



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a**

**directive on safety on the Community's railways and amending Council directive  
95/18/EC on the licensing of railway undertakings and directive 2001/14/EC on the  
allocation of railway infrastructure capacity and the levying of charges for the use of  
railway infrastructure and safety certification**

**directive amending Council directive 96/48/EC and directive 2001/16/EC on the  
interoperability of the trans-European rail system**

**regulation establishing a European Railway Agency**

**directive of the European Parliament and of the Council amending Council directive  
91/440/EEC on the development of the Community's railways**

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**regulation establishing a European Railway Agency**

**directive of the European Parliament and of the Council amending Council directive 91/440/EEC on the development of the Community's railways**

**1. BACKGROUND**

Date of transmission of the proposal to Parliament and the Council:  
(documents

COM(2002) 21 final – 2002/0022 (COD)

COM(2002) 22 final – 2002/0023 (COD)

COM(2002) 23 final – 2002/0024 (COD)

COM(2002) 25 final – 2002/0025 (COD)): 25.1.2002

Date of the opinion of the European Economic and Social Committee: 19.9.2002

Date of the opinion of the European Parliament on first reading: 14.1.2003

Date of transmission of the amended proposal: Not applicable

Date of adoption of the common position: 25.6.2003

## 2. SUBJECT OF THE COMMISSION PROPOSAL

There are four related legislative proposals:

- A proposal for the **amendment of Directive 91/440** to extend infrastructure access rights to include rail freight services within a Member State and to speed up the opening up of the market.
- A proposal for a **Directive on rail safety** concerned with definition of the main elements of safety systems for infrastructure managers and railway undertakings. The aim is to develop a common approach to safety and to put in place a common system for the issuing, content and validity of safety certificates. Lastly, the aim is to introduce, as in other sectors, the principle of the independence of technical investigations in the event of accidents.
- A proposal for a **Regulation creating a European Rail Agency** to provide technical support for interoperability and safety work. Its areas of action would be, firstly, the development of common safety standards and the development and management of a system for monitoring safety performance and, secondly, the long-term management of the system for the establishment, registration and monitoring of technical specifications for interoperability.
- An **amendment to the interoperability Directives 96/48/EC and 2001/16/EC**. Beyond the adjustments required by the previous proposals for the interoperability directives, the main aim is to ensure coherence of the fields of application between the network in which access will be opened up and the network in which the interoperability rules will have to apply.

## 3. COMMENTS ON THE COMMON POSITION

### 3.1 **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of Community railways**

*Consideration of Parliament's opinion*

Firstly, Parliament had requested (amendments 1, 7, 8 and 9), for the sake of legal clarity, maintaining the provisions on the Trans-European Rail Freight Network until the date on which the market is opened up throughout the network. This solution was also adopted by the Council (Article 1(2)), and the Commission supports it.

As regards the date on which rail freight is opened up fully to competition, the Council (Article 1(2)), like Parliament (amendments 5 and 11), followed the Commission's proposal, but wished to indicate specific dates rather than making a reference to the date of transposition. The Council has opted for 1 January 2006 for opening up international freight services to competition throughout the network, which corresponds to what Parliament called for, and the date of 1 January 2008 for opening up domestic freight services to competition, which represents a delay of two years compared with what Parliament wanted. Although the timetable adopted by Parliament is closer to its initial proposal, the Commission accepts the Council's more gradual compromise.

However, the Council has not adopted amendments 2 and 4 concerning opening up passenger services by rail to competition. At this stage, the Commission had also not adopted these amendments proposing opening up the market in passenger services by rail for the following reasons:

Firstly, the Commission would recall that its amended proposal for a Regulation on action by Member States on public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterways<sup>1</sup> fully applies to the railway sector and provides for the introduction of competition regulated by the award of public service contracts or exclusive rights.

The Commission is considering ways of opening up to competition other services which are not the subject of public service contracts or exclusive rights, with a view to putting forward proposals in 2003. Opening them up simply on the basis of freedom of access creates numerous difficulties as regards passenger protection, e.g. for the incorporation of reservation services or for the funding of public services. In this context, a balanced, well-regulated solution must be found, and the solutions proposed must be the subject of detailed impact analysis. It will also be necessary to take account of the case-law of the Court of Justice, which is likely to make new and important elements available soon.

Nonetheless, the Commission welcomes Parliament's amendments on opening up the passenger sector to competition as a strong political signal which will provide essential support for the preparation of its future proposals.

Lastly, it should be noted that the present legislation<sup>2</sup> enables international groupings of railway undertakings to obtain access and transit rights in order to operate international passenger services. This provision, which has hardly been used up to now due to the lack of an appropriate framework, could become the subject of renewed interest following the transposition on 15 March 2003 of Directives 2001/12/EC<sup>3</sup>, 2001/13/EC<sup>4</sup> and 2001/14/EC<sup>5</sup>, which now establish a specific, transparent and non-discriminatory framework for the allocation of capacity and provide for the establishment of a control body in each Member State.

The Council has not accepted Parliament's amendments 3 and 10 concerning "authorised candidates" enabling bodies other than railway undertakings to reserve capacity on the infrastructure. The Commission still supports this amendments since it believes that this is an important provision which strengthens the position of rail sector customers and contributes to the effective opening up of the freight market.

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<sup>1</sup> COM(2002) 107 final, OJ C 151E, 25 June 2002, p. 146.

<sup>2</sup> Directive 91/440/EEC – OJ L 237, 24.8.1991, p. 25.

<sup>3</sup> OJ L 75, 15.3.2001, p. 1.

<sup>4</sup> OJ L 75, 15.3.2001, p. 26.

<sup>5</sup> OJ L 75, 15.3.2001, p. 29.

### *New provisions introduced by the Council*

The Council has introduced a provision stating that, no later than 1 January 2007, the Commission should put forward a report on the implementation and impact of opening up the rail market (Article 1(2)(d)). The Commission welcomes this addition, which does not affect the timetable laid down by the Council for opening up the market.

## **3.2 Proposal for a Directive of the European Parliament and of the Council on the safety of Community railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity, the levying of charges for the use of railway infrastructure and safety certification**

### *Consideration of Parliament's opinion*

Several amendments by Parliament on which the Commission had expressed a favourable opinion in principle have been incorporated by the Council, sometimes with a different wording. This is the case, for example, with the provision requiring a safety certificate for infrastructure managers (amendment 37, Article 10a), the possibility of designating binational safety authorities (amendments 14, 50 and 85, Article 3(g)), as well as the strengthening of cooperation between investigating bodies in the event of an accident (amendment 57, Articles 20 and 21) and the definition of the concept of an accident (amendment 16, Article 3).

Other amendments have been adopted only in part or with a wording which, while not exactly the same as in the Parliament's amendments, is very close to it. These concern above all the scope of the directive (amendment 11, Article 3), the definition of Common Safety Objectives (amendments 12 and 23, Article 3), the procedure for issuing safety certificates to railway undertakings (amendments 33 and 79, Article 10), the question of training services (amendments 43 and 46, Article 12) and criteria concerning the independence of the investigating body in the event of an accident vis-à-vis the safety authority (amendment 56, Article 20). The Commission also supports this wording.

With regard to the national safety rules following the adoption of the Common Safety Objectives at Community level, the common position's approach (Article 8) is very different from that of Parliament. The latter supported the Commission's initial proposal and even called for going further by establishing a prior authorisation system for national rules (amendments 29 to 31). While it retains the principle of examining draft national rules and the possibility, where appropriate, of questioning them if they do not enable the levels required by the Common Security Objectives to be achieved, if they are incompatible with a TSI, or if they constitute a means of disguised discrimination, the common position has however not adopted the prior authorisation system. The Commission has accepted the Council's text, since it provides every guarantee for a transparent Community examination of draft national rules, and enables the Commission to question a national rule.

### *New provisions introduced by the Council*

The Council has reduced the scope of Article 12 concerning the recognition of staff, which means it has not been possible to consider amendments 41, 51 to 54 and 97. That is linked to the Commission's intention to reconsider this question in more detail following a broad consultation of the parties concerned, in particular the social partners who are working on the subject. The Commission has confirmed (see statement in point 5), firstly, that it is preparing a proposal on driver licensing, and secondly, that it supported the work of the social partners on working conditions, in particular as regards driving and rest times for drivers and on-board staff. This new Commission proposal should make it possible to meet the concerns expressed in amendments 5, 78, 47, 62 and 87.

### **3.3 Proposal for a Regulation of the European Parliament and of the Council establishing a European Rail Agency**

#### *Consideration of Parliament's opinion*

The main amendment by Parliament, on which the Commission had expressed a favourable opinion, have been adopted in the common position, with a few drafting changes which do not alter the substance.

In particular, the Council has accepted (Article 3) Parliament's ideas concerning representation of the sector on the Agency's Administrative Board, adding passenger representation (amendments 2, 5 and 35), and in the working parties (amendment 14). It has, however, spelt out the criteria for their representation.

The Council has not on the other hand accepted the Commission's proposal for the composition of the Administrative Board and, as in the other transport sector agencies, has decided that there should be one representative for each Member State (Article 26).

With regard to the direct participation of rail workers' representatives in the working parties, the Council has preferred to maintain the Commission's initial proposal, which provides for a consultation mechanism (Article 4). The arrangements for such consultation, both for the social partners and for customers' and passengers' representatives have, however, been strengthened. The Commission had supported Parliament's amendment 14 which provided that worker organisation representatives could participate in the working parties concerned (in addition to the formal consultation of the social partners provided for in Article 4) as far as the Agency's work which has a direct bearing on the working conditions, health and safety of workers in the sector is concerned. The Council's text is also acceptable given that the consultation arrangements have been strengthened.

Furthermore, the common position broadly follows the wording used in Article 30 for the duties and powers of the Executive Director (amendment 31), in Article 31 for his/her appointment (amendment 32), and in Article 33 for the Agency's visits to the Member States (amendment 37).

As regards the financial and budgetary aspects, it should be noted that it has not yet been possible to take full account of the entry into force on 1 January 2003 of the new general Financial Regulation, despite Parliament's amendments to that end. In addition, new general guidelines for the agencies are being adopted<sup>6</sup> in the light of the Commission's proposal amending the instruments setting up Agencies (COM(2002) 406 final) following the adoption of the new Financial Regulation. It will therefore be necessary, during the second reading, to align the provisions of the Regulation establishing the Rail Agency on the standard provisions which will then be available.

The Council has not accepted the proposal for two advisory committees, for the national safety authorities and for the investigative bodies (amendment 19), which the Commission had rejected since the new working of Article 3 enables these bodies to take part directly in work carried out by the Agency. Furthermore, the Agency still has the task of networking these bodies in order to facilitate their cooperation.

With regard to the Agency's working languages (Article 35), the Council has taken over the text in force for the Aviation Safety Agency and not the solution proposed by Parliament (amendment 38).

#### *New provisions introduced by the Council*

The Council has expressed the wish to extend the Agency's powers as regards the working conditions of staff having safety duties (Article 12(e)). The Commission welcomes this addition.

### **3.4 Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system**

#### *Consideration of Parliament's opinion*

The European Parliament has supported the Commission's proposal to extend the scope of the directives to the entire rail network. Without calling this principle into question, the Council wished to have a more gradual approach and has spelt out the various stages of this extension (Article 2), which the Commission has accepted.

With regard to the new elements introduced by Parliament's amendments - as compared with the Commission's initial proposal - on which the Commission expressed a favourable opinion, the Council has not at this stage adopted the definition of the concept of putting into service (amendments 4 and 14), the recording device (amendments 9 and 19), the provision concerning operational communication (amendments 10 and 20) and several less far-reaching improvements to the text.

#### *New provisions introduced by the Council*

None

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<sup>6</sup> Opinion of the Parliament on first reading adopted on 27 March 2003.

#### **4. CONCLUSIONS**

The Commission supports the texts of the common position.

However, as regards the Agency, the Commission would like to draw attention to the forthcoming adoption of the standard provisions for all agencies following the entry into force of the new Financial Regulation.

#### **5. STATEMENTS BY THE COMMISSION**

The Commission entered the following statements in the minutes of the Transport Council meeting of 28 March 2003:

- "The Commission intends to present by the end of 2003 to the European Parliament and the Council a proposal relating to the introduction of a European driving licence for train drivers. Besides, the Commission fully supports and encourages the work in progress in the framework of the European Social Dialogue by the social partners, in accordance with Article 139 of the Treaty, concerning the harmonisation of driving times and rest periods for train drivers and staff accompanying trains.
- The Commission declares that the final budgetary needs for the European Railway Agency depend on a clear agreement on the competencies of this Agency between the Council and the European Parliament. These needs, of which a first assessment has been made in the financial statement attached to the legislative proposal, will have to be translated in the annual budgetary requests tabled by the Commission to the Council and the Parliament acting as the budgetary authority. A precise estimate of these needs for 2004-2006 can only be made once the codecision procedure has been completed.
- The arrangements laid down in paragraphs 4 and 5 of Article 8 of the Directive on safety do not constitute a system of prior authorisation."