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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the document Proposal for a Regulation of the European
Parliament and of the Council relating to cableway installations designed to
carry persons and repealing Directive 2000/9/EC relating to cableway
installations designed to carry persons

Delegations will find attached document SWD(2014) 117 final.

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Brussels, 27.3.2014
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**relating to cableway installations designed to carry persons and repealing Directive
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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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Disclaimer: This executive summary commits only the Commission's services involved in its preparation and does not prejudice the final form of any decision to be taken by the Commission.

1. PROBLEM DEFINITION

While it is generally recognised that the Cableways directive has successfully achieved its main objectives, experience collected throughout the 10 years of implementing the directive has also allowed identifying some aspects to be improved. Based on the feedback mechanisms from Member States and sectoral stakeholders, the following problems have been identified:

Problem 1: Difficulty to clearly identify certain installations as cableways

There are different interpretations and practices amongst the responsible authorities in the EU, manufacturers and notified bodies, in particular with regard to two types of installations:

- Installations that have both transport and leisure purpose: the Cableways Directive excludes from its scope “equipment for use in fairgrounds or amusement parks, for leisure purposes”. However there is new kind of equipment on the market that has been designed for leisure purposes but also serves as a means of transport
- Small funiculars and inclined lifts: in practice the distinction between these installations has proven difficult, as the inclined lifts fall within the scope of the Lifts Directive 95/16/EC, and small funiculars are subject to the Cableways Directive, and consequently they comply to different essential requirements.

Manufacturers or operators of some installations have incurred extra costs due to the need to retroactively modify the installations and to bring them in line with the cableways directive. Authorities and notified bodies throughout Europe have applied divergent approaches, leading to different treatment of manufactures and market distortions.

Problem 2: Distinction between safety components, subsystems and infrastructures

The Cableways Directive is based on the distinction between safety components, subsystems, infrastructure and installations; but such distinction has not always been clear.

Safety components and subsystems are subject to the rules on the free movement of goods and to that purpose they are submitted to the EC conformity assessment procedure and the EC declaration of conformity. On the other hand, installations continue to fall within the Member States’ competence and in this respect they are subject to a specific authorization regime. In addition, infrastructure is also not subject to free movement and may have to be tested in multiple Member States.

Problem 3: Conformity assessment procedure for subsystems

The Cableways Directive does not provide for a specific conformity assessment module for subsystems. Annex VII requires notified bodies to check the subsystems but does not give any indication on how they should do it. That situation has led to some divergent interpretation and implementation of the conformity evaluation of the subsystems that can result in legal uncertainty and market distortions.

Problem 4: Alignment of the Cableways Directive with the New Legislative Framework

The alignment of the Cableways Directive with the NLF takes place in the light of the political commitment laid down in Article 2 of the NLF Decision.

Many of the general horizontal problems identified by the NLF have also been observed in the context of implementing the Cableways Directive [2000/9/EC](#)

In the consultation process stakeholders have largely been in favour of the alignment.

Necessity for public intervention

The aspects addressed in the context of this initiative are already regulated by the Cableways Directive [2000/9/EC](#). This legislation does however not address the identified problems as effectively as desirable. The main justification for the action is to ensure legal certainty and the NLF alignment for the Cableways Directive and the sectoral stakeholders.

2. ANALYSIS OF SUBSIDIARITY

This initiative concerns the proper and effective functioning of the internal market for products in the field of cableways installations designed to carry persons. EU action in this area is based on Article 114 of the TFEU. An EU level action prevents introducing new and various national regulations which would result in fragmentation of the internal market.

If actions are taken at national level to address the problems, they may create obstacles to the free movement of Cableways products (safety components and subsystems). Diverging approaches taken by the authorities or notified bodies have already led to unequal treatment of economic operators.

3. OBJECTIVES

The main objective of the initiative is to improve the functioning of the internal market, ensuring at the same time a higher level of safety, and to achieve a fair level playing field for Cableways economic operators. Another important objective is simplification, by clarifying some major concepts and definitions contained in the legal text, facilitating therefore its consistent application.

The following table presents the specific and operational objectives of the initiative for the revision of the Cableways Directive related to the general policy objectives indicated above.

GENERAL	SPECIFIC	OPERATIONAL
Better protect the health and safety of users Achieve a fair level playing field for Cableways economic operators and ensure free movement of goods	Ensure sound and uniform application of the Cableways Directive Ensure clarity of legislation and its consistent application through the EU Ensure consistency and flexibility of conformity assessment procedures for all the products in the scope of the	Clarify the scope of the Directive, definitions and borderlines with other directives (as Lifts 95/16/EC) Clarify identification and distinction between safety components, subsystems and infrastructure Provide more consistency in conformity assessment

	Cableways Directive Simplify the European regulatory environment in the field of cableways installations designed to carry persons	procedures for subsystems
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4. POLICY OPTIONS

Three alternative policy options have been considered, i.e.:

- the “Do nothing” as baseline option;
- the “Soft law” option as non-legislative alternative, consisting in amending relevant sections of the Application Guide to the Cableways Directive; and
- the “Legislative measure” option, consisting in amending specific parts of the legal text of the Cableways Directive.

The analysis of impacts of the above policy options was carried out separately for each of the identified areas of improvement applying a step by step approach. The policy options for each problem were subject to a separate qualitative analysis, complemented by the more detailed information made available by the “Impact Assessment Study Concerning the Revision of Directive 2000/9/EC Relating to Cableways Installations Designed to Carry Persons”.

5. ASSESSMENT OF IMPACTS

More relevant impacts were identified in the economic area. In the social area, some benefits are illustrated from a qualitative point of view. No environmental impacts are expected.

The assessment of each proposed change is based on its costs and benefits, where the latter includes improvements in legal certainty, a fair level playing field for the industry.

Social impacts have been assessed with regard to:

- Public health and safety
- Employment and labour markets

The social impact consists mainly of benefits to the health and safety of the users of cableway installations. The proposed changes are designed to improve the practical application of the Directive. Providing legal certainty and better specifying the obligations of economic operators, through the alignment to the NLF, is assumed to contribute to an improved level of safety and quality of cableway installations. As a result, the probability of accidents or injuries would be reduced. However, it was not possible to illustrate benefits from a quantitative point of view.

None of the options is expected to have an impact on employment in the sector.

Economic impacts have been assessed with regard to:

- Functioning of the Internal Market and competition
- Competitiveness, trade and investment flows
- Operating costs and conduct of businesses / SMEs
- Administrative burdens on businesses
- Public Authorities
- Innovation and research

Concerning clarifications in the scope of the Directive and the implementation of a specific conformity assessment procedure for subsystems, additional costs should not intervene, because what the changes will provide is legal certainty to the current situation. The same products are considered to fall already today within the scope of the Directive; costs would therefore arise only for those manufacturers who have erroneously not applied the Cableways Directive. In this context, it needs to be pointed out that the compliance costs with the Cableways Directive are higher than if a product had not to ensure this compliance. On the other hand, benefits would occur from clarification in the scope and conformity assessment procedures for manufacturers, operators and national authorities, as a result of avoiding possible mistakes on compliance, conformity assessment and certification.

6. COMPARISON OF OPTIONS

Preferred options are chosen on the basis of the analysis and the assessment of the relevant policy options, taking into consideration economic impacts and the higher level of social benefits in terms of health and safety of the users of cableway installations, through improvements in legal certainty and in the application of the Directive.

For the proposed changes, a combination of “Soft law” with “Legislative measures” are the preferred options.

Each impact is assessed according to the following scale:

- ++ significant positive impact
- + minor positive impact
- 0 no impact / baseline
- minor negative impact
- significant negative impact

The preferred options for each proposed change are highlighted in grey colour.

	Effectiveness	Efficiency costs benefits	Coherence
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Scope of the Directive				
1. Do nothing (baseline)	0	0	0	0
2. “Soft law” (amending the Application Guide)	<p>+</p> <p>Sound and uniform implementation of the Cableways Directive will be promoted but it will not make unclear legal situations disappear completely.</p>	<p>0</p> <p>Additional costs are not foreseen. The clarifications state the correct interpretation of the current law.</p>	<p>+</p> <p>Benefits may be expected if at least a part of involved manufacturers take knowledge and abide by the provisions of the Application Guide. A particular uncertainty involving the soft law approach related to the fact that it is mainly addressed to lifts manufacturers.</p>	<p>+</p> <p>Progress in the uniform implementation of the Cableways Directive will contribute to better regulation and Single Market Act, despite the risk that unclear legal situations may emerge in the future.</p>
3. Legislative measure (amending the Directive)	<p>++</p> <p>The sound, uniform and consistent application of the Cableways Directive will be ensured by the legislative measure for the limited scope it covers.</p>	<p>0</p> <p>Additional costs have not been identified. As in the previous option, it is a clarification of an existing legal requirement.</p>	<p>++</p> <p>Significant improvement of legal certainty for manufacturers. Wrong assessment on what legal requirements to comply with will be avoided.</p>	<p>++</p> <p>The clear legal situation will contribute to better regulation and Single Market Act.</p>
Safety components, subsystems, infrastructures and installations				
1. Do nothing (baseline)	0	0	0	0
2. “Soft law” (amending the Application Guide)	<p>+</p> <p>Soft law would provide flexible guidance, avoiding unwanted too prescriptive provisions that may result from a legislative solution in this case. Specific objectives of sound and uniform application of the Cableways Directive would be better achieved by the soft law option.</p>	<p>0</p> <p>Additional costs resulting from a soft law approach were not identified</p>	<p>+</p> <p>Benefits are to be expected because a tool will be available for clarifying applicable provisions for manufacturers, notified bodies and public administrations. Mistakes and involved costs, in the classification of products are expected to be reduced.</p>	<p>+</p> <p>The clarification provided in the Application Guide will encourage a consensual implementation of the legislation, bringing therefore a positive contribution to better regulation and Single Market Act. However, it will not grant that unclear legal situations will completely disappear.</p>
3. Legislative measure (amending the Directive)	<p>0</p> <p>In principle, a legislative measure would provide a more</p>	<p>- -</p> <p>There are risks associated to higher costs from a</p>	<p>0</p> <p>Benefits were not clearly identified, unless it is assumed</p>	<p>0</p> <p>Taking into account the questions raised on the availability of</p>

	sound and uniform application of the Cableways Directive. However, the discussions in the working groups and the consultation process have not provided a clear legal text that would avoid further interpretation in the future.	legislative option, including also for innovation.	that a clear legal text, if available, would improve predictability for manufacturers.	a sound legislative solution, it is questionable whether this solution could provide a positive contribution to better regulation or the Single Market Act.
Conformity assessment procedure for subsystems				
1. Do nothing (baseline)	0	0	0	0
2. “Soft law” (amending the Application Guide)	+ The promotion of conformity assessment modules in the Application Guide may contribute to partly meet consistency in this area. However, this approach is not fundamentally different compared to the current situation. The modules are widely known but identified problems remain.	0 A conformity assessment procedure is already required now, therefore additional costs should not be significant.	0 It is questionable whether benefits would result from this option. The current availability of modules has not allowed to promote a completely predictable situation for manufacturers.	0 Contributions to better regulation and Single Market Act are not clear as the impact of a soft law option is considered to be very limited.
3. Legislative measure (amending the Directive)	++ The consideration of modules for conformity assessment in the law, as it is usually done for products falling under new approach legislation, will grant consistency in the use of conformity assessment procedures in the EU. The specific objectives will be fully met.	0 A conformity assessment procedure is already required now, therefore additional costs should not be significant.	++ A significant improvement of legal certainty and predictability for manufacturers will be achieved.	++ This option provides a clear legal situation. It will contribute to better regulation and Single Market Act.

Choice of the legal instrument:

In line with the Commission policy to simplify the regulatory environment, it is proposed to change the Directive into a Regulation. The current Directive imposes clear and detailed rules to become applicable in a uniform manner throughout the Union. It can therefore be easily changed into a Regulation. This change will avoid the costs to the Member States associated with the transposition of a Directive. In addition, it will allow for a more rapid application of the new legislation and it will help economic operators to conduct their business as they will

have to deal with a single regulatory instrument rather than with 28 national laws transposing a Directive.

7. MONITORING AND EVALUATION

The evaluation of the effectiveness of the legislation will continue to be based on the feedback received through the various communication and co-operation mechanisms already established within the framework of the Cableways Directive, i.e.:

- Cableways Advisory Standing Committee (CSC) and Cableways Experts Working Group (CWG);
- Cableways Member States Market Surveillance Administrative Co-operation Group (Cableways AdCo);
- Cableway Installations Sectoral Group (CSG) of the European Co-ordination of Notified Bodies;
- Technical Committee 242 on Safety requirements for passenger transportation by rope of the European Committee for Standardisation (CEN/TC 242).

Additional feedback will be obtained from the new or expanded cooperation and information exchange mechanisms provided for by NLF Regulation 765/2008.

Monitoring the level of compliance will be possible via the following indicators:

- number of products checked;
- number of non-compliant products among those checked;
- type of non-compliance found.

These enforcement indicators will be based on information provided by the market surveillance authorities via:

- the RAPEX system;
- a general database established under Article 23 of the NLF Regulation 765/2008 for the exchange of information among the Member States on market surveillance activities and non-compliant products (ICSMS);
- the safeguard clause notification procedures.

Non-compliance will also be detectable through complaints addressed to the Commission.

In line with its “Smart regulation” policy, the Commission will evaluate the effectiveness of the revised Cableways Regulation within a period of 5 up to a maximum of 10 years after the date of application of the Regulation, basing itself on the feedback obtained from the mechanisms set out above.