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30.4.2004

**DIRECTIVE 2004/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 29 April 2004****amending Council Directive 91/440/EEC on the development of the Community's railways**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- (2) The extension of those access rights to international rail freight services on the whole network as from 1 January 2006 should lead to greater than expected gains in terms of modal shift and the development of international rail freight.

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

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

- (3) The extension of those access rights to all kinds of rail freight services as from 1 January 2007, in accordance with the principle of freedom to provide services, would improve the efficiency of the rail mode relative to other modes of transport. It would also facilitate sustainable transport between and within Member States, by encouraging competition and allowing entry of new capital and enterprises.

Having regard to the opinion of the European 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> in the light of the joint text approved by the Conciliation Committee on 23 March 2004,

- (4) This Directive is part of a comprehensive set of measures announced by the White Paper on transport policy and encompassing Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) <sup>(6)</sup>, Directive 2004/50/EC amending the interoperability directives <sup>(7)</sup> and Regulation (EC) No 881/2004 establishing the European railway agency (Agency Regulation) <sup>(8)</sup>. This set of measures, referred to as the 'second railway package', was adopted to further develop the Community regulatory framework in the field of railways, as established in particular by Directives 2001/12/EC <sup>(9)</sup>, 2001/13/EC <sup>(10)</sup> and 2001/14/EC <sup>(11)</sup>, these latter Directives being referred to as the 'first railway package'. In order to complete the regulatory framework and pursue the effort to realise an integrated European railway area, the Commission proposed on 3 March 2004 a third set of measures that will further contribute to the objective of this Directive. This proposed third step addresses train drivers

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 <sup>(5)</sup> provides that licensed railway undertakings are granted rights of access to the trans-European Rail Freight Network and, at the latest from 2008, to the whole network for international rail freight services.

<sup>(1)</sup> OJ C 291 E, 26.11.2002, p. 1.

<sup>(2)</sup> OJ C 61, 14.3.2003, p. 131.

<sup>(3)</sup> OJ C 66, 19.3.2003, p. 5.

<sup>(4)</sup> Opinion of the European Parliament of 14 January 2003 (OJ C 38 E, 12.2.2004, p. 89), Council Common Position of 26 June 2003 (OJ C 270 E, 11.11.2003, p. 1) and Position of the European Parliament of 23 October 2003 (not yet published in the Official Journal). Legislative Resolution of 22 April 2004 and Decision of the Council of 26 April 2004.

<sup>(5)</sup> OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).

<sup>(6)</sup> OJ L 164, 30.4.2004, p. 16.

<sup>(7)</sup> OJ L 164, 30.4.2004, p. 40.

<sup>(8)</sup> OJ L 164, 30.4.2004, p. 3.

<sup>(9)</sup> OJ L 75, 15.3.2001, p. 1.

<sup>(10)</sup> OJ L 75, 15.3.2001, p. 26.

<sup>(11)</sup> OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).

licensing, quality of service for rail freight transport, passenger rights in international railway transport and market-opening for international passenger transport services by rail. The European Parliament voted already in October 2003 in this legislative procedure on an amendment aiming at the marketopening for all passenger transport services by 2008. The European Parliament and the Council agreed to examine diligently the third set of measures. With regard to marketopening for international passenger transport services, the date of 2010 proposed by the Commission has to be considered as an objective allowing all operators to prepare in an appropriate manner.

- (5) The Commission should study developments in traffic, safety, working conditions and the situation of operators and should produce, by 1 January 2006, a report on those developments accompanied, where appropriate, by fresh proposals providing a basis for the best possible conditions for the Member States' economies, for rail undertakings and their employees, and for rail users.
- (6) Rail freight services offer considerable opportunities for the creation of new transport services and the improvement of existing ones at national and at European level.
- (7) To be fully competitive, rail freight transport increasingly requires the provision of comprehensive services, including transport between and within Member States.
- (8) Since railway safety is regulated by Directive 2004/49/EC as part of a new coherent Community regulatory framework for the railway sector, the provisions on safety contained in Directive 91/440/EEC should be repealed.
- (9) Directive 91/440/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 91/440/EEC is hereby amended as follows:

1. in Article 7, paragraph 2 shall be deleted at the date of entry into force of the Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways;

2. Article 10 shall be amended as follows:

- (a) paragraph 3 shall be replaced by the following:

'3. Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the Trans-European Rail Freight Network defined in Article 10a and in Annex 1 and, at the latest by 1 January 2006, to the entire rail network, for the purpose of operating international freight services.

In addition, at the latest by 1 January 2007, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services.;

- (b) paragraph 5 shall be replaced by the following:

'5. Any railway undertaking engaged in rail transport services shall conclude the necessary agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used. The conditions governing such agreements shall be nondiscriminatory and transparent, in conformity with the provisions of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (\*).

(\* OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30)

- (c) paragraph 6 shall be replaced by the following:

'6. Track access to, and supply of services in, the terminals and ports linked to rail activities referred to in paragraphs 1, 2 and 3, serving or potentially serving more than one final customer, shall be provided to all railway undertakings in a non-discriminatory and transparent manner and requests by railway undertakings may be subject to restrictions only if viable alternatives by rail under market conditions exist.'

- (d) paragraph 8 shall be replaced by the following:

'8. By 1 January 2006, the Commission shall submit to the European Parliament, the European Economic and Social Committee, the Committee of the Regions and the Council a report on the implementation of this Directive.

This report shall address:

- implementation of this Directive in the Member States and the effective working of the various bodies involved,
- market development, in particular international traffic trends, activities and market share of all market actors, including new entrants,
- impact on the overall transport sector, in particular as regards modal shift,
- impact on the level of safety in each Member State,
- working conditions in the sector, for each Member State.

If necessary, it shall be accompanied by suitable proposals or recommendations on continuing Community action to develop the railway market and the legal framework governing it.'

3. in Article 10b(4), point (c) shall be replaced by the following:

'(c) the state of the European railway network'

4. Article 14 shall be deleted.

*Article 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2005 at the latest. They shall forthwith inform the Commission thereof.

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

*Article 4*

This Directive is addressed to the Member States.

Done at Strasbourg, 29 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

M. McDOWELL