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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.3.2008
COM (2008) 137 final

2006/0272 (COD)

**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 of the European
Parliament and of the Council amending Directive 2004/49/EC on safety on the
Community's railways**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (document COM(2006) 784 final – 2006/0272 COD): 13.12.2006

Date of the opinion of the European Economic and Social Committee: 11.07.2007

Date of the opinion of the European Parliament, first reading: 29.11.2007

Date of adoption of the common position (by unanimity) 03.03.2008

2. OBJECTIVE OF THE COMMISSION PROPOSAL

On 13 December 2006 the European Commission adopted a series of measures to support the revitalisation of the railway sector by removing obstacles to the movement of trains throughout the European rail network.

The Commission launched this initiative for two main reasons:

- to facilitate the free movement of trains within the EU by making the procedure for putting locomotives into service more transparent and more efficient.
- to simplify the regulatory environment by consolidating and merging the directives on railway interoperability.

One of these measures consists of amending Directive 2004/49/EC on rail safety. In making this proposal, the Commission had three objectives:

- the introduction of the principle of mutual recognition by other Member States of authorisations already issued by a Member State for placing equipment into service. According to this principle, rolling stock already authorised to be put into service in one Member State should not be required to undergo complementary certification in another Member State as regards the additional national requirements arising, for example, from local system specifications;

- the extension of the Agency's powers to enable it to make an inventory of the different national procedures and technical regulations in force and to establish and update (extend) the list of requirements where compliance should be checked once only because the requirements concern internationally accepted rules or can be deemed to be equivalent to them.
- the clarification of the relationship between the rail company and the entity in charge of maintenance. The entry into force of the new 1999 COTIF Convention (concerning international carriage by rail) has brought in new rules governing contracts for the use of vehicles. There is therefore a proposal to define the keeper of a wagon and to specify the relationship between the company and the keeper, in particular as regards maintenance.

3. COMMENTS ON THE COMMON POSITION

The three institutions tried to secure an early agreement at first reading of this file. However, this was not possible due to the requests of the European Parliament, mainly concerning the definition of the relationship between railway companies and vehicle keepers as regards maintenance.

The Council's common position adopted by unanimity does not undermine the essential objectives and the underlying approach of the Commission's proposal.

Furthermore, the common position of the Council already incorporates some of the amendments adopted by the European Parliament at the first reading and ensures the necessary consistency with the recast of the directives on railway interoperability (proposal COM(2006)783 final – 2006/273 (COD)), on which agreement was reached at first reading. In particular, it was agreed to transfer the content of Article 14 of the Railway Safety Directive (as well as the new Article 14a) to the new Interoperability Directive with the aim of gathering together in one single act all the procedures related to bringing railway vehicles into service.

4. COMMISSION DETAILED COMMENTS

4.1. Amendments of the European Parliament accepted by the Commission and incorporated in full or in part in the common position

Amendments 2, 9, 19, 20, 24, 25, 26 and 27, which clarify, spell out or complement the Commission's proposal.

Amendments 1, 10, 11, 12, 13, 15 and 23, but they need to be adapted to the standard terminology stemming from Council Decision 2006/512/EC amending Decision 1999/468/EC laying down the procedures for the exercising of implementing powers conferred on the Commission.

Amendment 8: The reference to the NVR (*National Vehicle Register*) is in keeping with the Commission Decision on the NVR of 9 November 2007¹. However, this definition has been

¹ OJ L305, 23.11.2007, p. 30.

amended by the Council in its common position in order to make it consistent with the new article on vehicle maintenance.

With regard to amendment 18, the first paragraph is no longer necessary as it was agreed to transfer the content of Article 14 to the new directive on railway interoperability.

4.2. Amendments of the European Parliament rejected by the Commission and not incorporated in full or in part in the common position

Amendment 3 because the link between the Interoperability Directive and Directive 89/391/EEC (on the introduction of measures to encourage improvements in the safety and health of workers at work and laying down specific provisions to minimise the risks of rail transport for employees) is already commented upon in Recital 14 of the Directive currently in force.

Amendments 4, 5, 6 and 7 since it would not be advisable to amend the original definition of “national safety rules” as it appears in Directive 2004/49/EC on the safety of railways, which has just been transposed by the Member States. This definition has never been challenged by the players involved. As regards their substance, national safety rules are not all related to essential requirements of the directives on railway interoperability. Some, for example, cover the environment.

As far as amendment 14 is concerned, the CSTs (Common Safety Targets) and the procedure for adopting them were agreed upon in 2004. Work has already made good progress and it would not be appropriate to change the assumptions on which it is based whilst the process is still under way. A cost-benefit analysis is already provided for in Article 6(4) of the original Directive.

Amendments 16 and 17, which refer to a high level of safety and for which a wording more consistent with the rest of the directive was formulated in the context of the common position of the Council.

Amendment 22, which dealt with the possibility of requesting a technical opinion from the Railways Agency if the safety authority refused to issue safety certificates or safety approvals, goes further than the objectives set out in the Commission’s proposal.

4.3. Amendments of the European Parliament acceptable to the Commission but not incorporated in full or in part in the common position

Amendment 21, which the Commission had accepted in principle. However, the text of the common position is based on the concept of "the entity in charge of maintenance" which is now part of the new Community regulatory framework (it is defined in the "wagons²" TSI and in the Decision on the NVR referred to above). Moreover, whether the system for certifying owners is to be obligatory or voluntary should not be stipulated in the Directive but after completion of the impact study to be conducted by the Agency.

² OJ L 344, 8.12.2006, p. 1.

5. CONCLUSION

The Commission considers that the common position of the Council adopted by unanimity on 3 March 2008 contributes to the essential objectives and the underlying approach of its proposal, and can therefore support it.