

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 1

Subject-matter and scope

- 1 This Directive lays down:
 - a the rules applicable to the management of railway infrastructure and to rail transport activities of the railway undertakings established or to be established in a Member State as set out in Chapter II;
 - b the criteria applicable to the issuing, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Union as set out in Chapter III;
 - c the principles and procedures applicable to the setting and collecting of railway infrastructure charges and the allocation of railway infrastructure capacity as set out in Chapter IV.
- 2 This Directive applies to the use of railway infrastructure for domestic and international rail services.

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.

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[^{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 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.

[^{F212} 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.]

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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).

Article 3

Definitions

For the purpose of this Directive, the following definitions apply:

- (1) 'railway undertaking' means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;
- (2) [^{F1}'infrastructure manager' means any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development as determined by the Member State within the framework of its general policy on development and financing of infrastructure;]
- (2a) [^{F2}'development of the railway infrastructure' means network planning, financial and investment planning as well as the building and upgrading of the infrastructure;
- (2b) 'operation of the railway infrastructure' means train path allocation, traffic management and infrastructure charging;
- (2c) 'maintenance of the railway infrastructure' means works intended to maintain the condition and capability of existing infrastructure;
- (2d) 'renewal of the railway infrastructure' means major substitution works on the existing infrastructure which do not change its overall performance;
- (2e) 'upgrade of the railway infrastructure' means major modification works to the infrastructure which improve its overall performance;
- (2f) 'essential functions' of infrastructure management means decision-making concerning train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and decision-making concerning infrastructure charging, including determination and collection of charges, in accordance with the charging framework and the capacity allocation framework established by the Member States pursuant to Articles 29 and 39;]
- (3) 'railway infrastructure' means the items listed in Annex I;
- (4) 'international freight service' means a transport service where the train crosses at least one border of a Member State; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons cross at least one border;

- (5) 'international passenger service' means a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border;
- (6) 'urban and suburban services' means transport services whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas;
- (7) 'regional services' means transport services whose principal purpose is to meet the transport needs of a region, including a cross-border region;
- (8) 'transit' means crossing territory of the Union without loading or unloading goods, and/or without picking up passengers or setting them down in territory of the Union;
- (9) 'alternative route' means another route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;
- (10) 'viable alternative' means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the freight or passenger service concerned;
- (11) 'service facility' means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II;
- (12) 'operator of service facility' means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in points 2 to 4 of Annex II;
- (13) 'cross-border agreement' means any agreement between two or more Member States or between Member States and third countries intended to facilitate the provision of cross-border rail services;
- (14) 'licence' means an authorisation issued by a licensing authority to an undertaking, by which its capacity to provide rail transport services as a railway undertaking is recognised; that capacity may be limited to the provision of specific types of services;
- (15) 'licensing authority' means the body responsible for granting licences within a Member State;
- (16) 'contractual agreement' means an agreement or, *mutatis mutandis*, an arrangement within the framework of administrative measures;
- (17) 'reasonable profit' means a rate of return on own capital that takes account of the risk, including that to revenue, or the absence of such risk, incurred by the operator of the service facility and is in line with the average rate for the sector concerned in recent years;
- (18) 'allocation' means the allocation of railway infrastructure capacity by an infrastructure manager;
- (19) 'applicant' means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities under

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- Regulation (EC) No 1370/2007 and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity;
- (20) 'congested infrastructure' means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity;
- (21) 'capacity-enhancement plan' means a measure or series of measures with a calendar for their implementation which aim to alleviate the capacity constraints which led to the declaration of an element of infrastructure as 'congested infrastructure';
- (22) 'coordination' means the process through which the infrastructure manager and applicants will attempt to resolve situations in which there are conflicting applications for infrastructure capacity;
- (23) 'framework agreement' means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;
- (24) 'infrastructure capacity' means the potential to schedule train paths requested for an element of infrastructure for a certain period;
- (25) 'network' means the entire railway infrastructure managed by an infrastructure manager;
- (26) 'network statement' means the statement which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity;
- (27) 'train path' means the infrastructure capacity needed to run a train between two places over a given period;
- (28) 'working timetable' means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force;
- (29) 'storage siding' means sidings specifically dedicated to temporary parking of railway vehicles between two assignments;
- (30) 'heavy maintenance' means work that is not carried out routinely as part of day-to-day operations and requires the vehicle to be removed from service^{[F1];}
- (31) '[^{F2}vertically integrated undertaking' means an undertaking where, within the meaning of Council Regulation (EC) No 139/2004⁽¹⁾:
- (a) an infrastructure manager is controlled by an undertaking which at the same time controls one or several railway undertakings that operate rail services on the infrastructure manager's network;
 - (b) an infrastructure manager is controlled by one or several railway undertakings that operate rail services on the infrastructure manager's network; or

- (c) one or several railway undertakings that operate rail services on the infrastructure manager's network are controlled by an infrastructure manager.

It also means an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not have a distinct legal personality.

Where an infrastructure manager and a railway undertaking are fully independent of each other, but both are controlled directly by a Member State without an intermediary entity, they are not considered to constitute a vertically integrated undertaking for the purposes of this Directive;

- (32) 'public private partnership' means a binding arrangement between public bodies and one or more undertakings other than the main infrastructure manager of a Member State, under which the undertakings partially or totally construct and/or fund railway infrastructure, and/or acquire the right to exercise any of the functions listed in point (2) for a predefined period of time. The arrangement may take any appropriate legally binding form foreseen in national legislation;
- (33) 'management board' means the senior body of an undertaking performing executive and administrative functions, which is responsible and accountable for day-to-day management of the undertaking;
- (34) 'supervisory board' means the most senior body of an undertaking that fulfils supervisory tasks, including the exercise of control over the management board and general strategic decisions regarding the undertaking;
- (35) 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or more railway undertakings;
- (36) 'high speed passenger services' means passenger rail services operated without intermediate stops between two places separated at least by a distance of more than 200 km on specially-built high-speed lines equipped for speeds generally equal or greater than 250 km/h and running on average at those speeds.]

Textual Amendments

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- (1) [^{F2}Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).]

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Textual Amendments

- 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).