

Wednesday 26 February 2014

P7\_TA(2014)0147

**Single European railway area \*\*\*I**

**European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (COM(2013)0029 — C7-0025/2013 — 2013/0029(COD))**

**(Ordinary legislative procedure: first reading)**

(2017/C 285/52)

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0029),
  - having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, the Lithuanian Parliament, the Chamber of Deputies of the Grand Duchy of Luxembourg, the Netherlands Senate, the Netherlands House of Representatives and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 11 July 2013 <sup>(1)</sup>,
  - having regard to the opinion of the Committee of the Regions of 8 October 2013 <sup>(2)</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Employment and Social Affairs and the Committee on Regional Development (A7-0037/2014),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P7\_TC1-COD(2013)0029**

**Position of the European Parliament adopted at first reading on 26 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the 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,

<sup>(1)</sup> OJ C 327, 12.11.2013, p. 122.

<sup>(2)</sup> OJ C 356, 5.12.2013, p. 92.

Wednesday 26 February 2014

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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Over the past decade, **the European motorway network has grown by 27 %, but the railway network in use has shrunk by 2 %. Furthermore**, the growth of passenger traffic by rail has been insufficient to increase its modal share in comparison to cars and aviation. The 6 % modal share of passenger transport for rail in the European Union has remained fairly stable. **and** rail passenger services have not kept pace with evolving needs in terms of offer or quality. [Am. 1]
- (1a) **The principal reasons for rail's insufficient modal share in Europe include unfair competition as regards other modes of transport, a lack of political will to develop rail transport and under-investment in rail networks.** [Am. 2]
- (2) The Union markets for freight and for international passenger trains have been opened to competition since 2007 and 2010 respectively through Directives 2004/51/EC <sup>(4)</sup> and 2007/58/EC <sup>(5)</sup>. In addition, some Member States have opened their domestic passenger services to competition, either by introducing open access rights or competitive tendering for public service contracts or both.
- (2a) **The practical effects of the provisions of those Directives need to be assessed by checking the quality of the services provided on the basis of specific facts, tendering and use rates, costs and charges.** [Am. 3]
- (2b) **In order to establish a single European rail area, it is vital for the relevant legislation to be effectively and fully applied in all the Member States within the prescribed time-limits. Given the deficiencies that have been identified in the sector, the Member States should keep a close eye on the implementation of Union legislation.** [Am. 4]
- (2c) **Several studies and questionnaires demonstrate that, in Member States that have opened their markets for domestic passenger transport, such as Sweden and the United Kingdom, the railway market has grown, including more satisfied passengers and personnel.** [Am. 5]
- (3) Directive 2012/34/EU of the European Parliament and of the Council <sup>(6)</sup> establishes a single European railway area with common rules on the governance of railway undertakings and infrastructure managers, on infrastructure financing and charging, on conditions of access to railway infrastructure and services and on regulatory oversight of the rail market. With all these elements in place, it is now possible to complete the opening of the Union railway market and reform the governance of infrastructure managers with the objective of ensuring equal access to the infrastructure **in order to improve the quality of rail services throughout the Union while safeguarding social standards and employment conditions.** [Am. 6]

<sup>(1)</sup> OJ C 327, 12.11.2013, p. 122.

<sup>(2)</sup> OJ C 356, 5.12.2013, p. 92.

<sup>(3)</sup> Position of the European Parliament of 26 February 2014.

<sup>(4)</sup> Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 164, 30.4.2004, p. 164).

<sup>(5)</sup> Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 315, 3.12.2007, p. 44).

<sup>(6)</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

Wednesday 26 February 2014

- (3a) *The completion of the opening of the Union railway market should be seen as essential in order to enable rail to become a credible alternative to other modes of transport in terms of price and quality.* [Am. 7]
- (4) Directive 2012/34/EU requires the Commission to propose, if appropriate, legislative measures in relation of the opening of the market for domestic passenger transport services by rail and to develop appropriate conditions to ensure **the most cost efficient** non-discriminatory access to **infrastructure including incumbent-owned sales** infrastructure, building on the existing separation requirements between infrastructure management and transport operations. [Am. 8]
- (4a) *The opening of the market for domestic passenger transport will have a positive impact on the working of the European railway market; this will lead to greater flexibility and more possibilities for companies and passengers. Railway personnel will also benefit from the opening, as it will improve their chances of providing their services to new players on the market. Experienced workers can give the new players added value, leading to better labour conditions.* [Am. 9]
- (4b) *Member States are responsible for the organisation of their labour markets for railway personnel. They should however make sure that the way in which the labour market is organised does not harm the quality of the service. Union law already provides for a clear framework for the protection of railway workers.* [Am. 10]
- (5) Better coordination between infrastructure managers and railway undertakings should be ensured through the establishment of a coordination committee, in order to achieve efficient management and use of the infrastructure. **In addition, in order to ensure the smooth running of operations in the daily management of the network, including the management of traffic on the network during the winter season, the infrastructure manager at traffic control level should coordinate with railway undertakings, without compromising its independence and responsibility for managing the network and complying with the existing rules.** [Am. 117]
- (6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself.
- (6a) *In order to secure sufficient and fair competition within the European railway area, it is necessary not only to guarantee non-discriminatory access to infrastructure but also to integrate national rail networks and strengthen the regulatory bodies. Such strengthening should take the form of extending the powers of the competent regulatory bodies and developing a network of regulatory bodies which would in future be a key operator in the regulation of the rail transport market in the Union.* [Am. 12]
- (6b) *The infrastructure manager, in exercising all the relevant functions as provided for in this Directive, should be required to use its competences to constantly improve the efficiency of the management of the rail infrastructure with a view to providing high-quality services to its users.* [Am. 13]
- (7) *Without prejudice to Member States' powers as regards infrastructure planning and financing, cross-border issues such as track-access charges should be addressed efficiently between infrastructure managers of the different Member States through the establishment of a European network of infrastructure managers.* [Am. 14]
- (8) In order to ensure equal access to the infrastructure, ~~any conflicts of interest resulting from integrated structures encompassing~~ **should be shaped in such a way that no conflicts of interest arise between** infrastructure management and transport activities ~~should be removed~~. Removing **potential** incentives to discriminate against competitors is the only way to guarantee equal access to the railway infrastructure. It is a requirement for the successful opening of the market for domestic passenger transport services by rail. This should also remove the potential for cross-subsidisation, which exists in such integrated structures, and which also leads to market distortions, **as well as arrangements in respect of staff remuneration and other benefits which might result in preferential treatment compared to competitors.** [Am. 15]

Wednesday 26 February 2014

- (9) The existing requirements for the independence of infrastructure managers from railway transport undertakings, as laid down in Directive 2012/34/EU, only cover the essential functions of the infrastructure manager, which are the decision-making on train path allocation, and the decision-making on infrastructure charging. It is however necessary that all the functions are exercised in an independent way, since other functions may equally be used to discriminate against competitors. This is in particular true for decisions on **access to ticketing services, stations and depots, on investments or on maintenance** which may be made to favour the parts of the network which are mainly used by the transport operators of the integrated undertaking. Decisions on the planning of maintenance works may influence the availability of train paths for the competitors. [Am. 16]
- (9a) **Despite the implementation of the safeguards set out in Directive 2013/34/EU guaranteeing the independence of the infrastructure manager, vertically integrated undertakings could use their structure to give railway operators belonging to such undertakings an undue competitive edge.** [Am. 17]
- (10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.
- (11) ~~Member States should therefore be required to ensure that the same legal or natural person or persons are not entitled to exercise control over an infrastructure manager and, at the same time, exercise control or any right over a railway undertaking. Conversely, control over~~ **This Directive aims to establish free and fair competition between all railway undertakings, and therefore precludes** a railway undertaking ~~should preclude the possibility of exercising control or any right over an infrastructure manager~~ **from retaining a vertically integrated model as defined in Article 3.** [Am. 18]
- (12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should at least introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.
- (12a) **Improving railway safety should be considered seriously during the process of opening the market for domestic passenger transport services by rail, particularly when it comes to reforming the integrated structures currently in place, in order to avoid the creation of additional administrative obstacles compromising the maintenance and improvements of safety.** [Am. 19]
- (12b) **The possibility for an infrastructure manager to pay dividends to the ultimate owner of the vertically integrated undertaking should not prevent the infrastructure manager from constituting reserves in order to improve its financial situation and to balance its accounts over a reasonable period as required by this Directive. All dividend payments of the infrastructure manager should be earmarked to be used for investments in the renewal of the railway infrastructure in operation.** [Am. 107]

Wednesday 26 February 2014

- (12c) *The holding company in a vertically integrated undertaking may contribute to strategic decisions necessary for the good functioning of the railway transport system as a whole in the interest of all parties active in the railway market, without prejudice to the decisions pertaining to the functions of the infrastructure manager. [Am. 108]*
- (12d) *It shall also be possible for the representatives of the ultimate owners of the vertically integrated undertaking in the Supervisory Board to include persons appointed by the ultimate owners but not employed by them, provided they do not have any responsibility or interest in any other entity of the vertically integrated undertaking. [Am. 109]*
- (12e) *The rules ensuring the independence of the infrastructure manager within the vertically integrated undertaking should be without prejudice to the Eurostat criteria on government deficit and debt, since in any case the holding, even taking into account the safeguards for the independence of the infrastructure manager, may still retain ownership of the infrastructure and in addition a sufficient number of functions in order not to be considered as a purely artificial entity having as its sole purpose the reduction of government debt within the meaning of those criteria. [Am. 110]*
- (13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.
- (13a) *Taking into account the heterogeneity of networks in terms of their size and density and the variety in the organisational structures of national and local or regional authorities and their respective experiences of the process of market opening, each Member State should be given sufficient flexibility to organise its network in such a way that a mix of open-access services and services performed under public service contracts can be achieved in order to ensure a high quality of services readily accessible to all passengers. Following selection of the public service contracts to be put out to tender, each Member State should establish on a case-by-case basis which safeguard mechanisms are to be introduced for each service should the tender procedure not be successfully completed. Those mechanisms should not in any way generate additional charges for the railway undertakings managing those services. [Am. 20]*
- (14) Granting Union railway undertakings the right of access to railway infrastructure in all Member States for the purpose of operating domestic passenger services may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the option of limiting such right of access where it would compromise the economic equilibrium of those public service contracts **or the quality of the service that they provide** and where approval has been given by the relevant regulatory body. [Am. 21]
- (15) **On its own initiative or following a request made by interested parties**, regulatory bodies should assess, **on the basis of an objective economic analysis**, the potential economic impact of domestic passenger services provided under open access conditions on existing public service contracts ~~following a request made by interested parties and on the basis of an objective economic analysis.~~ [Am. 22]
- (16) The process of the assessment should take into account the need to provide all market players with sufficient legal certainty to develop their activities. The procedure should be as simple, efficient and transparent as possible and coherent with the process for the allocation of infrastructure capacity.
- (17) The assessment of whether the economic equilibrium of the public service contract would be compromised should take into account predetermined criteria. Such criteria and the details of procedure to be followed may evolve over time, in particular in the light of the experience of regulatory bodies, competent authorities and railway undertakings and may take into account the specific characteristics of domestic passenger services.
- (18) When assessing whether the economic equilibrium of the public service contract would be compromised, regulatory bodies should consider the economic **and social** impact of the intended service on existing public service contracts, taking into account its impact on the profitability of any services included in such public service contracts ~~and~~, the consequences for **enhancing cohesion policy in the area concerned and** the net cost to the competent public

Wednesday 26 February 2014

authority that awarded the contracts. To make this assessment, factors such as passenger demand, ticket pricing, ticketing arrangements, location and number of stops and the timing and frequency of the proposed new service should be examined. [Am. 23]

- (18a) *In order to determine whether the quality of the service provided under a public service contract is affected by a free-access service on the same network, the regulatory bodies should take into account, in particular, network effects, the maintenance of connections and the punctuality of the services provided under the public service contract.* [Am. 24]
- (19) *In order to increase the attractiveness of railway services for passengers, Member States should be in a position to require railway undertakings operating domestic passenger services to participate in a common information and integrated ticketing scheme for the supply of tickets, through-tickets and reservations. ~~If~~ Such a scheme is established, it should be ensured ensure that it does not create market distortion or discriminate between railway undertakings.* [Am. 25]
- (19a) *It is important that railway undertakings engage in the development of integrated ticketing schemes, in particular as regards local and regional transport, in order to increase the attractiveness of rail transport for passengers. Such schemes should not create market distortion or discriminate between railway undertakings.* [Am. 26]
- (19b) *Since the new package seeks to strengthen passenger rights, and as freedom of movement is one of the basic pillars of the Union, greater efforts should be made to also safeguard that right for disabled persons and for persons with reduced mobility. This makes improving accessibility to means of transport and infrastructure a priority. In order to achieve that objective, cross-border contacts should be encouraged. This also applies to the assistance provided for that specific category of passengers, which should be harmonised within a broader system. A consultation process should be launched in this respect, involving the social partners, the public and organisations for the protection of the rights of disabled persons.* [Am. 27]
- (19c) *In the light of the experience acquired through the network of regulatory bodies provided for in Article 57 of Directive 2012/34/EU, the Commission should, by no later than 31 December 2016, draw up a legislative proposal strengthening the network of regulatory bodies, formalising its procedures and giving it legal personality. That body should have a supervisory and arbitration function enabling it to deal with cross-border and international problems and to hear appeals against decisions taken by national regulatory bodies.* [Am. 28]
- (19d) *With a view to completion of the Single European Railway Area, and given the competition in the railway sector, the Commission is committed to actively supporting and encouraging social dialogue at Union level in order to ensure that railway workers are protected in the long term against unwanted effects of market opening, such as social dumping.* [Am. 29]
- (19e) *Passengers should have access to functioning through-ticketing schemes and integrated ticketing schemes. Such schemes would also make railways a more attractive means of transport for people. Through-ticketing schemes developed by the sector within Member States should be interoperable with each other in order to enable a Union-wide scheme to be created that encompasses all rail passenger operators.* [Am. 30]
- (19f) *In light of the experience acquired through the network of regulatory bodies established pursuant to Article 57 of Directive 2012/34/EU, the Commission should draw up a legislative proposal to replace the network with a European Regulatory Body, formalising its procedures and giving it legal personality, by no later than 31 December 2019, in time for the opening of domestic passenger transport services by rail. That body should have a supervisory and arbitration function enabling it to deal with cross-border and international problems and to hear appeals against decisions taken by national regulatory bodies.* [Am. 31]
- (19 g) *In order to avoid social dumping, a railway undertaking should only be able to provide rail transport services if it complies with collective agreements or national laws laying down standards within the Member State in which it intends to act. Provision should therefore be made for equal pay in the same place. The competent regulatory body should monitor compliance with this requirement.* [Am. 32]

Wednesday 26 February 2014

- (19h) *The national regulatory body should approve or request changes to the arrangements for the transfer of staff. This may include the application of a cooling-off period for staff who are to be transferred. The regulatory body, when taking its decision, should aim at avoiding the transfer of sensitive information from the infrastructure manager to another entity within the integrated undertaking. [Am. 33]*
- (19i) *The opening of the market should not have any adverse repercussions on the working and social conditions of railway workers. The relevant social clauses should be respected in order to avoid any social dumping or unfair competition by new entrants that fails to respect minimum social standards in the railway sector. [Am. 34]*
- (19j) *Railway undertakings and infrastructure managers should establish within their safety culture a just culture' in order to actively encourage personnel to report safety related accidents, incidents and near misses without being subject to punishment or discrimination. A just culture enables the railway industry to learn lessons from accidents, incidents and near misses and thereby improve safety on the railway for workers and passengers. [Am. 35]*
- (19k) *The Commission should ensure the full and correct enforcement by Member States of the provisions of Council Directive 2005/47/EC<sup>(1)</sup>. [Am. 36]*
- (19l) *In the light of the development of the single European railway area and the further opening of the rail transport market, Member States should make use of collective agreements in order to avoid social dumping and unfair competition. [Am. 37]*
- (19m) *The Commission should assess the impact of this Directive on the development of the labour market for railway on-board staff and, if appropriate, propose new legislative measures on the certification of such staff. [Am. 38]*
- (19n) *On-board personnel are a professional group within the railway sector that performs safety-relevant tasks. It traditionally performs operational safety tasks within the railway system and is responsible for the comfort and safety of passengers on board trains. A certification similar to the certification of locomotive drivers is useful in order to guarantee a high level of qualifications and competences, to recognise the relevance of that professional group for the safety of rail services but also to facilitate mobility of workers. [Am. 39]*
- (19o) *The national regulatory body should approve or request changes to the arrangements for the transfer of staff. This may include the application of a cooling-off period for staff who are to be transferred. The regulatory body, when taking its decision, should aim at avoiding the transfer of sensitive information from the infrastructure manager to another entity within the integrated undertaking. [Am. 40]*
- (20) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>(2)</sup>, Member States have undertaken to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments in justified cases. With regard to this Directive, the legislator considers the transmission of such documents to be justified
- (20a) *Infrastructure managers should cooperate in cases concerning incidents or accidents with an impact on cross-border traffic, with a view to sharing any relevant information and thereby avoiding negative spill-over effects. [Am. 41]*
- (20b) *The regulatory body should be competent to monitor infrastructure maintenance works so as to ensure that they are not undertaken in a way that leads to discrimination between railway undertakings. [Am. 42]*
- (20c) *The infrastructure manager within a vertically integrated undertaking should be able to offer its staff certain social services in premises that are used by other entities of the vertically integrated undertaking. [Am. 43]*

<sup>(1)</sup> Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (OJ L 195, 27.7.2005, p. 15).

<sup>(2)</sup> OJ C 369, 17.12.2011, p. 14.

Wednesday 26 February 2014

- (20d) *The infrastructure manager within a vertically integrated undertaking should be allowed to cooperate with other entities of the vertically integrated undertaking as regards the development of IT systems, subject to the approval of the regulatory body. [Am. 44]*
- (20e) *The conditions for offering tickets, through tickets and reservations throughout the Union, as provided for in Article 9 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>(1)</sup>, should be considered fulfilled once the common travel information and ticketing scheme is set up by 12 December 2019, in line with the provisions of this Directive. [Am. 45]*
- (20f) *The regulatory body may produce guidelines on the enhancement of the independence of the staff and management of the infrastructure manager within a vertically integrated undertaking with respect to train path allocation and infrastructure charging. [Am. 118]*
- (20 g) *Under this Directive, Member States are free at any time to choose between different types of structures for infrastructure managers that co-exist within the single European railway area, namely separated and vertically integrated undertakings, even if they have already introduced a separated type of structure. This Directive lays down various rules and principles governing the internal organisation of those structures. [Am. 47]*
- (20h) *For the purpose of this Directive, the concepts of supervisory board, administrative board, management board or bodies legally representing the undertaking should be applied to existing corporate structures in the Member States, while avoiding the creation of additional bodies, [Am. 119]*

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2012/34/EU is amended as follows:

-1. In Article 1, the following paragraphs are added:

*'2a. This Directive aims to make rail transport a more attractive means of transport for the European public. It is designed to help to create workable information and integrated ticketing schemes. The through-ticketing schemes developed by the railway sector within Member States should be interoperable with each other in order to enable a Union-wide scheme to be created encompassing all rail passenger operators. [Am. 49]*

*2b. The objective of this Directive, which is to complete the single European railway area, will be pursued on the basis of social dialogue at Union level in order to ensure that railway workers are appropriately protected against the unwanted effects of the opening of the market.'* [Am. 50]

-1b. In Article 2, the following paragraph is inserted:

*'3a. Articles 7, 7a, 7b, 7c, 7d and 7e shall not apply to networks of less than 500 km where:*

*(a) those networks do not have any strategic importance for the functioning of the European railway market; or*

*(b) they are technically and organisationally isolated from the main domestic railway network.'* [Am. 87]

<sup>(1)</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

Wednesday 26 February 2014

1. Article 3 is amended as follows:

(a) Point 2 is replaced by the following:

‘(2) “infrastructure manager” means any body or firm ensuring the development, operation and maintenance of railway infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, traffic management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities.’;

(b) Point 5 is deleted;

(c) the following new point is added:

‘(31) “vertically integrated undertaking” means an undertaking where:

- one or several railway undertakings are owned or partly owned by the same undertaking as an infrastructure manager (holding company), or
- an infrastructure manager is owned or partly owned by one or several railway undertakings or
- one or several railway undertakings are owned or partly owned by an infrastructure manager.’;

(ca) The following point is added:

‘(32) “integrated ticketing scheme” means a ticketing system which allows a person to make a journey that involves transfers within or between different transport modes, such as trains, buses, trams, metros, ferries or airplanes.’;

(cb) The following point is added:

‘(33) “through ticket” means a ticket or tickets representing a transport contract for successive railway services operated by one or more railway undertakings.’; [Am. 52]

(cc) The following points are added:

‘(34) “supervisory board” means any group of individuals nominated by the owners of the company to promote their interests, monitor and control the work of the executives and approve the major business management decisions;

(35) “management board” means any group of individuals in charge of executive functions for the day-to-day management of the company.’; [Am. 53]

(cd) The following point is added:

‘(36) “high speed passenger services” means passenger services operated on specially built high-speed lines equipped for speeds generally equal to or greater than 250 km/h and running at those speeds for most of the journey.’; [Am. 54]

2. In Article 6, paragraph 2 is deleted.

2a. The following Article is inserted:

**‘Article 6a**

*Provided that no conflict of interest arises and that the confidentiality of commercially sensitive information is guaranteed, nothing in this Directive shall prevent Member States from authorising the infrastructure manager to engage in cooperation agreements, in a transparent, non-exclusive and non-discriminatory way, with one or more applicants as regards a specific line or a local or regional part of the network, in such a way as to give financial incentives to increase the efficiency of its cooperation in relation to the part of the network concerned. Such incentives may consist in reductions or increases of track access charges corresponding to possible cost savings or revenue increases for the railway undertaking or for the infrastructure manager as a result of that cooperation. Such cooperation shall be aimed at delivering more efficient management of disruptions, maintenance works or congested infrastructure, or of a line or a part of the network prone to delays, or at improving safety.*

Wednesday 26 February 2014

*Its duration shall be limited to a maximum of five years and shall be renewable. The infrastructure manager shall inform the regulatory body referred to in Article 55 of the planned cooperation. The regulatory body shall give its prior approval to the cooperation agreement, demand its modification or reject it if the above conditions are not fulfilled. It may require the agreement to be modified at any stage throughout the duration of the agreement. The infrastructure manager shall inform the coordination committee referred to in Article 7d about the cooperation agreement. This paragraph shall not apply to cooperation allowed under Articles 7a and 7b between the infrastructure manager and railway undertakings that are parts of the same vertically integrated undertaking.* [Am. 120]

3. Article 7 is replaced by the following:

'Article 7

Institutional separation of the infrastructure manager

1. Member States shall ensure that the infrastructure manager ~~performs all the functions referred to in Article 3(2) and~~ is independent from any railway undertaking.

*Where, on the date of entry into force of this Directive, some items of railway infrastructure as defined in Annex I are owned and managed by undertakings other than the infrastructure manager, Member States may decide that such arrangements are to continue, provided that those undertakings are legally distinct and independent from any railway undertaking.* [Am. 121]

To guarantee the independence of the infrastructure manager, Member States shall ensure that infrastructure managers are organised in an entity that is legally distinct from any railway undertaking.

2. Member States shall also ensure the same legal or natural person or persons are not allowed:

- (a) to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004 (\*), hold any financial interest in or exercise any right over a railway undertaking and over an infrastructure manager at the same time;
- (b) to appoint members of the supervisory board, the administrative board or bodies legally representing an infrastructure manager, and at the same time to directly or indirectly exercise control, hold any financial interest in or exercise any right over a railway undertaking;
- (c) to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both a railway undertaking and an infrastructure manager;
- (d) to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to directly or indirectly exercise control, hold any financial interest in or exercise any right over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to directly or indirectly exercise control, hold any interest in or exercise any right over an infrastructure manager.

3. For the implementation of this Article, where the person referred to in paragraph 2 is a Member State or another public body, two public authorities which are separate and legally distinct from each other and which are exercising control or other rights mentioned in paragraph 2 over the infrastructure manager, on the one hand, and the railway undertaking, on the other hand, shall be deemed not to be the same person or persons.

4. Provided that no conflict of interest arises and that confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may subcontract specific development, renewal and maintenance works, over which it shall keep the decision-making power, to railway undertakings or to any other body acting under the supervision of the infrastructure manager.

*4a. Provided that the provisions concerning the institutional separation of the infrastructure manager, as laid down in paragraphs 1 to 3, are respected, that no conflict of interest arises and that the confidentiality of commercially sensitive information is guaranteed, Member States may authorise the infrastructure manager to engage in cooperation agreements, in a transparent, non-exclusive and non-discriminatory way, with one or more applicants as regards a specific line or a local or regional part of the network, in such a way as to give such applicant an incentive to increase the efficiency of its cooperation in relation to the part of the network concerned.*

Wednesday 26 February 2014

*Such incentives shall consist in reductions of track access charges corresponding to possible cost savings for the infrastructure manager as a result of that cooperation. Such cooperation shall be aimed at delivering more efficient management of disruptions, maintenance works or congested infrastructure, or of a line or a part of the network prone to delays, or at improving safety. Its duration shall be limited to a maximum of five years and shall be renewable. The infrastructure manager shall inform the regulatory body referred to in Article 55 of the planned cooperation. The regulatory body shall give its prior approval to the cooperation agreement, demand its modification or reject it if the above conditions are not fulfilled. It may require the agreement to be modified at any stage throughout the duration of the agreement. The infrastructure manager shall inform the coordination committee referred to in Article 7d about the cooperation agreement. [Am. 56]*

5. Where ~~on the date of entry into force of this Directive~~, the infrastructure manager belongs to a vertically integrated undertaking, Member States may decide not to apply paragraphs 2 to 4 of this Article. In such case, the Member State concerned shall ensure that the infrastructure manager ~~performs all the functions referred to in Article 3(2) and~~ has effective organisational and decision-making independence from any railway undertaking in accordance with the requirements set ~~out~~ in Articles 7a ~~to 7e~~ **and 7b**.

(\*) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1). [Am. 122]

4. The following Articles are inserted:

'Article 7a

Effective independence of the infrastructure manager within a vertically integrated undertaking

1. Member States shall ensure that the infrastructure manager shall be organised in a body which is legally distinct from any railway undertaking or holding company controlling such undertakings and from any other legal entities within a vertically integrated undertaking.

2. Legal entities within the vertically integrated undertaking that are active in railway transport services markets shall not have any ~~direct or indirect~~ shareholding in the infrastructure manager, **either directly, indirectly or through subsidiaries**. Nor shall the infrastructure manager have any ~~direct or indirect~~ shareholding in any legal entities within the vertically integrated undertaking active in railway transport services markets, **either directly, indirectly or through subsidiaries**.

*This provision shall not, however, preclude the existence of a vertically integrated undertaking where one or more railway undertakings are owned or partly owned by the same undertaking as an infrastructure manager (holding company).*

3. The infrastructure manager's incomes may not be used in order to finance other legal entities within the vertically integrated undertaking but only in order to finance the business of the infrastructure manager ~~and to pay dividends~~. **Dividend payments to the ultimate owner of the vertically integrated company shall be possible. Those dividend payments by the infrastructure manager shall be earmarked to be used for investment in the renewal of the infrastructure in operation and shall not prevent the infrastructure manager from constituting reserves in order to manage its profits and losses over the business cycle.**

*These provisions shall not apply to payments to private investors in the case of public-private partnerships.*

The infrastructure manager may ~~not grant loans to any other legal entities~~ **only to its own subsidiaries**. Within the vertically integrated undertaking, ~~and no other legal entity within the vertically integrated undertaking may grant loans to the infrastructure manager~~ **loans to the infrastructure manager may only be granted by the holding company and shall be subject to monitoring by the regulatory body referred to in Article 55. The holding company shall demonstrate to the satisfaction of the regulatory body that the loan is granted at market price and that it complies with Article 6.**

Wednesday 26 February 2014

Any services offered by other legal entities to the infrastructure manager shall be based on contracts and be paid at market prices. The debt attributed to the infrastructure manager shall be clearly separated from the debt attributed to other legal entities within the vertically integrated undertaking, ~~and these debts shall be serviced separately.~~

The accounts of the infrastructure manager and of the other legal entities within the vertically integrated undertaking shall be kept in a way that ensures the fulfilment of these provisions ~~and allows for separate financial circuits for the infrastructure manager and for the other legal entities within the vertically integrated undertaking.~~

~~4. Without prejudice to Article 8(4), the infrastructure manager shall raise funds on the capital markets independently and not via other legal entities within the vertically integrated undertaking. Other legal entities within the vertically integrated undertaking shall not raise funds via the infrastructure manager. [Am. 123]~~

5. The infrastructure manager shall keep detailed records of any commercial and financial relations with the other legal entities within the vertically integrated undertaking and make them available to the regulatory body upon request, in accordance with Article 56(12).

Article 7b

Effective independence of the staff and management of the infrastructure manager within a vertically integrated undertaking

1. Without prejudice to the decisions of the regulatory body under Article 56, the infrastructure manager shall have effective decision-making powers, independent from the other legal entities within the vertically integrated undertaking, with respect to ~~all the functions referred to in Article 3(2)~~ **train path allocation and infrastructure charging.**

The overall management structure and the corporate statutes of the infrastructure manager shall ensure that none of the other legal entities within the vertically integrated undertaking shall determine, directly or indirectly, the behaviour of the infrastructure manager in relation to ~~these functions~~ **train path allocation and infrastructure charging.**

***The members of the supervisory board and of the management board of the infrastructure manager and the managers directly reporting to them shall act according to these principles.***

~~2. The members of the management board and senior staff members of the infrastructure manager shall not be in the supervisory or management boards or be senior staff members of any other legal entities within the vertically integrated undertaking.~~

~~The members of the supervisory or management boards and senior staff members of the other legal entities within the vertically integrated undertaking shall not be in the management board or be senior staff members of the infrastructure manager.~~

~~3. The infrastructure manager shall have a Supervisory Board which is composed of representatives of the ultimate owners of the vertically integrated undertaking.~~

~~The Supervisory Board may consult the Coordination Committee referred to under Article 7d on issues under its competence.~~

~~Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the office of the management board members of the infrastructure manager shall be taken by the Supervisory Board. The identity and the conditions governing the duration and the termination of office of the persons nominated by the Supervisory Board for appointment or renewal as members of the management board of the infrastructure manager, and the reasons for any proposed decision terminating the office, shall be notified to the regulatory body referred to in Article 55. Those conditions and the decisions referred to in this paragraph shall become binding only if the regulatory body has expressly approved them. The regulatory body may object to such decisions where doubts arise as to the professional independence of a person nominated for the management board or in the case of premature termination of office of a member of the management board of the infrastructure manager.~~

~~Effective rights of appeal to the regulatory body shall be granted for members of the management board who wish to enter complaints against the premature termination of the office.~~

Wednesday 26 February 2014

4. For a period of three years after leaving the infrastructure manager, members of the Supervisory Board or management board and senior staff members of the infrastructure manager shall not be entitled to hold any senior position with any other legal entities within the vertically integrated undertaking. For a period of three years after leaving those other legal entities within the vertically integrated undertaking, their supervisory or management boards' members and senior staff members shall not be entitled to hold any senior position with the infrastructure manager.

5. The infrastructure manager shall have its own **management** staff and be located in separate premises from the other legal entities within the vertically integrated undertaking. Access to information systems shall be protected to ensure the independence of the infrastructure manager. Internal rules or staff contracts shall clearly limit contacts with. **Sensitive information held by the infrastructure manager shall be duly protected and shall not be passed on to other entities.**

**The infrastructure manager may offer to its staff social services, such as those provided in schools, kindergartens, sport centres and restaurants, in premises used by the other legal entities within the vertically integrated undertaking to official communications connected with the exercise of the functions of the infrastructure manager which are also exercised in relation to other railway undertakings outside the vertically integrated undertaking. Transfers of staff other than those referred to under point (c) between. The infrastructure manager may cooperate with other entities of the vertically integrated undertaking as regards the development of their information systems.**

**The regulatory body shall approve or request changes to the arrangements concerning the implementation of this paragraph with the aim of ensuring the independence of the infrastructure manager and the other legal entities within the vertically. The regulatory body may request the integrated undertaking shall only be possible if it can be ensured that sensitive to provide it with any information will not be passed on between them that may be necessary.**

6. The infrastructure manager shall have the necessary organisational capacity to perform all of its functions independently from the other legal entities within the vertically integrated undertaking and shall not be allowed to delegate to these legal entities the operation of these functions or any activities related to them.

**Provided that no conflict of interest, market distortion or discrimination arises and that confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may subcontract specific development, renewal and maintenance works, over which it shall keep the decision-making power, to railway undertakings or to any other body acting under the supervision of the infrastructure manager.**

7. The members of the supervisory or management boards and senior staff of the infrastructure manager shall hold no interest in or receive any financial benefit, directly or indirectly, from any other legal entities within the vertically integrated undertaking. Performance-based elements of their remuneration shall not depend on the business results of any other legal entities within the vertically integrated undertaking or any legal entities under its control, but exclusively on those of the infrastructure manager. [Am. 124/rev]

#### Article 7c

##### Procedure of verification of compliance

1. Upon request of a Member State or on its own initiative, the Commission shall decide whether infrastructure managers which are part of a vertically integrated undertaking fulfil the requirements of Article 7a and Article 7b and whether the implementation of these requirements is appropriate to ensure a level playing field for all railway undertakings and the absence of distortion of competition in the relevant market.

2. The Commission shall be entitled to require all necessary information within a reasonable deadline from the Member State where the vertically integrated undertaking is established. The Commission shall consult the regulatory body or bodies concerned and, if appropriate, the network of regulatory bodies referred to in Article 57.

3. Member States may limit the rights of access provided for in Article 10 to railway undertakings which are part of the vertically integrated undertaking to which the infrastructure manager concerned belongs, if the Commission informs Member States that no request has been made in accordance with paragraph 1 or pending the examination of the request by the Commission or if it decides, in accordance with the procedure referred to in Article 62(2), that:

Wednesday 26 February 2014

- ~~(a) no adequate replies to the Commission information requests in accordance with paragraph 2 have been made, or~~
- ~~(b) the infrastructure manager concerned does not fulfil the requirements set out in Articles 7a and 7b, or~~
- ~~(c) the implementation of requirements set out in Articles 7a and 7b is not sufficient to ensure a level playing field for all railway undertakings and the absence of distortion of competition in the Member State where the infrastructure manager concerned is established.~~

~~The Commission shall decide within a reasonable period of time.~~

~~4. The Member State concerned may request the Commission to repeal its decision referred to in paragraph 3, in accordance with the procedure referred to in Article 62(2), when that Member State demonstrates to the satisfaction of the Commission that the reasons for the decision do not exist any longer. The Commission shall decide within a reasonable period of time.~~

~~5. Without prejudice to paragraphs 1 to 4, the on-going compliance with the requirements set out in Articles 7a and 7b shall be monitored by the regulatory body referred to in Article 55. Any applicant shall have the right to appeal to the regulatory body if it believes that these requirements are not complied with. Upon such an appeal, the regulatory body shall decide, within the time limits indicated in Article 56(9), on all the necessary measures to remedy the situation. [Am 101 and 125/rev]~~

Article 7c

Coordination Committee

1. Member States shall ensure that infrastructure managers set up and organise Coordination Committees for each network. Membership of this committee shall be open ~~at least~~ to the infrastructure manager, known applicants in the sense of Article 8(3) and, upon their request, potential applicants, their representative organisations, representatives of users of the rail freight and passenger transport services and, where relevant, regional and local authorities **including the competent authorities**. Member State representatives and the regulatory body concerned shall be invited to the meetings of the Coordination Committee as observers. [Am. 59]

2. The Coordination Committee shall make proposals concerning or advising the infrastructure manager and, where appropriate, the Member State on:

- (a) the needs of applicants related to the maintenance and development of the infrastructure capacity;
- (b) the content of the user-oriented performance targets contained in the contractual agreements referred to in Article 30 and of the incentives referred to in Article 30(1) and their implementation;
- (c) the content and implementation of the network statement referred to in Article 27;
- (d) the charging framework and rules set by the State and the charging scheme established by the infrastructure manager in accordance with Article 29 and the level and structure of infrastructure charges;
- (e) the process for allocation of infrastructure capacity, including priority rules for the allocation of capacity between different categories of infrastructure users; **the principles of coordination in the event of conflicting requests to operate a rail service shall be governed by Article 46(4); [Am. 60]**
- (f) issues of intermodality;
- (g) any other issue related to the conditions for access and use of the infrastructure and the quality of the services of the infrastructure manager;
- (ga) issues faced by the users of the rail freight and passenger transport services, including the quality of the service provided, the infrastructure charges, and the level and transparency of the rail service prices. [Am. 61]**

Wednesday 26 February 2014

The Coordination Committee shall have the power to request relevant information from the infrastructure manager on points (a) to ~~(g)~~ **(ga)** in order to be able to carry out these tasks, **without prejudice to commercial confidentiality**. [Am. 62]

3. The Coordination Committee shall draw up rules of procedure that include, in particular, rules on participation in and frequency of meetings which shall be at least quarterly. **The rules of procedure shall provide inter alia for regular consultation, at least once a year, of the users of the rail freight and passenger transport services and of railway sector workers' representatives.** A report of the Coordination Committee's discussions shall be submitted annually to the infrastructure manager, the Member State, the regulatory body concerned, **users of the rail freight and passenger transport services and the railway sector workers' representatives concerned** and the Commission with an indication of the respective positions taken by the Committee members. [Am. 63]

Article 7d

European Network of Infrastructure Managers

1. Member States shall ensure that infrastructure managers participate and cooperate in a network to develop the Union rail infrastructure, **and** in particular to ensure:

- (i) timely and efficient implementation of the trans-European transport network, including the core network corridors, rail freight corridors according to Regulation (EU) No 913/2010 (\*) and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU (\*\*) **and**
- (ii) **the facilitation of efficient and effective cross-border passenger services within the Union, including through cross-border cooperation to overcome bottlenecks.**

**1a. The network shall also develop common framework principles in respect of charging for cross-border passenger services operating on more than one network as defined in Article 37 and allocation of capacity as provided for in Article 40. Those common principles shall be subject to the opinion of the network of regulatory bodies as referred to in Article 57.** [Am. 64]

The Commission shall be a member of the Network. It shall coordinate and support the work of the Network and make recommendations to the Network, as appropriate. It shall ensure the active cooperation of the appropriate infrastructure managers.

2. The Network shall participate in the market monitoring activities referred to in Article 15 and benchmark the efficiency **and effectiveness** of infrastructure managers on the basis of common indicators and quality criteria, such as the reliability, capacity, availability, punctuality and safety of their networks, asset quality and utilisation, maintenance, renewals, enhancements, investments, ~~and~~ financial efficiency **and transparency of the charging framework and charging rules.** [Am. 65]

3. The Commission ~~may~~, **taking into account the views expressed by the Network, shall** adopt measures setting out the common principles and practices of the Network, in particular to ensure consistency in benchmarking, and the procedures to be followed for cooperation in the Network. Those measures shall be adopted by means of ~~an~~ **implementing a delegated** act in accordance with the procedure referred to in Article ~~62(3)~~ **60**.

(\*) Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ L 276, 20.10.2010, p. 22).

(\*\*) Commission Decision 2012/88/EU of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system (OJ L 51, 23.2.2012, p. 51). [Am. 66]

5. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right of access to railway infrastructure in all Member States for the purpose of operating all types of rail passenger services. Railway undertakings shall have the right to pick up passengers at any station and set them down at another. That right shall include access to infrastructure connecting service facilities referred to in point 2 of Annex II.'

Wednesday 26 February 2014

(aa) the following paragraph is inserted:

*'2a. A Member State shall not be required to grant any right of access to infrastructure for the purpose of operating any type of services to a railway undertaking where that undertaking is controlled directly or indirectly by a person or persons from a third country or third countries in which rights of access to infrastructure and service facilities are not granted to Union undertakings on conditions similar to those specified in this Directive. For the purposes of this paragraph, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:*

*(a) ownership or the right to use all or part of the assets of the undertaking concerned;*

*(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.'; [Am. 67]*

(b) paragraphs 3 and 4 are deleted.

6. Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

*'1. Member States may limit the right of access provided for in Article 10(2) to passenger services between a given place of departure and a given destination when one or more public service contracts cover the same route or an alternative route if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question. **High-speed passenger services shall not be limited in their right of access provided for in Article 10(2).***

*Competent authorities and infrastructure managers shall give advance notice to all interested parties of capacity requests pursuant to Regulation (EC) No 1370/2007 of the European Parliament and of the Council (\*) that may conflict with the rights of access pursuant to Article 10 of this Directive.*

*All passenger services that are not part of a public service contract shall be referred to as open access services.*

*If a competent authority creates a new public service contract, or extends the scope of an existing one, in the sense of using more infrastructure capacity than was previously used, the rights of access of undertakings that provide existing open access services which may be affected by the decision of the competent authority shall not be subject to any limitations.*

*(\*) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).: [Am. 68]*

(b) the first subparagraph of paragraph 2 is replaced by the following:

*'In order to determine whether the economic equilibrium of a public service contract would be compromised, the relevant regulatory body or bodies referred to in Article 55 shall make an objective economic analysis and base its decision on pre-determined criteria. ~~They shall determine this~~*

*Those criteria shall cover, inter alia, the impact of the exercise of the right of access on the profitability of any services comprised in the public service contract, including the resulting impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, the location and number of stops and timing and the frequency of the proposed new service, and shall be established by the regulatory body referred to in Article 55 in compliance with the measures provided for in paragraph 4 of this Article. The analysis shall assess whether the viability of the services operated under the public service contract would be compromised by a new open access service.*

Wednesday 26 February 2014

*The economic equilibrium of the public service contract shall not be deemed to be compromised if the regulatory body predicts that the prospective new service would be mainly revenue-generating rather than revenue-abstracting for the rail sector, and that the revenue loss for the set of services under the public service contract or contracts, if any, would not be substantial. In accordance with such analysis and the decision of the relevant regulatory body, Member States shall be empowered to authorise, modify or deny the right of access for the passenger service sought.'*

(c) *the following paragraphs are inserted:*

*'2a. Where a public service contract is awarded through a competitive public tendering procedure in accordance with Union law, Member States may, in accordance with Regulation (EC) No 1370/2007, limit the right of access provided for in Article 10(2) of this Directive for the duration of that public service contract on services between a place of departure and a destination which are covered by that public service contract. The information that the right of access is limited shall be made public when the tendering procedure for that public service contract is launched. Any additional new service within the meaning of Article 10(2) which is predicted by the regulatory body to be mainly revenue-generating rather than revenue-abstracting for the rail sector and in respect of which the revenue loss for the set of services under the public service contract, if any, is predicted not to be substantial shall not be limited in its access.*

*The limitations referred to in this paragraph shall not have the effect of restricting the right to pick up passengers at any station located along the route of an international service and to set them down at another, including at stations located in the same Member State.*

*2b. The regulatory body or bodies performing the analyses referred to in paragraphs 2 and 2a make its or their determination* after a request from any of the following, submitted within one month from *receipt of* the information on the intended passenger service referred to in Article 38(4):

- (a) the competent authority or competent authorities that awarded the public service contract;
- (b) any other interested competent authority with the right to limit access under this Article;
- (c) the infrastructure manager;
- (d) the railway undertaking performing the public service contract;

*(da) the railway undertaking that has requested capacity in accordance with Article 38(4).'; [Ams 69 and 114]*

(d) ~~paragraph~~ *paragraphs 3 and 4 is are* replaced by the following:

*'3. The regulatory body shall give the grounds for its decision and the conditions under which a reconsideration of the decision within one month of its notification may be requested by one of the following:*

- (a) the relevant competent authority or competent authorities;
- (b) the infrastructure manager;
- (c) the railway undertaking performing the public service contract;
- (d) the railway undertaking seeking access.';

~~In case~~ *Where* the regulatory body decides *in accordance with paragraph 2* that the economic equilibrium of a public contract would be compromised by the intended passenger service referred to in Article 38(4), it shall indicate possible changes to such service which would ensure that the conditions to grant the right of access provided for in Article 10(2) are met.

Wednesday 26 February 2014

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the network referred to in Article 57(1), the Commission shall adopt by 16 December 2016 measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those ~~implementing~~ **delegated** acts shall be adopted in accordance with the ~~examination~~ procedure referred to in Article ~~62(3)~~ **60**; [Am. 70]

(e) paragraph 5 is deleted.

7. The following Article 13a is inserted:

'Article 13a

Common information and ~~integrated~~ ticketing schemes [Am. 71]

1. ~~Without prejudice to Regulation (EC) No 1371/2007<sup>(1)</sup> and Directive 2010/40/EU<sup>(2)</sup>,~~ **All timetabling data shall be deemed to constitute public data and shall be made available accordingly.**

**Notwithstanding Regulation (EC) No 1371/2007 and Directive 2010/40/EU, Member States shall require all rail stakeholders such as railway undertakings, infrastructure managers and ticket vendors to use by 12 December 2019 an interoperable through-ticketing and information system that fulfils the objective of enabling passengers to access all data needed to plan a journey and to reserve and buy their tickets within the Union.**

**Member States shall require railway undertakings to cooperate in setting up, by 12 December 2019, a common travel information and ticketing scheme for the supply of tickets, through-tickets and reservations for all public passenger transport by rail provided under a public service contract pursuant to Regulation (EC) No 1370/2007 or shall decide to empower relevant authorities to set up such a scheme. The scheme shall not create market distortion or discriminate between railway undertakings. It shall be managed by a public or private legal entity or by an association of all railway undertakings operating passenger services.**

**Railway undertakings operating commercial public passenger services shall have non-discriminatory access to the scheme for the purpose of providing information on, and selling tickets for, public passenger transport by rail as an add-on to their own transport services.**

**Any system shall be devised in such a way as to be interoperable in accordance with Directive 2008/57/CE and the basic technical specifications on telematic applications. It shall apply those technical requirements in order to ensure, in particular, consistency in charging and clearing, confidentiality of commercial information, protection of personal data and compliance with competition rules. Any system or application offering additional services to passengers shall be interoperable with those technical specifications.**

**Member States shall ensure that access to the basic technical specifications on telematic applications is open and non-discriminatory.**

**Any commercial agreement between participants shall be in conformity with competition rules.**

**The costs of such a system shall be divided fairly among the participants, in a manner which reflects their respective contributions.**

**The regulatory body shall ensure that any such through-ticketing system does not create market distortion or discriminate between railway undertakings.**

Member States may **also** require railway undertakings ~~operating domestic passenger services~~ **and providers of passenger transport by other modes of transport** to participate in a common **interoperable travel** information and integrated ticketing scheme for the supply of tickets, through-tickets and reservations or decide to give the power to ~~competent~~ **relevant** authorities to establish such a scheme. If such a scheme is established, Member States shall ensure that it does not create market distortion or discriminate between railway undertakings **and other providers of**

Wednesday 26 February 2014

**passenger transport** and that it is managed by a public or private legal entity or an association of all railway undertakings operating passenger services. [Am. 72]

2. Member States shall ~~require railway undertakings operating passenger services to put in place and coordinate~~ **set up, and coordinate, including with respect to major routes within the Union, national** contingency plans to provide assistance to passengers, ~~in the sense of Article 18 of Regulation (EC) No 1371/2007, taking account of Commission Decision 2008/164/EC (\*)~~, in the event of a major disruption to services **triggered by a natural or man-made disaster. Each railway undertaking operating passenger services and each station manager shall put in place its own contingency plan in accordance with national contingency plans.**

<sup>(1)</sup> OJ L 315, 3.12.2007, p. 14.

<sup>(2)</sup> OJ L 207, 6.8.2010, p. 1.

<sup>(\*)</sup> Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72). [Am. 73]

7a. In Article 19, the following point is added:

**'(da) have undertaken to apply the respective collective agreements of the Member States in which the undertaking wishes to operate.'** [Am. 74]

8. In Article 38, paragraph 4 is replaced by the following:

**'4. Where an applicant intends to request infrastructure capacity with a view to operating a passenger service, it shall inform the infrastructure managers and the regulatory bodies concerned no less than 18 months before the entry into force of the working timetable to which the request for capacity relates. In order to enable regulatory bodies concerned to assess the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service on that route defined in a public service contract, any other interested competent authority with the right to limit access under Article 11 and any railway undertaking performing the public service contract on the route of that passenger service is informed without undue delay and at the latest within five days.'**

8a. In Article 42, the following paragraph 1a is inserted:

**'1a. With a view to preventing discrimination against applicants, the regulatory body referred to in Article 55 of this Directive shall give prior approval to such a framework agreement and shall oversee a framework agreement in force on its own initiative. An applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated or discriminated against, or if it is in any other way aggrieved by a framework agreement. In the event of an appeal against a framework agreement, the regulatory body shall either confirm that no modification of the framework agreement is required or shall require modification of that framework agreement in accordance with directions specified by the regulatory body, not later than two months after the appeal is received by the regulatory body. The infrastructure manager and the railway undertaking shall comply with the regulatory body's decision as soon as is materially feasible, and in any case not later than one month after receiving notification of that decision from the regulatory body. Whilst performing the functions described in this paragraph, the regulatory body shall pay particular attention to the protection of business secrets.'** [Am. 75]

8b. In Article 46, paragraph 4 is replaced by the following:

**'4. The principles governing the coordination process shall be set out in the network statement. These shall, in particular, reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers. In the event of conflicting requests to operate a rail service in the same market segment, the infrastructure manager, when allocating capacity, shall take into consideration only the infrastructure disputed and not the overall volume of capacity requested by the competing applicants.'** [Am. 76]

Wednesday 26 February 2014

8c. In Article 54, paragraph 1 is replaced by the following:

*'1. In the event of disturbance to train movements caused by technical failure or accident, the infrastructure manager shall take all necessary steps to restore the situation to normal. To that end, it shall draw up a contingency plan listing the various bodies to be informed in the event of serious incidents or serious disturbance to train movements. In the event of disturbance which has a potential impact on cross-border traffic, the infrastructure manager shall share any relevant information with other infrastructure managers whose network and traffic may be affected by that disturbance. The infrastructure managers concerned shall cooperate to restore the cross-border traffic to normal.'* [Am. 77]

8d. In Article 55, the following paragraph is added:

*'3a. Member States shall ensure that the regulatory bodies have the necessary organisational and operational resources referred to in Article 56 of this Directive and shall, where necessary, adopt an action plan for the purpose of providing them with those resources.'* [Am. 78]

8e. Article 56 is replaced by the following:

*'Article 56*

*Functions of the regulatory body*

*1. Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:*

- (a) the network statement in its provisional and final versions;*
- (b) the criteria set out in it;*
- (c) the allocation process and its result;*
- (d) the charging scheme;*
- (e) the level or structure of infrastructure charges which it is, or may be, required to pay;*
- (f) arrangements for access in accordance with Articles 10 to 13;*
- (g) access to and charging for services in accordance with Article 13;*
- (ga) scheduled and unscheduled infrastructure maintenance work.*

*2. Without prejudice to the powers of the national competition authorities for securing competition in the rail services markets, the regulatory body shall have the power to monitor the competitive situation in the rail services markets and shall, in particular, control points (a) to (ga) of paragraph 1 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.*

*3. The regulatory body shall also cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (\*), and the licensing authority within the meaning of this Directive.*

*Member States shall ensure that these authorities jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with recommendations on issues that may affect safety. Without prejudice to the independence of each authority within the field of their respective competences, the relevant authority shall examine any such recommendation before adopting its decisions. If the relevant authority decides to deviate from these recommendations, it shall give reasons in its decisions.*

Wednesday 26 February 2014

4. Member States may decide that the regulatory body is given the task to adopt non-binding opinions on the provisional versions of the business plan referred to in Article 8(3), the contractual agreement and the capacity-enhancement plan to indicate in particular whether these instruments are consistent with the competitive situation in the rail services markets.

5. The regulatory body shall have the necessary organisational capacity in terms of human and material resources, which shall be proportionate to the importance of the rail sector in the Member State.

6. The regulatory body shall ensure that charges set by the infrastructure manager comply with Section 2 of Chapter IV and are non-discriminatory. The regulatory body shall ensure that the access charges set by the infrastructure manager, operators of service facilities or railway undertakings — including for access to tracks and access to stations, their buildings and other facilities, including facilities for the display of travel information — are not discriminatory. In that connection, proposed changes to the level or structure of the charges referred to in this paragraph shall be notified to the regulatory body at the latest two months prior to their scheduled entry into force. Until one month prior to their entry into force, the regulatory body may insist on a reduction or an increase in the proposed changes, on their postponement or on their cancellation. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Chapter.

7. The regulatory body shall, regularly and, in any case, at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.

8. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned.

Information requested shall be supplied within a reasonable period set by the regulatory body that shall not exceed one month, unless, in exceptional circumstances, the regulatory body agrees to, and authorises, a time-limited extension, which shall not exceed two additional weeks. The regulatory body shall be able to enforce such requests with appropriate penalties, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes.

9. The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information. Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (ga) of paragraph 1.

A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance. The regulatory body shall be able to enforce its decisions with the appropriate penalties, including fines.

In the event of a complaint against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with its instructions. The infrastructure manager shall comply with the decision of the regulatory body at the latest one month after receiving notification of that decision.

10. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal may have suspensive effect on the decision of the regulatory body only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law, where applicable.

Wednesday 26 February 2014

11. *Member States shall ensure that decisions taken by the regulatory body are published.*

12. *The regulatory body shall have the power to carry out audits or initiate external audits with infrastructure managers, operators of service facilities and, where relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6. In this respect, the regulatory body shall be entitled to request any relevant information. In particular the regulatory body shall have the power to request infrastructure manager, operators of service facilities and all undertakings or other entities performing or integrating different types of rail transport or infrastructure management as referred to in Article 6(1) and (2) and Article 13 to provide all or part of the accounting information listed in Annex VIII with a sufficient level of detail as deemed necessary and proportionate.*

*Without prejudice to the powers of the national authorities responsible for State aid issues, the regulatory body may also draw conclusions from the accounts concerning State aid issues which it shall report to those authorities.*

13. *The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning certain amendments to Annex VIII. Thus, Annex VIII may be amended to adapt it to the evolution of accounting and control practices and/or to supplement it with additional elements necessary to verify separation of accounts.*

(\*) *Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L 191, 18.7.2008, p. 1).* [Am. 79]

8f. *In Article 57 the following paragraph is added:*

*'9a. Where an applicant considers that a decision of an infrastructure manager is obstructing the development of an international service, it may refer the matter to the network of regulatory bodies for an opinion. The national regulatory body concerned shall be informed of that referral at the same time. The network shall, where necessary, seek explanations from the infrastructure manager and, in any case, from the national regulatory body concerned. The network shall adopt and publish its opinion and communicate it to the national regulatory body concerned.*

*The network of regulatory bodies shall submit an annual activity report to the Commission. The Commission shall report to the European Parliament and Council.*

*Within one year from the entry into force of this Directive and by no later than 31 December 2019, the Commission shall adopt a legislative proposal establishing a European regulatory body and shall confer on it legal personality together with a supervisory and arbitration function empowering it to deal with cross-border issues and to hear appeals against decisions taken by national regulatory bodies. That new body shall replace the European Network of Regulatory Bodies.'* [Am. 80]

9. *In Article 63, paragraph 1 is replaced by the following:*

*'1. By 31 December 2024, the Commission shall evaluate the impact of this Directive on the rail sector and shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on its implementation. That evaluation shall take into account the views expressed by the European regulatory body on whether discriminatory practices or other types of distortion of competition persist and the views expressed by social partners in the relevant Union social dialogue committee.* [Am. 81]

*By the same date, the Commission ~~European Regulatory Body~~ shall assess whether discriminatory practices or other types of distortion of competition persist in relation to infrastructure managers which are part of a vertically integrated undertaking and shall publish recommendations for further policy measures. The Commission shall, if appropriate, propose new legislative measures based on those recommendations.* [Am. 82]

*The Commission shall, no later than 18 months after the entry into force of this Directive, assess its impact on the development of the labour market for railway on-board staff and shall, if appropriate, propose new legislative measures on the certification of such on-board railway staff.'* [Am. 83]

Wednesday 26 February 2014

**Article 1a****Regulation (EC) 1371/2007 is amended as follows:****Article 2, paragraph 3 is replaced by the following:****‘3. On the entry into force of this Regulation, Articles 9, 10, 11, 12, 19, 20(1) and 26 shall apply to all rail passenger services throughout the Union.’. [Am. 84]**

## Article 2

1. Member States shall adopt and publish, by ... (\*) at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate to the Commission the text of those provisions immediately.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 3

1. This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union. **It shall be made available in consolidated form, together with Directive 2012/34/EU as amended by it, within three months of its publication.** [Am. 85]

2. Points 5 to 8 of Article 1 shall apply from 1 January 2018 [in time for the working timetable starting on 14 December 2019].

**Until the date of application of point 5 and without prejudice to international passenger services, Member States shall not be required to grant the right of access to railway undertakings and their directly or indirectly controlled subsidiaries, licensed in a Member State where access rights of a similar nature are not granted.** [Am. 86]

## Article 4

This Directive is addressed to the Member States.

Done at

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

---

(\*) 18 months after entry into force of this Directive.