

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 4

#### *Regulatory body*

#### *Article 55*

#### **Regulatory body**

1 Each Member State shall establish a single national regulatory body for the railway sector. Without prejudice to paragraph 2, this body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity. It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.

2 Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated regulatory authorities fulfil the independence requirements set out in paragraph 1 of this Article. The regulatory body for the rail sector may also be joined in organisational term with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty<sup>(1)</sup>, the safety authority established under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways<sup>(2)</sup> or the licensing authority referred to in Chapter III of this Directive, if the joint body fulfils the independence requirements set out in paragraph 1 of this Article.

3 Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence. They shall, in particular, ensure that the persons in charge of decisions to be taken by the regulatory body in accordance with Article 56, such as members of its executive board, [<sup>X1</sup>where relevant, be appointed, under clear and transparent rules which guarantee their independence, by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings.]

Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for disciplinary reasons not related to their decision-making. They shall be selected in a transparent procedure on the basis of their merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.

Member States shall ensure that these persons act independently from any market interest related to the railway sector, and shall therefore not have any interest or business

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relationship with any of the regulated undertakings or entities. To this effect, these persons shall make annually a declaration of commitment and a declaration of interests, indicating any direct or indirect interests that may be considered prejudicial to their independence and which might influence their performance of any function. These persons shall withdraw from decision-making in cases which concern an undertaking with which they had a direct or indirect connection during the year before the launch of a procedure.

They shall not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body, and have full authority over the recruitment and management of the staff of the regulatory body.

After their term in the regulatory body, they shall have no professional position or responsibility with any of the regulated undertakings or entities for a period of not less than one year.

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**Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area \(Official Journal of the European Union L 343 of 14 December 2012\)](#).

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- (1) [OJ L 1, 4.1.2003, p. 1.](#)  
Editorial note: The title of Council Regulation (EC) No 1/2003 has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was: Articles 81 and 82 of the Treaty.
- (2) [OJ L 164, 30.4.2004, p. 44.](#)