



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.9.2006
COM(2006) 515 final

2004/0048 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position adopted by the Council with a view to the adoption of a directive of the
European Parliament and of the Council on the certification of train drivers operating
locomotives and trains on the Community's rail network**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position adopted by the Council with a view to the adoption of a directive of the
European Parliament and of the Council on the certification of train drivers operating
locomotives and trains on the Community's rail network**

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council(COM(2004)0142 – C6-0002/2004 – 2004/0048(COD)) 4 March 2004

Date of the opinion of the European Economic and Social Committee: 9 February 2005

Date of the opinion of the European Parliament, first reading: 28 September 2005

Date of adoption of the common position: 14 September 2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

On 3 March 2004, the Commission proposed a series of measures (the “third railway package”), which the Council began examining in April 2004 and Parliament began examining in October 2004. The package comprises four legislative proposals, including a proposal for a directive on the certification of train crews operating locomotives and trains on the Community's rail network. Drawn up in consultation with the industry and the social partners, this text provides for a mechanism to define more clearly powers and responsibilities as regards the training of train drivers and crews who perform safety-related tasks, and the assessment and recognition of their qualifications. Train drivers will have to hold a licence certifying their general skills; this licence will be their property and will be valid throughout the Community. The licence will have to be supplemented by a certificate issued by a railway undertaking confirming that specific training has been followed for the line concerned, the rolling stock used and the operational and safety procedures which are specific to that undertaking.

3. COMMENTS ON THE COMMON POSITION

The Council unanimously adopted general amendments to the Commission's proposal which are acceptable since they make it possible to achieve the objectives set.

Of the 45 amendments adopted by the European Parliament on first reading, the Commission was able to accept 25 as such or with drafting amendments (1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,

14, 18, 19, 27, 28, 29, 30, 31, 33, 34, 36, 42, 44 and 46). It was able to accept 11 in principle (5, 17, 21, 22, 23, 35, 37, 40, 41, 43 and 47) and one in part (2). The Commission considered that 8 amendments were not acceptable (15, 24, 25, 26, 32, 38, 39 and 45).

The Council found that a significant number of objectives pursued by the EP were already taken into account in its common position, and took over certain amendments in their entirety (27, 36 and 44).

4. DETAILED COMMISSION COMMENTS

4.1. Amendments accepted by the Commission, and incorporated in part in the common position

The references below are to the recitals and articles of the common position.

- Amendment 1: the proposed clarifications can be found in other parts of the preamble.
- Amendment 6: this amendment is taken over in a different wording in the new recital (20) of the common position.
- Amendment 8: this amendment is taken over in part in the new definition of “train driver” as set out in Article 3(b) of the common position.
- Amendment 10: this amendment proposes a definition of “training centre” which has been partially taken over in the common position (Article 3(k)).
- Amendment 12: the Commission can agree to this simplification of categories, whereby driving is authorised on the basis of the harmonised complementary certificate, since the common position provides, in Article 4 (3) for the definition of codes which will make it possible to identify more precisely the type of service authorised.
- Amendment 13: the clarification requested by the EP is fully incorporated in the new wording of Article 11(3).
- Amendments 17, 46 and 47 these amendments concern Article 16 which specifies the periodic checks which must be undergone so that drivers can keep their licences and certificates. Article 16 of the Council’s common position has been recast in order to achieve a fair balance between the provisions to be included in the body of the text and those to be included in the annexes. Minimum frequencies are laid down in the annexes for all types of checks; they may be altered, where necessary, by means of the Committee procedure, on the basis of experience. The principle of continuous training has been included in Article 23(8) of the common position.
- Amendment 19: this amendment concerns Article 17 and is incorporated virtually in its entirety in the common position.

- Amendments 21 and 22: the proposals concerning the reformulation of Article 18 are acceptable as far as the principles are concerned. They are reflected to some extent in the common position, in which a better balance between monitoring carried out by the employer (Article 18) and controls by the competent authority (Article 28) has been established.
- Amendment 23: the proposals concerning the reformulation of Article 19 are acceptable as far as the principles are concerned. However, an exhaustive list of the tasks of the competent authority has proved necessary, and the text of the common position meets this objective.
- Amendment 28: this amendment concerns the delegation of the tasks of the competent authority. This aspect has been clarified in the new wording of Article 19.
- Amendment 29: this amendment concerns the publication of the list of accredited persons. This aspect has been clarified in the new wording of Article 20 in the Council's common position.
- Amendments 30 and 33: these amendments concern the recognition of trainers and examiners by the competent authority. They are incorporated almost entirely in Articles 20, 23 (training) and 24 (examinations), as amended in the common position.
- Amendment 41: the aim of this amendment, which is to provide for a target date for the complete migration of existing licences is achieved in the new paragraph 2(c) of Article 36 as proposed in the common position.
- Amendment 42: this amendment is taken over almost entirely in Article 33 of the common position. The text of the amendment contains an explanation which should be in the preamble rather than the operative part.

4.2. Amendments accepted by the Commission, but not incorporated in the common position

- Amendment 2: the Commission could only support this amendment in part: the text concerning the agreement on "working conditions of mobile staff engaged in cross-border services" is unacceptable since the Commission proposal does not concern working time and rest periods.
- Amendments 3 and 4: these amendments specify the objectives to be achieved and were acceptable to the Commission.
- Amendments 5 and 37: with regard to the role of the social partners, the Commission had indicated that it was necessary to differentiate between the TSIs (technical specifications for interoperability), which are technical requirements formulated by the European Railway Agency in accordance with the directives in force concerning interoperability and the Regulation establishing the Agency, and annexes to a directive which are subject to the co-decision procedure or, by delegation of responsibilities, to the Committee procedure. However, it was able to accept that social partners should be properly consulted concerning

requirements with an impact on working conditions and on the health and safety of workers.

- Amendments 7, 9, 11, 34 and 35: while supporting the Commission's approach, these amendments propose a clearer definition of train crews and the procedures to be applied to them. They are therefore acceptable, as to the principle, but it should be noted that adding a new annex by Committee procedure, as proposed by the EP, raises legal problems. It should be noted that not only did the Council not take over these amendments, it also restricted the application of the directive to drivers.
- Amendment 14: this is the logical consequence of simplifying the categories. However, this provision, which allows a Member State to require two years' professional experience in category A before moving on to category B, has been deleted since the licence is issued by the railway undertaking under its own responsibility and to obtain the licence the applicant driver must undergo training the aims of which are specified in an annex to the directive and pass a number of examinations conducted by recognised or accredited examiners. All the conditions are therefore met to ensure that licences are issued on the basis of a full knowledge of the facts, while allowing undertakings sufficient flexibility to organise the training and certification of their drivers as efficiently as possible.
- Amendment 18: the Commission can accept this amendment, which provides that, when a driver ceases to be employed by a railway undertaking or infrastructure manager, the competent authority must be informed without delay.
- Amendment 31: this is compatible with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Amendment 40, concerning Article 34 (1) to (4): In part of this amendment, the EP proposes to refer to trains which have right of access deriving from Directive 91/440. While simplifying the timetable for applying the directive, this proposal would have the drawback of making its field of application less clear. Moreover, the proposed dates are not realistic given the timetable for the adoption of the third railway package. The new text of Article 34 makes it possible to take account of the various requirements: the need to set up registers before starting to certify drivers, the need to take account of existing drivers, and the need to take account of drivers undergoing training when the directive enters into force, etc.
- Amendment 43: the proposed amendment concerning the verification of physical fitness, as set out in Annex III 3.2, subparagraph 1, can be accepted as to the principle.

4.3. Amendments rejected by the Commission and not incorporated in the common position

- Amendment 15: the term "period checks" is preferred in order to clearly indicate that, to keep the licence and complementary certificate, drivers must regularly undergo certain tests on safety grounds.

- Amendments 24 and 25: The terms “occupational physician” and “transport psychologist” are interpreted differently in different Member States. The Commission is therefore unable to take up these amendments.
- Amendment 26: the purpose of this amendment is unclear. Verification of general professional skills can be carried out by an institute or by an examiner provided that they are accredited by the competent authority. The text of the common position is more precisely worded than the original proposal (see Articles 20 and 23) and may be to the EP’s satisfaction on this point.
- Amendment 32: Despite the fact that in principle the proposal appears to protect the investment made by an employer for training a driver, there are several problems here. First of all, there are no equivalent clauses in other modes of transport, in particular in the aviation sector in which training is also very expensive. A clause of this kind concerns labour law and hence does not seem particularly relevant in this directive. Lastly, the reasons why a driver leaves an employer may be many and varied. If a driver leaves as a result of the employer’s fault, why should another undertaking be required to pay for the training?
- Amendment 39: once the legislation has been adopted, it will be necessary to allow the Member States sufficient time to transpose the directive and amend their own national legislation accordingly. A period of less than two years is considered to be unrealistic in this connection.
- Amendment 45: where safety is concerned, it should be stressed that, to obtain a harmonised complementary certificate in another Member State, a driver will have to undergo suitable training to acquire knowledge of the infrastructure, operating rules and language, and then be tested by an examiner accredited or recognised by the safety authority of the country in which the driver wishes to drive. This amendment would unnecessarily increase the economic impact of training borne by railway undertakings.

4.4. Amendments rejected by the Commission but incorporated in the common position

- Amendment 38: this amendment concerns the report to be drawn up by the Agency on the application of the directive. The text of the common position takes account of this amendment and is more complete.
- Amendment 40, concerning Article 35 (5): part of this amendment introduces the possibility of a temporary derogation for “domestic” drivers. The Commission cannot accept such derogations on the scale of entire countries for several reasons. Firstly, in social terms, this would be tantamount to creating two “classes” of drivers, whereas in practice these categories are not watertight. This would generate career and wage differences that it would be difficult to justify. Secondly, in safety terms, there would be two categories of drivers on the same route: those trained and certified in accordance with this directive, and those trained and certified in accordance with and *ad hoc* national system. They might not have the same reactions in the same situations. Thirdly, in economic terms, the Member States would have to maintain two different sets of legislation and two accreditation/

recognition systems for trainers/examiners, the undertakings would have to maintain two different training systems, etc. This duplication would be inefficient and generate costs.

5. CONCLUSION

The Commission proposal envisaged covering all train crew members with safety-critical tasks and did not provide for the possibility of derogation for a Member State. However, the Commission recognises that the Council common position does not alter the main objective or the spirit of its proposal.