

COUNCIL DIRECTIVE 95/18/EC of 19 June 1995 on the licensing of railway undertakings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

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

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

Whereas the single market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the principle of the freedom to provide services should be applied to the railway sector, taking into account that sector's specific characteristics;

Whereas Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (4) provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings;

Whereas, in order to ensure that access rights to railway infrastructure are applied throughout the Community on a uniform and non-discriminatory basis, it is appropriate to introduce a licence for railway undertakings providing the services referred to in Article 10 of Directive 91/440/EEC;

Whereas it is appropriate to maintain the scope of Directive 91/440/EEC, including the exceptions made in it for regional, urban and suburban services and whereas it should be specified that transport activities in the form of shuttle services through the Channel Tunnel are also excluded from the scope of that Directive;

Whereas a licence issued by a Member State should accordingly be recognized as valid throughout the Community;

Whereas Community conditions for access to or transit via railway infrastructure will be regulated by other provisions of Community law;

Whereas, having regard to the principle of subsidiarity and in order to ensure the requisite uniformity and transparency, it is appropriate that the Community lay down the broad principles of such a licensing system, leaving to Member States the responsibility for the granting and the administration of licences;

Whereas, in order to ensure dependable and adequate services, it is necessary to ensure that railway undertakings meet at any time certain requirements in relation to good repute, financial fitness and professional competence;

Whereas for the protection of customers and third parties concerned it is important to ensure that railway undertakings are sufficiently insured or have made equivalent arrangements in respect of liability risks;

Whereas the suspension and revocation of licences and the granting of temporary licences should also be dealt with in this context;

Whereas a railway undertaking will also be required to comply with national and Community rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety on specific stretches of track;

Whereas, in order to ensure the efficient operation of international rail transport, it is necessary that railway undertakings respect the agreements in force in this field;

Whereas, finally, the procedures for the granting, maintenance and amendment of operating licences to railway undertakings should reflect a general desire for transparency and non-discrimination,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Objective and Scope

Article 1

1. This Directive concerns the criteria applicable to the issue, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Community when they provide the services referred to in Article 10 of Directive 91/440/EEC under the conditions laid down in that Article.

2. Railway undertakings the activities of which are limited to the operation of urban, suburban or regional services shall be excluded from the scope of this Directive.

Railway undertakings and international groupings the activity of which is limited to the provision of shuttle services transporting road vehicles through the Channel Tunnel shall also be excluded from the scope of this Directive.

3. A licence shall be valid throughout the territory of the Community.

Article 2

For the purposes of this Directive:

(a) 'railway undertaking` shall mean any private or public undertaking the main business of which is to provide rail transport services for goods and/or passengers, with a requirement that the undertaking must ensure traction;

(b) 'licence` shall mean an authorization issued by a Member State to an undertaking, by which its capacity as a railway undertaking is recognized. That capacity may be limited to the provision of specific types of services;

(c) 'licensing authority` shall mean the body charged by a Member State with the issue of licences.

(d) - 'urban and suburban services` shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas;

- 'regional services` shall mean transport services operated to meet the transport needs of a region.

Article 3

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by this Directive.

SECTION II

Licences

Article 4

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established.

2. Member States shall not issue licences or extend their validity where the requirements of this Directive are not complied with.

3. A railway undertaking which fulfils the requirements imposed in this Directive shall be authorized to receive a licence.

4. No railway undertaking shall be permitted to provide the rail transport services covered by this Directive unless it has been granted the appropriate licence for the services to be provided.

However, such a licence shall not itself entitle the holder to access to the railway infrastructure.

Article 5

1. A railway undertaking must be able to demonstrate to the licensing authorities of the Member State concerned before the start of its activities that it will at any time be able to meet the requirements relating to good repute, financial fitness, professional competence and cover for its civil liability listed in Articles 6 to 9.

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

Article 6

Member States shall define the conditions under which the requirement of good repute is met to ensure that an applicant railway undertaking or the persons in charge of its management:

- has/have not been convicted of serious criminal offences, including offences of a commercial nature,

- has/have not been declared bankrupt,

- has/have not been convicted of serious offences against specific legislation applicable to transport,

- has/have not been convicted of serious or repeated failure to fulfil social- or labour-law obligations, including obligations under occupational safety and health legislation.

Article 7

1. The requirements relating to financial fitness shall be met when an 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 twelve months.

2. For the purposes of paragraph 1, each applicant shall give at least the particulars listed in section I of the Annex.

Article 8

1. The requirements relating to professional competence shall be met when:

(a) an applicant railway undertaking has or will have a management organization which possesses the knowledge and/or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence,

(b) its personnel responsible for safety, in particular drivers, are fully qualified for their field of activity and

(c) its personnel, rolling stock and organization can ensure a high level of safety for the services to be provided.

2. For the purposes of paragraph 1, each applicant shall give at least the particulars listed in section II of the Annex.

3. Appropriate written proof of compliance with qualification requirements shall be produced.

Article 9

A railway undertaking shall be adequately insured or make equivalent arrangements for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties.

SECTION III

Validity of the licence

Article 10

1. A licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Directive. A licensing authority may, however, make provision for a regular review at least every five years.

2. Specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.

Article 11

1. If there is serious doubt that a railway undertaking which it has licensed complies with the requirements of this Directive, and in particular Article 5 thereof, the licensing authority may, at any time, check whether that railway undertaking does in fact comply with those requirements.

Where a licensing authority is satisfied that a railway undertaking can no longer meet the requirements of the Directive, and in particular Article 5 thereof, it shall suspend or revoke the licence.

2. Where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Directive on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.

3. Notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the re-organization of the railway undertaking, provided that safety is not jeopardized. A temporary licence shall not, however, be valid for more than six months after its date of issue.

4. When a railway undertaking has ceased operations for six months or has not started operations six months after the grant of a licence, the licensing authority may decide that the licence shall be submitted for approval or be suspended.

As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.

5. In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardized; in that event, the grounds for such a decision shall be given.

6. Where a railway undertaking intends significantly to change or extend its activities, its licence shall be resubmitted to the licensing authority for review.

7. A licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings are commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.

8. When a licensing authority suspends, revokes or amends a licence, the Member State concerned shall immediately inform the Commission accordingly. The Commission shall inform the other Member States forthwith.

Article 12

In addition to the requirements of this Directive, a railway undertaking shall also comply with those provisions of national law which are compatible with Community law and are applied in a non-discriminatory manner, in particular:

- specific technical and operational requirements for rail services,

- safety requirements applying to staff, rolling stock and the internal organization of the undertaking,
- provisions on health, safety, social conditions and the rights of workers and consumers.

Article 13

Railway undertakings shall respect the agreements applicable to international rail transport in force in the Member States in which they operate.

SECTION IV

Transitional provision

Article 14

Railway undertakings operating rail services shall be granted a transitional period of twelve months as at the final date of transposition referred to in Article 16 (2) in order to comply with the provisions of this Directive. That transitional period shall not cover any provision which might affect the safety of railway operations.

SECTION V

Final provisions

Article 15

1. The procedures for the granting of licences shall be made public by the Member State concerned, which shall inform the Commission thereof.
2. The licensing authority shall take a decision on an application as soon as possible, but not more than three months after all relevant information, notably the particulars referred to in the Annex, has been submitted, taking into account all the available information. The decision shall be communicated to the applicant railway undertaking. A refusal shall state the grounds therefore.
3. Member States shall take the measures necessary to ensure that the licensing authority's decisions are subject to judicial review.

Article 16

1. The Commission shall, two years after the application of this Directive, submit to the Council a report on such application accompanied, if necessary, by proposals concerning continued Community action, with particular regard to the possibility of enlarging the scope of the Directive.
2. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive within two years of the date of its entry into force. They shall forthwith inform the Commission thereof.

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

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

Article 18

This Directive is addressed to the Member States.

Done at Luxembourg, 19 June 1995.

For the Council

The President

B. PONS

(1) OJ No C 24, 28. 1. 1994, p. 2 and OJ No C 225, 13. 8. 1994, p. 9.

(2) Opinion delivered on 14 September 1994 (OJ No C 393, 31. 12. 1994, p. 56).

(3) Opinion of the European Parliament of 3 May 1994 (OJ No C 205, 25. 7. 1994, p. 38), Council Common Position of 21 November 1994 (OJ No C 354 of 13. 12. 1994, p. 11) and Decision of the European Parliament of 14 March 1995 (OJ No C 89, 10. 4. 1995, p. 30).

(4) OJ No L 237, 24. 8. 1991, p. 25.

ANNEX

I. Particulars referred to in Article 7 (2)

1. Financial fitness will be verified by means of an undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. Detailed particulars must be provided, in particular on the following aspects:

(a) available funds, including the bank balance, pledged overdraft provisions and loans;

(b) funds and assets available as security;

(c) working capital;

(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;

(e) charges on an undertaking's assets.

2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.

3. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents must include information concerning the matters referred to in paragraph 1.

II. Particulars referred to in Article 8 (2)

1. Particulars of the nature and maintenance of rolling stock, in particular as regards safety standards.

2. Particulars of the qualifications of personnel responsible for safety and details of personnel training.