

Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (Text with EEA relevance)

## CHAPTER IV

### **LEVYING OF CHARGES FOR THE USE OF RAILWAY INFRASTRUCTURE AND ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY**

#### *SECTION 2*

#### ***Infrastructure and services charges***

#### *Article 29*

#### **Establishing, determining and collecting charges**

1 Member States shall establish a charging framework while respecting the management independence laid down in Article 4.

Subject to that condition, Member States shall also establish specific charging rules or delegate such powers to the infrastructure manager.

Member States shall ensure that the network statement contains the charging framework and charging rules or indicates a website where the charging framework and charging rules are published.

The infrastructure manager shall determine and collect the charge for the use of infrastructure in accordance with the established charging framework and charging rules.

Without prejudice to the management independence laid down in Article 4 and provided that the right has been directly conferred by constitutional law before 15 December 2010, the national parliament may have the right to scrutinise and, where appropriate, review the level of charges determined by the infrastructure manager. Any such review shall ensure that charges comply with this Directive, the established charging framework and charging rules.

2 Except where specific arrangements are made under Article 32(3), infrastructure managers shall ensure that the charging scheme in use is based on the same principles over the whole of their network.

3 Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

4 An infrastructure manager shall respect the commercial confidentiality of information provided to it by applicants.

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### Article 30

#### **Infrastructure cost and accounts**

1 Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges.

2 Without prejudice to their competence regarding railway infrastructure planning and financing, and to the budgetary principle of annuality, where applicable, Member States shall ensure that a contractual agreement, fulfilling the basic principles and parameters set out in Annex V, is concluded between the competent authority and the infrastructure manager covering a period of not less than five years.

Member States shall ensure that contractual agreements in force on 15 December 2012 are modified, if necessary, to align them with this Directive upon their renewal, or at the latest by 16 June 2015.

3 Member States shall implement the incentives referred to in paragraph 1 through the contractual agreement referred to in paragraph 2 or through regulatory measures or through a combination of incentives to reduce costs in the contractual agreement and the level of charges through regulatory measures.

4 If a Member State decides to implement the incentives referred to in paragraph 1 through regulatory measures, this shall be based on an analysis of the achievable cost reductions. This shall be without prejudice to the powers of the regulatory body to review the charges referred to in Article 56.

5 The terms of the contractual agreement referred to in paragraph 2 and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contractual period.

6 Member States shall ensure that applicants and, upon their request, potential applicants are informed by the competent authority and the infrastructure manager and are given the opportunity to express their views on the content of the contractual agreement before it is signed. The contractual agreement shall be published within one month of concluding it.

The infrastructure manager shall ensure consistency between the provisions of the contractual agreement and the business plan.

7 Infrastructure managers shall develop and maintain a register of their assets and the assets they are responsible for managing which would be used to assess the financing needed to repair or replace them. This shall be accompanied by details of expenditure on renewal and upgrading of the infrastructure.

8 Infrastructure managers shall establish a method for apportioning costs to the different categories of services offered to railway undertakings. Member States may require prior approval. That method shall be updated from time to time on the basis of the best international practice.

## Article 31

### Principles of charging

1 Charges for the use of railway infrastructure and of service facilities shall be paid to the infrastructure manager and to the operator of service facility respectively and used to fund their business.

2 Member States shall require the infrastructure manager and the operator of service facility to provide the regulatory body with all necessary information on the charges imposed in order to allow the regulatory body to perform its functions as referred to in Article 56. The infrastructure manager and the operator of service facility shall, in this regard, be able to demonstrate to railway undertakings that infrastructure and service charges actually invoiced to the railway undertaking pursuant to Articles 30 to 37 comply with the methodology, rules and, where applicable, scales laid down in the network statement.

3 Without prejudice to paragraph 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

Before 16 June 2015, the Commission shall adopt measures setting out the modalities for the calculation of the cost that is directly incurred as a result of operating the train. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

The infrastructure manager may decide to gradually adapt to those modalities during a period of no more than four years after the entry into force of those implementing acts.

4 The infrastructure charges referred to in paragraph 3 may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion.

5 The infrastructure charges referred to in paragraph 3 may be modified to take account of the cost of environmental effects caused by the operation of the train. Any such modification shall be differentiated according to the magnitude of the effect caused.

Based on the experience gained by infrastructure managers, railway undertakings, regulatory bodies and competent authorities, and recognising existing schemes on noise differentiation, the Commission shall adopt implementing measures setting out the modalities to be followed for the application of the charging for the cost of noise effects including its duration of application and enabling the differentiation of infrastructure charges to take into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3). They shall not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

Any such modification of infrastructure charges to take account of the cost of noise effects shall support the retrofitting of wagons with the most economically viable low-noise braking technology available.

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Charging of environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is applied to road freight transport in accordance with Union law.

If charging for environmental costs generates additional revenue, it shall be for Member States to decide how the revenue is to be used.

Member States shall ensure that the necessary information is kept and that the origin of the charging of environmental costs and its application can be traced. Member States shall provide the Commission with this information upon request.

6 To avoid undesirable disproportionate fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of train services and times. Nevertheless, the relative magnitude of the infrastructure charge shall be related to the costs attributable to the services.

7 The charge imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit.

8 Where services listed in points 3 and 4 of Annex II, as additional and ancillary services are offered by only one supplier, the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit.

9 Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the infrastructure manager caused by the maintenance.

10 The operator of the facility for supply of the services referred to in points 2, 3 and 4 of Annex II shall provide the infrastructure manager with the information on charges to be included in the network statement or shall indicate a website where such information is made available free of charge in electronic format in accordance with Article 27.

### *Article 32*

#### **Exceptions to charging principles**

1 In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges shall not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs listed in point 1 of Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers shall contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Infrastructure managers may further distinguish market segments according to commodity or passengers transported.

Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for those market segments.

The list of market segments shall be published in the network statement and shall be reviewed at least every five years. The regulatory body referred to in Article 55 shall control that list in accordance with Article 56.

2 For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full costs recovery of the costs incurred.

3 For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

4 The infrastructure charges for the use of railway corridors which are specified in Commission Decision 2009/561/EC<sup>(1)</sup> shall be differentiated to give incentives to equip trains with the ETCS compliant with the version adopted by the Commission Decision 2008/386/EC<sup>(2)</sup> and successive versions. Such differentiation shall not result in any overall change in revenue for the infrastructure manager.

Notwithstanding this obligation, Member States may decide that this differentiation of infrastructure charges does not apply to railway lines specified in Decision 2009/561/EC on which only ETCS equipped trains may run.

Member States may decide to extend this differentiation to railway lines not specified in Decision 2009/561/EC.

Before 16 June 2015 and following an impact assessment, the Commission shall adopt measures setting out modalities to be followed in applying the differentiation of the infrastructure charge according to a time-frame consistent with the ERTMS European Deployment Plan established under Decision 2009/561/EC and ensuring that it does not result in any overall change in revenue for the infrastructure manager. Those implementing measures shall adapt the modalities of the differentiation applicable to trains operating local and regional services using a limited section of the railway corridors specified in Decision 2009/561/EC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3). They shall not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

5 To prevent discrimination, Member States shall ensure that any given infrastructure manager's average and marginal charges for equivalent use of its infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

6 If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1 of this Article, it shall make them public at least three months in advance of the deadline for the publication of the network statement according to Article 27(4).

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### Article 33

#### Discounts

1 Without prejudice to Articles 101, 102, 106 and 107 TFEU and notwithstanding the direct cost principle laid down in Article 31(3) of this Directive, any discount on the charges levied on a railway undertaking by the infrastructure manager, for any service, shall comply with the criteria set out in this Article.

2 With the exception of paragraph 3, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

3 Infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time-limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

4 Discounts may relate only to charges levied for a specified infrastructure section.

5 Similar discount schemes shall apply for similar services. Discount schemes shall be applied in a non-discriminatory manner to any railway undertaking.

### Article 34

#### Compensation schemes for unpaid environmental, accident and infrastructure costs

1 Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.

2 Where a railway undertaking receiving compensation enjoys an exclusive right, the compensation shall be accompanied by comparable benefits to users.

3 The methodology used and calculations performed shall be publicly available. It shall in particular be possible to demonstrate the specific uncharged costs of the competing transport infrastructure that are avoided and to ensure that the scheme is granted on non-discriminatory terms to undertakings.

4 Member States shall ensure that the scheme is compatible with Articles 93, 107 and 108 TFEU.

### Article 35

#### Performance scheme

1 Infrastructure charging schemes shall encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network through a performance scheme. This scheme may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better-than-planned performance.

2 The basic principles of the performance scheme as listed in point 2 of Annex VI shall apply throughout the network.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning amendments to point 2(c) of Annex VI. Thus point 2(c) of Annex VI, may be amended in the light of the evolution of the rail market and experience gained by regulatory bodies referred to in Article 55, infrastructure managers and railway undertakings. Such amendments shall adapt the classes of delay to the best practices developed by industry.

#### *Article 36*

### **Reservation charges**

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. That non-usage charge shall provide incentives for efficient use of capacity. The levy of such a charge on applicants that were allocated a train path shall be mandatory in the event of their regular failure to use allocated paths or part of them. For the imposition of this charge, the infrastructure managers shall publish in their network statement the criteria to determine such failure to use. The regulatory body referred to in Article 55 shall control such criteria in accordance with Article 56. Payments for this charge shall be made by either the applicant or the railway undertaking appointed in accordance with Article 41(1). The infrastructure manager shall always be able to inform any interested party of the infrastructure capacity which has already been allocated to user railway undertakings.

#### *Article 37*

### **Cooperation in relation to charging systems on more than one network**

1 Member States shall ensure that infrastructure managers cooperate to enable the application of efficient charging schemes, and associate to coordinate the charging or to charge for the operation of train services which cross more than one infrastructure network of the rail system within the Union. Infrastructure managers shall, in particular, aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of the railway networks. To this end they shall establish appropriate procedures, subject to the rules set out in this Directive.

2 For the purpose of paragraph 1 of this Article, Member States shall ensure that infrastructure managers cooperate to enable mark-ups, as referred to in Article 32, and performance schemes, as referred to in Article 35, to be efficiently applied, for traffic crossing more than one network of the rail system within the Union.

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- (1) Commission Decision 2009/561/EC of 22 July 2009 amending Decision 2006/679/EC as regards the implementation of the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system ([OJ L 194, 25.7.2009, p. 60](#)).
- (2) Commission Decision 2008/386/EC of 23 April 2008 modifying Annex A to Decision 2006/679/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system and Annex A to Decision 2006/860/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European high-speed rail system ([OJ L 136, 24.5.2008, p. 11](#)).