

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 3*

#### *Allocation of infrastructure capacity*

#### *Article 42*

#### **Framework agreements**

1 Without prejudice to Articles 101, 102 and 106 TFEU, a framework agreement may be concluded between an infrastructure manager and an applicant. Such a framework agreement shall specify the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable period.

The framework agreement shall not specify a train path in detail, but shall be such as to meet the legitimate commercial needs of the applicant. A Member State may require prior approval of such a framework agreement by the regulatory body referred to in Article 55 of this Directive.

2 Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.

3 Framework agreements shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.

4 Framework agreements may contain penalties should it be necessary to modify or terminate the agreement.

5 Framework agreements shall, in principle, cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

6 For services using specialised infrastructure referred to in Article 49 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multiannual amortisation plan.

In such exceptional cases, the framework agreement may set out the detailed characteristics of the capacity which is to be provided to the applicant for the duration of the framework agreement. Those characteristics may include the frequency, volume and quality of train paths. The infrastructure manager may reduce reserved capacity

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which, over a period of at least one month, has been used less than the threshold quota provided for in Article 52.

As from 1 January 2010, an initial framework agreement may be drawn up for a period of five years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 55 shall be responsible for authorising the entry into force of such an agreement.

7 While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

8 Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission may adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).