



**THE GOVERNANCE OF RAIL
INFRASTRUCTURES IN THE NEW
EUROPEAN REGULATORY
FRAMEWORK**



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THE EUROPEAN LIBERALISATION PROCESS: A BRIEF

1. Purpose: to revitalize the rail sector and increase its market share.
2. The opening up of national rail transport markets to competition.
 2. 1. The establishment of a single European rail transport market.



3. Other liberalisation requirements through so-called “packages”.



THE EUROPEAN LIBERALISATION PROCESS: A BRIEF



- 🚂 Establish the so-called “single European railway area”.
- 🚂 Clarify the regulatory environment in the rail sector.
- 🚂 Integrate the basic principles that govern the European railway policy.

THE EUROPEAN LIBERALISATION PROCESS: A BRIEF











The basic principles that govern the European railway policy

- 🚂 The effective separation of infrastructure management from transport operations (“unbundling”);
- 🚂 The independence of railway undertakings and infrastructure managers and the obligation of the latter to grant non-discriminatory access to the network;
- 🚂 The financial autonomy of railway undertakings and their management according to commercial principles;
- 🚂 The access conditions to railway infrastructure and services;
- 🚂 The charging for the use of railway infrastructure and capacity allocation; or
- 🚂 the monitoring of the competitive situation in the rail services markets by national rail regulatory authorities.

THE EUROPEAN LIBERALISATION PROCESS: A BRIEF



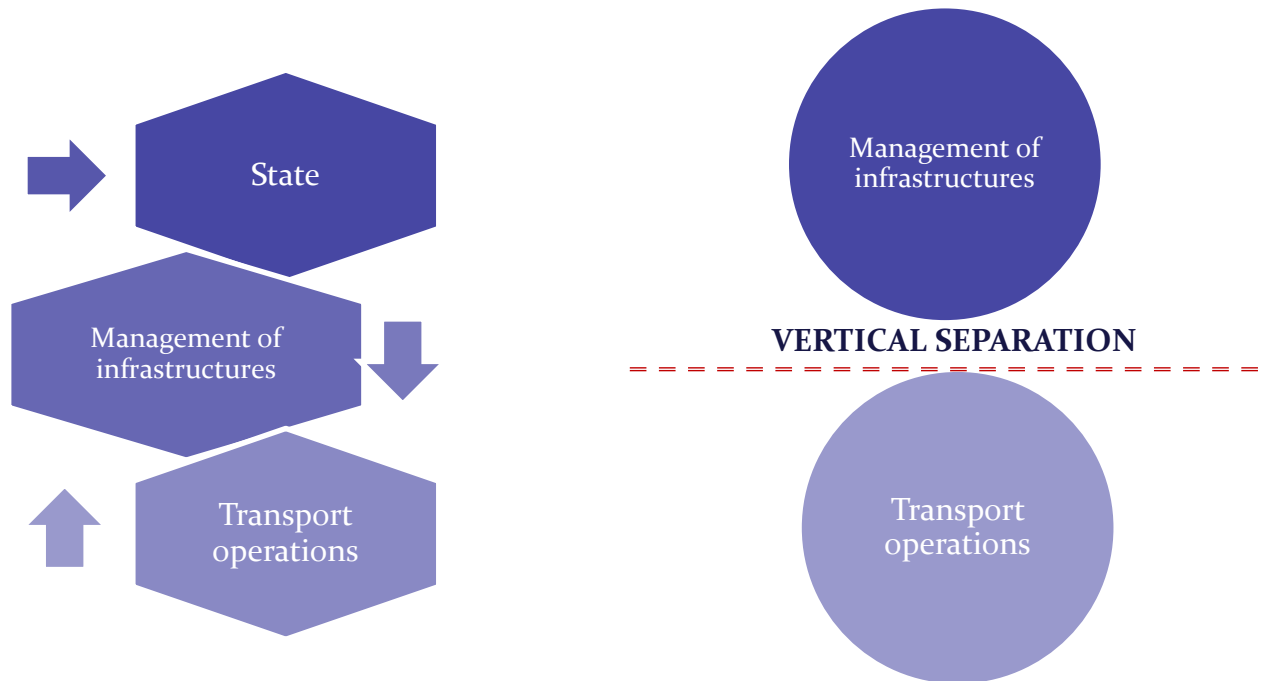
 Technical pillar	 Regulation 2016/796  Directive 2016/797  Directive 2016/798
 Market pillar	 Directive 2016/2370  Directive 2016/2337  Regulation 2016/2338

- The opening of the market for domestic passenger transport services by rail.
- The governance of the railway infrastructure.



THE GOVERNANCE OF RAILWAY INFRASTRUCTURES

 The separation of infrastructure management and the provision of transport services





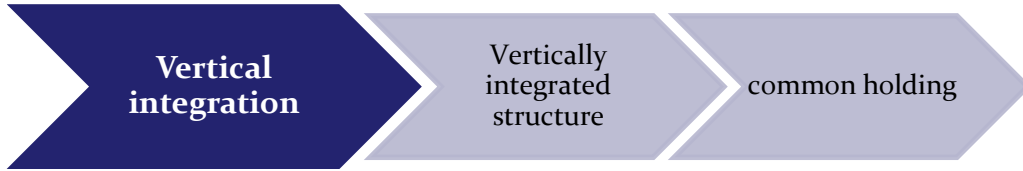
THE VERTICAL SEPARATION IN THE EU SECTOR

The vertical separation of the management of railway infrastructures from the provision of transport services:

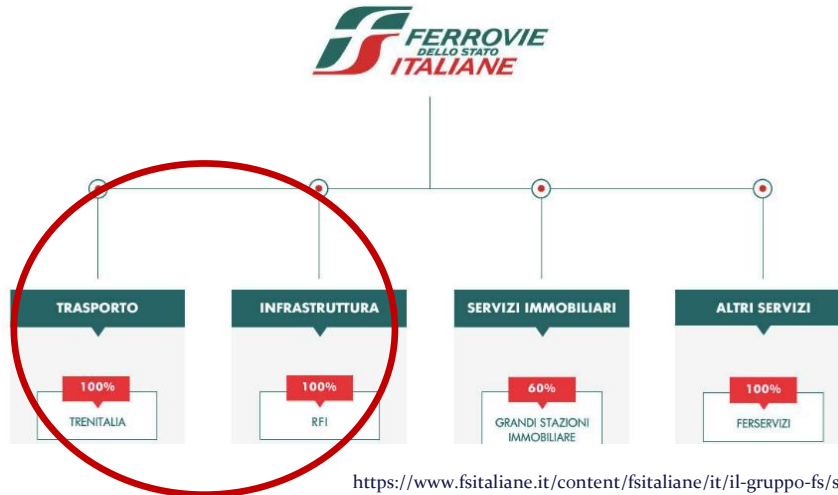
- To ensure greater transparency of the capacity and the terms and conditions of the infrastructure manager; and
 - To increase the level of competition in rail transport.
- non-discriminatory access to the network

- 🏢 Accounting separation
- 🏢 Organizational separation (*i.e.* distinct divisions within a single undertaking)
- 🏢 Institutional separation (*i.e.* management of the infrastructure by a separate entity)

Different organizational structure in the Member States



Art. 3(31)




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THE GOVERNANCE OF RAILWAY INFRASTRUCTURES IN THE NEW EUROPEAN REGULATORY FRAMEWORK



 New rules that strengthen the organizational and decision-making independence of managers.





 Articles 7 and 7a to 7f of Directive 2012/34, introduced by Directive 2016/2370.

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Structural independence

Art. 7 of Directive 2012/34, amended by Directive 2016/2370

-  National framework for the assessment of any personal financial, economic or professional interests which could improperly influence the impartiality of the infrastructure manager.
-  The independence of the board members of infrastructure managers in order to enhance the governance of infrastructure managers.
-  The manager is organised as an entity that is legally distinct from any railway undertaking (or, in vertically integrated undertakings, from any other legal entities within the undertaking).
-  An individual does not belong simultaneously to decision-making or supervision bodies of both the manager and a railway undertaking.

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Other rules on independence

Arts. 7a to 7f of Directive 2012/34, introduced by Directive 2016/2370.

The exercise of management functions, especially the “essential functions” (i.e. train path allocation and infrastructure charging).

The impartiality of the infrastructure manager in respect of traffic management and maintenance planning.

The outsourcing and sharing of the infrastructure manager’s functions.

The financial transparency.

The coordination and cooperation between the agents involved.

THE GOVERNANCE OF RAILWAY INFRASTRUCTURES IN THE NEW EUROPEAN REGULATORY FRAMEWORK



Art. 7a

Other rules on independence

The exercise of management functions, especially the “essential functions” (*i.e.* train path allocation and infrastructure charging).

- railway undertaking or any other legal entity does not exercise a decisive influence on the manager in relation to these functions.
- anyone has decisive influence on appointments and dismissals of persons in charge of taking decisions on essential functions.
- the mobility of persons in charge of the essential functions does not create conflicts of interest.

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Art. 7b

Other rules on independence

The impartiality of the infrastructure manager in respect of traffic management and maintenance planning.

- Rail undertakings must have full and timely access to relevant information in case of disruption.
- Rail undertakings must have access to the traffic management process in a non-discriminatory basis.
- The manager must consult applicants and take into consideration the concerns expressed as regard as the long-term planning of maintenance and/or renewal of the infrastructure.
- The manager must carry out the scheduling of maintenance works in a non-discriminatory way.

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Art. 7c

Other rules on independence

The outsourcing and sharing of the infrastructure manager's functions.

- ✗ The manager may outsource functions to a different entity, provided that:
 - no conflicts of interest arise and the confidentiality of commercially sensitive information is guaranteed.
 - the entity not be nor a railway undertaking, not control a railway undertaking, or not to be controlled by a railway undertaking.
 - BUT, 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.
- ✓ The manager can outsource the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to RU or companies which control RU (or are controlled by the RU).

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Art. 7d Other rules on independence

The financial transparency.

- the manager can only use the income from infrastructure network management activities.
- the use of such income to finance an undertaking which are part of a vertically integrated undertaking and which exercise control over both a railway undertaking and that manager, is prohibited.
- The manager shall not grant loans to railway undertakings, either directly or indirectly, or vice versa.
- In vertically integrated undertakings:
 - Loans between legal entities of a vertically integrated undertaking shall only be granted at market rates and conditions which reflect the individual risk profile of the entity concerned.
 - Other safeguards:
 - 1) liabilities attributed to the manager must be clearly separate from those attributed to other legal entities and consequently these liabilities are reimbursed separately;
 - 2) any service offered to the manager by other legal entities must be based on contracts and must be paid at market prices.

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Art. 7e

Other rules on independence

The coordination and cooperation between the agents involved.

The manager must put in place mechanisms to ensure coordination between the agents involved:

- These mechanisms must be previously published in the Network Statement.
- These mechanisms refer to:
 - applicants' needs on any issue related to the conditions for access;
 - the use of the infrastructure; and
 - the quality of the services of the manager.
- The national regulatory authority is the body in charge of ensuring its effectiveness.

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Art. 7f

Other rules on independence

The coordination and cooperation between the agents involved.

The manager must participate and cooperate in a network:

- Aim: to facilitate the provision of efficient and effective rail services within the EU.
- Platform of Rail Infrastructure Managers in Europe:
 - Created in October 2013.
 - The improvement of the cooperation of the main European IMs, the support to the implementation of the rail policy and the exchange of good practices.



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