COMMON POSITION (EC) No 12/2008
adopted by the Council on 3 March 2008

(Text with EEA relevance)

(2008/C 122 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee (3),

After consulting the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty (4),

Whereas:

(1) With a view to pursuing the efforts to create a single market in rail transport services, the European Parliament and the Council have adopted Directive 2004/49/EC (5) establishing a common regulatory framework for railway safety.

(2) Originally, authorisation procedures for placing in service railway vehicles were dealt with by Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (6) and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system (7) for new or upgraded parts of the Community rail system, and Directive 2004/49/EC for vehicles already in use. In accordance with better regulation, and with a view to simplifying and modernising Community legislation, all provisions regarding authorisations for placing railway vehicles in service should be incorporated in a single legal text. Therefore, the current Article 14 of Directive 2004/49/EC should be deleted and a new provision regarding authorisation of placing in service vehicles already in use should be included in Directive 2008/.../EC of the European Parliament and of the Council of ... on the interoperability of the rail system within the Community (8), hereinafter referred to as the 'Railway Interoperability Directive', that has replaced Directives 96/48/EC and 2001/16/EC.

(3) The entry into force of the 1999 Convention concerning International Carriage by Rail (COTIF) on 1 July 2006 brought in new rules governing contracts for the use of vehicles. According to the CUV (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic) appendix thereto, wagon keepers are no longer obliged to register their wagons with a railway undertaking. The former 'Regolamento Internazionale Veicoli' (RIV) Agreement between railway undertakings has ceased to apply and was partially replaced by a new private and voluntary agreement (General Contract of Use for Wagons, GCU) between railway undertakings and wagon keepers whereby the latter are in charge of the maintenance of their wagons. In order to reflect these changes and to facilitate the implementation of Directive 2004/49/EC as far as safety certification of railway undertakings is concerned, the concept of the 'keeper' and the concept of 'entity in charge of maintenance' should be defined, as well as the specification of the relationship between these entities and railway undertakings.

(4) The definition of the keeper should be as close as possible to the definition used in the 1999 COTIF Convention. Many entities can be identified as a keeper of a vehicle, for example, the owner, a company making business out of a fleet of wagons, a company leasing vehicles to a railway undertaking, a railway undertaking or an infrastructure manager using vehicles for maintaining its infrastructure. These entities have the control over the vehicle with a view to its use as a means of transport by the railway undertakings and the infrastructure managers. In order to avoid any doubt, the keeper should be clearly identified in the National Vehicle Register (NVR) provided for in Article 33 of the Railway Interoperability Directive.

(10) OJ L ...
(5) Before a vehicle is placed in service or used on the network, an entity in charge of its maintenance should be identified in the NVR. The keeper and the entity in charge of maintenance can be the same person or body. However, in exceptional cases, such as, for example, vehicles placed in service for the first time in a third country, vehicles towed with a view to their placing in service in another place of the network or carrying out special transport services, it is not possible or appropriate to identify the entity in charge of maintenance. In such exceptional cases, the relevant national safety authority should be allowed to accept vehicles on the network for which it is competent without an entity in charge of maintenance being assigned to them.

(6) Where this entity in charge of maintenance is a railway undertaking or an infrastructure manager, its safety management system includes the maintenance system and neither of them needs further certification. If the entity in charge of maintenance is not a railway undertaking or an infrastructure manager, it may be certified according to a system to be developed by the European Railway Agency and adopted by the Commission. The certificate delivered to that entity would guarantee that the maintenance requirements of this Directive are met for any vehicle of which it is in charge. This certificate should be valid in the whole Community.

(7) Maintenance requirements are being developed in the context of the Railway Interoperability Directive, in particular as part of the ‘rolling stock’ technical specifications for interoperability (TSIs). As a result of the entry into force of this Directive there is a need to ensure coherence between these TSIs and the certification requirements for the entity in charge of maintenance to be adopted by the Commission. The Commission will achieve this by modifying, where appropriate, the relevant TSIs using the procedure envisaged by the Railway Interoperability Directive.

(8) Since the objective of this Directive, namely further developing and improving safety on the Community’s railways, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community 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 set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.


(10) In particular, the Commission should be empowered to revise and adapt the Annexes to Directive 2004/49/EC, to adopt and revise common safety methods and common safety targets, and also to establish a maintenance certification system. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(11) A Member State which has no railway system and which does not envisage having one in the near future, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement this Directive.

(12) In accordance with point 34 of the Interinstitutional Agreement on better law-making (2), Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.


HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2004/49/EC is hereby amended as follows:

1. the following points shall be added to Article 3:

(a) “keeper” means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered in such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/.../EC of the European Parliament and of the Council of ... on the interoperability of the rail system within the Community (3), hereinafter referred to as the “Railway Interoperability Directive”;

(t) “entity in charge of maintenance” means an entity in charge of maintenance of a vehicle, and registered as such in the NVR;


5. Article 7 shall be amended as follows:

2. in Article 4(4) the term ‘wagon keeper’ shall be replaced by ‘keeper’;

3. Article 5(2) shall be replaced by the following:

2. Before 30 April 2009 Annex I shall be revised, in particular to incorporate therein the common definitions of the CSIs and the common methods for calculating accident costs. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

4. Article 6 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

1. An initial series of CSMs covering, as a minimum, the methods described in paragraph 3(a) shall be adopted by the Commission before 30 April 2008. They shall be published in the Official Journal of the European Union.

A second series of CSMs covering the remaining methods described in paragraph 3 shall be adopted by the Commission before 30 April 2010. They shall be published in the Official Journal of the European Union.

These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

(b) point (c) of paragraph 3 shall be replaced by the following:

(c) as far as they are not yet covered by TSIs, methods to check that the structural subsystems of the railway system are operated and maintained in accordance with the relevant essential requirements;

(c) paragraph 4 shall be replaced by the following:

4. The CSMs shall be revised at regular intervals, taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States as laid down in Article 4(1). This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

5. Article 7 shall be amended as follows:

(a) the first and second subparagraphs of paragraph 3 shall be replaced by the following:

The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. It shall be adopted by the Commission before 30 April 2009 and shall be published in the Official Journal of the European Union. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

The second set of draft CSTs shall be based on the experience gained from the first set of CSTs and their implementation. It shall reflect any priority areas where safety needs to be further improved. It shall be adopted by the Commission before 30 April 2011 and shall be published in the Official Journal of the European Union. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

(b) point (b) of paragraph 2 shall be replaced by the following:

5. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

6. Article 10 shall be amended as follows:

(a) the second subparagraph of paragraph 1 shall be replaced by the following:

The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet requirements laid down in TSIs and other relevant Community legislation and in national safety rules in order to control risks and provide transport services safely on the network.

(b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe supply of its services on the relevant network. These requirements may concern the application of the TSIs and national safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate vehicles used by railway undertakings. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.
7. Article 14 shall be replaced by the following:

‘Article 14

Maintenance of vehicles

1. Before it is placed in service or used on the network, each vehicle shall have an entity in charge of maintenance assigned to it and this entity shall be registered in the NVR in accordance with Article 33 of the Railway Interoperability Directive.

2. The relevant National Safety Authorities may, in exceptional cases and restricted to their respective networks, decide on derogations from the obligation provided for in paragraph 1.

3. Without prejudice to the responsibility of the railway undertakings and infrastructure managers as provided for in Article 4, the entity in charge of maintenance shall ensure that vehicles are in a safe state of running by means of a system for maintenance.

4. Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager the system referred to in paragraph 3 of this Article shall be established through the safety management system set out in Article 9.

5. If the entity in charge of maintenance is not a railway undertaking or an infrastructure manager it may be certified pursuant to paragraph 6.

6. Based on a recommendation by the Agency, the Commission shall, by ... (*), adopt a measure establishing certification of the entity in charge of maintenance with regard to its maintenance system. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

The measure shall include the requirements for the certification of the entity in charge of maintenance based on the approval of its maintenance system, the format and validity of the certificate and the body or bodies responsible for issuing it, and the controls necessary for the functioning of the certification system.

7. The certificates granted in accordance with paragraph 6 of this Article shall confirm compliance with the requirements referred to in paragraph 3 of this Article and shall be valid throughout the Community. If the entity in charge of maintenance is not certified, a railway undertaking or an infrastructure manager shall ensure, through its safety management system set out in Article 9, that all relevant maintenance procedures are adequately applied.

(*) One year after the entry into force of this Directive.

8. Article 16(2) shall be amended as follows:

(a) point (a) shall be replaced by the following:

'(a) authorising the placing in service of the structural subsystems constituting the rail system in accordance with Article 15 of the Railway Interoperability Directive and checking that they are operated and maintained in accordance with the relevant essential requirements;'

(b) point (b) shall be deleted;

(c) point (g) shall be replaced by the following:

'(g) supervising that vehicles are duly registered in the NVR and that safety related information contained therein, is accurate and kept up to date;'

9. the following point shall be added to Article 18:

‘(e) the derogations that have been decided in accordance with Article 14(2);'

10. Article 26 shall be replaced by the following:

‘Article 26

Adaptation of the Annexes

The Annexes shall be adapted to scientific and technical progress. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

11. Article 27 shall be amended as follows:

(a) the following paragraph shall be added:

‘2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof;'

(b) paragraph 4 shall be deleted;

12. point 3 of Annex II shall be deleted.

‘Article 2

Implementation and transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (**). They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by the Member States.

(**) 24 months after the entry into force of this Directive.
The obligations for transposition and implementation of this Directive shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their respective territories.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at …

For the European Parliament

The President

…

For the Council

The President

…
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION

On 13 December 2006, the Commission submitted three legislative proposals primarily aimed at facilitating the movement of railway vehicles across the European Union:

— a proposal for a Directive amending Directive 2004/49/EC on safety on the Community’s railways (1) (hereinafter referred to as the Railway Safety Directive);

— a proposal for a Directive on the interoperability of the Community rail system (2) (hereinafter referred to as the Railway Interoperability Directive);

— a proposal for a Regulation amending Regulation (EC) No 881/2004 establishing a European Railway Agency (3) (hereinafter referred to as the Agency Regulation).

On 29 November 2007, the European Parliament voted its opinion at first reading.

On 3 March 2008, the Council will adopt its Common Position. In carrying out its work, the Council took account of the opinion of the Economic and Social Committee (4). The Committee of the Regions decided not to adopt an opinion on the above mentioned proposals.

II. ANALYSIS OF THE COMMON POSITION

1. General

With a view to enabling railways to play its key role with regard to sustainable mobility in the European Union, the Council aims at the gradual development of an integrated European railways area. In this context, the Council considers that the three legislative proposals recasting the interoperability directives for conventional and high-speed rail and amending the Railway Safety Directive and the Agency Regulation can bring important improvements to the technical part of the regulatory framework for European railways.

These proposals lower existing barriers to the free circulation of railway vehicles on the European rail network thereby facilitating cross acceptance of authorisations of railway vehicles amongst Member States.


2. Key policy issues

The three main changes Council made to the Commission proposal are set out below. Furthermore, Council provides for an exemption for Cyprus and Malta.

2.1. Integration of all provisions on authorisation procedures in one single act

Both the Railway Safety Directive and the Railway interoperability directives currently in force contain provisions dealing with authorisation procedures for placing railway vehicles in service. The latter deals with new or upgraded parts of the Community rail system and the former concerns vehicles that are already in use. In accordance with Better Regulation, and with a view to simplifying Community legislation, Council incorporates all provisions regarding authorisations for

(2) OJ C 126, 7.6.2007, p. 7.
placing vehicles in service in a single legal act. Thereto, the existing but amended Article 14, the new Article 14a and the new Annex of the proposal amending the Railway Safety Directive are transferred to the recasted Railway Interoperability Directive. Parliament agreed with this transfer in the context of the first reading agreement on the Railway Interoperability Directive. Consequently, Council can in principle accept the amendments 20, 26 and 27 in full. Furthermore, Council can in principle follow amendment 18 considering that, as a result of the transfer, the legislator can refrain from making any reference to authorisation procedures in the amended Railway Safety Directive.

2.2. Clarification of roles and responsibilities with regard to maintenance

As a result of the entry into force on 1 July 2006 of the new 1999 Convention concerning International Carriage by rail (COTIF), keepers of vehicles are no longer obliged to register their wagons with a railway undertaking. In response to this development, and with a view to enabling railway undertakings to provide transport services safely on the network, Council specifies the new constellation of roles and responsibilities with regard to maintenance. Thereto, the Council puts forward a new definition of ‘keeper’ and introduces the concept of ‘entity in charge of maintenance’.

While following as close as possible the definition used in COTIF, Council establishes a clear connection between the keeper and its vehicle through the obligation for keepers to register as such in a National Vehicle Register. Council can accept amendment 8 in full as Council and Parliament agree on the definition of ‘keeper’. Moreover, amendment 9, which was introduced with a view to applying the correct terminology, can be accepted in principle.

In the Common Position, it is provided for that entities in charge of maintenance shall ensure that vehicles are in a safe state of running by means of a system for maintenance. Thereto, each vehicle, before it is placed in service or used on the network, needs to have such an entity in charge of maintenance assigned to it. Moreover, each entity in charge of maintenance must be registered in a National Vehicle Register. Only in exceptional cases, and restricted to its respective network, a National Safety Authority may decide to derogate from the obligation to assign an entity in charge of maintenance to a vehicle. Such derogations need to be published by the authority in its annual report. Through this system, Council aims at enabling railway undertakings and infrastructure managers to easily identify who is in charge of the maintenance of the vehicles they operate.

2.3. Maintenance certification

With a view to assuring both to the National Safety Authorities and to the participants in the transport chain that the maintenance of wagons is effectively controlled, Council chooses to strengthen the provision in the Commission proposal on maintenance certification. The Commission proposed that, where appropriate, a maintenance certification system for keepers should be established. Conversely, Council agrees on a provision obliging the Commission to adopt, at the latest one year after the entry into force of the proposal amending the Railway Safety Directive, a measure establishing certification of entities in charge of maintenance with regard to their maintenance systems. Both in the Commission proposal and in Council’s Common Position, this certification system is based on a Recommendation from the European Railway Agency. The Council ensures that the certificate delivered will be valid throughout the Community, and that it will guarantee the certified entity meeting the maintenance requirements of the Railway Safety Directive for any vehicle of which it is in charge.

Furthermore, entities in charge of maintenance may participate in this certification system on a voluntary basis. Finally, with a view to clarifying that no new requirements are introduced for railway undertakings and infrastructure managers, the Council specifies that the safety management
system, which railway undertakings and infrastructure managers already need to establish under the current Railway Safety Directive, includes the maintenance system.

In amendment 21, Parliament proposes a system of maintenance of railway vehicles that differs in two main ways from the system laid down by the Council. First of all, where Council — in line with Commission Decision of 28 July 2006 adopting the Technical Specification on Interoperability (TSI) on wagons and with Commission Decision of 9 November 2007 adopting a common specification of the National Vehicle Register — introduces the concept of entity in charge of maintenance, Parliament attributes direct responsibility for the maintenance of a vehicle to the keeper. Secondly, Parliament requests a mandatory maintenance certification system, whereas Council — in line with the global approach as outlined by the European Railway Agency — provides for a voluntary system.

Council cannot accept amendment 21 for three reasons. The first reason is that making the keeper responsible for the maintenance of the vehicle does not seem to be coherent with the overall responsibility of railway undertakings and infrastructure managers for a safe operation of transport as arranged for in other key provisions of the Railway Safety Directive, in particular Article 4. As a second reason, Council considers that mandatory participation in a maintenance system is not always appropriate and could lead to unnecessary administrative costs, for instance in the case of wagons coming from third countries or other types of vehicles such as locomotives and passenger cars. As a third reason, Council fears that attributing to keepers a responsibility for maintenance, which requires specific know-how, could burden the development of their economic activities.

2.4. Exemption for Cyprus and Malta

Taking into account the fact that Cyprus and Malta do not have railway systems, the Council provides in its Common Position for an exemption to transpose and implement the Directive amending the Railway Safety Directive as long as no railway system is established on their respective territories.

III. AMENDMENTS OF THE EUROPEAN PARLIAMENT

The response of Council to the amendments 8, 9, 18, 20, 21, 26 and 27 is set out above in relation to the key issues.

In addition, Council can accept in full amendment 2 on the correlation tables. Moreover, amendment 16 and 17 concerning correction of a language version are acceptable in principle. However, Council cannot accept for legal or technical reasons the following amendments:

— Amendment 3 because objectives of safety and health of workers fall outside the scope of the Commission proposal;

— The mutually related amendments 4 to 7 because the proposed definition of ‘national safety rules’ is not compatible with Annex II of the Railway Safety Directive where a description of national safety rules is given, and because the term ‘essential requirements’ is used in a sense considered too narrow;

— Amendment 14 because the Council holds the opinion that the discussion on developing Common Safety Targets (CSTs) took place at the time of the adoption of the Railway Safety Directive and should not be re-opened. Moreover, the Council notes that, on the basis of Article 6(4) of Agency Regulation, Recommendations of the European Railway Agency, inter alia on CSTs, already require detailed cost-benefit analyses;

— Amendment 19 as it is not compatible with the structure of the Common Position;

— Amendment 22 concerns the question who should be allowed to request a technical opinion from the European Railway Agency. This should however not be contentious anymore as, in the context of the Railway Interoperability Directive, Council and Parliament reached an agreement on the same issue;
Amendments 1, 10, 11, 12, 13, 15, 23, 24 and 25 on comitology in which Parliament introduces the urgency procedure for several measures. Since these measures are of general scope and designed to amend or supplement non-essential elements of the Railway Safety Directive, Council does agree with the Commission and with the Parliament that, for these measures, the Parliament should be involved through the regulatory with scrutiny procedure. Nevertheless, providing for the possibility to apply the urgency procedure seems disproportionate as all these measures are already linked to a specific deadline or need to be revised at regular intervals.

IV. CONCLUSION

The three legislative proposals on interoperability, safety and the European Railway Agency, which aim at facilitating the movement of railway vehicles across the European Union, make an important contribution to the further integration of the European railways area. Council and Parliament already achieved significant progress on these three proposals, in particular by reaching a first reading agreement on the Railway Interoperability Directive. This lays a solid basis for both co-legislators to find compromise solutions on the proposals amending the Railway Safety Directive and the Agency Regulation during their second reading discussions.