Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2015/909

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area[(1)], and in particular Article 31(3) thereof,

Whereas:

(1) A need for accelerated renewal or maintenance resulting from a more intense use of the network may be taken into account for the purposes of calculation of direct costs, provided it is ensured that only costs directly incurred as a result of operating the train service are included.

(2) Infrastructure managers are under the obligation to operate networks whilst they face restrictions hampering efficient management and cost control. Consequently, Member States should have the opportunity to set direct costs at the level of costs of efficient service provision.

(3) Setting the track access charge at the costs directly incurred by the train service should not set out to cause that the infrastructure manager to experience either a net financial loss or a net financial gain as a result of operation of the train service.

(4) Historical asset values should be based on the amounts paid for acquisition of assets by the infrastructure manager provided that the infrastructure manager remains liable for such amounts.

(5) The infrastructure manager should not be allowed to recover the cost of investment in an asset where it is not obliged to repay that cost.

(6) Since the modalities for the calculation of the cost that is directly incurred as a result of operating the train service should be applicable throughout the Union, they should be compatible with the existing infrastructure cost accounting systems and cost data applied by the infrastructure managers.

(7) The use of forecast costs and performance levels should not give rise, under usual business circumstances, to higher levels of direct costs, track access charges and

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eventually an ineffective use of the network. Therefore historic asset values should be applied and only if such values are not available, or where current values are lower, could current values be considered. Alternatively, estimated values or replacement values, forecast costs and forecast performance levels could be used provided the infrastructure manager substantiates to the regulatory body how it established them and that it established them objectively.

(8) The infrastructure manager should be allowed to include in the calculation of its direct costs only costs that it can objectively and robustly demonstrate that they are triggered directly by the operation of the train service. For example, wear and tear of track-side signals and signal boxes does not vary with traffic and therefore should not be subject to a direct cost-based charge[(2)]. Conversely, parts, such as point infrastructure, will be exposed to wear and tear by operating the train service and thus should partially be subject to a direct cost charge. As sensors become more widely deployed on trains and infrastructure, these could provide additional information on the actual wear and tear caused by the train service.

(9) The Court of Justice delivered a judgment on the calculation of direct costs incurred by operating the train service[(3)]. This Regulation takes that judgement into account.

(10) Electric supply equipment such as cables or transformers are generally not subject to wear and tear by the operation of the train service. These are neither exposed to friction nor to other impacts caused by the operation of the train service. Therefore these costs of electric supply equipment should not be included in the calculation of costs directly incurred by an operation of the train service. However, trains, when they use electric traction, wear down the contact medium (overhead wire or the electrified third rail) due to friction and the electric arcs they cause. Consequently, a part of the maintenance and renewal costs of these contact mediums could be considered as directly incurred by operation of the train service. Maintenance and renewal costs of other components of overhead line equipment can also degrade as a direct result of traffic movements which cause electrical and mechanical stress.

(11) The use of vehicles or railway lines with certain design features results in different levels of direct costs incurred by the train service. Member States may allow their infrastructure managers to modulate average direct costs in accordance with, inter alia, best international practice to reflect such differences.

(12) It is a well-established economic principle that user charges based on marginal costs ensure the optimum effective use of available infrastructure capacity. Hence, the infrastructure manager may decide to use the proxy of marginal costs for calculating its cost directly incurred as a result of operating the train service.

(13) Furthermore, international best practice[(4)] has established methods and models such as econometric or engineering modelling, to calculate the marginal costs of infrastructure use. At the same time, international best practice will continue to develop as further independent analysis and research — verified independently of the infrastructure manager, such as by the Regulatory Body — is undertaken, including analysis and research which may be specific to an individual Member State because of particular infrastructure characteristics. Consequently, the infrastructure manager should be

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allowed to use such models to identify the direct costs incurred by the operation of the train service.

(14) Different forms of econometric or engineering modelling might offer a higher degree of precision in calculating direct costs or marginal costs of the use of infrastructure. However, cost modelling requires a higher level of data quality and expertise than methods based on deducting from the full costs certain non-eligible cost categories. Moreover, regulatory bodies may not yet be able to verify the compliance of a concrete calculation with the provisions of Directive 2012/34/EU. Consequently, where these higher requirements are met, the infrastructure manager should be given the right to calculate direct costs on the basis of econometric or engineering modelling or a combination of both.

(15) Regulatory bodies should be able to check whether the different charging principles are applied consistently with the information the infrastructure manager provided to them. Therefore, Annex IV of Directive 2012/34/EU requires the infrastructure manager to detail in the network statement the methodology, rules and, where applicable, scales as regards both costs and charges.

(16) International studies[(5)] calculated values of direct unit costs in close collaboration with infrastructure managers. Although these studies analysed various methods used in Member States for different fleet compositions and different destinations, many values of direct costs per train kilometres were found to be below EUR 2 (at 2005 prices and exchange rates, using an appropriate price index) per train km of a 1 000 t train. To curb administrative effort for regulatory bodies, the same degree of detail should not be required of the calculation of direct costs when their value remains below this level.

(17) For different reasons, such as productivity gains, the spread of new technologies or a better understanding of cost causation, the calculation of direct costs should be updated or reviewed regularly in accordance with, inter alia, best international practice.

(18) Given that railway undertakings need predictable charging systems and have reasonable expectations for the development of infrastructure charges, the infrastructure manager should provide a phasing-in plan for railway undertakings operating the train services that may see their charges significantly increase following a review of the implementation of the existing calculation modalities, if such a phase-in plan is required by the regulatory body.

(19) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 62(1) of Directive 2012/34/EU,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation sets out the modalities for the calculation of the costs directly incurred as a result of operating the train service for the purpose of setting the charges for the minimum

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access package and access to infrastructure connecting service facilities referred to in Article 31(3) of Directive 2012/34/EU.

2 This Regulation shall apply without prejudice to the provisions regarding the financing of infrastructure or the equilibrium of income and expenditure of the infrastructure manager set out in Article 8 of Directive 2012/34/EU.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘direct cost’ means the cost which is directly incurred as a result of operating the train service;

(2) ‘direct unit cost’ means the direct cost per train kilometre, vehicle kilometre, gross tonne kilometre of a train, or a combination of those;

(3) ‘cost centre’ means a business unit within the infrastructure manager's accounting system to which costs are allocated for the sake of apportioning those costs directly or indirectly to a marketable service.

Article 3

Direct costs on a network-wide basis

1 Direct costs on a network-wide basis shall be calculated as the difference between, on the one hand, the costs for providing the services of the minimum access package and for the access to the infrastructure connecting service facilities and, on the other hand, the non-eligible costs referred to in Article 4.

2 The Member State may decide that the infrastructure manager applies the costs of efficient service provision for the purposes of calculation of direct costs on a network-wide basis referred to in paragraph 1.

3 Asset values used for the purpose of calculating direct costs on a network-wide basis shall be based on historic values or, where such values are not available or where current values are lower, on current values. Historic values of the assets shall be based on the amounts paid and documented by the infrastructure manager at the time of acquisition of these assets. In case of a debt relief, whereby all of part of the infrastructure manager's debts have been assumed by another entity, the infrastructure manager shall attribute a relevant part of the debt relief to reduce its asset values and the corresponding direct costs on a network-wide basis. By derogation from the first sentence, the infrastructure manager may apply values including estimated values or current values or replacement values if they can be transparently, robustly and objectively measured and duly justified to the regulatory body.

4 Without prejudice to Article 4 and if the infrastructure manager can transparently, robustly, and objectively measure and demonstrate on the basis of, inter alia, best international practice that costs are directly incurred by the operation of the train service, the infrastructure manager may include in the calculation of its direct costs on a network-wide basis in particular the following costs:

a costs of staff needed for keeping open a particular stretch of line if an applicant requests to run a specific train service scheduled outside the regular opening hours of this line;

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b the part of the costs of points infrastructure, including switches and crossings, that is exposed to wear and tear by the train service;

c the part of the costs of renewing and maintaining the overhead wire or the electrified third rail or both and the supporting overhead line equipment directly incurred as a result of operating the train service;

d the costs of staff needed for preparing the allocation of train paths and the timetable to the extent that they are directly incurred as a result of operating the train service.

5 Costs used for calculation under this Article shall be based on payments effected or forecast by the infrastructure manager. Costs calculated under this Article shall be measured or forecast consistently on the basis of data from the same time period.

Article 4

Non-eligible costs

1 The infrastructure manager shall not include in the calculation of direct costs on a network-wide basis in particular the following costs:

a fixed costs relating to the provision of a stretch of line which the infrastructure manager must bear even in the absence of train movements;

b costs that do not relate to payments made by the infrastructure manager. Costs or cost centres that are not directly linked to the provision of the minimum access package or to access to infrastructure connecting service facilities;

c costs of acquisition, selling, dismantling, decontamination, recultivation or renting of land or other fixed assets;

d network-wide overhead costs, including overhead salaries and pensions;

e financing costs;

f costs related to technological progress or obsolescence;

g costs of intangible assets;

h costs of track-side sensors, track-side communication equipment and signalling equipment if not directly incurred by operation of the train service;

i costs of information, non-track side located communication equipment or telecommunication equipment;

j costs related to individual incidences of force majeure, accidents and service disruptions without prejudice to Article 35 of Directive 2012/34/EU;

k costs of electric supply equipment for traction current if not directly incurred by operation of the train service. Direct costs of operation of the train services that do not use electric supply equipment shall not include costs of using the electric supply equipment;

l costs related to the provision of information mentioned under item 1(f) of Annex II to Directive 2012/34/EU, unless incurred by operation of the train service;

m administrative costs incurred by schemes of differentiated charges referred to in Articles 31(5) and 32(4) of Directive 2012/34/EU;

n depreciation which is not determined on the basis of real wear and tear of infrastructure due to the train service operation;

o the part of the costs of maintenance and renewal of civil infrastructure that is not directly incurred by operation of the train service.

2 If the infrastructure manager received funding to finance specific infrastructure investments, which it is not obliged to repay and where such investments are taken into account