

COMMISSION OF THE EUROPEAN COMMUNITIES

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SYN 490

Brussels, 14.07.1994

Amended proposal for a
COUNCIL DIRECTIVE
on the licensing of railway undertakings

SYN 488

(presented by the Commission pursuant to Article 189a(2) of the EC Treaty)

Amended proposal for a
COUNCIL DIRECTIVE
on the allocation of railway infrastructure capacity and the
charging of infrastructure fees

SYN 490

(presented by the Commission pursuant to Article 189a(2) of the EC Treaty)

Amended proposal for a

SYN 488

COUNCIL DIRECTIVE

on the licensing of railway undertakings

EXPLANATORY MEMORANDUM

At its plenary session of 3rd May 1994, the European Parliament approved the Commission's proposal for a Council Directive¹ on the licensing of railway undertakings. At the same time, it adopted a number of amendments to the text.

The Commission has accepted the amendments concerning articles 1(2), 2(e) and (f), 4(3), 5(2), 8(1)(b), (c) and (d), 9, 10(2), 11(2), 11(7), 12, 14, 15(1), 16(1), as they strengthen or clarify the original text. It has accepted the amendment to article 3, as this would reinforce the independence of the body responsible for granting licences. The Commission has also accepted the amendments to articles 7, 10(1), 11(1), 11(5) and the annex, as taken together they lighten the obligations on railway undertakings to provide information, without weakening the licensing system.

The Commission has refused the proposed amendment to article 4(4), as it would delete text that specifies what a railway undertaking must do to gain access to infrastructure, once licenced. It also refused an amendment to article 8(2), as it might restrict a railway undertaking's access to essential training facilities under the exclusive control of another undertaking to an unacceptable extent.

¹ COM(93)678, O.J. no. C24 of 28.01.1994.

Amended proposal for a

COUNCIL DIRECTIVE

on the licensing of railway undertakings
(presented by the Commission pursuant to Article 189A(2)
of the Treaty establishing the European Community)

The following parts of the Commission's original proposal are replaced by the texts below.

Article 1(2)

2. By derogation from the above Member States may exclude from the scope of this Directive railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services, insofar as those services do not involve the joint use of infrastructure with undertakings subject to this Directive, and preserved and museum railways.

Article 2(e) and (f)

- (e) 'licensing authority' means the authority or agency charged by the Member State with the granting of railway operating licences;
- (f) 'urban, suburban and regional services' means transport services to meet the transport needs of an urban centre or conurbation, as well as transport between such a centre or conurbation and surrounding areas, or the transport needs of a region.

Article 3

Each Member State shall designate the authority or agency responsible for the granting of railway operating licences and for the carrying out of obligations under this Directive. This authority or agency may not be associated, directly or indirectly, with the national railway undertaking.

Article 4(3)

3. A railway undertaking meeting the requirements set out in this Directive shall be entitled on a non-discriminatory basis to receive an operating licence valid throughout the Community.

Article 5(2)

2. For the purpose of paragraph 1, each applicant shall provide all relevant information.

Article 7 (1), (2) and (3)

1. The requirements in relation to financial fitness are met when the applicant railway undertaking can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of 12 months.
2. For the purpose of paragraph 1, each applicant shall provide all relevant information, in particular a business plan for at least the first year of operation and the data referred to in Section I of the Annex.
3. Evidence of financial fitness may be provided by submitting an audit report and appropriate certificates from a bank, a public savings bank, a certified public accountant or a sworn auditor. They must contain the information mentioned in paragraph 2.

Article 8(1) (b), (c) and (d)

- (b) the applicant railway undertaking can demonstrate that it will be in a position to provide appropriate rolling stock including traction and maintenance arrangements necessary to operate safely and efficiently services according to the terms of its operating licence;
- (c) its staff, who are critical to safety, notably drivers, are fully qualified for their field of activity; and
- (d) its personnel, equipment and organization can ensure a high level of safety of the operations to be undertaken.

Article 9

A railway undertaking must be insured or have made equivalent arrangements to cover full liability per claim in case of accidents, in particular in respect of passengers, luggage, freight, mail and third parties.

Article 10 (1) and (2)

VALIDITY OF THE OPERATING LICENCE

1. An operating licence shall be valid as long as the railway undertaking fully meets the obligations of this Directive. However, the licensing authority may make provision for a review one year after a new licence has been issued and shall review the situation every five years thereafter. For this purpose the railway undertaking shall provide all relevant information, in particular the data referred to in Section II of the Annex.
2. Specific provisions for suspension or revocation of a licence must be reflected in the licence itself.

Article 11 (1), (2), (5) and (7)

1. If apprised of facts raising serious doubts that the requirements of this Directive, and in particular Article 5 thereof, are complied with by a railway undertaking licensed by them, the licensing authorities shall immediately assess whether the railway undertaking is in compliance with the requirements. Article 10(1), third sentence shall apply. Where the licensing authority is satisfied that the railway undertaking can no longer meet the requirements of the Directive, and in particular Article 5, it shall suspend or revoke the operating licence.
2. Notwithstanding paragraph 1, where an operating licence is suspended or revoked by reason of non-compliance with the requirements of financial fitness, the licensing authority may grant a temporary licence pending the reorganisation of the railway undertaking, provided that safety is not put at risk. However, a temporary licence shall only last for a maximum period of 6 months from the date of commencement.
5. When a railway undertaking intends significantly to change or extend its activities, the operating licence has to be amended accordingly. For the purposes of paragraphs 4 and 5 the applicant shall provide all relevant information, in particular the data referred to in Section III of the Annex.
7. When the licensing authority has suspended, revoked or amended an operating licence, the Member State concerned shall immediately inform the other Member States, notably those in which the railway undertaking concerned is operating, and the Commission.

Article 12

In addition to the requirements of the Directive, the railway undertakings shall also respect national laws compatible with Community law, in particular specific technical requirements for certain rail services and laws on health and safety, social conditions and rights for workers and consumers.

Article 14**TRANSITIONAL PROVISIONS**

Railway undertakings operating rail services at the date of entry into force of this Directive shall be granted a transitional period of six months to obtain an operating licence. This transitional period shall not cover any provision that might affect safety of railway operations.

Article 15(1)

1. The Member States shall without delay make public their respective procedures for the granting of operating licences and inform the Commission thereof.

Article 16(1)

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1996. They shall forthwith inform the Commission thereof.

Annex**I. Information for use in association with article 7(2)**

The text of this section is unchanged.

II. Information for use in association with article 10(1) to be provided for the review of existing licence holders

1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.
2. A projected balance sheet, including profit and loss account, for the forthcoming year.
3. Arrangements as regards availability and maintenance of rolling stock notably as regards safety standards, and the qualifications of staff who are critical to safety.

III. Information for use in association with Article 11(4) and (5)

1. The audited accounts for the previous financial year.
2. Precise details of all proposed changes, e.g. change of type of service, extension of service, proposed takeover or merger, etc.
3. Details of changes, as regards availability and maintenance of rolling stock, in the qualification of staff who are critical to safety.

Amended proposal for a

COUNCIL DIRECTIVE

**on the allocation of railway infrastructure capacity
and the charging of infrastructure fees**

**(presented by the Commission pursuant to Article 189A(2)
of the Treaty establishing the European Community)**

Amended proposal for a

COUNCIL DIRECTIVE

**on the allocation of railway infrastructure capacity
and the charging of infrastructure fees**

EXPLANATORY MEMORANDUM

At its plenary session of 3rd May 1994, the European Parliament approved the Commission's proposal for a Council Directive¹ on the allocation of railway infrastructure and the charging of infrastructure fees. At the same time, it adopted a number of amendments to the proposal.

The Commission has accepted the amendments concerning articles 2(a), (b) and (d), 3 (1) first sentence, 4(1), 6 new second paragraph, 8(1) third indent, 12(1), as they strengthen or clarify the original text. It has accepted the addition of a second paragraph to article 3, as this specifies when an infrastructure manager can act as the allocation body without conflict of interest. It has also accepted the amendments to article 10 on procedures for allocating infrastructure capacity. The amendment introduces a distinction between applications for individual trains and those for regular scheduled services; this ensures that procedures are well fitted to the type of application.

The Commission has refused the other amendments proposed :

- to article 3(1), a new second indent, requiring that all applicants be given an equal chance of obtaining train paths allocated for the first time. However, the requirement would conflict with the priorities defined in articles 4 and 5 of the Commission's proposal.
- to article 5, text allowing Member States to grant special or exclusive rights to infrastructure if indispensable for its efficient use. However, such a provision could become a pretext for denying rights of access to infrastructure.
- to article 8(1), an extra indent adding a principle for Member States to follow in defining rules for infrastructure fees. This principle is that infrastructure fees should also be charged for other modes of transport. However, this raises general issues of transport policy that go beyond the scope of the proposed directive.
- to article 8(1), an extra indent adding a principle for Member States to follow in laying down rules for infrastructure fees. This principle is that preferential rates would not be allowed, unless is covered by articles 4 and 5 of the proposed Directive. However, this would prevent the granting of reductions and rebates that are normal commercial practice.

COUNCIL DIRECTIVE

**on the allocation of railway infrastructure capacity
and the charging of infrastructure fees**
(presented by the Commission pursuant to Article 189A(2)
of the Treaty establishing the European Community)

The following parts of the Commission's original proposal are replaced by the texts below.

Article 2(a), (b) and (d)

- (a) 'railway undertaking' means any private or public undertaking whose main business is to provide rail transport services for goods and/or passengers with a requirement that the undertaking must ensure traction, but excluding private tourist and museum railways;
- (b) 'infrastructure manager' means any public or private body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;
- (d) 'allocation body' means the body designated by the Member State as responsible for the allocation of infrastructure capacity;

Article 3

1. Each Member State shall designate the body responsible for the allocation of infrastructure capacity in accordance with the requirements of this Directive. In particular the allocation body shall ensure:
 - that railway infrastructure is allocated on a fair and non-discriminatory basis, and
 - that subject to articles 4 and 5 the allocation procedure is efficiently organised applying market principles.
2. In those cases where the infrastructure manager is not a railway operator, it may be assigned the duties of the allocation body. This does not apply, however, to the review procedure set out in Article 12(1). In other cases, the infrastructure manager cannot be assigned the duties of the allocation body or be linked to it, directly or indirectly.

Article 4(1)

1. By derogation from Article 3 the Member States may take the necessary measures to ensure that, in allocating railway infrastructure capacity, priority is given to the following rail services:
 - (a) services provided in the interest of the public, as defined in Regulation (EEC) no. 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of public service transport by rail, road and inland waterway, as amended by Council Regulation (EEC) no. 1893/91 of 20 June 1991;
 - (b) specialized types of operation on infrastructure constructed or upgraded for certain specific services, in particular specialized high-speed or freight lines or lines using combined inter-modal transport, without prejudice to Article 85, 86 and 90 of the Treaty. Train paths on such specialized infrastructure should be allocated on a fair and non-discriminatory basis.

Article 6(2)

2. The infrastructure manager may finance infrastructure development, including the provision or renewal of capital assets, and may make a return on capital employed.

Article 8(1), third indent

fees charged shall be reasonable and shall be notified to the allocation body;

Article 10

1. Member States shall lay down without delay the procedures for the allocation of railway infrastructure capacity. These procedures shall be made public by the Member State concerned and the Commission shall be informed thereof.
2. An application for infrastructure capacity shall be submitted to the allocation body of the Member State of establishment.
3. If an application for infrastructure capacity concerns a train path outside the territory of the Member State of establishment of the railway undertaking, the application shall be submitted to the allocation body of the Member State in whose territory the place of departure or arrival of the rail service concerned is situated.

4. When an application is made for a new train path, the allocation body shall distinguish:
- between a single application for a train path for an individual train, and an application for a train path for a regular scheduled service, and
 - between an application for a train path concerning a single allocation body and one for a train path concerning more than one allocation body.

5. Where an application is for a train path for a regular scheduled service concerning a single allocation body, the allocation body shall take a decision on the application as soon as possible, but no later than two months after all relevant information has been submitted. The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reason(s) therefor.

6. Where an application is for a train path for a regular scheduled service concerning more than one allocation body, the allocation body to which an application has been submitted shall immediately inform the other allocation bodies concerned with this request. The latter shall take their decision as soon as possible, normally within three months after all the relevant information has been submitted to them. They shall immediately inform the allocation body to which the request has been submitted.

The allocation body to which a application has been submitted, together with the other allocation bodies concerned, shall notify to the applicant as soon as possible, in good time before the start of a timetabling period, a firm date by which the train path will be available; the date shall be within a reasonable period — normally no more than three months — from the date of the application; and shall be publicly announced.

7. Where the application is for a train path for a single journey or occasional traffic concerning a single allocation body, that body shall take a decision on the application as soon as possible, but no later than one month after all relevant information has been submitted. The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reason(s) therefor.

8. If the train path requested concerns more than one allocation body, the allocation body to which an application has been submitted shall immediately inform the other allocation bodies concerned with this request. The latter shall take a decision as soon as possible but no later than one month after all relevant information has been submitted. They shall immediately inform the allocation body to which the request has been submitted.

The allocation body to which an application has been submitted together with the other allocation bodies concerned shall take a decision on the application as soon as possible, but no later than two months after all relevant information has been submitted. The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reason(s) therefor.

9. In taking a decision on the allocation of train paths for regular services, the allocation body shall take into account all requests received in the order in which they are received. The offer of a train path shall be open for one month, which period is not affected by any application of the review procedure set out in Article 12(1).
10. In addition to the procedure set out in the above paragraphs an applicant undertaking may directly contact the other allocation bodies concerned with this request.

The allocation body to which the application has been submitted shall be informed.
11. The allocation of a train path or paths shall be dependent upon the issue of a safety certificate by the authority responsible for safety. This certificate shall affirm that the railway undertaking has the means to comply with the safety conditions laid down by that authority. In particular, the railway undertaking must demonstrate that it can provide rolling stock, traction, personnel and equipment appropriate to the service and route operated.
12. The railway undertakings to which railway infrastructure capacity has been allocated shall conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure.
13. An application which has been refused on the grounds of insufficient capacity shall be reconsidered at the next time-table adjustment for the routes concerned if the applicant so requests. The dates for such adjustments and other administrative arrangements shall be available to interested parties.

Article 12(1)

1. Member States shall take the measures necessary to ensure that, if a railway undertaking and an infrastructure manager are unable to agree on the fees to be charged, the matter shall be reviewed by the allocation body when so requested in writing by a railway undertaking. The allocation body shall take its decision on the review within two months from the submission of all relevant information.

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