



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.4.2004
COM(2004) 232 final

2004/0074 (CNS)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the licensing of railway undertakings

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this was a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they were responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 95/18/EC and the instrument amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of such Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council - Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ Annex II, Part A of this proposal.

↓ 95/18/EC (adapted)

2004/0074 (CNS)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the licensing of railway undertakings

(Text with EEA relevance)

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,

Having regard to the opinion of the ☐ European ☐ Economic and Social Committee¹,

↓

Having regard to the opinion of the Committee of the Regions²,

↓ 95/18/EC (adapted)

Acting in accordance with the procedure laid down in Article ☐ 251 ☐ of the Treaty³,

Whereas:

¹ OJ C
² OJ C
³ OJ C



- (1) Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings⁴ has been substantially amended⁵. In the interests of clarity and rationality the said Directive should be codified.

↓ 95/18/EC Recital 2

- (2) The principle of the freedom to provide services should be applied to the railway sector, taking into account that sector's specific characteristics.

↓ 95/18/EC Recital 3 (adapted)

- (3) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁶ provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings.

↓ 95/18/EC Recital 4 (adapted)

- (4) 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.

↓ 2001/13/EC Recital 4 (adapted)

- (5) 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 to all companies active in the sector.

↓ 95/18/EC Recital 5

- (6) 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 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.

⁴ OJ L 143, 27.6.1995, p. 70. Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).

⁵ See Annex II, part A.

⁶ OJ L 237, 24.8.1991, p. 25. ☒ Directive as last amended by the 2003 Act of Accession. ☒

↓ 95/18/EC Recital 6

- (7) A licence issued by a Member State should be recognised as valid throughout the Community.

↓ 95/18/EC Recital 7

- (8) Community conditions for access to or transit via railway infrastructure will be regulated by other provisions of Community law.

↓ 2001/13/EC Recital 2

- (9) 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.

↓ 95/18/EC Recital 10

- (10) 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.

↓ 95/18/EC Recital 11

- (11) The suspension and revocation of licences and the granting of temporary licences should also be dealt with in this context.

↓ 95/18/EC Recital 12 (adapted)

- (12) A railway undertaking ☒ should ☒ 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.

↓ 95/18/EC Recital 13

- (13) 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.

↓ 2001/13/EC Recital 6

- (14) 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.

↓ 95/18/EC Recital 14 (adapted)

- (15) The procedures for the granting, maintenance and amendment of operating licences to railway undertakings should reflect a general desire for transparency and non-discrimination.

↓ 2001/13/EC Recital 7

- (16) 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 trans-national implications, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

↓

- (17) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,

↓ 95/18/EC (adapted)

⊠ HAVE ⊠ ADOPTED THIS DIRECTIVE:

⊠ CHAPTER ⊠ I

↓ 95/18/EC

Objective and Scope

↓ 2001/13/EC Art.1 pt. 1

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.

↓ 95/18/EC

Article 2

For the purposes of this Directive:

↓ 2001/13/EC Art.1 pt. 2

- (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;

↓ 95/18/EC

- (b) “licence” shall mean an authorisation 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;

↓ 95/18/EC (adapted)

- (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;
- ☒ (e) ☒ “regional services” shall mean transport services operated to meet the transport needs of a region.

↓ 2001/13/EC Art.1 pt. 3
(adapted)

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. ☒

⊠ CHAPTER ⊠ II

⊠ Conditions for obtaining the ⊠ licence

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 authorised 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

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.

For the purposes of ⊠ the first paragraph ⊠ , each applicant shall provide all relevant information.

↓ 95/18/EC

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:

↓ 95/18/EC (adapted)

- ☒ (a) ☒ has/have not been convicted of serious criminal offences, including offences of a commercial nature;
- ☒ (b) ☒ has/have not been declared bankrupt;
- ☒ (c) ☒ has/have not been convicted of serious offences against specific legislation applicable to transport;

↓ 2001/13/EC Art.1 pt. 5
(adapted)

- ☒ (d) ☒ 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 the case of a company seeking to operate cross-border goods transport subject to customs procedures.

↓ 95/18/EC (adapted)

Article 7

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.

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

↓ 95/18/EC

Article 8

1. The requirements relating to professional competence shall be met when:
 - (a) an applicant railway undertaking has or will have a management organisation 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 organisation can ensure a high level of safety for the services to be provided.

↓ 95/18/EC (adapted)

For the purposes of ☒ the first subparagraph ☒, each applicant shall give at least the particulars listed in section II of Annex ☒ I ☒.

- ☒ 2. ☒ Appropriate written proof of compliance with qualification requirements shall be produced.

↓ 95/18/EC

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.

↓ 95/18/EC (adapted)

☒ CHAPTER ☒ III

↓ 95/18/EC

Validity of the licence

Article 10

↓ 2001/13/EC Art.1.7 (adapted)

- ☒ 1. A licence shall be valid throughout the territory of the Community. ☒

2. 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.
3. 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~~ this ~~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-organisation of the railway undertaking, provided that safety is not jeopardised. 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 jeopardised; 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.

↓ 2001/13/EC Art.1 pt. 6

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.

↓ 2001/13/EC Art.1 pt. 7 (adapted)

Article 12

1. 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.
2. A railway undertaking may at any time refer to the Commission the question of the compatibility of the requirements of national law with Community law and also the question of whether such requirements are applied in a non-discriminatory manner.
- ☒ If the Commission considers that the provisions of this Directive have not been fulfilled, it shall deliver an opinion on the correct interpretation of the Directive, without prejudice to Article 226 of the Treaty. ☒

Article 13

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

↓ 95/18/EC Section V (adapted)

✕ CHAPTER IV ✕

↓ 95/18/EC

Final provisions

↓ 95/18/EC Art.15 (adapted)

Article ✕ 14 ✕

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 Annex ✕ I ✕ , 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 therefor.
 3. Member States shall take the measures necessary to ensure that the licensing authority's decisions are subject to judicial review.
-

↓

Article 15

Directive 95/18/EC, as amended by the Directive listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

↓ 95/18/EC Art.17 (adapted)

Article ✕ 16 ✕

This Directive shall enter into force on the ✕ twentieth day following that ✕ of its publication in the *Official Journal of the European ✕ Union ✕* .

*Article 17 *

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

↓ 95/18/EC (adapted)

ANNEX I

I. Particulars referred to in the second paragraph of Article 7

↓ 95/18/EC

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 point 1.
-

↓ 95/18/EC (adapted)

II. Particulars referred to in the second subparagraph of Article 8 (1)

↓ 95/18/EC

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.
-



ANNEX II

Part A

Repealed Directive with its amendment (referred to in Article 15)

Council Directive 95/18/EC (OJ L 143, 27.6.1995, p. 70)

Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26)

Part B

List of time-limits for transposition into national law (referred to in Article 15)

Directive	Time-limit for transposition
95/18/EC	27 June 1997
2001/13/EC	15 March 2003

ANNEX III

CORRELATION TABLE

Directive 95/18/EC	This Directive
Article 1	Article 1
Article 2 points (a) to (c)	Article 2 points (a) to (c)
Article 2 point (d) first indent	Article 2 point (d)
Article 2 point (d) second indent	Article 2 point (e)
Article 3 first sentence	Article 3 first paragraph
Article 3 second sentence	Article 3 second paragraph
Article 4(1) to (4)	Article 4 (1) to (4)
Article 4(5)	Article 10(1)
Article 5(1) and (2)	Article 5 first and second paragraphs
Article 6 first to fourth indents	Article 6 points (a) to (d)
Article 7(1) and (2)	Article 7 first and second paragraphs
Article 8(1)	Article 8(1) first subparagraph
Article 8(2)	Article 8(1) second subparagraph
Article 8(3)	Article 8(2)
Article 9	Article 9
Article 10(1)	Article 10(2)
Article 10(2)	Article 10(3)
Article 11	Article 11
Article 12(1)	Article 12(1)
Article 12 (2) first sentence	Article 12 (2) first subparagraph
Article 12 (2) second sentence	Article 12 (2) second subparagraph
Article 13	Article 13
Article 14	—
Article 15	Article 14

Article 16

–

Article 17

Article 18

Annex

–

–

–

Article 15

Article 16

Article 17

Annex I

Annex II

Annex III