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| From: | General Secretariat of the Council |
| To: | Delegations |
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| Subject: | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the interoperability of the rail system within the European Union (Recast) - Examination of the recitals |

Following the adoption of the general approach on the articles of the above mentioned Directive at the TTE Council on 10 June 2013 and in view of the meeting of the Working Party on Land Transport on 31 March 2014, delegations will find in the Annex a Presidency compromise proposal on the recitals with a view to making them consistent with the text of the articles.

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

2013/0015 (COD)

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the interoperability of the rail system within the European Union
(Recast)

(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 Articles 91(1), 170 and 171 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,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) 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 Community³ has been substantially amended several times. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) In order to enable citizens of the Union, economic operators and regional and local authorities to benefit to the full from the advantages deriving from the establishing of an area without internal frontiers, it is appropriate, in particular, to improve the interlinking and interoperability of the national rail networks as well as access thereto, implementing any measures that may prove necessary in the field of technical standardisation.
- (3) The pursuit of interoperability within the Union's rail system should lead to the definition of an optimal level of technical harmonisation and make it possible to facilitate, improve and develop international rail transport services within the Union and with third countries and contribute to the progressive creation of the internal market in equipment and services for the construction, renewal, upgrading and operation of the rail system within the Union.
- (4) The commercial operation of trains throughout the rail network requires in particular excellent compatibility between the characteristics of the infrastructure and those of the vehicles, as well as efficient interconnection of the information and communication systems of the different infrastructure managers and railway undertakings. Performance levels, safety, quality of service and cost depend upon such compatibility and interconnection, as does, in particular, the interoperability of the **Union** rail system.
- (5) The railway regulatory framework **at European and Member State level** should set clear responsibilities for ensuring compliance with the safety, health and consumer protection rules applying to the railway networks. **Against this background, this Directive should not lead to a reduced level of safety in the European Union's railway sector. To this end, the Agency should take full responsibility for the authorisations it issues.**

³ OJ L 191, 18.7.2008, p. 1.

- (6) There are major differences between national regulations, internal rules and technical specifications applicable to rail systems, subsystems and components, since they incorporate techniques that are specific to the national industries and prescribe specific dimensions and devices and special characteristics. This situation prevents trains from being able to run without hindrance throughout the Union .
- (7) ~~Over the years, this situation has created very close links between the national railway industries and the national railways, to the detriment of a genuine opening up of markets allowing new entrants to emerge.~~ In order to enhance their competitiveness at world level, **these European railway** industries require an open and competitive ~~European~~ market.
- (8) It is therefore appropriate to define essential requirements **related to rail interoperability** for the whole of the Union which should apply to its rail system.
- (9) The development of technical specifications for interoperability (TSIs) has shown the need to clarify the relationship between the essential requirements and the TSIs on the one hand, and the European standards and other documents of a normative nature on the other. In particular, a clear distinction should be drawn between the standards or parts of standards which should be made mandatory in order to achieve the objectives of this Directive, and the "harmonised standards" that have been developed **in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council⁴. Where strictly necessary, the TSIs may make an explicit reference to European standards or specifications, which become mandatory from the moment the TSI is applicable.**

⁴ OJ L 316, 14.11.2012, p. 12.

- (10) In order to genuinely increase the competitiveness of the Union railway sector without distorting competition between key actors of the rail system, the TSIs, should be drafted by respecting the principles of openness, consensus and transparency as defined in Annex II to Regulation (EU) No 1025/2012.
- (11) The quality of rail services in the Union depends, *inter alia*, on excellent compatibility between the characteristics of the network in the broadest sense, including the fixed parts of all the subsystems concerned and those of the vehicles including the onboard components of all the subsystems concerned. Performance levels, safety, quality of service and cost depend upon that compatibility.
- (12) A TSI **should set** ~~sets~~ all the conditions with which an interoperability constituent should conform, and the procedure to be followed in assessing conformity. In addition, it is necessary to specify that every constituent should undergo the procedure for assessing conformity and suitability for the use indicated in the TSIs, and have the corresponding certificate, **comprising either the assessment of the intrinsic conformity of an interoperability constituent, considered in isolation, to the technical specifications to be met, or the assessment of the suitability for use of an interoperability constituent considered within its railway environment in relation to the technical specifications.**
- (13) When developing new TSIs the aim should always be to ensure compatibility with the existing **sub**systems. This will help to promote the competitiveness of rail transport and prevent unnecessary additional costs through the requirement of upgrading or renewal of existing subsystems to ensure backward compatibility. In those exceptional cases where it will not be possible to ensure compatibility, TSIs may establish the framework necessary to decide whether the existing subsystem needs a new decision or authorisation for placing in service, and the corresponding deadlines.

- (14) ~~It is necessary f~~ For safety reasons **Member States' competent authorities are required to assign an identification code a European Vehicle Number to each a vehicle when requested by the vehicle's keeper** placed in service. The vehicle should then be entered in a national vehicle register. ~~The registers should be open to consultation by all Member States and by certain economic players within the Union. The national vehicle registers should be consistent as regards the data format. They should therefore be covered by common operational and technical specifications.~~ *[moved to recital 39d]*
- (15) If certain technical aspects corresponding to the essential requirements cannot be explicitly covered in a TSI, such aspects which need still to be addressed are identified in an annex to the TSI as open points. For these open points, pending the completion of the TSI, national rules apply. **To avoid redundant verifications and unnecessary administrative burden, national rules should also be classified to establish the equivalence between national rules of different Member States covering the same topics.**
- (16) The procedure to be followed in the case of essential requirements applicable to a subsystem which have not yet been covered in the corresponding TSI should be specified. In such case, the bodies responsible for the conformity assessment and verification procedures should be the ~~notified bodies~~ **designated bodies** referred to in Article 17 of Directive ~~2008/57/EC~~ **this Directive**.
- (17) **This Directive ~~2008/57/EC~~ applies to the entire rail system within the Union and the scope of the TSIs is being extended to cover also the vehicles and networks not included in the trans-European rail system. Therefore, Annex I of Directive 2008/57/EC should be simplified, by removing specific references to the trans-European rail system.**
- (18) The functional and technical specifications to be met by the subsystems and their interfaces may vary according to the use of subsystems, for example according to the categories of lines and vehicles.

- (19) In order to ensure the progressive implementation of rail interoperability within the whole Union and gradually reduce the diversity of legacy systems, the TSIs should specify the provisions to be applied in the event of renewal or upgrading of existing subsystems and may specify deadlines for achieving include proposals for the staged completion of the target system. TSIs shall indicate when the upgrade and renewal of infrastructure and vehicles requires a new authorisation. **In all cases for the upgrade and renewal of infrastructure it is necessary for the applicant to submit a file to the national safety authority so that they may decide if a new authorisation is needed based on the criteria set out in this Directive. In the case of the upgrade and renewal of vehicles which have an authorisation to place on the market the applicant will decide if they need to seek a new authorisation from the national safety authority based on the criteria set out in this Directive.**
- (20) In view of the gradual approach to eliminating obstacles to the interoperability of the rail system and of the time consequently required for the adoption of TSIs, steps should be taken to avoid a situation where Member States adopt new national rules or undertake projects that increase the diversity of the present system.
- (21) In order to eliminate the obstacles to interoperability, and as a consequence of extending the scope of the TSIs to the whole Union's rail system, the amount of national rules should progressively be reduced. National rules should be differentiated between rules strictly related to local requirements and rules needed to cover open points in TSIs. The second type of rules should progressively be removed as a result of closure of open points in the TSIs.
- (22) The adoption of a gradual approach satisfies the special needs of the objective of the interoperability of the rail system, which is characterised by old national infrastructure and vehicles requiring heavy investment for adaptation or renewal, and particular care should be taken ~~not to penalise~~ **maintain the competitiveness of** rail economically vis-à-vis other modes of transport.

- (23) In view of the extent and complexity of the rail system, it has proved necessary, for practical reasons, to break it down into the following subsystems: infrastructure, trackside control-command and signalling, on-board control-command and signalling, energy, rolling stock, operation and traffic management, maintenance and telematics applications for passenger and freight services. For each of these subsystems the essential requirements must be specified and the technical specifications determined, particularly in respect of constituents and interfaces, in order to meet these essential requirements. The same system is broken down into fixed and mobile elements comprising, on the one hand, the network, composed of the lines, stations, terminals, and all kinds of fixed equipment needed to ensure safe and continuous operation of the system and, on the other hand, all vehicles travelling on this network. Therefore, for the purposes of this Directive, a vehicle is composed of one subsystem (rolling stock) and where applicable other subsystems (mainly the on-board control-command and signalling subsystem).
- (24) The United Nations Convention on the Rights of Persons with Disabilities to which the Union is a party establishes accessibility as one of its general principles and requires States' Parties to take appropriate measures to ensure to persons with disabilities access on an equal basis with others, including by developing, promulgating and monitoring the implementation of minimum standards and guidelines for accessibility. Accessibility is therefore an **essential** ~~important~~ requirement for the interoperability of the rail system.
- (25) Implementation of the provisions on the interoperability of the rail system should not create unjustified barriers in cost-benefit terms to the preservation of the existing rail network of each Member State, but should endeavour to retain the objective of interoperability.
- (26) TSIs also have an impact on the conditions of use of rail transport by users, and it is therefore necessary to consult these users on aspects concerning them.
- (27) Each Member State concerned should be allowed not to apply certain TSIs in a **limited** number of duly substantiated situations. These situations and the procedures to be followed in case of non-application of the TSI should be clearly defined.

- (28) The drawing up of TSIs and their application to the rail system should not impede technological innovation, which should be directed towards improving economic performance.
- (29) To comply with the appropriate provisions on procurement procedures in the rail sector and in particular Directive ~~2004/17/EC~~ [...] of the European Parliament and of the Council of ~~31 March 2004~~ **coordinating on the procurement procedures of by** entities operating in the water, energy, transport and postal services **sectors**⁵, the contracting entities should include technical specifications in the general documents or in the terms and conditions for each contract. To this end it is necessary to build up a set of rules in order to serve as references for these technical specifications.
- (30) An international system of standardisation capable of generating standards which are actually used by those involved in international trade and which meet the requirements of the Union policy would be in the Union's interest. The European standardisation organisations should therefore continue their cooperation with the international standardisation bodies.
- (31) The contracting ~~entities~~ **entity, which orders the design, construction, renewal or upgrading of a subsystem, could be a railway undertaking, an infrastructure manager, an entity in charge of maintenance, a keeper, or a concession holder responsible for carrying out a project. The contracting entities should** ~~are to~~ define the ~~further~~ requirements needed to complete European specifications or other standards. These specifications should meet the essential requirements that have been harmonised at Union level and which the rail system must satisfy.

⁵ ~~Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1). Directive as last amended by Commission Regulation (EC) No 213/2008 (OJ L 74, 15.3.2008, p. 1). Commission proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors, COM(2011) 895 final, 2011 0349 (COD).~~

- (32) The procedures governing the assessment of conformity or of suitability of use of constituents should be based on the use of the modules covered by Commission Decision 2010/713/EU of 9 November 2010 on modules for the procedures for assessment of conformity, suitability for use and EC verification to be used in the technical specifications for interoperability adopted under Directive 2008/57/EC of the European Parliament and of the Council⁶. As far as possible and in order to promote industrial development, it is appropriate to draw up the procedures involving a system of quality assurance.
- (33) Conformity of constituents is mainly linked to their area of use in order to guarantee the interoperability of the system and not only their free movement on the Union market. The suitability for use of the most critical constituents as regards safety, availability or system economy should be assessed. It is therefore not necessary for a manufacturer to affix the CE marking to constituents that are subject to the provisions of this Directive. On the basis of the assessment of conformity and/or suitability for use, the manufacturer's declaration of conformity should be sufficient.
- (34) Manufacturers are nonetheless obliged to affix the CE marking to certain components in order to certify their compliance with other Union provisions relating to them.
- (35) When a TSI enters into force, a number of interoperability constituents are already on the market. A transitional period should be provided for so that these constituents can be integrated into a subsystem, even if they do not strictly conform to that TSI.
- (36) The subsystems constituting the rail system should be subject to a verification procedure. This verification should enable the entities responsible for their placing in service **or placing on the market** to be certain that, at the design, construction and putting into service stages, the result is in line with the regulations and technical and operational provisions in force. It should also enable manufacturers to be able to count upon equality of treatment, whatever the Member State.

⁶ OJ L 319, 4.12.2010, pp. 1–52 .

- (37) After a subsystem is placed in service **or on the market**, care should be taken to ensure that it is operated and maintained in accordance with the essential requirements relating to it. Under Directive [...] [Railway Safety Directive]⁷, responsibility for meeting these requirements lies, for their respective subsystems, with the infrastructure manager, ~~or~~ the railway undertaking **or the entity in charge of maintenance, each for their own part.**
- (38) ~~The procedure for placing in service of vehicles and fixed installations should be clarified taking into account the responsibilities of infrastructure managers and railway undertakings.~~
The respective responsibilities of all actors involved should be clarified in relation to the procedures for placing on the market and use of vehicles, and for the placing in service of fixed installations.
- (38a) **The Agency and national safety authorities should cooperate and share competencies as appropriate for the issuing of authorisations with due regard to safety and with a view to the gradual development of competence within the Agency. This cooperation should allow for a gradual transition towards an enhanced role for the Agency concerning further streamlining of the authorisation procedures. Clear procedural and dispute resolution provisions should be established to address situations where the Agency and national safety authorities disagree on assessments made in relation to authorisations.**

⁷ OJ L...

- (39) In order to facilitate the placing ~~in service of vehicles~~ **on the market of vehicles** and reduce administrative burdens, the notion of a vehicle authorisation for placing on the market valid throughout the Union should be introduced. ~~as a precondition to enable railway undertakings to place in service a vehicle.~~ In addition, this notion is more in line with Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC⁸. **While authorisations for placing on the market allow for commercial transactions of vehicles anywhere on the Union market, the vehicle may only be used within the area of use for which the authorisation is granted. In this context, any extension of the area of use should be subject to an updated authorisation for the vehicle. It is necessary that vehicles already authorised under earlier Directives also receive an authorisation to place on the market if they are intended to be used on networks not covered by their authorisation.**
- (39a) **When the area of use is limited to a network or networks within one Member State, the applicant should have a choice as to whether it submits its application for vehicle authorisation to the national safety authority of that Member State or to the Agency.**
- (39aa) **An appropriate appeal procedure should be available to the applicant.**
- (39b) **Specific measures, including cooperation agreements are required to take account of the specific geographical and historical situation of certain Member States, while ensuring the proper functioning of the internal market.**
- (39c) **Member States with an important share of rail traffic with third countries having the same railway gauge which is different from the main rail network within the Union should be able to maintain different vehicle authorisation procedures for freight wagons belonging to a pool of freight wagons in a shared use with those third countries.**

⁸ OJ L 218, 13.8.2008, p. 82.

~~(39d) It is necessary f~~For safety reasons **Member States' competent authorities are required** to assign ~~an identification code~~ **a European Vehicle Number** to each a vehicle **when requested by the vehicle's keeper** ~~placed in service~~. The vehicle should then be entered in a national vehicle register. The registers should be open to consultation by all Member States and by certain economic players within the Union. The national vehicle registers should be consistent as regards the data format. They should therefore be covered by common operational and technical specifications. *[moved from recital 14]*

(40) To ensure traceability of the vehicles and their history, the references of the vehicle authorisations for placing on the market should be recorded together with the other vehicle data.

(41) ~~The TSIs should specify the~~ Procedures **should be established** for checking the compatibility between vehicles and ~~the network route~~ after the delivery of the vehicle authorisation for placing on the market **and before the use by a railway undertaking of a vehicle in its area of use specified in the vehicle authorisation for placing on the market.** ~~the decision to place into service.~~

(42) ~~To help railway undertakings decide on the placing into service of a vehicle and to avoid redundant verifications and unnecessary administrative burden,~~ national rules should also be classified to establish the equivalence between national rules of different Member States covering the same topics.

(43) The notified bodies responsible for examining the procedures for conformity assessment and suitability for the use of constituents, together with the procedure for the assessment of subsystems should, in particular in the absence of any European specification, coordinate their decisions as closely as possible.

- (44) Transparent accreditation as provided for in Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93⁹, ensuring the necessary level of confidence in conformity certificates, should be considered by the national public authorities throughout the Union the preferred means of demonstrating the technical competence of notified and, *mutatis mutandis*, the bodies designated to check the compliance with national rules. However, national authorities may consider that they possess the appropriate means of carrying out this evaluation themselves. In such cases, in order to ensure the appropriate level of credibility of evaluations carried out by other national authorities, they should provide the Commission and the other Member States with the necessary documentary evidence demonstrating the compliance of the conformity assessment bodies evaluated with the relevant regulatory requirements.
- (45) This Directive should be limited to establishing the interoperability requirements for interoperability constituents and subsystems. In order to facilitate compliance with those requirements it is necessary to provide for presumption of conformity for interoperability constituents and subsystems which are in conformity with harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 for the purpose of expressing detailed technical specifications of those requirements.
- (46) The TSIs should be revised at regular intervals. When deficiencies are discovered in the TSIs, ~~the European Union Agency for Railways (hereinafter referred to as the Agency)~~ should be asked to issue an opinion which, under certain conditions, might be published and used by all stakeholders (including industry and notified bodies) as an acceptable means of compliance pending the revision of the TSIs concerned.

⁹ OJ L 218, 13.8.2008, p. 30.

(47) Since the objective of this Directive, namely interoperability within the rail system on a Union-wide scale, cannot be sufficiently achieved by the Member States acting alone, since no individual Member State is in a position to take the action needed in order to achieve such interoperability 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 on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

~~(48) In order to amend non-essential elements of this Directive, 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 the adaptation to technical progress of Annex II regarding the breakdown of the rail system into subsystems and to the description of these subsystems, the content of the TSIs and the amendments to TSIs, including those amendments needed to remedy TSIs deficiencies. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. 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.~~

~~(49) In order to address the deficiencies discovered in TSIs, the Commission should adopt delegated acts amending those TSIs under the urgency procedure.~~

~~(50) In order to ensure the implementation of Article 6(1) of this Directive concerning the mandate to the Agency to draft TSIs and their amendments and to make the relevant recommendations to the Commission, implementing powers should be conferred on the Commission.~~

(51) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission relating to: the content of the file which shall accompany the request of non-application of one or more TSIs or parts of them, the details, the format and the transmission modalities of that file; **the content of the TSIs and the amendments to TSIs, including those amendments needed to remedy TSIs deficiencies,** the scope and the content of the EC declaration of conformity and suitability for use of interoperability constituents, its format and the details of the information included in it; the classification of the notified national rules in different groups with the aim of facilitating the compatibility checks between fixed and mobile equipment; the verification procedures for subsystems, including the general principles, the content, procedure and documents related to the 'EC' verification procedure, and to the verification procedure in the case of national rules; the templates for the 'EC' declaration of verification and for the declaration of verification in the case of national rules and templates for documents of the technical file that has to accompany the declaration of verification; the common specifications relating to content, data format, functional and technical architecture, operating mode and rules for data input and consultation for the register of infrastructure, **the national vehicle register and the register of authorisation to place types on the market.** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹⁰.

(51a) Certain preparations are necessary to prepare the Agency for its enhanced role under this Directive. Accordingly, an appropriate transitional period should be provided for. During this period, the Commission should review the progress made by the Agency in preparing for its enhanced role. Thereafter, the Commission should report regularly on the progress made in implementing this Directive. Additionally, the Commission should report on actions taken regarding the identification and traceability of safety critical components. It is necessary also to provide Member States, national safety authorities and stakeholders sufficient time for preparations to implement this Directive.

¹⁰ OJ L 55, 28.2.2011, p.13.

- (52) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (53) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (54) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IV, part B.
-