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Delegations will find attached document C(2021) 4611 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

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extending the reference period of 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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Since the beginning of 2020, the COVID-19 outbreak has had a major impact on rail transport in the Union. Rail passenger and freight transport have declined due to limitations on mobility and the consequent reduction in the demand for transport. During the first period of the pandemic in spring 2020, rail operators stopped most international passenger trains. Passenger numbers in domestic rail transport decreased during the first wave of the pandemic by up to 90% compared to the previous year. A few operators, in particular new entrants, had to stop operations whilst rail freight operators reported a severe decrease in transported volumes as many industries slowed down or even ceased their production due to the impact of the pandemic. Throughout the summer of 2020, demand and transport volumes remained at low levels in both passenger and freight transport.

A second wave of the pandemic in the fall of 2020 obliged many countries to take further restrictive measures with regard to citizens' mobility. Some of these measures remained in place until the beginning of 2021. Whilst some traffic volumes show a positive trend in the period starting in January 2021 up until March 2021, some others remained at depressed levels. Moreover, even when the number of train-km recovered almost to the pre-pandemic levels, the numbers of passengers and the amount of goods transported (the latter to a much lesser extent) have not yet reached the levels of 2019. Therefore, the impact of the pandemic on the transport sector continues to be significant.

On 7 October 2020, the EU adopted Regulation (EU) No 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. Under Article 2 of Regulation (EU) No 2020/1429, 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. These relief measures should be taken in a transparent, objective and non-discriminatory way and refer to payments of charges that have or will become due during the reference period set out in Article 1 of the Regulation (1 March 2020 until 31 December 2020). The aim of the Regulation is to enable rail stakeholders to better cope with the financial consequences of the COVID-19 pandemic, and to respond to their urgent liquidity needs as long as those consequences persist.

Regulation (EU) 2020/1429 grants delegated powers to the Commission to extend its reference period. In particular, pursuant to its Article 5(2), the Commission may adopt a delegated act amending the reference period specified in Article 1 of the Regulation. This power is conferred where the Commission finds that the reduction in the level of rail traffic as compared to the level in the corresponding period in the previous years is persisting and is likely to persist and that this situation is the result of the impact of the COVID-19 outbreak. Findings of this kind must be underpinned by the data as referred to in Article 5(2). Any such delegated act may only extend the reference period by up to six months, and the reference period may not be extended beyond 14 April 2022.

Having concluded that the reduction in the level of rail traffic, as a result of the impact of the outbreak of COVID-19, was persisting and that this situation was most likely to remain until the mid of 2021, the Commission adopted 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 until June 2021.

2. ASSESSMENT OF THE IMPACT OF COVID-19 PANDEMIC ON RAIL TRAFFIC

The Commission assessed the data (on rail volumes) referred to in paragraph 1 of Article 5 of the Regulation (EU) 2020/1429 from January 2019 to March 2021, in conjunction with data on passenger and freight volumes made available by Eurostat.

Limitations to the movement of persons continued to affect passenger mobility since March 2020. Even if Member States progressively lifted limitations in summer 2020, they introduced new measures following the surge of the second wave of the pandemic in the fall of 2020. In early March 2021, the restrictions due to the pandemic were expected to be fully or partially lifted. However, they were tightened again in many Member States due to the surge of a third wave of the pandemic.

The pandemic had in general a higher impact on passenger services than on freight services, despite differences among Member States.

- The number of passenger trains circulating on the network decreased by 6.9% over one year between March 2020 and February 2021 compared to the same period of 2019-2020; in particular the number of passenger commercial trains decreased by 27.9%. The number of passenger trains operated under public service obligations ('PSO passenger services') decreased by 5.5% over the same period.
- The number of freight trains circulating on the network decreased by 4.9% between March 2020 and February 2021 compared to the same period 2019-2020.
- With regard to the impact of the second wave of the pandemic, the number of passenger trains circulating on the network decreased by 1.3% between October 2020 and February 2021 compared to the same period of 2019-2020; in particular the number of passenger commercial trains decreased by 25.8%. The number of PSO passenger trains increased by 1.3% over the same period.
- As for freight trains, their number decreased by 0.2% between October 2020 and February 2021 compared to the same period 2019-2020.
- Among passenger segments, the pandemic had a severe and persisting effect on commercial services. For services rendered under public service contracts, the traffic data expressed in terms of train-km may underestimate the impact of the crisis on passenger volumes, as the competent authority determines the frequencies of the train runs. The number of passengers end 2020 remains half of those compared to end 2019, while train-km of PSO passenger services are increasing.
- Passenger services expressed in train-km decreased by 11.4% between March 2020 and February 2021 compared to the same period of 2019-2020, freight services by 6.1%. With regard to the impact of the second wave of the pandemic, passenger train-km decreased by 6.1% between October 2020 and February 2021 compared to the same period of 2019-2020, whereas freight services increased by 0.6%.
- Between March 2020 and February 2021, PSO passenger services expressed in train-km decreased by 5.9% compared to the same period 2019-2020, commercial passenger services by 33.1%.
- With regard to the impact of the second wave of the pandemic, between October 2020 and February 2021, PSO passenger services expressed in train-km increased by 0.6% compared to the same period 2019-2020, commercial passenger services decreased by 30%.

The previous data compare trends of rail traffic during the period of the pandemic against corresponding periods before the pandemic. This is the reason why, despite being available, data for March 2021 were not included in the analysis (March 2020 being the first month where the pandemic started affecting the mobility of rail passengers).

However, data including March 2021 were used to assess the traffic trends to be expected in 2021.

Infrastructure managers' data (number of trains, train-km) clearly show how marked the impact of the COVID-19 pandemic has been on the supply of rail transport services and how limited in time and size the recovery of rail traffic during summer 2020 has been, in particular for commercial passenger services.

Eurostat quarterly data on passenger-km and tonne-km transported by rail for 2020 show the evolution of the demand for passenger and freight rail services. These figures, available until December 2020, show the significant impact on volumes during the first and second wave of the pandemic in particular for the passenger segment. Furthermore, they inform about the possible consequences of the third wave of the pandemic in spring 2021:

- traffic in terms of passenger-km has decreased in the second quarter of 2020 by 75% compared to second quarter 2019. After a short recovery in the third quarter of the year, it declined again in the fourth quarter by 56% compared to the fourth quarter 2019;
- the number of passengers in the fourth quarter 2020 was halved compared to the level in the same period in 2019;
- traffic in terms of tonne-km decreased by 15% in the second quarter of 2020 compared to second quarter 2019, but recovered thereafter increasing by 5% in the fourth quarter 2020 compared to the same quarter 2019; and
- the amount of tonnes moved by train in the fourth quarter 2020 increased by 3% compared to 2019.

Considering PSO and commercial passenger services per country, these two passenger segments had a different impact because of the pandemic. In particular, the level of commercial services is still far from pre-crisis levels. When considering the number of trains and the level of train-km, PSO services appear more resilient. Nevertheless, the persistent low number of passengers and passenger-km reported by Eurostat, suggests that these services continued to run despite the limited number of passengers due to the continued financial support by the competent authorities.

- In some countries, commercial passenger services stopped during 2020 and have not yet restarted, in particular where commercial passenger volumes were already low before the pandemic.
- Even where commercial services were more resilient, traffic levels remained lower than before the pandemic and they continue to threaten the survival of the railway undertakings providing them.
- Available data show that since March 2020 the pandemic continued to have a negative impact on the rail sector, even putting at risk the survival of some rail transport operators.

Moreover, the pandemic has severely hit the segment of commercial (national and international) high-speed passenger services. The rapid decline in commercial passenger train-km in countries with a well-established offer of high-speed services supports this conclusion.

Despite the apparent recovery of the consumer confidence - the latest available flash estimate of the Commission's monthly consumer confidence indicator, published in April 2021, shows that the indicator continued its recovery and is now above its long-term average – the impact of the COVID-19 pandemic on public transport activities still persists.

Following flat values in January and February 2021, a sharp increase in March brought the ESI (Economic Sentiment Indicators) virtually back to its long-term average in the EU for the first time since the outbreak of the pandemic on the European continent. These positive developments need to be considered with caution, as a part of the underlying surveys were conducted in early March when restrictions due to the pandemic were expected to be fully or partially lifted, before they were tightened again in many Member States later in March. Looking at sector developments however, services confidence in March is still well below its long-term average and pre-pandemic level¹.

The EU economy contracted by 6.1% and the euro area economy by 6.6% in 2020. The rebound in Europe's economy that began last summer stalled in the fourth quarter of 2020 and in the first quarter of 2021, due to public health measures introduced to contain the second wave of the pandemic. The EU and euro area economies are expected to rebound strongly as vaccination rates increase and restrictions are eased. According to the Spring 2021 Economic Forecast of the European Commission, the EU economy will expand by 4.2% in 2021 and by 4.4% in 2022. The euro area economy is forecast to grow by 4.3% this year and 4.4% next year. Despite the significant upgrade of the growth outlook compared to the previous forecast, Member States should see their economies return to pre-crisis levels only by the end of 2022².

Member States used more tailored, less severe mobility restriction measures during the second wave compared to the first wave. Nevertheless, the measures taken had a negative impact on rail traffic and the financial equilibrium of railway undertakings still suffers from the impact of the first wave of the pandemic.

The outbreak of a second wave of the pandemic hindered the quick recovery of rail traffic, in particular for rail passenger services. In October and November 2020, Member States imposed new limitations to mobility. The effects of an improvement of the public health situation due to the vaccination campaign will likely materialise only in the fall of 2021. Nevertheless, the passenger numbers are still to make a full recovery, remaining at about half of the pre-pandemic level in the fourth quarter 2020. In particular, for commercial passenger traffic the time to recover to pre-pandemic levels may be longer than expected.

Based on the above, the Commission concludes, first, that the reduction in the level of rail traffic resulting from the impact of the outbreak pandemic is still persisting. Second, despite the expected improvement in public health conditions, the Commission considers it as very likely that there will be a persistent negative impact of the pandemic on the rail traffic and railway undertakings' difficult financial situation at least until the end of this year. The prolongation of the period of application of the Regulation by six months until the end of December 2021 will include the obligation for rail infrastructure managers to provide a new set of data. The new data set will help in the assessment of the situation at the end of 2021.

Consequently, the Commission proposes to prolong the duration of the reference period by six months, until 31 December 2021.

¹ [European Business Cycle Indicators. 1st Quarter 2021 \(europa.eu\)](https://ec.europa.eu/economy_finance/european-business-cycle-indicators-1st-quarter-2021)

² Links to the Spring 2021 Economic Forecast are available here: [Spring 2021 Economic Forecast: Rolling up sleeves \(europa.eu\)](https://ec.europa.eu/economy_finance/spring-2021-economic-forecast)

3. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 6(4) of Regulation (EU) No 2020/1429, before adopting a delegated act, the Commission is to consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The Commission consulted the Group of experts on rail market (GERM) on the draft of this delegated act.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 amends ‘the reference period’ during which the temporary rules on the levying of charges for the use of railway infrastructure and derogations from the charging principles as set out in Chapter IV of Directive 2012/34/EU apply. It applies to the use of railway infrastructure for domestic and international rail services covered by that Directive.

In order to prevent a risk of serious legal uncertainty, it is appropriate to adopt this delegated Regulation under the urgency procedure detailed under Article 5(3) of Regulation (EU) 2020/1429. This delegated Regulation shall therefore enter into force without delay, the day following that of its publication in the Official Journal, and shall apply as long as no objection is expressed.

COMMISSION DELEGATED REGULATION (EU) .../...

of 28.6.2021

extending the reference period of 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 COMMISSION,

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

Having regard to 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 outbreak³, and in particular Article 5(2) thereof,

Whereas:

- (1) The COVID-19 pandemic has led to a sharp drop in rail traffic because of a significant fall in demand and direct measures taken by the Member States to contain the pandemic.
- (2) Those circumstances are beyond the control of railway undertakings that have continuously faced considerable liquidity problems, major losses and in some cases are risking insolvency.
- (3) In order to counteract the negative economic effects of the COVID-19 pandemic and support railway undertakings, Regulation (EU) 2020/1429 enables Member States to authorise infrastructure managers to reduce, waive or defer charges for accessing rail infrastructure. That possibility had been granted from 1 March 2020 until 31 December 2020 and was extended by Commission Delegated Regulation (EU) 2020/2180⁴ until 30 June 2021 ('the reference period').
- (4) Limitations imposed on mobility during the period of the pandemic had a significant impact on the use of rail passenger services. Rail freight services were also impacted but in a more limited way. Based on the data provided by Union rail infrastructure managers, the pandemic hit harder the passenger service segment and, in particular the commercial passenger service segment, with a significant reduction of its offer across all Member States, which has still not come back to its 2019 levels. Between March 2020 and February 2021, passenger services expressed in train-km decreased by 11.5% compared to the same period 2019-2020, freight services by 6.1%. Between March 2020 and February 2021, passenger services operated under public service obligations expressed in train-km decreased by 5.9% compared to the same period 2019-2020, commercial passenger services by 33.1%. In the fourth quarter of 2020,

³ OJ L 333, 12.10.2020, p. 1.

⁴ 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 (OJ L 433, 22.12.2020, p. 37).

the passenger traffic in passenger-km decreased by 56% and the number of passengers halved compared to the same period in 2019. That trend may have a significant impact on competition in the rail passenger markets, the realisation of a truly single European rail area and, ultimately the move towards a more sustainable transport sector with more people and goods moving by rail. The freight traffic in tonne-km increased by 5% in the fourth quarter of 2020 compared to 2019 and the amount of tonnes moved by train increased by 3%.

- (5) The World Health Organisation data shows that the number of daily recorded cases of COVID-19 in Europe is still very high as the cases reported on 9 May 2021 were at the level of 107,253 on that day only.
- (6) At the end of April 2021, the European Centre for Disease Control highlighted that “Europe is at a critical juncture in its fight against COVID-19. Many countries are currently relaxing restrictions, some against a backdrop of increasing numbers of cases and with new variants emerging, while still rolling out nationwide vaccination programmes.”
- (7) The reduction in the level of rail traffic as compared to the level in the corresponding period in the previous years is persisting and is likely to continue at least until the conclusion of the vaccination process. That this situation is the result of the impact of the COVID-19 outbreak.
- (8) It is therefore necessary to extend the reference period established in Article 1 of Regulation (EU) 2020/1429 until the end of December 2021.
- (9) If the European Parliament and the Council were to scrutinise this Regulation for the full period of objection provided for in Article 6(6) of Regulation (EU) 2020/1429, this Regulation would only enter into force after the end of the reference period currently envisaged in Article 1 of Regulation (EU) 2020/1429. In order to avoid legal uncertainty this Regulation should be adopted under the urgency procedure provided for in Article 7 of Regulation (EU) 2020/1429, and 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*,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EU) 2020/1429 is replaced by the following:

“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 31 December 2021 (“the reference period”).

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28.6.2021

For the Commission
The President
Ursula VON DER LEYEN