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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the implementation of Directive 2012/34/EU
as amended by Directive (EU) 2016/2370**

{SWD(2025) 178 final}

1. Introduction

This report reviews the implementation of Directive 2012/34/EU¹ ('the Directive') as amended by Directive (EU) 2016/2370² ('the Governance Directive') on the rail sector as required by Article 63(1) of Directive 2012/34/EU. The aim of this report is to provide an overview of key issues and problems in implementation of the Directive. However, this report cannot provide an exhaustive account of all national implementation measures and does not prejudge any position the Commission might take in any future legal proceedings.

As prescribed by Article 63(1) of Directive 2012/34/EU, the report evaluates in particular: (1) the development of high-speed rail services and the existence of discriminatory practices regarding access to high-speed lines; and (2) whether discriminatory practices or other types of distortion of competition persist in relation to infrastructure managers (IMs) which are part of a vertically integrated undertaking (VIU). The analysis of the high-speed market in the context of this implementing report has also informed the drafting of the high-speed-rail communication³ to be adopted by the Commission.

Boosting rail is considered essential to decarbonise transport as rail is one of the most efficient transport modes. In 2022, it performed 7.2% of EU passenger transport and 11.9% of EU freight transport while being responsible for only 0.3% of transport greenhouse gas emissions. Rail accounts for only 1.8% of the EU transport final energy consumption.

This report shows that some obstacles are still holding back the development of a true single European railway area. However, the delays in national transposition of the Governance Directive, the impact of the COVID-19 pandemic and the energy crisis of recent years⁴ all mean that it is not yet possible to make a comprehensive assessment of the impact of the Directive on the rail market. More extensive evidence would be required to justify the presentation of new legislative proposals at this stage. However, targeted interventions on the issues identified in this report might be possible through specific policy actions or through revisions of other acts, such as implementing acts, delegated acts or guidelines.

The Commission valued the input to this report received by stakeholders, as reported in Annex A of the staff working document (SWD) accompanying this report, and will take this input into account in any possible follow-up actions.

The report does not include figures on the latest market developments. However, an extensive overview, including statistics, can be found in Annex C of the SWD.

2. Transposition

The Directive was last amended in 2016 by the Governance Directive, which deals with both the opening of domestic passenger transport services and the governance of railway infrastructure. The Commission has monitored the transposition of the Directive into national

¹ 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 OJ L 343, 14.12.2012, pp. 32-77.

² 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, OJ L 352, 23.12.2016, pp. 1-17.

³ High-speed-rail communication, forthcoming.

⁴ European Commission, '[Impact of the COVID-19 pandemic on the financial sustainability of the railway sector](#)' (2024).

law and launched several infringement proceedings against Member States. Half of those proceedings were addressed at Member States which did not notify their transposing measures to the Commission on time. The other half targeted aspects of non-conformity, meaning cases in which the Directive was not transposed correctly. The aspects of non-conformity that arose the most were the following (listed in order of frequency):

- the governance of the IM;
- the charging framework;
- the role of the regulatory body (RB);
- the granting of infrastructure access rights;
- the allocation of infrastructure capacity;
- the granting of licences.

Further details of the infringement cases can be found in Annex B of the SWD.

3. Implementation of the main provisions

a. Market opening

Market opening appears to have positive effects for customers, as shown by a study recently published by the Commission⁵.

Preliminary results based on the experience of frontrunners in the opening of domestic passenger markets show that, where passengers had several options, railway services became cheaper and more frequent.

Completing the process of gradual market opening, the Directive encouraged railway operators to become more responsive to customer needs and improve their cost-effectiveness, enhancing the role of rail in accelerating the reduction of transport emissions and congestion.

Under the current EU regulatory framework, the provision of open-access passenger services can be limited only if an economic equilibrium test (EET), as per Article 11 of the Directive, determines that a new passenger service would compromise the economic equilibrium of a public service performed on the same or on an alternative route. The EET is an exception to market opening and should be used accordingly. The application of the EET presents different concerns, from the 18-months advance notification of new services required by Article 38(4) of the Directive to the inconsistent interpretation of Implementing Regulation (EU) 2018/1795, laying down the procedure and criteria for the application of the EET⁶.

Affordability and convenience remain critical factors for passengers choosing the train over other modes, and the competitiveness of rail transport still needs to improve. In addition, measures have already been implemented within the European Union that only partially cover the external costs of more carbon intensive modes, notably the EU Emissions Trading System.

⁵ European Commission, ‘Study on passenger and freight rail transport services’ prices for final customers’, (2024).

⁶ Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council, OJ L 294, 21.11.2018, pp. 5-14.

Providing cross-border services remains challenging due to issues with interoperability and capacity coordination. These issues are particularly challenging for new entrants and small start-ups, which have to rely on multiple partners. Night trains, which have negative or very narrow profit margins, are particularly difficult to set up.

There continue to be significant barriers to entry for all passenger services and these barriers are not always addressed in EU legislation.

The availability of rolling stock is essential for the provision of rail transport services. Buying new rolling stock is expensive and requires long delivery times, in particular for passenger rolling stock. This presents a challenge, especially for smaller operators and ‘pure’ new entrants, who often struggle to finance their investments as opposed to large incumbents and their subsidiaries.

Well-functioning leasing or second-hand markets for passenger rolling stock are not yet available, unlike in the freight sector, where market opening took place much earlier and the leasing market has had time to develop. In the passenger sector, active operators may prefer scrapping rolling stock over reselling to avoid favouring competitors. In some cases, the availability of second-hand rolling stock is further limited by the need to bring old material into line with recent regulations (for example for rolling stock containing asbestos). The current Directive is silent on this very significant barrier to entry.

A fragmented ticketing landscape and the lack of through-tickets make rail travel less attractive for passengers⁷. The Commission is presently working on specific initiatives in this regard (for example on both multimodal digital mobility services and single digital booking/ticketing in addition to a targeted revision of Regulation (EU) 2021/782 on rail passengers’ rights and obligations).

The amendments introduced by the Governance Directive were less relevant for rail freight, which has operated in a fully open EU market since 2007. Nevertheless, recent developments in the rail freight market are not so encouraging and a modal shift towards rail has not yet materialised. In fact, different segments of the rail freight market show different dynamics. For example, the transformation of the European economy is shifting transport demand away from bulk commodities – such as coal, chemicals, basic metals, and petroleum products – towards containerised transport. The generally good performance of intermodal rail transport in the recent years was thus more than offset by the decline of bulk transport, which constitutes the core of rail freight activity. The single wagon-load business is also struggling, due to its costs and complexity.

One of the most critical factors for the success of the rail freight sector is the availability of network capacity of good quality, which allows rail operators to respond rapidly to market requests and provide a reliable service to shippers. Currently, rail freight has low priority in the allocation of rail capacity (with passenger transport taking priority) and ends up suffering the

⁷ Article 13a of Directive 2012/34/EU states: ‘The Commission shall monitor rail market developments concerning the introduction and use of common information and through-ticketing systems and shall assess the need for action at Union level, taking into account market initiatives’. In addition, Article 12 of Regulation 2021/782 on rail passengers’ rights and obligations provides for some obligations for railway undertakings to offer through-tickets.

most from temporary capacity restrictions due to maintenance and repair works. Capacity management aspects are further discussed in point (e), below.

Another critical issue is the funding of infrastructure and the predictability of this funding, because IMs' need to draw up business plans to ensure sufficient investment in rail transport. Further analysis of the implementation of Article 8, which sets out requirements for the financing of the IMs, is needed in this respect.

Finally, a comprehensive assessment of the effects of market opening should also look at social aspects, including: (i) job security; (ii) working conditions; and (iii) the sustainability of the sector more generally. The lack of specialised rail staff is a well-acknowledged problem.

b. Access to service facilities and to the services provided in those facilities

Access to service facilities and to the services these facilities provide is essential for the provision of rail transport services.

The distinction between railway infrastructure and service facilities is not always understood in the same way by different stakeholders, and this lack of a common understanding has an impact on the enforcement of rules governing access and charging. The lack of a precise and usable definition of specific items of infrastructure or service facilities also makes it difficult to unequivocally categorise these items and apply the corresponding provisions. The combination of unclear definitions and a lack of comprehensiveness (for example on what should be considered as an additional or an ancillary service in the context of Annex II) is also problematic. In some cases, more than one facility coexists on the same site or more than one service is provided in the same facility, creating uncertainties as to the applicable rules (major examples of this are ports, heavy and light maintenance services in high-speed-rail facilities and multi-activity freight terminals).

The availability of information on service facilities and the accessibility of services within these facilities, as required by Implementing Regulation (EU) 2017/2177 concerning access to service facilities and rail related services⁸, is also limited.

Finally, the EU regulatory framework lacks provisions to prevent discriminatory practices by service facilities owned by established railway undertakings (RUs), when the use of these service facilities can be crucial for the RUs' competitors to provide rail services.

c. Licensing

As the repository of notifications from national licensing authorities (Article 24(8)), the European Union Railways Agency (ERA) contributed significantly to the Commission's assessment of provisions on the licensing of RUs, highlighting issues related to: (i) the notifications (delays, diverging interpretations of the procedures, limited digitalisation); (ii) the lack of information on different national civil liability frameworks; and (iii) the interaction

⁸ Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (Text with EEA relevance), OJ L 307, 23.11.2017, pp. 1-13.

between the Directive and Directive (EU) 2016/798 (the Railway Safety Directive)⁹. The Commission observed that stakeholders lack clarity on whether a subsidiary or branch RU can rely on the licence of its mother company. Stakeholders referred to: (i) the potential ambiguity in the interpretation of some of the documents required to prove financial fitness listed in Annex III; and (ii) the lack of reference to current standard financial reports.

Finally, the ERA also reported issues encountered with the notification template and procedure as defined by Implementing Regulation (EU) 2015/171¹⁰.

d. Charging

IMs adopt different approaches to track access charges (TACs), especially for setting mark-ups and determining the market segments in which TACs are applied. Stakeholders also: (i) pointed to the lack of coordination of IMs on TACs applied to international routes for cross-border rail services; and (ii) reported different interpretations and applications of the parts of the Directive related to charging in conjunction with Annexes V and VI. For this reason, the Commission has adopted guidelines¹¹ to provide clarity on existing legal obligations, as well as examples of best practices and developments observed in different EU railway markets.

Difficulties faced by IMs in gathering data from RUs to calculate TACs are also reported by stakeholders, as well as the lack of clarity in the concept of direct costs introduced in Article 30 and detailed in the Regulation (EU) 2015/909¹². National RBs have an important role in monitoring and enforcement in this respect.

e. Capacity management

The current rules for managing rail infrastructure capacity are laid down in the Directive. Evidence shows that the current framework does not serve all segments of the rail market equally well. In particular, freight and cross-border transport struggle to get capacity of adequate quantity and quality to meet customers' needs.

In 2023, the Commission presented a proposal for a Regulation that revises those rules¹³, introducing: (i) a new multi-annual planning cycle; (ii) better cross-border coordination; and (iii) greater use of economic incentives, performance review, and digital tools. The proposal, currently being negotiated in trilogues, will replace the existing legal framework with a single, directly applicable framework for the whole EU rail network.

⁹ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast), OJ L 138, 26.5.2016, pp. 102-149.

¹⁰ Commission Implementing Regulation (EU) 2015/171 of 4 February 2015 on certain aspects of the procedure of licensing railway undertakings, OJ L 29, 5.2.2015, pp. 3-10.

¹¹ Communication from the Commission – Interpretative guidelines concerning the setting up of charges for the use of railway infrastructure, OJ C, C/2025/2606, 7.5.2025.

¹² Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service, OJ L 148, 13.6.2015, pp. 17-22.

¹³ Proposal for a Regulation of the European Parliament and of the Council on the use of railway infrastructure capacity in the single European railway area, amending Directive 2012/34/EU and repealing Regulation (EU) No 913/2010 - COM/2023/443 final.

Stakeholders systematically mention traffic management and maintenance planning as having a significant impact on the development of the rail transport and in some cases observe that the Directive's requirements on these topics are unclear or unevenly applied. Poor prioritisation criteria for international traffic, limited and untimely access to works planning, and capacity restrictions are also mentioned as significant sources of disruption. Some consider that only the inclusion of traffic management and maintenance planning within the essential functions would ensure the independence of the IMs, but others are afraid this could make critical operations more rigid. Many consider that performance incentives for IMs should be made more effective. Framework agreements provide long-term to RUs' business plans but must not create uncertainty (for example about the renewal of these framework agreements) or be used to prevent market entry. According to RBs, Implementing Regulation (EU) 2016/545 on framework agreements does not currently prevent these risks¹⁴.

f. Regulatory bodies

Ensuring the healthy development of the rail market requires strong and independent RBs. This is particularly true during the rolling out of competition and in the presence of VIUs. To carry out the significant and extended duties laid down by the Directive, the RBs must have the necessary skilled staff and funding. The Directive remains quite general on this point, leaving Member States free to decide on both the funding mechanism and the number of employees which are required to be 'proportionate to the importance of the rail sector in the Member State'.

The ability of RBs to enforce rules depends also on their powers in national legislation. Whenever the Directive remains general on the level of strength of specific regulatory powers, national frameworks can differ, and this could jeopardise the equal treatment of undertakings across the EU. Examples of this are the sanctioning powers and the level of penalties that RBs can impose (which the Directive simply states must be 'appropriate'), or the role of RBs in monitoring charges, which in some Member States include an *ex ante* evaluation power, whereas in others is limited to *ex post* checks. In general, the effectiveness of RBs' actions could benefit from a clearer interpretation of their powers.

Finally, unclear or missing definitions of some elements of the Directive further complicate the RBs' work and create uncertainty for market players.

4. High-speed services

The favourable regulatory framework defined by the Directive has been a key factor for the growth of high-speed rail services, increasingly linking people and markets in a fast and cost-effective way with a more sustainable mode of transport¹⁵.

¹⁴ Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity, C/2016/1954, OJ L 94, 8.4.2016, pp. 1-11.

¹⁵ Recital (29) of Directive (EU) 2016/2370.

Better high-speed rail connections are a critical step towards forging a more connected, accessible, and unified Europe. The Commission acknowledged this in its forthcoming high-speed-rail communication, which sets out the necessary steps to deliver: (1) a completely interoperable and high-performing high-speed rail network; (2) a competitive service model oriented towards the public; and (3) a vision for a competitive European rail supply industry.

The high-speed rail segment saw a significant drop in prices and increase in ridership after the introduction of competition in domestic services in Italy, Spain and more recently France. The impact of competition on fares, frequencies, onboard services and travel times depends on the business strategies adopted by the competing RUs but is generally favourable to high-speed-rail travellers.

However, discriminatory practices and several barriers to entry in accessing high-speed-rail lines still exist, and these weaken the positive impact of market opening. The availability of rolling stock is a major barrier to entry for high-speed markets in rapid growth. Multiple cases have been brought to the attention of the Commission where new entrants face hurdles created by remaining national rules, long delays for receiving necessary authorisations, and considerable time and cost to adapt the rolling stock to different technical specifications, particularly when providing a cross-border service.

Existing service facilities, such as maintenance workshops, are not always capable of providing the services needed by high-speed trains, and where they are capable of providing these services, their territorial distribution might not be adapted to the needs of new entrants. However, setting up new maintenance workshops or adapting existing ones require substantial time and investment, as well as the availability of an appropriate location, which is often unfeasible for smaller operators lacking the economies of scale or the legacy infrastructure enjoyed by incumbents.

The level, structure and stability of TACs are other elements that influence the market offering and the level of competition in the high-speed rail sector. TACs are a substantial portion of the operational costs for high-speed RUs and at the same time a source of income for the IMs. High-speed rail services, which tend to be more profitable than conventional services due to higher passenger volumes and premium pricing, are often subject to mark-ups on top of direct cost-based charges. This benefits the IMs' bottom line but has a negative impact on the operators' costs and ultimately on ticket prices, reducing the ability of rail to compete with other transport modes. Depending on price elasticity, RUs' savings from lower TACs could be passed on to passengers in the form of lower fares, boosting demand and ultimately IMs' revenues. Even without passing on these savings, improved profit margins could encourage operators to expand their services, also increasing IMs' revenues.

Finally, uncertainty around applicable TACs (lack of transparency, overly complex formulas, frequent changes) can also act as a barrier to market entry. The absence of predictability on the cost of accessing the infrastructure complicates the development of solid business plans and undermines the confidence of potential investors, who require stability over extended periods.

High-speed rail services are offered predominantly in an open-access regime, but there are cases where these services are combined with the provision of State-funded public service obligations (PSOs). This combination can represent an issue when: (i) there is no clear accounting and operational separation between the commercial and the PSO parts of the service

to avoid cross-subsidisation; or (ii) priority rules lead to preferential treatment to providers offering combined services to the detriment of the purely commercial ones.

Finally, any action to boost high-speed rail connections will require reliable market monitoring. However, there is a lack of comprehensive indicators in European statistics specifically designed for monitoring high-speed rail markets on both the lines and the services. This is in part due to unprecise or incoherent definitions of high-speed lines or services across EU legislation. Initiatives at EU level will address this issue¹⁶.

5. Vertically integrated undertakings

The Directive does not impose a specific form of governance in the rail sector, and there are widely differing views among stakeholders as to whether the current provisions are effective in preventing anti-competitive behaviour from VIUs, where IMs and RUs are part of the same entity. Some stakeholders consider full unbundling the only effective way to avoid conflicts of interest and anti-competitive behaviour, while others stress the benefits of integrated governance for the society ('system vision'). RBs consider that the impact of the governance model on competition cannot be generalised but argue that VIUs require more intense supervision.

The Governance Directive introduced specific provisions to ensure the absence of conflicts of interest and anti-competitive behaviour by VIUs. The amended Article 7 of the Directive focuses on the independence of IMs, in particular within VIUs, imposing organisational separation in separate legal entities, forbidding concurrent appointments or the employment of senior management from the IM in the RU (or vice versa) among others. This last point is particularly relevant, as some examples of double mandates and staff transfers within integrated entities suggest the persistence of significant conflicts of interest, even in cases where VIUs are formally complying with the legal provisions. The supervisory powers of the RBs concerning conflicts of interest differ across countries.

The Directive lays down several conditions to ensure that the IM has organisational and decision-making independence as regards essential functions (Article 7a) to avoid discrimination in favour of integrated RUs. Member States may also decide to attribute the essential functions (charging and path allocation) to an independent essential functions body. Currently only Ireland, Hungary, Luxembourg and Latvia have opted for this solution.

VIUs increasingly engage in non-core activities such as rolling stock maintenance, ticketing, energy management, or the production and provision of telecommunication services. The performance of energy-supply and rolling-stock-maintenance activities by VIUs could create competitive barriers that warrant closer attention – in particular when these VIUs use rail infrastructure originally financed by public funds.

Accounting separation and the financial transparency of intra-group financial flows remain significant issues. Other significant issues include a lack of transparency and the difficulties faced by RBs in accessing the financial information needed to perform their monitoring and enforcement duties. Examples of forbidden conduct of this kind include: (i) intra-group

¹⁶See Annex C of the accompanying SWD

favourable financing terms (ii) intra-VIU cumulation of tasks and responsibilities; (iii) lack of transparency; and (iv) a failure to separate accounts. Direct transfers of assets between entities in the same group could also represent a problem.

The activity of RBs is fundamental to ensure compliance with rules related to VIUs, in particular rules on accounting separation and safeguards against non-discriminatory practices. Article 56(12) of the Directive empowers RBs to verify compliance with Article 6 (accounting separation) and Article 7d (financial transparency). However, the effectiveness of RBs' investigative powers depends on the national legislative framework and is not uniform across the Member States. Remaining challenges include the resource-intensiveness of audits and the difficulties in accessing critical information. Streamlining RBs' powers, improving their access to data, and considering third-party audits funded by operators could improve efficiency and ensure consistent regulatory enforcement.

Distortions of competition and discriminatory practices could be further prevented by regulatory initiatives, such as: (i) addressing legal ambiguities in key definitions; (ii) increasing transparency in data access and financial flows; (iii) physical and operational separation of IT systems between IMs and RUs; (iv) fair access to service facilities and stations' spaces; and (v) strengthening the independence, resources, and enforcement capabilities of RBs¹⁷.

6. Conclusions

It is challenging to give a full and reliable assessment at this stage of the effects of the revised Directive. This is because of: (i) the short span of time since the Directive was fully enacted in Member States; (ii) the impact of the COVID-19 pandemic on the rail sector; and (iii) the impact of the energy crisis on the rail sector. However, despite the positive developments in some markets, there are strong indications that many obstacles continue to limit the establishment of a Single European Rail Area, as envisaged by the Directive, and that there are aspects of the Directive that do not properly address those remaining barriers.

In the past few years, the Commission has taken initiatives to address specific areas of concern in the Directive. These initiatives include the **proposal for a Regulation on the use of railway infrastructure capacity** and the **TAC guidelines**. The **forthcoming EU high-speed rail communication** tackles market regulation issues and the need for infrastructure investments. **Initiatives on ticketing** are also already underway.

Despite these recent Commission initiatives, further problematic elements in the implementation of rail regulation remain to be addressed.

The EET is a key element of market opening and should be applied consistently and used appropriately. Depending on the results of the assessment of the EET use and implementation of **Regulation (EU) 2018/1795**, the Commission could decide to review that Regulation.

¹⁷ For more details on this paragraph see the 'Input study on vertically integrated rail undertakings in the European Union' on DG MOVE website.

Rail transport services require fair and non-discriminatory access to service facilities and the services provided in those facilities, but major obstacles remain in this field. The Commission will assess these obstacles when reviewing **Implementing Regulation (EU) 2017/2177**.

Given the issues around licensing, the Commission will also look at **Implementing Regulation (EU) 2015/171**, to see how it can be updated and improved.

On the lack of comprehensive specific indicators for market monitoring, the Commission will revise **Implementing Regulation (EU) 2015/1100** to include specific indicators on high-speed rail and indicators on social and work aspects, at the same time simplifying as much as possible the reporting obligations.

The Commission is aware that some problematic aspects of the Directive require further in-depth assessment and will continue to work with the sector to address them. The availability and financing of rolling stock is a major example of these problematic aspects. As for the persisting issues related to VIUs, the Commission is determined to effectively enforce the current provisions in this domain.