

**COMMON POSITION (EC) No 27/2000****adopted by the Council on 28 March 2000****with a view to adopting Directive 2000/.../EC of the European Parliament and of the Council of ...  
amending Council Directive 95/18/EC on the licensing of railway undertakings**

(2000/C 178/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(4)</sup>,

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>(5)</sup> provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings.
- (2) To ensure dependable and adequate services, a common licensing scheme is necessary to ensure that all railway undertakings meet at any time certain requirements in relation to good repute, financial fitness and professional competence in order to protect customers and third parties and offer services observing a high standard of safety.
- (3) In order to ensure that access rights to railway infrastructure are applied throughout the Community on a uniform and non-discriminatory basis, Council Directive

95/18/EC<sup>(6)</sup> introduced a licence for railway undertakings providing the services referred to in Article 10 of Directive 91/440/EEC, this licence being obligatory for the operation of such services and valid throughout the Community.

- (4) Since some Member States have extended access rights going beyond Directive 91/440/EEC, it seems necessary to ensure fair, transparent and non-discriminatory treatment of all railway undertakings that may operate in this market by extending the licensing principles laid down by Directive 95/18/EC to all companies active in the sector.
- (5) In order better to fulfil the information obligations, Member States and the Commission should ensure better information for all Member States and the Commission. Following common practice and a logical interpretation of Directive 95/18/EC, the information to be given by Member States and the Commission should also cover licences issued.
- (6) It is desirable to ensure that licensed railway undertakings that operate international goods transport respect the relevant customs and tax provisions applicable, in particular regarding customs transit.
- (7) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive, namely to set out broad principles for the licensing of railway undertakings and the mutual recognition of such licences throughout the Community, cannot be sufficiently achieved by the Member States on account of the manifestly international dimension of issuing such licences and can therefore, by reason of its transnational implications, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

<sup>(1)</sup> OJ C 321, 20.10.1998, p. 8.

<sup>(2)</sup> OJ C 209, 22.7.1999, p. 22.

<sup>(3)</sup> OJ C 57, 29.2.2000, p. 40.

<sup>(4)</sup> Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 119), Council Common Position of 28 March 2000 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(5)</sup> OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2000/.../EC of the European Parliament and of the Council (OJ L ...).

<sup>(6)</sup> OJ L 143, 27.6.1995, p. 70.

(8) Directive 95/18/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 95/18/EC is amended as follows:

1. Article 1 shall be replaced by the following:

*'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.

2. Member States may exclude from the scope of this Directive:

- (a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
- (b) railway undertakings which only operate urban or suburban rail passenger services;
- (c) railway undertakings whose activity is limited to the provision of regional rail freight services that are not covered by the scope of Directive 91/440/EEC;
- (d) undertakings which only carry out freight operations on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

3. Undertakings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive'.

2. Article 2(a) shall be replaced by the following:

'(a) "railway undertaking": shall mean any public or private undertaking the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings which provide traction only'.

3. Article 3 shall be replaced by the following:

*'Article 3*

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by this Directive. The task of issuing licences shall be carried out by a body which does not provide rail transport services itself and is independent of bodies or undertakings that do so'.

4. The following paragraph shall be added to Article 4:

'5. A licence shall be valid throughout the territory of the Community.'

5. Article 6, fourth indent shall be replaced by the following:

'— 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, and customs-law obligations in case of a company seeking to operate cross-border goods transport subject to customs procedures'.

6. Article 11(8) shall be replaced by the following:

'8. When a licensing authority issues, 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'.

7. Articles 12 and 13 shall be replaced by the following:

*'Article 12*

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

- (a) specific technical and operational requirements for rail services;
- (b) safety requirements applying to staff, rolling stock and the internal organisation of the undertaking;
- (c) provisions on health, safety, social conditions and the rights of workers and consumers;
- (d) requirements applying to all undertakings in the relevant railway sector designed to offer benefits or protection to consumers.

*Article 13*

Railway undertakings shall respect the agreements applicable to international rail transport in force in the Member States in which they operate. They also shall observe the relevant customs and tax provisions'.

*Article 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at ...

*For the European Parliament*

*The President*

*For the Council*

*The President*

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(\*) Two years after the entry into force of this Directive.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 30 September 1998, the Commission submitted to the Council a proposal for a Directive of the European Parliament and of the Council amending Directive 95/18/EC on the licensing of railway undertakings<sup>(1)</sup>. The proposal was based on Article 75 of the EC Treaty (following amendment, this became Article 71 of the EC Treaty).
2. The European Parliament, the Economic and Social Committee and the Committee of the Regions delivered their opinions on 10 March <sup>(2)</sup>, 26 May <sup>(3)</sup> and 18 November 1999 <sup>(4)</sup> respectively.

Following the entry into force of the Amsterdam Treaty on 1 May 1999, the European Parliament confirmed its opinion on 16 September 1999.

3. The Commission submitted its amended proposal<sup>(5)</sup> to the European Parliament and to the Council on 29 November 1999. That proposal was based on Article 71 of the EC Treaty.
4. The Council adopted its Common Position in accordance with Article 251 of the EC Treaty on 28 March 2000.

### II. OBJECTIVES

This Directive forms part of a legislative package aimed at revitalising European railways. The principal aim is to reverse the decline from which rail transport is suffering particularly in the area of freight by creating the conditions for an expanding, competitive customer-oriented rail system.

Revitalisation of the railways is indispensable in view of the current congestion of road infrastructures resulting in safety and environmental problems. If road transport is not to come to a complete standstill in the next few years, more rational use of the railways will be necessary. The conditions of competition for the railways will therefore have to be improved in relation to other means of transport. To that end, this proposal aims to enlarge the scope of application of the current Directive on the licensing of railway undertakings so as to standardise the conditions applicable to all railway undertakings established in the Community. Licences would be granted by the Member State in which the railway undertaking is established although they would be valid throughout the Community. Thus a common licensing system would make it possible to ensure that undertakings were treated fairly and without discrimination. In this way all railway undertakings would be able to exploit the possibilities of access to new markets on a uniform and non-discriminatory basis, thus limiting the risk of licences constituting an obstacle to market access.

### III. ANALYSIS OF THE COMMON POSITION

As the text was amended during the discussions, the Common Position differs from the Commission's proposal and amended proposal on certain points:

- in Article 1(2), the Council considered it desirable to provide for exemptions from the scope of the Directive to be optional for Member States. Thus Member States which so wish can establish a single model of licence for railway undertakings established in their territory,

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<sup>(1)</sup> OJ C 321, 20.10.1998, p. 8.

<sup>(2)</sup> OJ C 175, 21.6.1999, p. 115.

<sup>(3)</sup> OJ C 209, 22.7.1999, p. 22.

<sup>(4)</sup> OJ C 57, 29.2.2000, p. 40.

<sup>(5)</sup> Not yet published in the Official Journal.

- in Article 1(3), the shuttle service for road vehicles through the Channel Tunnel has been excluded from the scope of the Directive for the same reasons as are adduced in the statement of reasons regarding the Common Position on the amendment of Directive 91/440/EEC,
- in Article 2(a), the definition of railway undertaking has been slightly amended to adapt it to the new amended definition adopted by the Council in its Common Position on the proposal for a Directive amending Directive 91/440/EEC; wording has also been added to cover companies which provide traction only,
- Article 1(4) of the proposal has been incorporated into the Common Position as a new Article 4(5), as the Council considered that this provision should be included among the conditions for obtaining a licence,
- in Article 6, fourth indent, and Article 13, the Council has slightly amended Directive 95/18/EC to ensure minimum level of security for the operation of the customs and fiscal procedures which new railway undertakings would have to implement,
- in Article 11(8), the Council has amended Directive 95/18/EC so as to oblige the authority responsible for licensing also to inform the Commission whenever it issues a new licence,
- in Article 12, which lists the requirements resulting from national legislation to be met by the railway undertaking, the Council has seen fit to add a reference to the requirements offering benefits or protection to consumers.

#### IV. EUROPEAN PARLIAMENT AMENDMENTS

Amendment 1 aims to include in Article 8 a reference to the fact that the conditions relating to professional competence are non-discriminatory. As this principle of non-discrimination, one of the fundamental principles of Community law enshrined in the Treaty and in the case-law of the Court, was already mentioned in Article 12, the Council did not see the need to include it in Article 8, in the same way as it does not appear explicitly in Articles 6, 7 and 9 of the Directive.

Amendment 2 was rejected by the Council. The aim was to link, in the case of freight services, cover of the railway undertaking's civil liability in the event of an accident to the fact that the charges reflect willingness to pay more than the costs imposed and to the fact that the regulatory bodies ensure charges are not excessive. Like the Commission, the Council considered that all railway undertakings should have sufficient cover of their liability and that such cover could not be linked to agreement by the railway undertakings to pay more than costs. Protection of all third parties should be ensured in the event of an accident or incident.

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