring the compliance with safety and regulatory standards by undertakings.

Additional services shall comprise:

- (a) use of electrical supply equipment for traction current;
- (b) traction current;
- (c) pre-heating of passenger trains;
- (d) supply of fuel;
- (e) shunting;
- (f) tailor made contracts for:
 - control of transport of dangerous goods,
 - assistance in running abnormal trains.

Ancillary Services shall comprise:

- (a) access to telecommunication network;
 - (b) provision of supplementary information;
 - (c) technical inspection of rolling stock.
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