

19.2.2014

A7-0037/95

Amendment 95

Sabine Wils, Jacky Hénin, Sabine Lösing, Marie-Christine Vergiat, Patrick Le Hyaric,
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

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

Or. en

Justification

Is up to Member states to achieve the best way to ensure that Infrastructure Managers could act independently from other railway undertakings.

19.2.2014

A7-0037/96

Amendment 96

**Sabine Wils, Jacky Hénin, Sabine Lösing, Paul Murphy, Marie-Christine Vergiat,
Patrick Le Hyaric,**
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

***(a) to directly or indirectly exercise
control in the sense of Council Regulation
(EC) No 139/2004¹⁰, hold any financial
interest in or exercise any right over a
railway undertaking and over an
infrastructure manager at the same time;***

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

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

***(d) to manage the rail infrastructure or be
part of the management of the
infrastructure manager, and at the same
time to directly or indirectly exercise***

AM\P7_AMA(2014)0037(095-104)_EN.doc

PE529.528v01-00

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.

¹⁰ *OJ L 24, 29.1.2004, p. 1.*

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. Moreover the rule is too much prescriptive on the internal organization of a vertically integrated railway company.

19.2.2014

A7-0037/97

Amendment 97

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Patrick Le Hyaric,**
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 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. *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. Deleting paragraph 3 is consistent with deletion of paragraph 2.

19.2.2014

A7-0037/98

Amendment 98

**Sabine Wils, Jacky Hénin, Paul Murphy, Marie-Christine Vergiat, Sabine Lösing,
Patrick Le Hyaric,**
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Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 3

Directive 2012/34/EU

Article 7 – paragraph 5

Text proposed by the Commission

Amendment

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

19.2.2014

A7-0037/99

Amendment 99

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Patrick Le Hyaric,**
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Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 a

Text proposed by the Commission

Amendment

Article 7a

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***

AM\P7_AMA(2014)0037(095-104)_EN.doc

PE529.528v01-00

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).

Or. en

Justification

The so-called Reinforced Chinese Walls Model by the Commission would neither contribute to greater efficiency nor provide added value in the rail sector. 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.

19.2.2014

A7-0037/100

Amendment 100

**Sabine Wils, Jacky Hénin, Paul Murphy, Sabine Lösing, Marie-Christine Vergiat,
Patrick Le Hyaric,**
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Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 b

Text proposed by the Commission

Amendment

Article 7b

deleted

***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***

AM\P7_AMA(2014)0037(095-104)_EN.doc

PE529.528v01-00

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.

Or. en

Justification

The so-called Reinforced Chinese Walls Model as proposed by the Commission would neither contribute to greater efficiency nor provide added value in the rail sector. 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.

19.2.2014

A7-0037/101

Amendment 101

**Sabine Wils, Jacky Hénin, Paul Murphy, Sabine Lösing, Marie-Christine Vergiat,
Patrick Le Hyaric,**
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 4

Directive 2012/34/EU

Article 7 c

Text proposed by the Commission

Amendment

Article 7c

deleted

Procedure of verification of compliance

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

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

3. Member States may limit the rights of access provided for in Article 10 to railway undertakings which are part of

AM\P7_AMA(2014)0037(095-104)_EN.doc

PE529.528v01-00

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

The so-called Reinforced Chinese Walls Model as proposed by the Commission would neither contribute to greater efficiency nor provide added value in the rail sector. 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.

19.2.2014

A7-0037/102

Amendment 102

Sabine Wils, Jacky Hénin, Sabine Lösing, Marie-Christine Vergiat, Patrick Le Hyaric,
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 5 – point a

Directive 2012/34/EU

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

It is worthwhile to keep the reference to international rail passenger service as defined in Art.3 point 5 of Directive 2012/34.

19.2.2014

A7-0037/103

Amendment 103

**Sabine Wils, Jacky Hénin, Paul Murphy, Sabine Lösing, Marie-Christine Vergiat,
Patrick Le Hyaric,**
on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 6 – point a

Directive 2012/34/EU

Article 11 – paragraph 1

Text proposed by the Commission

Amendment

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

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, ***including social cohesion and the right to mobility as set in*** the public service contract or contracts in question.

Or. en

Justification

Not only the economic equilibrium has to be considered but also the social and the cohesion impacts of the public service contracts.

19.2.2014

A7-0037/104

Amendment 104

Sabine Wils, Jacky Hénin, Paul Murphy, Sabine Lösing, Marie-Christine Vergiat

Patrick Le Hyaric,,

on behalf of the GUE/NGL Group

Report

A7-0037/2014

Saïd El Khadraoui

Single European railway area

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

Proposal for a directive

Article 1 – point 6 – point d

Directive 2012/34/EU

Article 11 – paragraph 5

Text proposed by the Commission

Amendment

(d) paragraph 5 is deleted.

deleted

Or. en

Justification

Requirements provided for in paragraph 5 are to be kept as linked with provisions set in Regulation 1370/2007. Opening the market does not imply deleting such provisions relating to international passenger services when in conflict with still in force public service contracts.