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 U.K.

DEVELOPMENT OF THE UNION RAILWAYS

SECTION 4 U.K.

Access to railway infrastructure and services

Article 10 *U.K.*

Conditions of access to railway infrastructure

1 Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all Member States for the purpose of operating all types of rail freight services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in point 2 of Annex II, and to infrastructure serving or potentially serving more than one final customer.

[[F1]1a Without prejudice to the international obligations of the Union and the Member States, Member States having a border to a third country may limit the right of access provided for in this Article for services operated from and to that third country running on a network the track gauge of which is different from the main railway network within the Union if distortions of competition arise in cross-border railway transport between Member States and that third country. Such distortions may result, inter alia, from lack of non-discriminatory access to rail infrastructure and related services in the third country concerned.

If a Member State, in accordance with this paragraph, intends to adopt a decision to limit the right of access, it shall submit the draft decision to the Commission and consult the other Member States.

If, within a period of 3 months after submitting that draft decision, neither the Commission nor another Member State objects to it, the Member State may adopt the decision.

The Commission may adopt implementing acts setting out the details of the procedure to be followed for the application of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).**]**

[[F2]2 Without prejudice to Regulation (EC) No 1370/2007, railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right of access to railway infrastructure in all Member States for the purpose of operating rail passenger services. Railway undertakings shall have the right to pick up passengers at any station and set them down at another. That right shall include access to infrastructure connecting service facilities referred to in point 2 of Annex II to this Directive.**]**

[F3]3 . . . . . .

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[F3]4 . . . . . .

Textual Amendments

F1 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).

F2 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).

F3 Deleted 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 11 U.K.

Limitation of the right of access and of the right to pick up and set down passengers

[[F2]1 Member States may limit the right of access provided for in Article 10(2) to passenger services between a given place of departure and a given destination when one or more public service contracts cover the same route or an alternative route if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question.**]**

[[F2]2 In order to determine whether the economic equilibrium of a public service contract would be compromised, the relevant regulatory body or bodies referred to in Article 55 shall make an objective economic analysis and base their decision on pre-determined criteria. They shall determine this after a request from any of the following, submitted within 1 month from the receipt of the information on the intended passenger service referred to in Article 38(4):

a the competent authority or competent authorities that awarded the public service contract;

b any other interested competent authority with the right to limit access under this Article;

c the infrastructure manager;

d the railway undertaking performing the public service contract.**]**

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided by these parties, and, as appropriate, shall ask for relevant information from, and initiate consultation with, all relevant parties, within one month of receipt of the request. The regulatory body shall consult all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks of receipt of all relevant information.

[[F2]3 The regulatory body shall give the grounds for its decision and the conditions under which a reconsideration of the decision may be requested, within 1 month of its notification, by one of the following:

a the relevant competent authority or competent authorities;

b the infrastructure manager;

c the railway undertaking performing the public service contract;

d the railway undertaking seeking access.

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Where the regulatory body decides that the economic equilibrium of a public contract would be compromised by the intended passenger service referred to in Article 38(4), it shall indicate possible changes to that service which would ensure that the conditions to grant the right of access provided for in Article 10(2) are met.**]**

4 Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt by 16 December 2016 measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

[[F1]Based on the experience of regulatory bodies, competent authorities and railway undertakings, and based on the activities of the network referred to in Article 57(1), the Commission shall by 16 December 2018 adopt implementing acts setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article as regards domestic passenger services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).**]**

[[F2]5 Member States may also limit the right of access to railway infrastructure for the purpose of operating domestic passenger services between a given place of departure and a given destination within the same Member State where:

a exclusive rights to convey passengers between these stations have been granted under a public service contract awarded before 16 June 2015; or

b an additional right/authorisation to operate commercial passenger services in competition with another operator between these stations has been awarded by 25 December 2018 on the basis of a fair competitive tendering procedure;

and where these operators receive no compensation to operate these services.

Such a limitation may continue for the original duration of the contract or authorisation, or until 25 December 2026, whichever is shorter.**]**

6 Member States shall ensure that the decisions referred to in paragraphs 1, 2, 3 and 5 are subject to judicial review.

Textual Amendments

F1 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).

F2 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).

[[F1]*Article 11a* U.K.

High-speed passenger services

1 With a view to developing the market for high-speed passenger services, promoting optimal use of available infrastructure, and in order to encourage the competitiveness of high-speed passenger services resulting in beneficial effects for passengers, without prejudice to Article 11(5), the exercise of the right of access provided for in Article 10 as regards high speed

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passenger services may only be subject to the requirements established by the regulatory body in accordance with this Article.

2 Where the regulatory body, following the analysis foreseen in Article 11(2), (3) and (4), determines that the intended high speed passenger service between a given place of departure and a given destination compromises the economic equilibrium of a public service contract that covers the same route or an alternative route, the regulatory body shall indicate possible changes to the service which would ensure that the conditions to grant the right of access provided for in Article 10(2) are met. Such changes may include a modification of the intended service.**]**

Textual Amendments

F1 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 12 U.K.

Levy on railway undertakings providing passenger services

1 Without prejudice to Article 11(2), Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

In that case, railway undertakings providing domestic or international rail passenger transport services shall be subject to the same levy on the operation of routes which fall within the jurisdiction of that authority.

2 The levy is intended to compensate the authority for public service obligations laid down in public service contracts awarded in accordance with Union law. The revenue raised from such a levy and paid as compensation shall not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

3 The levy shall be imposed in accordance with Union law, and shall respect in particular the principles of fairness, transparency, non-discrimination and proportionality, in particular between the average price of the service to the passenger and the level of the levy. The total levies imposed pursuant to this paragraph shall not endanger the economic viability of the rail passenger transport service on which they are imposed.

4 The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.

5 Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

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Article 13 U.K.

Conditions of access to services

1 Infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package laid down in point 1 of Annex II.

2 Operators of service facilities shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in point 2 of Annex II, and to the services supplied in these facilities.

3 To guarantee full transparency and non-discrimination of access to the service facilities referred to in points 2(a), (b), (c), (d), (g) and (i) of Annex II, and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of a body or firm which is also active and holds a dominant position in national railway transport services markets for which the facility is used, the operators of these service facilities shall be organised in such a way that they are independent of this body or firm in organisational and decision-making terms. Such independence shall not imply the requirement of the establishment of a separate legal entity for service facilities and may be fulfilled with the organisation of distinct divisions within a single legal entity.

For all service facilities referred to in point 2 of Annex II, the operator and the body or firm shall have separate accounts, including separate balance sheets and profit and loss accounts.

Where operation of the service facility is ensured by an infrastructure manager or the operator of the service facility is under the direct or indirect control of an infrastructure manager compliance with the requirements set out in this paragraph shall be deemed to be demonstrated by the fulfilment of the requirements set out in Article 7.

4 Requests by railway undertakings for access to, and supply of services in the service facility referred to in point 2 of Annex II shall be answered within a reasonable time limit set by the regulatory body referred to in Article 55. Such requests may only be refused if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. This shall not oblige the operator of the service facility to make investments in resources or facilities in order to accommodate all requests by railway undertakings.

Where requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of the service facility referred to in paragraph 3, the operator of the service facility shall justify in writing any decision of refusal and indicate viable alternatives in other facilities.

5 Where an operator of the service facility referred to in point 2 of Annex II encounters conflicts between different requests, it shall attempt to meet all requests in so far as possible. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the applicant may complain to the regulatory body referred to in Article 55 which shall examine the case and take action, where appropriate, to ensure that an appropriate part of the capacity is granted to that applicant.

6 Where a service facility referred to in point 2 of Annex II has not been in use for at least two consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service

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facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

7 Where the operator of the service facility provides any of the services referred to in point 3 of Annex II as additional services, it shall supply them upon request to railway undertakings in a non-discriminatory manner.

8 Railway undertakings may request, as ancillary services, further services referred to in point 4 of Annex II from the infrastructure manager or from other operators of the service facility. The operator of the service facility is not obliged to supply these services. Where the operator of the service facility decides to offer to others any of these services, it shall supply them upon request to railway undertakings in a non-discriminatory manner.

9 Based on the experience of regulatory bodies and operators of service facilities and based on the activities of the network referred to in Article 57(1), the Commission may adopt measures setting out the details of the procedure and criteria to be followed for access to the services to be supplied in the service facilities referred to in points 2 to 4 of Annex II. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

[F1 Article 13a U.K.

Common information and through-ticketing schemes

1 Without prejudice to Regulation (EC) No 1371/2007 of the European Parliament and of the Council[(1)] and Directive 2010/40/EU of the European Parliament and of the Council[(2)], Member States may require railway undertakings operating domestic passenger services to participate in a common information and integrated ticketing scheme for the supply of tickets, through-tickets and reservations or give the power to competent authorities to establish such a scheme. If such a scheme is established, Member States shall ensure that it does not create market distortion or discriminate between railway undertakings and that it is managed by a public or private legal entity or an association of all railway undertakings operating passenger services.

2 The Commission shall monitor rail market developments concerning the introduction and use of common information and through-ticketing systems and shall assess the need for action at Union level, taking into account market initiatives. It shall in particular consider non-discriminatory access for rail passengers to data necessary to plan journeys and book tickets. By 31 December 2022, it shall present a report to the European Parliament and the Council on the availability of such common information and through-ticketing systems, to be accompanied, if appropriate, by legislative proposals.

3 Member States shall require railway undertakings operating passenger services to put in place contingency plans and shall ensure that these contingency plans are properly coordinated to provide assistance to passengers, in the sense of Article 18 of Regulation (EC) No 1371/2007, in the event of a major disruption to services.**]**

Textual Amendments

F1 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).

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(1) **[**[F1]Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).**]**

(2) **[**[F1]Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (OJ L 207, 6.8.2010, p. 1).**]**

Textual Amendments

F1 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).