



**COUNCIL OF  
THE EUROPEAN UNION**

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

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Subject :            Proposal for a Regulation of the European Parliament and of the Council  
                         amending Regulation (EC) No 881/2004 establishing a European Railway Agency

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**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 railways<sup>1</sup> (hereinafter referred to as the Railway Safety Directive);
- a proposal for a Directive on the interoperability of the Community rail system<sup>2</sup> (hereinafter referred to as the Railway Interoperability Directive);
- a proposal for a Regulation amending Regulation (EC) No 881/2004 establishing a European Railway Agency<sup>3</sup> (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 Committee<sup>4</sup>. The Committee of the Regions decided not to adopt an opinion on the above mentioned proposals.

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<sup>1</sup> OJ C 126, 07.06.2007, p 7.

<sup>2</sup> OJ C 126, 07.06.2007, p 7.

<sup>3</sup> OJ C 126, 07.06.2007, p 7.

<sup>4</sup> OJ C 256, 27.10.2007, p. 39.

## **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 both the Railway Safety Directive and the Agency Regulation can bring important improvements to the technical part of the regulatory framework for European railways. 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 some amendments which the Parliament adopted at its first reading Opinions.

### **2. Key policy issues**

The proposal amending the Agency Regulation is primarily aimed at adapting the legislative framework for the European Railway Agency to the new tasks that result from the amended Railway Safety Directive and the Railway Interoperability Directive. Therefore, in drawing up its Common Position on the Commission proposal amending the Agency Regulation, Council took as a starting point the text which forms the basis of the first reading agreement between Council and Parliament on the Railway Interoperability Directive and the Common Position on the proposal amending the Railway Safety Directive. In addition, Council made some changes to the Commission proposal with a view to ensuring a better use of the Agency's technical expertise.

## 2.1 Classification of national rules

Even though Council significantly restructures the Commission proposal, overall it keeps the important provisions as proposed by the Commission. In this context, it needs to be mentioned that the Council maintains the key provision on the classification of all national rules regarding the authorisation of placing railway vehicles in service. The European Railway Agency is tasked to create a reference document comparing the national technical and safety rules and to update it regularly. In so doing, it can be gradually identified which national rules should be considered equivalent and, consequently, cannot be used as ground for additional checks. This will contribute to increased cross-acceptance of vehicle authorisations amongst Member States.

Council agrees with Parliament's amendment 3 which aims at the reduction of national rules on authorisations for placing vehicles in service that are equivalent amongst Member States. However, in sharing that aim, Council considers it more effective to ask the Agency to submit a regular update of the reference document than - as Parliament proposes - to set a single and fixed date (1 January 2010) before which the Agency must propose solutions. Furthermore, Council cannot accept amendment 2, as it prefers establishing a general task for the Agency to prepare a reference document than requiring the Agency to give priority to those national rules which concern differences between Member States regarding safety clearance for infrastructure and rolling stock.

## 2.2 Main modifications to Commission proposal

Taking the Commission's proposal as the basis, Council introduces several modifications.

- a) Council agreed to make better use of the Agency's expertise. Firstly, the Agency may be called upon to provide technical opinions in the case of a negative decision by a National Safety Agency and on the equivalence of national rules for the technical parameters established in the Railway Interoperability Directive. Secondly, the Agency may be requested to deliver an opinion on urgent modifications of Technical Specifications for Interoperability (TSIs).

- b) In the Common Position, the Agency is tasked to prepare - within 6 months from the date on which the Railway Interoperability Directive enters into force - a report setting out, if necessary, recommendations on the implementation of a system of voluntary certification of vehicle maintenance as set out in the Railway Safety Directive. In its Common Position, the Council further indicates that these recommendations must be consistent with the roles and responsibilities of railway undertakings and entities in charge of maintenance as laid down in the Railway Safety Directive while facilitating the safety certification procedure of railway undertakings and avoiding the administrative burden of duplication of controls, inspections and/or audits. Considering that it would increase the administrative burden and impose additional costs to the industry, the Council cannot support the main element of amendment 6 which calls for a mandatory system of certification.
- c) In the Agency Regulation, the Council lists all tasks of the Agency that are defined in Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community, hereinafter referred to as the Train Drivers Directive<sup>5</sup>. In listing these tasks, the Council distinguishes between tasks with regard to train drivers, on the one hand, and tasks with regard to other crew members performing safety-critical tasks, on the other hand. As to the train drivers, the list includes tasks such as preparing a draft for a Community model for the train drivers licence and ensuring the interoperability of the registers for train drivers' licences. As to the other crew members performing safety-critical tasks, the Agency must present a report identifying their profile and tasks.

Finally, for the staff involved in the operation and maintenance of the rail system but not belonging to either of the two categories mentioned above, the Agency is tasked to make recommendations suggesting common criteria for defining vocational competences and assessing staff.

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<sup>5</sup> OJ L 315, 03.12.2007, p 51.

- d) Council adapts the provision on registers in the Agency Regulation in the light of the changes made to the Railway Safety Directive and the recasted Railway Interoperability Directive. The provision on registers in the Common Position reflects that the Agency needs to draw up common specifications for the newly created register of authorised vehicle types as well as for the infrastructure register, and that it must set up and keep the register for vehicle types. Parliament makes the same proposal on the setting up and keeping of a European register of vehicles types in amendment 7, which the Council of course supports. In addition, Council elaborates the rules on accessibility of documents and registers in a separate Article.
- e) Building on the Commission proposal, Council specifies the conditions under which the Commission can request assistance from the Agency for the implementation of the Community's legislative framework on railway interoperability and safety.
- f) Council takes over amendment 9 of the European Parliament which provides for more possibilities to extend work contracts of staff with a view to ensuring the continuity of its operations. However, the Council limits this more flexible regime to the first 10 years of operation as this period is the period where it will be particularly important to retain qualified staff.
- g) Other changes Council made to the Commission proposal:
- In view of the different national situations, Council provides for the possibility that not only national safety agencies, but, depending on the subject under discussion, also other competent national authorities can appoint representatives to participate in the working parties of the Agency;

- Council supports the Commission's aim to have notified bodies across the Community which function on the basis of the same criteria. With a view to clarifying this provision, in the Common Position, a distinction is made between the different roles of the Agency as to monitoring the quality of the work of notified bodies, on the one hand, and as to checking whether a notified body still meets the set criteria, on the other hand;
- The Council agrees with the Commission that the Agency should be involved in assessing the interoperability aspects of certain requests for Community funding, but specifies that the delay within which the Agency must give an answer is restricted to a maximum of 2 months;
- The Council follows the Commission's proposal considering that the tasks of the Agency with respect to ERTMS need to be specified in the Regulation but chooses to reformulate the relevant provision somewhat.

### **III. Amendments of the European Parliament**

The response of Council to the amendments 2, 3, 6, 7 and 9 is set out in relation to the above key issues. In addition, Council cannot accept the following amendments:

- Amendment 1 regarding working parties of the Agency as it falls outside the scope of the Commission proposal;
- Amendment 4 entrusting the Agency as from 2015 with the task of granting authorisations for placing vehicles conforming to TSIs in service. This issue can however be considered solved, as the same amendment was the result of a compromise in the context of the Railway Interoperability Directive where Council and Parliament elaborated a procedure for National Safety Authorities when authorising the placing in service of vehicles, thereby adding the principle of mutual recognition of such authorisations. Moreover, both institutions agreed to invite the Commission to draw up a report on the effectiveness of this new procedure and on the possible future collaborative approaches between the Agency and the National Safety Agencies;

- Amendments 5 and 8 on Technical Opinions by the Agency have only been partly incorporated in the Council's Common Position. In line with the compromise on the Railway Interoperability Directive, the Council rejects the possibility for individual applicants to request a Technical Opinion directly from the Agency as Parliament proposes in amendment 5. As to the possibility of the Agency to give Technical Opinions on ERTMS as proposed in both amendment 5 and 8, the Council agrees on a provision requiring the Agency to set up a procedure for managing requests for changes to ERTMS specifications.

#### 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 Agency Regulation and the Railway Safety Directive during their second reading discussions.