EUROPEAN
COMMISSION

Brussels, 30.1.2013
COM(2013) 29 final

2013/0029 (COD)

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

(Text with EEA relevance)

{SWD(2013) 10 final}
{SWD(2013) 11 final}
{SWD(2013) 12 final}
{SWD(2013) 13 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In its 2011 White Paper on transport policy adopted on 28 March 2011[1], the Commission put forward its vision of a Single European Railway Area with an internal railway market where European railway undertakings can provide services without unnecessary technical and administrative barriers.

Several policy initiatives have recognised the potential of rail infrastructure as a backbone for the internal market and a driver of sustainable growth. The European Council conclusions of January 2012 highlighted the importance of unleashing the growth potential of a fully integrated Single Market, including measures with regard to network industries. The Commission Communication on Action for Stability, Growth and Jobs adopted on 30 May 2012 stressed the importance of further reducing the regulatory burden and barriers to entry in the rail sector. Likewise, the Commission Communication on strengthening the governance of the single market, adopted on 8 June 2012[2] also stressed the importance of the transport sector.

At the same time, the Commission has proposed for the next 2014-2020 multi-annual financial framework to create the 'Connecting Europe Facility' (CEF) and allocate €31.7 billion to transport infrastructure out of the total €50 billion envelope.

In the last decade, three legislative "railway packages" have progressively opened up national markets and making railways more competitive and interoperable at the EU level. However, despite the considerable development of the 'EU *acquis*', the modal share of rail in intra-EU transport has remained modest. This proposal targets the remaining obstacles that limit the effectiveness of railway markets.

1.2. Problems to be addressed

Remaining obstacles relate first of all to the access to the market for domestic passenger services. In many Member States these markets are closed to competition, which does not only limit their development, but also creates disparities between those Member States that have opened their markets, and those that have not.

The majority of domestic passenger services cannot be provided on a commercial basis alone and require support from the State. They are performed under public service contracts. Therefore this legislative package also addresses the issue of competition for public service contracts, and additional points such as the availability of rolling stock for potential bidders for such contracts, and integrated timetabling and ticketing systems where they benefit the passenger.

A second set of problems which prevent the rail market from developing its full potential are issues relating 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 infrastructure managers are unable to fulfil their tasks, since their functions are separated

[1] White Paper : Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system ; COM(2011)144

[2] Better Governance for the Single Market ; COM(2012)259

between different bodies. Moreover, the current legal framework has not led to improved cross-border cooperation among infrastructure managers.

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 face a conflict of interests as they have to take account of the business interests of the integrated structure and its transport subsidiaries and have an incentive to discriminate in the provision of access to the infrastructure.

Finally, integrated structures make it much more difficult to enforce the separation of accounts between infrastructure management and transport operations. Regulators find it difficult to trace financial flows between the different subsidiaries and the holding company in an integrated structure. Accountancy tools allow for the artificial increase or decrease of the results of the respective subsidiaries. Cross-subsidising practices and transfers of infrastructure funds to competitive activities are a serious market entry barrier for new operators that do not have the possibility to rely on such funds. Cross-subsidising practises may also imply State aid granted to competitive activities.

1.2 General Objectives

The main objective of the European Union's transport policy is to establish an internal market through a high degree of competitiveness and the harmonious, balanced and sustainable development of economic activities. The 2011 Transport White Paper stated that rail should account for the majority of medium-distance passenger transport by 2050. This modal shift would contribute to the 20% reduction of greenhouse gas emissions foreseen in the Europe 2020 Agenda for smart, sustainable and innovative growth[3]. The White Paper concluded that no major change in transport would be possible without the support of adequate infrastructure and a smarter approach to using it.

The overall objective of the Fourth Railway Package is to enhance the quality and efficiency of rail services by removing any remaining legal, institutional and technical obstacles, and fostering the performance of the railway sector and its competitiveness, in order to further develop the Single European Railway Area.

1.3. Specific Objectives

This proposal encompasses provisions with the following aims:

a) The opening of the market for domestic passenger transport services by rail with the objective of intensifying competitive pressure on domestic rail markets, in order to increase the quantity and improve the quality of passenger services. These proposals have to be seen alongside the proposed amendments to Regulation 1370/2007/EC (Public Service Obligations) and in this context aim to increase the efficiency of the public financing of passenger services.

b) Enhancing governance of the infrastructure manager with the objective of ensuring equal access to the infrastructure. This should be achieved through the removal of conflicts of interest affecting decisions of the infrastructure manager on market access and the elimination of the potential for cross-subsidisation, which exists in integrated structures. The proposal also aims to ensure that all of the infrastructure manager's functions will be managed in a

[3] Communication from the Commission : Europe 2020 ; A strategy for smart, sustainable and inclusive growth ; COM(2010) 2020

consistent manner. Finally, the proposal aims at strengthening coordination between infrastructure managers and rail operators to better address market needs and at enhancing cross-border cooperation between infrastructure managers.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

In order to support the Commission in the impact assessment process, an external consultant was asked to prepare a support study and to undertake a targeted consultation. The study was started in December 2011 and the final report was delivered in December 2012.

To gather the views of the stakeholders, a variety of targeted consultation methods was preferred to an open consultation. Between 1 March and 16 April 2012, tailored questionnaires were sent to 427 rail-related stakeholders (railway undertakings, infrastructure managers, public transport ministries, safety authorities, ministries, representative bodies, workers' organisations etc.). The response rate was 40 %. The views of passengers were collected through a Eurobarometer survey that reached 25 000 members of the public evenly spread over the 25 Member States with railways. The network of the Committee of the Regions was used to reach local and regional authorities and the Sectoral Dialogue Committee on railways has also been consulted.

These consultations were complemented with a stakeholder hearing held on 29 May 2012 (with some 85 participants), a conference with some 420 participants on 24 September 2012 and with interviews with specific stakeholders throughout 2012. Commission staff met with representatives from the Community of European, the European Passenger Transport Operators, the European Transport Workers' Federation, the European Passengers' Federation, the European Rail Infrastructure Managers and UITP – the International Association of Public Transport. Visits and face-to-face interviews with stakeholders were also organised in Italy, France, Germany, the Netherlands, Poland, Hungary, Sweden and the United Kingdom.

The majority of stakeholders agreed during the targeted consultation that the quality of rail services and the competitiveness of the sector in the EU were being affected by different access barriers for railway undertakings. 69 % found different interpretation of legislation to be an issue. Infrastructure capacity constraints were considered to be the main access barrier for railway undertakings (quoted by 83 %).

The result of the consultation showed that views are highly polarised regarding the appropriateness of solutions that should ensure the independent and efficient governance of railway infrastructure. A large majority of transport ministries, competition authorities, regulatory bodies, independent infrastructure managers and railway undertakings, passengers and freight forwarders' associations advocated a complete separation which would ensure full transparency and a level playing field for all operators. In contrast, holding companies, infrastructure managers depending on such holdings and workers' representatives referred to scientific literature that highlights the disadvantages of separation, such as higher transaction costs and the risk of disconnection inefficiencies. These stakeholders thought that a stronger role of regulatory oversight could be sufficient to solve the issues. 64 % of respondents supported the idea of creating a specific body of representatives from all infrastructure users to ensure interests are taken into account in a non-discriminatory way.

Throughout the consultation process the Commission took a proactive approach to prompting stakeholders to participate. Given that all relevant parties were given the opportunity to express their opinions, the Commission's minimum consultation standards were met.

Based on the external study mentioned above and the conclusions of the stakeholder consultation process, the Commission made a quantitative and qualitative assessment of the impact of the proposed measures. This evaluation examined alternative options for new measures aiming to modernise the existing regulatory framework.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Definition of the infrastructure manager (Article 3(2))

The clarification sets out all the relevant functions of infrastructure management that are to be performed by the infrastructure manager, in order to ensure that all these functions are fulfilled in a consistent manner. It abolishes the option set out in the existing text for functions of the infrastructure manager on a network or part of a network to be allocated to different bodies or firms. It also clarifies the meaning of the different functions of infrastructure management.

3.2. Definition of international passenger services (Article 3, point 5)

The fifth Point of the existing Article 3 defines international passenger services. With the opening of the market for domestic passenger transport services by rail, the distinction between international and domestic passenger services becomes irrelevant for the purpose of this Directive. This definition is therefore deleted.

3.3. Separation of accounts within an integrated group (Article 6(2))

The existing Article 6(2) allows for the possibility of organising infrastructure and transport services within a single undertaking while fulfilling the requirements of a separation of accounts. Since the proposal contains specific rules on the separation of the two activities, this provision has to be deleted.

3.4. Institutional separation of the infrastructure manager (Article 7)

This provision establishes that infrastructure managers should be able to fulfil all the necessary functions for the sustainable development of the infrastructure. It also introduces the institutional separation of the infrastructure manager from transport operations, by prohibiting the same legal or natural person from having the right to control or exercise influence over an infrastructure manager and a railway undertaking at the same time. It allows for the possibility of a Member State to be owner of both legal entities, in which control should be exercised by public authorities that are separate and legally distinct from each other.

3.5. Independence of infrastructure managers within vertically integrated undertakings (Articles 7a and 7b)

The proposal allows vertically integrated undertakings, including those with a holding structure, to maintain ownership of the infrastructure manager. However, it clarifies that this is only permissible if conditions are fulfilled which ensure that the infrastructure manager has effective decision-making rights for all its functions. It further sets out that this must be guaranteed by strong and efficient safeguards protecting the infrastructure manager’s independence. It specifies that these safeguards should be in place with regard to the structure of the undertaking, including the separation of financial circuits between the infrastructure manager and other companies of the integrated group. It also sets out rules on the management structure of the infrastructure manager.

3.6. Verification of compliance (Article 7c)

This provision establishes a possibility for Member States to limit access rights of railway operators which are part of vertically integrated undertakings, in case the Commission is not a

position to confirm that safeguards to protect the independence of the infrastructure manager have been effectively implemented.

3.7. Coordination committee (Article 7d)

This provision seeks to ensure good coordination between the infrastructure manager and the users of the network which are affected by his decisions, including applicants, representatives of passengers and users of freight services, and regional and local authorities. It lists the issues on which the infrastructure manager should take advice from the users which include their needs on the development of the infrastructure, performance targets, allocation and charging.

3.8. European Network of Infrastructure Managers (Article 7e)

The proposal creates a forum for the cooperation of infrastructure managers across borders, with a view to developing the European rail network. This includes cooperation on the establishment of the core network corridors, the rail freight corridors and the implementation of the European Rail Traffic Management System (ERTMS) deployment plan. The proposal also covers the role to be played by this Network in monitoring the performance of infrastructure managers with the aim of improving the quality of services offered by infrastructure managers.

3.9. Conditions of access to railway infrastructure (Article 10)

Article 10(2) is amended to grant to European railway undertakings access rights for the purpose of operating domestic passenger services. Since the distinction made in the existing legislation between international and domestic services is removed, Article 10(3) and 10(4), whose purpose had been to determine the international or domestic nature of a service, have to be deleted.

3.10. Limitation of the right of access (Article 11)

This provision gives Member States the possibility to limit access rights for the purpose of operating domestic or international services if the exercise of this right would compromise the economic equilibrium of a public service contract. As is currently the case for international services, the provision stipulates that regulatory bodies have the responsibility to determine whether the economic equilibrium of a public service contract is being compromised by a domestic service according to common procedures and criteria.

3.11. Common information and integrated ticketing schemes (Article 13a)

In order to ensure that passengers continue to benefit from network effects, this provision gives Member States the possibility to establish information and integrated ticketing schemes common to all railway undertakings operating domestic passenger services in a way that does not distort competition. In addition, it provides for the adoption of coordinated contingency plans by railway undertakings to provide assistance to passengers if there is a major disruption of traffic.

3.12 Capacity rights (Article 38(4))

With a view to giving all market players sufficient legal certainty to develop their activities, this provision is amended. It defines the time frame within which regulatory bodies should assess whether the economic equilibrium of a public service contract would be compromised. This is consistent with the process for the allocation of infrastructure capacity.

2013/0029 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[4],

Having regard to the opinion of the Committee of the Regions[5],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(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.

(2) The Union markets for freight and for international passenger trains have been opened to competition since 2007 and 2010 respectively through Directives 2004/51/EC[6] and 2007/58//EC[7]. In addition, some Member States have opened their domestic passenger services to competition, either by introducing open access rights or competitive tendering for public service contracts or both.

(3) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area[8] 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

---

4 OJ C , , p. .
5 OJ C , , p. .
6 OJ L164, 30.4.2004, p. 164.
7 OJ L315, 3.12.2007, p. 44.
8 OJ L 343, 14.12.2012, p. 32.

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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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 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.

(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.

(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.

(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.

(16) The process of the assessment should take into account the need to provide all market players with sufficient legal certainty to develop their activities. The procedure should be as simple, efficient and transparent as possible and coherent with the process for the allocation of infrastructure capacity.

(17) The assessment of whether the economic equilibrium of the public service contract 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.

(18) When assessing whether the economic equilibrium of the public service contract would be compromised, regulatory bodies should consider the economic impact of the intended service on existing public service contracts taking into account its impact on the profitability of any services included in such public service contracts and the consequences for the net cost to the competent public authority that awarded the contracts. To make this assessment, factors such as passenger demand, ticket pricing, ticketing arrangements, location and number of stops and the timing and frequency of the proposed new service should be examined.

(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.

(20) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents[9], 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2012/34/EU is amended as follows:

1. Article 3 is amended as follows:

(a) Point 2 is replaced by the following:

‘(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’;

(b) Point 5 is deleted;

(c) the following new Point 31 is added:

[9] OJ C 369, 17.12.2011, p. 14.

'(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';

2. In Article 6, paragraph 2 is deleted;

3. Article 7 is replaced by the following:

'Article 7

Institutional separation of the infrastructure manager

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

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.

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

(a) to directly or indirectly exercise control in the sense of Council Regulation (EC) No 139/2004[10], 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 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.

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

[10] OJ L 24, 29.1.2004, p. 1.

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.

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.

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.'

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

Article 7d

Coordination Committee

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

2. The Coordination Committee shall make proposals concerning or advising the infrastructure manager and, where appropriate, the Member State on:

   (a) the needs of applicants related to the maintenance and development of the infrastructure capacity;

(b) the content of the user-oriented performance targets contained in the contractual agreements referred to in Article 30 and of the incentives referred to in Article 30(1) and their implementation;

(c) the content and implementation of the network statement referred to in Article 27;

(d) the charging framework and rules set by the State and the charging scheme established by the infrastructure manager in accordance with Article 29 and the level and structure of infrastructure charges;

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

(f) issues of intermodality;

(g) any other issue related to the conditions for access and use of the infrastructure and the quality of the services of the infrastructure manager.

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

3. The Coordination Committee shall draw up rules of procedure that include, in particular, rules on participation in and frequency of meetings which shall be at least quarterly. A report of the Coordination Committee's discussions shall be submitted annually to the infrastructure manager, the Member State, the regulatory body concerned and the Commission with an indication of the respective positions taken by the Committee members.

Article 7e

European Network of Infrastructure Managers

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[11] and the European Rail Traffic Management System (ERTMS) deployment plan laid down in Decision 2012/88/EU[12].

The Commission shall be a member of the Network. It shall coordinate and support the work of the Network and make recommendations to the Network, as appropriate. It shall ensure the active cooperation of the appropriate infrastructure managers.

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

[11] OJ L 276, 20.10.2010, p. 22.
[12] OJ L 51, 23.2.2012, p. 51.

and utilisation, maintenance, renewals, enhancements, investments and financial efficiency.

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).'

5. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'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.';

(b) paragraphs 3 and 4 are deleted.

6. Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

'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.';

(b) the first subparagraph of paragraph 2 is replaced by the following:

'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 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):

(a) the competent authority or competent authorities that awarded the public service contract;

(b) any other interested competent authority with the right to limit access under this Article;

(c) the infrastructure manager;

(d) the railway undertaking performing the public service contract.';

(c) paragraph 3 is replaced by the following:

'3. The regulatory body shall give the grounds for its decision and the conditions under which a reconsideration of the decision within one month of its notification may be requested by one of the following:,

(a) the relevant competent authority or competent authorities;

(b) the infrastructure manager;

(c) the railway undertaking performing the public service contract;

(d) the railway undertaking seeking access.';

In case the regulatory body decides that the economic equilibrium of a public contract would be compromised by the intended passenger service referred to in Article 38(4), it shall indicate possible changes to such service which would ensure that the conditions to grant the right of access provided for in Article 10(2) are met.';

(d) paragraph 5 is deleted.

7. The following Article 13a is inserted:

'Article 13a

Common information and integrated ticketing schemes

1. Without prejudice to Regulation (EC) No 1371/2007[13] and Directive 2010/40/EU[14], Member States may require railway undertakings operating domestic passenger services to participate in a common information and integrated ticketing scheme for the supply of tickets, through-tickets and reservations or decide to give the power to competent authorities to establish such a scheme. If such a scheme is established, Member States shall ensure that it does not create market distortion or discriminate between railway undertakings and that it is managed by a public or private legal entity or an association of all railway undertakings operating passenger services.

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

8. In Article 38, paragraph 4 is replaced by the following:

'4. Where an applicant intends to request infrastructure capacity with a view to operating a passenger service, it shall inform the infrastructure managers and the regulatory bodies concerned no less than 18 months before the entry into force of the working timetable to which the request for capacity relates. In order to enable regulatory bodies concerned to assess the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service on that route defined in a public service contract, any other interested competent authority with the right to limit access under Article 11 and any railway undertaking performing the public service contract on the route of that passenger service is informed without undue delay and at the latest within five days.'

9. In Article 63, paragraph 1 is replaced by the following:

'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,

---

13 OJ L315, 3.12.2007, p. 14.

14 OJ L207, 6.8.2010, p. 1.

the European Economic and Social Committee and the Committee of the Regions a report on its implementation.

By the same date, the Commission shall assess whether discriminatory practices or other types of distortion of competition persist in relation to infrastructure managers which are part of a vertically integrated undertaking. The Commission shall, if appropriate, propose new legislative measuress.'

Article 2

1. Member States shall adopt and publish, by [18 months after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate to the Commission the text of those provisions immediately.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

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].

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*