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Delegations will find attached document C(2020) 9260 final.

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

of 18.12.2020

extending the reference period of 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

(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 Europe. Rail passenger and freight transport have significantly declined due to limitations on mobility and consequent lower demand for transport. During the first period of the pandemic in spring 2020, rail operators stopped most international passenger trains. The number of passengers of domestic rail transport fell by up to 90% compared to last year. Few operators, in particular new entrants, had to stop operations whilst rail freight operators reported drop in transported volumes as many industries slowed down or even ceased their production due to the impact of the pandemic. During the following period in summer 2020, demand and transport volumes remained at low levels in both passenger and freight transport.

In autumn 2020, a second wave of the pandemic obliged many countries to take further restrictive measures with regard to citizens' mobility. 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 of Regulation (EU) No 2020/1429 (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 respond to their urgent liquidity needs as long as those consequences persist.

Regulation (EU) No 2020/1429 grants delegated powers to the Commission to extend its reference period. In particular, the Commission may adopt a delegated act amending the reference period specified in Article 1 of Regulation (EU) No 2020/1429. 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. As follows from Article 5(1) and (2) of the Regulation, the values of year 2019 are to be used as a proxy for the traffic levels prevailing in "previous years". This is justified by the rather stable traffic levels in recent years before the outbreak of the pandemic and the fact that 2019 is the last year before that outbreak.

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

The Commission assessed the data referred to in paragraph 1 of Article 5 of the Regulation in conjunction with data on passengers and freight volumes made available by Eurostat and other information from institutional sites, media and internal sources.

The Commission draws the following conclusions based on the analysis of the data concerning EU-27.

- Limitations to the free movement of persons severely hit the rail sector in March, April and May 2020. Even if Member States progressively lifted these limitations from May onward, Eurostat data indicate that the demand continued to decrease at least until June 2020.
- The pandemic had in general a higher impact on passenger services than on freight services, despite differences for each Member State[1].
  - Between March and September 2020, passenger services expressed in train-km decreased by 16.9% compared to the same period the previous year, freight services by 11.1%. The first wave of the pandemic hit both segments even harder in April 2020. Passenger traffic in train-km declined by 40.6% and freight traffic by 19.9% as compared to April 2019. In September 2020, the total train-km were still 5.5% lower than in September 2019, mainly due to persistently low passenger train-km, still down by 6.0%.
  - Between March and September 2020, the number of passenger trains circulating on the network decreased by 11.1% compared to the same period the previous year, the number of freight trains by 8.2%. In April 2020, the number of passenger trains decreased by 33.9% and the number of freight trains by 17.0% as compared to April 2019. In September 2020, the total number of trains circulating on the network was in line with the figure registered in September 2019, with significant differences across segments. In particular, the number of passenger commercial trains was still below the same month of 2019, the number of PSO passenger trains was back to the 2019 levels.
- Among passenger segments, the pandemic had a severe and persisting effect on commercial services. For public service contracts, the traffic data expressed in terms of train-km may underestimate the impact of the crisis as it is the competent authority that is entitled to change frequencies.
  - Between March and September 2020, PSO passenger services expressed in train-km decreased by 12.2% compared to the same period the previous year, commercial passenger services by 37.3%. In April 2020, PSO traffic in train-km declined by 35.0% and commercial traffic 64.5% as compared to April 2019. In September 2020, the total passenger train-km were still 6.0% lower than in September 2019, mainly due to persistently low commercial passenger train-km, still down by 22.5%.
  - Between March and September 2020, in the EU-27 the number of PSO passenger trains circulating on the network decreased by 10.8% compared to the same period the previous year, the number of commercial passenger trains by 22.4%. In April 2020, the number of PSO trains decreased by 34.5% and the number of commercial trains decreased by 42.8% as compared to April 2019. In September 2020, the total number of passenger trains circulating on the network was in line with the figure registered in September 2019, with

[1] The data set EU-27 does not include Luxembourg and Greece, as the infrastructure managers did not provide the required data in time.

significant differences across segments. In particular, the number of passenger commercial trains was still 9.3% lower than the same month of 2019.

- 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 fragile the summer recovery has been until September 2020. Eurostat quarterly data on passenger-km and tonne-km transported by rail in the first two quarters 2020 show the evolution of customers' demand for passenger and freight rail services. These figures, available until June 2020[2], demonstrate the huge impact on demand volumes during the first wave of the pandemic. Furthermore, they inform about the possible consequences of the second wave of the pandemic that hit the sector after the summer:
  - traffic in terms of passenger-km decreased by 16.8% in the first quarter of 2020 compared to the same period in 2019. In the second quarter of 2020 the decrease was 71.2% compared to the same period of 2019; and
  - traffic in terms of tonne-km decreased by 8.3% in the first quarter of 2020 compared to the same period in 2019. In the second quarter of 2020 the decrease was 15.9% compared to the same period of 2019.
- Considering PSO and commercial passenger services per country, these two passenger segments have differently suffered from the consequences of the pandemic. In particular, commercial services are still struggling to come back to the 2019 levels.
  - In some countries, commercial passenger services stopped offering their services during some months of 2020, in particular where commercial passenger volumes were already low before the pandemic.
  - Even where commercial services were more resilient, the traffic levels are too low to guarantee the survival of railway undertakings.
- Moreover, the pandemic has severely hit the segment of 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.

Available data shows that in the period between March 2020 and September 2020 the COVID-19 pandemic has had an exceptional negative impact on the rail sector, even putting at risk the survival of some rail transport operators.

Despite the absence of more recent traffic data to assess the impact of the second wave currently hitting Europe, some conclusions can be drawn by looking at the forecast of economic activities and recent decisions of railway undertakings on service reduction as reported in the press.

According to the autumn 2020 economic forecast of the Commission, economic activities in Europe suffered from a severe shock in the first half of the year, rebounding in the third quarter as containment measures were gradually lifted. However, the resurgence of the COVID-19 pandemic in autumn in conjunction with the reintroduction of containment measures by national authorities resulted in a new drop of the economic activities. The

[2] Eurostat figures on EU-27 on passenger kilometres do not include Austria and Belgium, figures on EU-27 on tonne kilometres do not include Belgium.

forecast was prepared in a context of severe uncertainty, assuming public health measures tightening significantly in the fourth quarter of 2020, and gradually easing in 2021 and 2022. Output in both the euro area and the EU is not expected to recover to pre-pandemic levels in 2022[3].

The latest available flash estimate of the Commission's consumer confidence indicator[4], published in November 2020, shows negative values for both the euro area (−17.6 points) and the EU (−18.7 points): both are below their long-term averages of −11.2 and −10.6 respectively and have decreased compared to October.

A similar picture is drawn by the Commission's Economic Sentiment Indicator (ESI).The ESI was particularly hit during the first wave of the pandemic and started recovering only in May. The latest available Commission's business and consumer survey[5] shows how ESI's recovery came to a halt in both the euro area and the EU in October 2020, when the second wave hit the continent.

Member States are using more tailored, less severe lockdown measures during the second wave. Nevertheless, these measures are still having a negative impact on rail traffic and the financial equilibrium of railway undertakings still suffers from the impact of the first wave. Various national press releases show the reactions of railway undertakings that have drastically reduced their offer and cut down services.[6]

The outbreak of a second wave of the pandemic hinders the quick recovery of rail traffic, in particular for rail passenger services. In October and November, Member States have re-imposed limitations to mobility. The data available until September 2020 and the available data on consumer confidence show that the effects of an improvement of the public health situation, assuming that such an improvement were to occur in the first half of 2021, for example due to the availability of a vaccine, will likely materialise only with considerable delay. It can thus be estimated that levels of rail traffic will remain below pre-pandemic levels at least until mid next year.

Based on the above, the Commission concludes, first, that the reduction in the level of rail traffic found is persisting and is the result of the impact of the outbreak of COVID-19. Second, given the current renewed worsening of the COVID-19 pandemic in Europe, the experience reflected in the traffic figures available until September 2020 and the economic forecast described above, the Commission considers it very likely that a negative impact of the pandemic on the rail traffic will continue to persist at least until the middle of the next year. The prolongation of the period of application of the Regulation by six months until the end of June 2021 will renew 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 expiry of the measures established by Regulation (EU) 2020/1429, as extended by the present delegated Regulation.

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3 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2021 and https://ec.europa.eu/info/sites/info/files/economy-finance/ecfin_forecast_autumn_2020_overview_en.pdf

4 https://ec.europa.eu/info/sites/info/files/flash_consumers_2020_11_en.pdf

5 https://ec.europa.eu/info/sites/info/files/full_bcs_2020_10_en.pdf

6 https://quifinanza.it/info-utili/video/covid-italo-sospende-treni-rimborso/430356/; https://www.brusselstimes.com/news/business/139117/thalys-suspends-trains-between-brussels-and-germany-izy-paris-coronavirus-crisis-amsterdam/; https://www.railjournal.com/financial/flixtrain-suspends-services-for-second-time-in-2020/; https://www.railjournal.com/passenger/main-line/european-operators-reduce-services-again-as-passenger-numbers-drop/.

Consequently, the Commission proposes to prolong the duration of the reference period by six months, until 30 June 2021.

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 18.12.2020

extending the reference period of 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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, 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) These 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) No 2020/1429 enables Member States to authorise infrastructure managers to reduce, waive or defer charges for accessing rail infrastructure. This possibility had been granted from 1 March 2020 until 31 December 2020 ('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. The pandemic also resulted in many industries slowing down or even ceasing their production thereby reducing the amount of goods carried by rail freight. Based on the data provided by rail infrastructure managers in the EU-27, 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. Between March and September 2020, passenger services expressed in train-km decreased by 16.9% compared to the same period of the previous year, freight services by 11.1%. Between March and September 2020, passenger services under public service obligations expressed in train-km decreased by 12.2% compared to the same period the previous year, commercial passenger services by 37.3%. The passenger traffic in passenger-km decreased by 71.2% in the second quarter of 2020 compared to the same period of 2019, the freight traffic in tonne-km decreased by 15.9%. This trend may have a huge impact on the 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.

(5) The World Health Organisation data shows that the number of daily recorded cases in Europe has picked up again with a considerable number of days recording more than 300,000 new cases in October 2020.

(6) In November 2020, the European Centre for Disease Control (ECDC) estimated that "Across the European Union/European Economic Area (EU/EEA) and the United Kingdom (UK) there has been a considerable further increase in COVID-19 infections and the current situation represents a major threat to public health" and that "the current epidemiological situation in most countries is a serious concern as it poses an increasing risk of transmission, requiring immediate, targeted public health action".

(7) Following this development, Member States have increasingly taken stricter limitations on mobility starting from October. Therefore, there are no prospects of a rapid recovery of rail traffic in the short term.

(8) It thus appears that the reduction in the level of rail traffic as compared to the level in the corresponding period in the previous years, for which 2019 provides the reference values in accordance with Article 5(1) and (2) of Regulation (EU) 2020/1429, is persisting and that this situation is the result of the impact of the COVID-19 outbreak.

(9) The forecasts indicate a very gradual recovery of the economy over the next two years as consumer confidence and economic sentiment indicators turned into negative. Furthermore, in light of the data available for earlier periods, any improvement in respect of public health, for example due to the availability of a vaccine, assuming that such an improvement were to occur in the first half of 2021 is likely to exert appreciable positive effects on rail traffic only with considerable delay. Such positive effects will likely materialise no earlier than from the second half of 2021.

(10) It appears therefore that the reduction in the level of rail traffic as compared to the level in the corresponding period in the previous years is likely to persist until that time and that this situation is the result of the impact of the COVID-19 outbreak.

(11) It is therefore necessary to extend the reference period established in Article 1 of the Regulation until the end of June 2021.

(12) This delegated Regulation is foreseen to enter into force after the end of the reference period currently envisaged in Article 1 of Regulation (EU) No 2020/1429. In order to avoid legal uncertainty this Regulation should be adopted under the urgency procedure detailed under Article 7 of the Regulation, 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) No 2020/1429 is replaced by the following:

"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').".

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, 18.12.2020

For the Commission
The President
Ursula VON DER LEYEN