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(Acts whose publication is obligatory)

DIRECTIVE 2001/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 2001

amending Council Directive 91/440/EEC on the development of the Community's railways

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas:

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ should be amended to take account of experience with its implementation and of developments in the railway sector since its adoption, in order to ensure that its objectives are achieved.

(2) Fair and non-discriminatory access to the infrastructure needs to be guaranteed through the separation of certain essential functions and/or the creation of a rail regulator fulfilling the control and implementation functions as well as through the separation of profit and loss accounts and the balance sheets.

(3) Fair and non-discriminatory access to the infrastructure needs to be guaranteed also through the separation of safety related functions and/or the creation of a rail regulator fulfilling the control and implementation functions. In any case railway undertakings may be involved in a non-discriminatory way in enforcement and monitoring of safety standards.

(4) Extension of access rights should, as with other modes of transport, proceed in conjunction with the parallel implementation of the necessary accompanying harmonisation measures.

(5) In accordance with the objective of completing the internal market, which will include the possibility for all licensed railway undertakings meeting the safety conditions to provide services, access rights should, for a transitional period of up to seven years, be extended to licensed railway undertakings for the international transport of goods on a defined network, called the Trans European Rail Freight Network, including access to, and supply of, services in major terminals and ports. After this transitional period, the Trans-European Rail Freight Network should cover the entire European rail network and the railway undertakings should be granted rights of access thereto for international freight transport.

(6) Access right is guaranteed to the licensed railway undertaking meeting the safety conditions and seeking access, whatever the mode of operation.

⁽¹⁾ OJ C 321, 20.10.1998, p. 6, and OJ C 116 E, 26.4.2000, p. 21.

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 115), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 56), Council Common Position of 28 March 2000 (OJ C 288, 11.10.2000, p. 1) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 20 December 2000.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25.

(7) Member States remain free to grant access rights that are more extensive than access for railway undertakings operating international combined transport to international groupings operating international services and to railway undertakings operating international freight services within the Trans-European Rail Freight Network. The use of these more extensive access rights may be limited to railway undertakings licensed in

Member States where access rights of a similar nature are granted, provided that this limitation is compatible with the Treaty.

- (8) To promote efficient management of infrastructure in the public interest, infrastructure managers should be given a status independent of the State, and freedom to manage their internal affairs, while Member States should take the necessary measures for the development and the safe use of railway infrastructure.
- (9) To promote the efficient operation of passenger and freight transport services and to ensure transparency in their finances, including all financial compensation or aid paid by the State, it is necessary to separate the accounts of passenger and of freight transport services.
- (10) It is necessary to implement a number of measures in order 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 envisaged by the Commission.
- (11) Bodies should be established with a sufficient degree of independence to regulate competition on the rail services market where there are no entities performing that function.
- (12) The Commission should report on the implementation of this Directive and make appropriate proposals.
- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (14) Specific measures are required to take account of the specific geopolitical and geographical situations of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.
- (15) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to develop the Community's railways, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the

manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

- (16) Directive 91/440/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC is hereby amended as follows:

- 1) the title of Section I shall be replaced by the following: 'Scope and Definitions';
- 2) Article 1 shall be repealed;
- 3) the following paragraph shall be added to Article 2:

'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.'
- 4) Article 3 shall be amended as follows:
 - a) the first and second indents shall be replaced by the following:

— "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';

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- b) the following indent shall be inserted after the fourth indent:

— “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’;

- 5) the title of Section II shall be replaced by the following: ‘Management independence’;
- 6) Article 4 shall be replaced by the following:

‘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’;

- 7) Article 6 shall be replaced by the following:

‘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.’;

- 8) Article 7 shall be replaced by the following:

‘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.

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.’;

9) Article 9(3) shall be replaced by the following:

'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.'

10) the following paragraph shall be added to Article 9:

'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.'

11) Article 10 shall be replaced by the following:

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) and in Annex I 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 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 and the legal framework governing it, and in any case seven years 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

⁽¹⁾ See page 29 of this Official Journal.

railway undertakings shall be granted, over that entire network and on fair conditions, guaranteed access and transit for the international transport of goods.;

- 12) in Section V 'Access to railway infrastructure' the following Article shall be added:

'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.;

- 13) after Section V 'Access to railway infrastructure', the following section shall be added:

'SECTION Va

Monitoring tasks of the Commission

Article 10b

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

2. In this context, the Commission shall closely involve representatives of the Member States and of the sectors

concerned in its work, including users, so that they are able better to monitor the development of the railway sector and the evolution of the market, assess the effect of the measures adopted and analyse the impact of the measures planned by the Commission.

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

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

- a) the evolution of the internal market in rail services
- b) the framework conditions
- 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.'

- 14) Article 11 shall be replaced by the following:

'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).;

- 15) the following Article shall be inserted:

'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.;

16) Article 14 shall be replaced by the following:

'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.;

17) the following Article shall be inserted:

'Article 14a

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

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

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

2. However, where:

- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and of Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway

services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to out in Article 11a(2); or

- b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogation referred to in paragraph 1 shall not apply.

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

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.'

Article 2

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

When Member States adopt these measures, 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 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH

ANNEX I

PORTS

BELGIE/BELGIQUE	Cartagena-Escombreras	LUXEMBOURG
Antwerpen/Anvers	Gijón	
Gent/Gand	Huelva	NEDERLAND
Zeebrugge/Zeebruges	Tarragona	Amsterdam Zeehaven
	Valencia	Delfzijl/Eemshaven
	Vigo	Vlissingen
DANMARK		Rotterdam Zeehaven
Ålborg	FRANCE	Terneuzen
Århus	Bayonne	
Esbjerg	Bordeaux	ÖSTERREICH
Fredericia	Boulogne	
København	Calais	PORTUGAL
Nyborg	Cherbourg	Leixões
Odense	Dunkerque	Lisboa
	Fos-Marseille	Setúbal
DEUTSCHLAND	La Rochelle	Sines
Brake	Le Havre	
Bremen/Bremerhaven	Nantes	SUOMI/FINLAND
Brunsbüttel	Port-la-Nouvelle	
Cuxhaven	Rouen	Hamina
Emden	Sète	Hanko
Hamburg	St-Nazaire	Helsinki
Kiel		Kemi
Lübeck	IRELAND	Kokkola
Nordenham	Cork	Kotka
Puttgarden	Dublin	Oulu
Rostock		Pori
Sassnitz	ITALIA	Rauma
Wilhelmshaven	Ancona	Tornio
Wismar	Bari	Turku
	Brindisi	SVERIGE
ΕΛΛΑΣ	C. Vecchia	Göteborg-Varberg
Αλεξανδρούπολις	Genova	Helsingborg
Ελευσίνα	Gioia Tauro	Luleå
Πάτρα	La Spezia	Malmö
Πειραιάς	Livorno	Norrköping
Θεσσαλονίκη	Napoli	Oxelösund
Βόλος	Piombino	Stockholm
	Ravenna	Trelleborg-Ystad
ESPAÑA	Salerno	Umeå
Algeciras	Savona	
Almería	Taranto	UNITED KINGDOM
Barcelona	Trieste	
Bilbao	Venezia	All rail-connected ports

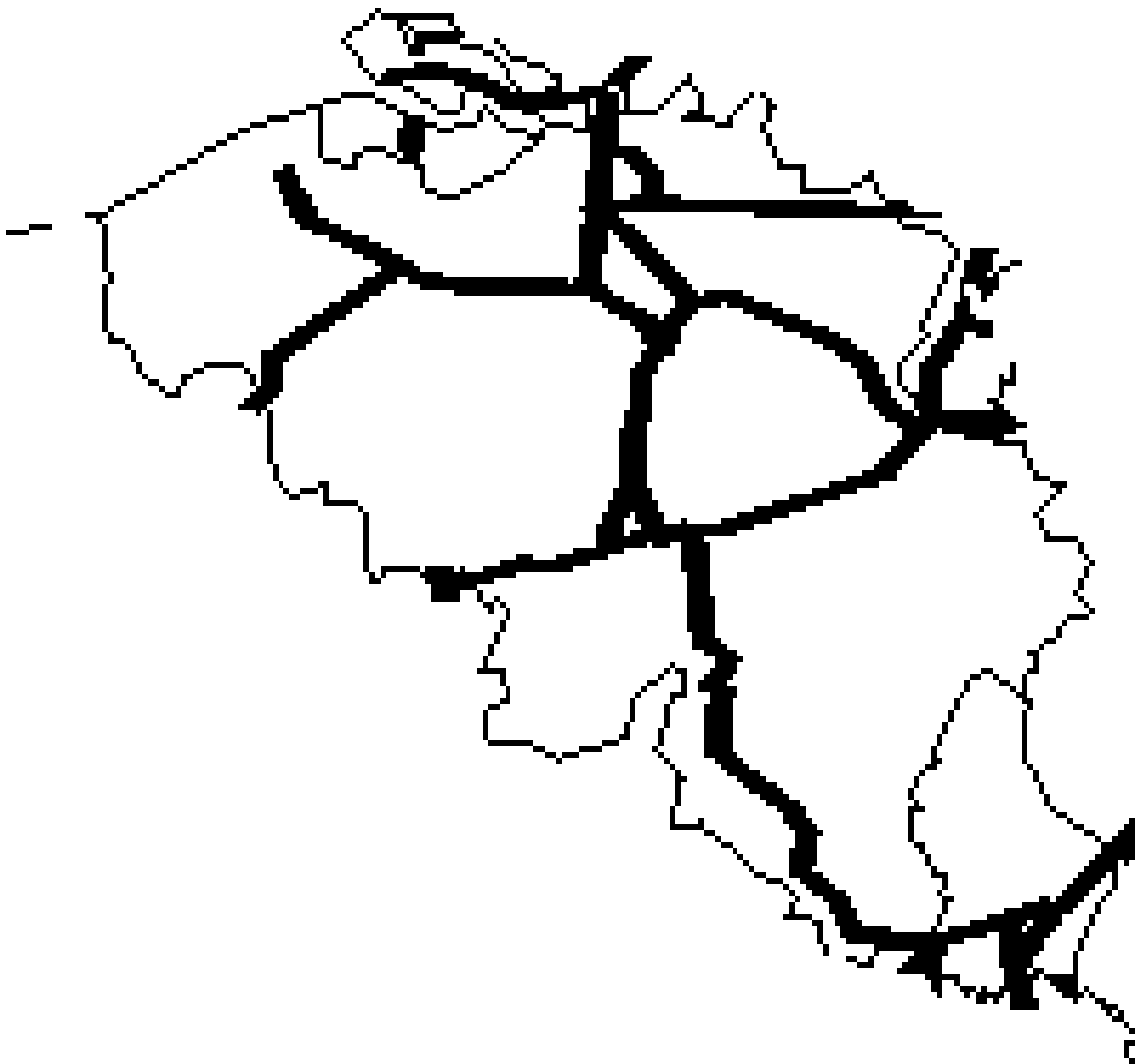


RTTFM Art. 10a (1) a, 91/440/EEC
TERFN Art. 10a (1) a, 91/440/EØF
TESGN Art. 10a (1) a, 91/440/EWG
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TERFN Art. 10a (1) a, 91/440/EEC
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BELGIQUE/BELGIË



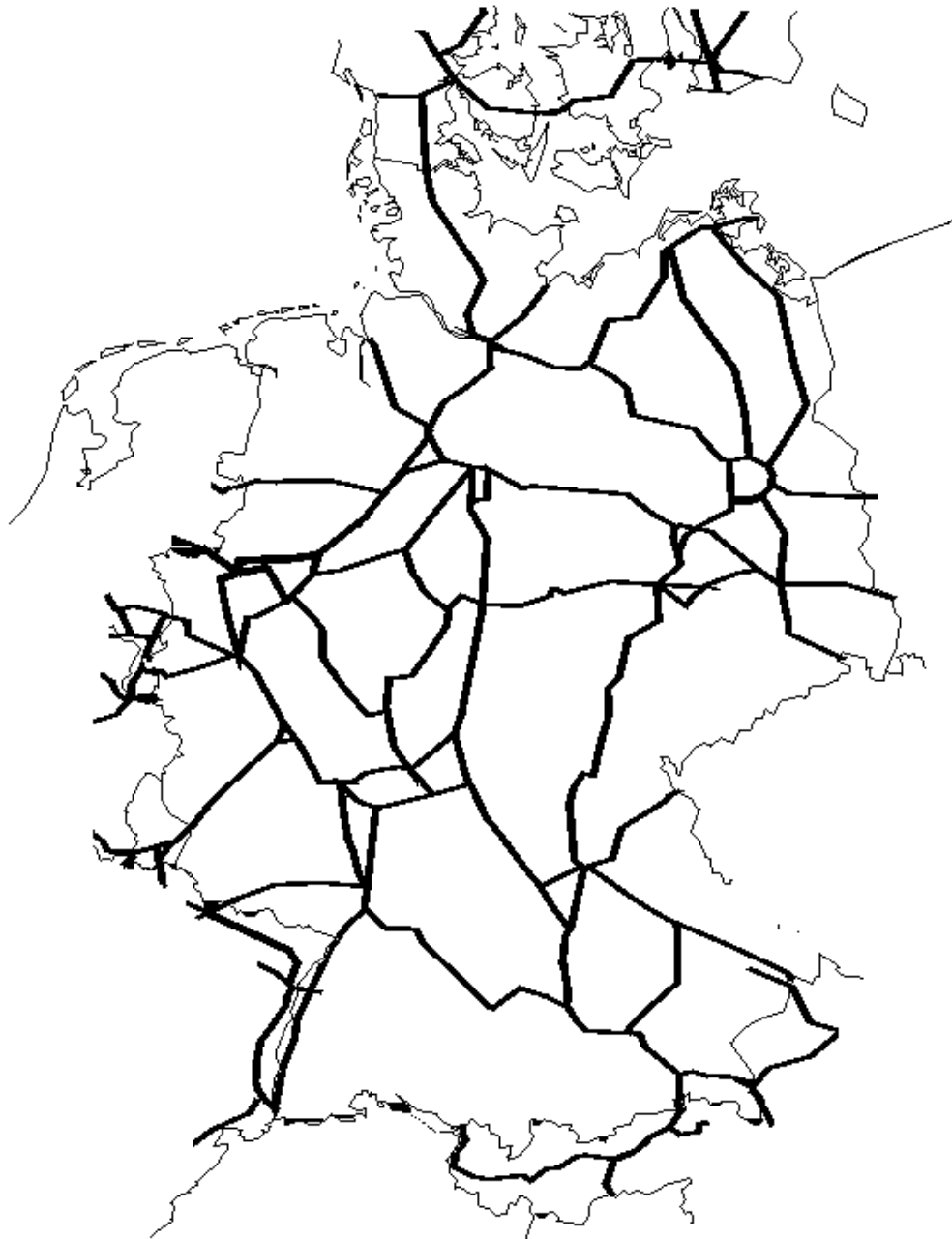


DANMARK





DEUTSCHLAND





ΕΛΛΑΣ



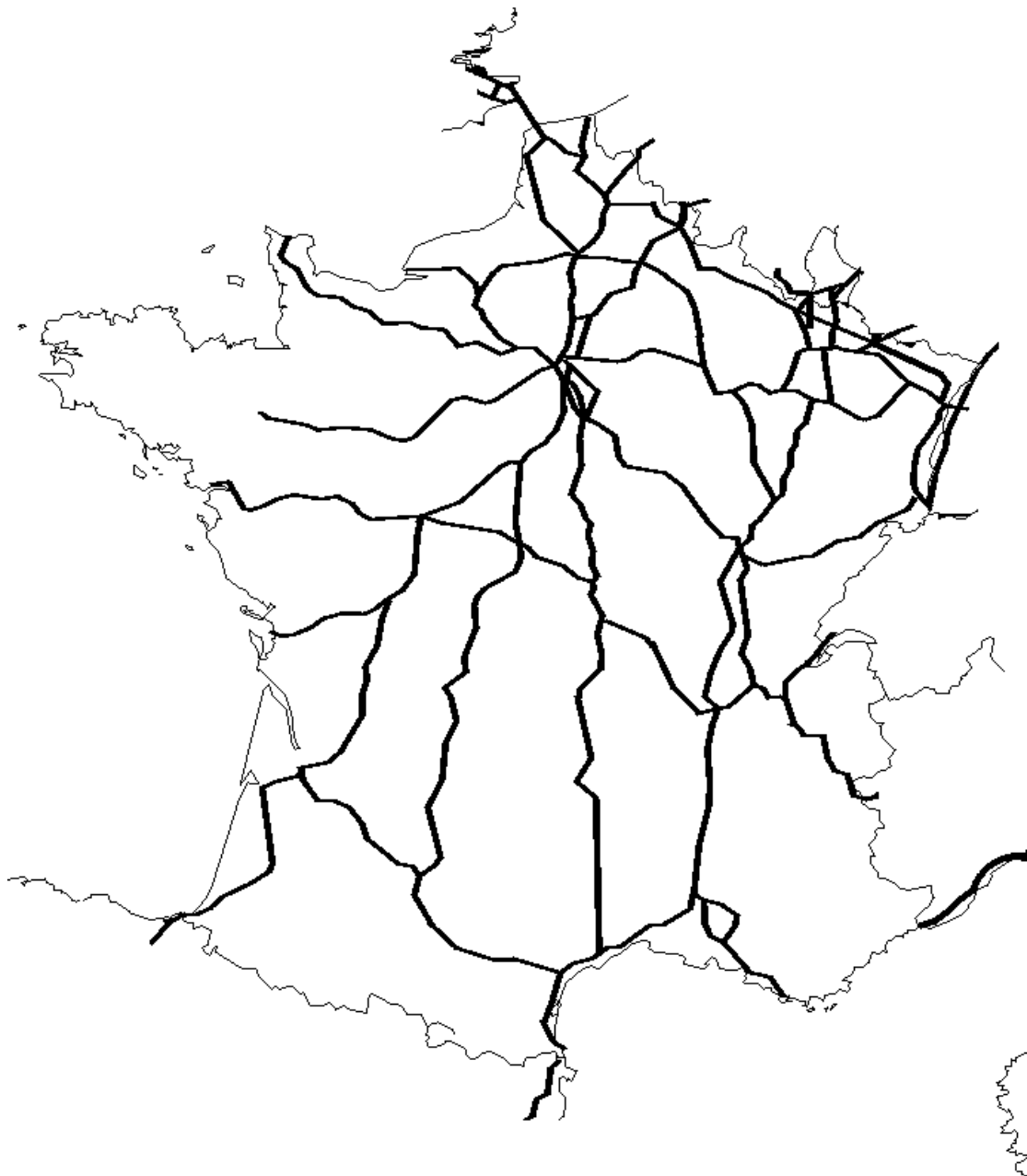


ESPAÑA





FRANCE





IRELAND



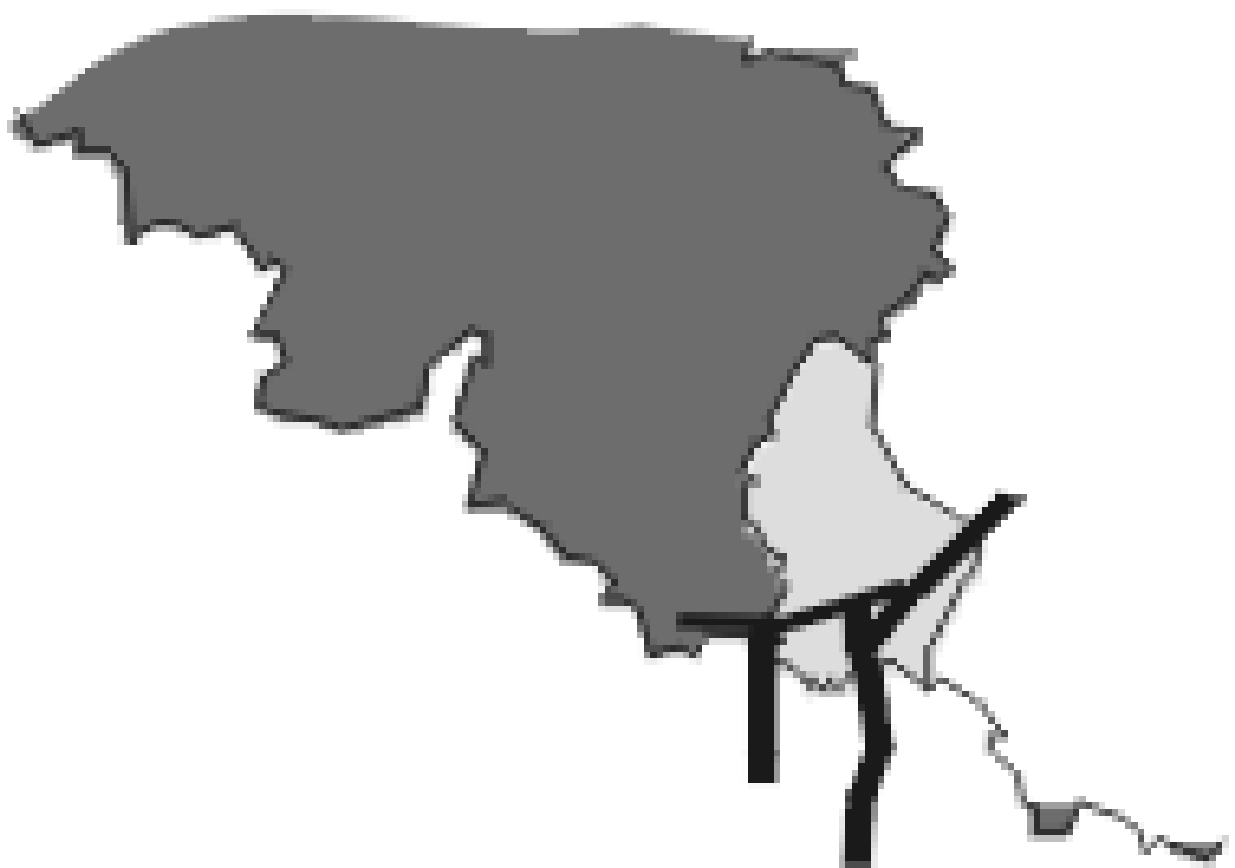


ITALIA



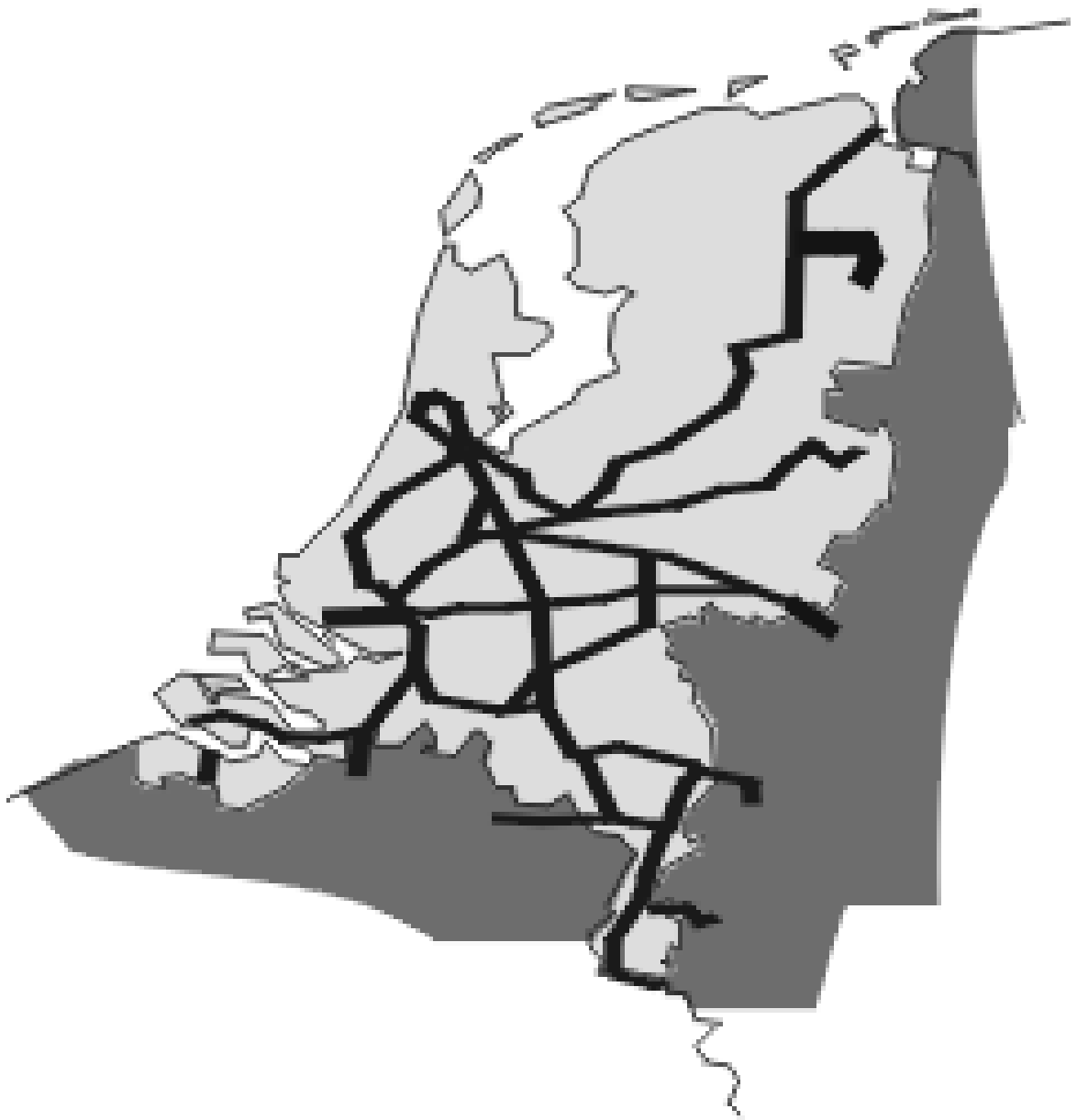


LUXEMBOURG



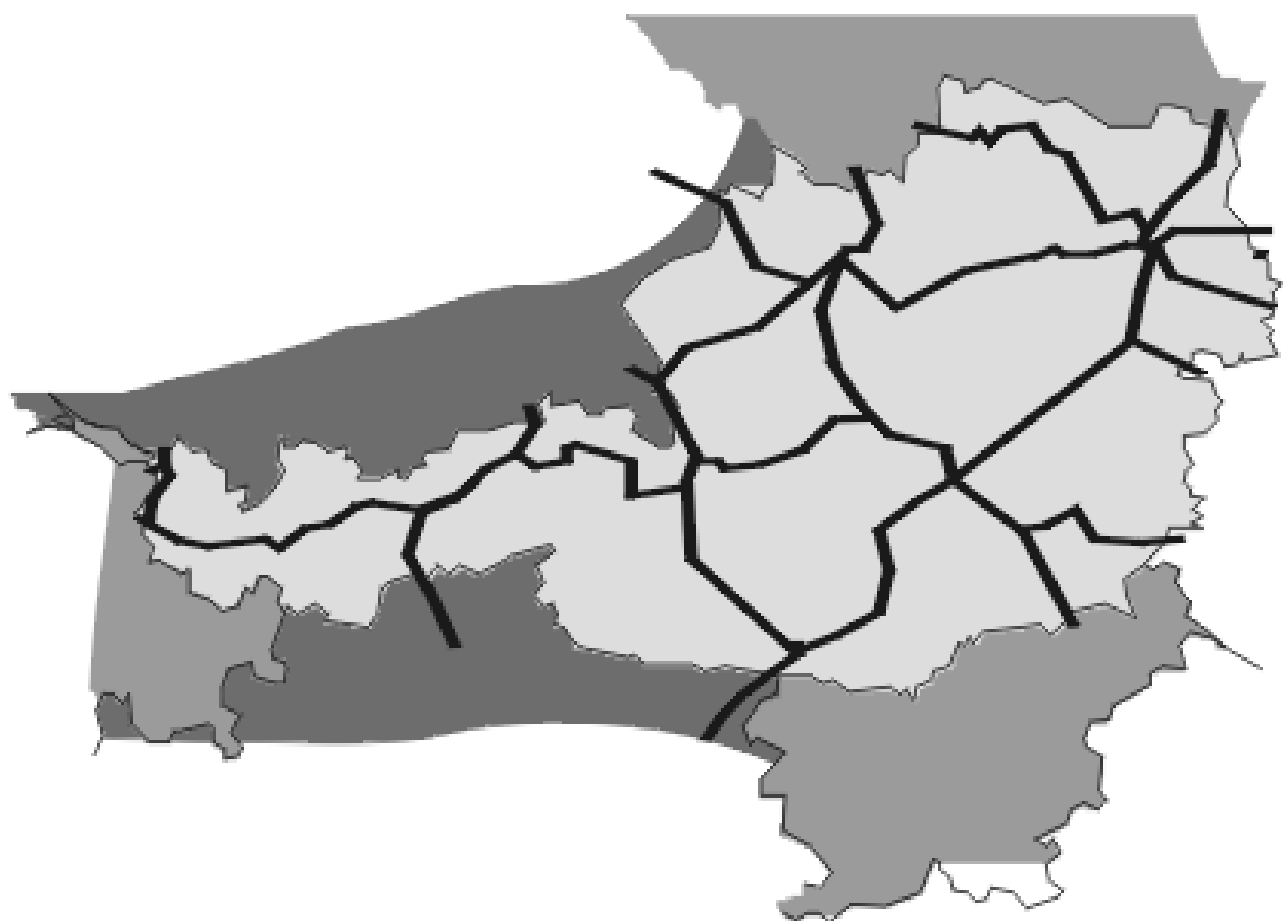


NEDERLAND



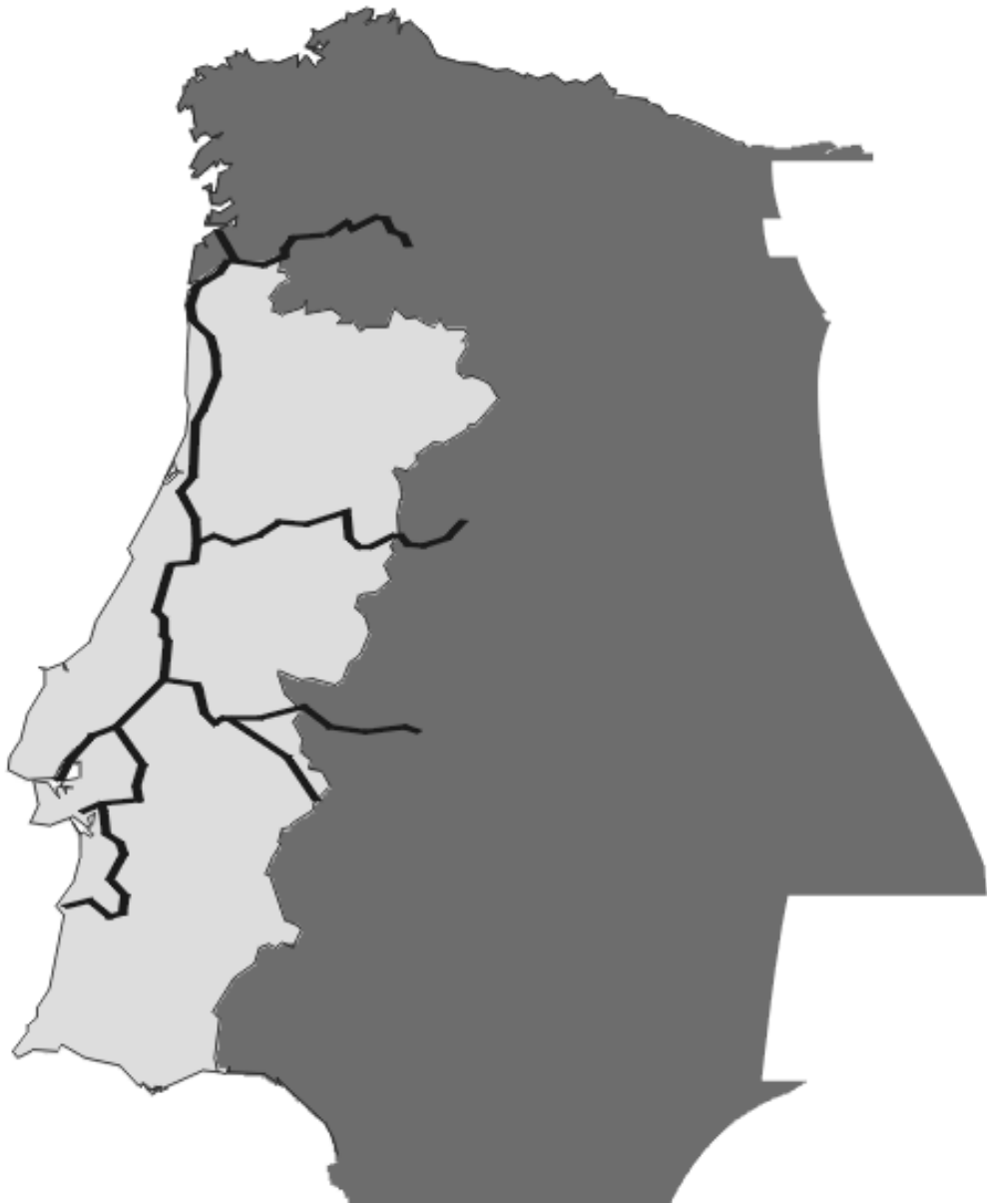


ÖSTERREICH



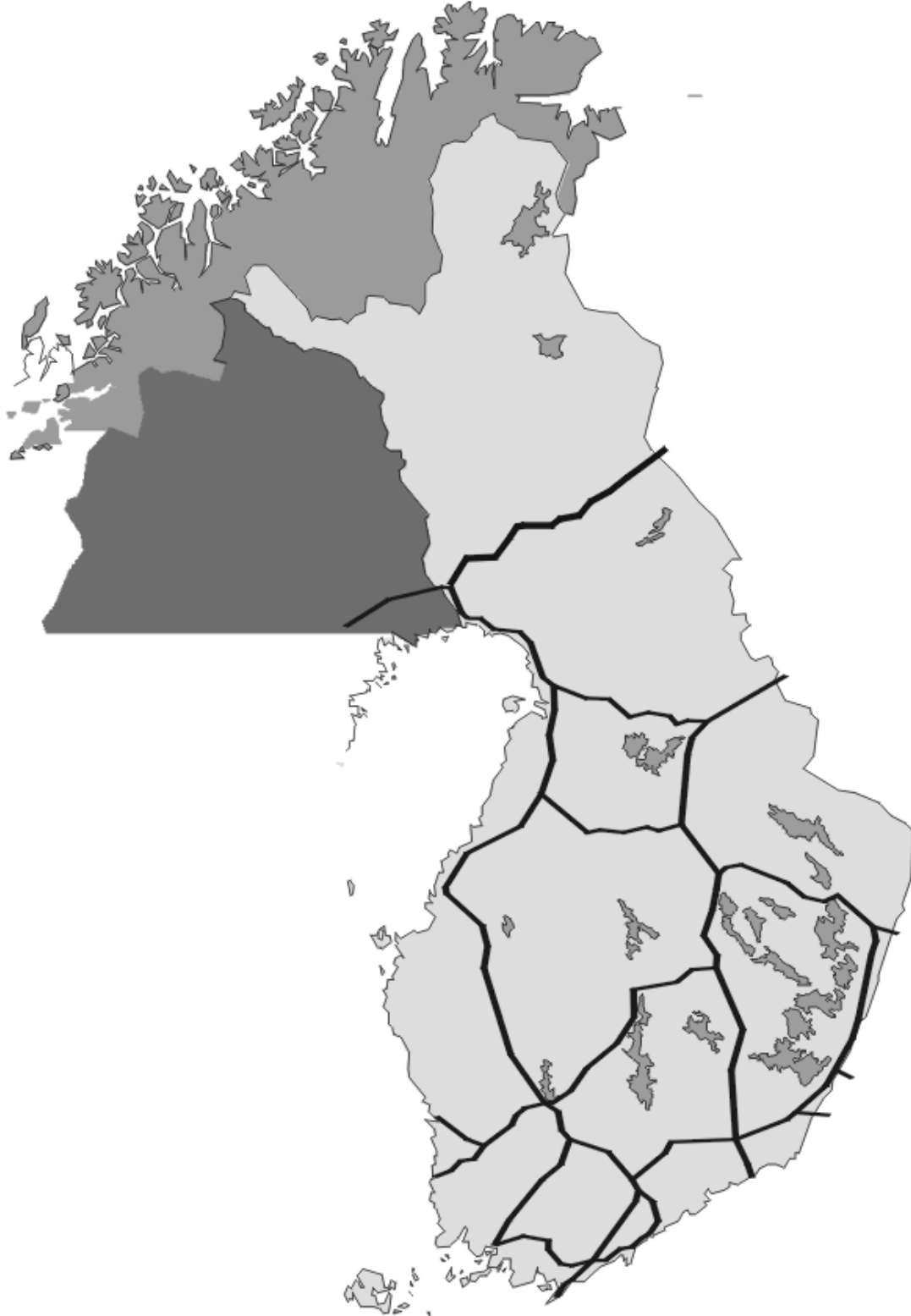


PORTUGAL



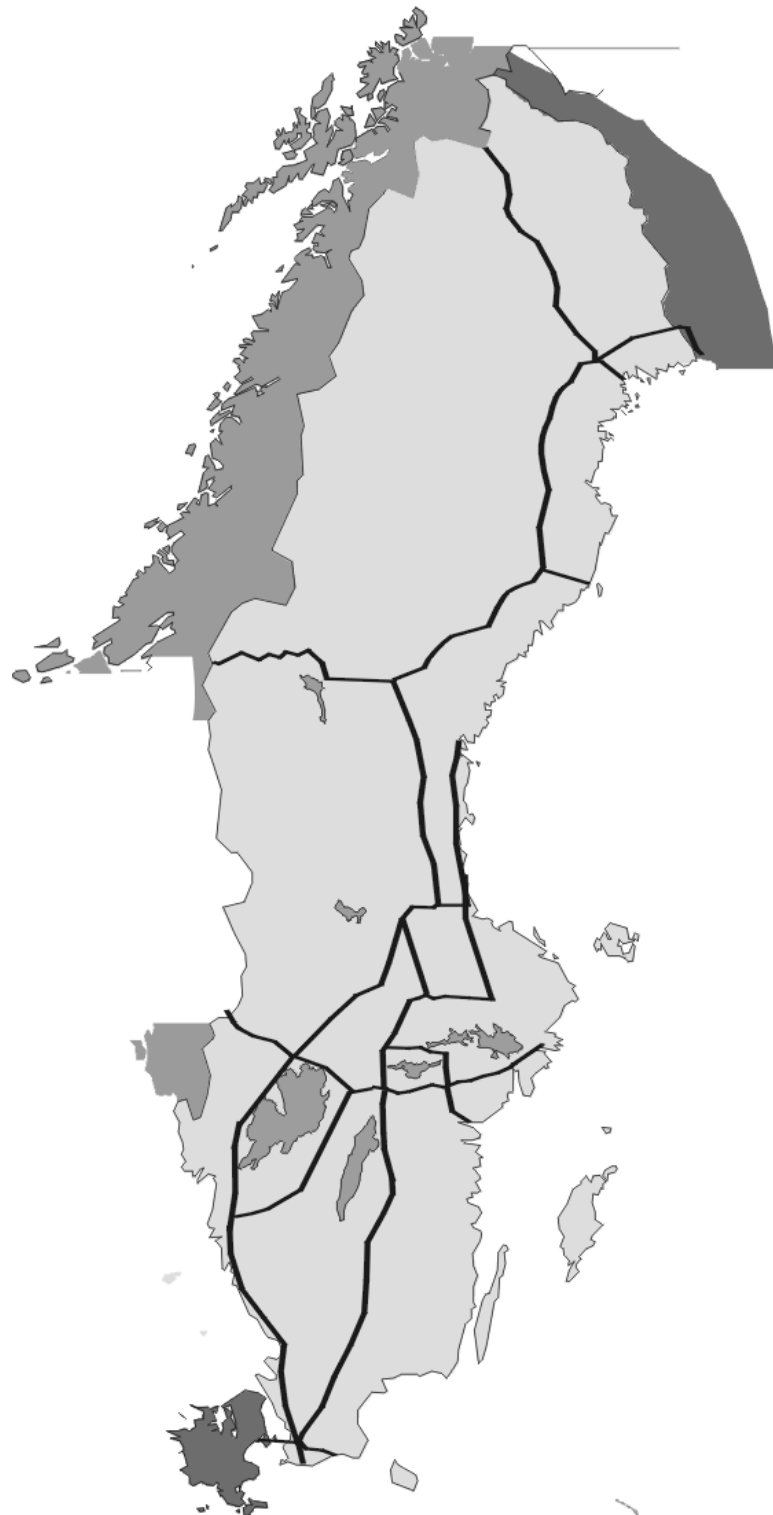


SUOMI/FINLAND





SVERIGE





UNITED KINGDOM



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.
-