

DIRECTIVE 2001/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 26 February 2001****amending Council Directive 95/18/EC on the licensing of railway undertakings**

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⁽¹⁾,

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

Having regard to the opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾, in the light of the joint text approved on 22 November 2000 by the Conciliation Committee,

Whereas:

(1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁵⁾ 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⁽⁶⁾ 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 licenses 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 trans-national implications, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

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

⁽¹⁾ OJ C 321, 20.10.1998, p. 8, and
OJ C 116 E, 26.4.2000, p. 38.

⁽²⁾ OJ C 209, 22.7.1999, p. 22.

⁽³⁾ OJ C 57, 29.2.2000, p. 40.

⁽⁴⁾ Opinion of the European Parliament of 10 March 1999 (OJ C 175, 21.6.1999, p. 119), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 56), Council Common Position of 28 March 2000 (OJ C 178, 27.6.2000, p. 23) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 20 December 2000.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (see page 1 of this Official Journal).

⁽⁶⁾ OJ L 143, 27.6.1995, p. 70.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/18/EC is hereby 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

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 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 15 March 2003. 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 Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH