Commission Implementing Regulation (EU) 2015/10 of 6 January 2015 on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2015/10

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on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014

(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 41(3) thereof,

Whereas:

(1) Article 41(2) of Directive 2012/34/EU provides for the possibility for infrastructure managers to set requirements with regard to applicants to ensure that their legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded.

(2) Those requirements should be appropriate, transparent and non-discriminatory. They can only include the provision of a financial guarantee that should not exceed an appropriate level proportional to the contemplated level of activity, and assurance of the capability of the applicant to prepare compliant bids for infrastructure capacity.

(3) Financial guarantees could take the form of advance payments or guarantees provided by financial institutions

(4) The appropriateness of the requirements referred to in Article 41(2) of Directive 2012/34/EU should take account of the fact that the infrastructure of competing transport modes, such as road and air transport, sea ships and inland waterways, is often free of user charges and hence also free of financial guarantees thereon. In order to ensure fair competition between transport modes, financial guarantees should be limited to the strict minimum in terms of level and duration.

(5) Those financial guarantees are only appropriate if they are necessary for the purpose of reassuring the infrastructure manager about the future revenues and utilisation of the infrastructure. Considering that infrastructure managers are able to rely on the checks and surveillance of the financial fitness of railway undertakings under the licensing procedure in accordance with Chapter III of Directive 2012/34/EU, and in particular Article 20 of that Directive, the need for financial guarantees is further reduced.

Changes to legislation: *Commission Implementing Regulation (EU) 2015/10 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The principle of non-discrimination applies to those guarantees, therefore there should be no distinction between the guarantee requirements for privately and publicly owned applicants.

(7) Guarantees should be commensurate with the level of risk posed by the applicant for the infrastructure manager at different stages of capacity allocation. The risk is considered generally to be low as long as the capacity can be re-allocated to other railway undertakings.

(8) A guarantee which is requested in relation to the preparation of compliant bids can only be considered as appropriate, transparent and non-discriminatory if the infrastructure manager sets out clear and transparent rules for preparing a capacity request in the network statement, and offers the necessary support tools to applicants. Since it is not possible to objectively determine the capability of preparing compliant bids before the application procedure, any lack of capability can only be determined after that procedure, on the basis of a repeated failure to put forward those bids or provide the necessary information to the infrastructure manager. The applicant should be responsible for that failure which carries a sanction involving the exclusion of the applicant from the application for a specific train path.

(9) Commission Implementing Regulation (EU) No 870/2014[(2)] was mistakenly adopted in a version other than that which had received the positive opinion of the Committee. Implementing Regulation (EU) No 870/2014 should accordingly be repealed.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the requirements for financial guarantees that an infrastructure manager may request to ensure that its legitimate expectations about future revenues are met without exceeding a level proportional to the level of activities contemplated by the applicant. The requirements include in particular the conditions when a guarantee or an advance payment may be requested and the level and duration of a financial guarantee. In addition, this Regulation sets out certain details as regards the criteria to assess the capability of an applicant to prepare compliant bids for infrastructure capacity.

Article 2

Definitions

For the purpose of this Regulation, the following definition applies:

‘financial guarantee’ means (a) advance payments to reduce and anticipate future obligations to pay infrastructure charges or (b) contractual arrangements by which a financial institution such as bank commits to ensure that such payments are effected once they are due.

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Article 3

Conditions for financial guarantees

1 The applicant may choose to meet a request for financial guarantee by means of either advance payment or contractual arrangement in the meaning of Article 2. If an applicant provides an advance payment for infrastructure charges, the infrastructure manager shall not at the same time request other financial guarantees for the same contemplated activities.

2 The infrastructure manager may request applicants to provide financial guarantees where the credit rating of the applicant suggests that he might have difficulties in effecting regular payments for infrastructure charges. The infrastructure manager shall mention such credit ratings in the section on charging principles of its network statement, if applicable. The infrastructure manager shall base his request for a financial guarantee on ratings not older than two years provided by a credit rating agency or another professional rating or credit scoring entity.

3 The infrastructure manager shall not request a financial guarantee:

a from the designated railway undertaking if a financial guarantee has already been granted or paid by the applicant, which is not a railway undertaking, to cover future payments for the same contemplated activities;

b if the infrastructure charge is to be paid directly to the infrastructure manager by a competent authority pursuant to Regulation (EC) No 1370/2007 of the European Parliament and of the Council[(3)].

Article 4

Level and duration of financial guarantees

1 The level of financial guarantees regarding one applicant shall not exceed the estimated amount of charges incurred during two months of train operations requested.

2 An infrastructure manager shall not require that a financial guarantee takes effect or is paid more than 10 days before the first of the month in which the railway undertaking starts the train operations in relation to the infrastructure charges which this financial guarantee is to cover. If the capacity is allocated after this point in time, the infrastructure manager may request the financial guarantee at short notice.

Article 5

Capability to prepare compliant bids for infrastructure capacity

The infrastructure manager shall not reject an application for a specific train path on grounds of failing to provide assurance of the capability to prepare a compliant bid for infrastructure capacity, within the meaning of Article 41(2) of Directive 2012/34/EU, unless:

(a) the applicant has failed to answer two subsequent requests requiring the provision of the missing information or has repeatedly responded in a way that does not satisfy the conditions set out in the network statement referred to in Article 27 of Directive