Proposal for a directive of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system

(2000/C 89 E/05)

(Text with EEA relevance)

COM(1999) 617 final — 1999/0252(COD)

(Submitted by the Commission on 29 November 1999)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 156 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee for the Regions,

Whereas:

(1) 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;

(2) The commercial operation of trains throughout the trans-European rail network requires excellent compatibility between the characteristics of the infrastructure and those of the rolling stock, as well as efficient interconnection of the information and communication systems of the different infrastructure managers and operators. Performance levels, safety, quality of service and cost depend upon such compatibility and interconnection, as does, in particular, the interoperability of the trans-European conventional rail system;

(3) To achieve these objectives an initial measure was taken by the Council on 23 July 1996 with the adoption of Directive 96/48/EC concerning the interoperability of the trans-European high-speed rail system [1];

(4) In its White Paper entitled 'A strategy for revitalising the Community's railways' [2] in 1996, the Commission announced a second measure in the conventional rail sector and then ordered a study on the integration of national rail systems, the results of which were published in May 1998 with the recommendation of the adoption of a directive based on the approach taken in the high-speed sector. This study also recommended that, rather than tackling all the obstacles to interoperability head on, problems should be solved gradually to an order of priority based on the cost-benefit ratio of each project. In this study the harmonisation of procedures and rules in use and the interconnection of information and communication systems were shown to be more effective than measures, for example, concerning infrastructure;

(5) The Commission Communication on 'Integration of conventional rail systems' recommends the adoption of this directive and justifies the similarities and main differences compared with the directive adopted in the high-speed sector. The main differences lie in the adaptation of the geographical scope, in the extension of the technical scope to take account of the results of the above study and in the adoption of a gradual approach to eliminating obstacles to the interoperability of the rail system;

(6) Article 155 of the Treaty provides that the Community shall embark upon any activity which may prove necessary in order to ensure network interoperability, particularly in respect of the harmonisation of technical standards;

(7) The Council of 6 October 1999 asked the Commission to propose a strategy for improving rail interoperability and eliminating bottlenecks in order to remove obstacles of a technical, administrative and economic nature, while guaranteeing a high level of safety and personnel training and qualifications;

(8) Pursuant to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways [3] railway companies must have increased access to the network, which in turn requires infrastructure, equipment and stock interoperability;

[1] OJ L 235, 17.9.1996.

[2] COM(96) 421, 30.7.1996.

[3] OJ L 237, 24.8.1991, p. 25.

(9) Member States are responsible for ensuring compliance with the safety, health and consumer protection rules applying to the railway networks in general during the design, construction, placing in service and operation of those railways. Together with the local authorities, they also have responsibilities in respect of rights in land, regional planning and environmental protection;

(10) National regulations and the railways' internal rules and the technical specifications which the railways apply contain major differences. These national regulations and internal rules incorporate techniques that are specific to the national industries. They prescribe specific dimensions and devices and special characteristics. This situation runs counter to trains being able to run smoothly throughout the European network;

(11) Over the years, this situation has created very close links between the national railway industries and the national railways, to the detriment of the genuine opening-up of contracts. In order to enhance their competitiveness at world level these industries require an open, competitive European market;

(12) It is therefore appropriate to define basic essential requirements for the whole of the Community which will apply to the trans-European conventional rail system;

(13) In view of the extent and complexity of the trans-European conventional rail system, it has proved necessary, for practical reasons, to break this down into subsystems. For each of these subsystems the essential requirements must be specified and the technical specifications determined for the whole of the Community, particularly in respect of constituents and interfaces, in order to meet these essential requirements;

(14) Implementation of the provisions on the interoperability of the trans-European conventional rail system must not create unjustified cost-benefit barriers to the preservation of the existing rail network of each Member State, but must endeavour to retain the objective of interoperability;

(15) Each Member State concerned should be allowed not to apply certain technical specifications for interoperability in special cases, provided that there are procedures to ensure that these derogations are justified. Article 155 of the Treaty requires the Community activities in the field of interoperability to take account of the potential economic viability of projects;

(16) To comply with the appropriate provisions on procurement procedures in the rail sector, and in particular directive 93/38/EEC [1], the contracting entities must include technical specifications in the general documents or in the specifications for each contract. To this end it is necessary to build up a body of European specifications in order to serve as references for these technical specifications;

(17) Within the meaning of Directive 93/98/EEC, a European specification is a common technical specification, a European technical approval or a national standard transposing a European standard. Harmonised European standards are drawn up by a European standardisation body such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) or the European Telecommunications Standards Institute (ETSI), to the order of the Commission and their references published in the *Official Journal of the European Communities*;

(18) 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 Community policy would be in the Community's interest. The European standardisation bodies must therefore continue their cooperation with the international standardisation bodies;

(19) The contracting entities must define the further requirements needed to complete European specifications or other standards. These specifications must not prevent the essential requirements that have been harmonised at Community level and which the trans-European conventional rail system must satisfy, from being met;

(20) The procedures governing the assessment of conformity or of suitability of use of constituents must be based on the use of the modules covered by Council Decision 93/465/EEC [2]. As far as possible and in order to promote industrial development, it is appropriate to expand the procedures involving a system of quality assurance. The concept of constituent covers both tangible objects and intangible objects such as software;

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[1] Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84), as amended by the 1994 Act of Accession and as last amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC.

[2] Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (OJ L 220, 30.8.1993, p. 23).

(21) The suitability for use of the most critical constituents as regards safety, availability or system economy should be assessed;

(22) The contracting entities lay down in their specifications, in particular for the constituents, by reference to the European specifications, the characteristics which must be met, in contractual terms, by the manufacturers;

(23) This being the case, constituent conformity is mainly linked to their area of use in order to ensure and guarantee the interoperability of the system, and not only to their free movement on the Community market;

(24) It is therefore not necessary for a manufacturer to affix the CE marking to constituents that are now subject to the provisions of this Directive. On the basis of the assessment of conformity and/or suitability for use conducted in accordance with the procedures provided for that purpose in the Directive, the manufacturer's declaration of conformity is sufficient;

(25) That does not affect the obligation on manufacturers to affix the CE marking to certain components in order to certify their compliance with other Community provisions relating to them;

(26) The subsystems constituting the trans-European conventional rail system must be subjected to a verification procedure. This verification must enable the authorities responsible for authorising their placing in service to be assured that at the design, construction and placing in service stages the result is in line with the regulations and technical and operational provisions in force. It must also enable manufacturers to be able to count upon equality of treatment whatever the country. It is therefore necessary to lay down a module defining the principles and conditions applying to 'EC' verification of subsystems;

(27) The 'EC' verification procedure is based on technical specifications for interoperability (TSIs). These TSIs are drawn up to the order of the Commission by the joint body representing the infrastructure managers, the railway companies and the industry. The reference to TSIs is required in order to ensure interoperability of the trans-European conventional rail system. These TSIs are subject to the provisions of Article 18 of Directive 93/38/EEC;

(28) 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 must, in particular in the absence of any European specification, coordinate their decisions as closely as possible;

(29) Council Directive 91/440/EEC on the development of Community railways requires a separation of activities, in accounting terms, between transport service operation and those concerning railway infrastructure management. This being the case, the specialised services provided by the railway infrastructure managements designated as notified bodies should be structured in such a way as to meet the criteria which must apply to this type of body. Other specialised bodies may be notified where these meet the same criteria;

(30) The measures needed to implement this Directive are measures of a general nature within the meaning of Article 2 of Council Decision 99/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1];

(31) Interoperability within the trans-European conventional rail system is Community-wide in scale. No individual Member State is in a position to take the action needed in order to achieve this interoperability. It is therefore necessary for this action to be taken at Community level,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

1. In accordance with Articles 154 and 155 of the Treaty, this Directive sets out to establish the conditions to be met to achieve interoperability within the Community territory of the trans-European conventional rail system, as described in Annex I. These conditions concern the design, construction, putting into service, upgrading, renewal, operation and maintenance of the parts of this system put into service after the date of entry into force of this Directive.

2. The resultant technical harmonisation must also make for a single market in the equipment and services needed to construct, renew, upgrade and operate the trans-European conventional rail system.

Article 2

For the purposes of this Directive:

(a) 'trans-European conventional rail system' means the structure, as described in Annex I, composed of lines and fixed installations, of the trans-European transport network, built or upgraded for conventional rail transport and combined rail transport, plus the rolling stock designed to travel on that infrastructure;

[1] OJ L 184, 17.7.1999, p. 23.

(b) 'interoperability' means the ability of the trans-European conventional rail system to allow the safe and uninterrupted movement of trains which accomplish the expected levels of performance for these lines. This ability rests on all the regulatory, technical and operational conditions which must be met in order to satisfy the essential requirements;

(c) 'subsystems' means the subdivision, as shown in Annex II, of the trans-European conventional rail system into structural and functional subsystems for which essential requirements must be laid down;

(d) 'interoperability constituents' means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the trans-European conventional rail system depends directly or indirectly;

(e) 'essential requirements' means all the conditions set out in Annex III which must be met by the trans-European conventional rail system, the subsystems, the interoperability constituents and the interfaces;

(f) 'European specification' means a common technical specification, a European technical approval or a national standard transposing a European standard, as defined in points 8 to 12 of Article 1 of Directive 93/38/EEC;

(g) 'technical specifications for interoperability', hereinafter referred to as 'TSIs' means the specifications by which each subsystem or part subsystem is covered in order to meet the essential requirements and ensure the interoperability of the trans-European conventional rail system;

(h) 'joint representative body' means the body bringing together representatives of the infrastructure managers, railway companies and industry which is responsible for drawing up the TSIs. 'Infrastructure managers' means those referred to in Articles 3 and 7 of Directive 91/440/EEC;

(i) 'notified bodies' means the bodies which are responsible for assessing the conformity or suitability for use of the interoperability constituents or for appraising the 'EC' procedure for verification of the subsystems;

(j) 'basic parameters' means any regulatory, technical or operational condition which is critical to interoperability and requires a decision in accordance with the procedure laid down in Article 21 before any development of draft TSIs by the joint representative body;

(k) 'specific case' means any part of the trans-European conventional rail system which needs special provisions in the TSIs, either temporary or definitive, because of geographical, topographical, urban environment or compatibility with the existing system constraints;

(l) 'upgrading' means any major modification work on a subsystem or part subsystem which requires fresh authorisation for putting into service within the meaning of Article 14;

(m) 'renewal' means any major substitution work on a subsystem or part subsystem which requires fresh authorisation for putting into service within the meaning of Article 14.

Article 3

1. This Directive applies to the provisions concerning, for each subsystem, the interoperability constituents, the interfaces and procedures as well as the conditions of overall compatibility of the trans-European conventional rail system required achieve its interoperability.

2. The provisions of this Directive shall apply without prejudice to any other relevant Community provisions. However, in the case of interoperability constituents and interfaces compliance with the essential requirements of this Directive may require the use of individual European specifications drawn up for that purpose.

Article 4

1. The trans-European conventional rail system, subsystems, interoperability constituents and interfaces must meet the relevant essential requirements.

2. The further technical specifications referred to in Article 18(4) of Directive 93/38/EEC which are necessary to complete European specifications or other standards in use within the Community must not conflict with the essential requirements.

CHAPTER II

Technical specifications for interoperability

Article 5

1. Each of the subsystems shall be covered by a TSI. Where necessary, especially for treating categories of lines, hubs or rolling stock separately, or to solve certain interoperability problems as a matter of priority, a subsystem may be covered by several TSIs. In this case the provisions of this Article also apply to the part of the subsystem concerned.

2. Subsystems must comply with the TSIs; this compliance must be permanently maintained while each subsystem is in use.

3. To the extent necessary in order to achieve interoperability of the trans-European conventional rail system and the single market referred to in Article 1, each TSI shall:

(a) lay down essential requirements for each subsystem concerned and its interfaces vis-à-vis other subsystems;

(b) establish the functional and technical specifications to be met by the subsystem and its interfaces vis-à-vis other subsystems, for each of the categories of line and/or hub provided for in Annex I;

(c) establish possible implementing rules in specific cases;

(d) determine the interoperability constituents and interfaces which must be covered by European specifications, including European standards, which are necessary to achieve interoperability within the trans-European conventional rail system;

(e) state, in each case under consideration, which of the modules defined in Decision 93/465/EEC or, where appropriate, which specific procedures are to be used to assess either the conformity or the suitability for use of interoperability constituents and 'EC' verification of subsystems;

(f) propose, where necessary, an indicative timetable and a strategy for implementing the TSIs, including the technical and/or geographical stages to be completed for achieving interoperability within the trans-European conventional rail system.

4. Each TSI shall be drawn up on the basis of an examination of an existing subsystem and indicate a target subsystem that may be obtained gradually within a reasonable time-scale. Accordingly, the gradual adoption of TSIs and compliance therewith will help gradually to achieve the interoperability of the trans-European conventional rail system while retaining, as far as possible, the compatibility of the existing railway network in each Member State.

Article 6

1. Draft TSIs shall be drawn up to the order of the Commission in accordance with the procedure set out in Article 21(2). TSIs shall be adopted and reviewed by the same procedure. They shall be published by the Commission in the *Official Journal of the European Communities*.

2. The joint representative body shall be designated in accordance with the procedure set out in Article 21(2); it shall comply with the rules laid down in Annex VIII. Where the joint representative body does not comply with these rules or does not have the authority needed to draw up a particular TSI another authorised body shall be designated by the same procedure.

3. The joint representative body or, where appropriate, the authorised body in question shall be responsible for preparing the review and updating of TSIs and making recommendations to the Committee referred to in Article 21 in order to take account of developments in technology or social requirements.

4. Each draft TSI shall be drawn up in two stages.

First of all, the joint representative body shall identify the basic parameters for this TSI. The most viable solutions accompanied by technical and economic justification shall be put forward for each of these parameters and a decision taken in accordance with the procedure set out in Article 21(2).

The joint representative body shall then draw up the draft TSI on the basis of those basic parameters. Where necessary, the joint representative body shall take account of standardisation work already carried out, of working parties already in place and of acknowledged research work.

5. The drafting, adoption and review of TSIs shall take account of the estimated cost of the technical solutions required so as to establish and put into effect the most viable solutions.

To this end, the joint representative body or, where appropriate, the authorised body shall attach to each draft TSI a global assessment of the estimated costs and benefits of the solution put forward. This evaluation shall note the impact anticipated for all the economic operators and agents concerned. Member States shall participate in this assessment by providing the requisite data.

6. The Committee referred to in Article 21 shall be kept regularly informed of the preparatory work on the TSI. During this work the Committee may formulate any useful recommendations concerning the design of the TSIs and the cost-benefit analysis.

7. The date of entry into force of each TSI adopted shall be established in accordance with the procedure provided for in Article 21(2).

Article 7

A Member State may opt not to apply certain TSIs, including in connection with rolling stock, in the following cases and circumstances:

— for any element referred to Article 1(1) at an advanced stage of development when these TSIs are published, or

— for any project concerning the renewal or upgrading of an existing line where the basic parameters of these TSIs are not compatible with those of the existing line and the application of these TSIs would compromise the economic viability of the project and the compatibility of the rail system in the Member State.

In both of these cases the Member State concerned shall serve prior notice of its intended derogation to the Commission and shall forward to it a file setting out the TSIs or the parts of TSIs that it wishes not to apply as well as the corresponding specifications that it does wish to apply. The Commission shall examine whether the measures envisaged by the Member State are justified and shall take a decision in accordance with the procedure in Article 21(2). Where necessary, a recommendation shall be drawn up concerning the specifications to be applied.

CHAPTER III

Interoperability constituents

Article 8

Member States shall take all necessary steps to ensure that interoperability constituents:

— are placed on the market only if they enable interoperability to be achieved within the trans-European conventional rail system while at the same time meeting the essential requirements,

— are used in their area of use as intended and are suitably installed and maintained.

These provisions shall not obstruct the placing on the market of these constituents for other applications.

Article 9

Member States may not, in their territory and on the grounds of this Directive, prohibit, restrict or hinder the placing on the market of interoperability constituents for use in the trans-European conventional rail system where they comply with this Directive. In particular, they may not require checks which have already been carried out as part of the procedure of 'EC' declaration of conformity or suitability for use.

Article 10

1. Member States shall consider as complying with the essential provisions of this Directive applying to them those interoperability constituents which bear the 'EC' declaration of conformity or suitability for use, the components of which are set out in Annex IV.

2. Compliance of an interoperability constituent with the respective essential requirements or the suitability for use shall be established in relation to the conditions laid down by the corresponding TSI, including any relevant European specifications that may exist.

3. The references to European specifications shall be published in the *Official Journal of the European Communities* and mentioned in the respective TSI. When the relevant European specifications are published after adoption of the TSI, they must be taken into account as soon as the TSI are revised.

4. Member States shall publish the references to national standards transposing European standards.

5. As regards the period prior to the publication of a TSI, in the absence of any European specifications and without prejudice to Article 20(5), Member States shall inform the other Member States and the Commission of the standards and technical specifications in use in order to implement the essential requirements. This notification shall be made within 12 months of the date of entry into force of the Directive.

6. Where a European specification is not yet available at the time of adoption of a TSI, the TSI shall refer to the most advanced version available of the draft specification that has to be complied with or shall incorporate all or part of that draft.

Article 11

Where it appears to a Member State or the Commission that European specifications do not meet the essential requirements, partial or total withdrawal of the specifications from the publications containing them, or their amendments, may be decided upon in accordance with the procedure laid down in Article 21(2) after consultation of the Committee set up under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

Article 12

1. Where a Member State finds that an interoperability constituent covered by the 'EC' declaration of conformity or suitability for use and placed on the market is likely, when used as intended, not to meet the essential requirements, it shall take all necessary steps to restrict its area of application, prohibit its use or withdraw it from the market. The Member States shall forthwith inform the Commission of the measures taken and give the reasons for its decision, stating in particular whether failure to conform is due to:

— failure to meet the essential requirements,

— incorrect application of European specifications where application of such specifications is invoked,

— inadequacy of the European specifications.

2. The Commission shall consult the parties concerned as quickly as possible. Where, following that consultation, the Commission establishes that the measure is justified it shall forthwith inform the Member States that has taken the initiative as well as the other Member States thereof. Where, after that consultation, the Commission establishes that the measure is unjustified it shall forthwith inform the Member State that has taken the initiative and the manufacturer or his authorised representative established within the Community thereof. Where the decision referred to in paragraph 1 is justified by the existence of a gap in European specifications, the procedure defined in Article 11 shall apply.

3. Where an interoperability constituent bearing the 'EC' declaration of conformity fails to comply, the competent Member State shall take appropriate measures against whomsoever has drawn up the declaration and shall inform the Commission and the other Member States thereof.

4. The Commission shall ensure that the Member States are kept informed of the progress and results of that procedure.

Article 13

1. In order to establish the 'EC' declaration of conformity or suitability for use of an interoperability constituent, the manufacturer or his authorised representative established in the Community shall apply the provisions provided for by the respective TSIs.

2. Assessment of the conformity or suitability for use of an interoperability constituent shall be appraised by the notified body with which the manufacturer or his authorised representative established in the Community has lodged the application.

3. Where interoperability constituents are the subject of other Community directives covering other aspects, the 'EC' declaration of conformity or suitability for use shall, in such instances, state that the interoperability constituents also meet the requirements of those other directives.

4. Where neither the manufacturer nor his authorised representative established in the Community has met the obligations arising out of paragraphs 1, 2 and 3, those obligations shall be incumbent on any person who places interoperability constituents on the market. The same obligations shall apply to whomsoever assembles interoperability constituents or parts of interoperability constituents having diverse origins or who manufactures interoperability constituents for his own use, for the purposes of this Directive.

5. Without prejudice to the provisions of Article 12:

(a) in each instance where the Member State finds that the 'EC' declaration of conformity has been drawn up improperly, the manufacturer or his authorised representative established in the Community shall be required to restore the interoperability constituent to a state of conformity and to terminate the infringement under the conditions laid down by that Member State;

(b) where non-conformity persists, the Member State shall take all appropriate steps to restrict or prohibit the placing on the market of the interoperability constituent at issue, or to ensure that it is withdrawn from the market in accordance with the procedures provided for in Article 12.

CHAPTER IV

Subsystems

Article 14

1. Each Member State shall authorise the placing in service of those structural subsystems constituting the trans-European conventional rail system which are located in its territory or operated by railway undertakings established there.

To this end, Member States shall take all necessary steps to ensure that these subsystems may be placed in service only if they are designed, constructed and installed in such a way as not to hinder the meeting of the essential requirements concerning them when integrated into the trans-European conventional rail system.

2. Each Member State shall check at the placing in service, and at regular intervals thereafter, that these subsystems are operated and maintained in accordance with the essential requirements concerning them.

Article 15

Without prejudice to the provisions of Article 19, Member States may not, in their territory and on the grounds of this Directive, prohibit, restrict or hinder the construction, placing in service and operating of structural subsystems constituting the trans-European conventional rail system which meet the essential requirements. In particular, they may not require checks which have already been carried out as part of the procedure leading to the 'EC' declaration of verification.

Article 16

1. Member States shall consider as being interoperable and meeting the essential requirements those structural subsystems constituting the trans-European conventional rail system which are covered by the 'EC' declaration of verification.

2. Verification of the interoperability, in accordance with the essential requirements, of a structural subsystem constituting the trans-European conventional rail system shall be established by reference to TSIs where they exist.

3. As regards the period prior to the publication of TSIs, Member States shall send the other Member States and the Commission, for each subsystem, a list of the technical rules in use for implementing the essential requirements. This shall be notified within 12 months of the date of entry into force of this Directive.

Article 17

Where it emerges that the TSIs do not fully meet the essential requirements the Committee referred to in Article 21 may be consulted at the request of a Member State or on the initiative of the Commission.

Article 18

1. In order to establish the 'EC' declaration of verification, the procurement entity or its official representative shall have the 'EC' verification procedure examined by the notified body that it has selected for that purpose.

2. The activities of the notified body responsible for the 'EC' verification of a subsystem shall begin at the design stage and cover the entire manufacturing period through to the type-approval stage before a subsystem is placed in service. It shall also cover verification of the compatibility of the subsystem in question with the system into which it is incorporated.

3. The notified body shall be responsible for compiling the technical file that has to accompany the 'EC' declaration of verification. This technical file must contain all of the necessary documents relating to the characteristics of the subsystem and, where appropriate, all the documents certifying conformity of the interoperability constituents. It must also contain all of the elements relating to the conditions and limits of use and to the instructions concerning servicing, constant or routine monitoring, adjustment and maintenance.

Article 19

1. Where a Member State finds that a structural subsystem covered by the 'EC' declaration of verification accompanied by the technical file does not fully comply with this Directive and in particular does not meet the essential requirements, it may request that additional checks be carried out.

2. The Member State making the request shall forthwith inform the Commission of any additional checks requested and set out the substantiating reasons therefor. The Commission shall without delay initiate the procedure provided for in Article 21(2).

CHAPTER V

Notified bodies

Article 20

1. Member States shall notify the Commission and the other Member States of the bodies responsible for carrying out the procedure for the assessment of conformity or suitability for use referred to in Article 13 and the verification procedure referred to in Article 18, indicating each body's area of responsibility.

The Commission shall assign identification numbers. It shall publish in the *Official Journal of the European Communities* the list of bodies, their identification numbers and areas of competence, and shall keep the list updated.

2. Member States shall apply the criteria provided for in Annex VII for the assessment of the bodies to be notified. Bodies meeting the assessment criteria provided for in the relevant European standards shall be deemed to meet the said criteria.

3. A Member State shall withdraw approval from a body which no longer meets the criteria referred to in Annex VII. It shall forthwith inform the Commission and the other Member States thereof.

4. Should a Member State or the Commission consider that a body notified by another Member State does not meet the relevant criteria, the matter shall be referred to the Committee provided for in Article 21, which shall deliver its opinion within three months. In the light of the opinion of the Committee, the Commission shall inform the Member State in question of any changes that are necessary for the notified body to retain the status conferred upon it.

5. Where appropriate, coordination of the notified bodies shall be implemented in accordance with Article 1(4).

CHAPTER VI

Committee and work programme

Article 21

1. The Commission shall be assisted by the Committee established by Article 21 of Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and composed of the representatives of the Member States and chaired by the representative of the Commission (hereinafter referred to as 'Committee').

2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Council Decision 99/458/EC of 28 June 1999 shall apply, pursuant to the provisions of Article 8 thereof.

3. The periods provided for in Article 5(6) of Decision 99/468/EC shall be set at two months.

4. Once this Directive enters into force, the Committee referred to in Directive 96/48/EC may discuss any matter relating to the interoperability of the trans-European conventional rail system. Initiatives may also be taken to ensure interoperability between the trans-European rail system and the rail system of third countries.

5. Should it prove necessary, the Committee may set up working parties to aid it in carrying out its tasks, in particular with a view to coordinating the notified bodies.

Article 22

1. The Committee shall draw up a work programme which takes account of the order of priority in drawing up the TSIs, on the one hand, and the respective priorities of its own tasks, on the other. This work programme shall be adopted by the Commission in accordance with the procedure set out in Article 21(2).

2. After consultation of the joint representative body the order of priority for the development of TSIs shall be adopted, for example, according to subsystems or parts of subsystems, categories of lines or rolling stock, network hubs. The order of priority shall be established by comparing the advantages that each TSI is likely to generate in respect of estimated costs.

The following aspects shall be considered as priorities in the first work programme: control/command and signalling; telematic applications for freight services; traffic operation and management (including staff qualifications); noise; and rolling stock.

3. The first work programme shall consist of the following stages:

(a) designation of the joint representative body;

(b) development on the basis of a draft established by the joint representative body of a representative architecture of the conventional rail system, based on the list of subsystems (Annex 2), to guarantee consistency between TSIs. This architecture must include in particular the different constituents of this system and their interfaces and act as a reference framework for defining the areas of use of each TSI;

(c) adoption of a model structure for developing TSIs;

(d) adoption of a method of cost-benefit analysis of the solutions set out in the TSIs;

(e) adoption of the mandates needed to draw up the TSIs;

(f) adoption of the basic parameters for each TSI;

(g) approval of draft standardisation programmes;

(h) management of the transition period between the date of entry into force of this Directive and publication of the TSIs.

CHAPTER VII

Final provisions

Article 23

Any decision taken pursuant to this Directive concerning the assessment of conformity or suitability for use of interoperability constituents, the checking of subsystems constituting the trans-European conventional rail system and any decision taken pursuant to Articles 11, 12, 17 and 19 shall set out in detail the reasons on which it is based. It shall be notified as soon as possible to the party concerned, together with an indication of the remedies available under the laws in force in the Member States concerned and of the time limits allowed for the exercise of such remedies.

Article 24

1. Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive no later than 18 months after entry into force of this Directive. They shall forthwith inform the Commission thereof. The fact that TSIs have not been published shall not under any circumstances justify failure to meet the above deadline.

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

Article 25

Every two years the Commission shall report to the European Parliament and the Council on the progress made towards achieving interoperability of the trans-European conventional rail system.

To this end, the joint representative body shall develop and regularly update a tool capable of providing, at the request of a Member State or the Commission, a chart of the trans-European conventional rail system showing, for each component of the system (lines and hubs, rolling stock series), the principal characteristics (e.g. basic parameters) and their compliance with the characteristics laid down by the TSIs.

Article 26

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

Article 27

This Directive is addressed to the Member States.

ANNEX I

THE TRANS-EUROPEAN CONVENTIONAL RAIL SYSTEM

Infrastructure

The infrastructure of the trans-European conventional rail system shall be that on the lines of the trans-European transport network identified in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network or listed in any update to the same Decision as a result of the revision provided for in Article 21 of the guidelines.

For the purposes of this Directive, this network may be subdivided into the following categories:

— lines intended for long-distance passenger services;

— lines intended for mixed services (passengers and freight);

— lines specially designed or upgraded for freight services (freight corridor);

— lines intended for regional services;

— passenger hubs;

— freight hubs;

— lines connecting the abovementioned components.

Rolling stock

The rolling stock shall comprise all the stock likely to travel on all or part of the trans-European conventional rail network, including:

— self-propelling thermal or electric trains;

— thermal or electric traction units;

— passenger carriages;

— freight wagons.

Compatibility of the trans-european conventional rail system

The quality of rail services in Europe depends, *inter alia*, on excellent compatibility between the characteristics of the infrastructure (in the broadest sense, i.e. the fixed parts of all the subsystems concerned) and those of the rolling stock (including the onboard components of all the subsystems concerned). Performance levels, safety, quality of service and cost depend upon that compatibility.

ANNEX II

SUBSYSTEMS

1. **List of subsystems**

For the purposes of this Directive, the system constituting the trans-European conventional rail system may be broken down into subsystems, as follows:

(a) basically structural areas:

— infrastructure;

— energy;

— control and command and signalling;

— traffic operation and management;

— telematics applications for passenger and freight services;

— rolling stock;

(b) basically operational areas:

— maintenance.

2. **Description of the subsystems**

For each subsystem or part of a subsystem, the list of constituents and aspects relating to interoperability is proposed by the joint representative body at the time of drawing up the relevant draft TSI.

Without prejudging the choice of constituents and aspects relating to interoperability or the order in which they will be made subject to TSIs, the subsystems include, in particular:

2.1. *Infrastructure:*

The track, points, engineering structures (bridges, tunnels, etc.), associated station infrastructure (platforms, means of access, etc.), safety and protective equipment.

2.2. *Energy:*

The electrification system, overhead lines and current collectors.

2.3. *Control and command and signalling:*

All the equipment necessary to ensure safety and to command and control movements of trains authorised to travel on the network.

2.4. *Traffic operation and management:*

The procedures and related equipement enabling a coherent operation of the different structural sub-systems, both during normal and degraded operation, incuding in particular train driving, traffic planning and management.

2.5. *Telematics applications:*

This sub-system comprises two elements:

— applications for passenger services, including systems providing passengers with information before and during the journey, reservation and payment systems, luggage management and management of connections between trains and with other modes of transport;

— applications for freight services, including information systems (real-time monitoring of freight and trains), marshalling and allocation systems, reservation, payment and invoicing systems, management of connections with other modes of transport and production of electronic accompanying documents.

2.6. *Rolling stock:*

Structure, command and control system for all train equipment, traction and energy conversion units, braking, coupling and running gear (bogies, axles, etc.) and suspension, doors, man/machine interfaces (driver, on-board staff and passengers), passive or active safety devices and requisites for the health of passengers and on-board staff.

2.7. *Maintenance:*

The procedures, associated equipment, logistics centres for maintenance work and reserves allowing the mandatory corrective and preventive maintenance to ensure the interoperability of the rail system and guarantee the performance required.

ANNEX III

ESSENTIAL REQUIREMENTS

1. **General requirements**

1.1. *Safety*

1.1.1. The design, construction or assembly, maintenance and monitoring of safety-critical components and, more particularly, of the components involved in train movements must be such as to guarantee safety at the level corresponding to the aims laid down for the network, including those for specific degraded situations.

1.1.2. The parameters involved in the wheel/rail contact must meet the stability requirements needed in order to guarantee safe movement at the maximum authorised speed.

1.1.3. The components used must withstand any normal or exceptional stresses that have been specified during their period in service. The safety repercussions of any accidental failures must be limited by appropriate means.

1.1.4. The design of fixed installations and rolling stock and the choice of the materials used must be aimed at limiting the generation, propagation and effects of fire and smoke in the event of a fire.

1.1.5. Any devices intended to be handled by users must be so designed as not to impair their safety if used foreseeably in a manner not in accordance with the posted instructions.

1.2. *Reliability and availability*

The monitoring and maintenance of fixed or movable components that are involved in train movements must be organised, carried out and quantified in such a manner as to maintain their operation under the intended conditions.

1.3. *Health*

1.3.1. Materials likely, by virtue of the way they are used, to constitute a health hazard to those having access to them must not be used in trains and railway infrastructure.

1.3.2. Those materials must be selected, deployed and used in such a way as to restrict the emission of harmful and dangerous fumes or gases, particularly in the event of fire.

1.4. *Environmental protection*

1.4.1. The environmental impact of establishment and operation of the trans-European conventional rail system must be assessed and taken into account at the design stage of the system in accordance with the Community provisions in force.

1.4.2. The materials used in the trains and infrastructure must prevent the emission of fumes or gases which are harmful and dangerous to the environment, particularly in the event of fire.

1.4.3. The rolling stock and energy-supply systems must be designed and manufactured in such a way as to be electromagnetically compatible with the installations, equipment and public or private networks with which they might interfere.

1.4.4. Operation of the trans-European conventional rail system must respect existing regulations on noise pollution.

1.4.5. Operation of the trans-European conventional rail system must not give rise to an inadmissable level of ground vibrations for the activies and areas close to the infrastructure and in a normal state of maintenance.

1.5. *Technical compatibility*

The technical characteristics of the infrastructure and fixed installations must be compatible with each other and with those of the trains to be used on the trans-European conventional rail system.

If compliance with these characteristics proves difficult on certain sections of the network, temporary solutions, which ensure compatibility in the future, may be implemented.

2. **Requirements specific to each subsystem**

2.1. *Infrastructure*

2.1.1. Safety

Appropriate steps must be taken to prevent access to or undesirable intrusions into installations.

Steps must be taken to limit the dangers to which persons are exposed, particularly in stations through which trains pass.

Infrastructure to which the public has access must be designed and made in such a way as to limit any human safety hazards (stability, fire, access, evacuation, platforms, etc.).

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

2.2. *Energy*

2.2.1. Safety

Operation of the energy-supply systems must not impair the safety either of trains or of persons (users, operating staff, trackside dwellers and third parties).

2.2.2. Environmental protection

The functioning of the energy-supply systems must not interfere with the environment beyond the specified limits.

2.2.3. Technical compatibility

The electricity/thermal energy supply systems used must:

— enable trains to achieve the specified performance levels;

— in the case of electricity, be compatible with the collection devices fitted to the trains.

2.3. *Control and command and signalling*

2.3.1. Safety

The control and command and signalling installations and procedures used must enable trains to travel with a level of safety which corresponds to the objectives set for the network.

2.3.2. Technical compatibility

All new infrastructure and all new rolling stock manufactured or developed after adoption of compatible control and command and signalling systems must be tailored to use of those systems.

The control and command and signalling equipment installed in the train drivers' cabs must permit normal operation, under the specified conditions, throughout the trans-European conventional rail system.

2.4. *Rolling stock*

2.4.1. Safety

The structure of the rolling stock and of the links between vehicles must be designed in such a way as to protect the passenger and driving compartments in the event of collision or derailment.

The electrical equipment must not impair the safety and functioning of the control and command and signalling installations.

The braking techniques and the stresses exerted must be compatible with the design of the track, engineering structures and signalling systems.

Steps must be taken to prevent access to electrically-live constituents in order not to endanger the safety of persons.

In the event of danger, devices must enable passengers to inform the driver and accompanying staff to contact him.

The access doors must incorporate an opening and closing system which guarantees passenger safety.

Emergency exits must be provided and indicated.

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

An emergency lighting system of sufficient intensity and duration is an absolute requirement on board trains.

Trains must be equipped with a public address system which provides a means of communication to the public from on-board staff and ground control.

2.4.2. Reliability and availability

The design of the vital equipment, of the running, traction and braking equipment and of the control and command system must be such as to enable the train to continue its mission, in a specific degraded situation, without adverse consequences for the equipment remaining in service.

2.4.3. Technical compatibility

The electrical equipment must be compatible with the operation of the control and command and signalling installations.

In the case of electric traction, the characteristics of the current-collection devices must be such as to enable trains to travel under the energy-supply systems for the trans-European conventional rail system.

The characteristics of the rolling stock must be such as to allow it to travel on any line on which it is expected to operate.

2.5. *Maintenance*

2.5.1. Health

The technical installations and the procedures used in the maintenance centres must not constitute a danger to human health.

2.5.2. Environmental protection

The technical installations and the procedures used in the maintenance centres must not exceed the permissible levels of nuisance with regard to the surrounding environment.

2.5.3. Technical compatibility

The maintenance installations for conventional rolling stock must be such as to enable safety, health and comfort operations to be carried out on all stock for which they have been designed.

2.6. *Operation and traffic management*

2.6.1. Safety

Alignment of the network operating rules and the qualifications of drivers and on-board staff and of the staff in the control centres must be such as to ensure safe operation.

The maintenance operations and intervals, the training and qualifications of the maintenance and control centre staff and the quality assurance system set up by the operators concerned in the control and maintenance centres must be such as to ensure a high level of safety.

2.6.2. Reliability and availability

The maintenance operations and periods, the training and qualifications of the maintenance and control centre staff and the quality assurance system set up by the operators concerned in the control and maintenance centres must be such as to ensure a high level of system reliability and availability.

2.6.3. Technical compatibility

Alignment of the network operating rules and the qualifications of drivers, on-board staff and traffic managers must be such as to ensure operating efficiency on the trans-European conventional rail system.

2.7. *Telematics applications for freight and passenger services*

2.7.1. Technical compatibility

The essential requirements for telematics applications guarantee a minimum quality of service for passengers and carriers of goods, particularly in terms of technical compatibility.

Steps must be taken to ensure that the data bases, software and data communication protocols are developed in a manner allowing maximum data interchange between different applications and operators, as well as a full access to the information for users.

2.7.2. Reliability and Availability

The methods of use, management, updating and maintenance of these data bases, software and data communication protocols must guarantee the efficiency of these systems and the quality of the service.

2.7.3. Health

The interfaces between these systems and users must comply with the minimum rules on ergonomics and health protection.

ANNEX IV

CONFORMITY AND SUITABILITY FOR USE OF INTEROPERABILITY CONSTITUENTS

1. **Interoperability constituents**

The EC declaration applies to the interoperability constituents involved in the interoperability of the trans-European conventional rail system, as referred to in Article 3. These interoperability constituents may be:

1.1. *Multiple-use constituents*

These are constituents that are not specific to the railway system and which may be used as such in other areas.

1.2. *Multiple-use constituents having specific characteristics*

These are constituents which are not, as such, specific to the railway system, but which must display specific performance levels when used for railway purposes.

1.3. *Specific constituents*

These are constituents that are specific to railway applications.

2. **Scope**

The EC declaration covers:

— either the assessment by a notified body or bodies of the intrinsic conformity of an interoperability constituent, considered in isolation, to the technical specifications to be met;

— or the assessment/judgment by a notified body or bodies of the suitability for use of an interoperability constituent, considered within its railway environment and, in particular in cases where the interfaces are involved, in relation to the technical specifications, particularly those of a functional nature, which are to be checked.

The assessment procedures implemented by the notified bodies at the design and production stages will draw upon the modules defined in Decision 93/465/EEC, in accordance with the conditions referred to in the TSIs.

3. **Contents of the EC declaration**

The EC declaration of conformity or of suitability for use and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the instructions and must contain the following:

— the Directive references;

— the name and address of the manufacturer or his authorised representative established within the Community (give trade name and full address and, in the case of the authorised representative, also give the trade name of the manufacturer or constructor);

— description of interoperability constituent (make, type, etc.);

— description of the procedure followed in order to declare conformity or suitability for use (Article 13);

— all the relevant descriptions met by the interoperability constituent and, in particular, its conditions of use;

— name and address of the notified body or bodies involved in the procedure followed in respect of conformity or suitability for use and date of examination certificate together, where appropriate, with the duration and conditions of validity of the certificate;

— where appropriate, reference to the European specifications;

— identification of signatory empowered to enter into commitments on behalf of the manufacturer or of the manufacturer's authorised representative established within the Community.

ANNEX V

DECLARATION OF VERIFICATION OF SUBSYSTEMS

The EC declaration of verification and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the technical file and must contain the following:

— the Directive references;

— name and address of the contracting entity or its authorised representative established within the Community (give trade name and full address and, in the case of the authorised representative, also give the trade name of the contracting entity);

— a brief description of the subsystem;

— name and address of the notified body which conducted the EC verification referred to in Article 18;

— the references of the documents contained in the technical file;

— all the relevant temporary or definitive provisions to be complied with by the subsystems and in particular, where appropriate, any operating restrictions or conditions;

— if temporary: duration of validity of the EC declaration;

— identity of signatory.

ANNEX VI

VERIFICATION PROCEDURE FOR SUBSYSTEMS

1. **Introduction**

EC verification is the procedure whereby a notified body checks and certifies, at the request of a contracting entity or of its authorised representative established within the Community, that a subsystem:

— complies with the Directive,

— complies with the other regulations deriving from the Treaty,

and may be put into operation.

2. **Stages**

The subsystem is checked at each of the following stages:

— overall design;

— construction of subsystem, including, in particular, civil-engineering activities, constituent assembly, overall adjustment;

— final testing of the subsystem.

3. **Certificate**

The notified body responsible for EC verification draws up the certificate of conformity intended for the contracting entity or its authorised representative established within the Community, which in turn draws up the EC declaration of verification intended for the supervisory authority in the Member State in which the subsystem is located and/or operates.

4. **Technical file**

The technical file accompanying the declaration of verification must be made up as follows:

— for infrastructure: engineering-structure plans, approval records for excavations and reinforcement, testing and inspection reports on concrete;

— for the other subsystems: general and detailed drawings in line with execution, electrical and hydraulic diagrams, control-circuit diagrams, description of data-processing and automatic systems, operating and maintenance manuals, etc.;

— list of interoperability constituents, as referred to in Article 3, incorporated into the subsystem;

— copies of the EC declarations of conformity or suitability for use with which the abovementioned constituents must be provided in accordance with Article 13 of the Directive accompanied, where appropriate, by the corresponding calculation notes and a copy of the records of the tests and examinations carried out by the notified bodies on the basis of the common technical specifications;

— certificate from the notified body responsible for EC verification, accompanied by corresponding calculation notes and countersigned by itself, stating that the project complies with this Directive and mentioning any reservations recorded during performance of the activities and not withdrawn; the certificate should also be accompanied by the inspection and audit reports drawn up by the same body in connection with its task, as specified in points 5.3 and 5.4.

5. **Monitoring**

5.1. The aim of EC monitoring is to ensure that the obligations deriving from the technical file have been met during production of the subsystem.

5.2. The notified body responsible for checking production must have permanent access to building sites, production workshops, storage areas and, where appropriate, prefabrication or testing facilities and, more generally, to all premises which it considers necessary for its task. The contracting entity or its authorised representative within the Community must send it or have sent to it all the documents needed for that purpose and, in particular, the implementation plans and technical documentation concerning the subsystem.

5.3. The notified body responsible for checking implementation must periodically carry out audits in order to confirm compliance with the Directive. It must provide those responsible for implementation with an audit report. It may require to be present at certain stages of the building operations.

5.4. In addition, the notified body may pay unexpected visits to the worksite or to the production workshops. At the time of such visits the notified body may conduct complete or partial audits. It must provide those responsible for implementation with an inspection report and, if appropriate, an audit report.

6. **Submission**

The complete file referred to in paragraph 4 must be lodged with the contracting entity or its authorised agent established within the Community in support of the certificate of conformity issued by the notified body responsible for verification of the subsystem in working order. The file must be attached to the EC declaration of verification which the contracting entity sends to the supervisory authority in the Member State concerned.

A copy of the file must be kept by the contracting entity throughout the service life of the subsystem. It must be sent to any other Member States which so request.

7. **Publication**

Each notified body must periodically publish relevant information concerning:

— requests for EC verification received;

— certificates of conformity issued;

— certificates of conformity refused.

8. **Language**

The files and correspondence relating to the EC verification procedures must be written in an official language of the Member State in which the contracting entity or its authorised representative within the Community is established or in a language accepted by the entity.

ANNEX VII

MINIMUM CRITERIA WHICH MUST BE TAKEN INTO ACCOUNT BY THE MEMBER STATES WHEN NOTIFYING BODIES

1. The body, its Director and the staff responsible for carrying out the checks may not become involved, either directly or as authorised representatives, in the design, manufacture, construction, marketing or maintenance of the interoperability constituents or subsystems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor and that body.

2. The body and the staff responsible for the checks must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgment or the results of their inspection, in particular from persons or groups of persons affected by the results of the checks.

3. The body must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the checks. It should also have access to the equipment needed for exceptional checks.

4. The staff responsible for the checks must possess:

   — proper technical and vocational training;

   — a satisfactory knowledge of the requirements relating to the checks that they carry out and sufficient practice in those checks;

   — the ability to draw up the certificates, records and reports which constitute the formal record of the inspections conducted.

5. The independence of the staff responsible for the checks must be guaranteed. No official must be remunerated either on the basis of the number of checks performed or of the results of those checks.

6. The body must take out civil liability insurance unless that liability is covered by the State under national law or unless the checks are carried out directly by that Member State.

7. The staff of the body are bound by professional secrecy with regard to everything they learn in the performance of their duties (with the exception of the competent administrative authorities in the State where they perform those activities) in pursuance of this Directive or any provision of national law implementing the Directive.

ANNEX VIII

GENERAL RULES TO BE OBSERVED BY THE JOINT REPRESENTATIVE BODY (JRB)

1. In line with the general Community standardisation procedures, the JRB must work openly and transparently, based on consensus and independent of any particular interests. To this end, all members of the three categories represented on the JRB - infrastructure managers, railway companies and industry - must have the opportunity to express their opinion during the process of drafting TSIs, in accordance with the JRB's rules of procedure and before finalisation of the draft TSIs by the JRB.

2. If the JRB lacks the expertise required in order to draft a particular TSI, it must inform the Commission immediately.

3. The JRB must set up the working parties necessary for the purposes of drafting TSIs; these working parties must have a flexible, efficient structure. To this end, the number of experts must be limited. Balanced representation must be ensured between infrastructure managers and railway companies on the one hand and industry on the other; an appropriate balance must be struck between different nationalities. Experts from non-Community countries may sit in on working parties as observers.

4. Any difficulties which emerge in relation with the Directive and which cannot be resolved by the JRB's working parties must be reported to the Commission without delay.

5. All the working papers necessary in order to monitor the JRB's work must be placed at the Commission's disposal.

6. The JRB must take all measures necessary to safeguard the confidentiality of any critical information which comes to its knowledge in the course of its activities.

7. The JRB must take all measures necessary to inform all its members and all experts participating in the working parties of the results of the work of the committee referred to in Article 21 and of the recommendations made by the committee and by the Commission.