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Committee on Transport and Tourism

2013/0029(COD)

18.6.2013

*****I**

DRAFT REPORT

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

Committee on Transport and Tourism

Rapporteur: Saïd El Khadraoui

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0029),
 - having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0025/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Chamber of Deputies of the Grand Duchy of Luxembourg, the Swedish Parliament, the Netherlands Senate, the Netherlands House of Representatives, the French Senate and the Lithuanian Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of¹,
 - having regard to the opinion of the Committee of the Regions of ...²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Employment and Social Affairs and the Committee on Regional Development (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

Amendment 1

Proposal for a directive Recital 5

Text proposed by the Commission

(5) Better coordination between infrastructure managers and railway undertakings should be ensured through the establishment of a coordination committee, in order to achieve efficient management and use of the infrastructure.

Amendment

(5) Better coordination between infrastructure managers and railway undertakings should be ensured through the establishment of a coordination committee, in order to achieve efficient management and use of the infrastructure. ***In addition, in order to ensure the smooth running of operations in the daily management of the network, the infrastructure manager at traffic control level should coordinate with railway undertakings, without compromising its independence and responsibility for managing the network and the existing rules.***

Or. en

Justification

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

Amendment 2

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The infrastructure manager, in exercising all the relevant functions as provided for in the Directive, should be required to use its competences to constantly improve the efficiency of the management of the rail infrastructure in order to provide high-quality services to its users.

Justification

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

Amendment 3

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 of 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 an optimal mix of open access services and services performed under public service contracts can be achieved in order to ensure a high quality of services for all passengers;

Or. en

Amendment 4

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 in a

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

common information and ***through*** ticketing scheme for the supply of tickets, through-tickets and reservations. Such a scheme should not create market distortion or discriminate between railway undertakings.

Or. en

Justification

This recital relates specifically to the creation of a through ticketing scheme for rail passenger transport.

Amendment 5

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) It is important that railway undertakings engage in the development of integrated ticketing schemes, in particular as regards local and regional transport, in order to increase the attractiveness of rail transport for passengers. Such schemes should not create market distortion or discriminate between railway undertakings.

Or. en

Justification

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

Amendment 6

Proposal for a directive Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) Passengers should have access to functioning through ticketing schemes and integrated ticketing schemes. Such schemes would also make railways a more attractive means of transport for people. Through ticketing schemes developed by the sector within Member States should be interoperable with each other in order to enable a Union-wide scheme to be created that encompasses all rail passenger operators.

Or. en

Amendment 7

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

Text proposed by the Commission

Amendment

(19c) The national regulatory body should approve or request changes to the arrangements for the transfer of staff. This may include the application of a cooling-off period for staff to be transferred. The regulatory body, when taking its decision, should aim at avoiding the transfer of sensitive information from the infrastructure manager to another entity within the integrated undertaking.

Or. en

Amendment 8

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

Text proposed by the Commission

Amendment

(19d) In 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 establishing a European regulatory body. 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

It should not be forgotten that the creation of a European regulatory body is necessary to complete the Single European Railway Area. This is a request from the Parliament since the recast of the first railway package.

Amendment 9

Proposal for a directive Recital 19 e (new)

Text proposed by the Commission

Amendment

(19e) With a view to completion of the single European railway area, and given the competition in the sector, the Commission should actively support and encourage the social dialogue at Union level in order to ensure that railway workers are appropriately protected against unwanted effects of market opening and to develop joint responses to challenges resulting from the implementation of the Fourth Railway Package.

Or. en

Amendment 10

Proposal for a directive Recital 19 f (new)

Text proposed by the Commission

Amendment

(19f) The Commission should ensure 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 sector¹.

¹ OJ L 195, 27.7.2005, p. 15.

Or. en

Amendment 11

Proposal for a directive Recital 19 g (new)

Text proposed by the Commission

Amendment

(19g) In the light of the development of the single European railway area and the further opening of the rail transport market, Member States should make use of representative collective agreements in order to avoid social dumping and unfair competition.

Or. en

Amendment 12

Proposal for a directive Recital 19 h (new)

Text proposed by the Commission

Amendment

(19h) The Commission should assess the impact of this Directive on the development of the labour market for railway on-board staff and, if appropriate, propose new legislative measures on the certification of such railway on-board staff.

Or. en

Amendment 13

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) "integrated ticketing scheme" means a ticketing system which allows a person to make a journey that involves transfers within or between different transport modes, such as trains, buses, trams, metros, ferries or airplanes.';***

Or. en

Justification

Complements Art 7d, paragraph 2, point f and the role of the coordination committee as regards the development of integrated ticketing schemes proposed therein.

Amendment 14

Proposal for a directive

Article 1 – point 1 – point c b (new)

Directive 2012/34/EU

Article 3

Text proposed by the Commission

Amendment

(cb) the following new point 33 is added:

'(33) "through ticket" means a ticket or tickets representing a transport contract for successive railway services operated by one or more railway undertakings.'

Or. en

Justification

This is the definition used in regulation 1371/2007. For the sake of clarity it should also be included in this Directive which deals with the same subject.

Amendment 15

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For a period of three years after leaving the infrastructure manager, members of the supervisory board or management board of the infrastructure manager shall not be entitled to hold any senior position with any railway undertaking operating on the network of that infrastructure manager.

Or. en

Amendment 16

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 4 a (new)

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.

Or. en

Justification

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

Amendment 17

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

Where the infrastructure manager belongs to a vertically integrated undertaking, Member States may decide not to apply paragraphs 2 to 4 of this Article. In such *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 7c.

Or. en

Justification

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

Amendment 18

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Without prejudice to Article 56, the infrastructure manager shall request approval by the regulatory body referred to in Article 55 prior to any change to the structure or the level of charges for access to railway infrastructure and for access to service facilities operated by it. The regulatory body shall verify compliance with this Directive as well as with the charging framework and the charging rules established by Member States in accordance with Article 29, and shall require any necessary modification of the charging scheme.

Or. en

Justification

The regulatory body should approve ex-ante any change of infrastructure charges and should have the power to modify such changes.

Amendment 19

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 4

Text proposed by the Commission

Amendment

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***

4. For a period of three years after leaving the infrastructure manager, members of the *supervisory board* or management board of the infrastructure manager shall not be entitled to hold any senior position with any other legal entities within the vertically integrated undertaking ***or any other railway undertaking operating on the network of that infrastructure manager.*** For a period of three years after leaving those other legal entities within the vertically integrated undertaking, their

staff members shall not be entitled to hold any senior position with the infrastructure manager.

supervisory or management boards' members shall not be entitled to hold any senior position with the infrastructure manager.

Or. en

Amendment 20

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b – paragraph 5

Text proposed by the Commission

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.

Amendment

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 ***in paragraph 4*** between the infrastructure manager and the other legal entities within the vertically integrated undertaking shall only be possible if it can be ensured that sensitive information will not be passed on between them.

The infrastructure manager may cooperate with other entities of the vertically integrated undertaking as regards the development of their information systems, provided that it is ensured that sensitive information held by

the infrastructure manager is adequately protected.

The regulatory body shall approve or request changes to the arrangements concerning the implementation of the first and second subparagraphs of this paragraph with the aim of ensuring the independence of the infrastructure manager. The regulatory body may request the integrated undertaking to provide it with any information that may be necessary.

Or. en

Justification

The Commission proposal is overly prescriptive. The regulatory body should ensure that as regards premises, IT systems and staff, other than the top management levels, the arrangements are such that they ensure the infrastructure manager's independence. Those arrangements may vary between Member States.

Amendment 21

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 d – paragraph 1

Text proposed by the Commission

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

Amendment

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

observers.

of the Coordination Committee as
observers.

Or. en

Amendment 22

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 d – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

(e) the process for allocation of infrastructure capacity, including priority rules for the allocation of capacity between different categories of infrastructure users;
the principles of coordination in the event of conflicting requests to operate a rail service shall be governed by Article 46(4);

Or. en

Justification

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

Amendment 23

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

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

Text proposed by the Commission

Amendment

(ea) issues relating to through ticketing;

Or. en

Amendment 24

Proposal for a directive

Article 1 – point 4

Directive 2012/034/EU

Article 7 d – paragraph 2 – point f

Text proposed by the Commission

(f) issues of intermodality;

Amendment

(f) issues of intermodality, ***including integrated ticketing and integrated timetabling***;

Or. en

Justification

The coordination committee should be able to discuss with the infrastructure manager questions regarding integrated ticketing and timetabling which is of particular importance for regional and local transport.

Amendment 25

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 e – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that infrastructure managers participate and cooperate in a network to develop the Union rail infrastructure, in particular to ensure timely and efficient implementation of the trans-European transport network, including the core network corridors, rail freight corridors according to Regulation (EU) No 913/2010 and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU.

Amendment

1. Member States shall ensure that infrastructure managers participate and cooperate in a network to develop the Union rail infrastructure, in particular to ensure timely and efficient implementation of the trans-European transport network, including the core network corridors, rail freight corridors according to Regulation (EU) No 913/2010 and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU. ***That cooperation shall also ensure cooperation between those corridors. The Network shall involve, where relevant, national safety authorities***

and the European Railway Agency in order to ensure interoperability, in particular on cross-border sections;

Or. en

Justification

The links between the corridors need to be strengthened. In order to achieve better cooperation the European Network of Infrastructure Managers is the right tool. Safety authorities may need to be involved for questions related to interoperability on cross-border sections.

Amendment 26

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 e – paragraph 2

Text proposed by the Commission

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

Amendment

2. The Network shall participate in the market-monitoring activities referred to in Article 15 and benchmark the efficiency of infrastructure managers on the basis of common indicators and quality criteria, such as the reliability, capacity, availability, punctuality and safety of their networks, asset quality and utilisation, maintenance, renewals, enhancements, ***cross-border cooperation to overcome bottlenecks***, investments and financial efficiency.

Or. en

Amendment 27

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 e – paragraph 3

Text proposed by the Commission

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

Amendment

3. **Following a proposal from the Network**, the Commission **shall** adopt measures setting out the common principles and practices of the Network, in particular to ensure consistency in benchmarking, and the procedures to be followed for cooperation in the Network. Those measures shall be adopted by means of a **delegated** act in accordance with the procedure referred to in Article **60**.

Or. en

Amendment 28

Proposal for a directive

Article 1 – point 6 – point a

Directive 2012/34/EU

Article 11 – paragraph 1

Text proposed by the Commission

1. Member States may limit the right of access provided for in Article 10(2) to passenger services between a given place of departure and a given destination when one or more public service contracts cover the same route or an alternative route if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question.

Amendment

1. **With the exception of high-speed passenger services**, Member States may limit the right of access provided for in Article 10(2) to passenger services between a given place of departure and a given destination when one or more public service contracts cover the same route or an alternative route if the exercise of this right would compromise the economic equilibrium of the public service contract or contracts in question.

Where a public service contract is awarded through a competitive public tendering procedure in accordance with Union law, Member States may, in accordance with Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road¹, limit the right of access provided for in Article 10(2) of this

Directive for the duration of that public service contract on services between a place of departure and a destination which are covered by that public service contract. The information that the right of access is limited shall be made public when the tendering procedure for that public service contract is launched. The limitations referred to in this subparagraph shall not have the effect of restricting the right to pick up passengers at any station located along the route of an international service and to set them down at another, including at stations located in the same Member State, unless the exercise of that right would compromise the economic equilibrium of the public service contract in question.

¹ OJ L 315, 3.12.2007, p. 1.

Or. en

Justification

In addition to the Commission's proposal there should be the possibility to deny the operation of open-access services where a public service has been awarded through a competitive tender.

Amendment 29

Proposal for a directive

Article 1 – point 6 – point b

Directive 2012/34/EU

Article 11 – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

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

Amendment

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

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

The assessment of whether the economic equilibrium of the public service contract would be compromised shall take into account predetermined criteria such as the impact on the profitability of any services which are included in a public service contract, including the resulting impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops and timing and the frequency of the proposed new service, which are established by the regulatory body referred to in Article 55 in compliance with the implementing measures provided for in paragraph 4 of this Article. The assessment shall demonstrate whether the viability of the services operated under the public service contract would be affected. The equilibrium shall be regarded as compromised when it can be demonstrated that the economic feasibility of operating those public services, providing a reasonable level of quality, would be jeopardised.

In accordance with such assessment and the decision of the relevant regulatory body, Member States shall be able to authorise, modify or deny the right of access for the passenger service sought, in line with the economic analysis and with Union law and the principles of equality and non-discrimination. The regulatory body or bodies shall determine this after a request from any of the following, submitted within one month from the information on the intended passenger service referred to in Article 38(4):

Or. en

Justification

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

Amendment 30

Proposal for a directive

Article 1 – point 7

Directive 2012/34/EU

Article 13 a – title

Text proposed by the Commission

Common information and ***integrated***
ticketing schemes

Amendment

Common information and ticketing
schemes

Or. en

Justification

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

Amendment 31

Proposal for a directive

Article 1 – point 7

Directive 2012/34/EU

Article 13 a – paragraph 1

Text proposed by the Commission

1. ***Without prejudice to Regulation (EC) No 1371/2007 and Directive 2010/40/EU***, Member States may require railway undertakings ***operating domestic passenger services*** to participate in a common information and integrated ticketing scheme for the supply of tickets, through-tickets and reservations or decide to give the power to ***competent*** authorities to establish such a scheme. If such a scheme is established, Member States shall ensure that it does not create market

Amendment

1. ***All timetabling data shall be considered public data and be made available accordingly.***

distortion or discriminate between railway undertakings and that it is managed by a public or private legal entity or an association of all **railway** undertakings operating passenger services.

Member States shall require railway undertakings to cooperate in setting up by 12 December 2020 a common travel information and ticketing scheme for the supply of tickets, through-tickets and reservations for all passenger services operated on their territory, or shall decide to empower relevant authorities to establish such a scheme. The scheme shall not create market distortion or discriminate between railway undertakings, and shall be managed by a public or private legal entity or an association of all railway undertakings operating passenger services. The relevant infrastructure manager shall contribute to the scheme as far as this is necessary in order to obtain information on train movements.

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

This Article is without prejudice to Regulation (EC) No 1371/2007 and Directive 2010/40/EU.

Or. en

Justification

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

Amendment 32

Proposal for a directive

Article 1 – point 7 a (new)

Directive 2012/34/EU

Article 19 – point d

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

If the rail passenger market is to become more open it is necessary to enhance the requirements of good repute as regards the respect of working conditions that a railway undertaking needs to be fulfilled to obtain a licence in order to avoid a lowering of labour conditions due to more competition.

Amendment 33

Proposal for a directive

Article 1 – point 8 a (new)

Directive 2012/34

Article 46 – paragraph 4

Text proposed by the Commission

Amendment

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

'4. The principles governing the

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

Or. en

Justification

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

Amendment 34

Proposal for a directive

Article 1 – point 9

Directive 2012/34/EU

Article 63 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. By 31 December 2024, the Commission shall evaluate the impact of this Directive on the rail sector and shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on its implementation.

Amendment

1. By 31 December 2024, the Commission shall evaluate the impact of this Directive on the rail sector and shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on its implementation. *That evaluation shall take into account the views expressed by social partners in the relevant Union social dialogue committee.*

Or. en

Amendment 35

Proposal for a directive

Article 1 – point 9a (new)

Directive 2012/34/EU

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 36

Proposal for a directive

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Points 5 to 8 of Article 1 shall apply from 1 January **2019** [in time for the working timetable starting on **12** December **2020**].

Or. en

EXPLANATORY STATEMENT

I. The Commission proposal

In the last decade, three "railway packages" have aimed to progressively open up national markets and make railways more competitive and interoperable. However, the modal share of rail in intra-EU transport has remained modest and many technical barriers continue to exist. The Fourth railway package is supposed to target the obstacles that limit the effectiveness of railway markets in order to improve the sector's performance and to create a Single European Railway Area.

Regarding this proposal, the Commission states that remaining obstacles relate first of all to the access to the market for domestic passenger services, which limit the development of the sector and create disparities between those Member States that have opened their markets, and those that have not.

A second set of problems are issues related to the governance of infrastructure managers. Since infrastructure managers are natural monopolies, they do not always react to the needs of the market and its users, thus hindering the performance of the sector as a whole. In a number of Member States they are unable to fulfil their tasks, since their functions are separated between different bodies. Cross-border cooperation of infrastructure managers should also be improved.

In addition, a number of market entry barriers result from situations where infrastructure management and transport operations are part of the same integrated structure. In such a case, infrastructure managers may face a conflict of interests, a situation which could lead to discrimination as regards access to the infrastructure for other railway undertakings.

Finally, integrated structures make it much more difficult to enforce the separation of accounts between the management of the infrastructure and the operations of transport services. Regulators find it difficult to trace financial flows between the holding company and its subsidiaries. Cross-subsidising and transfers of public funds allocated to the infrastructure manager to finance competitive activities are not only a serious market entry barrier for new operators, but also an illegal use of State aid.

II. The rapporteur's comments

Your rapporteur agrees with the overall aim of the Commission as regards the creation of a Single European Railway Area. The share of rail vis-à-vis other transport modes should raise and it should be the EU's ambition to make the railways once again a reliable and attractive means of transport. However, liberalisation should not be a goal in itself but should be seen as a useful tool to create a more competitive sector with high quality services. Market opening needs be accompanied by stringent rules on passenger's rights as regards travel information and ticketing and strengthened social rules for railway workers.

It is also necessary to find the right balance between market opening and the protection of

public service obligations (PSO) for each Member State. "Cherry picking" of commercially attractive lines should be avoided as should be the systematical closing of less profitable lines.

As regards the Commission proposal at hand, your rapporteur considers that the following issues need to be looked at with particular attention:

1. Market opening and public service contracts: a more "balanced approach"

Open access services should be possible wherever there is no PSO. However, where services are performed under a public service contract (PSC), market opening should be more gradual than foreseen by the Commission. It is important to take into account the heterogeneity of networks in terms of their size, density and Member States' variety of organisational structures. Member States have different experiences with the process of market opening, and therefore should be given enough flexibility to organise their network in such a way that an optimal mix of open access services and services performed under PSC can be achieved in order to ensure a high quality of services for all passengers. Therefore Member States should be able to choose between more options to find the right balance between open access and PSO.

According to the Commission proposal, railway undertakings can now access the rail network throughout the EU for the provision of all kinds of transport services, be it freight or passenger services, national or international. Member States may limit this open access to protect services operated under a PSC when the economic equilibrium of that PSC would be affected by the open access service. The respective economic equilibrium test is done by the regulatory body which can then request the modification of the new service or even block it.

In addition to this option, it should also be possible to limit open access in cases where a PSC has been allocated by way of a competitive tendering procedure and to thus give the exclusive right of providing rail services to the operator who has been awarded the contract without having to perform the economic equilibrium test. This procedure still ensures a sufficient degree of competition due to the organisation of a tendering procedure. At the same time it gives more planning certainty to the competent authorities and the PSC provider once the service is running. This option of a "balanced approach" would also allow Member States and competent authorities to get gradually familiar with competitive tendering. When a Member State chooses to limit the right of open access, this shall not affect the right of international cabotage, unless the economic equilibrium of the PSC in question would be compromised.

It is necessary to make the definition of the criteria of the economic equilibrium test more precise and to provide for better guiding principles to ensure a uniform application of this test in the Member States.

2. Better governance of the rail sector

At this stage, your rapporteur is not proposing any major changes as regards the provisions on the independence of the infrastructure manager. In general, the stronger the regulatory body, the more flexible the modalities of the structure of vertically integrated companies can be. The provisions on the organisation of the IT systems and on staff transfers are overly prescriptive and more leeway can be given to integrated companies to find the appropriate arrangements,

under supervision of the regulatory body. However, this excludes more flexibility as regards the financial transparency between the different entities of such an integrated structure. Therefore, the rapporteur wishes not to touch the relevant provisions as proposed by the Commission.

A further strengthening of the regulatory body is proposed, which is the power to pre-approve charges set by the infrastructure manager where the latter belongs to an integrated company. The rapporteur wishes to underline that all Member States have to make sure that their regulatory body has the necessary organisational capacity in terms of human and material resources to fulfil its functions as set out in Article 56 of Directive 2012/34/EU.

Where a complete separation between the infrastructure manager and railway undertakings exists, it may be useful to allow them to cooperate on concrete projects that would lead to improved management of the infrastructure and to a better service for freight and passenger transport. Such cooperation or alliance should be limited in time, be supervised by the regulatory body and should not endanger the independence of the infrastructure manager. It should serve to find practical arrangements to solve specific problems such as the improved organisation of traffic on a part of infrastructure where delays frequently occur.

3. Passenger rights - establishing a proper through ticketing scheme

The provisions on passenger rights in Regulation 1371/2007¹ are a step in the right direction. Unfortunately, they are too weak to have had any major visible impact on the development of an EU-wide through ticketing scheme. The sector is working on solutions but those would, once available, remain optional. From the point of view of passengers' right that is not sufficient. Your rapporteur proposes to make the development of such services in each Member State mandatory by 2020. This deadline would enable the sector to make use of the voluntary scheme, currently developed under the auspices of the ERA.

As for integrated ticketing, solutions should be developed in parallel, taking into account the utility of such systems in particular for local and regional transport.

Your rapporteur considers that the data related to timetables should be made available for third parties to be used for the development of innovative solutions for journey planners etc.

4. Strengthening social provisions

Further market opening and more competition has to go hand in hand with strengthening social rules to limit any negative effects on railway staff. Competition should not lead to social dumping. Railway undertakings should be obliged to respect all existing rules regarding social and working conditions and their disrespect should have negative consequences for the operator in question. Your rapporteur proposes adding to the requirements for obtaining a licence the commitment by the undertakings to respect the existing representative collective agreements in the Member States the railway undertaking wants to operate in.

¹ REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on rail passengers' rights and obligations

New attempts should be made to establish a certification for on-board personnel, as initially proposed by the Commission in 2004 but which at the time was not supported by the Council. As international traffic is expected to increase, EU-wide minimum requirements for on-board staff should be established similar to what has been agreed for train drivers. The Commission should ensure the correct and complete enforcement by the Member States of Council Directive 2005/47/EC.

Finally, in order to create a level playing field also in the area of working conditions, a permanent social dialogue should be established at EU level to ensure the respect of social rights and a high degree of professional qualifications for railway staff.

5. Clarifying the role of the European network of infrastructure managers

The proposed European infrastructure managers' network is certainly a useful way of increasing cooperation of infrastructure managers across borders. It lacks however some clarity and detail. Therefore some additions and precisions are proposed with regards to the cooperation between the corridors of the TEN-T network and the rail freight corridors, the involvement of national safety authorities and ERA if appropriate, and the role of the Commission in the network.