EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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REGULATION
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING REGULATION (EU) 2020/1429 AS REGARDS THE DURATION OF THE REFERENCE PERIOD FOR THE APPLICATION OF TEMPORARY MEASURES CONCERNING THE LEVYING OF CHARGES FOR THE USE OF RAILWAY INFRASTRUCTURE

REGULATION

(EU) 2022/… OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 February 2022

amending Regulation (EU) 2020/1429 as regards the duration of the reference period for the application of temporary measures concerning the levying of charges for the use of railway infrastructure

(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],

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[1] Opinion of 19 January 2022 (not yet published in the Official Journal).

[2] Position of the European Parliament of 16 February 2022 (not yet published in the Official Journal) and decision of the Council of 24 February 2022.

Whereas:

(1) The COVID-19 pandemic has led to a sharp drop in rail traffic caused by a significant fall in demand. This has had a serious impact on railway undertakings.

(2) Those circumstances are beyond the control of railway undertakings, which 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 to support railway undertakings, Regulation (EU) 2020/1429 of the European Parliament and of the Council[1] enabled Member States to authorise infrastructure managers to reduce, waive or defer charges for accessing rail infrastructure. That possibility was granted for a reference period from 1 March 2020 until 31 December 2020 and was further extended by Commission Delegated Regulation (EU) 2021/1061[2] until 31 December 2021.

(4) The continuation of the COVID-19 pandemic and the emergence of very contagious and unpredictable variants, such as the COVID-19 Omicron variant, mean that new restrictive measures might be necessary.

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[1] 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 (OJ L 333, 12.10.2020, p. 1).

[2] Commission Delegated Regulation (EU) 2021/1061 of 28 June 2021 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 229, 29.6.2021, p. 1).

(5) The negative impact of the COVID-19 pandemic on rail traffic is persisting and it is possible that railway undertakings will continue to be affected. In an effort to respond to the urgent needs of the sector, the reference period set by Regulation (EU) 2020/1429 should be further extended until 30 June 2022.

(6) The unforeseeable evolution of the COVID-19 pandemic, the sudden emergence of new variants and the need to assess their impact on the railway sector requires a swift and flexible regulatory response. In order to avoid a gap in the response to the current situation, it is essential to ensure that the rules continue to apply after 31 December 2021. Given the nature of the measures provided for by Regulation (EU) 2020/1429, the retroactive application of the extension of the reference period does not result in a violation of the legitimate expectations of the persons concerned.

(7) The Commission should continuously analyse the economic impact of the COVID-19 pandemic on the rail sector and the Union should be in a position to prolong without undue delay the period of application of the measures provided for by Regulation (EU) 2020/1429 if the adverse conditions persist.

(8) In order to extend, if necessary and justified, the validity of the rules provided for in Regulation (EU) 2020/1429, 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 Regulation (EU) 2020/1429 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[1]. 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.

(9) Since the objective of this Regulation, namely to extend the application of the temporary rules on the levying of charges for the use of railway infrastructure laid down in response to the urgent situation created by the COVID-19 pandemic, 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. 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.

(10) Regulation (EU) 2020/1429 should therefore be amended accordingly.

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[1] OJ L 123, 12.5.2016, p. 1.

(11) In view of urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic justifying the proposed measures, and more particularly in order to adopt the necessary measures quickly so as to address the severe and immediate problems faced by the sector, it is considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(12) In order to ensure continuity and 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 of its publication in the *Official Journal of the European Union*, and should apply, with retroactive effect, from 1 January 2022,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2020/1429

Regulation (EU) 2020/1429 is amended as follows:

(1) Article 1 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 2022 (“the reference period”).’;

(2) Article 5, paragraph 2 is replaced by the following:

‘2. Where the Commission finds, on the basis of the data referred to in paragraph 1, 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 also finds, on the basis of the best available scientific data, that this situation is the result of the impact of the COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 6 to amend the reference period specified in Article 1 accordingly. Any such amendment may only extend the reference period by up to six months, and the reference period may not be extended beyond 31 December 2023.’;

(3) Article 6, paragraph 2 is replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 5(2) shall be conferred on the Commission until 31 December 2023.’.

Article 2

Entry into force

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

It shall apply from 1 January 2022.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*