



Department
for Transport

Consultation on draft legislation to transfer economic regulation of the Channel Tunnel from the Intergovernmental Commission (IGC) to the Office of Rail Regulation (ORR) and establishing a streamlined and unified charging framework

December 2014

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft

General email enquiries : <https://forms.dft.gov.uk>

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Foreword

The European Commission on 20 June 2013 issued Reasoned Opinions to both the UK and France concerning alleged non-compliance with various provisions of the First Railway Package with respect to the Channel Tunnel. The European Commission's opinion followed earlier Letters of Formal Notice under Article 258 to both the UK and France in September 2011.

Firstly, the Commission considered that the charges for the Tunnel were unacceptably high, and not set in accordance with the criteria provided by European Law. It also took issue with the length of long-term agreements giving access to the infrastructure to some train operators.

In terms of economic regulation of the Channel Tunnel, the Commission considered that the IGC did not meet the requirements of the relevant EU legislation. First, the Commission considered that the IGC lacked the ability to take regulatory decisions on its own initiative in the absence of an appeal by a train operator. Secondly, the Commission also considered that the IGC lacked the necessary regulatory independence because of its links with the Governments, and the links of public authorities with industry parties.

The Commission also doubted that there was in place a method for apportioning infrastructure costs and determining charges properly.

The Government did not (and does not) accept the Commission's allegations. Nevertheless, after a number of discussions between the British and French Governments, Eurotunnel and the Commission, agreement was reached with the Commission. First and foremost, Eurotunnel would lower its freight charges, and the Commission would agree not to pursue its claims relating to the level of the charges and length of the historic access arrangements. They have now done so, and the Commission has closed the case in this respect. Secondly, it was agreed that the Governments would do two things. While not accepting that the current arrangements for economic regulation of the Channel Tunnel did not comply with the EU legislation, they would transfer economic regulation from the ICG to national bodies. They also agreed to put in place a charging framework that would put beyond doubt the

issues raised by the Commission on the cost allocation method. Having a charging framework is already a requirement under EU legislation. At the moment, the charging framework consists of a number of provisions in various legal documents governing a number of aspects of Tunnel regulation. The revised framework will be in a single document. The new framework is designed to reflect existing practice, whilst making pre-existing EU constraints explicit.

Under the agreement, the above commitments must be fulfilled by the end of March 2015.

The Commission cannot, legally, commit itself never to reopen matters, but we are confident that the Commission's letters were a strong assurance to discontinue infraction action provided the commitments are met by the end of March 2015.

How to respond

The consultation period began on 12 December 2014 and will run until 23 January 2015. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.gov.uk/dft or you can contact the Department if you would like alternative formats (Braille, audio CD, etc).

Please send consultation responses to:

Name	Mike Franklyn
Address	Department for Transport, Infrastructure, Safety and Security Rail Executive Department for Transport 4/26 - Great Minster House 33 Horseferry Road London SW1P 4DR
Phone number	020 7944 5761
Email address	mike.franklyn@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex D. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposals

To revoke and replace the existing Channel Tunnel (International Arrangements) Order 2005 (as amended). This will give effect to a binational regulation made by the UK/French Intergovernmental Commission (the “IGC”) under the Treaty of Canterbury (which governs the Tunnel) (a) to remove the IGC’s function as economic regulator; and (b) to put in place a unified and streamlined charging framework.

We will also amend the Railways Infrastructure (Access and Management) Regulations 2005 to extend the ORR’s jurisdiction to the Tunnel.

Annex B sets out further detailed background information on the proposed IGC binational regulation and the proposed Charging framework

These changes are intended to be superseded, from 16 June 2015, by further national regulations implementing the Recast First Rail Package (i.e Directive 2012/34/EU, the “Recast Directive”) for Great Britain generally (including the Tunnel) . The Recast Directive replaces (with a number of amendments) the existing First Rail Package Directives (Directives 1991/440/EEC and 2001/14/EC, both as amended). (There will be separate regulations for Northern Ireland)

The further regulations to implement the Recast will retain the role of the ORR as the economic regulator for the UK side of the Channel Tunnel.

Consultation questions

Bi-national Regulation

The draft bi-national regulation will be made under the Treaty of Canterbury. It will apply to both the British and the French sides of the Tunnel. It removes the IGC's function as economic regulator under EU law, and puts in place a unified and streamlined charging framework (which appears in its Annex).

Question 1: Do you have any comments on the draft binational regulation? Please explain your reasons and add any additional comments you wish to make.

Question 2: Do you have any comments on the role of the IGC after the transfer of functions? Article 4 expressly provides that the bi-national regulation is without prejudice to the IGC's general role, under Article 10 of the Treaty of Canterbury, of supervising, in the name and on behalf of both Governments, all matters relating to the construction and operation of the Tunnel. Please explain your reasons and add any additional comments you wish to make.

Article 3 of the draft bi-national regulation requires co-operation between the two regulators, and makes provisions as to the processes

to achieve that result, taking into account the specific trans-border nature of the Channel Tunnel.

Question 3: Do you agree that arrangements to prevent conflicting decisions are best left to the regulators themselves? If not, please explain your reasons and what alternative method you consider would achieve this which would not be inconsistent with EU law, which does not allow disagreements between regulators to be settled by a third body. Please add any additional comments you wish to make.

The Recast Directive (like the First Package Directives which it replaces) provides for Member States to establish a Charging Framework. The draft Charging Framework in the Annex to the bi-national regulation, does, among other things, the following:

- it covers public funding for the Tunnel;*
- it deals with long-term costs. The Recast Directive includes provisions allowing infrastructure managers to recover the long-term costs of an infrastructure project through the charges, but they do not provide a definition of long-term costs. the Charging Framework is seeking to provide greater certainty for the infrastructure manager and its customers by providing a non-exhaustive list of the costs that can be considered to be "long-term costs" and making clear that long-term costs need to be spread over the life of the Concession.*
- it authorises the levying of mark-ups, should the infrastructure manager wish to do so and the conditions laid down in European legislation be fulfilled.*
- it requires the year-on-year decrease of certain categories of costs.*
- it prohibits double-recovery of costs.*

Question 4: Do you have any comments on Article 4(2) of the Charging Framework on what is considered “long term” costs? Please explain your reasons and add any additional comments you wish to make.

Question 5: Do you have any comments on the provision in Article 4(5) of the Charging Framework which provides for a year-on-year decrease, in real terms, of the charges levied to recover long-term costs? Please explain your reasons and add any additional comments you wish to make.

Question 6: Do you have any other additional comments on the bi-national regulation, including the charging framework?

The Railways Infrastructure (Access and Management) (Amendment) Regulations 2015

The proposed Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 (the “amendment Regulations”) are intended to amend the existing 2005 Regulations¹ which implement the existing First Rail Package Directives². The amendment Regulations will amend the scope of the 2005 Regulations so as to include the Tunnel, which at present is outside scope. This will have the effect of extending the ORR’s jurisdiction to the Tunnel. The amendment Regulations will also enhance the ORR’s enforcement powers, so as to put beyond doubt the issues the Commission raised about the regulator’s independence and powers. The ORR will be given the power to issue directions, enforceable by court injunctions, when negotiations between infrastructure and applicant are likely to contravene the Regulations. Its power to obtain information will also be enhanced. Compliance with charging frameworks and the charging principles will also become enforceable by the ORR through court injunctions. These changes are intended to give effect to

¹ The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049)

² i.e Directives 1991/440/EEC and 2001/14/EC, both as amended. These are now replaced by the Recast Directive which is required to be implemented by Member States by 16 June 2015.

the commitments made in the agreement reached with the Commission on the infraction action.

Further regulations (on which there will be a separate consultation) are expected to be made later in 2015 to implement the Recast Directive more generally for Great Britain as a whole (including the Tunnel). (There will be separate regulations for Northern Ireland).

Question 7: Do you have any comments on the provisions in the draft amendment Regulations extending the ORR's jurisdiction to the Tunnel? If so, please explain your reasons and add any additional comments you wish to make.

Question 8: Do you have any comments on the provisions in the amendment Regulations enhancing enforcement powers? If so, please explain your reasons and add any additional comments you wish to make.

Question 9: Do you have any other additional comments on the draft Regulations?

The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015

The proposed Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015 will give the force of law, in the UK, to the bi-national regulation. The Order will make supplemental provisions and savings, to ensure that the changes do not affect things done, or in the process of being done, at the time it enters into force, more than is necessary.

Question 10: Do you have any comments on Article 5, on supplemental provisions and savings? If so, please explain your reasons and add any additional comments you wish to make.

Question 11: Do you have any other additional comments on the draft Order?

Initial Assessment of Costs

Question 12: After considering the initial analysis of costs and benefits at **Annex A**, do you believe that the proposals will have a cost impact on your business? If so, please provide a quantitative analysis showing the cost on your business.

Question 13: Do you have any other comments on the costs or benefits associated with these proposals? If so, please explain your reasons and add any additional comments you wish to make.

Any other comments

Question 14: Do you have any other additional comments or points you wish to make on the proposals?

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.gov.uk/dft Paper copies will be available on request.

Annex A Initial assessment of costs

When responding to the consultation, please comment on the initial analysis of costs and benefits below, giving supporting evidence wherever possible.

Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the policy, and practical enforcement or implementation issues.

Initial Assessment of Costs

The British IGC staff and resources used for the economic regulation of the Tunnel are, in practice, currently provided by the ORR. They will now be provided directly by the ORR, at no extra cost to that institution.

The charging framework has no influence on the level of the costs of running the infrastructure, since it is about how these costs are distributed between the different users of the infrastructure. It is therefore cost-neutral to industry: even if, under the new framework, one party could in theory have to cover a greater proportion of the costs than before, another would cover a correspondingly smaller one.

Furthermore, in terms of distribution of costs, the framework is designed to allow the infrastructure manager (Eurotunnel) to continue to have flexibility in apportioning infrastructure costs between users but subject always to EU law requirements of equitable and non-discriminatory treatment. The proposed new framework broadly mirrors existing practice whilst making pre-existing EU constraints explicit, and we therefore consider it unlikely the existence of the framework will lead to Eurotunnel changing its existing charging rules in any significant way. Therefore, the costs and burdens imposed by it will be nil or negligible.

The transitional costs, such as familiarisation costs, arising from the new arrangements will be very small. As stated above, the charging framework is consistent with existing charging practices. ORR staff already perform Channel Tunnel regulatory functions. ORR will need to devote some minimal resources to updating their existing liaison processes with French counterparts to ensure future regulatory action is

coordinated; however, such processes already exist, since IGC decisions already require the agreement of the Heads of both the British and the French delegations.

Annex B Explanatory note on draft bi-national Regulation

Explanatory note concerning

the draft regulation of the Intergovernmental Commission on the Channel Tunnel on the establishment of a charging framework and repealing the bi-national regulation of the Intergovernmental Commission of 23rd July 2009 on the use of the Channel Fixed Link

Introduction

1. This is a note to explain the context of the draft bi-national regulation of the Intergovernmental Commission (IGC) on the establishment of a charging framework and repealing the bi-national regulation of the Intergovernmental Commission of 23rd July 2009 on the use of the Channel Fixed Link.
2. The draft bi-national regulation contains two parts. One is the main body, with its preamble and operative parts. The other is the Annex, which contains the Charging Framework, established in compliance with Directive 2012/34/EU (the "Recast Directive")³. The Annex fully forms part of the draft bi-national regulation, and its provisions will have the same legal effect as those in the main body.

Context and purpose of the bi-national regulation

European legislation

3. Under Article 55(1) of Recast Directive, Member States must establish a single regulatory body for the railway sector on their national territory, which must be legally distinct and independent

³ The Recast Directive consolidates with amendments provisions of the First Rail Package Directives, Directives 91/440/EEC and 2001/14/EC (both as amended), as well as Directive 95/18/EC on the licensing of rail undertakings (this latter directive is not of relevance in the present context).

from any other public or private entity. That Article is required to be transposed by 16 June 2015. Therefore, by that date, under EU law, the IGC would no longer be able to be the railway regulatory body for areas of UK and French territory contained in the Channel Tunnel Concession Area.

4. Furthermore, Article 29(1) of the Recast Directive⁴ provides that Member States must establish a charging framework in respect of the use of railway infrastructure. Again, that Article must be transposed by 16 June 2015.

Infraction proceedings

5. Following the Reasoned Opinion issued in June 2013, it was agreed between the European Commission and both governments that the Commission would not pursue further its complaints concerning the alleged non-independence of the IGC as an economic regulator and the alleged lack of a method for apportioning infrastructure costs on condition that:

- the functions of economic regulator were transferred to the national regulators in advance of the 16 June 2015 deadline
- new provisions were put in place containing the charging framework for the Tunnel in accordance with European legislation.

6. These commitments must be fulfilled by 31 March 2015. Failure to meet this deadline could lead to the infraction process being resumed in the above respects.

Implementation of European legislation and infraction commitments

National legislation

7. By contrast with what happens at present, (where legislation is made for the Tunnel by the IGC on a bi-national basis) most of the provisions of the Recast Directive and the commitments made in relation to the infraction process will be implemented through national legislation. This includes, for example, the provisions conferring rights of access, the provisions on separation between

⁴ The previous equivalent provisions are at article 4 of Directive 2001/14/EC

infrastructure management and transport operations, or the charging principles.

8. For the UK, the Recast Directive will be implemented generally, by a further statutory instrument, to be made by the Secretary of State for Transport⁵. But the parts of the Recast Directive that relate to the infraction commitments will be implemented earlier, in relation to the Channel Tunnel, by 31 March 2015, again by statutory instrument⁶.

Bi-national regulation

9. Nonetheless, the national regulations need to be preceded by a bi-national regulation to be made by the IGC, in order to:
 - Make the new provisions containing the bi-national charging framework for the Tunnel
 - revoke the existing bi-national regulation⁷ which established the IGC as an economic regulator for the purposes of the First railway package Directives and provide for the transfer of economic regulatory functions from the IGC to the ORR (for the UK side of the Tunnel) and to ARAF (for the French side of the Tunnel).
 - make provision for the role of the IGC after the transfer of regulatory functions to the ORR and ARAF.
 - encourage cooperation between the ORR and ARAF, in order to take into account the specific trans-border nature of the Channel Tunnel
10. The proposed new Bi-national regulation will come into force when both the UK and France have completed their internal processes to give it effect under their respective legal systems. In the case of the UK, this will be by means of the two proposed statutory instruments now being consulted on.

Commentary of the draft

⁵ This will cover Great Britain, including the Channel Tunnel. Separate legislation will be needed for Northern Ireland.

⁶ This is the purpose of the proposed Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015 and the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 which together with the proposed bi-national Regulation of the IGC are the main subject of this consultation.

⁷ i.e the Bi-national Regulation of the Intergovernmental Commission of 23rd July 2009.

11. The Appendix to this note includes an Article-by-Article commentary of the provisions of the draft binational regulation.
12. As a general remark, it must be noted that the greatest part of the transposition of the Recast Directive will, in the future, be done through national legislation. The scope of the bi-national regulation is thus relatively limited. Furthermore, the bi-national regulation will need to depart from the language of EU legislation when it is dealing with the context that is specific to the Tunnel, for example, the IGC's supervisory role under the Treaty of Canterbury, or the provisions specific to the handover of regulatory function by the IGC to the national regulators. The bi-national regulation will also not be able to copy out the language of EU legislation where it implements European provisions that specifically require Member States to supplement EU law. For example, the provisions on establishing a charging framework require Member States to set out additional detail to the charging requirements set out in the First Rail Package Directives and now consolidated in the Recast Directive.

Appendix

Article-by-Article commentary of the draft

Main body of the bi-national regulation

Preamble

After stating the legal basis for the bi-national regulation, the preamble states and summarises the Articles of the Recast Directive that the bi-national regulation deals with. These include Article 26, on Member States' obligation to allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity.

The preamble then notes the national implementing provisions that have or are intended to be made.

Finally, the preamble notes the provision in the Recast Directive on international cooperation between the regulators, and how it is particularly important in the case of the Tunnel.

Article 1

This Article expressly provides for the transfer of regulatory functions to national regulators, and specifies that, unlike the IGC under the earlier arrangements, each is only competent for its own side of the Tunnel.

Article 2

The first paragraph of this article specifies the requirement for the IGC to communicate all information currently held for the purpose of its existing function as the economic regulator of the Fixed Linked to the national regulators.

The second paragraph is self-explanatory.

Article 3

Article 3 concerns cooperation between the national economic regulators.

The Article follows closely the wording of Article 57(2) and (3) of the Recast Directive. When it departs from it, or omits elements, it is for the following reasons.

Firstly, the Recast Directive provisions on cooperation between regulatory bodies generally will be transposed by British and French legislation. Therefore, most of Article 57 does not need to be reproduced in the bi-national regulation.

Secondly, the special nature of the Channel Tunnel and the Concessionaires, as a single infrastructure and manager straddling the territory of two Member States, require provisions that reinforce the obligation of cooperation. For this reason, the obligation of “close cooperation” should not be limited to the purpose of “mutual assistance”. This is why the Article requires the working arrangements to “include mechanisms for minimising the risk of the regulatory bodies adopting conflicting decisions”.

The risk of conflicting regulatory decisions between regulators

The IGC in giving consideration to these matters has been particularly mindful of how undesirable it would be for the regulators to reach conflicting decisions, and has given careful thought to reducing the risk of this happening. The IGC is satisfied that all has been done to ensure that future arrangements will be workable.

Under EU law, it is for the national regulator alone to decide how to apply the relevant rules on its territory. While EU law encourages, and indeed requires, cooperation between regulatory bodies, it stops short of allowing them to divest themselves of their decision-making powers or of compelling them to agree with each other. This means that differing decisions could, in theory, be made. However, it is possible to put in place mechanisms to ensure that any such situation would only happen after careful consideration by the regulators of one another's point of view. In practice, the regulators will undoubtedly want to use their best efforts to avoid conflicting decisions, and will want to cement good working relationships. The details of the mechanisms for resolving disputes are best made by the regulators themselves. They have started to work on these, and will report to the IGC by the end of this year.

It would be inconsistent with EU law to provide for irreconcilable disagreements between regulators to be settled by a third body (for example the IGC). Not being the national regulator, such a body could not take the decision itself. Nor could it order the regulators to take a particular decision on a railway economic regulation matter, since, for the territory of each Member State, such decision are within the exclusive competence of the national regulator. Finally, even if the third party were made up of representatives of the regulators, it would not be a standalone authority distinct, in "organisational, functional hierarchical and decision-making terms" of other public entities (see article 55(1) of the Recast Directive).

Therefore, if, despite their best efforts, the ORR and ARAF are unable to reach agreement on an issue, that could, in the final analysis, mean one decision in respect of the British side of the Tunnel, and a different one for the French side of the Tunnel. It is not possible to eliminate the risk of this undesirable outcome occurring while at the same time correctly implementing the requirements of the Recast Directive. However Article 57 of the Recast Directive allows, and in fact encourages, regulators to coordinate with one another to prevent that situation from happening at all in the first place. With this in mind, the draft bi-national regulation requires the two regulators to put in place working arrangements in order to cooperate closely and coordinate their action, which must include ways of minimising the risk of disagreement. The latter comes in addition to the requirements of the Recast Directive (which do not prevent Member States from making such a provision).

The details of the arrangements to prevent conflicting decisions are best left to the regulators themselves. The inclusion of such detailed arrangements in the bi-national regulation is neither desirable nor appropriate. It could encroach on the independence of the regulators, and the arrangements would not be as flexible as they could be. It is understood that ORR and ARAF are working on such arrangements, and will present them for the information of IGC by the end of 2014.

Article 4

The purpose of Article 4 is to deal with the remaining roles of the IGC, and its relations with the national economic regulators.

Article 4 makes it explicit that the IGC continues to have its general role, under Article 10 of the Treaty of Canterbury, of supervising, in the name and on behalf of both Governments, all matters relating to the construction and operation of the Tunnel.

Because the Recast Directive requires the regulatory bodies to be independent when exercising their functions, this Article also explicitly requires the IGC to have no involvement in the decision-making processes of the regulatory bodies.

Article 5

Article 5 provides that, where a person challenges an IGC decision made before the transfer of regulatory functions before a court, they can continue to do so before the courts of either the UK or France. In respect of such decisions, as before, once a challenge has been made before the courts of one country, the courts of the other country no longer have jurisdiction, but the decision of the court will have effect in respect of both sides of the Tunnel.

The IGC will continue to deal with court challenges relating to decisions pre-dating the transfer.

Decisions made by the national regulatory bodies after the transfer will be subject to judicial review in the country where the decision-making body is based.

Article 8

Article 8 is based on the provision that was used in respect of the 2013 IGC bi-national regulation on safety. The process set out is the standard one in relation to IGC regulations. Once the regulation is signed, the UK and France will take whatever steps are necessary in their country for it to have effect. In the UK, this will be the making of the statutory instruments being consulted on here (see above). Each country will then notify the other that, in its respect, the process is complete. Once both countries have completed their internal processes, and notified one another of that completion, the bi-national regulation will enter into force.

Annex to the bi-national regulation: charging framework

Article 1

This article refers to the fact that the Framework is made in accordance with the relevant EU law provisions, so that, if there is any ambiguity as to whether any of its provisions could be given an interpretation going against EU law, that provision is not to be so interpreted.

The Article also makes provisions concerning the interpretation of the charging framework.

Article 2

The Article first mentions that charging rules are for the Infrastructure Manager (IM) to establish.

Article 2 also applies Article 8(4) of the Recast Directive, under which Member States have to ensure that infrastructure managers balance their accounts without State funding.

Article 3

Article 3 restates the principles found in the relevant European legislation: fairness, non-discrimination, transparency.

Article 4

Paragraph 1

The first paragraph of Article 4 reflects Article 31(3) of the Recast Directive, on the “cost directly incurred” being the minimum charge. It closely follows the wording of that Article.

Paragraph 2

The second paragraph reflects Article 32(3) of the Recast Directive, on charging for recovery of the long-term costs. The wording follows closely that of the Article, applying them to the particular conditions of the Tunnel

Paragraph 3

Paragraph 3 elaborates the wording of the Recast Directive. This is because the purpose of a charging framework is to set out requirements that supplement and “fill out” the outline provisions in the Recast Directive.

The Directives do not provide a definition of long-term costs, and the Charging Framework is seeking to provide greater certainty for the infrastructure manager and its customers by clarifying here the costs considered to be included in “long-term costs”.

In particular, it makes it clear that long-term costs need to be spread over the life of the Concession.

Paragraph 4

Paragraph 4 implements Article 32(1) of the Recast Directive on markups. The reason it does not reproduce Article 32(1) verbatim (except for the use of the phrase “markups”) is that its purpose is not to transpose that provision: that transposition is left to national legislation. Rather, it makes it clear that the Charging Framework does not prohibit markups.

Paragraph 5

Paragraph 5 provides for a year-on-year decrease, in real terms, of the charges levied to recover long-term costs (other than operating, maintenance and renewal costs).

Paragraphs 6 to 8

These paragraphs relate to discounts. They apply Articles 33(2) to (5) of the Recast Directive.

Article 5

That Article sets out how the infrastructure manager can calculate access charges. In particular, it sets out the principles governing how the costs that can be recovered through the charges are to be apportioned between the users. This had been a particular concern of the Commission during the infraction process. The Article recalls general principles, and requires the Concessionaires to take into account how the costs to be recovered relate to the activities of the railway undertakings concerned. The latter, while meeting the Commission's allegation that earlier transposition had not gone far enough in prescribing criteria on the method to apportion costs, also permits the Concessionaires to continue using the Activity Based Costing method.

The Article also prohibits double-recovery, again a particular concern of the Commission during the infraction process.

Article 6

This article reflects the requirement in Article 30(8) of the Recast Directive to explicitly require a method for apportioning costs to be used by infrastructure manager. The absence of such an express provision in the current bi-national regulation was one of the infraction complaints raised by the Commission.

Annex C Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available on the Better Regulation Executive website at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Please do not send your consultation response to this address.

Annex D List of those consulted

DB Schenker

Direct Rail Services

Europorte

Eurostar

Eurotunnel

Freightliner

GB Rail Freight

Intergovernmental Commission (IGC)

Office of Rail Regulation (ORR)

Rail Freight Group

Annex E The Railways Infrastructure (Access and Management) (Amendment) Regulations 2015

STATUTORY INSTRUMENTS

2015 No. 0000

TRANSPORT

The Railways Infrastructure (Access and Management) (Amendment) Regulations 2015

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1(2)

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽⁸⁾.

The Secretary of State is a Minister designated⁽⁹⁾ for the purposes of that section in relation to measures relating to railways and railway transport.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015.

⁽⁸⁾ 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006, section 27(1)(a).

⁽⁹⁾ S.I. 1996/266, to which there are amendments not relevant to these Regulations.

(2) These Regulations enter into force at the same time as the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015⁽¹⁰⁾.

Amendment of the Railway Infrastructure (Access and Management) Regulations 2005

2. The Railway Infrastructure (Access and Management) Regulations 2005⁽¹¹⁾ are amended as follows.

Interpretation

3.—(1) In regulation 3(1)—

(a) after the definition of "applicant", insert—

““the Channel Tunnel Order” means the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulations Functions) Order 2015;

“the Channel Tunnel charging framework” means the charging framework set out in the Annex to the IGC Regulation;

”;

(b) after the definition of “framework agreement” insert—“the IGC regulation” has the same meaning as in the Channel Tunnel Order”.

Scope

4. For regulation 4(7), substitute—

“(7) With the exception of regulations 5, 9(1) and (2) and 29A, these Regulations do not apply to the business of the Concessionaires in respect of any shuttle service for road vehicles.”.

Establishing, determining and collecting the charges

5.—(1) In regulation 12(3), after “rail link facility”, insert “or is part of the tunnel system”.

(2) In regulation 12(4), after “where paragraph (3) applies”, insert “by reason of the infrastructure to which the charge relates being a rail link facility”.

(3) After regulation 12(4), insert—

“(4A) Where paragraph (3) applies by reason of the infrastructure to which the charges relates being part of the tunnel system, the infrastructure manager must, subject to paragraph (7)—

(a) establish the specific charging rules in accordance with Article 2 of the Channel Tunnel charging framework;

(b) determine the fees to be charged in accordance with paragraph (5) for the use of the infrastructure in accordance with the Channel Tunnel charging framework, the specific charging rules, and the principles and exceptions set out in Schedule 3; and

(c) collect those fees.”

(4) In regulation 12(5), for the reference “(4)”, substitute “(4A)”.

(5) For paragraph 2(1) of Schedule 3, substitute—

“(1) In order to obtain full recovery of the costs incurred, the infrastructure manager, with the approval of the applicable authority, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

(1A) For the purposes of this paragraph, the applicable authority is—

(a) in relation to infrastructure subject to the access charges review, the Office of Rail Regulation;

(b) in relation to a rail link facility, the Secretary of State; and

⁽¹⁰⁾ Coming into force at the same time as this Order. S.I. number not known at the time of making.

⁽¹¹⁾ S.I. 2005/3049, amended by S.I.2009/1122.

- (c) in relation to infrastructure that is part of the tunnel system, the Office of Rail Regulation.
- (1B) For the purposes of this paragraph—
- (a) approval given by the Office of Regulation in relation to infrastructure subject to the access charges review must be given under that review; and
- (b) approval given by the Secretary of State in relation to a rail link facility must be given through the development agreement.”.

Capacity allocation

6.—(1) At the beginning of regulation 16(1), insert “Subject to paragraph (1A),” and, for the word “Whilst”, substitute “whilst”.

(2) After regulation 16(1), insert—

“(1A) Paragraph (1) does not apply to the allocation of infrastructure capacity within the tunnel system.”

International cooperation

7. At the beginning of regulation 28(5), insert “Without prejudice to Article 3 of the IGC Regulation”.

Enforcement

8.—(1) In regulation 28, after paragraph (3), insert—

“(3A) The Office of Rail Regulation may in particular, as part of the intervention mentioned in paragraph (3), issue such directions to the applicant or the infrastructure manager as it considers requisite for the purpose of ensuring that no contravention arises or, to the extent that a contravention has arisen, that it ceases.

(3B) Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998(12), it is the duty of any person to whom a direction is given under paragraph (3A) to comply with and give effect to that direction.”

(2) At the end of regulation 29(2)(d), insert “and the Channel Tunnel charging framework”.

(3) In regulation 31, after “13”, insert “28(2) and (3)”.

(4) In regulation 36(1)(c), after the word “paragraphs”, insert “(2)(a), (4)(b), (4A)(b),”.

(5) After regulation 36(1)(d), insert—

“(dd) paragraph (3B) of regulation 28;”.

Signed by authority of the Secretary of State for Transport

Date

Name
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

An Explanatory Note will be inserted here in due course.

(12) S.I. 1998/3132. Relevant amending instruments are S.I. 2000/2092, 2002/2058, 2003/364, 2003/3361, 2005/352, 2005/3515, 2006/1689, 2007/3543, 2009/3390, 2010/2577, 2012/2208, 2013/262, 2013/1412, 2014/610 and 2014/1233 and the Constitutional Reform Act 2005.

Annex F The Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015

STATUTORY INSTRUMENTS

2015 No.

RAILWAYS

The Channel Tunnel (International Arrangements) (Charging
Framework and Transfer of Economic Regulation Functions) Order
2015

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with article 1(2)

The Secretary of State for Transport makes this Order in exercise of the powers conferred on the appropriate minister by section 11(1)(a), (c), (d) and (g), (2)(a) and (b) and (3)(f) of the Channel Tunnel Act 1987(13).

(13) 1987 c.53. "Appropriate minister" is defined in section 13(1) of that Act.

Citation and commencement

9.—(1) This Order may be cited as the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015.

(2) This Order comes into force on the date when the IGC regulation comes into force, as provided for in Article 8 of that regulation.

(3) The Secretary of State for Transport must give notice in the London, Edinburgh and Belfast Gazettes of the date provided for in paragraph (2).

Interpretation

10. In this Order—

”the 2005 Order” means the Channel Tunnel (International Arrangements) Order 2005(**14**);

”the 2005 Regulations” means the Railways Infrastructure (Access and Management) Regulations 2005(**15**);

”the 2015 Regulations” means the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015(**16**);

”the IGC regulation” means the regulation of the Intergovernmental Commission of [*insert date*] on the establishment of a charging framework and repealing the bi-national regulation of the Intergovernmental Commission of 23rd July 2009 on the use of the Channel Fixed Link (being a regulation drawn up under article 10(3)(e) of the Treaty), the provisions of which are set out in the Schedule; and

”Intergovernmental Commission” means the Commission established pursuant to Article 10 of the Treaty.

Application of the IGC regulation

11. The IGC regulation has the force of law in the United Kingdom.

Revocation

12. The 2005 Order, the Channel Tunnel (International Arrangements) (Amendment) Order 2008(**17**) and the Channel Tunnel (International Arrangements) (Amendment) Order 2009(**18**) are revoked.

Supplemental provisions and savings

13.—(1) This article is subject to Article 5 of the IGC regulation.

(2) Subject to paragraph (3), in any case where provisions of the 2005 Regulations, as they have effect after the entry into force of the 2015 Regulations, make provision equivalent to that made under or by virtue of the 2005 Order before its revocation by this Order, then—

- (a) in so far as anything done by any person under or by virtue of 2005 Order could have been done by that person under such provisions of the 2005 Regulations, it is to have effect as if so done; and
- (b) in so far as anything that is in the process of being done by any person under or by virtue of the 2005 Order, immediately before its revocation, could continue to be done by that person under such provisions of the 2005 Regulations, it may continue to be so done.

(3) For the purposes of section 16(1) of the Interpretation Act 1978(**19**) and of paragraph (2), anything done or in the process of being done by the Intergovernmental Commission under the 2005 Order, before its revocation under this Order shall be deemed to have been done or to be in the process of being done by the Office of Rail Regulation(**20**).

(14) S.I. 2005/3207, amended by S.I. 2008/2366 and 2009/2081.

(15) S.I. 2005/3049, amended by S.I. 2009/1122 and 2011/1043 and by the 2015 Regulations.

(16) Coming into force at the same time as this Order. S.I. number not known at the time of making.

(17) S.I. 2008/2366.

(18) S.I. 2009/2081.

(19) 1978 c.30.

(20) The Office of Rail Regulation was established by section 15 of the Railways and Transport Safety Act 2003 (c.20).

Date

[Name]
Minister of State
Department for Transport

SCHEDULE

Article 2

IGC Regulation

VERSION FRANCAISE

ENGLISH VERSION

Règlement portant établissement d'un cadre de tarification et abrogation du règlement binational de la Commission intergouvernementale sur l'utilisation du tunnel sous la Manche, signé le 23 juillet 2009

Regulation on the establishment of a charging framework and repealing the bi-national regulation of the Intergovernmental Commission on the IGC of 23rd July 2009 on the use of the Channel Fixed Link

La Commission intergouvernementale mise en place pour suivre au nom des gouvernements de la France et du Royaume-Uni, et par délégation de ceux-ci, l'ensemble des questions liées à la construction et à l'exploitation de la Liaison Fixe (ci-après « la CIG »)

The Intergovernmental Commission established to supervise, in the name and on behalf of the British and French governments, all matters concerning the construction and operation of the Fixed Link ("the IGC")

Vu le Traité entre la France et le Royaume- Uni de Grande Bretagne et d'Irlande du Nord (ci-après « le Royaume-Uni ») concernant la construction et l'exploitation par des sociétés privées concessionnaires d'une Liaison Fixe Transmanche, signé à Cantorbéry le 12 février 1986 (ci-après « le Traité de Cantorbéry »), et notamment ses articles 1 et 10 ;

Having regard to the Treaty between the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) and the French Republic (France) concerning the construction and operation by private concessionaires of a Channel Fixed Link, signed at Canterbury on 12 February 1986 (the Treaty of Canterbury), and in particular Articles 1 and 10 thereof;

Vu la Directive 2012/34/UE du Parlement européen et du Conseil du 21 novembre 2012 établissant un espace ferroviaire unique européen (ci-

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21

après « la Directive »), et notamment ses articles 26, 29, 55 et 57 ;

Considérant que conformément à l'article 26 de la Directive, les États membres doivent garantir que les systèmes de tarification pour les entreprises ferroviaires permettent au gestionnaire d'infrastructure de commercialiser les capacités de l'infrastructure disponible et d'en faire une utilisation effective et optimale ;

Considérant que conformément à l'article 29 de la Directive, les États membres doivent mettre en place un cadre de tarification ;

Considérant que l'article 55 de la Directive dispose que chaque État membre institue un organisme de contrôle national unique du secteur ferroviaire, qui doit être une autorité autonome juridiquement distincte et indépendante, sur les plans organisationnel, fonctionnel, hiérarchique et décisionnel, de toute autre entité publique ou privée, tout en ayant la possibilité d'être rattachée, sur le plan organisationnel, à certaines entités mentionnées dans la Directive ;

Considérant que, d'ici l'entrée en vigueur du présent règlement, la France et le Royaume-Uni auront adopté ou s'approprieront à adopter des dispositions pour transposer l'article 55 de la Directive ;

Considérant que, par conséquent, le règlement binational de la Commission

November 2012 establishing a single European railway area (the Directive), and, in particular, Articles 26, 29, 55 and 57 thereof;

Considering that, under the above-mentioned Article 26, Member States must ensure that charging schemes for railway undertakings allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity;

Considering that, under the above-mentioned Article 29, Member States must establish a charging framework;

Considering that the above-mentioned Article 55 requires each Member State to establish a single national regulatory body for the railway sector, which must be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity, except that it may be joined in organisational terms with a number of authorities specified in the Directive;

Considering that provisions have been made, or are to be made, by the time this regulation enters into force, by the United Kingdom and France for the transposition of the above-mentioned Article 55;

intergouvernementale du 23 juillet 2009 sur l'utilisation de la Liaison Fixe Transmanche (ci-après « le règlement binational ») doit être abrogé, et que les fonctions d'organisme de contrôle de la Liaison Fixe confiées à la CIG en vertu de la législation européenne doivent être transférées aux autorités compétentes de la France et du Royaume-Uni ;

Considérant que conformément à l'article 57 de la Directive, les États membres veillent à ce que des modalités de collaboration soient mises en place entre les organismes de contrôle du secteur ferroviaire ; considérant que le caractère transfrontalier de la Liaison Fixe et l'existence d'un gestionnaire d'infrastructure unique renforce l'importance de cette collaboration ;
Adopte le règlement suivant :

Article 1

La fonction d'organisme de contrôle de la CIG est transférée aux organismes de contrôle établis en vertu de la législation européenne par la France et le Royaume-Uni (ci-après les organismes de contrôle).

Ces organismes de contrôle sont respectivement compétents sur la partie de la Liaison Fixe située sur le territoire de l'État dont ils relèvent, déterminée conformément à l'article 3 du traité de Cantorbéry.

Article 2

La CIG s'assure que toute information ou document qu'elle détient dans l'exercice de ses

Considering, therefore, that the binational regulation of the Intergovernmental Commission on the IGC of 23rd July 2009, on the use of the Channel Fixed Link (the binational regulation), should be repealed, and that the functions of the IGC by virtue of European law as regulatory body in respect of the Fixed Link should be transferred to the competent authorities of the United Kingdom and France;

Considering that the above-mentioned Article 57 requires Member States to ensure that cooperation arrangements are established between the national regulatory bodies for the railway sector; considering that the cross-border nature of the Fixed Link infrastructure and the existence of only one infrastructure manager makes cooperation even more important,

Has adopted the following regulation:

Article 1

The function of the IGC as a regulatory body shall be transferred to the regulatory bodies established by the United Kingdom and France by virtue of European law (the regulatory bodies).

These regulatory bodies shall respectively have jurisdiction over the part of the Fixed Link situated on the territory of their State, as determined in accordance with article 3 of the Treaty of Canterbury.

Article 2

The IGC shall ensure that any information or document that it holds for the purposes of its

fonctions au titre du règlement binational, au moment de l'abrogation de ce dernier conformément à l'article 8, soient communiqués, dans les meilleurs délais possibles après ladite abrogation, aux organismes auxquels ces fonctions sont transférées en vertu de l'article 1.

La CIG et les organismes de contrôle échangent les informations nécessaires à l'exercice de leurs fonctions respectives.

Article 3

Les organismes de contrôle de la France et du Royaume-Uni, dans l'exercice de leurs fonctions relatives à la Liaison Fixe, collaborent étroitement et coordonnent leurs processus de décision. A cette fin, ils mettent en place des procédures communes de travail. Dans le but d'éviter une situation d'insécurité juridique, ces procédures doivent minimiser le risque d'adoption de décisions contradictoires par les organismes de contrôle.

Les organismes de contrôle tiennent la CIG informée des procédures communes de travail.

En cas de plainte ou d'enquête lancée de leur propre initiative sur des questions d'accès ou de tarification relatives à un sillon, ainsi que dans le cadre de la surveillance de la concurrence sur le marché concernant des services de transport ferroviaire international, les organismes de contrôle se consultent mutuellement. Dans ce cas, ils se fournissent toutes les informations qu'ils ont eux-mêmes le droit d'exiger en vertu de leur droit national. Ces informations ne peuvent être utilisées qu'aux fins du traitement de la plainte ou de l'enquête mentionnée dans le présent alinéa.

Article 4

Le présent règlement est sans préjudice de la fonction générale de suivi de l'ensemble des questions relatives à l'exploitation de Liaison Fixe, confiée à la CIG au nom et par délégation des Gouvernements français et britannique par le Traité de Cantorbéry. La CIG exerce cette fonction dans le respect de l'indépendance des organes de régulation compétents et n'interfère pas dans leur processus décisionnel.

functions under the bi-national regulation, at the time of its repeal pursuant to Article 8, are communicated as quickly as practicable after that repeal, to the regulatory bodies to which its functions are transferred pursuant to Article 1.

The IGC and the regulatory bodies will exchange information as necessary to discharge their respective functions.

Article 3

The British and French national rail regulatory bodies shall, in the performance of their functions in relation to the Fixed Link, cooperate closely and coordinate their decision making. They shall put in place working arrangements to that end. For the purpose of avoiding legal uncertainty, those working arrangements shall minimise the risk of the regulatory bodies adopting conflicting decisions.

The regulatory bodies shall keep the IGC informed of their working arrangements.

In the case of a complaint or an own-initiative investigation on issues of access or charging relating to a train path through the Fixed Link, as well as in the framework of monitoring competition on the market related to international rail transport services, the national regulatory bodies shall consult one another. When so consulted, they shall provide each other all the information that they themselves have the right to request under their national law. This information may only be used for the purpose of handling the complaint or investigation referred to in this paragraph.

Article 4

This regulation is without prejudice to the IGC's function, under the Treaty of Canterbury, of supervising, in the name and on behalf of the British and French Governments, all matters concerning the operation of the Fixed Link. In carrying out this function, the IGC shall respect to the independence of the relevant regulatory bodies and shall not interfere with their decision making process.

Regulatory bodies may consult the IGC on any issue.

Les organismes de contrôle peuvent consulter la CIG sur toute question.

Article 5

Dans l'hypothèse où, avant l'entrée en vigueur du présent règlement, une décision prise par la CIG, au titre de ses missions en matière de régulation économique, fait ou est susceptible de faire l'objet d'un recours juridictionnel, la CIG ainsi que les autorités juridictionnelles saisies demeurent compétentes pour en connaître, dans les conditions énoncées à l'article 76 du règlement de la CIG du 24 janvier 2007 précité.

La CIG tient les organismes de contrôle nationaux informés de l'évolution du recours.

Article 6

Le cadre de tarification mis en place aux termes de l'article 29 de la Directive pour la Liaison Fixe Transmanche est défini à l'annexe du présent règlement.

Article 7

Le règlement binational est abrogé.

Article 8

Chaque gouvernement notifie à l'autre l'accomplissement des procédures internes requises, en ce qui le concerne, pour l'entrée en vigueur du présent règlement qui prend effet à compter du jour de la réception de la dernière notification.

Fait par la Commission intergouvernementale le en français et anglais, les deux versions linguistiques faisant également foi.

Le chef de la délégation française à la CIG

Le chef de la délégation du Royaume Uni à la CIG

Article 5

Where, before the coming into force of this regulation, a decision taken by the IGC in the exercise of its functions relating to economic regulation is or maybe the subject of an application for judicial review, the IGC and the authorities concerned shall continue to have jurisdiction in relation to the application, pursuant to Article 76 of the IGC regulation of 24 January 2007 on the safety of the Channel Fixed Link.

The IGC shall inform the regulatory bodies about the progress of the application.

Article 6

The charging framework established by virtue of Article 29 of the Directive in respect of the Channel Fixed Link shall be the one set out in the Annex to this regulation.

Article 7

The bi-national regulation is repealed.

Article 8

Each Government shall notify the other of the completion of its necessary internal procedures to enable this regulation to come into force. This regulation shall enter into force [on the date of reception of the later notification].

Done by the Intergovernmental Commission on in English and French, both texts being equally authoritative.

The Head of the British delegation to the IGC

The Head of the French delegation to the IGC

ANNEXE

Cadre de tarification pour le Tunnel sous la Manche

ANNEX

Charging Framework for the Channel Tunnel

Article 1 Introduction	Article 1 Introduction
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<p>L'objectif du présent cadre de tarification est d'énoncer le régime applicable à la détermination, par le gestionnaire d'infrastructure du tunnel sous la Manche, des redevances d'utilisation de l'infrastructure, conformément à l'article 29.1 de la Directive 2012/34/UE (ci-après, « la Directive »). Toute redevance perçue par le gestionnaire de l'infrastructure auprès des entreprises ferroviaires doit être conforme au présent cadre de tarification.</p> <p>Conformément à l'article 2.9 de la Directive, les opérations de transport sous forme de services de navettes pour véhicules routiers à travers le Tunnel sous la Manche ne sont pas soumises au présent cadre de tarification et, aux fins de ce cadre, ne sont pas considérées comme des activités ferroviaires.</p> <p>Sauf indication contraire, les termes utilisés dans ce cadre de tarification ont le même sens que ceux utilisés dans la Directive.</p>	<p>The purpose of this charging framework is to set out the regime by which the infrastructure manager of the Channel Tunnel shall determine the charges for the use of the infrastructure, in accordance with Article 29.1 of Directive 2012/34/EU (the Directive). Any charges levied by the infrastructure manager on railway undertakings shall be determined and collected pursuant to this charging framework.</p> <p>In accordance with Article 2(9) of the Directive, transport operations in the form of shuttle services for road vehicles through the tunnel shall not be subject to this charging framework and, for the purposes of this framework, shall not be regarded as railway activities.</p> <p>Except where the context otherwise requires, expressions used in this charging framework shall have the same meaning as in the Directive.</p>
<p>Article 2</p> <p>Règles de tarification</p> <p>Le gestionnaire de l'infrastructure est responsable de l'établissement et de la mise en œuvre des règles de tarification applicables à l'infrastructure ferroviaire du Tunnel sous la Manche.</p> <p>Conformément au Traité de Cantorbéry et à l'accord de Concession, le gestionnaire d'infrastructure ne reçoit aucun financement des États concédants.</p> <p>Conformément à la législation européenne, le gestionnaire de l'infrastructure est tenu d'équilibrer ses comptes.</p>	<p>Article 2</p> <p>Charging rules</p> <p>The infrastructure manager shall be responsible for establishing and applying the charging rules for the railway infrastructure of the Channel Tunnel.</p> <p>In accordance with the Treaty of Canterbury and the Concession entered into under it, the infrastructure manager shall not receive any funding from the States granting the Concession.</p> <p>In accordance with European legislation, the infrastructure manager is required to balance its accounts.</p>
<p>Article 3</p> <p>Principes généraux</p> <p>Dans l'exercice de ses fonctions, le gestionnaire d'infrastructure doit constamment s'assurer de la transparence et du caractère équitable et non-discriminatoire des redevances.</p>	<p>Article 3</p> <p>General principles</p> <p>When performing its functions, the infrastructure manager shall, at all times, ensure that the charges are transparent, non-discriminatory and fair.</p>
<p>Article 4</p>	<p>Article 4</p>

Redevances

Les redevances sont au moins équivalentes au coût directement imputable à l'exploitation du service ferroviaire.

Le gestionnaire d'infrastructure peut fixer ou maintenir des redevances plus élevées que le coût directement imputable à l'exploitation de chaque service ferroviaire, fondées sur le coût à long terme du projet de la Liaison Fixe Transmanche relatif aux activités ferroviaires de cette dernière.

Les coûts à long terme du projet sont recouverts sur la durée de l'Accord de Concession. Ces coûts comprennent les coûts relatifs au financement de la construction de la Liaison Fixe Transmanche et de tout investissement complémentaire nécessaires pour répondre à la demande de services ferroviaires entrepris par le gestionnaire d'infrastructure en relation avec les activités ferroviaires, y compris le coût de la dette et de son remboursement et une rémunération raisonnable du capital investi, ainsi que les coûts relatifs au fonctionnement, à la maintenance et au renouvellement.

Le gestionnaire de l'infrastructure est également autorisé à percevoir des majorations dans les conditions prévues par la législation européenne.

Au titre des dispositions visant à encourager les mesures d'incitation à réduire les coûts de fourniture de l'infrastructure et le niveau des redevances, la part des redevances perçues destinée à recouvrer les coûts à long terme liés à la construction initiale de la Liaison Fixe et aux investissements complémentaires mentionnés à l'alinéa 3 ci-dessus est ajustée annuellement pour refléter l'évolution de l'indice des coûts minorée de 1,1% et tout changement intervenu dans ces coûts.

Le gestionnaire de l'infrastructure peut instaurer des systèmes de réduction s'adressant à toutes les entreprises ferroviaires utilisant la Liaison Fixe et qui accordent, pour des flux de circulation déterminés, des réductions limitées dans le temps afin d'encourager le développement de nouveaux services. Le gestionnaire d'infrastructure peut également consentir des réductions afin de favoriser l'utilisation de sillons considérablement sous-utilisés. Des systèmes de réduction similaires

Access charges

Charges must be at least equivalent to the cost that is directly incurred as a result of operating the train service.

The infrastructure manager may set higher charges than the cost that is directly incurred by the operation of each train service on the basis of the long-term costs of the Channel Tunnel project, attributable to the railway activities.

The long term costs shall be recovered over the life of the Concession Agreement. These costs shall include the costs of financing the construction of the Fixed Link and of any further investment necessary to meet the demand for railway services made by the infrastructure manager in relation to the railway activities, including the cost of debt and its repayment and a reasonable return on capital investments, as well as the costs of operation, maintenance and renewal.

The infrastructure manager is also authorised to levy mark-ups, as long as the conditions laid down in relation to this in European legislation are fulfilled.

Pursuant to the provisions made to encourage the putting in place of incentives to reduce the costs of providing infrastructure and the level of charges, the portion of the charges levied to recover the long-term costs related to the initial construction of the Fixed Link and the further investments mentioned at paragraph 3 above shall be adjusted annually to reflect inflation minus 1,1% and any changes in those costs.

The infrastructure manager may also introduce schemes available to all railway undertaking using the Fixed Link, for specified traffic flows, granting time-limited discounts to encourage the development of new rail services. The infrastructure manager may also grant discounts encouraging the use of considerably underutilised paths. Similar discount schemes shall apply for similar services. Discount schemes shall be applied in a non-

<p>s'appliquent aux services similaires. Les systèmes de réduction sont appliqués de manière non discriminatoire à toute entreprise ferroviaire.</p> <p>Le gestionnaire d'infrastructure est autorisé à faire varier les redevances dues par les entreprises ferroviaires en fonction des périodes d'utilisation afin d'encourager un usage optimal de l'infrastructure en termes de sillons, de vitesse ou d'horaires.</p> <p>Dans le cas où il décide d'accorder des réductions ou de faire varier les redevances, il doit s'assurer que la description détaillée de ces réductions et variations figure dans le Document de Référence du Réseau.</p>	<p>discriminatory manner to any railway undertaking.</p> <p>The infrastructure manager may vary the charges levied on railway undertakings according to the time when the path is used in order to encourage optimal use of the railway infrastructure in terms of railway path, speed and schedule.</p> <p>If it decides to grant discounts or to vary the charges, it must ensure that it sets out the detail of such discounts and variations in the network statement.</p>
<p>Article 5</p> <p>Calcul des redevances</p> <p>Le gestionnaire d'infrastructure détermine le montant des redevances pour l'utilisation du tunnel sous la Manche.</p> <p>Ce faisant, le gestionnaire de l'infrastructure respecte les principes de non-discrimination, de transparence et d'équité, et tient compte de la manière dont les coûts à recouvrer sont liés aux activités des entreprises ferroviaires concernées.</p> <p>Aucune partie des coûts ne peut être recouvrée plus d'une fois.</p> <p>Le gestionnaire d'infrastructure détermine les conditions de paiement, de remboursement ou de dispense dans le cas où une réservation de capacité est annulée et peut être réattribuée à une autre entreprise ferroviaire.</p>	<p>Article 5</p> <p>Calculation of access charges</p> <p>The infrastructure manager shall determine the charges for use of the Channel Tunnel.</p> <p>In doing so the infrastructure manager shall respect the principles of non-discrimination, transparency and fairness and take into account how the costs to be recovered relate to the activities of the railway undertakings concerned.</p> <p>In any event, no portion of any costs shall be recovered more than once.</p> <p>The infrastructure manager shall determine the terms of payment, refund or waiver if a reservation for infrastructure capacity is cancelled and can be used by another railway undertaking.</p>
<p>Article 6</p> <p>Méthode d'imputation des coûts</p> <p>Le gestionnaire d'infrastructure élabore une méthode d'imputation des coûts équitable, transparente, non-discriminatoire et conforme aux principes établis dans le présent cadre de</p>	<p>Article 6</p> <p>Method for apportioning costs</p> <p>The infrastructure manager shall establish a method for apportioning costs which is fair, transparent, non-discriminatory and in conformity with the principles established in</p>

tarification. Il publie cette méthode et la met à jour en tant que de besoin.

this charging framework. It shall publish this method and update it when necessary.

EXPLANATORY NOTE

(This note is not part of the Order)

An Explanatory Note will be inserted in due course.