courtesy translation – only the Italian text is authentic

Legislative Decree No. 112 of 15 July 2015[·]

Implementation of *Directive 2012/34/EU* of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast).

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(1) Published in the Official Journal No. 170 of 24 July 2015.

THE PRESIDENT OF THE REPUBLIC

Having regard to *Articles 76* and *87 of the Constitution*;

Having regard to *Law No 234 of 24 December 2012* laying down general rules on Italy's participation in the decision-making and implementation of EU legislation and policies;

Having regard *to European Delegation Law No 96 of 6 August 2013*;

Having regard to *Articles 1 and 2 of Law No 96 of 4 June 2010* laying down measures for the fulfilment of obligations arising from Italy's membership to the European Communities – Community law 2009;

Having regard to *Directive* 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area;

Having regard to Article *37 of Decree-Law No 201 of 6 December 2011,* converted, with amendments, into Law *No 214 of 22 December 2011,* as amended by Article 36 *of Decree-Law No 1 of 24 January 2012,* converted, as amended, into Law No 27 of 24 March 2012;

Having regard to *Legislative Decree No 162 of 10 August 2007*;

Having regard to *Law No 287 of 10 October 1990,* and in particular *Article 7* thereof*;*

Having regard to *Legislative Decree No 188 of 8 July 2003* implementing Directives 2001/12/EC, 2001/13/EC and 2001/14/EC relevant to the railway sector;

Having regard to *the Decree of the Minister of Infrastructure and Transport of 5 August 2005*, published in the Official Journal of the Italian Republic No 256 of 3 November 2005;

Having regard to *Article 131, paragraph 1, of Law No 388 of 23 December 2000;*

Having regard to *Legislative Decree No 422 of 19 November 1997,* as amended;

Having regard to Article 14 of *Law No 400 of 23 August 1988;*

Having regard to *Law No 166 of 1 August 2002,* and in particular *Article 38 (2)* and *(3)* thereof;

Having regard to the *decree of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance,* of *28 May 2009*, published in the Official Journal of the Italian Republic No. 142 of 22 June 2009;

Whereas it is deemed necessary, for proper transposition of *Directive 2012/34/EU* and in the interests of clarity of the regulatory framework, to fully revise the provisions referred to in *Legislative Decree No 188*

of 2003 in order to align them with the provisions of *Directive 2012/34/EC* of the European Parliament and of the Council;

Having considered to issue a legislative decree that replaces and repeals the provisions referred to in *Legislative Decree No. 188 of 2003*;

Having regard to the preliminary decisions of the Council of Ministers, as adopted at its meeting of 10 April 2015;

Having received the opinion of the Standing Conference on the Relations between State, Regions and Autonomous Provinces of Trento and Bolzano;

Having received the opinions of the competent committees of the Chamber of Deputies and of the Senate of the Republic;

Having regard to the decisions of the Council of Ministers adopted at its meetings of 11 June 2015 and 10 July 2015;

On the proposal of the Prime Minister and of the Minister of Infrastructure and Transport, in agreement with the Ministers of Foreign Affairs and International Cooperation, Justice and Economy and Finance;

HEREBY ISSUES

the following legislative decree:

Chapter I

General provisions

Art. 1 Subject-matter and scope

1. This decree lays down:
   a) the rules applicable to the use and management of railway infrastructure for domestic and international rail services and for rail transport activities of the railway undertakings operating in Italy;
   b) the criteria applicable to the issuing, renewal or amendment of licences for the provision of rail services by the railway undertakings established in Italy;
   c) the principles and procedures applicable to the setting and collecting of railway infrastructure charges and also to the allocation of railway infrastructure capacity.

2. This decree shall not apply to:
   a) standalone local and regional rail networks for passenger transport and to railway undertakings which only operate urban, suburban or regional services on these networks;
   b) rail networks intended only for the provision of urban and suburban passenger services and railway undertakings which only operate urban and extra-urban transport services on these networks;
   c) private railway infrastructure that is used only for the freight operations of the owner of such infrastructure and railway undertakings providing only freight services on such infrastructures.

3. Notwithstanding paragraphs 2 (a) and (b), when the railway undertaking is under the direct or indirect control of an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services, the provisions of Articles 4, 5, 11 and 16 shall apply to such railway undertaking.

4. The rail networks falling within the scope of this decree and for which the planning and administrative functions and tasks are assigned to the regions pursuant to *Legislative Decree No 422 of 19 November*

1997 shall be regulated, with reference to the use and management of such infrastructure, to rail transport activities, to the right of access to infrastructure and to the allocation of infrastructure capacity, on the basis of the principles of *Directive 2012/34/EU* of the European Parliament and of the Council establishing a single European railway area, and of this decree.

5. For the networks referred to in paragraph 4, the functions of the regulatory body specified in article 37, are carried out by the Transport Regulation Authority referred to in article *37 of Decree-Law No. 201 of 6 December 2011,* converted, with amendments, into Law *No. 214 of 22 December 2011,* on the basis of the principles laid down in Directive 2012/34/EU and in this decree.

6. Within six months from the date of entry into force of this decree, the Minister of Infrastructure and Transport shall issue, subject to agreement with the Permanent Conference for the Relations between State, Regions and Autonomous Provinces of Trento and Bolzano, after consultation with the regulatory body referred to in Article 3 (1) (t), a ministerial decree that identifies the rail networks referred to in paragraph 4. Pending the issue of the decree referred to in the above sentence, the *Decree of the Minister of Infrastructure and Transport of 5 August 2005* shall apply. The Minister of Infrastructure and Transport shall make, on a regular basis at least every five years, the necessary amendments to the decree referred to in the first sentence in order to take account of the market developments in the sector. The exclusions of local railway infrastructure which are of no strategic importance for the functioning of the railway market shall be notified in advance to the European Commission in accordance with the procedures under Article *2 (4)* of *Directive 2012/34/EU* of the European Parliament and of the Council, in the framework of the preliminary activities for update of the Ministerial Decree.[3] [5]

7. The Ministry of Infrastructure and Transport, subject to consultation with interested parties, shall define the rail infrastructure development strategy on the basis of sustainable financing of the rail system. In its first application, this strategy is outlined in the Economic and Financial Planning Document, in the Annex concerning infrastructure requirements and projects, until approval of the first multi-annual planning document under in Article 201 of the Code of Public Contracts, referred to in *Legislative Decree No 50 of 18 April 2016,* as amended, which outlines, *inter alia*, the rail infrastructure development strategy.[2]

8. The provisions of this decree shall be without prejudice to *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014* on the procurement procedures of entities operating in the water, energy, transport and postal services sectors, repealing *Directive 2004/17/EC,* transposed by the Code of Public Contracts referred to in *Legislative Decree No 50 of 18 April 2016*.[4]

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(2) Paragraph replaced by art. *15 (1b) of Decree-Law No. 148 of 16 October 2017,* converted, as amended, into *Law No 172 of 4 December 2017*.

(3) Paragraph amended by art. *1 (1) (a) of Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof.

(4) Paragraph amended by art. *1 (1) (b)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof.

(5) For the implementation of the provisions of this paragraph, see *Ministerial Decree of 5 August 2016*.

Art. 2 *Principles*

1. The activities that are governed by this decree shall comply with the following principles:

a) autonomy and independence as for management, administration and accounting of the railway undertakings;

b) independence of the essential functions of the infrastructure manager, accounting separation or establishment of independent and separate business structures, in terms of assets and accounting, for rail infrastructure management and operation of rail transport activities;

c) freedom of access to the market for rail freight and passenger services by railway undertakings, in accordance with the requirements of EU Directives and Articles 56 et seq. TFEU, under equitable, non-discriminatory and transparent conditions so as to ensure the development of competition in the rail sector;

d) possible improvement of the financial structure of publicly owned or controlled railway undertakings, in accordance with *Article 9 of Directive 2012/34/EU* of the European Parliament and of the Council, without prejudice to EU State aid legislation and in accordance with Articles 93, 107 and 108 TFEU.

2. The implementation of this Article shall not result in new or greater charges for public finance.

Art. 3 *Definitions*

1. For the purpose of this decree the following definitions shall apply:

a) 'railway undertaking' means any public or private licensed undertaking, the principal business of which is to provide services for both the transport of goods and of passengers by rail with a requirement that the undertaking ensures traction; this also includes undertakings which provide traction only;

b) 'infrastructure manager' means any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development as determined by the State within the framework of its general policy on development and financing of infrastructure;(6)

b-a) 'development of the railway infrastructure' means network planning, financial and investment planning as well as the building and upgrading of the infrastructure;(7)

b-b) 'operation of the railway infrastructure' means train path allocation, traffic management and infrastructure charging;(7)

b-c) 'maintenance of the railway infrastructure' means works intended to maintain the condition and capability of existing infrastructure;(7)

b-d) 'renewal of the railway infrastructure' means major substitution works on the existing infrastructure which do not change its overall performance;(7)

b-e) 'upgrade of the railway infrastructure' means major modification works to the infrastructure which improve its overall performance;(7)

b-f) 'essential functions of infrastructure management' means decision-making concerning train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and decision-making concerning infrastructure charging, including determination and collection of charges, in accordance with the criteria established by the regulatory body pursuant, in particular, to Articles 17 and 26 of this decree;(7)

c) 'railway infrastructure' means the items listed in Annex I to this decree;

d) 'international freight service' means a transport service where the train crosses at least one border of a Member State; the train may be joined or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border;

e) 'international passenger service' means a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be both joined and split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;

f) 'urban and suburban services' means transport services whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas;

g) 'regional services' means transport services whose principal purpose is to meet the transport needs of one or more regions, including a cross-border region;

h) 'transit' means crossing territory of the Union that includes neither loading or unloading goods, nor picking up and setting down passengers in the territory of the Union;

i) 'alternative route' means a different route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;

l) 'viable alternative' means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger service concerned;

m) 'service facility' means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in articles 13 (2) (9) and (11);

n) 'operator of service facility' means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in article 13 (2), (9) and (11);

o) 'cross-border agreement' means any agreement between two or more Member States or between Member States and third countries intended to facilitate the provision of cross-border rail services;

p) 'licence' means an authorisation valid throughout the territory of the Union issued by the competent licensing authority to an undertaking, by which its capacity to provide rail transport services as a railway undertaking is recognised; that capacity may be limited to the provision of specific types of services;

q) 'national passenger licence' means an authorisation valid only on the national territory, issued pending the liberalisation process of national rail passenger services within the EU, on the basis of the same requirements provided for the issue of the licence referred to under (p) and in compliance with the provisions of *Regulation (EC) No 1371/2007* of the European Parliament and of the Council of 23 October 2007, to an undertaking established in Italy, which authorises the operation of rail passenger services having origin and destination exclusively in the national territory; in the case of railway undertakings that are controlled, in accordance with *Article 7* of *Law No 287 of 10 October 1990,* by undertakings established abroad, the same principles of reciprocity shall apply as those laid down for the issue of the authorisation, the existence of which in the countries where the controlling undertakings are established shall be certified by the applicant;[(8)]]

r) 'authorisation' means an authorisation issued by the Minister of Infrastructure and Transport, at the request of licensed railway undertakings, which permits the service performance on the national territory upon reciprocity in the case of railway undertakings established outside the European Union or their subsidiaries within the meaning of *Article 7* of *Law No 287* of *10 October 1990;* [(9)]

s) 'licensing authority' means the national body responsible for granting licences to railway undertakings established in the Italian territory, which is the Ministry of Infrastructure and Transport;

t) 'regulatory body' means the Transport Regulation Authority, established by *Article 37 of Decree-Law No 201 of 6 December 2011,* converted, with amendments, into *Law No 214 of 22 December 2011,* as amended by *Article 36* of *Decree-Law No 1* of *24 January 2012,* converted, with amendments, into *Law No 27* of *24 March 2012*, which is also the national regulatory body referred to in *Article 55* of *Directive 2012/34/EU* of the European Parliament and of the Council;

u) 'rail transport' means the operation of both freight and passenger transport service between two different places, on the basis of a transport contract and of a track access agreement;

v) 'contractual agreement' means an agreement concluded within the framework of administrative measures;

w) 'track access agreement' means an agreement concluded between the infrastructure manager and the railway undertaking to grant the use of the infrastructure in terms of train paths, against payment of the charges referred to in Article 17;

aa) 'reasonable profit' means a rate of return on own capital that takes account of the risk, including that to revenue, or the absence of such risk, incurred by the operator of the service facility and is in line with the average rate for the sector concerned in recent years;

bb) 'capacity allocation' means the process by which the requests are examined and the capacity allocation of a given railway infrastructure by the infrastructure manager is defined;

cc) 'applicant' means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as the regions and autonomous provinces and, more generally, the competent authorities under *Regulation (EC) No. 1370/2007* and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity for the purpose of carrying out a rail transport service;

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

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

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

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

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

ii) 'network' means the entire railway infrastructure managed by an infrastructure manager;

ll) 'network statement' means the statement in which the general rules, deadlines, procedures and criteria for setting and levying the charges for access and use of the railway infrastructure and the fees for the services, as well as those concerning capacity allocation are published in detail, including such other information as is required to enable applications for infrastructure capacity;

mm) 'train path' means the fraction of infrastructure capacity needed to run a train between two places over a specified period;

nn) '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;

oo) 'storage siding' means sidings specifically dedicated to temporary parking of railway vehicles between two assignments;

pp) 'heavy maintenance' means work that is not carried out routinely as part of day-to-day operations and requires the vehicle to be removed from service;

qq) 'specific investment projects' means investment projects financed, in whole or in part, with debt or risk capital;

rr) 'siding' means a track that develops from the cross-over connecting to the railway infrastructure up to the inside of the connected siding;

ss) 'connected siding' means the facility, owned by an entity other than the infrastructure manager, where industrial or logistic activities are carried out, including ports and industrial development areas, connected to the railway infrastructure through a siding;

tt) 'siding connection agreement' means an agreement between the infrastructure manager and the owner or operator of a connected siding to regulate the traffic management between the railway infrastructure and the connected siding and the security checks on the state of the siding;

uu) 'total cost' means the set of operating costs, depreciation and cost of return on invested capital, including debt or risk capital;

uu-a) 'vertically integrated undertaking' means an undertaking where, within the meaning of *Council Regulation (EC) No 139/2004*:

1) an infrastructure manager is controlled by an undertaking which at the same time controls one or several railway undertakings that operate rail services on the infrastructure manager's network; or

2) an infrastructure manager is controlled by one or several railway undertakings that operate rail services on the infrastructure manager's network; or

3) one or several railway undertakings that operate rail services on the infrastructure manager's network are controlled by an infrastructure manager; or

4) an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not have a distinct legal personality. Where an infrastructure manager and a railway undertaking are fully independent of each other, but both are controlled directly by the State without an intermediary entity, they are not considered to constitute a vertically integrated undertaking for the purposes of this decree; (10)

uu-b) 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or more railway undertakings;

uu-c) 'high speed passenger services' means passenger rail services operated on specially-built high-speed lines equipped for speeds generally equal or greater than 250 km/h(10).

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(6) Letter replaced by *art. 2 (1) (a)* of *Legislative Decree No. 139 of 23 November 2018* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

(7) Letter introduced by *art. 2 (1) (b)* of *Legislative Decree No. 139 of 23 November 2018* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

(8) Letter repealed by *art. 2 (1) (c)* of *Legislative Decree No. 139 of 23 November 2018* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof; for the application of this provision, see *art. 20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*. See also the transitional rules referred to in *article 20 (3)*.

(9) Letter replaced by *art. 2 (1) (d)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof; for the application of this provision, see *art. 20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(10) Letter added by *art. 2 (1) (e)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Chapter II

Railway undertakings

Art. 4 *Principles*

1. Railway undertakings established in Italy are independent as regards management, administration and internal control over administrative, economic and accounting matters. Assets, budgets and accounts of the railway undertakings shall be separate from those of the State, regions, autonomous provinces and local authorities.

2. Railway undertakings are managed according to the principles which apply to commercial companies, irrespective of their public or private ownership. This shall also apply to the public service obligations imposed by the State on the railway undertaking and to the public service contracts which that undertaking concludes with the competent authorities.

3. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and other technical, commercial and financial management objectives; they shall also indicate the means of attaining those objectives.

4. With reference to the general policy guidelines and taking into account national plans and contracts, which may be multiannual, including investment and financing plans and, without prejudice to *Regulation (EC) No 1370/2007* of the European Parliament and of the Council, railway undertakings shall, in particular, be free to:

a) establish their internal organisation, without prejudice to the provisions of Articles 11, 17 and 22;
b) control the supply and marketing of services and fix the pricing thereof;
c) take decisions on staff, assets and own procurement;
d) expand their market share, develop new technologies and new services and adopt any innovative management techniques;
e) establish new activities in fields associated with the railway business.

5. Notwithstanding the provisions of paragraph 4, shareholders of publicly owned or controlled railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under the rules of the Italian company law. The provisions of this Article shall be without prejudice to the powers of supervisory bodies relating to the appointment of board members.

Art. 5 *Accounts and financial statements of railway undertakings*

1. Railway undertakings shall make the annual budget publicly available.

2. The financial statement, in its profit and loss account and balance sheet components, shall be kept separate and shall be published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services.

3. Where public funds are provided for activities relating to the provision of transport services as public-service remits, they shall be shown separately in the relevant accounts, in accordance with *article 7 del Regulation (EC) No. 1370/2007* and shall not be transferred to activities relating to the provision of other transport services or any other business.

4. Where the railway undertaking carries out activities related to the management of railway infrastructure, the financial statements, in their profit and loss account and balance sheet components, shall be kept separate and shall be published, on the one hand, for business relating to the provision of transport services and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other and shall have specific accounting evidence.

5. The accounts for the different areas of activity referred to in paragraphs 2, 3 and 4 shall be kept in a way that allows for monitoring of the prohibition on transferring public funds received by one area of activity to another and the monitoring of the use of income from infrastructure charges and surpluses from other commercial activities.

6. The above is, in any case, without prejudice to the provisions of *Article 37 (3) (b)* of *Decree-Law No 201* of *6 December 2011,* converted, as amended, into *Law No 214* of *22 December 2011*.

Art. 6 *Access and use of railway infrastructure*

1. Access and use of railway infrastructure for the purpose of operating rail services shall be granted provided that each railway undertaking demonstrates the following:

a) it is licensed for the service to be provided;
b) it holds the safety certificate referred to in Article 10 issued by the National Agency for Railway safety(11), referred to in *Legislative Decree No 162 of 10 August 2007*;
c) it has concluded a private or public track access agreement referred to in Article 25. The conditions underlying this agreement shall be non-discriminatory and transparent and shall be published in the network statement.

[2. Undertakings that intend to provide passenger rail services having origin and destination exclusively in the national territory, are required to hold, in addition to the requirements under paragraph 1 (b) and (c), a national passenger license referred to in article 3 (1) (q).(12)]

3. Railway undertakings established outside the European Union or their subsidiaries pursuant to *Article 7* of *Law No 287* of *10 October 1990* are required to hold, in addition to the requirements under paragraph 1, the authorisation referred to in Article 3 (1) (r).(13)

4. When concluding the agreements provided for in paragraph 1 (c), the railway infrastructure manager shall ensure that the railway undertaking holds a licence issued by Italy or by another EU Member State.

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(11) For the purpose of this decree, "*Agenzia nazionale per la sicurezza delle ferrovie*" (National Railway Safety Agency) shall be understood as replaced by "*Agenzia nazionale per la sicurezza delle ferrovie e delle infrastrutture stradali e autostradali*" (ANSFISA) (National Agency for the Safety of Railways and Road and Motorway infrastructure), pursuant to the provisions of *art. 12 (20) of Decree-Law No 109* of *28 September 2018,* converted, as amended, into *Law No 130* of *16 November 2018*.

(12) Paragraph repealed by art. *3 (1) (a)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof; for the application of this provision see art. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(13) Paragraph replaced by art. *3 (1) (b)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof; for the application of this provision see art. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018.*

Art. 7 *Licensing*

1. Undertakings established in Italy, whose principal business is to provide rail services, applying for a licence, shall be able to demonstrate already before the start of their activity that they meet the requirements relating to good repute, financial fitness, professional competence and cover for civil liability as listed in Article 8.

2. The application for a licence is subject to stamp tax according to the legislation in force, indicates the type or types of services that the company intends to perform and is signed by the company's legal representative.

3. Applicant undertakings are required to comply with the operating procedures for obtaining the licence, as published by the competent authority on the website of the Ministry of Infrastructure and Transport, and to produce, together with the application, the complete set of documents indicated in the procedures that is necessary to certify that the requirements referred to in Article 8 are met.

4. The licence is granted by the Ministry of Infrastructure and Transport, Department for Transport, Navigation, General Affairs and Personnel, Directorate General for Transport and Railway Infrastructures, within ninety days of the receipt of the complete set of information referred to in paragraph 3, through an administrative disposition that is communicated to the applicant. A refusal of the application shall state the grounds on which it is based.(15)

5. The issue of the licence shall be notified to the European Railway Agency, in accordance with the procedures under *Regulation (EU) 2015/171 of 4 February 2015*, referred to in *Article 17 (5)* of *Directive 2012/34/EU* of the European Parliament and of the Council, and to the National Railway Safety Agency (14) and to the Railway Infrastructure Manager.(16)

6. The decisions taken by the licensing authority may be subject to judicial review.

7. When submitting their application, applicant undertakings are required to pay a fee that is proportional to the costs incurred for preliminary activities, verifications, checks and procedures for issuing and amending the licence. A decree of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance, shall update the payment procedures and amount of the fee referred to in *Ministerial Decree* of *28 May 2009*, on the basis of the provisions contained in *Regulation (EU) 2015/171 of 4 February 2015*, referred to in *Article 17 (5)* of *Directive 2012/34/EU* of the European Parliament and of the Council.(17)

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(14) For the purpose of this decree, "*Agenzia nazionale per la sicurezza delle ferrovie*" (National Railway Safety Agency) shall be understood as replaced by "*Agenzia nazionale per la sicurezza delle ferrovie e delle infrastrutture stradali e autostradali*" (ANSFISA) (National Agency for the Safety of Railways and Road and Motorway infrastructure), pursuant to the provisions of *art. 12 (20)* of *Decree-Law No 109 of 28 September 2018,* converted, as amended, into *Law No 130 of 16 November 2018*.

(15) Paragraph amended by *art. 4 (1) (a)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof; for the application of this provision see art. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(16) Paragraph amended by *art. 4 (1) (b)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of art. *20 (1)* thereof; for the application of this provision see art. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(17) For the implementation of the provisions of this paragraph, see *Ministerial Decree of 5 August 2016*.

Art. 8 Conditions for obtaining a licence

1. To obtain a licence, applicant undertakings shall meet the requirements relating to good repute, financial fitness, professional competence and cover for civil liability.

2. The requirements relating to good repute are met if the railway undertaking concerned:

a) has not been declared bankrupt(19) or subjected to compulsory winding-up or extraordinary administration proceedings, unless a judgement of discharge has been delivered, or has not been subject, in the five years prior to the application for the license, to the procedures of arrangements with creditors or administrative receivership;

b) has not been convicted pursuant to Article 444 of the Code of Criminal Procedure of crimes against property, public faith, public economy, industry and commerce, public safety, public administration, for crimes provided for by section XI of Book V of the Civil Code and by section VI of *Royal Decree No. 267 of 16 March 1942,* or of intentional crimes for which the law provides for a maximum term of at least four-year imprisonment, unless a judgement of discharge has been delivered;

c) has not been convicted of serious or repeated failure to fulfil social or labour law obligations, including obligations under occupational safety and health legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures;

d) has not been subjected to personal or asset protection measures;

e) is subject to none of the prohibitions provided for in *Article 67 of Legislative Decree no. 159 of 6 September 2011*;

f) has not been convicted of serious offences set out in specific legislation applicable to transport;

f-a) has not been convicted of serious criminal offences resulting from obligations arising from binding collective agreements.[18]

3. The requirements referred to in paragraph 2 shall be met by:
   a) owners of individual undertakings;
   b) all partners in a partnership;
   c) general partners, in the case of limited partnership or limited partnership by shares;
   d) chief executive officers and legal representatives for any other company.

4. If they are not individual undertakings, the requirement referred to in paragraph 2 (a) shall be also met by the legal person carrying out the business activity.

5. The requirement relating to financial fitness are fulfilled when an undertaking is able to meet its actual and potential obligations, established under realistic assumptions, for a period of no less than 12 months, on the basis of the provisions of *Regulation (EU) 2015/171* of *4 February 2015*, as referred to in *Article 17 (5)* of *Directive 2012/34/EU* of the European Parliament and of the Council.

6. For the purpose of carrying out the test of financial capacity, the application for a licence shall be accompanied by specific information concerning the following aspects, as set out in Annex III to *Directive 2012/34/EU* of the European Parliament and of the Council:
   a) available funds, including the bank balance, pledged overdraft provisions and loans;
   b) funds and assets available as security;
   c) working capital;
   d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;
   e) charges on the undertaking's assets;
   f) taxes and social security contributions.

7. In order to demonstrate that the requirements of financial fitness referred to in paragraph 5 are met, the undertaking shall submit a report, produced by an auditor or other sworn accounting expert, evaluating the information required on the basis of the elements indicated in paragraph 6, as well as any appropriate documentation by a bank or savings bank. The auditor shall be a third party, that is autonomous and independent from the undertaking, or a member of a competent public administration.

8. An undertaking applying for a licence is not financially fit if considerable or recurrent arrears of taxes or social security are owed as a result of that undertaking's activity.

9. As regards professional competence, an undertaking shall demonstrate that it has or is able to have an efficient management organisation and that it possesses the knowledge and experience necessary to exercise safe and reliable operational control and supervision for the railway service of the type specified in the licence.

10. In order to carry out a test of professional competence, the application for a licence shall be accompanied by specific information on:
   a) nature and state of maintenance of rolling stock, with particular reference to safety standards;
   b) qualifications of personnel responsible for safety and personnel training arrangements, it being understood that compliance with the qualification requirements must be proven through the submission of relevant supporting documents.

11. The information referred to under paragraph 10 (a) and (b) may be replaced by a methodical plan specifying the programmes for acquisition and management of human and instrumental resources, including maintenance of rolling stock, with particular reference to safety standards.

12. Should an undertaking already hold a safety certificate referred to in Article 10, the professional competence requirement referred to in paragraph 9, is deemed to be already satisfied.

13. Any railway undertaking railway undertaking shall be adequately insured or have adequate guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties.

14. A decree by the Minister of Infrastructure and Transport, having obtained a substantiated report from the infrastructure managers, and prior opinion of the regulatory body, approves the minimum level of insurance cover required, considering the specificities and risk profile of the different types of service. The network statement shall include this level and its ensuing updates in accordance with the procedures laid down in the Ministerial Decree.

15. For the purpose of certifying the requirements provided for in paragraph 13, the applicant undertaking shall attach to the application a declaration of commitment to hold, at the time the activity is started, the insurance policy or guarantee in compliance with the provisions of the decree referred to in paragraph 14.

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(18) Letter introduced by *art. 5 (1)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

(19) Pursuant to the combined provisions of *Articles 349 (1)* and *389 (1)* of *Legislative Decree No. 14 of 12 January 2019,* as replaced by *Article 5 (1)* of *Legislative Decree No 23 of 8 April 2020,* converted, with amendments, into *Law No 40* of *5 June 2020,* as of 1 September 2021*,* the terms "bankruptcy", "bankruptcy proceedings", "bankrupt" and related expressions in the existing provisions shall be understood as replaced by "compulsory winding up", "compulsory winding up proceedings" and "debtor subject to compulsory winding up" and related expressions, without prejudice to the continuity of the provisions.

Art. 9 *Validity of the licence*

1. The licence shall have unlimited validity, except as provided for in this article.

2. The Ministry of Infrastructure and Transport, at any time, may require the undertakings to provide evidence that they hold and maintain the requirements underlying the issue of the licence and may carry out checks and controls, including inspections, in case of reasonable doubts as to compliance with these requirements.

3. For the purpose of verifying the actual fulfilment and compliance with the provisions of this article, the Ministry of Infrastructure and Transport shall, on a five-year basis, review the position of each licensed railway undertaking, without prejudice to the possibility of carrying out, at any time, appropriate checks and controls, including inspections, regarding the compliance with and existence of the above obligations and requirements.

4. No later than six months from the entry into force of the decree referred to in article 8 (14), the Ministry of Infrastructure and Transport shall request the licensed railway undertakings to provide the necessary information for the purpose of verifying the compliance of their insurance cover. In the absence of such cover, the Ministry of Infrastructure and Transport, having received the prior opinion of the regulatory body, ascertains whether any guarantees under market conditions for cover, that are held by the undertakings, comply with the provisions of the decree referred to in article 8 (14). Undertakings are required to reply within thirty days from the request. The findings of this verification shall be communicated to the European Railway Agency, as provided for in *Regulation (EU) 2015/171 of 4 February 2015*, referred to in *Article 17 (5) of Directive 2012/34/EU* of the European Parliament and of the Council.(21)

5. The Ministry of Infrastructure and Transport shall revoke the licence where it is satisfied that the railway undertaking no longer holds the authorisations and requirements for obtaining the licence, while it shall suspend its effectiveness when there is reasonable doubt as to their actual existence, for a period not exceeding thirty days, for the purpose of carrying out of the necessary inquiries.

6. Where the Ministry of Infrastructure and Transport is satisfied that there is serious doubt regarding compliance with the requirements laid down in *Directive 2012/34/EU* of the European Parliament and of the Council on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.

7. The Ministry of Infrastructure and Transport may grant a temporary licence for the time necessary for the reorganisation of the railway undertaking, in any case not exceeding six months from the date of issue of the licence, provided that the safety of the transport service is not jeopardised, when the suspension or revocation of the licence has been determined by the failure to meet the requirements relating to financial fitness.

8. The Ministry of Infrastructure and Transport may suspend the licence or request that the license is resubmitted for approval where a railway undertaking has ceased operations for more than six months or has not started operations after six months of the grant of the licence. The railway undertaking may ask to be granted a longer period than six months for the start of operations, taking account of the specific nature of the services to be provided. The renewal may be requested at the same time as the licensing application or after the issue of the licence. In both cases, the request for renewal should be adequately substantiated with the information that is necessary to assess the causes of the delayed start of operations.

9. No renewals may be requested for the start of operations exceeding two years or subsequent renewals the sum of which exceeds two years. Further, the Ministry of Infrastructure and Transport may, on its own initiative, suspend or revoke the licence of those railway undertakings which have never applied for the issue of a safety certificate to the National Railway Safety Agency during the two years of inactivity[(20)]. This extended inactivity or non-implementation of the above certification procedure constitutes a failure to comply with the requirements relating to professional competence referred to in Article 8 (9).

10. In the period of renewal or suspension of the activity, the railway undertakings shall timely inform every six months, the Ministry of Infrastructure and Transport, by submitting a progress report concerning the preparatory activities for the start of operations, indicating any corporate changes and issues encountered, in order to allow the Ministry of Infrastructure and Transport to assess compliance with the scheduled date of start of operations.

11. The railway undertaking is required to request confirmation of the licence in the event of changes in the legal structure of the undertaking and, in particular, in case of merger or takeover by another entity. The railway undertaking requesting confirmation may continue its operations unless the Ministry of Infrastructure and Transport suspends, on the basis of a substantiated measure, the effectiveness of the already issued licence, if it considers that the safety of the transport service is jeopardised.

12. In the cases referred to in paragraph 11, the Ministry of Infrastructure and Transport further requests evidence of the maintenance of the conditions for the issue of the authorisation referred to in article 3 (1) (r).[(22)]

13. Where a railway undertaking intends to extend or significantly change its activities, it shall request a review of its licence.

14. The Ministry of Infrastructure and Transport may revoke the licence when a railway undertaking is subject to bankruptcy proceedings and there is no realistic prospect of satisfactory restructuring within a reasonable period of time.

15. The Ministry of Infrastructure and Transport shall immediately inform the European Railway Agency, the National Railway Safety Agency [(20)] and the railway infrastructure manager of the measures taken to revoke, suspend or amend a license. The European Railway Agency shall inform the licensing authorities of other Member States forthwith.[(23)]

16. Licensed undertakings are required to provide the following information to the Ministry of Infrastructure and Transport on an annual basis:

a) consolidated financial statements;
b) summary report of traffic and services provided;
c) report containing information relating to the implemented quality control checks and customer satisfaction achieved as well as information on delays and payment of refunds.

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(20) For the purpose of this decree, "*Agenzia nazionale per la sicurezza delle ferrovie*" (National Railway Safety Agency) shall be understood as replaced by "*Agenzia nazionale per la sicurezza delle ferrovie e delle infrastrutture stradali e autostradali*" (ANSFISA) (National Agency for the Safety of Railways and Road and Motorway infrastructure), pursuant to the provisions of *art*. *12 (20)* of *Decree-Law No 109* of *28 September 2018,* converted, as amended, into *Law No 130* of *16 November 2018*.

(20) Paragraph amended by *art. 6 (1) (a)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof; for the application of this provision see *art*. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(21) Paragraph replaced by *art. 6 (1) (b)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof; for the application of this provision see *art*. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

(22) Paragraph amended by *art. 6 (1) (c)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof; for the application of this provision see *art*. *20 (2)* of the above-mentioned *Legislative Decree No. 139/2018*.

Art. 10 *Safety certificate*

1. In order to ensure safe and reliable performance of railway services, the safety certificate referred to in *Legislative Decree No. 162* of *10 August 2007* shall confirm compliance with national and European regulations, as regards specific technical and operational requirements for railway services and safety requirements for personnel, rolling stock and internal organisation of the undertaking, with particular regard to traffic safety standards and to the provisions and requirements issued for each line and service.

2. The undertaking may request the issue of the safety certificate prior to the issue of the licence.

3. The provision referred to in *article 27 (4)* of *Legislative Decree No. 162 of 10 August 2007* applies until the date of entry into force of the decree referred to in Article 1 (6). After this period, the safety certificate shall be issued by the National Railway Safety Agency [(24)].

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(24) For the purpose of this decree, "*Agenzia nazionale per la sicurezza delle ferrovie*" (National Railway Safety Agency) shall be understood as replaced by "*Agenzia nazionale per la sicurezza delle ferrovie e delle infrastrutture stradali e autostradali*" (ANSFISA) (National Agency for the Safety of Railways and Road and Motorway infrastructure), pursuant to the provisions of *art*. *12 (20)* of *Decree-Law No 109* of *28 September 2018,* converted, as amended, into *Law No 130* of *16 November 2018*.

Chapter III

Infrastructure Manager

Art. 11 *Independence of the* infrastructure *manager* [(25)]

1. The infrastructure manager referred to in Article 3 (1) (b) is an entity that is legally distinct from any railway undertaking and, in vertically integrated undertakings, from any other legal entities within the undertaking.

2. While respecting the framework and specific rules concerning charging and capacity allocation, the infrastructure manager shall be independent and responsible for its own management, administration and internal control.

3. The railway infrastructure manager shall be responsible for the operation and development of the railway infrastructure as well as of the safe operation of trains, maintenance and renewal of the railway infrastructure, in technical, commercial and financial terms, ensuring its accessibility, functionality and dissemination of information on equitable and non-discriminatory access to the infrastructure for all undertakings concerned. The infrastructure manager shall also ensure the maintenance and cleaning of public areas at passenger stations. This obligation shall be transferred to the station manager on the basis of a specific agreement and without further charges for public finances, if the latter does not coincide with the infrastructure manager, with the exception of the areas that are functional to the infrastructure manager's own activities.

4. The railway infrastructure manager, for the network under its management, is entrusted, on an exclusive basis, within the limits referred to in Articles 17 and 26 of this decree and without prejudice to the provisions of paragraph 11 and the specific powers of the regulatory body, with decisions relating to essential functions. No legal entity within a vertically integrated undertaking may exercise a decisive influence on the decisions of the infrastructure manager relating to essential functions.

5. Railway undertakings, or any entity with public or private legal personality, in agreement with the infrastructure manager, may, however, contribute to the development of the railway infrastructure, including through investments, maintenance and direct financing or through the infrastructure manager itself, with no higher charges for public finance under existing legislation and provided that equitable and non-discriminatory access is guaranteed.

6. A railway undertaking or any other legal entity within a vertically integrated undertaking may not exercise a decisive influence on appointments and dismissals of persons in charge of taking decisions on the essential functions.

7. The persons in charge of taking decisions on the essential functions for a period of twenty-four months after ceasing to hold office, may not play any role within the railway undertakings operating on the relevant infrastructure.

8. The members of the management board of the infrastructure manager and the managers directly reporting to them shall act in a non-discriminatory manner and their impartiality shall not be affected by any conflict of interest. For this purpose, the entities referred to in this paragraph shall annually submit to their company, a declaration concerning any financial, economic or professional personal interest that is linked, even potentially, to a railway undertaking.

9. The members of the management board of the infrastructure manager and the persons in charge of taking decisions on the essential functions, or, where established, the members of the supervisory board may not at the same time act as members of the supervisory board of a railway undertaking. In vertically integrated undertakings, the members of the management board of the infrastructure manager and the persons in charge of taking decisions on the essential functions shall not receive any performance-based

remuneration from other legal entities within the vertically integrated undertaking, nor any bonuses principally related to the economic and financial results of particular railway undertakings. They may however be offered incentives related to the overall performance of the railway system.

10. The railway infrastructure manager is required to respect the confidentiality of available commercial information. Where information systems are common to different entities within a vertically integrated undertaking, access to sensitive information relating to essential functions shall be expressly restricted to authorised staff of the infrastructure manager for the performance of those functions and insofar as necessary. Sensitive information shall not be passed on to other entities within a vertically integrated undertaking.

11. Where within three hundred and sixty days from the date of entry into force of this decree they do not appear to be entities that are legally distinct from the undertaking operating the rail services on the same network, the regional railway infrastructure managers referred to in article 1 (4) shall assign, within the following ninety days, the essential functions referred to in article 3 (1) (b-f), to a third party, that is independent in its legal form and decision-making from the railway undertakings. This assignment shall be governed by an agreement between the parties. The provisions referred to in paragraph 1 shall not apply to the managers of these networks who have carried out the above assignment. For the purposes referred to in Article 5, the managers of these networks shall be organised as a division in charge of management of the infrastructure, with no legal personality, distinct from the division in charge of providing rail services. Paragraph 9 shall apply to the heads of divisions in charge of management of the infrastructure and provision of railway services. Compliance with the requirements referred to in this paragraph shall be demonstrated in the separate accounts of the respective divisions of the undertaking.

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(25) Article replaced by *art. 7 (1)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 11a *Impartiality of the infrastructure manager in respect of traffic management and maintenance planning* [(26)]

1. The persons in charge of taking decisions on traffic management and maintenance planning functions shall act in a transparent and non-discriminatory manner and their impartiality shall not be affected by any conflict of interest. For this purpose, the entities referred to in this paragraph shall annually submit to their company a declaration concerning any financial, economic or professional personal interest that is linked, even potentially, to a railway undertaking.

2. The infrastructure manager shall provide the railway undertakings, in a transparent and non-discriminatory way, with timely communication of both planned traffic disruptions, within the framework of the network statement, and non-scheduled ones, by means of appropriate information tools. Where the infrastructure manager grants further access to the traffic management process, it shall do so for the railway undertakings concerned in a transparent and non-discriminatory way.

3. The long-term planning of major maintenance or renewal shall be carried out by the infrastructure manager in a non-discriminatory way and, for this purpose, the infrastructure manager shall consult applicants and, where possible, consider the concerns expressed by them.

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(26) Article introduced by *art. 8 (1)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 11b *Outsourcing and sharing the infrastructure manager's functions* [(27)]

1. Provided that no conflicts of interest arise, and that the confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may:

a) outsource functions or parts thereof to a different entity, provided the latter is not a railway undertaking, does not control a railway undertaking, or is not controlled by the railway undertaking. Within a vertically integrated undertaking, essential functions shall not be outsourced to any other entity of the vertically integrated undertaking, unless such entity exclusively performs essential functions;

b) outsource the execution of works and related tasks for on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control the railway undertaking or are controlled by the railway undertaking.

2. The infrastructure manager shall retain the supervisory power over, and bear responsibility for, the exercise of the functions described in Article 3 (1) (b). Any entity carrying out essential functions shall comply with Articles 11, 11a, and 11c.

3. Subject to supervision by the regulatory body, an infrastructure manager may conclude cooperation agreements with one or more railway undertakings in a non-discriminatory way and with a view to delivering benefits to customers such as reduced costs or improved performance on the part of the network covered by the agreement. The regulatory body shall monitor the execution of such agreements and may, where justified, advise that they should be terminated.

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(27) Article introduced by *art. 8 (1)* of *Legislative Decree No. 139* of *23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 11c *Financial transparency* [(28)]

1. The infrastructure manager may use the income from infrastructure network management activities, including the use of public funds, only to finance its own business, including the servicing of its loans. The infrastructure manager may also use any profits deriving from such income to pay dividends to owners of the company, which may include the State and any private shareholders, but excludes undertakings which are part of a vertically integrated undertaking and which exercise control over both a railway undertaking and the infrastructure manager.

2. Without prejudice to the provisions of the following paragraphs, financial transfers between the infrastructure manager and the railway undertakings and, in vertically integrated undertakings, between the infrastructure manager and any other legal entity of the integrated undertaking shall be prohibited, where such transfers may lead to distortions of market competition, including as a result of cross-subsidisation.

3. Dividends of the infrastructure manager resulting from activities which do not involve the use of public funds or income from charges for the use of railway infrastructure may be used also by

undertakings which are part of a vertically integrated undertaking and which exercise control over both a railway undertaking and the infrastructure manager.

4. Infrastructure managers shall not grant loans to railway undertakings, either directly or indirectly, nor these shall grant loans to infrastructure managers, either directly or indirectly.

5. Within a vertically integrated undertaking, loans between the legal entities of that undertaking shall only be granted, disbursed and serviced at market rates and conditions which reflect the individual risk profile of the entity concerned.

6. Loans between legal entities of a vertically integrated undertaking granted before 24 December 2016 shall continue until their maturity, provided that they were contracted at market rates and that they are actually disbursed and serviced.

7. Any services offered by other legal entities of a vertically integrated undertaking to the infrastructure manager shall be provided on the basis of contracts and be paid either at market prices or at prices which reflect the cost of production, plus a reasonable margin of profit.

8. Debts attributed to the infrastructure manager shall be clearly separated from debts attributed to other legal entities within vertically integrated undertakings. Such debts shall be serviced separately. This does not prevent the final payment of debts being made via an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager, or via another entity within the undertaking.

9. The accounts of the infrastructure manager and of the other legal entities within a vertically integrated undertaking shall be kept in a way that ensures the fulfilment of this article and allows for separate accounting and transparent financial circuits within the undertaking.

10. Within vertically integrated undertakings, the infrastructure manager shall keep detailed records of any commercial and financial relations with the other legal entities within that undertaking.

11. References under this article relating to infrastructure manager, railway undertaking, and other legal entities of a vertically integrated undertaking shall be understood as referred also to the respective divisions of the undertaking.

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(28) Article introduced by *art. 8 (1)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 11d *Coordination mechanisms* [(29)]

1. The infrastructure manager shall establish appropriate coordination mechanisms for consultation of all interested railway undertakings and of the applicants, including potential applicants. The regulatory body is entitled to participate in the consultations as an observer.

2. Except as provided for in Articles 14 (1) and 15 (2) and (6), the coordination concerns:

a) the needs of applicants related to the maintenance and development of the infrastructure capacity;

b) the content of the user-oriented performance targets contained in the contractual agreements referred to in Article 15 and of the incentives referred to in Article 15 (4) and their implementation;

c) issues of intermodality and interoperability to be addressed in the context of the business plan referred to in Article 15 (5) and (6);

d) any other issue related to the conditions for access, the use of the infrastructure and the quality of the services of the infrastructure manager.

3. The infrastructure manager, after consultation with interested parties, shall draw up and publish guidelines for coordination of the themes referred to in (a), (b) and (c). Coordination shall take place annually and the infrastructure manager shall publish on its website a description of the activities undertaken pursuant to this article.

4. Coordination under this article shall be without prejudice to the right of applicants to appeal to the regulatory body and the powers of the regulatory body as set out in Article 37.

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(29) Article introduced by *art. 8 (1)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 11e *European Network of Infrastructure Managers* [(30)]

1. The national railway infrastructure manager participates in the European network of infrastructure managers referred to in *Article 7-f of Directive 2012/34/EU* of the European Parliament and of the Council. The right of the applicant to appeal to the regulatory body as provided for in Article 37, including in relation to matters which are covered by the coordination activity between infrastructure managers, shall in any case remain unaffected.

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(30) Article introduced by *art. 8 (1)* of *Legislative Decree No. 139 of 23 November 2018,* as of 23 December 2018, pursuant to the provisions of *art. 20 (1)* thereof.

Art. 12 *Conditions of access to railway infrastructure*

1. Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure which falls within the scope of this decree, for the purpose of operating rail freight transport and related services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in article 13 (2), and to infrastructure serving or potentially serving more than one final customer.

2. Without prejudice to the provisions of *Regulation (EC) No 1370/2007,* railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure which falls within the scope of this decree, for the purpose of operating rail passenger services. That right shall include access to infrastructure connecting service facilities referred to in article 13 (2). [(31)]

[3. When operating an international passenger service, railway undertakings shall have the right to pick up passengers at any station along the international route and to set them down at another station, including stations located in the same Member State.[(32)]]

[4. The regulatory body shall determine, following a request from the competent authorities or railway undertakings concerned, as identified by Article 5 of European Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 whether the principal purpose of the service is to carry passengers between stations located in different Member States, in accordance with Articles 6 to 9 of the above Implementing Regulation (EU) No 869/2014. The decision of the regulatory body shall be duly justified and promptly published on its website, while respecting the confidentiality to be applied to commercially sensitive information. In the cases where it is established by the regulatory body that the principal purpose of the service is not to carry passengers between stations located in different Member States and without prejudice to the possibility of limitation referred to in paragraph 5, the railway undertaking shall hold a national passenger licence to perform the service.(32)]

5. The operation of rail passenger services may be subject to limitations by the regulatory body, on the basis of the provisions of paragraphs 6 and 7, between a given place of departure and a given destination when one or more public service contracts cover the same route or an alternative route if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question.(33)

6. In order to determine whether the economic equilibrium of a public service contract would be compromised pursuant to paragraph 5, the regulatory body shall make an objective economic analysis and base its decision on pre-determined criteria to be identified by its own measure after consultation with the Ministry of Economy and Finance, and upon request of the competent authority that awarded the public service contract, by the infrastructure manager, or by the railway undertaking performing the public service contract. The request shall be submitted within one month from the receipt of the information on the intended passenger service referred to in Article 24 (2). The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body with the information required to reach a decision. The regulatory body shall consider the information provided by these parties, and, as appropriate, shall ask for relevant information from, and initiate consultation with, all relevant parties, within thirty days of receipt of the request. The regulatory body shall consult 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 six weeks of receipt of all relevant information.(34)

7. The regulatory body shall give the grounds for its decision and the conditions under which the competent authority, infrastructure manager, railway undertaking performing the public service contract or railway undertaking seeking access may request a reconsideration of the decision within one month of its notification. (35)

[8. Unless otherwise specified by the regulatory body in its decision, the reconsideration of a decision may not be requested in the first three years following the publication of the decision, with the exception of the case referred to in paragraph 6 (a).(36)]

9. The decisions referred to in paragraphs 5, 6 and 7 may be subject to judicial review.(37)

10. The regulatory body, including by considering the relevant economic analyses, having established that the economic equilibrium of the public service contract would be compromised, shall indicate any limitations referred to in paragraph 5 which would allow that the conditions to grant the right of access to the new operator are met.
The competent authority may request the railway undertaking that is subject to the procedure referred to in paragraph 6 to pay appropriate, transparent and non-discriminatory compensation levies, that are set, after prior opinion of the regulatory body, on the basis of the measures laid down by the European Commission pursuant to the *Article 11 (4) (2) of Directive 2012/34/EU* of the European Parliament and of the Council.(38)

11. The revenue raised from such a levy shall be used to compensate the services covered by the public service contract in order to restore their economic equilibrium and shall not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations considering the relevant receipts and a reasonable profit for discharging those obligations. 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.

12. In order to allow for the development of competitive processes in the rail transport sector, in line with the need to ensure the payment of the charges for universal rail services of national interest covered by public service contracts, as referred to in *Article 38 (2) and (3)* of Law No 166 of 1 August 2002, as amended, a surcharge may be introduced on the charge payable for the operation of medium- and long-distance passenger services, which are not provided in the context of public service contracts, for the part operated on specially-built or upgraded high-speed lines equipped for speeds equal or greater than 250 km/h.

13. The determination of the surcharge referred to in paragraph 12, in accordance with EU law and in particular Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, as well as with the principles of equity, transparency, non-discrimination and proportionality, shall be carried out by decree of the Minister of Infrastructure and Transport, in agreement with the Minister for Economy and Finance, after consultation of the Transport Regulation Authority, on the basis of the costs of universal rail services of national interest subject to public service contracts referred to in paragraph 12, without compromising the economic viability of the relevant rail passenger transport service, and shall be updated every three years. The revenue raised from such surcharge may not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations considering the relevant receipts and a reasonable margin of profit for discharging those obligations. The revenues deriving from the surcharge shall be fully paid into the State budget and shall be used to contribute to the financing of universal service obligations of rail transport of national interest covered by public service contracts referred to in paragraph 12.

14. The competent authorities shall keep the information necessary to ensure that the origin of the levies paid as compensation and their use can be traced and shall, upon request, provide such information to the Commission.

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(31) Paragraph replaced by art. 9 (1) (a) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(32) Paragraph replaced by art. 9 (1) (b) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(33) Paragraph replaced by art. 9 (1) (c) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(34) Paragraph replaced by art. 9 (1) (d) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(35) Paragraph replaced by art. 9 (1) (e) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(36) Paragraph replaced by art. 9 (1) (f) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(37) Paragraph replaced by art. 9 (1) (g) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

(38) Paragraph replaced by art. 9 (1) (h) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 12a *High-speed passenger services* [(39)]

1. With a view to developing the market for high-speed passenger services, promoting optimal use of available infrastructure, and in order to encourage the competitiveness of high-speed passenger services resulting in beneficial effects for passengers, the exercise of the right of access provided for in Article 12 as regards high speed passenger services may only be subject to the requirements established by the regulatory body in accordance with this article.

2. Where the regulatory body, following the analysis foreseen in Article 12 (6) and (7), determines that the intended high-speed passenger service between a given place of departure and a given destination compromises the economic equilibrium of a public service contract that covers the same route or an alternative route, the regulatory body shall indicate possible changes to the service which would ensure that the conditions to grant the right of access provided for in Article 12 (6) are met. Such changes may include a modification of the intended service.

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(39) Article introduced by art. 10 (1) of Legislative Decree No. 139 of 23 November 2018 as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 13 *Conditions for access to services*

1. The infrastructure manager shall ensure and therefore supply to all railway undertakings that were allocated train paths, under equitable and non-discriminatory conditions, and without any additional charge with respect to the charge for access and use of the infrastructure, the provision of the following services constituting the minimum access package:

a) handling of requests for railway infrastructure capacity for the purpose of the conclusion of track access agreements;

b) the right to utilise capacity which is granted;

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

d) train control and regulation, signalling and dispatching, as well as the communication of information on train movement;

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

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

2. Operators of service facilities shall supply under equitable, non-discriminatory and transparent conditions, to all railway undertakings access, including track access, to the following facilities, when they exist, and to the services supplied in these facilities:

a) passenger stations with regard to operational structures for travel information display and suitable location for ticketing services and to any other operational facilities which are necessary for rail operation;

b) freight terminals;

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

d) areas, facilities and buildings for parking and storage of rolling stock and freight;

e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;

f) other technical facilities, including cleaning and washing facilities, and wastewater treatment systems;

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

h) relief facilities;

i) refuelling areas and facilities, the charges for which shall be shown on the invoices separately.

3. The connection between the service facilities and the railway infrastructure is governed by specific siding connection agreements, the model of which is set out in the network statement. These agreements shall contain equitable, non-discriminatory and transparent conditions.

4. To guarantee full transparency and non-discrimination of access to the service facilities referred to in paragraph 2 (a), (b), (c), (d), (g) and (i), and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of a firm which is also active and holds a dominant position in national railway transport services markets for which the facility is used, the operators of these service facilities shall be organised in such a way that they are independent of this firm in organisational and decision-making terms. Such independence shall not imply the requirement of the establishment of a separate legal entity for service facilities and may be fulfilled with the organisation of distinct divisions within a single legal entity.

5. For all service facilities referred to in paragraph 2, the operator and the firm referred to under paragraph 4 shall have separate accounts, including through bundling by categories of the facilities managed by the operator itself, with evidence in the profit and loss account and in the balance sheet. Where operation of the service facility is ensured by an infrastructure manager or the operator of the service facility is under the direct or indirect control of an infrastructure manager, compliance with the requirements set out in paragraph 4 and in this paragraph shall be deemed to be demonstrated by the fulfilment of the requirements set out in Article 11.

6. Requests by railway undertakings for access to the service facilities referred to in paragraph 2 and for supply of services, when these are provided, shall be answered within a reasonable time limit set by the regulatory body. Such requests may only be refused, justifying in writing the reasons for refusal, if there are viable alternatives allowing to operate the freight or passenger service concerned on the same or alternative routes or on other facilities under economically acceptable conditions. This shall not oblige the operators of the service facilities to make investments in resources or facilities in order to accommodate all requests by railway undertakings, but rather to ensure optimal and efficient use of the capacity of the facility.

7. Where an operator of the service facility referred to in paragraph 2 encounters conflicts between different requests, it shall attempt to meet all requests in so far as possible. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the applicant may complain to the regulatory body which shall examine the case and take action, where appropriate, to ensure that an appropriate part of the capacity is granted to that applicant.

8. Where a service facility referred to in paragraph 2 has not been in use for at least two consecutive years and interest by railway undertakings for access to this facility has been expressed on the basis of

demonstrated needs, its owner shall publicise, including through publicity in the same facility, the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

9. Where the operator of the service facility provides the following additional services, these are supplied upon request of the railway undertakings under equitable, non-discriminatory and transparent conditions:

a) traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC;

b) pre-heating of passenger trains and train water supply;

c) control of running of trains carrying dangerous goods;

d) assistance in running abnormal trains;

e) shunting services.

10. With regard to traction current referred to in paragraph 9 (a), the cost for its provision is determined on the basis of the provisions of Article 29 of Decree-Law No. 91 of 24 June 2014, converted, as amended, into Law No 116 of 11 August 2014. Considering changes in the electricity market conditions, the service provider shall apply equalisation mechanisms to railway undertakings, either positive or negative, on the basis of the cost of supply actually incurred by the service provider.

11. The operator of the service facility or the infrastructure manager may, at the request of railway undertakings, provide, where available, under equitable, non-discriminatory and transparent conditions, the following ancillary services:

a) access to telecommunication networks;

b) provision of supplementary information;

c) technical inspection of rolling stock;

d) ticketing services in passenger stations;

e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

12. Without prejudice to the compliance with the principle of non-discrimination, the operator of the service facility or the infrastructure manager shall not be obliged to provide the services referred to in paragraph 11.

13. The procedures and criteria for access to the services referred to in paragraphs 2, 9 and 11 shall be defined by the Transport Regulation Authority on the basis of the measures referred to in Article 13 (9) of Directive 2012/34/EU of the European Parliament and of the Council.

Art. 13a *Common information and through-ticketing schemes* [(40)]

1. In order to facilitate and meet passengers' demand for integrated services, a common information and integrated ticketing scheme shall be introduced within one year from the date of entry into force of this decree for the supply of tickets, through tickets and reservations, with respect to passenger services which are operated in a liberalised market and are not subject to public contributions.

2. Without prejudice to Regulation (EC) No 1371/2007 of the European Parliament and of the Council and Directive 2010/40/EU of the European Parliament and of the Council, the arrangements for the establishment of the system referred to in paragraph 1 shall be defined by a decree of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance, after consultation with the Transport Regulation Authority. The decree shall set out the arrangements for cost-sharing of the integrated service among operators. The regulatory body shall ensure that the system does not create

market distortions and is managed under equitable and non-discriminatory access conditions, including with respect to the availability of the data on which the system operates.(41)

3. A decree of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance, having obtained the opinion of the Permanent Conference for the Relations between the State, the Regions and the Autonomous Provinces of Trento and Bolzano, shall identify the arrangements for the application of the common information and integrated ticketing scheme to passenger services other than those referred to under paragraph 1.(41)

(40) Article introduced by art. 11 (1) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

(41) See also art. 20 (5) of Legislative Decree No. 139 of 23 November 2018.

Art. 14 *Network statement*

1. The infrastructure manager shall after consultation with the regions, autonomous provinces and other interested parties, develop and publish a network statement, ensure that it is periodically updated and introduce appropriate amendments and additions, on the basis of any indications and requirements submitted by the regulatory body, which may also cover the specific arrangements for the above-mentioned consultation.

2. The network statement shall set out the nature of the infrastructure, which is available to railway undertakings, and contain information setting out the conditions for access to the relevant railway infrastructure. The network statement shall also contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is made available free of charge in electronic format.

3. The content of the network statement is laid down in accordance with Annex V to this decree.

4. Any interested party is allowed to obtain a copy of the network statement upon submission of appropriate application. The infrastructure manager may, for this purpose, request the payment of a fee which shall not exceed the cost of publication of the statement. The content of the network statement shall be made available free of charge in electronic format on the web portal of the infrastructure manager and accessible through a common web portal. This web portal shall be set up by the infrastructure manager in the framework of the cooperation in accordance with Article 27.

5. The network statement shall be published in Italian and in another EU official language no less than four months in advance of the deadline for requests for infrastructure capacity allocation.

Art. 15 *Relations between the national railway infrastructure manager and the State*

1. The relations between the national railway infrastructure manager and the State shall be governed by a concession contract and one or more programme contracts *(contratti di programma)*. Programme contracts are concluded for a minimum period of five years, in accordance with the basic principles and parameters set out in Annex II to this Decree. The terms of the programme contracts and the structure of the payments to provide funding to the infrastructure manager shall be agreed in advance and cover the whole contractual period. Pending the conclusion of the new programme contracts for the period 2016-2020 and until they take effect, the programme contract - services 2012-2014, concluded between the

Ministry of Infrastructure and Transport and Rete Ferroviaria Italiana S.p.A., is extended, under the existing terms and conditions, for the period necessary to the conclusion of the new contract and in any case until 31 December 2016 at the latest, with the update of the relevant tables.(42)

2. The Ministry of Infrastructure and Transport shall inform the regulatory body and, through the infrastructure manager, the applicants and, upon request, potential applicants, of the content of the programme contract, so that they are given the opportunity to express their views thereupon before it is signed, in particular with respect to works in terminals and freight terminals, urban nodes, stations and connections with ports. The programme contract shall be published within one month of its conclusion.

3. In compliance with articles 93, 107 and 108 TFEU, the programme contract referred to in paragraph 1 regulates separately, on the one hand, the granting of financing to cover new investments for the purpose of improving the quality of services, developing the infrastructure and respecting safety levels that are consistent with technological evolution, and, on the other, the granting of financing intended for ordinary maintenance and extraordinary maintenance aimed at the renewal of the railway infrastructure. The financing may be provided by means other than direct State contributions, including private funding.

4. In the programme contracts referred to in paragraph 1, taking due account of the need to ensure achievement of high levels of safety, performance of maintenance operations, and quality improvement of infrastructure and related services, incentives are provided for the manager to reduce the costs of providing infrastructure and the level of access charges, without prejudice to the compliance with the economic and financial equilibrium referred to in Article 16.

5. Within the framework of general government policy and considering the strategy referred to in article 1 (7) and the financing referred to in paragraph 1, the infrastructure manager shall develop and update a business plan including investment and financial programmes, to be submitted to the Ministry of Infrastructure and Transport and to the regulatory body. The plan shall be designed to ensure optimal and efficient use, provision and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved.

The infrastructure manager shall ensure that known applicants and, upon their request, potential applicants, have access to the relevant information and are given the opportunity to express their views on the content of the business plan regarding the conditions for access and use and the nature, provision and development of the infrastructure before its approval by the infrastructure manager. For this purpose, the infrastructure manager shall publish the business plan on its website three months before its adoption, allowing applicants thirty days to deliver a non-binding opinion on these issues.

6. The infrastructure manager shall ensure consistency between the provisions of the programme contract and the business plan.

7. Within one year of the entry into force of this legislative decree, the infrastructure manager shall develop and annually update a register of its assets and the assets it is responsible for managing, providing adequate information to the Ministry of Infrastructure and Transport. This register shall be accompanied by details of expenditure on renewal and upgrading of the infrastructure and shall be used to assess the financing needed to repair or replace the infrastructure.

(42) Paragraph amended by Article 7 (9) of Legislative Decree No. 210 of 30 December 2015, converted, with amendments, into Law No 21 of 25 February 2016.

Art. 16 *National infrastructure cost and accounts*

1. The accounts of the railway infrastructure manager, under normal business conditions and over a reasonable period which shall not exceed a period of five years, shall at least balance income from infrastructure charges, State funding as defined in the programme agreements referred to in Article 15, surpluses from other commercial activities, any non-refundable incomes from private and public sources, on the one hand, and infrastructure expenditure in its components of operating costs, depreciation and return on invested capital, on the other.

2. The infrastructure manager shall use a regulatory accounting system that highlights the methods for apportioning costs to all industrial processes related to its activity, with particular reference to the minimum access package. In particular, this system presents a degree of unbundling of the accounting items so as to highlight the allocation of costs and revenues related to the industrial processes within its remit or to the different categories of services offered to railway undertakings, as well as the allocation of public funding and incentives. The infrastructure manager shall from time to time update the cost allocation on the basis of the best international practice.

3. The results deriving from the accounting system referred to in paragraph 2 shall be communicated annually to the Ministry of Infrastructure and Transport and be accompanied by all the information necessary to assess the efficiency of expenditure and compliance with paragraph 1.

4. 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 17 and 18, the infrastructure manager shall aim at balancing its accounts without State funding.

Chapter IV

Charging

Art. 17 *Charges for the use of railway infrastructure and services* [(43)]

1. Subject to the general guidance of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance, for the purpose of equitable and non-discriminatory access and use of rail infrastructure by railway undertakings, the Transport Regulation Authority referred to in Article *37* of Decree-Law No 201 of 6 December 2011, converted, as amended, into Law No. 214 of 22 December 2011, shall define, without prejudice to the independence of the infrastructure manager, and taking into account the need to ensure the economic equilibrium thereof, the charging criteria for use of the railway infrastructure by the infrastructure manager and for the services referred to under article 13.

2. The infrastructure manager, on the basis of the provisions of paragraph 1, shall determine and collect the charge for the use of infrastructure. The charge for the use of the infrastructure shall be published in the network statement. Except where specific arrangements are made under Article 18, the infrastructure manager shall ensure that the charging scheme in use is based on the same principles over the whole of the network.

3. The infrastructure manager shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market or of the network and that the charges actually applied comply with the provisions of article 2. Compliance with these guarantees shall be shown in the network statement, without disclosing confidential commercial information.

4. Without prejudice to paragraph 5 and 6 of this article or to Article 18, the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service on the basis of the provisions under paragraph 1 and taking into account the calculation modalities laid down in the implementing act referred to in Article 31 (3) of Directive 2012/34/EU of the European Parliament and of the Council. The infrastructure manager may decide to gradually adapt to those modalities during a period of no more than four years after the entry into force of that implementing act.

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

6. The infrastructure manager may modify the infrastructure charges to take account of the cost of environmental effects caused by the operation of the train, on the basis of the calculation modalities specified in Implementing Regulation (EU) No 429/2015 of the European Commission of 13 March 2015, as adopted pursuant to Article 31 (5) of Directive 2012/34/EU of the European Parliament and of the Council. Any such modification of infrastructure charges to take account of the cost of noise effects shall support the retrofitting of wagons with the most economically viable low-noise braking technology available.

7. 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 to road freight transport in accordance with Union law. If charging for environmental costs generates additional revenue, it shall be for the Ministry of Infrastructure and Transport, in agreement with the Ministry of Economy and Finance, after consultation with the Transport Regulation Authority, to decide how the additional revenue is to be used. The infrastructure manager shall ensure that the necessary information is kept and that the origin of the charging of environmental costs and its application can be traced and shall provide the EU Commission with this information upon request.

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

9. The infrastructure manager may levy an appropriate charge for capacity that is allocated but not used. That non-usage charge shall provide incentives for efficient use of capacity. The levy of such a charge on applicants that were allocated a train path shall be mandatory in the event of their regular failure to use allocated paths or part thereof. For the imposition of this charge, the infrastructure manager shall publish in its network statement the criteria to determine such failure to use. The regulatory body shall control such criteria. Payments for this charge shall be made by either the applicant or by the appointed railway undertaking. The infrastructure manager shall always be able to inform any interested party of the infrastructure capacity which has already been allocated to user railway undertakings.

10. The charge imposed for track access within service facilities referred to in article 13 (2) and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit.

11. Where the additional and ancillary services referred to in article 13 (9) and (11) are offered by only one supplier, the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit. If the same services are offered under competition, they may be provided at market price.

(43) See also Article 196 of Legislative Decree No 34 of 19 May 2020, converted, as amended, into Law No 77 of 17 July 2020.

Art. 18 *Exceptions to access charging principles*

1. Subject to the provisions of Article 17 concerning the charging for the use of railway infrastructure and services, in order to obtain full recovery by the infrastructure manager of the costs incurred for access and use of rail infrastructure and connection to service facilities, by a decree of the Minister of Infrastructure and Transport, in agreement with the Minister of Economy and Finance, mark-ups may be levied on the charges for use of the railway infrastructure, without prejudice to the economic and financial equilibrium under Article 16.

2. For the purpose of the adoption of the decree referred to under paragraph 1, the Ministry of Infrastructure and Transport shall ensure that the infrastructure managers evaluate the impact of the mark-ups for specific market segments, considering at least the pairs listed in point 1 of Annex VI of Directive 2012/34/EU of the European Parliament and of the Council and retaining the relevant ones. The list of market segments defined by infrastructure managers shall contain at least the three following segments: a) freight services; b) passenger services within the framework of a local, regional and national public service contract and c) other passenger services.

Infrastructure managers may further distinguish market segments according to commodity or passengers transported as well as other parameters relating to the specific segments. Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for those market segments.

3. The infrastructure manager levies the mark-ups referred to under paragraph 1 on the basis of the principles of efficiency, transparency and non-discrimination, while guaranteeing optimal competitiveness of rail market segments. The charging system shall respect the productivity increases achieved by railway undertakings. The infrastructure manager may also apply, without prejudice to Articles 101, 102, 106 and 107 TFEU, the discounts on the charges levied on a railway undertaking, in accordance with paragraphs 11, 12 and 13, without prejudice to the economic and financial equilibrium referred to in Article 16.

4. The regulatory body shall verify:

a) that the market can bear the application of the mark-ups referred to in paragraph 1;

b) that these mark-ups are applied on the basis of the principles of efficiency, transparency and non-discrimination;

c) that these mark-ups are applied so as to guarantee optimal competitiveness of rail market segments;

d) that the charging system respects the productivity increases achieved by railway undertakings.

The regulatory body shall notify the results of the verification to the Ministry of Infrastructure and Transport and to the Ministry of Economy and Finance for their ensuing assessments. The regulatory body shall also verify that the discounts comply with the provisions of paragraphs 11, 12 and 13.

5. The level of charges shall 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.

6. The list of market segments shall be published in the network statement and shall be reviewed at least every five years. The regulatory body shall control that list in accordance with Article 14 (1) of this decree.

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

8. For the High-Speed/High-Capacity system and for other specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue to set higher charges on the basis of the total long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

9. The infrastructure charges for the use of railway corridors which are specified in Commission Regulation (EU) 2016/919 shall be differentiated, in accordance with the criteria defined by the regulatory body, so as to give incentives to equip trains with the control-command and signalling system known as "European Train Control System" (ETCS), compliant with the version adopted by Commission Decision 2008/386/EC or successive versions. Such differentiation shall not result in any overall change in revenue for the infrastructure manager. Notwithstanding this obligation to differentiate charges, this differentiation for the use of the infrastructure shall not apply to the railway lines specified in Regulation (EU) 2016/919, on which only ETCS equipped trains may run. In the cases referred to in this paragraph, the need to ensure the economic and financial equilibrium of the management shall remain unaffected.(44)

10. To prevent discrimination, any given infrastructure manager's average and marginal charges for equivalent use of its infrastructure are comparable and comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

11. The discounts referred to in paragraph 3 may relate only to charges levied for a specified infrastructure section and 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.

12. Similar discount schemes shall apply for similar services. Discount schemes shall be applied in a non-discriminatory manner to any railway undertaking.

13. The infrastructure manager may introduce charging schemes that are intended for 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.

14. Any modification of the essential elements of the charging system shall be made public at least three months in advance of the deadline for the publication of the network statement.

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(44) Paragraph replaced by art. 12 (1) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 19 *Compensation scheme for unpaid environmental, accident and infrastructure costs*

1. In accordance with Articles 93, 107 and 108 TFEU, the Ministry of Infrastructure and Transport, after consultation with the regulatory body, may set up a time-limited compensation scheme for the rail mode, where it can be demonstrated that environmental, accident and infrastructure costs of competing transport modes were unpaid, and up to the amount of the difference between these costs and the equivalent costs that may be attributed to the rail mode.

2. Where railway undertakings receiving compensation referred to under paragraph 1 enjoy an exclusive right, the compensation shall be accompanied by comparable benefits to users.

3. The definition and calculation methodologies used to determine the compensation referred to in this article shall be publicly available and shall make it possible to demonstrate the magnitude of the specific costs that may be attributed to competing transport modes that are avoided, directly or indirectly, by supporting rail transport through the use of such compensation.

Art. 20 *Cooperation in relation to charging systems on more than one network*

1. Infrastructure managers shall cooperate to enable the application of efficient charging schemes, and associate to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the Union. Infrastructure managers shall, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the railway networks, by establishing appropriate procedures to this end.

2. For the purpose of paragraph 1, infrastructure managers shall cooperate to enable mark-ups, as referred to in Article 18, and the performance monitoring system, as referred to in Article 21, to be efficiently applied, for traffic crossing more than one network of the rail system within the Union.

Art. 21 *Rail performance monitoring scheme*

1. In order to minimise shortcomings arising from disruption to train operation, the infrastructure manager shall adopt, with no additional charges for the State budget, a rail performance monitoring scheme which may include both penalties for network users which cause such disruptions, compensation for network users which suffer from such disruptions, and bonuses that reward network users standing out for better-than-planned performance compared to the relevant track access agreements.

2. The basic principles of the performance monitoring system as listed in point 2 of Annex VI to Directive 2012/34/EU of the European Parliament and of the Council shall apply throughout the network managed by the infrastructure manager.

Chapter V

Allocation of infrastructure capacity

Art. 22 *Capacity rights*

1. The railway infrastructure manager is the entity responsible for the allocation of railway infrastructure capacity.

2. The railway infrastructure manager shall allocate capacity by ensuring:

a) that capacity is allocated in a fair and non-discriminatory manner and in accordance with the principles of Article 26 and of Union law;

b) that the allocation of capacity allows effective and optimal use of the railway infrastructure;

c) the commercial confidentiality of the information received.

3. The infrastructure capacity allocated to an applicant shall not be transferred by the recipient to another undertaking or service under penalty of invalidity; any infringement shall lead to the exclusion from a new allocation of capacity in the context of the scheduling of the immediately following working timetable. The use of capacity by a railway undertaking to carry out the transport activity of an applicant which is not a railway undertaking shall not be considered as a transfer.

4. 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.

5. The infrastructure manager and an applicant may, however, enter into a framework agreement, as laid down in Article 23, for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period, and from the first timetable change, consistent with the procedures identified for allocation of capacity under Article 26 and set out in the network statement.

6. The respective rights and obligations of infrastructure managers and applicants in respect of any allocation of capacity shall be laid down in contracts in accordance with the terms set out in the network statement.

7. The infrastructure manager may set requirements for applicants to ensure that its legitimate expectations about future revenues and use of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. They shall be published, as part of the capacity allocation principles, in the network statement.

8. The conditions set out in paragraph 7 may only include the provision of a financial guarantee that shall 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, on the basis of the provisions of Commission Implementing Regulation (EU) 2015/10 of 6 January 2015 pursuant to Article 41 (3) of Directive 2012/34/EU of the European Parliament and of the Council.

Art. 23 *Framework agreements*

1. Without prejudice to Articles 101, 102 and 106 TFEU, the framework agreement referred to under article 22 (5) shall specify the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period, on the basis of the procedures and criteria set out by the regulatory body in accordance with the implementing act referred to in Article 42 (8) of Directive 2012/34/EU of the European Parliament and of the Council, and Article 26 of this decree. The framework agreement shall not specify a train path in detail, but shall be such as to meet the legitimate commercial needs of the applicant.

2. If the applicant for a framework agreement is not a railway undertaking, it shall indicate to the infrastructure manager, as set out in the network statement, the railway undertakings that operate on its behalf, at least in the first year of validity of the agreement, the transport services relating to the capacity procured under that framework agreement. For this purpose, these railway undertakings shall apply for the allocation of specific capacities, in the form of train paths and related services, and after the conclusion of the contract with the infrastructure manager, in accordance with the procedures laid down in Articles 22 and 25, as set out in the network statement.

3. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services. For this purpose, with respect to each section or railway line, the maximum share of capacity that may be procured by an individual applicant by means of a framework agreement with a period of validity of more than one year may not exceed the limits set out in the network statement, taking into account the criteria established by the regulatory body on the basis of the implementing act referred to in Article 42 (8) of Directive 2012/34/EU of the European Parliament and of the Council, where it has been adopted.

4. Amendments or limitations to the terms of the framework agreement shall be allowed provided that they are designed to enable better use to be made of the railway infrastructure.

5. The framework agreement may contain penalties, should it be necessary to modify or terminate the agreement for both parties; in this respect exceptions may be contractually provided for particular cases.

6. Framework agreements shall, in principle, cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks, that are closely linked to the use of capacity procured by the framework agreement or to the conclusion of contracts under public service obligations.

7. For services using specialised infrastructure referred to in Article 31 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, as well as where such investment is covered by contractual commitments including a multiannual amortisation plan. In such exceptional cases, the framework agreement may set out the detailed characteristics of the capacity which is to be provided to the applicant for the duration of the framework agreement. Those characteristics may include the frequency, volume and quality of train paths. The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 34.

8. A framework agreement, that is concluded as from 1 January 2010, for an initial period of five years, shall be renewable only once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body shall be responsible for authorising the renewal of this agreement.

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

Art. 24 *Path requests*

1. Requests for infrastructure capacity may be made by applicants in the form of train paths and related services referred to under article 13 (2) (a), (b) and (c). In order to use such infrastructure capacity, applicants shall appoint a railway undertaking to conclude an agreement for use of the infrastructure with the infrastructure manager in accordance with Article 25.

2. The applicant for infrastructure capacity with a view to operating a passenger service, shall inform the infrastructure managers and the regulatory bodies concerned at least eighteen months before the working timetable which the request for capacity refers to, comes into force. In order to enable them to assess the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service on that route defined in a public service contract and any railway undertaking performing the public service contract on the route of that passenger service is informed without undue delay and in any event within ten days.(45)

3. Without prejudice to Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010, for train paths crossing more than one network, the infrastructure manager shall ensure that applicants may apply to a one-stop shop that is either a joint body established by the infrastructure managers or one single infrastructure manager involved in the train path. That infrastructure manager shall be permitted to act on behalf of the applicant to seek capacity with other relevant infrastructure managers.

(45) Paragraph replaced by art. 13 (1) of Legislative Decree No.139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof; for the application of this provision see art. 20 (2) of the above-mentioned Legislative Decree No. 139/2018.

Art. 25 *Track access agreement*

1. Railway undertakings shall apply to the infrastructure manager to request a track access agreement for the provision of rail transport services, against a charge as provided for in Article 17.

2. Requests relating to the working timetable shall comply with the deadlines provided for in Annex VII to Directive 2012/34/EU of the European Parliament and of the Council, as set out in the network statement.

3. Applicants who are parties to a framework agreement pursuant to Article 23, shall apply in relation to that agreement for specified capacity in the form of train paths in accordance with the terms of that agreement.

4. Prior to the conclusion of the track access agreement, railway undertakings shall hold a rail safety certificate.

5. The track access agreement shall be concluded in a non-discriminatory and transparent manner, on the basis of the model published in the network statement. The parties shall be entitled to negotiate specific conditions to ensure better efficiency in the use of the railway infrastructure.

Art. 26 *Capacity allocation*

1. The infrastructure manager shall perform the capacity-allocation processes. In particular, the infrastructure manager shall ensure that infrastructure capacity is allocated in a fair, transparent and non-discriminatory manner and in accordance with EU law, while complying with the criteria established by the regulatory body and set out in the network statement.

2. The infrastructure manager shall respect the commercial confidentiality of information received from applicants and shall always be able to inform any interested party of the infrastructure capacity allocated for the operation of rail services.

3. Infrastructure capacity shall be allocated on the basis of the schedule set out in Annex III to this decree, of the provisions of the network statement and of any measures laid down in the implementing act referred to in Article 43 (2) of Directive 2012/34/EU of the European Parliament and of the Council.

4. The railway infrastructure manager before commencing consultation on the draft working timetable referred to in Article 28 (3), shall identify, together with the entities responsible for capacity allocation in the other Member States, the international train paths which are to be included in the working timetable. Only if it is absolutely necessary and against evidence, the infrastructure manager may make changes to the train paths that have been reserved for international transport services in accordance with the procedure referred to in paragraph 3.

5. The infrastructure manager shall decide on the path requests within two months of the expiry of the deadline for their submission by the railway undertakings and shall notify the latter and the regulatory body without delay. The refusal of the request shall state the grounds on which it is based and shall be communicated to the regulatory body.

6. Where the refusal of the request for capacity is justified by the insufficient capacity, the request shall be reviewed, in agreement with the applicant, at the following timetable adjustment for the routes concerned. The dates of timetable adjustments and related requirements shall be made available to the parties concerned.

7. The railway infrastructure manager shall notify without delay the regulatory body and the railway undertakings concerned of any significant changes in the quality of the lines and capacity used for the operation of rail services. Railway undertakings holding a public service contract shall, in turn, immediately notify the competent authorities referred to in Regulation (EC) No 1370/2007 thereof.

Art. 27 *Cooperation in the allocation of infrastructure capacity*

1. Infrastructure managers shall cooperate to enable the creation and efficient allocation of infrastructure capacity which crosses more than one network of the rail system within the Union, including under framework agreements referred to in Article 23. Infrastructure managers shall establish appropriate procedures and organise train paths crossing more than one network accordingly. Representatives of infrastructure managers whose allocation decisions have an impact on the activity of other infrastructure managers shall associate in order to coordinate the allocation of or to allocate all relevant infrastructure capacity, including at an international level, without prejudice to the specific rules contained in Union law on rail freight-oriented networks. The principles and criteria for capacity allocation established under this cooperation shall be published by infrastructure managers in their network statement. Appropriate representatives of infrastructure managers from third countries may be associated with these procedures.

2. The Commission shall be informed of and invited to attend as an observer at the main meetings at which common principles and practices for the allocation of infrastructure for international paths are developed. The regulatory body shall receive sufficient information about the development of common principles and practices for the allocation of infrastructure and IT-based allocation systems, to allow to perform the regulatory supervision in accordance with Article 37.

3. At any meeting or other activity undertaken to permit the allocation of infrastructure capacity for trans-network train services, decisions shall only be taken by representatives of infrastructure managers.

4. The participants in the cooperation referred to in 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. 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 a specific request as provided for in Article 30. Such prearranged international train paths shall be communicated to applicants through any of the participating infrastructure managers.

Art. 28 *Scheduling and coordination procedure*

1. Within the capacity allocation process, all requests for infrastructure capacity, including requests for train paths on lines crossing more than one network, shall be met as far as possible, taking account, as far as possible, of all constraints on applicants, including the economic effect on their business and safeguarding, in any case, the rights deriving from the framework agreements concluded pursuant to Article 23.

2. Only in the cases provided for in Articles 31 and 32, the infrastructure manager, within the scheduling and coordination process aimed at the allocation of capacity, may give priority to specific services in compliance of the principles set out in Article 26 (1).

3. The infrastructure manager, after consultation with interested parties, shall draw up a draft working timetable and allow these parties at least thirty days to present their views, if any, to be taken into consideration for the purpose of the allocation of infrastructure capacity. Interested parties shall include all those who have requested infrastructure capacity and other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.

4. In case of conflicts between different requests, the infrastructure manager shall attempt to coordinate them with a view to ensuring the best possible matching of all requirements, including, where appropriate, by proposing, within reasonable limits, infrastructure capacity that differs from that which was requested. These limits shall be described in the network statement.

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

a) train paths requested by all other applicants on the same routes;
b) train paths allocated on a preliminary basis to all other applicants on the same routes;
c) alternative train paths proposed on the relevant routes in accordance with paragraph 4;
d) full details of the criteria being used in the capacity-allocation process.

In accordance with Article 11 (10), that information shall be provided without disclosing the identity of other applicants, unless applicants concerned have agreed to such disclosure.[(46)]

6. The principles governing the coordination process shall be set out in the network statement and shall, in particular, reflect both the difficulty of arranging train paths for international transport services and the effect that any modification may imply for other infrastructure managers.

7. Without prejudice to the judicial remedies provided for by national law and to the provisions of Article 37, in the case of disputes relating to the allocation of infrastructure capacity, the infrastructure manager shall set up a dispute resolution system in order to resolve such disputes promptly. This system shall be set out in the network statement. Decision shall be reached by the infrastructure manager within a time limit of ten working days.

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(46) Paragraph amended by art. 14 (1) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 29 *Congested infrastructure*

1. Where, after coordination of the train path requests and consultation with applicants, it is not possible to satisfy requests for infrastructure capacity adequately, the infrastructure manager shall immediately declare that element of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which can be expected to suffer from insufficient capacity as compared to the requested use in the near future.

2. Where infrastructure has been declared to be congested, the infrastructure manager shall carry out a capacity analysis as provided for in Article 32, unless a capacity-enhancement plan, as provided for in Article 33, is already being implemented.

3. Where charges referred to in Article 17 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 social importance of a service as compared to any other service which is consequently excluded.

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

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

Art. 30 *Specific requests*

1. The infrastructure manager shall respond swiftly, and in any event within five working days, to requests for individual train paths submitted by railway undertakings, including during the working timetable period. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.

2. The infrastructure manager shall undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to be able to respond rapidly to foreseeable specific requests for capacity. This principle shall also apply in cases of congested infrastructure.

Art. 31 *Specialised infrastructure*

1. Without prejudice to the provisions under paragraph 2, infrastructure capacity shall be considered to be available for the use of all types of transport services which have the characteristics necessary for operation on the train path.

2. Where there are suitable alternative routes, the infrastructure manager may, after consultation with all interested parties, designate particular infrastructure for use by specified types of traffic. Without prejudice to Articles 101, 102 and 106 TFEU, where such designation has occurred, the infrastructure manager may give priority to such types 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 used corresponds to the technical characteristics necessary for operation on the train path.

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

Art. 32 Capacity analysis

1. The objective of capacity analysis is to determine the constraints on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied. The capacity 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 capacity 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. The infrastructure manager may take measures that include rerouting services, retiming services, speed alterations and infrastructure improvements, including specialisation of the train path.

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

Art. 33 Capacity-enhancement plan

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

2. The capacity-enhancement plan shall be developed after consultation with users of the relevant congested infrastructure and shall identify:
   a) the reasons for the congestion;
   b) the likely future development of traffic;
   c) the constraints on infrastructure development;
   d) the options and costs for capacity enhancement, including likely changes to access charges.

3. In addition to the provisions of paragraph 2, the enhancement plan shall determine, on the basis of a cost benefit analysis of the possible measures identified, the action to be taken to enhance infrastructure capacity, including a timetable for implementing the measures. The plan is submitted to the Ministry of Infrastructure and Transport for prior approval. The implementation of the plan, in relation to the investments necessary for capacity enhancement, shall be subject to the actual allocation of public funding under the contractual agreement referred to in Article 15.

4. For the use of specified congested infrastructure and infrastructure sections, the infrastructure manager shall cease to demand payment of the charge component that is linked to traffic density on such infrastructure and infrastructure sections, in cases where:
   a) it does not produce a capacity-enhancement plan;
   b) it does not make progress with the action plan identified in the capacity enhancement plan.

5. In the cases referred to in paragraph 4 the infrastructure manager may, subject to the approval of the regulatory body, continue to demand payment of the charge component referred to in that paragraph, if:
   a) the capacity-enhancement plan cannot be realised for reasons beyond its control;
   b) the options available are not economically or financially viable.

Art. 34 *Use of train paths*

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

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

Art. 35 *Infrastructure capacity for maintenance work*

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

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

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

4. The regulatory body may require the infrastructure manager to provide such information, if it deems that this is necessary.(47)

(47) Paragraph as amended by art. 15 (1) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 36 *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 shall take all necessary steps to restore the operation of the service to normal. To that end, it shall draw up a contingency plan listing the various bodies to be informed in the event of serious incidents or serious disturbances to train movements. In the event of a disturbance which has a potential impact on cross-border traffic, the infrastructure manager shall share any relevant information with other infrastructure managers, the network and traffic of which may be affected by that disturbance and shall cooperate with them to restore the cross-border traffic to normal.(48)

2. In an emergency and, where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the train paths allocated may be withdrawn without warning for as long as is necessary to repair the system. The infrastructure manager may, if it deems this necessary, require railway undertakings to make available to it the resources which it feels are the most appropriate to restore the situation to normal as soon as possible.

3. Railway undertakings shall be involved in assuring the enforcement of the safety standards and rules within the scope of their activities and in monitoring of their own compliance therewith.

3a. Railway undertakings operating passenger services shall put in place contingency plans and shall submit them to the infrastructure manager so that they are properly coordinated to provide assistance to passengers, in accordance with Article 18 of Regulation (EC) No 1371/2007, in the event of a major disruption to services.(49)

(48) Paragraph replaced by art. 16 (1) (a) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

(49) Paragraph added by art. 16 (1) (b) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

Art. 37 *Regulatory body*

1. The regulatory body is the Transport Regulation Authority which exercises its responsibilities in rail transport and access to related infrastructure pursuant to Article 37 of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011, Article 37 of Decree-Law No 1 of 24 January 2012, converted, with amendments, into Law No 27 of 24 March 2012, Directive 2014/34/EU of the European Parliament and of the Council, and this decree. The regulatory body operates in full autonomy and independence of judgement and evaluation.

2. Without prejudice to the provisions of Article 28 (7) concerning disputes relating to the allocation of infrastructure capacity, each applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or, where appropriate, by the railway undertaking or the operator of a service facility concerning:

a) the network statement in its provisional and final versions;
b) the criteria set out in it;
c) the allocation process and its result;
d) the charging scheme;
e) the level or structure of infrastructure charges which it is, or may be, required to pay;
f) arrangements for access in accordance with Articles 12 and 13;
g) access to and charging for services in accordance with Article 13 and 17;
g-a) traffic management;(50)
g-b) renewal planning and scheduled or unscheduled maintenance;(50)
g-c) compliance with the requirements, including those regarding conflicts of interest, set out in Articles 11, 11-a, 11-b and 11-c. (50)

3. Without prejudice to the powers of the national competition authority to secure competition in the rail services markets, the regulatory body, subject to the provisions of article 37 (2) and (3) of decree-law No 201 of 6 December 2011, converted, as amended, into Law No. 214 of 22 December 2011, shall have the power to monitor the competitive situation in the rail services markets, including in particular the market for high-speed passenger services, and the activities of infrastructure managers referred to under letters (a) to (g-c) of paragraph 2. In particular, the regulatory body shall verify compliance with letter (a) to (g-c) of paragraph 2 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.(51)

4. The regulatory body shall cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the

interoperability of the rail system within the Community, and with the licensing authority within the meaning of article 56 (3) of Directive 2012/34/EU of the European Parliament and of the Council.

5. For the purposes of the activities referred to in paragraph 4, the authorities referred to in paragraph 4 shall jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with recommendations on issues that may affect safety. Without prejudice to the independence of each authority within the field of their respective competences, the relevant authority shall examine any such recommendation before adopting its decisions. If the relevant authority decides to deviate from these recommendations, it shall give reasons in its decisions.

6. The regulatory body shall ensure that charges for access and supply of services referred to in Article 13 set by the operator of the service facility comply with the provisions of this decree and are non-discriminatory. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this decree.

7. The regulatory body shall regularly and, in any case at least every two years, consult representatives of users of the rail freight and passenger transport services, to consider their views on the rail market.

8. The regulatory body shall have the power to request information from the infrastructure manager, applicants and any third party involved. Information requested shall be supplied within a reasonable period set by the regulatory body that shall not exceed one month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed two additional weeks. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its function of decision-making, monitoring and control of the competition in the rail services markets. This includes data which are necessary for statistical and market observation purposes.

9. The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information. Without prejudice to the powers of the national competition authority for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to letters (a) to (g-c) of paragraph 2. [52]

10. A decision of the regulatory body shall be binding on all parties covered by that decision and shall be a definitive act. The regulatory body may enforce its decisions with appropriate penalties.

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

12. Decisions taken by the regulatory body are published and are subject to judicial review. The appeal may have suspensive effect on the decision of the regulatory body only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant.

13. In order to verify compliance with accounting separation provisions laid down in Article 5 and provisions on financial transparency laid down in Article 11-c, the regulatory body shall have the power to carry out audits on its own or have them initiated by infrastructure managers, operators of service facilities and, where relevant, railway undertakings. In the case of vertically integrated undertakings, those powers shall extend to all legal entities. The regulatory body shall be entitled to request any relevant information. In particular, the regulatory body shall have the power to request infrastructure managers, operators of service facilities and all undertakings or other entities performing or integrating different types of rail transport or infrastructure management as referred to in Article 5 (4) and (5) and Article 13 to provide all or part of the accounting information listed in Annex IV to this decree and any other information that the regulatory body may require in the exercise of the functions referred to under article 37 (3) (b) of decree-law No 201 of 6 December 2011, converted, as amended, into Law No 214 of 22 December 2011, with a sufficient level of detail as deemed necessary and proportionate. Without prejudice to the powers of the national authorities responsible for State aid issues, the regulatory body may also draw conclusions from the accounts concerning State aid issues which it shall report to those authorities.(53)

13-a The regulatory body shall assess the implementation of the cooperation agreements referred to in Article 11-b (3) and shall monitor compliance with the provisions of Article 11-c (19, (4), (5), (6) and (8).(54)

14. While complying with the provisions of Chapter I, sections I and II, of Law No 689 of 24 November 2021, in so far as applicable, the regulatory body shall provide for the following:

a) in the event of assessed infringement of the rules on access to and use of the railway infrastructure and related services, imposition of an administrative fine of up to one per cent of the turnover related to market revenue generated by the person responsible for the infringement in the last financial year that is closed prior to the assessment of the infringement and, in any case, not exceeding EUR 1.000.000;

b) in the event of non-compliance with its orders and requirements, imposition of an administrative fine ranging from EUR 100.000 to EUR 500.000;

c) where the addressees of a request from the regulatory body do not provide the information or provide inaccurate, misleading or incomplete information, or without justification, do not provide the information within the prescribed time-limit, imposition of an administrative fine ranging from EUR 50.000 to EUR 250.000;

d) in the event of repeated infringements referred to in (a), (b) and (c) above, imposing of penalties of up to twice the maximum penalty provided for each infringement.

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(50) Letter added by art. 17 (1) (a) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

(51) Paragraph amended by art. 17 (1) (b) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

(52) Paragraph amended by art. 17 (1) (c) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

(53) Paragraph replaced by art. 17 (1) (d) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

(54) Paragraph introduced by art. 17 (1) (e) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

Art. 38 *Cooperation between regulatory bodies*

1. The regulatory body shall exchange information about its work and decision-making criteria and practice and, in particular, exchange information on the main issues of the procedures and on the problems of interpreting transposed Union railway law for the purpose of coordinating its decision-making with its European counterparts.

2. The regulatory body shall cooperate closely with its European counterparts, including through working arrangements and for the purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3. In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the regulatory body shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the Commission, and shall request all necessary information from them before taking its decision.

3a. Where matters concerning an international service require decisions of two or more regulatory bodies, the regulatory body shall cooperate with the regulatory bodies concerned in preparing their respective decisions in order to bring about a resolution of the matter. For that purpose, the regulatory body concerned shall carry out its functions in accordance with Article 37.(55)

4. The regulatory body consulted in accordance with paragraph 3 shall provide all the information that its European counterparts have the right to request under their national law. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5. The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

6. Associated representatives of infrastructure managers as referred to in Article 27 (1) shall provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3, that is requested by the regulatory body. That regulatory body shall be entitled to transfer such information regarding the international train path concerned to the other regulatory bodies referred to in paragraph 3.

7. At the request of a regulatory body, the Commission may participate in the activities listed under paragraphs 2 to 6 for the purpose of facilitating the cooperation between regulatory bodies.

8. Regulatory bodies shall develop common principles and practices for making the decisions for which they are empowered under Directive 2012/34/EU of the European Parliament and of the Council on the basis of the measures referred to in article 57 (8) of that Directive. Such common principles and practices shall include arrangements for the resolution of disputes that arise within the framework of paragraph 3a.(56)

9. The regulatory body shall review decisions and practices of associations of infrastructure managers as referred to in Article 17 and Article 27 (1) that implement provisions of this decree or otherwise facilitate international rail transport.

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(55) Paragraph introduced by art. 18 (1) (a) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20 (1) thereof.

(56) Paragraph amended by art. 18 (1) (b) of Legislative Decree No. 139 of 23 November 2018, as of 23 December 2018, pursuant to the provisions of art. 20(1) thereof.

Art. 39 *General principles for cross-border agreements*

1. The provisions contained in cross-border agreements shall not discriminate between railway undertakings or restrict the freedom of railway undertakings to operate cross-border services.

2. The Minister of Foreign Affairs and International Cooperation shall notify the Commission of any cross-border agreement, either new or revised after 16 June 2013, before their conclusion. The Commission shall decide whether such agreements are in compliance with Union law.

3. Without prejudice to the division of competence between the Union and the Member States, in accordance with Union law, the Minister of Foreign Affairs and International Cooperation shall notify the Commission of the intention to enter into negotiations on, terminate agreements and conclude new or revised cross-border agreements with third countries and, where appropriate, invite the Commission to participate as an observer. The Ministry of Foreign Affairs and International Cooperation shall take into account the Commission's communications where the negotiations are likely to undermine the objectives of Union negotiations underway with the third countries concerned or to lead to an agreement which is incompatible with Union law.

4. In cases of incompatibility of the agreement or of the impossibility of carrying out the negotiations referred to in paragraphs 2 and 3, within one month of the decision of the Commission, the Minister of Foreign Affairs and International Cooperation, after consultation with the Minister of Infrastructure and Transport, shall initiate the necessary procedure of termination of the agreement.

5. In all other cases, if within one year from the start of the negotiations no agreement has been found with the delegation of the other Member State or third country, for the resolution of the discrepancies with EU law, the Minister of Foreign Affairs and International Cooperation shall initiate the necessary procedure of termination of the agreement.

Art. 40 *Market monitoring*

1. For the purposes of market monitoring by the Commission as referred to in Article 15 (5) of Directive 2012/34/EU of the European Parliament and of the Council, the Minister of Infrastructure and Transport shall, while respecting the role of the social partners, supply to the Commission on an annual basis the necessary information on the use of the networks and the evolution of framework conditions in the rail sector, on the basis of the implementing acts referred to in Article 15 (6) of the Directive.

2. For the purpose of the fulfilment of this obligation, the Minister of Infrastructure and Transport shall rely on the National Institute of Statistics and the National Observatory on Local Public Transport Policies, set up by article 1 (300) of Law No. 244 of 24 December 2007, for matters within their remit, on the basis of a protocol of understanding to be concluded within six months from the entry into force of this decree.

3. The rules on data protection provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data shall remain unaffected. The Commission shall support the exchange of the information referred to

in paragraph 1 among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets supplied by the relevant undertakings.

4. In order to ensure consistency in the reporting obligations, the Minister of Infrastructure and Transport shall define and publish the modalities and timing of the information requested by the Commission, which are binding on all addressees of the relevant survey.

Art. 41 *Additional obligations of railway undertakings*

1. In addition to the requirements laid down in this decree, railway undertakings operating passenger or freight transport services on the national railway infrastructure shall also comply with national, regional, and regulatory legislation, that are compatible with European legislation, and applied in a non-discriminatory manner, with particular regard to defined standards and requirements relating to:

a) specific technical and operational requirements for rail services;

b) safety requirements applicable to personnel, rolling stock and internal organisation of railway undertakings;

c) health, safety, social conditions and rights of workers and users;

d) requirements applicable to all undertakings in the relevant rail sector intended to offer benefits, or protection to users.

2. Railway undertakings are obliged to comply with the agreements applicable to international rail transport, as well as with the relevant tax and customs legislation.

Chapter VI

Final provisions

Art. 42 *Repealed rules*

1. From the date of entry into force of this decree, the following shall be repealed:

a) Legislative Decree No 188 of 8 July 2003;

b) articles 58 and 59 of Law No 99 of 23 July 2009;

c) decree of the Ministry of Infrastructure and Transport of 2 February 2011;

d) Presidential Decree No 146 of 16 March 1999 laying down rules for the implementation of Directive 95/18/EC on the licensing of railway undertakings and Directive 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees.

2. Any reference to the decrees referred to in paragraph 1, in the laws, regulations and administrative provisions concerning the subject-matter governed by this decree, is understood to be made to this decree.

Art. 43 *Explicit supersession clause*

1. With regard to the provisions of Article 117 (5) of the Constitution, the provisions of this decree concerning the legislative competence of the regions and autonomous provinces of Trento and Bolzano, which have not yet transposed Directive 2012/34/EU of the European Parliament and of the Council, shall apply until the date of entry into force of the implementing legislation of each region and autonomous

province, in compliance with the constraints arising from the EU law and the fundamental principles that may be inferred from this decree.

Art. 44 *Financial invariance clause*

1. The implementation of this decree shall not result in new or greater burdens on public finance.

2. The administrations concerned shall comply with the requirements laid down in this decree with the human, instrumental and financial resources available under existing legislation.

Art. 45 *Entry into force*

1. This decree shall enter into force on the day following its publication in the Official Journal of the Italian Republic.

This decree, bearing the State seal, shall be included in the Official Collection of Legislative Acts of the Italian Republic. Any person concerned is required to comply and have it complied therewith.

Annex I
LIST OF RAILWAY INFRASTRUCTURE ITEMS

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

- ground area,

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

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

- level crossings, including appliances to ensure the safety of road traffic,

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

- access way for passengers and goods, including access by road and access for passengers arriving or departing on foot,

- safety, signalling and telecommunications installations on the open track, in stations and in marshalling yards, including plant for generating, transforming and distributing electric current for signalling and telecommunications; buildings for such installations or plant; track brakes,

- lighting installations for traffic and safety purposes,

- plant for transforming and carrying electric power for train haulage: substations, supply cables between substations and contact wires, catenaries and supports; third rail with supports,

- buildings used by the infrastructure department, including a proportion of installations for the collection of transport charges.

Annex II

BASIC PRINCIPLES AND PARAMETERS OF PROGRAMME CONTRACTS

The programme contract shall specify the provisions of Article 14 and include at least the following elements:

1) the scope of the agreement as regards infrastructure and service facilities, structured in accordance with article 13. It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. Where appropriate, construction of new infrastructure may also be covered;

2) the structure of requirements or funds allocated to the infrastructure services listed in Annex II, to maintenance and renewal and to any extraordinary maintenance plans. Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;

3) performance and quality indicators covering elements such as:

a) train performance, such as in terms of line speed and reliability, and customer satisfaction;

b) n*etwork* capacity;

c) asset management;

d) activity and annual expenditure volumes;

e) safety levels; and

f) environmental protection;

4) the amount of possible maintenance backlog and the assets which will be phased out of use and therefore trigger different financial flows;

5) the incentives referred to in Article 30 (1) of Directive 2012/34/EU of the European Parliament and of the Council, with the exception of those incentives implemented through regulatory measures in accordance with Article 30 (3); of Directive 2012/34/EU of the European Parliament and of the Council;

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

7) the agreed duration of the contract;

8) rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and timely information to users;

9) remedial measures to be taken if either of the parties is in breach of its contractual obligations, or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination.

The minimum elements of this Annex shall be included in each programme contract in accordance with its relevant purpose.

Annex III
SCHEDULE FOR THE ALLOCATION PROCESS

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

2. The changes of working timetable shall take place at midnight on the second Saturday in December. Where a change or an adjustment is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, they shall take place at midnight on the second Saturday in June and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates, and, in this case, they shall inform the Commission if international traffic may be affected.

3. The deadline for receipt of requests for capacity to be incorporated into the working timetable shall be no more than twelve months in advance of the change of the working timetable.

4. No later than eleven months before the change of the working timetable, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant infrastructure managers. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.

5. At the latest four months after the deadline for submission of bids by applicants, the infrastructure manager shall prepare and publish a draft working timetable.

Annex IV
ACCOUNTING INFORMATION TO BE SUPPLIED TO THE REGULATORY BODY UPON REQUEST

1. Account separation

   a) separate profit and loss accounts and financial statements, in their income statement and balance sheet components, for each freight, passenger and infrastructure management activity;

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

   c) cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the regulatory body;

   d) methodology used to allocate costs between different activities;

   e) where the regulated firm is part of a group structure, full details of inter-company payments.

2. Monitoring of track access charges

   a) different cost categories, in particular providing sufficient information on costs so that infrastructure charges can be monitored;

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

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

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

3. Indication of financial performance

   a) a statement of financial performance;

   b) a summary expenditure statement;

   c) a maintenance expenditure statement;

   d) an operating expenditure statement;

   e) an income statement;

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

Annex V
CONTENTS OF THE NETWORK STATEMENT

The network statement referred to in Article 14 shall contain the following information:

a) a section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it. The information in this section shall be made consistent, on an annual basis with, or shall refer to, the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC.

b) a section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges as well as other relevant information on access applying to the services listed in Article 13 which are provided by only one supplier. It shall detail the methodology, rules and scales used for the application of Articles 17 to 20, as regards both costs and charges. It shall contain information on changes in charges already decided upon or foreseen in the next five years, if available;

c) 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:

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

2) the requirements governing applicants;

3) the schedule for the application and allocation processes and the procedures which shall be followed to request information on the scheduling and the procedures for scheduling planned and unforeseen maintenance work;

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

5) the procedures to be followed and criteria used where infrastructure is congested;

6) details of restrictions on the use of infrastructure;

7) conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process;

The section shall detail the measures taken to ensure adequate treatment of freight services, international services and requests subject to the procedure referred to under Article 30. It shall contain a template form for capacity requests. The infrastructure manager shall also publish detailed information about the allocation procedures for international train paths and in particular for those relating to rail freight corridors, as referred to in Regulations (EU) No 1315/2013 and 1316/2013 of the European Parliament and of the Council of 11 December 2013, and to the one-stop-shop system provided for in Regulation (EU) 913/2010 of the European Parliament and of the Council of 22 September 2010;

d) a section on information relating to the application for a licence referred to in Article 7 and to the rail safety certificates issued in accordance with Directive 2004/49/EC or indicating a website where such information is made available free of charge in electronic format;

e) a section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 21;

f) a section on information on access to and charging for service facilities. Operators of service facilities other than the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement or shall indicate a website where such information is made available free of charge in electronic format;

g) a model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 23.