

Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (repealed)

CHAPTER IV

GENERAL MEASURES

*Article 30*

**Regulatory body**

1 Without prejudice to Article 21(6), Member States shall establish a regulatory body. This body, which can be the Ministry responsible for transport matters or any other body, shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. The body shall function according to the principles outlined in this Article whereby appeal and regulatory functions may be attributed to separate bodies.

2 An applicant shall have a right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking concerning:

- a) the network statement;
- b) criteria contained within it;
- c) the allocation process and its result;
- d) the charging scheme;
- e) level or structure of infrastructure fees which it is, or may be, required to pay;
- f) safety certificate, enforcement and monitoring of the safety standards and rules.

3 The regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.

4 The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

5 The regulatory body shall be required to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information.

Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

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6 Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.

### *Article 31*

#### **Cooperation of regulatory bodies**

The national regulatory bodies shall exchange information about their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

### *Article 32*

#### **Safety certification**

1 The arrangements for safety certification for railway undertakings which are or will be established in the Community and the international groupings which they form shall be in accordance with this Article.

2 The Member States shall provide for their respective territories that a safety certificate in which the railway undertakings' safety requirements are set out be submitted in order to ensure safe service on the routes concerned.

3 In order to obtain the safety certificate, the railway undertaking shall comply with the regulations under national law, compatible with Community law and applied in a non-discriminatory manner, laying down the technical and operational requirements specific to rail services and the safety requirements applying to staff, rolling stock and the undertaking's internal organisation.

In particular, it shall provide proof that the staff whom it employs to operate and accompany the trains has the necessary training to comply with the traffic rules applied by the infrastructure manager and to meet the safety requirements imposed on it in the interests of train movement.

The railway undertaking shall also prove that the rolling stock making up the trains has been approved by the public authority or by the infrastructure manager and checked in accordance with the operating rules applicable to the infrastructure used. The safety certificate shall be issued by whichever body is designated for the purpose by the Member State in which the infrastructure used is situated.

### *Article 33*

#### **Derogations**

1 For a period of five years from 15 March 2003, the following Member States:

- Ireland, as a Member State located on an island, with a rail link to only one other Member State,
- the United Kingdom, in respect of Northern Ireland, on the same basis, and
- Greece, as a Member State that does not have any direct rail link to any other Member State,

do not need to apply the requirements set out in:

- a) Articles 3, 4(2), 13, 14, 17, 21(4), 21(6), 22, 24(3), 25 to 28 and 30 on the condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal, when so requested in writing by a railway undertaking, before an independent body which shall take its decision within two months of the submission of all relevant information and whose decision shall be subject to judicial review, and
- b) Article 32 in so far as rail transport services falling outside the scope of Article 10 of Directive 91/440/EEC are concerned.

2 However, where:

- a) more than one railway undertaking licensed in accordance with Article 4 of Directive 95/18/EC, or, in the case of Ireland and Northern Ireland, a railway company so licensed elsewhere submits an official application to operate competing railway services in, to or from Ireland, Northern Ireland or Greece, the continued applicability of this derogation will be decided upon in accordance with the advisory procedure referred to in Article 35(2); or
- b) a railway undertaking operating railway services in Ireland, Northern Ireland or Greece submits an official application to operate railway services on, to or from the territory of another Member State (in the case of Ireland, or the United Kingdom, in respect of Northern Ireland, or both, another Member State outside their territories), the derogations referred to in paragraph 1 shall not apply.

Within one year from the receipt of either the decision referred to in point (a) adopted in accordance with the advisory procedure referred to in Article 35(2), or notification of the official application referred to in point (b), the Member State or States concerned (Ireland, the United Kingdom with respect to Northern Ireland, or Greece) shall put in place legislation to implement the Articles referred to in paragraph 1.

3 A derogation referred to in paragraph 1 may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of such derogation may address a request to the Commission for a renewed derogation. Any such request must be substantiated. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 35(2). The said advisory procedure shall apply to any decision related to the request.

When adopting its decision the Commission shall take into account any development in the geopolitical situation and the development of the rail market in, from and to the Member State having requested the renewed derogation.

4 Luxembourg as a Member State with a relatively small rail network does not need to apply until 31 August 2004 the requirement to award to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in Articles 4 and 14 in so far as they oblige Member States to establish independent bodies performing the tasks referred to in those Articles.