

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 V

FINAL PROVISIONS

Article 58

Public procurement rules

The provisions of this Directive shall be without prejudice to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors⁽¹⁾.

Article 59

Derogations

1 Until 15 March 2013, Ireland, as a Member State located on an island, with a rail link to only one other Member State, and the United Kingdom, in respect of Northern Ireland, on the same basis:

- a do not need to entrust to an independent body the functions determining equitable and non-discriminatory access to infrastructure, as provided for in the first subparagraph of Article 7(1) in so far as that Article obliges Member States to establish independent bodies performing the tasks referred to in Article 7(2);
- b do not need to apply the requirements set out in Article 27, Article 29(2), Articles 38, 39 and 42, Article 46(4) and (6), Article 47, Article 49(3), and Articles 50 to 53, 55 and 56 on condition that decisions on the allocation of infrastructure capacity or the charging of fees are open to appeal, if so requested in writing by a railway undertaking, before an independent body which shall take its decision within two months of the submission of all relevant information and whose decision shall be subject to judicial review.

2 Where more than one railway undertaking licensed in accordance with Article 17, or, in the case of Ireland and Northern Ireland, a railway company so licensed elsewhere, submits an official application to operate competing railway services in, to or from Ireland or Northern Ireland, the continued applicability of this derogation shall be decided upon in accordance with the advisory procedure referred to in Article 62(2).

The derogations referred to in paragraph 1 shall not apply where a railway undertaking operating railway services in Ireland or Northern Ireland submits an official application to operate railway services on, to or from the territory of another Member State, with the exceptions of Ireland for railway undertakings operating in Northern Ireland and the United Kingdom for railway undertakings operating in Ireland.

Within one year from the receipt of either the decision referred to in the first subparagraph of this paragraph or notification of the official application referred to in the second subparagraph of this paragraph, the Member State or States concerned (Ireland

or the United Kingdom with respect to Northern Ireland) shall put in place legislation to implement the Articles referred to in paragraph 1.

3 A derogation referred to in paragraph 1 may be renewed for periods not longer than five years. Not later than 12 months before the expiry date of the derogation a Member State availing itself of that derogation may address a request to the Commission for a renewed derogation. Any such request shall be justified. The Commission shall examine such a request and adopt a decision in accordance with the advisory procedure referred to in Article 62(2). That procedure shall apply to any decision related to the request.

When adopting its decision, the Commission shall take into account any development in the geopolitical situation and the development of the rail market in, from and to the Member State that requested the renewed derogation.

Article 60

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 20(5), Article 35(3), Article 43(2) and Article 56(13) shall be conferred on the Commission for a period of five years from 15 December 2012. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of powers referred to in Article 20(5), Article 35(3), Article 43(2) and Article 56(13) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 20(5), Article 35(3), Article 43(2) and Article 56(13) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 61

Measures of application

At the request of a Member State, of a regulatory body or on its own initiative, the Commission shall examine specific measures adopted by national authorities in relation to the application of this Directive, concerning the conditions of access to railway infrastructure and services, the licensing of railway undertakings, infrastructure

charging and capacity allocation within 12 months after adoption of those measures. The Commission shall decide in accordance with the procedure referred to in Article 62(2) whether the related measure may continue to be applied within four months of receipt of such a request.

Article 62

Committee procedure

1 The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. When the committee delivers no opinion on a draft implementing act to be adopted pursuant to Article 10(4), Article 11(4), Article 12(5), Article 13(9) and Article 17(5), Article 31(3) and (5), Article 32(4) and Article 57(8), the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 63

Report

1 By 31 December 2012 at the latest, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of Chapter II. This report shall also assess the development of the market, including the state of preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). The Commission shall, if appropriate, propose legislative measures in relation to the opening of the domestic rail passenger market and to develop appropriate conditions to ensure non-discriminatory access to the infrastructure, building on the existing separation requirements between infrastructure management and transport operations, and shall assess the impact of any such measures.

2 In light of the experience acquired through the network of regulatory bodies, the Commission shall, by 16 December 2014, submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions a report on cooperation between regulatory bodies. The Commission shall, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, in particular for international services. To that end, legislative measures shall also be considered, if appropriate.

Article 64

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive including as regards compliance by undertakings, operators, applicants, authorities and other entities concerned by 16 June 2015. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

The obligations for transposition and implementation of Chapters II and IV of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

Article 65

Repeal

Directives 91/440/EEC, 95/18/EC and 2001/14/EC, as amended by the Directives listed in Annex IX, Part A, are repealed with effect from 15 December 2012, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex IX.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X.

Article 66

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 67

Addressees

This Directive is addressed to the Member States.

(1) [OJ L 134, 30.4.2004, p. 1.](#)