COUNCIL DIRECTIVE 95/19/EC

of 19 June 1995

on the allocation of railway infrastructure capacity and the charging of infrastructure fees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission (1),

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

Whereas greater integration of the Community transport sector is an essential element of the internal market and whereas the railways are a vital part of the Community transport sector;

Whereas the principle of the freedom to provide services needs to be applied in the railway sector, taking account of the specific characteristics of that sector;

Whereas Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (4) provides for certain access rights in international rail transport for railway undertakings and international groupings of railway undertakings;

Whereas it is important to ensure that, where railway undertakings and the international groupings which they constitute provide the services referred to in Article 10 of Directive 91/440/EEC, they benefit fully from the new access rights and whereas, to this end, it is appropriate to establish a system for the allocation of railway infrastructure and the charging of infrastructure fees which is non-discriminatory and uniform throughout the Community;

Whereas the scope of Directive 91/440/EEC should be maintained, including the exceptions laid down therein for regional, urban and suburban services, and whereas it should be specified that transport operations in the form of shuttle services through the Channel Tunnel are also excluded from the scope of that Directive;

Where, pursuant to the principle of subsidiarity, it is appropriate that the Community lay down the broad principles of such a system, leaving it to the Member States to put in place the detailed rules for the relevant practical implementation;

Whereas the Member States should ensure sufficient flexibility as regards the allocation of infrastructure capacity to allow efficient and optional use of the infrastructure;

Whereas, however, it is necessary to grant certain priority rights with regard to the allocation of infrastructure capacity, notably for public services and services provided on a specific railway infrastructure;

Whereas it is also necessary to provide for the possibility of granting special rights in allocating infrastructure capacity if those rights are essential to ensure adequate transport services or to allow the financing of new infrastructure;

Whereas the accounts of the infrastructure manager should be in balance so that infrastructure expenditure can be covered;

Whereas, furthermore, it is necessary to define non-discriminatory rules as regards the charging of infrastructure fees in the same market;

Whereas efficient use of infrastructure capacity requires that fees be fixed according to a common set of general criteria;

Whereas, out of a general concern for transparency and non-discrimination, common rules should be adopted concerning the procedures for the allocation of infrastructure capacity and the charging of infrastructure fees;

Whereas, in the interests of traffic safety, railway undertakings must, in order to have access to a particular infrastructure, hold a certificate of safety based on certain common criteria and on national provisions, issued by the body competent for the infrastructure used; whereas they must also conclude with the infrastructure manager the requisite technical, administrative and financial agreements;

Whereas it is necessary to guarantee possibilities for making an appeal before an independent body against decisions taken by the authorities and bodies competent as regards the allocation of infrastructure capacity and the charging of infrastructure fees; whereas this possibility for making an appeal is required in particular to resolve any conflicts of interest in cases where an infrastructure manager is at the same time a transport services operator and is responsible for allocating train paths and/or collecting infrastructure fees,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Objective and scope

Article 1

1. The purpose of this Directive is to define the principles and procedures to be applied with regard to the allo-

(1) OJ No C 24, 28. 1. 1994, p. 2 and OJ No C 225, 13. 8. 1994, p. 11.
(2) Opinion delivered on 14 September 1994 (OJ No C 393, 31. 12. 1994, p. 56).
(3) Opinion of the European Parliament of 3 May 1994 (OJ No C 205, 25. 7. 1994, p. 38), Council Common Position of 21 November 1994 (OJ No C 354, 13. 12. 1994, p. 19) and Decision of the European Parliament of 14 March 1995 (OJ No C 89, 10. 4. 1995, p. 31).
(4) OJ No L 237, 24. 8. 1991, p. 25.

cation of railway infrastructure capacity and the charging of infrastructure fees for railway undertakings which are or will be established in the Community and the international groupings which they form, where such undertakings and groupings carry out services referred to in Article 10 of Directive 91/440/EEC under the conditions laid down in that Article.

2. Railway undertakings the activities of which are limited to the operation of urban, suburban and regional services shall be excluded from the scope of this Directive.

Railway undertakings and international groupings the business of which is limited to providing shuttle services for road vehicles through the Channel Tunnel are also excluded from the scope of this Directive.

3. Railway infrastructure capacity shall be granted in the form of the allocation of train paths in accordance with Community and national law.

Article 2

For the purpose of this Directive:

(a) 'railway undertaking' means any public or private undertaking the main business of which is to provide rail transport services for goods and/or passengers, with a requirement that the undertaking must ensure traction;

(b) 'international grouping' means any association of at least two railway undertakings established in different Member States for the purpose of providing international transport services between Member States;

(c) 'infrastructure manager' means any public body or undertaking responsible in particular for establishing and maintaining railway infrastructure, as well as for operating the control and safety systems;

(d) 'train path' means the infrastructure capacity needed to run a train between two places at a given time;

(e) 'allocation' means the allocation of railway infrastructure capacity by an allocation body;

(f) 'allocation body' means the authority and/or infrastructure manager designated by the Member States for the allocation of infrastructure capacity.

SECTION II

Allocation of railway infrastructure capacity

Article 3

Each Member State shall designate the allocation body in accordance with the requirements of this Directive. In particular, the allocation body, which shall be informed of all train paths available, shall ensure that:

— railway infrastructure capacity is allocated on a fair and non-discriminatory basis and that,

— subject to Articles 4 and 5, the allocation procedure allows optimum effective use the infrastructure.

Article 4

1. Member States may take the necessary measures to ensure that priority is given to the following rail services in the allocation of railway infrastructure capacity:

(a) services provided in the interest of the public, as defined in Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway [1];

(b) services wholly or partly operated on infrastructure constructed or developed for certain specific services (specialized high-speed or freight lines), without prejudice to Articles 85, 86 and 90 of the Treaty.

This provision shall apply without discrimination to all services within the scope of Article 1 having comparable characteristics and providing similar services.

2. With regard to services provided under paragraph 1 (a), Member States may compensate the infrastructure manager for any financial losses incurred due to the imposition of a certain infrastructure capacity allocation in the interests of public service.

Article 5

Member States may grant special rights as regards infrastructure capacity allocation on a non-discriminatory basis to railway undertakings operating certain types of services

[1] OJ No L 156, 28. 6. 1969, p. 1. Regulation as last amended by Regulation (EEC) No 1893/91 (OJ No L 169, 29. 6. 1991, p. 1).