



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Transport and Tourism

2013/0029(COD)

26.9.2013

AMENDMENTS

37 - 316

Draft report
Saïd El Khadraoui
(PE513.018v01-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway structure

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

Amendment 37

Marita Ulvskog

Proposal for a directive

—

Proposal for a rejection

***The European Parliament rejects the
Commission proposal.***

Or. sv

Amendment 38

Sabine Wils, Jacky Hénin

Draft legislative resolution

Paragraph 1

Draft legislative resolution

**1. Adopts its position at first reading
hereinafter set out;**

Amendment

**1. Rejects the European Commission
proposal;**

Or. en

Justification

Directive 2012/34 of 21.11.2012 already reached a sustainable share of tasks among different actors in the railway sector: the greater part of the its provisions are to be transposed into national law by 16 June 2015 and the Commission will then deliver a monitoring report to the EP and the Council assessing the effectiveness of the modifications of the recast directive. Any change is premature and counterproductive for legal certainty both for railway undertakings and employees.

Amendment 39

Jean-Jacob Bicep

on behalf of the Verts/ALE Group

Isabelle Durant

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.

Or. fr

Amendment 40
Sabine Wils, Jacky Hénin

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 growth of passenger traffic by rail has been ***sufficient*** to increase its modal share in ***inland transport, on average, in the EU 15 group, while the same average has not been gained*** in the ***Member States who joined the Union in 2004, 2007 and 2013.*** ***Changes in rail's modal share are not correlated with the governance structures in place in the different Member States.***

Or. en

Justification

Eurostat reports the following figures related to rail's share of inland transport: EU-15: 2001: 6.7%, 2010: 7.4% - New MS: 2001: 7.4%, 2010: 5.1%. In some Member States the modal share has fallen while in some others there have been strong increases. However, there is no correlation and no evidence of any causal link between governance structure and modal

share.

Amendment 41
Jean-Jacob Bicep

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.

Or. fr

Amendment 42
Gilles Pargneaux

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The practical effects of these provisions 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.

Or. fr

Justification

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

Amendment 43
Jean-Jacob Bicep

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) 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 European legislation.

Or. fr

Amendment 44
Jean-Jacob Bicep

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

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

(3) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area 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 ***increasing the modal share of rail and improving the quality of rail services.***

Justification

Equal access to the network is not an end in itself. The political objective of this directive should be that of increasing rail's modal share and improving the quality of rail transport.

Amendment 45

Sabine Wils, Jacky Hénin

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 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.

Amendment

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

Justification

There is not yet available any impact assessment of Directive 2012/34: Member States have a deadline for transposition on 16.6.2015 and the EC will only provide reports on its implementation thereafter. Moreover, no reliable social and economic assessment has been provided on the previous effects of opening and liberalising the rail market.

Amendment 46
Oldřich Vlasák

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 shall be seen as essential so that the railway could become a credible alternative to other modes of transport in terms of price and quality.

Or. en

Amendment 47
Georges Bach

Proposal for a directive
Recital 4

Text proposed by the Commission

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

deleted

Or. fr

Justification

Does not add anything to the text.

Amendment 48
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 4

Text proposed by the Commission

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

deleted

Or. en

Justification

Unnecessary and redundant recital, as it merely recalls the review clause of Directive 2012/34.

Amendment 49
Gesine Meissner

Proposal for a directive
Recital 4

Text proposed by the Commission

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

(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 **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.

Or. en

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 50

Philippe De Backer, Ramon Tremosa i Balcells

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 more flexibility and more possibilities for companies and passengers. Railway personnel will also benefit from the opening, as it will improve their chances to provide their services to new players on the market. Experienced workers can create an added value to the new players, leading to better labour conditions.

Or. en

Amendment 51

Philippe De Backer

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 the labour market is organised, does not harm the quality of the service. European laws do already provide for a clear framework for the protection of railway workers.

Or. en

Amendment 52
Jean-Jacob Bicep

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself.

deleted

Or. fr

Amendment 53
Georges Bach

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself.

deleted

Or. en

Justification

There is no need for such a split of functions.

Amendment 54

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 6

Text proposed by the Commission

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself. *deleted*

Or. en

Justification

There is no clear evidence that such a reform is necessary.

Amendment 55

Isabelle Durant

Proposal for a directive

Recital 6

Text proposed by the Commission

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself. *deleted*

Or. en

Justification

Railway infrastructure is a natural monopoly and it is usually partly funded by public money. For these reasons, it is essential to preserve the possibility for the State or for the competent authority to exert control, directly or through the establishment of one or more supervisory or executive bodies, over network planning, investment planning, train path allocation and infrastructure charging.

Amendment 56
Gilles Pargneaux

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager *itself*.

Amendment

(6) ***Except in the case of public-private partnerships and without prejudice to their powers as regards infrastructure planning and financing***, Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager.

Or. fr

Justification

Increasing the powers of the infrastructure manager should not prevent the Member States or infrastructure managers from using public-private partnerships, whether in respect of part or all of an infrastructure construction, maintenance or operation project, or whether, in specific cases, they cover the operation of transport services on such infrastructure.

Amendment 57
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself.

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself ***or by the concerned independent body as set in national rules.***

Or. en

Justification

Several Member States, as well as Switzerland, currently have a split of functions involving 'ad hoc' independent bodies.

Amendment 58

Artur Zasada, Bogdan Kazimierz Marcinkiewicz

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself.

Amendment

(6) Member States should also ensure that all functions necessary to the sustainable operations, maintenance, and development of the rail infrastructure will be managed in a consistent manner by the infrastructure manager itself, ***which does not prevent a Member State from having many managers operating on stand-alone rail lines or sections thereof.***

Or. pl

Justification

The proposed new wording for the definition of an infrastructure manager as formulated in Article 3(2) of Directive 2012/34/EU could lead to doubts arising regarding the possibility of several managers existing in a single Member State.

Amendment 59
Ismail Ertug

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. This strengthening should take the form of extending the competent regulatory bodies' powers and developing a network of regulatory bodies which would in future be a key operator in the regulation of the EU rail transport market.

Or. de

Amendment 60
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

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.

deleted

Or. en

Amendment 61
Gilles Pargneaux

Proposal for a directive

Recital 7

Text proposed by the Commission

(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.

Amendment

(7) ***Without prejudice to Member States' powers as regards infrastructure planning and financing***, 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.

Or. fr

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 62

Phil Bennion, Philippe De Backer

Proposal for a directive

Recital 7

Text proposed by the Commission

(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.

Amendment

(7) 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.

Or. en

Justification

There is a need for infrastructure managers to cooperate with respect to track-access charges to give incentives to railway undertakings to operate on cross-border routes.

Amendment 63
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 7

Text proposed by the Commission

(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.

Amendment

(7) Cross-border issues should be addressed efficiently between infrastructure managers ***or independent bodies*** of the different Member States ***by means of enhanced cooperation among*** infrastructure managers.

Or. en

Justification

In consistency with amendment tabled to Article 7s (new).

Amendment 64
Jean-Jacob Bicep

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

deleted

Amendment 65

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(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. *deleted*

Justification

Equal access can be secured using other measures.

Amendment 66

Isabelle Durant

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure equal access to the infrastructure, any conflicts of interest resulting from integrated structures encompassing infrastructure management *deleted*

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.

Or. en

Justification

By virtue of the existing legislation, essential functions need to be separated from any RU, be it alone or as part of an infrastructure manager that's itself separated from any RU. When this is the case, non-discrimination can be controlled by a strong regulator as a performance obligation rather than as an obligation of means and further cutting the IM off from all RUs can and ought to be avoided as it can only lead to unnecessary transaction costs, synergy losses and misaligned objectives.

Amendment 67

Sabine Wils, Jacky Hénin

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(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

deleted

which also leads to market distortions.

Or. en

Justification

The EC assumed that integrated structures always lead to conflicts of interest, while it seems that non-integrated structures never do. It is furthermore assumed that conflicts of interest and discriminatory behaviour are correlated as cause-effect while in order to tackle discriminatory behaviour itself the regulatory body could be strengthened instead of applying to structural reforms.

Amendment 68
Gilles Pargneaux

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, any conflicts of interest ***between*** 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.

Or. fr

Justification

The aim of non-discrimination should not affect the resources or the way in which the sector is organised, which should stay at EU level in order to attain such an aim. This must not preclude the infrastructure manager from belonging to a group whose operations include rail activities.

Amendment 69
Oldřich Vlasák

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, 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, ***as well as staff remuneration and other benefits which might cause preferential treatment with regard to one of the competitors.***

Or. en

Amendment 70
Hubert Pirker

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***

Amendment

(8) In order to ***secure*** equal access to the infrastructure, ***a key role is played by the national regulatory body which is independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body and***

*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.*

*notified body. It must therefore be given corresponding powers. **Only in this way can fair competition be guaranteed.** **Independent regulation** is a requirement for the successful opening of the market for domestic passenger transport services by rail. **Furthermore** the potential **should be removed** for cross-subsidisation, which exists in such integrated structures, and which leads to market distortions.*

Or. de

Justification

What is vital for fair competition in rail transport is independent regulation, not the tearing down of existing structures. As in the debate on the recasting of the first railway package, the focus should be on a strong and effective regulator, not on the various business models.

Amendment 71

Ismail Ertug, Boguslaw Liberadzki, Georges Bach, Knut Fleckenstein

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 emerge 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.

Or. de

Amendment 72
Georges Bach

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Taking into account the heterogeneity of networks in terms of their size and density and the variety of organisational structures of national and local or regional authorities and their respective experience 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.

Or. fr

Amendment 73
Jean-Jacob Bicep

Proposal for a directive
Recital 9

Text proposed by the Commission

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

deleted

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.

Or. fr

Amendment 74

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 9

Text proposed by the Commission

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.

deleted

Or. en

Justification

What matters is what the regulatory body is empowered to do. Maintenance decisions can be subjected to regulatory control. As for investment, this is mainly in the hands of the Member States, so it is not a good example.

Amendment 75

Ismail Ertug, Boguslaw Liberadzki, Georges Bach, Knut Fleckenstein

Proposal for a directive

Recital 9

Text proposed by the Commission

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.

deleted

Or. de

Amendment 76

Isabelle Durant

Proposal for a directive

Recital 9

(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. ***deleted***

Or. en

Justification

By virtue of the existing legislation, essential functions need to be separated from any RU, be it alone or as part of an infrastructure manager that's itself separated from any RU. When this is the case, non-discrimination can be controlled by a strong regulator as a performance obligation rather than as an obligation of means and further cutting the IM off from all RUs can and ought to be avoided as it can only lead to unnecessary transaction costs, synergy losses and misaligned objectives.

Amendment 77
Gilles Pargneaux

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 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.***

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 ***a way that guarantees non-discriminatory access to the network via the introduction of safeguards that are commensurate with the criticality of the functions concerned,*** since other functions may equally be used to discriminate against competitors. ***In this way, if the essential functions have to be subject to tough safeguards because the exercise of those functions is vital in order for access to the network to be non-discriminatory, it must be possible to treat other functions (rail traffic, network maintenance, renewal and development), which have to be covered by a unified infrastructure manager, differently, since they are less vital in terms of ensuring that access to the network is non-discriminatory; as they are central to the integrated operation of the transport system (in line with the specific nature of the rail system referred to above) and therefore need close links with railway undertakings; and given the decisive role that states play as regards the choice of investments.***

Or. fr

Justification

Les fonctions essentielles doivent incontestablement faire l'objet de mesures de sauvegarde fortes dans la mesure où leur exercice conditionne directement l'accès non discriminatoire au réseau. Les autres fonctions (circulations, entretien du réseau, renouvellement et développement) qui doivent être prises en charge par un gestionnaire d'infrastructure unifié

doivent pouvoir être traitées différemment dans la mesure où leur exercice est moins sensible du point de vue de l'accès non discriminatoire au réseau et en raison du rôle des États en ce qui concerne les choix d'investissements.

Amendment 78

Phil Bennion, Philippe De Backer

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 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.

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 ***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.

Or. en

Justification

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

Amendment 79

Karim Zéribi

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 *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.*

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. *Since other functions may equally be used to discriminate against competitors*, it is necessary that all the functions are exercised in *a way that guarantees non-discriminatory access to the network via the phasing-in of safeguards that nevertheless take into account the level of sensitivity of each one, with a view to the optimum operation of the sector.*

Or. fr

Amendment 80
Sabine Wils, Jacky Hénin

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

Amendment

(9) The existing requirements for the independence of infrastructure managers from railway transport undertakings, as laid down in Directive 2012/34/EU, cover the essential functions of the infrastructure manager, which are the decision-making on train path allocation, and the decision-making on infrastructure charging.

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.*

Or. en

Justification

Unnecessary and misleading addition for extending separation requirements. As for investment, for example, this is mainly in the hands of the Member States and the mandate for effective contract of service and rail development that Member States governments are going to negotiate with the infrastructure managers.

Amendment 81

Dominique Riquet, Dominique Vlasto, Philippe De Backer

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.

Or. fr

Amendment 82

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.

Deleted

Or. en

Justification

Trying to ‘entirely exclude’ a certain type of risk is typically an unwise and inefficient way of designing policy because other considerations, such as economic performance, are then unduly pushed aside.

Amendment 83
Gilles Pargneaux

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not **entirely** exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. **Concerning** the decision-making **independence** it must be ensured that the appropriate safeguards **exclude control of** an integrated undertaking over the decision-making of an infrastructure manager. **However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.**

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not exclude the possibility of maintaining **or setting up** an integrated undertaking, as long as these three categories of independence are ensured. **As far as the independence of decision-making is concerned** it must be ensured that the appropriate safeguards **prevent** an integrated undertaking **from being able to exercise exclusive control** over the decision-making of an infrastructure manager **where such control gives rise to discriminatory practices being used against competing railway undertakings. Another way of helping to ensure non-discrimination would be to draw up a set of relevant rules to prevent any problems as regards the financing of the activities of the infrastructure manager and the rail operator respectively.**

Or. fr

Justification

The legislative proposal identifies two models of organisation. Reserving one for certain Member States rather than others could be seen to be discriminatory and to run counter to the principle of subsidiarity. The text therefore needs to be changed to allow the Member States to opt, at any time, for any sector-specific model of organisation of equivalent effect, i.e. guaranteeing non-discriminatory access to the infrastructure for all rail undertakings.

Amendment 84

Dominique Riquet, Dominique Vlasto, Philippe De Backer

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.

Amendment

(10) Total separation (in legal, organisational, decision-making and accounting terms) of infrastructure management and all undertakings offering rail services on such infrastructure is the only way of guarding against anti-competitive practices and of successfully building, for the benefit of all passengers, an open, non-discriminatory European rail market that is capable of stimulating technological and commercial innovation in the rail sector.

Or. fr

Amendment 85

Ismail Ertug, Bogusław Liberadzki, Georges Bach, Knut Fleckenstein

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU **only** include legal, organisational and decision-making independence. This does not **entirely** exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. **Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.**

Amendment

(10) The existing requirements of Directive 2012/34/EU include legal, organisational and decision-making independence. This does not exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. **Provided these three categories of independence are ensured, the vertical integration of undertakings does not contradict the objectives of the common legal framework. The rules against cross-subsidisation should be monitored and implemented by the regulatory bodies.**

Or. de

Amendment 86

Joachim Zeller

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not **entirely**

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not exclude the

exclude the possibility of maintaining an integrated undertaking, *as long as these three categories of independence are ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.*

possibility of maintaining an integrated undertaking, as long as *the mutual independence of the transport undertaking and the infrastructure manager is ensured in the essential functions, i.e. in decisions on the allocation of routes and infrastructure charging, stations, investments and maintenance. As far as independent decision-making is concerned, appropriate rules must be in place to prevent an integrated undertaking from exercising supervision over the decisions of an infrastructure manager.*

Or. de

Justification

The Commission assumes that a complete separation of activities is the best solution. Such an approach has no place in a proposal for a directive, which must remain neutral.

Amendment 87 **Karim Zéribi**

Proposal for a directive **Recital 10**

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not *entirely* exclude the possibility of maintaining an

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not exclude the possibility of maintaining *or setting up* an

integrated undertaking, as long as these three categories of independence are ensured. **Concerning** the decision-making **independence** it must be ensured that the appropriate safeguards **exclude control of** an integrated undertaking over the decision-making of an infrastructure manager. **However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.**

integrated undertaking, as long as these three categories of independence are ensured. **As far as the independence of decision-making is concerned** it must be ensured that the appropriate safeguards **prevent** an integrated undertaking **from being able to exercise exclusive control** over the decision-making of an infrastructure manager, **thereby discriminating against competing railway undertakings.**

Another way of helping to attain the objective of non-discrimination would be to draw up a set of relevant rules to govern the financing of the activities of the infrastructure manager and the rail operator respectively.

Or. fr

Amendment 88
Isabelle Durant

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not entirely exclude the possibility of maintaining an

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational **or decision-making independence for the infrastructure manager or, failing all of the former,**

integrated undertaking, as long as these three categories of independence *are* ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, *or at least* it is *very difficult for* regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is *the most* effective measure to solve these problems.

legal, organisational and decision-making independence *for the essential functions*. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as *one of* these three categories of independence *is* ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures *and* it is *necessary to give extensive powers to* regulatory bodies to *allow them to* control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is *an* effective measure to solve these problems *but it brings along increased transaction costs, synergy losses and a misalignment of objectives, which can lead to poorer services at higher costs*.

Or. en

Amendment 89
Jean-Jacob Bicep, Isabelle Durant

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making independence. This does not entirely

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational *or decision-making independence for the infrastructure*

exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence **are** ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, **or at least** it is **very difficult for** regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is **the most** effective measure to solve these problems.

manager or, failing all of the former, legal, organisational and decision-making independence **for the essential functions**. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as **one of** these three categories of independence **is** ensured. Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures **and** it is **necessary to give extensive powers to** regulatory bodies to **allow them to** control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is **an** effective measure to solve these problems **but it brings along increased transaction costs, synergy losses and a misalignment of objectives, which can lead to poorer services at higher costs**.

Or. en

Amendment 90
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making

Amendment

(10) The existing requirements of Directive 2012/34/EU only include legal, organisational and decision-making

independence. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured. ***Concerning the decision-making independence it must be ensured that the appropriate safeguards exclude control of an integrated undertaking over the decision-making of an infrastructure manager. However, even the full application of such safeguards does not completely remove all the possibilities for discriminatory behaviour towards competitors which exist in the presence of a vertically integrated undertaking. In particular, the potential for cross-subsidisation still exists in integrated structures, or at least it is very difficult for regulatory bodies to control and enforce safeguards which are established to prevent such cross-subsidisation. An institutional separation of infrastructure management and transport operation is the most effective measure to solve these problems.***

independence. This does not entirely exclude the possibility of maintaining an integrated undertaking, as long as these three categories of independence are ensured.

Or. en

Justification

A more balanced and pragmatic approach, relying more strongly on the regulatory body rather than on compulsory restructuring measures, is desirable, while the text proposed by the EC is related to a non-effective system of 'Chinese Walls Model'

Amendment 91

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

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

deleted

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 right over an infrastructure manager.

Or. en

Amendment 92

Ismail Ertug, Boguslaw Liberadzki, Georges Bach, Knut Fleckenstein

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 right over an infrastructure manager.

Deleted

Or. de

Amendment 93

Sabine Wils, Jacky Hénin

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

deleted

control or any right over a railway undertaking. Conversely, control over a railway undertaking should preclude the possibility of exercising control or any right over an infrastructure manager.

Or. en

Justification

This EC text essentially means that full vertical separation should be compulsory for all Member States, despite the fact that there is no evidence that this is the only workable and efficient model.

Amendment 94
Gilles Pargneaux

Proposal for a directive
Recital 11

Text proposed by the Commission

(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 right*** over an infrastructure manager.

Amendment

(11) Member States should therefore be required to ensure that the same legal or natural person or persons are not entitled to exercise ***exclusive*** control over an infrastructure manager and over a railway undertaking ***at the same time, where the effect of such would be to favour that undertaking or discriminate against its competitors***. Conversely, control over a railway undertaking should preclude the possibility of exercising ***exclusive*** control over an infrastructure manager, ***where discriminatory practices result from such control***.

The purpose or effects of measures relating to the institutional separation of infrastructure management and the transport operations should, in any event, be without prejudice to the provisions of Article 345 of the Treaty on the Functioning of the European Union, particularly where public undertakings

are concerned.

Or. fr

Justification

La proposition de la Commission qui conduit à interdire à un même ministère d'exercer sa mission de tutelle sur un gestionnaire de l'infrastructure et sur une entreprise ferroviaire publique ne semble pas compatible avec l'article 5 TUE et l'article 345 TFUE. La directive ne devrait pas conduire les États membres à modifier un régime de propriété, qu'il s'agisse du gestionnaire de l'infrastructure ferroviaire ou d'une entreprise ferroviaire, pas plus qu'elle ne devrait imposer aux États de revoir l'organisation de leurs pouvoirs publics, dans le régime de séparation institutionnelle et dans celui de l'entreprise verticalement intégrée.

Amendment 95

Dominique Riquet, Dominique Vlasto, Philippe De Backer

Proposal for a directive

Recital 11

Text proposed by the Commission

(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 right over an infrastructure manager.

Amendment

(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.

Or. fr

Amendment 96

Karim Zérubi

Proposal for a directive

Recital 11

Text proposed by the Commission

(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 right*** over an infrastructure manager.

Amendment

(11) Member States should therefore be required to ensure that the same legal or natural person or persons are not entitled to exercise ***exclusive*** control over an infrastructure manager and over a railway undertaking ***at the same time, where the effect of such would be to discriminate against its competitors***. Conversely, control over a railway undertaking should preclude the possibility of exercising ***exclusive*** control over an infrastructure manager.

Or. fr

Amendment 97
Jean-Jacob Bicep

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should at least introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of

Amendment

deleted

decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

Or. fr

Amendment 98

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 12

Text proposed by the Commission

Amendment

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should at least introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive

deleted

2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

Or. en

Amendment 99
Dominique Riquet, Philippe De Backer

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should at least introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure

deleted

manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

Or. fr

Amendment 100
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should at least introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude

deleted

that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

Or. en

Justification

The EC text describes the ‘Reinforced Chinese Walls’ model advocated by the Commission as the only possibly acceptable alternative to full vertical separation being thus far too prescriptive. More flexibility is needed for Member States respecting the subsidiarity principle and their choice in the rail industrial model.

Amendment 101 Gilles Pargneaux

Proposal for a directive Recital 12

Text proposed by the Commission

(12) Where ***Member States still maintain an*** infrastructure manager ***which is part of*** a vertically integrated undertaking, ***they*** should at least introduce ***strict*** safeguards to guarantee ***effective independence of the entire*** infrastructure manager ***in relation to*** the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers ***between*** the infrastructure manager ***and*** the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions

Amendment

(12) Where ***the*** infrastructure manager ***belongs to*** a vertically integrated undertaking, ***the Member States concerned*** should at least introduce safeguards to guarantee ***that*** the infrastructure manager ***operates so as to ensure non-discriminatory treatment among the legal entities of*** the integrated undertaking ***engaged in activities in railway transport markets and any other railway undertaking***. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers ***from*** the infrastructure manager ***to*** the other legal entities of the integrated undertaking ***engaged in activities in***

under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to *EU* state aid rules.

railway transport markets and to any other railway undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking *engaged in activities in railway transport markets*. This should apply independently of the application of fiscal legislation of Member States and without prejudice to *European Union* state aid rules.

Or. fr

Amendment 102

Ismail Ertug, Boguslaw Liberadzki, Georges Bach, Knut Fleckenstein

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should *at least* introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, *and, as far as possible within an integrated structure, prevent financial transfers between the infrastructure manager and the other legal entities of the*

Amendment

(12) Where Member States still maintain an infrastructure manager which is part of a vertically integrated undertaking, they should introduce strict safeguards to guarantee effective independence of the entire infrastructure manager in relation to the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager. *The Member States therefore remain obliged to secure compliance with these independence criteria. This should be achieved chiefly by appropriate regulation*

integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

which does not jeopardise the infrastructure undertakings' refinancing options or contradict the undertakings' principle of trading as a commercial enterprise. This should apply independently of the application of fiscal legislation of Member States and without prejudice to EU state aid rules.

Or. de

Amendment 103

Karim Zéribi

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Where *Member States still maintain an* infrastructure manager *which is part of* a vertically integrated undertaking, *they* should at least introduce *strict* safeguards to guarantee *effective independence of the entire* infrastructure manager *in relation to* the integrated undertaking. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers *between* the infrastructure manager *and* the other legal entities of the integrated undertaking. These safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making

Amendment

(12) Where *the* infrastructure manager *belongs to* a vertically integrated undertaking, *the Member States concerned* should at least introduce safeguards to guarantee *that* the infrastructure manager *operates in an impartial manner in respect of the legal entities of* the integrated undertaking *and any other railway undertaking*. These safeguards should not only concern the corporate organisation of the infrastructure manager in relation to the integrated undertaking, but also the management structure of the infrastructure manager, and, as far as possible within an integrated structure, prevent financial transfers *from* the infrastructure manager *to* the other legal entities of the integrated undertaking *with a railway undertaking licence*. These

independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking. This should apply independently of the application of fiscal legislation of Member States and without prejudice to *EU* state aid rules.

safeguards do not only correspond to what is necessary to fulfil the existing requirements of decision-making independence of the essential functions under Directive 2012/34/EU, in terms of management independence of the infrastructure manager, but go beyond those requirements by adding clauses to exclude that incomes of the infrastructure manager may be used to fund the other entities within the vertically integrated undertaking ***with a railway undertaking licence***. This should apply independently of the application of fiscal legislation of Member States and without prejudice to ***European Union*** state aid rules.

Or. fr

Amendment 104
Jean-Jacob Bicep

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings. For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the

deleted

integrated operators concerned.

Or. fr

Amendment 105
Gilles Pargneaux

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings. For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Deleted

Or. fr

Justification

The compliance verification procedure (Article 7c) and the procedure for the consideration of specific measures relating to the application of the directive (Article 61) raise a number of legal issues. Such procedures would invest the Commission with excessive discretionary and enforcement powers and would impinge upon the powers of the Court of Justice of the European Union as laid down in Articles 258 and 260 TFEU.

Amendment 106

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Deleted

Or. en

Amendment 107

Ismail Ertug, Boguslaw Liberadzki, Georges Bach, Knut Fleckenstein

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of

deleted

the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Or. de

Justification

The sanction proposed by the Commission, of enabling Member States to limit or revoke access rights for integrated operators, contradicts the aim of creating a single European railway area.

Amendment 108

Sabine Wils, Jacky Hénin

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility

deleted

to limit or revoke access rights of the integrated operators concerned.

Or. en

Justification

The provision gives excessively discretionary powers to the Commission for the proposed verification of compliance with a particularly structural model and the consequent compliance in opening the market access.

Amendment 109

Dominique Riquet, Dominique Vlasto

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings. For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that **these safeguards are effectively implemented and that any remaining distortions of competition are removed.** In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Amendment

(13) For this reason, without prejudice to **Article** 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that ***infrastructure management and all undertakings offering railway services on that infrastructure are indeed totally separate.*** In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Or. fr

Amendment 110

Oldřich Vlasák

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned. ***Moreover, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned, in case the Member States are not allowed by EU institutions to choose freely between the independence of the infrastructure manager from railway transport undertakings and the vertically integrated undertaking.***

Or. en

Justification

Since one of the models (the independence of the infrastructure manager from railway transport undertakings and the vertically integrated undertaking) might turn out to be more advantageous for the Member States and railway undertakings based there, all Member States must be free to choose between these models.

Amendment 111
Philippe De Backer, Phil Bennion, Ramon Tremosa i Balcells

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings, For this reason, without prejudice to Art 258 of the Treaty on the Functioning of the European Union, the Commission should verify, upon request of a Member State, **a railway undertaking** or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.

Or. en

Amendment 112
Karim Zérubi

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings. For this reason, **without prejudice to Art 258** of the Treaty on the Functioning of the European Union, the Commission should

Amendment

(13) Despite the implementation of the safeguards guaranteeing independence vertically integrated undertakings could abuse of their structure to provide undue competitive advantages for railway operators belonging to such undertakings. For this reason, **pursuant to Article 258** of the Treaty on the Functioning of the European Union, the Commission should

verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed. ***In case the Commission is not in a position to confirm that this has been achieved, all Member States should have the possibility to limit or revoke access rights of the integrated operators concerned.***

verify, upon request of a Member State or on its own initiative, that these safeguards are effectively implemented and that any remaining distortions of competition are removed.

Or. fr

Amendment 113
David-Maria Sassoli, Franco Frigo

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Taking into account the heterogeneity of networks in terms of their size and density and the variety in the organisational structures of national and local or regional authorities and their respective experiences of the process of market opening, each Member State should be given sufficient flexibility to organise its network in such a way that a mix of open-access services and services performed under public service contracts can be achieved in order to ensure a high quality of services readily accessible to all passengers. Following selection of the public service contracts to put out to tender, each Member State should establish on a case-by-case basis which safeguard mechanisms to introduce 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 114
Jean-Jacob Bicep

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.

Or. fr

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 115
Sabine Wils, Jacky Hénin

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

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

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 **and the social cohesion and right to mobility as required and adopted in** those public service contracts. **The relevant regulatory body should consider these concerns when giving its approval to such limitations.**

Or. en

Justification

Relevant social and cohesion issues regarding the concerned territory or the geographical area have to be considered.

Amendment 116 **Oldřich Vlasák**

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.

Or. en

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 117

Phil Bennion, Philippe De Backer

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) Regulatory bodies should assess the potential economic impact of domestic passenger services provided under open access conditions on existing public service contracts *as well as the potential economic impact of a new or altered public service contract on services provided under open access conditions by railway undertakings which have been granted access to railway infrastructure according to Article 10, paragraph 2 of this Directive*, following a request made by interested parties and on the basis of an objective economic analysis.

Or. en

Justification

The potential economic impact of a new public service contract or the extension of the scope of an existing public service contract on a route where an open access operator is providing a service should also be assessed by the regulatory bodies

Amendment 118

Phil Bennion, Philippe De Backer

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) The assessment of whether the economic equilibrium of the public service contract would be compromised should

Amendment

(17) The assessment of whether the economic equilibrium of the public service contract *or of the service provided by*

take into account predetermined criteria. Such criteria and the details of procedure to be followed may evolve over time, in particular in the light of the experience of regulatory bodies, competent authorities and railway undertakings and may take into account the specific characteristics of domestic passenger services.

railway undertakings which have been granted access to railway infrastructure according to Article 10, paragraph 2 of this Directive, would be compromised should take into account predetermined criteria. Such criteria and the details of procedure to be followed may evolve over time, in particular in the light of the experience of regulatory bodies, competent authorities and railway undertakings and may take into account the specific characteristics of domestic passenger services.

Or. en

Justification

The potential economic impact of a new public service contract or the extension of the scope of an existing public service contract on a route where an open access operator is providing a service should also be assessed by the regulatory bodies

Amendment 119 **Sabine Wils, Jacky Hénin**

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

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 and the consequences for **the enhancing cohesion policy in the concerned area 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

should be examined.

and number of stops and the timing and frequency of the proposed new service should be examined.

Or. en

Justification

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

Amendment 120
Jean-Jacob Bicep

Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) 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.

Or. fr

Amendment 121
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Recital 19

Text proposed by the Commission

Amendment

(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

deleted

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.

Or. en

Amendment 122
Michel Dantin, Dominique Riquet

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, railway undertakings operating domestic passenger services **should cooperate with one another to set up** 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.

Or. fr

Amendment 123
Phil Bennion, Philippe De Backer

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

Amendment

(19) In order to increase the attractiveness of railway services for passengers, Member States should require railway undertakings operating domestic passenger services to

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.

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.

Or. en

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 124

Jean-Jacob Bicep, Michael Cramer

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 *will have* to require railway undertakings operating passenger services to participate in a common information and through ticketing scheme for the supply of tickets, through-tickets and reservations. *When* such a scheme is established, *there will be a need to ensure that it is interoperable and can be integrated into other national or European schemes, and* that it does not create market distortion or discriminate between railway undertakings.

Or. fr

Amendment 125

Franco Frigo

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Since the new package seeks to strengthen passenger rights, and as freedom of movement is one of the basic pillars of the EU, greater efforts should be made to also safeguard that right for the disabled and people 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 the disabled.

Or. it

Amendment 126
Georges Bach

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The Commission should assess the impact of this Directive on the development of the labour market for railway staff.

Or. en

Amendment 127
Antonio Cancian

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

Text proposed by the Commission

Amendment

(19a) In order to ensure that a new open access passenger service contributes, on balance, to the positive development of the sector, such a service should be allowed to access the market unhindered provided that it is mainly revenue-generating rather than revenue-abstracting for the rail sector, and provided that the revenue loss for the operator under the relevant public service contract is not substantial.

In that context, a mainly revenue-generating service should be understood as a service whose net benefit in terms of new rail sector revenues exceeds any losses of revenues incurred by the operator under the relevant public service contract. New rail sector revenues should be understood as revenues deriving from passenger flows that are either taken from other modes or that constitute entirely new travel flows.

When estimating the revenue loss of the operator under the public service contract, the regulatory body should estimate the total decrease in revenue under the public service contract assuming the new open access entry, as compared to a baseline without the open access entry, other things assumed equal. For this assessment, the regulatory body may define a threshold. In addition, total rail passenger volume, e.g. in terms of passenger-kilometres, may also be defined as a criterion in the assessment.

The competent authority that awarded the public service contract should compensate the railway undertaking performing the public service contract for the losses of revenue it incurs as a result of a new open access service until the date of expiry of

the PSO contract.

Where the public service contract is a framework contract consisting of several individual lots, the analysis should focus on individual lots rather than on the framework contract as a whole.

Or. en

Amendment 128
Ramon Tremosa i Balcells

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) 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 draw up a legislative proposal strengthening the network of regulatory bodies, formalising its procedures and giving it legal personality, not later than 31 December 2016. 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.

Or. en

Justification

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

Amendment 129
Jean-Jacob Bicep

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The opening-up of the railway market for passengers and the development of a Single European Railway Area should under no circumstances lead to a decline in the working conditions of workers in the sector or be a cause of social dumping. With that in view, conditions governing the opening-up of the markets, in particular the use by Member States of collective agreements applying in their territory, should be established.

Or. fr

Amendment 130

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) 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 may draw up a legislative proposal strengthening establishing a European regulatory body.

Or. en

Justification

Regulatory Bodies already have means to cooperate as a network. The proposal is premature, as regulatory bodies have been equipped in new tools of cooperation only recently by the Directive 2012/34 (Art. 57). Once the new provisions have been properly implemented, the Commission will be able to assess their outcome and – if necessary – propose additional measures.

Amendment 131
Georges Bach

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) With a view to the 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 EU level in order to ensure that railway workers are protected in the long term against unwanted effects of market opening, such as social dumping.

Or. fr

Amendment 132
David-Maria Sassi, Franco Frigo

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) In the light of the experience acquired through the network of regulatory bodies under Article 57 of Directive 2012/34/EU, the Commission should bring forward a legislative proposal to consolidate the network of regulatory bodies, formalise their procedures and give them legal personality, by 31 December 2016 at the latest. The resulting organisation should act as a supervisor and arbitrator to settle issues of a cross-border and international nature, and as a body for hearing appeals against decisions taken by the national regulatory authorities.

Amendment 133
Marita Ulvskog

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) 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 and should be linked together in order to enable a Union-wide scheme to be created that encompasses all rail passenger operators.

Or. sv

Amendment 134
Antonio Cancian

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) In the light of the experience acquired through the new network of regulatory bodies, the Commission should bring forward a legislative proposal under which the network of regulatory bodies is replaced with a single European regulatory body that acts as a supervisor and arbitrator to settle any issues of a cross-border and international nature, and as a body for hearing appeals against decisions taken by the national regulatory authorities. This single European

regulatory body should be operational by the time of the opening of the domestic rail passenger market.

Or. it

Justification

A European regulatory body needs to be created in view of the current opening up to competition of the railways market and the future opening up of the domestic rail passenger market. It is no longer possible for a single European railway market to be regulated by individual national regulators.

Amendment 135
Sabine Wils, Jacky Hénin

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The Commission should assess the impact of this Directive on the development of the labour market for railway staff.

Or. en

Justification

The Commission analysis on the impact of this Directive on railway staff should include and apply to all railway staff, not only on-board staff, and should remain flexible regarding follow-up actions respecting subsidiarity and the collective national labour agreements.

Amendment 136
Franco Frigo

Proposal for a directive
Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) Passengers should have access to workable through ticketing schemes and integrated ticketing schemes. Integrated ticketing schemes should also apply to reduced rate tickets for special categories of passengers.

The integrated 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 that encompasses all rail passenger operators.

Or. it

Amendment 137

Georges Bach

Proposal for a directive

Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) In this context, the Commission ensures the full and correct enforcement by Member States of the provisions of 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, particularly their safety.

Or. fr

Amendment 138

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) The Commission should assess the impact of this Directive on the development of the labour market for railway staff.

Or. en

Justification

The amendment is too prescriptive. It is clearly welcome to assess sectorial labour market impacts, not only for on-board staff.

Amendment 139
Ramon Tremosa i Balcells, Philippe De Backer

Proposal for a directive
Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) In light of the experience acquired through the network of regulatory bodies established with Article 57, 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, not 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.

Or. en

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 140

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) On the basis of the experience acquired through the new network of regulatory bodies, the Commission should bring forward a legislative proposal under which the network of regulatory bodies is replaced with a single European regulatory body that acts as a supervisor and arbitrator to settle any issues of a cross-border and international nature, and as a body for hearing appeals against decisions taken by the national regulatory authorities. This single European regulatory body should be operational by the time of the opening of the domestic rail passenger market.

Or. it

Amendment 141

Sabine Wils, Jacky Hénin

Proposal for a directive

Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) To avoid misleading social dumping

a railway undertaking can only provide rail transport services, if it complies with the respect of representative collective agreements or national laws granting the same standards within the Member State in which it intends to act. Equal pay in the same place should therefore be paid. The competent regulatory body shall monitor compliance with this requirement.

Or. en

Justification

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

Amendment 142

Franco Frigo

Proposal for a directive

Recital 19 c (new)

Text proposed by the Commission

Amendment

(19c) 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.

Or. it

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 143
Gilles Pargneaux

Proposal for a directive
Recital 20

Text proposed by the Commission

Amendment

(20) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments in justified cases. With regard to this Directive, the legislator considers the transmission of such documents to be justified, *deleted*

Or. fr

Justification

The Council's political declaration stipulates that the Commission must justify, on a case-by-case basis, the need for, and the proportionality of, providing such documents, taking into account, in particular, the 'complexity of the directive and of its transposition, as well as the possible additional administrative burden'. It is not an a priori, general acknowledgement of the need and proportionality of the provision of the documents.

Amendment 144
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The regulatory framework set by the Member State should set incentives for all rail market participants to fulfil their tasks in an efficient and market-oriented

way.

Or. en

Justification

Besides the beneficial effects of competition, and beyond the general framework of EU law, Member States should design efficiency-enhancing and market-oriented incentives for all rail sector actors.

Amendment 145

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) The regulatory body should analyse rail system efficiency from the viewpoint of productive efficiency, namely the ability to provide the same level of output at a lower cost, or a higher level of output at the same cost.

Or. en

Justification

This recital clarifies the meaning of the term 'efficiency' in order to support the analytical work of regulatory bodies.

Amendment 146

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 20 c (new)

Text proposed by the Commission

Amendment

(20c) Lessons learnt at national level from rail sector reforms need to be respected in

the context of EU law.

Or. en

Justification

Many Member States have developed effective ways of raising the performance of their rail sectors. These experiences offer precious knowledge and insights that need to be taken into account.

Amendment 147

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Recital 20 d (new)

Text proposed by the Commission

Amendment

(20d) A new open access service should be allowed to access the market unhindered provided that the new service is mainly revenue-generating rather than revenue-abstracting for the rail sector, and provided that the revenue loss for the operator under the relevant public service contract is not substantial.

A mainly revenue-generating service should mean a service whose net benefit in terms of new rail sector revenues exceeds any losses of revenues incurred by the operator under the relevant public service contract.

New rail sector revenues should be understood as revenues deriving from passenger flows that are either taken from other modes or that constitute entirely new travel flows.

When estimating the revenue loss of the operator under the public service contract, the regulatory body should estimate the total decrease in revenue under the public service contract assuming the new open access entry, as compared to a baseline without the open

access entry, other things assumed equal. For this assessment, the regulatory body may define a threshold. In addition, total rail passenger volume, e.g. in terms of passenger-kilometres, may also be defined as a criterion in the assessment.

The competent authority that awarded the public service contract should compensate the railway undertaking performing the public service contract for the losses of revenue it incurs as a result of a new open access service until the date of expiry of the PSO contract.

Or. en

Justification

A new definition of economic equilibrium is proposed which specifies in more detail technical criteria for the economic equilibrium test. It is specified that the competent authority should adjust the compensation paid to the PSO operator when new open access entry leads to losses for the PSO operator.

Amendment 148
Saïd El Khadraoui

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Infrastructure managers should cooperate in case of incidents or accidents with an impact on cross-border traffic to share any relevant information in order to avoid negative spill-over effects;

Or. en

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 149
Saïd El Khadraoui

Proposal for a directive
Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) The regulatory body should have the competence of monitoring infrastructure maintenance works to ensure they are not undertaken in a way that leads to discrimination between railway undertakings.

Or. en

Amendment 150
Saïd El Khadraoui

Proposal for a directive
Recital 20 c (new)

Text proposed by the Commission

Amendment

(20c) The infrastructure manager within a vertically integrated undertaking should have the possibility to offer its staff certain social services in premises that are used by other entities of the vertically integrated undertaking.

Or. en

Amendment 151
Saïd El Khadraoui

**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.

Or. en

**Amendment 152
Saïd El Khadraoui**

**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 2020, in line with the provisions of this Directive.

Or. en

Justification

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

**Amendment 153
Silvia-Adriana Țicău**

Proposal for a directive
Article 1 – point - 1(new)
Directive 2012/34/EU
Article 1 – paragraph 2a (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. The Directive will 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 an EU-wide scheme to be created that encompasses all rail passenger operators.’

Or. ro

Amendment 154
Silvia-Adriana Țicău

Proposal for a directive
Article 1 – point - 1 a (new)
Directive 2012/34/EU
Article 1 – paragraph 2b (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 155

Hubert Pirker

Proposal for a directive

Article 1 – point -1

Directive 2012/34/EU

Article 2 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

-1. The following paragraph 4a (new) is added to Article 2:

Integrated railway undertakings which are not of strategic importance for the functioning of the European rail transport market and which operate rail networks covering a distance of less than 400 km shall be exempt from the provisions of Articles 7 and 7a to 7e.

Or. de

Justification

If the Commission's proposals on vertical separation in Articles 7 and 7a to e are adopted, there needs to be a fall-back position for small and medium-sized rail undertakings.

Amendment 156

Ismail Ertug, Knut Fleckenstein, Georges Bach

Proposal for a directive

Article 1 – point 1 – point a

Directive 2012/34/EU

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(a) Point 2 is replaced by the following:

deleted

'2. 'infrastructure manager' means any body or firm ensuring the development, operation and maintenance of railway infrastructure on a network; development

includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, traffic management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities’;

Or. de

Justification

The definition of ‘infrastructure manager’ in Directive 2012/34 should be retained.

Amendment 157

Jean-Jacob Bicep, Isabelle Durant

Proposal for a directive

Article 1 – point 1 – point a

Directive 2012/34/EU

Article 3 – point 2

Text proposed by the Commission

Amendment

(a) Point 2 is replaced by the following:

deleted

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

infrastructure renewals and the other asset management activities;’

Or. fr

Justification

The railway infrastructure manager is a publicly-funded natural monopoly. It is therefore vital to retain the possibility for Member States or the relevant authorities to exercise control over the planning of the network, investments, train path allocation and the levying of charges.

Amendment 158
Sabine Wils, Jacky Hénin

Proposal for a directive
Article 1 – point 1 – point a
Directive 2012/34/EU
Article 3 – point 2

Text proposed by the Commission

Amendment

(a) Point 2 is replaced by the following: *deleted*

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

Or. en

Justification

Six Member States Hungary, Latvia, Lithuania, Luxembourg, Slovenia and France currently do not have an infrastructure manager in charge of all the functions listed in the proposed definition. Moreover, in Switzerland an institutionally separate body is overseeing capacity allocation and timetabling. There is no evidence that this arrangement does not allow these Member States' rail sectors to perform less well than others in Europe. Therefore, there is no need to change the existing definition.

Amendment 159

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 1 – point a

Directive 2012/34/EU

Article 3

Text proposed by the Commission

Amendment

(a) Point 2 is replaced by the following:

deleted

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

Or. en

Justification

There is no need for the Commission to narrow down the definition of the infrastructure manager. Member States should be allowed to pursue an organisational model which works best for them. In particular, separation of essential functions should remain a possible model

as specified in the recast of the first railway package.

Amendment 160
Gilles Pargneaux

Proposal for a directive
Article 1 – point 1 – point a
Directive 2012/34/EU
Article 3 – point 2

Text proposed by the Commission

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

Amendment

(2) ‘infrastructure manager’ means any body or firm ensuring the development, operation and maintenance of railway infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure, *without prejudice to Member States’ powers, in particular as regards infrastructure planning and financing, as well as national infrastructure maintenance and development in accordance with Article 8(1) and financing for new investment in accordance with Article 8(2)*; operation of the infrastructure includes *the essential functions and traffic management*; maintenance includes infrastructure renewals and the other asset management activities;

Or. fr

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 161
Karim Zéribi

Proposal for a directive
Article 1 – point 1 – point a
Directive 2012/34/EU
Article 3 – point 2

Text proposed by the Commission

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

Amendment

(2) ‘infrastructure manager’ means any body or firm ensuring the development, operation and maintenance of railway infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure, **without prejudice to the powers of the Member States in accordance with Article 8(1) and (2)**; operation of the infrastructure includes all elements of the process of train path allocation, traffic management and infrastructure charging; maintenance includes infrastructure renewals and the other asset management activities;

Or. fr

Justification

Self-explanatory.

Amendment 162
Dieter-Lebrecht Koch, Thomas Ulmer

Proposal for a directive
Article 1 – point 1 – point a
Directive 2012/34/EU
Article 3 – point 2

Text proposed by the Commission

(2) ‘infrastructure manager’ means any body or firm **ensuring the** development, operation and maintenance of railway infrastructure on a network; development

Amendment

(2) ‘infrastructure manager’ means any body or firm **responsible for any or all of the following functions**: development, operation and maintenance of railway

includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, traffic management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities;

infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, traffic management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities;

Or. de

Justification

Some Member States such as Hungary, Luxembourg, Slovenia and France do not at present have an infrastructure manager responsible for all these functions. If the national regulator takes over some of these functions, this will strengthen its position.

Amendment 163

Artur Zasada, Bogdan Kazimierz Marcinkiewicz

Proposal for a directive

Article 1 – point 1 – point a

Directive 2012/34/EU

Article 3 – point 2

Text proposed by the Commission

»(2) ‘infrastructure manager’ means any body or firm ensuring the development, operation and maintenance of railway infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, traffic

Amendment

»(2) ‘infrastructure manager’ means any body or firm ensuring, *in particular*, the development, operation and maintenance of railway infrastructure on a network; development includes network planning, financial and investment planning as well as building and upgrades of the infrastructure; operation of the infrastructure includes all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual

management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities’;

paths, traffic management and infrastructure charging, including determination and collection of the charges; maintenance includes infrastructure renewals and the other asset management activities’;

Or. pl

Amendment 164
Gilles Pargneaux

Proposal for a directive
Article 1 – point 1 – point a a (new)
Directive 2012/34/EU
Article 3 – point 2a (new)

Text proposed by the Commission

Amendment

(aa) the following point 2a is inserted:
‘(2a) “essential functions” means all elements of the process of train path allocation, including both the definition and the assessment of availability and the allocation of individual paths, and infrastructure charging, including determination and collection of the charges;’

Or. fr

Amendment 165
Saïd El Khadraoui

Proposal for a directive
Article 1 – point 1 – point b

Text proposed by the Commission

Amendment

(b) Point 5 is deleted;

deleted

Or. en

Amendment 166
Isabelle Durant

Proposal for a directive
Article 1 – point 1 – point b

Text proposed by the Commission

Amendment

(b) Point 5 is deleted;

deleted

Or. en

Justification

Given their modest share in total passenger traffic and their focus on long-distance relations, international passenger trains tend to have a limited impact on the revenue of domestic passenger train operators. The liberalisation of domestic passenger services could have a much greater impact on the financing and network integration of services operated under public service obligations and therefore calls for clearer and stricter safeguards against cherry-picking and network fragmentation.

Amendment 167
Sabine Wils, Jacky Hénin

Proposal for a directive
Article 1 – point 1 – point b

Text proposed by the Commission

Amendment

(b) Point 5 is deleted;

deleted

Or. en

Justification

The definition of international rail passenger services is still needed for clarity and is to be kept.

Amendment 168
Artur Zasada, Bogdan Kazimierz Marcinkiewicz

Proposal for a directive
Article 1 – point 1 – point b

Text proposed by the Commission

Amendment

b) Point 5 is deleted;

deleted

Or. pl

Justification

The deletion of the point concerning the definition of international traffic poses a problem for Member States which have an external rail border with third countries. There is a risk of a legal loophole arising. It is proposed that the current definition be retained and possibly modified so that it takes account of the situation of such Member States.

Amendment 169
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31

Text proposed by the Commission

Amendment

(c) the following new Point 31 is added:

deleted

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

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

an infrastructure manager is owned or partly owned by one or several railway undertakings or

one or several railway undertakings are owned or partly owned by an infrastructure manager;”

Or. fr

Justification

This definition is superfluous if Articles 7a, 7b and 7c are deleted.

Amendment 170
Dominique Vlasto

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – introductory part

Text proposed by the Commission

‘vertically integrated undertaking’ means
an undertaking where:

Amendment

‘vertically integrated undertaking’ means
an undertaking where ***the railway
undertaking uses the infrastructure
manager’s infrastructure and where:***

Or. fr

Justification

This amendment draws attention to a scenario in which there are serious risks of conflicts of interest or anti-competitive practices.

Amendment 171
Karim Zéribi

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – introductory part

Text proposed by the Commission

‘vertically integrated undertaking’ means
an undertaking where:

Amendment

‘vertically integrated undertaking’ means
an undertaking where ***the railway
undertaking is a user of the infrastructure
manager’s infrastructure and where:***

Or. fr

Justification

This amendment clarifies the remit of the vertically integrated undertaking.

Amendment 172

Erik Bánki

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3 – point 31 – indent 1

Text proposed by the Commission

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

Amendment

- one or several railway undertakings are owned or partly owned by the same undertaking as an infrastructure manager (holding company ***which is neither infrastructure manager nor railway undertaking***), or

Or. en

Justification

It is important to clarify that a holding company is considered neither as infrastructure manager nor as railway undertaking. Thanks to this amendment, interpretation problems can be avoided.

Amendment 173

Karim Zéribi

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3 – point 31 – indent 1

Text proposed by the Commission

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

Amendment

- one or several railway undertakings are owned ***or linked via a similar relationship***, or partly owned, by the same undertaking as an infrastructure manager (holding

company), or

Or. fr

Justification

Self-explanatory.

Amendment 174

Karim Zéribi

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3 – point 31 – indent 2

Text proposed by the Commission

- an infrastructure manager is owned or partly owned by one or several railway undertakings or

Amendment

- an infrastructure manager is owned ***or linked via a similar relationship***, or partly owned, by one or several railway undertakings or

Or. fr

Justification

Self-explanatory.

Amendment 175

Isabelle Durant

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3– point 31 – indent 3

Text proposed by the Commission

- one or several railway undertakings are owned or partly owned by an infrastructure manager

Amendment

- one or several railway undertakings are owned or partly owned by an infrastructure manager

and where one or more of these railway undertakings use all or parts of the infrastructure managed by this infrastructure manager.

Or. en

Justification

Provided that accounting and financial separation between these different entities is granted, as already ought to be the case by virtue of the existing legislation, it makes little sense to consider as making part of an "integrated railway undertaking" entities that are strictly unrelated from an operational point of view.

Amendment 176
Karim Zéribi

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – indent 3

Text proposed by the Commission

- one or several railway undertakings are owned or partly owned by an infrastructure manager;

Amendment

- one or several railway undertakings are owned *or linked via a similar relationship*, or partly owned, by an infrastructure manager.

Vertically integrated undertakings exercising all or some of the infrastructure management functions, within the meaning of Article 3(2), under a contract awarded in accordance with public procurement rules that belong to a holding engaged via a subsidiary in railway operations that account for a minor proportion of the group's activities shall not be subject to the obligations set out in Articles 7a and 7b.

Or. fr

Justification

Self-explanatory.

Amendment 177

Georges Bach

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3 – point 31 – indent 3 a (new)

Text proposed by the Commission

Amendment

- an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not necessarily have distinct legal personalities

Or. en

Justification

The definition of vertically integrated undertaking should also include traditional integrated railway undertakings that include an infrastructure manager.

Amendment 178

Erik Bánki

Proposal for a directive

Article 1 – point 1 – point c

Directive 2012/34/EU

Article 3 – point 31 – indent 3 a (new)

Text proposed by the Commission

Amendment

- an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not necessarily have distinct legal personalities; and the track length of such

undertaking shall not exceed 650 km.

Or. en

Justification

The amendment declares that a traditional integrated railway company which includes both an infrastructure manager and a railway transport operator, but organised as a single legal entity whose divisions do not have distinct legal personalities and the track length does not exceed 650 km is also a case of a vertically integrated undertaking. For reasons of economies of scale it makes no sense to apply complex separation and/or regulatory requirements to small railway networks.

Amendment 179

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 1 – point c – indent 3a (new)

Directive 2012/34/EU

Article 3 – point 31 – indent 3 a (new)

Text proposed by the Commission

Amendment

or

- an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not necessarily have distinct legal personalities;

Or. en

Justification

The Commission's proposed definition is incomplete. A traditional integrated railway company that includes both an infrastructure manager and railway transport operations, but organised as a single legal entity whose divisions do not have distinct legal personalities is also a case of a vertically integrated undertaking.

Amendment 180

Sabine Wils, Jacky Hénin

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – indent 3a (new)

Text proposed by the Commission

Amendment

- an undertaking consisting of distinct divisions, including an infrastructure manager and one or several divisions providing transport services that do not necessarily have distinct legal personalities;

Or. en

Justification

A traditional integrated railway company includes both an infrastructure manager and railway transport operators and could be organised as a single entity whose divisions do not have distinct legal personalities; it is also a case of a vertically integrated undertaking. Such clarification is to be added to the Commission proposal.

Amendment 181
Bernadette Vergnaud

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – sub-point 1 a (new)

Text proposed by the Commission

Amendment

For the purposes of this paragraph, the railway undertaking or undertakings are users of the infrastructure manager's infrastructure.

Or. fr

Justification

The aim of this amendment is to clarify the definition of a vertically integrated undertaking in respect of which conflicts of interest, as referred to in detail in the explanatory memorandum

accompanying the proposal for a directive, can actually occur. It seeks to exclude vertically integrated undertakings where the railway undertaking does not operate on the network that is part of the holding.

Amendment 182
Gilles Pargneaux

Proposal for a directive
Article 1 – point 1 – point c
Directive 2012/34/EU
Article 3 – point 31 – sub-point 1 a (new)

Text proposed by the Commission

Amendment

The fact of one undertaking owning another within a vertically integrated undertaking can be characterised by relationship or link of any kind in fact or in law conferring rights equivalent to property rights.

Vertically integrated undertakings that cumulatively fulfil the conditions below shall not be subject to the obligations set out in Articles 7a and 7b:

(a) they exercise some or all of the infrastructure management functions defined in Article 3(2);

(b) they exercise those functions under contracts awarded by Member States or infrastructure managers in compliance with EU law on the award of public contracts and concessions; and

(c) they belong to a holding which owns, directly or indirectly, one or more undertakings engaged in activities in railway transport services markets; and

(d) the operations of the undertaking(s) engaged in activities in the railway transport services markets represents a minor proportion of the holding's operations.

Justification

With regard to the notion of a vertically integrated undertaking that is owned by several legal entities in the same group, it should be made clear how that ownership can be perceived. It would seem that a derogation from the safeguards laid down in Articles 7a to 7c is necessary in order to prevent construction firms being forced to sever their links with their railway undertaking subsidiaries, whose operations represent a minor proportion of the company's overall operations.

Amendment 183
Antonio Cancian

Proposal for a directive
Article 1 – point 1 – point c a (new)
Directive 2012/34/EU
Article 3

Text proposed by the Commission

Amendment

(ca) The following new Point 32 is added:

‘(32) Of the functions performed by the infrastructure manager, the following shall constitute essential functions:

(a) decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and

(b) decision making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).’

Or. it

Amendment 184
David-Maria Sassoli, Franco Frigo

Proposal for a directive
Article 1 – point 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) The following new Point 32 is added:

‘(32) Of the functions performed by the infrastructure manager, the following shall constitute essential functions:

(a) decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and

(b) decision making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).’

Or. it

Amendment 185
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 1 a (new)
Directive 2012/34/EU
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

In Article 6 paragraph 1 is replaced by the following:

1. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for activities relating to the provision of transport services by railway undertakings and, on the other, for activities relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other. This provision would, however, not prevent revenue from the commercial activity of a railway undertaking being transferred to the infrastructure manager.

Amendment 186
Hubert Pirker

Proposal for a directive
Article 1 – point 2

Text proposed by the Commission

Amendment

2. In Article 6, paragraph 2 is deleted; **deleted**

Or. de

Justification

This deletion should be seen in conjunction with the amendments to Article 7 et seqq. which seek again to delete the Commission proposals on the vertical separation of infrastructure and operation. What is vital for fair competition in rail transport is independent regulation, not the tearing down of existing structures.

Amendment 187
Jean-Jacob Bicep, Isabelle Durant

Proposal for a directive
Article 1 – point 2

Text proposed by the Commission

Amendment

2. Paragraph 2 of Article 6 is deleted. **deleted**

Or. fr

Justification

Paragraphs 1 and 4 of Article 6 of Directive 2012/34/EU provide clear and strict guidelines guaranteeing, on the one hand, the keeping and publication of separate profit and loss accounts and balance sheets for IMs and RUs, and on the other hand, the prohibition of any transfer of public funds from one to the other. There is no reason to believe that this may not be practicable between "distinct divisions within a single undertaking" and therefore no

reason to delete Art. 6(2) of said directive.

Amendment 188

Bogusław Liberadzki, Ismail Ertug, Georges Bach, Knut Fleckenstein

Proposal for a directive

Article 1 – point 2

Text proposed by the Commission

Amendment

2. In Article 6, paragraph 2 is deleted; **deleted**

Or. en

Amendment 189

Sabine Wils, Jacky Hénin

Proposal for a directive

Article 1 – point 2

Text proposed by the Commission

Amendment

2. In Article 6, paragraph 2 is deleted; **deleted**

Or. en

Justification

Article 6, paragraph 2, of Directive 2012/34/EU allows Member States to act either through the creation of distinct entities, or through the organisation of distinct divisions within a single undertaking. This provision is to be kept as there is no evidence that separation of accounts cannot be successfully organised on the basis of distinct divisions within a single railway undertaking.

Amendment 190

Artur Zasada, Bogdan Kazimierz Marcinkiewicz

Proposal for a directive

Article 1 – point 2

Text proposed by the Commission

Amendment

2) In Article 6, paragraph 2 is deleted;

deleted

Or. pl

Amendment 191
Joachim Zeller

Proposal for a directive
Article 1 – point 2
Directive 2012/34/EU
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. In Article 6, paragraph 2 is deleted;

2. In Article 6, paragraph 2 is replaced by the following:

2. To avoid incurring disproportionately high costs, the Member States may provide that, as long as the undertaking has fewer than 3 000 employees and its activities are restricted to urban transport and to an infrastructure of less than 150 km, distinct divisions may be set up within a single undertaking.

Or. de

Justification

Institutional separation in small undertakings which only provide services at regional level and on a specific infrastructure could lead to serious fragmentation of these service providers and a rise in operating costs, and hence to a rise in compensation paid from public funds.

Amendment 192
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 2 a (new)
Directive 2012/34/EU
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

2a. In Article 6 paragraph 4 is amended as follows:

The accounts for the different areas of activity referred to in paragraphs 1 and 3 shall be kept in a way that allows monitoring of the complete prohibition on transferring public funds paid to one area of activity to another and of the use of income from infrastructure charges and surpluses from other commercial activities.

Or. fr

Amendment 193
Hubert Pirker

Proposal for a directive
Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. de

Justification

What is vital for fair competition in rail transport is independent regulation, not the tearing down of existing structures. The current rules on the separation of infrastructure and operation are adequate and are backed up by a strengthened regulatory body.

Amendment 194
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. en

Justification

There is no need for new unbundling requirements beyond what exists in the recast of the first railway package. New and stricter legislation creates a threat of over-regulation of the railway sector, which may hamper its competitiveness. Furthermore, the existing unbundling requirements provide legal certainty. They have been interpreted by the European Court of Justice in its rulings of 28 February 2013.

Amendment 195

Jean-Jacob Bicep

Proposal for a directive

Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. fr

Justification

It is vital that public authorities be able to monitor strategic decisions on railway infrastructure. To ensure that there is no discrimination on the network, the essential functions must be separated and strictly monitored by a powerful regulator. However, separating other functions would give rise to extra coordination costs, a misalignment of interests between the infrastructure managers and the railway undertakings and a loss of synergy

Amendment 196

Bogusław Liberadzki, Ismail Ertug, Knut Fleckenstein, Georges Bach

Proposal for a directive

Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

(This Amendment deletes the Commission's proposal of a new Article 7, e.g. the original text of the Article 7 in Directive 2012/34 EU shall be kept.)

Or. en

Amendment 197

Sabine Wils, Jacky Hénin

**Proposal for a directive
Article 1 – point 3**

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. en

Justification

The existing separation requirements in Article 7 of Directive 2012/34/EU are sufficient and there is no justification for imposing new ones. Existing economic studies assessing the economic efficiency of national railway systems provide there is no evidence that imposing new strict separation requirements will facilitate market access or support any of the EU transport policy goals that the Commission is aiming to achieve.

Amendment 198

Werner Kuhn

**Proposal for a directive
Article 1 – point 3**

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. de

Amendment 199
Jörg Leichtfried, Georges Bach

Proposal for a directive
Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. de

Justification

Non-discriminatory access to infrastructure is already guaranteed by the regulator. The current legal position is far better suited to achieve the necessary synergies from the system. The strength of a holding system lies in its integrated nature, and a further separation of undertakings would lead to unnecessary losses of synergy and make the system more expensive. It would also mean that the infrastructure manager's customer orientation was no longer guaranteed.

Amendment 200
Marita Ulvskog

Proposal for a directive
Article 1 – point 3

Text proposed by the Commission

Amendment

3. [...]

deleted

Or. sv

Amendment 201
Gilles Pargneaux

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Without prejudice to their planning and infrastructure financing capabilities, the 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.

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.

The provisions of Article 7(1) and (2) do not apply to undertakings which carry out some or all of the infrastructure management functions set out in Article 3(2) in a given railway infrastructure and, where relevant, a railway transport service activity in the same infrastructure, on the basis of PPP contracts awarded by the Member States or infrastructure managers in compliance with EU legislation on public procurement and concessions.

Or. fr

Justification

Extending the competences of infrastructure managers should not jeopardise the opportunity for the Member States or infrastructure managers to make use of PPPs, whether they concern construction, maintenance or infrastructure operation projects, wholly or in part, or whether they also cover the operation of transport services on this infrastructure in specific cases.

Amendment 202
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Subject to paragraph 4 of this Article, Member States shall ensure that **an** infrastructure manager performs all the functions referred to in Article 3(2) and is **independently of** any railway undertaking.

Or. en

Justification

Support the principle behind the provisions which require an IM to be separate from a RU and the need for robust governance to ensure that an IM performs its functions independently, transparently and in a non-discriminatory way. However, IMs should have flexibility to deliver their functions efficiently and cost effectively including by sub-contracting their functions to another IM or third party and entering into partnership or alliancing arrangements with RUs in accordance with the amended par. 4.

Amendment 203
Brian Simpson

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ensure that the infrastructure manager(s) **are accountable for** all the functions referred to in Article 3(2) **acting independently of** any railway undertaking.

Or. en

Justification

It is important to clarify the relationship between infrastructure manager and railway undertakings.

Amendment 204
Joachim Zeller

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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 ***as regards the essential functions, i.e. decisions on the allocation of routes and infrastructure charging, stations, investments and maintenance.***

Or. de

Amendment 205
Karim Zérifi

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Without prejudice to their planning and infrastructure financing capabilities, the 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.

Or. fr

Amendment 206
Erik Bánki

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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. ***The Infrastructure Manager is considered independent even in case of vertical control, if it has autonomous right of decision in train path allocation and determination of the charges and this autonomous right of decision in these fields is laid down in its Articles of Association. Member States ensure that this decision-making right, respectively the prohibition to remove such right shall be regulated by national law.***

Or. en

Justification

Within a vertically integrated undertaking there exists an ownership relation between the infrastructure manager and the railway undertaking or between the holding and the infrastructure manager, therefore, the decision in train path allocation and the determination of charges as being the most important decision making criteria for an infrastructure manager to be independent should be laid down in the Articles of Association of the infrastructure manager.

Amendment 207

Karim Zéribi

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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.
Enterprises carrying out some or all of the infrastructure management tasks set out in Article 3(2) in a given railway infrastructure and, where relevant, a railway transport service activity in the same infrastructure, within the scope of the PPPs awarded, are not required to satisfy the requirements of Article 7(1) and (2).

Or. fr

Justification

Self-explanatory.

Amendment 208
Joachim Zeller

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.***

Amendment

To guarantee the independence of the infrastructure manager, Member States ***may organise themselves independently in accordance with the subsidiarity principle.***

Or. de

Amendment 209
Joachim Zeller

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Small-scale vertically integrated undertakings to which the following criteria apply shall be exempt from mandatory separation:

- undertakings integrated since at least 1 January 2013;***
- undertakings maintaining a rail network no longer than 350 km;***
- undertakings with employees carrying out both infrastructure manager and train operator tasks.***

Or. de

Justification

There are over 100 rail undertakings in the EU which meet the above criteria. They are not of strategic importance for the functioning of the European rail transport market. Strict separation for those undertakings would not influence train path demand, but it would increase their operating costs to such an extent that their very financial viability would be at risk, thus greatly jeopardising rail transport in the region concerned.

Amendment 210
Corien Wortmann-Kool

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 1 – subparagraph 2a (new)

Text proposed by the Commission

Amendment

However, it is important to keep the flexibility for railway undertakings and

infrastructure managers to cooperate in order to improve the network, in particular the management of the traffic on the network during the winter season.

Or. en

Amendment 211
Gilles Pargneaux

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 legal or natural person or persons are not allowed*:

Member States shall also ensure *that*:

Or. fr

Amendment 212
Jacqueline Foster

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 legal or natural person or persons are not allowed:

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

Or. en

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 213
Gilles Pargneaux

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point a

Text proposed by the Commission

*(a) to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004, hold any financial interest in **or exercise any right over** a railway undertaking and over an infrastructure manager at the same time;*

Amendment

*(a) **the same natural or legal person is not authorised to** hold any financial interest in a railway undertaking and over an infrastructure manager at the same time;*

Or. fr

Amendment 214
Jacqueline Foster

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point a

Text proposed by the Commission

*(a) to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004 , **hold any** financial **interest in or exercise any right over** a railway undertaking and **over** an infrastructure manager at the same time;*

Amendment

*(a) to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004 **or have a majority** financial **holding in** a railway undertaking and an infrastructure manager at the same time;*

Or. en

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 215

Karim Zéribi

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point a

Text proposed by the Commission

(a) ***to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004***, hold any financial interest in ***or exercise any right over*** a railway undertaking and over an infrastructure manager ***at the same time***;

Amendment

(a) ***simultaneously*** hold any financial interest in a railway undertaking and over an infrastructure manager

Or. fr

Justification

Self-explanatory.

Amendment 216

Gilles Pargneaux

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point b

Text proposed by the Commission

(b) to appoint members of the supervisory board, the administrative board ***or bodies***

Amendment

(b) the same legal person is not authorised to appoint more than two-thirds of

legally representing an infrastructure manager, and at the same time to **directly or indirectly exercise control, hold any financial interest in or** exercise any right over a railway undertaking;

members of the supervisory board **or** the administrative board **of** an infrastructure manager, and at the same time to exercise any **exclusive** right over a railway undertaking;

Or. fr

Amendment 217
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 2 – point b

Text proposed by the Commission

(b) to appoint members of the supervisory board, the administrative board or bodies legally representing an infrastructure manager, and at the same time to **directly or indirectly exercise control, hold any financial interest in or** exercise any right over a railway undertaking;

Amendment

(b) to appoint members of the supervisory board, the administrative board or bodies legally representing an infrastructure manager, and at the same time to **hold a majority** financial interest in or exercise any **controlling** right over a railway undertaking;

Or. en

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 218
Karim Zérifi

Proposal for a directive
Article 1 – point 3

Directive 2012/34/EU
Article 7 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) to **appoint members of the supervisory board, the administrative board or bodies legally representing an infrastructure manager, and at the same time to** directly or indirectly exercise control, **hold any financial interest in or exercise any right** over a railway undertaking;

(b) to directly or indirectly exercise control, **within the meaning of Council Regulation (EC) No 139/2004**, over a railway undertaking **and an infrastructure manager**

Or. fr

Justification

Self-explanatory.

Amendment 219
Karim Zéribi

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 2 – point c)

Text proposed by the Commission

Amendment

(c) **to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both a railway undertaking and an infrastructure manager;**

deleted

Or. fr

Amendment 220
Gilles Pargneaux

Proposal for a directive
Article 1 – point 3

Directive 2012/34/EU
Article 7 – paragraph 2 – point c

Text proposed by the Commission

(c) to be a member of the supervisory board, the administrative board **or bodies legally representing the undertaking**, of both a railway undertaking and an infrastructure manager;

Amendment

(c) the same natural person is not authorised to be a member of the supervisory board **or** the administrative board of both a railway undertaking and an infrastructure manager;

Or. fr

Amendment 221
Jacqueline Foster

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point c

Text proposed by the Commission

(c) to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both a railway undertaking and an infrastructure manager;

Amendment

(c) to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking of both a railway undertaking and an **infrastructure manager if that person or those persons hold a controlling right in both the railway undertaking and the** infrastructure manager;

Or. en

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 222

Karim Zéribi

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point d)

Text proposed by the Commission

Amendment

(d) to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to directly or indirectly exercise control, hold any financial interest in or exercise any right over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to directly or indirectly exercise control, hold any interest in or exercise any right over an infrastructure manager.

deleted

Or. fr

Amendment 223

Gilles Pargneaux

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 – point d

Text proposed by the Commission

Amendment

d) to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to ***directly or indirectly*** exercise control, ***hold any financial interest in or exercise any right*** over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to ***directly or indirectly*** exercise control, ***hold any interest in or exercise any right*** over an

d) the same natural or legal person is not authorised to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to exercise ***exclusive*** control over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to exercise ***exclusive*** control over an infrastructure manager.

infrastructure manager.

Or. fr

Amendment 224
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 2 – point d

Text proposed by the Commission

d) to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to ***directly or indirectly exercise control, hold any financial interest*** in or exercise ***any*** right over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to ***directly or indirectly exercise control, hold any interest*** in or exercise ***any*** right over an infrastructure manager.

Amendment

d) to manage the rail infrastructure or be part of the management of the infrastructure manager, and at the same time to ***have a majority financial holding*** in or exercise ***a controlling*** right over a railway undertaking, or to manage the railway undertaking or be part of its management, and at the same time to ***have a majority financial holding*** in or exercise ***a controlling*** right over an infrastructure manager.

Or. en

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 225
David-Maria Sassoli, Franco Frigo

Proposal for a directive
Article 1 – point 3

Text proposed by the Commission

Amendment

2a. Members of the supervisory board or management board or heads of rail network managers or of any railway undertaking operating on these may not, for a period of at least three years following the termination of their duties, take up any managerial position in any public body responsible for the administration or regulation of the railway sector. The same restriction shall apply to managers of public bodies who leave their posts to take up managerial positions with rail network managers or any railway undertaking operating on these.

Or. it

Amendment 226
Gilles Pargneaux

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Paragraph 2 does not apply

(a) where the person referred to is a

Member State;

(b) where the person referred to is an undertaking as defined in the third subparagraph of Article 3(31).

Or. fr

Justification

The idea of a vertically-integrated undertaking based on the existence of an ownership relationship between several legal entities from the same group should specify the way in which this relationship is assessed. A derogation from the safeguards laid down in Articles 7(a) to 7(c) is needed to avoid the situation whereby public works groups are forced to split from their subsidiary rail undertakings where the latter are relatively inactive as compared with the group as a whole.

Amendment 227
Oldřich Vlasák

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In view of staffing and running costs, the Members States need to be allowed to maintain the functions referred to in paragraph 2 under the competence of a single ministry.

Amendment 228
Karim Zéribi

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Paragraph 2 does not apply to the Member States and to the undertakings referred to in the third subparagraph of Article 3(31).

Or. fr

Justification

Self-explanatory.

Amendment 229
Gilles Pargneaux

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4

Text proposed by the Commission

4. Provided that no conflict of interest arises and that confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may subcontract specific development, renewal and maintenance works, over

Amendment

4. Where the infrastructure manager intends to subcontract to railway undertakings or any other entity acting under the control of a railway undertaking, it will ensure compliance

which *it* shall keep the decision-making power, *to railway undertakings or to any other body acting under the supervision of the infrastructure manager.*

with the following conditions:

*(a) the work in question shall be specific development, renewal and maintenance works, over which **the infrastructure manager** shall keep the decision-making power, **without prejudice to the competences of the Member States in terms of planning and infrastructure financing;***

(b) there shall be no conflict of interests;

*(c) **The confidentiality of commercially-sensitive information shall be preserved.***

Or. fr

Justification

The increased unification of the functions and duties of the infrastructure manager must not jeopardise the intervention of the Member States in terms of planning and infrastructure financing.

Amendment 230 **Jacqueline Foster**

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Nothing in this Article 7 shall prevent an infrastructure manager from:

Amendment 231
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4 – point a (new)

Text proposed by the Commission

Amendment

(a) sub-contracting any or all of the functions listed in Article 3(2) to any person or legal entity other than a railway undertaking provided that the requirements of paragraphs 1 and 2 of this Article are met in relation to that person or legal entity;

Or. en

Justification

While respecting the separation requirements of paragraphs 1 and 2, an IM must be able to sub-contract its tasks to another IM or a third party.

Amendment 232
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4 – point b (new)

Text proposed by the Commission

Amendment

(b) sub-contracting 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 provided that no conflict of interest arises and that the

confidentiality of commercially sensitive information is guaranteed;

Or. en

Amendment 233
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4 – point c (new)

Text proposed by the Commission

Amendment

(c) creating and operating in a transparent and non-discriminatory manner joint control centres with railway undertakings to support operational and incident management and provide a coordinated operational environment on the network;

Or. en

Justification

Joint control centres are essential to improve the performance of the network and its response to delays.

Amendment 234
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4 – point d (new)

Text proposed by the Commission

Amendment

(d) carrying out or having an interest in any railway undertaking carrying out rail services (including the transportation of

people and goods by rail) for the development, operation or maintenance of the network;

Or. en

Justification

IM must be able to run infrastructure maintenance services on its network.

Amendment 235
Jacqueline Foster

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 4 – point e (new)

Text proposed by the Commission

Amendment

(e) entering into arrangements with one or more railway undertakings, after consulting the Coordination Committee referred to in Article 7d and with the prior approval of the regulatory body referred to in Article 55, with a view to reducing costs and delivering greater efficiencies on the part of the network covered by the arrangements and for its users Such arrangements must not undermine the principles of transparency, freedom of access to the network and fair competition between railway undertakings or otherwise breach Union or national law.

Or. en

Justification

Cooperation between IMs and RUs with a view to reducing costs and delivering greater efficiencies should be permitted with regulatory oversight and transparency to protect RUs which are not part of the arrangements from discrimination.

Amendment 236
Brian Simpson

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 and non-discriminatory way, with one or several 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. 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.

Any resulting cost savings in infrastructure charges for the railway operator shall be passed on as reductions in passenger fares on the part of the network concerned.

Or. en

Justification

It is important that an independent infrastructure manager has the possibility of engaging in agreements with railway undertakings in order to improve the performance of a specific line or part of the network. Cost savings as a result of that closer cooperation should be passed on to the passenger in the form of fare reductions.

Amendment 237

Philippe De Backer, Dominique Riquet, Phil Bennion, Michel Dantin, Dominique Vlasto, Nathalie Griesbeck

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.

deleted

Or. en

Justification

A vertically integrated undertaking can never have the necessary independence between the railway undertaking and the infrastructure manager and cannot ensure full transparency of financial flows. Institutional separation is therefore the only solution in order to create a well performing European railway market.

Amendment 238

Brian Simpson

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 5

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Justification

EU rail passengers and freight operators stand to benefit from growth, innovation and investment in the railways. The true potential of the EU rail market will not be realised while preferential treatment is given to one or other railway operator, and while one or other rail operator uses its influence over the infrastructure management to block competitors. A firm move away from a structure which we know results in discriminatory practices and an unlevel playing field is needed.

Amendment 239

Inés Ayala Sender

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. **deleted**

Or. en

Justification

In order to keep coherent the text, paragraphs from article 7a to 7c should be deleted accordingly. A full unbundled system can ensure a common playing field between all operators. Ensuring a clear completion without any discrimination is the way to build a Single European Railway Area.

Amendment 240

Gilles Pargneaux

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

5. Where the infrastructure manager belongs to a vertically integrated undertaking, Member States may decide not to apply paragraphs 2 to 3 of this

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.’

Article. In such *cases*, 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 in Articles 7a to 7b.’

Or. fr

Amendment 241
Karim Zéribi

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 5

Text proposed by the Commission

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.’

Amendment

5) Where the infrastructure manager belongs to a vertically integrated undertaking, Member States may decide not to apply paragraphs 2 to 3 of this Article. In such *cases*, 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 7b.

Or. fr

Justification

Refers to earlier amendments.

Amendment 242
Georges Bach

Proposal for a directive
Article 1 – point 3
Directive 2012/34/EU
Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Smaller, vertically integrated undertakings maintaining a rail network no more than 450 km in length shall be exempt from the separation requirement.

Or. de

Justification

There are over 100 rail undertakings in the EU which meet the above criteria. Strict separation for those undertakings would not influence train path demand, but it would increase their operating costs to such an extent that their very financial viability would be at risk, thus greatly jeopardising rail transport as such.

Amendment 243
Erik Bánki

Proposal for a directive
Article 1 – point 3 a (new)
Directive 2012/34/EU
Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

3a. Article 7 – paragraph 1 – point(b) is replaced by the following:
(b) decision-making on infrastructure charging and determination, excluding the collection of the charges, without prejudice to Article 29(1)

Or. en

Justification

This amendment refers to the currently effective numbering of the recast (Directive 2012/34), the word "excluding" constituting the amendment. There is no risk to competition if the charge is collected by the infrastructure manager, since the collection itself is the result of a vindication of demand for a predetermined and published fare and service. The judgement in the case C-473/10 of the Court of Justice of the European Union also proves this approach.

Amendment 244

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Article 1 – point 3 a (new)

Directive 2012/34/EU

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

In Article 7, the following paragraph is added:

‘5a.

(a) A Member States may decide not to apply the requirements under Article 7 (1) to (4) or those under Articles 7a to 7c. In such cases the Member State must comply with paragraphs 2 to 6 of this Article.

(b) Member States shall ensure that the essential functions determining equitable and non-discriminatory access to infrastructure are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structures, this objective shall be shown to have been achieved.

The essential functions shall be:

(a) decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and
(b) decision making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).’

Member States may, however, assign to railway undertakings or any other body the responsibility for contributing to the development of the railway infrastructure, for example through investment, maintenance and funding.

Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions referred to in Sections 2 and 3 of Chapter IV shall be performed respectively by a charging body and by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking.

When the provisions of Sections 2 and 3 of Chapter IV refer to the essential functions of an infrastructure manager, they shall be understood as applying to the charging body or the allocation body for their respective powers.

3. Without prejudice to Article 56, the infrastructure manager shall first request the approval of the regulatory body referred to in Article 55 before making any change to the level of charges for access to railway infrastructure or for access to service facilities which the manager operates. The regulatory body shall verify compliance with this Directive and with the charging framework and specific charging rules established by Member States in accordance with Article 29.

4. Without prejudice to Article 56(1), an applicant shall have the right to appeal to the regulatory body if he believes he has been unfairly treated, discriminated against or in any way disadvantaged, and in particular against decisions adopted by the infrastructure manager or, where appropriate, by the railway undertaking or manager of a service facility, concerning scheduled or unscheduled maintenance work.

5. Without prejudice to Article 56(9), 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 shall require modification of that decision, in accordance with the decision of the regulatory body, within one month of receiving the appeal. The infrastructure manager shall comply with the decision adopted by the regulatory body as soon as is practicably possible, and in any event no later than one month after notification of the decision.

6 Without prejudice to powers in respect of judicial appeal conferred by constitutional rules, where applicable, appeals against decisions taken by the regulatory body under Article 56(10) may not be such as to have suspensive effect when the decision concerns charges for access to railway infrastructure or allocation of capacity.

Or. it

Amendment 245
Hubert Pirker

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. de

Justification

What is vital for fair competition in rail transport is independent regulation, not the tearing down of existing structures. The current rules on the separation of infrastructure and operation are sufficient and are backed up by a strengthened regulatory body.

Amendment 246
Werner Kuhn

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. de

Amendment 247
Jörg Leichtfried, Georges Bach

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. de

Justification

Non-discriminatory access to infrastructure is already guaranteed by the regulator. The current legal position is far better suited to realise the necessary synergies from the system. The strength of a holding system lies in its integrated nature, and a further separation of undertakings would lead to unnecessary losses of synergy and make the system more expensive. It would also mean that the infrastructure manager's customer orientation was no longer guaranteed.

Amendment 248
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. fr

Amendment 249

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. en

Justification

There is no need for new unbundling requirements beyond what exists in the recast of the first railway package. New and stricter legislation creates a threat of over-regulation of the railway sector, which may hamper its competitiveness. Furthermore, the existing unbundling requirements provide legal certainty. They have been interpreted by the European Court of Justice in its rulings of 28 February 2013.

Amendment 250

Marita Ulvskog

Proposal for a directive

Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. sv

Amendment 251

Sabine Wils, Jacky Hénin

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

Amendment

4. [...]

deleted

Or. en

Justification

The so-called Reinforced Chinese Walls Model as proposed in Articles 7a, 7b and 7c by the Commission would neither contribute to greater efficiency nor provide added value in the rail sector. The existing essential functions are well explained in Directive 2012/34 and must be kept as they are. Moreover, sufficient legal clarity regarding how these provisions should be implemented has been provided by the rulings of the European Court of Justice of 28 February 2013, 18 April 2013 and 11 July 2013.

Amendment 252

Bogusław Liberadzki, Ismail Ertug, Knut Fleckenstein, Georges Bach

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a, 7 b, 7 c

Text proposed by the Commission

Amendment

‘Article 7a

deleted

***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 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 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 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 vertically integrated undertaking shall only be possible if it can be ensured that sensitive information will not be passed on between them.

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.

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 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 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

Amendment 253

Bogusław Liberadzki, Ismail Ertug, Knut Fleckenstein

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a

Text proposed by the Commission

Amendment

4. The following *Articles 7 a to 7 e are*

4. The following *article 7a is* inserted :

inserted:

‘Article 7a

Effective independence of the infrastructure manager within a vertically integrated undertaking

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

2. Legal entities within the vertically integrated undertaking that are active in railway transport services markets shall not have any direct or indirect shareholding in the infrastructure manager. 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 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

Article 7 a

Requirements for the independence and transparency of infrastructure managers

1. 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).

2. Control agreements in which the shareholders of infrastructure managers are granted influence in decisions taken at such undertakings on track access and usage charges, or on the general terms and conditions for usage of infrastructure, are not admissible.

3. Financial flows generated at integrated companies from charges for the use of railway infrastructure are to be disclosed within the framework of external reporting. This is to include demands on the return on capital of the infrastructure managers.

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).

4. Costs incurred by the infrastructure managers for internal services rendered are to be charged appropriately and in line with market prices.

5. The planned development of average usage charges for the individual transport modes (rail freight, long-distance passenger rail and regional passenger rail) including any foreseeable developments is to be disclosed within fluctuation margins for a five-year planning period and updated annually. Major deviations in the updates from planning for the previous year are to be indicated separately and justified. Major deviations in the development of usage charges from the development of production prices require special explanation by the respective infrastructure manager.

6. It has to be ensured that, on a multi-annual average, any profits arising at the infrastructure managers do not exceed the costs of the capital injected into these companies. The balance between equity and external capital is to be taken into account. The maximum return on capital is subject to regulation.

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.

(Articles 7b and 7c of the COM proposal are deleted.)

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 vertically integrated undertaking shall only be possible if it can be ensured that sensitive information will not be passed on between them.

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.

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 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 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

Justification

To ensure anti-discriminatory access to infrastructure, as well as the transparency and plausibility of financial flows between the infrastructure managers and railway operator with which they are linked and to ensure adequate capacities and market-oriented efficiency of infrastructure as well as competitive and predictable infrastructure charging, additional requirements that are substantial for non-discriminatory access to infrastructure are defined.

Amendment 254 **Jean-Jacob Bicep**

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – title

Text proposed by the Commission

Amendment

*Effective independence of the
infrastructure manager within a vertically
integrated undertaking*

deleted

Or. fr

Amendment 255

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – title

Text proposed by the Commission

Amendment

***Effective independence of the
infrastructure manager within a vertically
integrated undertaking***

deleted

Or. en

Amendment 256

Jean-Jacob Bicep

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 1

Text proposed by the Commission

Amendment

***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.***

deleted

Or. fr

Amendment 257

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 1

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 258

Isabelle Durant

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 1

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Justification

Paragraphs 1 and 4 of Article 6 of Directive 2012/34/EU provide clear and strict guidelines guaranteeing, on the one hand, the keeping and publication of separate profit and loss accounts and balance sheets for IMs and RUs, and on the other hand, the prohibition of transfers of public funds from one to the other. There is no reason to believe that accounting separation may not be practicable between distinct divisions of a single undertaking or that it may require the creation of legally distinct bodies.

Amendment 259
Gilles Pargneaux

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***active in the rail transport service markets*** within a vertically integrated undertaking.

Or. fr

Amendment 260
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Or. fr

Amendment 261

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 2

Text proposed by the Commission

Amendment

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. ***deleted***

Or. en

Amendment 262

Isabelle Durant

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 2

Text proposed by the Commission

Amendment

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. ***deleted***

Justification

Article 6 of Dir. 2012/34/EU ensures that separate P&L accounts and balance sheets are kept for IMs and RUs and prohibits the transfer of public funds between them. Provided that essential functions are separated from any RU and that strong regulators ensure that IMs' decisions are non-discriminatory, making sure that an IM cares for the results of at least one RU can only make it more understanding and responsive to the needs of not only this particular RU but of all other RUs as well.

Amendment 263
Oldřich Vlasák

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***Moreover***, the infrastructure manager ***shall neither*** have any direct or indirect shareholding in any legal entities within the vertically integrated undertaking active in railway transport services markets, ***nor shall have any direct or indirect interest in the operating profit of these entities.***

Amendment 264
Antonio Cancian

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7a – paragraph 2

Text proposed by the Commission

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**.

Amendment

2. **Railway undertakings** within the vertically integrated undertaking 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 **railway undertaking** within the vertically integrated undertaking.

Or. it

Amendment 265

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7a – paragraph 2

Text proposed by the Commission

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**.

Amendment

2. **Railway undertakings** within the vertically integrated undertaking 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 **railway undertaking** within the vertically integrated undertaking.

Or. it

Amendment 266

Jean-Jacob Bicep

Proposal for a directive

Article 1 – point 4

Text proposed by the Commission

Amendment

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.* *deleted*

Or. fr

Amendment 267

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

**Proposal for a directive
Article 1 – point 4**

Text proposed by the Commission

Amendment

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.* *deleted*

Or. en

Amendment 268
Gilles Pargneaux

Proposal for a directive
Article 1 – point 4

Text proposed by the Commission

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.

Amendment

3. The infrastructure manager's incomes may not be used in order to finance other legal entities within the vertically integrated undertaking ***which are active in the rail transport service markets*** but only in order to finance the business of the infrastructure manager and to pay reasonable 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. 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.

Or. fr

Amendment 269
Antonio Cancian

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 3

Text proposed by the Commission

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.**

Amendment

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 owner of the vertically integrated company. The infrastructure manager may not grant loans to any other legal entities within the vertically integrated undertaking. 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.

Or. it

Amendment 270
Isabelle Durant

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 3

Text proposed by the Commission

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.

Amendment

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. **Any** loans **or** 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.

Or. en

Justification

Prohibiting the infrastructure manager from granting loans to any other legal entity within a vertically integrated undertaking can be justified on the grounds that this could indeed lead to competitive distortions. But by contrast, there is no reason why other legal entities within the vertically integrated undertaking could not grant loans to the infrastructure manager, especially if such loans are provided based on contracts and remunerated at no more than market prices.

Amendment 271

Michael Cramer, Karim Zéribi

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 3

Text proposed by the Commission

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.

Amendment

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. ***This shall however not prevent an integrated undertaking from transferring surpluses from commercial activities to an area of activity financed through public funds.*** 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, ***in particular with regard to the prohibition on transferring public funds and revenues from the infrastructure to another area of activity.***

Justification

Taxpayers do not accept that companies divert public funds to commercial activities, e.g. for taking over competitors or financing road freight activities. It shall, however, be possible to use surpluses from commercial activities to support activities financed through public funds, e.g. by investing into publicly funded railway infrastructure.

Amendment 272**Joachim Zeller****Proposal for a directive****Article 1 – point 4**

Directive 2012/34/EU

Article 7 a – paragraph 3

Text proposed by the Commission

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

Amendment

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 **appropriate** dividends to the ultimate owner of the vertically integrated company. **Profit transfers shall not be permissible.** 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

circuits for the infrastructure manager and for the other legal entities within the vertically integrated undertaking.

these provisions and allows for separate financial circuits for the infrastructure manager and for the other legal entities within the vertically integrated undertaking.

Or. de

Justification

The ban on profit transfers should be expressed even more clearly in the text. To the extent that dividend payments are still permissible, their scope should be regulated. Dividend payments that are equivalent to a profit transfer should not be permitted.

Amendment 273

Jean-Jacob Bicep

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 4

Text proposed by the Commission

Amendment

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.

deleted

Or. fr

Amendment 274

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 4

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 275
Antonio Cancian

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 – paragraph 4

Text proposed by the Commission

Amendment

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.

4. Without prejudice to Article 8(4), **other** legal entities within the vertically integrated undertaking shall not raise funds via the infrastructure manager.

Or. it

Amendment 276
David-Maria Sassoli, Franco Frigo

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 4

Text proposed by the Commission

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.

Amendment

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.

Without prejudice to the rule on charging for the use of the infrastructure, the incomes of other legal entities within the vertically integrated undertaking and the dividends paid by other legal entities within the vertically integrated undertaking shall not be used in order to finance the activities of the infrastructure manager without prior approval of the regulatory body referred to in Article 55. The regulatory shall approve such financing of the infrastructure manager only if it can be demonstrated that this does not create a conflict of interest, distort competition or create undue advantages for these other entities in relation to other railway undertakings.

Or. en

Amendment 277
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 a – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

the regulatory body upon request, in accordance with Article 56(12).

Or. fr

Amendment 278

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 5

Text proposed by the Commission

Amendment

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).

deleted

Or. en

Amendment 279

Gilles Pargneaux

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 5

Text proposed by the Commission

Amendment

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).

5. Any services offered by other legal entities to the infrastructure manager shall be based on contracts and be paid at market prices. The infrastructure manager shall keep detailed records of **these** 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. fr

Amendment 280
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b

Text proposed by the Commission

Amendment

[...]

deleted

Or. fr

Amendment 281
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7b

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

There is no need for new unbundling requirements beyond what exists in the recast of the first railway package. New and stricter legislation creates a threat of over-regulation of the railway sector, which may hamper its competitiveness. Furthermore, the existing unbundling requirements provide legal certainty. They have been interpreted by the European Court of Justice in its rulings of 28 February 2013.

Amendment 282
Marita Ulvskog

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b

Text proposed by the Commission

Amendment

[...]

deleted

Or. sv

Amendment 283
Sabine Wils, Jacky Hénin

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

The so-called Reinforced Chinese Walls Model as proposed in Articles 7a, 7b and 7c by the Commission would neither contribute to greater efficiency nor provide added value in the rail sector. The existing essential functions are well explained in Directive 2012/34 and must be kept as they are. Moreover, sufficient legal clarity regarding how these provisions should be implemented has been provided by the rulings of the European Court of Justice of 28 February 2013, 18 April 2013 and 11 July 2013.

Amendment 284
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – title

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Amendment 285

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7b – title

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 286

Antonio Cancian

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – title

Text proposed by the Commission

Amendment

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

Effective independence of the staff and management ***responsible for performing the essential functions*** of the infrastructure manager within a vertically integrated undertaking

Or. it

Amendment 287
David-Maria Sassoli, Franco Frigo

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – title

Text proposed by the Commission

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

Amendment

Effective independence of the staff and management ***responsible for performing the essential functions*** of the infrastructure manager within a vertically integrated undertaking

Or. it

Amendment 288
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 1

Text proposed by the Commission

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.

Amendment

deleted

Amendment 289

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 1

Text proposed by the Commission

Amendment

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.

deleted

Amendment 290

Isabelle Durant

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to the decisions of the regulatory body under Article 56, the infrastructure manager shall have

deleted

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.

Or. en

Justification

Rail infrastructure is a publicly funded natural monopoly. It is therefore essential to preserve the possibility for the State to exert control over network and investment planning, train path allocation and infrastructure charging. Where essential functions are separated from any RU and where the IM's decisions are supervised by a strong regulator, further cutting the IM off from all RUs can only lead to unnecessary transaction costs, synergy losses and misaligned objectives.

Amendment 291 **Gilles Pargneaux**

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 1

Text proposed by the Commission

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

Amendment

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 *which are active in the rail transport service markets*, with respect to the *essential* functions referred to in Article 3(2)(a). The overall management structure and the corporate

legal entities within the vertically integrated undertaking shall **determine, directly or indirectly, the behaviour** of the infrastructure manager in relation to these functions.

statutes of the infrastructure manager shall ensure that none of the other legal entities within the vertically integrated undertaking **which are active in the rail transport service markets** shall **have exclusive control over the decisions** of the infrastructure manager in relation to these functions.

Or. fr

Amendment 292
Karim Zéribi

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 1

Text proposed by the Commission

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.

Amendment

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 **which have a railway undertaking licence**, 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 **which have a railway undertaking licence** shall **have exclusive control over the decisions** of the infrastructure manager in relation to these functions.

Or. fr

Justification

Self-explanatory.

Amendment 293
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 2

Text proposed by the Commission

Amendment

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. *deleted*

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.

Or. fr

Amendment 294
Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 2

Text proposed by the Commission

Amendment

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 *deleted*

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.

Or. en

Amendment 295
Isabelle Durant

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b– paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

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.

Or. en

Justification

By virtue of the existing legislation, essential functions need to be separated from any RU, be it alone or as part of an infrastructure manager that's itself separated from any RU. When this is the case, non-discrimination can be controlled by a strong regulator as a performance obligation rather than as an obligation of means and further cutting the IM off from all RUs

can and ought to be avoided as it can only lead to unnecessary transaction costs, synergy losses and misaligned objectives.

Amendment 296
Gilles Pargneaux

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The members of the management board **or of the executive board** of the infrastructure manager shall not be in the management boards or **the executive boards** of any other legal entities **active in the rail transport service markets** within the vertically integrated undertaking.

Or. fr

Amendment 297
Antonio Cancian

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.**

Amendment

The members of the management board and senior staff members of the infrastructure manager shall not be in the management boards **of railway undertakings.**

Or. it

Amendment 298

Karim Zéribi

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

The members of the management board **or of the executive board** of the infrastructure manager shall not be in the management boards or **the executive boards** of any other legal entities **with a railway undertaking licence** within the vertically integrated undertaking.

Or. fr

Justification

Self-explanatory.

Amendment 299

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.**

Amendment

The members of the management board and senior staff members of the infrastructure manager shall not be in the supervisory or management boards **of railway undertakings.**

Or. it

Amendment 300
Gilles Pargneaux

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

The members of the management boards *or of the executive boards* of other legal entities *active in the rail transport service markets* within the vertically integrated undertaking shall not be in the management board or *the executive board* of the infrastructure manager.

Or. fr

Amendment 301
Antonio Cancian

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

The members of the management boards *or* senior staff members of *railway undertakings* shall not be in the management board or be senior staff members of the infrastructure manager.

Or. it

Amendment 302
Karim Zéribi

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

The members of the management boards **or of the executive boards** of other legal entities **with a railway undertaking licence** within the vertically integrated undertaking shall not be in the management board or **the executive board** of the infrastructure manager.

Or. fr

Justification

Self-explanatory.

Amendment 303

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

The members of the supervisory or management boards and senior staff members of **railway undertakings** shall not be in the management board or be senior staff members of the infrastructure manager.

Or. it

Amendment 304

Antonio Cancian

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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.

Or. it

Amendment 305
Jean-Jacob Bicep

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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.

Or. fr

Amendment 306

Bogdan Kazimierz Marcinkiewicz, Ryszard Antoni Legutko, Artur Zasada

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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.

Or. en

Amendment 307
Isabelle Durant

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

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.

Or. en

Justification

By virtue of the existing legislation, essential functions need to be separated from any RU, be it alone or as part of an IM that is itself separated from any RU. When this is the case, non-discrimination can be controlled by a strong regulator as a performance obligation and there is no need to erect so-called Chinese Walls or to overload the legislation with undecipherable and cumbersome measures only to generate unnecessary transaction costs, synergy losses and misaligned objectives.

Amendment 308

David-Maria Sassoli, Franco Frigo

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The infrastructure manager shall have a Supervisory Board which is composed of

deleted

representatives of the ultimate owners of the vertically integrated undertaking.

Or. it

Amendment 309
Gilles Pargneaux

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

The infrastructure manager shall have a ***management board or, if it has an executive board, a supervisory board***. The ***management board or the supervisory board*** shall ***comprise*** representatives of the ultimate owners of the vertically integrated undertaking ***or individuals appointed by the Member State and may also include representatives of the staff of the infrastructure manager***.

Or. fr

Amendment 310
Bernadette Vergnaud

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

The infrastructure manager shall have a ***supervisory board*** which is composed of representatives of the ultimate owners of the vertically integrated undertaking ***and, where relevant, representatives of the regional public authorities concerned***.

Justification

In countries where the public passenger rail transport services have been regionalised, the public authorities which finance them should be represented on the management or supervisory board.

Amendment 311
Joachim Zeller

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

The infrastructure manager shall have a Supervisory Board which is composed of representatives of the ultimate owners of the vertically integrated undertaking ***and representatives of the competent local and regional authorities where these are not already represented.***

Justification

Local and regional authorities are significant actors in the rail system. For this reason they should be include in the decision-making and supervisory bodies of the infrastructure manager, which of course enjoys a natural monopoly. Territorial authorities are the link between operators and end users, and are well acquainted with the latter's needs.

Amendment 312
Karim Zéribi

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

The infrastructure manager shall have a ***management board or, if it has an executive board, a supervisory board. This shall comprise*** representatives of the ultimate owners of the vertically integrated undertaking ***or individuals appointed by the Member State and representatives of the staff of the infrastructure manager, in conformity with the national rules governing the composition of companies' governance bodies.***

Or. fr

Justification

Self-explanatory.

Amendment 313
Gilles Pargneaux

Proposal for a directive
Article 1 – point 4
Directive 2012/34/EU
Article 7 b – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

The ***management board or the executive board*** may consult the Coordination Committee referred to under Article 7d on issues under ***the*** competence ***of the latter***.

Or. fr

Amendment 314
Karim Zéribi

Proposal for a directive
Article 1 – point 4

Directive 2012/34/EU
Article 7 b – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

This board may consult the Coordination Committee referred to under Article 7d on issues under **the** competence **of the latter**.

Or. fr

Justification

Self-explanatory.

Amendment 315
Gilles Pargneaux

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 3– subparagraph 3

Text proposed by the Commission

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**

Amendment

Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the office of the **president of the** management board **or the executive board** of the infrastructure manager shall be taken by the **supervisory board or by the ultimate owner**. The identity and the conditions governing the duration and the termination of office of the **person** nominated by the **supervisory board or by the ultimate owner** for appointment or renewal as **president** of the management board **or the executive 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. The regulatory body may object to such decisions **only if** the professional independence **vis-à-vis all legal entities**

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*.

active in the rail transport services markets of *the* person nominated *to preside over* the management board *or the executive board of the infrastructure manager could not be guaranteed*, or *if the* premature termination of *the president's* office *was motivated for reasons of professional independence vis-à-vis all legal entities active in the rail transport service markets*.

Or. fr

Amendment 316

Karim Zéribi

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 3– subparagraph 3

Text proposed by the Commission

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

Amendment

Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the office of the *president of the* management board *or the executive board* of the infrastructure manager shall be taken by the *supervisory board or by the ultimate owner*. The identity and the conditions governing the duration and the termination of office of the *person* nominated by the *supervisory board or by the ultimate owner* for appointment or renewal as *president* of the management board of the infrastructure manager, and the reasons for any proposed decision terminating the *president's* office, shall be notified to the regulatory body referred to in Article 55. The regulatory body may object to such decisions *only if* the professional independence *vis-à-vis all legal entities with a railway undertaking licence* of *the* person nominated *to preside over* the management board *or the executive board of the infrastructure*

of a member of the management board of the infrastructure manager.

manager could not be guaranteed, or if the premature termination of the president's office was motivated for reasons of professional independence vis-à-vis all legal entities with a railway undertaking licence.

Or. fr

Justification

Self-explanatory.