

Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (Text with EEA relevance)

### CHAPTER III

## LICENSING OF RAILWAY UNDERTAKINGS

### SECTION 1

#### *Licensing authority*

#### *Article 16*

#### **Licensing authority**

Each Member State shall designate a licensing authority that shall be responsible for issuing licences and for carrying out the obligations imposed by this Chapter.

The licensing authority shall not provide rail transport services itself and shall be independent of firms or entities that do so.

### SECTION 2

#### *Conditions for obtaining a licence*

#### *Article 17*

#### **General requirements**

1 An undertaking shall be entitled to apply for a licence in the Member State in which it is established.

2 Member States shall not issue licences or extend their validity where the requirements of this Chapter are not complied with.

3 An undertaking which fulfils the requirements set out in this Chapter shall be authorised to receive a licence.

4 No undertaking shall be permitted to provide the rail transport services covered by this Chapter unless it has been granted the appropriate licence for the services to be provided.

However, such a licence shall not, in itself, entitle the holder to access the railway infrastructure.

5 The Commission shall adopt measures setting out the details for the use of a common template for the licence and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

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## Article 18

### Conditions for obtaining a licence

An undertaking applying for a licence shall be required to be able to demonstrate to the licensing authorities of the Member State concerned before the start of its activities that it will at any time be able to meet the requirements relating to good reputation, financial fitness, professional competence and cover for its civil liability as listed in Articles 19 to 22.

For those purposes, each undertaking applying for a licence shall provide all relevant information.

## Article 19

### Requirements relating to good reputation

Member States shall define the conditions under which the requirement of good reputation is met to ensure that an undertaking applying for a licence or the persons in charge of its management:

- (a) have not been convicted of serious criminal offences, including offences of a commercial nature;
- (b) have not been declared bankrupt;
- (c) have not been convicted of serious offences set out in specific legislation applicable to transport;
- (d) 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 the case of a company seeking to operate cross-border freight transport subject to customs procedures<sup>[F1]</sup>;
- (e) <sup>[F2]</sup>have not been convicted of serious offences resulting from obligations arising in accordance with national law from binding collective agreements, where applicable.]

#### Textual Amendments

- F1** Substituted by [Directive \(EU\) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure \(Text with EEA relevance\)](#).
- F2** Inserted by [Directive \(EU\) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure \(Text with EEA relevance\)](#).

## Article 20

### Requirements relating to financial fitness

1 The requirements relating to financial fitness shall be met when an undertaking applying for a licence can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of 12 months.

2 The licensing authority shall verify financial fitness especially by means of a railway undertaking's annual accounts or, in the case of undertakings applying for a licence which are unable to present annual accounts, a balance sheet. Each undertaking applying for a licence shall provide at least the information listed in Annex III.

3 The licensing authority shall not consider an undertaking applying for a licence to be financially fit if considerable or recurrent arrears of taxes or social security are owed as a result of that undertaking's activity.

4 The licensing authority may require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. Those documents shall include the information listed in Annex III.

5 The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex III. Thus, Annex III may be amended to specify the information to be provided by undertakings applying for a licence or supplemented in the light of the experience gained by licensing authorities or the evolution of the rail transport market.

## Article 21

### Requirements relating to professional competence

The requirements relating to professional competence shall be met when an undertaking applying for a licence can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

## Article 22

### Requirements relating to cover for civil liability

Without prejudice to Union rules on State aid and in accordance with Articles 93, 107 and 108 TFEU, a railway undertaking shall be adequately insured or have adequate guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties. Notwithstanding this obligation, the specificities and the risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes, may be taken into account.

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## SECTION 3

### **Validity of the licence**

#### *Article 23*

#### **Spatial and temporal validity**

- 1 A licence shall be valid throughout the territory of the Union.
- 2 A licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Chapter. A licensing authority may, however, make provision for a regular review. If so, the review shall be carried out at least every five years.
- 3 Specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.

#### *Article 24*

#### **Temporary licence, approval, suspension and revocation**

- 1 If there is serious doubt that a railway undertaking which it has licensed complies with the requirements of this Chapter, and in particular those of Article 18, the licensing authority may, at any time, check whether that railway undertaking does in fact comply with those requirements.

Where a licensing authority is satisfied that a railway undertaking can no longer meet the requirements, it shall suspend or revoke the licence.

- 2 Where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Chapter on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.

- 3 Notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the reorganisation of the railway undertaking, provided that safety is not jeopardised. A temporary licence shall not, however, be valid for more than six months after its date of issue.

- 4 Where a railway undertaking has ceased operations for six months or has not started operations within six months of the grant of a licence, the licensing authority may decide that the licence shall be required to be resubmitted for approval or be suspended.

As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.

- 5 In the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardised. In that event, the grounds for such a decision shall be given.

- 6 Where a railway undertaking intends to significantly change or extend its activities, its licence shall be resubmitted to the licensing authority for review.

7 A licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings have commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.

8 Where a licensing authority issues, suspends, revokes or amends a licence, it shall immediately inform the European Railway Agency accordingly. The European Railway Agency shall inform the licensing authorities of other Member States forthwith.

### *Article 25*

#### **Procedure for granting licences**

1 The procedures for granting licences shall be made public by the Member State concerned, which shall inform the Commission thereof.

2 The licensing authority shall take a decision on an application as soon as possible, but not more than three months after all relevant information, notably the particulars referred to in Annex III, has been submitted. The licensing authority shall take into account all the available information. The decision shall be communicated to the undertaking applying for a licence without delay. A refusal shall state the grounds on which it is based.

3 Member States shall ensure that the licensing authority's decisions are subject to judicial review.