

Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

Article 1

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

1. the following paragraph shall be added to Article 2:
 4. Member States may exclude from the scope of this Directive any railway service carried out in transit through the Community and which begins and ends outside the Community territory.;
2. the fourth indent of Article 3 shall be deleted;
3. the following indent shall be inserted in Article 3 after the fifth indent:
 - “international passenger service” shall mean a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;
4. the following indent shall be inserted in Article 3 after the sixth indent:
 - “transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory.;
5. the first indent of Article 5(3) shall be deleted;
6. the phrase ‘and international groupings’ shall be deleted in Article 8(1);
7. Article 10(1) shall be deleted;
8. the following paragraphs shall be inserted in Article 10:
 - 3a. Railway undertakings within the scope of Article 2 shall be granted by 1 January 2010 the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

The right of access to the infrastructure of the Member States for which the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 1 January 2012.

Whether the principal purpose of the service is to carry passengers between stations located in different Member States shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC following a request from the relevant competent authorities and/or interested railway undertakings.

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3b Member States may limit the right of access defined in paragraph 3a on services between a place of departure and a destination which are covered by one or more public service contracts conforming to the Community legislation in force. Such limitation may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

Whether the economic equilibrium would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis and based on pre-determined criteria, following a request from:

- the competent authority or competent authorities that awarded the public service contract,
- any other interested competent authority with the right to limit access under this Article,
- the infrastructure manager, or
- the railway undertaking performing the public service contract.

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within two months of receipt of all relevant information. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which,

- the relevant competent authority or competent authorities,
- the infrastructure manager,
- the railway undertaking performing the public service contract, or
- the railway undertaking seeking access;

may request a reconsideration of the decision.

3c Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Community law. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.

3d The provisions of this Directive shall not require a Member State to grant, before 1 January 2010, the right of access referred to in paragraph 3a to railway undertakings and their directly or indirectly controlled subsidiaries, licensed in a Member State where access rights of a similar nature are not granted.

3e Member States shall take the necessary measures to ensure that the decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.

3f Without prejudice to paragraph 3b, Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for

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the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

In that case, railway undertakings providing domestic or international rail passenger transport services shall be subject to the same levy on the operation of routes which fall within the jurisdiction of that authority.

The levy is intended to compensate the authority for public service obligations laid down in public service contracts awarded in conformity with Community law. The revenue raised from such levy and paid as compensation may not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

The levy shall be imposed in accordance with Community law, and shall respect in particular the principles of fairness, transparency, non-discrimination and proportionality, in particular between the average price of the service to the passenger and the level of the levy. The total levies imposed pursuant to this paragraph shall not endanger the economic viability of the rail passenger transport service on which they are imposed.

The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.;

9. Article 10(8) shall be replaced by the following:

8. By 1 January 2009, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of this Directive.

This report shall address:

- the implementation of this Directive in the Member States, and in particular its impact in the Member States as referred to in the second subparagraph of paragraph 3a and the effective working of the various bodies involved;
- market developments, in particular international traffic trends, activities and market share of all market actors, including new entrants.;

10. the following paragraph shall be added to Article 10:

9. By 31 December 2012, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of the provisions of paragraphs 3a to 3f.

The application of this Directive shall be evaluated on the basis of a report to be presented by the Commission two years after the date of the opening-up of the market in international passenger services.

This report shall also assess the development of the market, including the state of the preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC)

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Nos 1191/69 and 1107/70⁽¹⁾ and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission shall, if appropriate, propose complementary measures to facilitate any such opening, and shall assess the impact of any such measures.

11. Article 11(2) shall be replaced by the following:

2. Measures designed to amend non-essential elements of this Directive and relating to the adaptation of the Annexes thereto shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11a(3).;

12. Article 11a(3) shall be replaced by the following:

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.;

13. the following subparagraph shall be added to Article 15:

The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

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(1) [OJ L 315, 3.12.2007, p. 1.](#)