



STATUTORY INSTRUMENTS.

**S.I. No. 55 of 2010.**



EUROPEAN COMMUNITIES (RAILWAY INFRASTRUCTURE)  
REGULATIONS 2010.

**(Prn. A10/0238)**

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S.I. No. 55 of 2010.

EUROPEAN COMMUNITIES (RAILWAY INFRASTRUCTURE)  
REGULATIONS 2010.

I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to—

- (a) Council Directive 91/440/EC of the European Parliament and of the Council of 29 July 1991<sup>1</sup> as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001<sup>2</sup>, Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004<sup>3</sup>, Directive 2006/103/EC of the Council of 20 December 2006<sup>4</sup> and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007<sup>5</sup>, and
- (b) Council Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001<sup>6</sup> as amended by Commission Decision No. 2002/844/EC of 23 October 2002<sup>7</sup>, Council Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004<sup>8</sup> and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007<sup>5</sup>,

hereby make the following regulations:

*Citation.*

1. These Regulations may be cited as the European Communities (Railway Infrastructure) Regulations 2010.

*Interpretation.*

2. (1) In these Regulations—

“Act of 2005” means Railway Safety Act 2005 (No. 31 of 2005);

“allocation” means the allocation of railway infrastructure capacity by the infrastructure manager;

“appeal panel” means a panel constituted in accordance with Regulation 18(4) for the purpose of hearing appeals under Regulation 18(1);

“bank” means a recognised bank within the meaning of the Central Bank Acts 1942 to 2001;

<sup>1</sup> OJ L237, 24.8.1991, p.25

<sup>2</sup> OJ L75, 15.3.2001, p.1

<sup>3</sup> OJ L164, 30.4.04, p.164

<sup>4</sup> OJ L363, 20.12.2006, p.344

<sup>5</sup> OJ L315, 3.12.2007, p.44

<sup>6</sup> OJ L75, 15.3.2001, p.29

<sup>7</sup> OJ L289, 26.10.2002, p.30

<sup>8</sup> OJ L164, 30.04.2004, p.44

“Directive of 1991” means Council Directive 91/440/EEC of 29 July 1991<sup>1</sup> on the development of the Community’s railways as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001<sup>2</sup>, Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004<sup>3</sup>, Directive 2006/103/EC of the Council of 20 December 2006<sup>4</sup> and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007<sup>5</sup>;

“Directive of 2001” means Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001<sup>6</sup> on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure as amended by Commission Decision No. 2002/844/EC of 23 October 2002<sup>7</sup>, Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004<sup>8</sup> and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007<sup>5</sup>;

“Regulations of 2003” means European Communities (Licensing of Railway Undertakings) Regulations 2003 (S.I. No. 537 of 2003);

“functions” includes powers and duties;

“heritage railway” means a railway undertaking which only operates train services or railway infrastructure of historic or touristic interest;

“infrastructure manager” means Iarnród Éireann;

“Iarnród Éireann” means the company of the name Iarnród Éireann — Irish Rail formed under section 6 of the Transport (Reorganisation of Córas Iompair Éireann) Act 1986 (No. 31 of 1986);

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

“Minister” means Minister for Transport;

“panel” means a panel constituted in accordance with Regulation 7(9) for the purpose of making determinations under Regulation 7(2) and (3).

(2) A word or expression that is used in these Regulations and is also used in the Directive of 1991 or the Directive of 2001 has, unless the contrary intention appears, the same meaning in those Regulations as it has in that Directive.

<sup>1</sup> OJ L237, 24.8.1991, p.25

<sup>2</sup> OJ L75, 15.3.2001, p.1

<sup>3</sup> OJ L164, 30.4.04, p.164

<sup>4</sup> OJ L363, 20.12.2006, p.344

<sup>5</sup> OJ L315, 3.12.2007, p.44

<sup>6</sup> OJ L75, 15.3.2001, p.29

<sup>7</sup> OJ L289, 26.10.2002, p.30

<sup>8</sup> OJ L164, 30.04.2004, p.44

*Scope.*

3. (1) These Regulations apply to—
  - (a) the management of the railway infrastructure in the State,
  - (b) access to the railway infrastructure for certain services,
  - (c) rail transport activities in the State of railway undertakings established, or to be established, in the State or in another Member State, and
  - (d) the procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.
- (2) These Regulations apply to the use of railway infrastructure for rail passenger and freight services.
- (3) The following are excluded from the scope of these Regulations—
  - (a) networks intended only for the operation of urban or suburban passenger services,
  - (b) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations, and
  - (c) regional networks which are used for regional freight services solely by a railway undertaking that is not covered by the scope of the Directive of 1991 until capacity on the network is requested by another applicant.

*Infrastructure manager.*

4. (1) Iarnród Éireann is designated as infrastructure manager for the purposes of these Regulations.
- (2) Accordingly references in the Directive of 1991, the Directive of 2001 and these Regulations to the infrastructure manager shall be construed as references to Iarnród Éireann.
- (3) The infrastructure manager shall liaise with the infrastructure managers of the other Member States on all relevant matters where appropriate.
- (4) The infrastructure manager shall co-operate with the infrastructure managers of the other Member States to ensure the efficient operation of train services which cross more than one infrastructure network.
- (5) The infrastructure manager shall act in a fair and non-discriminatory manner at all times in performing its functions under these Regulations.

*Access to railway infrastructure*

5. (1) Any railway undertaking shall be granted access, after 1 January 2010 and on equitable conditions, to the State's railway infrastructure for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station in the State located on the international route and set them down at another station in the State, subject to the determination regarding the principal purpose of the proposed service by the panel convened under Regulation 7.

(2) Any railway undertaking shall be granted access, on equitable conditions, to the State's railway infrastructure for the purpose of operating international and domestic rail freight services or international combined transport goods services.

(3) Access rights granted under this Regulation shall only be granted to railway undertakings meeting the necessary safety requirements of the Act of 2005 and the licensing requirements of the Regulations of 2003.

(4) Existing national safety standards and technical rules shall be applicable to all railway undertakings.

(5) Track access to, and supply of services in, the terminals and ports linked to rail activities under these Regulations shall be provided to railway undertakings in a non-discriminatory and transparent manner, provided these railway undertakings are licensed and fulfil the necessary safety requirements.

*Applications for infrastructure capacity.*

6. (1) An application for the allocation of railway infrastructure capacity may be submitted to the infrastructure manager for each timetable period by a railway undertaking established, or to be established, in the State or another Member State.

(2) An application for the allocation of railway infrastructure capacity shall only be considered if it is—

(a) in accordance with such form as the infrastructure manager may from time to time direct, and

(b) accompanied by—

(i) proof that the applicant railway undertaking is entitled to apply for infrastructure capacity in the State under paragraph (1),

(ii) a safety certificate issued to the applicant under the Act of 2005,

(iii) a bond, in favour of the infrastructure manager, that is guaranteed by a bank and that meets the requirements of paragraph (3) or, with the infrastructure manager's approval, proof of an equivalent arrangement that meets those requirements, and

(iv) an application fee of €750.

(3) The bond or equivalent arrangement referred to in paragraph (2) shall—

- (a) be entered into by the applicant, and
- (b) be for an amount equal in value to 5 per cent of the total cost to the applicant of providing the services for which the allocation is required, established under realistic assumptions, for a period of 12 months from the date of allocation.

(4) The infrastructure manager shall respect the commercial confidentiality of information provided by any applicant.

(5) If the applicant does not make use of a train path allocated to the applicant under these Regulations, the proceeds of the bond or other arrangement in an amount not exceeding—

- (a) the amount certified by the infrastructure manager as the cost of processing the application, and
- (b) the amount certified by the infrastructure manager as the amount of any subsequent loss of earnings by it due to the non-use of that infrastructure,

shall be payable, on the infrastructure managers written demand, to the infrastructure manager.

(6) The infrastructure manager may—

- (a) seek further particulars of any matter that appears to it to be relevant to its consideration of an application, and
- (b) require those particulars to be given by means of an affidavit or statutory declaration or in such other manner as the infrastructure manager may direct.

*Determination of the principal purpose of the proposed service.*

7. (1) When a railway undertaking intends to request infrastructure capacity with a view to operating an international passenger service, it shall inform the Minister and the infrastructure managers concerned. In order to enable the assessment of the principal purpose of the proposed international service to carry passengers between stations located in different Member States, and the potential impact on existing public service contracts, the Minister shall ensure that the award body for public service contracts and any railway undertaking performing the public service contract on the route of this proposed international passenger service is informed.

(2) A panel shall determine whether the principal purpose of a service for which access has been requested under Regulation 5(1) is to carry passengers between stations located in different Member States, following a request from

the Minister, the award body for public service contracts, the infrastructure manager, or the railway undertaking performing the public service contract.

(3) The panel convened for the purpose of making a determination under paragraph (2) may determine that the infrastructure manager limits the right of access defined in Regulation 5(1) on proposed services between a place of departure and a destination which are covered by one or more public service contracts.

(4) A limitation to the right of access under paragraph (3) may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

(5) A determination made under paragraphs (2) or (3) by the panel shall be based on an objective economic analysis and pre-determined criteria.

(6) The Minister, the award body for public service contracts and the railway undertakings providing the public services shall provide the panel with the information reasonably required under paragraph (2) or (3) in order for the panel to reach a decision.

(7) The panel shall consider the information provided under paragraph (6), consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within two months of receipt of all relevant information. The panel shall give the grounds for its decision and specify the time period within which, and the conditions under which, a request for a reconsideration of the decision can be made.

(8) A request for a reconsideration of the decision made under paragraph (7) can be made by the Minister, the award body for public service contracts, the infrastructure manager, the railway undertaking performing the public service contract or the railway undertaking seeking access.

(9) The panel convened for the purposes of determining the scope of services under this Regulation shall consist of 5 members appointed in the following manner—

- (a) one member appointed by the infrastructure manager,
- (b) one member appointed by the relevant railway undertaking,
- (c) one member appointed by the public service award body,
- (d) a transport economic expert appointed by the Minister, and
- (e) a senior counsel agreed upon by the above members and, where the members fail to agree upon a senior counsel within one month of



them both being appointed, the chairman of the Bar Council shall be requested to nominate a senior counsel.

*Services.*

8. (1) Railway undertakings shall be entitled to the minimum access package and track access to service facilities described in Annex II to the Directive of 2001. The infrastructure manager may only reject a request for track access to service facilities if viable alternatives under market conditions exist.

(2) Where the infrastructure manager provides the services described in Annex II point 3 to the Directive of 2001, they shall be provided on request by a railway undertaking.

(3) The infrastructure manager is not obliged to provide the services referred to in Annex II point 4 to the Directive of 2001.

(4) When providing the services and facilities referred to in paragraphs (1), (2) and (3), the infrastructure manager shall act in a fair and non-discriminatory manner.

(5) The infrastructure manager may conclude agreements with railway undertakings related to the services referred to in the preceding paragraphs of this Regulation.

*Specialised infrastructure.*

9. (1) If there are suitable alternative train paths for other traffic, the infrastructure manager may, after consultation with interested parties, reserve a specific train path or part of a train path as special infrastructure capacity in accordance with Article 24(2) of the Directive of 2001. However, such a reservation of infrastructure capacity shall not prevent other types of traffic from availing of the infrastructure capacity when capacity is available and the rolling stock conforms to the technical characteristics necessary.

(2) When allocating infrastructure capacity on train paths or parts of train paths reserved as special infrastructure capacity, the infrastructure manager may give priority to the type of traffic for which the infrastructure has been reserved.

*Scheduling.*

10. (1) The infrastructure manager and applicants for infrastructure capacity shall adhere to the schedule for the allocation process set out in Annex III to the Directive of 2001.

(2) The infrastructure manager shall consult with interested parties about the draft working timetable and allow them one month to present their views. Interested parties shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the draft working timetable may affect their ability to procure rail services during the working timetable period.

(3) The draft working timetable shall take account of the capacity requested, provided that the requested train paths enable railway traffic to be operated in accordance with technical and safety regulations.

(4) The infrastructure manager, in order to improve the allocation of capacity, may offer applicants capacity that does not essentially differ from the capacity they have requested. Capacity may also be left unallocated, provided that reserve capacity is needed for the working timetable period pursuant to a reservation of capacity under Regulation 9.

(5) The infrastructure manager shall take appropriate measures to deal with any concerns expressed by interested parties.

(6) The infrastructure manager may, within the working timetable, reserve infrastructure capacity to enable it to respond rapidly to foreseeable *ad hoc* requests for individual train paths made under Regulation 13.

*Allocation of infrastructure capacity.*

11. (1) The infrastructure manager shall, having taken into account the comments of interested parties pursuant to Regulation 10 and taking into account the needs of passenger and freight traffic, infrastructure maintenance and the efficient use of the railway network, allocate infrastructure capacity—

- (a) on the basis of the draft timetable,
- (b) on a fair and non-discriminatory basis, and
- (c) subject to the conditions set out in this Regulation.

(2) Railway infrastructure capacity may only be allocated to a railway undertaking—

- (a) entitled to make an application under Regulation 6, and
- (b) to whom a safety certificate has been issued under section 46 (inserted by Regulation 9(2) of the European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008)) of the Act of 2005.

(3) The infrastructure manager shall as far as possible meet all requests for infrastructure capacity, including requests for train paths crossing more than one network.

(4) Subject to paragraph (1), the infrastructure manager may not refuse an application for a particular train path if there is no other application for all or part of the path.

(5) An allocation of railway infrastructure capacity shall entitle the holder to operate trains over the train paths in accordance with the conditions set out in the allocation.

(6) The infrastructure manager may attach to any allocation of infrastructure capacity such conditions as it considers appropriate to ensure that the holder of the allocation—

- (a) operates the services specified in his or her allocation,
- (b) does not interfere with the rights of holders of other allocations or the rights of operators of services not covered by these Regulations, and
- (c) does not operate the services specified in his or her allocation in an unsafe manner.

(7) If more than one application is received for all or part of a particular train path, the infrastructure manager shall endeavour, by suggesting suitable amendments to the applicants, to reach agreement among the applicants which would enable some or all of the applications to be granted.

(8) Subject to paragraph (9), if it is not possible to reach agreement with all of the applicants, even though the applicants have not unreasonably refused to agree to a modification to their applications, the infrastructure manager shall—

- (a) allocate the train path to the applicant, if any, who has the right to use the path, or a substantially similar path, at the time of the application, if at the end of the current allocation period the applicant will not have already enjoyed the use of the path for 60 or more consecutive months, or
- (b) allocate a train path to one of the applicants on a non-discriminatory basis.

(9) Notwithstanding paragraph (8), the infrastructure manager may refuse any application if, in its opinion, the applicant has unreasonably refused to agree to a modification to its application proposed by the infrastructure manager under paragraph (7).

(10) The infrastructure manager's decision concerning an application for railway infrastructure capacity (including, in the case of a refusal, the reason or reasons for the refusal) shall be communicated by written notice to the applicant.

(11) If an application is refused on the grounds of insufficient railway infrastructure capacity, the written notice shall include the following information—

- (a) that the applicant is entitled to request the infrastructure manager to reconsider the application at the next timetable adjustment for the routes concerned,
- (b) the date when those adjustments would be considered, and
- (c) the time allowed and the procedure for making the request.

*Contracts with infrastructure manager.*

12. (1) Railway undertakings to which railway infrastructure capacity is allocated in accordance with these Regulations shall conclude an agreement with the infrastructure manager covering the necessary administrative, technical and financial matters to regulate traffic control and safety issues concerning the services to be provided by them.

(2) Agreements referred to in paragraph (1) may include details relating to the provision of services as outlined in Regulation 8.

(3) The terms and conditions of an agreement concluded under paragraph (1) shall be non-discriminatory and transparent between railway undertakings or between railway undertakings and the infrastructure manager as a provider of rail services.

(4) The infrastructure manager in granting allocation rights under these Regulations shall operate its control and safety systems so as to take into account the services operated in exercise of such rights.

*Ad hoc requests for infrastructure capacity.*

13. (1) Applicants may make *ad hoc* requests in writing to the infrastructure manager for individual train paths.

(2) The infrastructure manager shall respond to *ad hoc* requests for individual train paths within five days of the request being received by the infrastructure manager.

(3) Subject to the requirements of these Regulations, the infrastructure manager shall allocate the train path requested if there is sufficient reserved infrastructure capacity to meet the *ad hoc* request.

(4) Notwithstanding Regulation 11, the infrastructure manager may on request allocate train paths to operators of heritage railways.

(5) The infrastructure manager may waive infrastructure charges or levy a nominal charge in respect of the allocation of infrastructure capacity to operators of heritage railways.

*Monitoring of allocated train paths.*

14. (1) If the infrastructure manager considers that a service being provided on foot of an allocation of railway infrastructure capacity under these Regulations does not meet the requirements under which the allocation was made, it may give notice in writing to the applicant to whom the allocation was made directing that applicant to bring the service up to the required standard within the time limit specified in the notice.

(2) If there is a failure to comply with a notice given under paragraph (1) within the time limit specified in the notice, the infrastructure manager may suspend or withdraw the allocation.

(3) Where there has been a failure to use a train path that has been allocated, the infrastructure manager may decide not to withdraw capacity if the failure to use it is due to reasons beyond the control of the applicant to whom the allocation was made.

(4) The infrastructure manager may withdraw infrastructure capacity in full or in part on a part of the rail network which is provisionally out of service due to a technical failure, accident or some other incident on the rail network. In such cases the infrastructure manager may offer the operator using the said capacity an alternative train path or train paths.

*Measures to be taken in event of disturbance.*

15. (1) In the event of disturbance to services on train paths allocated in accordance with Regulation 11 caused by technical failure or accident, the infrastructure manager shall take all the necessary steps to ensure that train services can be resumed as soon as possible.

(2) The infrastructure manager shall draw up a list of the various public bodies to be informed in the event of serious railway incidents.

(3) Where the disturbance to services under paragraph (1) is caused by an accident, the obligation on the infrastructure manager to ensure that all necessary steps are taken to facilitate the early resumption of services is without prejudice to any other obligations on the infrastructure manager or any other person under the laws of the State or Community law to facilitate the proper investigation of railway accidents.

*Infrastructure charges.*

16. (1) The infrastructure manager shall charge a charge, in these Regulations referred to as an infrastructure charge, to railway undertakings for the use of the railway infrastructure. The infrastructure charge shall be payable to the infrastructure manager and shall be used to fund infrastructure maintenance and the operations of the infrastructure manager in its capacity as infrastructure manager.

(2) The amount of the infrastructure charge shall be determined by the infrastructure manager in accordance with this Regulation. It shall comprise a basic charge and any other charges connected with the infrastructure charge.

(3) The infrastructure charge shall take account of the services provided by the infrastructure manager under Regulation 8.

(4) The infrastructure manager shall not discriminate in the charging of infrastructure charges for services of an equivalent nature.

(5) The following apply to the calculation of infrastructure charges, namely—

- (a) The infrastructure charge for the minimum access package and access to service facilities referred to in Annex II to the Directive of 2001 shall be set at the cost that is directly incurred as a result of operating the train service,

- (b) Where there is only one supplier, the infrastructure charge for the services described in points 3 and 4 of Annex II to the Directive of 2001 shall relate to the cost of providing the service, calculated on the basis of the actual level of use,
  - (c) The infrastructure charge for the services referred to in point 2 of Annex II to the Directive of 2001 shall take account of the competitive situation pertaining in rail transport.
- (6) In determining the amount of the infrastructure charge, account shall be taken of the following factors—
- (a) the nature of the service,
  - (b) the frequency of the service,
  - (c) the time of the service,
  - (d) the prevailing market situation,
  - (e) the type and degree of wear and tear of the infrastructure,
  - (f) the cost of infrastructure maintenance, and
  - (g) scarcity of capacity.
- (7) The infrastructure manager shall ensure that its charging scheme is based on the same principles over the entire network.
- (8) The infrastructure charging scheme 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 and these principles shall apply throughout the network.
- (9) Infrastructure charges payable under this Regulation shall not be refundable.

*Co-operation of infrastructure manager with other infrastructure managers.*

17. (1) The infrastructure manager shall co-operate with the infrastructure managers of the other Member States to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network.
- (2) In performing the functions under paragraph (1), the infrastructure manager shall act in accordance with Article 15(3) of the Directive of 2001.
- (3) The infrastructure manager shall, in co-operation with the infrastructure managers of the other Member States, assess the need for, and if necessary propose and organise international train paths to facilitate the operation of freight services which are subject to an *ad hoc* request under Regulation 13.

*Appeals against decision by infrastructure manager.*

18. (1) A railway undertaking that is aggrieved by a decision of the infrastructure manager on—

- (a) the allocation of infrastructure capacity, or
- (b) the charging of infrastructure charges,

may, within the period specified in paragraph (2), appeal against that decision to an appeal panel.

(2) An appeal under paragraph (1) shall be made by delivering a written notice of appeal to the infrastructure manager no later than 21 days after the railway undertaking is notified of the decision being appealed.

(3) On receipt of a notice of appeal under paragraph (2), the infrastructure manager shall refer the appeal to an appeal panel.

(4) An appeal panel convened for the purposes of hearing an appeal made under paragraph (1) shall consist of 3 members appointed in the following manner—

- (a) one member appointed by the infrastructure manager,
- (b) one member appointed by the appellant,
- (c) a senior counsel agreed upon by the members referred to in subparagraphs (a) and (b), and where the members fail to agree upon a senior counsel within one month of them both being appointed, the chairman of the Bar Council shall be requested to nominate a senior counsel.

(5) The appeal panel convened under this Regulation for the purpose of hearing an appeal shall determine the manner in which the appeal shall be conducted.

(6) After considering an appeal the appeal panel may—

- (a) confirm the decision, or
- (b) substitute its decision for that of the infrastructure manager and that decision shall take effect as if made by the infrastructure manager.

(7) The appeal panel convened for the purpose of hearing an appeal under paragraph (1) shall—

- (a) make a decision under paragraph (6) within 2 months after the submission to the panel of all information relevant to the appeal, and
- (b) by written notice, inform the appellant and the infrastructure manager of its decision including the reason or reasons.

(8) On receipt by the infrastructure manager of a notice of appeal under paragraph (1) against a decision on the charging of infrastructure charges, the requirement to pay the charges shall be suspended pending the final determination of the appeal.

*Separation of accounts.*

19. (1) Any railway undertaking which is also the infrastructure manager shall keep and publish, annually, separate profit and loss accounts and balance sheets, on the one hand for business relating to the provision of rail transport services, and, on the other, for business relating to the management and maintenance of the railway infrastructure.

(2) Any railway undertaking to which paragraph (1) applies shall ensure that state aid granted to that railway undertaking for the provision of transport services is not transferred for use in the management of the railway infrastructure. The accounts of such a railway undertaking shall be maintained so as to reflect this prohibition.

(3) Any railway undertaking shall keep and publish, annually, separate profit and loss accounts and, either, balance sheets or statements of assets and liabilities in respect of 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. Such funds must not be transferred for use in activities relating to the provision of other transport services or any other business.

*Market monitoring.*

20. (1) The Minister or a body designated by the Minister shall be responsible for monitoring competition in the rail services market in the State including the rail freight transport market for the purposes of these Regulations.

(2) Any railway undertaking or interested party may lodge a complaint with the Minister or a body designated by the Minister under paragraph (1) if that railway undertaking, or interested party feels it has been treated unjustly, or treated in a non-equitable or discriminatory manner with regard to access or any other matters relevant to these Regulations.

(3) If the party that lodged a complaint referred to in paragraph (2) is dissatisfied with the decision of the Minister or designated body, that party may appeal to the High Court within 21 days of the date of the decision of the Minister or designated body.

(4) On hearing an appeal under paragraph (3) the High Court may either confirm or vary the decision of the Minister or designated body or uphold the complaint.

(5) The Minister, or designated body, may, with or without a complaint being made pursuant to paragraph (2), decide on appropriate measures to correct undesirable developments in the rail services markets.



*Infrastructure business plan.*

21. (1) The infrastructure manager shall draw up a business plan in accordance with Article 7(4) of the Directive of 1991.

(2) The infrastructure manager may consult with relevant parties in the formulation of this business plan including the Minister.

(3) The business plan shall be submitted to the Minister for approval.

(4) The business plan may be reviewed from time to time jointly by the infrastructure manager and the Minister.

*Revocations.*

22. The following regulations are revoked:

- (a) the European Communities (Access to Railway Infrastructure) Regulations 2003 (S.I. No. 536 of 2003);
- (b) the European Communities (Allocation of Infrastructure Capacity and the levying of Charges for the use of Railway Infrastructure and Safety Certification) Regulations 2004 (S.I. No. 643 of 2004);
- (c) the European Communities (Access to Railway Infrastructure) (Amendment) Regulations 2005 (S.I. No. 780 of 2005); and
- (d) Regulation 18 of the European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008).



GIVEN under my Official Seal,  
17 February 2010.

NOEL DEMPSEY,  
Minister for Transport.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The purpose of these Regulations is to give effect to:

- (a) Directive 91/440/EC of the European Parliament and of the Council of 29 July 1991, as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001, and by Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 and by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 on the development of the Community's railways. The Directive requires Member States to open up the international rail passenger service market by 1 January 2010. The Directive also requires Member States to grant access to railway undertakings for the purposes of operating international and domestic rail freight services or international combined transport goods services.
- (b) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 as amended by Commission Decision No. 2002/844/EC of 23 October 2002 and by Council Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 and by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007.

The Regulations revoke the following Regulations:

- (a) the European Communities (Access to Railway Infrastructure) Regulations 2003 (S.I. No. 536 of 2003).
- (b) the European Communities (Allocation of Infrastructure Capacity and the levying of charges for the use of Railway Infrastructure and Safety Certification) Regulations 2004 (S.I. No. 643 of 2004).
- (c) the European Communities (Access to Railway Infrastructure) (Amendment) Regulations 2005 (S.I. No. 780 of 2005).
- (d) Regulation 18 of the European Communities (Railway Safety) Regulations 2008 (S.I. No. 61 of 2008).

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