



# Best Practice Guide for Railway Network Statements

Final Report



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## Table of acronyms and names

<b>ADIF</b>	Administrador de Infraestructuras Ferroviarias ( <i>Spanish IM</i> )
<b>ATC</b>	Automatic Train Control system
<b>AU</b>	Authority, Ministry, Regulatory Body
<b>Banedanmark</b>	<i>Danish IM</i>
<b>Banverket</b>	<i>Swedish IM</i>
<b>BLS</b>	Bern-Lötschberg-Simplon railway ( <i>Swiss IM</i> )
<b>CCG</b>	Cargo Center Graz ( <i>Austrian Terminal Manager</i> )
<b>CER</b>	Community of European Railway and Infrastructure Companies
<b>CFL</b>	Chemin de Fer Luxembourgeois ( <i>Luxembourgish IM</i> )
<b>CFR</b>	Compania Nationala de Caille Ferate Romane ( <i>Romanian IM</i> )
<b>CS</b>	Corridor Statement
<b>DB Netz</b>	Deutsche Bahn ( <i>German IM</i> )
<b>DG TREN</b>	Directorate – General Energy and Transport
<b>Directive</b>	Directive 2001/14/EC
<b>EC</b>	European Commission
<b>Eesti Raudtee</b>	<i>Estonian IM</i>
<b>EIM</b>	European Rail Infrastructure Managers association
<b>ERFA</b>	European Rail Freight Association
<b>EU</b>	European Union
<b>Eurotunnel</b>	<i>British-French IM</i>
<b>FC</b>	Framework contact/s
<b>GIS</b>	Geographical Information System
<b>HGK</b>	Häfen und Güterverkehr Köln ( <i>German IM</i> )
<b>HMF</b>	Højbjerg Maskinfabrik ( <i>German IM</i> )
<b>HS1</b>	High Speed 1 ( <i>British IM</i> )
<b>HZ</b>	Hrvatske željeznice ( <i>Croatian IM</i> )
<b>IM</b>	Railway Infrastructure Manager/s
<b>Infrabel</b>	<i>Belgian IM</i>
<b>Latvian Railway</b>	<i>Latvian IM</i>
<b>LG</b>	Lietuvos Geležinkeliai ( <i>Lithuanian IM</i> )
<b>ITS</b>	University of Leeds Institute of Transport Studies

<b>Keyrail</b>	<i>Dutch IM</i>
<b>Jernbaneverket</b>	<i>Norwegian IM</i>
<b>JP MZ Infrastruktura</b>	Javno Pretprijatie Makedonski Zheleznici ( <i>Macedonian IM</i> )
<b>MS</b>	Member State/s
<b>NEA</b>	NEA Transport research and training Ltd
<b>Network Rail</b>	<i>British IM</i>
<b>NRIC</b>	National Railway Infrastructure Company ( <i>Bulgarian IM</i> )
<b>NS</b>	Railway Network Statement/s
<b>OBB</b>	Österreichische Bundesbahnen ( <i>Austrian IM</i> )
<b>ProRail</b>	( <i>Dutch IM</i> )
<b>PwC</b>	PricewaterhouseCoopers Advisory srl
<b>RB</b>	Regulatory Body/s
<b>REFER</b>	Rede Ferroviária Nacional ( <i>Portuguese IM</i> )
<b>RFI</b>	Rete Ferroviaria Italiana ( <i>Italian IM</i> )
<b>RFF</b>	Réseau Ferré de France ( <i>French IM</i> )
<b>RHK</b>	Ratahallintokeskus ( <i>Finnish IM</i> )
<b>RNE</b>	RailNetEurope
<b>RU</b>	Railway Undertaking/s
<b>SBB</b>	Schweizerische Bundesbahnen ( <i>Swiss IM</i> )
<b>SRID</b>	Železnice Srbije ( <i>Serbian IM</i> )
<b>SZ</b>	Slovenske železnice ( <i>Slovenian IM</i> )
<b>SZDC</b>	Správa železniční dopravní cesty ( <i>Czech IM</i> )
<b>TML</b>	Transport & Mobility Leuven
<b>UIC</b>	International Union of Railways

## 1 INTRODUCTION

The “open access” policy launched and implemented by the European Commission envisages “on track competition” among railway operators. The introduction of “market forces” in the rail sector requires, in that framework, easy and fair access to the information about the network.

The relevance of providing comprehensive, up-to-date and open information stems, in particular, from:

- the need to provide all users with the same level of information (in a context where, typically, there is information asymmetry between the incumbent, i.e. the main national railway undertaking that has historically operated the rail services, and the newcomers);
- the need to efficiently use the often scarce resource represented by the rail capacity, that requires informing the likely users of the available capacity on each section / node of the network;
- the need to implement transparent and shared procedures for the allocation of such capacity.

In order to achieve the above mentioned objectives, Directive 2001/14/EC introduced the obligation for rail Infrastructure Managers to publish a Network Statement (NS). This document presents information on the network's rail infrastructure, and on commercial and legal access conditions. The Directive defined the basic requirements to be fulfilled by the NS.

NS are “key to market access”, since they summarise all relevant information on the rail infrastructure “product”: how to obtain access to it, what are its characteristics (in the different sections of the network), how much of it is available (i.e. the infrastructure capacity), what is the timing for requesting it, what is its price, etc.

An implementation guide for drafting Network Statements (NS) in accordance with Article 3 of Directive 2001/14/EC was developed by RailNetEurope. The Association of German Transport Companies (*Verband Deutscher Verkehrsunternehmen* - VDV) also prepared recommendations for the presentation of both network access' conditions and terms of the use of service facilities.

The European Commission was informed by Regulatory Bodies that information provided in the NS is not always aligned to the requirements of the Directive 2001/14/EC. In particular, frequently NS do not encompass exhaustive information with regard to charges (methodology for calculation, rules, scales, discounts) and rail related services provided on the network (mainly those provided at the borders).

The objectives of this study for DG-TREN are to analyse the existing level of implementation of provisions set by Directive 2001/14/EC and to develop recommendations for drafting Railway Network Statements, based also on the analysis of existing best practices.

### 1.1 Structure of the report

Three main activities were carried out for this study, whose results are reported in this paper. These are the assessment of the existing legal basis, the Consultant's assessment of existing NS and the Consultation of the Stakeholders (infrastructure managers,

authorities such as regulatory bodies and ministries, railway undertakings and authorised applicants).

Chapters 2 to 7 summarise the analyses of the different parts of the NS, considering both the assessment of existing NS carried out by the Consortium, and the opinions stated by the stakeholders. Existing best practices are reported. Each chapter closes with specific recommendations for drafting Network Statements that fulfil the Directive's requirements, whilst also satisfying the market's (i.e. RU) needs.

Chapter 8 summarise the results of the legal assessment (presented in detail in Annex B), and compare them with the level of compliance to the legal basis that has been assessed by the consultant.

Chapter 9 to 12 deal with general problems: the needs of the authorised applicants, the harmonisation of the NS, the preparation of them for international corridors, and the consistency with other documents, such as, in particular, the Infrastructure registers. The last chapter (13) presents the general recommendations arising for the study on the drafting of the NS, not specific to a particular section of it.

Annexes bring additional information on the legal basis and on the RNE Guidelines. Annex B presents findings concerning the EU legal basis for the NS, which is mainly represented by the provisions of the Directive 2001/14/EC. Annex D summarises the few elements collected on the needs of Authorised Applicants.

Annex E contains the minutes of the workshop held with the stakeholders on December 7, 2009.

The following table associates the main questions listed in the Task Specifications with the specific chapter(s) of the report where the issue is analysed.

<b>Key questions (Task Specification)</b>	<b>Reference in the document</b>
What are the infrastructure and services for which no NS is available?	Chapter 3 and Chapter 4
What are the special needs of authorised applicants as regards NS?	Chapter 9
Are NS compliant with provisions of EC directive 2001/14 and its Annex I?	From Chapter 2 to Chapter 8
What are the problems related to publishing information in NS on service facilities not operated by the IM?	Chapters 4, 5 and 6
What is the consistency between NS and other relevant documents?	Chapter 12
What is the level of harmonisation of NS?	From Chapter 2 to Chapter 10
What types of tools can be used to improve such harmonisation (including GIS)?	Chapter 10
What are the costs and benefits of further harmonisation?	Chapter 10
What shall be the characteristics / structure of corridor statements?	Chapter 11
What are the outcomes of the workshop with the stakeholders?	Annex E

## 1.2 Consultant's assessment of NS

The Consultant's assessment entailed the analysis of the NS made available by the main Infrastructure Managers in the relevant European countries. The analysis was carried out by the Consortium's experts in order to check the completeness and the quality of the information provided in the NS.

The analysis involved the assessment of the Network Statements prepared by the IM of the EU Member States and also included 4 Balkan Countries and 2 Extra-EU Countries against the provisions of Directive 2001/14/EC and the indications of the RailNetEurope guidelines<sup>1</sup>.

The Consultant's assessment covered 23 EU Countries (i.e. the 27 EU Member States minus Cyprus and Malta where there are no railways, and Greece and Ireland which have derogations). In addition, 3 documents describing the "condition of access" to service facilities (referred to as Terminal Statements) were examined.

In total, considering that some Countries provide more than one NS, 34 Network Statements and 3 Terminal Statements underwent the Consultant's assessment. Each section of every NS was analysed to determine the grade of completeness and clarity provided to potential and actual RU. The analysis also included the identification of best practices to be proposed as examples for the preparation of the NS.

The NS that were analysed are listed below:

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▪ CCG (Austria)*	▪ HGK (Germany)*	▪ REFER (Portugal);
▪ OBB (Austria);	▪ HMF (Germany)*	▪ CFR (Romania);
▪ RB (Austria);	▪ RFI (Italy)	▪ SRID (Serbia);
▪ Infrabel (Belgium);	▪ VPE (Hungary)	▪ ZSR (Slovakia);
▪ NRIC (Bulgaria);	▪ Latvian Railway (Latvia)	▪ SZ (Slovenia);
▪ HZ (Croatia);	▪ LG (Lithuania)	▪ ADIF (Spain);
▪ SZDC (Czech Republic);	▪ CFL (Luxembourg)	▪ Banverket (Sweden);
▪ Banedanmark (Denmark);	▪ Jernbaneverket (Norway)	▪ BLS (Switzerland);
▪ ER (Estonia);	▪ JP MZ (Macedonia)	▪ SBB (Switzerland);
▪ RHK (Finland);	▪ ZICG (Montenegro)	▪ Network Rail (UK);
▪ RFF (France);	▪ Keyrail (Netherlands)	▪ HS1 (UK)
▪ DB Netz (Germany)	▪ ProRail (Netherlands)	▪ Eurotunnel (UK-France).
	▪ PKP (Poland)	

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*\*Terminal statements*

<sup>1</sup> RNE, Common Structure & Implementation Guide, version 2006-03-30, available at <http://www.railneteuropa.com/>

### 1.3 Stakeholders' Survey

This was carried out with rail sector stakeholders (national ministries and regulatory bodies, infrastructure managers, railway undertakings), to verify the needs and constraints of the entities involved either in the preparation or the utilisation of the NS, as well as to gather their opinion concerning the existing best practices.

The questionnaires were particularly focused on assessing the completeness and clarity of information provided by NS on rail related services and on charging.

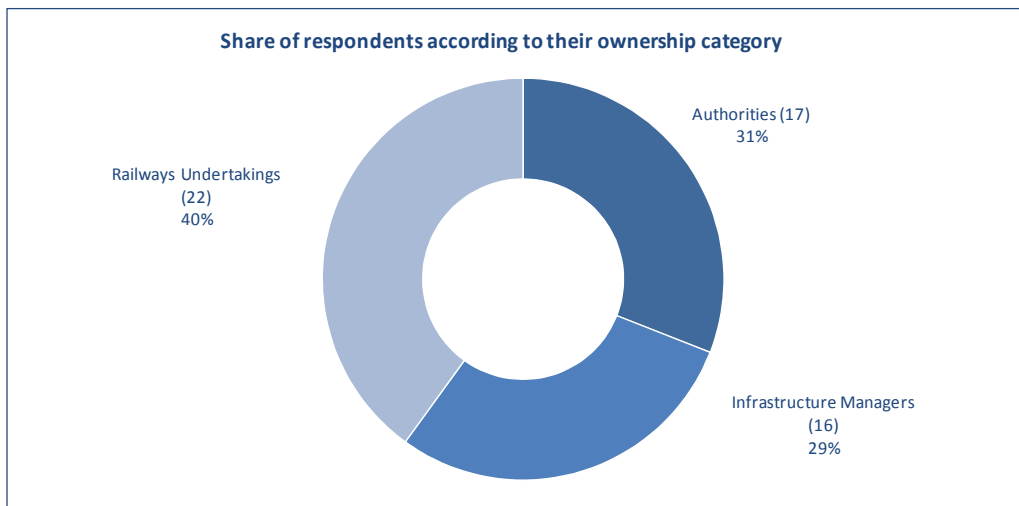
The Stakeholders' Consultation saw the involvement of Regulatory Bodies, Capacity Allocation Bodies and Ministries of Transports (all together "Authorities"), Infrastructure Managers (IM) and Railway Undertakings and Authorised Applicants (RU) from 23 Countries, of which 20 were EU Member States and 3 were extra-EU Countries. The Stakeholders were issued a questionnaire containing questions on the various issues related to the NS and required to fill it and submit it before a deadline. In particular, the National Authorities were requested to indicate best practices identified in the NS of their Country.

The response rate to the consultation was different for each category of stakeholders; the number of subjects that returned the questionnaire filled in is listed below:

- 22 RU, corresponding to 21% of the contacted RU;
- 17 Authorities, corresponding to 33% of the contacted Authorities;
- 16 IM, corresponding to 41% of the contacted IM.

The following figure shows the share of respondents according to their category.

**Figure 1-1: Share of respondent RU according to their category**



Among the 22 respondent Railway Undertakings 15 were classified as Incumbents and 7 as New operators: the first include the national public operators or the former public operators, the second include the new private operators and one authorised applicant. A few incumbent operators responded with regards to more than one NS, providing distinct

answers for each NS considered: each of these answers was counted separately in the statistical outputs provided in this report.

When comparing the outcomes from the Consultant's assessment and from the Survey, it must be taken into account that the samples surveyed in each activity were different in size. Hence, very different percentages do not mean, in most cases, that there are big differences in the assessment of specific NS (as an example, if the consultant reports that 15 out of 37 analysed NS contain a given item of information, this represents 40% of the sample; if the same 15 NS are from the 16 IM answering to the stakeholders consultation, the latter will then give a percentage of 90% NS having that information).

#### **1.4 Stakeholders' Workshop**

On the 7th December 2009 a workshop was held in Brussels, with the objective to share the outcomes of the preliminary analysis (country analysis and consultation) and to describe possible recommendations for the improvement of NS.

The workshop was chaired by EC DG TREN with the support of the Consultant. A wide number of stakeholders registered to the work shop, including:

- 4 international associations of Infrastructure Managers or Railway Undertakings, including: Community of European Railway and Infrastructure Companies (CER); European Rail Freight Association (ERFA); European Rail Infrastructure Managers (EIM); RailNetEurope (RNE).
- 18 National Authorities including also 2 Capacity Allocation Bodies.
- 10 Infrastructure Managers.
- 10 Railways Undertakings of which 8 Incumbents and 2 New operators.
- The UK national Railways Undertakings association (ATOC).

During the workshop the Consultant collected feedback, suggestions and advice from the interested stakeholders.

These were taken into account for reviewing and integrating the recommendations presented in this document.



## 2 ACCESS CONDITIONS

### 2.1 Expected minimum content of the network statement according to Directive 2001/14/EC

Art 3 point 2 of the Directive states that the NS “*shall contain information setting out the conditions for access to the relevant railway infrastructure*”. As per Annex I point 1 of Directive 2001/14/EC, the NS shall contain “*a section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it*”.

Annex A illustrates the information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and that which is optional (referred to as optional content).

### 2.2 Findings of the analysis

#### Consultant’s assessment

Table 2-1 reports synthetically the results of the Consultant’s assessment for what concerns access conditions. It can be noted from the table that:

- The general requirements for access to the network managed by each IM are detailed by nearly all of the NS analysed. In some cases, the information is not contained in the NS itself, but needs to be searched for in external documents (Enclosures, Laws) which are indicated in the NS.
- Most NS provide general information about the framework agreement between RU and the IM for accessing the network, with varying grade of completeness.
- The requirements<sup>2</sup> in terms of third party approval required for framework agreement are specified (completely or partially) by a limited number of NS.
- Templates of Access Contracts are presented by almost half of the NS examined.
- The operational rules and procedure for ordinary and special transport are detailed, completely or partially, in the majority of NS.
- The procedures for the acceptance of the RU’s rolling stock and staff are specified, extensively or just synthetically, by most NS. However, many NS make reference to specific websites containing detailed information, rather than providing full details on the procedures in the main document.

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<sup>2</sup> Art 17.1 of 2001/14/EC states in the last sentence that “A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 30 of this Directive.” It appears necessary an explicit clarification of the need or not of such approval in the NS, as part of the illustration of the access conditions

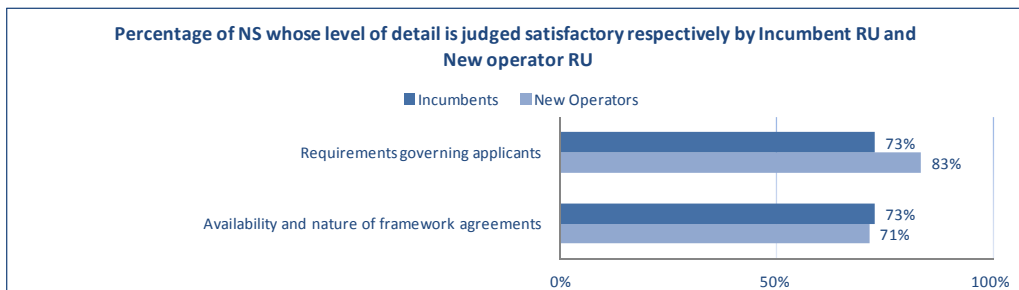
**Table 2-1: Information on Access conditions**

Topic		% of NS providing the information extensively and clearly
Info on general requirements sufficiently detailed		97% (36 NS)
Info on framework agreements	Role & structure	59% (22 NS)
	Req. in terms of third parties approval	22% (8NS)
Template of access contract		49% (18 NS)
Details on operational rules to be respected by RU		68% (25 NS)
Description of procedures for rolling stock acceptance (extensive or synthetic)		92% (34 NS)
Description of procedures for staff acceptance (extensive or synthetic)		89% (33 NS)

### Opinions of respondent Railway Undertakings (RU)

Figure 2-1 summarises the opinions of respectively incumbent RU and new operator RU on the quality of information provided by NS on access conditions.

**Figure 2-1: Opinions of RU on the quality of information provided by NS on access conditions**



According to the RU that responded to the consultation, the majority of NS provides satisfactory information on 'requirements governing applicants', with Incumbent RU less satisfied than New operator RU. With regards to 'availability and nature of framework agreement' more than 70% of NS are considered to provide satisfactory information with no relevant differences between Incumbents' and New operators' opinions.

### 2.3 Issues related to Framework Agreements and rail access

A Framework Agreement (FA) is a legally binding document setting out the rights and responsibilities of a railway undertaking and an infrastructure manager or capacity allocation and charging body over a period longer than one timetable period.

It is compulsory for IM to behave according to the basic principle of non-discrimination (EC Directive 2001/14, Art 16). This principle is equally valid for the handling of FA.

According to Directive 2001/14, Article 17, FA should normally be for a period of five years, with any longer period requiring specific justification, and any period longer than ten years exceptional, and justified by large scale long term investment.

Directive 2001/14 recognises conflicting objectives regarding FA. On the one hand if railway undertakings are to invest in rolling stock, and possibly also the infrastructure itself,

then they will certainly require assurance as to the future availability and price of infrastructure capacity. On the other hand, if they were able to completely reserve all the capacity on a route then they could prevent all competition. 2001/14 balances the two objectives of promoting investment but also promoting competition by permitting agreements about the future allocation of capacity but not regarding the allocation of individual train paths and not so as to prevent other operators from using the route in question.

Individual Member-States of the EU are free to propose FA (discretionary clause). Hence they have taken up this possibility in their national legislation in different ways. FA at the national level have been concluded only in a few countries, such as Germany, Italy and Austria.

At request of the consultant, RNE has carried out a survey on IM, investigating issues related to Authorised Applicants and Framework Agreements. The responses provided by 20 IM from such survey indicate that the implementation of FA by IM has been rather low so far. In fact, only 7 IM out of the 20 that responded have one or more FA currently implemented.

As regards the possibility of conflicts in the allocation of capacity due to FA, RNE's survey indicates that the occurrence of conflicts is not significant, mainly because of the low implementation of FA by IM. However, some issues have been reported by some of the IM that have implemented FA:

- in one case, the existing FA makes use of 50% of available capacity causing difficulties with the integration of the remaining capacity requests during peak periods;
- in another case, the IM stated that although no conflicts have arisen so far, some may occur in the future, in case FA are made applicable by the IM also for freight traffic, problems are likely to arise in terms of capacity allocation on the network.

The consultant also interviewed the European Rail Infrastructure Managers (EIM) about Framework Agreements. In EIM's view and experience, there is no reported case of conflicts related to FA in terms of capacity allocation.

Network Statements do not always explicitly describe the content and the implications of FA. However, the details provided vary significantly between countries. For example:

- In Sweden, such agreements are loose and give little commitment regarding future capacity allocation and price, which means that they are not in themselves an obstacle to market entry, but may disincentivise investments in freight or commercial passenger services (in the case of franchised passenger services, it is generally the franchising body which secures track access and bears the revenue risk should future access be unsatisfactory).
- The Netherlands Network Statement specifically refers to FA being flexible and capable of amendment in the light of changing demand for capacity. But in some cases, more specific priority in terms of capacity allocation is given by the Network Statement.
- In Britain, the standard Track Access Agreement is in effect a FA for 5-7 years giving rights to a certain amount of capacity at a certain price. These rights may be fixed, or contingent on capacity being available when higher priority uses have been satisfied; they may say nothing about timing or may specify paths to within a 'flexing' margin or bandwidth. Exceptionally the track access agreement is longer,

and tied up with specific investment in infrastructure (as in the case of the Chiltern Railways 'Evergreen' project), rolling stock (such as the Virgin Rail leasing of new 'Pendolino' trainsets for the West Coast main line). The amount of capacity to be left available for allocation in the annual timetabling round or as a result of ad hoc applications is not specified, but is considered periodically on a route by route basis as part of a route utilisation study.

The function of Framework Agreements in UK may also be fulfilled by Station Access Agreements or Depot Access Agreements, where applicable, granted by the person with the appropriate legal interest in the station or light maintenance depot concerned. Where the IM has let the relevant station or light maintenance depot to a railway undertaking or other entities, then these will have the appropriate legal interest to grant an access agreement to anyone seeking permission to use that facility, rather than the IM itself.

The IM is permitted to enter into bi-lateral agreements with RU and other entities to develop infrastructure enhancements, although if such an agreement were to include rights to use a railway facility then it would need to be approved by the ORR, as a Track Access Contract.

The Railways Act 1993 provides for the possibility of such rights to take the form of either the normal grant of rights or of an access option.

In accordance with the terms of its network licence, the IM is required to co-operate with train operators to identify ways in which its reasonable requirements in respect of allocation of capacity on the network could be satisfied.

As regards conflicts, these can generally be avoided through the timetabling process.

- In Germany, FA also give priority use of certain amounts of capacity; paths must be offered to the holder of a FA within a certain bandwidth, although in general no more than 75% of capacity must be allocated in this way.

The divergent application of FA in individual Member-States (with differences for example in duration, and in the width of relevant time slots) makes it more difficult to launch new, large-scale transport initiatives at the international level. Similarly, legal requirements for solving conflicts between competing applications for FA diverge from one country to another. On one side, there may be no relevant guidelines available at all, whilst on the other side mutually-exclusive applications for FA have to be submitted to the decision-making powers of a Regulatory Body.

Overall, according to the analysis carried out and the information available, FA, more than contributing to the development of the infrastructure, do offer assurance to train operators and their customers of the future availability of suitable paths, and in that way encourage investment in rolling stock and terminals and stability of services. Whilst in some countries they do effectively tie up a lot of capacity, and this could be used deliberately as a strategy to block entry, we consider that – provided that they require approval by an independent regulator to safeguard against this happening – the current situation regarding FA is satisfactory. To the extent that the existing legislation (Article 17) makes such a regulatory process optional, consideration could be given to tightening it up to make it compulsory.

## 2.4 Best Practices and comments provided by the Stakeholders

Some RU lamented that NS provide information on requirements governing applicants but the level of detail is not satisfactory. With regard to Framework Agreements a RU denounced that they look like “grandfather rights” under disguise. This comment was also discussed in the stakeholders’ workshop of Dec. 7, 2009, but most IM declared that FA does not imply any fixed pre-booking on specific paths.

## 2.5 Best Practices identified by the Consultant

No particular best practices were identified with regard to this section in any of the NS analysed by the Consultant, however it must be highlighted that the general requirements for the access to the network are presented by almost all the NS analysed.

## 2.6 Recommendations

Hereafter, recommendations that arose from the Consultant’s assessment and the Stakeholders’ consultation are provided in synthetic tables for some of the topics discussed above. Each recommendation is presented together with the degree of importance given to it.

### Framework agreements

2-a	Strongly recommended	The role, availability and content of framework agreements should be clearly defined in the NS.
2-b	Recommended	A model framework agreement should be available, e.g. via a web-link.
2-c	Recommended	The need for third party agreement to a framework agreement (e.g. by a regulator) should be clearly specified.

### Access contracts and operational rules

2-d	Strongly recommended	The availability of templates or model access contracts should be highlighted in the NS, with a web link provided to enable the reader to inspect the current version.
2-e	Recommended	The operational rules and procedures for both ordinary and special transport should be detailed, where possible, within the NS – where this is not possible, web-links should be provided for the reader to inspect the relevant document.
2-f	Recommended	The procedures for the acceptance of rolling stock and staff should be indicated in the NS, with web-links provided for the reader to locate detailed information. These should include who to apply to, what information is required and a timetable for completion of the process.

### 3 THE AVAILABLE INFRASTRUCTURE

#### 3.1 Expected minimum content of the network statement according to Directive 2001/14/EC

Art 3 point 2 of the Directive states that the NS “shall set out the nature of the infrastructure which is available to railway undertakings”. According to Annex I point 1 of Directive 2001/14/EC, the NS shall contain “a section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it”. Art. 24 point 3 states that NS shall identify and describe part of the network dedicated to specified type of traffic (specialised infrastructure).

Annex A illustrates the information that, according to the RNE guidelines is to be included in the NS and that which is optional to include.

#### 3.2 Findings of the analysis

This section of the report illustrates the results of the analysis for what concerns the provision of information provided by the analysed NS on the nature of the railway line. The provision of information on the Minimum Access Package is treated in Chapter 4.2.1.

Table 3-1 shows the availability of information on the nature of the railway line and the type of presentation. The results presented in the table indicate that the majority of NS are exhaustive in detailing the characteristics of the rail infrastructure.

The least provided information concerns the period of unavailability of the line, which is indicated by just over half of the analysed NS.

**Table 3-1: Information on the nature of the railway lines**

	Information availability (n. of NS)			If available, type of presentation* (n. of NS)			
	Yes	No	% Yes	Tables	GIS maps	Schematic maps	Other
Number of tracks	33	4	89%	16	1	14	6
Track gauge	33	4	89%	13	2	8	11
Loading gauge	29	8	78%	7	2	10	10
Weight limits	31	6	84%	14	1	10	5
Gradients	26	11	70%	16	2	5	2
Maximum speed	28	9	76%	14	1	5	3
Maximum train length	26	11	70%	14	-	3	6
Power supply	34	3	92%	13	2	14	8
Traffic control systems	32	5	86%	10	1	14	11
Signalling systems	31	6	84%	9	1	6	10
Communication systems	33	4	89%	12	1	11	11
ATC systems	26	11	70%	8	1	13	6
Specific traffic restrictions	26	11	70%	10	1	8	7
Period of unavailability	20	17	54%	7	-	-	9

\* More than one answer per topic possible, thus the sum may not equal the total number of NS.

### 3.3 Best Practices and comments provided by the Stakeholders

Table 3-3 reports a best practiced mentioned by The Swedish Transport Agency on the information on the nature of the railway lines provided by the NS of Banverket (Sweden).

**Table 3-2: Best practices identified by the Stakeholders on the information on the nature of the railway lines**

Stakeholder	IM	Best practices indicated	Reasons
The Swedish Transport Agency	Banverket (Sweden)	Description of the Network through a web application	A web application is made available by the IM. It describes the nature of the infrastructure, allowing to include more information than on paper and to let users decide the level of information they need to consult.

According to the RU that answered to the consultation, the majority of NS (73%) provides satisfactory information on 'nature of the infrastructure which is available to railway undertakings and the conditions of access to it'. This, together with the outcome of the consultants' analysis presented in Table 3-4, suggests that, apart from the need for the above mentioned specific best practices, there is in general a good level of quality of information provided by NS in this area.

The UK Office of Rail Regulation (ORR) reported on its experience in addressing a complaint by a RU on the contents of the Network Statement. This can be reckoned to constitute a best practice.

**Table 3-3: Best practices identified by the Stakeholders on procedure for addressing RU complaint**

Stakeholder	IM	Best practices indicated	Reasons
The UK Office Of Rail Regulation (ORR)	High speed line between London and the Channel Tunnel HS1 (UK)	Description of procedure for addressing RU Complaint	<p>ORR reviews the draft Network Statements produced by NR and HS1 each year so that updated versions can be published each October.</p> <p>In 2008 ORR received an appeal from a freight operator because it was aggrieved with the continuing lack of sufficient information on the charging scheme for HS1. ORR determined the appeal by directing the infrastructure manager of HS1 to publish, by 17 November 2008, an up-to-date Network Statement to include sufficient information to enable a train operator to calculate the cost of using HS1. ORR also directed the Charging Body for the HS1 Network to provide the infrastructure manager with such information, and in such timescales, as is necessary to enable the infrastructure manager to fulfil its obligations, as directed by ORR. Both parties complied with our directions within the specified timescales.</p>

### 3.4 Best practices identified by the Consultant

Some NS feature accurate and exhaustive descriptions of the line, so that it was possible to record best practices. The following table reports the sections of the NS emerging as "best practices" according to consultants' analysis, along with the respective justifications.

**Table 3-4: Best practices identified by the Consultants on the information on the nature of the railway lines**

Country / IM	Best practices indicated	Reasons
<b>Banedanmark (Denmark)</b>	Detailed maps (appendix)	Very straightforward and complete description of the nature of the network (although some information such as curve radius, congested sections and conditions of the network are missing)
<b>Latvian Railway (Latvia)</b>	Chapter 3 Infrastructure	Clear description of the available infrastructure
	Appendix 8 Division of railway infrastructure (track sections) by categories	Complete description of the characteristics of the railway line
	Appendix 9 Directive "About establishing of train traffic speed"	Complete description of allowed speeds for passenger trains and freight trains per track section
<b>CFL (Luxembourg)</b>	Description infrastructure	Very detailed description of the national line, but probably not feasible for more extended networks
<b>ProRail (Netherlands)</b>	Specific traffic restrictions	Accurate description of traffic restrictions on the line, exhaustive and easy to read and understand
<b>REFER (Portugal)</b>	Description of the Network	Annexes are included in the online document, facilitating the understanding and ensuring a comprehensive and exhaustive communication to the interested parties, preferable than having annexes in separate documents.

### 3.5 Recommendations

The recommendations for the provision of information on available infrastructure are reported in the tables below.

3-a	Strongly recommended	The extent of the railway network covered by the NS is a crucial feature of the NS and should be clearly illustrated using maps; where possible, these should be GIS maps allowing the customers (RU or authorised applicants) to quickly access infrastructure information on the specific line.
3-b	Strongly recommended	The connected networks (i.e. neighbouring IM) should be specified and should be indicated on the above maps.
3-c	Strongly recommended	Where available, web-links to the NS of connected networks should be provided.
3-d	Strongly recommended	Points of contact for relevant connected networks should be provided within the NS list of contacts.



3-e	Recommended	<p>A common approach to the presentation of the key characteristics of the infrastructure as listed in Table 3-1 should be agreed to facilitate easy cross reference from one NS to another. This could be by use of a standardised table of characteristics, with then supporting information for each characteristic outlined in more detail by use of text and maps placed in either annexes and/or online.</p> <p>Level of details of the provided information shall be also harmonised, e.g. NS shall present infrastructure characteristics of each line (between two junctions) since more detailed data will be presented in the Infrastructure Registers.</p>
3-f	Strongly recommended	<p>The NS should provide a picture of expected network development, both in the short term (over the current NS timetable period of validity) and for the longer term. Best practice will provide an outline of future infrastructure projects or work – with details in an annex and/or via a web-link. This will include impacts on the key characteristics of the new or improved lines, including in particular plans for installation of ERTMS.</p>

## 4 SERVICE FACILITIES AND SUPPLY OF RAIL RELATED SERVICES

### 4.1 Expected minimum content of the Network Statement according to Directive 2001/14/EC

Art 3 point 2 of the Directive states that the NS “shall contain information setting out the conditions for access to the relevant railway infrastructure”. As per Annex I point 2 of Directive 2001/14/EC, the NS “shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier”.

Annex A illustrates the information that, according to the RNE guidelines are to be included in the NS and those that are optional.

### 4.2 Findings of the analysis

#### 4.2.1 Minimum access package (Annex II.1)

##### Consultant’s assessment

Table 4-1 provides a synthesis of the outcomes of the assessment conducted by the Consultant<sup>3</sup> with regards to the level of detail of the description of the services listed in Annex II.1. A brief comment to the main findings follows.

**Table 4-1: Assessment of the Consultant on level of detail of information provided in the NS with regards to service facilities (cf. Annex II, point 2)**

Track access to Service Facilities and Supply of Services	Consultant’s assessment		
	% of NS that include type of information listed below*		
	List / Location	Infra. and technical details	Opening times
Use of electrical supply equipment for traction current, where available	65%	47%	N/A
Access to Refuelling facilities	33%	34%	3%
Access to Passenger stations, their buildings and other facilities	74%	35% - 44%	-
Access to Freight terminals	50% - 63%	38% - 40%	-
Access to Marshalling yards	40%	12%	11%
Access to Train formation facilities	34% - 41%	17%	11%
Access to Storage sidings	18% - 23%	-	9%
Access to Maintenance and other technical facilities	29% - 35%	-	3%

<sup>3</sup> To ensure consistency with the two level of the analysis, preliminary consultant’s assessment of each NS has been in a later stage also cross-checked with the responses of stakeholder to the consultation, in case the relevant IM, RB or RU answered to the questionnaire.

*Note: Percentage range due to the fact that the information is a synthesis of several aspects.  
Blank cells indicate that the topic was not investigated or the assessment of the topic is not applicable.  
Eurotunnel was not included in this analysis of service facilities, given the specific type of managed infrastructure (Channel Tunnel)*

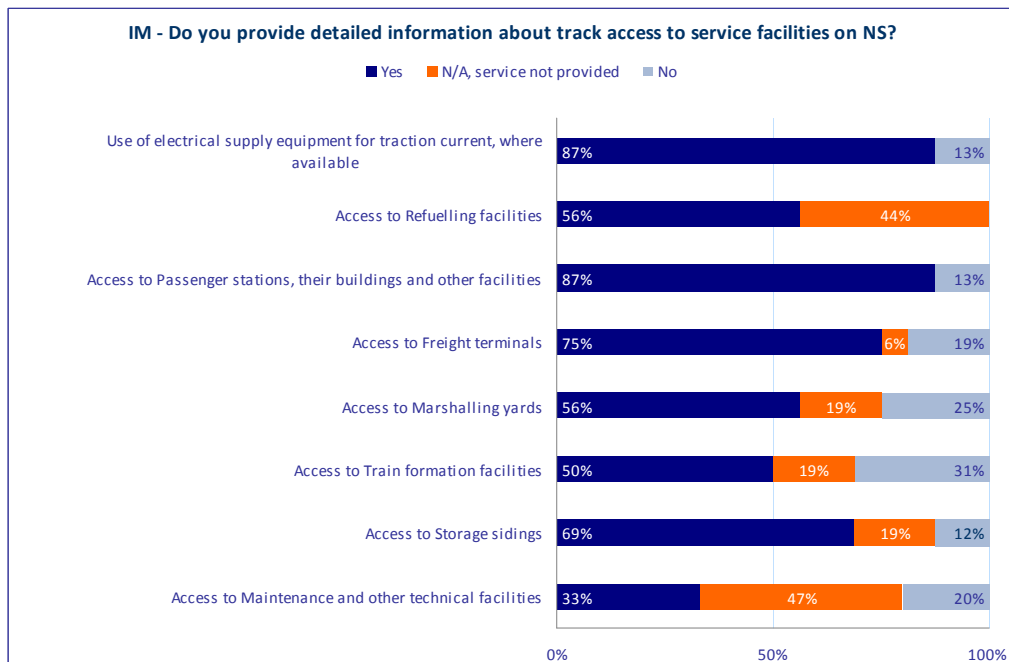
With regards to track access to services facilities and supply of services, the Consultant's assessment highlighted that the NS are frequently lacking information. Most aspects are covered by less than half of the NS analysed. In particular:

- The information about opening times of the facilities is supplied in a very limited number of NS. In most cases, RU are invited to get in contact with the facility manager for operational details.
- Information on the location of passenger stations is provided in the majority of NS (74%), whereas the list and location of lines where the electrical supply equipment is available is supplied in 65% of NS.
- Information on freight terminals is supplied by slightly more than half of the NS analysed.
- Technical information such as the length or number of tracks in terminals and train formation facilities and the type of marshalling yards is provided in a minority of cases.

As regards the coverage and level of detail of the information, the overall picture indicates a balanced situation (no NS is fully satisfactory). On average, most NS cover about half of the aspects required.

#### **Opinions of respondent Infrastructure Managers**

Figure 4-1 summarises the answers provided by infrastructure managers on the level of detail of information provided in the network statements regarding track access for service facilities.

**Figure 4-1: Inclusion of detailed information about services listed below in the NS**

As shown in the figure, often, the IM replied that detailed information on the access to a specific service is not available in the NS because the service is not provided by them; however in many of these cases it is unknown if this service is actually provided on a competitive basis:

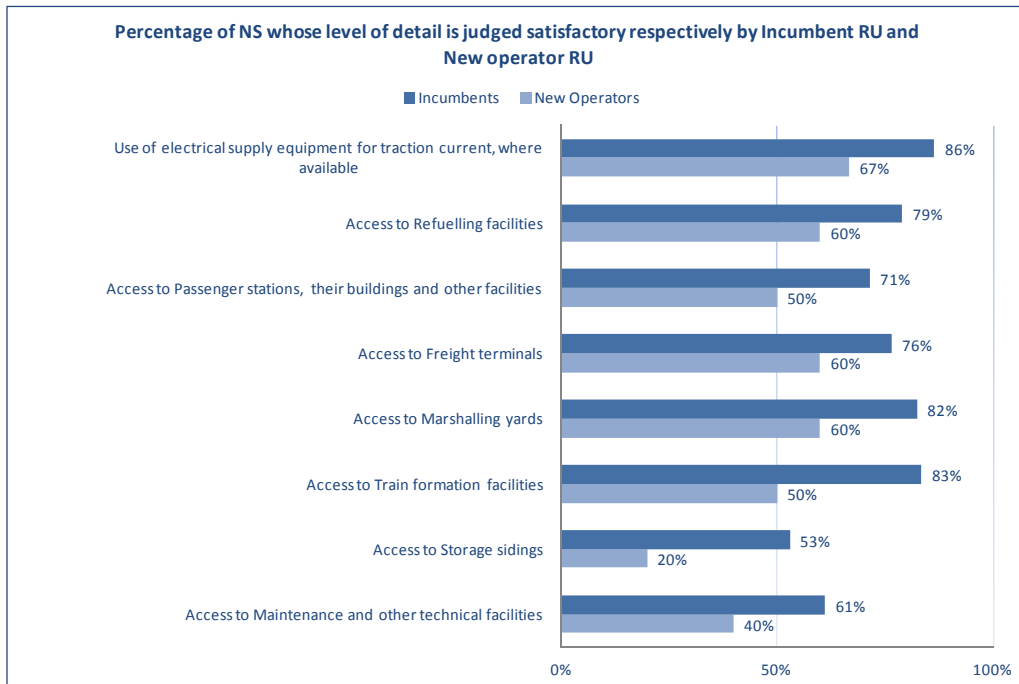
- 44% of respondent IM don't provide detailed information on 'access to refuelling facilities' because they don't provide the service or there are not such facilities in their network.
- 19% of respondent IM provide only general information on 'access to freight terminals' but declare that additional information can be obtained on request.
- A significant share of respondent IM (25%) do not provide detailed information on 'access to marshalling yards'; however, most of the IM of this group declare that specific information can be obtained on request or it is announced that it will be added to a new version of the NS.
- Information on 'access to train formation facilities' is provided only by 50% of respondent IM, in a few cases (19%) the information is not yet provided (but it is announced for the next version of the NS) or is only provided on request, in many cases (31%) the service is not provided by the IM.

A significant share of respondent IM (47%) provide no information on 'access to maintenance and other technical facilities' because this service is not managed by them.

## Opinion of respondent Railway Undertakings (RU)

Figure 4-2 summarises the opinions of respectively Incumbent RU and New operator RU on the quality of information provided by NS on rail related services.

**Figure 4-2: Opinion of respondent RU on the quality of information provided by NS on access to service facilities**



With regards to description of service facilities and supply of services, in most cases the NS were judged to provide a satisfactory level of detail. New operators, however, appear largely to be less satisfied than the incumbents (for most service facilities' information, only 50% (or less) of them are satisfied).

Main concerns of RU regard the quality of information on 'Access to storage sidings' and on 'Access to maintenance and other technical facilities'.

### Overall considerations

In some cases, the outcomes of two assessment activities do not differ significantly (e.g. in the case of 'supply of traction current equipment' and 'passenger station'). In other cases, the majority of respondent RU declare themselves satisfied by the information provided in the NS, even if a relevant share of respondent IM declare that the same information is not included in the NS and the assessment made by the Consultant seems to confirm IM responses (e.g. 'Access to Refuelling facilities', 'Access to Marshalling yards', 'Access to Train formation facilities').

It is worth mentioning that the majority of respondent IM declare that information on 'Access to Storage sidings' is included in their NS, however, the majority of respondent RU think that the quality of information is not satisfactory and, according to the Consultant's assessment, information is generally lacking on this topic.

#### 4.2.2 Additional and ancillary services (Annex II.3-4)

##### Consultant's assessment

Table 4-2 on the next page presents the assessment on the information related to the additional and ancillary services provided in the NS. The table provides a synthesis of the Consultant's assessment and of the stakeholder consultation.

**Table 4-2: Synthesis of assessment on level of detail of information provided in the NS with regards to 'Additional services' and 'Ancillary services' (cf. Annex II, point 3 and 4)**

Type of service		Consultant's assessment		
		% of NS with information available*		
		Yes, detailed	Yes, partial	No
ADDITIONAL SERVICES	Supply of Traction current	39%	33%	28%
	Pre-heating of passenger trains	19%	32%	49%
	Supply of diesel fuel, shunting services ...	19% - 24%	31% - 32%	49% - 50%
	Tailor-made contracts for Control of transport of dangerous goods	11%	35%	54%
	Tailor-made contracts for assistance in running abnormal trains	16%	30%	54%
ANCILLARY SERVICES	Access to telecommunication network	19%	41%	41%
	Provision of supplementary information	22%	41%	38%
	Technical inspection of rolling stock	11%	27%	62%

*Note: Percentage range due to the fact that the information is a synthesis of several aspects.*

The information related to the additional and ancillary services is treated in detail in a minority of NS. In fact, the cases where the information is missing outnumber significantly those where the information is supplied exhaustively.

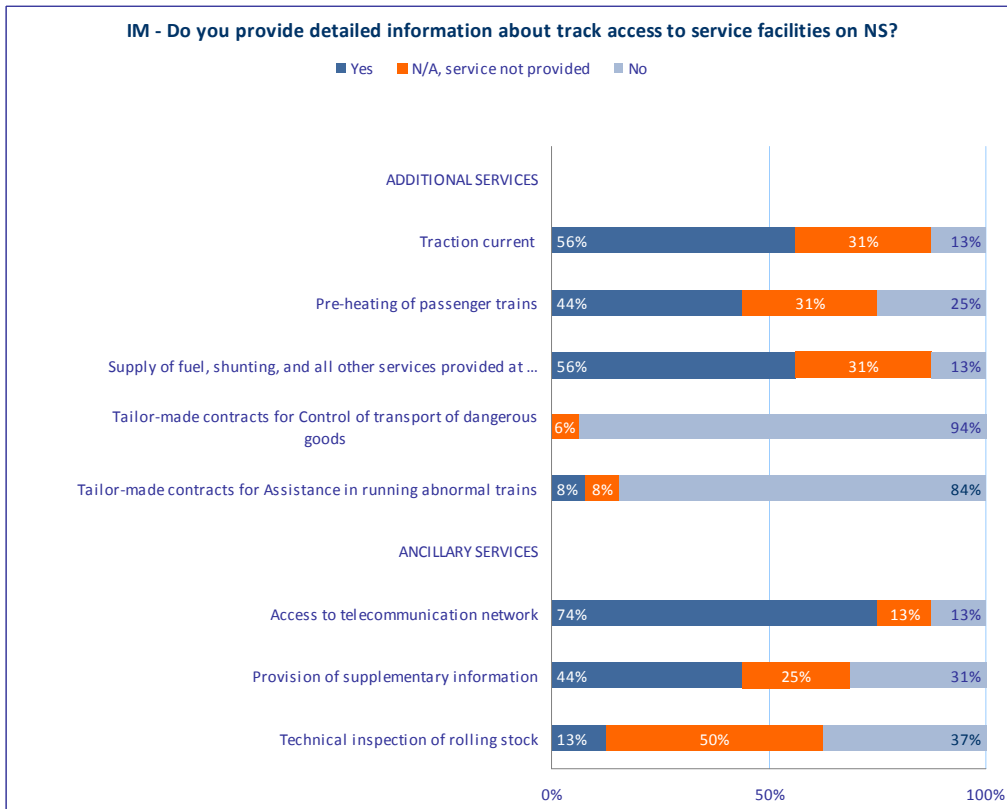
According to the assessment made by the Consultant:

- The information about the 'Technical inspection of rolling stock' is frequently missing or provided partially, along with the aspects related to 'Pre-heating of passenger trains', 'Supply of diesel fuel', 'Shunting services' 'Tailor-made contracts for Control of transport of dangerous goods' and 'Tailor-made contracts for assistance in running abnormal trains';
- None of the NS provides all the information fully in detail;
- On average, each topic is covered by half of the NS, with the diametric opposite exceptions represented by 'Supply of Traction current' (72% of coverage is summing full and partial detail) and 'Technical inspection of rolling stock' (fully or partially covered by a total of 38% of NS).

### Opinions of respondent Infrastructure Managers

Figure 4-3 summarises the answers provided by infrastructure managers on to the level of detail of information provided in the network statements regarding ‘additional services’ and ‘ancillary services’.

**Figure 4-3: Inclusion of detailed information about additional and ancillary services in the NS**



Detailed information on additional services is not always available in the NS:

- Tailor made contracts for ‘control of transport of dangerous goods’ and for ‘assistance in running abnormal trains’ are not included in the NS with only one exception. However general information on who provides the service and the rules governing the provision of services are reported in the NS.
- Information on other services such as ‘traction current’, ‘pre-heating of trains’ and ‘supply of fuels etc.’ are included in the NS in about 50% of the cases.

Also detailed information on ancillary services is not always included in the NS:

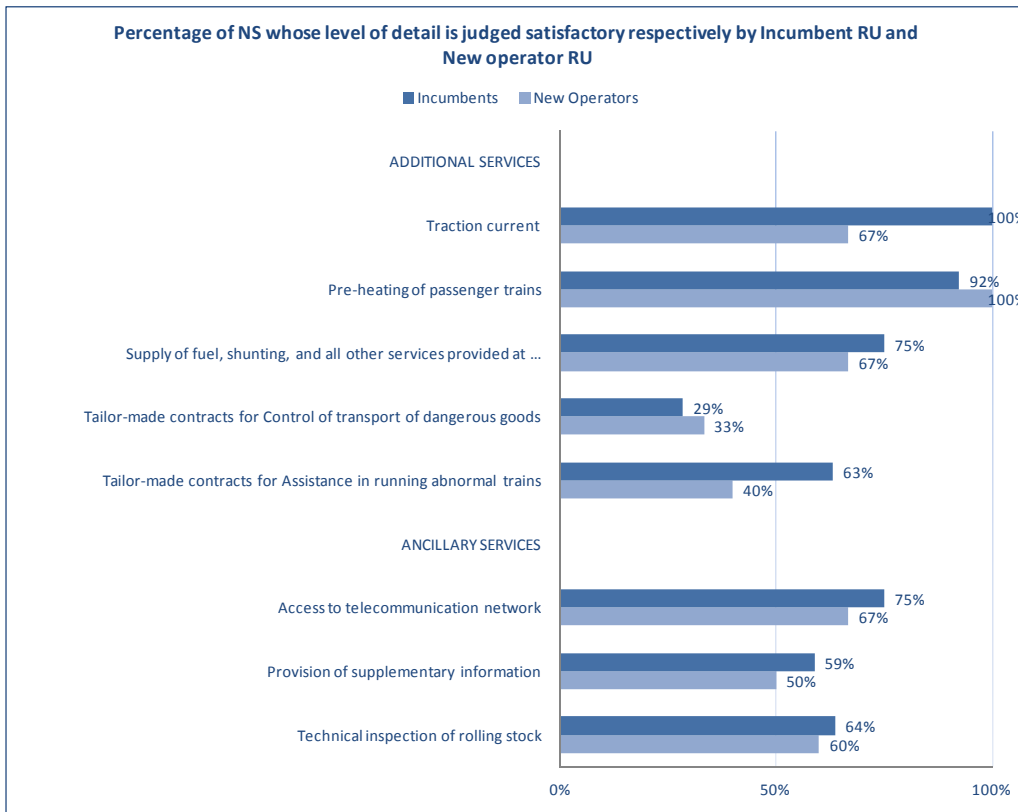
- Information on ‘access to communication networks’ is provided in the large majority of NS (74%).

- 44% of respondent IM provide detailed information on ‘provision of supplementary information’, other IM don’t provide such information in the NS, and some of these specified that the service is not provided by them.
- Detailed information on ‘technical inspection of rolling stock’ is generally not included in the NS, often because this service is not provided by the IM (50%).

**Opinion of respondent Railway Undertakings (RU)**

Figure 4-4 presents the opinions of respectively Incumbent RU and New operator RU on the quality of information provided by NS on additional and ancillary services.

**Figure 4-4: Opinion of respondent RU on the quality of information provided by NS on additional and ancillary services**



Quality of information on additional services with the exception of ‘tailor-made contracts for assistance in running abnormal trains’ and ‘tailor-made contracts for control of transport of dangerous goods’ is generally regarded as satisfactory by respondent RU. Major discrepancies of views between Incumbents and New operators regard information on ‘Traction current’ and on ‘Assistance in running abnormal trains’, with the latter being much less satisfied.

With regards to ancillary services, low level of satisfaction among RU is encountered for ‘Provision of supplementary information’. Differences between opinions of Incumbents and New operators are moderate.



## Overall considerations

Respondent RU reported that level of detail of information on ‘Supply of Traction current’ and ‘Pre-heating of passenger trains’ is satisfactory for the large majority of NS; in contrast according to the consultant’s assessment and to the responses provided by the IM, in many cases the information on these two subjects is not satisfactory. Similarly, even if according to the Consultant’s assessment and to the response of the IM Tailor made contracts for dangerous goods and for abnormal trains are very rarely included in the NS, this doesn’t seem to be of major concern for RU.

The highlighted discrepancies between the different assessments are likely to be linked to

- the different sample size and content;
- the lack of actual interest from the RU, which in quite a few cases probably do not use (most of) the ancillary / additional services. Thus, their answers might be not fully consistent with the actual content of the NS.

### 4.3 Best Practices and comments provided by the Stakeholders

With regards to services such as ‘Traction current’ or ‘Telecommunication network’ that are typically provided by third parties, it was reported that often general conditions are not reported in the NS, however in many cases information on access to these services are separately published by the service providers.

The respondents RU reported also that level of details is very different: for instance, for passenger stations, some RU commented that NS is not describing availability and equipment of them; in another case, only the (few) stations managed by the IM are mentioned, while most of them are managed by Third parties. In a couple of cases, however, NS provides extensive information according to the RU;

Some respondents IMs explain the lack of information on some service facility in the NS by specifying that the IM is not managing them, even if in many cases it is the owner. This is particularly the case of refueling facilities and freight terminals. Some IM clearly stated that they not consider being responsible to provide such information in case the facilities are leased to other operators

No best practice on this topic was indicated by stakeholders.

### 4.4 Best Practices identified by the Consultant

No best practices were identified for this section in any of the NS analysed by the Consultants.

### 4.5 Recommendations

Hereafter, the recommendations that arose from the Consultant’s assessment and the Stakeholders’ consultation are provided in a table for the topics discussed above. Each recommendation is presented together with the degree of importance attributed to it.

4-a	Strongly recommended	For all rail related services, provided by the IM and associated companies, complete information on the characteristics of these services should be provided, either directly in the NS or via a list of facilities with web-links.
4-b	Strongly recommended	Where service facilities are not provided by the IM, at the least a list of the nature and location of such facilities should be provided, with contact details and – where available – a web-link.

4-c	Recommended	<p>A common approach to the presentation of the access to service facilities and supply of services (in case they are provided by the IM and associated companies) should be agreed to facilitate easy cross reference from one NS to another. This could be by use of a standardised table of service facilities and services.</p> <p>In particular, for each type of service and service facilities it is necessary to agree on the information to be provided in the NS, i.e. the minimum information (type of data, level of detail) allowing the users (RUs and authorised applicants) to support their preliminary decision making in their planning phase, considering also the feasibility to include each type of data in the NS<sup>4</sup>.</p>
4-d	Strongly recommended	<p>Where service facilities are owned and operated by the IM, supporting information for each facility and service should be outlined in more detail by use of text and maps placed in either annexes and/or online.</p>

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<sup>4</sup> The RNE Guidelines already suggested specific type of information to be provided for each type of service or service facilities. However, the evidence shows that few NS have fully applied such proposals.

## 5 CHARGES FOR THE MINIMUM ACCESS PACKAGE

### 5.1 Expected minimum content of the network statement according to Directive 2001/14/EC

As per Annex I point 2 of Directive 2001/14/EC, the NS shall include “sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the **methodology, rules and, where applicable, scales** used for the application of Article 7(4) and (5) and Articles 8 and 9. It shall contain information on changes if charges already decided upon or foreseen”.

As stated in Annex II point 1 of the same Directive, “The minimum access package shall comprise:

- a) handling of requests for infrastructure capacity;
- b) the right to utilise capacity which is granted;
- c) use of running track points and junctions;
- d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
- e) all other information required to implement or operate the service for which capacity has been granted.

Annex A illustrates the information that, according to the RNE guidelines, are to be included in the NS and those that are optional.

### 5.2 Findings of the analysis

#### Consultant’s assessment

Table 5-1 presents a synthesis of the outcomes of the assessment conducted by the Consultant<sup>5</sup> with regards to the level of detail of the information on charges for the access to the infrastructure.

A brief comment to the findings follows after the table.

**Table 5-1: Synthesis of assessment on level of detail of information on charges for access to infrastructure**

Type of Charge	Consultant’s Assessment		
	% of NS with information on charging*		
	Yes	N/A (Charge not applied)	No
Charges for the access to the infrastructure	100%	-	-
Charges that reflects the scarcity of capacity (Art. 7.4)	27%	43%	30%
Charges that reflects cost of the environmental effects (Art. 7.5)	14%	56%	30%
Discounts (Art. 9)	43%	27%	30%

<sup>5</sup> Cf. note 3.

Type of Charge	Consultant's Assessment		
	% of NS with information on charging*		
	Yes	N/A (Charge not applied)	No
Performance Related Charges (Art. 11)	27%	16%	57%
Mark-ups (Art. 8.1-8.2)	40%	30%	30%

*Note: Percentage range due to the fact that the information is a synthesis of several aspects.*

*Blank cells indicate that the topic was not investigated or the assessment of the topic is not applicable.*

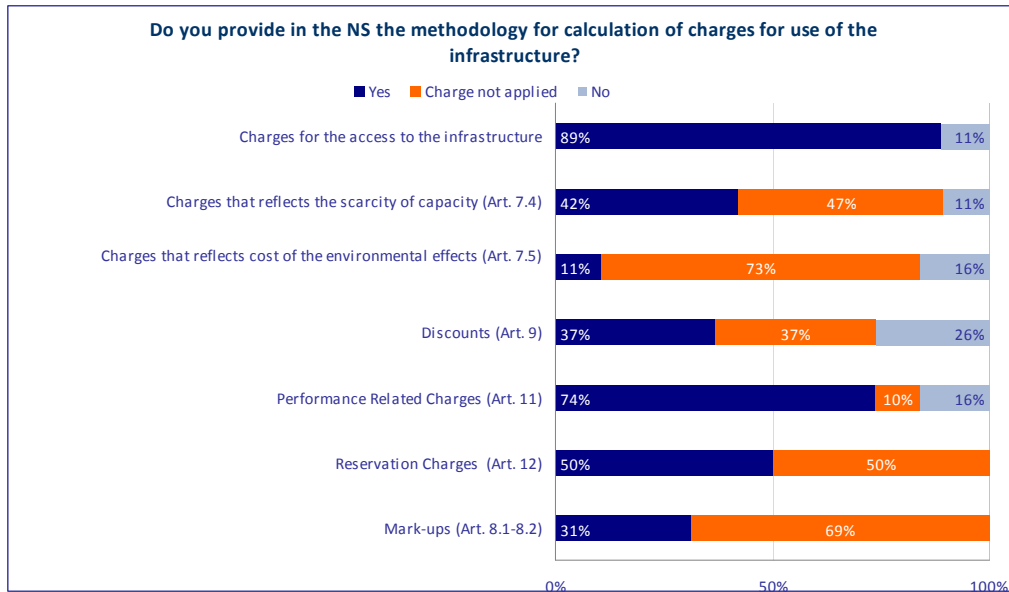
Among the main findings of the analysis, the following points are worthy being mentioned:

- On average, the information on the different aspects of charging is provided by the majority of the NS analysed;
- The information about the 'charges reflecting the scarcity of capacity' is provided by about one third of NS, whereas this aspect is not included in the existing charging scheme of over 40% of IM;
- The cost of environmental effects is included in the formulation of charges by only a minority of IM (also since it does not exist in most charging schemes);
- The information about performance related charges is provided only by about one third of the NS.

#### **Answers of Infrastructure Manager (IM) and National Authorities (AU) on the inclusion of methodology for calculation of charges on the NS**

Figure 5-1 shows the answers of infrastructure managers (IM) and national authorities (AU) on the inclusion in the NS of the description of the methodology for the calculation of charges for the minimum access package.

**Figure 5-1: Inclusion of the methodology for calculation of charges the minimum access package in the NS**



The methodology for the calculation of charges is stated to be provided in most the cases. Only 11% of respondent IM and AU (2 out of 19) declared that the methodology is not included in the NS: one respondent specified that the methodology is described in a specific article of a national law, the other one specified that the methodology was just approved and it will be included in the NS very soon.

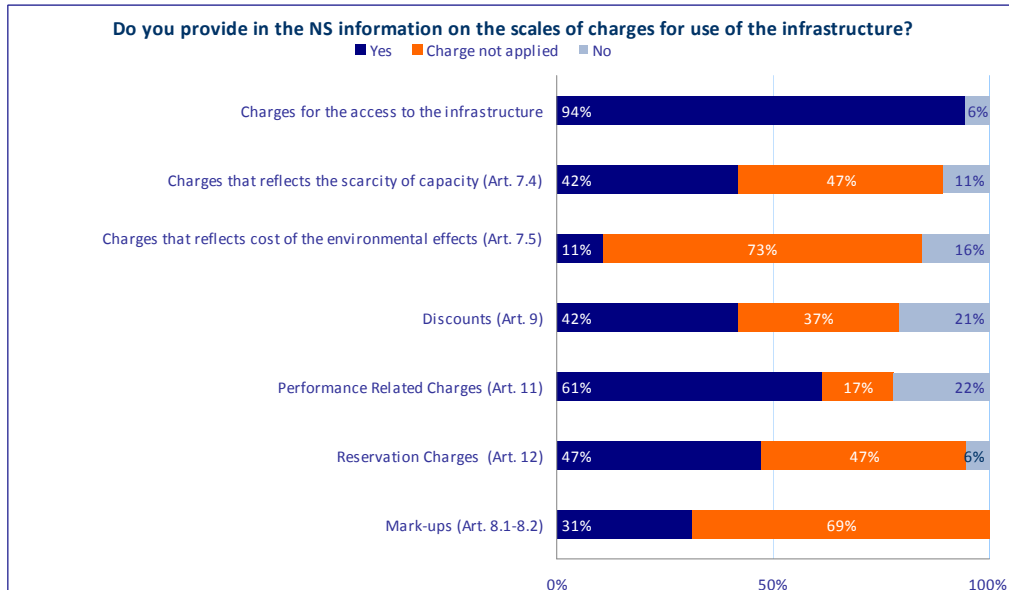
11% of respondent IM (2) declared that they don't describe in the NS the methodology on 'charges that reflects the scarcity of capacity of identifiable segment of infrastructure during periods of congestions' because is not in their competence.

'Charges that reflects cost of the environmental effects caused by the operation' are rarely applied by the IM. Consequently the methodology for the calculation of such charges is presented only in a few cases.

**Answers of Infrastructure Manager (IM) and National Authorities (AU) on the specification of the scales of charges on the NS**

Figure 5-1 shows the answers of infrastructure managers (IM) and national authorities (AU) on the inclusion in the NS of information on scales of charges for the minimum access package.

**Figure 5-2: Inclusion of information on the scale of charges for use of the infrastructure in the NS**



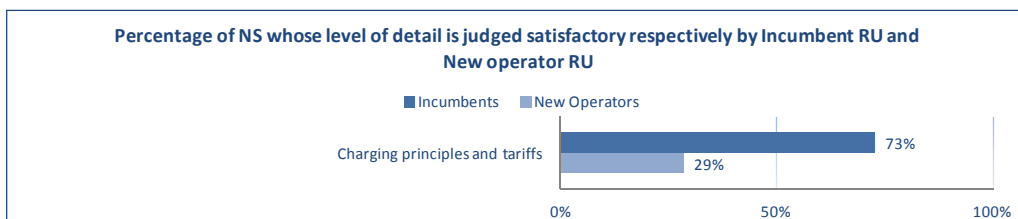
According to respondent IM and AU most NS provide information on the scales of charges when a charge is actually applied. The main exceptions regard ‘Performance related charges’ and ‘Discounts’; more than 20% of respondent IM and AU don’t provide information on the scale of these charges even if the charges are part of their charging system.

It is worth reporting that only one IM doesn’t provide information on scale of charge for accessing the infrastructure: it was explained that this has been only recently approved and it will be included in the NS very soon.

**Opinions of respondent Railway Undertakings (RU)**

RU were not addressed by detailed questions on each type of charge. However, they were requested to provide their general opinion on the level of detail of information on ‘Charging principle and tariffs’. Figure 4-4 presents the opinions of respectively Incumbent RU and New operator RU on the quality of information provided by NS on ‘Charging principle and tariffs’.

**Figure 5-3: Opinion of respondent RU on the quality of information provided by NS on ‘Charging principle and tariffs’**



As shown in the figure above there is an irreconcilable disparity of views between Incumbent and New operators on the quality of information on charging provided by the NS: according to New operators only 29% of NS provide satisfactory information, whereas according to Incumbent the large majority (73%) of NS provide satisfactory information.

### Overall considerations

The assessment made by the consultant is generally aligned with the responses provided by IM and AU. Clear exceptions are on 'Charges that reflects the scarcity capacity' and on 'Performance Related Charges'. For the latest, according to the Consultant's assessment, only 27% of NS present satisfactory information whereas respondent IM and AU believe that up to 74% of NS include information on the methodology.

### 5.3 Best Practices and comments provided by the Stakeholders

The variety of "methodology and rules" in the different Countries for charging the use of the infrastructure is considered as an issue by many RU, even if the information is clear. Besides, the level of details is not always considered as satisfactory to allow RU to calculate the charges by themselves.

Most of RU lamented that tariffs are not clearly explained and this don't allow the RU to make preliminary estimation on costs. It is interesting to note that some IM don't provide information on 'charges for minimum access package' but attach the concerned Ministry Decrees to the NS.

IM in general claim that the methodology, rules and scales are described in the NS. With no exceptions, according to IM, in case specific type of charges (such as environmental charges, mark-ups, discount, charges for scarce capacity, performance related charges) are not described in the NS, this is only because they are not applied.

One of the consulted stakeholders has identified some best practices on the NS prepared by VPE, the Hungarian Rail Capacity Allocation Office responsible for the NS for both the Hungarian IM. These are reported in Table 5-2.

**Table 5-2: Best practices individuated by the Stakeholders on the information on charging principles and tariffs**

Stakeholder	NS prepared by	Best practices indicated	Reasons
The Hungarian National Transport Authority	VPE (Hungary)	Charging Methodology	The document displays the methodology through which each charge is calculated, the way justifiable costs and expenses are measured and used for the setting of charges and performance indicators that are used for the charge-setting. The Charging Methodology is prepared every five years by the capacity allocation (and charge-setting) body. The regulatory body checks the compliance of the data collection and the cost allocation determined in the Charging Methodology. The regulatory body is also entitled to check whether the costs and expenses used for the calculation of charges fall within the justifiable costs and expenses in compliance with the Charging Methodology. This procedure enhances transparency and contributes to the setting of charges on the basis of the relevant national and community legislation.

However, it must be considered that, despite the indication from The Hungarian National Transport Authority reported above, the Consultant highlights that the NS prepared by

VPE is only available in Magyar, thus not accessible by foreign operators in an easy manner.

#### 5.4 Best Practices identified by the Consultant

Following the Consultant's assessment, some sections of the NS analysed have been identified as best practices and are reported in the table below.

**Table 5-3: Best practices individuated by the Consultants on the information on charging principles and tariffs**

Country / IM	Best practices indicated	Reasons
Infrabel (Belgium) NS	Charging principles	The section is straightforward and allows calculating a total train charge easily.
Network Rail (UK)	Charging principles	Completeness of the information provided about charging, although the presentation is not particularly clear and straightforward

#### 5.5 Recommendations

The recommendations for the provision of information on charging for the minimum access package are reported in the tables below.

##### General recommendations

5-a	Strongly recommended	The description of charging methodology should be set out in brief in the NS, with a web-link provided for the reader to access further, more detailed information. This should include the data used to determine changes and the analysis undertaken using it.
5-b	Strongly recommended	The rules used for calculating charges should be clearly indicated in the NS, with a web-link provided for the reader to access further, more detailed information.
5-c	Strongly recommended	A table of tariffs should be provided in the NS. These should include all relevant differentiation, e.g. by type of vehicle, line, speed or type of path and make clear whether charges are levied per vehicle-km, train-km, gross tonne-km or path
5-d	Recommended	Where tariffs are complex, a software tool or other aid should be provided for railway undertakings to calculate the charges they will face for a particular traffic flow.
5-e	Recommended	Information should be provided in the NS on whether and how charges are expected to change over the short and medium term. This should include modifications to charges within the existing system of charges, as well as any broader changes to the system of charges that are envisaged.

##### Specific recommendations

5-f	Strongly recommended	Information on charges in the NS should be kept clear and concise, with web-links provided for the further, more complex detail.
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5-g	Strongly recommended	Scales of charges (tariff levels) shall be included even if the charges are not set by the IM, but by another body (Ministry or Regulation Authority).
5-h	Recommended	Where there are different components to the applicable charge – e.g. mark-ups, environmental charges etc – these should be clearly identified (i.e. presented separately from the basic charges) and the rationale for their level explained.
5-i	Strongly recommended	It should be clearly stated that all relevant charging components are identified in the NS, allowing the reader safely to conclude that where a component is not identified, there is no such component to the charging system.
5-j	Strongly recommended	If discounts are provided for, the NS shall clearly specify which lines are concerned, which type of trains are entitled to pay the discounted charges, what is the time period during which the discount will be applicable.
5-k	Strongly recommended	Any performance regime provisions should be clearly explained.

## 6 CHARGES FOR SERVICES

### 6.1 Expected minimum content of the network statement according to Directive 2001/14/EC

As per Annex I point 2 of Directive 2001/14/EC, the NS shall include “*sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Article 7(4) and (5) and Articles 8 and 9. It shall contain information on changes if charges already decided upon or foreseen*”.

As stated in Annex II point 2 of the same Directive, “*Track access to services facilities and supply of services shall comprise:*

- a) *use of electrical supply equipment for traction current, where available;*
- b) *refuelling facilities;*
- c) *passenger stations, their buildings and other facilities;*
- d) *freight terminals;*
- e) *marshalling yards;*
- f) *train formation facilities;*
- g) *storage sidings;*
- h) *maintenance and other technical facilities”*

As stated in Annex II point 3 of the same Directive, “*Additional services may comprise:*

- i) *traction current;*
- j) *pre-heating of passenger trains;*
- k) *supply of fuel, shunting, and all other services provided at the access services facilities mentioned above;*
- l) *tailor-made contracts for:*
  - *control of transport of dangerous goods,*
  - *assistance in running abnormal trains”.*

As stated in Annex II point 4 of the same Directive, “*Ancillary services may comprise:*

- m) *access to telecommunication network;*
- n) *provision of supplementary information;*
- o) *technical inspection of rolling stock”.*

Annex A illustrates the information that, according to the RNE guidelines, are to be included in the NS and those that are optional.

### 6.2 Findings of the analysis

#### 6.2.1 Charges for the track access to service facilities

##### Consultant’s assessment

Table 6-1 provides a synthesis of the outcomes of the Consultant's assessment carried out by the Consultant<sup>6</sup> with regards to the charging for the use of service facilities and the supply of the services listed in the Annex II (point 2) of the Directive.

A brief comment on the findings is provided in the next pages.

**Table 6-1: Synthesis of assessment on level of detail of information on charges for service facilities and supply of services listed in Annex II, 2**

Track access to service facilities	Consultant's assessment			
	% of NS with information on charging			
	Yes (also for service facilities managed by other operators)	Yes (only for service facilities managed by IM)	Yes (but information is incomplete)	No
Use of electrical supply equipment for traction current, where available	11%	24%	19%	46%
Access to Refuelling facilities*	3%	14%	19%	64%
Access to Passenger stations, their buildings and other facilities*	3%	39%	11%	47%
Access to Freight terminals*	3%	28%	14%	56%
Access to Marshalling yards*	-	36%	14%	50%
Access to Train formation facilities*	-	36%	14%	50%
Access to Storage sidings*	-	17%	14%	69%
Access to Maintenance and other technical facilities*	3%	10%	14%	73%

\*percentages do not take into account Eurotunnel, which does not provide such service facilities

It can be inferred from the table that exhaustive information on the charging for rail related services is rarely provided. In particular, very few NS supply information on charging for the access to the facilities listed below:

- Re-fuelling facilities
- Access to Storage sidings
- Access to Maintenance workshops and other technical facilities.
- Access to Freight terminals

The number of NS that provide information also for network not managed by the IM is extremely limited.

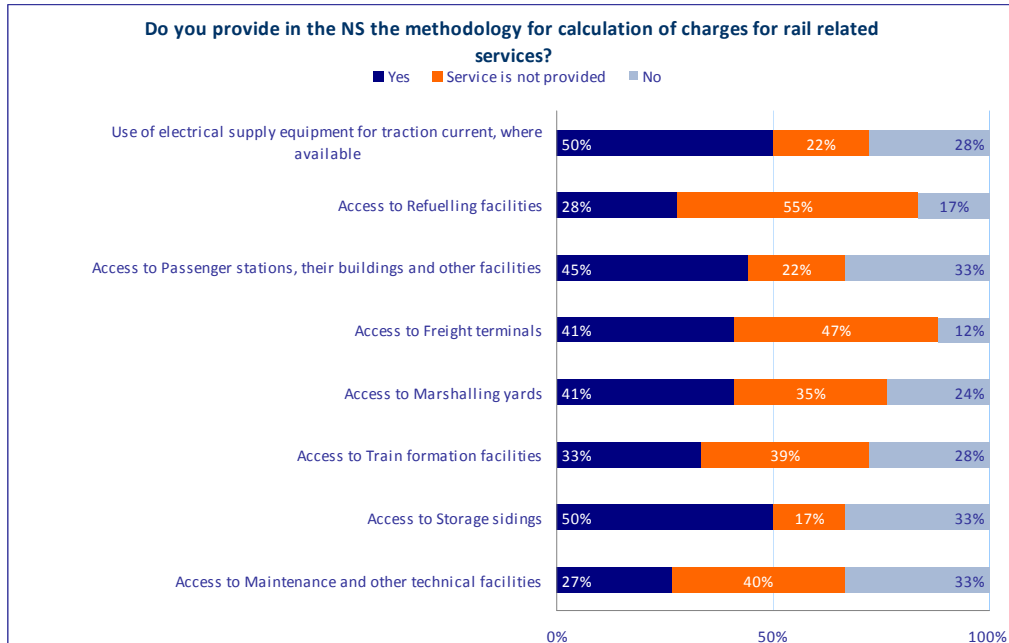
<sup>6</sup> See note 3

Many NS do not provide the tariffs for the additional and ancillary services. Among the likely reasons is the fact that these services are often directly negotiated between RU and service providers, and thus they are not charged on predetermined tariffs published on the NS.

**Answers of Infrastructure Manager (IM) and National Authorities (AU) on the inclusion of methodology for calculation of charges for access to services facilities**

Figure 6-1 shows the answers of infrastructure managers and national authorities on the methodology for the calculation of charges for access to services facilities.

**Figure 6-1: Inclusion of the methodology for calculation of charges for access to service facilities**

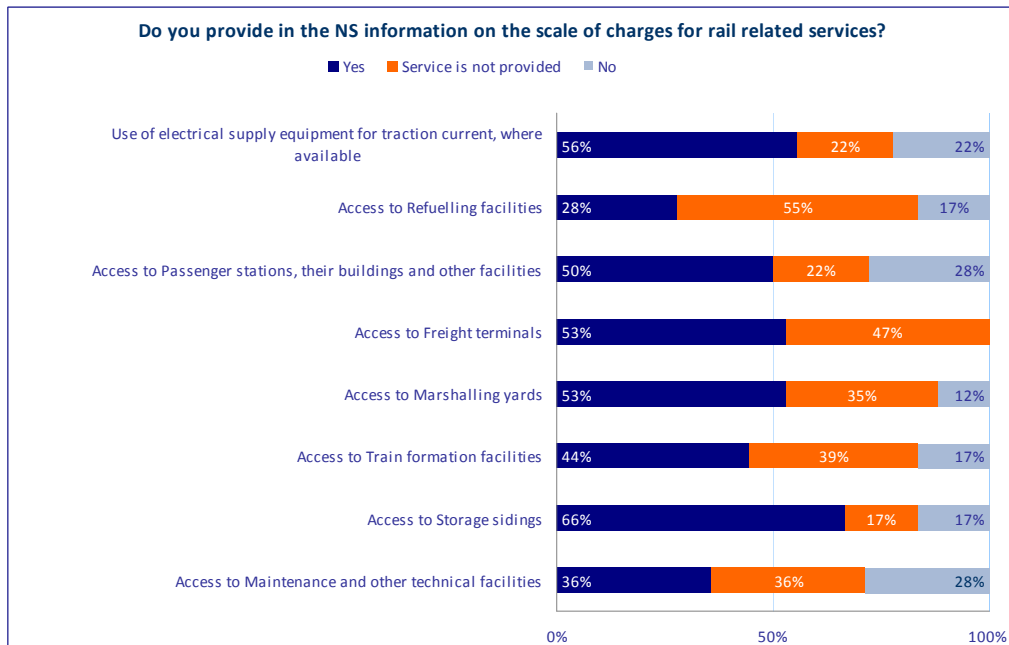


As shown in the figure above, the responses received from infrastructure managers and national authorities on the methodology for the calculation of charges for the access to services facilities, indicate that methodology is usually not presented in the NS. One of the likely reasons is that the IM does not know the methodology because it does not provide the service by itself. However, it should be stressed that, according to art. 5.1 of the directive 2001/14/EC, even in that case the IM “shall use all reasonable endeavours to facilitate the provision of these services”. Therefore the NS should include at least references to external documents providing information on the related charges.

**Answers of Infrastructure Manager (IM) and National Authorities (AU) on the inclusion of information on the scale of charges for rail related services**

Figure 6-2 summarises the answers of infrastructure managers and national authorities on the inclusion of information on the scale of charges for rail related services in the NS.

**Figure 6-2: Inclusion of information on the scale of charges for access to service facilities**



The responses received from infrastructure managers and national authorities on the inclusion of information on the scale of charges for rail related services in the NS indicate that, when a service is available, the NS very often contain information on the scale of the charge.

The most important exception is: ‘access to passenger stations’ and ‘access to maintenance and other technical facilities’. For these service facilities, almost 30% of IM provide no information on charging scales in the NS, despite these being rather important for RU’s decision making.

**Overall considerations**

IM and AU deemed the provision of information of NS more complete than the Consultants did. The most notable examples are the information on the access to storage sidings and to maintenance and other technical facilities, for which the discrepancy between the Consultant’ and the stakeholders’ assessments is very evident.

An exception instead, is represented by the information on access to train formation facilities, for which the results of the two activities are similar.

**6.2.2 Charges for additional and ancillary services**

**Consultant’s assessment**

Table 6-2 and Table 6-3 provide a synthesis of the outcomes of the analysis carried out by the Consultant with regards to the charging for the use of service facilities and the supply of the services listed in the Annex II (point 3 and 4) of the Directive.

A brief comment on the findings is provided in the following pages.

**Table 6-2: Synthesis of assessment on level of detail of information on charges for ‘additional services’ listed in Annex II, point 3**

Additional services	Consultant's assessment			
	% of NS with information on charging*			
	Yes (also for service managed by other operators)	Yes (only for services managed by IM)	Yes (but information is incomplete)	No
Supply of Traction current	14%	22%	17%	47%
Pre-heating of passenger trains	3%	14%	8%	75%
Supply of diesel fuel, shunting services ...	3% - 6%	11% - 20%	6% - 11%	63% - 80%
Tailor-made contracts for Control of transport of dangerous goods	-	8%	17%	75%
Tailor-made contracts for assistance in running abnormal trains	3%	8%	17%	72%

Note: Percentage range due to the fact that the information is a synthesis of several aspects.

**Table 6-3: Synthesis of assessment on level of detail of information on charges for ‘ancillary services’ listed in Annex II, point 4**

Ancillary Services	Consultant's assessment			
	% of NS with information on charging*			
	Yes	Yes (only for services managed by IM)	Yes (but information is incomplete)	No
Access to telecommunication network	-	9%	14%	77%
Provision of supplementary information	-	14%	19%	67%
Technical inspection of rolling stock	3%	3%	14%	81%

Note: Percentage range due to the fact that the information is a synthesis of several aspects.

The tables show that, according to the Consultants' analysis, detailed information on the charging for additional and ancillary services is provided only by a limited number of the NS analysed. In particular, nearly no NS supplies information on charging for the access to the facilities listed below:

- Pre-heating of passenger trains
- Tailor-made contracts for Control of transport of dangerous goods
- Access to telecommunication network;

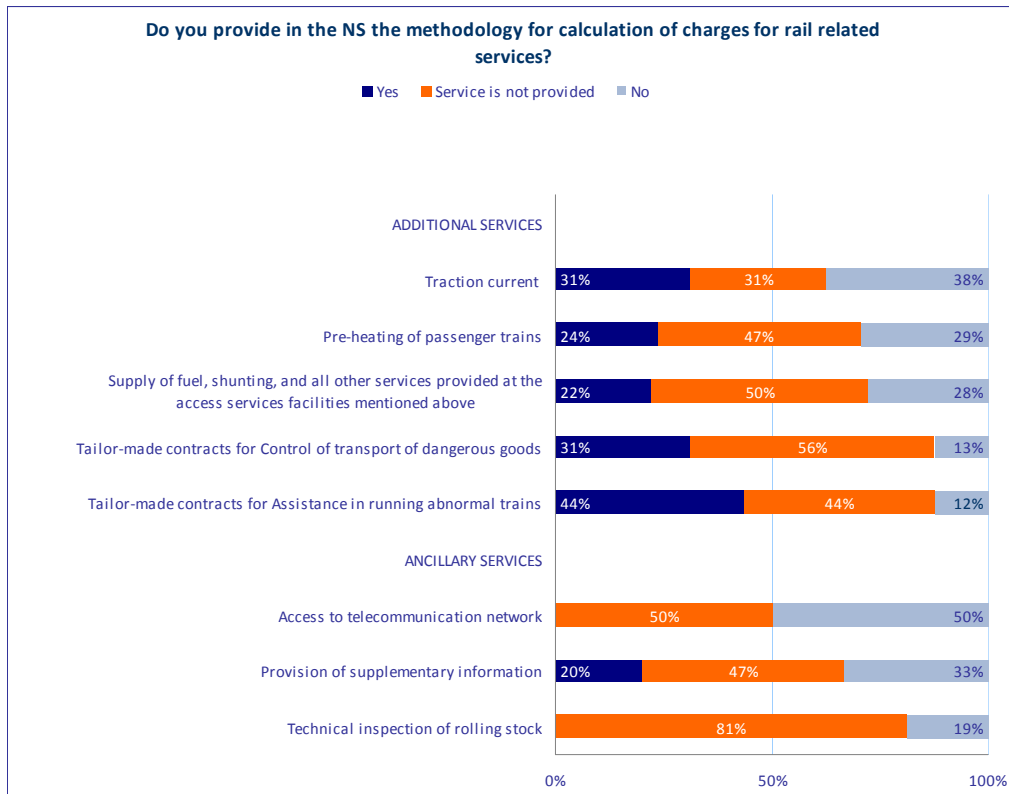
- Technical inspection of rolling stock.

The overall level of information on additional and ancillary services by NS was considered rather low.

**Answers of the Infrastructure Managers and National Authorities on the methodology for calculation of charges for additional and ancillary services**

Figure 6-3 shows the answers of infrastructure managers and national authorities on the methodology for calculation of charges for additional and ancillary services.

**Figure 6-3: Inclusion of the methodology for calculation of charges for rail related services in the NS**



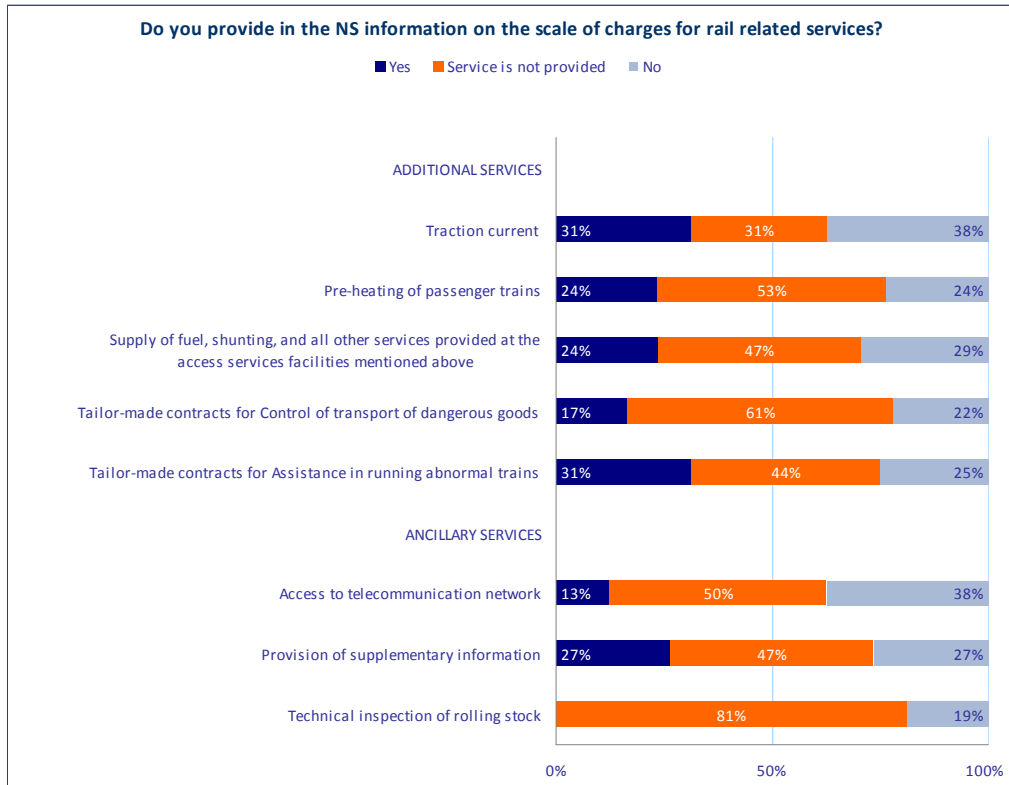
As for ‘track access to service facilities’, the methodology for calculation of charges for additional and ancillary services is not generally provided. However, in very many cases this is due to the fact that the IM don’t provide such services.

The services for which a description of charging methodology is more often not included in the NS are: ‘traction current’, ‘access to telecommunication network’, ‘provision of supplementary information’. For these services more than 30% of respondent IM / AU provide no information on charging methodology in the NS.

**Answers of the Infrastructure Managers and National Authorities on the scales of charges for additional and ancillary services**

Figure 6-4 summarises the answers of infrastructure managers on the inclusion of information on the scale of charges for additional and ancillary services in the NS.

**Figure 6-4: Inclusion of information on the scale of charges for rail related services in the NS**



According to respondent IM / AU, in a considerable number of cases, even if a service is available, the NS doesn't contain information on the scale of the charge. Emblematic cases are: 'traction current' and 'access to telecommunication network'. For these services almost 40% of respondent IM / AU don't provide information on scale for charging in the NS.

**Overall considerations**

It can be noted by comparing the Consultant's assessment with the stakeholders' responses that there are relevant differences. This is mainly due to the fact that the IM and the AU deem the provision of information of NS more complete than the Consultants did.

The most notably examples of this tendency are the information on charging for the assistance in running abnormal trains; on one hand the Consultants found that the information is fully or partially provided by only 28% of NS, on the other hand the IM and AU declared that the information on charging methodology and scales is provided respectively by 44% and 31%.

However, it appears from both points of view that the provision of information on this section is rather low. One reason is that many services are not provided directly by the IM,



since they are supplied by third parties, RU are invited to contact the service providers in order to get information on the charging.

### 6.3 Best Practices and comments provided by the Stakeholders

Some IM reported that in many cases the access to service facilities is provided by other entities than the IM; thereby IM might not dispose of information about charging of such service facilities. No best practice was identified by stakeholders on this topic.

As for the general information on service and service facilities, some IM explicitly stated that they do not consider themselves to be in charge of providing such information in the NS in case the facilities are leased to other operators. In such cases, they also do not have information on the charges applied by such operators to third parties.

Besides, in some Countries the managing entities define the charges by negotiation (on commercial basis), so there is not a “list of charges” that the IM can obtain from the service operators for the publishing on the NS.

### 6.4 Best Practices identified by the Consultant

No best practices were identified for this section in any of the NS analysed by the Consultant.

### 6.5 Recommendations

The recommendations on charges for services that arose from the Consultant’s assessment and the Stakeholders’ consultation are presented below. Each recommendation is presented together with the degree of importance attributed to it.

#### Charges for access to service facilities and supply of services

6-a	Strongly recommended	Where the service facilities are owned and operated by the IM or associated companies, an outline of the principles on which the applicable charges are based shall be provided, as well as the charging levels for the basic services, if the information is complex the detail can be provided via web-links.
6-b	Strongly recommended	Where the service facilities are not owned or operated by the IM, contact points and web-links for information on charging for the owners/operators should be provided.

The same recommendations synthesized in the table above apply to the section of the NS on the charging for “additional and ancillary services”.

## 7 CAPACITY ALLOCATION

### 7.1 Expected minimum content of the network statement according to Directive 2001/14/EC

Art 3 point 2 of the Directive states that the NS “shall contain information setting out the conditions for access to the relevant railway infrastructure”. As per Annex I point 2 of Directive 2001/14/EC, the NS shall contain “a section on the principles and criteria for capacity allocation. This shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:

- a) the procedures according to which applicants may request capacity from the infrastructure manager;
- b) the requirements governing applicants;
- c) the schedule for the application and allocation processes;
- d) the principles governing the coordination process;
- e) the procedures which shall be followed and criteria used where infrastructure is congested;
- f) details of restrictions on the use of infrastructure;
- g) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.

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

Art. 16 point 2 of the same Directive foresees that “the infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published as part of the allocation principles in the network statement”.

As per art. 17 point 6 of the Directive: “while respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party”

As stated in art. 22 point 6 of the Directive “The procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement”.

Annex A illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

### 7.2 Findings of the analysis

#### Consultant’s assessment

Table 7-1 reports the number and relative percentages of NS that provide information on capacity allocation. It can be noticed from the table that:

- most NS provide principles and conditions for capacity allocation, as well as information on the principles governing the coordination process;
- a limited number of NS provide a detailed schedule of the allocation process;
- information about procedure in case of congested infrastructure is supplied by just over half of the NS;
- information on cooperation for capacity allocation is provided by only about one third of the NS.

The overall result of the assessment of the information provided by NS about “capacity allocation” is that this section is largely impacted by the specific practices existing in each Country about procedures and rules for the allocation of capacity to the applicants. Thus, missing information does not mean necessarily a lack of clearness or transparency, but different underlying approaches to this aspect.

**Table 7-1: Information on Capacity Allocation**

Topic	Information provided extensively and clearly by
Procedures to request capacity	95% (35 NS)
Capacity allocation procedures and conditions	92% (34 NS)
Detailed schedule of the allocation process	59% (22 NS)
Capacity allocation principles and criteria	81% (30 NS)
Procedures for appeals	59% (22 NS)
Principles governing the coordination process	73% (27 NS)
Procedures in case of congested infrastructure	57% (21 NS)
Priority criteria in case of congested infrastructure	62% (23 NS)
Measures to be taken in the event of disturbance	68% (25 NS)
Cooperation for capacity allocation*	24%-30%

\* Percentage range due to the fact that the information is a synthesis of several aspects

### Opinions of respondent Railway Undertakings

Figure 7-1 presents the opinions of respectively Incumbent RU and New operator RU on the level of information on capacity allocation issues.

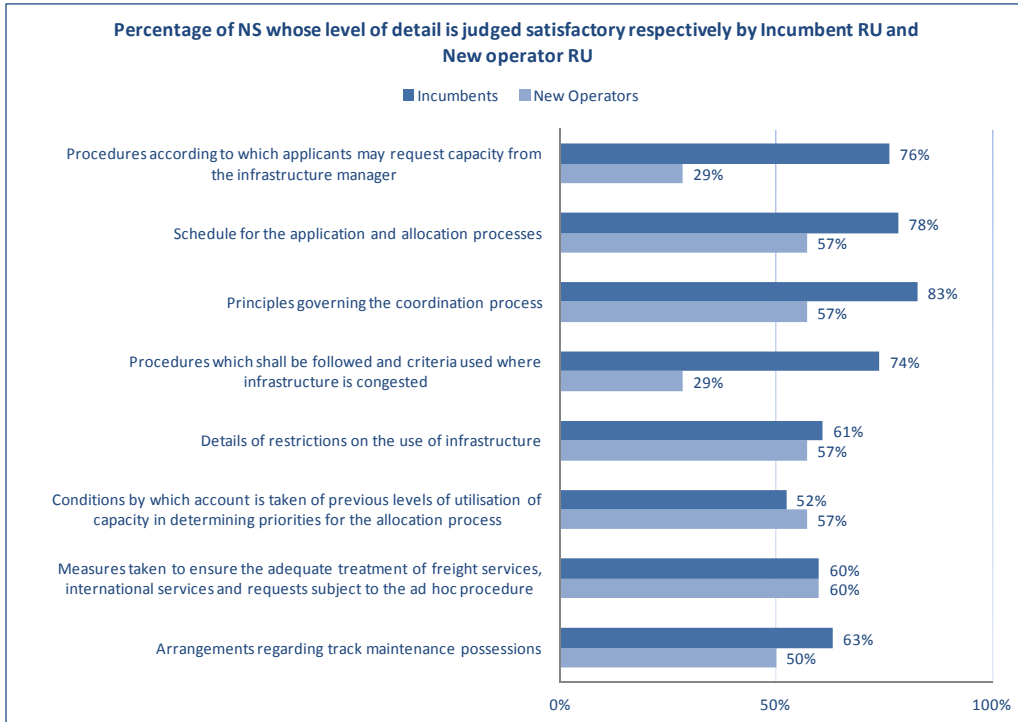
As it can be noted from the table, in most cases RU expressed satisfaction about the level of detail of NS. Nevertheless, on a number of topics there is clear disparity of views between Incumbent and New operators, with the latter being much less satisfied.

Discrepancies of opinions are more accentuated on ‘procedures to request capacity’ and on ‘Procedures which shall be followed and criteria used where infrastructure is

congested'. Differences of opinion are relevant also for 'Schedule for the application and allocation processes' and for 'Principles governing the coordination process'.

As an example, with regards to 'procedures to request capacity' according to new operators only 29% of NS are reckoned to provide a satisfactory level of information even if 94% of NS, actually, include description of such topic (cf. Table 7-1).

**Figure 7-1: Opinions of RU on the level of detail of NS on the provision of information on capacity allocation issues**



**7.3 Best Practices and comments provided by the Stakeholders**

Several comments were provided by RU on the procedures according to which applicants may request capacity from the infrastructure manager. Some lamented that procedures are over formalistic and that the availability of a direct contact would be beneficial. It was also reported that time required to allocate spot traffic might not be in line with market demand. Some RU declared that it would be very useful to have information on residual capacity.

With regards to track maintenance possessions many RU lamented that restricted use because of track maintenance is not communicated with adequate notice. In addition financial consequences for instance for rerouting trains are not covered by IM.

The consulted stakeholders have identified some best practices, as explained below.

**Table 7-2: Best practices individuated by the Stakeholders on the information on the nature of the railway lines**

Stakeholder	IM	Best practices indicated	Reasons
Nederlandse Spoorwegen (Dutch RU)	ProRail (Netherlands)	Procedure for requesting capacity allocation	High level of details in relation to procedures according to which applicants may request capacity from the infrastructure manager, schedule for the application and allocation processes, principles governing the coordination process.

#### 7.4 Best Practices identified by the Consultant

Following the Consultant's assessment, some sections of the NS analysed have been identified as best practices and are reported in the table below.

**Table 7-3: Best practices individuated by the Consultants on the information on the nature of the railway lines**

Country / IM	Best practices indicated	Reasons
ProRail (Netherlands)	Description of allocation process	The process is presented by a clear scheme, easy to understand.
	Schedule of Path Requests and Allocation Process	Clear and exhaustive. The use of the table improves comprehensibility.
	Further Description of the Processes	Detailed and clear
	Non-usage / Cancellation Rules	Clear and exhaustive
	Exceptional Transports	Unambiguous definition of the types of exceptional transport

#### 7.5 Preliminary recommendations

The Recommendations for the provision of information on capacity allocation are reported in the tables below.

##### General information on availability and nature of infrastructure capacity

7-a	Strongly recommended	The general capacity characteristics / constraints of the available infrastructure should be clearly set out in the NS. This should be, for instance, in maximum number of trains per hour (given a specified mix of types of train).
7-b	Strongly recommended	A clear statement that the allocated capacity is non-transferable and non-tradable should be included in the NS.
7-c	Strongly recommended	It should be clearly indicated where infrastructure is designated for particular specialised traffic; equally, it should be clearly stated where no such designation applies.
7-d	Strongly	Clear information should be provided on capacity reservation for the purposes

	recommended	of maintenance, with possible implications for operations indicated. This would include the days and hours for which each line is closed, or for which capacity is limited, for instance by single track working. Where this is not possible, a commitment should be included to provide this at least a stipulated number of days in advance of the work taking place.
7-e	Recommended	A standardised form for capacity requests should be developed and publicised via the NS; with the form itself being available as an annex or web-link.

### Principles and criteria for capacity allocation

7-f	Strongly recommended	Clear statements of the principles and criteria for capacity allocation should be provided in the NS.
7-g	Strongly recommended	The NS should clearly specify the Coordination Process applied including the timetable.
7-h	Strongly recommended	The NS should provide clear information on the procedures for capacity allocation where capacity is congested, including any prioritisation criteria that apply on congested sections and the timetable.
7-i	Recommended	Where capacity is congested, the NS should clearly indicate the IM's procedure for undertaking Capacity Analysis and preparing its Capacity Enhancement Plan.
7-j	Strongly recommended	The impacts of any Framework Agreements on available capacity should be clearly indicated, with implications for new capacity requests outlined.
7-k	Strongly recommended	The appeals process for challenging decisions on capacity allocation should be clearly set out within the NS, with contact points and web-links provided for any third party arbiters associated with the process and a timetable for considering appeals.
7-l	Strongly recommended	Any 'use it or lose it' provisions should be clearly detailed.
7-m	Recommended	Allocation principles should be presented also for the capacity of service facilities, in case these are managed by the IM.

## 8 COMPLIANCE ASSESSMENT OF NETWORK STATEMENTS TO DIRECTIVE 2001/14/EC

This chapter summarises the results of both the consultant's assessment of NS and the legal assessment, making a comparison of the level of univocity of the provisions of the directive and the compliance level of compliance of NS with its provisions.

The tables that follow refer to the provisions of Directive 2001/14/EC as regards the information that must be made available in the NS for each aspect (assess conditions, infrastructure, capacity allocation, services and charges). The justification for each judgement can be found in the Legal Assessment (Annex B).

The following judgements were made on clarity and univocity of each provision of the Directive:

- **Clear and univocal** means that the provision is immediately understandable and is not prone to any misinterpretation. Thus the legal bindingness is strong.
- **Susceptible to misinterpretation** means that the provision may be interpreted in more than one way, leading to different NS providing the information in a different way or with varying degrees of exhaustiveness. The legal bindingness may be weakened by such lack of univocity.
- **Very susceptible to misinterpretation** means that the provision is formulated in such a way that leaves much ground for diverging interpretations. The legal bindingness is very limited, as the norm may be ignored by IM

### 8.1 Access conditions

Provisions	Articles	Univocity / bindingness	Percentage of NS providing the information extensively and clearly*
It (the network statement) shall contain information setting out the conditions for access to the relevant railway infrastructure.	Art. 3.2	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	97%
The network statement referred to in Article 3 shall contain the following information: 1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it.	Annex I point 1	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	59-97%
While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.	Art.17.6	<ul style="list-style-type: none"> <li>□ clear and univocal</li> <li>■ susceptible to misinterpretation**</li> <li>□ very susceptible to misinterpretation</li> </ul>	22-59%

\*Note: Percentage range due to the fact that the information is a synthesis of several aspects.

*\*\* Specifically, art. 17 is mostly about principles and thus not very specific in terms of implementation, then there is no provision, except from point 6, which requires the FA to be included in the NS. Art. 17.6 requires the general nature of FA to be made available to any interested party, “general nature” being a rather vague term. See Annex B for a more detailed discussion.*

## 8.2 Available infrastructure

Provisions	Articles	Univocity / bindingness	Percentage of NS providing the information extensively and clearly
The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure. The content of the network statement is laid down in Annex I.	Art. 3.2	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	79-90%
The network statement referred to in Article 3 shall contain the following information:  1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it.	Annex I point 1	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	
When infrastructure has been designated pursuant to paragraph 2, this shall be described in the network statement.	Art 24.3	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	70% (specific traffic restrictions)



### 8.3 Services

Provisions	Articles	Univocity / bindingness*	Percentage of NS providing the information extensively and clearly
The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure. The content of the network statement is laid down in Annex I.	Art. 3.2	<input type="checkbox"/> clear and univocal <input checked="" type="checkbox"/> susceptible to misinterpretation* <input type="checkbox"/> very susceptible to misinterpretation	- see figures below
The network statement referred to in Article 3 shall contain the following information:  1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it.	Annex I point 1	<input type="checkbox"/> clear and univocal <input checked="" type="checkbox"/> susceptible to misinterpretation* <input type="checkbox"/> very susceptible to misinterpretation	MAP x% Additional Services 11-39% Ancillary Services 11-22%

\* The definition of “Infrastructure” in the Directive is not explicit about service facilities. In fact, service facilities under Annex II.2 are not explicitly listed as part of the infrastructure in relevant EU Regulations, i.e.:

- Dir 91/440/EC states that “railway infrastructure” shall mean all the items listed in Annex I.A to Commission Regulation (EEC) N° 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) N° 1108/70(1), 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’”
- Regulation 2598/70/EEC states, in the Annex I.A, that:
 

*“Railway infrastructure consists of the following items, provided that 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; 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, and 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 traversers (except those reserved exclusively for locomotives);*
  - *Access way for passengers and goods, including access by road;*
  - *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 : sub-stations, supply cables between sub-stations and contact wires, catenaries and supports; third rail with supports;*
- *Buildings used by the infrastructure department, including a proportion in respect of installations for the collection of transport charges.”*

## 8.4 Charges for minimum access package

Provisions	Articles	Univocity / bindingness	Percentage of NS providing the information extensively and clearly
<p>The network statement referred to in Article 3 shall contain the following information:</p> <p>...2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Article 7(4) and (5) and Articles 8 and 9.</p>	Annex I point 2 and Annex II point I	<ul style="list-style-type: none"> <li><input type="checkbox"/> clear and univocal</li> <li><input checked="" type="checkbox"/> susceptible to misinterpretation*</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	Charges for access to infrastructure 100% (individual aspects covered by 14-43% of NS)
<p>The network statement referred to in Article 3 shall contain the following information:</p> <p>...2. A section on charging principles and tariffs.... It shall contain information on changes in charges already decided upon or foreseen.</p>	Annex I point 2 and Annex II point I	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	100% (with varying degree of exhaustiveness for each aspect)
<p>The infrastructure charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.</p>	Art 7.4	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	27% (not applicable in 43% of NS)

*\*The main problem with Annex I.2 is that the provision is limited to the situation when the services listed in Annex II are provided by only one supplier. This might be too general to cope with the far more complex situation in the real market and may cause uncertainties as regards the provision of information in the NS. See Annex B for a more detailed discussion.*

<p>The infrastructure charge may be modified to take account of the cost of the environmental effects caused by the operation of the train. Such a modification shall be differentiated according to the magnitude of the effect caused.</p> <p>Charging of environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is applied at a comparable level to competing modes of transport.</p> <p>In the absence of any comparable level of charging of environmental costs in other competing modes of transport, such modification shall not result in any overall change in revenue to the infrastructure manager. If a comparable level of charging of environmental costs has been introduced for rail and competing modes of transport and that generates additional revenue, it shall be for Member States to decide how the revenue shall be used.</p>	Art 7.5	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	14% (not applicable in 56% of NS)
<p>In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimum competitiveness in particular of international rail freight. The charging system shall respect the productivity increases achieved by railway undertakings.</p> <p>The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.</p>	Art 8.1	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	40% (not applicable in 30% of NS)

<p>For specific investment projects, in the future, or that have been completed not more than 15 years before the entry into force of this Directive, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/or cost-effectiveness and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.</p>	Art 8.2	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	- not assessed
<p>Infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.</p> <p>Discounts may relate only to charges levied for a specified infrastructure section.</p> <p>Similar discount schemes shall apply for similar services.</p>	Art 9.3-9.5	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	43% (not applicable in 27% of NS)
<p>1. Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.</p> <p>2. Where an operator receiving compensation enjoys an exclusive right, the compensation must be accompanied by comparable benefits to users.</p> <p>3. The methodology used and calculations performed must be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided</p>	Art 10	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	- not assessed

<p>and to ensure that the scheme is granted on non-discriminatory terms to undertakings.</p> <p>4. Member States shall ensure that such a scheme is compatible with Articles 73, 87 and 88 of the Treaty.</p>			
<p>1. Infrastructure charging schemes shall through a performance scheme encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network. This may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better than planned performance.</p> <p>2. The basic principles of the performance scheme shall apply throughout the network.</p>	Art 11	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	27% (not applicable in 16% of NS)
<p>Infrastructure managers may levy an appropriate charge for capacity that is requested but not used. This charge shall provide incentives for efficient use of capacity.</p>	Art 12 Para.1	<ul style="list-style-type: none"> <li>■ clear and univocal</li> <li>□ susceptible to misinterpretation</li> <li>□ very susceptible to misinterpretation</li> </ul>	70% (non usage/cancellation rules including penalties)

## 8.5 Charges for services

Provisions	Articles	Univocity / bindingness	Percentage of NS providing the information extensively and clearly
<p>The network statement referred to in Article 3 shall contain the following information:</p> <p>2. A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Article 7(4) and (5) and Articles 8 and 9.</p>	Annex I point 2 and Annex II point 2	<input type="checkbox"/> clear and univocal <input checked="" type="checkbox"/> susceptible to misinterpretation* <input type="checkbox"/> very susceptible to misinterpretation	10-40% <i>(only for service facilities managed by IM)</i>
<p>The network statement referred to in Article 3 shall contain the following information:</p> <p>...2. A section on charging principles and tariffs.... It shall contain information on changes in charges already decided upon or foreseen.</p>	Annex I point 2	<input checked="" type="checkbox"/> clear and univocal <input type="checkbox"/> susceptible to misinterpretation <input type="checkbox"/> very susceptible to misinterpretation	30%
<p>Where services listed in Annex II, points 3 and 4 as additional and ancillary services are offered only by one supplier the charge imposed for such a service shall relate to the cost of providing it, calculated on the basis of the actual level of use.</p>	Art 7.8	<input checked="" type="checkbox"/> clear and univocal <input type="checkbox"/> susceptible to misinterpretation <input type="checkbox"/> very susceptible to misinterpretation	Additional services 8-22% Ancillary services 3-14% <i>(only for service facilities managed by IM)</i>

\* See comments to point 8-4.

### 8.6 Capacity allocation

Provisions	Articles	Univocity / bindingness	Percentage of NS providing the information extensively and clearly
<p>The network statement referred to in Article 3 shall contain the following information:</p> <p>3. A section on the principles and criteria for capacity allocation. This shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:</p> <p>a) the procedures according to which applicants may request capacity from the infrastructure manager;</p> <p>b) the requirements governing applicants;</p> <p>c) the schedule for the application and allocation processes;</p> <p>d) the principles governing the coordination process;</p> <p>e) the procedures which shall be followed and criteria used where infrastructure is congested;</p> <p>f) details of restrictions on the use of infrastructure;</p> <p>g) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.</p> <p>It shall detail the measures taken to ensure the adequate treatment of freight services, international services and requests subject to the ad hoc procedure.</p>	<p>Annex I point 3</p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	<p>92% (with varying degree of exhaustiveness for each aspect)</p>



<p>2. The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published as part of the allocation principles in the network statement, and the Commission shall be informed.</p> <p>3. The requirements in paragraph 2 may only include the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant, and assurance of the capability to prepare compliant bids for infrastructure capacity.</p>	Art. 16.2-3	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	73% (requirements governing applicants)
<p>While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.</p>	Art.17.6	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	59%
<p>The infrastructure manager shall adhere to the schedule for capacity allocation set out in Annex III.</p>	Art. 18.1	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	59%
<p>1. Where after coordination of the requested paths and consultation with applicants it is not possible to satisfy requests for infrastructure capacity adequately then the infrastructure manager must immediately declare that element of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which it can be foreseen will suffer from insufficient capacity in the near future.</p>	Art 22.1-2	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	57% (procedures in case of congested infrastructures)

<p>The infrastructure manager shall respond to ad hoc requests for individual train paths as quickly as possible, and in any event, within five working days. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.</p>	Art 23.1	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	81%
<p>When infrastructure has been designated pursuant to paragraph 2, this shall be described in the network statement.</p>	Art 24.3	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	70%
<p>1. In particular for congested infrastructure the infrastructure manager shall require the surrender of a train path which, over a period of at least one month, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the operator's control.</p> <p>2. An infrastructure manager may specify in the network statement conditions whereby it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.</p>	Art 27	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> clear and univocal</li> <li><input type="checkbox"/> susceptible to misinterpretation</li> <li><input type="checkbox"/> very susceptible to misinterpretation</li> </ul>	14% (conditions of previous capacity utilisation to set priorities for allocation)

## 9 SPECIAL NEEDS OF AUTHORISED APPLICANTS AS REGARDS NETWORK STATEMENTS

Article 16 of Directive 2001/14/EC provides that applications for capacity may be made, in the Countries which allow so, by entities other than RU. The concept of Authorised Applicant (AA) is strictly meant to allow certain types of entities, which are not Railway Undertakings, to purchase capacity from the IM. Therefore, RU would find themselves in competition with these entities for capacity allocation, which is expected to bring dynamism to the market.

As indicated in paragraph 1.3, the Stakeholders' Consultation saw the involvement, among others, of RU and AA from 23 Countries. Unfortunately only one AA replied to the questionnaire.

The consultee expressed general discontentment with regards to the two network statements it has been using. However it is important to point out that the respondent AA rarely commented on the quality of information provided and, conversely, it provided numerous complaints on operational issues.

For instance, the AA lamented that the principles governing the coordination process are not transparent and would require more supervision by the Regulator. It also pointed out that it would be too early to take in account of previous levels of utilisation of capacity in determining priorities for the allocation process since this would give priority to the incumbents.

With regards to track access to service facilities the AA complained about the unavailability of marshalling yards that were all rented to incumbents. Also, availability of storage sidings is considered not satisfactory because many of these facilities were removed. Information on access to Freight terminals is not considered satisfactory, since shunting has to be arranged directly by the transport operator.

The AA suggested that the use of track sections should be published on internet. Finally, with regards to harmonisations of NS, the AA believes that the availability of different NS allows for identify best practices; by contrast premature harmonisation might result in setting poor levels of quality for NS.

At request of the consultant, RNE carried out an additional survey on IM, investigating issues related to Authorised Applicants and Framework Agreements. The consultant also interviewed the European Rail Infrastructure Managers (EIM) about special needs of AA.

The responses from 20 IM to RNE's survey show that:

- Nine IM out of 20 (plus one further IM, contacted by EIM at request of the consultant) accept AA's applications for capacity. Some IM do not accept AA's applications because, according to the national laws of their countries, only licensed RU are allowed to apply for train paths. One IM in particular does not accept AA for requests of specific train-paths, but only in the context of pluriannual framework-agreements;
- Seven IM out of 20 (plus one further IM, contacted by EIM at request of the consultant) report applications from AA for requesting capacity. One IM in particular has received 16 applications from AA.

It can be seen from these data that, at the present, AA play a minor role in applying for capacity, as the vast majority of capacity requests are still done by RU, as also confirmed by EIM.

For what concerns the needs of AA identified by IM As regards the NS, no specific needs have emerged either from the consultation carried out by the consultant or from the survey carried out by RNE. In fact, apart from the information on who can apply for a train path and which types of RUs can perform train operations (therefore which RUs the authorized applicant can choose from), there are no other specific references to AA in the NS, as all remaining information should be of interest to all, being them just RU or AA.

According to the IM that responded to RNE's survey, usually AA need general assistance and support in applying for capacity, especially with regard to the technical specifications of required train paths and in drafting the scheme of services. One of the IM suggested that there is the need to inform potential AA of the possibility to become an AA and guide them for the purpose.

The advantages of having the possibility of accepting requests from AA in addition to RU can be significant in terms of simplification of the capacity allocation process carried out by IM. In fact, it has been reported by one IM that in some cases, more than one RU (freight) apply for identical train paths in areas and on lines where there is only one industry, which put out a tender for its transport needs. Especially in cases like this, it would be preferable that the industry was an AA, in order to save the IM a large amount of unnecessary work.

RNE expressed its views to the consultant on AA with regard to some aspects that can be further analysed. These can be summarized as follows:

- The content of the contract between an AA and the IM – Rights and Obligations of each part. This contract should have some similarities to the Access Contract signed between RU and IM. This should not be confused with the Framework Agreements, where being an AA or an RU should have no special differences;
- The entity responsible for paying the access charges – the AA or the RU selected by the AA;
- Specific information that the IM should supply to the AA, as the AA will have much lesser information needs than the RU, namely all that concerns detailed technical conditions. However, information that may affect the AA planning of services, as an example "availability of the infrastructure", should be considered;
- Eventual specific services that the IM may offer in support of the capacity allocation process, as the AA may not have the sufficient know-how to prepare complete path requests.

In EIM's view, in general it can be expected that AA need to be able to easily operate the process of booking train paths for their traffic, to ensure control of the costs and flexibility in timing. In addition, in some countries, such as the UK, once the path is agreed, the AA is able to tender for the haulage and choose the best tender based on quality and price.

Whilst no particular NS-related issues arise in relation to AA, EIM stressed the importance to note that AA need mutual recognition along corridors.

## 10 HARMONISATION OF RAIL NETWORK STATEMENTS

### 10.1 Costs and benefits of harmonisation

The inclusion of additional or more detailed information in the network statement, as well as the harmonisation of the contents of network statements and the preparation of corridor statements, is likely to imply the imposition of additional costs on the concerned stakeholders.

In particular:

- IM would have to bear additional costs for the collection and presentation of required additional or more detailed information compared to the ones presented in most existing NS;
- providers of services included in Annex 2 of Directive 2001/14/EC could face additional costs as well, since they may be required to contribute by supplying information on the services provided for inclusion in the NS;
- finally, regulatory bodies may incur in additional costs in order to verify the additional information to be included in the national NS.

Nevertheless, a large part of these expected additional costs can be considered to be one-off costs; in fact, once the NS is revised according to new guidelines, the IM will only have to update it when needed; this would not constitute an additional burden since IM are already supposed to undertake this activity regularly.

Furthermore, it should be considered that a network statement which provides exhaustive information would reduce the additional requests of information from RU, thus lowering the costs for IM for satisfying RU's additional requests of information.

Needless to say, RU and authorised applicants will take benefit of the improved information level, since they will be in the position to better evaluate alternative routes for their train services in terms of infrastructure constraints, charges applied, available services and service facilities, and available capacity. A more rational use of the available capacity is also likely to result from this.

### 10.2 Outcomes of consultation

Railway Undertakings and National Authorities were requested to provide their opinion on the opportunity and feasibility of harmonising rail network statement across Europe.

As shown in Table 10-1, the large majority of respondent RU (13) consider that harmonisation of NS is desirable. 3 RU believe that harmonisation is useful but there are issues that need further discussion. 3 RU stated that harmonisation of NS is not desirable at least at this point. Finally, 2 RU believe that harmonisation of RU is not relevant for their business.

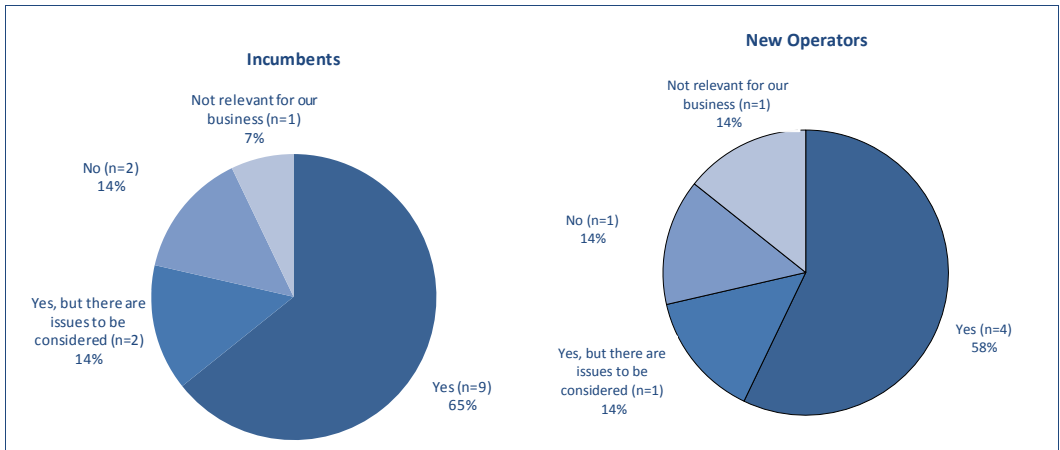
**Table 10-1: Opinion of RU on the importance of harmonising NS across Europe**

Share / No. of respondent RU	Opinion	Comments / Remarks
62% / 13 RU	Yes	Harmonisation will help to define the conditions for using the infrastructure all across the EU. RU shall be included in the process of harmonization of NS to make sure that

		<p>their positions are regarded sufficiently.</p> <p>Some special information, etc. should be allowed because of the different circumstances and business cases on every country</p>
14% / 3 RU	Yes, but there are issues to be considered	<p>It will be useful only if it provides one centralised tool for the consultation and the order of all the paths through the different country.</p> <p>Network Statement is a too serious document to be left to the discretion of infrastructure Managers on their own.</p> <p>Harmonization of NS should not be an harmonisation of services to the lowest common denominator resulting in an excessive simplification of Network Statements.</p> <p>Country specific setting should not be neglected. Decreasing the quality of the network statement to promote harmonisation is not acceptable.</p>
14% / 3 RU	No	<p>Further harmonisation is not needed. The existing legislation has to be implemented in all EU Member States.</p> <p>Having different NS allow for individuating best practices. Harmonising now may result in downward levelling.</p>
10% / 2 RU	Not relevant for our business	

Figure 10-1 compares the opinions of Incumbents and New operators on the importance of harmonising NS across Europe. The views of the two groups are, in this case, similar.

**Figure 10-1: Opinions of Incumbent RU versus New Operator RU on the importance of harmonising NS across Europe**



Also the majority of National authorities and Ministries (11) consider that harmonisation of NS is desirable (see Table 10-2). 4 Authorities believe that harmonisation is useful but there are issues that need further discussion. Finally, 2 Authorities believe that harmonisation of NS is not suitable.

**Table 10-2: Opinion of National Authorities and Ministries (AU) on the desirability of harmonising NS across Europe**

Share / No. of respondent AU	Opinion	Comments / Remarks
65% / 11 AU	Yes	<p>A standardised form and structure may help the opening up the market and reduce entry barriers. In the process of harmonisation, co-operation of the regulatory bodies may be useful even if the elaboration of the network statements does not fall under their scope.</p> <p>Complete harmonization can be very complicated in the first phase. However, the setting of common minimum parameters could be useful for the operation of a European railway network.</p>
23% / 4 AU	Yes, but there are issues to be considered	<p>Infrastructure is financed in every country in a completely different way which necessarily leads to different access charges.</p> <p>For small network harmonised NS could result in being more complicated than possibly necessary.</p> <p>Harmonisation of network statements should not result in being an additional cost driver.</p> <p>Harmonisation of NS in terms of detailed information and application: charging scheme, performance scheme and priority rules may be quite hard, due to different interpretation of 2001/14/EC.</p> <p>Harmonisation is desirable and feasible so long as it takes account of the different characteristics of networks.</p>
12% / 2 AU	No	<p>Directive 2001/14/EC provides a sufficient framework for the establishment of the NS. It should be ensured the proper application of existing law.</p>

### 10.3 Recommendations

The recommendations for the harmonization of NS are reported in the table below.

10-a	Recommended	<p>Level of detail: a common level of detail should be agreed amongst IM, in order to provide reasonably detailed information to the RU and authorised applicants that are exploring the possibility of starting new services on the network. The level of detail should be such as to allow discerning the characteristics of the single branches, in view of planning and estimating the feasibility and viability of new services.</p>
10-b	Recommended	<p>In perspective, the use of web tools should be encouraged in order to provide RU with up to date and sufficiently detailed information, especially in view of international cooperation between IM (e.g. for International Corridors)</p> <p>To this aim EICIS* - the existing European Infrastructure Charging Information System run by RailNetEurope – could be considered as a good practice to be used by all IM.</p>
10-c	Recommended	<p>NS should include all the points mentioned in Annex I of the Directive 2001/14/EC, clearly stating whether the information is not provided because not applicable (e.g. information on specific services not presented since such services are non provided by the IM; information on discounts and mark-ups on charges not presented since actually they actually do not exist).</p>

\* EICIS allows a FAT calculation of the access charges for cross-border train paths, including station fees and shunting fees. At the present, the system covers 16 European rail infrastructure networks and is used by 350 users from 21 countries. The use of such system should be encouraged and extended across Europe.

## 11 PREPARATION OF CORRIDOR STATEMENTS

Railway Undertakings and Infrastructure Managers were requested to provide their opinion on the opportunity and feasibility of preparing corridor statements. The Corridor Statement would pull together all the relevant information on an international rail freight corridor, covering all the Countries through which it passes in one document.

As shown in Table 11-1, most respondent RU (11) believe that corridor statements are desirable. 3 RU think that CS are useful but there are issues that need further discussion. 3 RU consider CS not desirable. Finally, 4 RU stated that CS are not relevant for their business.

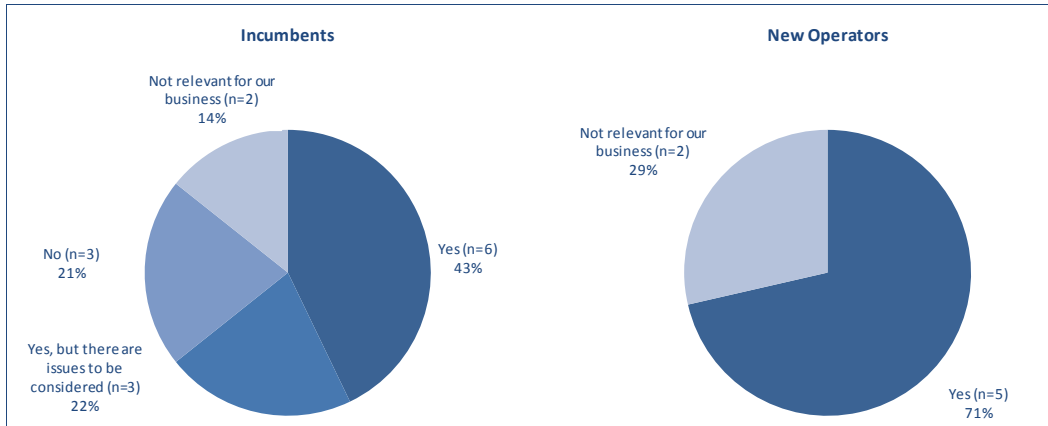
**Table 11-1: Opinion of RU on the importance of preparing corridor statements**

Share / No. of respondent RU	Opinion	Comments / Remarks
52% / 11 RU	Yes	It will help to see the rail services and the facilities of the rail networks of other countries, and it will facilitate the collection of information. A database on corridor lines would be useful for the passenger operators as well, in particular if they are interested in operating their rolling stock (traction units and coaches) on these corridors. They would find useful the information on the operating conditions on the corridors (max. speed, the required ETCS level and others).
15% / 3 RU	Yes, but there are issues to be considered	A document including all corridors should be considered in the future taking into account that the Regulation of the Railway European Network for Freight Transport is currently under discussion. It would be useful, but only if it is up to date and easily available. Consistence between corridor statements and network statements should be taken care of.
15% / 3 RU	No	Tracks and service facilities are often not provided by the same undertaking.
20% / 4 RU	Not relevant for our business	

Figure 11-1 compares the opinions of Incumbents and New operators on the importance of preparing corridor statements.



**Figure 11-1: Opinions of Incumbent RU versus New Operator RU on the importance of preparing corridor statements**



Some Infrastructure Managers (6) think that the preparation of CS feasible (see Table 11-2). 8 IM think that it is feasible but there are issues that need further discussion. Finally, 2 IM believe that there is no added value in preparing CS.

**Table 11-2: Opinion of Infrastructure Managers (IM) on the feasibility of Corridor Statements**

Share / No. of respondent AU	Opinion	Comments / Remarks
38% / 6 IM	Yes	<p>If the current RNE agreed structure for drafting of Network Statements was amended, the preparation of CS could be possible by compiling the existing texts into a consolidated document.</p> <p>It can provide additional value in presenting the critical values for the different infrastructure-related parameters in a corridor (like lowest axle load limit, smallest loading gauge, etc)</p>
50% / 8 IM	Yes, but there are issues to be considered	<p>It has to be discussed how much content of the national network statements should be covered by a potential corridor statement.</p> <p>To have an added-value, CS should be organised in a quite different way than NS, e.g. : define what is common/different (mainly for chap 2), provide European maps (chap 3), chap 6 could be replaced by an IT tool for calculating prices ...</p> <p>CS should, when possible, be made/updated in an automatic way so that the IM don't have to provide/update information for more than one medium</p> <p>The IM does not dispose of all information necessary to compile a complete corridor statement. Services can also be provided by railway undertakings or specialised industry parties. Therefore they should be involved.</p> <p>It would be realizable only under the condition of a complete harmonization of the national NS, not only with regards to their structure but also of the contents.</p>
12% / 2 IM	No	<p>There are different principles in the scope of providing access to infrastructure as well as differences in organisation of railway traffic in European countries. In practice CS would be a multiplication of several national Network Statements used currently by railway undertaking.</p>

## 11.1 Recommendations

The recommendations for the preparation of corridor statements are reported in the table below.

### Preparation of corridor statements

11-a	Recommended	Corridor statements should present an overview of the corridor, of the infrastructure concerned and of any special arrangements for access and capacity allocation (for instance one stop shops) pertaining to it, with links to the Network Statements of individual infrastructure managers for detail on matters concerning the infrastructure of that manager
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## 12 CONSISTENCY OF NS AND OTHER DOCUMENTS

The Task Specification of the Study asked for a verification of the consistency of NS and other documents, such as the infrastructure registers, maintenance registers and framework contracts.

Issues concerning the **framework contracts** have already been examined in the previous chapters, and in particular chapter 2 concerning the general information on them provided by the NS, and chapter 7 for the aspects relating to the provision of information on the capacity already allocated through this kind of contracts.

No examples of public **maintenance registers** of railway network have been found or made available for the analysis.

The following paragraphs from 12.1 to 12.4 analyse, then, the relationship between **infrastructure registers** and network statements, considering the existing example of the former and their specific legal basis, as well as the opinion on these issues received from the stakeholders' associations.

### 12.1 Legal basis

Directive 2001/14 states in Annex I that the NS shall contain (among others) "A section setting out the nature of the infrastructure which is available to railway undertakings". This includes all sections of the infrastructure managed by the IM and available to RU (open to traffic). No details on what "the nature of infrastructure" exactly means are provided.

Directive 96/48/EC on the interoperability of the trans-European high-speed rail system (amended by Directive 2004/50/EC and 2007/32/EC), introduced the provision that member states shall ensure that a register of infrastructure is published and updated annually.

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, states the following at Article 35:

*1. Each Member State shall ensure that a register of infrastructure is published and updated on the basis of the revision cycle referred to in paragraph 2. This register shall indicate the main features of each subsystem or part subsystem involved (e.g. the basic parameters) and their correlation with the features laid down under the applicable TSIs. To that end, each TSI shall indicate precisely what information must be included in the register of infrastructure.*

*2. The Agency shall prepare draft specifications on this register regarding its presentation and format, its revision cycle and instructions for use, taking into account an appropriate transition period for infrastructures placed in service before the entry into force of this Directive. The Commission shall adopt the specifications in accordance with the regulatory procedure referred to in Article 29(3).*

Accordingly, the Technical Specification of Interoperability for the Trans-European Conventional Rail System – Subsystem Infrastructure developed by the Interoperability Unit of the European Railway Agency (vs. 3.0, 12/12/2008) indicates, for instance, which information concerning the infrastructure subsystem shall be included in the Register of Infrastructure (cf. Figure 12-1).

## Figure 12-1: Information to be included in the Infrastructure Register for the Infrastructure Subsystem (ERA, TSI for the Infrastructure Subsystem, vs3.0, Annex D)

### ANNEX D - ITEMS TO BE INCLUDED IN THE REGISTER OF INFRASTRUCTURE

As stated in section 4.8 of this TSI, this Annex indicates which information concerning the infrastructure subsystem shall be included in the Register of Infrastructure.

Infrastructure subsystem item	Section of this TSI
Route, boundaries and section of line concerned (description)	
Section of Line	
Date of putting into service as an interoperable line	
Category of Line	4.2.1
Gauge	4.2.2
Line Category (Locomotive Classes if relevant) in combination with permitted speed	4.2.2
Line speed	4.2.2
Train length	4.2.2
Conditions for running trains with specific systems to enhance performance level	4.2.3.2
Minimum distance between track centres	4.2.4.2
Maximum gradients	4.2.4.3
Minimum radius of horizontal curve	4.2.4.4
Nominal track gauge	4.2.5.1
Cant	4.2.5.2
Rail inclination for plain line	4.2.5.7.1
Use of braking systems independent of wheel-rail adhesion conditions (Longitudinal track resistance)	4.2.7.2
Usable length of platforms	4.2.10.1
Distance markers	4.2.12.1
Fixed installations for servicing trains (location and type)	4.2.13

The information to be included in the Register of Infrastructure required for other subsystems are also set in the TSIs concerned.

### 12.2 Stakeholders' view

No formal question on the implementation / usefulness of infrastructure register or on the difference between them and the NS have been included in the Consultation's questionnaire (several aspects have been eliminated from the first version in view of reducing the time required for filling in). However, some important elements of the view of the stakeholders on this are presented in the "Joint CER/EIM/RNE input on questionnaire on Network Statements":

*One of CER, EIM and RNE's concerns is to prevent the Network Statement's structure and contents from becoming too similar to those of the Infrastructure Register. While the Infrastructure Register is expected to cover extensive and highly-detailed engineering data, that needs to be updated frequently, Network Statements are of a more commercial nature; they are meant to focus strictly on the information required by Applicants to study and prepare their path requests or other requirements related with the supply of railway services by the IM. The information contained in the NS can eventually be updated if needed, but it is in the interest of the market that its contents are kept as stable as possible. As a consequence, both databases need to be consistent with each other, but their data specifications and updating processes should be kept separate.*

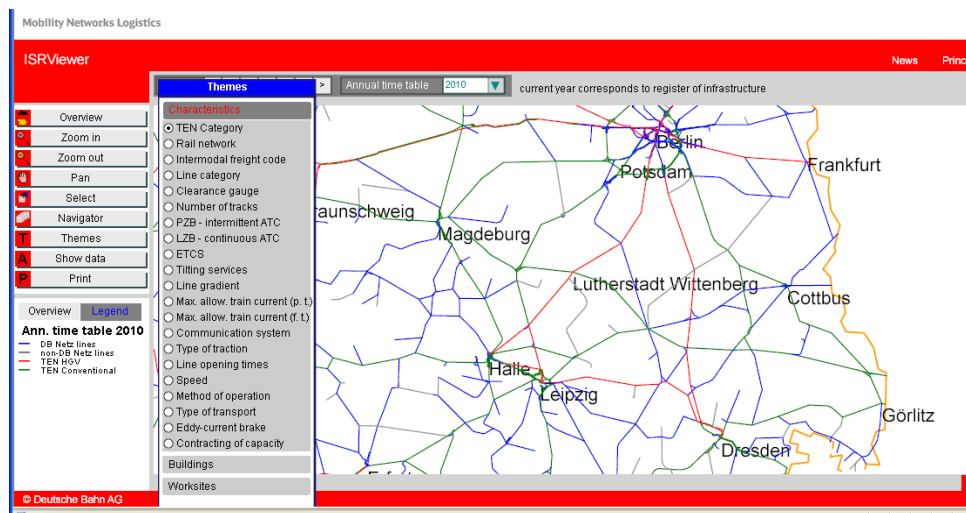
### 12.3 Consultant's assessment

According to the Consultant's analysis, so far, few IM have completed the preparation of the infrastructure registers (IRs). DB Netz AG (Germany) and RHK (Finland) are the examples we have found.

The findings of the analysis of existing IRs are the following:

- according to the German Federal Law (Gazette I S. 1092), following the EC Directive 96/48, a register of infrastructure has to be published to comply with all applicable TSI's; the existing IR of DB Netz AG is divided into a text part (Principles) and the interactive map with the data. The user may obtain maps at different scales for each infrastructure parameters, with colours specifying the characteristics of each section. The zooming function allows a view of such parameter at a very detailed level.

**Figure 12-2: Snapshot from the DB Netz IR's interactive map**



- a section called “Infrastructure Register” is included as an Annex to the RHK's NS; the type of information provided, however, does not appear to differ consistently from what is usually presented in the NS (cf. Figure 12-3).

Figure 12-3: Extract from RHK Infrastructure Register (Annex 1 of the NS)

Likennepaikka (vorkon solmupiste)	Likennepaikka (vorkon solmupiste)	Raidan pituus	Määrätyt kaitteisuus	Sähköistysjärjestelmä	Suojattu tai radio-ohjattu osuus	Junan kulunvalvontajärjestelmä	ERTMS	Kalittavakortin junien JKV-koodaus	Raidiojärjestelmä
Trafficplats (raennäts knutpunkt)	Trafficplats (raennäts knutpunkt)	Raidens längd	Största kaitningen	Elektriferingssystemet	Linjeblockerad eller radiostyrt sträcka	Automatiskt tågkontroll		ATC-kodning av stations lög	Radio system
Traffic operating point (Node of the network)	Traffic operating point (Node of the network)	Length of line [km]	Max. gradient %	Electrification system	Section blocking or radio controlled section	ATP		ATP-coding for fitting trains	Radio system
Helsinki asema	Korava asema	29	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Helsinki asema	Helsinki Länsisatama	4	10	—	—	—	—	—	Linjaraado
Korava asema	Hyvinkää	29	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Hyvinkää	Riihimäki asema	12	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Korava asema	Vuosaari	19	10	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Korava asema	Säikövie	27	10	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Korava asema	Hakosilta	65	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Hyvinkää	Lojja	64	10	—	—	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Lojja	Karjaa	35	10	—	—	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Lojja	Lojjanjärvi	4	15,5	—	—	—	—	—	GSM-R/Linjaraado
Pasila alapiha	Helsinki Sömlänen	3	10	—	—	—	—	—	Linjaraado
Helsinki asema	Huopalahti	6	10	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Huopalahti	Vantaanrasti	9	20	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Huopalahti	Kirkkonummi	31	12,5	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Kirkkonummi	Karjaa	49	12,5	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Karjaa	Hanko asema	50	10	—	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Karjaa	Turku asema	107	12,5	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Turku asema	Turku satama	10	10	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Turku tavara	Turku Veturitunneli	9	10	—	On	—	—	—	GSM-R/Linjaraado
Riihimäki asema	Toijala	70	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Toijala	Turku asema	128	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Toijala	Tampere asema	40	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Toijala	Valkoääski	19	10	—	—	—	—	—	GSM-R/Linjaraado
Turku asema	Raisio	6	10	—	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Raisio	Naantali	6	10	—	—	—	—	—	GSM-R/Linjaraado
Raisio	Uusikaupunki	57	10	—	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Uusikaupunki	Hangonraati	3	11,5	—	—	—	—	—	GSM-R/Linjaraado
Tampere asema	Läsnäli	6	10	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Läsnäli	Kokomäki	91	12,5	AC2	On	ATP-WVFRHK	—	On	GSM-R/Linjaraado
Kokomäki	Kulikalnen	13	12,5	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Kulikalnen	Rauma	34	12,5	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Kulikalnen	Säämä	19	12,5	—	—	—	—	—	Linjaraado
Kokomäki	Poru	36	10	AC2	On	ATP-WVFRHK	—	—	GSM-R/Linjaraado
Poru	Mittelytöto	21	10	—	—	—	—	—	GSM-R/Linjaraado

APPENDIX 1 Infrastructure Register

The choice of RHK is not surprising. Being the TSIs specifying in detail the Infrastructure Register contents developed several years after the emission of Directive 2001/14, most IM have developed NS that are quite detailed in terms of infrastructure description, covering most of the aspects that are now prescribed to be specified in the NS.

### 12.4 Conclusions

The two documents shall now find different roles, structure and contents. The IRs, following 2008/57/EC, has to present not only the “main features of each subsystem or part subsystem involved (e.g. the basic parameters)” but also “their correlation with the features laid down under the applicable TSIs”. The development of interactive tools such as that of DB Netz may facilitate the access to the information at any required level of detail (even km by km, if necessary).

On the other hand, the NS shall also summarise the “main features” describing the “nature of the infrastructure”, and in particular, to our understanding, the aspects that are most critical for verifying access conditions, such as electrification, track gauge, loading gauge, ERTMS level (if any). The information shall be provided for each section (between two junctions), while for more detailed data the IR shall be consulted.

Networks that have not yet developed the IR, such as RFF or RFI, should be able to apply such distinctions when issuing the IR in order to make the most effective use of these two documents.

### 13 ADDITIONAL RECOMMENDATIONS ON THE GENERAL CHARACTERISTICS OF THE NS

Based on the overall analysis performed in this study, some recommendations for the general characteristics of the NS have been also developed.

They are presented in the following table.

13-a	Strongly recommended	The Network Statement should be a self contained document providing all essential information for Railway Undertakings wishing to access the network. Supplementary information should be accessible via web-links, which must be kept live and up-to-date.
13-b	Strongly recommended	Where the Network Statement is produced in a language not widely spoken in neighbouring countries, it should also be produced in English or another appropriate language.
13-c	Strongly recommended	The NS itself should be included in access contracts as a legally binding agreement, although this would not automatically apply to all supplementary information provided in annexes (in particular in case their content is supplied by a third party, e.g. an external rail-related service provider) or via web-links.

## ANNEX A: Directions of the RailNetworkEurope Common Structure and Implementation Guide

This Annex presents the provisions and directions of the relevant European legislation and guidelines. The following sources are referred to:

- Directive 2001/14/EC;
- The Implementation guide for drafting Network Statements developed by RailNetEurope (RNE).
- The recommendations prepared by the Association of German Transport Companies (*Verband Deutscher Verkehrsunternehmen* - VDV) for the presentation of network access' conditions and terms of the use of service facilities.

### 13.1 Access Conditions

The following table illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

**Table A-1: Indications of the RNE Guide on Access Conditions**

Ref. to the RNE guide	Topic	Mandatory content	Optional content
2.2	General Access Requirements	Main legal regulations set by national and international authorities.	-
2.2.1	Requirements to apply for a train path	Requisites for being accepted as an applicant.	-
2.2.2	Who is allowed to perform train operations (freight and/or passenger?)	Directive 2001/14/EC Article 16 and Annex I (3) Kinds of RU (domestic and/or foreign) or other organisations are permitted to perform train operations (freight and/or passenger).	-
2.2.3	Licences	Body responsible for issuing train operating licences. Contact name and address or reference to Section 1.8.	-
2.2.4	Safety Certificate	Body responsible for issuing safety certificates. Contact name and address, or reference to Section 1.8. If the IM issues safety certificates itself, either description or reference to the certification process.	-
2.2.5	Cover of liabilities of accidents	Dir 95/18 art 9 Description of or reference to the relevant national legislation and state any mandatory levels of insurance. If other means of risk coverage than insurance is permitted, list of them.	-
2.3	How to apply for a Train Path	Reference to chapter 4	-
2.4	General Business/Commercial Conditions	-	-
2.4.1	Framework Agreement	Directive 2001/14/EC Article17 Brief description of the role of a Framework Agreement and reference to the contracts which are regarded as Framework Agreements (e.g. Track Access Agreement, Station Access Agreement, etc.). State whether the IM is permitted to enter into bi-lateral agreements with RU to develop infrastructure enhancements and reference to any standard regulations, or state which other body is responsible for infrastructure enhancement.	-



Ref. to the RNE guide	Topic	Mandatory content	Optional content
2.4.2	Access Contracts	<p>Directive 2001/12 Article 1 11)</p> <p>Information on contracts necessary for the use of infrastructure capacity</p> <p>State whether an access contract is required before applying for a train path and/or before actual operation, and if separate contracts are required for station /depot access and/or any other services.</p> <p>State which contracts are required to deliver the minimum access package as set out in Directive 2001/14/EC. Reference to Section 5 for details of additional and ancillary service contracts.</p> <p>State if any independent approval of access contracts is needed.</p> <p>State if a standard form of access contract exists and whether its use is compulsory.</p> <p>.</p>	The contract formats should be included in an Annex to the Network Statement and/or published on the IM's homepage
2.5	Operational Rules	<p>(i.e. Rules to be followed by train crew and signallers in current train operations).</p> <p>Organisation is responsible for publication of the Rules.</p> <p>Contact name and address, or reference to Section 1.8.</p>	Both national and local operational rules and instructions should be covered.
2.6	Exceptional Transports	<p>(e.g. test trains, out-of-gauge loads, heavy axle load vehicles).</p> <p>Refer to UIC leaflet 502 Annex 1 (article 1.3) extract from the RIV for definition of "Exceptional Transports". State whether or not the IM uses the UIC definition.</p> <p>Body is in charge of the rules for exceptional transports.</p> <p>Contact name and address, or reference to Section 1.8.</p> <p>Reference to Section 4.7 for the capacity allocation process and Section 5 for details of other services provided by the IM.</p>	-
2.7	Dangerous Goods	<p>Refer to R.I.D. for definition of "Dangerous Goods"</p> <p>Whether or not the IM uses the RID regulations and if there are any exceptions.</p> <p>Reference to any national regulations for dangerous goods.</p> <p>Contact name and address (or reference to Section 1.8) for applications to move dangerous goods.</p> <p>Reference to Section 4.7 for the capacity allocation process and Section 5 for details of other services provided by the IM.</p>	-
2.8	Rolling Stock Acceptance Process Guidelines	<p>Directive 2001/14/EC Article 32 (3)</p> <p>Organisations in charge of the process.</p> <p>Contact names and addresses, or reference to Section 1.8.</p> <p>If the IM is in charge of the rolling stock acceptance process, either description or reference to the main stages in the process and any relevant documentation.</p>	-
2.9	Staff Acceptance Process	<p>Directive 2001/14/EC Article 32 (3)</p> <p>This provision covers operations staff, e.g. drivers, conductors, shunters.</p> <p>Organisations in charge of the process.</p> <p>Contact names and addresses, or reference to Section 1.8.</p> <p>If the IM is in charge of the staff acceptance process, either description or reference to the main stages in the process and any relevant documentation.</p>	-

## 13.2 The available infrastructure

The following table illustrates the information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

**Table A-2: Indications of the RNE Guide on the available infrastructure**

Ref. to the RNE guide	Topic	Mandatory content	Optional content
3.2	Extent of Network	Directive 2001/14/EC Annex I (1)	-
3.2.1	Limits	Geographic limits of the IM's infrastructure and indication of any lines not available for normal railway traffic operations.	-
3.2.2	Connected Railway Networks	Reference to neighbouring IM, including other national networks, and list of all international border crossings. Reference to Section 3.6 for details of private sidings and private freight terminals.	-
3.2.3	Further information	List of available documents which provide detailed infrastructure data and contacts for further information.	-
3.3	Network Description	-	-
3.3.1	Geographic Identification	-	-
3.3.1.1	Track Typologies	Extent of single track / double track / multiple track	-
3.3.1.2	Track Gauges	Track gauge(s) (UIC leaflet 510), even if there is only one gauge. Where the IM has more than one gauge, indication the extent of track of each gauge.	-
3.3.2	Capabilities	-	-
3.3.2.1	Loading Gauge	Lading gauge applicable to each route section. Reference to UIC leaflet 506 or to Combined Traffic Codes.	-
3.3.2.2	Weight Limits	Maximum axle load and any other weight limits applicable to each route section.	Reference to UIC leaflet 700-0. Axle and Meter loads.
3.3.2.3	Line Gradients	Maximum or critical gradient on each route section.	-
3.3.2.4	Line Speeds	Maximum permitted speed per line for each route section.	-
3.3.2.5	Maximum train lengths	Maximum train length allowed on each line or section. (excluding Exceptional Transports).	-
3.3.2.6	Power supply	Extent of the network that is electrified and description of the electrification system, including the voltage and frequency used..	Additional information such as contact wire height, contact pressure, etc.
3.3.3	Traffic Control and Communication Systems	Brief technical description of the traffic control, including signalling, regulation, dispatching and communication and provision	-
3.3.3.1	Signalling Systems	Brief technical description of the signalling systems	-
3.3.3.2	Traffic Control Systems	Brief technical description of the traffic control systems (may be merged with signalling systems).	-
3.3.3.3	Communication Systems	Brief technical description of the train radio communication systems.	-

Ref. to the RNE guide	Topic	Mandatory content	Optional content
3.3.3.4	ATC Systems	Brief technical description of the automatic train control systems. Information on whether it is mandatory for trains operating on lines with ATC systems to be equipped with equivalent systems.	-
3.4	Traffic Restrictions	-	-
3.4.1	Specialised Infrastructure.	Directive 2001/14/EC Article 24 Extent of any specialised infrastructure and description of the traffic restrictions that apply	-
3.4.2	Environmental Restrictions	Limits on for example noise levels or other Environmental Restrictions. If the limits are allocated to certain line sections or hours, state this.	-
3.4.3	Dangerous Goods).	Line sections where Dangerous Goods is not permitted, or where permission is limited (to certain times of the day and/or to certain classes of Dangerous Goods)	-
3.4.4	Tunnel Restrictions	Tunnel restrictions, for example restrictions on the use of diesel traction.	-
3.4.5	Bridge Restrictions.	Bridge restrictions, for example closure in high winds, specific opening hours etc	-
3.5	Availability of the infrastructure	Information on restrictions, for example imposed by the IM due to his own needs for managing the infrastructure.	-
3.9	Infrastructure Development	Any available information on the main projects for infrastructure development, including timescales, the nature of the works and the effects on operational characteristics, both during construction period and after completion.	

### 13.3 Capacity Allocation

The following table illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

**Table A-3: Indications of the RNE Guide on capacity allocation**

Ref. to the RNE guide	Topic	Mandatory content	Optional content
4.2	Description of Process	- how to apply (which forms to be used) - how capacity allocation is decided - the bodies involved and state their responsibilities	The RNE document "Process for international path requests" might be mentioned.
-4.3	Schedule for Path Requests and Allocation Process	Information related to Directive 2001/14/EC Article 18 and Annex III	-
4.3.1	Schedule for working timetable	List of the deadlines in the process or reference to separate production schedule	-
4.3.2	Schedule for requests for train paths outside the timetabling process (ad hoc requests)	Directive 2001/14/EC Article 23 List of the deadlines in the process or reference to separate production schedule.	-
4.4.1	Coordination process	Directive 2001/14/EC Article 21 Description of the coordination process including details of activities performed by IM's and RU.	-

Ref. to the RNE guide	Topic	Mandatory content	Optional content
4.4.2	Dispute resolution process	Directive 2001/14/EC Article 21 sub 6 Contact names and addresses of bodies involved. Detailed description of information the RU must give to the IM in case of a dispute. Deadlines in the dispute resolution process. Information on whether or not the process can delay the capacity allocation process.	-
4.4.3	Congested Infrastructure; definition, priority criteria and process	Directive 2001/14/EC Article 22 (4-6) National legislation defining when an area (line and/or station) is to be considered as congested. Indication (by maps or names of lines and locations) of which areas are or are likely to become congested during the period of validity of the NS. Description of priority criteria to be used when an area is declared congested.	-
4.4.4	Impact of Framework Agreements	Description of how a Framework Agreement affects capacity allocation, e.g. whether it confers a particular level of priority on path requests. Refer to a separate list of Framework Agreements if one exists.	-
4.5	Allocation of Capacity for Maintenance, Renewal and Enhancements	Directive 2001/14/EC Article 28 Reference to documents setting out the capacity allocated for maintenance, renewals and enhancements in the current timetable and any future timetables for which the process is complete or in progress.	-
4.5.1	Process	Description of how the allocations of capacity for maintenance, renewals and enhancements is established, including roles and rights of IM and RU, or reference to Section 4.2 if the process is the same as allocation of capacity for train paths.	-
4.6	Non-usage/ Cancellation Rules	Directive 2001/14/EC Article 27 Description of the deadlines for cancellation of planned train services. Description of the limits for non-usage of allocated capacity which trigger loss of access or other penalties. Reference to Section 6 for charges imposed when cancellations are advised too late or not at all.	-
4.7	Exceptional Transports and Dangerous Goods	Information on whether or not the RU needs to notify the IM (or any other body) about its Exceptional transport or Dangerous Goods when applying for train paths. Deadlines that need to be met.	-
4.8	Special measures to be taken in the event of disturbance	Information related to Directive 2001/14/EC Article 29	-
4.8.1	Principles	Reference to existing procedures and contractual arrangements.	-
4.8.2	Operational Regulation	Description or reference to existing train regulation policies regarding foreseen and unforeseen problems.	-
4.8.3	Foreseen problems	-	-
4.8.4	Unforeseen problems	-	-

### 13.4 Service facilities and supply of rail related services

The following table illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

**Table A-4: Indications of the RNE Guide on services facilities and supply of rail related services**

Ref. to RNE guide	Topic	Mandatory content	Optional content
3.3.1.3.	Stations and nodes	List of the stations and nodes and description of their main characteristics. Information on the maximum length limit for trains using each station.	Distances between nodes and length of station tracks
3.6	Passengers terminals (stations)	Platform lengths and heights and refer	Description of other passenger facilities. Information can be structured as lists sorted (railway) line by line and station by station.
3.7	Freight terminals	List of the location of freight terminals. Description of the kind of each terminal (intermodal or conventional, harbour etc.). Information on the body in charge of (track) capacity allocation within the freight terminal.	List and description of special built terminals. If the terminal is suited for interchange of goods between other (more) modes than rail-road and rail-rail this should be stated. (example rail-road-sea/river –air). Contact point RU's or other interested parties shall turn to in order to obtain further information concerning each terminal. Information concerning services provided in each terminal.
3.8.	Service Facilities	(2001/14, annex 1, number 2) List of the key Service Facilities offered by IM	List of service Facilities not owned by the IM
3.8.1	Train formation yards	List of the location of train formation yards and the maximum length of trains that can be formed in each yard.	Contact point RU or other interested parties shall turn to in order to obtain further information concerning each yard.
3.8.2	Storage sidings	List of the location of storage sidings and the maximum length of trains that can be formed in each yard.	Contact point RU or other interested parties shall turn to in order to obtain further information concerning each storage siding.
3.8.3	Maintenance Facilities	(If the IM is the service provider, information to be included in section 5, otherwise inclusion is optional).	Location of each facility in question and a contact point if the facility is not managed by the IM
3.8.4	Refuelling facilities	List of the location of refuelling facilities and the type(s) of fuel that can be provided in each place.	Contact point RU's or other interested parties shall turn to in order to obtain further information.
3.8.5	Technical facilities	List of the location and type of technical facility and describe its purposes.	Information on Facilities like wheel damage detectors, red box (hot box) detectors, wagon weight bridges, loading gauge gauges. Contact point RU's or other interested parties shall turn to in order to obtain further information concerning each facility. If the facility in question detect and/or gather data concerning the RU's train, information concerning how the RU can obtain access to this data should be included.
3.8.6-3.8.99	Other facilities	If the IM provides other services or facilities than listed in the previous numbers (3.8.1- 3.8.5) these services are to be listed here with separate sub numbers.	-
5.2	Minimum access package	List of services obligatory delivered by IM as per Directive 2001/14/EC, Annex II, point 1. Description of the services.	-
5.3	Track access to services facilities and supply of services	Directive 2001/14/EC, Annex II, point 2 Product definition – including track access conditions and usage conditions for each of the services listed, also stating if services are delivered by IM, or by other suppliers, who may be referred to.	-

Ref. to RNE guide	Topic	Mandatory content	Optional content
5.4	Additional services	Directive 2001/14/EC, Annex II, point 3 Product definition – including usage conditions for each of the services listed, also stating if services are delivered by IM, or by other suppliers, who may be referred to.	-
5.5	Ancillary services	Directive 2001/14/EC, Annex II, point 4 Product definition – including usage conditions for each of the services listed, also stating if services are delivered by IM, or by other suppliers, who may be referred to.	-

The German Transport Companies Association (VDV) has developed in 2005 the document “*Nutzungsbedingungen für Serviceeinrichtungen – Allgemeiner Teil (NBS-AT)*” (Terms and Conditions for the utilisation of Service Facilities - General Part). A second version was issued in 2007. In order to harmonise these guidelines with the ones on network usage conditions<sup>7</sup> also issued by VDV and recently reviewed, the NBS-AT are going to be updated again soon.

The NBS-AT regulate the terms and conditions of access to the service facilities, in particular in order to ensure uniform conditions to the authorised applicants regarding

- non-discriminatory access to service facilities and the use of railway vehicles of the users;
- the non-discriminatory provision of services offered.

Both for network utilisation and service facilities utilisation, VDV has also published guidelines for a specific section of the terms and conditions allowing each rail infrastructure manager to present the specific aspects of their network and service facilities. For the latter, this document is called “*Nutzungsbedingungen für Serviceeinrichtungen – Allgemeiner Teil (NBS-BT)*” (Terms and Conditions for the utilisation of Service Facilities – Special Part).

It is worth to remember that Access conditions to service facilities public rail infrastructure companies (*Eisenbahninfrastrukturunternehmen* EIU) in Germany has the obligation to provide public Terms and conditions for the access to the networks they manage (i.e. Network Statement), including the basic content indicated in the annex 2 of the Ordinance on the access to the rail infrastructure of 3 June 2005 (*Verordnung über den diskriminierungsfreien Zugang zur Eisenbahninfrastruktur und über die Grundsätze zur Erhebung von Entgelt für die Benutzung der Eisenbahninfrastruktur, or Eisenbahninfrastruktur-Benutzungsverordnung* EIBV), as well as, according to art. 10 of EIBV, terms and conditions for the access to the service facilities and the provision of the related services.

According to the information received from VDV, NBS-AT have been developed and reviewed taking into account suggestions and criticism from EIU but also from other actors of the railway sector, as well as from the railway regulation authority (*Bundesnetz Agentur*). Most EIU apply NBS-AT (as well as SNB-AT for the networks) without any significant change, so that VDV believed that such guidelines regulations have found wide acceptance.

<sup>7</sup> Schienennetz-Benutzungsbedingungen der Betreiber der Schienenwege – Allgemeiner Teil (SNB-AT).

The NBS-AT includes general definition of access conditions, charging principles, rights and obligation of the parties, liability and environmental hazards.

The NBS-BT address instead the specific characteristics of the service facilities of the IM issuing them, in particular concerning

- additions / deviations to / from the SNB-AT
- description of infrastructure and access conditions
- principles of charging
- capacity allocation rules / procedures.

The VDV notes<sup>8</sup> on the preparation of NBS-BT clarify that:

- in case the IM (EIU) operates a number of service facilities at one location, then all service facilities must be individually described
- the necessary content of service facilities' description includes maximum slope, smallest radius, location of the tracks within the rail infrastructure as well as usable length, track gauge, maximum speed, equipment size, permissible axle load and linear load, electrified sections, access to adjacent infrastructure, control, security and communication systems and any special features; relevant operational and technical regulations shall also be presented;
- regular operating hours shall be specified for each facilities (additional charges may be imposed in case of request of accessing outside the regular operating hours, and shall be specified);
- if the IM offers additional or ancillary services, these shall be described;
- the NBS-AT shall indicate if the access to the service facilities requires using a specific information or communication system;
- the NBS-BT requires a detailed explanation and statement of the charging principles; however this does not necessarily apply to facilities for refuelling, maintenance and other technical facilities, and ports.
- the NBS-AT should include rules for allocating the capacity at service facilities in case more than one user is requesting the access for the same time slot.

The publication of NBS-AT and NBS-BT is an important step towards harmonization in the preparation of detailed "terms and conditions" also for the access to service facilities, even if the actual application of the standard terms on "special conditions" (NBS-BT) still appear not homogeneous (in terms of type of information provided, and level of detail thereof) among the different EIU.

### 13.5 Charges for the minimum access package

The following table illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

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<sup>8</sup> VDV, *Hinweise zur Ausgestaltung des „Besonderen Teils“ der Nutzungsbedingungen für Serviceeinrichtungen* (NBS-BT) Notes on design of the "Special Part" of the Terms of Use for service facilities (NBS-BT), 13.09.2007

**Table A-5: Indications of the RNE Guide on Charges for the minimum access package**

Ref. to RNE guide	Topic	Mandatory content	Optional content
6.3	Tariffs	Charging information for train paths and any other services supplied by the IM including discounts, compensation schemes and reservation charges.	-
6.3.1	Minimum access package	Charging information for train paths and any other services supplied by the IM including discounts, compensation schemes and reservation charges.	-
6.4	Performance scheme	Information of performance scheme as defined by Directive 2001/14/EC Article 11	-
6.5	Changes to charges	Foreseen changes	-
6.6	Billing Arrangements	State who bills the services, terms and conditions including non-payment etc.	-

### 13.6 Charges for Services

The following table illustrates information that, according to the RNE guidelines, are to be included in the NS (referred to as mandatory content) and those that are optional (referred to as optional content).

**Table A-6: Indications of the RNE Guide on charges for services**

Ref. to RNE guide	Topic	Mandatory content	Optional content
6.3.2	Track access to services facilities	State if track access is included in the minimum access package or charged separately. Charging information for train paths and any other services supplied by the IM including discounts, compensation schemes and reservation charges.	-
6.3.3	Supply of services listed under Annex 2 point 2 of Directive 2001/14/EC	Charging information If IM supplies services	-
6.3.4	Additional services	Charging information If IM supplies services	-
6.3.5	Ancillary services	Charging information If IM supplies services	-



## ANNEX B: LEGAL ASSESSMENT

### 13.7 Introduction

Directive 2001/14/EC imposes minimum requirements for contents and procedures related to network statements, as regards deadlines, consultations, updating and complaint handling. The Directive has also imposed information obligations directly to the infrastructure manager, such as to inform about available capacity, about forthcoming maintenance works and capacity restrictions. But the analysis of existing NS shows that current practice is deficient in many aspects<sup>9</sup>. Many network statements available have failed to implement such obligations from the Directive to a satisfactory level: the information provided is incomplete (in particular for some sections of the NS); the data provided appears to be outdated; or the full content is difficult to access. As a result, the provisions of Directive 2001/14/EC appear to be not fully respected.

In response to Task 2 of Section 4 of the Task Specification, the Inception Report has summarised the requirements into two questions:

- Are NS compliant with provisions of EC directive 2001/14/EC and its Annex I?
- What are the problems related to publishing information in NS on service facilities not operated by the IM?

This annex presents the legal analysis of the EU legislative framework, notably the EU Directive 2001/14/EC, and provides answers for the above questions.

First, a summary of the results from the analysis of the existing NS (consultant's assessment) and from the consultation of the stakeholders are reported in brief, with particular attention paid to the subjects of which the information in network statement are reportedly missing, inadequate or insufficient to a significant extent (i.e. above 50% of NS).

Subsequently, such subjects are analysed from a legal perspective whereas the relevant provisions of Directive 2001/14/EC are elaborated, analyzed and assessed in terms of completeness and effectiveness.

Conclusions and recommendations are summarized in the final section of this annex.

#### Network Statements – State of the Art

The “analysis of the existing NS” and “consultation of the stakeholders” assessed<sup>10</sup> the level of details and sufficiency of the information that are provided in the network statement, as well as the information needs from the users' perspective, from a broad range of aspects:

- Availability of the Network Statements;
- Legal and general characteristics of the Network Statements;
- Information on the access conditions;
- Information on the nature of infrastructure available to railway undertakings;
- Information on rail related services and facilities;

<sup>9</sup> Presented in detail in the chapters from 2 to 7. The purpose of summarizing here the main results of the analysis is that they have given guidance to the key issues for the legal analysis.

<sup>10</sup> Ibidem.

- Information on network development;
- Information on charging principles and tariffs;
- Information on capacity allocation;
- Other aspects.

The assessment of the completeness of the information provided on the first and the second aspects are rather positive, while the analyses of other aspects have revealed a mixed picture. Information on the nature of infrastructure available is overall adequate with sufficient level of detail (high or fair), so is the information related to access conditions and network development. However, information in relation to other aspects is recorded as being low in many cases, in some cases with less than one half of the network statements providing satisfactory information.

Based on the results of the consultant's analysis and stakeholders' consultation, a list of key points has been drawn up which will be analysed in detail in respect of its relevant legal provisions. The following table presents the key points, as well as the main issues and areas where they are drawn from.

**Table B-1 List of Key Points for Legal Analysis**

Areas	Main issues	Key points for analysis
Services	Minimum access package	1) Service scope
	Access to service facilities and supply of services (Service Category II)	2) Facility/Service information 3) Provision of services
	Additional services	
	Ancillary services	
Charging	Charging principles in general (minimum access package)	4) Content of NS in relation to charging and charges 5) Changes in charges
	Charging rules and scales in particular (minimum access package)	6) Performance scheme 7) Scarcity charge Environment charge Mark-ups Discounts Environment compensation Reservation charge
	Charges in relation to category II services	8) Charges in relation to category II services
	Charges in relation to category III and IV services	9) Charges in relation to additional and ancillary services
Capacity allocation	Capacity being non-transferable and non-tradable	10) Capacity non-transferable and non-tradable
	Infrastructure designated for specialised traffic	11) Restriction of use in infrastructure (maintenance, specialised infrastructure) 12) Reserved capacity
	Requirements on applicants	13) Requirements on applicants
	Process for both application and capacity allocation with regard to Annex III of 2001/14/EC	14) Process for application and capacity allocation
	Allocation priority due to previous usage	15) Allocation priority (previous usage)
	Congested infrastructure	16) Congested infrastructure
	Impact of framework agreement	17) Impact of framework agreement
	Procedural information about decision following dispute resolution	18) Procedural information following dispute resolution
Appeal procedures	19) Appeal	

### 13.8 Legal Analysis (Directive 2001/14/EC)

Following the key points described in the previous section of Annex B, this section will take a deeper look, one by one, into the relevant provisions in the EU legislation i.e. Directive 2001/14/EC, assessing the level of implementation of such provisions, analyzing the legal consequences of the provisions as such and assessing where applicable, the effectiveness and completeness of Directive 2001/14/EC.

#### Evaluation framework

According to the legal effect of the provisions contained in directives as to member states and, should the direct effectiveness of directives be respected where provisions are sufficiently clear, the provisions in Directive 2001/14/EC can be categorized into three groups for the purpose of analysis: compulsory, compulsory under conditions, and non-compulsory (either informative or suggestive).

An overview of the legal provisions of Directive 2001/14/EC in relation to the key points and areas that we identified earlier is presented in Annex B. The legal provisions are marked as compulsory, compulsory under conditions or non-compulsory. This indicates the level of mandate of the directive in terms of implementation of the concerned provisions by the member states or directly, by the infrastructure manager whoever it applies to.

#### Legal analysis

##### A.1 Service scope (rail related type of services)

The Servrail study in 2006 has indicated that the type of services offered in each country is not exactly in line with Directive 2001/14/EC (Annex II)<sup>11</sup>. In Directive 2001/14/EC, services are grouped into four categories i.e. minimum access package, rail-related facilities and services (Annex II.2 services), additional services (Annex II.3 services), and ancillary services (Annex II.4 services). Our study has found that some countries still have different categorizations of services from those in the Directive 2001/14/EC<sup>12</sup>.

The transfer of services along the category ladder might have resulted from the actual national situation; as a result however, it changes the responsibility of the infrastructure manager, since its level of obligation changes in providing different categories of services as we will explain below. Furthermore, the transfer of services among categories can also create the disharmony between network statements. In the end, the users may encounter inconvenience in interpreting different services from different countries, in particular when a decision has to be made regarding crossing more than one network.

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<sup>11</sup> [http://ec.europa.eu/transport/rail/studies/doc/servrail\\_final\\_report.pdf](http://ec.europa.eu/transport/rail/studies/doc/servrail_final_report.pdf). Final Report, Chapter 6, Table 6.1 (P.95). The Servrail study has found that some countries have moved around the type of services among categories in relation to the Directive 2001/14/EC, for example some types of category II service have been defined in the minimum access package of some countries, or a type of Directive category IV service into a national category of III, and so on.

<sup>12</sup> For instance, Network Statement 2008-2009 from RFI Italy categorizes the 'use of the electrical power supply system for the traction electricity' in the minimum access package (Category II in Directive), and the 'access to telecom network' as Category II service (Category IV in Directive)

Another issue that our study has revealed is that in the case of the Netherlands, ProRail uses completely different names<sup>13</sup> in its network statement when referring to the services listed in Directive Annex II. It involves therefore not only service category swap, but also different naming. As a result, ProRail's network statement has become a standalone document in this particular respect, demanding a thorough study for the users to understand it correctly.

## A.2 Facility / Service information

The country analysis has revealed a considerable lack of information in regard to service facilities, as well as the detailed information about the services themselves in relation to Annex II.2, Annex II.3 and Annex II.4 services. Facility information is particularly concerned in Category II service, such as the list of facility, facility location, facility measurements (e.g. length, number) as well as the detailed opening times.

As an alternative, some network statements point to a contact person for services that are not provided by the infrastructure manager, the majority of which however do not provide such contact details, some even fail to do so when the services are provided by the IM themselves. Without the service and facility information, it will cause great inconvenience for railway undertakings to make decisions for their business operations.

Article 3 of Directive 2001/14/EC, together with Annex I and II, require information on all infrastructure. Therefore, lack of service and facility information in the network statement is not in compliance with the Directive.

## A.3 Provision of services

Infrastructure managers' duties in providing the services are set out clearly in Article 5 of Directive 2001/14/EC, on the basis of the four categories defined in Annex II:

- Minimum access package<sup>14</sup>: compulsory for IM to provide on a non-discriminatory basis
- Track access to service facilities (of Annex II services)<sup>15</sup>: compulsory for IM to provide on a non-discriminatory basis
- Annex II.2 services<sup>16</sup>: compulsory for IM to provide requested services in a non-discriminatory manner in case there is no viable alternative. The provider of the

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<sup>13</sup> Network Statement 2010-2011, ProRail, the Netherlands.

<sup>14</sup> Railway undertakings must have non-discriminatory right to entitle the services in the minimum access package that is offered by the IM. In other words, any IM has the absolute duty to provide the services contained in his minimum access package, to all operators on a non-discriminatory basis. It does not matter whether it is the IM who is responsible for the entire network or part of the network, so long as he provides the minimum access package.

<sup>15</sup> The obligation of the IM and the rights of railway undertakings are the same as in the "minimum access package". It is worth noting though that the operators' entitlement is access to the facilities, not the use of such facilities or the services provided therefrom.

<sup>16</sup> Without viable alternatives, infrastructure managers shall provide services to all railway undertakings who request them in a non-discriminatory manner. If some services are not offered by one IM, the provider of the 'main infrastructure' shall endeavour to facilitate the operators to obtain such services (from other infrastructure managers). Therefore, for an operator to gain access to Annex II.2 services supplied by the infrastructure manager, there are two conditions: 1) he submits such request; 2) there are no other viable alternatives provided by other suppliers. The Directive further specifies that in case there is more than one supplier with regard to any specific service, the obligation lies with the provider of the 'main infrastructure'

main infrastructure shall endeavour to facilitate the operators to obtain requested services if some services are not offered by one IM.

In many cases, the infrastructure manager who prepares the network statement is the one who provides most of the Annex II.2 services, thus he will be the provider of the main infrastructure as well. Equally however, we have encountered a number of network statements where the infrastructure manager provides few of the Category II services, or none at all. In the latter case, then the questions arise:

- how to identify the third party who is the provider of the main infrastructure; and
- how to require the third party to provide the facility/service information, and include it in the network statement that is prepared by the infrastructure manager?
- Annex II.3 services (additional services<sup>17</sup>): only compulsory for IM to provide requested services if the IM offers any range of additional services<sup>18</sup>:
- Annex II.4 services (ancillary services<sup>19</sup>): IM are not obliged to supply ancillary services.

In relation to Annex II.2 services, Directive states that applications shall not be rejected unless the infrastructure manager can prove that viable alternatives exist under market conditions. There have been many discussions about what the viable alternatives could be, assessed from various perspectives such as location, economical and financial viability and so on<sup>20</sup>.

Presumably, the interpretation of viable alternatives will differ country by country and, case by case. As far as the railway undertakings are concerned, this implies then a highly uncertain condition whether he will be given the services from the infrastructure manager to whom he requests. A definition of viable alternatives is desirable, though it is open to discussion as to what level to make this definition and make it feasible<sup>21</sup>.

### **B.1 Contents of Network Statement in relation to charging and charges**

Annex I, point 2<sup>22</sup> clearly states that the section on charging principles and tariffs to be included in a network statement “shall contain appropriate details of the charging scheme

Services facilities and services under the Annex II.2 include “use of electrical supply equipment for traction current, where available”, “refueling facilities”, “passenger stations, their buildings and other facilities”, “freight terminals”, “marshalling yards”, “train formation facilities”, “storage sidings”, “maintenance and other technical facilities”.

<sup>17</sup> I.e. “traction current”, “pre-heating of passenger trains”, “supply of fuel, shunting, and all other services provided at the access services facilities mentioned above”, “tailor-made contracts for control of transport of dangerous goods”, and “tailor-made contracts for assistance in running abnormal trains”.

<sup>18</sup> Note: Infrastructure manager’s duties are limited to the type of services he supplies.

<sup>19</sup> I.e. “access to telecommunication network”, “provision of supplementary information”, and “technical inspection of rolling stock”.

<sup>20</sup> ServRail: [http://ec.europa.eu/transport/rail/studies/doc/servrail\\_final\\_report.pdf](http://ec.europa.eu/transport/rail/studies/doc/servrail_final_report.pdf).

<sup>21</sup> For example at the EU level, or national level, or by the individual network statement, or leave it for the infrastructure manager to decide case by case.

<sup>22</sup> Directive 2001/14/EC, Annex I, Point 2: “A section on charging principles and tariffs. This shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Article 7(4) and (5) and Article 8 and 9. It shall contain information on changes in charges already decided upon or foreseen.”

as well as sufficient information on charges that apply to the services listed in Annex II which are provided by only one supplier.” Derived from this provision, the infrastructure manager is obliged to include the details and information on charging and charges, but only when the market segment concerned - in relation to (any of) specific types of service - is in a monopoly i.e. the service is provided by only one supplier. This is often the case in terms of the minimum access package where infrastructure manager is the only supplier, though much less often when it comes to Annex II.2, Annex II.3 and Annex II.4 services.

The provision of information is therefore not linked with the provision of the services. Instead, it's linked with the fact whether the market has only one supplier. As far as the infrastructure manager is concerned, so long as a monopoly situation exists regarding any category or type of service, he is obliged to provide the charging and charges information relating to this service in the network statement, no matter who is actually supplying such service.

The reason underlying Annex I point 2 is clear. Regardless of the identity of the monopoly supplier, users of the NS are entitled to know sufficient details and information about charging and charges of such service(s). It is reasonable in a monopoly market where very likely the infrastructure manager himself is the supplier and in case it is a different supplier, infrastructure manager is best positioned to obtain such information.

On the other hand, in accordance with Annex I point 2 infrastructure managers' duty will be waived when the service market becomes competitive i.e. when two or more suppliers are involved. As a result it is observed that among analyzed network statements, very often such information is not provided or is provided but to a very limited extent. A second observation is that whenever the infrastructure manager is not supplying a certain type of service himself, he often declares so in the network statement but meantime does not provide the related service's charging or tariff details any more. In the latter case, it is very hard for a user to judge whether the market segment is indeed a monopoly. In other words, whether the infrastructure manager's obligation is indeed waived or not.

In short, the provisions as such risk being too general and too rigid to tackle the complexity in a real market situation. If the provisions are only as such, two scenarios are assumed whereas different questions will arise:

**Scenario 1:** If infrastructure manager is not the service supplier:

- How and who shall judge whether there exists only one supplier in the market?  
In the absence of clear, measurable and objective criteria in defining a monopoly, IM may judge it according to his knowledge or experience, declaring that there exists more than one supplier to waive his obligation. What's more, a strict interpretation of one supplier will also exempt the infrastructure manager and the network statement from providing such information in extreme cases, for example where there exist two suppliers with market share of 99% and 1% each, or where there is only one supplier in one region of a large country.
- If only one non-IM supplier for a certain service exists, is it feasible for the infrastructure manager to collect “appropriate details of the charging scheme as well as sufficient information on charges”?

The study has shown that in reality the infrastructure manager ignores this duty frequently when he is not the supplier. Should, the infrastructure manager try to provide information in the network statement but encounters difficulty in collecting such information, then

- How can the other service provider(s) be regulated to provide to IM the charging and tariff information, so as to be included in the network statement?

**Scenario 2:** If the IM is providing the service, the following conclusions can be drawn:

- If the IM is the only supplier, the obligation is clear and reasonable for the IM to provide such information.
- If the IM is not the only supplier, the obligation for the IM to provide such information is legally waived. As a result, users may not get the required information.

## B.2 Change in charges

Annex I point 2<sup>23</sup> sets out that the network statement shall contain information on changes in charges already decided upon or foreseen. Such changes can be those already decided upon but not yet published, or those foreseen to be decided upon during the working timetable period.

Following this provision, the unforeseen changes in charges which occur during the working timetable period are beyond the regulation. In this case, Article 3.3 will apply which states “The network statement shall be kept up to date and modified as necessary”. Recognising the importance of the charge information to interested parties, such changes during the validity of a network statement shall be considered as necessary information and thus become part of the updating responsibility that the IM assumes.

Therefore, the legal provisions as such<sup>24</sup> are sufficient to deal with the subject of changes in charges. Lack of information in network statements in relation to changes in charges already decided upon or foreseen is not in compliance with the Directive.

## B.3 Performance scheme

Article 11 states that “Infrastructure charging schemes shall through a performance scheme encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.” The Performance scheme is therefore a definite part of the infrastructure charging scheme. Annex I point 2 further requires that appropriate details of the charging scheme shall be contained in the network statement.

It is sufficient to conclude therefore, that Article 11 together with Annex I point 2 is clear in setting requirements to include performance scheme related information in the network statement. Lack of information about performance scheme in analysed network statements is not in compliance with the Directive.

## B.4 Capacity scarcity charge, environment charge, mark-ups, discounts, environment compensation and reservation charge

When it comes to charging principles or exceptions, in the minimum access package there are a fair number of specific types of charge that fall at the discretion of member states or infrastructure manager, whoever is competent in accordance with relevant provisions, who may decide to levy such charges on top of the minimum access package basics. If it is the

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<sup>23</sup> Ibid 10.

<sup>24</sup> Namely, Annex I point 2 in combination with Article 3.3.

member state that is to set the charges, for example in the case of mark-ups (Article 8.1)<sup>25</sup> and environmental compensation (Article 10.1)<sup>26</sup>, it shall be interpreted that the network statement shall include information on mark-ups and environmental compensation as well, as if they were decided by the infrastructure manager.

According to Annex I point 2, should a scarcity charge (Article 7.4)<sup>27</sup>, environment charges (Article 7.5)<sup>28</sup>, mark-ups (Article 8) and discounts (Article 9)<sup>29</sup> apply, the network statement shall detail their methodology, rules and where applicable the scales used. In its respective articles the Directive has set clear principles and general requirements with regard to above mentioned charges. In respect of environment compensation, Article 10.3<sup>30</sup> makes similar requirements on methodology used and calculations performed, and scales used in Article 10.1<sup>31</sup>.

There is no specific term in Directive requiring methodology, rules or scales related to the reservation charge (Article 12)<sup>32</sup>. Seeing however reservation charge is only applicable to specific user(s) and happens only during the working timetable period of the network statement, and that it is not a factor that affects all users in terms of their competitiveness, it is proper if the Directive does not impose as strict obligation as in the minimum access package on infrastructure manager to provide and publish the charging principles, methodology, rules or scales.

Therefore, the current provisions in the Directive 2001/14/EC are sufficient and clear with regard to a scarcity charge, environment charges, mark-ups, discounts, environment compensation and reservation charges.

### **B.5 Charges in relation to Annex II.2 services**

If, it is only one supplier who is providing the Annex II.2 service, according to Annex I point 2 the network statement shall contain appropriate details of the charging scheme as well as sufficient information on charges (tariffs). However, as we discussed in the previous point “contents of Network Statement in relation to charging and charges”, the same

<sup>25</sup> Article 8 “Exceptions to charging principles”, paragraph 1: “... a Member State may... levy mark-ups on the basis that... The levels of charges must not... 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.”

<sup>26</sup> Article 10 “Compensation schemes for unpaid environmental, accident and infrastructure costs”, paragraph 1: “Member states may put in place a time limited compensation scheme for .unpaid environmental, accident and infrastructure costs of competing modes...”

<sup>27</sup> Article 7 “Principles of charging”, paragraph 4: “The infrastructure charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion”.

<sup>28</sup> Article 7 “Principles of charging”, paragraph 5: “The infrastructure charge may be modified to take account of the cost of the environmental effects caused ..”

<sup>29</sup> Article 9 “Discounts”, paragraph 3: “IM may introduce schemes available to all users... granting time limited discounts to encourage...”.

<sup>30</sup> Article 10 “Compensation schemes for unpaid environmental, accident and infrastructure costs”, paragraph 3: “The methodology used and calculations performed must be publicly available. It shall in particular be possible to demonstrate... and to ensure that the scheme is granted on non-discriminatory terms...”.

<sup>31</sup> Ibid 13.

<sup>32</sup> Article 12 “Reservation charges”, paragraph 1: “IM may levy... charge for capacity that is requested but not used.” Paragraph 2: “The IM shall always be able to inform any interested party for the infrastructure capacity which has been allocated to user RU.”



potential problems exist: In case there exists more than one supplier, the obligation of the IM to provide such information in the network statement is legally waived; in case the supplier is not the IM, then such an obligation is often ignored by the infrastructure manager, resulting in the frequent absence of information in the network statement.

### **B.6 Charges in relation to Annex II.3 / II.4 services (additional and ancillary services)**

Like Annex II.2 services, charges and charging information related to additional and ancillary services are limited to the situation when there is the monopoly. However, since it is not compulsory for the infrastructure manager to provide Annex II.3 / II.4 services, it is reasonable if the infrastructure manager is obliged to provide the relevant charging information only when he supplies the services and when he is the only supplier.

### **C.1 Capacity non-transferable and non-tradable**

Article 13.1<sup>33</sup> stipulates clearly that “infrastructure capacity...once allocated to an applicant may not be transferred by the recipient to another undertaking or service.” Further it continues in the next paragraph that “Any trading in infrastructure capacity shall be prohibited and shall lead to exclusion from the further allocation of capacity.” The provisions are therefore clear, precise, and adequate.

### **C.2 Restriction of use in infrastructure**

As a compulsory part of the content to be included in the network statement, Annex I point 3<sup>34</sup> of the Directive points out that not only the general capacity characteristics of the infrastructure, but also any restrictions relating to its use, shall be set out in the network statement. Restrictions of use in infrastructure are such as capacity requirements for maintenance; infrastructure designated for special types of traffic, and reserved capacity<sup>35</sup>. A common character among the three is their obvious effect on available capacity for allocation.

#### **Capacity for maintenance**

Capacity reserved for maintenance is not available capacity any more. Since most times it is the IM who is in charge of maintenance and thus also schedules the maintenance work, then presumably it is the IM who shall submit such capacity request according to Article 28.1<sup>36</sup>. Article 28.2 further requires that “adequate account shall be taken... of the effect of infrastructure capacity reserved for scheduled track maintenance on applicants”. This has implied that the capacity reserved for maintenance will have an effect on capacity allocation.

The lack of information relating to capacity reserved for maintenance in network statements, as the study has revealed, may be due to the fact that Article 28 does not

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<sup>33</sup> Article 13 “Capacity rights”, paragraph 1: “Infrastructure capacity and once allocated to an applicant may not be transferred by the recipient to another undertaking or service.” “Any trading in infrastructure capacity shall be prohibited and shall lead to exclusion from the further allocation of capacity.”

<sup>34</sup> Annex 1 Point 3: “The NS referred to in Art 3 shall contain: 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 RU 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:...”.

<sup>35</sup> The subject of ‘reserved capacity’ will be explained in the next point.

<sup>36</sup> Article 28.1 generally requires that “requests for capacity to enable maintenance shall be submitted during the scheduling process”.

specify who shall submit such capacity requests and also take adequate account, it will be reasonable however, to assume this obligation imposed on the infrastructure manager. It is obvious when the infrastructure manager is the responsible party for maintenance work. But in case it is a third party, it will be at a much lower cost for the infrastructure manager to provide this information whom presumably shall remain in constant and regular contact with the third party, instead of the railway undertakings and in particular the new entrants for whom to be aware of this split of responsibility, to know the contact of the third party, and to get access to the maintenance plan or information.

### **Designated infrastructure [xx]**

While Article 24.2<sup>37</sup> gives the right to infrastructure manager to designate particular infrastructure for use by specified types of traffic, Article 24.3<sup>38</sup> makes it clear that when infrastructure has been designated, this shall be described in the network statement. Since one of the consequences of designated infrastructure is the priority given to this specific type of traffic when allocating capacity (Article 24.2), it is necessary for other users (applicants) to know in advance what capacity is not available to them indeed, any more.

### **C.3 Reserved capacity**

Like capacity for maintenance and designated infrastructure capacity, capacity requested and reserved by one railway undertaking has the same effect on other users, i.e. it is not available anymore.

Article 12<sup>39</sup> indicates that the infrastructure managers may levy a charge for capacity that is requested but not used. Article 12 also states that “The infrastructure manager shall always be able to inform any interested party of the infrastructure capacity which has been allocated to user railway undertakings.”

It is worth noting though that the obligation on the IM, as a result of Article 12, is to prepare themselves to be able to inform about allocated capacity during the year. It is therefore, not a direct obligation on the IM to inform about allocated capacity. Also, the information to inform about is the allocated capacity, rather than the capacities that have become available i.e. those reserved but not used.

Finally, it will be also useful to specify the channels that the IM is going to use to disseminate such information, or the ways that the users can use to get access to such data.

### **C.4 Requirements on applicants**

According to Annex I point 3, the network statement shall contain specific criteria during the capacity allocation process and in particular, the requirements governing applicants. Article 16.2<sup>40</sup> entitles the infrastructure manager to set requirements with regard to applicants, while such requirements shall be appropriate, transparent, and non-

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<sup>37</sup> Article 24 “Specialised infrastructure”, paragraph 2: “Where..., the IM may... designate particular infrastructure for use by specified types of traffic... When such designation has occurred, the IM may give priority to this type of traffic when allocating infrastructure capacity.”

<sup>38</sup> Article 24 “Specialised infrastructure”, paragraph 3: “When infrastructure has been designated... this shall be described in the network statement.”

<sup>39</sup> Ibid 19.

<sup>40</sup> Article 16 “Applicants” paragraph 2: “The infrastructure manager may set requirements with regard to applicants to ensure that ... . Such requirements shall be appropriate, transparent and non-discriminatory. The requirements shall be published...”.

discriminatory and published as part of the allocation principles in the network statement. Article 16.3<sup>41</sup> then specifies that should there be such requirements, “they may only include the provision of a financial guarantee... and assurance of the capability to prepare compliant bids”.

It is therefore not an obligation, rather a right[xx], on infrastructure managers to set special requirements on applicants other than the general conditions which are usually governed in access conditions (e.g. license, certificate). The provisions of Directive on this point - Article 16.2, 16.3 and Annex I point 3 - are specific and sufficient. Therefore the lack of related information in the network statement is not in compliance with the Directive.

### **C.5 Process for application and capacity allocation**

According to Annex I point 3, it shall be specified in the network statement about the procedures and deadlines which relate to the capacity allocation process. Specific criteria including the procedures according to which applicants may request capacity as well as the schedule for the application and allocation process shall be also included in the network statement. More specifically, Article 19.2<sup>42</sup> clearly points to Annex III which in point 3 states that the deadline for receipt of request shall be no more than 12 months in advance of the effective date of the working timetable. Similar provisions are found for scheduling of the allocation process in Article 18.1<sup>43</sup> and Annex III point 5<sup>44</sup>.

The Directive is therefore very specific, effective and clear in this aspect. It is also sufficient for national legislation to implement. Network statements that do not contain the above required information are not in compliance with the Directive.

### **C.6 Congested infrastructure**

Directive 2001/14/EC has a rather extended section regulating the congested infrastructure, including Articles 22, 25 and 26. Procedural wise, Article 22.1<sup>45</sup> clearly states that the infrastructure manager shall declare the infrastructure to be congested immediately where it is not possible to satisfy requests for infrastructure capacity adequately. Then according to Article 22.2<sup>46</sup>, once the infrastructure is declared to be congested, the infrastructure manager shall carry out a capacity analysis unless a capacity enhancement plan is being implemented. Article 25<sup>47</sup> and 26<sup>48</sup> then continue to regulate

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<sup>41</sup> Article 16 “Applicants” paragraph 3: “The requirements in paragraph 2 may only include the provision of a financial guarantee that ..., and assurance of the capability to prepare compliant bids...”.

<sup>42</sup> Article 19 “Application” paragraph 2: “Requests relating to the regular working timetable must adhere to the deadlines set out in Annex III.”

<sup>43</sup> Article 18 “Schedule for the allocation process” paragraph 1: “The infrastructure manager shall adhere to the schedule for capacity allocation set out in Annex III.”

<sup>44</sup> Annex III point 5: “No later than four months after the deadline for submission of bids by applicants, the IM shall prepare a draft timetable.”

<sup>45</sup> Article 22 “Congested infrastructure” paragraph 1: “where... it is not possible to satisfy requests for infrastructure capacity adequately then the infrastructure manager must immediately declare that element of infrastructure ... to be congested.”

<sup>46</sup> Article 22 “Congested infrastructure” paragraph 2: “When infrastructure has been declared to be congested, the infrastructure manager shall carry out a capacity analysis... unless...”.

<sup>47</sup> Article 25 “Capacity analysis” sets the objective of capacity analysis, what to consider during the analysis as well as measures to be considered, and a time deadline for completion of the analysis.

<sup>48</sup> Article 26 “Capacity enhancement plan” regulates the timeline, content, and conditions of the capacity enhancement plan.

extensively the procedures, principles and contents regarding capacity analysis and capacity enhancement plan.

Provisions as such with respect of congested infrastructure in terms of procedure, capacity analysis as well as enhancement plan are extensive, sufficient, and clear.

The frequent lack of information in network statements regarding the procedures after the infrastructure has been declared congested, or about the capacity analysis or about capacity enhancement plan, shall be considered therefore as non-compliance with the Directive.

### **C.7 Impact of framework agreement**

An applicant who is a party to a framework agreement shall apply in accordance with that agreement<sup>49</sup>. Despite that such agreed capacity cannot be specified to such details as a certain train path<sup>50</sup>, nor to preclude the use by other applicants<sup>51</sup>, the existence of framework agreements will have an influence on the process of capacity allocation. This is because a framework agreement has already agreed upon the infrastructure capacity required by and offered to the applicant. Some IM may also assign priority to a framework agreement.

Like reserved capacity for maintenance and designated infrastructure, the need is obvious in order to make the reserved capacity, via framework agreements, known to all interested parties. With this attempt Article 17.6 states that the general nature of each framework agreement shall be made available. It is however too general and not strong or specific enough to make it compulsory for infrastructure managers to include them directly in the network statement.

### **C.8 Procedural information following dispute resolution**

Like congested infrastructure, provisions in Directive 2001/14/EC governing procedures in case of disputes during the coordination process are crystal clear. According to Article 21.6<sup>52</sup>, the Directive requires a dispute resolution system be set up for allocation of infrastructure capacity. It further states that if this system is applied, a decision shall be reached within a time limit of 10 working days.

Since setting up of the dispute resolution system is mandatory, and that once it applies the time limit of 10 working days shall also apply, it is mandatory to include the decision making deadline in network statements. Therefore, any network statement that fails to include a specific number of days before which a decision following the dispute resolution system shall be made, is not in compliance with the Directive.

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<sup>49</sup> Article 19 "Application" paragraph 3: "An applicant who is a party to a framework agreement shall apply in accordance with that agreement."

<sup>50</sup> Article 17 "Framework agreement" paragraph 1: "Without prejudice to... The framework agreement shall not specify a train path in detail, but should be such as to...".

<sup>51</sup> Article 17 "Framework agreement" paragraph 2: "Framework agreement shall not be such as to preclude the use of the relevant infrastructure by other applicants or services."

<sup>52</sup> Article 21 "Coordination process" paragraph 6: "Without prejudice to..., in case of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall, be made available in order to resolve such disputes promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days."

## C.9 Appeal

In Directive 2001/14/EC, Article 30.2<sup>53</sup> regulates that an applicant shall have a right to appeal to the regulatory body for any interests that he believes have been unfairly treated, discriminated against or is in any other way aggrieved. The paragraph lists a wide range of issues that are governed by this article, and highlights that the appeal might be especially against the decisions adopted by the infrastructure manager. While the term is general, the legal effect is clear and inclusive as a directive deems to be.

The Directive has also given the member states the authority to establish the regulatory body (Article 30.1), and for this regulatory body or national legislation to detail the right of appeal of applicants. A missing step in between therefore, by the member state or regulatory body or infrastructure manager, may lead to this particular provision not being implemented completely. The fact that analysed network statements have a considerably low coverage of detailed appeal procedures may be an indication that one or more steps in between at the national level are missing. It is either the member state who fails to reflect this point in its national legislation, or who is not sufficiently specific or practical, or it can be the infrastructure manager who has failed to implement the national law in its network statement.

### Assessment of EU legal framework

From the legal analysis in the previous section we see that the relevant provisions are clear, sufficient and effective in Directive 2001/14/EC regarding the following subjects:

- In relation to “Charging”:
- B.2 Change in charges;
- B.3 Performance scheme; and
- B.4 Scarcity charge, environment charge, mark-ups, discounts, environment, compensation and reservation charge
- In relation to “Capacity allocation”:
- C.1 Capacity non-transferable and non-tradable
- C.2 Restrictions of use in infrastructure (designated infrastructure)
- C.4 Requirements on applicants
- C.5 Process for application and capacity allocation
- C.7 Congested infrastructure
- C.9 Procedural information following dispute resolution

With regard to the remaining subjects, the relevant provisions in the Directive are considered to be not sufficiently clear, adequate or effective:

- In relation to “Services”:
- A.1 Service scope (rail related type of services)

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<sup>53</sup> Article 30 “Regulatory body” paragraph 2: “An applicant shall have a right to appeal to the regulatory body if it believes that.. concerning: a) the network statement; b) criteria contained within it; c) the allocation process and its result; d) the charging scheme; e) level or structure of infrastructure fees which it is, or may be, required to pay; f) safety certificate, enforcement and monitoring of the safety standards and rules.”

- A.2 Facility / service information
- A.3 Provision of services
- In relation to “Charging”:
- B.1 Contents of NS in relation to charging and charges
- B.5 Charges in relation to category II services
- B.6 Charges in relation to category III/IV services (additional and ancillary services)
- In relation to “Capacity allocation”:
- C.2 Restriction of use in infrastructure (capacity requirements for maintenance)
- C.3 Reserved capacity
- C.6 Allocation priority (previous usage)
- C.8 Impact of framework agreement
- C.10 Appeal

### Article 5 (services)

Basically, Article 5<sup>54</sup> is concerned with regulating the provision of services. Obligations imposed on the infrastructure manager(s) differ: while it is compulsory to provide the minimum access package, it is compulsory with conditions in regard to Annex II.2 and Annex II.3 services and, provision of Annex II.4 services is not compulsory.

In relation to Annex II.2 services, that Article 5.1<sup>55</sup> uses such terms as ‘viable alternatives’ and ‘market conditions’ have caused different applications country by country and case by case. Leaving the judgement of such conditions at the discretion of infrastructure managers may also lead to uncertainty and disparity in interpretation. Additionally, the choice of ‘the provider of the main infrastructure provider’ may have also resulted in ineffective implementation. Since many infrastructure managers do not provide Annex II.2 services or only to a limited extent, this will exempt the infrastructure manager from facilitating the provision of such services meanwhile it is difficult to regulate the main infrastructure provider to perform this duty.

As far as the service or facility information is concerned, Article 5 may strengthen the need to provide such information by introducing specific provisions towards this end, on top of the current Article 3 and Annex I and II. As a matter of fact, the definition of “infrastructure” provided by the EC Directives does not explicitly include most of the service facilities listed under Annex II. In fact, service facilities under Annex II.2 are not explicitly listed as part of the infrastructure in relevant EU Regulations, i.e.:

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<sup>54</sup> Article 5 “Services” paragraph 1 regulates the provision of minimum access package and category II services. In paragraph 2 and 3 it defines the duty of infrastructure manager for providing additional services and ancillary services respectively.

<sup>55</sup> Article 5 “Services” paragraph 1: “Railway undertakings shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in Annex II. The supply of services referred to in Annex II, point 2 shall be provided in a non-discriminatory manner and requests by railway undertakings may only be rejected if viable alternatives under market conditions exist. If the services are not offered by one infrastructure manager, the provider of the ‘main infrastructure’ shall use all reasonable endeavours to facilitate the provision of these services.”

- Dir 91/440/EC states that “railway infrastructure” shall mean all the items listed in Annex I.A to Commission Regulation (EEC) N° 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) N° 1108/70(1), 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’”
- Regulation 2598/70/EEC states, in the Annex I.A, that: “Railway infrastructure consists of the following items, provided that 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; 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, and 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 traversers (except those reserved exclusively for locomotives);
  - Access way for passengers and goods, including access by road;
  - 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 : sub-stations, supply cables between sub-stations and contact wires, catenaries and supports; third rail with supports;
  - Buildings used by the infrastructure department, including a proportion in respect of installations for the collection of transport charges.”

#### **Annex I point 2 (contents in relation to charging and charges for all categories of services)**

Annex I point 2 specifies clearly the duty of providing “appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in Annex II” in the network statement, but limits it to the situation when the services listed in Annex II are provided by only one supplier.

As the analysis illustrates in the previous section, the provision as such might be over-simplified and too general to cope with the far more complex situation in the real market. Firstly it is questionable to determine, and by who, whether the services are supplied by

only one supplier. Secondly, if the single supplier is a different party than the IM, is it feasible for the IM to provide such information? And thirdly, by limiting the duty to where there is only one supplier, the circumstances will arise where there is no one who is to bear the responsibility to provide the charging and charges information in the network statement e.g. when the market is competitive and more than one supplier for one service exists. Last but not least, this provision applies to all categories of services, while the duty of the IM largely differ in providing different categories of services.

#### **Article 12 (reserved capacity)**

Since available capacity is important information to railway undertakings throughout the working period of the timetable, it is beneficial and useful for railway undertakings to obtain such information about available capacity resulting from unused reservation.

The second paragraph of article 12, as it is, may be insufficient to produce the desired effect to secure information about the available capacity. Firstly, by defining the duty of IM as “be able to inform any interested party of the infrastructure capacity which has been allocated to user railway undertakings”, rather than the duty to inform directly, the legal provision will be less effective in implementation. Secondly, the Directive may introduce the obligation for the IM to specify in the network statement details of the information channels via which railway undertakings can obtain the information. It is also desirable to change the information to be informed about, from “infrastructure capacity which has been allocated” to “available capacity which has been allocated but not used”.

#### **Article 28, Annex I point 3 (restriction of use in infrastructure: maintenance capacity)**

Annex I point 3 requires clearly that “This<sup>56</sup> 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.” Article 28 however, in the first paragraph requires the application for maintenance capacity be submitted only during the scheduling process and in the second paragraphs, simply requiring that adequate account shall be taken of the effect of infrastructure capacity reserved for scheduled track maintenance on application, without clearly stating on whom the obligation is imposed.

Without defining a clear body to bear the liability of providing the maintenance capacity information, Article 28 becomes vague and ineffective in implementation. Also by introducing the term such as “adequate”, the legal effect of such provisions is weakened.

Since capacity reservation for maintenance is often prepared in advance, it is feasible for network statements to include information about the likely capacity requirements for maintenance.

#### **Article 17 (impact of framework agreement)**

Few network statements have included the information in relation to framework agreements, though Article 17 sets to regulate about the role, effect, content, terms of use and the publicity of framework statements. This is perhaps attributed to two main reasons. Firstly it is the general terms that are applied in Article 17, which mostly appear in terms of principles or principle issues therefore become less specific in terms of implementation. Secondly, there is no provision (except paragraph 6) in Article 17 which specifically

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<sup>56</sup> ‘This’ refers to the section on the principles and criteria for capacity allocation.



requires the framework agreement or part of which to be included in the network statement. Article 17.6 is an exception in this respect wherein the general nature of each framework agreement is required to be made available to any interested party. However 'general nature' is also a vague term, which may lead to disparity in interpretation.

In respect of third party approval of the framework agreement, Article 17.1 entitles member state to require prior approval by the regulatory body. Article 17.1 does not however levy it as an obligation to contain this information. This may also led to the missing of information in relation to third party approval in network statements.

#### **Article 30.2 (appeal)**

Article 30.1 has entitled applicant the right to appeal to the regulatory body regarding a range of issues, it seems to have failed however, in real life, to reinforce its implementation seeing that the number of network statements is significantly low which include procedural information about appealing.

A network statement which does not stipulate the right of applicants to appeal, the procedures to appeal, and the body to which appeals must be sent is a fairly biased document against the users' interests. In order to ensure adequate and effective appealing right and information to be included in the network statement, extra provision can be added to current Article 30.2 which specifies that the network statement shall contain clear and adequate information about appeals including the appealing procedures.

## **ANNEX C: Legal assessment regarding connected networks (international transport)**

In most network statements international transport does not receive adequate treatment in terms of, in particular: the schedule for the allocation process, coordination principles, priority in congestion and cooperation on capacity allocation in case of more than one network. Likewise, less than half of the network statements give priority for freight services on congested lines.

With low response in the network statements and poor implementation of the relevant legal provisions, the following subjects are identified for detailed legal analysis and assessment of the legal framework. A short summary of the legal provisions from Directive 2001/14/EC in relation to such subjects is included in the end of this Annex.

1. Application for international service capacities
2. Schedule for allocation process
3. Cooperation among infrastructure managers
4. Coordination principles
5. Priority in capacity allocation and in case of congestion

### **13.9 Legal Analysis**

#### **13.10 Application for international service capacities**

In terms of application, Article 19.4 states that applicants are entitled to request capacity crossing more than one network by applying to one infrastructure manager. That infrastructure manager shall then be permitted to act on behalf of the applicant to seek capacity with other relevant infrastructure managers. While this provision gives the right to applicants to apply for international transport service capacities, it also implies among infrastructure managers that one shall respect and recognize the request from the other on behalf of an applicant dwelling in the latter's country. The Directive then goes further in Article 19.5 endowing more rights to the applicants, ensuring that for infrastructure capacity crossing more than one network, applicants can submit such application to any joint body that the infrastructure managers may establish. In connection with article 19.4, we can see then that any joint body who receives such application is allowed to apply for capacity to other relevant infrastructure managers on behalf of the applicant.

Article 19.4 and 19.5 have sufficiently ensured the right of applicants to apply as well as the right to apply to any joint body in an international network, however, the provisions do not impose any reciprocal obligation on infrastructure managers - either the one who receives the application or any other within the network - to deal effectively with such applications. Without legal requirements at their end, infrastructure managers appear to be inclined to omit this aspect from their network statement. In this respect, by regulating rights and not obligations, the Directive is rendered less effective.

#### **13.11 Schedule for allocation process**

In contrast with the treatment in Directive 2001/14 of obligations on the infrastructure manager with respect to dealing with applications for capacity on more than one network,

Directive 2001/14/EC does provide clear and distinct terms addressing duties on infrastructure managers for the scheduling process in capacity allocation. Article 18.2 requires that infrastructure managers shall put the international train paths in the first place by agreeing with other relevant infrastructure managers and before commencing the consultation on the draft working timetable with other applicants within its own country. Annex III point 4 further elaborates a specified time line for such international train paths to be agreed upon between IM. Combining Article 18.2 and Annex III point 4, it is clear and obligatory therefore for any individual infrastructure manager to assign at least provisional international train paths 11 months or earlier, before the working timetable comes into force.

### **13.12 Cooperation among infrastructure managers**

In order to make sure that international transport services receive the desired level of treatment, an extensive Article 15 is dedicated to this purpose, addressing the principles, procedures, methods and criteria that infrastructure manager shall follow in order to enable an efficient creation and allocation of international train paths. Since the international train paths involve infrastructure from more than one infrastructure manager, it is vital for an EU level law, which is higher than the national law, to set the rules and harmonise the requirements.

Article 15 is drafted in rather general terms, and whilst this is partly attributed to the wider target groups covered, , to some extent, this appears to lose its effectiveness when it comes to implementation. The obligations addressed by Article 15 are more conceptual in nature, and are thus more difficult to apply when it comes to practical application by any individual infrastructure manager.

In order to make sure that Article 15 is fully implemented and reflected in the network statement, more practical and applicable terms should be stipulated with regard to the principles and rules contained in the article, as well as what to be done during the process of international cooperation. The requirements as such might ideally be stated directly in the Directive so that its importance of being implemented in the NS becomes evident. In addition, requiring the details of principles and rules be published in the network statement will also enhance the transparency of such information which again will increase the sense of obligation to get it implemented in practice.

In short, because Article 15 sets to regulate a group of parties instead of one, it would enhance its effectiveness by stating the relevant obligations more clearly, and by addressing such duties in more practical terms for the sake of application. An article as such would definitely need the law at national level to adapt, so it should therefore address its general principles and objectives in such a way that national legislation would not omit to regulate and reflect what is stipulated in the Directive. The implementing body in this aspect is the member state.

### **13.13 Coordination principles**

During the coordination process, international train paths are referred to in Article 21.4. However, the reference is perhaps overly generic saying that the principles governing the coordination process shall reflect the difficulty of arranging international train paths as well as the effect that modification may have on other infrastructure managers. Hence, Article 21.4 gives freedom to the infrastructure manager, instead of regulating it, to judge what shall be interpreted as difficulty or sufficient in taking care of international train paths.

### 13.14 Priority in capacity allocation and in case of congestion

During capacity allocation, priority can be applied but only in case of congestion and specialised infrastructure (Article 20.2). In article 22.5, it follows then clearly that in case of congestion, adequate consideration shall be given to freight services and in particular international freight services in determining priority criteria.

However, the effectiveness of the provision is offset by introducing ‘adequate consideration’, since adequate is not a quantifiable term. Thus, it is left to the infrastructure manager to interpret the level of consideration that it deems to be ‘adequate’, which may lead to uncertainty and disparity between interpretations.

### 13.15 Legal Assessment

Provisions in relation to international transport are dispersed throughout the Directive 2001/14/EC. Though Article 15 is dedicated to cooperation between infrastructure managers in the allocation process when it involves more than one network, provisions about application, allocation schedule, coordinating principle and allocation priority regarding international transport are spread over various articles that are predominantly about other types of transport. By spreading provisions in different articles under various subjects in this way, the Directive does not seem to signal sufficiently the importance of the issues in relation to international transport. Perhaps as a consequence, this has weakened its effectiveness in implementation.

In terms of wording in the provisions, Article 19.4 and 19.5 (application for international service capacities), Article 21.4 (coordination principles) and Article 22.5 (priority) all tend to use overly generic terms. By regulating rights of applicants, and not imposing obligations on infrastructure manager(s) Article 19.4 and 19.5 are rendered less effective. Both 21.4 and 22.5 also involve definitions that are open to interpretation, such as ‘difficulty’, ‘effect’ in Article 21.4 and ‘adequate consideration’ in Article 22.5 which gives infrastructure managers perhaps too much discretion to interpret such terms. As a result, such provisions may well be ignored in network statements or treated differently, thus leading to disparities among networks.

As far as Article 15 is concerned, the article is more conceptual in nature in order to suit the larger audience that it sets to govern i.e. infrastructure managers crossing more than one network, and we believe it is thus less effective in terms of practicability for implementation.. Rectify this, the Directive could add provisions specifying the duty on member states to include similar terms in national legislation so as to enhance the legal importance of such provisions. For issues that can be directly implemented in a network statement, for example principles and rules or activities to take during the cooperation process, the Directive could further stipulate with a specific provision that such information shall be included directly in the network statements.

### 13.16 Legal provisions in relation to connected networks (international transport)

Article	Provisions	Areas of concern
Annex I.3	“It shall detail the measures taken to ensure the adequate treatment of freight services, international services and...”	Priority for freight services in general
Art 20.2	“The IM may give priority to specific services within the scheduling and coordination process but only as set out in Articles 22 (Congested infrastructure) and 24 (Specialised infrastructure).” (compulsory under conditions) (nor more further, blank)	Priority for freight services in capacity allocation
Art 22.3 Art 22.4	Art 22.3: “When..., the IM may... employ priority criteria to allocate infrastructure capacity.”	Priority for freight services in congestion

	Art 22.4: "The priority criteria shall take account of... In order to guarantee..., in particular to... promote the development of rail freight, Member States may take any measures necessary to ensure that such services are given priority..." (compulsory under conditions)	
Art 22.5	"The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority criteria."	Priority for freight services in congestion
Art 19.4	"Applicants may request infrastructure capacity.. by applying to one IM. That IM shall then be permitted to act on behalf of the applicant to seek capacity with the other relevant IM." (compulsory under conditions)	International service application
Art 19.5	"IMs shall ensure that, applicants may apply direct to any joint body which the IM may establish."	International service application
Art 18.2	"The IM shall agree with the other relevant IM ... which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary."	Schedule for international services in capacity allocation
Annex III.4	"No later than 11 months before the working timetable comes into force, the IM shall ensure that provisional international train paths have been established in cooperation with... IM shall ensure that as far as possible these are adhered to during the subsequent process."	Schedule for international services (in case of more than one network) in capacity allocation process
Art 15.1	"IM shall cooperate... which crosses more than one network. They shall organise international train paths... They shall establish such procedures as appropriate to enable this to take place..."	Procedural information in case of cooperation on corridors which involves more than one network and IM
Art 21.4	"The principles governing the coordination process shall be defined in the NS. These shall in particular reflect the difficulty of arranging international train paths and the effect that modification may have on other IM."	Coordination principles for international services
Art 20.2	"The IM may give priority to specific services within the scheduling and coordination process but only as set out in Articles 22 (Congested infrastructure) and 24 (Specialised infrastructure)." (compulsory under conditions)	Priority for international services in capacity allocation
Art 22.5	"The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority criteria."	Priority for international services in congestion

## ANNEX D: minutes of the workshop held with the stakeholders on 7<sup>th</sup> December 2009.

### Workshop 7 December 2009

DG TREN, Brussels

**Minutes:** Eef Delhaye (TML) – revision: Paolo Guglielminetti (PwC)

**Participants:** Stakeholders: list attached

**EC-DG  
TREN:** Maurizio Castelletti, Frank Jost

**Consortium:** Paolo Guglielminetti (PwC), Chris Nash (ITS), Eef Delhaye (TML), Adriaan Roest Crolius (NEA)

### Introduction

- **Mr Maurizio Castelletti**, EC-DG TREN, presents the aim and the scope of the work, and recalls the existing legal basis for the Network Statements (NS). The study is not orientated at proposing change to existing legislation, besides what is already included in the recast of the 1<sup>st</sup> railway package.
- **Mr. Filipe Charrua Graça Gomes de Pina**, RailNetEurope (RNE), illustrates the scope of the work of RNE's NS working group:
  - to harmonize structures and to propose content for the NS;
  - to carry out benchmark analysis;
  - to support the development of documents having an international scope.

RNE do not enforce changes, nor carry out individual analysis of specific NS.

### Part 1 – General layout and structure of the NS & information on access conditions and minimum access package

- **Paolo Guglielminetti** (PwC); **Chris Nash** (ITS): Presentation of results and recommendations
- **Open discussion**

The following tables report the main points discussed during the workshop.

Stakeholder	Questions or intervention	Answers provided
<b>Dan Wolff (EIM)</b>	If the objective is not to change legislation, how the results from this study will be taken into account (if not via infringement procedure)	<b>DG TREN:</b> The utilization of the results of the study has not been decided yet. A recast of some aspects included in the Annexes may be possible (e.g. classification of services in Annex II of 2001/14).  Besides, guidelines with actual interpretation of 2001/14 provisions on NS may be developed by the EC
<b>Hinne Groot (MoT, NL)</b>	The study has explored how NS are used by RU?or do they get info in another way?	<b>Consortium:</b> Although no direct question on this was asked for to the RUs, the answers received suggest that some RUs actually used the NS for their planning (e.g. new RUs, RUs willing to develop services in another countries), while others (typically incumbent RUs operating trains only in their country) don't need the instruments because already very familiar with network characteristics.
	Are there any regulatory appeals on NS?	<b>DG TREN:</b> There is a working group of the Regulatory Body on that. No cases are currently open ( <i>an intervention from the public says that a case is open in NL for the NS becoming part of the contract or being negotiable</i> )
	Is there information on administrative costs to produce a NS?	<b>DG TREN:</b> No specific data have been collected in the Consultation on this.
<b>Gomez Pina (RNE)</b>	The document is a good starting point; most of the recommendations correspond to RNE's point of view, but there is concern on how some of them will be implemented. How can for example a harmonized webtool be guaranteed? What would be the content? Only on infrastructure or also on charging? Should IM provide it or RNE?	<b>Consortium:</b> As far as we can, we will try to be more precise in our recommendations. Webtools are recommended to provide all type of information that will be difficult to disseminate effectively with paper documents. Both infrastructure data and charges information will take benefit of them.  There is certainly a role to play by RNE in disseminating good practices and further support harmonization (the existing RNE guidelines have been already successful in harmonizing some section of the NS).
<b>Daniel Haltner (Trasse CH)</b>	In Germany there are 117 IM contacts: how can you display all this information? Just a link to the NS of the main connected IMs, and not to all the relevant IM's?	<b>Consortium:</b> In the very few Countries were so many IMs exist, the links shall be provided only to the NS of the main connected networks.
<b>Richard Davies (ATOC, UK)</b>	Presenting future development of the network is important, but some characteristics (e.g. loading gauges) change quite often.	<b>Consortium:</b> It is important to provide information on most important infrastructure changes, but of course not all details may be provided.  <b>DG TREN:</b> Infrastructure Registers will be the appropriate document for detailed description on the infrastructure and their updating, but their preparation will take a lot of time

Stakeholder	Questions or intervention	Answers provided
<b>Réka Németh (VPE Rail Capacity Allocation Office, Hungary)</b>	Did the study take into account that some NS are legally binding offers? ... This makes it not easy to add weblinks, contact details, as well as any element not directly managed by the IM or requiring frequent updating.	<b>Consortium:</b> Most NS are not binding or only binding when annexed to the contract, so the problem is peculiar to few countries. In case the NS is binding, it is possible to put the info which is not “controlled” by the IM or requiring too frequent updating in a not-binding Annex to the NS.

## Part 2 – Rail related services

- **Paolo Guglielminetti (PwC); Chris Nash (ITS):** Presentation of results and recommendations
- **Open discussion**

Stakeholder	Questions or intervention	Answers provided
<b>Gomez Pina (RNE)</b>	Recommendations 4d / 6b state the provision of contacts for the service facilities that are not” owned or operated by the IM”: will the study define this strictly? The IM is not in the position to enforce the provision of contact details or any other information from the service providers ...	<b>Consortium:</b> In case the IM is offering the services, the information shall be provided. If someone else is providing them, the IM is not liable. However, if there is a monopoly in providing services, the IM shall make all possible effort to facilitate the access to them. If a monopolistic service provider does not provide to the IM service description, charges or even contact details, it is advisable that the IM clearly states that in the NS.
<b>Dan Wolff (EIM)</b>	EIM agrees on recommendation 4d as it has been formulated. An obligation to monopolistic service providers to provide such kind of information will be suitable. A lot of service providers say that because of commercial reasons they can not give any information.	<b>DG TREN:</b> The proposed obligation is likely to be included in the recast of the 1 <sup>st</sup> Railway Package
<b>Frank Miram (Deutsche Bahn AG)</b>	The situation in Germany is different. According to German law everyone who is providing rail-related services has to have its own NS. The idea to have one main NS linking all the specific NS does not seem feasible.	<b>DG TREN:</b> this is noted <b>Consortium:</b> If all have to have a NS, this means that the information is there. The only issue is how to link all NSs, considering that it would not be feasible for the main IM to maintain such a huge list of web-links to individual NS.



Stakeholder	Questions or intervention	Answers provided
<b>Réka Németh (VPE Rail Capacity Allocation Office, Hungary)</b>	In Hungary there is the same obligation as in Germany. Besides, the IM is not in the position of preparing a NS for all, as in Hungary there is a capacity allocation body in charge of that.	<i>See previous answer</i>
	Recommendation 4b requires the provision of information on the services that are “more interesting for the market”. Who will judge in advance what are the most “charming” facilities on which the information shall be collected?	<b>Consortium:</b> If services are provided by IM, all should be included. If they are not provided by the IM, some prioritizing might be needed, that is way a selection of the most important services may be useful. The market behavior will support this selection, i.e. by analyzing the request for information on services received by the IM.  It should also not be problematic to have all contacts of service providers as for most countries there are not a lot of service providers.  In some cases is a daughter company of the IM that provides the services; in these cases, the information should be included.
<b>Emanuele De Santis (Nuovo Trasporto Viaggiatori, Italy)</b>	For the new entrants all the services are very important, so the NS shall provide a focus on them	<i>See previous answer</i>
<b>Dan Wolff (EIM)</b>	Have EC considered reshuffling services in annex 2?	<b>DG TREN:</b> EC is looking into moving some services from point 2 to point 1 (services that are part of the minimum access package) of annex 2 (e.g. Traction current).
	RB activities' scope according to art 30 does not include the regulation of services: would EC enlarge the scope of the RB role (now restricted to the regulation of the minimum access package)?	<b>DG TREN:</b> Yes, role of RB is part of the recast consideration. But the decision on what happens with the Recast will wait until next year as the new commissioner might have its own view on rail.

### Part 3 – Charging, capacity allocation & NS harmonization

- **Paolo Guglielminetti (PwC); Chris Nash (ITS):** Presentation of results and recommendations
- **Open discussion**

Stakeholder	Questions or intervention	Answers provided
<b>Dan Wolff (EIM)</b>	Slide 38 mentions that only 41% of the NS provide a detailed schedule of the allocation process. This is important lack of information, which would handicap the RU. However slide 39 mentions that 73% of the people are satisfied for that point. This is a big gap on an important issue and you do not have a recommendation on this point	<b>Consortium:</b> Only 21 RU answered. 73% of 21 means 14-15 RUS satisfied.  The Consultant's analysis instead included more NS, and 41% means 13 NS, so the difference is only apparent.  The question also is also why RU are really satisfied. It is possible that in some cases they receive their information elsewhere (especially in the case of the incumbents).
<b>Philippe Lallemand (B-Cargo Operations , Belgium)</b>	It is indeed important to find the allocation rules in the NS, but it is equally important that the rules are respected. Answers to the requests of path are often not quick. It is important that the information is in the NS, but more importantly is that we receive the paths.  The problem is more serious for international paths, when more than 1 IM is concerned.	<b>DG TREN:</b> this is a question beyond the NS, we know that things are not optimal yet. You can always send a letter to the EC if specific questions.
<b>Daniel Haltner (Trasse CH)</b>	<i>(Intervening as RNE member)</i>  The deadlines exist, and the IM shall be able to comply with them. If this is not the case, the RU should go to court.	-
<b>Réka Németh (VPE Rail Capacity Allocation Office, Hungary)</b>	The problem with the NS is that they are not very flexible; weblinks make it sometimes too easy to modify information, but who will check if the weblinks are still valid?	<b>Consortium:</b> If all desirable information would be part of the NS, it would not be readable anymore. But it is crucial that the information should be there. Weblinks should only be used for supplementary information. Note that there are applications which can check if weblinks are working, so this cannot be a major issue preventing the use of weblinks.
<b>Emanuele De Santis (Nuovo Trasporto Viaggiatori, Italy)</b>	Summarizing the findings, more detail and information is needed and NTV agrees on that.  For capacity allocation, rules shall be defined for the lines but also for terminal's capacity. The train path should be linked to the services. The capacity allocation should be integrated.	<b>Consortium:</b> Suggestion agreed, the problem is often the last mile. We will include this in our recommendations.  NS can give information on the service facility, but process of allocation of its capacity is also crucial.  <b>DG TREN:</b> EC agrees with the remark made on Origin-Destination Paths (including services).
	Did the consultants verify how many NS are complying with the TSI concerning maintenance facilities?	<b>DG TREN:</b> This TSI has been withdrawn, so not in force any more. It is described in each TSI (of infrastructure, of rolling stocks). However, this is very generic description and cannot be linked to the NS.

<i>Stakeholder</i>	<i>Questions or intervention</i>	<i>Answers provided</i>
<b>Daniel Haltner (Trasse CH)</b>	<p>For capacity allocation there are not “grandfathers rights”. So, the question to RU about “conditions by which account is taken of previous levels of capacity in determining priorities for the allocation process” is wrong.</p> <p>Only a FA, if they are present, has some stability for the next years</p>	<b>Consortium:</b> On this area, it is clear that in case of no FA exist, it is enough to specify in the NS that no FA are present.
<b>Gomez Pina (RNE)</b>	<p>RNE welcomes this independent study and it clearly shows where to go to. However, he is concerned on how to get there (road map) for example for the point on harmonization. RNE is improving the common structure, but the existence of different business cultures shall be taken into account.</p> <p>With respect to the road map:</p> <ul style="list-style-type: none"> <li>• will the study analyze the work done by RNE (Guidelines)</li> <li>• will there be concrete recommendations with respect to the measures to be taken?</li> <li>• Shall the improvements be implement by each IM or by RNE?</li> </ul>	<p><b>DG TREN:</b> EC still need to decide on whether recommendations will be classified by who should take it up. For the EC point of view, the more RNE does, the better.</p> <p><b>Consortium:</b> The study has thoroughly investigated the recommendations made by RNE guidelines. The Guidelines have been very effective in the promotion of harmonization of some areas of the NS (e.g. description of the nature of the infrastructure) but they are less applied for other areas (services) or not enough detailed for some aspects (charging).</p> <p>The work done by RNE has been appreciated as providing a very good basis for NS harmonization.</p>
<b>Richard Davies (ATOC, UK)</b>	It would be interesting to specify what RUs answered to the Consultation	<b>Consortium:</b> 7 where “new” comers (5 operating freight services, 2 passengers).
<b>Helena Palomar Ortiz (ADIF, Spain)</b>	It shall be recommended that ERTMS level (if any) shall be specified for each line in the NS.	<b>Consortium:</b> Agreed, this information shall be recommended both for existing lines and when describing network evolution.

Stakeholder	Questions or intervention	Answers provided
<b>Daniel Haltner (Trasse CH)</b>	<p>Not sure about the feasibility / usefulness of providing information on the “maximum number of trains per hour” since it depends on the traffic mix that may vary over the time; besides, there is no obligation to provide this information apart from the case of congested infrastructure.</p> <p>Also the recommendation on the “impacts of any Framework Agreements on available capacity” is not relevant (there is no “grandfathers right”. Only if infrastructure is congested, you may have priorities, but the FA will not have a priority per se.</p> <p>Providing info on pre-allocated capacity may even imply a lower level of flexibility for capacity allocation.</p>	<p><b>Consortium:</b> The recommendation is not linked to a specific directive provision, so it is not a matter of compliance.</p> <p>However, such information is very important for the RUs, and the timetable is not changing so highly from one year to another, so information may be provided.</p> <p>Concerning FA, for operators it is important to know if there is a FA. It is important to know whether the line is not congested but there are only paths remaining during the night, for instance. If the information is not available, RU could be taken by surprise if this only comes up in the negotiations with the IM.</p>
<b>Hinne Groot (MoT, NL)</b>	<p>Support the remarks as Trasse.ch</p>	
<b>Chiara Pisano (EIM)</b>	<p>The Stakeholders consultation included questions on corridor NS and on the definition of ‘viable alternative’. Why this is not included in your position paper?</p>	<p><b>DG TREN:</b> With respect to the corridor, in the framework of the new proposed legislation for corridors with freight priority, for the time being the position of the Council is that there is a NS to be published on the level of corridor. A final decision has not been taken yet.</p> <p><b>Consortium:</b> Concerning the concept of “viable alternative”, the results of the questionnaire could not be easily summarized as almost each one of the answers received was different. Only way is to show all answers, and it has been promised to the respondents not to do that.</p> <p>For the corridor, the answer of the stakeholders is the same as for the harmonization: it could be interesting, but we risk to make it extensive, expensive,...if we want to include all in one document. Moreover, it will be very difficult to provide the service description over several countries.</p>
<b>Dan Wolff (EIM)</b>	<p>EIM believe that, if it would not mean additional work, the corridor NS is feasible.</p>	<p>-</p>

Stakeholder	Questions or intervention	Answers provided
	Why the consultation did not include a question about art 27 (“use it or lose it” principle) and it was not investigated on whether IM use it?	<b>Consortium:</b> Art 27 (congestion) was not in the consultation as the questionnaire was already quite long and not all aspects were included.  An analysis of that might be carried out if missing information on this is detected in the NS
<b>Kjartan Kvernsveen(Jernbanean-verket, Norway)</b>	The questionnaire was too long. The time consumption for respondents shall be taken into account. The consultants shall not ask for the content of the NS, they can analyse it by themselves.	<b>Consortium:</b> Experience of previous consultation showed us that it is crucial to always ask confirmation from relevant stakeholders, avoiding consultant's interpretation of factual elements.
	According the Position paper, more about 200 questionnaires were send out and 62 answers received, but only 6-7 new RUs (whose answers have a major interest). Could you show us the answers of the newcomers separately?	<b>Consortium:</b> Agreed

## Conclusions

### Maurizio Castelletti (EC – DG TREN):

- In some cases NS are missing information on specific issues (services + charges for them) and they lack details on the charging systems.
- We also see that additional information is needed concerning the last mile (stop- terminals) and that there are doubts about the provision of contact details in the NS.
- It would be also necessary to balance the information provided on paper (on the NS) and in weblinks.
- We think that the use of IT will become more and more in the future.
- Activities of RNE in supporting NS harmonization and disseminating good practices are very important and the EC fully supports them.
- One additional point is the need to provide information on the future development of the network. Crucially, because when RUs are looking at entering a market, they need to be able to plan over different years. This issue is linked to the definition of multiannual contracts for the development and maintenance of the networks.
- We also noticed the need to better understand the meaning of the legal value of the NS. There are different interpretations of this. Sometimes the legal commitment may be considered as a reason to exclude non stable information, or the information not directly controlled by the IM.

**Consortium:** The modifications of the recommendations proposed in the WS will be taken into account as much as possible.

**Frank Miram (Deutsche Bahn AG):** An important, general issue is the lack of regulatory scrutiny on the NS. The reason why some information is lacking might be because of the lack of regulation. It is nice to know what is nice to have, but if there is no control on the application of the rules, they will not have an effect.

**Stakeholders registered to the WS**

<i>Family name</i>	<i>First name</i>	<i>Organisation</i>
Bartkowski	Swenja	BNetzA, Germany
Benchekrout	Zineb	Réseau Ferré de France
Berg	Johannes	DB Netz AG
Brinckman-Salzedo	Delphine	Community of European Railway and Infrastructure Companies (CER) AISBL
Brzezinski	Artur	The Office of Railway Transport, Poland
Caruso	Roberto	Rete Ferroviaria Italiana S.p.A.
Corraze	Christine	Transport Ministry of France
Davies	Richard	Association of Train Operating Companies (ATOC), UK
De Ryck	Luc	Dienst Regulering van het Spoorwegvervoer en van de Exploitatie van de Luchthaven Brussel-Nationaal CCN
De Santis	Emanuele	Nuovo Trasporto Viaggiatori S.p.A.
Enberg	Nils	The Swedish Transport Agency
Enzfelder	Myriam	Swiss Federal Railways SBB
Ezraty-Daziano	Laurence	SNCF
Faramelli	Maurice	Administration des chemins de fer Gestionnaire des Capacités, Luxembourg
Gersende	Bidelot	Infrabel, Belgium
Gomez Pina	Xxx	REFER, RNE (chairman NS Working group)
Groot	Hinne	Ministry of Transport of the Netherlands
Haltner	Daniel	Trasse Schweiz AG
Hamoniau	Claire	Réseau Ferré de France
Haskins	Jon	Network Rail Infrastructure Ltd, UK
Heiming	Monika	ERFA
Iesalnieks	Juris	Latvian State Railway Administration
Kessel	Heinz	Department for Transport, UK
Kvernsveen	Kjartan	Jernbaneverket, Norway
Lallemant	Philippe	B-Cargo Operations
Lanucara	Lucio	Trenitalia S.p.A.
Maksimovas	Martynas	JSC „Lithuanian railways“
Miram	Frank	Deutsche Bahn AG
Monfoort	Wouter	Dutch Regulatory Body

Németh	Réka	VPE Rail Capacity Allocation Office, Hungary
Palomar Ortiz	Helena	Jefe de Gabinete de Gestión Postventa
Picelj	Peter	Ministry of Transport of Slovenia
Pisano	Chiara	European Rail Infrastructure Managers (EIM)
Pollard	Anna	UK Rail Regulator
Porras	Kaisa-Elina	Finnish Rail Administration
Pšenica	Peter	Slovenian Railways Ltd.
Sedlák	Mikuláš	Ministry of Transport of Slovakia
Sturmani	Oskars	Latvian Railway - LDZ
Sünder	Michael	OeBB Personenverkehr / Rail Cargo Austria
Tamás	Veréb	National Transport Authority of Hungary
Templado	Antonio Gómez	Jefe de Gabinete de Gestión Postventa
Urvald	Krisztián	MÁV Hungarian State Railways Co.
Vilkas	Darius	JSC Transachema
Wiederin	Stefan	OeBB Infrastruktur
Wolff	Dan	European Rail Infrastructure Managers
Wróbel	Jaroslav	PKP Polskie Linie Kolejowe S.A.
Zemljč	Zdenko	The Rail Transport Public Agency of the Republic of Slovenia

