



**COUNCIL OF  
THE EUROPEAN UNION**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	14813/13 TRANS 527 CODEC 2278
No. Cion doc.:	6014/13 TRANS 40 CODEC 227
Subject:	Proposal for a Directive of the European Parliament and of the Council on railway safety (Recast) - Examination of the recitals

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Following the adoption of the general approach on the articles of the above mentioned Directive at the TTE Council on 10 October 2013 and in view of the meeting of the Working Party on Land Transport on 10 April 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~~.

2013/0016 (COD)

Proposal for a  
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on railway safety**  
**(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 Article 91  
(1) thereof,  
Having regard to the proposal from the European Commission<sup>1</sup>,  
After transmission of the draft legislative act to the national Parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>3</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

(1) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 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<sup>4</sup> have been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.

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<sup>1</sup> OJ C , , p..

<sup>2</sup> OJ C , , p..

<sup>3</sup> OJ C , , p..

<sup>4</sup> OJ L 164, 30.4.2004, p. 44.

- (2) Directive 2004/49 established a common regulatory framework for railway safety, through harmonisation of the content of safety rules, the safety certification of railway undertakings, the tasks and roles of the national safety authorities and the investigation of accidents. Nevertheless, to pursue efforts to establish a single **European railway area market for rail transport services**, that Directive needs thorough revision.
- (3) Metros, trams and other light rail systems are subject in many Member States to local or regional safety rules and are often supervised by local or regional authorities and not covered by the requirements for interoperability or licensing within the Union. Trams are furthermore often subject to road safety legislation and could therefore not be fully covered by railway safety rules. For these reasons such local rail systems should be excluded from the scope of this Directive. This does not prevent Member States from applying the provisions of this Directive to local rail systems on a voluntary basis if they deem this appropriate.
- (4) Safety levels in the Union's rail system are generally high, in particular compared to road transport. **Railway safety should be generally maintained and, when practicable, continuously improved, in line with taking into account** technical and scientific progress, ~~safety should be further improved, when reasonably practicable~~ and the development of the Union legislation. **Priority should be given to the prevention of accidents.** ~~taking into account the expected improvement in the competitiveness of rail transport.~~
- (5) The main actors in the rail system, infrastructure managers and railway undertakings, should bear full responsibility for the safety of the system, each for their own part. Whenever appropriate, they should cooperate in implementing risk control measures. ~~Member States should make a clear distinction between this immediate responsibility for safety and the national safety authorities' task of providing a national regulatory framework and supervising the performance of all operators.~~

*[see new recital (13e) on supervision]*

- (6) The responsibility of infrastructure managers and railway undertakings for operating the rail system does not preclude other actors such as entities in charge of maintenance, manufacturers, carriers, consignors, **consignees**, fillers, **unfillers**, loaders, **unloaders**, maintenance, maintenance suppliers, wagon keepers, service providers and procurement entities from assuming responsibility for their products or services. To avoid the risk that the responsibilities are not properly assumed, each relevant actor should be made responsible for its particular process. Each actor in the rail system should be responsible in respect to the other actors for complete and truthful communication of all relevant information to check if the vehicles are fit to run. In particular that concerns information on the status and history of the vehicle, maintenance files, traceability of loading operations, and consignment notes.
- (7) Each railway undertaking, infrastructure manager and entity in charge of maintenance should ensure that its contractors and other parties implement risk control measures. To this end, **each railway undertaking, infrastructure manager and entity in charge of maintenance** they should apply the methods for monitoring set out in the common safety methods (CSMs). Their contractors should apply this process through contractual arrangements. Because such arrangements are an essential part of the safety management system of railway undertakings and infrastructure managers, railway undertakings and infrastructure managers should disclose their contractual arrangements on request of the European Union Agency for Railways (hereafter "the Agency") or the national safety authority in the context of supervision activities.
- (8) Common safety targets (CSTs) and CSMs have been gradually introduced to ensure that safety is maintained at a high level and, when necessary and where reasonably practicable, improved. They should provide tools for assessment of the safety and performance of operators at Union level as well as in the Member States. Common safety indicators (CSIs) have been established in order to assess whether systems comply with the CSTs and to facilitate the monitoring of railway safety performance.

(9) National rules, which are often based on national technical standards, have been gradually replaced by rules based on common standards, established by CSTs, CSMs and technical specifications for interoperability (TSIs). In order to eliminate the obstacles to interoperability, the amount of national rules should be reduced as a consequence of extending the scope of the TSIs to the whole Union's rail system and of closing open points in the TSIs. For this purpose the Member States should keep their system of national rules updated, delete obsolete rules and thereof inform the Commission and the the Agency.

(9a) National rules often include requirements which are partly relevant for interoperability purposes, and partly for safety purposes. Safety being an essential requirement of the railway interoperability Directive, a national rule may be relevant for both directives. The distinction between the terms "national safety rules" and "national technical rules" as defined in Directive 2004/49/EC and 2008/57/EC respectively is therefore removed and replaced by the notion of "national rules" which must be notified either under the interoperability Directive or under the safety Directive or both. National rules must be notified under the interoperability Directive mainly when they relate to the placing on the market of structural subsystems. They must be notified under the safety Directive when they relate to the operation of the railway system, or to the specific subjects of the safety Directive including the role of the actors, safety certification, safety authorisation and accident investigation.

(10) 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 **except in specific situations as provided for in this Directive**. The safety management system is the recognised tool for preventing accidents and railway undertakings are responsible for taking immediate corrective action to prevent re-occurrence of accidents. Member States should not decrease the responsibility of the railway undertakings by establishing new national rules immediately after an accident, **unless necessary as an urgent preventive measure**.

(11) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system meeting Union requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the Agency and to the national safety authority in the Member State concerned.

**(11a) Rail freight services should also encompass the transport of dangerous goods. However, a distinction should be made between the objective of this Directive, which is to maintain and, where possible, improve the safety of railway system, and Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, which mainly regulates the classification of the substance and the specification of their containments, including the safe loading, unloading and use of the containments within the existing railway system. Consequently, the safety management system of the railway undertakings and of the infrastructure managers should take due consideration of the potential additional risks generated by carrying dangerous goods containments, without prejudice to Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods.**

(12) To ensure a high level of railway safety and equal conditions for all railway undertakings, ~~they~~ ~~the latter~~ should be subject to **identical** ~~the same~~ safety requirements. A licensed railway undertaking should hold a safety certificate in order to obtain access to the railway infrastructure. The safety certificate should provide evidence that the railway undertaking has established its safety management system and is able to comply with the relevant safety standards and rules **for the relevant area of operation. For an area of operation covering at least two Member States**, ~~international transport services~~, it should be enough to approve the safety management system only once at Union level

(13) Harmonised methods based on Directive 2004/49/EC have been established to be applied to the railway undertakings and the national safety authorities on monitoring, conformity assessment, supervision and on risk evaluation and assessment. This regulatory framework is sufficiently mature to move progressively towards a 'single safety certificate', valid throughout the Union. ~~The move to a single safety certificate should make the rail system more effective and efficient by reducing administrative burdens for the railway undertakings.~~

*[last sentence of recital 13 moved to recital 13a]*

**(13a) In order to make the procedures for issuing safety certificates to railway undertakings more efficient and impartial, it is necessary to give the Agency a central role in the issuing of safety certificates. Where the area of operation is limited to one Member State, the applicant should have the possibility to choose as to whether it submits its application for safety certificates to the national safety authority of that Member State or to the Agency. ~~The move to a single safety certificate~~ This new regime should make the rail system more effective and efficient by reducing administrative burdens for the railway undertakings.**

**(13b) The Agency and the national safety authorities should cooperate and share competences as appropriate for the issuing of safety certificates. Clear procedural and dispute resolution provisions should be established to address situations where the Agency and the national safety authorities disagree on assessments made in relation to the issuing of safety certificates.**

**(13c) 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. Where operation is limited to networks requiring specific expertise due to geographical or historical reasons, and where such networks are isolated from the rest of the Union's rail system, it should be possible for the applicant to perform the necessary formalities locally through interacting with the relevant national safety authorities. To this end, for the purposes of reducing administrative burden and costs, the cooperation agreements to be concluded between the Agency and the relevant national safety authorities may provide the appropriate allocation of tasks, without prejudice to the final responsibility of the Agency in issuing the single safety certificate.**

**(13d) This Directive should not lead to a reduced level of safety and increase costs in the European Union's railway sector. To this end, the Agency and the national safety authorities should take full responsibility for the certificates they issue, in particular contractual and non-contractual liabilities. In the event of a judicial inquiry involving the Agency or its staff, the Agency should cooperate fully with the competent authorities of the Member States concerned.**

**(13e) A clear distinction should be made between the immediate responsibility for safety deriving from the issuing of the safety certificates, on the one hand, and the national safety authorities' task of providing a national regulatory framework and supervising the performance of all operators on a continuous basis, on the other hand. Each national safety authority should oversee continued compliance with the legal obligation imposed to a railway undertaking or infrastructure manager to establish a safety management system. Establishing this evidence may require not only on-site inspections to the railway undertaking but also supervision tasks to be carried out by the national safety authorities in order to assess that the railway undertaking continues to apply duly its safety management system after having been granted the safety certificate.**



**When a national safety authority is requested to supervise a railway undertaking established in different Member States, the other relevant national safety authorities should be informed by the Agency and the latter should ensure the necessary coordination of supervision activities.**

**(13f) The Agency and the national safety authorities should cooperate closely in the cases where a national safety authority concludes that a holder of a safety certificate no longer satisfies the conditions for certification. In that case, it should ask the Agency to restrict or revoke it. In case of disagreement between the Agency and the national safety authority, an appeal procedure should be established.**

**If a national safety authority identifies a serious safety risk during supervision, it should be allowed to apply temporary safety measures, including restricting or suspending immediately the relevant operations. A serious safety risk in this context should be understood as being an intentional or negligent non-compliance with legal obligations or safety requirements, that may in itself or in a series of consequential events cause an accident or a serious accident.**

~~(14) The single safety certificate should be issued on the basis of the evidence that the railway undertaking has established its safety management system. Establishing this evidence may require not only on-site inspections to the railway undertaking but also the supervision aimed to assess that the railway undertaking continues to apply duly its safety management system after having been granted the single safety certificate.~~

~~(15) Infrastructure manager should have a key responsibility for the safe design, maintenance and operation of its rail network. The infrastructure manager should be subject to safety authorisation by the national safety authority concerning its safety management system and other provisions to meet safety requirements.~~

- (16) The certification of train staff **might create difficulties for** ~~is often an insurmountable barrier~~ to new entrants. Member States should ensure that facilities for the training and certification of train staff necessary to meet requirements under national rules are available to railway undertakings intending to operate on the relevant network.
- (17) The entity in charge of maintenance should be certified for freight wagons. Where the entity in charge of maintenance is an infrastructure manager, this certification should be included in the procedure for safety authorisation. The certificate issued to such an entity should guarantee that the maintenance requirements of this Directive are met for any freight wagon for which the entity is in charge. This certificate should be valid in the whole Union and should be issued by a body able to audit the maintenance system set up by the entity. As freight wagons are frequently used in international traffic and as the entity in charge of maintenance may want to use workshops established in more than one Member State, the certification body should be able to implement its controls throughout the Union. **The Agency should evaluate the system of certification of the entity in charge of maintenance for freight wagons and, where appropriate, recommend its extension to all vehicles.**
- (18) The national safety authorities should be fully independent in their organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant, ~~and procurement~~ **contracting entity and any entity awarding public service contracts**. They should carry out their tasks in an open and non-discriminatory way and cooperate with the Agency to create a **Single European railway area** ~~single rail area~~ and coordinate their decision-making criteria. To increase efficiency, two or more Member States may decide to merge the staff and resources of the respective national safety authorities.
- ~~(19) When a national safety authority is requested to supervise a railway undertaking established in different Member States, the other relevant national safety authorities should be informed by the Agency and the latter should ensure the necessary coordination of supervision activities.~~

- (20) Serious accidents on the railways are rare. However, they can have disastrous consequences and raise concern among the public about the safety performance of the rail system. All such accidents should, therefore, be investigated from a safety perspective to avoid recurrence and the results of the investigations should be made public. Other accidents and incidents should also be subject to safety investigations when they could be significant precursors to serious accidents.
- (21) A safety investigation should be kept separate from the judicial inquiry into the same incident and should be granted access to evidence and witnesses. It should be carried out by a permanent body that is independent of the actors of the rail sector. The body should function in a way which avoids any conflict of interest and any possible involvement in the causes of the occurrences that are investigated; in particular, its functional independence should not be affected if it is closely linked to the national safety authority, **the Agency** or regulator of railways for organisational and legal structure purposes. Its investigations should be carried out under as much openness as possible. For each occurrence the investigation body should establish the relevant investigation group with necessary expertise to find the immediate causes and underlying causes.
- (21a) The investigation carried out after a serious accident should be carried out with as much openness as possible, so that all parties can be heard and can share the results. In particular, during the investigation, the investigating body should update the parties, who it judges as having related safety responsibility, on the progress of the investigation and take account of their views and opinions. This will allow the investigation body to receive any additional relevant information and to be aware of different opinions on its work so that it can complete at best its investigation. The purpose of this consultation should in no case lead to apportioning blame or liability but rather to collect factual evidences and taking lessons for future improvement of safety. The investigating body should however be free of choosing the information it will share with such parties in order to avoid any undue pressure, except when this is requested by the judicial procedure. In addition, the investigating body should also take account of the reasonable information needs of the victims and their relatives.**

- (22) In order to improve the efficiency of activities of an investigating body and to help it in discharging its duties, the investigating body should have timely access to the site of an accident, where necessary in good cooperation with the judicial authority. The reports on investigations and any findings and recommendations provide crucial information for the further improvement of railway safety and should be made publicly available at Union level. Safety recommendations should be acted upon by the addressees and actions reported back to the investigating body.
- (23) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (24) Since the objectives of the actions proposed in this Directive, namely coordinating activities in the Member States in order to regulate and supervise safety, investigating accidents and establishing common safety targets, common safety methods, common safety indicators and common requirements for single safety certificates cannot be sufficiently achieved by the Member States and can 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 those objectives.
- ~~(25) In order to supplement and amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of common safety methods and their revision, and revision of common safety indicators and common safety targets. 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 to the Council.~~

- (26) In order to ensure uniform conditions for the implementation of this Directive, the implementing powers should be conferred on the Commission relating to **common safety indicators, common safety methods, common safety targets** the requirements for the safety management system and its elements, **rules on the certification procedure**, review of the system for certification of the entities in charge of maintenance for freight wagons and extension to other rolling stocks and the principal content of the accident and incident investigation report. 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 powers<sup>5</sup>.
- (27) The obligation to transpose this Directive into national law should be confined to those provisions representing a substantive change as compared with the earlier Directive. The obligation to transpose the provisions that are unchanged arises under the earlier Directive.
- (28) This Directive should be without prejudice to the obligation of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IV, part B,

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<sup>5</sup> OJ L 55, 28.2.2011, p. 13.