Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (Text with EEA relevance)

CHAPTER II

DEVELOPMENT OF THE UNION RAILWAYS

SECTION 2

Separation of infrastructure management and transport operations and of different types of transport operations

[F1 Article 7

Independence of the infrastructure manager

1 Member States shall ensure that the infrastructure manager is responsible for operation, maintenance and renewal on a network and is entrusted with the development of the railway infrastructure of that network in accordance with national law.

Member States shall ensure that none of the other legal entities within the vertically integrated undertaking has a decisive influence on the decisions taken by the infrastructure manager in relation to the essential functions.

Member States shall ensure that the members of the supervisory board and of the management board of the infrastructure manager and the managers directly reporting to them act in a non-discriminatory manner and that their impartiality is not affected by any conflict of interest.

2 Member States shall ensure that the infrastructure manager is organised as an entity that is legally distinct from any railway undertaking and, in vertically integrated undertakings, from any other legal entities within the undertaking.

3 Member States shall ensure that the same individuals cannot be concurrently appointed or employed:

a as members of the management board of an infrastructure manager and as members of the management board of a railway undertaking;

b as persons in charge of taking decisions on the essential functions and as members of the management board of a railway undertaking;

c where a supervisory board exists, as members of the supervisory board of an infrastructure manager and as members of the supervisory board of a railway undertaking;

d as members of the supervisory board of an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager and as members of the management board of that infrastructure manager.

4 In vertically integrated undertakings, the members of the management board of the infrastructure manager and the persons in charge of taking decisions on the essential functions

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shall not receive any performance-based remuneration from any other legal entities within the vertically integrated undertaking, nor shall they receive any bonuses principally related to the financial performance of particular railway undertakings. They may however be offered incentives related to the overall performance of the railway system.

5 Where information systems are common to different entities within a vertically integrated undertaking, access to sensitive information relating to essential functions shall be restricted to authorised staff of the infrastructure manager. Sensitive information shall not be passed on to other entities within a vertically integrated undertaking.

6 The provisions of paragraph 1 of this Article shall be without prejudice to the decision-making rights of Member States as regards the development and funding of railway infrastructure and the competences of Member States as regards infrastructure financing and charging, as well as capacity allocation, as defined in Article 4(2), and Articles 8, 29 and 39.**]**

Textual Amendments

F1 Substituted by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU 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).