

Council Directive of 29 July 1991 on the development
of the Community's railways (91/440/EEC) (repealed)

COUNCIL DIRECTIVE

of 29 July 1991

on the development of the Community's railways

(91/440/EEC) (repealed)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas greater integration of the Community transport sector is an essential element of the internal market, and whereas the railways are a vital part of the Community transport sector;

Whereas the efficiency of the railway system should be improved, in order to integrate it into a competitive market, whilst taking account of the special features of the railways;

Whereas, in order to render railway transport efficient and competitive as compared with other modes of transport, Member States must guarantee that railway undertakings are afforded a status of independent operators behaving in a commercial manner and adapting to market needs;

Whereas the future development and efficient operation of the railway system may be made easier if a distinction is made between the provision of transport services and the operation of infrastructure; whereas given this situation, it is necessary for these two activities to be separately managed and have separate accounts;

Whereas, in order to boost competition in railway service management in terms of improved comfort and the services provided to users, it is appropriate for Member States to retain general responsibility for the development of the appropriate railway infrastructure;

Whereas, in the absence of common rules on allocation of infrastructure costs, Member States shall, after consulting the infrastructure management, lay down rules providing for the payment by railway undertakings and their groupings for the use of railway infrastructure; whereas such payments must comply with the principle of non-discrimination between railway undertakings;

Whereas Member States should ensure in particular that [^{X1}existing publicly owned or controlled] railway transport undertakings are given a sound financial structure, whilst taking care that any financial rearrangement as may be necessary shall be made in accordance with the relevant rules laid down in the Treaty;

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Whereas, in order to facilitate transport between Member States, railway undertakings should be free to form groupings with railway undertakings established in other Member States;

Whereas, such international groupings should be granted rights of access and transit in the Member States of establishment of their constituent undertakings, as well as transit rights in other Member States as required for the international service concerned;

Whereas, with a view to encouraging combined transport, it is appropriate that access to the railway infrastructure of the other Member States should be granted to railway undertakings engaged in the international combined transport of goods;

Whereas it is necessary to establish an advisory committee to monitor and assist the Commission with the implementation of this Directive;

Whereas, as a result, Council Directive 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States⁽⁴⁾ should be repealed,

HAS ADOPTED THIS DIRECTIVE:

Editorial Information

X1 Substituted by [Corrigendum to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways \(Official Journal of the European Communities No L 237 of 24 of August 1991\)](#).

SECTION I

[^{F1}Scope and Definitions]

^{F2}Article 1

Textual Amendments

F2 Deleted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways](#).

Article 2

1 This Directive shall apply to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State.

[^{X12} Railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services shall be excluded from the scope of this Directive.]

[^{F33} Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive except Articles 6(1), 10 and 10a.]

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[^{F4} Member States may exclude from the scope of this Directive any railway service carried out in transit through the Community and which begins and ends outside the Community territory.]

Editorial Information

- X1** Substituted by [Corrigendum to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways \(Official Journal of the European Communities No L 237 of 24 of August 1991\)](#).

Textual Amendments

- F3** Inserted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways](#).
- F4** Inserted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure](#).

Article 3

For the purpose of this Directive:

- [^{F1}'railway undertaking' shall mean 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;
- 'infrastructure manager' shall mean any body or undertaking 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]
- 'railway infrastructure' shall mean all the items listed in Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70⁽⁵⁾, with the exception of the final indent which, for the purposes of this Directive only, shall read as follows: 'Buildings used by the infrastructure department',
- [^{F5}. . . .]
- [^{F3}'international freight service' shall mean transport services where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border]
- [^{F4}'international passenger service' shall mean a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;]
- 'urban and suburban services' shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;

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- [^{F4}“transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory;]
- ‘regional services’ shall mean transport services operated to meet the transport needs of a region.

Textual Amendments

- F3** Inserted by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.
- F4** Inserted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
- F5** Deleted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

Textual Amendments

- F1** Substituted by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.

SECTION II

[^{F1}Management independence]

[^{F1}Article 4

1 Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

2 While respecting the framework and specific charging and allocation rules established by the Member States, the infrastructure manager shall have responsibilities for its own management, administration and internal control.]

Article 5

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

Railway undertakings shall be managed according to the principles which apply to commercial companies; this shall also apply to their public services obligations imposed by the State and to public services contracts which they conclude with the competent authorities of the Member State.

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2 Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and the other technical, commercial and financial management objectives; [^{X1}they must also provide for the means enabling these objectives to be obtained.]

3 In the context of the general policy guidelines determined by the State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:

- [^{F5}]
- establish their internal organization, without prejudice to the provisions of Section III;
- control the supply and marketing of services and fix the pricing thereof, without prejudice to Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligation inherent in the concept of a public service in transport by rail, road and inland waterway⁽⁶⁾,
- take decisions on staff, assets and own procurement,
- expand their market share, develop new technologies and new services and adopt any innovative management techniques;
- establish new activities in fields associated with railway business.

Editorial Information

X1 Substituted by [Corrigendum to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways \(Official Journal of the European Communities No L 237 of 24 of August 1991\)](#).

Textual Amendments

F5 Deleted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure](#).

SECTION III

Separation between infrastructure management and transport operations

[^{F1}Article 6

1 Member States shall take the measures necessary to ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity may not be transferred to the other.

The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

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

3 Member States shall take the measures necessary to ensure that the functions determining equitable and non-discriminatory access to infrastructure, listed in Annex II,

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are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of the organisational structures, this objective must be shown to have been achieved.

Member States may, however, assign to railway undertakings or any other body the collecting of the charges and the responsibility for managing the railway infrastructure, such as investment, maintenance and funding.

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

Textual Amendments

- F1** Substituted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

^{F1}Article 7

1 Member States shall take the necessary measures for the development of their national railway infrastructure taking into account, where necessary, the general needs of the Community.

^{F6}2

3 Member States may also accord the infrastructure manager, having due regard to Articles 73, 87 and 88 of the Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments.

4 Within the framework of general policy determined by the State, the infrastructure manager shall draw up a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved.]

Textual Amendments

- F1** Substituted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)
- F6** Deleted by [Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

Article 8

The manager of the infrastructure shall charge a fee for the use of the railway infrastructure for which he is responsible, payable by railway undertakings [^{F5}and international groupings] using that infrastructure. After consulting the manager, Member States shall lay down the rules for determining this fee.

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

Textual Amendments

- F5** Deleted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and](#)

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Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

SECTION IV

Improvement of the financial situation

Article 9

1 In conjunction with [^{X1}the existing publicly owned or controlled railway undertakings], Member States shall set up appropriate mechanisms to help reduce the indebtedness of such undertakings to a level which does not impede sound financial management and to improve their financial situation.

2 To that end, Member States may take the necessary measures requiring a separate debt amortization unit to be set up within the accounting departments of such undertakings.

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

[^{F13} Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 73, 87 and 88 of the Treaty.]

[^{F34} In the case of railway undertakings profit and loss accounts and either balance sheets or annual statement of assets and liabilities shall be kept and published for business relating to the provision of rail freight-transport services. Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.]

Editorial Information

- X1** Substituted by [Corrigendum to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways \(Official Journal of the European Communities No L 237 of 24 of August 1991\)](#).

Textual Amendments

- F1** Substituted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways](#).
- F3** Inserted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways](#).

SECTION V

Access to railway infrastructure

[^{F1}Article 10

^{F5}₁

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

[^{F7}]^{X23} Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the Trans-European Rail Freight Network defined in Article 10a and in Annex I and, at the latest by 1 January 2006, to the entire rail network, for the purpose of operating international freight services.

In addition, at the latest by 1 January 2007, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services.]]

[^{F43a} Railway undertakings within the scope of Article 2 shall be granted by 1 January 2010 the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

The right of access to the infrastructure of the Member States for which the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 1 January 2012.

Whether the principal purpose of the service is to carry passengers between stations located in different Member States shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC following a request from the relevant competent authorities and/or interested railway undertakings.

3b Member States may limit the right of access defined in paragraph 3a on services between a place of departure and a destination which are covered by one or more public service contracts conforming to the Community legislation in force. Such limitation may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

Whether the economic equilibrium would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis and based on pre-determined criteria, following a request from:

- the competent authority or competent authorities that awarded the public service contract,
- any other interested competent authority with the right to limit access under this Article,
- the infrastructure manager, or
- the railway undertaking performing the public service contract.

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

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shall give the grounds for its decision and specify the time period within which, and the conditions under which,

- the relevant competent authority or competent authorities,
- the infrastructure manager,
- the railway undertaking performing the public service contract, or
- the railway undertaking seeking access;

may request a reconsideration of the decision.

3c Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Community law. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.

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

3e Member States shall take the necessary measures to ensure that the decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.

3f Without prejudice to paragraph 3b, Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

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

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

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

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

4 At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of this Article, and within two months of receipt of such a request and after consulting the Committee referred to in Article 11a(2), decide

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whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

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

[^{F7}X²⁵ Any railway undertaking engaged in rail transport services shall conclude the necessary agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used. The conditions governing such agreements shall be non-discriminatory and transparent, in conformity with the provisions of 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 and safety certification⁽⁷⁾.]]

[^{F7}X²⁶ Track access to, and supply of services in, the terminals and ports linked to rail activities referred to in paragraphs 1, 2 and 3, serving or potentially serving more than one final customer, shall be provided to all railway undertakings in a non-discriminatory and transparent manner and requests by railway undertakings may be subject to restrictions only if viable alternatives by rail under market conditions exist.]]

7 Without prejudice to Community and national regulations concerning competition policy and the institutions with responsibility in that area, the regulatory body established pursuant to Article 30 of Directive 2000/14/EC, or any other body enjoying the same degree of independence shall monitor the competition in the rail services markets, including the rail freight transport market.

That body shall be set up in accordance with the rules in Article 30(1) of the said Directive. Any applicant or interested party may lodge a complaint with this body if it feels that it has been treated unjustly, has been the subject of discrimination or has been injured in any other way. On the basis of the complaint and, where appropriate, on its own initiative, the regulatory body shall decide at the earliest opportunity on appropriate measures to correct undesirable developments in these markets. In order to ensure the necessary possibility of judicial control and the requisite cooperation between national regulatory bodies, Article 30(6) and Article 31 of the said Directive shall apply in this context.

[^{F88} By 1 January 2009, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of this Directive.

This report shall address:

- the implementation of this Directive in the Member States, and in particular its impact in the Member States as referred to in the second subparagraph of paragraph 3a and the effective working of the various bodies involved;
- market developments, in particular international traffic trends, activities and market share of all market actors, including new entrants.]

[^{F49} By 31 December 2012, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of the provisions of paragraphs 3a to 3f.

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The application of this Directive shall be evaluated on the basis of a report to be presented by the Commission two years after the date of the opening-up of the market in international passenger services.

This report shall also assess the development of the market, including the state of the preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70⁽⁸⁾ and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission shall, if appropriate, propose complementary measures to facilitate any such opening, and shall assess the impact of any such measures.]]

Editorial Information

- X2** Substituted by Corrigendum to Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (Official Journal of the European Union L 164 of 30 April 2004).

Textual Amendments

- F1** Substituted by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.
- F4** Inserted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
- F5** Deleted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
- F7** Substituted by Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.
- F8** Substituted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

f³Article 10a

- 1 The Trans-European Rail Freight Network consists of the following elements:
- a) Railway lines as indicated in the maps in Annex I.
 - b) Diversionary routes, where appropriate, particularly around congested infrastructure within the meaning of Directive 2000/14/EC. When these routes are offered, overall journey times shall be safeguarded as far as this is feasible.
 - c) Track access to terminals serving or potentially serving more than one final customer and to other sites and facilities, including feeder lines to and from these.
 - d) Track access to and from ports as listed in Annex I, including feeder lines.

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2 The feeder lines mentioned in paragraph 1(c) and (d) cover at either end of the journey 50 km or 20 % of the length of the journey on the railway lines referred to in paragraph 1(a), whichever is greater.

Belgium and Luxembourg, as Member States with a relatively small or concentrated network, may limit the length of the feeder lines in the first year after 15 March 2003 to at least 20 km and until the end of the second year to at least 40 km.]

Textual Amendments

F3 Inserted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

[^{F3}SECTION Va

Monitoring tasks of the Commission

Article 10b

1 Not later than 15 September 2001 the Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments of European rail transport. The Commission shall ensure that adequate resources are made available to enable the effective monitoring of this sector.

2 In this context, the Commission shall closely involve representatives of the Member States and of the sectors concerned in its work, including users, so that they are able better to monitor the development of the railway sector and the evolution of the market, assess the effect of the measures adopted and analyse the impact of the measures planned by the Commission.

3 The Commission shall monitor the use of the networks and the evolution of the framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, safety regulation and licensing and the degree of harmonisation that evolves. It shall ensure an active cooperation between the appropriate regulatory bodies in the Member States.

4 The Commission shall report to the European Parliament and the Council on:

- a) the evolution of the internal market in rail services
- b) the framework conditions
- [^{F7}[^{X2}c) the state of the European railway network]]
- d) the utilisation of access rights
- e) barriers to more effective rail services
- f) infrastructure limitations, and
- g) the need for legislation.]

Editorial Information

X2 Substituted by [Corrigendum to Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways \(Official Journal of the European Union L 164 of 30 April 2004\).](#)

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Textual Amendments

- F7** Substituted by [Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

SECTION VI

Final provisions

[^{F1}Article 11

1 Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted by use of the advisory procedure referred to in Article 11a(2).

[^{F82} Measures designed to amend non-essential elements of this Directive and relating to the adaptation of the Annexes thereto shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11a(3).]

Textual Amendments

- F1** Substituted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)
- F8** Substituted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.](#)

[^{F3}Article 11a

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.

[^{F83} Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

4 The Committee shall adopt its rules of procedure.]

Textual Amendments

- F3** Inserted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)
- F8** Substituted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.](#)

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Article 12

The provisions of this Directive shall be without prejudice to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedure of entities operating in the water, energy, transport and telecommunications sectors⁽⁹⁾.

Article 13

Decision 75/327/EEC is hereby repealed as from 1 January 1993.

Reference to the repealed Decision shall be understood to refer to this Directive.

^{F6}Article 14

.....

Textual Amendments

F6 Deleted by [Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

^{F3}Article 14a

- 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 requirement to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 6(3), first subparagraph and the tasks set out in Article 7(2), first subparagraph, in so far as those Articles oblige Member States to establish independent bodies performing the tasks referred to in the said Articles.

- 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 of 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 out in Article 11a(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 derogation 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 11a(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.

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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 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 11a (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 Article 6(3), first subparagraph, in so far as it obliges Member States to establish independent bodies performing the tasks referred to in that Article.]

Textual Amendments

F3 Inserted by [Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.](#)

Article 15

Member States shall, after consultation with the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

[^{F4}The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.]

Textual Amendments

F4 Inserted by [Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.](#)

Article 16

This Directive is addressed to the Member States.

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[^{F3}ANNEX I

PORTS

BELGIE/BELGIQUE

Antwerpen/Anvers

Gent/Gand

Zeebrugge/Zeebruges

[^{F9}БЪЛГАРИЯ

Варна

Бургас

Русе

Лом

Видин]

DANMARK

Ålborg

Århus

Esbjerg

Fredericia

København

Nyborg

Odense

DEUTSCHLAND

Brake

Bremen/Bremerhaven

Brunsbüttel

Cuxhaven

Emden

Hamburg

Kiel

Lübeck

Nordenham

Puttgarden

Rostock

Sassnitz

Wilhelmshaven

Wismar

[^{F10}EESTI

Muuga sadam

Paljassaare sadam

Vanasadam

Paldiski põhjasadam

Paldiski lõunasadam

Kopli põhjasadam

Kopli lõunasadam

Bekkeri sadam

Kunda sadam]

ΕΛΛΑΣ

Αλεξανδρούπολις

Ελευσίνα

Πάτρα

Πειραιάς

Θεσσαλονίκη

Βόλος

ESPAÑA

Algeciras

Almería

Barcelona

Bilbao

Cartagena-Escombreras

Gijón

Huelva

Tarragona

Valencia

Vigo

FRANCE

Bayonne

Bordeaux

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Boulogne

Calais

Cherbourg

Dunkerque

Fos-Marseille

La Rochelle

Le Havre

Nantes

Port-la-Nouvelle

Rouen

Sète

St-Nazaire

IRELAND

Cork

Dublin

ITALIA

Ancona

Bari

Brindisi

C. Vecchia

Genova

Gioia Tauro

La Spezia

Livorno

Napoli

Piombino

Ravenna

Salerno

Savona

Taranto

Trieste

Venezia

LATVIJA

Rīga

Ventspils

Liepāja
LIETUVA

Klaipėda]
NEDERLAND

Amsterdam Zeehaven

Delfzijl/Eemshaven

Vlissingen

Rotterdam Zeehaven

Terneuzen
[^{F10}POLSKA

Szczecin

Świnoujście

Gdańsk

Gdynia]
PORTUGAL

Leixões

Lisboa

Setúbal

Sines
[^{F9}ROMÂNIA

Constanța

Mangalia

Midia

Tulcea

Galați

Brăila

Medgidia

Oltenița

Giurgiu

Zimnicea

Calafat

Turnu Severin

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Orşova]

[^{F10}SLOVENIJA

Koper

SUOMI/FINLAND

Hamina

Hanko

Helsinki

Kemi

Kokkola

Kotka

Oulu

Pori

Rauma

Tornio

Turku

SVERIGE

Göteborg-Varberg

Helsingborg

Luleå

Malmö

Norrköping

Oxelösund

Stockholm

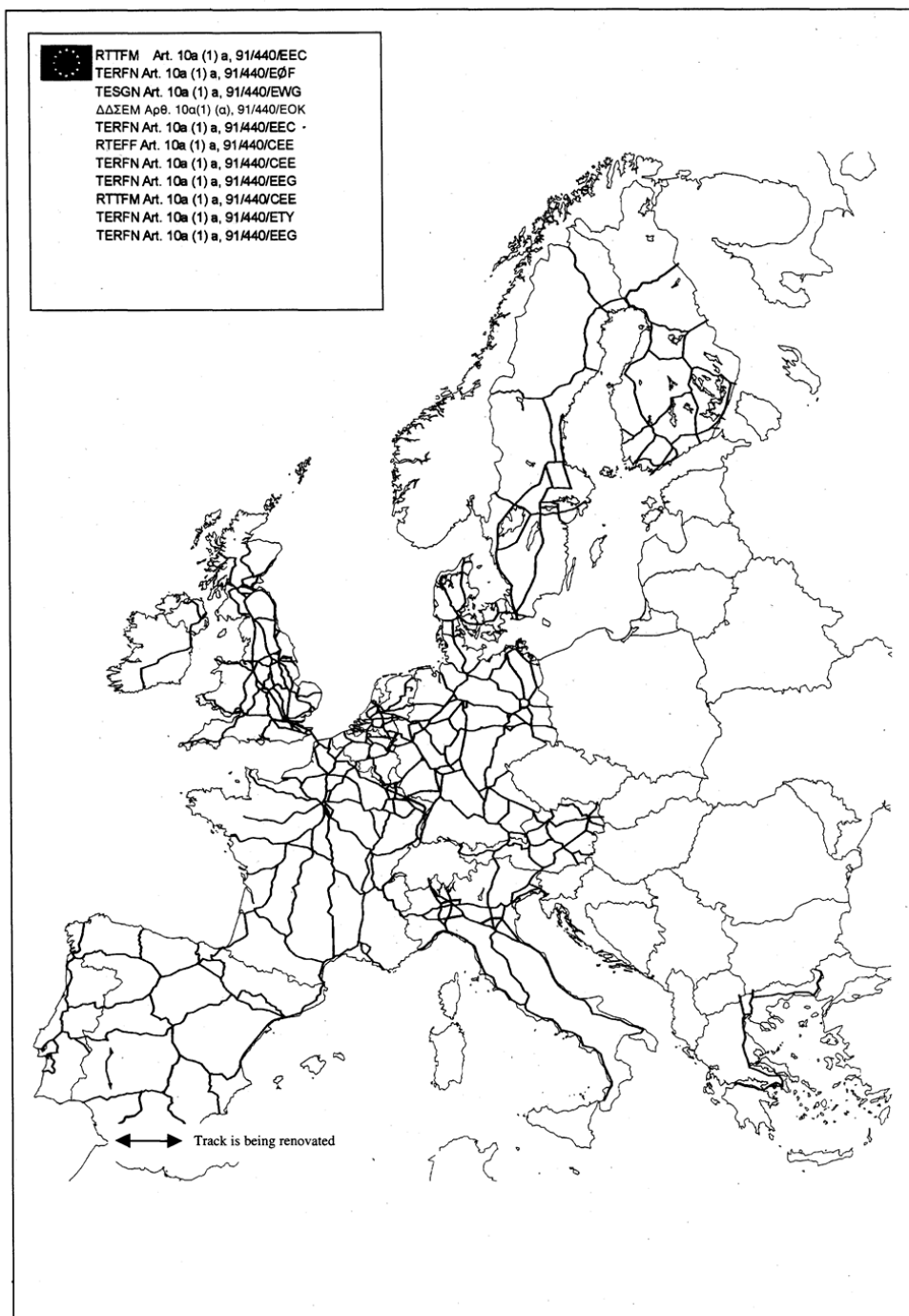
Trelleborg-Ystad

Umeå

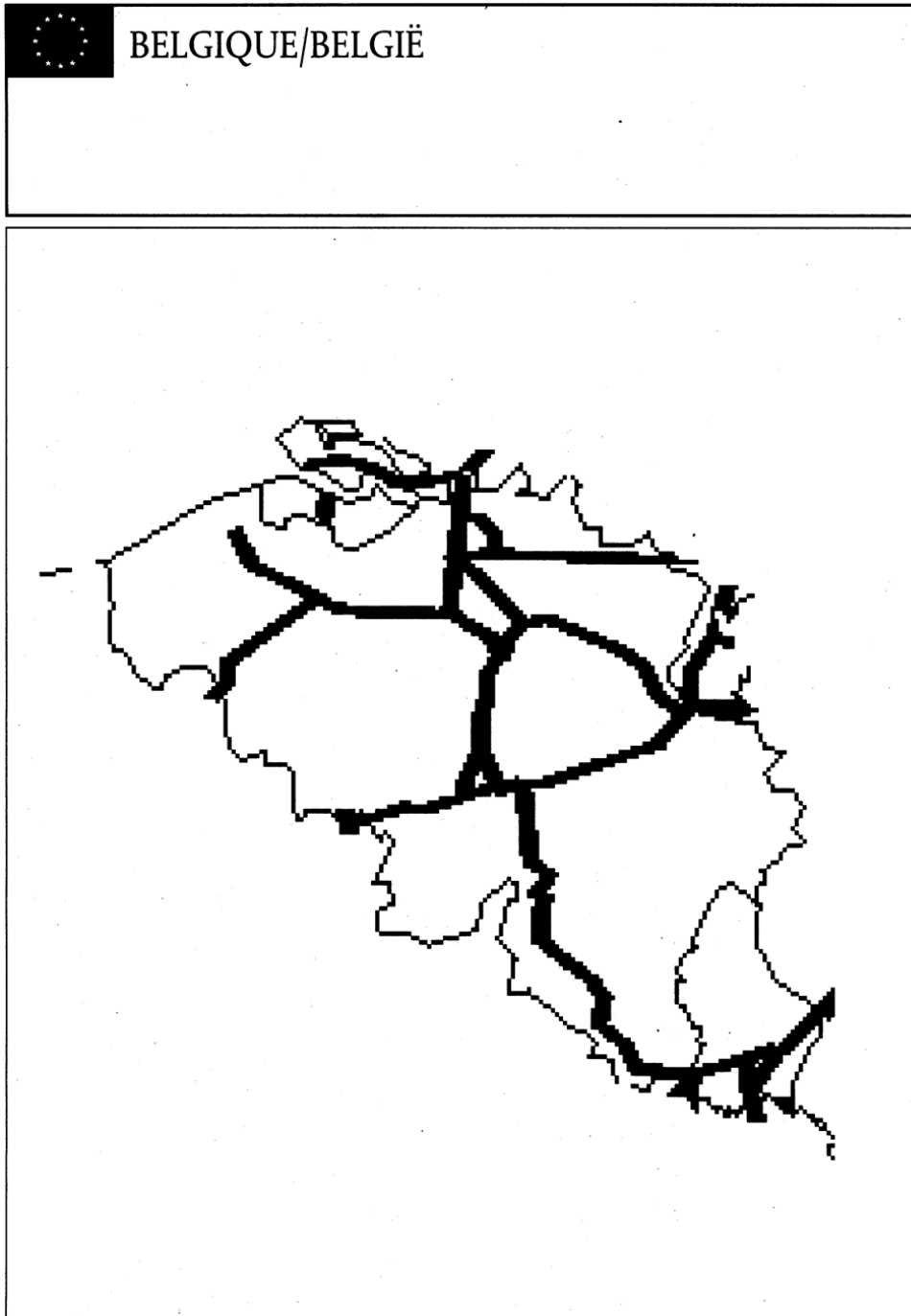
UNITED KINGDOM

All rail-connected ports

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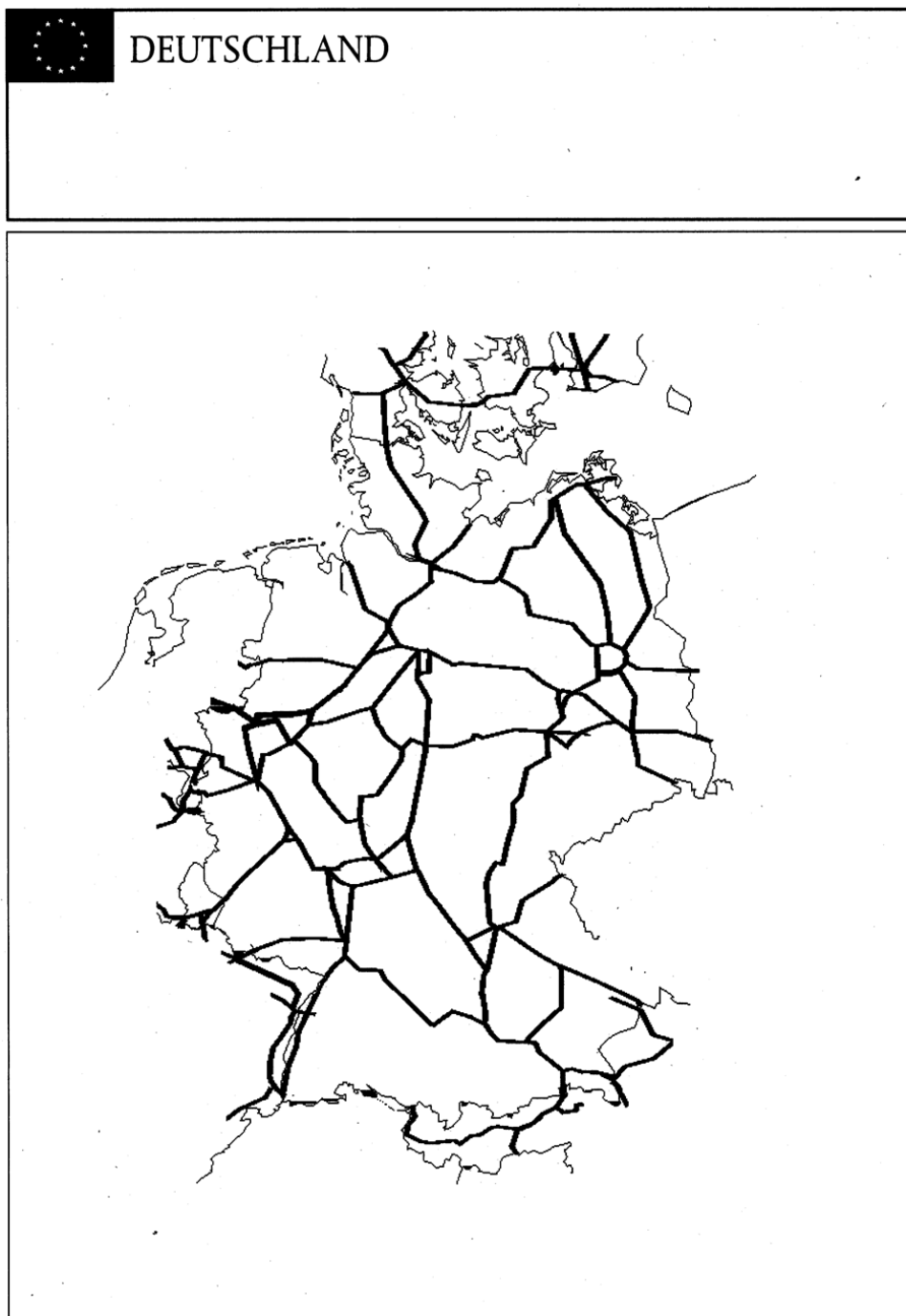
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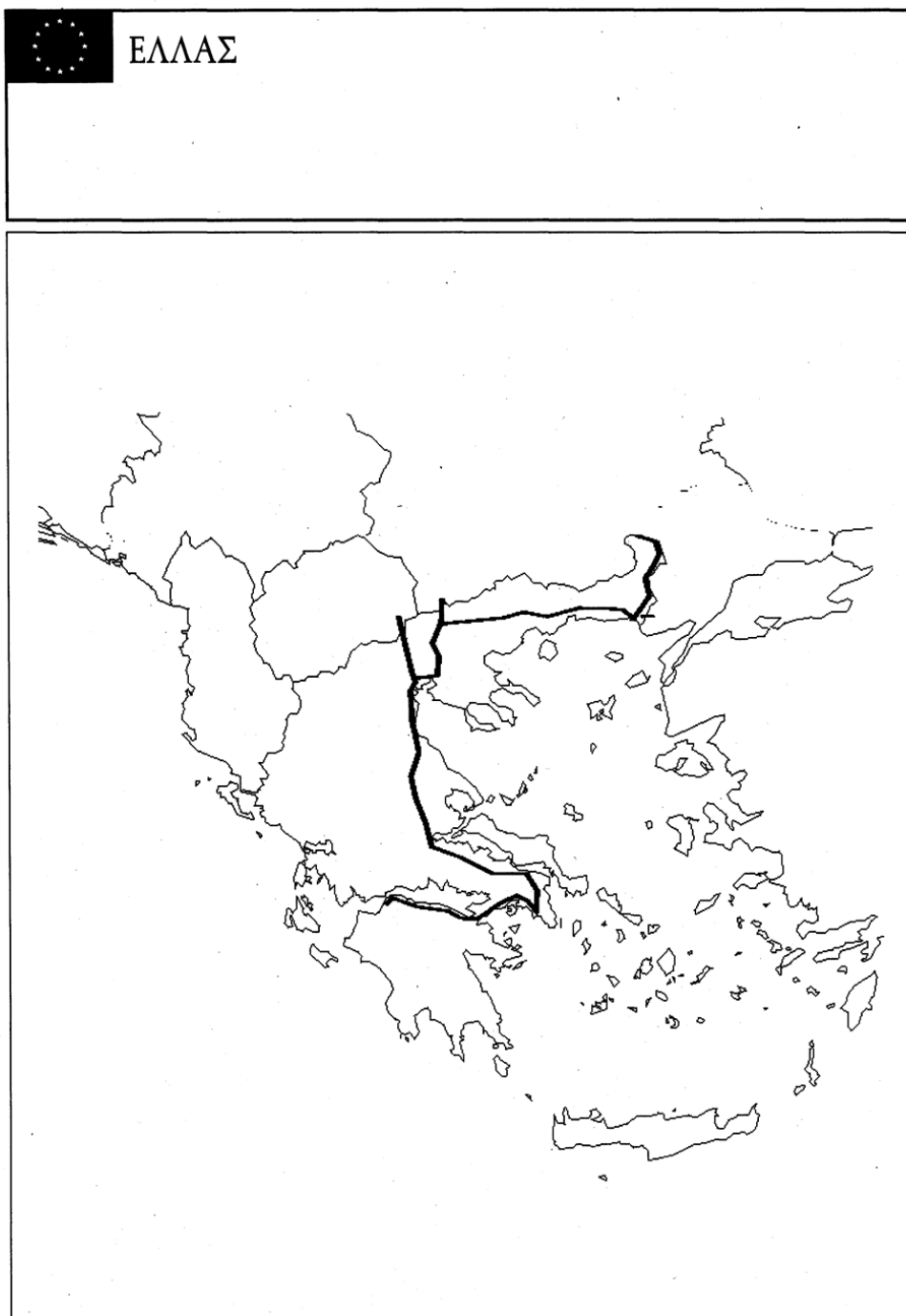
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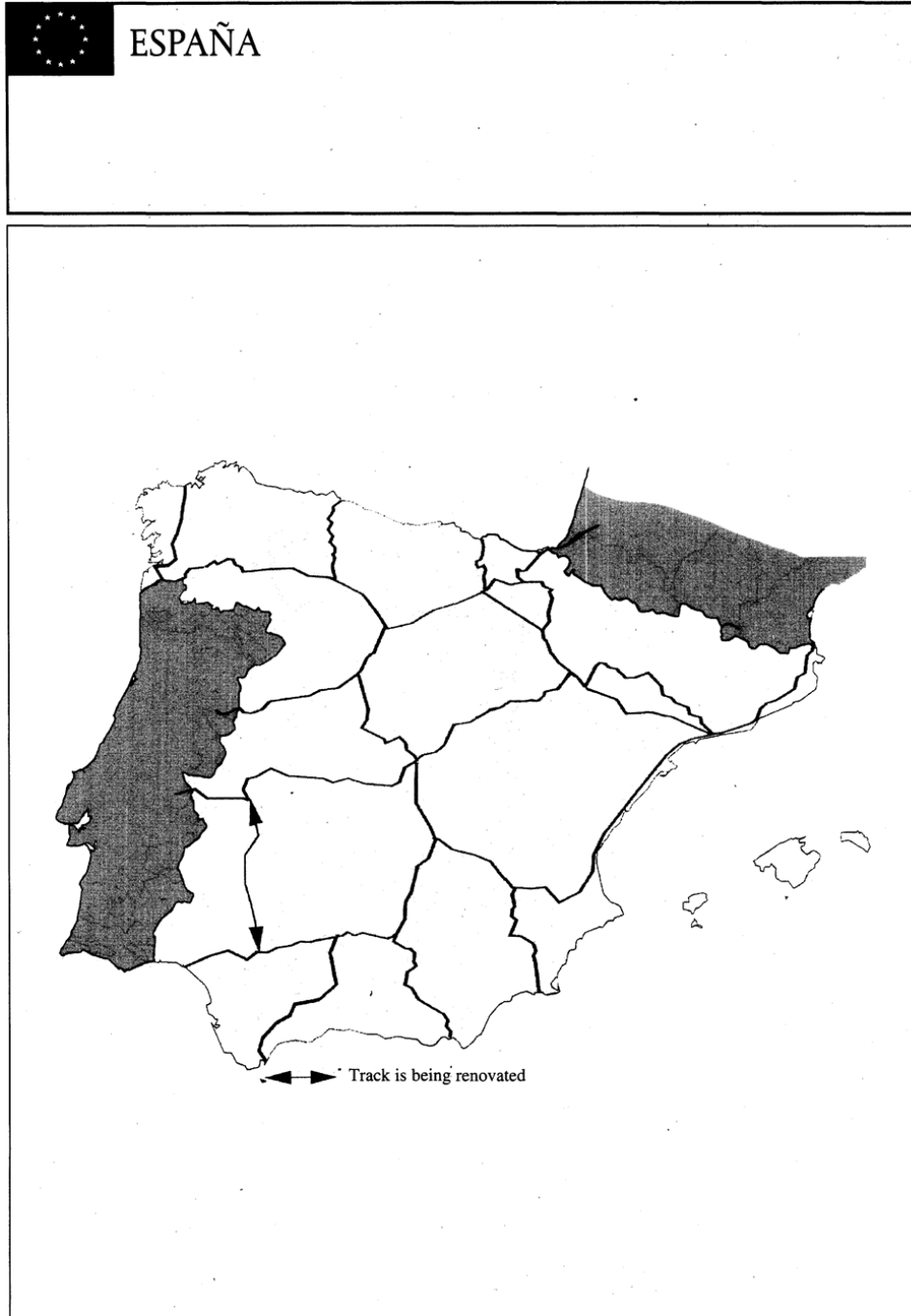
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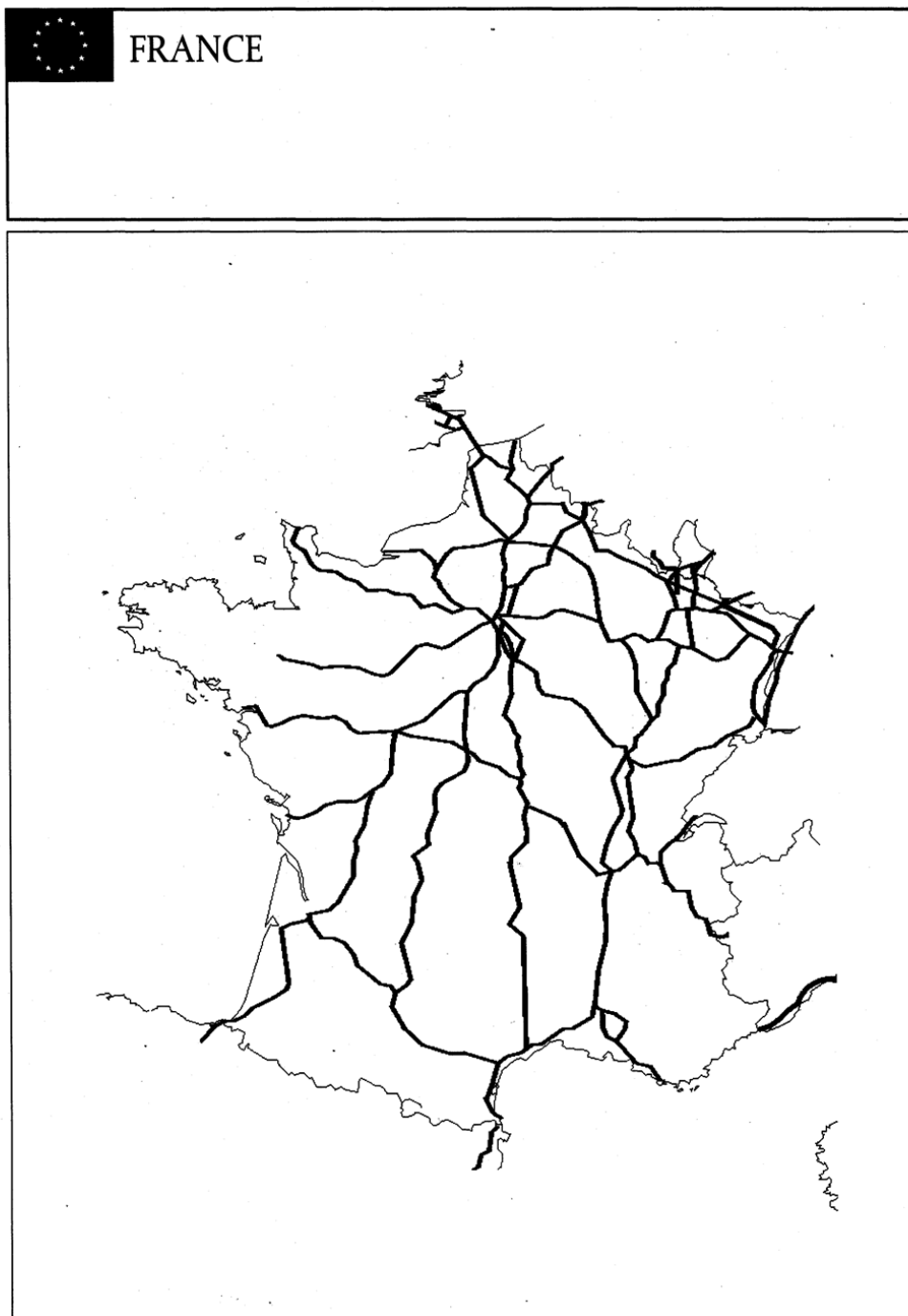
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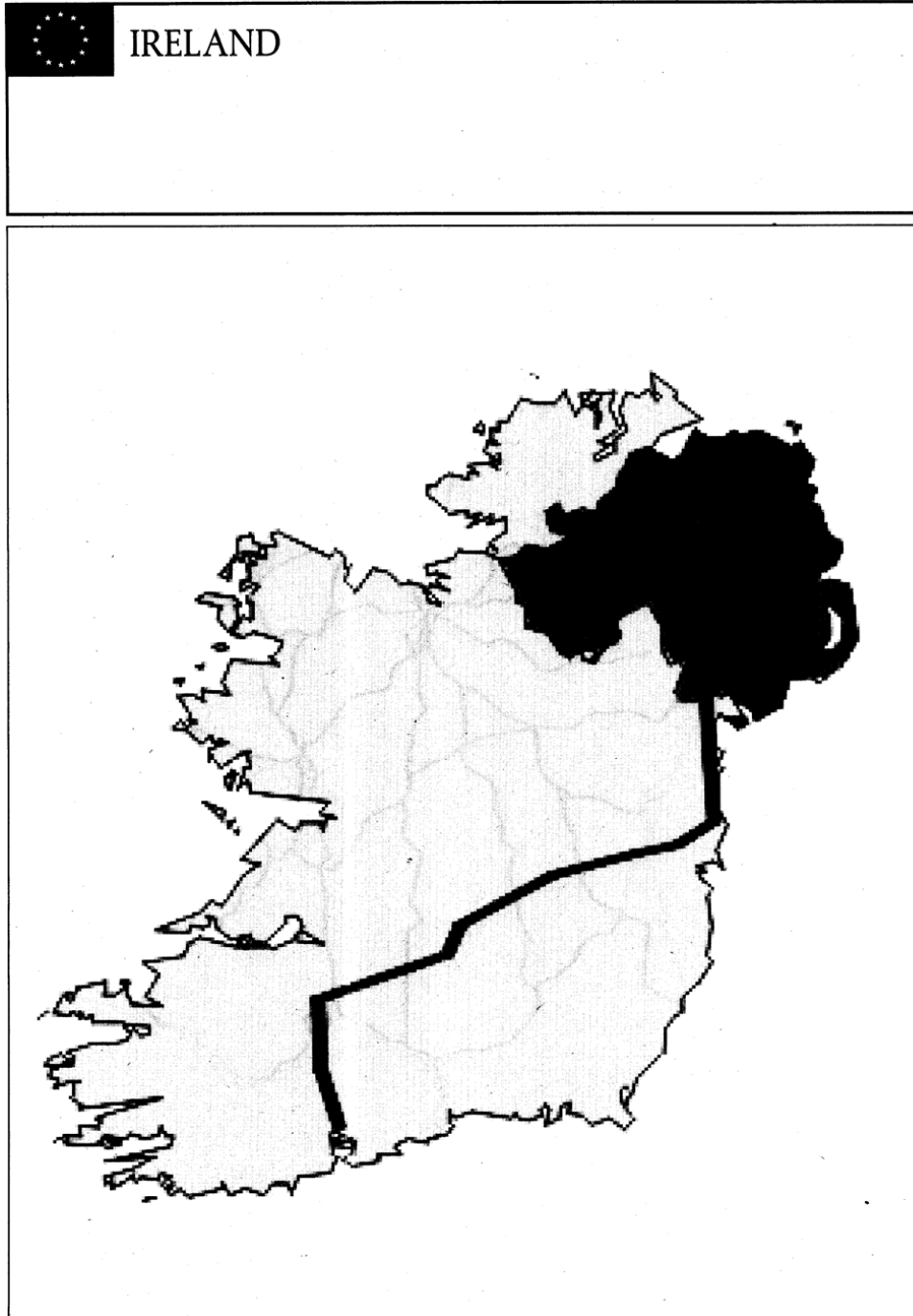
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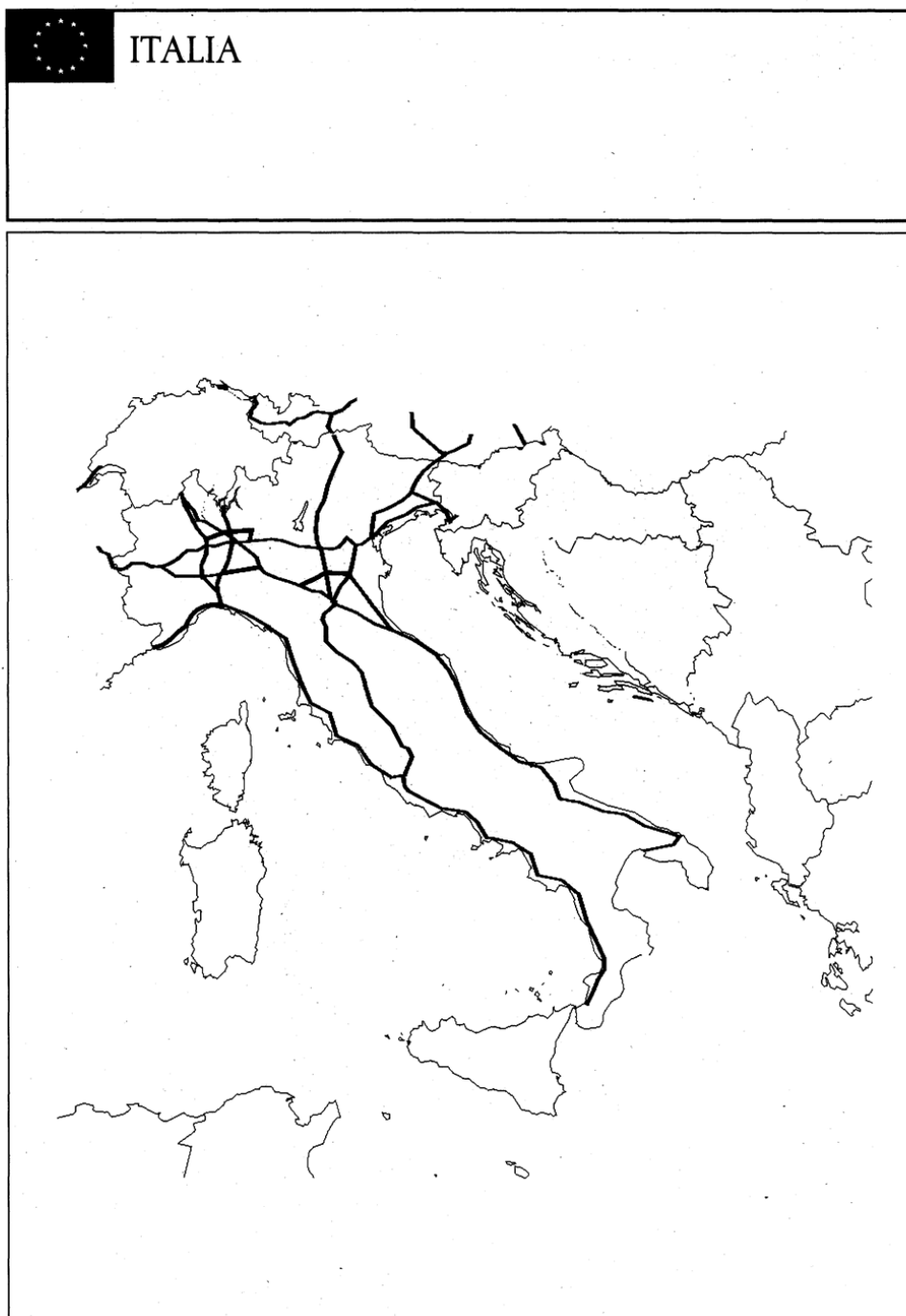
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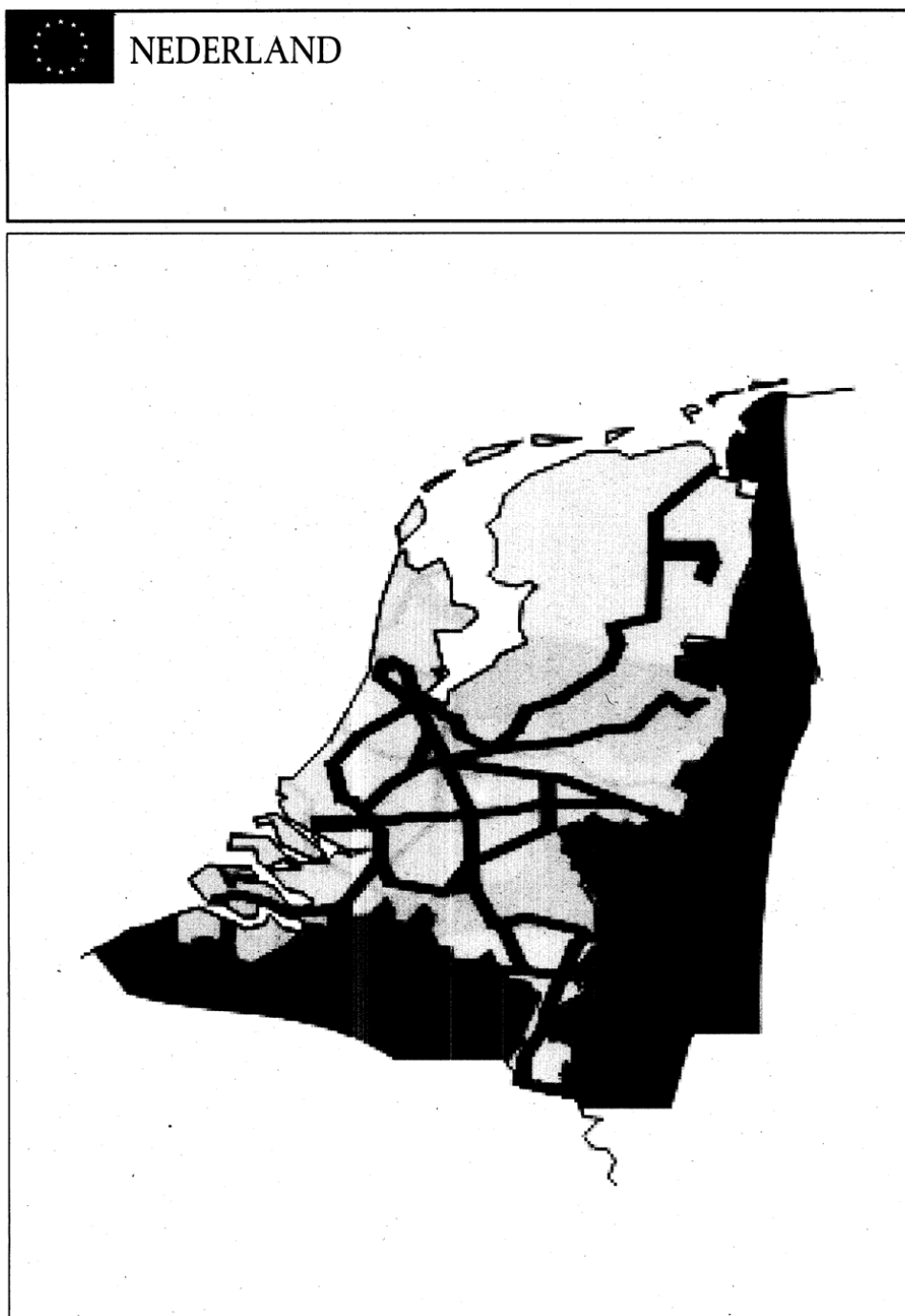
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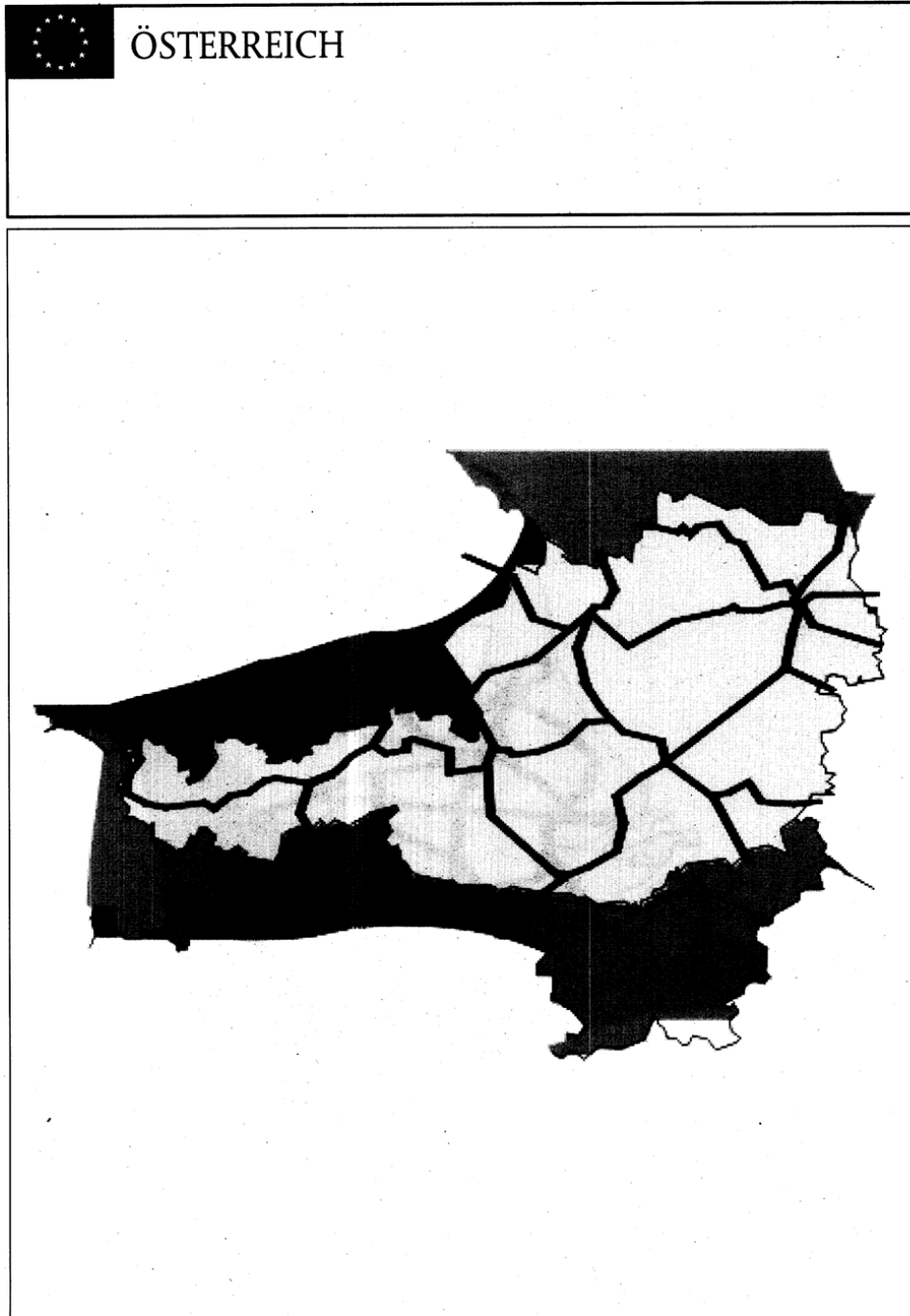


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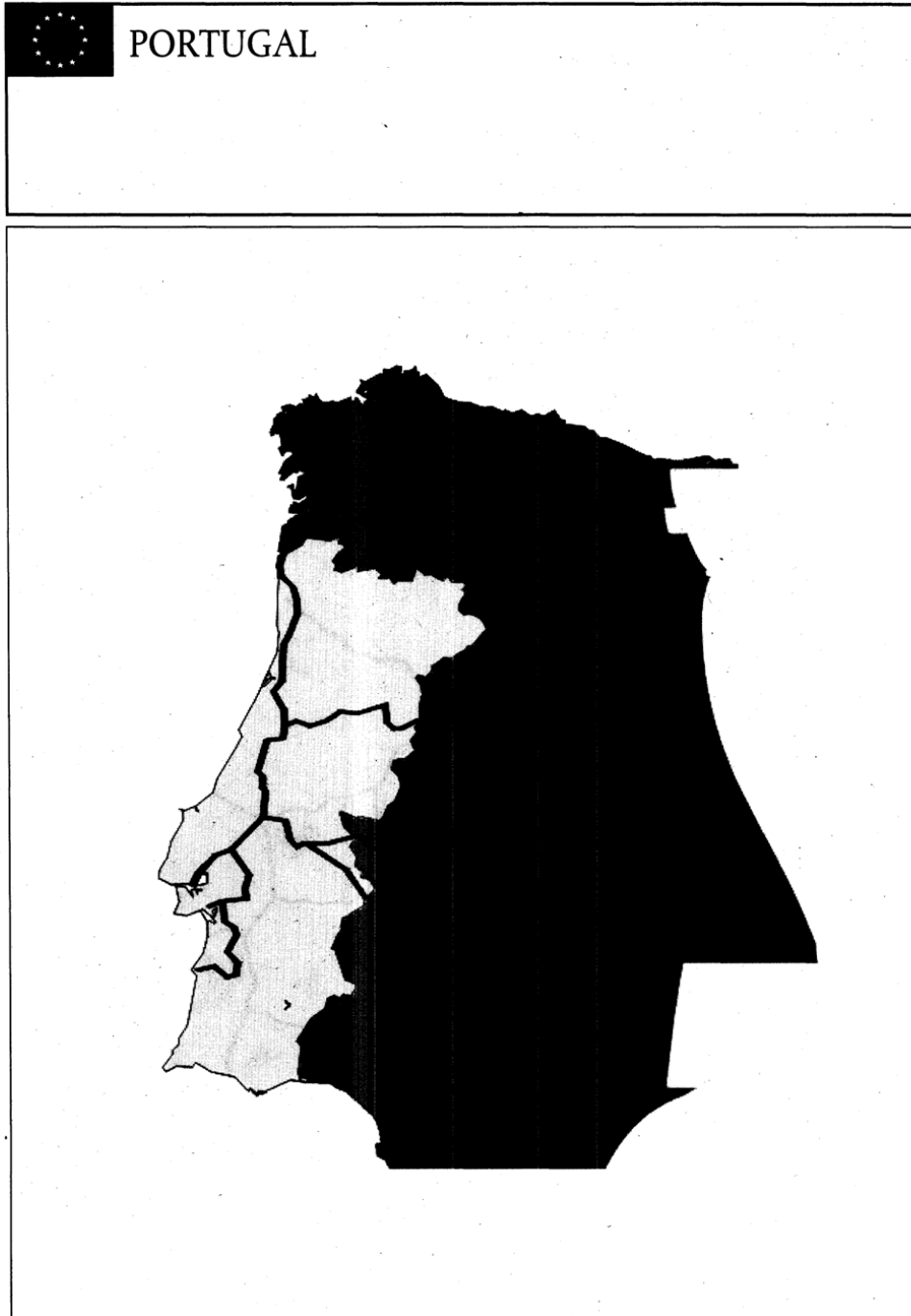
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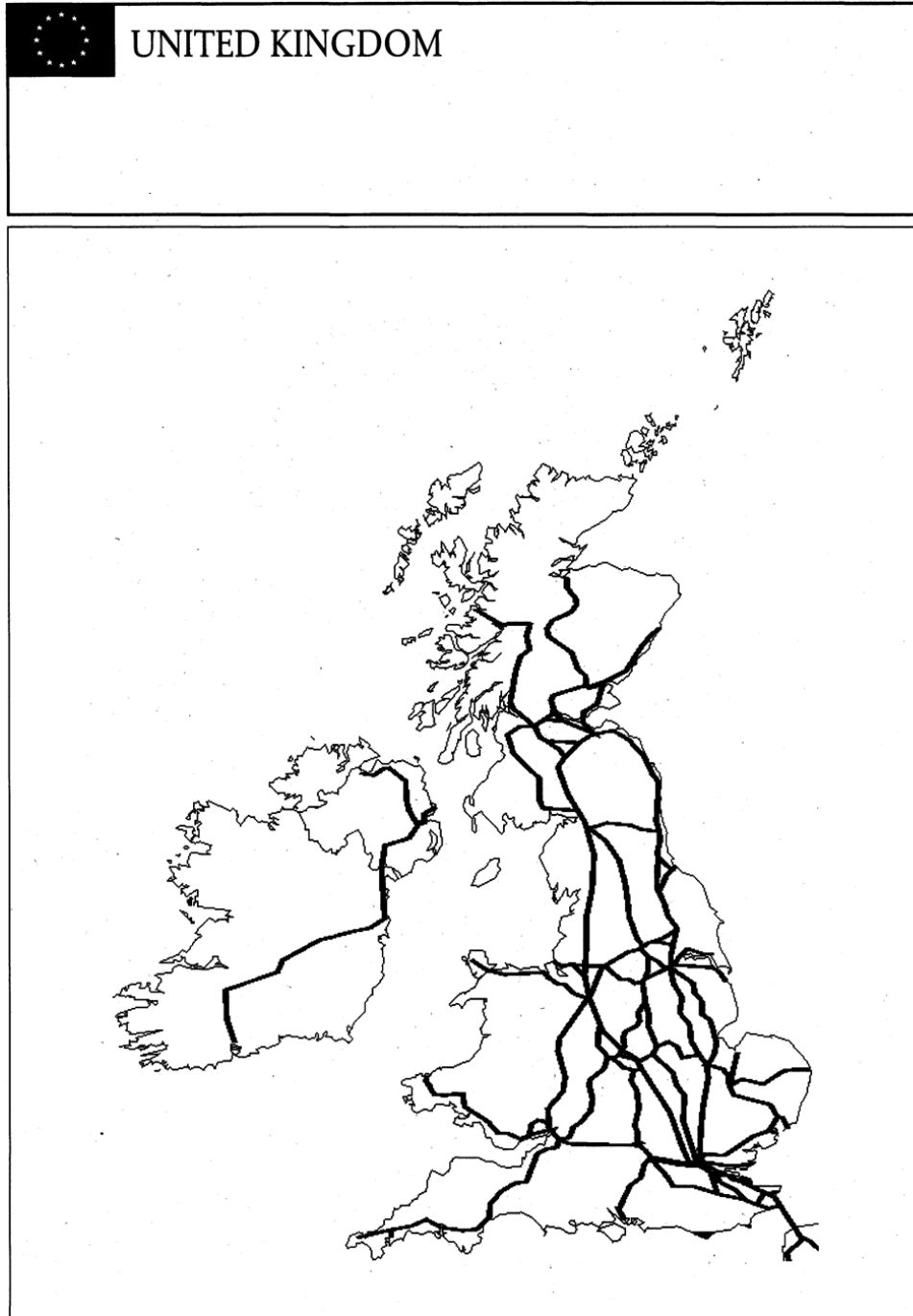


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[^{F3}ANNEX II

List of essential functions referred to in Article 6(3):

- preparation and decision making related to the licensing of railway undertakings including granting of individual licenses,
- decision making related to the path allocation including both the definition and the assessment of availability and the allocation of individual train paths,
- decision making related to infrastructure charging,
- monitoring observance of public service obligations required in the provision of certain services.]

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- (1) OJ No C 34, 14.2.1990, p. 8 and OJ No C 87, 4.4.1991, p. 7.
- (2) OJ No C 19, 28.1.1991, p. 254.
- (3) OJ No C 225, 10.9.1990, p. 27.
- (4) OJ No L 152, 12.6.1975, p. 3.
- (5) OJ No L 278, 23.12.1970, p. 1, Regulation amended by Regulation (EEC) No 2116/78 (OJ No L 246, 8.9.1978, p. 7).
- (6) OJ No L 156, 28.6.1969, p. 1; Regulation last amended by Regulation (EEC) No 1893/91 (OJ No L 169, 29.6.1991, p. 1).
- (7) [^{F1}[^{F7}[^{X2}OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).]]
- (8) [^{F4}OJ L 315, 3.12.2007, p. 1.]]
- (9) OJ No L 297, 29.10.1990, p. 1.

Editorial Information

- X2** Substituted by Corrigendum to Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (Official Journal of the European Union L 164 of 30 April 2004).

Textual Amendments

- F1** Substituted by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways.
- F4** Inserted by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
- F7** Substituted by Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.