



EUROPEAN COMMISSION

Brussels, 14.8.2013  
C(2013) 5361 final

*Dear President,*

*The Commission would like to thank the Sénat of the French Republic for its Reasoned Opinion concerning the 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 {COM(2013) 29 final}.*

*The Sénat noted the objectives of the Commission proposal: i) open domestic passenger market to competition by 2019, and ii) reform the governance of the railway systems to prevent distortions of competition due to the relations between the infrastructure manager and railway operators.*

*The Commission welcomes the fact that the Sénat supports the need to provide a harmonised framework for the governance of the rail systems. To this aim, the Commission has proposed to strengthen the role of infrastructure managers so that they control all the functions at the heart of an efficient rail network (infrastructure investment planning, day-to-day operations and maintenance, as well as timetabling).*

*The Sénat made observations concerning two specific features of the proposed measures which they considered would not be in accordance with the subsidiarity principle: i) the impossibility to introduce a new vertically integrated structure after the entry into force of the Directive (art. 7, paragraph 5) and ii) the prerogatives of the Commission in verifying the compliance of vertically integrated structures with the requirements of the Directive (art. 7c).*

*The Commission would like to underline that to remove potential conflicts of interest and give all companies access to tracks in a non-discriminatory manner, the infrastructure managers must have operational and financial independence from any transport operator running the trains. As a general rule, institutional separation is the simplest and most effective way to achieve this objective.*

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*However, the Commission also had to take into account that certain Member States may want to maintain their existing vertically integrated structures. To ensure flexibility, the Commission proposal allows for maintaining existing vertically integrated structures provided that strict internal separation requirements ensure the necessary legal, financial and operational separation. But this possibility needs to remain an exception to the general rule. This is the reason why it should only apply to structures existing when the Directive will enter into force, giving sufficient time to all Member States to consider the most suitable structure for their railway system.*

*The second observation of the Sénat concerns the compliance verification clause. The Commission would like to stress that this mechanism is necessary to ensure a level playing field in view of full passenger market opening in 2019.*

*Upon request of a Member State or on its own initiative the Commission would verify if the internal separation requirements referred above for vertically integrated structures are strictly implemented, enabling a fair competition in their home market. In this respect, the Commission would act in line with its role of verifying the correct application of EU legislation. This assessment would take the form of a Commission decision on which Member States would be consulted in accordance with the comitology procedures and could be subject to judicial review. If it cannot be demonstrated that all safeguards are in place in practice, Member States themselves, and not the Commission, may limit the right of access of rail undertakings forming part of a vertically integrated structure to their network.*

*The Commission hopes that these clarifications address the concerns raised by the Sénat of the French Republic and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*