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**COMMISSION IMPLEMENTING DECISION**

**of 20.2.2015**

**on the strategic importance of local railway infrastructure pursuant to Article 2(4) of  
Directive 2012/34/EU**

(Only the Finnish and Swedish texts are authentic)

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### on the strategic importance of local railway infrastructure pursuant to Article 2(4) of Directive 2012/34/EU

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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 establishing a single European railway area (recast)<sup>1</sup>, and in particular Article 2(4) thereof,

Whereas:

- (1) Article 2(4) of Directive 2012/34/EU allows Member States to exclude local railway infrastructures which do not have any strategic importance for the functioning of the rail market from the application of Chapter IV of the Directive.
- (2) Article 2(4) of Directive 2012/34/EU requires the Member States to notify the Commission of their intention to exclude such railway infrastructures. The Republic of Finland has notified the Commission of its intention to exclude the railway infrastructures listed in the Annexes to this Decision from the application of Chapter IV of Directive 2012/34/EU, in particular the rules on charging and capacity allocation.
- (3) The infrastructures listed in the notification cover a variety of different types, ranging from sidings owned by industrial sites and used solely for the transport of goods between the main state network and a single industrial site to infrastructure connecting service facilities such as ports or terminals to the main network.
- (4) The notification also covers historical railway lines owned by railway museum associations and a number of sidings owned by municipalities.
- (5) According to the information provided by Finland, most of the infrastructures covered by the notification are operated by companies as side-businesses to ensure that trains have access to transport goods to and from factories. For the time being, the owners of the infrastructures usually do not levy charges for their use.
- (6) Finland has informed the Commission that draft national legislation gives the national rail regulatory body a surveillance role as regards the infrastructures covered by the notification, including a right to receive any information needed in this respect.
- (7) The Commission has verified the information provided by Finland.
- (8) Article 3(3) of Directive 2012/34/EU defines ‘railway infrastructure’ as the items listed in Annex I to that Directive. Annex I specifies that railway infrastructure consists of the items contained in the list provided they form part of the permanent

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<sup>1</sup> OJ L 343, 14.12.2012, p. 32.

way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings.

- (9) The definition of ‘infrastructure manager’ under Article 3(2) of Directive 2012/34/EU refers to bodies or firms responsible for establishing, managing and maintaining railway infrastructure. Recital 12 of that Directive clarifies in this regard that managers of private branch lines and sidings, such as sidings and lines in private industrial facilities, should not be subject to the obligations imposed on infrastructure managers under Directive 2012/34/EU.
- (10) This is, however, without prejudice to the application of provisions governing access to infrastructure connecting to service facilities or (potentially) serving more than one final customer, and the rights and duties of operators of service facilities, in particular the application of Articles 10, 13 and 31 of Directive 2012/34/EU to owners of private sidings or branch lines falling within this category. Recital 12 of that Directive underlines in this regard that non-discriminatory access to branch lines and sidings should be guaranteed, irrespective of their ownership, where they are needed to get access to service facilities essential for the provision of transport services and where serving or potentially serving more than one final customer.
- (11) Owners of private sidings and branch lines connecting to service facilities or (potentially) serving more than one final customer are also subject to control by regulatory bodies under Article 56 of Directive 2012/34/EU.
- (12) Under Article 2(3)(d) of Directive 2012/34/EU, Member States may, however, without prior approval from the Commission, exempt privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations, such as spur tracks linking industrial sites, from the application of Articles 7, 8 and 13 and Chapter IV of Directive 2012/34/EU.
- (13) As Article 2(4) of Directive 2012/34/EU refers to ‘railway infrastructure’, the notification obligation and Commission mandate under this provision concerns solely local railway infrastructures covered by the definition of Article 3(3) of this Directive. The Commission is therefore not in a position to adopt a decision on the strategic importance of private branch lines and sidings, including those connecting to service facilities and/or serving or potentially serving more than one final customer.
- (14) The information provided by Finland indicates that the sidings and branch lines listed in Annex I to this Decision are operated as side-businesses by undertakings owning industrial sites, to allow freight to be transported between these sites and the main state network. These infrastructures are private sidings and/or branch lines not covered by the definition of railway infrastructure in Article 3(2) of Directive 2012/34/EU. The Commission is therefore not in a position to assess their strategic importance and adopt a decision pursuant to Article 2(4) of the Directive.
- (15) The Commission has assessed whether the remaining railway infrastructures in the notification can be considered to be without strategic importance for the functioning of the rail market.
- (16) Article 2(4) of Directive 2012/34/EU contains a non-exhaustive list of parameters to be taken into account when assessing the strategic importance of local infrastructures. These include the length of the railway lines concerned, their level of use and the traffic volume potentially impacted. These parameters are variables which can change over time.

- (17) According to the information provided by Finland, the local municipal railways Akaan kaupunki, Hattulan kunta, Heinolan kaupunki, Haameenlinnan kaupunki, Iisalmen kaupunki, Jyvaeskylaan kaupunki, Kiuruveden kaupunki, Kruunupynn kunta, Outokummun kaupunki, Paltamon kunta and Parikkalan kunta, as listed in Annex II to this Decision, are at most two kilometres long and rarely used for freight transport operations. There is no passenger transport on these infrastructures.
- (18) The infrastructures of Kauppa-ja teollisuusministerioe, Kuusankosken kaupunki, Lahden kaupunki, Laapenrannan kaupunki, Lapuan kaupunki, Seinajoen kaupunki, Valkeakosken kaupunki, Aeaenekosken kaupunki and Tohmajaerven kunta, as listed in Annex II to this Decision, are not in active use according to the information provided by Finland.
- (19) The infrastructure owned by Kuopion kaupunki ja satama is, according to the information provided by Finland, a siding of one kilometre from the state-owned network to a small inland harbour that serves some forestry operations. The infrastructure owned by Joensuun kaupunki ja satama is, according to the information provided by Finland, a siding of three kilometre from the state-owned network to a small inland harbour that serves some forestry operations and historical ferry cruises in summer time. There is no direct international freight traffic from the port.
- (20) Based on the information provided by Finland, as these local infrastructures listed in Annex II to this Decision are currently either not in active use or only rarely used local sidings of less than two kilometres, they may at present be considered to be without strategic importance for the functioning of the rail market.
- (21) The infrastructure owned by Kouvolan kaupunki, Suonenjoen kaupunki, Tampere kaupunki and Riihimaaen kaupunki, as listed in Annex II to this Decision, are local sidings of a few hundred metres which are in active use. Given the characteristics of these infrastructures, in particular their very short length, they are not to be considered of strategic importance for the functioning of the rail market.
- (22) The infrastructures owned by Haapamaeen Museoveturiyhdistys Ry, Museorautatieyhdistys Ry, Porvoon Museorautatie Ry and Hyvinkaaen kaupunki, as listed in Annex II to this Decision, are used only for historical purposes and can therefore be considered to be without strategic importance for the functioning of the rail market.
- (23) As the criteria set out in Article 2(4) of Directive 2012/34/EU, on which the assessment of strategic importance is based, are by nature variable, Finland should inform the Commission of any change in relevant circumstances which may necessitate a reassessment by the Commission of the strategic importance of local railway infrastructure.
- (24) The infrastructure owned by VR Yhtymae Oy belongs to the incumbent state-owned railway company. It connects, inter alia, terminals operated by the incumbent to the main state network. While the infrastructure may for the time being be used exclusively by the incumbent railway undertaking, it does not exist solely for that purpose. The infrastructure can therefore not be considered to be private branch lines or sidings. As it provides, *inter alia*, access to service facilities, it is likely to play an important role in ensuring the functioning of the rail market. The infrastructure owned by the incumbent VR Yhtymae Oy can therefore not be considered to be without strategic importance for the functioning of the rail market.

(25) After having consulted the Committee referred to in Article 62 of Directive 2012/34/EU,

HAS ADOPTED THIS DECISION:

*Article 1*

The infrastructures notified by the Republic of Finland and listed in Annex I are not covered by the definition of ‘railway infrastructure’ under Article 3(3) of Directive 2012/34/EU. The Commission is therefore not in a position to decide on the strategic importance of these infrastructures under Article 2(4) of the Directive.

*Article 2*

The railway infrastructures notified by the Republic of Finland and listed in Annex II may be considered to be without strategic importance for the functioning of the rail market.

*Article 3*

The railway infrastructure notified by the Republic of Finland and listed in Annex III may not be considered to be without strategic importance for the functioning of the rail market and may therefore not be excluded from the application of Chapter IV of Directive 2012/34/EU.

*Article 4*

This Decision is based on an assessment of the strategic importance of the infrastructures at the date of its adoption. Finland shall notify the Commission of any circumstances, including in particular changes affecting the evaluation criteria set out in Article 2(4) of Directive 2012/34/EU and changes in ownership of the railway lines concerned, which may require reassessment by the Commission of the strategic importance of the infrastructures covered by this Decision.

*Article 5*

This Decision is addressed to the Republic of Finland.

Done at Brussels, 20.2.2015

*For the Commission*  
*Violeta BULC*  
*Member of the Commission*