



EUROPEAN COMMISSION

*Brussels, 15.05.2014
C(2014) 3119 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Proposal for a Council Regulation establishing the Shift2Rail Joint Undertaking {COM(2013) 922 final}.

The Commission is pleased to note that the Bundesrat welcomes the Commission's initiative to promote research and innovation in the rail sector and considers the establishment of a joint venture between the EU and the railway industry as a useful means of achieving the Union's objectives of completing the Single European Railway Area and increasing the competitiveness of the EU rail sector in relation to other modes of transport and competitors from third countries.

The Commission fully agrees with the Bundesrat's view that the governance and functioning of such a Joint Undertaking must be transparent and preserve the financial interests of the Union, ensuring that funds are managed soundly. The proposed Regulation foresees that the Commission would ensure, through its representation within the Governing Board and through the Authorising Officer by delegation, that the internal control framework applicable to the Shift2Rail Joint Undertaking fully meets the necessary accountability requirements and that any risk of conflicts of interest within the Shift2Rail Joint Undertaking are appropriately mitigated. To this end, the internal control framework for the Shift2Rail Joint Undertaking would be built on (1) the implementation of Internal Control Standards offering at least equivalent guarantees to those of the Commission; (2) the independent and transparent evaluation of applications for membership and projects, based on published selection criteria together with appeal mechanisms and full declarations of any interests; (3) the application of preventive measures against fraud, corruption and any other illegal activities; and (4) detailed monitoring and reporting requirements, with ex-post audits and a scientific evaluation of project results. Furthermore, the auditing of accounts and of the legality and regularity of the transactions of the Shift2Rail Joint Undertaking would, of course, be undertaken by the Court of Auditors.

*Mr Stephan WEIL
President of the Bundesrat
Leipziger Straße 3 - 4
D – 10117 BERLIN*

The Commission also understands the Bundesrat's concern that the governance and functioning of Shift2Rail Joint Undertaking should be open, providing the opportunity to a wide range of stakeholders to participate and enabling Member States to exert their influence. The Commission has sought to put in place adequate safeguards to ensure that these concerns are met appropriately, while also ensuring that the governance and functioning of Shift2Rail Joint Undertaking remains effective and efficient. In particular, Member States would play an important role at several levels:

First, the Council of the European Union would have to endorse the content of the Shift2Rail Master Plan – the strategic roadmap outlining the key priorities and the essential operational and technological innovations required from all stakeholders to achieve the objectives of the Shift2Rail Joint Undertaking. This Master Plan would serve as the basis for developing the detailed work programmes of the latter. A preliminary draft of this Master Plan would be drawn up by the Commission, via a consultative process. Indeed, an open stakeholder hearing is planned in May 2014 and any contributions from the German Government and from the Länder would be considered with utmost interest by the Commission. The draft Master Plan would then be handed over to the Shift2Rail Joint Undertaking for further development, once it is established.

Second, Member States – and their constituent regions where appropriate – would be able to exert their influence through the States' Representative Group, which would be established with a view to issuing recommendations and proposals to the Governing Board of the Joint Undertaking on the strategic orientation of Shift2Rail, on the work programmes, on technical managerial and financial matters, as well as on links to national or regional research and innovation programmes.

Third, as highlighted in the Bundesrat's Opinion, the Shift2Rail Joint Undertaking would have the possibility to set up various working groups under clause 14 of Annex 1 to the proposed Regulation, in which national and regional representatives may be present. The Commission believes the Bundesrat's proposals to establish a working group on 'noise reduction technology' and one on the 'introduction of innovative freight wagons' are worth investigating further given that noise reduction and shifting freight transport from road to rail are essential goals of Shift2Rail Joint Undertaking. However, the establishment of such working groups would of course be subject to a decision of the Governing Board of the Shift2Rail Joint Undertaking.

Finally, regarding patents, the general rules of Horizon2020 concerning Intellectual Property Rights would apply to the Shift2Rail Joint Undertaking. Specific provisions could be made in the project's consortium agreements, as is the case for the normal Framework Programme. The general rule is that a company that develops a solution would own the right to exploit this solution. If it is jointly developed then it is jointly owned. If further activities would use these solutions that have been developed, then the owners would need to provide them either for free or in exchange for a royalty fee. In any case, the Commission would seek to ensure that inventions paid with public money should be preserved for the public interest.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the concerns and issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Siim Kallas
Vice-President*