

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 I

GENERAL PROVISIONS

Article 2

Exclusions from the scope

1 Chapter II shall not apply to railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.

Notwithstanding the first subparagraph, when such a railway undertaking is under the direct or indirect control of an undertaking or another entity performing or integrating rail transport services other than urban, suburban or regional services, Articles 4 and 5 shall apply. Article 6 shall also apply to such a railway undertaking with regard to the relationship between the railway undertaking and the undertaking or entity which controls it directly or indirectly.

2 Member States may exclude the following from the application of Chapter III:

- a undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
- b undertakings which only operate urban or suburban rail passenger services;
- c undertakings which only operate regional rail freight services;
- d undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

[^{F13} Member States may exclude the following from the application of Articles 7, 7a, 7b, 7c, 7d, 8 and 13 and Chapter IV:]

- a local and regional stand-alone networks for passenger services on railway infrastructure;
- b networks intended only for the operation of urban or suburban rail passenger services;
- c regional networks which are used for regional freight services solely by a railway undertaking that is not covered under paragraph 1 until capacity on that network is requested by another applicant;
- d privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

[^{F23a} Member States may exclude the following from the application of Articles 7, 7a, 7b, 7c, 7d and 8:

Local, low-traffic lines of a length not exceeding 100 km that are used for freight traffic between a mainline and points of origin and destination of shipments along those lines, provided that those lines are managed by entities other than the main infrastructure manager and that either (a) those lines are used by a single freight operator or (b) the essential functions in relation to those lines are performed by a body which is not

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controlled by any railway undertaking. Where there is only a single freight operator, Member States may also exempt it from the application of Chapter IV until capacity is requested by another applicant. This paragraph can equally be applied where the line is used also, to a limited extent, for passenger services. Member States shall inform the Commission of their intention to exclude such lines from the application of Articles 7, 7a, 7b, 7c, 7d and 8.

3b Member States may exclude the following from the application of Article 7, 7a, 7b, 7c and 7d:

Regional low-traffic networks managed by an entity other than the main infrastructure manager and used for the operation of regional passenger services provided by a single railway undertaking other than the incumbent railway undertaking of the Member State, until capacity for passenger services on that network is requested, and provided that the undertaking is independent of any railway undertaking operating freight services. This paragraph can equally be applied where the line is used also, to a limited extent, for freight services. Member States shall inform the Commission of their intention to exclude such lines from the application of Articles 7, 7a, 7b, 7c and 7d.]

[^{F14} Without prejudice to paragraph 3, Member States may exclude local and regional railway infrastructures which do not have any strategic importance for the functioning of the railway market from the application of Article 8(3) and local railway infrastructures which do not have any strategic importance for the functioning of the railway market from the application of Articles 7, 7a, 7c and Chapter IV. Member States shall notify the Commission of their intention to exclude such railway infrastructures. The Commission shall adopt implementing acts setting out its decision whether such railway infrastructure may be considered to be without strategic importance. In doing so, the Commission shall take into account the length of railway lines concerned, their level of use and the traffic volume potentially impacted. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 62(2).]

5 Member States may exclude from the application of Article 31(5) vehicles operated or intended to be operated from and to third countries, running on a network whose track gauge is different from the main rail network within the Union.

6 Member States may decide time periods and deadlines for the schedule for capacity allocation which are different from those referred to in Article 43(2), point 2(b) of Annex VI and points 3, 4 and 5 of Annex VII if the establishment of international train paths in cooperation with infrastructure managers of third countries on a network whose track gauge is different from the main rail network within the Union has a significant impact on the schedule for capacity allocation in general.

7 Member States may decide to publish the charging framework and charging rules applicable specifically to international freight services from and to third countries operated on a network whose track gauge is different from the main rail network within the Union with different instruments and deadlines than those provided under Article 29(1) where this is required to ensure fair competition.

8 Member States may exclude from the application of Chapter IV railway infrastructure, whose track gauge is different from the main rail network within the Union, and which connects cross-border stations of a Member State to the territory of a third country.

[^{F28a} For a period of 10 years after 24 December 2016, Member States may exclude from the application of Chapters II and IV of this Directive, with the exception of Articles 10, 13 and 56, isolated railway lines of less than 500 km, with a different track gauge to that of the

main domestic network, that connect with a third country to which Union rail legislation does not apply and that are managed by a different infrastructure manager than the main domestic network. Railway undertakings operating exclusively on such lines may be exempted from the application of Chapter II.

Such exemptions may be renewed for periods not exceeding 5 years. No later than 12 months before the expiry date of the exemption, a Member State that intends to renew an exemption shall notify the Commission of its intention to do so. The Commission shall examine whether the conditions for an exemption set out in the first subparagraph are still met. If that is not the case, the Commission shall adopt implementing acts setting out its decision on the termination of the exemption. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 62(2).]

9 This Directive shall not apply to undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28.

10 Member States may exclude from the application of Chapter II, with the exception of Article 14, and Chapter IV, any railway service carried out in transit through the Union.

11 Member States may exclude from the application of Article 32(4) trains not equipped with the European Train Control System (ETCS) and used for regional passenger services which have been placed into service for the first time before 1985.

[^{F2}12 Where there is an existing public-private partnership concluded before 16 June 2015 and the private party to that partnership is also a railway undertaking responsible for providing passenger railway services on the infrastructure, Member States may continue to exempt such a private party from the application of Articles 7, 7a and 7d and to limit the right to pick up and set down passengers for services operated by railway undertakings on the same infrastructure as the passenger services provided by the private party under the public-private partnership.

13 Private infrastructure managers that are party to a public-private partnership concluded before 24 December 2016 and that do not receive public funds shall be excluded from the application of Article 7d provided that loans and financial guarantees operated by the infrastructure manager do not benefit directly or indirectly specific railway undertakings.]

Textual Amendments

- F1** Substituted by [Directive \(EU\) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure \(Text with EEA relevance\)](#).
- F2** Inserted by [Directive \(EU\) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure \(Text with EEA relevance\)](#).