



**COUNCIL OF
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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject : Proposal for a Directive of the European Parliament and of the Council amending
 Directive 2004/49/EC on safety on the Community's railways

DRAFT STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

On 13 December 2006, the Commission submitted three legislative proposals primarily aimed at facilitating the movement of railway vehicles across the European Union:

- a proposal for a Directive amending Directive 2004/49/EC on safety on the Community's railways¹ (hereinafter referred to as the Railway Safety Directive);
- a proposal for a Directive on the interoperability of the Community rail system² (hereinafter referred to as the Railway Interoperability Directive);
- a proposal for a Regulation amending Regulation (EC) No 881/2004 establishing a European Railway Agency³ (hereinafter referred to as the Agency Regulation).

On 29 November 2007, the European Parliament voted its opinion at first reading.

On 3 March 2008, the Council will adopt its Common Position. In carrying out its work, the Council took account of the opinion of the Economic and Social Committee⁴. The Committee of the Regions decided not to adopt an opinion on the above mentioned proposals.

II. Analysis of the Common Position

1. General

With a view to enabling railways to play its key role with regard to sustainable mobility in the European Union, the Council aims at the gradual development of an integrated European railways area. In this context, the Council considers that the three legislative proposals recasting the interoperability directives for conventional and high-speed rail and amending the Railway Safety Directive and the Agency Regulation can bring important improvements to the technical part of the regulatory framework for European railways.

¹ OJ C 126, 07.06.2007, p 7.

² OJ C 126, 07.06.2007, p 7.

³ OJ C 126, 07.06.2007, p 7.

⁴ OJ C 256, 27.10.2007, p. 39.

These proposals lower existing barriers to the free circulation of railway vehicles on the European rail network thereby facilitating cross acceptance of authorisations of railway vehicles amongst Member States.

Council and Parliament succeeded in reaching an agreement at first reading on the proposal for a Railway Interoperability Directive so that Council can adopt the proposed act thus amended. Council and Parliament could however not align their positions at first reading on the proposals amending the Railway Safety Directive and the Agency Regulation. Consequently, Council adopted Common Positions on both proposals, thereby taking due account of the amendments which Parliament adopted at its first reading Opinions.

2. Key policy issues

The three main changes Council made to the Commission proposal are set out below. Furthermore, Council provides for an exemption for Cyprus and Malta.

2.1 Integration of all provisions on authorisation procedures in one single act

Both the Railway Safety Directive and the Railway interoperability directives currently in force contain provisions dealing with authorisation procedures for placing railway vehicles in service. The latter deals with new or upgraded parts of the Community rail system and the former concerns vehicles that are already in use. In accordance with Better Regulation, and with a view to simplifying Community legislation, Council incorporates all provisions regarding authorisations for placing vehicles in service in a single legal act. Thereto, the existing but amended Article 14, the new Article 14a and the new Annex of the proposal amending the Railway Safety Directive are transferred to the recasted Railway Interoperability Directive. Parliament agreed with this transfer in the context of the first reading agreement on the Railway Interoperability Directive. Consequently, Council can in principle accept the amendments 20, 26 and 27 in full. Furthermore, Council can in principle follow amendment 18 considering that, as a result of the transfer, the legislator can refrain from making any reference to authorisation procedures in the amended Railway Safety Directive.

2.2 Clarification of roles and responsibilities with regard to maintenance

As a result of the entry into force on 1st July 2006 of the new 1999 Convention concerning International Carriage by rail (COTIF), keepers of vehicles are no longer obliged to register their wagons with a railway undertaking. In response to this development, and with a view to enabling railway undertakings to provide transport services safely on the network, Council specifies the new constellation of roles and responsibilities with regard to maintenance. Thereto, the Council puts forward a new definition of "keeper" and introduces the concept of "entity in charge of maintenance".

While following as close as possible the definition used in COTIF, Council establishes a clear connection between the keeper and its vehicle through the obligation for keepers to register as such in a National Vehicle Register. Council can accept amendment 8 in full as Council and Parliament agree on the definition of "keeper". Moreover, amendment 9, which was introduced with a view to applying the correct terminology, can be accepted in principle.

In the Common Position, it is provided for that entities in charge of maintenance shall ensure that vehicles are in a safe state of running by means of a system for maintenance. Thereto, each vehicle, before it is placed in service or used on the network, needs to have such an entity in charge of maintenance assigned to it. Moreover, each entity in charge of maintenance must be registered in a National Vehicle Register. Only in exceptional cases, and restricted to its respective network, a National Safety Authority may decide to derogate from the obligation to assign an entity in charge of maintenance to a vehicle. Such derogations need to be published by the authority in its annual report. Through this system, Council aims at enabling railway undertakings and infrastructure managers to easily identify who is in charge of the maintenance of the vehicles they operate.

2.3 Maintenance certification

With a view to assuring both to the National Safety Authorities and to the participants in the transport chain that the maintenance of wagons is effectively controlled, Council chooses to strengthen the provision in the Commission proposal on maintenance certification. The Commission proposed that, where appropriate, a maintenance certification system for keepers should be established. Conversely, Council agrees on a provision obliging the Commission to adopt, at the latest one year after the entry into force of the proposal amending the Railway Safety Directive, a measure establishing certification of entities in charge of maintenance with regard to their maintenance systems. Both in the Commission proposal and in Council's Common Position, this certification system is based on a Recommendation from the European Railway Agency. The Council ensures that the certificate delivered will be valid throughout the Community, and that it will guarantee the certified entity meeting the maintenance requirements of the Railway Safety Directive for any vehicle of which it is in charge.

Furthermore, entities in charge of maintenance may participate in this certification system on a voluntary basis. Finally, with a view to clarifying that no new requirements are introduced for railway undertakings and infrastructure managers, the Council specifies that the safety management system, which railway undertakings and infrastructure managers already need to establish under the current Railway Safety Directive, includes the maintenance system.

In amendment 21, Parliament proposes a system of maintenance of railway vehicles that differs in two main ways from the system laid down by the Council. First of all, where Council - in line with Commission Decision of 28 July 2006 adopting the Technical Specification on Interoperability (TSI) on wagons and with Commission Decision of 9 November 2007 adopting a common specification of the National Vehicle Register - introduces the concept of entity in charge of maintenance, Parliament attributes direct responsibility for the maintenance of a vehicle to the keeper. Secondly, Parliament requests a mandatory maintenance certification system, whereas Council - in line with the global approach as outlined by the European Railway Agency - provides for a voluntary system.

Council cannot accept amendment 21 for three reasons. The first reason is that making the keeper responsible for the maintenance of the vehicle does not seem to be coherent with the overall responsibility of railway undertakings and infrastructure managers for a safe operation of transport as arranged for in other key provisions of the Railway Safety Directive, in particular Article 4. As a second reason, Council considers that mandatory participation in a maintenance system is not always appropriate and could lead to unnecessary administrative costs, for instance in the case of wagons coming from third countries or other types of vehicles such as locomotives and passenger cars. As a third reason, Council fears that attributing to keepers a responsibility for maintenance, which requires specific know-how, could burden to the development of their economic activities.

2.4 Exemption for Cyprus and Malta

Taking into account the fact that Cyprus and Malta do not have railway systems, the Council provides in its Common Position for an exemption to transpose and implement the Directive amending the Railway Safety Directive as long as no railway system is established on their respective territories.

III. Amendments of the European Parliament

The response of Council to the amendments 8, 9, 18, 20, 21, 26 and 27 is set out above in relation to the key issues.

In addition, Council can accept in full amendment 2 on the correlation tables. Moreover, amendment 16 and 17 concerning correction of a language version are acceptable in principle.

However, Council cannot accept for legal or technical reasons the following amendments:

- Amendment 3 because objectives of safety and health of workers fall outside the scope of the Commission proposal;

- The mutually related amendments 4 to 7 because the proposed definition of "national safety rules" is not compatible with Annex II of the Railway Safety Directive where a description of national safety rules is given, and because the term "essential requirements" is used in a sense considered too narrow;
- Amendment 14 because the Council holds the opinion that the discussion on developing Common Safety Targets (CSTs) took place at the time of the adoption of the Railway Safety Directive and should not be re-opened. Moreover, the Council notes that, on the basis of Article 6(4) of Agency Regulation, Recommendations of the European Railway Agency, inter alia on CSTs, already require detailed cost-benefit analyses;
- Amendment 19 as it is not compatible with the structure of the Common Position;
- Amendment 22 concerns the question who should be allowed to request a technical opinion from the European Railway Agency. This should however not be contentious anymore as, in the context of the Railway Interoperability Directive, Council and Parliament reached an agreement on the same issue;
- Amendments 1, 10, 11, 12, 13, 15, 23, 24 and 25 on comitology in which Parliament introduces the urgency procedure for several measures. Since these measures are of general scope and designed to amend or supplement non-essential elements of the Railway Safety Directive, Council does agree with the Commission and with the Parliament that, for these measures, the Parliament should be involved through the regulatory with scrutiny procedure. Nevertheless, providing for the possibility to apply the urgency procedure seems disproportionate as all these measures are already linked to a specific deadline or need to be revised at regular intervals.

IV. Conclusion

The three legislative proposals on interoperability, safety and the European Railway Agency, which aim at facilitating the movement of railway vehicles across the European Union, make an important contribution to the further integration of the European railways area. Council and Parliament already achieved significant progress on these three proposals, in particular by reaching a first reading agreement on the Railway Interoperability Directive. This lays a solid basis for both co-legislators to find compromise solutions on the proposals amending the Railway Safety Directive and the Agency Regulation during their second reading discussions.
