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► **B** ► **M2** **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 ◀**

(OJ L 75, 15.3.2001, p. 29)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Commission Decision 2002/844/EC of 23 October 2002	L 289	30	26.10.2002
► <u>M2</u> Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004	L 220	16	21.6.2004

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**DIRECTIVE 2001/14/EC OF THE EUROPEAN PARLIAMENT
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**on the allocation of railway infrastructure capacity and the levying
of charges for the use of railway infrastructure**

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas:

- (1) Greater integration of the Community railway sector is an essential element of the completion of the internal market and moving towards achieving sustainable mobility.
- (2) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ provides for certain access rights in international rail transport for railway undertakings, and international groupings of railway undertakings; these rights mean that railway infrastructure can be used by multiple users.
- (3) Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees ⁽⁶⁾ set out a broad framework for the allocation of railway infrastructure capacity.
- (4) Those Directives have not prevented a considerable variation in the structure and level of railway infrastructure charges and the form and duration of capacity allocation processes.
- (5) To ensure transparency and non-discriminatory access to rail infrastructure for all railway undertakings all the necessary information required to use access rights are to be published in a network statement.
- (6) Appropriate capacity-allocation schemes for rail infrastructure coupled with competitive operators will result in a better balance of transport between modes.
- (7) Encouraging optimal use of the railway infrastructure will lead to a reduction in the cost of transport to society.

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

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

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

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

⁽⁶⁾ OJ L 143, 27.6.1995, p. 75.

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- (8) An efficient freight sector, especially across borders, requires action for the opening up of the market.
- (9) It should be possible for Member States to allow purchasers of railway services to enter directly the capacity-allocation process.
- (10) The revitalisation of European railways by means of extended access for international freight on the Trans-European Rail Freight Network requires fair intermodal competition between rail and road, particularly by taking appropriate account of the different external effects; appropriate charging schemes for rail infrastructure coupled with appropriate charging schemes for other transport infrastructures and competitive operators will result in an optimal balance of different transport modes.
- (11) The charging and capacity allocation schemes should permit equal and non-discriminatory access for all undertakings and attempt as far as possible to meet the needs of all users and traffic types in a fair and non-discriminatory manner.
- (12) Within the framework set out by Member States charging and capacity-allocation schemes should encourage railway infrastructure managers to optimise use of their infrastructure.
- (13) Railway undertakings should receive clear and consistent signals from capacity allocation schemes which lead them to make rational decisions.
- (14) In order to take into account the needs of users, or potential users, of railway infrastructure capacity to plan their business, and to the needs of customers and funders, it is important that the infrastructure manager ensures that infrastructure capacity is allocated in a way which reflects the need to maintain and improve service reliability levels.
- (15) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption and improve performance of the network.
- (16) Charging and capacity allocation schemes should allow for fair competition in the provision of railway services.
- (17) It is important to have regard to the business requirements of both applicants and the infrastructure manager.
- (18) It is important to maximise the flexibility available to the infrastructure managers with regard to the allocation of infrastructure capacity, but this must be consistent with satisfaction of the applicant's reasonable requirements.
- (19) The capacity allocation process must prevent the imposition of undue constraints on the wishes of other undertakings holding, or intending to hold, rights to use the infrastructure to develop their business.
- (20) It is desirable to grant some degree of flexibility to infrastructure managers to enable a more efficient use to be made of the infrastructure network.
- (21) Capacity allocation and charging schemes may need to take account of the fact that different components of the rail infrastructure network may have been designed with different principal users in mind.
- (22) The requirements for passenger services may often conflict with the requirements for freight; the requirements for passenger services may result in a network which is more costly to build and maintain than one designed solely for freight; the increasing speed differential between freight and passenger rolling stock can lead to an exacerbation of the conflict between these two types of traffic.
- (23) Different users and types of users will frequently have a different impact on infrastructure capacity and the needs of different services need to be properly balanced.

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- (24) Services operated under contract to a public authority may require special rules to safeguard their attractiveness to users.
- (25) The charging and capacity allocation schemes must take account of the effects of increasing saturation of infrastructure capacity and ultimately the scarcity of capacity.
- (26) The different time-frames for planning traffic types mean that it is desirable to ensure that requests for infrastructure capacity which are made after the completion of the timetabling process can be satisfied.
- (27) The use of information technology can enhance the speed and responsiveness of the timetabling process and improve the ability of applicants to bid for infrastructure capacity, as well as improving the ability to establish train paths which cross more than one infrastructure manager's network.
- (28) To ensure the optimum outcome for railway undertakings, it is desirable to require an examination of the use of infrastructure capacity when the coordination of requests for capacity is required to meet the needs of users.
- (29) In view of the monopolistic position of the infrastructure managers it is desirable to require an examination of the available infrastructure capacity, and methods of enhancing it when the capacity allocation process is unable to meet the requirements of users.
- (30) A lack of information about other railway undertakings' requests as well as about the constraints within the system may make it difficult for railway undertakings to seek to optimise their infrastructure capacity requests.
- (31) It is important to ensure the better coordination of allocation schemes so as to ensure the improved attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic.
- (32) It is important to minimise the distortions of competition which may arise, either between railway infrastructures or between transport modes, from significant differences in charging principles.
- (33) It is desirable to define those components of the infrastructure service which are essential to enable an operator to provide a service and which should be provided in return for minimum access charges.
- (34) Investment in railway infrastructure is desirable and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments where they are economically attractive.
- (35) Any charging scheme will send economic signals to users. It is important that those signals to railway undertakings should be consistent and lead them to make rational decisions.
- (36) To enable the establishment of appropriate and fair levels of infrastructure charges, infrastructure managers need to record and establish the valuation of their assets and develop a clear understanding of cost factors in the operation of the infrastructure.
- (37) It is desirable to ensure that account is taken of external costs when making transport decisions.
- (38) It is important to ensure that charges for international traffic are such as to permit rail to meet the needs of the market; consequently infrastructure charging should be set at the cost that is directly incurred as a result of operating the train service.
- (39) The overall level of cost recovery through infrastructure charges affects the necessary level of government contribution; Member States may require different levels of overall cost recovery through charges including mark-ups or a rate of return which the

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market can bear while balancing cost recovery with intermodal competitiveness of rail freight. However, it is desirable for any infrastructure charging scheme to enable traffic to use the rail network which can at least pay for the additional cost which it imposes.

- (40) A railway infrastructure is a natural monopoly. It is therefore necessary to provide infrastructure managers with incentives to reduce costs and manage their infrastructure efficiently.
- (41) Account should be taken of the fact that for a great many years the level of investment in infrastructure and technology has not made it possible to create the conditions for any real development of railway transport. It is therefore advisable, against this background, for appropriate upgrading to be carried out, in particular in the context of setting up the Trans-European Rail Freight Network, by using *inter alia* the Community instruments available, without prejudice to priorities already established.
- (42) Discounts which are allowed to railway undertakings must relate to actual administrative cost savings experienced; discounts may also be used to promote the efficient use of infrastructure.
- (43) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network.
- (44) The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required.
- (45) Measures are needed to ensure that all railway undertakings licensed under Community law are required to hold an appropriate safety certificate before operating on the territory of a Member State; the granting of safety certificates must comply with Community law.
- (46) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of these Community rules and acts as an appeal body, notwithstanding the possibility of judicial review.
- (47) Specific measures are required to take account of the specific geopolitical and geographical situation of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.
- (48) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (49) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof as well as safety certification, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

INTRODUCTORY PROVISIONS

*Article 1***Scope**

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

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

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

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

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

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

*Article 2***Definitions**

For the purpose of this Directive:

- a) 'allocation' means the allocation of railway infrastructure capacity by an infrastructure manager;

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

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

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

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

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- b) ‘applicant’ means a licensed railway undertaking and/or an international grouping of railway undertakings, and, in Member States which provide for such a possibility, other persons and/or legal entities with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No 1191/69⁽¹⁾ and shippers, freight forwarders and combined transport operators, for the operation of railway service on their respective territories;
- c) ‘congested infrastructure’ means a section of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;
- d) ‘capacity enhancement plan’ means a measure or series of measures with a calendar for their implementation which are proposed to alleviate the capacity constraints leading to the declaration of a section of infrastructure as ‘congested infrastructure’;
- e) ‘coordination’ means the process through which the allocation body and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;
- f) ‘framework agreement’ means a legally binding general agreement on the basis of public or private law, setting out the rights and obligations of an applicant and the infrastructure manager or the allocation body in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;
- g) ‘infrastructure capacity’ means the potential to schedule train paths requested for an element of infrastructure for a certain period;
- h) ‘infrastructure manager’ means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
- i) ‘network’ means the entire railway infrastructure owned and/or managed by an infrastructure manager;
- j) ‘network statement’ means the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes. It shall also contain such other information as is required to enable application for infrastructure capacity;
- k) ‘railway undertaking’ means any public or private undertaking, licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;
- l) ‘train path’ means the infrastructure capacity needed to run a train between two places over a given time-period;
- m) ‘working timetable’ means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.

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



Article 3

Network statement

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

CHAPTER II

INFRASTRUCTURE CHARGES

Article 4

Establishing, determining and collecting charges

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

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

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions, described in this chapter, other than collecting the charges shall be performed by a charging body that is independent in its legal form, organisation and decision-making from any railway undertaking.
3. Infrastructure managers shall cooperate to achieve the efficient operation of train services which cross more than one infrastructure network. They shall in particular aim to guarantee the optimum competitiveness of international rail freight and ensure the efficient utilisation of the Trans-European Rail Freight Network. They may establish such joint organisations as are appropriate to enable this to take place. Any cooperation or joint organisation shall be bound by the rules set out in this Directive.
4. Except where specific arrangements are made under Article 8(2), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.
5. Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.
6. An infrastructure manager or charging body shall respect the commercial confidentiality of information provided to it by applicants.

Article 5

Services

1. Railway undertakings shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in Annex II. The supply of services referred to in Annex II, point 2 shall be provided in a non-discriminatory manner

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and requests by railway undertakings may only be rejected if viable alternatives under market conditions exist. If the services are not offered by one infrastructure manager, the provider of the 'main infrastructure' shall use all reasonable endeavours to facilitate the provision of these services.

2. Where the infrastructure manager offers any of the range of services described in Annex II, point 3 as additional services he shall supply them upon request to a railway undertaking.
3. Railway undertakings may request a further range of ancillary services, listed in Annex II, point 4 from the infrastructure manager or from other suppliers. The infrastructure manager is not obliged to supply these services.

*Article 6***Infrastructure cost and accounts**

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

Without prejudice to the possible long-term aim of user cover of infrastructure costs for all modes of transport on the basis of fair, non-discriminatory competition between the various modes, where rail transport is able to compete with other modes of transport, within the charging framework of Articles 7 and 8, a Member State may require the infrastructure manager to balance his accounts without State funding.

2. Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be provided with incentives to reduce the costs of provision of infrastructure and the level of access charges.
3. Member States shall ensure that the provision set out in paragraph 2 is implemented, either through a contractual agreement between the competent authority and infrastructure manager covering a period of not less than three years which provides for State funding or through the establishment of appropriate regulatory measures with adequate powers.
4. Where a contractual agreement exists, the terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contract period.
5. A method for apportioning costs shall be established. Member States may require prior approval. This method should be updated from time to time to the best international practice.

*Article 7***Principles of charging**

1. Charges for the use of railway infrastructure shall be paid to the infrastructure manager and used to fund his business.
2. Member States may require the infrastructure manager to provide all necessary information on the charges imposed. The infrastructure manager must, in this regard, be able to justify that infrastructure charges actually invoiced to each operator, pursuant to Articles 4 to 12, comply with the methodology, rules, and where applicable, scales laid down in the network statement.
3. Without prejudice to paragraphs 4 or 5 or to Article 8, the charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

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

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

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

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

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

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

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

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

Article 8

Exceptions to charging principles

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

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

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

3. To prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of his infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system

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meets these requirements in so far as this can be done without disclosing confidential business information.

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

*Article 9***Discounts**

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

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

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

4. Discounts may relate only to charges levied for a specified infrastructure section.

5. Similar discount schemes shall apply for similar services.

*Article 10***Compensation schemes for unpaid environmental, accident and infrastructure costs**

1. Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.

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

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

4. Member States shall ensure that such a scheme is compatible with Articles 73, 87 and 88 of the Treaty.

*Article 11***Performance scheme**

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

2. The basic principles of the performance scheme shall apply throughout the network.

*Article 12***Reservation charges**

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

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

CHAPTER III

ALLOCATION OF INFRASTRUCTURE CAPACITY*Article 13***Capacity rights**

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

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

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

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

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

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

*Article 14***Capacity allocation**

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

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

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

*Article 15***Cooperation in the allocation of infrastructure capacity on more than one network**

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

The procedure established in order to coordinate the allocation of infrastructure capacity at an international level shall associate representatives

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

2. At any meeting or other activity undertaken to permit the allocation of infrastructure capacity for trans-network train services, decisions shall only be taken by representatives of infrastructure managers.
3. The participants in the cooperation referred to paragraph 1 shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating infrastructure capacity be made publicly available.
4. Working in cooperation as referred to in paragraph 1, infrastructure managers shall assess the need for, and may where necessary propose and organise international train paths to facilitate the operation of freight trains which are subject to an *ad hoc* request as referred to in Article 23.

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

Article 16

Applicants

1. Applications for infrastructure capacity may be made by railway undertakings and their international groupings and, in the territories of those Member States which so allow, by other applicants complying with the definition in Article 2(b). Member States may also allow other applicants to apply for infrastructure capacity on their territories.
2. The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published as part of the allocation principles in the network statement, and the Commission shall be informed.
3. The requirements in paragraph 2 may only include the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant, and assurance of the capability to prepare compliant bids for infrastructure capacity.

Article 17

Framework agreements

1. Without prejudice to Articles 81, 82 and 86 of the Treaty, a framework agreement may be concluded with an applicant. Such a framework agreement specifies the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period. The framework agreement shall not specify a train path in detail, but should be such as to seek to meet the legitimate commercial needs of the applicant. A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 30 of this Directive.
2. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.
3. A framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.
4. The framework agreement may contain penalties should it be necessary to modify or terminate the agreement.
5. Framework agreements shall in principle be for a period of five years. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justi-

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fied by the existence of commercial contracts, specialised investments or risks.

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

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

*Article 18***Schedule for the allocation process**

1. The infrastructure manager shall adhere to the schedule for capacity allocation set out in Annex III.
2. Infrastructure managers shall agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary.

*Article 19***Application**

1. Applicants may apply on the basis of public or private law to the infrastructure manager to request an agreement granting rights to use railway infrastructure against a charge as provided for in chapter II.
2. Requests relating to the regular working timetable must adhere to the deadlines set out in Annex III.
3. An applicant who is a party to a framework agreement shall apply in accordance with that agreement.
4. Applicants may request infrastructure capacity crossing more than one network by applying to one infrastructure manager. That infrastructure manager shall then be permitted to act on behalf of the applicant to seek capacity with the other relevant infrastructure managers.
5. Infrastructure managers shall ensure that, for infrastructure capacity crossing more than one network, applicants may apply direct to any joint body which the infrastructure managers may establish.

*Article 20***Scheduling**

1. The infrastructure manager shall as far as is possible meet all requests for infrastructure capacity including requests for train paths crossing more than one network, and shall as far as possible take account of all constraints on applicants, including the economic effect on their business.
2. The infrastructure manager may give priority to specific services within the scheduling and coordination process but only as set out in Articles 22 and 24.
3. The infrastructure manager shall consult interested parties about the draft working timetable and allow them at least one month to present their views. Interested parties shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.
4. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.



Article 21

Coordination process

1. During the scheduling process referred to in Article 20, when the infrastructure manager encounters conflicts between different requests he shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.
2. When a situation requiring coordination arises, the infrastructure manager shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.
3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to achieve a resolution of any conflicts.
4. The principles governing the coordination process shall be defined in the network statement. These shall in particular reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.
5. When requests for infrastructure capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.
6. Without prejudice to the existing appeal procedures and to the provisions of Article 30, in case of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.

Article 22

Congested infrastructure

1. Where after coordination of the requested paths and consultation with applicants it is not possible to satisfy requests for infrastructure capacity adequately then the infrastructure manager must immediately declare that element of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which it can be foreseen will suffer from insufficient capacity in the near future.
2. When infrastructure has been declared to be congested, the infrastructure manager shall carry out a capacity analysis as described in Article 25, unless a capacity enhancement plan as described in Article 26 is already being implemented.
3. When charges in accordance with Article 7(4) have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the infrastructure manager may in addition employ priority criteria to allocate infrastructure capacity.
4. The priority criteria shall take account of the importance of a service to society, relative to any other service which will consequently be excluded.

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

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

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

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

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

*Article 23***Ad hoc requests**

1. The infrastructure manager shall respond to *ad hoc* requests for individual train paths as quickly as possible, and in any event, within five working days. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.

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

*Article 24***Specialised infrastructure**

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

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

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

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

*Article 25***Capacity analysis**

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

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

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

*Article 26***Capacity enhancement plan**

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

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

It shall identify:

a) the reasons for the congestion;

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

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

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

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

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

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

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

*Article 27***Use of train paths**

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

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

*Article 28***Infrastructure capacity for scheduled maintenance**

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

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

*Article 29***Special measures to be taken in the event of disturbance**

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

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

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

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

CHAPTER IV

GENERAL MEASURES

*Article 30***Regulatory body**

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

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

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

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- f) arrangements for access in accordance with Article 10 of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽¹⁾ as amended by Directive 2004/51/EC of the European Parliament and of the Council of 30 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways ⁽²⁾.

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

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

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

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

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's

⁽¹⁾ OJ L 237, 24.8.1991, p. 25.

⁽²⁾ OJ L 164, 30.4.2004, p. 164.

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decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

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

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

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

▼M2**▼B***Article 33***Derogations**

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

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

do not need to apply the requirements set out in:

- a) Articles 3, 4(2), 13, 14, 17, 21(4), 21(6), 22, 24(3), 25 to 28 and 30 on the condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal, when so requested in writing by a railway undertaking, before an independent body which shall take its decision within two months of the submission of all relevant information and whose decision shall be subject to judicial review, and
- b) Article 32 in so far as rail transport services falling outside the scope of Article 10 of Directive 91/440/EEC are concerned.

2. However, where:

- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and Northern Ireland, a railway company so licensed elsewhere submits an official application to operate competing railway services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to in Article 35(2); or
- b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogations referred to in paragraph 1 shall not apply.

Within one year from the receipt of either the decision referred to in point (a) adopted in accordance with the advisory procedure referred to in Article 35(2), or notification of the official application referred to in point (b), the Member State or States concerned (Ireland, the United Kingdom with respect to Northern Ireland, or Greece) shall put in place legislation to implement the Articles referred to in paragraph 1.

3. A derogation referred to in paragraph 1 may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of such

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derogation may address a request to the Commission for a renewed derogation. Any such request must be substantiated. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 35(2). The said advisory procedure shall apply to any decision related to the request.

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

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

CHAPTER V

FINAL PROVISIONS

*Article 34***Implementing measures**

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

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

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

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

*Article 35***Committee procedures**

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

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

4. The Committee shall adopt its rules of procedure.

▼B*Article 36***Report**

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

*Article 37***Repeals**

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

*Article 38***Implementation**

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

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

*Article 39***Entry into force**

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

*Article 40***Addressees**

This Directive is addressed to the Member States.



ANNEX I

Contents of the network statement

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

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

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

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

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

▼B*ANNEX III***Schedule for the allocation process**

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

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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.

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3. The final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the entry into force of the working timetable.

4. No later than 11 months before the working timetable comes into force, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant allocation bodies as set out in Article 15. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.

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