

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.

3 Member States may exclude the following from the application of Articles 7, 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.

4 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 rail market from the application of Article 8(3) and local railway infrastructures which do not have any strategic importance for the functioning of the rail market from the application of Chapter IV. Member States shall notify the Commission of their intention to exclude such railway infrastructures. In accordance with the advisory procedure referred to in Article 62(2), the Commission shall decide whether such railway infrastructure may be considered to be

without any strategic importance taking into account the length of railway lines concerned, their level of use and the traffic volume potentially impacted.

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.

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.