

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 4

Regulatory body

Article 55

Regulatory body

1 Each Member State shall establish a single national regulatory body for the railway sector. Without prejudice to paragraph 2, this body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity. It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.

2 Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated regulatory authorities fulfil the independence requirements set out in paragraph 1 of this Article. The regulatory body for the rail sector may also be joined in organisational term with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty⁽¹⁾, the safety authority established under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways⁽²⁾ or the licensing authority referred to in Chapter III of this Directive, if the joint body fulfils the independence requirements set out in paragraph 1 of this Article.

3 Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence. They shall, in particular, ensure that the persons in charge of decisions to be taken by the regulatory body in accordance with Article 56, such as members of its executive board, [^{x1}where relevant, be appointed, under clear and transparent rules which guarantee their independence, by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings.]

Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for disciplinary reasons not related to their decision-making. They shall be selected in a transparent procedure on the basis of their merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.

Member States shall ensure that these persons act independently from any market interest related to the railway sector, and shall therefore not have any interest or business

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relationship with any of the regulated undertakings or entities. To this effect, these persons shall make annually a declaration of commitment and a declaration of interests, indicating any direct or indirect interests that may be considered prejudicial to their independence and which might influence their performance of any function. These persons shall withdraw from decision-making in cases which concern an undertaking with which they had a direct or indirect connection during the year before the launch of a procedure.

They shall not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body, and have full authority over the recruitment and management of the staff of the regulatory body.

After their term in the regulatory body, they shall have no professional position or responsibility with any of the regulated undertakings or entities for a period of not less than one year.

Editorial Information

- X1 Substituted by Corrigendum to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Official Journal of the European Union L 343 of 14 December 2012).

Article 56

Functions of the regulatory body

1 Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:

- a the network statement in its provisional and final versions;
- b the criteria set out in it;
- c the allocation process and its result;
- d the charging scheme;
- e the level or structure of infrastructure charges which it is, or may be, required to pay;
- f arrangements for access in accordance with Articles 10 to 13;
- g access to and charging for services in accordance with Article 13^{F1;I}
- [^{F2}h traffic management;
- i renewal planning and scheduled or unscheduled maintenance;
- j compliance with the requirements, including those regarding conflicts of interest, set out in Article 2(13) and Articles 7, 7a, 7b, 7c, and 7d.]

[^{F1}2 Without prejudice to the powers of the national competition authorities to secure competition in the rail services markets, the regulatory body shall have the power to monitor the competitive situation in the rail services markets, including in particular the market for high-speed passenger services, and the activities of infrastructure managers in relation to points (a) to (j) of paragraph 1. In particular, the regulatory body shall verify compliance with points (a) to (j) of paragraph 1 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.]

3 The regulatory body shall also cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community⁽³⁾, and the licensing authority within the meaning of this Directive.

Member States shall ensure that these authorities jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with recommendations on issues that may affect safety. Without prejudice to the independence of each authority within the field of their respective competences, the relevant authority shall examine any such recommendation before adopting its decisions. If the relevant authority decides to deviate from these recommendations, it shall give reasons in its decisions.

4 Member States may decide that the regulatory body is given the task to adopt non-binding opinions on the provisional versions of the business plan referred to in Article 8(3), the contractual agreement and the capacity-enhancement plan to indicate in particular whether these instruments are consistent with the competitive situation in the rail services markets.

5 The regulatory body shall have the necessary organisational capacity in terms of human and material resources, which shall be proportionate to the importance of the rail sector in the Member State.

6 The regulatory body shall ensure that charges set by the infrastructure manager comply with Section 2 of Chapter IV and are non-discriminatory. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Chapter.

7 The regulatory body shall, regularly and, in any case, at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.

8 The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned.

Information requested shall be supplied within a reasonable period set by the regulatory body that shall not exceed one month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed two additional weeks. The regulatory body shall be able to enforce such requests with appropriate penalties, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes.

[^{F19}] The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within 1 month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within 6 weeks from receipt of all relevant information.

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Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.]

A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance. The regulatory body shall be able to enforce its decisions with the appropriate penalties, including fines.

In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.

10 Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal may have suspensive effect on the decision of the regulatory body only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law, where applicable.

11 Member States shall ensure that decisions taken by the regulatory body are published.

[^{F1}12 In order to verify compliance with accounting separation provisions laid down in Article 6 and provisions on financial transparency laid down in Article 7d, the regulatory body shall have the power to carry out audits or initiate external audits with infrastructure managers, operators of service facilities and, where relevant, railway undertakings. In the case of vertically integrated undertakings, those powers shall extend to all legal entities. The regulatory body shall be entitled to request any relevant information. In particular the regulatory body shall have the power to request infrastructure manager, operators of service facilities and all undertakings or other entities performing or integrating different types of rail transport or infrastructure management as referred to in Article 6(1) and (2) and Article 13 to provide all or part of the accounting information listed in Annex VIII with a sufficient level of detail as deemed necessary and proportionate.

Without prejudice to the powers of the national authorities responsible for State aid issues, the regulatory body may also draw conclusions from the accounts concerning State aid issues which it shall report to those authorities.

Financial flows referred to in Article 7d(1), loans referred to in Article 7d(4) and (5), and debts referred to in Article 7d(7) shall be subject to monitoring by the regulatory body.

Where a Member State has designated the regulatory body as the independent competent body referred to in Article 7c(4), the regulatory body shall assess the cooperation agreements referred to in that Article.]

13 The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VIII. Thus, Annex VIII may be amended to adapt it to the evolution of accounting and control practices and/or to supplement it with additional elements necessary to verify separation of accounts.

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).

- F2** 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 57

Cooperation between regulatory bodies

1 The regulatory bodies shall exchange information about their work and decision-making principles and practice and, in particular, exchange information on the main issues of their procedures and on the problems of interpreting transposed Union railway law. They shall otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose, they shall participate and work together in a network that convenes at regular intervals. The Commission shall be a member, coordinate and support the work of the network and make recommendations to the network, as appropriate. It shall ensure active cooperation of the appropriate regulatory bodies.

Subject to the rules on data protection provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁴⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽⁵⁾, the Commission shall support the exchange of the information referred above among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets supplied by the relevant undertakings.

2 The regulatory bodies shall cooperate closely, including through working arrangements, for the purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3 In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the regulatory body concerned shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the Commission, and shall request all necessary information from them before taking its decision.

[^{F2}3a Where matters concerning an international service require decisions of two or more regulatory bodies, the regulatory bodies concerned shall cooperate in preparing their respective decisions in order to bring about a resolution of the matter. For that purpose, the regulatory bodies concerned shall carry out their functions in accordance with Article 56.]

4 The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national law. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5 The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

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6 Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. That regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph 3.

7 At the request of a regulatory body, the Commission may participate in the activities listed under paragraphs 2 to 6 for the purpose of facilitating the cooperation of regulatory bodies as outlined in those paragraphs.

[^{F1}8 Regulatory bodies shall develop common principles and practices for making the decisions for which they are empowered under this Directive. Such common principles and practices shall include arrangements for the resolution of disputes that arise within the framework of paragraph 3a. Based on the experience of regulatory bodies and on the activities of the network referred to in paragraph 1, and, if needed, to ensure efficient cooperation of regulatory bodies, the Commission may adopt implementing acts setting out such common principles and practices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).]

9 Regulatory bodies shall review decisions and practices of associations of infrastructure managers as referred to in Article 37 and Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

[^{F2}10 For decisions concerning a bi-national infrastructure, both Member States concerned may at any time after 24 December 2016 agree to require coordination between the regulatory bodies concerned in order to align the impact of their decisions.]

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).
- F2** 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).

- (1) [OJ L 1, 4.1.2003, p. 1.](#)
Editorial note: The title of Council Regulation (EC) No 1/2003 has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was: Articles 81 and 82 of the Treaty.
- (2) [OJ L 164, 30.4.2004, p. 44.](#)
- (3) [OJ L 191, 18.7.2008, p. 1.](#)
- (4) [OJ L 281, 23.11.1995, p. 31.](#)
- (5) [OJ L 8, 12.1.2001, p. 1.](#)