

19.2.2014

A7-0037/117

**Amendment 117**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zéribi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Recital 5**

*Text proposed by the Commission*

(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.

*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.

***In addition, in order to ensure the smooth running of operations in the daily management of the network, including the management of traffic on the network during the winter season, the infrastructure manager at traffic control level should coordinate with railway undertakings, without compromising its independence and responsibility for managing the network and complying with the existing rules.***

Or. en

19.2.2014

A7-0037/118

**Amendment 118**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

***(20a) The regulatory body may produce guidelines on the enhancement of the independence of the staff and management of the infrastructure manager within a vertically integrated undertaking with respect to train path allocation and infrastructure charging.***

Or. en

19.2.2014

A7-0037/119

**Amendment 119**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Recital 20 b (new)**

*Text proposed by the Commission*

*Amendment*

***(20b) For the purpose of this Directive, the concepts of supervisory board, administrative board, management board or bodies legally representing the undertaking should be applied to existing corporate structures in the Member States, while avoiding the creation of additional bodies.***

Or. en

19.2.2014

A7-0037/120

**Amendment 120**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1 – point 2 a (new)**

Directive 2012/34/EU

Article 6 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The following Article 6a is inserted:***

***'Article 6a***

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

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

Or. en

19.2.2014

A7-0037/121

**Amendment 121**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1 – point 3**

Directive 2012/34/EU

Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

1. Member States shall ensure that the infrastructure manager is independent from any railway undertaking.

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

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

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

Or. en

19.2.2014

A7-0037/122

**Amendment 122**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1 –point 3**

Directive 2012/34/EU

Article 7 – paragraph 5

*Text proposed by the Commission*

*Amendment*

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

5. 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 case, the Member State concerned shall ensure that the infrastructure manager has effective organisational and decision-making independence from any railway undertaking in accordance with the requirements set ***out*** in Articles 7a ***and 7b***.

Or. en

19.2.2014

A7-0037/123

**Amendment 123**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérîbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1 – point 4**

Directive 2012/34/EU

Article 7 a

*Text proposed by the Commission*

*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 ***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.

Article 7a

Effective independence of the infrastructure manager within a vertically integrated undertaking

1. Member States shall ensure that the infrastructure manager ***is*** 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***.

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



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 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**.

**infrastructure manager (holding company).**

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

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

The infrastructure manager may grant loans **only to its own subsidiaries**. Within the vertically integrated undertaking, **loans to the infrastructure manager may only be granted by the holding company and shall be subject to monitoring by the regulatory body referred to in Article 55. The holding company shall demonstrate to the satisfaction of the regulatory body that the loan is granted at market price and that it**

***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).

***complies with Article 6.***

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.

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.

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).

Or. en

19.2.2014

A7-0037/123

**Amendment 123**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1 – point 4**

Directive 2012/34/EU

Article 7 b

*Text proposed by the Commission*

*Amendment*

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***.

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 ***train path allocation and infrastructure charging***.

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

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

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

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

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

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

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

*object to such decisions where doubts arise as to the professional independence of a person nominated for the management board or in the case of premature termination of office of a member of the management board of the infrastructure manager.*

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

*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 other than those referred to under point (c) between the infrastructure manager and the other legal entities within the*

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

*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 the 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 its functions.

*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.*

Or. en

19.2.2014

A7-0037/124

**Amendment 124**

**Franco Frigo, Ismail Ertug, Gilles Pargneaux, Herbert Reul, Karim Zérìbi and others**

**Report**

**A7-0037/2014**

**Saïd El Khadraoui**

Single European railway area

COM(2013)0029 – C7-0025/2013 – 2013/0029(COD)

**Proposal for a directive**

**Article 1**

Directive 2012/34/EU

Article 7 c

*Text proposed by the Commission*

*Amendment*

**Article 7c**

***deleted***

***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***

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*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 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.*

Or. en

