



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2003
COM(2003) 719 final

2002/0022 (COD)
2002/0023 (COD)
2002/0024 (COD)
2002/0025 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty
on the European Parliament's amendments
to the Council's common position regarding the**

SECOND RAILWAY PACKAGE

with a view to the adoption

**of a directive of the European Parliament and of the Council on safety on the
Community's railways and amending Council Directive 95/18/EC on the licensing of
railway undertakings and Directive 2001/14/EC on the allocation of railway
infrastructure capacity and the levying of charges for the use of railway infrastructure
and safety certification**

**of a directive of the European Parliament and of the Council amending Council
Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the
trans-European rail system**

**of a regulation of the European Parliament and of the Council establishing a European
Railway Agency**

**of a directive of the European Parliament and of the Council amending Council
Directive 91/440/EEC on the development of the Community's railways**

**AMENDING THE PROPOSALS OF THE COMMISSION
pursuant to Article 250(2) of the EC Treaty**

2002/0022 (COD)
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2002/0025 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty
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SECOND RAILWAY PACKAGE

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading.

The Commission sets out its opinion below on the amendments proposed by Parliament.

1. BACKGROUND

Date of transmission of the proposal to Parliament and the Council:
[documents

COM(2002) 21 final – 2002/0022 (COD)

COM(2002) 22 final – 2002/0023 (COD)

COM(2002) 23 final – 2002/0024 (COD)

COM(2002) 25 final – 2002/0025 COD)] : 24.1.2002

Date of the opinion of the European Economic and Social Committee: 19.9.2002

Date of the opinion of the European Parliament at first reading: 14.1.2003

Date of transmission of the amended proposal: Not applicable

Date of adoption of the common position: 26.6.2003

On 23 October 2003, Parliament adopted at second reading a resolution containing the following amendments to the common position for the individual texts:

- 28 amendments to the proposal for a directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;

- 4 amendments to the proposal for a directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system;
- 32 amendments to the proposal for a regulation of the European Parliament and of the Council establishing a European Railway Agency;
- 9 amendments to the proposal for a directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways.

2. PURPOSE OF THE PROPOSALS

There are four related legislative proposals:

- A proposal for a **directive on safety of the railways** which defines the basic characteristics of the safety systems for the infrastructure manager and for the railway undertakings. The aim is to develop a common approach to safety and establish a common system for the issue, content and validity of the safety certificates. The proposal also aims to introduce the principle of independent technical inquiries in the event of accidents, in line with the situation in other sectors.
- An **amendment to the interoperability Directives 96/48/EC and 2001/16/EC**. In addition to the adaptations required by previous proposals concerning the interoperability directives, this primarily concerns ensuring the consistency of the scope as regards the network on which access will be open and the network on which the interoperability rules will have to apply.
- A proposal for a **regulation setting up a European Railway Agency** to provide technical support for the work on interoperability and safety. The Agency's areas of activity would be, firstly, the development of common safety standards and the development and management of a system to monitor safety performance and, secondly, the long-term management of the system of establishing, registering and monitoring the technical specifications of interoperability.
- A proposal to **amend Directive 91/440** to extend infrastructure access rights to rail freight services within a Member State and to speed up market opening.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

- **Proposal for a directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification**

Parliament has adopted a number of amendments designed to clarify certain provisions of the text (**amendments 1, 12 and 24**) or of its objectives (**amendments 41, 42 and 7**), and of its scope in relation to other Community texts that already exist or are in preparation (**amendments 2, 5 and 50**).

Parliament also wishes to clarify certain provisions concerning national safety rules and their examination at Community level in order to verify, firstly, whether they comply with the common safety targets and, secondly, to ensure that they do not constitute a disguised restriction of market access (**amendments 3, 46, 47, 21**).

Amendments 44, 18 and 25 are designed to improve the transparency of procedures and the accessibility of the rules.

The proposed solution regarding the price to be paid for access to the training facilities is satisfactory (**amendment 48**).

Amendment 49 is acceptable as it ensures greater clarity regarding statistics on accidents.

The Commission supports all these amendments.

However, the Commission is unable to accept **amendment 43**, since it is a text of an explanatory nature on the scope of the directive, which would be better suited to the recitals, where it already figures (see amendment 2).

Nor is it possible to incorporate amendments concerning items covered in other parts of the text or in existing Community texts, or items which will be taken into account in the draft directive on licences for train drivers (**amendments 31 and 37**).

The Commission cannot accept **amendments 14, 15, 16, 23 and 32** designed to reduce systematically the deadlines for drafting texts. These deadlines had already been considerably shortened by the Council and it is important to set a realistic calendar, adapted to the budgetary possibilities that will be decided for the Agency, which does not overload the Agency to the point of dooming it to failure from the outset.

It is not possible either to include **amendment 8**, as the directive is not intended to harmonise rules but to define common standards that must be met, leaving Member States the possibility of retaining or setting a higher standard, subject to compliance with the principles of transparency and non-discrimination.

Amendment 27 creates confusion, as the purpose of the Article is to ensure access to the training facilities for staff accompanying trains.

- **Proposal for a directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system**

The Commission supports all of Parliament's amendments to this text.

Parliament's amendments are primarily designed to reaffirm the interoperability objective (**amendments 1 and 4**) and to improve the consistency of the wording of Directives 96/48/EC and 2001/16/EC (**amendment 3**).

In addition, they seek to include an obligation to fit a recording device in new trains among the essential requirements laid down in the directives (**amendments 2 and 5**).

- **Proposal for a regulation of the European Parliament and of the Council establishing a European Railway Agency**

Firstly, Parliament wishes to defend the Commission's initial proposal designed to ensure balanced representation of the Council and the Commission as well as of the various interested parties on the Agency's administrative board (**amendments 1, 10 and 33**).

With a view to improving the transparency and openness of the Agency's activities, Parliament wants representatives of workers' organisations from the industry to participate in the Agency's working parties on subjects directly related to the working conditions, health and safety of staff (**amendment 4**). It also wants wider consultation of the social partners on the proposals made by the Agency (**amendment 5**).

Parliament also includes the standard financial and budgetary provisions (**amendments 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32**) resulting from the entry into force of the new Financial Regulation on 1 January 2003, which it had not been possible to take into account during the work on the common position¹. It also incorporates the standard provisions on transparency (**amendments 13, 14 and 15**).

Amendment 7 is of a linguistic nature.

The Commission supports all these amendments.

However, the Commission cannot support **amendment 3**, as it presents legal difficulties in respect of the division of responsibilities between the Agency and the various national authorities. Nor can the Commission accept **amendment 6**, as it would introduce rigidity and bureaucracy in relations between the Agency, the national safety authorities and the enquiry bodies, while the Regulation already provides that one of the Agency's tasks is to facilitate networking and cooperation between these bodies.

Amendments 8 and 9 concern driver qualifications. It is not possible to incorporate these amendments, as the Commission is preparing a specific proposal on this subject for the end of the year.

Finally, the Commission is unable to include **amendment 12** on the Agency's working languages, since it believes that the Agency should simply use the working languages that are already current among professionals in the industry.

- **Proposal for a directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways**

The Commission's initial proposal concerned the transport of goods by rail. Parliament wishes to go in the direction of the Commission's proposals in this area in order to bring about a speedy, complete opening of the market for rail freight services (**amendment 1**). It wants the deadline of 2005 for presenting the report on the situation of market opening to be maintained, as provided for under the current Directives, and not to be postponed until 2007. It also wants the report to take account of passenger traffic (**amendments 3, 4, 9 and 10**).

¹ The amendment to the acts setting up the Community agencies was published in Official Journal L245 of 29.09.2003.

The Commission can accept these amendments (**amendment 6** is no longer relevant as amendment 11 has not been adopted).

Parliament also wishes to address the issue of opening up the market for passenger services in the framework of this second railway package. The Commission maintains the stance it already expressed at first reading on this issue and is unable to accept **amendments 2, 7 and 8**.

Firstly, the Commission recalls that its amended proposal for a regulation on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway² applies in full to the rail sector and provides for the introduction of competition regulated by the award of public service contracts or of exclusive rights.

With regard to the other services that are not concerned by public service contracts or by exclusive rights, the Commission is in the process of examining the arrangements for opening them to competition with a view to presenting proposals in 2003. Opening the market simply on the basis of free access presents numerous problems concerning the protection of passengers, e.g. in respect of integrated reservation services or the funding of public services. In this context, balanced, solidly based solutions must be found and the solutions proposed must be the subject of a detailed impact analysis.

Nevertheless, the Commission welcomes the European Parliament's amendments concerning the opening of passenger traffic to competition, as they send a strong political signal which will provide essential support in the preparation of its future proposals.

Finally, it should be noted that the current legislation³ enables international groupings of railway undertakings to obtain access and transit rights in order to operate international passenger services. This provision, which has scarcely been used up to now owing to the lack of a proper framework, might attract renewed interest with the transposal since 15 March 2003 of Directives 2001/12/EC⁴, 2001/13/EC⁵ and 2001/14/EC⁶ which now provide a specific, transparent and non-discriminatory framework for capacity allocation and infrastructure charging and which provide for the establishment of a regulatory body in each Member State.

4. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposals in keeping with the results of Parliament's second reading as set out above.

² COM(2002) 107 final, OJ C 151E, 25.6.2002, p. 146.

³ Directive 91/440/EEC, OJ L 237, 24.8.1991, p. 25.

⁴ OJ L 75, 15.3.2001, p. 1.

⁵ OJ L 75, 15.3.2001, p. 26.

⁶ OJ L 75, 15.3.2001, p. 29.