

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*

##### *Article 6*

#### **Separation of accounts**

1 Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other.

[<sup>F12</sup> For the purpose of this Article, Member States which apply Article 7a(3) shall require the undertaking to be organised in distinct divisions that do not have a distinct legal personality within a single undertaking.]

3 Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services. Public funds paid for activities relating to the provision of transport services as public-service remits shall be shown separately in accordance with Article 7 of Regulation (EC) No 1370/2007 in the relevant accounts and shall not be transferred to activities relating to the provision of other transport services or any other business.

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

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#### **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 \(Text with EEA relevance\)](#).

## *[<sup>F1</sup>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 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.]

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### 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 \(Text with EEA relevance\)](#).

## *[<sup>F2</sup>Article 7a*

### Independence of the essential functions

1 Member States shall ensure that the infrastructure manager has organisational and decision-making independence within the limits set out in Article 4(2), and Articles 29 and 39, as regards the essential functions.

- 2 For the application of paragraph 1, Member States shall ensure in particular that:
- a railway undertaking or any other legal entity does not exercise a decisive influence on the infrastructure manager in relation to the essential functions, without prejudice to the role of the Member States as regards the determination of the charging framework and the capacity allocation framework and specific charging rules in accordance with Articles 29 and 39;
  - a railway undertaking or any other legal entity within the vertically integrated undertaking has no decisive influence on appointments and dismissals of persons in charge of taking decisions on the essential functions;
  - the mobility of persons in charge of the essential functions does not create conflicts of interest.

3 Member States may decide that infrastructure charging and path allocation shall be performed by a charging body and/or by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking. In such a case, Member States may decide not to apply the provisions of Article 7(2) and points (c) and (d) of Article 7(3).

Point (a) of Article 7(3) and Article 7(4) shall apply *mutatis mutandis* to the heads of divisions in charge of management of the infrastructure and provision of railway services.

4 The provisions of this Directive referring to the essential functions of an infrastructure manager shall apply to the independent charging and/or allocation body.

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### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### Article 7b

#### **Impartiality of the infrastructure manager in respect of traffic management and maintenance planning**

1 Member States shall ensure that the functions of traffic management and maintenance planning are exercised in a transparent and non-discriminatory manner and that the persons in charge of taking decisions in respect of those functions are not affected by any conflict of interest.

2 As regards traffic management, Member States shall ensure that railway undertakings, in cases of disruption concerning them, have full and timely access to relevant information. Where the infrastructure manager grants further access to the traffic management process, it shall do so for the railway undertakings concerned in a transparent and non-discriminatory way.

3 As regards the long-term planning of major maintenance and/or renewal of the railway infrastructure, the infrastructure manager shall consult applicants and, to the best possible extent, take into account the concerns expressed.

The scheduling of maintenance works shall be carried out by the infrastructure manager in a non-discriminatory way.

#### **Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### Article 7c

#### **Outsourcing and sharing the infrastructure manager's functions**

1 Provided that no conflicts of interest arise and that the confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may:

- a outsource functions to a different entity, provided the latter is not a railway undertaking, does not control a railway undertaking, or is not controlled by a railway undertaking. Within a vertically integrated undertaking, essential functions shall not be outsourced to any other entity of the vertically integrated undertaking, unless such entity exclusively performs essential functions;
- b outsource the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control the railway undertaking, or are controlled by the railway undertaking.

The infrastructure manager shall retain the supervisory power over, and bear ultimate responsibility for, the exercise of the functions described in Article 3(2). Any entity carrying out essential functions shall comply with Articles 7, 7a, 7b and 7d.

2 By way of derogation from Article 7(1), infrastructure management functions may be performed by different infrastructure managers, including parties to public-private partnership arrangements provided that they all fulfil the requirements of Article 7(2) to (6) and Articles 7a, 7b and 7d and assume full responsibility for the exercise of the functions concerned.

3 Where essential functions are not assigned to a power supply operator, it shall be exempted from the rules applicable to infrastructure managers, provided that compliance with the relevant provisions concerning development of the network, in particular Article 8, is ensured.

4 Subject to supervision by the regulatory body or any other independent competent body determined by the Member States, an infrastructure manager may conclude cooperation agreements with one or more railway undertakings in a non-discriminatory way and with a view to delivering benefits to customers such as reduced costs or improved performance on the part of the network covered by the agreement.

That body shall monitor the execution of such agreements and may, where justified, advise that they should be terminated.

#### **Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### *Article 7d*

#### **Financial transparency**

1 While respecting national procedures applicable in each Member State, income from infrastructure network management activities, including public funds, may be used by the infrastructure manager only to finance its own business, including the servicing of its loans. The infrastructure manager may also use such income to pay dividends to owners of the company, which may include any private shareholders, but excludes undertakings which are part of a vertically integrated undertaking and which exercise control over both a railway undertaking and that infrastructure manager.

2 Infrastructure managers shall not grant loans to railway undertakings, either directly or indirectly.

3 Railway undertakings shall not grant loans to infrastructure managers, either directly or indirectly.

4 Loans between legal entities of a vertically integrated undertaking, shall only be granted, disbursed and serviced at market rates and conditions which reflect the individual risk profile of the entity concerned.

5 Loans between legal entities of a vertically integrated undertaking granted before 24 December 2016 shall continue until their maturity, provided that they were contracted at market rates and that they are actually disbursed and serviced.

6 Any services offered by other legal entities of a vertically integrated undertaking to the infrastructure manager shall be provided on the basis of contracts and be paid either at market prices or at prices which reflect the cost of production, plus a reasonable margin of profit.

7 Debts attributed to the infrastructure manager shall be clearly separated from debts attributed to other legal entities within vertically integrated undertakings. Such debts shall be serviced separately. This does not prevent the final payment of debts being made via an undertaking which is part of a vertically integrated undertaking and which exercises control

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over both a railway undertaking and an infrastructure manager, or via another entity within the undertaking.

8 The accounts of the infrastructure manager and of the other legal entities within a vertically integrated undertaking shall be kept in a way that ensures the fulfilment of this Article and allows for separate accounting and transparent financial circuits within the undertaking.

9 Within vertically integrated undertakings, the infrastructure manager shall keep detailed records of any commercial and financial relations with the other legal entities within that undertaking.

10 Where essential functions are performed by an independent charging and/or allocation body in accordance with Article 7a(3) and Member States are not applying Article 7(2), the provisions of this Article shall apply *mutatis mutandis*. References to infrastructure manager, railway undertaking and other legal entities of a vertically integrated undertaking in this Article shall be understood as referring to the respective divisions of the undertaking. Compliance with the requirements set out in this Article shall be demonstrated in the separate accounts of the respective divisions of the undertaking.

#### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### Article 7e

#### Coordination mechanisms

Member States shall ensure that appropriate coordination mechanisms are put in place to ensure coordination between their main infrastructure managers and all interested railway undertakings as well as applicants referred to in Article 8(3). Where relevant, representatives of users of the rail freight and passenger transport services, and national, local or regional authorities, shall be invited to participate. The regulatory body concerned may participate as an observer. The coordination shall concern inter alia:

- (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) issues of intermodality and interoperability;
- (e) any other issue related to the conditions for access, the use of the infrastructure and the quality of the services of the infrastructure manager.

The infrastructure manager shall draw up and publish guidelines for coordination, in consultation with interested parties. Coordination shall take place at least annually and the infrastructure manager shall publish on its website an overview of the activities undertaken pursuant to this article.

Coordination under this Article shall be without prejudice to the right of applicants to appeal to the regulatory body and the powers of the regulatory body as set out in Article 56.

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**Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).

*Article 7f*

**European Network of Infrastructure Managers**

1 With the view to facilitating the provision of efficient and effective rail services within the Union, Member States shall ensure that their main infrastructure managers participate and cooperate in a network, that meets at regular intervals to:

- a develop Union rail infrastructure;
- b support the timely and efficient implementation of the single European railway area;
- c exchange best practices;
- d monitor and benchmark performance;
- e contribute to the market monitoring activities referred to in Article 15;
- f tackle cross-border bottlenecks; and
- g discuss the application of Articles 37 and 40.

For the purpose of point (d), the network shall identify common principles and practices for the monitoring and benchmarking of performance in a consistent manner.

Coordination under this paragraph shall be without prejudice to the right of applicants to appeal to the regulatory body and the powers of the regulatory body as set out in Article 56.

2 The Commission shall be a member of the network. It shall support the work of the network and facilitate coordination.]

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**Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).