

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 2

Infrastructure and services charges

Article 32

Exceptions to charging principles

1 In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges shall not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

Before approving the levy of such mark-ups, Member States shall ensure that the infrastructure managers evaluate their relevance for specific market segments, considering at least the pairs listed in point 1 of Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers shall contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Infrastructure managers may further distinguish market segments according to commodity or passengers transported.

Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for those market segments.

The list of market segments shall be published in the network statement and shall be reviewed at least every five years. The regulatory body referred to in Article 55 shall control that list in accordance with Article 56.

2 For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full costs recovery of the costs incurred.

3 For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue to set higher charges on

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the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

[^{F14} The infrastructure charges for the use of railway corridors which are specified in Commission Regulation (EU) 2016/919⁽¹⁾ may be differentiated to give incentives to equip trains with the ETCS that is compliant with the version adopted by the Commission Decision 2008/386/EC⁽²⁾ and with successive versions. Such differentiation shall not result in any overall increase in revenue for the infrastructure manager.

Member States may decide that this differentiation of infrastructure charges does not apply to railway lines specified in Regulation (EU) 2016/919 on which only ETCS equipped trains run.

Member States may decide to extend this differentiation to railway lines not specified in Regulation (EU) 2016/919.]

5 To prevent discrimination, Member States shall ensure that any given infrastructure manager's average and marginal charges for equivalent use of its infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

6 If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1 of this Article, it shall make them public at least three months in advance of the deadline for the publication of the network statement according to Article 27(4).

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 \(Text with EEA relevance\)](#).

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- (1) [^{F1}Commission Regulation (EU) 2016/919 of 27 May 2016 on the technical specification for interoperability relating to the ‘control-command and signalling’ subsystems of the rail system in the European Union (OJ L 158, 15.6.2016, p. 1).]
- (2) [^{F1}Commission Decision 2008/386/EC of 23 April 2008 modifying Annex A to Decision 2006/679/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system and Annex A to Decision 2006/860/EC concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European high-speed rail system (OJ L 136, 24.5.2008, p. 11).]

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