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COUNCIL DIRECTIVE
of 29 July 1991
on the development of the Community's railways
(91/440/EEC)
(OJ L 237, 24.8.1991, p. 25)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001	L 75	1	15.3.2001

Corrected by:

- C1 Corrigendum, OJ L 305, 6.11.1991, p. 22 (91/440/EEC)
- C2 Corrigendum, OJ L 334, 18.12.2001, p. 34 (2001/12/EC)



COUNCIL DIRECTIVE
of 29 July 1991
on the development of the Community's railways
 (91/440/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

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

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

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

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

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

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

Whereas Member States should ensure in particular that ►**C1** existing publicly owned or controlled ◀ railway transport undertakings are given a sound financial structure, whilst taking care that any financial rearrangement as may be necessary shall be made in accordance with the relevant rules laid down in the Treaty;

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

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

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

⁽¹⁾ OJ No C 34, 14.2.1990, p. 8 and OJ No C 87, 4.4.1991, p. 7.

⁽²⁾ OJ No C 19, 28.1.1991, p. 254.

⁽³⁾ OJ No C 225, 10.9.1990, p. 27.

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

Whereas, as a result, Council Directive 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States⁽¹⁾ should be repealed,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

▼M1**Scope and Definitions****▼B***Article 2*

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

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2. Railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services shall be excluded from the scope of this Directive.

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

▼B*Article 3*

For the purpose of this Directive:

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- ‘railway undertaking’ shall mean any public or private undertaking licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only;
- ‘infrastructure manager’ shall mean any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings

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- ‘railway infrastructure’ shall mean all the items listed in Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70⁽²⁾, with the exception of the final indent which, for the purposes of this Directive only, shall read as follows: ‘Buildings used by the infrastructure department’;
- ‘international grouping’ shall mean any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States;

⁽¹⁾ OJ No L 152, 12.6.1975, p. 3.

⁽²⁾ OJ No L 278, 23.12.1970, p. 1, Regulation amended by Regulation (EEC) No 2116/78 (OJ No L 246, 8.9.1978, p. 7).

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- ‘international freight service’ shall mean transport services where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border

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- ‘urban and suburban services’ shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;
- ‘regional services’ shall mean transport services operated to meet the transport needs of a region.

SECTION II

▼M1**Management independence***Article 4*

1. Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.
2. While respecting the framework and specific charging and allocation rules established by the Member States, the infrastructure manager shall have responsibilities for its own management, administration and internal control.

▼B*Article 5*

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

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

2. Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and the other technical, commercial and financial management objectives; ► **C1** they must also provide for the means enabling these objectives to be obtained. ◀

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

- establish with one or more other railway undertakings an international grouping;
- establish their internal organization, without prejudice to the provisions of Section III;

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- control the supply and marketing of services and fix the pricing thereof, without prejudice to Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligation inherent in the concept of a public service in transport by rail, road and inland waterway⁽¹⁾,
- take decisions on staff, assets and own procurement,
- expand their market share, develop new technologies and new services and adopt any innovative management techniques;
- establish new activities in fields associated with railway business.

SECTION III

Separation between infrastructure management and transport operations**▼M1***Article 6*

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

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

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

3. Member States shall take the measures necessary to ensure that the functions determining equitable and non-discriminatory access to infrastructure, listed in Annex II, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of the organisational structures, this objective must be shown to have been achieved.

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

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

Article 7

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

2. Member States shall ensure that safety standards and rules are laid down, rolling stock and railway undertakings are certified accordingly and accidents investigated. These tasks shall be accomplished by bodies or undertakings that do not provide rail transport services themselves and are independent of bodies or undertakings that do so, in such a way as to guarantee equitable and non-discriminatory access to infrastructure.

Railway undertakings shall apply these safety standards and rules. Unless Member States mandate independent bodies with enforcement and monitoring, they may require or allow railway undertakings to be involved in ensuring the enforcement and monitoring of the safety standards and rules while guaranteeing the neutral and non-discriminatory execution of these functions.

⁽¹⁾ OJ No L 156, 28.6.1969, p. 1; Regulation last amended by Regulation (EEC) No 1893/91 (OJ No L 169, 29.6.1991, p. 1).

▼M1

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

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

▼B*Article 8*

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

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

SECTION IV

Improvement of the financial situation*Article 9*

1. In conjunction with ►C1 the existing publicly owned or controlled railway undertakings ◄, Member States shall set up appropriate mechanisms to help reduce the indebtedness of such undertakings to a level which does not impede sound financial management and to improve their financial situation.

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

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

▼M1

3. Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 73, 87 and 88 of the Treaty.

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

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SECTION V

Access to railway infrastructure▼M1*Article 10*

1. International groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established.

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

3. Whatever the mode of operation, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, the access that they are seeking to the Trans-European Rail Freight Network defined in Article 10(a) ►C2 and in Annex I and, in any case after 15 March 2008, to the entire rail network, ◀ for the purpose of operating international freight services.

4. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of this Article, and within two months of receipt of such a request and after consulting the Committee referred to in Article 11a(2), decide whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

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

5. Any railway undertaking engaged in rail transport services under paragraphs 1, 2 and 3 shall conclude the necessary administrative, technical and financial agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning that transport. The conditions governing such agreements shall be non-discriminatory and, if applicable, in conformity with the provisions of Directive 2000/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ⁽¹⁾.

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

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

That body shall be set up in accordance with the rules in Article 30(1) of the said Directive. Any applicant or interested party may lodge a complaint with this body if it feels that it has been treated unjustly, has been the subject of discrimination or has been injured in any other way. On the basis of the complaint and, where appropriate, on its own

⁽¹⁾ See page 29 of this Official Journal.

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initiative, the regulatory body shall decide at the earliest opportunity on appropriate measures to correct undesirable developments in these markets. In order to ensure the necessary possibility of judicial control and the requisite cooperation between national regulatory bodies, Article 30(6) and Article 31 of the said Directive shall apply in this context.

8. In accordance with Article 14 which provides for a report on the implementation of this Directive, accompanied by suitable proposals on continuing Community action to develop the railway market ► **C2** and the legal framework governing it, and in any case after 15 March 2008, ◀ the Trans-European Rail Freight Network defined in Article 10a and Annex I, granting access for the international transport of goods to the railway undertakings defined in Article 3, shall be extended to cover the entire European rail network. The railway undertakings shall be granted, over that entire network and on fair conditions, guaranteed access and transit for the international transport of goods.

Article 10a

1. The Trans-European Rail Freight Network consists of the following elements:

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

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

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

SECTION Va

Monitoring tasks of the Commission*Article 10b*

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

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

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

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

- a) the evolution of the internal market in rail services

▼ M1

- b) the framework conditions
- c) the state of the Trans-European Rail Freight Network
- d) the utilisation of access rights
- e) barriers to more effective rail services
- f) infrastructure limitations, and
- g) the need for legislation.

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SECTION VI

Final provisions▼ M1*Article 11*

1. Member States may bring any question concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted by use of the advisory procedure referred to in Article 11a(2).
2. The amendments necessary to adapt the Annexes shall be adopted by use of the regulatory procedure referred to in Article 11a(3).

Article 11a

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

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

4. The Committee shall adopt its rules of procedure.

▼ B*Article 12*

The provisions of this Directive shall be without prejudice to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedure of entities operating in the water, energy, transport and telecommunications sectors⁽¹⁾.

Article 13

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

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

▼ M1*Article 14*

By 15 March 2005 the Commission shall submit to the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Council a report on the implementation of this Directive accompanied by suitable proposals on continuing Community action to develop the railway market and the legal framework governing it.

⁽¹⁾ OJ No L 297, 29.10.1990, p. 1.

▼ **M1***Article 14a*

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

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

do not need to apply the requirement to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 6(3), first subparagraph and the tasks set out in Article 7(2), first subparagraph, in so far as those Articles oblige Member States to establish independent bodies performing the tasks referred to in the said Articles.

2. However, where:

- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and of Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to in Article 11a(2); or
- b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogation referred to in paragraph 1 shall not apply.

Within one year from the receipt of either the decision referred to in point (a) adopted in accordance with the advisory procedure referred to in Article 11a(2), or notification of the official application referred to in point (b), the Member State or States concerned (Ireland, the United Kingdom with respect to Northern Ireland, or Greece) shall put in place legislation to implement the Articles referred to in paragraph 1.

3. A derogation referred to in paragraph 1, may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of such derogation may address a request to the Commission for a renewed derogation. Any such request must be substantiated. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 11a (2). The said advisory procedure shall apply to any decision related to the request.

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

4. Luxembourg as a Member State with a relatively small rail network does not need to apply until 31 August 2004 the requirement to award to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Article 6(3), first subparagraph, in so far as it obliges Member States to establish independent bodies performing the tasks referred to in that Article.

▼ **B***Article 15*

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

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

Article 16

This Directive is addressed to the Member States.

▼ **M1***ANNEX I***PORTS**

BELGIE/BELGIQUE

Antwerpen/Anvers

Gent/Gand

Zeebrugge/Zeebruges

DANMARK

Ålborg

Århus

Esbjerg

Fredericia

København

Nyborg

Odense

DEUTSCHLAND

Brake

Bremen/Bremerhaven

Brunsbüttel

Cuxhaven

Emden

Hamburg

Kiel

Lübeck

Nordenham

Puttgarden

Rostock

Sassnitz

Wilhelmshaven

Wismar

ΕΛΛΑΣ

Αλεξανδρούπολις

Ελευσίνα

Πάτρα

Πειραιάς

Θεσσαλονίκη

Βόλος

ESPAÑA

Algeciras

Almería

Barcelona

Bilbao

Cartagena-Escombreras

Gijón

▼ M1

Huelva

Tarragona

Valencia

Vigo

FRANCE

Bayonne

Bordeaux

Boulogne

Calais

Cherbourg

Dunkerque

Fos-Marseille

La Rochelle

Le Havre

Nantes

Port-la-Nouvelle

Rouen

Sète

St-Nazaire

IRELAND

Cork

Dublin

ITALIA

Ancona

Bari

Brindisi

C. Vecchia

Genova

Gioia Tauro

La Spezia

Livorno

Napoli

Piombino

Ravenna

Salerno

Savona

Taranto

Trieste

Venezia

LUXEMBOURG

NEDERLAND

Amsterdam Zeehaven

Delfzijl/Eemshaven

▼ M1

Vlissingen

Rotterdam Zeehaven

Terneuzen

ÖSTERREICH

PORTUGAL

Leixões

Lisboa

Setúbal

Sines

SUOMI/FINLAND

Hamina

Hanko

Helsinki

Kemi

Kokkola

Kotka

Oulu

Pori

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Göteborg-Varberg

Helsingborg

Luleå

Malmö

Norrköping

Oxelösund

Stockholm

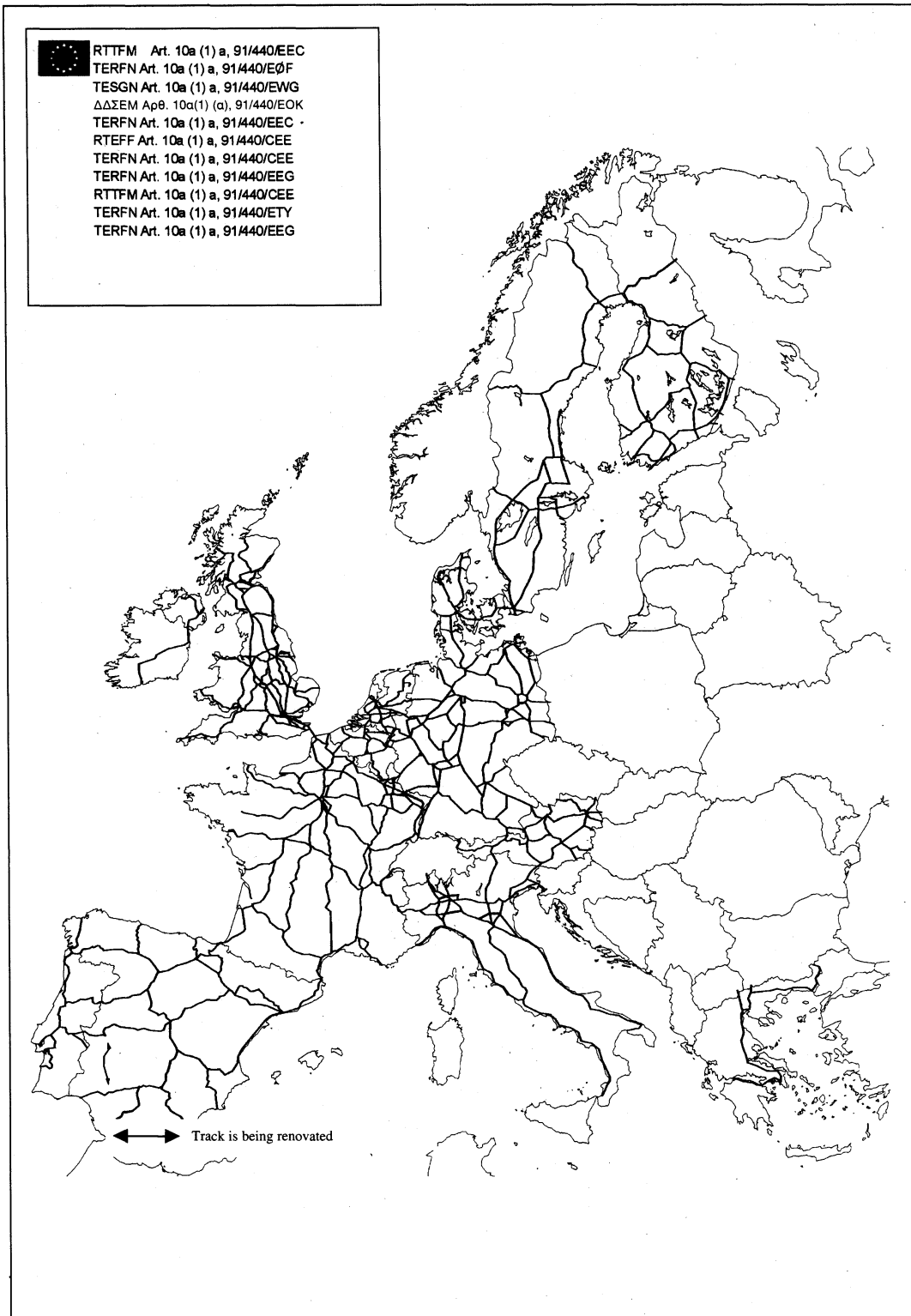
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Umeå

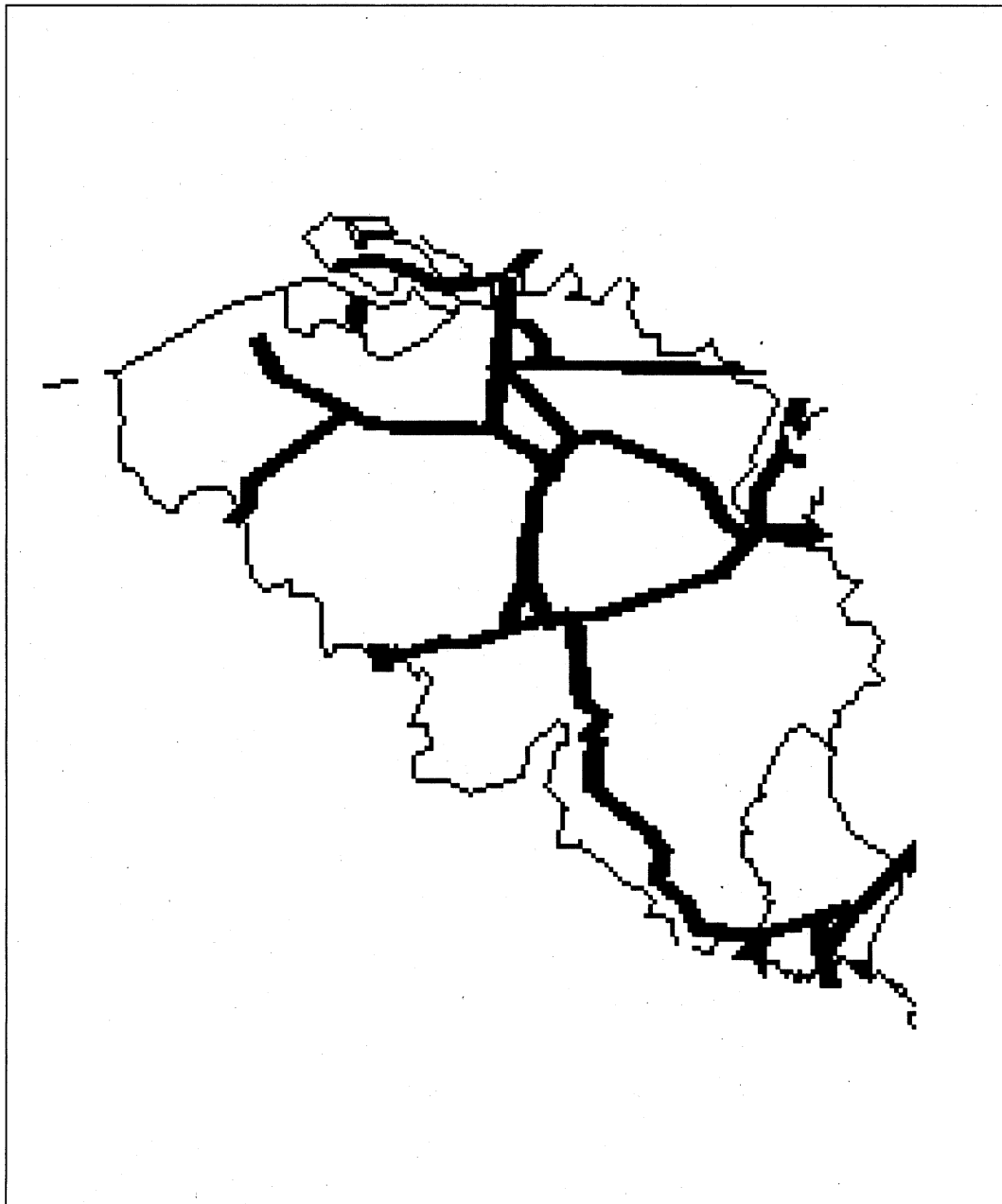
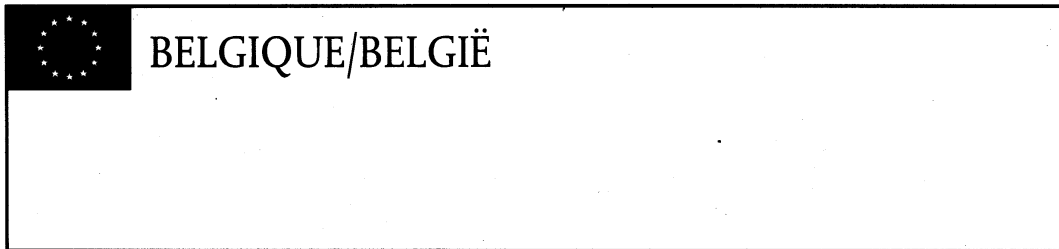
UNITED KINGDOM

All rail-connected ports

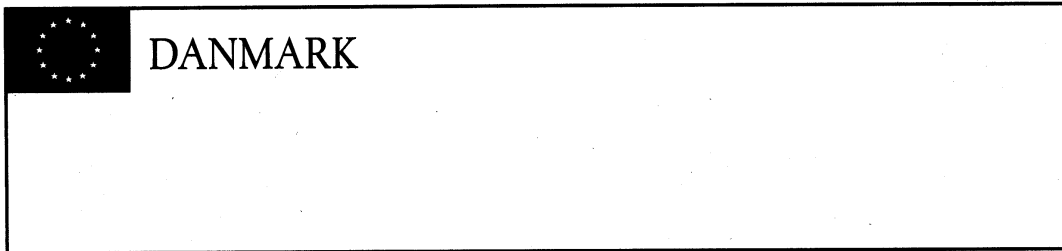
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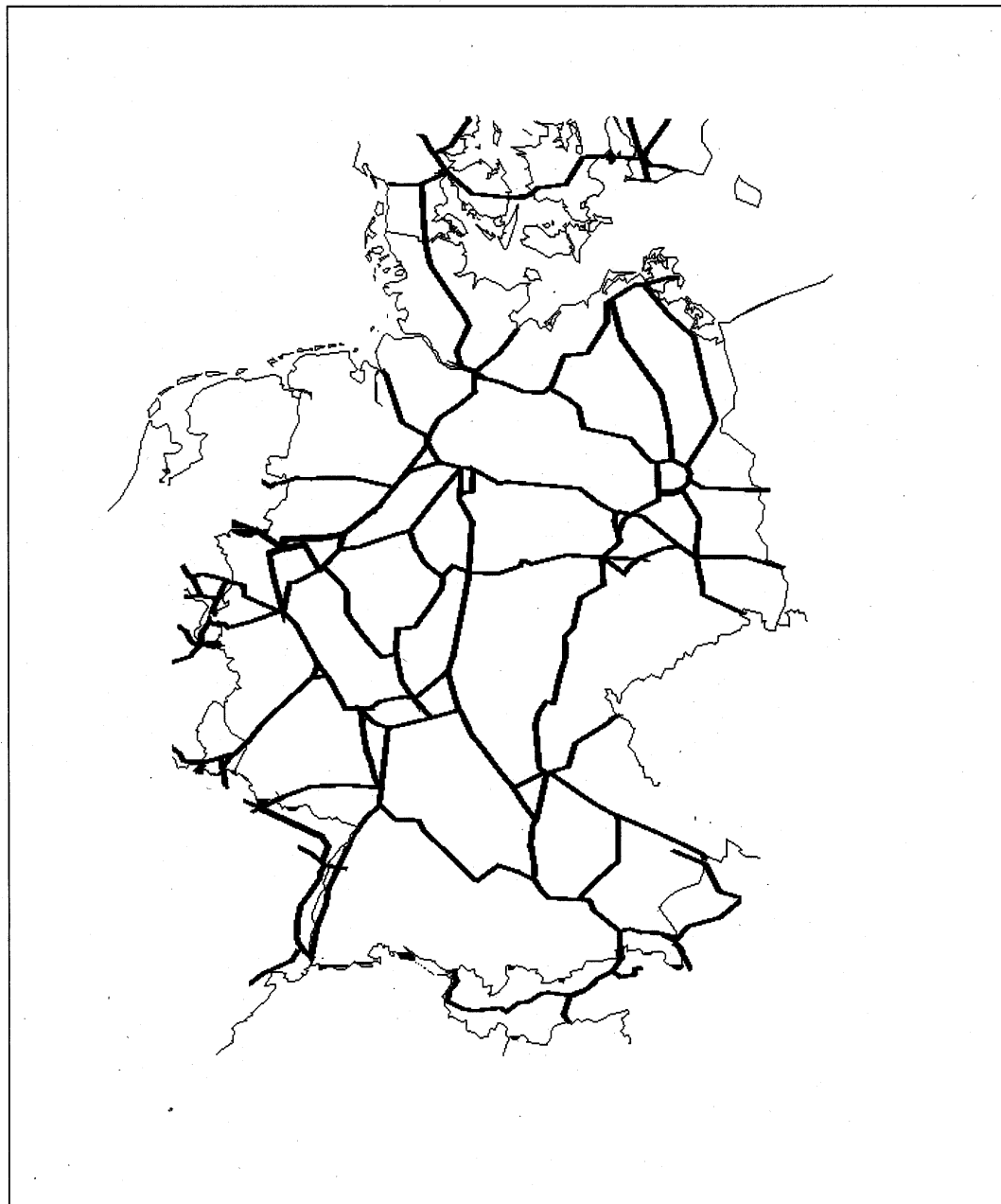
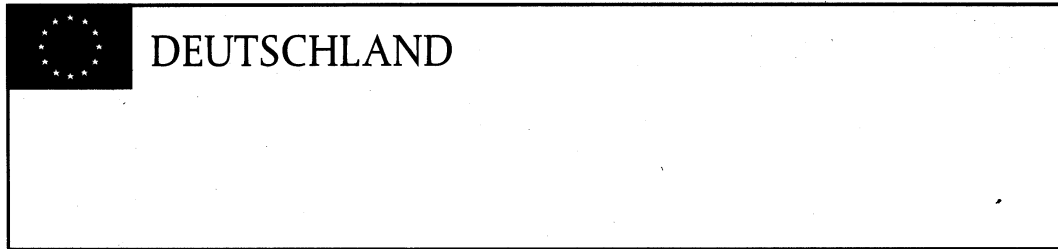
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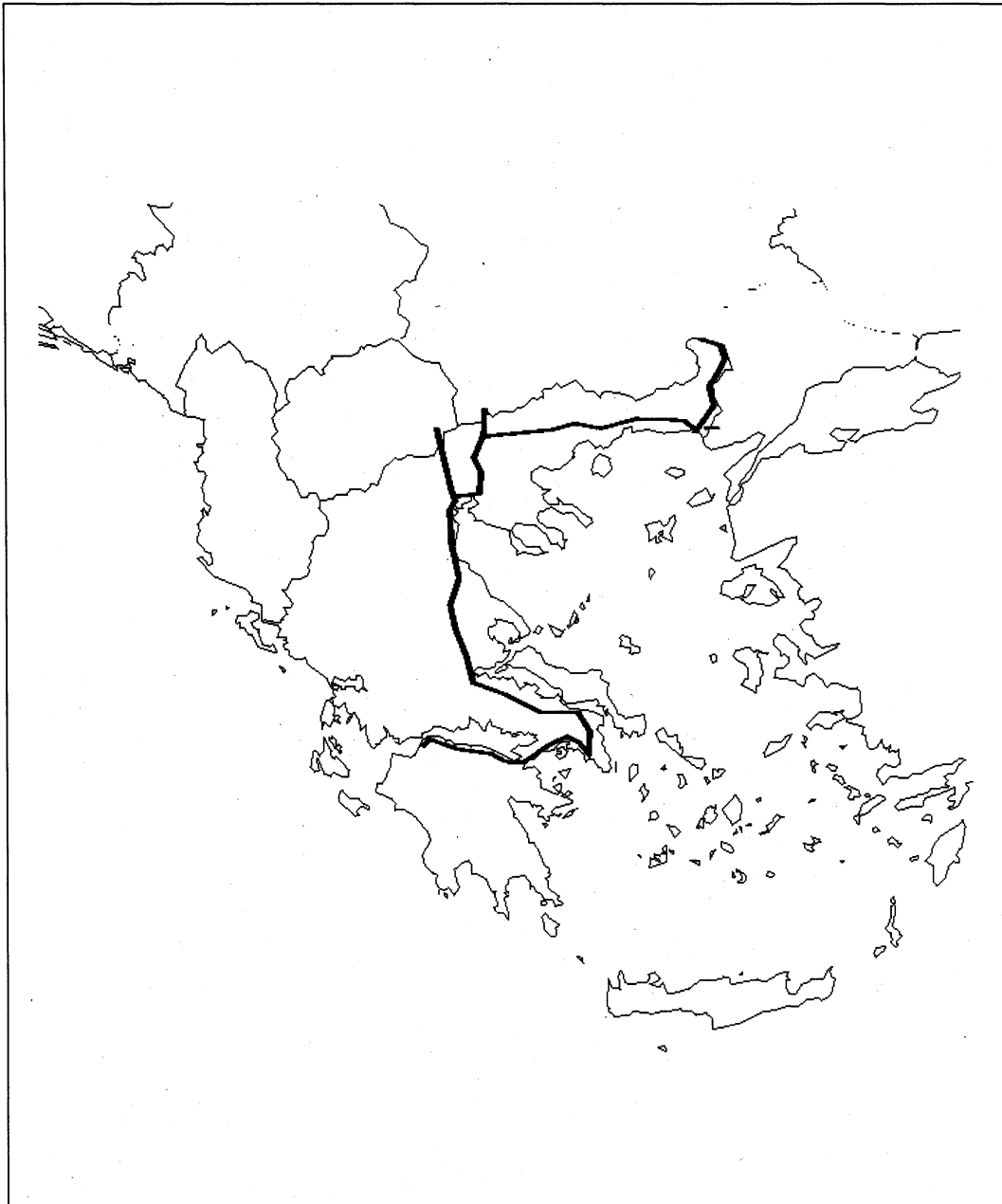
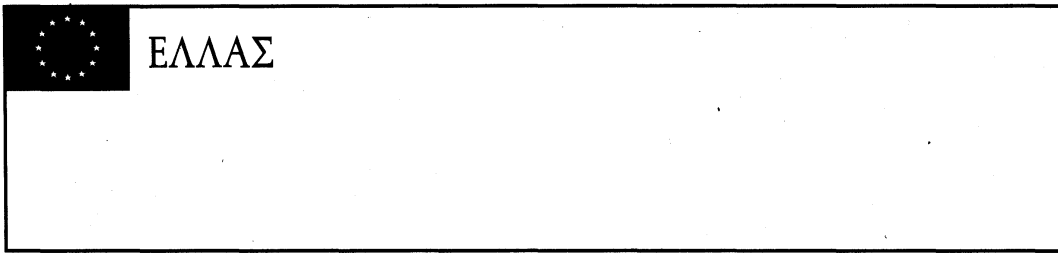
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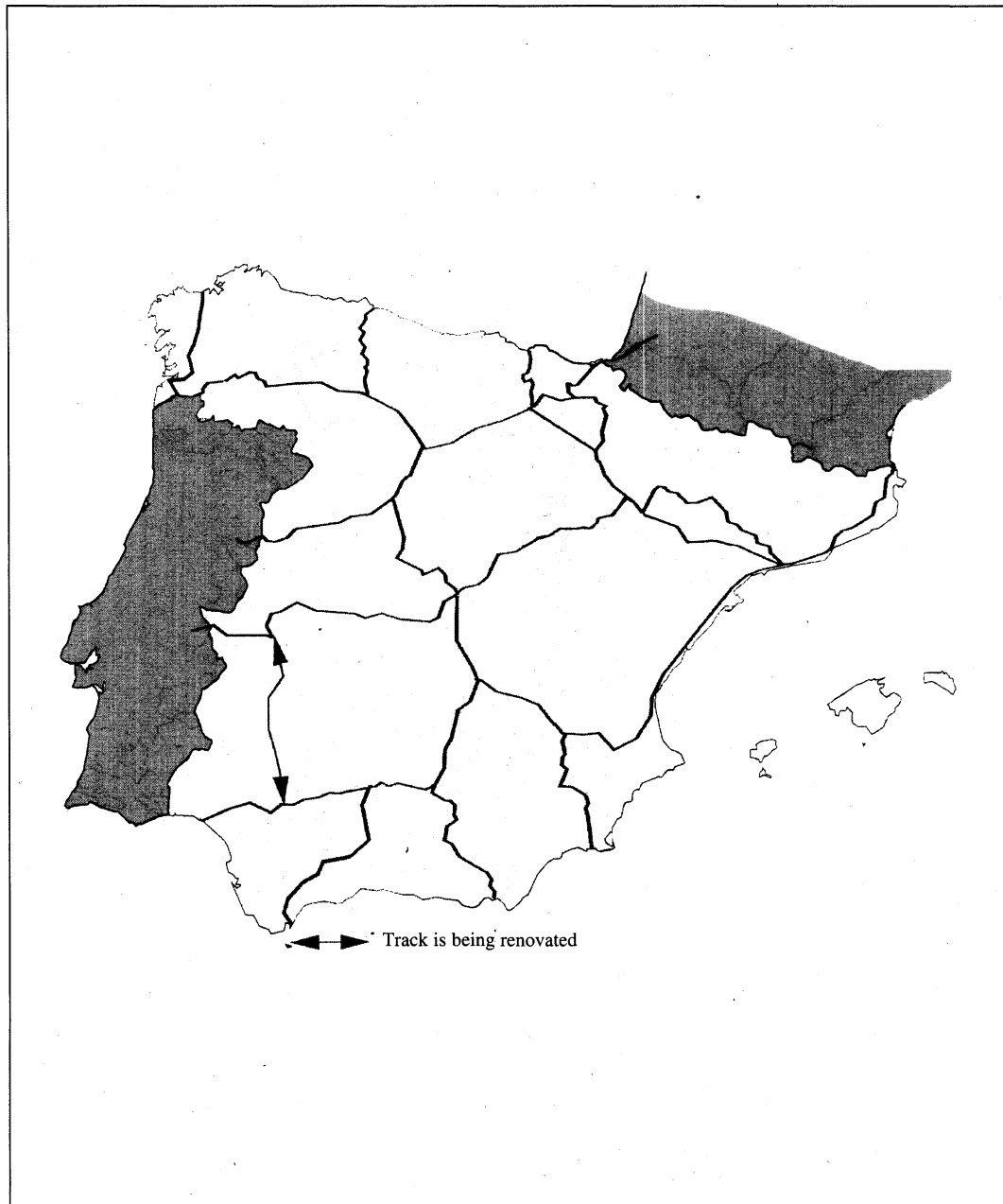
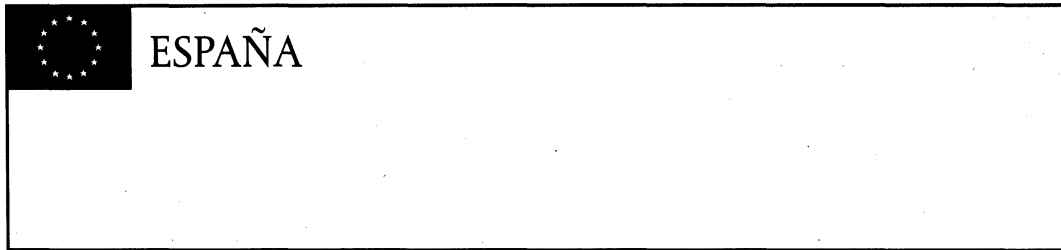
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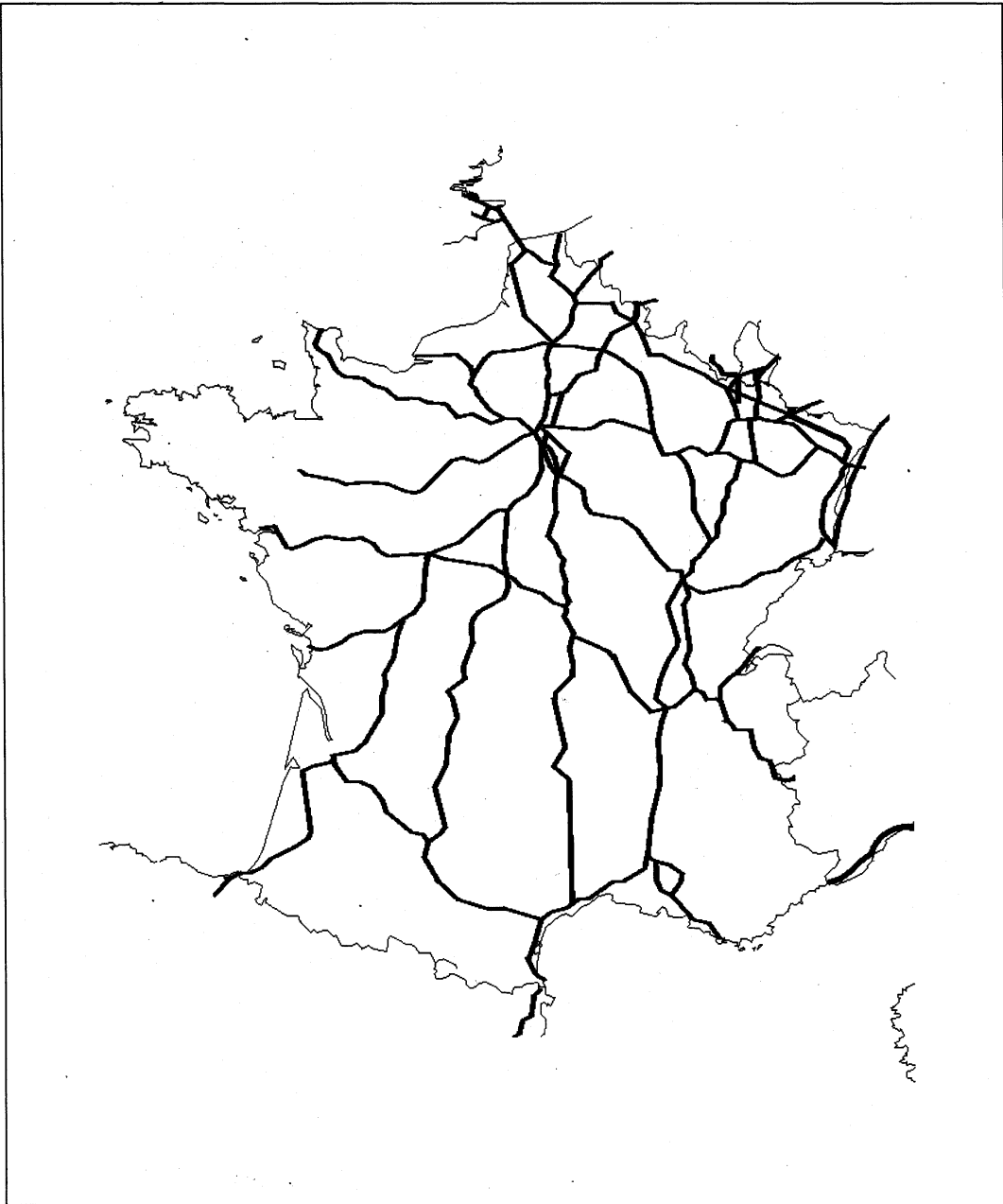
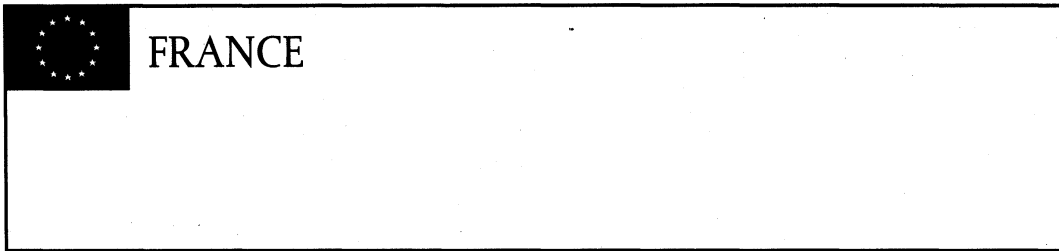
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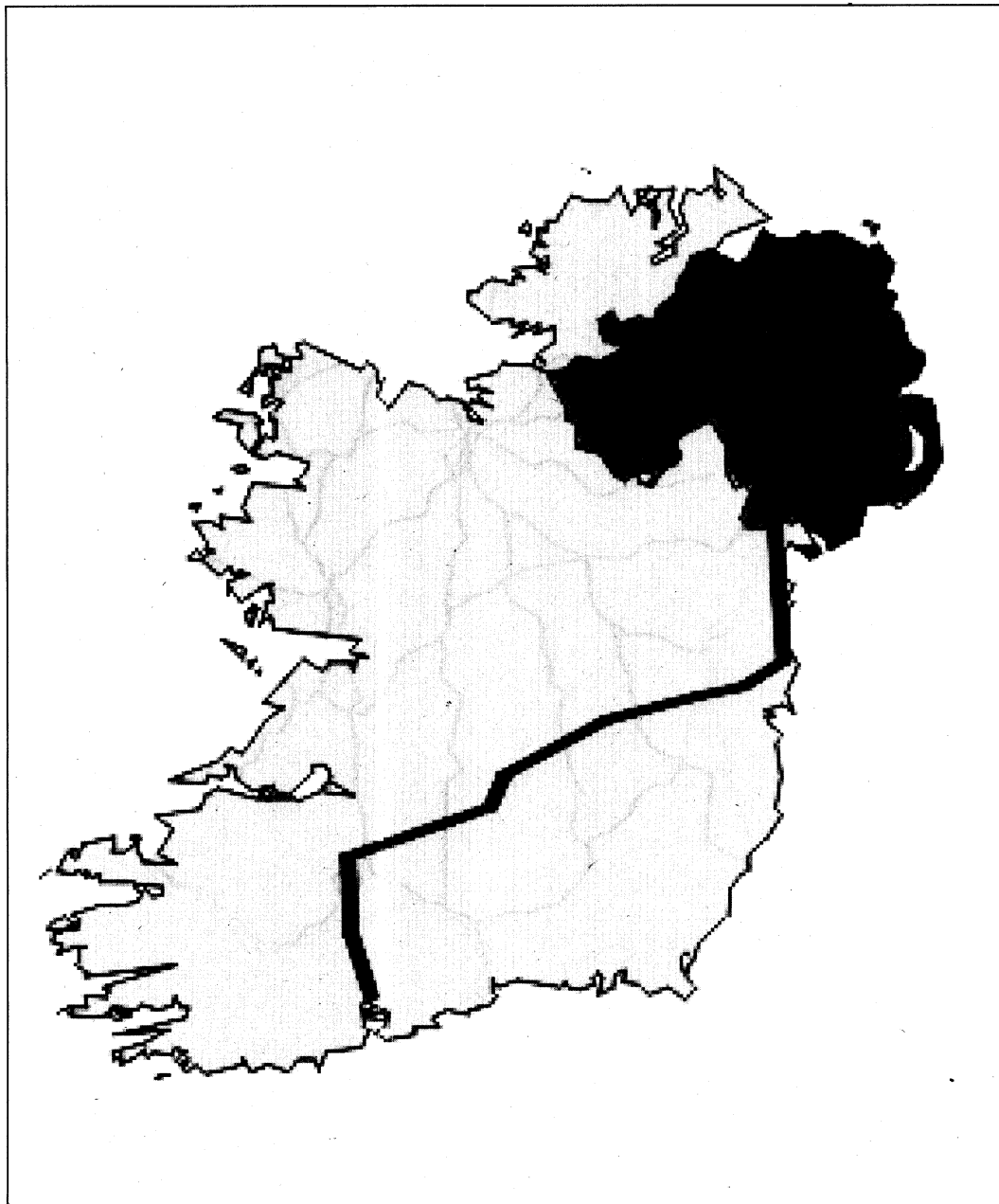
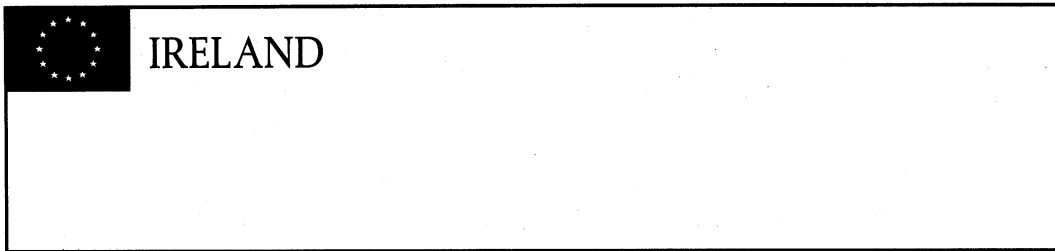
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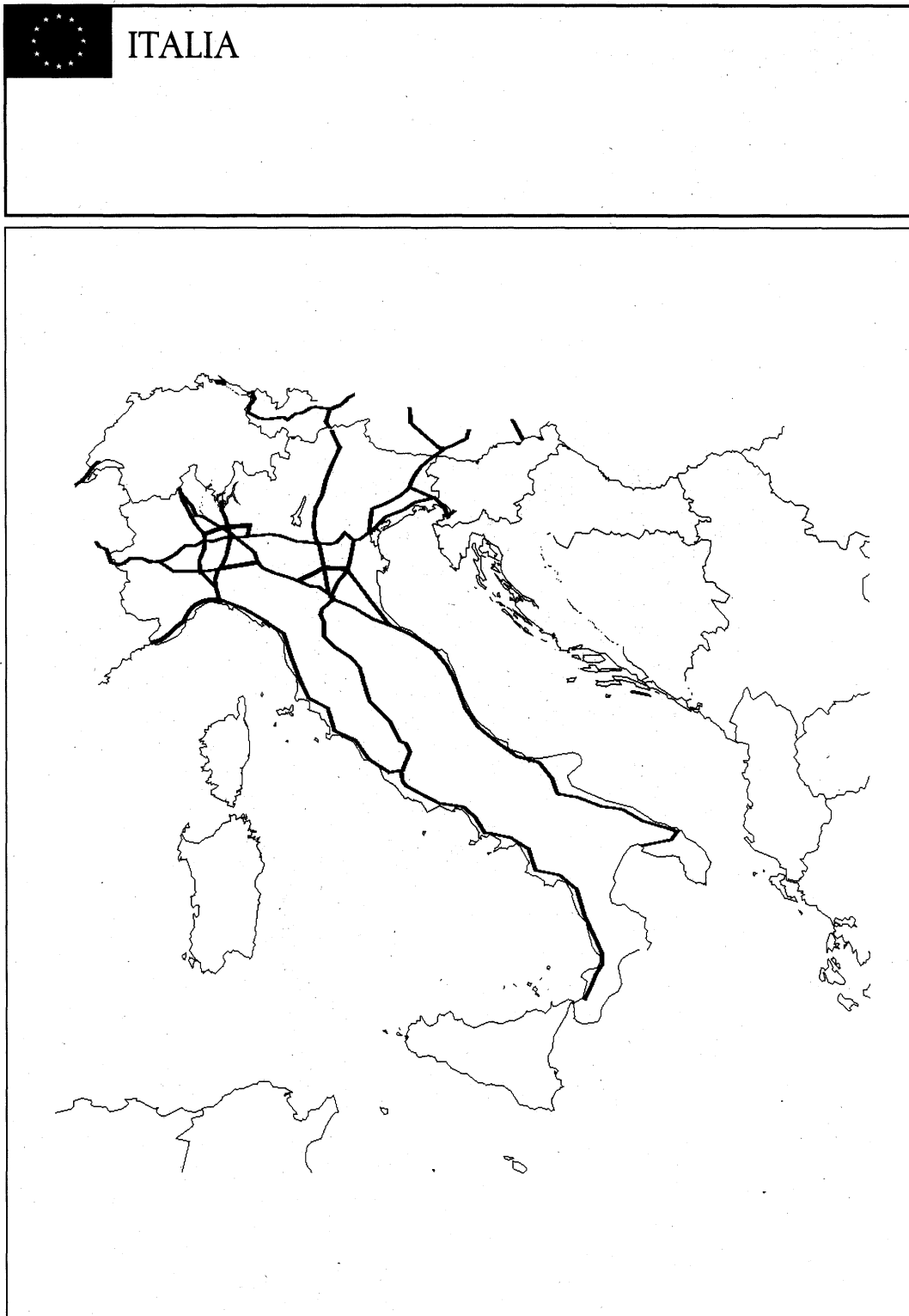
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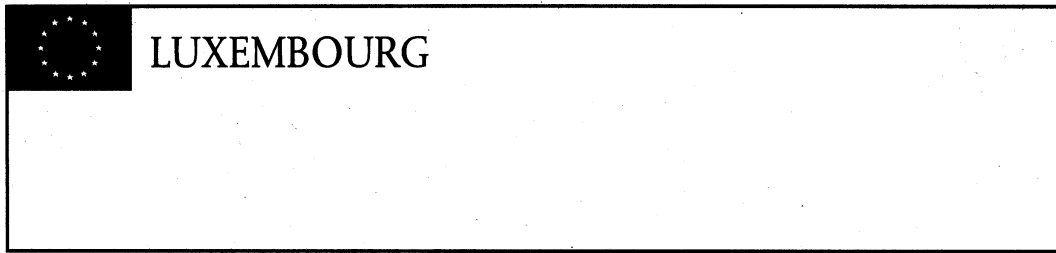
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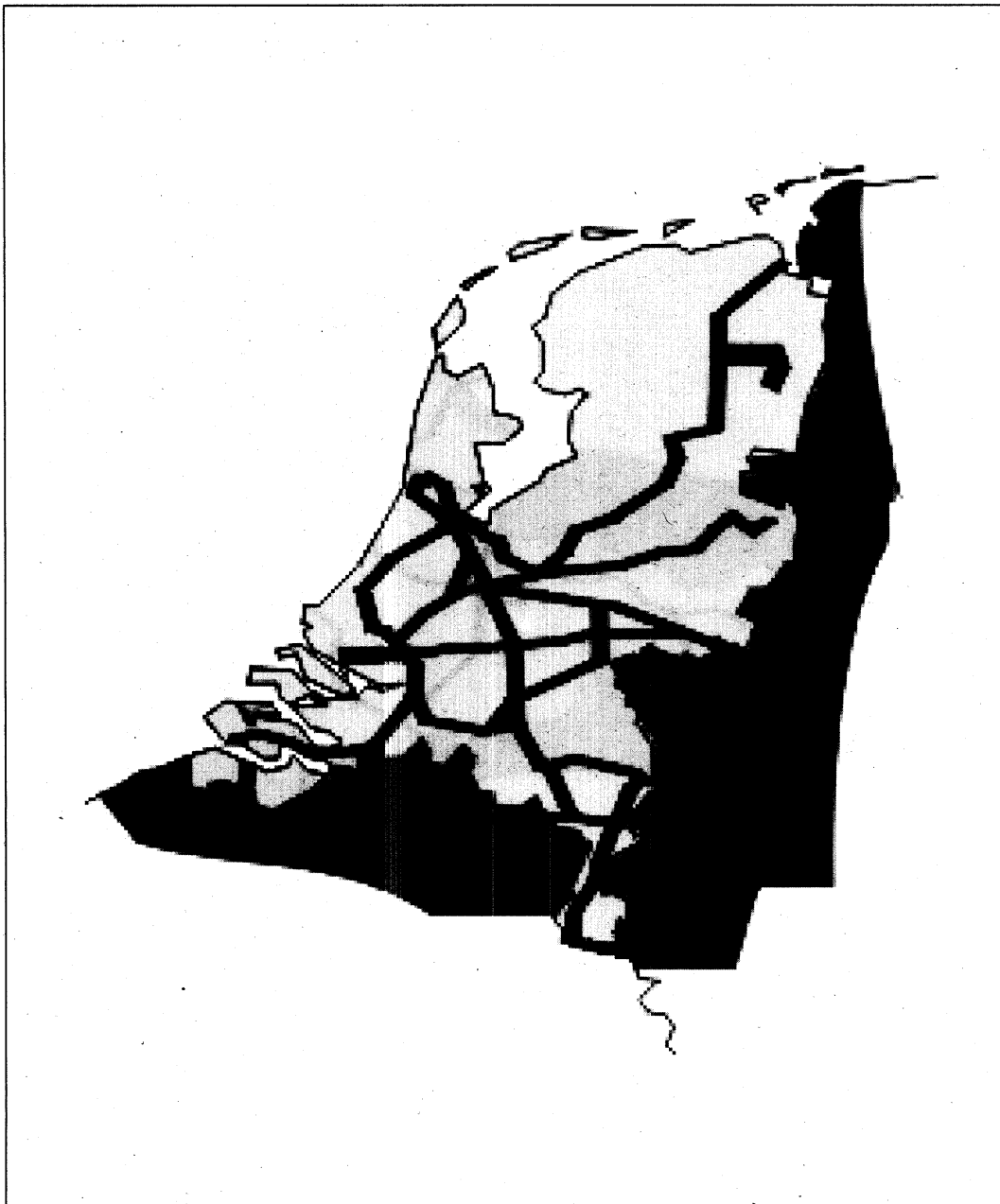
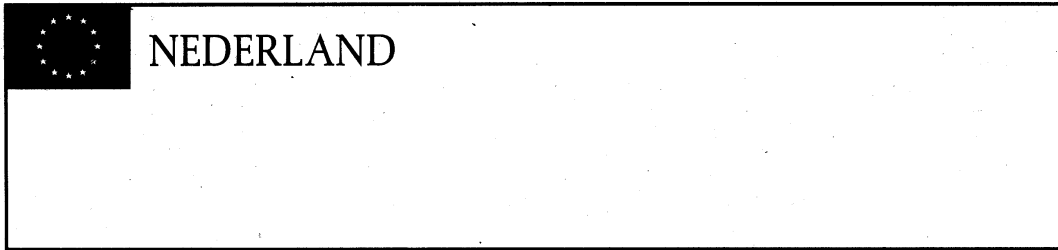
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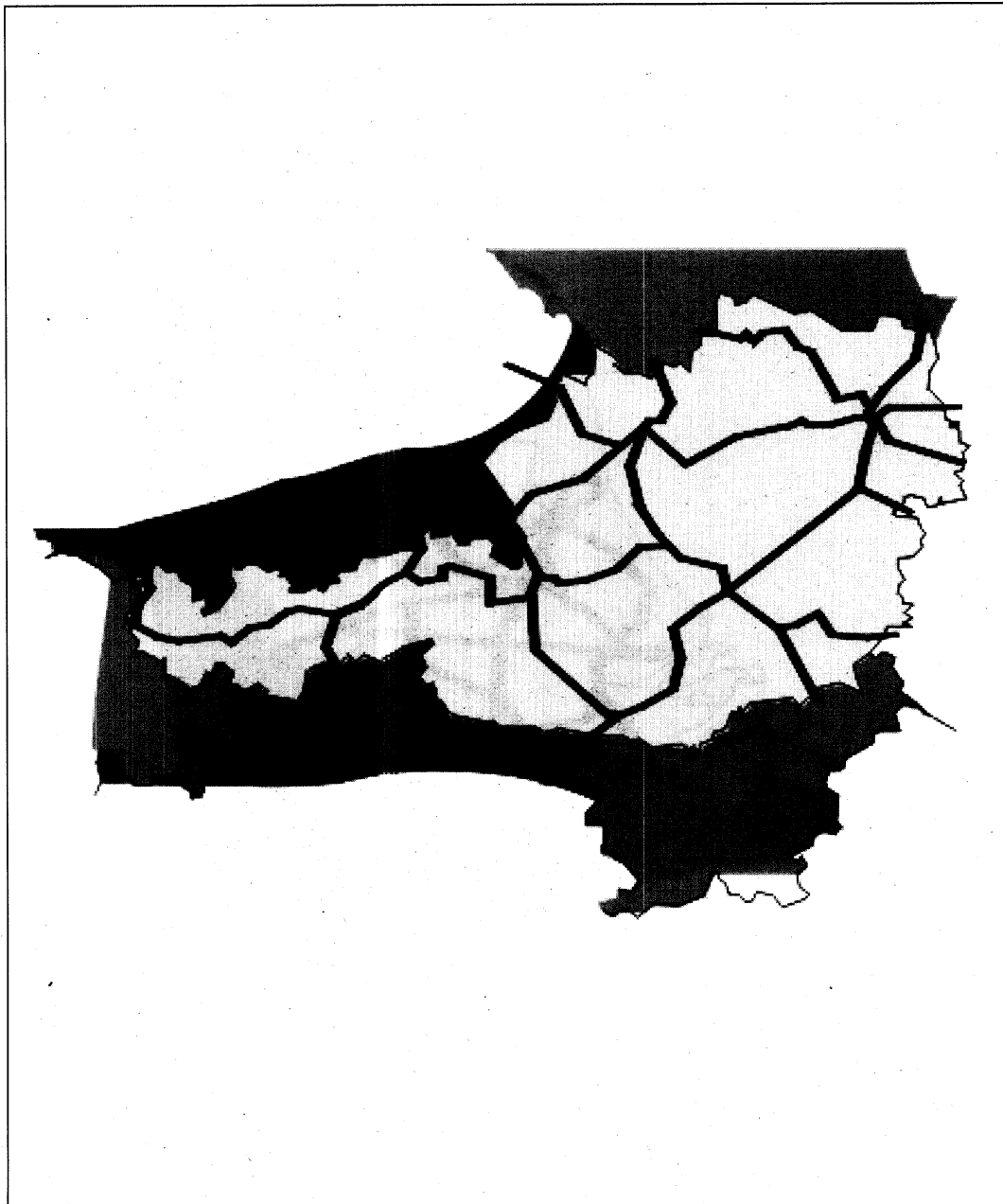
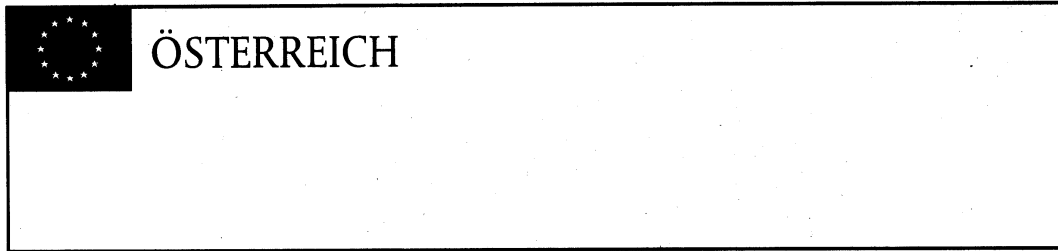
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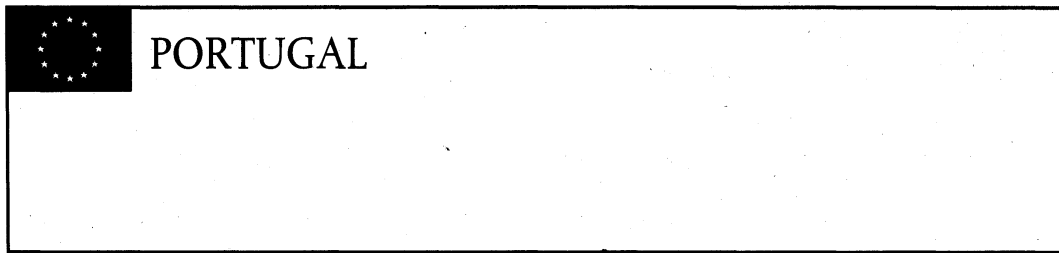
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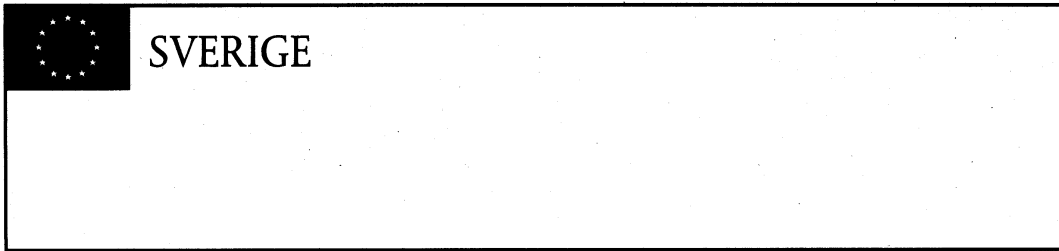
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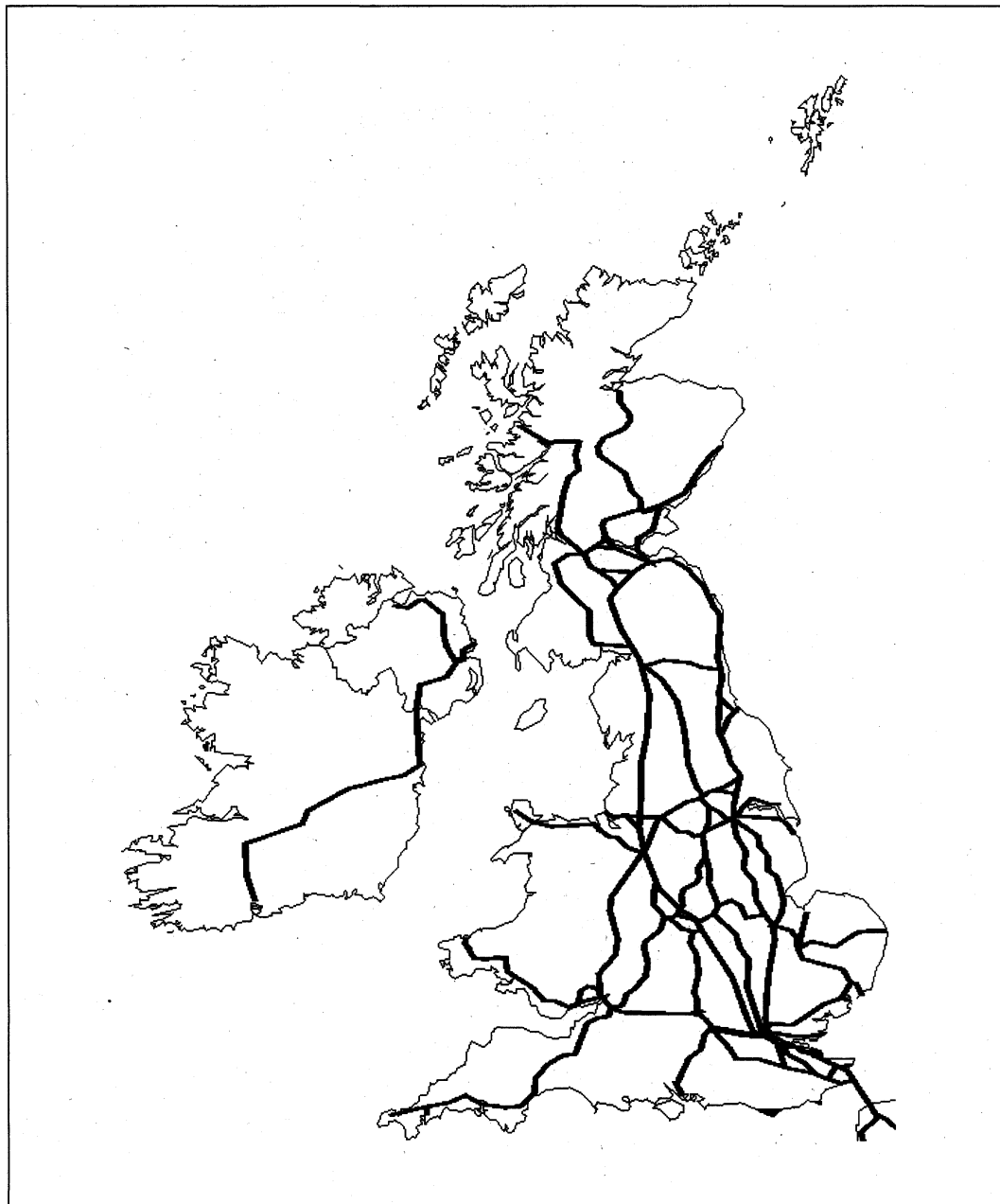
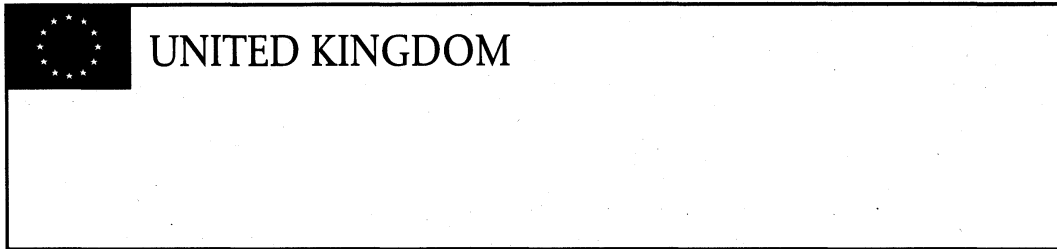
▼M1



▼M1



▼M1



▼M1*ANNEX II*

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

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