

I

(Information)

COUNCIL

COMMON POSITION No 41/2000

adopted by the Council on 28 March 2000

**with a view to adopting Directive 2000/.../EC of the European Parliament and of the Council of ...
amending Council Directive 91/440/EEC on the development of the Community's railways**

(2000/C 288/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Com-
munity, and in particular Article 71 thereof,

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

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

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

Acting in accordance with the procedure laid down in
Article 251 of the Treaty⁽⁴⁾,

Whereas:

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

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

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

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

- (5) In accordance with the objective of completing the
internal market, which will include the possibility for
all licensed railway undertakings meeting the safety
conditions to provide services, access rights should
be extended to licensed railway undertakings for the
international transport of goods on a defined network,
called the trans-European rail freight network, including
access to, and supply of, services in major terminals and
ports.

⁽¹⁾ OJ C 321, 20.10.1998, p. 6 and OJ C ...

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175,
21.6.1999, p. 115), Council Common Position of 28 March 2000
and Decision of the European Parliament of ... (not yet published
in the Official Journal).

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25.

- (6) Access right is guaranteed to the licensed railway undertaking meeting the safety conditions and seeking access, whatever the mode of operation.
- (7) Member States remain free to grant access rights that are more extensive than access for railway undertakings operating international combined transport to international groupings operating international services and to railway undertakings operating international freight services within the trans-European rail freight network. The use of these more extensive access rights may be limited to railway undertakings licensed in Member States where access rights of a similar nature are granted, provided that this limitation is compatible with the Treaty.
- (8) To promote efficient management of infrastructure in the public interest, infrastructure managers should be given a status independent of the State, and freedom to manage their internal affairs, while Member States should take the necessary measures for the development and the safe use of railway infrastructure.
- (9) To promote the efficient operation of passenger and freight transport services and to ensure transparency in their finances, including all financial compensation or aid paid by the State, it is necessary to separate the accounts of passenger and of freight transport services.
- (10) In order to monitor the development of the railway sector better a European Rail Observation System should be set up.
- (11) The Commission should report on the implementation of this Directive and make appropriate proposals.
- (12) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.
- (13) Specific measures are required to take account of the specific geopolitical and geographical situations of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.
- (14) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to develop the Community's railways, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated transnational action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.
- (15) Directive 91/440/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. the title of Section I is replaced by 'Scope and Definitions';
2. Article 1 is repealed;
3. the following paragraph is added to Article 2:

 '3. Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive except Articles 6(1), 10 and 10a.';
4. Article 3 is amended as follows:
 - (a) the first and second indents are replaced by the following:

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

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (b) the following indent is inserted after the fourth indent:

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

5. the title of Section II is replaced by ‘Management independence’;
6. Article 4 is replaced by the following:

‘Article 4

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

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

7. Article 6 is replaced by the following:

‘Article 6

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

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

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

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

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

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

4. A Member State having established an independent rail regulator that is controlling and implementing the access to the infrastructure in a neutral and non-discriminatory manner shall be exempted from the application of paragraph 3.

5. The application of paragraphs 3 and 4 shall be subject to a report by the Commission within the framework of the European Rail Observation System, referred to in Article 10b, to be submitted by ... (*)

If the report comes to the conclusion that the arrangement provided for in paragraph 4 did not succeed in guaranteeing neutral and non-discriminatory access to the infrastructure, the Commission shall take a decision on the application of paragraph 4 in accordance with the procedure referred to in Article 11a(3).

(*) Six years after the entry into force of this Directive.’;

8. Article 7 is replaced by the following:

‘Article 7

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

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

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

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

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

5. With reference to the separation provided for in paragraph 2, Article 6(4) and (5) shall apply accordingly.;

9. Article 9(3) is replaced by the following:

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

10. the following paragraph is added to Article 9:

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

11. Article 10 is replaced by the following:

'Article 10

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

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

3. Whatever the mode of operation, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, the access that they are seeking to the trans-European rail freight network defined in Article 10a and in Annex I for the purpose of operating international freight services.

4. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of paragraphs 1, 2 and 3 and, within two months of receipt of such a request and after consulting the Committee referred to in Article 11a(2), decide whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, to the Council and to the Member States.

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

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

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

(*) OJ L ...;

12. in Section V 'Access to railway infrastructure' the following Article is added:

'Article 10a

1. The trans-European rail freight network consists of the following elements:

(a) railway lines as indicated in the maps in Annex I;

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

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

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

(*) Directive on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

(**) Two years after the entry into force of this Directive.;

13. after Section V 'Access to railway infrastructure', the following section is added:

'SECTION Va

European Rail Observation System

Article 10b

1. Not later than ...(*) the Commission shall make the necessary arrangements to set up a European Rail Observation System to monitor technical and economic conditions and market developments of European rail transport. The Commission shall ensure that adequate resources are made available to enable the effective monitoring of this sector.

2. The European Rail Observation System shall be run by the Commission which should invite to the meetings representatives from Member States as well as representatives of sectors concerned. The European Rail Observation System shall focus on rail and related infrastructure as well as the services using the infrastructure. It shall provide the Commission with the technical assistance necessary for the formulation and evaluation of measures

envisaged in these fields and help to develop a detailed understanding of the evolution of the market and the factors driving it.

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

4. Relying on input from the European Rail Observation System, the Commission shall report to the European Parliament and to the Council on:

- (a) the evolution of the internal market in rail services;
- (b) the framework conditions;
- (c) the state of the trans-European rail freight network;
- (d) the utilisation of access rights;
- (e) barriers to more effective rail services;
- (f) infrastructure limitations; and
- (g) the need for legislation.

(*) Six months after the entry into force of this Directive.'

14. Article 11 is replaced by the following:

'Article 11

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

2. The amendments necessary to adopt the Annexes shall be adapted by use of the regulatory procedure referred to in Article 11a(3).;

15. the following Article is inserted:

'Article 11a

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC apply, having regard to the provisions of Article 8 thereof.

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

4. The Committee shall adopt its Rules of Procedure.;

16. Article 14 is replaced by the following:

'Article 14

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

(*) Four years after the entry into force of this Directive.;

17. the following Article is inserted:

'Article 14a

1. For a period of five years from ...(*), the following Member States:

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

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

2. However, where:

- (a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and of Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to in Article 11a(2); or

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

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

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

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

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

(*) Two years after the entry into force of this Directive.'

Article 2

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

(*) Two years after the entry into force of this Directive.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

For the Council

The President

ANNEX I

PORTS

België/Belgique

Antwerpen/Anvers
Gent/Gand
Zeebrugge/Zeebruges

Danmark

Aalborg
Århus
Esbjerg
Frederica
København
Nyborg
Odense

Deutschland

Brake
Bremen/Bremerhaven
Brunsbüttel
Cuxhaven
Emden
Hamburg
Kiel
Lübeck
Nordenham
Puttgarden
Rostock
Sassnitz
Wilhelmshaven
Wismar

Ελλάς

Αλεξανδρούπολις
Ελευσίνα
Πάτρα
Πειραιάς
Θεσσαλονίκη
Βόλος

España

Algeciras
Almería
Barcelona
Bilbao

Cartagena-Escombreras
Gijón
Huelva
Tarragona
Valencia
Vigo

France

Bayonne
Bordeaux
Boulogne
Calais
Cherbourg
Dunkerque
Fos-Marseille
La Rochelle
Le Havre
Nantes
Port-la-Nouvelle
Rouen
Sète
Saint-Nazaire

Ireland

Cork
Dublin

Italia

Ancona
Bari
Brindisi
C. Vecchia
Genova
Gioia Tauro
La Spezia
Livorno
Napoli
Piombino
Ravenna
Salerno
Savona
Taranto
Trieste
Venezia

Luxembourg**Nederland**

Amsterdam Zeehaven
Delfzijl/Eemshaven
Vlissingen
Rotterdam Zeehaven
Terneuzen

Österreich**Portugal**

Leixões
Lisboa
Setúbal
Sines

Suomi/Finland

Hamina
Hanko
Helsinki
Kemi
Kokkola
Kotka
Oulu
Pori
Rauma
Tornio
Turku

Sverige

Göteborg-Varberg
Helsingborg
Luleå
Malmö
Norrköping
Oxelösund
Stockholm
Trelleborg-Ystad
Umeå

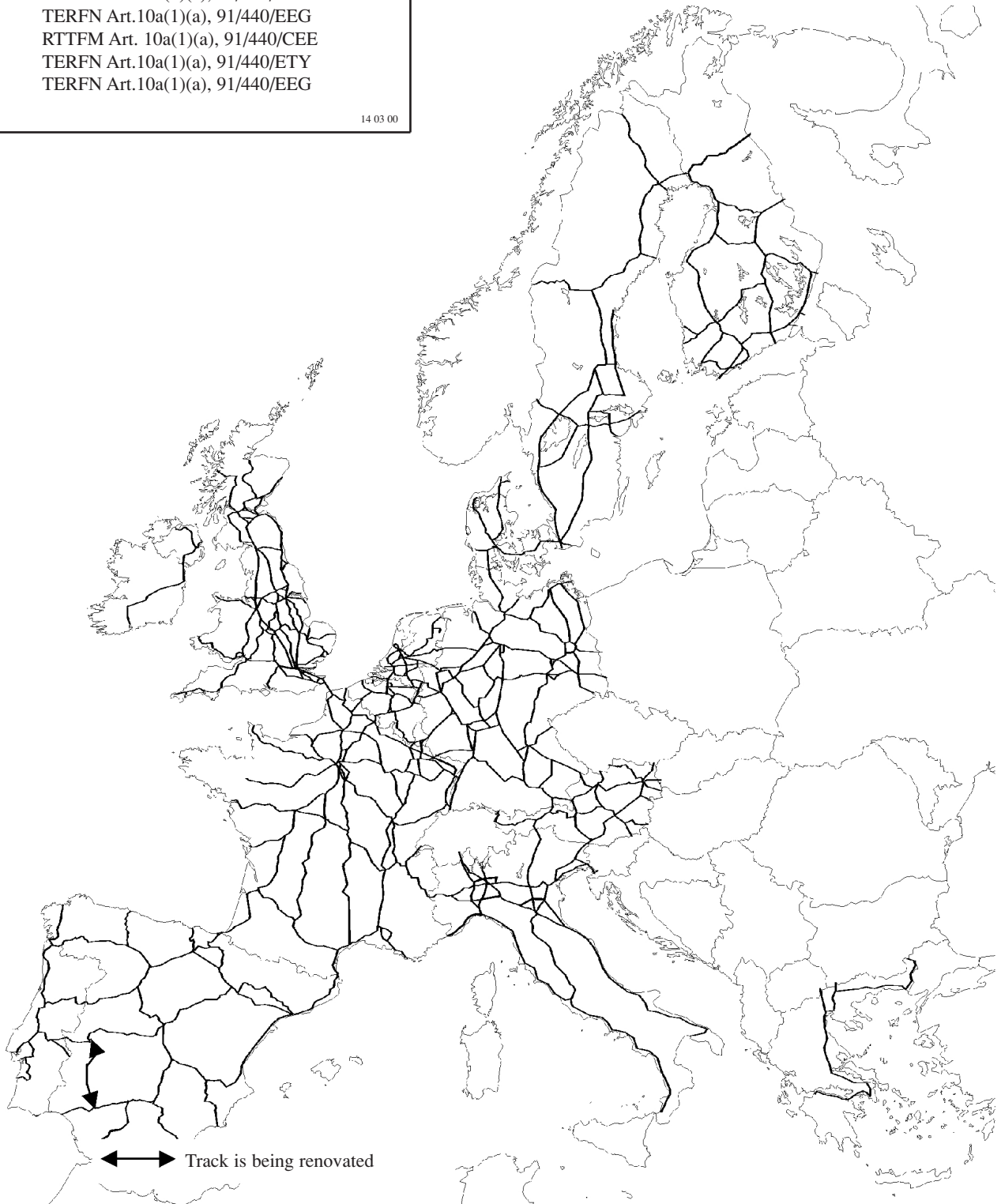
United Kingdom

All rail-connected ports



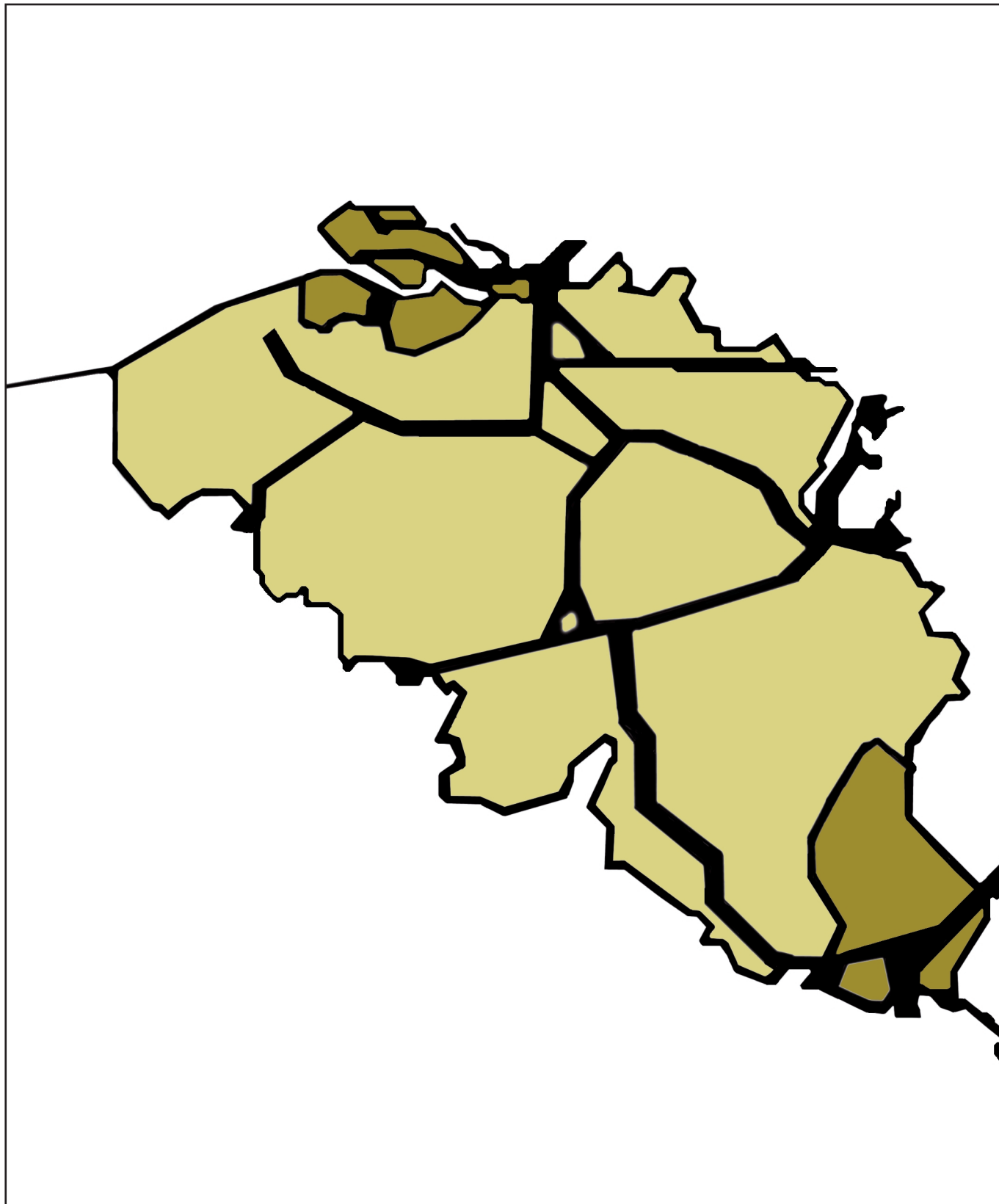
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TERFN Art. 10a(1)(a), 91/440/EØF
TESGN Art. 10a(1)(a), 91/440/EWG
ΔΔΣΕΜ Αρθ. 10α(1)(α), 91/440/EOK
TERFN Article. 10a(1)(a), 91/440/EEC
RTEFF Art. 10a(1)(a), 91/440/CEE
TERFN Art.10a(1)(a), 91/440/CEE
TERFN Art.10a(1)(a), 91/440/EEG
RTTFM Art. 10a(1)(a), 91/440/CEE
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TERFN Art.10a(1)(a), 91/440/EEG

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BELGIQUE/BELGIË



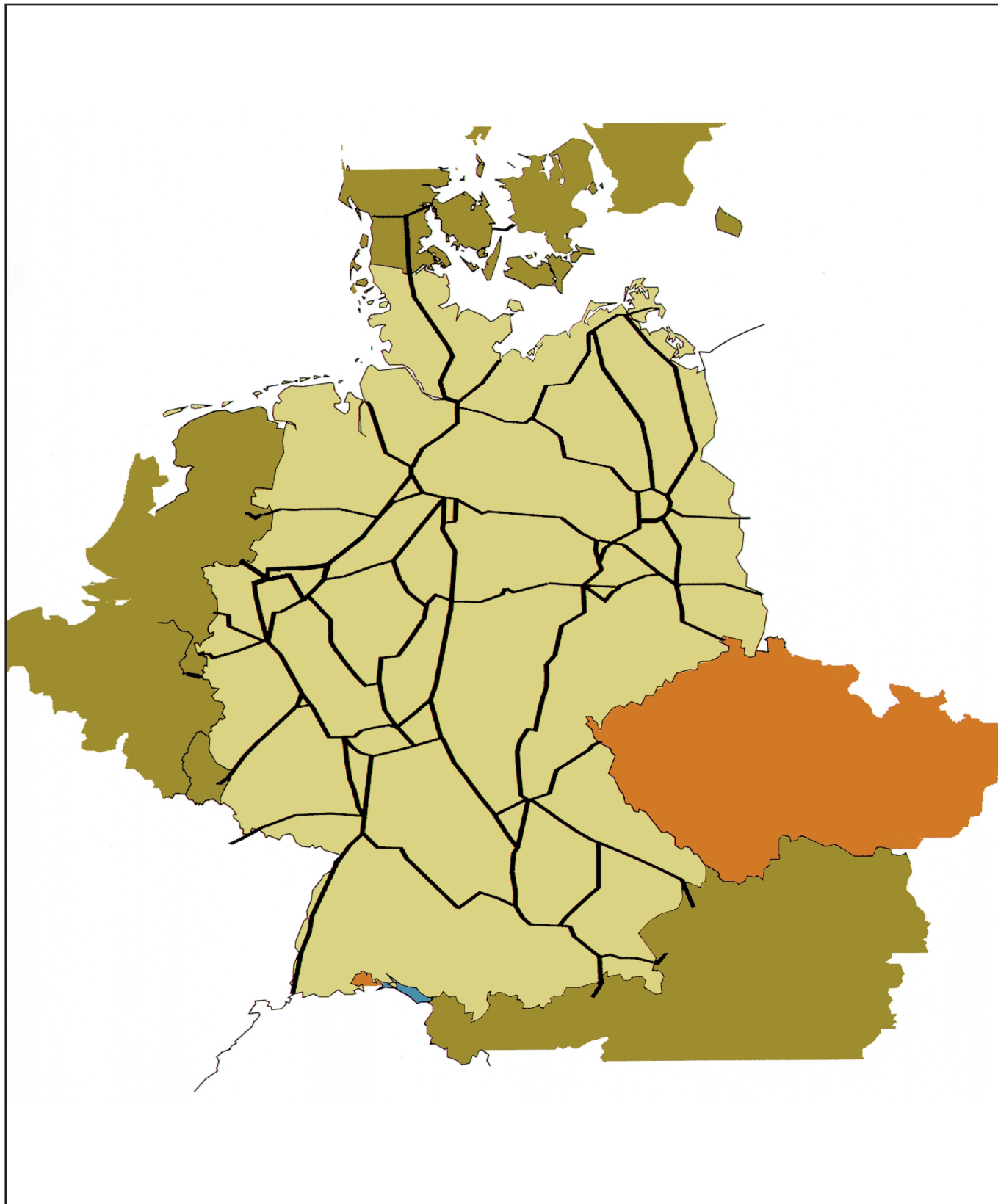


DANMARK



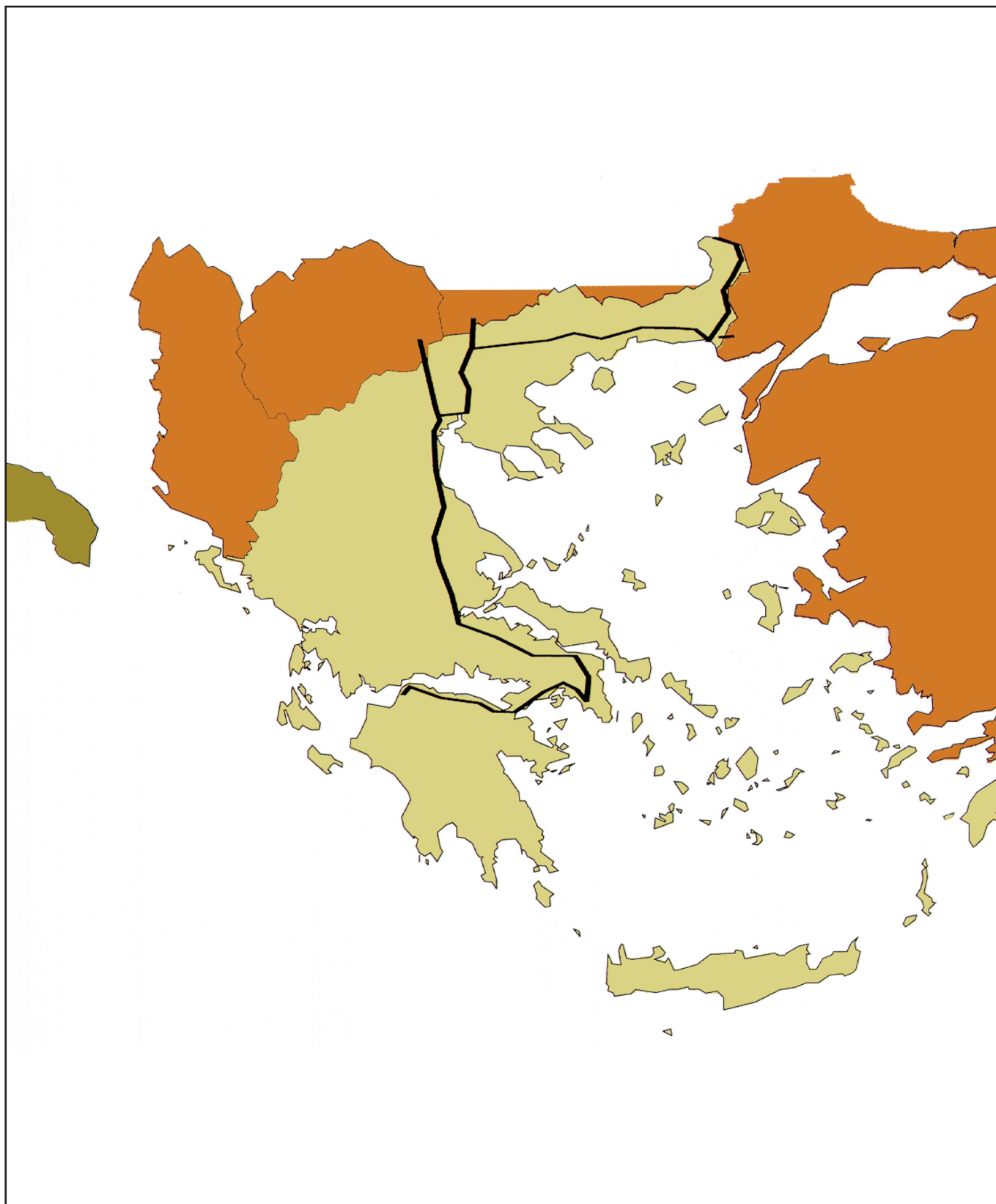


DEUTSCHLAND



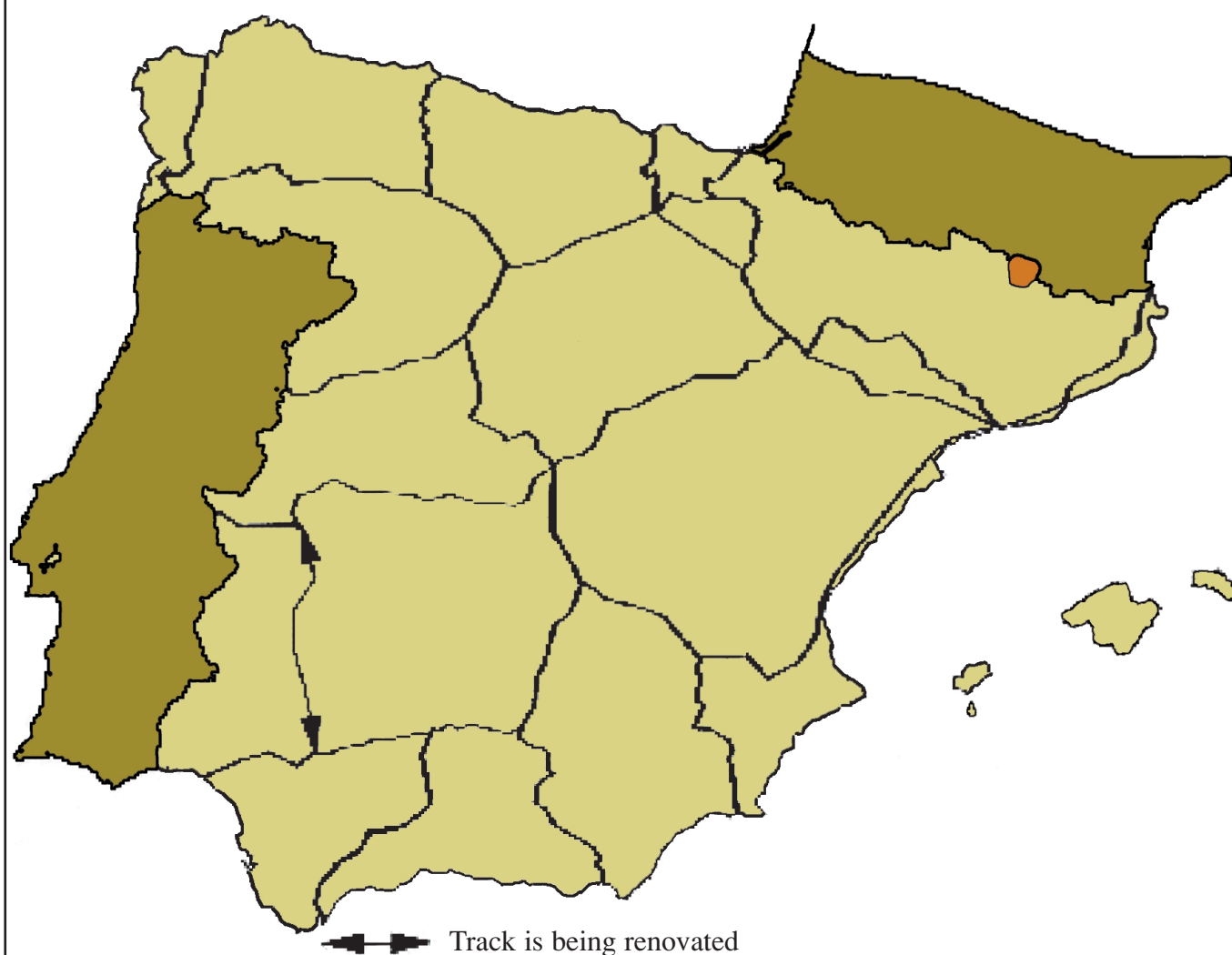


ΕΛΛΑΣ



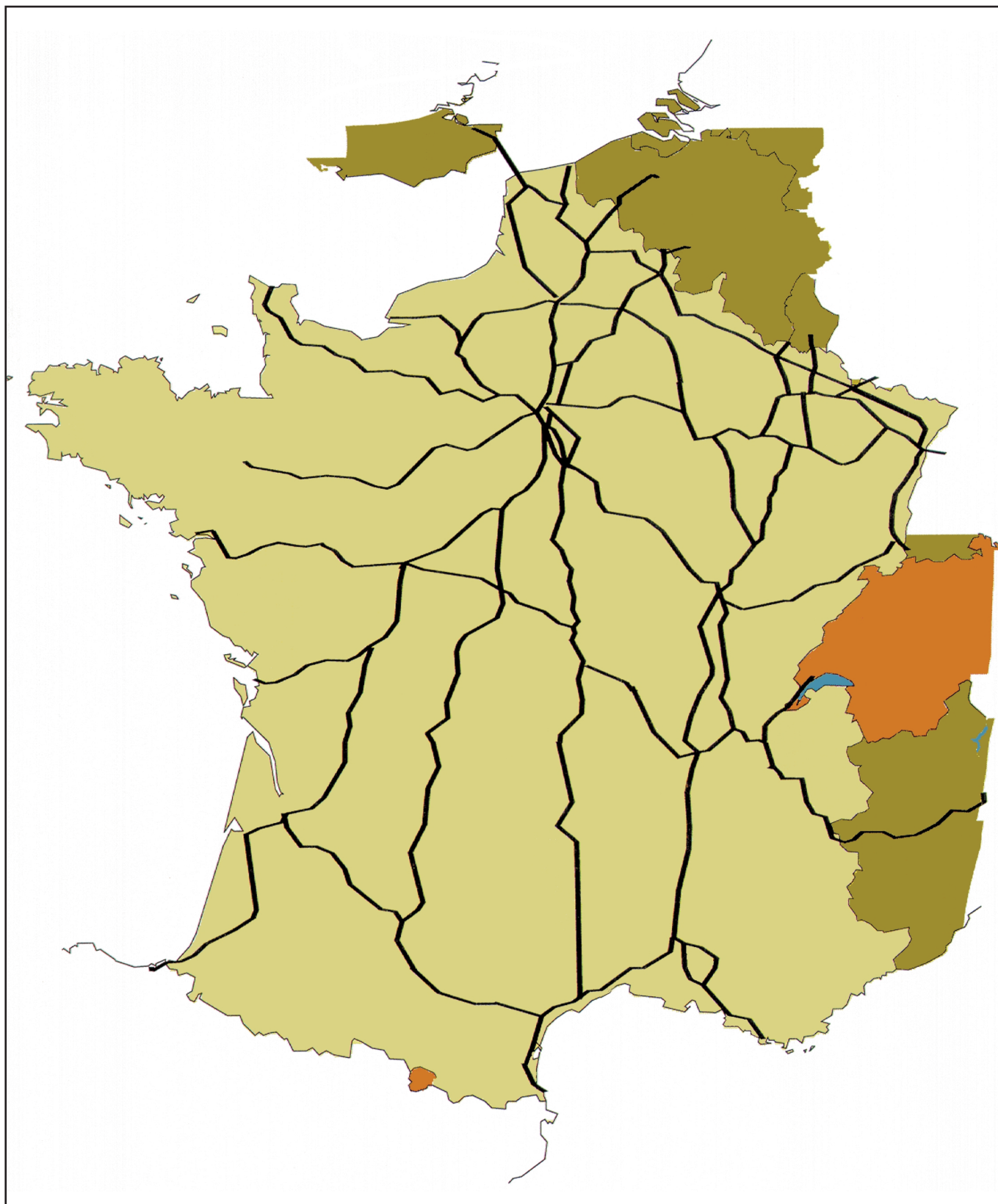


ESPAÑA



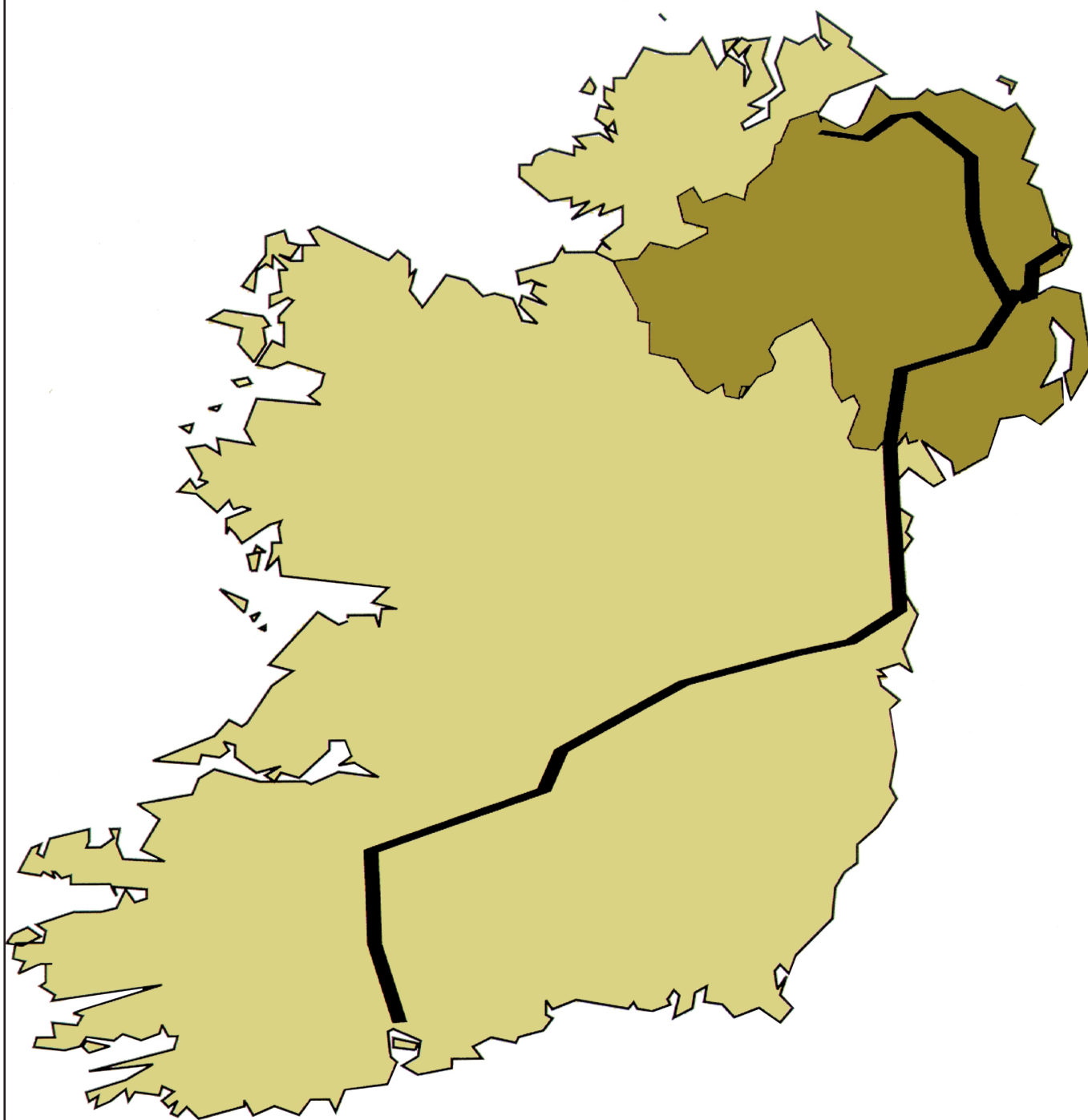


FRANCE





IRELAND



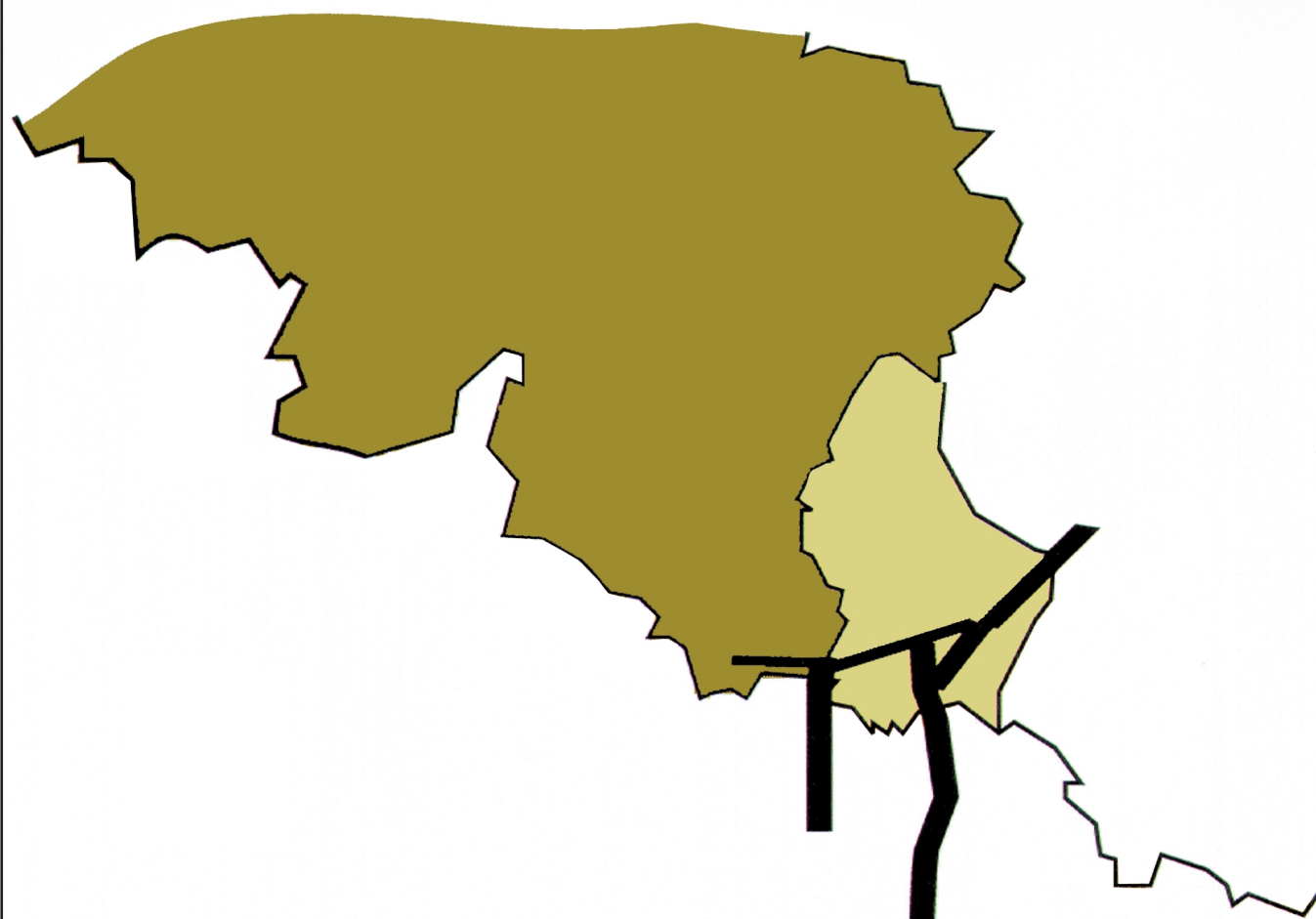


ITALIA





LUXEMBOURG



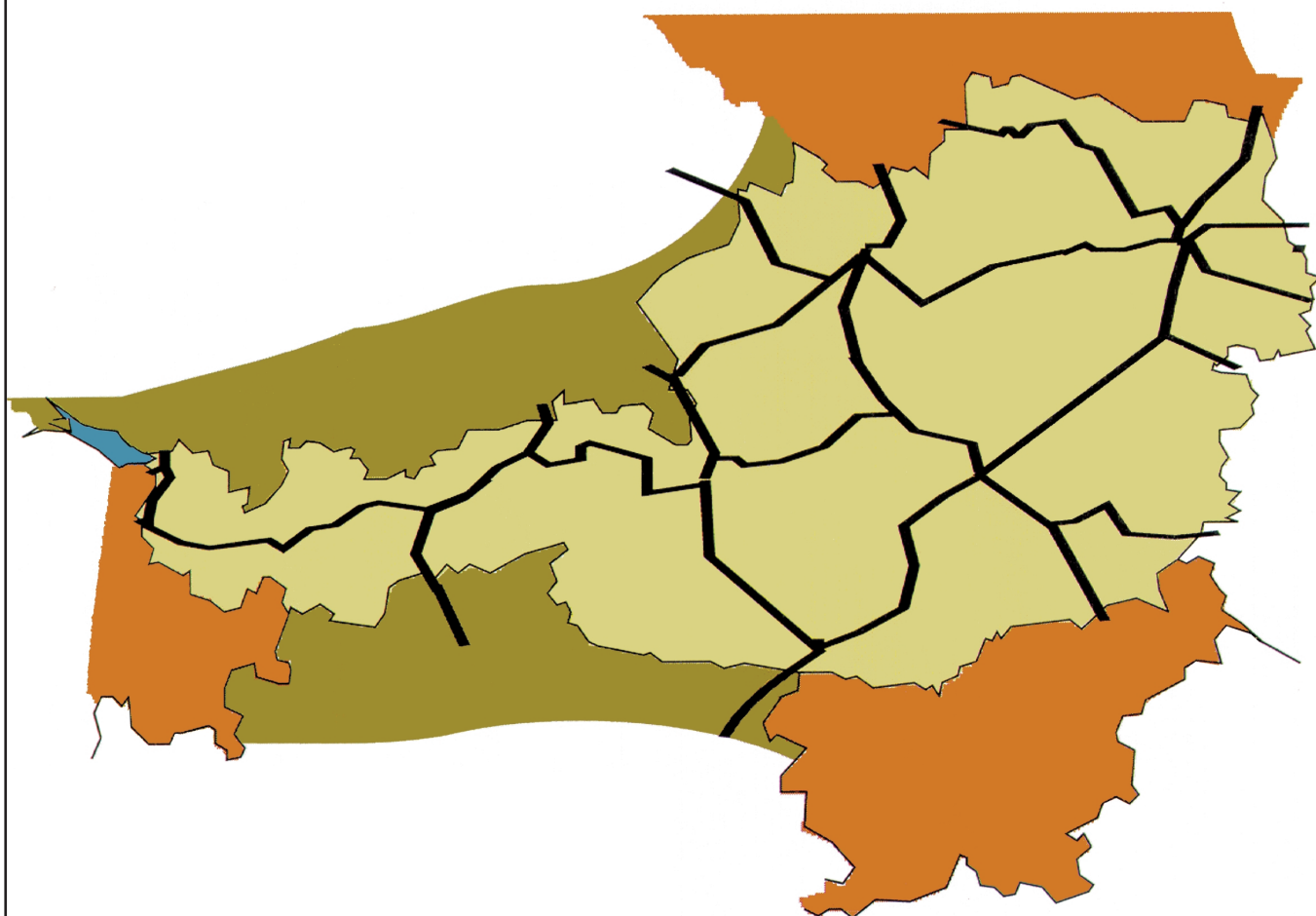


NEDERLAND



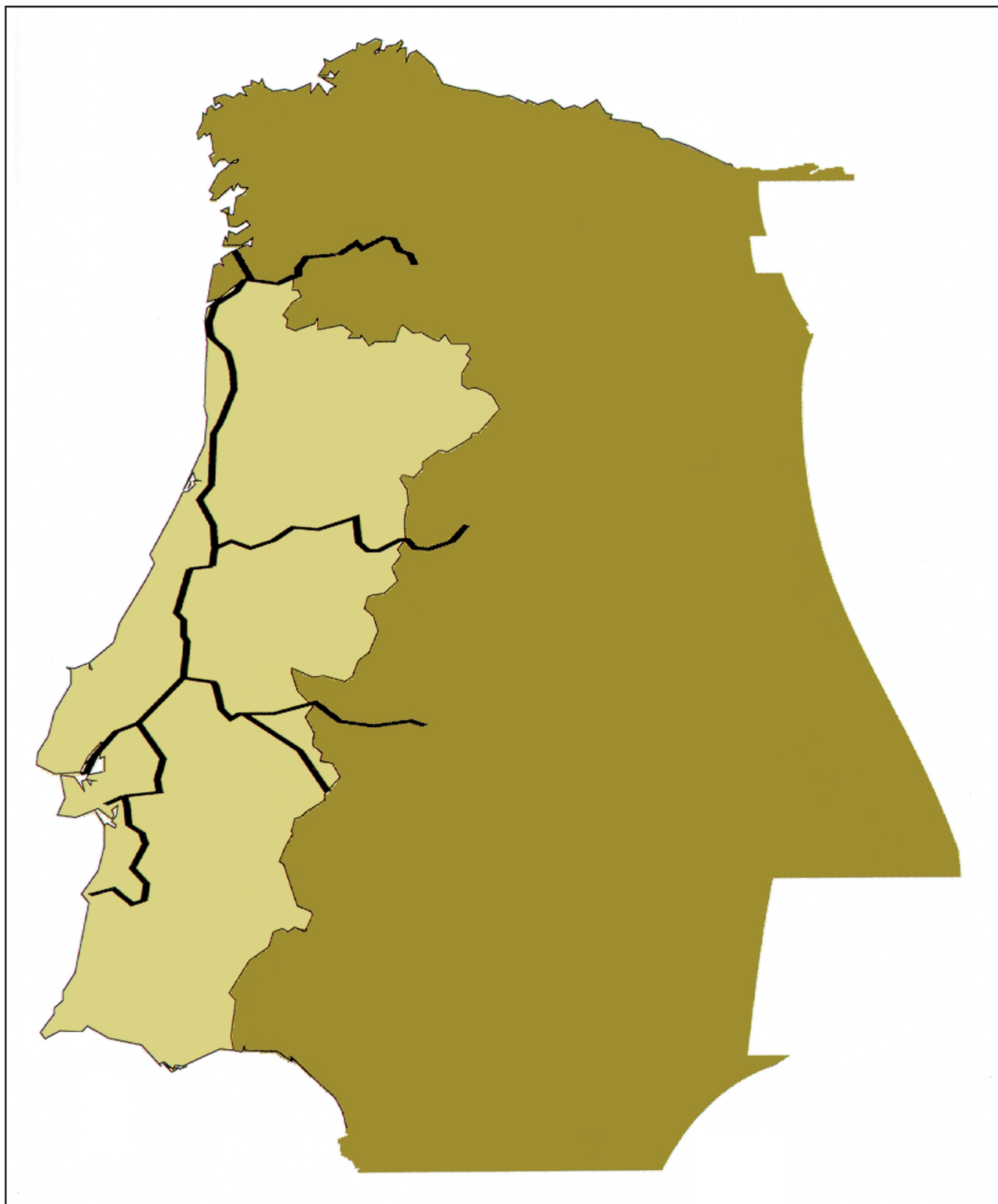


ÖSTERREICH



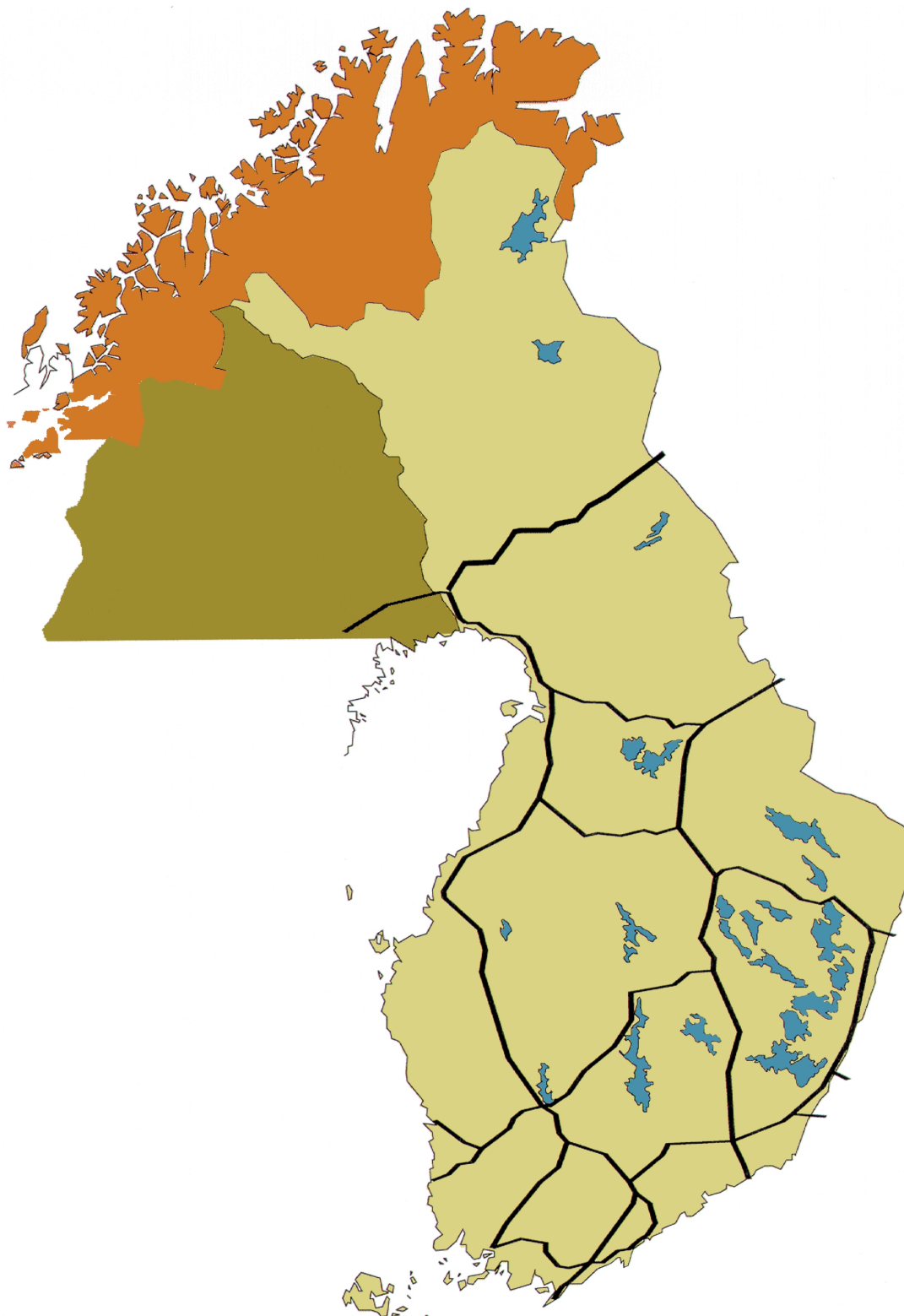


PORTUGAL



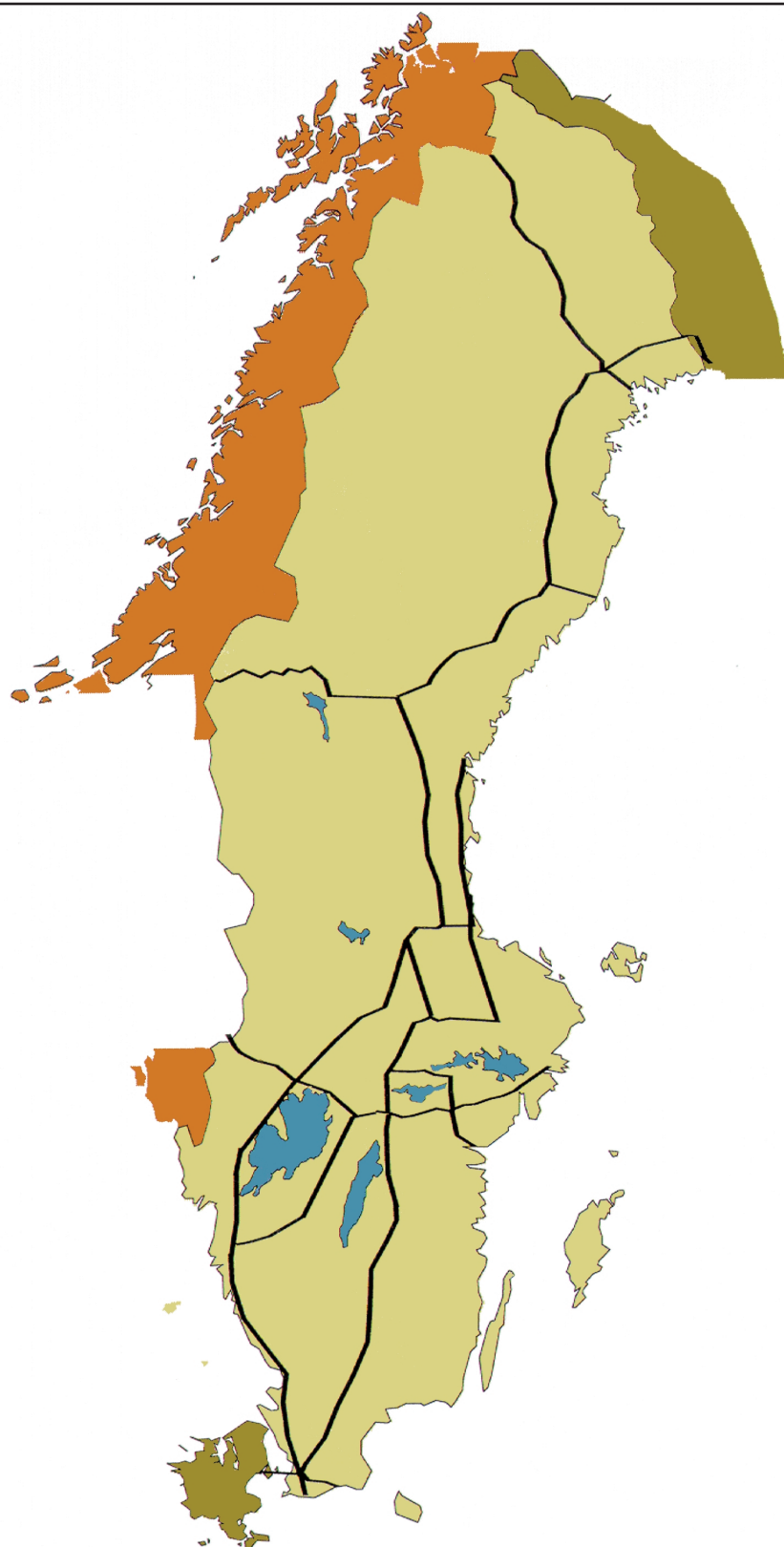


SUOMI/FINLAND





SVERIGE





UNITED KINGDOM



ANNEX II

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

- preparation and decision-making related to the licensing of railway undertakings including granting of individual licences,
 - decision-making related to the path allocation including both the definition and the assessment of availability and the allocation of individual train paths,
 - decision-making related to infrastructure charging.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 30 September 1998 the Commission forwarded to the Council a proposal for a Directive of the European Parliament and of the Council amending Directive 91/440/EEC on the development of the Community's railways⁽¹⁾. This proposal was based on Article 75 of the EC Treaty (amended to become Article 71).
2. The European Parliament, the Economic and Social Committee and the Committee of the Regions delivered their opinions on 10 March⁽²⁾, 26 May⁽³⁾ and 18 November 1999⁽⁴⁾ respectively.

After the entry into force of the Treaty of Amsterdam on 1 May 1999, the European Parliament confirmed its opinion on 16 September 1999.

3. On 29 November 1999 the Commission forwarded its amended proposal⁽⁵⁾ to the European Parliament and to the Council. That proposal is based on Article 71 of the EC Treaty.
4. On 28 March 2000 the Council adopted its Common Position pursuant to Article 251 of the EC Treaty.

II. OBJECTIVES

The purpose of this Directive is to revitalise Europe's railways. It aims to reverse the decline in rail transport, in particular in the freight sector, by creating the conditions for an expanding, competitive customer-oriented system.

The revitalisation of railways is indispensable given the current state of congestion on road infrastructures and the safety and environmental hazards that this entails. Railways must be used more rationally if total gridlock on our roads in a few years time is to be avoided. Railways therefore have to be given a sharper competitive edge over other modes of transport.

This Directive is part of a 'legislative package' which aims to create a new framework for the conditions for using rail infrastructure by making access rights effective.

The package is made up of three draft directives aimed at:

- amending the provisions of Directive 91/440/EEC primarily in order to establish the right access to infrastructure for railway undertakings established in the Community, to ensure separate accounting for railway infrastructure management and transport operations and to award to an independent body responsibility for the essential functions ensuring fair and non-discriminatory access to infrastructure,
- widening the scope of Directive 95/18/EC on the licensing of Community undertakings,

⁽¹⁾ OJ C 321, 20.10.1998, p. 6.

⁽²⁾ OJ C 175, 21.6.1999, p. 115.

⁽³⁾ OJ C 209, 22.7.1999, p. 22.

⁽⁴⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁵⁾ Not yet published in the Official Journal.

- replacing Directive 95/19/EC with a new directive on the allocation of infrastructure capacity, the charging of infrastructure fees and on safety certificates.

Another important element to be borne in mind is the individual situation of each of Europe's rail networks. For historical reasons Europe's railway is still multifarious. The differences between the constituent networks had to be taken into account when the Council was drafting compromise solutions. The infrastructures for this mode of transport are extremely complex and any changes will have to be phased in.

The Council is therefore aware that there is still a great deal to be done. To this end, the Commission has presented further complementary proposals, or will do so soon. Thus, Parliament and the Council have already been consulted on a proposal on the interoperability of the conventional railway system, and the Council has already completed its work on this vital technical aspect for the smooth functioning of the trans-European network.

The Council has also noted that the Commission intends to present a proposal on the enforcement and monitoring of railway safety standards and to propose the budgetary allocation of certain quantities from TEN appropriations on rail projects, with particular attention to the alleviation of bottlenecks affecting the development of rail freight. In fact, the financial side of revitalising railways must not be ignored.

Basically, the Council would like to reiterate that while the revitalisation of Europe's railways is a matter of utmost priority for economic, environmental and safety reasons, it is nevertheless a complex task which will demand considerable effort for many years to come.

This Directive aims to amend Directive 91/440/EEC in part, and the means proposed to attain that objective are primarily the extension of fair and non-discriminatory access rights to rail infrastructures and a clearer separation between infrastructure management activities and rail operations. In particular:

1. the Commission's 1995 proposal for *access and transit rights to the railway infrastructures* of the Member States aimed to extend the rights acquired in Directive 91/440/EEC so that they could henceforth be granted to all railway undertakings. Those rights would comprise all international and cabotage services for the carriage of goods and for combined transport, as well as international passenger transport services;
2. the Commission's 1998 proposal for the *separation of infrastructure management from railway operations* aimed not only to separate the profit and loss accounts for railway infrastructure managers from those for transport operations, but also to separate the balance sheets. The proposal also sets its sights on awarding to an independent body responsibility for the essential functions to guarantee fair and non-discriminatory access to infrastructure.

III. ANALYSIS OF THE COMMON POSITION

The Common Position fully embraces the common objective of the proposals submitted by the Commission. It also endorses the broad lines of the means proposed in this Directive to attain that objective.

The wording of the proposal has nevertheless been altered considerably in the course of discussions in the Council. The key points of the Common Position are given below. It should be pointed out that there are several points on which the Common Position differs from the original proposal; on the other hand, the Common Position is much closer to the Commission's amended proposal.

1. The Council has deleted Article 1 of Directive 91/440/EEC with a view to simplification, as it considers that the substance of that Article is already contained in Sections II to V.

2. Article 2(3) provides for undertakings, the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel, to be excluded from the scope of the Directive. This is in fact a very specific activity which does not have to comply with many of the requirements of the Directive; similar exclusions from the scope have also been provided for in both the other Directives in the legislative package on railway infrastructures. However, the obligation to keep separate accounts does apply to these undertakings, as set out under Article 6(1), and access rights to the tunnel infrastructure are guaranteed by the provisions of Articles 10 and 10(a), since the tunnel is part of the trans-European freight network.
3. The Council has slightly altered the wording of the definitions in Article 3 of the Directive for 'railway undertaking' and 'infrastructure manager', but retained the gist of those definitions. The most important amendment has been to add a phrase stipulating that the term 'railway undertaking' also includes undertakings which provide traction only.

Furthermore, the Common Position has also introduced a new definition of 'international freight service' so as to avoid any interpretation problems with Article 10(3) arising from the fact that one and the same wagon may form part of different trains in the course of one journey, and to specify that this provision does not include cabotage rights.

4. The Common Position has taken up the amendments proposed by the Commission on separation of accounts for infrastructure management and transport operations (Article 6(1)).
5. The Council has added paragraphs 3, 4 and 5 to Article 6. The purpose of those additions is to give further details for the separation of rail operating services from infrastructure management activities in order to secure the objective of fair and non-discriminatory access to them. To this end, the Common Position provides as follows:
 - (a) the objective in question must be shown to have been achieved;
 - (b) undertakings which provide rail transport services may not be entrusted with essential functions, in particular those relating to the issue of licences, allocation of train paths and charging for railway infrastructure. However, railway undertakings can be entrusted with merely collecting the charges and with managing infrastructures outside these essential functions, for example with investment, maintenance and financing;
 - (c) these rules on separation may be waived if a Member State has established an independent rail regulator to ensure neutral, non-discriminatory access to the infrastructure;
 - (d) the Directive does, however, provide for two mechanisms to guarantee neutral, non-discriminatory access to infrastructures:

— Article 6(5) requires the Commission to submit a report on this subject within the framework of the European Rail Observation System. In particular, the Commission will have to examine whether such access is guaranteed where, as provided for in Article 6(4), a Member State has recourse to an independent rail regulator instead of separating the essential functions; if this is not the case, the Commission must take a decision on the application of this paragraph in accordance with the Regulatory Committee procedure,

— secondly, Article 10(4) provides for the Commission, assisted by an advisory committee, to be able to examine and possibly annul the right of access measures taken by a Member State in the event that they are not equitable.

6. Article 7(2) and (5) lay down the safety standards. The criteria in the Common Position in this area are: the fundamental importance of maintaining very high rail safety standards; the current situation in several countries where the national railway undertaking takes an integral approach to safety; the desire to avoid any discrimination against other railway undertakings as a result of applying safety standards. On the basis of these criteria the Common Position establishes a system where:
- Article 7(2), first subparagraph, first establishes the responsibilities of the Member States in the field of safety and then refers to the bodies which are to accomplish the corresponding tasks, including a reference to the principle that those bodies are to be independent of railway undertakings,
 - Article 7(2), second subparagraph, nevertheless provides for a derogation from that principle for the enforcement and monitoring of safety standards and rules, provided neutral and non-discriminatory execution of these functions is guaranteed,
 - pursuant to Article 7(5), the mechanism provided for to ensure non-discrimination in the essential functions referred to under Article 6 is also to apply to safety.
7. Article 7(4) reproduces, in simplified form, the Commission proposal (paragraphs 4, 5 and 6) and promotes greater autonomy for infrastructure managers, although this is set against the backdrop of the general policy of the Member States.
8. The amendment to Article 9(4) proposed by the Commission was intended to provide separate accounts for passenger and for freight transport services in order to promote efficient management and create transparency about the financial situation of each. Aware of the fact that the prime objective of this measure is to avoid any passenger transport subsidies from being transferred to freight, thus distorting competition, the Council has taken care to clarify the text by indicating that public funds for activities relating to passenger-transport services must be shown separately in railway company accounts.
9. Over and above the rights of access recognised in Article 10 of Directive 91/440/EEC for international groupings (paragraph 1) and for railway undertakings operating combined transport services (paragraph 2), the Common Position (paragraph 3) extends the right to access and transit via the railway infrastructures of the Member States to all railway undertakings for the purpose of operating international freight services, although it limits these rights to the most important part of the trans-European rail freight network, the TERFN, defined in Article 10a and in Annex I. Furthermore, the opening phrase of this paragraph reiterates that access to the networks of the Member States shall be granted, on equitable conditions, to railway undertakings whatever their mode of operation; this phrase takes up the spirit of the European Parliament's fifth amendment to the proposal for a directive relating to the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

Furthermore, Article 10(4) of the Common Position provides for a specific procedure for monitoring the application and enforcement of the rights to access contained in the Directive.

Article 10(6) clarifies the rights to access the network and supply services linked to rail activities in terminals and ports.

Lastly, the new recital 7 reiterates that the Member States may grant access rights that are more extensive than those provided for in the Directive and may limit these rights to railway undertakings licensed in Member States where similar rights are granted, provided that this limitation is compatible with the Treaty.

10. Articles 11 and 11a contain institutional provisions, in particular with regard to committee procedure.
11. The Council also thought that a European Rail Observation System (EROS) should be created, the tasks of which are described in Article 10b, and that it should be run by the Commission. The Council thus recognises that the development and integration of the railway systems of the Member States is a task which can only be accomplished gradually and that there is need for a suitable permanent observation system.
12. The Council is aware of the specific features, whether temporary or lasting, peculiar to several of the national networks. For this reason Article 14a of the Common Position provides for several provisional derogations from the application of certain measures in Ireland, Northern Ireland and in Greece, as well as for Luxembourg in Article 14a(4).

IV. AMENDMENTS BY THE EUROPEAN PARLIAMENT

1. Amendments by the European Parliament, approved by the Commission and retained by the Council

The Council agreed with the amended proposal and has retained either all or part of the amendments from the European Parliament:

- Amendment 1, retained as new recital 4. However, in the Common Position the word 'liberalisation' has been replaced by 'extension of access rights', which seems to be more in keeping with the enacting terms (Article 10 in particular), and the words 'in stages' have been deleted as they could pre-empt any new initiative by the Commission on this,
- Amendment 2 has been adjusted and incorporated as recital 5, the main idea being that the extension of access rights granted to all railway undertakings should concentrate on the international transport of goods,
- Amendment 5, on the definition of an 'infrastructure manager',
- Amendment 8 has been partly incorporated into the Common Position, namely the reference to the investigation of accidents. However, the provisions of Article 7(2) and (5) are more intricate than those in the proposal (see III(6)),
- most of Amendment 9 has been retained in Article 7(4) of the Common Position, relating to the framework of general policy determined by the State for the activity of the infrastructure manager,
- with regard to the extension of access and transit rights, the Common Position retains the essence of Amendment 10, where Parliament requests that for the international transport of goods these rights be granted to all railway undertakings. The Common Position limits this extension to the TERFN, but this network covers most of the trans-European railway network and the related feeder lines.

2. Amendments proposed by the European Parliament and approved by the Commission, but not retained by the Council

- Amendment 6 on creating entities, separate from railway undertakings, for infrastructure management was endorsed by the Commission but has not been incorporated into the Common Position, the Council confining itself to entrusting the essential functions to bodies other than railway undertakings without requiring a strict institutional distinction between the infrastructure manager and the railway undertaking.
- Amendment 7 has not been included in the Common Position for reasons similar to those given for Amendment 6, as the Council preferred to leave Article 6(2) of Directive 91/440/EEC as it stood.

3. **Amendments proposed by the European Parliament which neither the Commission for the Council has accepted**

The following amendments were proposed by the European Parliament but were not endorsed by the Commission and have not been integrated into the Common Position by the Council:

- Amendment 3 has not been accepted, because Article 7(2) and (5) of the Common Position contain new criteria relating to the allocation of responsibility for safety matters; these new criteria are explained in recital 3 of the Common Position.
 - Amendment 4 has not been formally accepted because the Council thought that it would be preferable to delete Article 1 of Directive 91/440/EEC. The text of the Common Position on assigning essential functions to an independent body (Articles 6 and 7 and Annex II) contains more nuances than the Commission proposal (Article 1) and therefore in part conveys the idea contained in this amendment by Parliament.
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