

20.2.2014

A7-0037/ 001-086

## AMENDMENTS 001-086

by the Committee on Transport and Tourism

### Report

Saïd El Khadraoui

Single European railway area

A7-0037/2014

Proposal for a directive (COM(2013)0029 – C7-0025/2013 – 2013/0029(COD))

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### Amendment 1

#### Proposal for a directive

##### Recital 1

*Text proposed by the Commission*

(1) Over the past decade, 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. Rail passenger services have not kept pace with evolving needs in terms of offer or quality.

*Amendment*

(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.

### Amendment 2

#### Proposal for a directive

##### Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(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.*

### **Amendment 3**

#### **Proposal for a directive Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*(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.*

*Justification*

*The consequences of liberalisation in Europe need to be examined closely, with a focus on economic, social and environmental outcomes.*

### **Amendment 4**

#### **Proposal for a directive Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*(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.*

### **Amendment 5**

#### **Proposal for a directive Recital 2 c (new)**

*Text proposed by the Commission*

*Amendment*

*(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.*

## Amendment 6

### Proposal for a directive

#### Recital 3

##### *Text proposed by the Commission*

(3) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>8</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.

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<sup>8</sup> OJ L 343, 14.12.2012, p. 32.

##### *Amendment*

(3) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>8</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.*

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<sup>8</sup> OJ L 343, 14.12.2012, p. 32.

## Amendment 7

### Proposal for a directive

#### Recital 3 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

*(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.*

## Amendment 8

### Proposal for a directive

#### Recital 4

##### *Text proposed by the Commission*

(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 non-discriminatory access to infrastructure, building on the existing separation requirements between infrastructure management and transport operations.

##### *Amendment*

(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.

##### *Justification*

*It is inefficient for newcomers with just a few trains per day to set up expensive ticket offices and ticket machines on their own – at commercial rates decided by the station owner, which might be the holding company of the incumbent railway operator.*

## Amendment 9

### Proposal for a directive

#### Recital 4 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***(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.***

## Amendment 10

### Proposal for a directive

#### Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 11**

### **Proposal for a directive**

#### **Recital 5**

*Text proposed by the Commission*

*Amendment*

(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.

(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, the infrastructure manager at traffic control level should coordinate with railway undertakings, without compromising either its independence and responsibility for managing the network or the existing rules.***

#### *Justification*

*The cooperation at technical level between the infrastructure manager and railway undertakings should be improved in order to strengthen the efficient management of the network. This should be done without compromising the independence and role of the infrastructure manager.*

## **Amendment 12**

### **Proposal for a directive**

#### **Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(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.*

## **Amendment 13**

### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### *Justification*

*The infrastructure manager gains competences through the changes proposed by the Commission of Article 3.2. It should use those competences in the spirit of providing high-quality services to its users, the railway undertakings and their passengers. Infrastructure managers across the EU should share the same "mission statement".*

## **Amendment 14**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) Cross-border issues should be addressed efficiently between infrastructure managers of the different Member States through the establishment of a European network of infrastructure managers.

***(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.***

## *Justification*

*Making concerted efforts to unify the powers and duties of infrastructure managers should not preclude the Member States from intervening when it comes to infrastructure planning and financing.*

### **Amendment 15**

#### **Proposal for a directive Recital 8**

##### *Text proposed by the Commission*

(8) In order to ensure equal access to the infrastructure, ***any conflicts of interest resulting from*** integrated structures ***encompassing*** infrastructure management and transport activities ***should be removed***. Removing 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.

##### *Amendment*

(8) In order to ensure equal access to the infrastructure, integrated structures ***should be shaped in such a way that no conflicts of interest arise between*** infrastructure management and transport activities. 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***.

### **Amendment 16**

#### **Proposal for a directive Recital 9**

##### *Text proposed by the Commission*

(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

##### *Amendment*

(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 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.

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.

#### *Justification*

*Unfair access to ticket offices, stations and maintenance depots are also causes of discrimination*

#### **Amendment 17**

##### **Proposal for a directive Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### **Amendment 18**

##### **Proposal for a directive Recital 11**

*Text proposed by the Commission*

*Amendment*

***(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 a railway undertaking should preclude the possibility of exercising control or any***

***(11) This Directive aims to establish free and fair competition between all railway undertakings, and therefore precludes a railway undertaking from retaining a vertically integrated model as defined in Article 3.***



*right over an infrastructure manager.*

## **Amendment 19**

### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

*(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.*

## **Amendment 20**

### **Proposal for a directive Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) 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.*

## Amendment 21

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(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 and where approval has been given by the relevant regulatory body.

#### *Amendment*

(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.

#### *Justification*

*The economic equilibrium of the public service contract should not be the only criterion. Effects on the quality of the service provided, such as punctuality, maintaining connections, the number of stops and the frequency of trains therefore also need to be taken into account.*

## Amendment 22

### Proposal for a directive Recital 15

#### *Text proposed by the Commission*

(15) Regulatory bodies should assess 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.***

#### *Amendment*

(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.

#### *Justification*

*In order to discover the optimal combination of domestic passenger services provided under open access conditions and on the basis of existing public service contracts, the assessment by*

*regulatory bodies cannot be conducted on the basis of a prior request only.*

## **Amendment 23**

### **Proposal for a directive**

#### **Recital 18**

##### *Text proposed by the Commission*

(18) When assessing whether the economic equilibrium of the public service contract would be compromised, regulatory bodies should consider the economic 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 the net cost to the competent public 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.

##### *Amendment*

(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, the consequences for **enhancing cohesion policy in the area concerned and** the net cost to the competent public 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.

##### *Justification*

*Social and cohesion policy issues have to be compulsorily considered by the regulatory body.*

## **Amendment 24**

### **Proposal for a directive**

#### **Recital 18 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(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.***

## Amendment 25

### Proposal for a directive

#### Recital 19

##### *Text proposed by the Commission*

(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*** that it does not create market distortion or discriminate between railway undertakings.

##### *Amendment*

(19) In order to increase the attractiveness of railway services for passengers, Member States should 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. Such a scheme should ***ensure*** that it does not create market distortion or discriminate between railway undertakings.

##### *Justification*

*Any domestic passenger operator should join a ticketing scheme in order to offer to passengers the possibility to buy tickets for any operator's service from any operator.*

## Amendment 26

### Proposal for a directive

#### Recital 19 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***(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.***

##### *Justification*

*This recital concerns the importance of intermodal ticketing schemes, which are defined as "integrated ticketing schemes".*

## Amendment 27

### Proposal for a directive

#### Recital 19 b (new)

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 28**

### **Proposal for a directive Recital 19 c (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

### *Justification*

*The European Network of Regulatory Bodies should be established and be operational by December 2016.*

## **Amendment 29**

### **Proposal for a directive**

#### **Recital 19 d (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 30**

### **Proposal for a directive**

#### **Recital 19 e (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 31**

### **Proposal for a directive**

#### **Recital 19 f (new)**

*Text proposed by the Commission*

*Amendment*

***(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.*

*Justification*

*The European Regulatory Body should replace the European network of regulatory bodies by December 2019. If the EU aim is to develop a Single European Railway Market, the regulatory body must be a European one. We want to avoid seeing EU rules being applied and interpreted differently in each Member State by national regulators in particular in those cases where National regulatory body are not acting efficiently, are not independent and haven't got sufficient staff and resources.*

**Amendment 32**

**Proposal for a directive  
Recital 19 g (new)**

*Text proposed by the Commission*

*Amendment*

*(19g) In order to avoid social dumping, a railway undertaking should only be able to provide rail transport services if it complies with representative 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.*

*Justification*

*Necessary addition to clarify the compulsory requirement for any railway undertaking to be able to operate in a Member State.*

**Amendment 33**

**Proposal for a directive  
Recital 19 h (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### **Amendment 34**

##### **Proposal for a directive Recital 19 i (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### *Justification*

*The opening up of the market must not have an adverse impact on social and working conditions in the railway sector and should conform to national legislation in the field of social and health protection.*

#### **Amendment 35**

##### **Proposal for a directive Recital 19 j (new)**

*Text proposed by the Commission*

*Amendment*

***(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.*

**Amendment 36**

**Proposal for a directive  
Recital 19 k (new)**

*Text proposed by the Commission*

*Amendment*

*(19k) The Commission should ensure the  
full and correct enforcement by Member  
States of the provisions of Council  
Directive 2005/47/EC<sup>8a</sup>.*

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<sup>8a</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).*

**Amendment 37**

**Proposal for a directive  
Recital 19 l (new)**

*Text proposed by the Commission*

*Amendment*

*(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 representative collective agreements in  
order to avoid social dumping and unfair  
competition.*

**Amendment 38**

**Proposal for a directive  
Recital 19 m (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### **Amendment 39**

##### **Proposal for a directive**

##### **Recital 19 n (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

#### **Amendment 40**

##### **Proposal for a directive**

##### **Recital 19 o (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 41**

### **Proposal for a directive Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

***(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;***

*Justification*

*To date information on incidents and accidents which disrupt cross-border traffic is not automatically transmitted to other affected networks. Infrastructure managers should cooperate to improve the flow of information in such cases.*

## **Amendment 42**

### **Proposal for a directive Recital 20 b (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 43**

### **Proposal for a directive Recital 20 c (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 44**

### **Proposal for a directive**

#### **Recital 20 d (new)**

*Text proposed by the Commission*

*Amendment*

***(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.***

## **Amendment 45**

### **Proposal for a directive**

#### **Recital 20 e (new)**

*Text proposed by the Commission*

*Amendment*

***(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, 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.***

*Justification*

*Complements the amendments to Art. 13a as regards the common ticketing scheme.*

## **Amendment 46**

### **Proposal for a directive**

#### **Recital 20 f (new)**

*Text proposed by the Commission*

*Amendment*

***(20f) The regulatory body should produce, immediately after the entry into force of this Directive, guidelines on the enhancement of the independence of the infrastructure manager. Those guidelines should contain rules laying down sufficient 'cooling-off' periods during***

*which transfers of members of the supervisory and management board and of managers directly reporting to them are not possible; on the possibility of having simultaneous positions on boards of different legal entities within the vertically integrated undertakings; on the possibility of holding an interest in, or receiving any financial benefit from, any other legal entities within the vertically integrated undertaking; and on the performance-based elements of their remuneration, which should not depend on the business results of any other legal entities within the vertically integrated undertaking. The guidelines should also contain rules on how to avoid any conflict of interest, on the disclosure of sensitive information in the context of transfers of members of the supervisory or management board of the infrastructure manager and, if appropriate, the managers directly reporting to them, to any senior position with another legal entity within the vertically integrated undertaking, on separate premises and on protected access to information systems.*

#### **Amendment 47**

##### **Proposal for a directive Recital 20 g (new)**

*Text proposed by the Commission*

*Amendment*

*(20g) 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.*

#### **Amendment 48**

##### **Proposal for a directive**

## **Recital 20 h (new)**

*Text proposed by the Commission*

*Amendment*

***(20h) For the purposes of this Directive, the concept 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 as far as possible the creation of additional bodies.***

## **Amendment 49**

**Proposal for a directive**

**Article 1 – point -1 (new)**

Directive 2012/34/EU

Article 1 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***-1. In Article 1, the following paragraph is 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.’***

## **Amendment 50**

**Proposal for a directive**

**Article 1 – point -1 a (new)**

Directive 2012/34/EU

Article 1 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

***-1a. In Article 1, the following paragraph is added:***

***‘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.'*

## **Amendment 51**

### **Proposal for a directive**

#### **Article 1 – point 1 – point b**

Directive 2012/34/EU

Article 3 – point 5

*Text proposed by the Commission*

*Amendment*

***(b) Point 5 is deleted;***

***deleted***

## **Amendment 52**

### **Proposal for a directive**

#### **Article 1 – point 1 – points c a and c b (new)**

Directive 2012/34/EU

Article 3

*Text proposed by the Commission*

*Amendment*

***(ca) The following point 32 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 33 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;'***

### *Justification*

*Complements Art 7d, paragraph 2, point f and the role of the coordination committee as regards the development of integrated ticketing schemes proposed therein. This is the definition used in regulation 1371/2007. For the sake of clarity it should also be included in this Directive which deals with the same subject.*

## Amendment 53

### Proposal for a directive

#### Article 1 – point 1 – point c c (new)

Directive 2012/34/EU

Article 3

*Text proposed by the Commission*

*Amendment*

*(cc) The following points 34 and 35 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;"*

## Amendment 54

### Proposal for a directive

#### Article 1 – point 1 – point c d (new)

Directive 2012/34/EU

Article 3

*Text proposed by the Commission*

*Amendment*

*(cd) The following point 36 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."*

## Amendment 55

### Proposal for a directive

#### Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – introductory sentence

*Text proposed by the Commission*

*Amendment*

Member States shall also ensure the same

Member States shall also ensure *that* the



legal or natural person or persons are not allowed:

same legal or natural person or persons are not allowed:

#### *Justification*

*The proposed strict separation rules will prevent various types of cooperation between RUs and an IM which, previous experience suggests, can deliver wider rail network benefits in EU Member States. Where appropriate, an IM and RUs should be able to take joint decisions which deliver network benefits provided this is done in a transparent and non-discriminatory way. In so doing, they will exercise influence over each other with respect to areas of cooperation but not “controlling” rights.*

#### **Amendment 56**

##### **Proposal for a directive**

##### **Article 1 – point 3**

Directive 2012/34/EU

Article 7 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***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. 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.*

*Justification*

*An independent infrastructure manager should have the possibility to engage in agreements with railway undertakings in order to improve the performance of a specific line or part of the network. Such an agreement would require the approval of the regulatory body and be of limited duration.*

**Amendment 57**

**Proposal for a directive**

**Article 1 – point 3**

Directive 2012/34/EU

Article 7 – paragraph 5

*Text proposed by the Commission*

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 in Articles 7a to 7c.

*Amendment*

Where 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 ***a*** 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 in Articles 7a to 7c.

*Justification*

*Member States should be allowed to choose also in the future between a separation of the infrastructure manager from railway undertakings or an integrated structure.*

## Amendment 58

### Proposal for a directive

#### Article 1 – point 4

Directive 2012/34/EU

Articles 7 a, 7 b, 7 c

#### *Text proposed by the Commission*

##### 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. 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.

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 to the ultimate owner of the vertically integrated company. The infrastructure manager may ***not grant loans to any other legal entities*** within the vertically integrated undertaking, ***and no other legal entity within the vertically integrated undertaking may grant*** loans to the infrastructure manager. Any services offered by other legal entities to the infrastructure manager shall be based on

#### *Amendment*

##### 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 shareholding in the infrastructure manager, ***either directly, indirectly or through subsidiaries***. Nor shall the infrastructure manager have any shareholding in any legal entities within the vertically integrated undertaking active in railway transport services markets, ***either directly, indirectly or through subsidiaries***.

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 to the ultimate owner of the vertically integrated company. The infrastructure manager may grant loans ***only to its own subsidiaries dealing with infrastructure management***. Within the vertically integrated undertaking, loans to the infrastructure manager ***may only be granted by the holding company and shall be subject to prior approval by the regulatory body referred to in Article 55. The holding***

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.

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

***company shall demonstrate to the satisfaction of the regulatory body that the loan is granted on market terms and that it complies with Article 6. The regulatory body shall control the actual disbursement and reimbursement of the loan, in accordance with Article 56(12).***

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 ***may*** raise funds on the capital markets ***only*** independently. Other legal entities within the vertically integrated undertaking shall not raise funds via the infrastructure manager.

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). 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.

***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

integrated undertaking, with respect to all the functions referred to in Article 3(2). 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. ***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.***

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.

***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 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 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***

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.

5. The infrastructure manager shall have its own staff. ***Sensitive information held by the infrastructure manager shall be duly protected and shall not be passed on to other entities.***

*other than those referred to under point (c) between the infrastructure manager and the other legal entities within the vertically integrated undertaking shall only be possible if it can be ensured that sensitive information will not be passed on between them.*

*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 other legal entities within the vertically integrated undertaking. 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. The regulatory body may request the integrated undertaking to provide it with any information 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.*

6. The infrastructure manager shall have the necessary organisational capacity to perform all of its functions independently.

*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.*

#### 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

*7a Member States shall request the regulatory body to produce guidelines on the conditions to be fulfilled in order to enhance an effective independence of the staff and management of the infrastructure manager within a vertically integrated undertaking and to ensure that any conflict of interest or disclosure of sensitive information is avoided. Such guidelines shall be binding on the vertically integrated undertaking.*

#### 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:***

(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

the infrastructure manager concerned belongs, if the Commission:

(a) ***informs Member States that*** no adequate replies to the Commission information requests in accordance with paragraph 2 have been made, or

(b) ***decides, in accordance with the procedure referred to in Article 60, that*** the infrastructure manager concerned does not fulfil the requirements set out in Articles 7a and 7b, or

(c) ***decides, in accordance with the procedure referred to in Article 60, that*** 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 ***and shall simultaneously initiate a formal infringement procedure under Article 258 of the Treaty on the Functioning of the European Union against the Member State concerned.***

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.

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.

## Amendment 59

### Proposal for a directive

#### Article 1 – point 4

Directive 2012/34/EU

Article 7 d – paragraph 1

#### *Text proposed by the Commission*

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. Member State representatives and the regulatory body concerned shall be invited to the meetings of the Coordination Committee as observers.

#### *Amendment*

1. Member States shall ensure that infrastructure managers set up and organise Coordination Committees for each network. Membership of this committee shall be open 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.

## Amendment 60

### Proposal for a directive

#### Article 1 – point 4

Directive 2012/34/EU

Article 7 d – paragraph 2 – point e

#### *Text proposed by the Commission*

(e) the process for allocation of infrastructure capacity, including priority rules for the allocation of capacity between different categories of infrastructure users;

#### *Amendment*

(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);*

*Justification*

*The coordination committee should discuss the priority rules for capacity allocation, including the case of conflicting requests which is why reference is made to Art 46(4). The infrastructure manager may not, in case of competing requests for track access, unduly favour big client undertakings over smaller ones.*

**Amendment 61**

**Proposal for a directive**

**Article 1 – point 4**

Directive 2012/34/EU

Article 7 d – paragraph 2 – point g a (new)

*Text proposed by the Commission*

*Amendment*

***(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.***

*Justification*

*Consultation of the users of the rail freight and passenger transport services would provide relevant information to the Coordination Committee for performing his tasks as an advisor to the infrastructure manager and the Member State.*

**Amendment 62**

**Proposal for a directive**

**Article 1 – point 4**

Directive 2012/34/EU

Article 7 d – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

The Coordination Committee shall have the power to request relevant information from the infrastructure manager on points (a) to **(g)** in order to be able to carry out these tasks.

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

*Justification*

*Rules must be laid down to govern the establishment of the Coordination Committee.*

*Establishing the committee must not serve to undermine the Member States' discretionary and decision-making powers in the area of rail infrastructure or the principle of business secrecy, as regards either the infrastructure manager or railway undertakings.*

## **Amendment 63**

### **Proposal for a directive**

#### **Article 1 – point 4**

Directive 2012/34/EU

Article 7 d – paragraph 3

#### *Text proposed by the Commission*

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. A report of the Coordination Committee's discussions shall be submitted annually to the infrastructure manager, the Member State, the regulatory body concerned and the Commission with an indication of the respective positions taken by the Committee members.

#### *Amendment*

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.

## **Amendment 64**

### **Proposal for a directive**

#### **Article 1 – point 4**

Directive 2012/34/EU

Article 7 e – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that infrastructure managers participate and cooperate in a network to develop the Union rail infrastructure, in particular to ensure timely and efficient implementation of the trans-European transport network, including the core network corridors, rail

#### *Amendment*

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:

freight corridors according to Regulation (EU) No 913/2010<sup>11</sup> and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU<sup>12</sup>.

(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<sup>11</sup> and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU<sup>12</sup> *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.*

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<sup>11</sup> OJ L 276, 20.10.2010, p. 22.

<sup>12</sup> OJ L 51, 23.2.2012, p. 51.

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<sup>11</sup> OJ L 276, 20.10.2010, p. 22.

<sup>12</sup> OJ L 51, 23.2.2012, p. 51.

### *Justification*

*Coordination is needed among infrastructure managers to facilitate cross-border travel.*

### **Amendment 65**

#### **Proposal for a directive**

#### **Article 1 – point 4**

Directive 2012/34/EU

Article 7 e – paragraph 2

#### *Text proposed by the Commission*

2. The Network shall participate in the market monitoring activities referred to in

#### *Amendment*

2. The Network shall participate in the market monitoring activities referred to in

Article 15 and benchmark the efficiency 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.

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, financial efficiency **and transparency of the charging framework and charging rules**.

## Amendment 66

### Proposal for a directive

#### Article 1 – point 4

Directive 2012/34/EU

Article 7 e – paragraph 3

#### *Text proposed by the Commission*

3. The Commission **may** 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** act in accordance with the procedure referred to in Article **62(3)**.

#### *Amendment*

3. The Commission, **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 **a delegated** act in accordance with the procedure referred to in Article **60**.

## Amendment 67

### Proposal for a directive

#### Article 1 – point 5 – point a a (new)

Directive 2012/34/EU

Article 10 – paragraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(aa) the following paragraph 2a 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.';*

#### *Justification*

*The question of access to passenger and freight market for undertakings controlled from third countries needs to be addressed. It is both necessary and fair to ensure that balanced conditions exist on the basis of reciprocity. In the absence of such conditions, no individual Member State should be required to open its market to undertakings established in third countries or to undertakings directly or indirectly controlled by persons from third countries. The definition is taken from Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.*

#### **Amendment 68**

##### **Proposal for a directive**

##### **Article 1 – point 6 – point a**

Directive 2012/34/EU

Article 11 – paragraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

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.*

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*\* 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).*

## **Amendment 69**

### **Proposal for a directive**

#### **Article 1 – point 6 – point b**

Directive 2012/34/EU

Article 11 – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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



**determine this** after a request from any of the following, submitted within one month from the information on the intended passenger service referred to in Article 38(4):

pre-determined criteria.

*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.*

*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.*

*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 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 shall make its 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.

- (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).*

#### *Justification*

*The criteria that define the economic equilibrium need to be specified in more detail. The text is inspired by recital 21 of Directive 2012/34/EU and the 2010 interpretative Commission guidelines.*

## Amendment 70

### Proposal for a directive

#### Article 1 – point 6 – point c

Directive 2012/34/EU

Article 11 – paragraphs 3 and 4

#### *Text proposed by the Commission*

c) **paragraph 3** is 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*** the regulatory body decides 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.

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*** acts shall be adopted in accordance with the ***examination*** procedure referred to in Article 62(3).

#### *Amendment*

c) **paragraphs 3 and 4** 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.’;

***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.

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 ***delegated*** acts shall be adopted in accordance with the procedure referred to in Article 60.

### *Justification*

*The criteria that define the economic equilibrium need to be specified in more detail. The text is inspired by recital 21 of Directive 2012/34/EU and the 2010 interpretative Commission guidelines.*

#### **Amendment 71**

##### **Proposal for a directive**

##### **Article 1 – point 7**

Directive 2012/34/EU

Article 13 a – title

#### *Text proposed by the Commission*

Common information and **integrated** ticketing schemes

#### *Amendment*

Common information and ticketing schemes

### *Justification*

*This Article deals with the creation of a through ticketing scheme for rail, not an intermodal ticketing system.*

#### **Amendment 72**

##### **Proposal for a directive**

##### **Article 1 – point 7**

Directive 2012/34/EU

Article 13 a – paragraph 1

#### *Text proposed by the Commission*

1. ***Without prejudice to Regulation (EC) No 1371/2007<sup>13</sup> and Directive 2010/40/EU<sup>14</sup>***, Member States may 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 or decide to give the power to ***competent*** 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 that it is managed by a public or private legal entity or an association of all ***railway*** undertakings operating passenger services.

#### *Amendment*

1. ***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 *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 *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 passenger transport* and that it is managed by a public or private legal entity or an association of all undertakings operating passenger services.

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<sup>13</sup> OJ L 315, 3.12.2007, p. 14.

<sup>14</sup> OJ L 207, 6.8.2010, p. 1.

#### *Justification*

*A distinction should be made as regards through ticketing and integrated ticketing. Whereas the rail sector should establish a functioning through ticketing system as soon as possible, integrated ticketing solutions for cross-modal tickets should follow in a second step.*

#### **Amendment 73**

#### **Proposal for a directive**

**Article 1 – point 7**  
Directive 2012/34/EU  
Article 13 – paragraph 2

*Text proposed by the Commission*

2. Member States shall ***require railway undertakings operating passenger services to put in place and coordinate*** contingency plans to provide assistance to passengers, in the ***sense of Article 18 of Regulation (EC) No 1371/2007***, in the event of a major disruption to services.

*Amendment*

2. Member States shall ***set up, and coordinate, including with respect to major routes within the Union, national*** contingency plans to provide assistance to passengers, ***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.***

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***\* Commission Decision 2008/164/EC of 21 December 2007 on technical specifications for interoperability as regards 'persons of reduced mobility' in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72).***

**Amendment 74**

**Proposal for a directive**  
**Article 1 – point 7 a (new)**  
Directive 2012/34/EU  
Article 19 – point d a (new)

*Text proposed by the Commission*

*Amendment*

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

***'(da) have undertaken to apply the respective representative collective agreements of the Member States in which the undertaking wishes to operate.';***

*Justification*

*If the rail passenger market is to become more open it is necessary to enhance the requirements*

*of good repute as regards the respect of working conditions that a railway undertaking needs to be fulfil to obtain a licence in order to avoid a lowering of labour conditions due to more competition.*

## **Amendment 75**

### **Proposal for a directive**

#### **Article 1 – point 8 a (new)**

Directive 2012/34/EU

Article 42 – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

**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.**



### *Justification*

*It is important to give the regulatory bodies oversight over framework agreements, which can be a major source of discrimination.*

#### **Amendment 76**

##### **Proposal for a directive**

##### **Article 1 – point 8 b (new)**

Directive 2012/34

Article 46 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***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.'***

### *Justification*

*Even an independent infrastructure manager may want to favour big railway undertakings over smaller ones, as bigger ones in overall terms request more capacity and therefore add more to the infrastructure manager's revenues. This amendment clarifies that the infrastructure manager may not, in case of competing requests for track access, unduly favour big client undertakings over smaller ones.*

#### **Amendment 77**

##### **Proposal for a directive**

##### **Article 1 – point 8 c (new)**

Directive 2012/34/EU

Article 54 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***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.***

*Justification*

*Article 54, paragraph 1 is amended to make sure that information on a disturbance in one network which could have an impact on traffic in another Member State is communicated to other potentially affected infrastructure managers.*

**Amendment 78**

**Proposal for a directive**

**Article 1 – point 8 d (new)**

Directive 2012/34/EU

Article 55 – paragraph 3a (new)

*Text proposed by the Commission*

*Amendment*

**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.'**

**Amendment 79**

**Proposal for a directive**

**Article 1 – point 8 e (new)**

*Present text*

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.

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 **(g)** 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.

*Amendment*

**8e. Article 56 is amended as follows:**

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 [19], 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.

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

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 [19], 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.

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. 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

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 **(g)** 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 ***an appeal*** 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 ***directions specified by the regulatory body***.

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***

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.

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

*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.

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.

supplement it with additional elements  
necessary to verify separation of accounts.

## **Amendment 80**

### **Proposal for a directive**

#### **Article 1 – point 8 f (new)**

Directive 2012/34/EU

Article 57 – paragraph 9 a (new)

*Text proposed by the Commission*

*Amendment*

**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.'***



## Amendment 81

### Proposal for a directive

#### Article 1 – point 9

Directive 2012/34/EU

Article 63 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

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.***

## Amendment 82

### Proposal for a directive

#### Article 1 – point 9

Directive 2012/34/EU

Article 63 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

By the same date, the ***Commission*** 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***. The Commission shall, if appropriate, propose new legislative measures.

#### *Amendment*

By the same date, the ***European Regulatory Body*** shall assess whether discriminatory practices or other types of distortion of competition persist ***and shall publish recommendations for further policy measures***. The Commission shall, if appropriate, propose new legislative measures ***based on those recommendations***.

## Amendment 83

### Proposal for a directive

#### Article 1 – point 9 a (new)

Directive 2012/34/EU

Article 63 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**9a. In Article 63(1), the following subparagraph is added:**

**'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.';**

#### **Amendment 84**

**Proposal for a directive**

**Article 1 a (new)**

Regulation (EC) 1371/2007

Article 2 – paragraph 3

*Text proposed by the Commission*

*Amendment*

#### **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.'**

#### *Justification*

*This change to Regulation 1371/2007 is necessary to bring this text in line with the new provisions on through ticketing and the use of IT systems. Those are addressed in Article 9 and Article 10 of Regulation 1371/2007. Whereas Article 9 already applies, Member States could grant a temporary exemption from the application of Article 10. In order to create a coherent legal situation, its transposition should become mandatory.*

#### **Amendment 85**

**Proposal for a directive**

**Article 3 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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.***

**Amendment 86**

**Proposal for a directive  
Article 3 – paragraph 2**

*Text proposed by the Commission*

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].

*Amendment*

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.***