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.

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.

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) 'infrastructure manager' means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or firms;

(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 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.