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To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004
	- Examination of the recitals

Following the adoption of the general approach on the articles of the above mentioned Regulation on 14 March 2014 and with a view to the meeting of the Working Party on Land Transport on 27 March 2013, delegations will find in the Annex to this note Presidency's compromise proposals to make the recitals consistent with the text of the articles.

Modifications with respect to the Commission's proposal are in **bold**, while deletions are ~~strikethrough~~.

2013/0014 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Union Agency for Railways
and repealing Regulation (EC) No 881/2004

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 91(1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

¹ OJ C ... p

² OJ C ... p

- (1) The progressive establishment of a European railway area without frontiers requires Union action in the field of the technical regulations applicable to railways with regard to the technical aspects (interoperability) and the safety aspects, the two being inextricably linked and both requiring higher level of harmonisation at the Union level. Relevant railway legislation, in particular three railway packages, was adopted in the last two decades, with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community being the most relevant.
- (2) Simultaneous pursuit of the goals of railway safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it was necessary, as part of the Second Railway Package in 2004, to create within the existing institutional framework, and with respect for the balance of power in the Union, a European agency responsible for railway safety and interoperability (hereinafter referred to as the Agency).
- (3) The European Railway Agency was originally established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004³, in order to promote the establishment of a European railway area without borders and to help revitalise the railway sector while reinforcing its essential advantages in terms of safety. Regulation 881/2004 has to be replaced by a new act due to substantial amount of changes to the tasks of the Agency and its internal organisation.
- (4) The Fourth Railway Package proposes important changes to improve the functioning of the Single European railway area through amendments by way of recast to Directive 2004/49/EC and Directive 2008/57/EC, both directly linked to the tasks of the Agency. Those Directives, together with this Regulation, provide in particular for performing tasks related to issuing vehicle authorisations and safety certificates at the Union level. It implies a greater role of the Agency.

³ OJ L 164, 30.4.2004, p. 1.

- (5) The Agency should contribute to the creation and effective functioning of a Single European railway area without frontiers and guaranteeing a high level of safety while improving the competitive position of the railway sector. That should be attained by contributing, on technical matters, to the implementation of European Union legislation by enhancing the level of interoperability of railway systems and to developing a common approach to safety on the European railway system. **Where provided for by the interoperability and safety Directives**, the Agency should also perform the role of European authority responsible for issuing authorisations for placing on the market for railway vehicles and for types of vehicles, safety certificates for railway undertakings and authorisations for placing in service of trackside control-command and signalling sub-systems. Moreover, it should monitor national railway rules and the performance of national authorities acting in the railway interoperability and safety fields.
- (6) In pursuing its objectives, the Agency should take full account of the process of enlargement of the Union and of the specific constraints relating to rail links with third countries. The Agency should have sole responsibility for the functions and powers assigned to it.
- (7) The Agency, while performing its tasks, and particularly in relation to drafting recommendations, should take utmost account of external railway expertise. This expertise should predominantly consist of professionals from the railway sector and the relevant national authorities. They should form competent and representative working parties of the Agency.
- (8) In order to provide insight into the economic effects on the railway sector and its impact on society, to allow others to make informed decisions, and to manage the work priorities and resource allocation more effectively within the Agency, the Agency should further develop its engagement in the impact assessment activity.

- (9) The Agency should provide independent and objective technical support, predominantly to the Commission. Directive [Railway Interoperability] provides the basis for drafting and revising Technical Specifications for Interoperability (TSIs) while Directive ... [Railway Safety] provides the basis for drafting and revising Common Safety Methods (CSMs) and Common Safety Targets (CSTs). The continuity of the work and the development of the TSIs, CSMs and CSTs over time require a permanent technical framework and a dedicated staff of a specialised body. To this end, the Agency should be responsible for providing the Commission with recommendations in relation to drafting and revising the TSIs, CSMs and CSTs. The national safety organisations and regulatory bodies should be equally able to request an independent technical opinion from the Agency.
- (10) Railway undertakings have been faced with various problems when applying for safety certificates to competent national authorities, ranging from protracting procedures and excessive costs to unfair treatment, especially of new entrants. The certificates issued in one Member State have not been unconditionally recognised in other Member States, with a detriment to the Single European rail area. In order to make the procedures for issuing safety certificates to railway undertakings more efficient and impartial, it is essential to **give the Agency a central role in the issuing of safety certificates** ~~migrate towards a single safety certificate valid throughout the Union and issued by the Agency~~. The revised Directive ... [Railway Safety Directive] provides a basis for this.

(11) Currently Directive 2008/57/EC provides, in the case of rail vehicles, an authorisation of placing in service in each Member State, except in specific cases. The Task Force on vehicle authorisation set up by the Commission in 2011 discussed several cases where manufacturers and railway undertakings have suffered from excessive duration and cost of the authorisation process and proposed a number of improvements. As some problems are due to the complexity of the current vehicle authorisation process, it should be simplified. Each rail vehicle should only receive one authorisation and this authorisation for placing on the market for vehicles and for types of vehicles should **in principle** be issued by the Agency. **Where the area of use is limited to a network or networks within one Member State only, the applicant may choose whether it submits its application for vehicle authorisation to the Agency or to the national safety authority.** This would bring tangible benefits for the sector by reducing the costs and time of the procedure, and would diminish the risk of potential discrimination, especially of new companies wishing to enter a railway market. The revised Directive ... [Railway Interoperability] provides a basis for this.

(11a) **The revised Directive...[Interoperability Directive] should not lead to a reduced level of safety in the European Union's railway sector. In this respect, the Agency should take full responsibility for the authorisations it issues, including contractual and non-contractual liabilities.**

(11b) **With regard to liability of the staff of the Agency when carrying out the tasks conferred to the Agency, the Protocol on the Privileges and Immunities of the European Union should apply. The application of the Protocol on the Privileges and Immunities of the European Union should not lead to undue delays or unfounded restrictions to the conduct of national judicial proceedings. In the event of judicial proceedings involving the staff of the Agency, in which a member of the staff is requested to appear in a national court, the Management Board should decide without undue delay to waive his/her immunity, provided that such waiver would not compromise the interests of the Union. Such decision should be duly justified and should be amenable to the European Court of Justice for judicial review.**

- (11c) **The Agency should cooperate loyally with the national judicial authorities, in particular in cases in which the involvement of the Agency is necessary on the grounds that the Agency has exercised its tasks related to vehicle authorisations and safety certificates issued by the Agency. In the event that the Agency or a member of its staff is requested to provide information in the context of relevant national proceedings, the Agency should ensure that such request for information or, if necessary, participation in proceedings, is treated with due diligence and within a reasonable time period. To that end, the Management Board should adopt appropriate procedures to be used in such situations.**
- (12) In order to further pursue the development of Single European rail area, in particular with relation to providing appropriate information to freight customers and passengers, and taking into account **the fragmented development of such applications to date** ~~current involvement of the Agency,~~ it is necessary to give ~~it~~ **the Agency** a strengthened role in the field of telematics applications. **The Agency, as the most competent Union body, should be given a prominent role to ensure consistent development and deployment of all telematics applications. To this end, the Agency should be empowered with the function of the System Authority for telematics applications, and, in that quality, the Agency should maintain, monitor and manage all corresponding requirements at EU level. This would ensure their consistent development and swift deployment.**
- (13) Given the importance of the European Rail Traffic Management System (ERTMS) for the smooth development of the Single European railway area and its safety, and taking into account its fragmented development to date, it is necessary to strengthen its overall coordination at the Union level. Therefore the Agency, as the most competent Union body, should be given a more prominent role in this field to ensure consistent development of the ERTMS, to contribute to ensuring that ERTMS equipment complies with the specifications in force and to ensure that ERTMS-related European research programmes are coordinated with the development of ERTMS technical specifications.

- (13a) Moreover, in order to make the procedures for issuing authorisations for placing in service of trackside control-command and signalling sub-systems more efficient ~~and impartial and~~ **harmonised at EU level**, it is essential **that the Agency provides national safety authorities with relevant opinions** ~~to migrate towards a single authorisation valid in the Union and issued by the Agency.~~ The revised Directive ... [Railway Interoperability Directive] provides a basis for this. **In addition, a coordination group of notified conformity assessment bodies active in the field of ERTMS should be established by the Agency. Participation of such bodies should be encouraged as much as possible.**
- (14) Competent national authorities have been normally charging for issuing vehicle authorisations and safety certificates. With the transfer competence to the Union level, the Agency should be entitled to charge the applicants for issuing the certificates and authorisations mentioned in the preceding recitals. The level of those charges should be equal to or lower than the current average in the Union and should be determined in **an implementing** ~~a delegated~~ act to be adopted by the Commission.
- (15) It is a general objective that the transfer of functions and tasks from the Member States to the Agency should be done efficiently, without any reduction in the current high levels of safety. The Agency should have sufficient resources for its new tasks, and the timing of the allocation of these resources should be based on clearly defined needs. Taking into account the know-how of national authorities, in particular the National Safety Authorities, the Agency should be allowed to make appropriate use of that expertise when granting the relevant authorisations and certificates. To this end, secondment of national experts to the Agency should be encouraged.

- (16) Directive ... [Railway Safety] and Directive ... [Railway Interoperability] provide for examination of national measures from the point of view of safety and interoperability, and compatibility with competition rules. They also limit the possibility for Member States to adopt new national rules. The current system in which a large number of national rules continue to exist leads to possible conflicts with Union rules and creates a risk of insufficient transparency and disguised discrimination of foreign operators, especially the smaller and new ones. In order to migrate towards a system of truly transparent and impartial railway rules at Union level, gradual reduction of national rules needs to be reinforced. An opinion based on independent and neutral expertise is essential at Union level. To this end, the role of the Agency needs to be strengthened.
- (17) Performance, organisation and decision-making procedures in the field of railway interoperability and safety vary substantially among the national safety authorities and notified conformity assessment bodies, with a detrimental effect to smooth operation of the Single European rail area. In particular, small and medium companies wishing to enter the railway market in another Member State can be negatively affected. Therefore, a strengthened coordination with a view to greater harmonisation at the Union level is essential. To this end, the Agency should monitor the national safety authorities and notified conformity assessment bodies through audits and inspections.
- (18) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performance, based on common indicators and linking all parties in the sector, is important and should be carried out. As regards statistics, close collaboration with Eurostat is necessary.
- (19) In order to monitor progress with the railway interoperability and safety, the Agency should be responsible for publishing a relevant report every two years. Given its technical expertise and impartiality, the Agency should also assist the Commission with monitoring the implementation of Union railway safety and interoperability legislation.

- (20) The interoperability of the Trans-European network should be enhanced and the new investment projects chosen for support by the Union should be in line with the objective of interoperability set in ~~Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the Trans-European transport network.~~ **Regulation No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU⁴.** The Agency is the right institution to contribute to these objectives. **With regard to ERTMS deployment and ERTMS projects, the Agency's role should be to help the applicant to implement a project which is compliant with the TSI on control-command and signalling.**
- (21) Rolling stock maintenance is an important part of the safety system. There has been no genuine European market for the maintenance of rail equipment owing to the lack of a system for certification of maintenance workshops. This situation has been adding to the costs for the sector and results in journeys without loads. A European certification system for maintenance workshops should therefore gradually be developed and updated, with the Agency being the most appropriate body to propose adequate solutions to the Commission.
- (22) The vocational qualifications required for train drivers are a major factor in both safety and interoperability in the Union. They are also a precondition for the free movement of workers in the railway industry. This question should be tackled with respect to the existing framework for social dialogue. The Agency should provide the technical support necessary in order to take account of this aspect at Union level.
- (23) The Agency should organise and facilitate cooperation between the national safety authorities, the national investigating bodies and representative bodies from the railway sector acting on at European level, in order to promote good practices, exchange of relevant information, collection of railway-related data and monitor the overall safety performance of the railway system.

⁴ OJ L 348, 20.12.2013.

- (24) In order to ensure the greatest possible transparency and equal access for all parties to relevant information, the documents envisaged for the railway interoperability and safety processes should be accessible to the public. The same applies to licences, safety certificates and other relevant railway documents. The Agency should provide an efficient means of exchanging and publishing this information.
- (25) Promotion of innovation and research in the railway field is an important task which the Agency should encourage, given its reputation and position. Any financial assistance provided within the framework of the Agency's activities in this respect should not lead to any distortion in the relevant market.
- (26) In order to increase the efficiency of the Union financial support, its quality and compatibility with relevant technical regulations, the Agency, as the only Union body with reputable competence in the railway field, should play an active role in the assessment of rail projects.
- (27) Railway interoperability and safety legislation, implementation guides or recommendations of the Agency may sometimes pose interpretation and other problems to the stakeholders. Proper and uniform understanding of those acts is a precondition for effective implementation of the railway acquis and the functioning of the railway market. Therefore, the Agency should actively engage in training and explanatory activities in that regard.
- (27a) Taking into account the transfer of competences to the Agency in relation to the issuing of vehicle authorisations and safety certificates, there will be an important need for training and publication activities in these areas. When the national safety authorities are involved in those activities, the latter should be proposed to them free of charge, whenever possible.**

(28) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through fees and charges paid by applicants. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent, the Executive Director should have full responsibility. The Agency's staff should be independent and should represent an appropriate balance of short-term and long-term contracts, in order to maintain its organisational knowledge and business continuity while keeping necessary and on-going exchange of expertise with the railway sector.

~~(29) In order to ensure effectively the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including to establish the budget and approve the annual and multi-annual work programmes.~~

In order to streamline the decision-making process in the Agency and contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. In addition to the Management Board, which should give general orientations for the Agency's activities, a small-sized Executive Board should be set-up and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters. The delineation of competences of the Executive Board should be defined in a mandate to be adopted by the Management Board and may include opinions and provisional decisions subject to their final endorsement by the Management Board.

(30) In order to guarantee the transparency of the Management Board's decisions, representatives of the sectors concerned should attend its meetings, but without the right to vote, that right being reserved for the representatives of public authorities who are accountable to the democratic control authorities. The representatives of the sector should be appointed by the Commission on the basis of their representativeness at Union level of railway undertakings, infrastructure managers, railway industry, workers unions, passengers and freight customers.

- (30a) **When adopting possible implementing rules on language regime, the Management Board should take into account several criteria, including not only the needs of the applicants but also the impact on resources of the Agency and on the duration of the procedures related to vehicle authorisation and safety certification of railway undertakings.**
- ~~(31) In order to properly prepare the meetings of the Management Board and to advise it in relation to the decisions to be taken, an advisory Executive Board should be created.~~
- (32) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in an independent and impartial manner. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised Board of Appeal, whose decisions are, in turn, open to action before the Court of Justice.
- (33) A broader strategic perspective in relation to the activities of the Agency would help to plan and manage its resources more effectively and would contribute to higher quality of its outputs. **This is confirmed and reinforced by the Commission Delegated Regulation (EU) N° 1271/2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council.** Therefore, **a single programming document containing the annual and a multi-annual work programmes** should be adopted and updated regularly by the Management Board, after proper consultation of the relevant stakeholders.
- (34) The Agency's work should be transparent. Effective control by the European Parliament should be ensured and, to this end, the European Parliament should have the possibility of hearing the Executive Director of the Agency and **receiving the annual report of the Agency's activities** ~~being consulted on the multi-annual work programme~~. The Agency should also apply the relevant Union legislation concerning public access to documents.

- (35) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Union funding allocated to them, in particular concerning the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁵ should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office⁶.
- (36) Since the objectives of the action proposed, namely to establish a specialised body to formulate common solutions on matters concerning railway safety and interoperability, cannot be sufficiently achieved by the Member States by reason of the joint nature of the work to be done, and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives;

⁵ OJ L 136, 31.5.1999, p. 1.

⁶ OJ L 136, 31.5.1999, p. 15.

- (37) ~~In order to properly determine the level of fees and charges which the Agency is entitled to levy, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of articles dealing with issuing and renewal of authorisations for placing in service of trackside control command and signalling subsystems, authorisations for placing on the market for vehicles and for types of vehicles, and safety certificates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. Fees and charges should be set in a transparent, fair and uniform manner in cooperation with Member States and should not jeopardize the competitiveness of the European railway sector. They should be established on a basis which takes due account of the ability of undertakings to pay and should not lead to unnecessary financial burden on companies.~~ **Implementing powers should be conferred on the Commission in order to ensure the implementation of Article 73 concerning the determination of fees and charges which the Agency is entitled to levy for the issuing of vehicle authorisations and safety certificates.**

~~The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.~~

Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

- (38) In order to ensure the implementation of Articles 21 and 22 of this Regulation concerning examination of draft national rules and rules in force, implementing powers should be conferred on the Commission. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.**

- (39) In order to ensure uniform conditions for the implementation of Articles 29, 30, 31, and 51 of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.
- (40) It is necessary to implement certain principles regarding the governance of the Agency in order to comply with the Joint Statement and Common Approach agreed by the Inter-Institutional Working Group on EU decentralised agencies in July 2012, the purpose of which is to streamline the activities of agencies and increase their performance.
- (41) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,
-