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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the interoperability of the rail system within the European Union (recast)

- Statement of the Council's reasons
- Adopted by the Council on 10 December 2015

I. INTRODUCTION

On 31 January 2013, the Commission presented to the Council its proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (recast).

On 26 February 2014, the European Parliament voted its opinion at first reading.

On 5 June 2014, the Council reached a political agreement on the draft Directive. Following legal/linguistic revision, the Council adopted its position at first reading on 10 December 2015, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

Following the vote in the European Parliament and the adoption of the Council's political agreement, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. On 17 June 2015, a final compromise was agreed, which was subsequently endorsed by the Committee of Permanent Representatives on 30 June 2015. The European Parliament Committee on Transport and Tourism (TRAN) confirmed the agreement on 10 November 2015, and to this effect addressed a letter to the Chairman of the Permanent Representatives Committee.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee and of the Committee of Regions.

II. ANALYSIS OF THE POSITION AT FIRST READING

1. General

The above-mentioned proposal is part of the fourth railway package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area.

The objective of this legislative initiative is to establish a common approach to interoperability rules in order to increase economies of scale for railway undertakings active across the Union, as well as to simplify and reform administrative procedures for issuing vehicle authorisations, thereby removing the fragmentation of rules across the Union.

Furthermore, the intention is to increase the efficiency of the vehicle authorisation process, encouraging the recognition of interoperability authorisations across the EU and improving the coherence of the national legal frameworks related to the interoperability aspects of the internal market for railways.

Although the Council agrees with the Commission as regards the objective of the proposal, the Council's approach has been to introduce several amendments to the original proposal. The main provisions of the Directive have been significantly amended. The Council's position at first reading, therefore, amends the original Commission proposal by redrafting it and adding and deleting several provisions of the text. This means that the Council cannot accept the amendments introduced by the European Parliament's opinion at first reading in relation to those provisions.

2. Key policy issues

i) Vehicle authorisation for placing on the market (Article 21)

As opposed to the significant transfer of competences from the national authorities to the Agency initially proposed by the Commission, the Council provides for a dual system of authorisations in relation to the issuing of vehicle authorisations for placing on the market, depending on the intended area of use. According to this approach, the Agency acts as a one-stop-shop for vehicles intended for cross-border operations; however national safety authorities keep an important role in carrying out the assessments necessary to the issuing of these authorisations. For vehicles involved in national traffic only, a choice exists for the applicant to submit a request for authorisation either to the Agency or to the national safety authority. In both cases, the procedure and the decision criteria remain the same.

The European Parliament supports in general the approach retained by the Council. The latter also covers the concerns raised by the European Parliament by including the concept of "isolated networks" under the provisions concerning the cooperation agreements (see below under point v).

Against this background, amendment 34 was retained, amendments 35 and 102 were taken on board partially or in spirit, while amendments 94, 113 and 140 were not retained by the Council.

ii) Liability of the Agency for issuing vehicle authorisations for placing on the market (Recital 8 and Article 21 (6))

The Council's text clarifies that the Agency takes full responsibility for the authorisations it issues, including contractual and non-contractual liabilities.

iii) Appeal and arbitration procedure (Article 21(7) and (11))

While the Commission proposal did not include any specific provisions on appeal procedures, the Council's text reflects the possibility given to the applicant to refer the matter to a national court in case of disagreement with the measure taken by the national safety authority.

Similarly, an appeal procedure in case of a disagreement between the national safety authority and the Agency is included in the Council's text.

iv) Placing in service of track-side control-command and signalling (Articles 18 and 19)

In its original proposal, the Commission envisaged to transfer to the Agency the responsibility for the authorisation of placing in service of trackside control-command and signalling, including the European signalling system ERTMS.

The Council does not share the Commission's approach and considers that the national safety authorities should continue to authorise ERTMS. However, in order to reinforce harmonisation of ERTMS at EU level through increased interoperability from the outset of the procedure, the Council's text provides for the Agency to be consulted before any call for tenders relating to ERTMS track-side equipment. A new Article 19 has been added to that purpose.

In line with the Commission's approach, the European Parliament considers that the responsibility to give authorisation for the placing in service of ERTMS systems should be granted to the Agency. Therefore, amendments 81, 82, 83 and 86 could not be retained by the Council.

v) Cooperation agreements between the Agency and national safety authorities (Article 21, paragraphs (14) and (15))

In its initial proposal, the Commission did not include the conclusion of cooperation agreements between the Agency and one or more national safety authorities in the context of authorisations issued for vehicles intended for cross-border operations.

The Council considers that it is very important to include such provision in order to facilitate the practical implementation of the new authorisation system.

In addition, the Council lays down that cooperation agreements between the Agency and one or more national safety authorities for the purpose of authorisations concerning vehicles, may include specific cooperation arrangements in cases of networks requiring specific expertise due to geographical or historical reasons and/or share a track gauge with neighbouring third countries. This compromise provides, therefore, for the possibility for Member States with specific railway network characteristics to cooperate in the authorisation process under the umbrella of the Agency. These cooperation agreements may also include provisions to facilitate the extension of the area of use in the three Baltic States once a vehicle has been authorised in one of them.

In this context, amendment 118 was retained partially by the Council.

vi) Adoption of national rules (Article 14)

The Council position aims at establishing a flexible and workable procedure on existing and new national interoperability rules. To take into consideration the European Parliament concerns, the Council's position clarifies the procedures to be applied for the notification of existing and new national rules, as well as on the assessment to be made by the Agency (up to a period of 8 months). The approach retained by the Council aims at avoiding that national rules are validated without their prior assessment by the Agency.

Therefore, amendments 66, 72 and 73 were taken on board partially or in spirit, while amendments 67-70 could not be retained by the Council.

vii) Vehicle registers (Chapter VII, in particular Article 47)

To meet the concerns of the European Parliament as regards "Registers", the main change introduced by the Council regards the European Vehicle Register. In order to reduce administrative burdens and undue costs, the Commission should adopt a specification for a European Vehicle Register that would incorporate national vehicle registers, with a view to creating a common tool, while, at the same time, allowing for the maintenance of additional functions relevant to Member States' specific needs. The European Vehicle Register shall be operational five years after the entry into force of the Directive. The Council also introduces new provisions aiming at laying down the information to be contained in the European and national vehicle registers.

The European Parliament considers that the European Vehicle Register should be operational after four years.

Against this background, amendments 123, 126, 128, 130 and 131 were retained in spirit with redrafting, while amendments 98, 110, 120, 121, 122, 124, 125, 127 and 129 were not retained by the Council.

viii) Duration of the transitional period and transposition period (Articles 54 and 57)

The Council provides for a longer transitional regime for vehicle authorisations than the one initially envisaged by the Commission. This transitional regime is considered necessary for the proper functioning of the dual approach for the vehicle authorisation process set out in Article 21. According to the Council's position, Member States may continue to apply the existing provisions of Directive 2008/57/EC until three years after the date of entry into force of the Directive, against two years in the Commission proposal. Such period may be extended for one more year. In such case, Member States have to notify the Commission and the Agency of such decision and provide justification. The same procedure applies for ERTMS pre-authorisations.

A similar scheme of three plus one year applies to the transposition period.

In this context amendments 140, 141, 143 and 144 were not retained by the Council.

ix) Structure of the legal act (delegated acts/implementing acts)

In the initial Commission proposal, delegated acts are proposed as an instrument to determine the content of technical specifications for interoperability (TSIs) and their amendments. The European Parliament supports the Commission and also insists on expanding the scope of delegated acts to other areas for which the Commission has proposed implementing acts.

For the TSIs, the Council adopts a combination of delegated and implementing acts (Article 5(1) and (11)). The Commission will adopt delegated acts for the setting out of specific objectives of technical specifications for interoperability, followed by implementing acts in order to implement those specific objectives.

In this context, amendments 80 and 135 were partially accepted, while amendments 13, 14, 56, 57, 79, 99 and 142 were not retained by the Council.

3. Other amendments adopted by the European Parliament

Further EP amendments not included in the Council position at first reading concern in particular the:

- possible application of this Directive to urban rail systems (amendments 16 and 17);
- introduction of timeframes for the implementation of Technical Specifications for Interoperability by Member States (amendment 47);
- inclusion of delegated acts for the establishment of rules on penalties for failure to comply with the deadlines set in the legal act for the adoption of decisions by the Agency (amendment 136).

III. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter that the Chair of the European Parliaments' Committee on Transport and Tourism (TRAN) addressed to the Chairman of the Permanent Representatives Committee on 24 November 2015.

In this letter, the TRAN Chair indicates that he will recommend to the members of the TRAN Committee, and subsequently to the plenary, that they approve the Council's position at first reading without amendments, and conclude the ordinary legislative procedure at the stage of the European Parliament's second reading, in accordance with Article 294 of the TFEU.