

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<sup>(1)</sup>, 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.

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*Changes to legislation:* There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2015/10. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (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<sup>(2)</sup> 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:

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- (1) [OJ L 343, 14.12.2012, p. 32.](#)
- (2) Commission Implementing Regulation (EU) No 870/2014 of 11 August 2014 on criteria for applicants for rail infrastructure capacity ([OJ L 239, 12.8.2014, p. 11.](#)).

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**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Signature words omitted by [S.I. 2019/518 reg. 48](#)