



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(95) 151 final - SYN 488

- SYN 490

**Re-examined proposal for a
COUNCIL DIRECTIVE
on the licensing of railway undertakings
(presented by the Commission pursuant to article 189 c (d) of the Treaty establishing
the European Community)**

**Re-examined proposal for a
COUNCIL DIRECTIVE
on the allocation of railway infrastructure and the charging of infrastructure fees
(presented by the Commission pursuant to article 189 c (d) of the Treaty establishing
the European Community)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Re-examined proposal for a COUNCIL DIRECTIVE on the licensing of railway undertakings

On 15th December 1993 the Commission submitted a proposal for a directive on the licensing of railway undertakings to the Council⁽¹⁾. At its plenary session of 3rd May 1994 the European Parliament approved the Commission's proposal, while adopting a number of amendments⁽²⁾.

On 14th July 1994 the Commission presented an amended proposal to the Council, that included the greater part of the Parliament's amendments⁽³⁾. On 21st November 1994 the Council adopted a common position⁽⁴⁾, that included certain of the amendments adopted by the Parliament and taken up by the Commission in its modified proposal. The Commission gave the Parliament its views on the common position in its communication of 6th December 1994⁽⁵⁾.

On 14th March 1995, the Parliament approved the Council's common position, while adopting four amendments. In its re-examined proposal the Commission accepts these amendments as it did in its modified proposal, because they clarify or strengthen the text.

⁽¹⁾ COM (93) 678, SYN 488, OJ C 24 of 28.1.94, p. 2
⁽²⁾ OJ C 205 of 25.7.94, p. 38
⁽³⁾ COM (94) 316, OJ C 225 of 13.8.94, p. 9
⁽⁴⁾ EC N° 43/94, OJ C 354 of 13.12.94, p. 1
⁽⁵⁾ SEC (94) 1987, SYN 488,

Re-examined proposal for a
COUNCIL DIRECTIVE
 on the licensing of railway undertakings
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Common positionRe-examined proposal

Article 2e (new text)

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;

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 should ensure traction, with traction equipment owned, leased or rented.

Article 2e (new text)

(e) "Urban, suburban or regional services" shall mean services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such a centre or conurbation and surrounding areas, or 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.

Each Member State shall designate the authority or agency responsible for issuing licences and for carrying out the obligations imposed by this Directive. That body may not be connected directly or indirectly with the national railway undertaking

Article 8(1)

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 satisfactory operational control and supervision of the type of operation specified in the licence;

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

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

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 operation 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 an high level of safety for the services to be provided.

EXPLANATORY MEMORANDUM

Re-examined proposal for a COUNCIL DIRECTIVE

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

On 15th December 1993 the Commission submitted a proposal for a directive on the allocation of railway infrastructure and the charging of infrastructure fees to the Council⁽¹⁾. At its plenary session of 3rd May 1994 the European Parliament approved the Commission's proposal, while adopting a number of amendments⁽²⁾.

On 14th July 1994 the Commission presented an amended proposal to the Council, that included the greater part of the Parliament's amendments⁽³⁾. On 21st November 1994 the Council adopted a common position⁽⁴⁾, that included a limited number of the amendments adopted by the Parliament and taken up by the Commission in its modified proposal. The Commission gave the Parliament its views on the common position in its communication of 6th December 1994⁽⁵⁾.

On 14th March 1995, the Parliament approved the Council's common position, while adopting six amendments. In its re-examined proposal the Commission accepts four of these amendments that the Parliament adopted at its first reading and the Commission included in its modified proposal, because they clarify or strengthen the text.

However it refuses an amendment, that the Parliament adopted at its first reading but the Commission did not include in its modified proposal. This is the amendment that adds a new paragraph to article 8 that reads : "In order to avoid distortion of competition between modes of transport, fees for other modes shall be changed with equal regard for the principle of real costs". In the Commission's view, this raises important general issues of transport policy that go far beyond the scope of the directive.

The Parliament adopted a further amendment on 14th March 1995, the deletion of article 1, paragraphs 2 and 3. The Commission accepts the deletion of the second sentence of paragraph 2, that excludes from the scope of the directive railway undertakings that only provide shuttle services through the Channel Tunnel. In the Commission's view, the directive should cover all railway undertakings, as does directive 91/440/EEC on the development of the Community's railways, which it is designed to complement. The Commission also accepts the deletion of paragraph 3 in order to simplify the text.

However it does not accept the deletion of the first sentence of paragraph 2. This sentence excludes from the scope of the directive railway undertakings that only provide urban, suburban and regional services. The Commission considers that the directive should exclude them, as directive 91/440/EEC does.

⁽¹⁾ COM (93) 678, OJ C 24 of 28.1.94, p. 6

⁽²⁾ OJ C 205 of 25.7.94, p. 45

⁽³⁾ COM (94) 316, OJ C 225 of 13.8.94, p. 11

⁽⁴⁾ EC N° 44/94, OJ C 354 of 13.12.94, p. 19

⁽⁵⁾ SEC (94) 1894 final, SYN 490

4)

The text of the amendments that the Commission does not accept in its re-examined proposals is attached.

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Re-examined proposal for a - SYN 490
COUNCIL DIRECTIVE

on the allocation of railway infrastructure and the charging of infrastructure fees
(presented by the Commission pursuant to article 189 c (d) of the Treaty establishing
the European Community)

Article 1.

Common position

1. The purpose of this Directive is to define the principles and procedures to be applied with regard to the allocation of railway infrastructure capacity and the charging of infrastructure fees for railway undertakings which are or will be established in the Community and the international groupings which they form, where such undertakings and groupings carry out 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 and regional services shall be excluded from the scope of this Directive.

Railway undertakings and international groupings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are also excluded from the scope of this Directive.

3. Railway infrastructure capacity shall be granted in the form of the allocation of train paths in accordance with Community and national law.

Re-examined proposal

1. The purpose of this Directive is to define the principles and procedures to be applied with regard to the allocation of railway infrastructure capacity and the charging of infrastructure fees for railway undertakings which are or will be established in the Community and the international groupings which they form, where such undertakings and groupings carry out services referred to in Articles 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 and regional services shall be excluded from the scope of this Directive.

Article 2 (a)

a) "railway undertaking" means any public or private undertaking the main business of which is to provide rail services for goods and/or passengers, with a requirement that the undertaking must ensure traction;

a) "railway undertaking" means any public or private undertaking the main business of which is to provide rail services for goods and/or passengers, with a requirement that the undertaking must ensure traction, but excludes private tourist and museum railways;

Article 4, paragraph 1(b)

b) Services wholly or partly operated on infrastructure constructed or developed for certain specific services (specialized high-speed or freight lines), without prejudice to Articles 85, 86 and 90 of the Treaty.

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 intermodal transport, without prejudice to Articles 85, 86 or 90 of the Treaty. Train paths on such specialized infrastructure should be allocated on a fair and non-discriminatory basis.

Article 6, paragraphs 1 and 2 (new)

The accounts of an infrastructure manager shall, under normal business conditions over a reasonable time period, at least balance income from infrastructure fees plus State contributions on the one hand and infrastructure expenditure on the other.

1. The accounts of an infrastructure manager shall, under normal business conditions over a reasonable time period, at least balance income from infrastructure fees plus State contributions on the one hand and infrastructure expenditure on the other.

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

Article 10

1. Member States shall lay down the procedures for the allocation of railway infrastructure capacity referred to in Article 1(3). They shall publish their procedural rules and inform the Commission thereof.

2. An application for infrastructure capacity shall be submitted to the allocation body of the Member State on the territory of which the departure point of the service concerned is situated.

3. The allocation body to which an application has been submitted shall immediately inform the other allocation bodies concerned of 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; each allocation body shall have the right to refuse an application. They shall immediately inform the allocation body to which the request has been submitted.

The allocation body to which an application has been submitted shall, together with the other allocation bodies concerned, take a decision on the application as soon as possible, but no later than two months after all relevant information has been submitted.

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 undertaking so requests. The dates for such adjustments and other administrative arrangements shall be available to interested parties.

The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reason therefor.

1. Member States shall lay down without delay the procedures for the allocation of railway infrastructure capacity referred to in Article 1. They shall publish their procedural rules and inform the Commission 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.

3a. When an application is made for a new train path, the allocation body shall distinguish :

(a) between a single application for a rail path for an individual train, and an application for a rail path for a regular scheduled service; and

(b) between an application for a rail path concerning a single allocation body and one for a rail path concerning more than one allocation body.

4. An applicant undertaking may directly contact the other allocation bodies concerned with this request on condition that the allocation body to which the application has been submitted is informed.

4. 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.

4a. 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 an 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.

4b. 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.

5. The railway undertakings to which railway infrastructure capacity is allocated shall conclude the necessary administrative, technical and financial agreements with the infrastructure managers.

5. Where an application is for a train path for a single journey or occasional traffic 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 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 application 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.

5a. 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 13(1).

6. 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.

7. 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.

8. The railway undertaking to which railway infrastructure capacity has been allocated shall conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure.

9. An application which has been refused on the grounds of insufficient capacity or an inadequate period of notice 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.

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Annexe**Proposal for a Council directive on the allocation
of railway infrastructure and the charging of infrastructure fees**

Amendments adopted by the European Parliament at its second reading that the Commission does not include in its re-examined proposal.

Article 1

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

Article 8

1 (a). In order to avoid distortion of competition between modes of transport, fees for other modes shall be charged with equal regard for the principle of real costs.

DOCUMENTS

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