

Liberalization of railway transport

**European directives on railway transport and
Access to infrastructure**

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LIBERALIZATION OF RAILWAY TRANSPORT

Target: creation of a single market of railway transport in order to increase competitiveness both within the sphere of railway transport itself and in respect of other sectors of the transport market, and particularly road haulage.

Elements of competitiveness

- Lower costs: possibility to carry higher volumes of goods in a single trip;
- Safety: punctual carriage and reduction of the risk of losses and damages;
- Lower environmental impact;
- Potential technological development.

Elements limiting competitiveness

- Structural limitations, the railway network being an essential facility subject to saturation;
- Old age and divestment of a part of the European railway network;
- Persisting dissimilarity of Member States as concerns operational conditions and safety regulations.

THE ROLE OF COMMUNITY INSTITUTIONS - COMMUNITY DIRECTIVES

- Directives 91/440/EEC and 2001/12/EEC concerning development of railway enterprises;
- Directives 95/18/EEC and 2001/13/EEC concerning licences of railway enterprises;
- Directives 95/19/EEC and 2001/14/EEC concerning the apportionment of railway infrastructure capacity, levying of duties for the use of the railway infrastructure and safety certification;
- Directive 2001/16/EEC on the feasibility of interaction in the field of railway transport.

Directives 91/440/EEC and 2001/12/EEC on development of railway enterprises - the "break" of the State monopoly and the paramount principles of liberalization.

Principle of distinction between the performance of transport services and the operation of the infrastructure.

"A railway enterprise is any public or private enterprise holder of a licence, and whose main activity consists in the performance of services for the railway carriage of goods and/or passengers , and which compulsorily warrants the traction; the definition also includes enterprises which supply traction only" (Article 3).

"An infrastructure manager is any body or enterprise particularly in charge of the creation and maintenance of a railway infrastructure, including, if need be, the management of control and safety systems of the infrastructure. The tasks of an infrastructure manager on a network or part of it may be assigned to different bodies or enterprises" (Article 3).

Directives 91/440/EEC and 2001/12/EEC concerning development of railway enterprises – The “break” of the State Monopoly and the paramount principles of liberalization.

Principle of railway enterprises’ independence of the State system

“Member States adopt measures as required in the matter of management, administration and internal control on administration, economy and book-keeping , in order that railway enterprises may enjoy an independent status ensuring in particular the possession of assets, a balance and book-keeping separate from those of States” (Article 4.1).

The above provision particularly gives rise to the following results:

- Management of the enterprise based on entrepreneurial principles;
- Aim at attaining the enterprises’ financial balance;
- Possibility to autonomously regulate the terms of the supply and fix the relevant tariff.

Principle of “self management” adopted by the manager of the infrastructure vis-à-vis the State system

“In compliance with context and specific rules in the matter of rights and assignment as fixed by Member States, the manager of the infrastructure is responsible for his own management , administration and internal control” (Article 4.2).

Directives 91/440/EEC and 2001/12/EEC on development of railway enterprises – Right of access to the infrastructure.

- The right of access to the infrastructure is granted as follows:
 - i) international associations of enterprises, i.e. any association including at least two railway enterprises established in different States, are granted the right of access in the States where the enterprises belonging to the Association are located and the right of transit in Member States located between the said States;
 - ii) railway enterprises are allowed access, on equitable terms, to the infrastructure of the other State Members to perform international combined transports of goods;
 - iii) railway enterprises are furthermore allowed the right of access to the Trans-European Railway Network which should cover the whole European Network by the end of a period of transition (i.e. as from 1.1.2008).

Directives 95/18/EEC and 2001/13/EEC concerning licences of railway enterprises.

Target: to warrant in the whole Community a non-discriminatory and uniform application of the rights of access to the railway infrastructure by instituting a licence released to railway enterprises in accordance with common regulations and valid all over the Community territory.

Requisites for obtainance of the railway licence by enterprises:

- Honourableness (Article 6 of Directive 95/18/EC)
- Financial capacity (Article 7 of Directive 95/18/EC)
- Professional skill (Article 8)
- Appropriate insurance coverage of civil responsibility (Article 9)

Directives 95/19/EEC and 2001/14/EEC concerning:

- ❖ Apportionment of the railway infrastructure capacity
- ❖ Levying of duties for the use of the railway infrastructure and
- ❖ Safety certification.

Target: To ensure transparency and non-discriminatory access to the railway infrastructure for all enterprises which intend to carry out the activity of railway transport of goods and/or passengers within the Community.

IMPLEMENTATION OF DIRECTIVES BY THE ITALIAN SYSTEM

- ❖ Directive 91/440/EC was ratified by Presidential Decree no. 277/1998
- ❖ The new “package” consisting of the directives of 2001 was ratified by Law Decree 188/2003 (so-called “Consolidation Act” in the matter of railway transport)

LAW DECREE NO. 188/2003

It consists of four parts:

- ❖ Railway enterprises
- ❖ Manager of the infrastructures
- ❖ Duties and fees
- ❖ Assignment of the infrastructure capacity

LAW DECREE NO. 188/2003 – RAILWAY ENTERPRISES

Railway Enterprises shall be independent as to management, administration and internal control of administrative, economical and book-keeping matters. Assets, balance and book-keeping are separated from those of the State.

Conditions for the use of the railway network:

- ❖ The enterprise shall hold a licence issued by the Ministry of Infrastructure and Transports;
- ❖ The enterprise shall hold a safety certificate issued by the manager of the infrastructure;
- ❖ Stipulation of the necessary technical and management agreements with the manager of the infrastructure;
- ❖ The Ministry of Infrastructure and Transports shall issue a specific authority.

LAW DECREE NO. 188/2003 – SAFETY CERTIFICATE

“In order to ensure and warrant a safe and reliable performance of railway services, the safety certificate attests compliance with national regulations consistent with the Community Law, as concerns specific technical and operational requisites pertaining to railway services and those pertaining to staff, rolling stock and internal organization of the railway enterprise, with particular regard to standards in the matter of safety in circulation”.

LAW DECREE NO. 188/2003 – MANAGER OF THE INFRASTRUCTURE

The Manager shall:

- ❖ be autonomous and independent of the railway enterprise from a juridical, management or decision standpoint;
- ❖ be responsible for the control of safe circulation, maintenance and renewal of the infrastructure;
- ❖ issue safety certificates;
- ❖ assign infrastructure capacity in an equitable and non-discriminatory way;
- ❖ draw up the Network Information Schedule after consultation with the interested parties;
- ❖ calculate, on the basis of the principles established by the Ministry of Infrastructure and Transports, the fees to be paid by railway enterprises to have access to the infrastructure, and collect such fees accordingly.

LAW DECREE 188/2003 – DUTIES AND FEES

The right of access and/or transit is granted to:

- ❖ International associations of enterprises of which one at least has its business site in Italy;
- ❖ International associations of enterprises not having their business sites in Italy, but enjoying a right of transit in Italy for the performance of international transport services;
- ❖ Railway enterprises having their sites in the European Union, and enjoying a right of access to the railway network for the performance of international transports of goods;
- ❖ The following parameters apply for the sake of calculating and fixing the payable fee:
- ❖ Quality of the infrastructure, namely maximum speed and technical facilities of the line;
- ❖ Saturation connected to density of convoys on single infrastructural legs within one day's time;
- ❖ Wear and tear of the track and electric line;
- ❖ Speed as degree of absorption of capacity on the line;
- ❖ Power consumption bound to the utilized traction type.

LAW DECREE NO. 188/2003 - ASSIGNMENT OF THE
INFRASTRUCTURE CAPACITY

- ❖ The assignment shall be made on an equitable and non-discriminatory basis;
- ❖ It shall allow an efficient and optimum use of the railway infrastructure.

The assignment of the capacity is made in the form of “hourly tracks”, defined as “fraction of the railway infrastructure capacity required to make a convoy travel between two places in a determined period of time.

The manager of the network and the railway enterprise may enter into an overall agreement having a duration which is customarily fixed in 5 years.

THE ROLE OF THE GUARANTOR AUTHORITY ON
COMPETITION AND MARKET IN THE PROCESS OF
LIBERALIZATION OF RAILWAY TRANSPORT.

Notice AS 265/2003:

"...one cannot abstain from pointing out that, concretely, notwithstanding the evolution of the set of rules governing the liberalization of railway transport, the State Railway group continues to be envisaged as a single economical entity on account of its typical organization and setup.

Actually, the State Railway Holding – thanks to control connections and economical interests in common with the RFI and Trenitalia enterprises – appears to be in a position to affect enterprise policies of Companies belonging to the same group. Finally, it must be borne in mind that Trenitalia, on the one side, is the most important customer of RFI, and on the other side the latter Company, as manager of the infrastructure, determines the possibility for Trenitalia's competitors to have access to the infrastructure itself and thus enter the market"

Notice AS 235:

"Article 20 of Law Decree 188/2003, besides ensuring an equitable and not discriminated access to intermodal terminals for the transport of goods, also takes care of making sure that "the manager of the infrastructure , if unable to provide any of the services under paragraph 2, entrusts, within one year's time from the coming into force of this Decree, the management of such services (...) to parties independent of the railway enterprises." The purpose of the rule is therefore traceable in the requirement to ensure the neutrality of the service supplier in respect of the railway transport enterprises, as corollary of the more general principle of separation between management of the infrastructure and transport activity. Accordingly, the regulation intends to prevent any railway enterprise also in possession of the terminal management from taking advantage of such circumstance and possibly discriminating the competitors on the transport markets."

REPORT ON TRANSPORTS - THE THRIVING OF RAILWAY TRANSPORT

Targets for 2020:

- Establishment of an European Railway System;
- Increase of the market share from 6% to 10% for passengers;
and from 8% to 15% for goods;
- Triplication of the staff's productivity;
- Improvement of power efficiency by 50%;
- Reduction by 50% of the emission of polluting substances;
- Increase of the infrastructure capacity to an extent
corresponding to the pursued traffic targets.