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►B DIRECTIVE 2001/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways

(OJ L 75, 15.3.2001, p. 1)

Corrected by:

►C1 Corrigendum, OJ L 334, 18.12.2001, p. 34 (2001/12/EC)

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DIRECTIVE 2001/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 2001

amending Council Directive 91/440/EEC on the development of the Community's railways

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 of 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 [4] of the Treaty 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] should be amended to take account of experience with its implementation and of developments in the railway sector since its adoption, in order to ensure that its objectives are achieved.

(2) Fair and non-discriminatory access to the infastructure needs to be guaranteed through the separation of certain essential functions and/or the creation of a rail regulator fulfilling the control and implementation functions as well as through the separation of profit and loss accounts and the balance sheets.

(3) Fair and non-discriminatory access to the infrastructure needs to be guaranteed also through the separation of safety related functions and/or the creation of a rail regulator fulfilling the control and implementation functions. In any case railway undertakings may be involved in a non-discriminatory way in enforcement and monitoring of safety standards.

(4) Extension of access rights should, as with other modes of transport, proceed in conjunction with the parallel implementation of the necessary accompanying harmonisation measures.

(5) In accordance with the objective of completing the internal market, which will include the possibility for all licensed railway undertakings meeting the safety conditions to provide services, access rights should, for a transitional period of up to seven years, be extended to licensed railway undertakings for the international transport of goods on a defined network, called the Trans European Rail Freight Network, including access to, and supply of, services in major terminals and ports. After this transitional period, the Trans-European Rail Freight Network should cover the entire European rail network and the railway undertakings should be granted rights of access thereto for international freight transport.

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(1) OJ C 321, 20.10.1998, p. 6, and OJ C 116 E, 26.4.2000, p. 21.
(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. 115), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 56), Council Common Position of 28 March 2000 (OJ C 288, 11.10.2000, p. 1) 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.

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(6) Access right is guaranteed to the licensed railway undertaking meeting the safety conditions and seeking access, whatever the mode of operation.

(7) Member States remain free to grant access rights that are more extensive than access for railway undertakings operating international combined transport to international groupings operating international services and to railway undertakings operating international freight services within the Trans-European Rail Freight Network. The use of these more extensive access rights may be limited to railway undertakings licensed in Member States where access rights of a similar nature are granted, provided that this limitation is compatible with the Treaty.

(8) To promote efficient management of infrastructure in the public interest, infrastructure managers should be given a status independent of the State, and freedom to manage their internal affairs, while Member States should take the necessary measures for the development and the safe use of railway infrastructure.

(9) To promote the efficient operation of passenger and freight transport services and to ensure transparency in their finances, including all financial compensation or aid paid by the State, it is necessary to separate the accounts of passenger and of freight transport services.

(10) It is necessary to implement a number of measures in order better to monitor the development of the railway sector and the evolution of the market, assess the effect of the measures adopted and analyse the impact of the measures envisaged by the Commission.

(11) Bodies should be established with a sufficient degree of independence to regulate competition on the rail services market where there are no entities performing that function.

(12) The Commission should report on the implementation of this Directive and make appropriate proposals.

(13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(14) Specific measures are required to take account of the specific geopolitical and geographical situations of certain Member States as well as a specific organisation of the railway sector in various Member States while ensuring the integrity of the internal market.

(15) 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 develop the Community's railways, cannot be sufficiently achieved by the Member States in view of the need to ensure fair and non-discriminatory terms for access to the infrastructure as well as to take account of the manifestly international dimensions involved in the operation of significant elements of the railway networks, and can therefore, by reason of the need for coordinated trans-national action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve those objectives.

(16) Directive 91/440/EEC should be amended accordingly,

[1] OJ L 184, 17.7.1999, p. 23.

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HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1) the title of Section I shall be replaced by the following: ‘Scope and Definitions’;

2) Article 1 shall be repealed;

3) the following paragraph shall be added to Article 2:

‘3. Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel are excluded from the scope of this Directive except Articles 6(1), 10 and 10a.’;

4) Article 3 shall be amended as follows:

a) the first and second indents shall be replaced by the following:

‘— “railway undertaking”shall mean any public or private undertaking licensed according to applicable Community legislation, 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;

— “infrastructure manager”shall mean any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings’;

b) the following indent shall be inserted after the fourth indent:

‘— “international freight service”shall mean transport services where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border’;

5) the title of Section II shall be replaced by the following: ‘Management independence’;

6) Article 4 shall be replaced by the following:

‘Article 4

1. Member States shall take the measures necessary to ensure that as regards management, administration and internal control over administrative, economic and accounting matters railway undertakings have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

2. While respecting the framework and specific charging and allocation rules established by the Member States, the infrastructure manager shall have responsibilities for its own management, administration and internal control’;

7) Article 6 shall be replaced by the following:

‘Article 6

1. Member States shall take the measures necessary to ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity may not be transferred to the other.

The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

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2. Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure shall be managed by a separate entity.

3. Member States shall take the measures necessary to ensure that the functions determining equitable and non-discriminatory access to infrastructure, listed in Annex II, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of the organisational structures, this objective must be shown to have been achieved.

Member States may, however, assign to railway undertakings or any other body the collecting of the charges and the responsibility for managing the railway infrastructure, such as investment, maintenance and funding.

4. The application of paragraph 3 shall be subject to a report by the Commission in accordance with Article 10b, to be submitted by 15 March 2006.';

8) Article 7 shall be replaced by the following:

'Article 7

1. Member States shall take the necessary measures for the development of their national railway infrastructure taking into account, where necessary, the general needs of the Community.

2. Member States shall ensure that safety standards and rules are laid down, rolling stock and railway undertakings are certified accordingly and accidents investigated. These tasks shall be accomplished by bodies or undertakings that do not provide rail transport services themselves and are independent of bodies or undertakings that do so, in such a way as to guarantee equitable and non-discriminatory access to infrastructure.

Railway undertakings shall apply these safety standards and rules. Unless Member States mandate independent bodies with enforcement and monitoring, they may require or allow railway undertakings to be involved in ensuring the enforcement and monitoring of the safety standards and rules while guaranteeing the neutral and non-discriminatory execution of these functions.

3. Member States may also accord the infrastructure manager, having due regard to Articles 73, 87 and 88 of the Treaty, financing consistent with the tasks, size and financial requirements, in particular in order to cover new investments.

4. Within the framework of general policy determined by the State, the infrastructure manager shall draw up a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use and development of the infrastructure while ensuring financial balance and providing means for these objectives to be achieved.';

9) Article 9(3) shall be replaced by the following:

'3. Aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 73, 87 and 88 of the Treaty.';

10) the following paragraph shall be added to Article 9:

'4. In the case of railway undertakings profit and loss accounts and either balance sheets or annual statement of assets and liabilities shall be kept and published for business relating to the provision of rail freight-transport services. Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.';

11) Article 10 shall be replaced by the following: