Regulation (EU) 2020/1429 of the European Parliament and of the Council of 7 October 2020 establishing measures for a sustainable rail market in view of the COVID-19 outbreak (Text with EEA relevance)

REGULATION (EU) 2020/1429 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 October 2020

establishing measures for a sustainable rail market in view of the COVID-19 outbreak

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The COVID-19 outbreak has brought about a sharp drop in demand for rail transport services. This has had a serious impact on railway undertakings. The impact started to manifest itself as early as 1 March 2020 and is likely to last until at least 31 December 2020. The circumstances linked to the COVID-19 outbreak are beyond the control of railway undertakings which are facing considerable liquidity problems and major losses, and in some cases the risk of insolvency.

(2) In order to counteract the negative economic effects of the COVID-19 outbreak, railway undertakings might need financial support. It might not be possible for railway undertakings to pay charges for accessing rail infrastructure due to the COVID-19 outbreak, and, for that reason, infrastructure managers should be authorised to reduce, waive or defer such charges. This possibility should be granted for a period during which the effects of the COVID-19 outbreak on the rail market have already manifested itself and are expected to do so, i.e. from 1 March 2020 until 31 December 2020 (the ‘reference period’).

(3) Under Article 31(3) of Directive 2012/34/EU of the European Parliament and of the Council[(3)], track access charges to be paid to the infrastructure manager are not to fall below the cost directly incurred as a result of operating the train service. A partial or full waiver of charges or a deferral thereof, applied in a transparent, objective and non-

discriminatory way to all railway undertakings, active in the freight and/or passenger rail sectors, would alleviate the impact of the COVID-19 outbreak during the reference period. Member States should therefore have the possibility to authorise infrastructure managers to take measures to that effect.

(4) Article 32(1) of Directive 2012/34/EU allows Member States to levy mark-ups, if the market can bear them. Due to the impact of the COVID-19 outbreak, the ability of the market segments to bear mark-ups might have decreased. Member States should therefore have the possibility to authorise infrastructure managers to reassess the ability to bear mark-ups of the market segments, for the purpose of a possible reduction of the amounts due in respect of the reference period.

(5) Article 36 of Directive 2012/34/EU provides for a regime of reservation charges, intended to incentivise the efficient use of capacity. According to that Article, the levying of those charges is mandatory in case of regular failure by an applicant, including railway undertakings, to use allocated paths or part of them. Infrastructure managers are to publish in their network statements the criteria to determine such failure to use. The COVID-19 outbreak has caused severe disruptions to rail traffic that have led to widespread train path cancellations. The underlying events were and are beyond the control of railway undertakings. Moreover, they resulted in temporary lower use of capacity. It can therefore be assumed that the incentive effect that reservation charges under Article 36 of Directive 2012/34/EU are intended to produce is not relevant insofar as the reference period is concerned. Member States should therefore have the possibility to authorise infrastructure managers not to levy reservation charges for capacity allocated but not used during the reference period, even where such a non-use would be considered to be a regular failure to use allocated paths or part of them under the criteria currently applicable.

(6) In respect of track access charges, levying of mark-ups and reservation charges, any reduction in charges authorised by Member States in accordance with this Regulation would entail income losses on the part of the infrastructure manager. Those income losses would, in principle, be compensated in accordance with Article 8(4) of Directive 2012/34/EU. Given the extraordinary character of those losses, infrastructure managers should be refunded within a shorter period than the one provided for in that Article, namely by 31 December of the year following the year in which the loss was incurred.

(7) Temporary adjustments of the conditions for the use of rail infrastructure should be made and network statements should be kept up to date and amended as necessary.

(8) Due to the unforeseeable and sudden nature of the COVID-19 outbreak, it was impossible to adopt relevant measures in time. For that reason, this Regulation should also cover a period before its entry into force. Given the nature of the measures provided for by this Regulation, such an approach does not result in a violation of the legitimate expectations of the persons concerned.

(9) The further development of the COVID-19 outbreak and its further impact on the rail transport sector are difficult to predict. The Commission should continuously analyse the economic impact of the COVID-19 outbreak on that sector and the Union should

be in a position to prolong without undue delay the period during which the measures provided for by this Regulation apply if the adverse conditions persist.

(10) In order to extend, if necessary and justified, the validity of the measures provided for in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of prolonging the reference period during which the measures provided for by this Regulation apply. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(4)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(11) Since the objective of this Regulation, namely to lay down temporary rules on the levying of charges for the use of railway infrastructure in response to the urgent situation created by the COVID-19 outbreak, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(12) In order to allow for the prompt application of the measures provided for in this Regulation, it should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

[*F1* *Article 1*

This Regulation lays down temporary rules on the levying of charges for the use of railway infrastructure as set out in Chapter IV of Directive 2012/34/EU. It applies to the use of railway infrastructure for domestic and international rail services covered by that Directive, during the period from 1 March 2020 until 30 June 2021 ('the reference period').**]**

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2020/2180 of 18 December 2020 extending the reference period of Regulation (EU) 2020/1429 of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 outbreak (Text with EEA relevance).

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/1429 of the European Parliament and of the Council. (See end of Document for details)*

Article 2

Reduction, waiver or deferral of charges for the minimum access package and of reservation charges

1 Notwithstanding Article 27 and Article 31(3) of Directive 2012/34/EU, and subject to compliance with State aid rules, Member States may authorise infrastructure managers to reduce, waive or defer the payment of charges for the minimum access package, and for access to infrastructure connecting service facilities, where appropriate according to the market segments identified in their network statements, in a transparent, objective and non-discriminatory way, where such payment has or will become due during the reference period.

2 Notwithstanding Article 27 of Directive 2012/34/EU and subject to compliance with State aid rules, Member States may authorise infrastructure managers to reassess the ability of the market segments to bear mark-ups within the meaning of Article 32(1) of Directive 2012/34/EU, for the purpose of a possible reduction of the amounts due in respect of the reference period.

3 Notwithstanding Article 27 and the third sentence of Article 36 of Directive 2012/34/EU, and subject to compliance with State aid rules, Member States may authorise infrastructure managers not to levy reservation charges on any applicant, including railway undertakings, for capacity allocated but not used during the reference period. When doing so, Member States and infrastructure managers shall act in a transparent, objective and non-discriminatory way.

4 Notwithstanding Article 8(4) of Directive 2012/34/EU, and subject to compliance with State aid rules, Member States shall compensate infrastructure managers for the specific financial loss suffered as a result of the application of paragraphs 1, 2 and 3 of this Article by 31 December of the year following the year in which the loss was incurred. That compensation is without prejudice to the Member States' obligation under Article 8(4) of Directive 2012/34/EU to ensure that, over a reasonable period, which shall not exceed a period of five years, the profit and loss account of an infrastructure manager shall remain balanced.

5 Member States shall inform the Commission of the measures taken under this Article no later than three months from the date of entry into force of this Regulation, and shall inform the Commission of subsequent measures or changes thereof. The Commission shall make this information publicly available.

Article 3

Adjustments of the conditions for the use of rail infrastructure

Infrastructure managers shall amend, as appropriate and without delay, the network statement referred to in Article 27 of Directive 2012/34/EU so as to display the conditions applied by them, in view of the measures taken by the Member State concerned in accordance with Article 2 of this Regulation.

Article 4

Regulatory body

Article 56 of Directive 2012/34/EU shall apply to the reduction, waiver or deferral of charges for the minimum access package and of reservation charges referred to in Article 2 of this Regulation and to the adjustments of the conditions for the use of railway