Commission Implementing Regulation (EU) 2015/171 of 4 February 2015 on certain aspects of the procedure of licensing railway undertakings (Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area[(1)] and in particular Article 17(5) thereof,

Whereas:

(1) Commission Recommendation of 7 April 2004 on the use of a common European format for licence documents issued in accordance with Council Directive 95/18/EC on the licensing of railway undertakings[(2)] recommended the use of the standard format for the licence documents issued by national licensing authorities.

(2) Pursuant to Article 23 of Directive 2012/34/EU licences delivered by national licensing authorities are valid throughout the territory of the Union. The national licensing authorities should inform the European Railway Agency of licences that have been issued, suspended, revoked or amended and the latter should inform the other Member States accordingly. A common template for the licence would facilitate the work of the national licensing authorities and of the European Railway Agency and provide easier access to information on licences by all interested parties, in particular the licensing authorities of other Member States and the infrastructure managers.

(3) All necessary information that confirms that a given railway undertaking has been regularly licensed for a certain type of rail transport services can be contained within a standardised document. The standard template for the licence document would facilitate publication of all relevant information on licences on the website of the European Railway Agency. The standard format could be modified in the future depending on experience of its use and the development of the needs for further information on licences.

(4) The conditions under which the requirements referred to in Article 22 of Directive 2012/34/EU relating to cover for civil liability may be fulfilled may vary between Member States depending on national law. Evidence that the railway undertaking meets these national requirements should be provided for by an annex to the licence document. The standard template for this annex should be used for this purpose. In case the railway undertaking wishes to exercise its activities in two or more Member States, the cover

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for civil liability for each of these Member States should be mentioned in an additional annex, which should be supplied by the licensing authority in the additional Member State the railway undertaking wishes to operate in.

(5) Licensing authorities may reduce their administrative costs, the level of licensing fees and the time to make a decision on an application for a licence if they swiftly exchange the necessary data with other authorities and other public or private entities.

(6) Due to little movement in the market, no licensing decisions are taken in some Member States for one or more consecutive years. At the same time, high fees may pose an obstacle to market entry of railway undertakings.

(7) Railway undertakings which apply for a new licence should not face less favourable licensing conditions than the railway undertakings already operating in the market.

(8) Unnecessary administrative burden imposed on licensing authorities and undertakings should be reduced by strictly limiting the requirements to the conditions set out in Directive 2012/34/EU.

(9) The licensing authorities have no obligation to request a licensing fee from a railway undertaking. However Member States may decide to impose such a fee for the work undertaken by the licensing authorities on the examination of the application. In such a case the licensing fee should be non-discriminatory, be effectively levied on all the undertakings applying for a licence and be based on the actual workload of the licensing authority. If the licensing fee exceeds EUR 5 000, the licensing authority should set out the number of person hours employed and the expenditure in the payment note for the fee.

(10) In an attempt to create a level playing field between railway undertakings, Directive 2012/34/EU has repealed certain arrangements that are not compatible with enhancing market conditions, whereby railway undertakings have to be insured or have adequate guarantees under market conditions. Licensing authorities should be invited to verify the implementation of the revised conditions in cooperation with other authorities of Member States.

(11) The granting of a licence to a railway undertaking should not be conditional on it holding a safety certificate referred to in Article 10 of Directive 2004/49/EC of the European Parliament and of the Council[(3)].

(12) New railway undertakings are critical for competition, but they may have practical difficulties to provide a track record on their financial fitness which allows them to establish realistic assumptions for a period of 12 months in the future according to Article 20(1) and (2) of Directive 2012/34/EU. Whilst EU legislators have created the option of simplified proof for certain smaller air carriers according to Article 5(3) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council[(4)], the procedure for obtaining a licence may take account of these practical difficulties by alleviating the procedure for demonstrating financial fitness for railway undertakings that apply for a licence.

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(13) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 62(1) of Directive 2012/34/EU,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the details for the use of a common template for the licence document. It also provides for certain aspects of the procedure for granting a licence.

Article 2

Definitions

For the purpose of this Regulation, 'licence document' means the completed and duly signed common template, as set out in Annex I and II of this Regulation to be submitted to the European Railway Agency.

Article 3

The use of the common template for the licence document

1 Licences issued in accordance with Chapter III of Directive 2012/34/EU shall use the standard format set out in Annex I and II of this Regulation.

In the case where a new licence is issued, the licensing authority shall attribute the EC licence notification number in accordance with the harmonised numbering system called European Identification Number (EIN), as laid down in the Appendix 2 of the Commission Decision 2007/756/EC[(5)].

Each time a licence is granted, amended in way relevant to the licence document, suspended, revoked or replaced by a temporary licence, the licensing authority shall establish a licence document based on this format

2 Licensing authorities shall inform the European Railway Agency in accordance with Article 24(8) of Directive 2012/34/EU providing a copy of the licence document as stipulated in the communication protocol agreed between them.

3 The information concerning the financial cover for civil liability referred to in Article 22 of Directive 2012/34/EU shall be stated in the annex to the licence document, using the standard format laid down in Annex II to this Regulation. The authority issuing the licence shall attach an annex to the licence document. This annex shall be given the number one (1).

4 Through the information provided in the liability annexes, as set out in Annex II of this Regulation, the licensing authority in a particular Member State or an infrastructure manager may check whether the cover of civil liability taken by the railway undertaking and approved by other licensing authorities is sufficient in this particular Member State. If the licensing authority determines that the level of cover is insufficient it may request the railway undertaking to take out additional cover. The railway undertaking shall provide the licensing authority with the requested information about its cover.

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5 Once the licensing authority is satisfied with the cover, it shall inform the European Railway Agency, updating an existing annex communicated by a licensing authority of the same Member State or adding a further annex to the licence, using the standard format of this Annex II and assign the next number (2, 3, 4, etc.) to this annex.

6 Each liability annex shall mention the amount, the scope, such as geographical scope or types of services, and the commencement date and, if applicable, of expiration of the cover. The licence notification number shall be mentioned in each annex to establish a clear link with the licensed railway undertaking. The licensing authority shall establish an updated annex when it is informed about a change in the cover for civil liability and communicate the annex to the European Railway Agency.

Article 4

Licensing fees

Member States may request a licensing fee for the examination of each application. Licensing fees shall be applied in a non-discriminatory way.

Article 5

Certain aspects pertaining to requirements on civil liability cover and adequate guarantees

1 The licensing authority shall publish the minimum required levels of cover, including where the amount of such cover is laid down in national law.

2 The licensing authority may not request cover to take effect before the railway undertaking starts its train operations.

3 By 25 August 2015 at the latest, the licensing authority that has issued the licence shall request from all licensed railway undertakings evidence on the level and scope of their existing cover for liabilities in the event of accidents, unless they have contracted an insurance or the authority already has this information. It may also request such evidence from the railway undertakings in case it has doubts whether their cover meets the requirements referred to in Article 22 of Directive 2012/34/EU.

4 In case the undertaking does not demonstrate that it is adequately insured, but that it has adequate guarantees for cover, the licensing authority, if appropriate after consultation of the regulatory body, shall examine whether the conditions under which the undertaking has obtained such guarantees correspond to market conditions which would have been obtained by any other undertaking with the same level of financial standing and risk exposure.

5 If the licensing authority suspends the licence in accordance with Article 24(1) of Directive 2012/34/EU, or grants a temporary licence in accordance with Article 24(3) of the said Directive, it shall inform any other competent authorities referred to in Regulation (EC) No 1370/2007 of the European Parliament and of the Council[6], with which it knows that the railway undertaking had contracted services. If the licensing authority has doubts regarding the compatibility of the guarantees for cover of its liabilities with the Union rules on State aid, it may transmit the necessary information to the authorities responsible for the control of such State aid rules.

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Article 6

Relation with safety certificates

1 The granting of a licence may not be conditional on the undertaking holding a safety certificate referred to in Article 10 of Directive 2004/49/EC.

2 If an undertaking holds a safety certificate, the licensing authority shall not check requirements for safety certificates, when granting the licence.

Article 7

Certain aspects of the procedure for granting a licence

1 Within one month of the receipt of the application, the licensing authority shall inform the undertaking that the file is complete or ask for complementary information. This time limit may be extended by two weeks under exceptional circumstances and the undertaking shall be informed thereof. Once the complementary information has been received, the licensing authority shall inform the undertaking within a maximum of one month whether the file is complete.

2 The licensing authority may only request documents referred to in Chapter III of Directive 2012/34/EU or required by national legislation. The licensing authority shall publish a list of all the documents and their contents and shall not request any further documents from undertakings. If the list is updated and published, undertakings may still rely on the former list as regards applications they submitted before the update.

3 In respect of undertakings with annual revenues of less than EUR 5 million from rail transport activities, the licensing authority may consider the requirement regarding its ability to meet actual and potential obligations for a period of 12 months from the start of operations in accordance with Article 20(1) of Directive 2012/34/EU as fulfilled, if the undertaking can demonstrate that its net capital is at least EUR 100 000 or an amount agreed with the regulatory body. The licensing authority shall publish this amount.

Article 8

Entry into force

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

This Regulation shall apply from 16 June 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.