

COMMISSION IMPLEMENTING REGULATION (EU) 2015/171
of 4 February 2015
on certain aspects of the procedure of licensing railway undertakings
(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 (⁽¹⁾) and in particular Article 17(5) thereof,

Whereas:

- (1) Commission Recommendation of 7 April 2004 on the use of a common European format for licence documents issued in accordance with Council Directive 95/18/EC on the licensing of railway undertakings (⁽²⁾) recommended the use of the standard format for the licence documents issued by national licensing authorities.
- (2) Pursuant to Article 23 of Directive 2012/34/EU licences delivered by national licensing authorities are valid throughout the territory of the Union. The national licensing authorities should inform the European Railway Agency of licences that have been issued, suspended, revoked or amended and the latter should inform the other Member States accordingly. A common template for the licence would facilitate the work of the national licensing authorities and of the European Railway Agency and provide easier access to information on licences by all interested parties, in particular the licensing authorities of other Member States and the infrastructure managers.
- (3) All necessary information that confirms that a given railway undertaking has been regularly licensed for a certain type of rail transport services can be contained within a standardised document. The standard template for the licence document would facilitate publication of all relevant information on licences on the website of the European Railway Agency. The standard format could be modified in the future depending on experience of its use and the development of the needs for further information on licences.
- (4) The conditions under which the requirements referred to in Article 22 of Directive 2012/34/EU relating to cover for civil liability may be fulfilled may vary between Member States depending on national law. Evidence that the railway undertaking meets these national requirements should be provided for by an annex to the licence document. The standard template for this annex should be used for this purpose. In case the railway undertaking wishes to exercise its activities in two or more Member States, the cover for civil liability for each of these Member States should be mentioned in an additional annex, which should be supplied by the licensing authority in the additional Member State the railway undertaking wishes to operate in.
- (5) Licensing authorities may reduce their administrative costs, the level of licensing fees and the time to make a decision on an application for a licence if they swiftly exchange the necessary data with other authorities and other public or private entities.
- (6) Due to little movement in the market, no licensing decisions are taken in some Member States for one or more consecutive years. At the same time, high fees may pose an obstacle to market entry of railway undertakings.
- (7) Railway undertakings which apply for a new licence should not face less favourable licensing conditions than the railway undertakings already operating in the market.
- (8) Unnecessary administrative burden imposed on licensing authorities and undertakings should be reduced by strictly limiting the requirements to the conditions set out in Directive 2012/34/EU.

(¹) OJ L 343, 14.12.2012, p. 32.

(²) OJ L 113, 20.4.2004, p. 37.

- (9) The licensing authorities have no obligation to request a licensing fee from a railway undertaking. However Member States may decide to impose such a fee for the work undertaken by the licensing authorities on the examination of the application. In such a case the licensing fee should be non-discriminatory, be effectively levied on all the undertakings applying for a licence and be based on the actual workload of the licensing authority. If the licensing fee exceeds EUR 5 000, the licensing authority should set out the number of person hours employed and the expenditure in the payment note for the fee.
- (10) In an attempt to create a level playing field between railway undertakings, Directive 2012/34/EU has repealed certain arrangements that are not compatible with enhancing market conditions, whereby railway undertakings have to be insured or have adequate guarantees under market conditions. Licensing authorities should be invited to verify the implementation of the revised conditions in cooperation with other authorities of Member States.
- (11) The granting of a licence to a railway undertaking should not be conditional on it holding a safety certificate referred to in Article 10 of Directive 2004/49/EC of the European Parliament and of the Council (¹).
- (12) New railway undertakings are critical for competition, but they may have practical difficulties to provide a track record on their financial fitness which allows them to establish realistic assumptions for a period of 12 months in the future according to Article 20(1) and (2) of Directive 2012/34/EU. Whilst EU legislators have created the option of simplified proof for certain smaller air carriers according to Article 5(3) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council (²), the procedure for obtaining a licence may take account of these practical difficulties by alleviating the procedure for demonstrating financial fitness for railway undertakings that apply for a licence.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 62(1) of Directive 2012/34/EU,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the details for the use of a common template for the licence document. It also provides for certain aspects of the procedure for granting a licence.

Article 2

Definitions

For the purpose of this Regulation, 'licence document' means the completed and duly signed common template, as set out in Annex I and II of this Regulation to be submitted to the European Railway Agency.

Article 3

The use of the common template for the licence document

1. Licences issued in accordance with Chapter III of Directive 2012/34/EU shall use the standard format set out in Annex I and II of this Regulation.

In the case where a new licence is issued, the licensing authority shall attribute the EC licence notification number in accordance with the harmonised numbering system called European Identification Number (EIN), as laid down in the Appendix 2 of the Commission Decision 2007/756/EC (³).

(¹) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (OJ L 164, 30.4.2004, p. 44).

(²) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

(³) Commission Decision 2007/756/EC of 9 November 2007 adopting a common specification of the national vehicle register provided for under Articles 14(4) and (5) of Directives 96/48/EC and 2001/16/EC (OJ L 305, 23.11.2007, p. 30).

Each time a licence is granted, amended in way relevant to the licence document, suspended, revoked or replaced by a temporary licence, the licensing authority shall establish a licence document based on this format

2. Licensing authorities shall inform the European Railway Agency in accordance with Article 24(8) of Directive 2012/34/EU providing a copy of the licence document as stipulated in the communication protocol agreed between them.

3. The information concerning the financial cover for civil liability referred to in Article 22 of Directive 2012/34/EU shall be stated in the annex to the licence document, using the standard format laid down in Annex II to this Regulation. The authority issuing the licence shall attach an annex to the licence document. This annex shall be given the number one (1).

4. Through the information provided in the liability annexes, as set out in Annex II of this Regulation, the licensing authority in a particular Member State or an infrastructure manager may check whether the cover of civil liability taken by the railway undertaking and approved by other licensing authorities is sufficient in this particular Member State. If the licensing authority determines that the level of cover is insufficient it may request the railway undertaking to take out additional cover. The railway undertaking shall provide the licensing authority with the requested information about its cover.

5. Once the licensing authority is satisfied with the cover, it shall inform the European Railway Agency, updating an existing annex communicated by a licensing authority of the same Member State or adding a further annex to the licence, using the standard format of this Annex II and assign the next number (2, 3, 4, etc.) to this annex.

6. Each liability annex shall mention the amount, the scope, such as geographical scope or types of services, and the commencement date and, if applicable, of expiration of the cover. The licence notification number shall be mentioned in each annex to establish a clear link with the licensed railway undertaking. The licensing authority shall establish an updated annex when it is informed about a change in the cover for civil liability and communicate the annex to the European Railway Agency.

Article 4

Licensing fees

Member States may request a licensing fee for the examination of each application. Licensing fees shall be applied in a non-discriminatory way.

Article 5

Certain aspects pertaining to requirements on civil liability cover and adequate guarantees

1. The licensing authority shall publish the minimum required levels of cover, including where the amount of such cover is laid down in national law.

2. The licensing authority may not request cover to take effect before the railway undertaking starts its train operations.

3. By 25 August 2015 at the latest, the licensing authority that has issued the licence shall request from all licensed railway undertakings evidence on the level and scope of their existing cover for liabilities in the event of accidents, unless they have contracted an insurance or the authority already has this information. It may also request such evidence from the railway undertakings in case it has doubts whether their cover meets the requirements referred to in Article 22 of Directive 2012/34/EU.

4. In case the undertaking does not demonstrate that it is adequately insured, but that it has adequate guarantees for cover, the licensing authority, if appropriate after consultation of the regulatory body, shall examine whether the conditions under which the undertaking has obtained such guarantees correspond to market conditions which would have been obtained by any other undertaking with the same level of financial standing and risk exposure.

5. If the licensing authority suspends the licence in accordance with Article 24(1) of Directive 2012/34/EU, or grants a temporary licence in accordance with Article 24(3) of the said Directive, it shall inform any other competent authorities referred to in Regulation (EC) No 1370/2007 of the European Parliament and of the Council (⁽¹⁾), with which it knows that the railway undertaking had contracted services. If the licensing authority has doubts regarding the compatibility of the guarantees for cover of its liabilities with the Union rules on State aid, it may transmit the necessary information to the authorities responsible for the control of such State aid rules.

(¹) 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) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

Article 6**Relation with safety certificates**

1. The granting of a licence may not be conditional on the undertaking holding a safety certificate referred to in Article 10 of Directive 2004/49/EC.
2. If an undertaking holds a safety certificate, the licensing authority shall not check requirements for safety certificates, when granting the licence.

Article 7**Certain aspects of the procedure for granting a licence**

1. Within one month of the receipt of the application, the licensing authority shall inform the undertaking that the file is complete or ask for complementary information. This time limit may be extended by two weeks under exceptional circumstances and the undertaking shall be informed thereof. Once the complementary information has been received, the licensing authority shall inform the undertaking within a maximum of one month whether the file is complete.
2. The licensing authority may only request documents referred to in Chapter III of Directive 2012/34/EU or required by national legislation. The licensing authority shall publish a list of all the documents and their contents and shall not request any further documents from undertakings. If the list is updated and published, undertakings may still rely on the former list as regards applications they submitted before the update.
3. In respect of undertakings with annual revenues of less than EUR 5 million from rail transport activities, the licensing authority may consider the requirement regarding its ability to meet actual and potential obligations for a period of 12 months from the start of operations in accordance with Article 20(1) of Directive 2012/34/EU as fulfilled, if the undertaking can demonstrate that its net capital is at least EUR 100 000 or an amount agreed with the regulatory body. The licensing authority shall publish this amount.

Article 8**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 16 June 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 February 2015.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Standard format for the licence document**LICENCE INFORMATION FOR THE PERFORMANCE OF RAIL TRANSPORT SERVICES**

Within the Union and the European Economic Area according to Directive 2012/34/EU and the relevant national legislation.

1. Licence-issuing State

Issuing State	<input type="checkbox"/> New licence <input type="checkbox"/> Amended licence
National licence No	Decision identification
Applicable legislation	
Licensing authority	Phone No
Postal address	
Postcode and city	E-mail

2. Licence holder

Railway undertaking	Phone No
Postal address	
Postcode and city	E-mail
Registration No	VAT No

3. Validity

Valid from	Temporary licence: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Type of services: <input type="checkbox"/> traction only	<input type="checkbox"/> freight	<input type="checkbox"/> passenger
Suspended on	If yes: valid until Revoked on	

4. Amendments

Amended on

Description of amendment

5. Conditions and obligations

Conditions according to Article 23(2) of Directive 2012/34/EU should be mentioned here, or reference should be given to where documentation is available

Date	Signature
Name	
EC licence-notification No	

Explanations on filling in the licence template

The relevant Union legislation is laid down in Directive 2012/34/EU.

The railway licences issued under Directive 2012/34/EU are valid also in the European Economic Area through Decision No 118/2001 of the EEA Joint Committee of 28 September 2001 amending Annex XIII (Transport) to the EEA Agreement (OJ L 322, 6.12.2001, p. 32). Licences issued in the European Economic Area are equally valid in the Union through the same Decision.

Each time a decision affecting the licence document of a particular licensed railway undertaking is taken, i.e. by amending, suspending, revoking or replacing a permanent licence by a temporary one, a new licence document should be communicated to the European Railway Agency.

A licence document is always accompanied by the annex on financial cover for liability.

The explanations below refer to the numbered fields of the form. References are made to Articles of Directive 2012/34/EU.

Licence-issuing State. It should always be indicated if a document concerns a new licence or any kind of amendment to an existing licence. The legislation applicable in the issuing State should be identified by reference to law or other legal provisions. The licence identification number used in the issuing State should be entered and, where applicable, the identification of the authority decision through a reference number or other relevant reference. The licensing authority is designated by Member States pursuant to Article 16. It should be identified in a way that makes it possible for interested parties to get in contact with the body in question. Telephone numbers should indicate the number to the switchboard, where applicable, and not to the person in charge of licensing issues. Telephone and fax numbers should indicate the country code. The e-mail address should be the general mailbox of the authority.

Licence holder. The contact details of the licence holder should, in a similar way as the details of the authority, indicate the general addresses of the railway undertaking, avoiding giving reference to a certain person. If several registration numbers are attributed to the holder under national law there are possibilities in the form to enter both the VAT number and a second registration number. Telephone and fax numbers should indicate the country code.

Validity. According to the first sentence of Article 23(2) a licence is valid as long as the railway undertaking fulfils the obligations of the Directive. The reviews that are allowed according to the second sentence of Article 23(2) do not require that the licence document as such is amended.

The issuing authority should indicate the first date of validity and the type(s) of services that the licence is valid for. In the case of a temporary licence, issued according to the provisions of Article 24(3), an end date must be entered. The maximum validity of a temporary licence is six months. In the case of suspension or revocation the dates should be entered in the form. Dates should be entered in a common format (ddmmyy).

Amendments. If the licensed railway undertaking significantly changes or extends its activities the licence shall be resubmitted for review (Article 24.6). Such a review might cause the licence to be amended and if so, the date of the amendment shall be entered in the field together with a short description. Dates shall be entered in a common format (ddmmyy).

Conditions and obligations. Article 23(3) states that specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself. If that is the case, the provisions should be indicated in this field.

Signature. A person authorised by the licensing authority to decide on licences should validate and communicate the licence document to the European Railway Agency. The name of the signing person should be spelled out.

ANNEX II

Standard format for liability annex to railway licence

LICENCE

Liability annex No

Financial cover for liability

Concerning licence to perform rail transport services within the Union and the European Economic Area according to Directive 2012/34/EU and the relevant national legislation

1. Licence-issuing State

Issuing State	Licensing authority
National licence No	Decision identification
Applicable legislation	

2. Licence holder

Railway undertaking	
Registration No	VAT No

3. Licensing authority (if other than licensing authority in 1)

Licensing authority	Phone No
Postal address	
Postcode and city	E-mail
State	Applicable legislation

4. Financial cover for liability

Financial cover, amount	Guarantees under market conditions (short description)
Geographical coverage	
Valid from	Valid until

5. Conditions and obligations

National conditions according to Article 22, Article 23(2) and/or (3) of Directive 2012/34/EU should be mentioned here, or reference should be given to where documentation is available

Date

Signature

Name

EC licence-notification No

Explanations and instructions for use

Licence-issuing State. The information given in the licence shall be repeated here to enable a correct identification of the licence. The licensing authority is designated by Member States according to Article 16. Since the annex is linked to a licence document according to Annex I of this Regulation it is not necessary to repeat all information given on the licensing authority. The name is sufficient.

Licence holder. Since the annex is linked to a licence it is not necessary to repeat all information given on the licence holder. The name and possible registration numbers are sufficient.

Licensing body responsible for validation of financial cover. If the liability annex is submitted by the authority granting the licence to the railway undertaking this field should not be filled in. In case a licensing authority in another Member State has required and approved additional insurance cover, the relevant contact details of that licensing authority should be entered in this field. Telephone and fax numbers should indicate the country code.

Financial cover for liability. The amount of cover that is required and approved shall be entered in this field, stating the currency in which it is noted. If the railway undertaking has not taken out an insurance policy but demonstrated its cover by adequate guarantees under market conditions (e.g. a financial guarantee), the nature of this cover shall be described. If the geographical coverage is limited to a specific country or to a region or if certain countries or regions are specifically excluded it shall be described. The first date of validity of the insurance policy shall be entered. The railway undertaking has an obligation to maintain its cover for liability. The licence is not valid if the railway undertaking does not fulfil this requirement (Article 18). However, in exceptional cases an insurance might be taken for a limited time. In such a case an end date of the validity may be introduced. Dates shall be entered in a common format (ddmmyy). The licensing authority may check that the railway undertaking complies with the requirements (Article 24).

Conditions and obligations. The cover for liability may be linked to national conditions or obligations imposed on the railway undertaking by the provisions of Article 22. In such case it should be indicated in this field.

Signature. A person authorised by the licensing authority to approve insurance arrangements within the licensing procedure shall validate and communicate the document to the European Railway Agency. The name of the signing person shall be spelled out.

EC licence notification-number.
