

Task force on licensing and insurance of railway undertakings

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Problems related to the insurance requirement in Directive 95/18

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Background

- 1995: Adoption of Directive 95/18/EC**
'A railway undertaking shall be adequately insured or make equivalent arrangements for cover' /.../' (Art. 9)
- 1999: UIC study**
Showed that requirements in MS differ
- 2000: Commission study**
Same result, no survey of liability rules, no proposals
- 2001: Adoption of Directive 2001/13**
No changes to Article 9
- 2002: Working group on common format for licence**
Thorough discussion on licence requirements in Member States.
Form for declaration of conformity with MS requirements
- 2004: Adoption of Commission Recommendation
2004/358/EC**

Discussion in previous working group

- **Requirements differ typically from 2 million euro to 100 million euro**
 - It is though possible to insure a railway undertaking in all Member States
- **An insurance taken in one Member State might not be valid in other Member States**
 - Geographical limitations more or less standard
- **The solution was to add an Annex to the licence, stating:**
 - Insurance amount
 - Geographical coverage
- **It is possible to add further Annexes to the licence**
 - In case geographical coverage is limited
 - In case amount is insufficient

What are the problems?

- **It is difficult or impossible to find an insurance company willing to offer an insurance**
 - This problem might occur if national legislation does not stipulate any limitation to liability
- **Insurance premiums are too expensive**
 - This is a problem that is often perceived by railway undertakings; however the insurance market is a well-functioning global market and premiums should in the long-term adapt to actual risk level
- **Small railway undertakings are facing relatively higher premiums than big ones**
 - This is a true problem related to the fact that risk exposure is not directly related to size
- **“Equivalent arrangements” option might be unfair to private companies**
 - This is true, but railway reform in most Member States transfer incumbents to companies under private law

And, not to forget

Insurance market on all segments and in particular transport has developed unfavourably since September 11 2001....

How about solutions?

- **Limitation of liability**
 - Nationally or by EU or international (COTIF) law
 - Who pays for damages above limit?
- **Reduction of premiums**
 - Exploit the global market
 - Create strong counterparts to insurance companies by formation of groups
 - Higher excess
- **Level playing field**
 - Should state guarantees be allowed?
 - Change of subject from undertaking to transport entities?
 - Can car insurance pay all damages in a level-crossing accident?

Should there be amendments to Article 9 of Directive 95/18?

- **So far the problems have not been sufficiently examined**
 - A new study/survey should analyse the true nature of the problems
- **The insurance market should be given time to adapt to a free rail transport market and be given better factual basis for detailed risk analyses**
 - Invite representatives of insurance brokers to the working group
- **A possible future EU legislation should be aimed at limiting liability rather than harmonising insurance amounts**
 - Learn from experience in other transport sectors