

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 II

DEVELOPMENT OF THE UNION RAILWAYS

SECTION 1

Management independence

Article 4

Independence of railway undertakings and infrastructure managers

1 Member States shall ensure that, as regards management, administration and internal control over administrative, economic and accounting matters, railway undertakings directly or indirectly owned or controlled by Member States have independent status in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

2 While respecting the charging and allocation framework and the specific rules established by the Member States, the infrastructure manager shall be responsible for its own management, administration and internal control.

Article 5

Management of the railway undertakings according to commercial principles

1 Member States shall enable railway undertakings to adjust their activities to the market and to manage those activities under the responsibility of their management bodies, in the interests of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Railway undertakings shall be managed according to the principles which apply to commercial companies, irrespective of their ownership. This shall also apply to the public service obligations imposed on them by Member States and to public service contracts which they conclude with the competent authorities of the State.

2 Railway undertakings shall determine their business plans, including their investment and financing programmes. Such plans shall be designed to achieve the undertakings' financial equilibrium and other technical, commercial and financial management objectives; they shall also indicate the means of attaining those objectives.

3 With reference to the general policy guidelines issued by each Member State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:

- a establish their internal organisation, without prejudice to the provisions of Articles 7, 29 and 39;

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- b control the supply and marketing of services and fix the pricing thereof;
- c take decisions on staff, assets and own procurement;
- d expand their market share, develop new technologies and new services and adopt any innovative management techniques;
- e establish new activities in fields associated with the railway business.

This paragraph is without prejudice to Regulation (EC) No 1370/2007.

4 Notwithstanding paragraph 3, shareholders of publicly owned or controlled railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under the rules of the company law of Member States. The provisions of this Article shall be without prejudice to the powers of supervisory bodies under the company law of Member States relating to the appointment of board members.