

Official Journal

of the European Union

ISSN 1725-2423

C 270 E

Volume 46

11 November 2003

English edition

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EN

I

(Information)

COUNCIL

COMMON POSITION (EC) No 53/2003

adopted by the Council on 26 June 2003

with a view to the adoption of a Directive 2003/.../EC of the European Parliament and of the Council of ... amending Council Directive 91/440/EEC on the development of the Community's railways

(2003/C 270 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) Council Directive 91/440/EEC ⁽⁵⁾ of 29 July 1991 provides that licensed railway undertakings are granted rights of access to the trans-European Rail Freight Network and, at the latest from 2008, to the whole network for international rail freight services.
- (2) The extension of those access rights to international rail freight services on the whole network as from 1 January 2006 should enhance the anticipated benefits in terms of modal shift and the development of international rail freight.
- (3) The extension of those access rights to all kinds of rail freight services as from 1 January 2008, in accordance with the principle of freedom to provide services, would improve the efficiency of the rail mode relative to other modes of transport. It would also facilitate sustainable transport between and within Member States, by encouraging competition and allowing entry of new capital and enterprises.

(4) The Commission should study developments in traffic, safety, working conditions and the situation of operators following implementation of the first railway package and should produce, by 1 January 2007, a report on those developments accompanied, where appropriate, by fresh proposals providing a basis for the best possible conditions for the Member States' economies, for rail undertakings and their employees, and for rail users.

(5) Rail freight services offer considerable opportunities for the creation of new transport services and the improvement of existing ones at national and at European level.

(6) To be fully competitive, rail freight transport increasingly requires the provision of comprehensive services, including transport between and within Member States.

(7) Since railway safety is regulated by Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways ⁽⁶⁾ as part of a new coherent Community regulatory framework for the railway sector, the provisions on safety contained in Directive 91/440/EEC should be repealed.

(8) Directive 91/440/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC is hereby amended as follows:

1. in Article 7, paragraph 2 shall be deleted at the date of entry into force of the Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways;

⁽¹⁾ OJ C 291 E, 26.11.2002, p. 1.

⁽²⁾ OJ C 61, 14.3.2003, p. 131.

⁽³⁾ OJ C 66, 19.3.2003, p. 5.

⁽⁴⁾ Opinion of the European Parliament of 14 January 2003 (not yet published in the Official Journal), Council Common Position of 26 June 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).

⁽⁶⁾ OJ L ...

2. Article 10 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

‘3. Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the Trans-European Rail Freight Network defined in Article 10a and in Annex I and, at the latest by 1 January 2006, to the entire rail network, for the purpose of operating international freight services.’

In addition, at the latest by 1 January 2008, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services.’

(b) paragraph 5 shall be replaced by the following:

‘5. Any railway undertaking engaged in rail transport services shall conclude the necessary agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used. The conditions governing such agreements shall be non-discriminatory and transparent, in conformity with the provisions of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (*).’

(*) OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).’

(c) paragraph 6 shall be replaced by the following:

‘6. Track access to, and supply of services in, the terminals and ports linked to rail activities referred to in paragraphs 1, 2 and 3, serving or potentially serving more than one final customer, shall be provided to all railway undertakings in a non-discriminatory and transparent manner and requests by railway undertakings may be subject to restrictions only if viable alternatives by rail under market conditions exist.’;

(d) paragraph 8 shall be replaced by the following:

‘8. By 1 January 2007, the Commission shall submit to the European Parliament, the European Economic and Social Committee, the Committee of the Regions and the Council a report on the implementation of this Directive.’

This report shall address:

- implementation of this Directive in the Member States and the effective working of the various bodies involved,
- market development, in particular international traffic trends, activities and market share of all market actors, including new entrants,
- impact on the overall transport sector, in particular as regards modal shift,
- impact on the level of safety in each Member State,
- working conditions in the sector, for each Member State.

If necessary, it shall be accompanied by suitable proposals or recommendations on continuing Community action to develop the railway market and the legal framework governing it’;

3. in Article 10b(4), point (c) shall be replaced by the following:

‘(c) the state of the European railway network’;

4. Article 14 shall be deleted.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2005 at the latest. They shall forthwith inform the Commission thereof.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS ⁽¹⁾

I. INTRODUCTION

Having regard to Article 71 of the EC Treaty — and also to Article 156 in the specific case of the legislative proposal on interoperability — and in the framework of the co-decision procedure in accordance with Article 251 of the EC Treaty, the Council adopted its common positions on the four legislative proposals of the so-called 'second railway package' ⁽²⁾ ⁽³⁾ on 25 June 2003.

In taking its positions, the Council took account of the opinions of the European Parliament in its first reading on 14 January 2003 ⁽⁴⁾, of the European Economic and Social Committee ⁽⁵⁾ and of the Committee of the Regions ⁽⁶⁾.

The general aim of the package of legislative proposals is the revitalisation of the railway sector in the European Union; this revitalisation would be by and large amount to the completion of the internal market for the European rail sector, for both service providers and manufacturers. Through the abolishment of quasi-monopolies and by means of increased competition, cost savings related to economies of scale may be achieved, as well as more innovation — factors which are a prerequisite for the development of a world-class railway industry in the EU. Furthermore, the competitiveness of this mode of transport vis-à-vis the other modes of transport would be boosted by means of the proposed measures, thereby contributing to the much needed rebalancing of the modal split — particularly in the field of freight transport — with its consequent positive effects on the reduction of both congestion and pollution.

In the above context, the second railway package aims to achieve the necessary progress in the areas of interoperability, safety and market access (for freight transport). Furthermore, in order to perform the highly technical and complex tasks of designing the tools — the Technical Specifications for Interoperability (TSIs), the Common Safety Targets (CST), Common Safety Measures (CSM) — needed to achieve such progress a European pool of expertise is proposed, in the form of a European Railway Agency, which would then have a purely advisory function. The experts from the European Railway Agency would thus form a pool of expertise, aiding in the development of further Community legislation. They should provide independent expertise from a European — rather than a national — perspective.

II. ANALYSIS OF THE COMMON POSITION

Introduction

In view of their clear operational interlinkages, the Commission has presented the various legislative proposals as a package, requesting it to be handled as such. The Council has respected this 'package approach', and has reached a single overall agreement on this package, including on the four legislative proposals subjected to the co-decision procedure ⁽⁷⁾.

⁽¹⁾ This statement applies to all common positions on the three Directives and the Regulation contained in the 'second railway package'.

⁽²⁾ The Commission presented its proposals on 25 January 2002.

— Safety: OJ C 126 E, 28.5.2002, p. 332.

— Interoperability: OJ C 126 E, 28.5.2002, p. 312.

— European Railway Agency: OJ C 126 E, 28.5.2002, p. 323.

— Development of the Community's railways: OJ C 291 E, 26.11.2002, p. 1.

⁽³⁾ This package also contains the 'Recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999' (doc. 5726/02 TRANS 20).

⁽⁴⁾ Not yet published in the Official Journal.

⁽⁵⁾ OJ C 61, 14.3.2003, p. 131.

⁽⁶⁾ OJ C 66, 19.3.2003, p. 5.

⁽⁷⁾ This political agreement concerned the package as a whole and thus included also the adoption of the Council Decision as referred to in footnote 3.

The Council, by adopting its common position on the second railway package, has demonstrated its overall support for the general thrust of this legislative package; it is the expression of Council's willingness and determination to bring about the much needed revitalisation of the railway sector in the EU, so that it can recover its fair share of the market. However, it was also important to take into account the complexity of the railway sector, against the background of a number of technical, financial, socio-economic and, in some cases, political considerations.

Specific comments regarding the individual draft directives and the draft regulation

- (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*

Any efforts in pursuing a more effective Community railway system should not be detrimental to existing high safety levels in that system. In fact, any harmonised approach should not only maintain these safety levels but seek to improve them whenever possible and practicable, whilst respecting the principles underlying the functioning of the internal market. With this in mind, the Council conducted a most careful examination of all relevant provisions of this Directive.

For reasons of clarity, a separate article is now devoted to the common safety targets (CST) (Article 7) and the common safety methods CSM (Article 6); furthermore, their more gradual introduction has now been foreseen. Thus, for a first and second set of CST and CSM to be developed, specified deadlines and further details as regards their content are now provided.

The Council agrees that the establishment of a common regulatory framework should not prevent Member States from seeking further improvements of safety levels — beyond those flowing from the common standards — of their railway systems; at the same time the correct functioning of the internal market should not be compromised. Against this background, the Council's common position (Article 8.4) provides that Member States are allowed to introduce, after the adoption of the CST, new national safety rules which require higher levels of safety than the CST. The adoption of such stricter rules should however be preceded by prior consultation of interested parties and the submission of information to the Commission. In cases where such new rules are likely to affect operations of railway undertakings of other Member States on the territory of the Member State concerned, a specific notification procedure to the Commission will apply (Article 8.5).

Furthermore, the Council's common position contains a new article concerning the safety authorisation for infrastructure managers (Article 11). As regards article 12, the provisions for the access to training facilities were strengthened; at the same time, the basic requirements to be met by train staff were deleted, since they would soon be laid down in a technical specifications for interoperability (TSI). As regards the harmonisation of safety certificates (Article 14), it was felt that the intermediate stage with non-binding guidelines was not necessary.

Many more changes of a technical nature were incorporated, among which those regarding the tasks of the safety authority (Article 16), and several changes to the technical Annexes.

The Council was able to accept amendments 4 and 61, and to a certain extent the substance of amendments 12, 16, 37, 56, 57 and 59.

- (b) *Directive of the European Parliament and of the Council amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system*

The Council's common position retains the principle of applying the provisions of the Directive to the entire railway network in the European Union. However, because of a number of financial and economic considerations, it provides for a more gradual introduction of the technical specifications for interoperability (TSI) than proposed by the Commission. A first group of new TSI and/or TSI amendments should now be developed by 1 January 2009 (Article 2(2)); furthermore, the subject matter of the first group of new TSI has now been specified (Article 2(15)). For the application of a specific TSI, further categories of lines and rolling stock have been added in Annex III, as well as the possibility to further subdivide these categories as required. This will allow the specific TSI to be applied in the most cost-effective way. Articles 1(6) and 2(2) expand the possibilities for exemptions from the application of the provisions of a TSI.

Further changes contained in the Council's common position as compared to the Commission's proposal concern a great number of minor technical matters, including those pertaining to the Annexes.

The Council has accepted amendment 8, and believes that in essence its common position contains wording which corresponds to amendments 6, 13 and 15.

- (c) *Regulation of the European Parliament and of the Council establishing a European Railway Agency*

The Council recognises that a European Railway Agency can provide a very useful input into the legislative process and other aspects relating to the revitalisation of the European railways. Against this background, the changes introduced in the Council's common position do not significantly alter the substance of the Commission's proposal. These changes concern the tasks and responsibilities of the Agency, the consultation of other parties, the composition of its Working Parties and the Administrative Board, and the working languages. In several instances, the Council has chosen to draw on similar provisions in the Regulations establishing other Community bodies such as the European Maritime Safety Agency (EMSA) and the European Aviation Safety Agency (EASA).

The Council's common position coincides on many aspects, partly or in substance, with amendments adopted by the European Parliament in first reading, such as amendments 9, 22, 32, 36. As regards the amendments 2, 5, 14 and 35 which concern the composition of the Working Parties and of the Administrative Board, the Council's common position provides for the Working Parties now to be made up of both representatives from the railway sector and the users concerned (Article 3); in a similar fashion, the composition of the Administrative Board has also been altered. For the latter, the composition has been changed, notably by adding one representative per Member State (Article 26).

As regards visits by Agency representatives to Member States, the Council feels that its Article 33 largely corresponds to Parliament's amendment 37.

As regards the issue of the linguistic arrangements for the Agency, Article 35 of the common position now provides for these arrangements to be decided by the Administrative Board; the Council has deemed that this instance would be best placed to make this decision, weighing all factors involved such as cost and efficiency. The Council could thus not accept amendment 38, which it felt would place too large a burden on the Agency's functioning and would run counter to budgetary constraints placed on the Community's budget in general, also taking into account the accession of the new Member States to the Union as from 1 May 2004.

(d) *Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways*

In the framework of the overall agreement on Council's common position, the scope and timetable of market access formed most naturally important elements of the overall political compromise achieved by the Council. The Council could therefore not accept the amendments 2 and 4, which aim to widen considerably the scope of this Directive by incorporating the transport of passengers by rail.

The provisions relating to market access in the Council's common position may be summarised as follows:

- railway undertakings shall be granted, on equitable conditions, at the latest by 1 January 2006, access to the entire rail network for the purpose of operating international freight services;
- at the latest by 1 January 2008, railway undertakings shall be granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating all types of rail freight services.

Furthermore, by 1 January 2007, the Commission shall submit a report on the implementation of the Market Access Directive. Moreover, it may be noted in this respect that the Commission has presented a declaration stating its intention to present by end of 2003 to the European Parliament and the Council a proposal relating to the introduction of a European driving license for train drivers.

With regard to the aforementioned provisions regarding market access, as well as concerning the date of entry into force, the Council has for the sake of clarity made reference to specific dates, rather than making this date dependent upon the eventual date of publication in the Official Journal, as initially proposed: it has therefore accepted amendment 11. The Council holds that this presentation is a clear signal to all actors involved. Furthermore, Council has agreed on the substance of amendments 1, 5, 7 and 9 which seek to maintain the references to the Trans-European Rail Freight Network (TERFN). In fact, amendments 7 and 9 were accepted to the letter, whereas the other amendments were largely taken into account (cf. Article 1(2)).

COMMON POSITION (EC) No 54/2003**adopted by the Council on 26 June 2003**

with a view to the adoption of a Directive 2003/.../EC of the European Parliament and of the Council of ... amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system

(2003/C 270 E/02)

THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71 and 156 thereof,

Having regard to the Commission proposal ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

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

Whereas:

- (1) Under Articles 154 and 155 of the Treaty, the Community must contribute to the establishment and development of trans-European networks in the transport sector. In order to achieve these objectives, the Community must take any action necessary to ensure the interoperability of the networks, particularly in the field of technical standardisation.
- (2) An initial measure was taken in the rail sector with the adoption of Directive 96/48/EC ⁽⁵⁾. In order to implement the objectives of that Directive, technical specifications for interoperability (TSIs) have been drafted by the European Association for Railway Interoperability (AEIF), which was designated as the joint representative body in the framework of that Directive, and adopted by the Commission on 30 May 2002.

(3) On 10 September 1999 the Commission adopted a report to the European Parliament and the Council which gave an initial assessment of progress made in implementing the interoperability of the trans-European high-speed rail system. In its Resolution of 17 May 2000, the European Parliament called on the Commission to submit proposals for amending Directive 96/48/EC on the basis of the model used for Directive 2001/16/EC ⁽⁶⁾.

(4) Directive 2001/16/EC, like Directive 96/48/EC, introduces Community procedures for the preparation and adoption of TSIs, and common rules for assessing conformity with the TSIs. A mandate for the development of the first group of TSIs has been given to the AEIF, also designated as the Joint Representative Body.

(5) A number of lessons have been learned from the work on developing TSIs in the high-speed sector, the application of Directive 96/48/EC to specific projects and the work of the committee set up under that Directive, which have led the Commission to propose changes to the two Directives on railway interoperability.

(6) The adoption of Regulation (EC) No .../2003 of the European Parliament and of the Council of ... establishing a European Railway Agency ('the Agency Regulation') ⁽⁷⁾ and of Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways ('the Railway Safety Directive') ⁽⁸⁾ means that certain provisions of Directives 96/148/EC and 2001/16/EC need to be amended. In particular, once the Agency is established, the task of drafting any new or revised TSIs will be entrusted to it by the Commission.

(7) The entry into force of Directives 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways ⁽⁹⁾, 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings ⁽¹⁰⁾ and 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway

⁽¹⁾ OJ C 126 E, 28.5.2002, p. 312.

⁽²⁾ OJ C 61, 14.3.2003, p. 131.

⁽³⁾ OJ C 66, 19.3.2003, p. 5.

⁽⁴⁾ Opinion of the European Parliament of 14 January 2003 (not yet published in the Official Journal), Council Common Position of 26 June 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 235, 17.9.1996, p. 6.

⁽⁶⁾ OJ L 110, 20.4.2001, p. 1.

⁽⁷⁾ OJ L ...

⁽⁸⁾ OJ L ...

⁽⁹⁾ OJ L 75, 15.3.2001, p. 1.

⁽¹⁰⁾ OJ L 75, 15.3.2001, p. 26.

infrastructure and safety certification⁽¹⁾ has an impact on the implementation of interoperability. As in the case of other transport modes, the extension of access rights must be accompanied by the requisite harmonisation measures. It is therefore necessary to implement interoperability on the whole network by extending progressively the geographical scope of Directive 2001/16/EC. It is also necessary to extend the legal basis of Directive 2001/16/EC to Article 71 of the Treaty, on which Directive 2001/12/EC is founded.

- (8) The White Paper on European transport policy announces this Directive, which is part of the Commission's strategy to revitalise rail transport and, consequently, to shift the balance between transport modes, with the ultimate objective of reducing congestion on Europe's roads.
- (9) The TSIs developed in the framework of Directive 96/48/EC do not explicitly concern the work on renewing infrastructure and rolling stock, or replacements in the context of preventive maintenance. This is the case, however, under Directive 2001/16/EC on the conventional rail system, and the two Directives should be harmonised on this point.
- (10) The development of TSIs in the high-speed sector has shown the need to clarify the relationship between the essential requirements of Directive 96/48/EC and the TSIs, on the one hand, and the European standards and other documents of a normative nature on the other. In particular, a clear distinction should be drawn between the standards or parts of standards which must be made mandatory in order to achieve the objectives of that Directive, and the 'harmonised' standards that have been developed in the spirit of the new approach to technical harmonisation and standardisation.
- (11) As a rule, the European specifications are developed in the spirit of the new approach to technical harmonisation and standardisation. They enable a presumption to be made of conformity with certain essential requirements of Directive 96/48/EC, particularly in the case of interoperability constituents and interfaces. These European specifications, or the applicable parts thereof, are not mandatory and no explicit reference to these specifications may be made in the TSIs. References to these European specifications are published in the *Official Journal of the European Union*, and Member States publish the references to the national standards transposing the European standards.
- (12) TSIs may in certain cases make an explicit reference to European standards or specifications where this is strictly necessary in order to achieve the objectives of this Directive. Such explicit reference has consequences which must be made clear; in particular, these European standards or specifications become mandatory from the moment the TSI is applicable.
- (13) The TSI sets all the conditions with which an interoperability constituent must conform, and the procedure to be followed in assessing conformity. In addition, it is necessary to specify that every constituent must undergo the procedure for assessing conformity and suitability for the use indicated in the TSIs and have the corresponding certificate.
- (14) It is necessary for safety reasons to require Member States to assign an identification code to each vehicle placed in service. The vehicle should then be entered in a national vehicle register. The registers must be open to consultation by all Member States and by certain Community economic players. The registers should be consistent as regards the data format. They should therefore be covered by common operational and technical specifications.
- (15) The procedure to be followed in the case of essential requirements applicable to a subsystem which have not yet been covered by detailed specifications in the corresponding TSI should be specified. In such case, the bodies responsible for the conformity assessment and verification procedures should be those already notified under Article 20 of Directives 96/48/EC and 2001/16/EC.
- (16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾.
- (17) The definition of rolling stock in Annex I to Directive 96/48/EC should be clarified. The Directive should also concern rolling stock designed to operate only on track upgraded for high speeds, at speeds of the order of 200 km/h.
- (18) The application of this Directive should, as far as possible, preserve the work already undertaken in the framework of Directives 96/48/EC and 2001/16/EC and the application of these Directives by Member States in the framework of projects which are at an advanced stage of development when this Directive enters into force.
- (19) Since the objective of the proposed action, namely the interoperability of the trans-European rail system, cannot be sufficiently achieved by the Member States and can therefore, by reason of its trans-European character as recognised by the Treaty, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

⁽¹⁾ OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

(20) TSIs applicable to the high-speed rail system concerning infrastructure, rolling stock, energy, control, command and signalling, operation and maintenance were adopted on 30 May 2002 by the Commission. The draft TSIs referred to in Article 1(5) and 2(5) pertain to the revision of these TSIs or to the adoption of new TSIs.

(21) Since a draft reference system of technical rules concerning the current degree of interoperability of the trans-European conventional rail system is being developed as provided for in Article 25 of Directive 2001/16/EC, there is a need to update these technical rules in view of the extension of the scope of that Directive and also taking account of the first group of TSIs to be adopted by 2004.

(22) Notwithstanding the exemptions from the scope of Directive 2001/16/EC, the voluntary application of the relevant provisions of that Directive by the Member States at national level should be encouraged, with a view to increasing cost efficiency and economies of scale in the manufacturing sector.

(23) It is therefore necessary to amend Directives 96/48/EC and 2001/16/EC,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/48/EC is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

1. The aim of this Directive is to establish the conditions to be met to achieve interoperability within Community territory of the trans-European high-speed rail system as described in Annex I.

These conditions concern the design, construction, placing in service, upgrading, renewal, operation and maintenance of the parts of this system placed in service after ... (*), as well as the qualifications and health and safety conditions of the staff who contribute to its operation.

2. The pursuit of this objective must lead to the definition of a minimum level of technical harmonisation and make it possible to:

- (a) facilitate, improve and develop international rail transport services within Community territory and with third countries;
- (b) contribute to the gradual creation of the internal market in equipment and services for the construction, operation, renewal and upgrading of the trans-European high-speed rail system;

(c) contribute to the interoperability of the trans-European high-speed rail system.'

2. the following points shall be added to Article 2:

'(j) "basic parameter" means any regulatory, technical or operational condition which is critical to interoperability and requires a decision or recommendation in accordance with the procedure laid down in Article 21(2) before any development of complete draft TSIs;

(k) "specific case" means any part of the trans-European high-speed rail system which needs special provisions in the TSIs, either temporary or definitive, because of geographical, topographical or urban environment constraints or those affecting compatibility with the existing system. This may include in particular railway lines and networks isolated from the rest of the Community territory, the loading gauge, the track gauge or space between the tracks;

(l) "upgrading" means any major modification work on a subsystem or part subsystem which improves the overall performance of the subsystem;

(m) "substitution in the framework of maintenance" means any replacement of components by parts of identical function and performance in the framework of preventive or corrective maintenance;

(n) "renewal" means any major substitution work on a subsystem or part subsystem which does not change the overall performance of the subsystem;

(o) "existing rail system" means the structure composed of the railway infrastructures, comprising lines and fixed installations of the existing rail system plus the existing rolling stock of all categories and origin travelling on that infrastructure;

(p) "placing in service" means all the operations by which a subsystem is put into its design operating state.;

3. Article 2(h) shall be deleted.

4. Article 5 shall be amended as follows:

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

'1. Each of the subsystems shall be covered by one TSI. Where necessary, a subsystem may be covered by several TSIs and one TSI may cover several subsystems. The decision to develop and/or to review a TSI and the choice of its technical and geographical scope requires a mandate in accordance with Article 6(1).';

(*) Date of entry into force of this Directive.

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

‘3. To the extent necessary in order to achieve the objectives referred to in Article 1, each TSI shall:

- (a) indicate its intended scope (part of network or rolling stock referred to in Annex I, subsystem or part of subsystem referred to in Annex II);
- (b) lay down essential requirements for each subsystem concerned and its interfaces vis-à-vis other subsystems;
- (c) establish the functional and technical specifications to be met by the subsystem and its interfaces vis-à-vis other subsystems. If need be, these specifications may vary according to the use of the subsystem, for example according to the categories of line and/or rolling stock provided for in Annex I;
- (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 high speed rail system;
- (e) state, in each case under consideration, which procedures are to be used in order to assess the conformity or the suitability for use of the interoperability constituents, on the one hand, or the EC verification of the subsystems, on the other hand. These procedures shall be based on the modules defined in Decision 93/465/EEC;
- (f) indicate the strategy for implementing the TSIs. In particular, it is necessary to specify the stages to be completed in order to make a gradual transition from the existing situation to the final situation in which compliance with the TSIs shall be the norm;
- (g) indicate, for the staff concerned, the professional competences and health and safety conditions at work required for the operation and maintenance of the subsystem, as well as for the implementation of the TSIs.’;

(c) the following paragraph shall be inserted:

‘6. TSIs may make an explicit, clearly identified reference to European standards or specifications where this is strictly necessary in order to achieve the objectives of this Directive. In such case, these European standards or specifications (or the relevant parts thereof) shall be regarded as annexes to the TSI concerned and shall become mandatory from the moment the TSI is applicable. In the absence of European standards or specifications and pending their development, reference may be made to other clearly identified normative documents; in such case, this shall concern documents that are easily accessible and in the public domain.’;

5. Article 6 shall be replaced by the following:

‘Article 6

1. Draft TSIs and subsequent amendments to TSIs shall be drafted under a mandate from the Commission in accordance with the procedure set out in Article 21(2). They shall be drafted under the responsibility of the Agency in accordance with Articles 3 and 12 of Regulation (EC) No 2003/.../EC of the European Parliament and of the Council of establishing a European railway agency (Agency Regulation (*)) and in cooperation with the Working Parties mentioned in those Articles.

TSIs shall be adopted and reviewed in accordance with the procedure set out in Article 21(2). They shall be published by the Commission in the Official Journal of the European Union.

2. The Agency shall be responsible for preparing the review and updating of TSIs and making any recommendations to the Committee referred to in Article 21 in order to take account of developments in technology or social requirements.

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

First of all, the Agency shall identify the basic parameters for the TSI as well as the interfaces with the other subsystems and any other specific cases that may be necessary. The most viable alternative solutions accompanied by technical and economic justification shall be put forward for each of these parameters and interfaces. A decision shall be taken in accordance with the procedure set out in Article 21(2); if necessary, specific cases shall be cited.

The Agency shall then draw up the draft TSI on the basis of these basic parameters. Where appropriate, the Agency shall take account of technical progress, of standardisation work already carried out, of working parties already in place and of acknowledged research work. An overall assessment of the estimated costs and benefits of the implementation of the TSIs shall be attached to the draft TSI; this assessment shall indicate the likely impact for all the operators and economic agents involved.

4. The drafting, adoption and review of each TSI (including the basic parameters) shall take account of the estimated costs and benefits of all the technical solutions considered, together with the interfaces between them, so as to establish and implement the most viable solutions. The Member States shall participate in this assessment by providing the requisite data.

5. The Committee referred to in Article 21 shall be kept regularly informed of the preparatory work on the TSIs. During this work the Committee may formulate any terms of reference or useful recommendations concerning the design of the TSIs and the cost-benefit analysis. In particular, the Committee may, at the request of a Member State, require that alternative solutions be examined and that the assessment of the cost and benefits of these alternative solutions be set out in the report annexed to the draft TSI.

6. On the adoption of each TSI, the date of entry into force of that TSI shall be established in accordance with the procedure set out in Article 21(2). Where different subsystems have to be placed in service simultaneously for reasons of technical compatibility, the dates of entry into force of the corresponding TSIs shall be the same.

7. The drafting, adoption and review of the TSIs shall take account of the opinion of users, as regards the characteristics which have a direct impact on the conditions in which they use the subsystems. To that end the Agency shall consult associations and bodies representing users during the drafting and review phases of the TSIs. They shall enclose with the draft TSI a report on the results of this consultation.

The list of associations and bodies to be consulted shall be finalised by the Committee referred to in Article 21 before it adopts the mandate to review the TSIs and may be re-examined and updated at the request of a Member State or the Commission.

8. The drafting, adoption and review of the TSIs shall take account of the opinion of the social partners as regards the conditions referred to in Article 5(3)(g).

To this end, the social partners shall be consulted before the draft TSI is submitted, for adoption or review, to the Committee referred to in Article 21.

The social partners shall be consulted in the context of the sectoral dialogue committee set up in accordance with Commission Decision 98/500/EC (**). The social partners shall issue their opinion within three months.

(*) OJ L ...

(**) OJ L 225, 12.8.1998, p. 27.

6. Article 7 shall be replaced by the following:

'Article 7

A Member State need not apply one or more TSIs, including those relating to rolling stock, in the following cases and circumstances:

- (a) for a proposed new line, for the renewal or upgrading of an existing line, or for any element referred to Article 1(1) at an advanced stage of development or the subject of a contract in course of performance when these TSIs are published;
- (b) for any project concerning the renewal or upgrading of an existing line where the loading gauge, track gauge, space between the tracks, or electrification voltage in these TSIs is not compatible with those of the existing line;

- (c) for a proposed new line or for the proposed renewal or upgrading of an existing line in the territory of that Member State when its rail network is separated or isolated by the sea from the rail network of the rest of the Community territory;

- (d) for any proposed renewal, extension or upgrading of an existing line, when the application of these TSIs would compromise the economic viability of the project and/or the compatibility of the rail system in the Member State;

- (e) where, following an accident or a natural disaster, the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of the relevant TSIs;

In all 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 does not wish to be applied as well as the corresponding specifications that it does wish to apply. The Commission shall analyse the measures envisaged by the Member State. In cases (b) and (d), the Commission shall take a decision in accordance with the procedure set out in Article 21(2). Where necessary, a recommendation shall be drawn up concerning the specifications to be applied. Nevertheless, in the case of (b) the Commission's decision shall not refer to the loading gauge and the track gauge';

7. the following subparagraph shall be added to Article 9:

'In particular, they may not require checks which have already been carried out as part of the procedure leading to the "EC" declaration of conformity or suitability for use.';

8. Article 10 shall be amended as follows:

- (a) paragraph 2 shall be replaced by the following:

'2. All interoperability constituents shall be subject to the procedure for assessing conformity and suitability for the use indicated in the respective TSI and be accompanied by the corresponding certificate.';

- (b) paragraph 3 shall be replaced by the following:

'3. Member States shall consider that an interoperability constituent meets the essential requirements if it complies with the conditions laid down by the corresponding TSI or the European specifications developed to comply with these conditions.';

- (c) paragraphs 4 and 5 shall be deleted;

9. Article 11 shall be replaced by the following:

'Article 11

Where it appears to a Member State or the Commission that European specifications used directly or indirectly for the purposes of this Directive do not meet the essential requirements, partial or total withdrawal of the specifications concerned from the publications containing them, or their amendment, may be decided upon in accordance with the procedure set out 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 and of rules on information society services (*).

(*) OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18);

10. Article 14 shall be replaced by the following:

'Article 14

1. Each Member State shall authorise the placing in service of those structural subsystems constituting the trans-European high-speed rail system which are located or operated in its territory.

To this end, each Member State shall take all appropriate steps to ensure that these subsystems may be placed in service only if they are designed, constructed and installed in such a way that they do not compromise compliance with the essential requirements concerning them when integrated into the trans-European high-speed rail system.

In particular, each Member State shall check the compatibility of these subsystems with the system into which they are being integrated.

2. Each Member State shall check, when the subsystems are placed in service and at regular intervals thereafter, that they are operated and maintained in accordance with the essential requirements concerning them. To that end, the assessment and verification procedures laid down in the respective structural and functional TSIs shall be used.

3. In the event of renewal or upgrading, the infrastructure manager or the railway undertaking shall send the Member State concerned a file describing the project. The Member State shall examine this file and, taking account of the implementation strategy indicated in the applicable TSI, shall decide whether the size of the works means that a new authorisation for placing in service within the meaning of this Directive is needed.

Such new authorisation for placing in service shall be required whenever the overall safety level of the subsystem concerned may be affected by the works envisaged.

4. Where Member States authorise the placing in service of rolling stock, they shall be responsible for ensuring that an alphanumeric identification code is assigned to each vehicle. This code must be marked on each vehicle and be entered in a national vehicle register that meets the following criteria:

- (a) the register shall comply with the common specifications defined in paragraph 5;
- (b) the register shall be kept and updated by a body independent of any railway undertaking;
- (c) the register shall be accessible to the safety authorities and the investigating bodies designated in Articles 16 and 21 of Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways (Railway Safety Directive) (*); it shall also be made accessible, in response to any legitimate request, to the regulatory bodies designated in Article 30 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (**), to the Agency, to the railway companies and to the infrastructure managers.

In case of rolling stock placed in service for the first time in a third country, Member States may accept vehicles clearly identified according to a different coding system. However, once a Member State has authorised the placing in service of such vehicles on its territory, it must be possible to retrieve the corresponding data, listed below in paragraph 5(c), (d) and (e), through the register.

5. The common specifications for the register shall be adopted in accordance with the procedure set out in Article 21(2), on the basis of the draft specifications prepared by the Agency. These draft specifications shall include: content, data format, functional and technical architecture, operating mode, and rules for data input and consultation. The register shall contain at least the following information:

- (a) references to the "EC" declaration of verification and the issuing body;
- (b) references to the register of rolling stock mentioned in Article 22a;
- (c) identification of the owner of the vehicle or the lessee;

- (d) any restrictions on how the vehicle may be used;
- (e) safety-critical data relating to the maintenance schedule of the vehicle.

(*) OJ L ...

(**) OJ L 75, 15.3.2001, p. 29 Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).'

11. the following subparagraph shall be added to Article 15:

'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.'

12. Article 16(3) shall be replaced by the following:

'3. In the absence of TSIs, and including cases when a derogation has been notified under Article 7, 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 by ... (*) and thereafter each time the list of technical rules is changed. On that occasion, Member States shall also designate the bodies responsible for carrying out, in the case of these technical regulations, the verification procedure referred to in Article 18.'

13. the following subparagraph shall be added to Article 17:

'In such a case, the TSIs shall be reviewed in accordance with Article 6(2). If certain technical aspects corresponding to the essential requirements cannot be explicitly covered in a TSI, they shall be clearly identified in an annex to the TSI. Article 16(3) shall apply to these aspects.'

14. the following subparagraph shall be added to Article 18(2):

'They shall also cover verification of the interfaces of the subsystem in question in relation to the system in which it is integrated, on the basis of the information available in the respective TSI and the registers defined in Article 22a';

15. Article 20(5) shall be replaced by the following:

'5. The Commission shall set up a notified bodies coordination group (hereinafter the "coordination group") which shall discuss any matter relating to the application of the procedures for assessing conformity or suitability for the use referred to in Article 13 and the verification procedure referred to in Article 18, or to the application of the relevant TSIs. Member States' representatives may take part in the work of the coordination group as observers.

The Commission and the observers shall inform the committee referred to in Article 21 of the work carried out in the framework of the coordination group. The

Commission, when appropriate, will propose the measures needed to remedy the problems.

Where necessary, coordination of the notified bodies shall be implemented in accordance with Article 21.'

16. Article 21 shall be replaced by the following:

'Article 21

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (*) shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

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

(*) OJ L 184, 17.7.1999, p. 23.'

17. the following Articles shall be inserted:

'Article 21a

1. The Committee may discuss any matter relating to the interoperability of the trans-European high-speed rail system, including questions relating to interoperability between this system and the rail system of third countries.

2. The Committee may discuss any matter relating to the implementation of this Directive. If necessary, the Commission shall adopt an implementing recommendation in accordance with the procedure set out in Article 21(2).

Article 21b

1. The Commission may decide, on its own initiative or at the request of a Member State, in accordance with the procedure set out in Article 21(2), to mandate the drafting of a TSI for an additional subject, insofar as it concerns a subsystem mentioned in Annex II.

2. In accordance with the procedure set out in Article 21(2), the Committee shall, on the basis of a proposal by the Commission, adopt a work programme conforming to the objectives of this Directive and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (*).

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

Article 21c

Annexes II to VI may be amended in accordance with the procedure set out in Article 21(2).

(*) OJ L 110, 20.4.2001, p. 1.'

18. the following Article shall be inserted:

'Article 22a

1. Member States shall ensure that a register of infrastructure and a register of rolling stock are published and updated annually. These registers shall indicate the main features of each subsystem or part subsystem involved, e.g. the basic parameters, and their correlation with the features laid down by the applicable TSIs. To that end, each TSI shall indicate precisely which information must be included in the registers of infrastructure and of rolling stock.

2. A copy of those registers shall be sent to the Member States concerned and to the Agency and shall be made available for consultation by interested parties, including at least the professional actors from the sector.;

19. Annex I shall be replaced by the text in Annex I to this Directive;
20. Annex II shall be replaced by the text in Annex II to this Directive;
21. the following subparagraph shall be added to Annex VII, point 2:

'In particular, the body and the staff responsible for the checks must be functionally independent of the authorities designated to issue authorisations for placing in service in the framework of this Directive, licences in the framework of Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (*) and safety certificates in the framework of Directive 2003/.../EC (*), and of the bodies in charge of investigations in the event of accidents.

(*) OJ L 143, 27.6.1995, p. 70. Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).'

Article 2

Directive 2001/16/EC is hereby amended as follows:

1. the title shall be replaced by the following: 'Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system';

(*) Number of the Railway Safety Directive.

2. the following paragraph shall be added to Article 1:

'3. The scope of this Directive shall be progressively extended to the whole conventional rail system, including track access to terminals and main port facilities serving or potentially serving more than one user, except for infrastructure and rolling stock reserved for a strictly local, historical or touristic use or infrastructure which is functionally isolated from the rest of the rail system, and without prejudice to the derogations to the application of TSIs as listed in Article 7.

This Directive shall be applied to the parts of the network which are not yet covered by paragraph 1 only from the date of entry into force of the corresponding TSIs to be adopted in accordance with the procedure described below and for the fields of application set by them.

The Commission shall adopt, following the procedure set out in Article 21(2), by 1 January 2006 a work programme aiming at the development of new TSIs and/or the review of TSIs already adopted with a view to covering the lines and rolling stock not yet covered.

This work programme will indicate a first group of new TSIs and/or amendments to TSIs to be developed by January 2009, without prejudice to Article 5(5) as regards the possibility of providing for specific cases and without prejudice to Article 7 allowing for derogations in particular circumstances. The choice of the subjects to be covered by the TSIs will be based on the expected cost-effectiveness of each proposed measure and on the principle of proportionality of measures taken at Community level. To this end, appropriate consideration will be given to Annex I point 4 and the necessary balance between, on one hand, the objectives of uninterrupted movement of trains and of technical harmonisation, and, on the other hand, the trans-European, national, regional or local level of traffic considered.

After the development of this first group of TSIs, the identification of the priorities for the development of new TSIs or the revision of existing TSIs will be adopted following the procedure set out in Article 21(2).

A Member State need not apply this paragraph in the case of projects at an advanced stage of development or subject to a contract in the course of performance when the relevant group of TSIs are published.;

3. Article 2 shall be amended as follows:

(a) point (h) shall be deleted.

(b) points (l) and (m) shall be replaced by the following:

(l) "upgrading" means any major modification work on a subsystem or part subsystem which improves the overall performance of the subsystem;

(m) "renewal" means any major substitution work on a subsystem or part subsystem which does not change the overall performance of the subsystem;";

(c) the following points shall be added:

(o) "substitution in the framework of maintenance" means any replacement of components by parts of identical function and performance in the framework of preventive or corrective maintenance;

(p) "placing in service" means all the operations by which a subsystem is put into its design operating state';

4. Article 5 shall be amended as follows:

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

'1. Each of the subsystems shall be covered by one TSI. Where necessary, a subsystem may be covered by several TSIs and one TSI may cover several subsystems. The decision to develop and/or to review a TSI and the choice of its technical and geographical scope requires a mandate in accordance with Article 6(1).';

(b) point (e) in paragraph 3 shall be replaced by the following:

(e) state, in each case under consideration, which procedures are to be used in order to assess the conformity or the suitability for use of the interoperability constituents, on the one hand, or the "EC" verification of the subsystems, on the other hand. These procedures shall be based on the modules defined in Decision 93/465/EEC;'

(c) the following paragraph shall be added:

'7. TSIs may make an explicit, clearly identified reference to European standards or specifications where this is strictly necessary in order to achieve the objectives of this Directive. In such case, these European standards or specifications (or the relevant parts) shall be regarded as annexes to the TSI concerned and shall become mandatory from the moment the TSI is applicable. In the absence of European standards or specifications and pending their development, reference may be made to other clearly identified normative documents; in such case, this shall concern documents that are easily accessible and in the public domain.';

5. Article 6 shall be replaced by the following:

'Article 6

1. Draft TSIs and subsequent amendments to TSIs shall be drafted under a mandate from the Commission in accordance with the procedure set out in Article 21(2). They shall be drafted under the responsibility of the Agency, in accordance with Articles 3 and 12 of Regulation (EC) No .../2000 of the European Parliament and of the Council of ... establishing a European railway agency ("Agency Regulation") (*) and in cooperation with the working parties mentioned in those Articles.

TSIs shall be adopted and reviewed in accordance with the procedure set out in Article 21(2). They shall be published by the Commission in the *Official Journal of the European Union*.

2. The Agency shall be responsible for preparing the review and updating of TSIs and making any recommendations to the Committee referred to in Article 21 in order to take account of developments in technology or social requirements.

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

First of all, the Agency shall identify the basic parameters for the TSI as well as the interfaces with the other subsystems and any other specific cases that may be necessary. The most viable alternative solutions accompanied by technical and economic justification shall be put forward for each of these parameters and interfaces. A decision shall be taken in accordance with the procedure set out in Article 21(2); if necessary, specific cases shall be cited.

The Agency shall then draw up the draft TSI on the basis of these basic parameters. Where appropriate, the Agency shall take account of technical progress, of standardisation work already carried out, of working parties already in place and of acknowledged research work. An overall assessment of the estimated costs and benefits of the implementation of the TSIs shall be attached to the draft TSI; this assessment shall indicate the likely impact for all the operators and economic agents involved.

4. The drafting, adoption and review of each TSI (including the basic parameters) shall take account of the estimated costs and benefits of all the technical solutions considered, together with the interfaces between them, so as to establish and implement the most viable solutions. The Member States shall participate in this assessment by providing the requisite data.

5. The Committee referred to in Article 21 shall be kept regularly informed of the preparatory work on the TSIs. During this work the Committee may formulate any terms of reference or useful recommendations concerning the design of the TSIs and the cost-benefit analysis. In particular, the Committee may, at the request of a Member State, require that alternative solutions be examined and that the assessment of the cost and benefits of these alternative solutions be set out in the report annexed to the draft TSI.

6. On the adoption of each TSI, the date of entry into force of that TSI shall be established in accordance with the procedure set out in Article 21(2). Where different subsystems have to be placed in service simultaneously for reasons of technical compatibility, the dates of entry into force of the corresponding TSIs shall be the same.

7. The drafting, adoption and review of the TSIs shall take account of the opinions of the users, as regards the characteristics which have a direct impact on the conditions in which they use the subsystems. To that end the Agency shall consult associations and bodies representing users during the drafting and review phases of the TSIs. They shall enclose with the draft TSI a report on the results of this consultation.

The list of associations and bodies to be consulted shall be finalised by the Committee referred to in Article 21 before it adopts the mandate of the first TSI and may be re-examined and updated at the request of a Member State or the Commission.

8. The drafting, adoption and review of the TSIs shall take account of the opinion of the social partners as regards the conditions referred to in Article 5(3)(g).

To this end, the social partners shall be consulted before the draft TSI is submitted, for adoption or review, to the Committee referred to in Article 21.

The social partners shall be consulted in the context of the Sectoral Dialogue Committee set up in accordance with Decision 98/500/EC (**). The social partners shall issue their opinion within three months.

(*) OJ L ...

(**) Commission Decision 98/500/EC (OJ L 225, 12.8.1998, p. 27).'

6. Article 7(a) shall be replaced by the following:

'(a) for a proposed new line, for the renewal or upgrading of an existing line, or for any element referred to Article 1(1) at an advanced stage of development or the subject of a contract in course of performance when these TSIs are published;';

7. Article 10 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. All interoperability constituents shall be subject to the procedure for assessing conformity and suitability for the use indicated in the respective TSI and shall be accompanied by the corresponding certificate;';

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

'3. Member States shall consider that an interoperability constituent meets the essential requirements if it complies with the conditions laid down by the corre-

sponding TSI or the corresponding European specifications developed to comply with these conditions;';

(c) paragraphs 4 and 5 shall be deleted;

8. Article 11 shall be replaced by the following:

'Article 11

Where it appears to a Member State or the Commission that European specifications used directly or indirectly to achieve the objectives of this Directive do not meet the essential requirements, partial or total withdrawal of the specifications concerned from the publications containing them, or their amendment, may be decided upon in accordance with the procedure set out in Article 21(2) after consultation of the committee set up under Directive 98/34/EC;'

9. Article 14 shall be amended as follows:

(a) the following subparagraph shall be added to paragraph 2:

'To that end, the assessment and verification procedures laid down in the respective structural and functional TSIs shall be used;'

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

'3. In the event of renewal or upgrading, the infrastructure manager or the railway undertaking shall send the Member State concerned a file describing the project. The Member State shall examine this file and, taking account of the implementation strategy indicated in the applicable TSI, shall decide whether the size of the works means that a new authorisation for placing in service within the meaning of this Directive is needed.

Such new authorisation for placing in service shall be required each time the overall safety level of the subsystem concerned may be affected by the works envisaged. If a new authorisation is needed, the Member State shall decide to what extent the TSIs need to be applied to the project. The Member State shall notify its decision to the Commission and the other Member States;'

(c) the following paragraphs shall be inserted:

'4. Where Member States authorise the placing in service of rolling stock, they shall be responsible for ensuring that an alphanumeric identification code is assigned to each vehicle. This code must be marked on each vehicle and be entered in a national vehicle register that meets the following criteria:

(a) the register shall comply with the common specifications defined in paragraph 5;

(b) the register shall be kept and updated by a body independent of any railway undertaking;

- (c) the register shall be accessible to the safety authorities and investigating bodies designated in Articles 16 and 21 of Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways (*) ("Railway Safety Directive"). It shall also be made accessible, in response to any legitimate request, to the regulatory bodies designated in Article 30 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (**), to the Agency, to the railway undertakings and to the infrastructure managers.

In case of rolling stock placed in service for the first time in a third country, Member States may accept vehicles clearly identified according to a different coding system. However, once a Member State has authorised the placing in service of such vehicles on its territory, it must be possible to retrieve the corresponding data, listed below in paragraph 5(c), (d) and (e), through the register.

5. The common specifications for the register shall be adopted in accordance with the procedure laid down in Article 21(2), on the basis of the draft specifications prepared by the Agency. These draft specifications shall include: content, data format, functional and technical architecture, operating mode, rules for data input and consultation. The register shall contain at least the following information:

- (a) references to the "EC" declaration of verification and the issuing body;
- (b) references to the register of rolling stock mentioned in Article 24;
- (c) identification of the owner of the vehicle or the lessee;
- (d) any restrictions on how the vehicle may be used;
- (e) safety-critical data relating to the maintenance schedule of the vehicle.

(*) OJ L ...

(**) OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).'

10. Article 16(3) shall be replaced by the following:

'3. In the absence of TSIs, and including cases when a derogation has been notified under Article 7, 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 before ... (*) and following that, each time the list of technical rules is changed. On that occasion, Member States shall also designate the bodies responsible for carrying out, in the case of these technical regulations, the verification procedure referred to in Article 18.'

11. the following subparagraph shall be added to Article 17:

'In such a case, the TSIs shall be reviewed in accordance with the procedure referred to in Article 6(2). If certain technical aspects corresponding to the essential requirements cannot be explicitly covered in a TSI, they shall be clearly identified in an Annex to the TSI. Article 16(3) shall apply to these aspects.'

12. Article 20(5) shall be replaced by the following:

'5. The Commission shall set up a notified bodies coordination group (hereinafter referred to as "the coordination group") which shall discuss any matter relating to the application of the procedures for assessing conformity or suitability for the use referred to in Article 13 and the verification procedure referred to in Article 18, or to application of the relevant TSIs. Member States' representatives may take part in the work of the coordination group as observers.

The Commission and the observers shall inform the committee referred to in Article 21 of the work carried out in the framework of this coordination group. The Commission, when appropriate, will propose the measures needed to remedy the problems.

Where necessary, coordination of the notified bodies shall be implemented in accordance with Article 21.'

13. in Article 21 the following paragraph shall be added:

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

14. the following Article shall be inserted:

'Article 21a

The Commission may submit to the Committee any matter relating to the implementation of this Directive. If necessary, the Commission shall adopt an implementing recommendation in accordance with the procedure set out in Article 21(2).

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

Article 21b

Annexes II to VI may be amended in accordance with the procedure set out in Article 21(2).²

15. Article 23 shall be replaced by the following:

'Article 23

1. The order of priority for the adoption of the TSIs shall be as follows, without prejudice to the order of adoption of the mandates provided for in Article 6(1):

- (a) the first group of TSIs shall cover control/command and signalling; telematic applications for freight services; traffic operation and management (including staff qualifications for cross-border services respecting the criteria defined in Annexes II and III); freight wagons; noise problems deriving from rolling stock and infrastructure. As regards rolling stock, that intended for international use shall be developed first;
- (b) the following aspects shall also be discussed in the light of the resources of the Commission and the Agency: telematic applications for passenger services, maintenance, with particular regard to safety, passenger carriages, traction units and locomotives, infrastructure, energy and air pollution. As regards rolling stock, that intended for international use shall be developed first;
- (c) at the request of the Commission, a Member State or the Agency, the Committee may decide, in accordance with the procedure set out in Article 21(2), to draw up a TSI for an additional subject in so far as it concerns a subsystem mentioned in Annex II.

2. The Commission, in accordance with the procedure set out in Article 21(2), shall draw up a work programme observing the order of priority referred to in paragraph 1 and that of the other tasks entrusted to it by this Directive.

The TSIs mentioned in the first work programme referred to in paragraph 1(a) shall be drawn up not later than 20 April 2004.

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

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

- (c) adoption of a method of cost-benefit analysis of the solutions set out in the TSIs;
- (d) adoption of the mandates needed to draw up the TSIs;
- (e) adoption of the basic parameters for each TSI;
- (f) approval of draft standardisation programmes;
- (g) management of the transition period between the date of entry into force of Directive 2003/.../EC (*) and publication of the TSIs, including the adoption of the reference system mentioned in Article 25.

(*) OJ L ...'

16. Article 24(2) shall be replaced by the following:

'2. A copy of those registers shall be sent to the Member States concerned and to the Agency and shall be made available for consultation by interested parties, including at least the professional actors from the sector.'

17. Article 25(1) shall be replaced by the following:

'1. The Agency shall develop, in accordance with Articles 3 and 12 of Regulation (EC) No .../2003 (*), on the basis of the information notified by the Member States under Article 16(3), technical documents from the profession and the texts of the relevant international agreements, a draft reference system of technical rules ensuring the current degree of interoperability of the lines and rolling stock that will be brought within the scope of this Directive as defined in Article 1(3). The Commission, following the procedure set out in Article 21(2), shall examine this draft and decide whether it may constitute a reference system pending the adoption of TSIs.'

18. Annex I shall be replaced by the text in Annex III to this Directive;

19. the following subparagraph shall be added to Annex VII, point 2:

'In particular, the body and the staff responsible for the checks must be functionally independent of the authorities designated to issue authorisations for placing in service in the framework of this Directive, licences in the framework of Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (*), and safety certificates in the framework of Directive 2003/.../EC (**) and of the bodies in charge of investigations in the event of accidents.

(*) OJ L 143, 27.6.1995, p. 70 Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).'

(*) Number of the Agency Regulation.

(**) Number of the Railway Safety Directive.

20. Annex VIII shall be deleted.

Article 3

The Commission shall take all necessary measures to ensure that the application of this Directive preserves as far as possible the TSI development work already mandated in the framework of Directives 96/48/EC and 2001/16/EC and to ensure that projects that are at an advanced stage of development when this Directive enters into force are not affected.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive before ... (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 5

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

Article 6

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

For the Council

The President

(*) 24 months after the date of entry into force of this Directive.

ANNEX

'ANNEX I

THE TRANS-EUROPEAN HIGH-SPEED RAIL SYSTEM**1. THE INFRASTRUCTURE**

The infrastructure of the trans-European high-speed rail system shall be that of 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 ⁽¹⁾ or listed in any update of that Decision as a result of the revision provided for in Article 21 of that Decision.

The high-speed lines shall comprise:

- specially built high-speed lines equipped for speeds generally equal to or greater than 250 km/h,
- specially upgraded high-speed lines equipped for speeds of the order of 200 km/h,
- specially upgraded high-speed lines which have special features as a result of topographical, relief or town-planning constraints, on which the speed must be adapted to each case.

This infrastructure includes traffic management, tracking and navigation systems: technical installations for data processing and telecommunications intended for passenger services on these lines in order to guarantee the safe and harmonious operation of the network and efficient traffic management.

2. THE ROLLING STOCK

The rolling stock referred to in this Directive shall comprise trains designed to operate:

- either at speeds of at least 250 km/h on lines specially built for high speeds, while enabling operation at speeds exceeding 300 km/h in appropriate circumstances,
- or at speeds of the order of 200 km/h on the lines of section 1, where compatible with the performance levels of these lines.

3. COMPATIBILITY OF THE TRANS-EUROPEAN HIGH-SPEED 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.'

⁽¹⁾ OJ L 228, 9.9.1996, p. 1 Decision amended by Decision 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

ANNEX II

'ANNEX II

SUBSYSTEMS**1. LIST OF SUBSYSTEMS**

For the purposes of this Directive, the system constituting the trans-European high-speed rail system may be broken down into the following subsystems:

(a) either structural areas:

- infrastructure;
- energy;
- control and command and signalling;
- traffic operation and management;
- rolling stock;

(b) or operational areas:

- maintenance;
- telematics applications for passenger and freight services.

2. AREAS TO BE COVERED

For each subsystem, the list of aspects relating to interoperability is indicated in the mandates for drawing up TSIs given to the Agency.

Under Article 6(1), these mandates shall be established in accordance with the procedure set out in Article 21(2).

Where necessary, the list of aspects relating to interoperability indicated in the mandates is specified by the Agency in accordance with Article 5(3)(c).'

ANNEX III

'ANNEX I

THE TRANS-EUROPEAN CONVENTIONAL RAIL SYSTEM

1. INFRASTRUCTURE

The infrastructure of the trans-European conventional rail system will 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 ⁽¹⁾ or listed in any update to the same Decision as a result of the revision provided for in Article 21 of that Decision.

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

lines intended for passenger services;

lines intended for mixed traffic (passengers and freight);

lines specially designed or upgraded for freight services;

passenger hubs;

freight hubs, including intermodal terminals;

lines connecting the abovementioned elements.

This infrastructure includes traffic management, tracking, and navigation systems; technical installations for data processing and telecommunications intended for long-distance passenger services and freight services on the network in order to guarantee the safe and harmonious operation of the network and efficient traffic management.

2. ROLLING STOCK

The rolling stock will 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, including rolling stock designed to carry lorries.

Mobile railway infrastructure construction and maintenance equipment is included but is not the first priority.

Each of the above categories is subdivided into:

rolling stock for international use;

rolling stock for national use.

3. COMPATIBILITY OF THE TRANS-EUROPEAN CONVENTIONAL RAILWAY 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.

⁽¹⁾ OJ L 228, 9.9.1996, p. 1 Decision as amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

4. EXTENSION OF THE SCOPE

1. Subcategories of lines and rolling stock

In order to deliver interoperability cost-effectively further subcategories of all categories of lines and rolling stock mentioned in this Annex will, where necessary, be developed. If necessary, the functional and technical specifications mentioned in Article 5(3) may vary according to the subcategory.

2. Cost safeguards

The cost-benefit analysis of the proposed measures will take into consideration, among others, the following:

- cost of the proposed measure;
- reduction of capital costs and charges due to economies of scale and better utilisation of rolling stock;
- reduction of investment and maintenance/operating costs due to increased competition between manufacturers and maintenance companies;
- environmental benefits, due to technical improvements of the rail system;
- increase of safety in operation.

In addition, this assessment will indicate the likely impact for all the operators and economic agents involved.'

STATEMENT OF THE COUNCIL'S REASONS ⁽¹⁾

⁽¹⁾ See page 3 of this Official Journal.

COMMON POSITION (EC) No 55/2003**adopted by the Council on 26 June 2003**

with a view to the adoption of a Directive 2003/.../EC of the European Parliament and of the Council of ... 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

(2003/C 270 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) In order to pursue efforts to establish a single market for rail transport services, initiated by Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾, it is necessary to establish a common regulatory framework for railway safety. Member States have until now developed their safety rules and standards mainly on national lines, based on national technical and operational concepts. Simultaneously, differences in principles, approach and culture have made it difficult to break through the technical barriers and establish international transport operations.
- (2) Directive 91/440/EEC, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽⁶⁾ and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges

for the use of railway infrastructure and safety certification ⁽⁷⁾ provide the first steps towards regulation of the European rail transport market by opening the market for international rail freight services. However, the provisions on safety have proved to be insufficient and differences between safety requirements remain, which affect the optimum functioning of rail transport in the Community. It is of particular importance to harmonise the content of safety rules, safety certification of railway undertakings, the tasks and roles of the safety authorities and the investigation of accidents.

- (3) Metros, trams and other light rail systems are in many Member States subject to local or regional safety rules and are often supervised by local or regional authorities and not covered by the requirements on Community interoperability or licensing. Trams are furthermore often subject to road safety legislation and could therefore not be fully covered by railway safety rules. For these reasons and in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, Member States should be allowed to exclude such local rail systems from the scope of this Directive.
- (4) Safety levels in the Community rail system are generally high, in particular compared to road transport. It is important that safety is maintained during the current restructuring phase, which will move the railway sector further from self-regulation to public regulation. In line with technical and scientific progress, safety should be further improved, when reasonably practicable and taking into account the competitiveness of the rail transport mode.
- (5) All those operating the railway system, infrastructure managers and railway undertakings, should bear the full responsibility for the safety of the system, each for their own part. Whenever it is appropriate, they should cooperate in implementing risk control measures. Member States should make a clear distinction between this immediate responsibility for safety and the safety authorities' task of providing a national regulatory framework and supervising the performance of the operators.

⁽¹⁾ OJ C 126 E, 28.5.2002, p. 332.

⁽²⁾ OJ C 61, 14.3.2003, p. 131.

⁽³⁾ OJ C 66, 19.3.2003, p. 5.

⁽⁴⁾ Opinion of the European Parliament of 14 January 2003 (not yet published in the Official Journal), Council common position of 26 June 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).

⁽⁶⁾ OJ L 143, 27.6.1995, p. 70. Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).

⁽⁷⁾ OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).

- (6) Requirements on safety of the subsystems of the trans-European rail networks are laid down in Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system⁽¹⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system⁽²⁾. However, those Directives do not define common requirements at system level and do not deal in detail with the regulation, management and supervision of safety. When minimum safety levels of the subsystems are defined by technical specifications for interoperability (TSIs) it will be increasingly important to establish safety targets at the system level as well.
- (7) Common safety targets (CSTs) and common safety methods (CSMs) should be gradually introduced to ensure that a high level of safety is maintained and, when and where necessary and reasonably practicable, improved. They should provide tools for assessment of the safety level and the performance of the operators at Community level as well as in the Member States.
- (8) Information on safety of the railway system is scarce and not generally publicly available. It is thus necessary to establish common safety indicators (CSIs) in order to assess that the system complies with the CSTs and to facilitate the monitoring of railway safety performance. However, national definitions relating to the CSIs may apply during a transitional period and due account should therefore be taken of the extent of the development of common definitions of the CSIs when the first set of CSTs is drafted.
- (9) National safety rules, which are often based on national technical standards, should gradually be replaced by rules based on common standards, established by TSIs. New national rules should be in line with Community legislation and facilitate migration towards a common approach to railway safety. All interested parties should therefore be consulted before a Member State adopts a national safety rule that requires a higher safety level than the CSTs. If such a rule might affect railway undertakings from other Member States the new draft rule should be subject to a notification to the Commission.
- (10) The development of CSTs, CSMs and CSIs as well as the need to facilitate progress towards a common approach to railway safety requires technical support at Community level. The European Railway Agency established by Regulation (EC) No .../2003 of the European Parliament and of the Council⁽³⁾ is set up to issue recommendations concerning CSTs, CSMs and CSIs and further harmonisation measures and to monitor the development of railway safety in the Community.
- (11) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system, fulfilling Community requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the safety authority in the Member State concerned.
- (12) The safety management system should take into account the fact that Council Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁽⁴⁾ and its relevant individual directives are fully applicable to the protection of the health and safety of workers engaged in railway transport. The safety management system should also take account of Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail⁽⁵⁾.
- (13) To ensure a high level of railway safety and equal conditions for all railway undertakings, they should be subject to the same safety requirements. The safety certificate should give evidence that the railway undertaking has established its safety management system and is able to comply with the relevant safety standards and rules. For international transport services it should be enough to approve the safety management system in one Member State and give the approval Community validity. Adherence to national rules on the other hand should be subject to additional certification in each Member State. The ultimate aim should be to establish a common safety certificate with Community validity.
- (14) In addition to the safety requirements laid down in the safety certificate, licensed railway undertakings must comply with national requirements, compatible with Community law and applied in a non-discriminatory manner, relating to health, safety and social conditions, including legal provisions relating to driving time, and the rights of workers and consumers as provided for in Articles 6 and 12 of Directive 95/18/EC.
- (15) Every infrastructure manager has a key responsibility for the safe design, maintenance and operation of its rail network. In parallel to safety certification of railway undertakings the infrastructure manager should be subject to safety authorisation by the safety authority concerning its safety management system and other provisions to meet safety requirements.

⁽¹⁾ OJ L 235, 17.9.1996, p. 6.

⁽²⁾ OJ L 110, 20.4.2001, p. 1.

⁽³⁾ OJ L ...

⁽⁴⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁵⁾ OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).

- (16) Member States should make efforts to assist applicants wishing to enter the market as railway undertakings. In particular they should provide information and act promptly on requests for safety certification. For railway undertakings operating international transport services, it is important for the procedures to be similar in different Member States. Although the safety certificate will contain national parts for the foreseeable future, it should nevertheless be possible to harmonise the common parts of it and facilitate the creation of a common template.
- (17) Certification of train staff and authorisation of placing in service of in-use rolling stock for the different national networks are often insurmountable barriers to new entrants. Member States should ensure that facilities for the training and certification of train staff necessary to meet requirements under national rules are available to railway undertakings applying for a safety certificate. A common procedure should be established for authorisation of placing in service of in-use rolling stock.
- (18) As part of the new common regulatory framework for railway safety, national authorities should be set up in all Member States to regulate and supervise railway safety. To facilitate cooperation between them at Community level, they should be given the same minimum tasks and responsibilities. The national safety authorities should be granted a high degree of independence. They should carry out their tasks in an open and non-discriminatory way to help to create a single Community rail system and cooperate to coordinate their decision-making criteria, in particular concerning safety certification of railway undertakings operating international transport services.
- (19) Serious accidents on the railways are rare. However, they can have disastrous consequences and raise concern among the public about the safety performance of the railway system. All such accidents should, therefore, be investigated from a safety perspective to avoid recurrence and the results of the investigations should be made public. Other accidents and incidents could be significant precursors to serious accidents and should also be subject to safety investigations, when it is necessary.
- (20) A safety investigation should be kept separate from the judicial inquiry into the same incident and be granted access to evidence and witnesses. It should be carried out by a permanent body that is independent of the actors of the rail sector. The body should function in a way which avoids any conflict of interest and any possible involvement in the causes of the occurrences that are investigated; in particular, its functional independence should not be affected if it is closely linked to the national safety authority or regulator of railways for organisational and legal structure purposes. Its investigations should be carried out under as much openness as possible. For each occurrence the investigation body should establish the relevant investigation group with necessary expertise to find the immediate causes and underlying causes.
- (21) The reports on investigations and any findings and recommendations provide crucial information for the further improvement of rail safety and should be made publicly available at Community level. Safety recommendations should be acted upon by the addressees and actions reported back to the investigating body.
- (22) Since the objectives of the proposed action, namely to coordinate activities in the Member States to regulate and supervise safety and to investigate accidents and to establish at Community level common safety targets, common safety methods, common safety indicators and common requirements of safety certificates, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (23) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (24) This Directive aims at reorganising and bringing together the relevant Community legislation on railway safety. Consequently, provisions for safety certification of railway undertakings that were previously set out in Directive 2001/14/EC should, together with all references to safety certification, be repealed. Directive 95/18/EC included requirements on safety qualifications of operational staff and on safety of rolling stock that are covered by the requirements on safety certification of this Directive and should therefore no longer be part of the licensing requirements. A licensed railway undertaking should hold a safety certificate in order to be granted access to the railway infrastructure.
- (25) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive,

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Purpose

The purpose of this Directive is to ensure the development and improvement of safety on the Community's railways by:

- (a) harmonising the regulatory structure in the Member States;
- (b) defining responsibilities between the actors;
- (c) developing common safety targets and common safety methods;
- (d) requiring the establishment, in every Member State, of a safety authority and an accident and incident investigating body;
- (e) defining common principles for the management, regulation and supervision of railway safety.

Article 2

Scope

1. This Directive applies to the railway system in the Member States, which may be broken down into subsystems for structural and operational areas. It covers safety requirements on the system as a whole, including the safe management of infrastructure and of traffic operation and the interaction between railway undertakings and infrastructure managers.

2. Member States may exclude from the measures they adopt in implementation of this Directive:

- (a) metros, trams and other light rail systems;
- (b) networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks;
- (c) privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations.

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

- (a) 'railway system' means the totality of the subsystems for structural and operational areas, as defined in Directives 96/48/EC and 2001/16/EC, as well as the management and operation of the system as a whole;
- (b) 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
- (c) 'railway undertaking' means railway undertaking as defined in Directive 2001/14/EC, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;
- (d) 'technical specification for interoperability (TSI)' means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of the trans-European high-speed and conventional rail systems as defined in Directive 96/48/EC and Directive 2001/16/EC;
- (e) 'common safety targets (CSTs)' means the safety levels that must at least be reached by different parts of the rail system (such as the conventional rail system, the high speed rail system, long railway tunnels or lines solely used for freight transport) and by the system as a whole, expressed in risk acceptance criteria;
- (f) 'common safety methods (CSMs)' means the methods to be developed to describe how safety levels and achievement of safety targets and compliance with other safety requirements are assessed;
- (g) 'safety authority' means the national body entrusted with the tasks regarding railway safety in accordance with this Directive or any binational body entrusted by Member States with these tasks in order to ensure a unified safety regime for specialised cross-border infrastructures;
- (h) 'national safety rules' means all rules containing railway safety requirements imposed at Member State level and applicable to more than one railway undertaking, irrespective of the body issuing them;
- (i) 'safety management system' means the organisation and arrangements established by an infrastructure manager or a railway undertaking to ensure the safe management of its operations;

- (j) 'investigator-in-charge' means a person responsible for the organisation, conduct and control of an investigation;
- (k) 'accident' means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;
- (l) 'serious accident' means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other similar accident with an obvious impact on railway safety regulation or the management of safety; 'extensive damage' means damage that can immediately be assessed by the investigating body to cost at least EUR 2 million in total;
- (m) 'incident' means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of operation;
- (n) 'investigation' means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;
- (o) 'causes' means actions, omissions, events or conditions, or a combination thereof, which led to the accident or incident;
- (p) 'Agency' means the European Railway Agency, the Community agency for railway safety and interoperability;
- (q) '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, as defined in Directives 96/48/EC and 2001/16/EC;
- (r) '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 high-speed or conventional rail system depends directly or indirectly, as defined in Directive 96/48/EC and 2001/16/EC. The concept of a 'constituent' covers both tangible objects and intangible objects such as software.

CHAPTER II

DEVELOPMENT AND MANAGEMENT OF SAFETY

Article 4

Development and improvement of railway safety

1. Member States shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously

improved, taking into consideration the development of Community legislation and technical and scientific progress and giving priority to the prevention of serious accidents.

Member States shall ensure that safety rules are laid down, applied and enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system.

2. Member States shall ensure that the responsibility for the safe operation of the railway system and the control of risks associated with it is laid upon the infrastructure managers and railway undertakings, obliging them to implement necessary risk control measures, where appropriate in cooperation with each other, to apply national safety rules and standards, and to establish safety management systems in accordance with this Directive.

Without prejudice to civil liability in accordance with the legal requirements of the Member States, each infrastructure manager and railway undertaking shall be made responsible for its part of the system and its safe operation, including supply of material and contracting of services, vis-à-vis users, customers and third parties.

Article 5

Common safety indicators

1. In order to facilitate the assessment of the achievement of the CST and to provide for the monitoring of the general development of railway safety Member States shall collect information on common safety indicators (CSIs) through the annual reports of the safety authorities as referred to in Article 18.

The first reference year for the CSIs shall be ... (*); they shall be reported on in the annual report the following year.

The CSIs shall be established as set out in Annex I.

2. Before ... (**) Annex I shall be revised in accordance with the procedure referred to in Article 27(2), in particular to include common definitions of the CSI and common methods to calculate accident costs.

Article 6

Common safety methods

1. A first set of CSMs, covering at least the methods described in paragraph 3(a), shall be adopted by the Commission, before ... (***), in accordance with the procedure referred to in Article 27(2). They shall be published in the *Official Journal of the European Union*.

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

(**) Five years after the entry into force of this Directive.

(***) Four years after the entry into force of this Directive.

A second set of CSMs, covering the remaining part of the methods as described in paragraph 3, shall be adopted by the Commission before ...(*), in accordance with the procedure referred to in Article 27(2). They shall be published in the *Official Journal of the European Union*.

2. Draft CSMs and draft revised CSMs shall be drawn up by the Agency under mandates which shall be adopted in accordance with the procedure referred to in Article 27(2).

The draft CSMs shall be based on an examination of existing methods in the Member States.

3. The CSMs shall describe how the safety level, and the achievement of safety targets and compliance with other safety requirements, are assessed by elaborating and defining:

- (a) risk evaluation and assessment methods,
 - (b) methods for assessing conformity with requirements in safety certificates and safety authorisations issued in accordance with Articles 10 and 11, and
 - (c) as far as they are not yet covered by TSIs, methods to check that the structural subsystems of the trans-European high-speed and conventional rail systems are operated and maintained in accordance with the relevant essential requirements.
4. The CSMs shall be revised at regular intervals, in accordance with the procedure referred to in Article 27(2), taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States laid down in Article 4(1).
5. Member States shall make any necessary amendments to their national safety rules in the light of the adoption of CSMs and revisions to them.

Article 7

Common safety targets

1. The CSTs shall be developed, adopted and revised following the procedures laid down in this Article.
2. Draft CSTs and draft revised CSTs shall be drawn up by the Agency under mandates which shall be adopted in accordance with the procedure referred to in Article 27(2).
3. The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. They shall be adopted by the Commission, before ...(**), in accordance with the procedure referred to in Article 27(2), and shall be published in the *Official Journal of the European Union*.

(*) Six years after the entry into force of this Directive.

(**) Five years after entry into force of this Directive.

The second set of draft CSTs shall be based on the experiences gained from the first set of CSTs and their implementation. They shall reflect any priority areas where safety needs to be further improved. They shall be adopted by the Commission, before ...(***), in accordance with the procedure referred to in Article 27(2) and shall be published in the *Official Journal of the European Union*.

All proposals for draft and revised CSTs shall reflect the obligations on Member States laid down in Article 4(1). Such proposals shall be accompanied by an assessment of the estimated costs and benefits, indicating their likely impact for all the operators and economic agents involved and their impact on the societal acceptance of risk. They shall contain a timetable for gradual implementation, where necessary, in particular to take account of the nature and extent of investment required to apply them. They shall analyse the possible impact on TSI for the subsystems and contain, where appropriate, consequential proposals for amendments to the TSI.

4. The CSTs shall define the safety levels that must at least be reached by different parts of the railway system and by the system as a whole in each Member State, expressed in risk acceptance criteria for:

- (a) individual risks relating to passengers, staff including the staff of contractors, level crossing users and others, and, without prejudice to existing national and international liability rules, individual risks relating to unauthorised persons on railway premises;
- (b) societal risks.

5. The CSTs shall be revised at regular intervals, in accordance with the procedure referred to in Article 27(2), taking into account the global development of railway safety.

6. Member States shall make any necessary amendments to their national safety rules in order to achieve at least the CSTs, and any revised CSTs, in accordance with the implementation timetables attached to them. They shall notify these rules to the Commission in accordance with Article 8(3).

Article 8

National safety rules

1. Member States shall establish binding national safety rules and shall ensure that they are published and made available to all infrastructure managers, railway undertakings, applicants for a safety certificate and applicants for a safety authorisation.
2. Before ...(***) Member States shall notify the Commission of all the relevant national safety rules in force, as set out in Annex II, and indicate their area of application.

(***) Seven years after entry into force of this Directive.

(****) Twelve months after the entry into force of this Directive.

The notification shall further provide information on the principal content of the rules with references to the legal texts, on the form of legislation and on which body or organisation is responsible for its publication.

3. Member States shall forthwith notify the Commission of any amendment to the notified national safety rules and of any new such rule that might be adopted, unless the rule is wholly relating to the implementation of TSIs.

4. A Member State may, after the adoption of CSTs, introduce a new national safety rule, which requires a higher safety level than the CSTs. Before adopting such a rule, the Member State shall consult all interested parties in due time and shall inform the Commission which shall submit the draft safety rule to the Committee referred to in Article 27 for its opinion, which shall be adopted in accordance with the procedure referred to in Article 27(3). If the rule may affect operations of railway undertakings from other Member States on the territory of the Member State concerned, the notification procedure in paragraph 5 shall apply.

5. The Member State shall send the draft safety rule to the Commission, stating the reasons for introducing it.

If the Commission finds that the draft safety rule is incompatible with the CSMs or with achieving at least the CSTs, or that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States, a Decision, addressed to the Member State concerned, shall be adopted in accordance with the procedure referred to in Article 27(2).

Article 9

Safety management systems

1. Infrastructure managers and railway undertakings shall establish their safety management systems to ensure that the railway system can achieve at least the CSTs, is in conformity with the national safety rules described in Article 8 and Annex II and with safety requirements laid down in the TSIs, and that the relevant parts of CSMs are applied.

2. The safety management system shall meet the requirements and contain the elements laid down in Annex III, adapted to the character, extent and other conditions of the activity pursued. It shall ensure the control of all risks associated with the activity of the infrastructure manager or railway undertaking, including the supply of maintenance and material and the use of contractors. Without prejudice to existing national and international liability rules, the safety management system shall also take into account, where appropriate and reasonable, the risks arising as a result of activities by other parties.

3. The safety management system of any infrastructure manager shall take into account the effects of operations by different railway undertakings on the network and make provisions to allow all railway undertakings to operate in

accordance with TSIs and national safety rules and with conditions laid down in their safety certificate. It shall furthermore be developed with the aim of coordinating the emergency procedures of the infrastructure manager with all railway undertakings that operate on its infrastructure.

4. Each year all infrastructure managers and railway undertakings shall submit to the safety authority before 30 June an annual safety report concerning the preceding calendar year. The safety report shall contain:

- (a) information on how the organisation's corporate safety targets are met and the results of safety plans;
- (b) the development of national safety indicators, and of the CSIs laid down in Annex I, as far as it is relevant to the reporting organisation;
- (c) the results of internal safety auditing;
- (d) observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the safety authority.

CHAPTER III

SAFETY CERTIFICATION AND AUTHORISATION

Article 10

Safety certificates

1. In order to be granted access to the railway infrastructure, a railway undertaking must hold a safety certificate as provided for in this Chapter. The safety certificate may cover the whole railway network of a Member State or only a defined part thereof.

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

2. The safety certificate shall comprise:

- (a) certification confirming acceptance of the railway undertaking's safety management system as described in Article 9 and Annex III, and
- (b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe operation of the relevant network. The requirements may include application of TSIs and national safety rules, acceptance of staff's certificates and authorisation to place in service the rolling stock used by the railway undertaking. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.

3. The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification in accordance with paragraph 2.

The certification granted in accordance with paragraph 2 must specify the type and extent of the railway operations covered. The certification granted in accordance with paragraph 2(a) shall be valid throughout the Community for equivalent rail transport operations.

4. The safety authority in the Member State in which the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification necessary in accordance with paragraph 2(b).

5. The safety certificate shall be renewed upon application by the railway undertaking at intervals not exceeding five years. It shall be wholly or partly updated whenever the type or extent of the operation is substantially altered.

The holder of the safety certificate shall without delay inform the competent safety authority of all major changes in the conditions of the relevant part of the safety certificate. It shall furthermore notify the competent safety authority whenever new categories of staff or new types of rolling stock are introduced.

The safety authority may require that the relevant part of the safety certificate be revised following substantial changes in the safety regulatory framework.

If the safety authority finds that the holder of the safety certificate no longer satisfies the conditions for a certification which it has issued, it shall revoke part (a) and/or (b) of the certificate, giving reasons for its decision. The safety authority that has revoked an additional national certification granted in accordance with paragraph 4 shall promptly inform the safety authority that granted the certification under paragraph 2(a) of its decision.

Similarly, a safety authority must revoke a safety certificate if it is apparent that the holder of the safety certificate has not used it as intended in the year following its issue.

6. The safety authority shall inform the Agency within one month of the safety certificates referred to in paragraph 2(a) that have been issued, renewed, amended or revoked. It shall state the name and address of the railway undertaking, the issue date, scope and validity of the safety certificate and, in case of revocation, the reasons for its decision.

7. Before ... (*) the Agency shall evaluate the development of safety certification and submit a report to the Commission with recommendations on a strategy for migration towards a single Community safety certificate. The Commission shall take appropriate action following the recommendation.

(*) Five years after the entry into force of this Directive.

Article 11

Safety authorisation of infrastructure managers

1. In order to be allowed to manage and operate a rail infrastructure the infrastructure manager must obtain a safety authorisation from the safety authority in the Member State where he is established.

The safety authorisation shall comprise:

(a) authorisation confirming acceptance of the infrastructure manager's safety management system as described in Article 9 and Annex III, and

(b) authorisation confirming acceptance of the provisions of the infrastructure manager to meet specific requirements necessary for the safe design, maintenance and operation of the railway infrastructure including, where appropriate, the maintenance and operation of the traffic control and signalling system.

2. The safety authorisation shall be renewed upon application by the infrastructure manager at intervals not exceeding five years. It shall be wholly or partly updated whenever substantial changes are made to the infrastructure, signalling or energy supply or to the principles of its operation and maintenance. The holder of the safety authorisation shall without delay inform the safety authority of all such changes.

The safety authority may require that the safety authorisation be revised following substantial changes to the safety regulatory framework.

If the safety authority finds that an authorised infrastructure manager no longer satisfies the conditions for a safety authorisation it shall revoke the authorisation, giving reasons for its decisions.

3. The safety authority shall inform the Agency within one month of the safety authorisations that have been issued, renewed, amended or revoked. It shall state the name and address of the infrastructure manager, the issue date, the scope and validity of the safety authorisation and, in case of revocation, the reasons for its decision.

Article 12

Application requirements

1. The safety authority shall take a decision on an application for safety certification or safety authorisation without delay and in any event not more than four months after all information required and any supplementary information requested by the safety authority has been submitted. If the applicant is requested to submit supplementary information, such information shall be submitted promptly.

2. In order to facilitate the establishment of new railway undertakings and the submission of applications from railway undertakings from other Member States, the safety authority shall give detailed guidance on how to obtain the safety certificate. It shall list all requirements that have been laid down for the purpose of Article 10(2) and make all relevant documents available to the applicant.

Special guidance shall be given to railway undertakings that apply for a safety certificate concerning services on a defined limited part of an infrastructure, specifically identifying the rules that are valid for the part in question.

3. An application guidance document describing and explaining the requirements for the safety certificates and listing the documents that must be submitted shall be made available to the applicants free of charge. All applications for safety certificates shall be submitted in the language required by the safety authority.

Article 13

Access to training facilities

1. Member States shall ensure that railway undertakings applying for a safety certificate have fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains, whenever such training is necessary for the fulfilment of requirements to obtain the safety certificate.

The services offered must include training on necessary route knowledge, operating rules and procedures, the signalling and control command system and emergency procedures applied on the routes operated.

If the training services do not include examinations and granting of certificates, Member States shall ensure that railway undertakings have access to such certification if it is a requirement of the safety certificate.

The safety authority shall ensure that the provision of training services or, where appropriate, the granting of certificates meets the safety requirements laid down in TSIs or national safety rules described in Article 8 and Annex II.

2. If the training facilities are available only through the services of one single railway undertaking or the infrastructure manager, Member States shall ensure that they are made available to other railway undertakings at a reasonable and non-discriminatory price.

3. In every case each railway undertaking and each infrastructure manager shall be responsible for the level of training and qualifications of its staff carrying out safety-related work as set out in Article 9 and Annex III.

Article 14

Placing in service of in-use rolling stock

1. Rolling stock that has been authorised to be placed in service in one Member State in accordance with Article 10(2)(b) and is not fully covered by the relevant TSIs shall be authorised to be placed in service in another or other Member

States in accordance with this Article, if an authorisation is required by the latter Member State or States.

2. The railway undertaking applying for authorisation to place rolling stock in service in another Member State shall submit a technical file concerning the rolling stock or type of rolling stock to the relevant safety authority, indicating its intended use on the network. The file shall contain the following information:

- (a) evidence that the rolling stock has been authorised to be placed in service in another Member State and records that show its history of operation, maintenance and, where applicable, technical modifications undertaken after the authorisation;
- (b) relevant technical data, maintenance programme and operational characteristics requested by the safety authority and needed for its complementary authorisation;
- (c) evidence on technical and operational characteristics that shows that the rolling stock is in compliance with the energy supply system, the signalling and control command system, the track gauge and infrastructure gauges, the maximum allowed axle load and other constraints of the network;
- (d) information on exemptions from national safety rules that are needed to grant authorisation and evidence, based on risk assessment, showing that the acceptance of the rolling stock does not introduce undue risks to the network.

3. The safety authority may request that test runs on the network be undertaken to verify compliance with the restrictive parameters referred to in paragraph 2(c) and shall in that case prescribe their range and content.

4. The safety authority shall adopt its decision on an application in accordance with this Article without delay and not later than four months after the complete technical file, including documentation of the test runs, has been submitted. The certificate of authorisation may contain conditions for use and other restrictions.

Article 15

Harmonisation of safety certificates

1. Before ...(*), decisions on common harmonised requirements in accordance with Article 10(2)(b) and Annex IV and a common format for application guidance documents shall be adopted in accordance with the procedure referred to in Article 27(2).

2. The Agency shall recommend common harmonised requirements and a common format for application guidance documents under a mandate which shall be adopted in accordance with the procedure referred to in Article 27(2).

(*) Five years after entry into force of this Directive.

CHAPTER IV

SAFETY AUTHORITY

Article 16

Tasks

1. Each Member State shall establish a safety authority. This authority may be the Ministry responsible for transport matters and shall be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant and procurement entity.

2. The safety authority shall be entrusted with at least the following tasks:

- (a) authorising the bringing into service of the structural subsystems constituting the trans-European high-speed rail system in accordance with Article 14 of Directive 96/48/EC and checking that they are operated and maintained in accordance with the relevant essential requirements;
- (b) authorising the bringing into service of the structural subsystems constituting the trans-European conventional rail system, in accordance with Article 14 of Directive 2001/16/EC and checking that they are operated and maintained in accordance with the relevant essential requirements;
- (c) supervising that the interoperability constituents are in compliance with the essential requirements as required by Article 12 of Directives 96/48/EC and 2001/16/EC;
- (d) authorising the placing in service of new and substantially altered rolling stock that is not yet covered by a TSI;
- (e) the issue, renewal, amendments and revocation of relevant parts of safety certificates and of safety authorisations granted in accordance with Articles 10 and 11 and checking that conditions and requirements laid down in them are met and that infrastructure managers and railway undertakings are operating under the requirements of Community or national law;
- (f) monitoring, promoting, and, where appropriate, enforcing and developing the safety regulatory framework including the system of national safety rules;
- (g) supervising that rolling stock is duly registered and that safety-related information in the national register, established in accordance with Article 14 of Directive 96/48/EC and of Directive 2001/16/EC, is accurate and kept up-to-date.

3. The tasks referred to in paragraph 2 may not be transferred or subcontracted to any infrastructure manager, railway undertaking or procurement entity.

Article 17

Decision-making principles

1. The safety authority shall carry out its tasks in an open, non-discriminatory and transparent way. In particular it shall allow all parties to be heard and give reasons for its decisions.

It shall promptly respond to requests and applications and communicate its requests for information without delay and adopt all its decisions within four months after all requested information has been provided. It may at any time request the technical assistance of infrastructure managers and railway undertakings or other qualified bodies when it is carrying out the tasks referred to in Article 16.

In the process of developing the national regulatory framework, the safety authority shall consult all persons involved and interested parties, including infrastructure managers, railway undertakings, manufacturers and maintenance providers, users and staff representatives.

2. The safety authority shall be free to carry out all inspections and investigations that are needed for accomplishment of its tasks and it shall be granted access to all relevant documents and to premises, installations and equipment of infrastructure managers and railway undertakings.

3. Member States shall take the measures necessary to ensure that decisions taken by the safety authority are subject to judicial review.

4. The safety authorities shall conduct an active exchange of views and experience for the purpose of harmonising their decision-making criteria across the Community. Their cooperation shall in particular aim at facilitating and coordinating the safety certification of railway undertakings which have been granted international train paths in accordance with the procedure laid down in Article 15 of Directive 2001/14/EC.

The Agency shall support the safety authorities in these tasks.

Article 18

Annual report

Each year the safety authority shall publish an annual report concerning its activities in the preceding year and send it to the Agency by 30 September at the latest. The report shall contain information on:

- (a) the development of railway safety, including an aggregation at Member State level of the CSIs laid down in Annex I;
- (b) important changes in legislation and regulation concerning railway safety;
- (c) the development of safety certification and safety authorisation;
- (d) results of and experience relating to the supervision of infrastructure managers and railway undertakings.

CHAPTER V

ACCIDENT AND INCIDENT INVESTIGATION

Article 19

Obligation to investigate

1. Member States shall ensure that an investigation is carried out by the investigating body referred to in Article 21 after serious accidents on the railway system, the objective of which is possible improvement of railway safety and the prevention of accidents.

2. In addition to serious accidents, the investigating body referred to in Article 21 may investigate those accidents and incidents which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the trans-European high-speed or conventional rail systems.

The investigating body shall, at its discretion, decide whether or not an investigation of such an accident or incident shall be undertaken. In its decision it shall take into account:

- (a) the seriousness of the accident or incident;
- (b) whether it forms part of a series of accidents or incidents relevant to the system as a whole;
- (c) its impact on railway safety on a Community level, and
- (d) requests from infrastructure managers, railway undertakings, the safety authority or the Member States.

3. The extent of investigations and the procedure to be followed in carrying out such investigations shall be determined by the investigating body, taking into account the principles and the objectives of Articles 20 and 22 and depending on the lessons it expects to draw from the accident or incident for the improvement of safety.

4. The investigation shall in no case be concerned with apportioning blame or liability.

Article 20

Status of investigation

1. Member States shall define, in the framework of their respective legal system, the legal status of the investigation that will enable the investigators-in-charge to carry out their task in the most efficient way and within the shortest time.

2. In accordance with the legislation in force in the Member States and, where appropriate, in cooperation with the authorities responsible for the judicial inquiry, the investigators shall, as soon as possible, be given:

- (a) access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations;
 - (b) the right to an immediate listing of evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes;
 - (c) access to and use of the contents of on-board recorders and equipment for recording of verbal messages and registration of the operation of the signalling and traffic control system;
 - (d) access to the results of examination of the bodies of victims;
 - (e) access to the results of examinations of the train staff and other railway staff involved in the accident or incident;
 - (f) the opportunity to question the railway staff involved and other witnesses;
 - (g) access to any relevant information or records held by the infrastructure manager, the railway undertakings involved and the safety authority.
3. The investigation shall be accomplished independently of any judicial inquiry.

Article 21

Investigating body

1. Each Member State shall ensure that investigations of accidents and incidents referred to in Article 19 are conducted by a permanent body, which shall comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. This body shall be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It shall furthermore be functionally independent from the safety authority and from any regulator of railways.

2. The investigating body shall perform its tasks independently of the organisations referred to in paragraph 1 and shall be able to obtain sufficient resources to do so. Its investigators shall be afforded status giving them the necessary guarantees of independence.

3. Member States shall make provision that railway undertakings, infrastructure managers and, where appropriate, the safety authority, are obliged immediately to report accidents and incidents referred to in Article 19 to the investigating body. The investigating body shall be able to respond to such reports and make the necessary arrangements to start the investigation no later than one week after receipt of the report concerning the accident or incident.

4. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than railway accidents and incidents as long as such investigations do not endanger its independence.

5. If necessary the investigating body may request the assistance of investigating bodies from other Member States or from the Agency to supply expertise or to carry out technical inspections, analyses or evaluations.

6. Member States may entrust the investigating body with the task of carrying out investigations of railway accidents and incidents other than those referred to in Article 19.

7. The investigating bodies shall conduct an active exchange of views and experience for the purpose of developing common investigation methods, drawing up common principles for follow-up of safety recommendations and adaptation to the development of technical and scientific progress.

The Agency shall support the investigating bodies in this task.

Article 22

Investigation procedure

1. An accident or incident referred to in Article 19 shall be investigated by the investigation body of the Member State in which it occurred. If it is not possible to establish in which Member State it occurred or if it occurred on or close to a border installation between two Member States the relevant bodies shall agree which one of them will carry out the investigation or shall agree to carry it out in cooperation. The other body shall in the first case be allowed to participate in the investigation and fully share its results.

Investigation bodies from another Member State shall be invited to participate in an investigation whenever a railway undertaking established and licensed in that Member State is involved in the accident or incident.

This paragraph shall not preclude Member States from agreeing that the relevant bodies should carry out investigations in cooperation in other circumstances.

2. For each accident or incident the body responsible for the investigation shall arrange for the appropriate means, comprising the necessary operational and technical expertise to carry out the investigation. The expertise may be obtained from inside or outside the body, depending on the character of the accident or incident to be investigated.

3. The investigation shall be carried out with as much openness as possible, so that all parties can be heard and can share the results. The relevant infrastructure manager and railway undertakings, the safety authority, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users shall be regularly informed of the investigation and its progress and, as far as practicable, shall be given an opportunity to submit their opinions and views to the investigation and be allowed to comment on the information in draft reports.

4. The investigating body shall conclude its examinations at the accident site in the shortest possible time in order to enable the infrastructure manager to restore the infrastructure and open it to rail transport services as soon as possible.

Article 23

Reports

1. An investigation of an accident or incident referred to in Article 19 shall be the subject of reports in a form appropriate to the type and seriousness of the accident or incident and the relevance of the investigation findings. The reports shall state the objectives of the investigations as referred to in Article 19(1) and contain, where appropriate, safety recommendations.

2. The investigating body shall make public the final report in the shortest possible time and normally not later than 12 months after the date of the occurrence. The report shall, as close as possible, follow the reporting structure laid down in Annex V. The report, including the safety recommendations, shall be communicated to the relevant parties referred to in Article 22(3) and to bodies and parties concerned in other Member States.

3. Each year the investigating body shall publish by 30 September at the latest an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously.

Article 24

Information to be sent to the Agency

1. Within one week after the decision to open an investigation the investigating body shall inform the Agency thereof. The information shall indicate the date, time and place of the occurrence, as well as its type and its consequences as regards fatalities, injuries and material damage.

2. The investigating body shall send the Agency a copy of the final report referred to in Article 23(2) and of the annual report referred to in Article 23(3).

Article 25

Safety recommendations

1. A safety recommendation issued by an investigating body shall in no case create a presumption of blame or liability for an accident or incident.

2. Recommendations shall be addressed to the safety authority and, where needed by reason of the character of the recommendation, to other bodies or authorities in the Member State or to other Member States. Member States and their safety authorities shall take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration, and, where appropriate, acted upon.

3. The safety authority and other authorities or bodies or, when appropriate, other Member States to which recommendations have been addressed, shall report back at least annually to the investigating body on measures that are taken or planned as a consequence of the recommendation.

CHAPTER VI

IMPLEMENTING POWERS

Article 26

Adaptation of Annexes

The Annexes shall be adapted to technical and scientific progress, in accordance with the procedure referred to in Article 27(2).

Article 27

Committee procedure

1. The Commission shall be assisted by the Committee set up by Article 21 of Directive 96/48/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4. The Committee shall adopt its Rules of Procedure.

Article 28

Implementing measures

1. Member States may bring any measures concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted in accordance with the procedure referred to in Article 27(2).

2. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of provisions concerning safety certification and safety authorisation, and within two months of receipt of such a request decide in accordance with the procedure referred to in Article 27(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and the Member States.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 29

Amendments to Directive 95/18/EC

Directive 95/18/EC is hereby amended as follows:

1. Article 8 shall be replaced by the following:

'Article 8

The requirements relating to professional competence shall be met when an applicant railway undertaking has or will have a management organisation which possesses the knowledge and/or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.'

2. In the Annex, Section II shall be deleted.

Article 30

Amendments to Directive 2001/14/EC

Directive 2001/14/EC is hereby amended as follows:

1. The title shall be replaced by the following:

'Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure'.

2. In Article 30(2), point (f) shall be replaced by the following:

'(f) arrangements for access in accordance with Article 10 of Directive 91/440/EEC as amended by Directive 2003/.../EC of the European Parliament and of the Council of ... amending Council Directive 91/440/EEC on the development of the Community's railways (*).

(*) OJ L ...'

3. Article 32 shall be deleted.

4. In Article 34, paragraph 2 shall be replaced by the following:

'2. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of provisions concerning charging, capacity allocation, and within two months of receipt of such a request decide in accordance with the procedure referred to in Article 35(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.'

Article 31

Report

The Commission shall submit to the European Parliament and to the Council before ... (*) and every five years thereafter a report on the implementation of this Directive.

The report shall be accompanied where necessary by proposals for further Community action.

(*) Three years after the entry into force of this Directive.

*Article 32***Penalties**

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate, non-discriminatory and dissuasive.

The Member States shall notify those rules to the Commission by the date specified in Article 33 and shall notify it without delay of any subsequent amendment affecting them.

*Article 33***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) at the latest. They shall forthwith inform the Commission thereof.

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

*Article 34***Entry into force**

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

*Article 35***Addressees**

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) Two years after the entry into force of this Directive.

ANNEX I

COMMON SAFETY INDICATORS

Common Safety Indicators to be reported by the safety authorities:

Indicators relating to activities referred to in Article 2(2), (a) and (b), should be accounted for separately, if they are submitted.

If new facts or errors are discovered after the submission of the report the indicators for one particular year shall be amended or corrected by the safety authority at the first convenient opportunity and at the latest in the next annual report.

For indicators relating to accidents under heading 1 below, Regulation (EC) No 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics ⁽¹⁾ shall be applied as far as the information is available.

1. Indicators relating to accidents

1. Total and relative (to train kilometres) number of accidents and a break-down on the following types of accidents:

- collisions of trains, including collisions with obstacles within the clearance gauge;
- derailments of trains;
- level-crossing accidents, including accidents involving pedestrians at level-crossings;
- accidents to persons caused by rolling stock in motion;
- fires in rolling stock;
- others.

Each accident shall be reported under the type of the primary accident, even if the consequences of the secondary accident are more severe, e.g. a fire following a derailment.

2. Total and relative (to train kilometres) number of persons seriously injured and killed by type of accident divided into the following categories:

- passengers (also in relation to total number of passenger-kilometres);
- employees including the staff of contractors;
- level-crossing users;
- unauthorised persons on railway premises;
- others.

2. Indicators relating to incidents and near-misses

1. Total and relative (to train kilometres) number of broken rails, track buckles and wrong-side signalling failures.
2. Total and relative (to train kilometres) number of signals passed at danger.
3. Total and relative (to train kilometres) number of broken wheels and axles on rolling stock in service.

⁽¹⁾ OJ L 14, 21.1.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1192/2003 (OJ L 167, 4.7.2003, p. 13).

3. Indicators relating to consequences of accidents

1. Total and relative (to train kilometres) costs in euro of all accidents where, if possible, the following costs should be calculated and included:

- deaths and injuries;
- compensation for loss of or damage to property of passengers, staff or third parties – including damage caused to the environment;
- replacement or repair of damaged rolling stock and railway installations;
- delays, disturbances and re-routing of traffic, including extra costs for staff and loss of future revenue.

From the above costs shall be deducted indemnity or compensation recovered or estimated to be recovered from third parties such as motor vehicle owners involved in level crossing accidents. Compensation recovered by insurance policies held by railway undertakings or infrastructure managers shall not be deducted.

2. Total and relative (to number of hours worked) number of working hours of staff and contractors lost as a consequence of accidents.

4. Indicators relating to technical safety of infrastructure and its implementation

1. Percentage of tracks with Automatic Train Protection (ATP) in operation, percentage of train kilometres using operational ATP systems.
2. Number of level crossings (total and per line kilometre). Percentage of level crossings with automatic or manual protection.

5. Indicators relating to the management of safety

Internal audits accomplished by infrastructure managers and railway undertakings as set out in the documentation of the safety management system. Total number of accomplished audits and the number as a percentage of audits required (and/or planned).

6. Definitions

The reporting authorities may use nationally applied definitions of the indicators and methods for calculation of costs when data according to this Annex are submitted. All definitions and calculation methods in use shall be explained in an Annex to the annual report described in Article 18.

ANNEX II

NOTIFICATION OF NATIONAL SAFETY RULES

National safety rules that are to be notified to the Commission according to the procedure described in Article 8 include:

1. rules concerning existing national safety targets and safety methods;
 2. rules concerning requirements on safety management systems and safety certification of railway undertakings;
 3. rules concerning requirements for the authorisation of placing in service and maintenance of new and substantially altered rolling stock that is not yet covered by a TSI. The notification shall include rules for exchange of rolling stock between railway undertakings, registration systems and requirements on testing procedures;
 4. common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;
 5. rules laying down requirements on additional internal operating rules (company rules) that must be established by infrastructure managers and railway undertakings;
 6. rules concerning requirements on staff executing safety critical tasks, including selection criteria, medical fitness and vocational training and certification as far as they are not yet covered by a TSI;
 7. rules concerning the investigation of accidents and incidents.
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ANNEX III

SAFETY MANAGEMENT SYSTEMS**1. Requirements on the safety management system**

The safety management system must be documented in all relevant parts and shall in particular describe the distribution of responsibilities within the organisation of the infrastructure manager or the railway undertaking. It shall show how control by the management on different levels is secured, how staff and their representatives on all levels are involved and how continuous improvement of the safety management system is ensured.

2. Basic elements of the safety management system

The basic elements of the safety management system are:

- (a) a safety policy approved by the organisation's chief executive and communicated to all staff;
 - (b) qualitative and quantitative targets of the organisation for the maintenance and enhancement of safety, and plans and procedures for reaching these targets;
 - (c) procedures to meet existing, new and altered technical and operational standards or other prescriptive conditions as laid down
 - in TSIs, or
 - in national safety rules referred to in Article 8 and Annex II, or
 - in other relevant rules, or
 - in authority decisions,and procedures to assure compliance with the standards and other prescriptive conditions throughout the life-cycle of equipment and operations;
 - (d) procedures and methods for carrying out risk evaluation and implementing risk control measures whenever a change of the operating conditions or new material imposes new risks on the infrastructure or on operations;
 - (e) provision of programmes for training of staff and systems to ensure that the staff's competence is maintained and tasks carried out accordingly;
 - (f) arrangements for the provision of sufficient information within the organisation and, where appropriate, between organisations operating on the same infrastructure;
 - (g) procedures and formats for how safety information is to be documented and designation of procedure for configuration control of vital safety information;
 - (h) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventive measures are taken;
 - (i) provision of plans for action and alerts and information in case of emergency, agreed upon with the appropriate public authorities;
 - (j) provisions for recurrent internal auditing of the safety management system.
-

ANNEX IV

DECLARATIONS FOR NETWORK SPECIFIC PART OF SAFETY CERTIFICATE

The following documents must be submitted to enable the safety authority to deliver the network-specific part of the safety certificate:

- documentation from the railway undertaking on the TSIs or parts of TSIs and, where relevant, national safety rules and other rules applicable to its operations, its staff and its rolling stock and how compliance is ensured by the safety management system;
- documentation from the railway undertaking on the different categories of staff employed or contracted for the operation, including evidence that they meet requirements of TSIs or national rules and have been duly certified;
- documentation from the railway undertaking on the different types of rolling stock used for the operation, including evidence that they meet requirements of TSIs or national rules and have been duly certified.

To avoid duplication of work and to reduce the amount of information only summary documentation should be submitted concerning elements that comply with TSIs and other requirements of Directives 96/48/EC and 2001/16/EC.

ANNEX V

PRINCIPAL CONTENT OF ACCIDENT AND INCIDENT INVESTIGATION REPORT**1. Summary**

The summary shall contain a short description of the occurrence, when and where it took place and its consequences. It shall state the direct causes as well as contributing factors and underlying causes established by the investigation. The main recommendations shall be quoted and information shall be given on the addressees.

2. Immediate facts of the occurrence

1. The occurrence:

- date, exact time and location of the occurrence;
- description of the events and the accident site including the efforts of the rescue and emergency services;
- the decision to establish an investigation, the composition of the team of investigators and the conduct of the investigation.

2. The background to the occurrence:

- staff and contractors involved and other parties and witnesses;
- the trains and their composition including the registration numbers of the items of rolling stock involved;
- the description of the infrastructure and signalling system – track types, switches, interlocking, signals, train protection;
- means of communication;
- works carried out at or in the vicinity of the site;
- trigger of the railway emergency plan and its chain of events;
- trigger of the emergency plan of the public rescue services, the police and the medical services and its chain of events.

3. Fatalities, injuries and material damage:

- passengers and third parties, staff, including contractors;
- cargo, luggage and other property;
- rolling stock, infrastructure and the environment.

4. External circumstances:

- weather conditions and geographical references.

3. Record of investigations and inquiries

1. Summary of testimonies (subject to the protection of identity of the persons):

- railway staff, including contractors;
- other witnesses.

2. The safety management system:

- the framework organisation and how orders are given and carried out;
- requirements on staff and how they are enforced;
- routines for internal checks and audits and their results;
- interface between different actors involved with the infrastructure.

3. Rules and regulations:

- relevant Community and national rules and regulations;
- other rules such as operating rules, local instructions, staff requirements, maintenance prescriptions and applicable standards.

4. Functioning of rolling stock and technical installations:

- signalling and control command system, including registration from automatic data recorders;
- infrastructure;
- communications equipment;
- rolling stock, including registration from automatic data recorders.

5. Documentation on the operating system:

- measures taken by staff for traffic control and signalling;
- exchange of verbal messages in connection with the occurrence, including documentation from recordings;
- measures taken to protect and safeguard the site of the occurrence.

6. Man-machine-organisation interface:

- working time applied to the staff involved; [meaning not clear]
- medical and personal circumstances with influence on the occurrence, including existence of physical or psychological stress;
- design of equipment with impact on man-machine interface.

7. Previous occurrences of a similar character.

4. Analysis and conclusions

1. Final account of the event chain:

- establishing the conclusions on the occurrence, based on the facts established in heading (3).

2. Discussion:

- analysis of the facts established in heading (3) with the aim of drawing conclusions as to the causes of the occurrence and the performance of the rescue services.

3. Conclusions:

- direct and immediate causes of the occurrence including contributory factors relating to actions taken by persons involved or the condition of rolling stock or technical installations;
- underlying causes relating to skills, procedures and maintenance;
- root causes relating to the regulatory framework conditions and application of the safety management system.

4. Additional observations:

- deficiencies and shortcomings established during the investigation, but without relevance to the conclusions on causes.

5. **Measures that have been taken**

- Record of measures already taken or adopted as a consequence of the occurrence.

6. **Recommendations**

STATEMENT OF THE COUNCIL'S REASONS ⁽¹⁾

⁽¹⁾ See page 3 of this Official Journal.

COMMON POSITION (EC) No 56/2003**adopted by the Council on 26 June 2003****with a view to the adoption of a Regulation (EC) No .../2003 of the European Parliament and of the Council of ... establishing a European Railway Agency (Agency Regulation)**

(2003/C 270 E/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the Opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) The progressive establishment of a European railway area without frontiers requires Community action in the field of the technical regulations applicable to railways with regard to both the technical aspects and the safety aspects, the two being inextricably linked.

(2) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ provides for progressively opening up rights of access to the infrastructure to any licensed Community railway undertakings which wish to operate goods services.

⁽¹⁾ OJ C 126 E, 28.5.2002, p. 323.

⁽²⁾ OJ C 61, 14.3.2003, p. 131.

⁽³⁾ OJ C 66, 19.3.2003, p. 5.

⁽⁴⁾ Opinion of the European Parliament of 14 January 2003 (not yet published in the Official Journal), Council common position of 26 June 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).

(3) Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽⁶⁾ provides that all railway undertakings must hold a licence and that a licence issued in a Member State shall be valid throughout the Community.

(4) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ⁽⁷⁾ establishes a new framework with the aim of creating a European railway area without frontiers.

(5) The technical and operational differences between the railway systems of the Member States have compartmentalised the national rail markets and prevented dynamic development of this sector on a European scale. Council Directive 96/48/EC of 23 July 1996 on the interoperability of the Trans-European high-speed rail system ⁽⁸⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the Trans-European conventional rail system ⁽⁹⁾ define essential requirements and establish a mechanism for defining mandatory technical specifications for interoperability.

(6) Simultaneous pursuit of the goals of safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it is necessary to create, within the existing institutional framework and with respect for the balance of power in the Community, a European Agency responsible for railway safety and interoperability (hereinafter referred to as 'the Agency'). The creation of such an Agency will provide a means of considering the safety and interoperability goals for the European rail network jointly and with a high level of expertise and in this way contributing to revitalising the railways and to the general objectives of the common transport policy.

⁽⁶⁾ OJ L 143, 27.6.1995, p. 70. Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).

⁽⁷⁾ OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).

⁽⁸⁾ OJ L 235, 17.9.1996, p. 6.

⁽⁹⁾ OJ L 110, 20.4.2001, p. 1.

- (7) In order to promote the establishment of a European railway area without borders and to help revitalise the railway sector while reinforcing its essential advantages in terms of safety, the Agency should contribute to the development of a genuine European railway culture and form an essential tool of dialogue, consultation and exchange between all the actors in the railway sector, having due regard for their individual competences.
- (8) Directive 2003/.../EC of the European Parliament and of the Council of ... on safety on the Community's railways ⁽¹⁾ ('Railway Safety Directive') provides for the development of common safety indicators, common safety targets and common safety methods. Development of these tools requires independent technical expertise.
- (9) In order to facilitate the procedures for issuing safety certificates to railway undertakings, it is essential to develop a harmonised format for safety certificates and a harmonised format for applications for safety certificates.
- (10) The Railway Safety Directive provides for examination of national safety measures from the point of view of safety and interoperability. To this end, an opinion based on independent and neutral expertise is essential.
- (11) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performances, based on common indicators and linking all players in the sector, does not yet exist and such a tool should be introduced. As regards statistics, close collaboration with Eurostat is necessary.
- (12) The national railway safety organisations, regulators and other national authorities should be able to request an independent technical opinion when they require information concerning several Member States.
- (13) Directive 2001/16/EC provides that a first group of technical specifications for interoperability (TSIs) is to be drawn up not later than 20 April 2004. The Commission has given a mandate to carry out this work to the European Association for Railway Interoperability (AEIF), which brings together the manufacturers of railway equipment and the infrastructure managers and operators. Steps should be taken to preserve the experience built up by professionals from the industry in the context of the AEIF. The continuity of the work and the development of the TSIs over time requires a permanent technical framework.
- (14) The interoperability of the Trans-European network should be enhanced and the new investment projects chosen for support by the Community should be in line with the objective of interoperability set 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 ⁽²⁾.
- (15) In order to ensure continuity, the working parties to be set up by the Agency should rely as appropriate on the composition of the AEIF, supplemented by additional members.
- (16) Rolling stock maintenance is an important part of the safety system. There is no genuine European market for the maintenance of rail equipment owing to the lack of a system for certification of maintenance workshops. This situation adds to the costs for the sector and results in journeys without loads. A European certification system for maintenance workshops should therefore gradually be developed.
- (17) The vocational competences required for train drivers are a major factor in both safety and interoperability in Europe. They are also a precondition for the free movement of workers in the railway industry. This question should be tackled with respect to the existing framework for social dialogue. The Agency should provide the technical support necessary in order to take account of this aspect at European level.
- (18) Registration is first and foremost an act of recognition of the capability of rolling stock to operate under specified conditions. The registration should be transparent and non-discriminatory and fall within the competence of the public authorities. The Agency should provide technical support in order to establish a system for registration.
- (19) In order to ensure the greatest possible transparency and equal access for all parties to relevant information, the documents envisaged for the interoperability process should be accessible to the public. The same applies to licences and safety certificates. The Agency should provide an efficient means of exchanging this information.
- (20) Promotion of innovation in the field of railway safety and interoperability is an important task which the Agency should encourage. Any financial assistance provided within the framework of the Agency's activities in this respect should not lead to any distortion in the relevant market.

⁽¹⁾ OJ L ...

⁽²⁾ OJ L 228, 9.9.1996, p. 1. Decision as amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

- (21) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Community. In order to ensure independence in its daily management and in the opinions and recommendations which it issues, the Agency's Executive Director should have full responsibility and the Agency's staff should be independent.
- (22) In order to ensure effectively the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board vested with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, approve its work programme, adopt its budget, define a policy for visits to the Member States and appoint the Executive Director.
- (23) In order to guarantee the transparency of the Administrative Board's decisions, representatives of the sectors concerned should attend its deliberations, but without the right to vote, that right being reserved to the representatives of public authorities who are answerable to the democratic control authorities. The representatives of the sector should be appointed by the Commission on the basis of their representativeness at European level for railway undertakings, infrastructure managers, railway industry, workers unions, passengers and freight customers.
- (24) The Agency's work should be transparent. Effective control by the European Parliament should be ensured and, to this end, the European Parliament should have the possibility of hearing the Executive Director of the Agency. The Agency should also apply the relevant Community legislation concerning public access to documents.
- (25) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹⁾ should apply

without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office ⁽²⁾.

- (26) Since the objectives of the action proposed, namely to establish a specialised body to formulate common solutions on matters concerning railway safety and interoperability, cannot be sufficiently achieved by the Member States by reason of the joint nature of the work to be done, and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

PRINCIPLES

Article 1

Establishment and objectives of the Agency

This Regulation establishes a European Railway Agency, hereinafter referred to as 'the Agency'.

The objective of the Agency shall be to contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety.

In pursuing these objectives, the Agency shall take full account of the process of enlargement of the European Union and of the specific constraints relating to rail links with third countries.

Article 2

Type of acts of the Agency

The Agency may:

- (a) address recommendations to the Commission concerning the application of Articles 6, 7, 12, 14, 16, 17 and 18;
- (b) issue opinions to the Commission pursuant to Articles 8, 13 and 15, and to the authorities concerned in the Member States pursuant to Article 10.

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

*Article 3***Composition of the working parties**

1. For drawing up the recommendations provided for in Articles 6, 7, 12, 14, 16, 17 and 18, the Agency shall establish a limited number of working parties. These working parties shall take as a basis, on the one hand, the expertise built up by professionals from the railway sector, in particular the experience gained by the European Association for Railway Interoperability (AEIF), and, on the other hand, the expertise of the competent national authorities. The Agency shall ensure that its working parties are competent and representative and that they include adequate representation of those sectors of the industry and of those users which will be affected by measures which might be proposed by the Commission on the basis of the recommendations addressed to it by the Agency. The work of the working parties shall be transparent.

2. The Agency shall forward the adopted work programme to the representative bodies from the railway sector acting on a European level. The list of these bodies shall be drawn up by the Committee referred to in Article 21 of Directive 96/48/EC. Each body and/or group of bodies shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party.

3. The national safety authorities defined in Article 16 of the Railway Safety Directive shall appoint their representatives for the working parties in which they wish to participate.

4. The Agency may, if necessary, add to the working parties independent experts recognised as competent in the field concerned.

5. The working parties shall be chaired by a representative of the Agency.

*Article 4***Consultation of the social partners**

Whenever the work provided for in Articles 6, 12 and 17 has a direct impact on the social environment or working conditions in the railway sector, the Agency shall consult the social partners within the framework of the sectoral dialogue committee set up pursuant to Commission Decision 98/500/EC ⁽¹⁾.

These consultations shall be held before the Agency submits its recommendations to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its recommendations. The opinions expressed by the sectoral dialogue committee shall be forwarded by the Agency to the Commission and by the

Commission to the committee referred to in Article 21 of Directive 96/48/EC.

*Article 5***Consultation of rail freight customers and passengers**

Whenever the work provided for in Articles 6 and 12 has a direct impact on rail freight customers and passengers, the Agency shall consult the organisations representing them. The list of organisations to be consulted shall be drawn up by the committee referred to in Article 21 of Directive 96/48/EC.

These consultations shall be held before the Agency submits its proposals to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its proposals. The opinions expressed by the organisations concerned shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 21 of Directive 96/48/EC.

CHAPTER 2

SAFETY*Article 6***Technical support**

1. The Agency shall recommend to the Commission the common safety methods (CSMs) and the common safety targets (CSTs) provided for in Articles 6 and 7 of the Railway Safety Directive.

2. The Agency shall recommend to the Commission, at the request of the Commission or of the committee referred to in Article 21 of Directive 96/48/EC or on its own initiative, other measures in the field of safety.

3. For the transitional period preceding adoption of the CSTs, of the CSMs and of the technical specifications for interoperability (TSIs), as well as for matters concerning equipment and infrastructure not covered by the TSIs, the Agency may submit any appropriate recommendation to the Commission. The Agency shall ensure consistency between these recommendations and the TSIs already existing or being drawn up.

4. The Agency shall present a detailed cost-benefit analysis in support of the recommendations which it submits pursuant to this Article.

5. The Agency shall organise and facilitate cooperation between the national safety authorities and the investigating bodies defined in Articles 16 and 21 of the Railway Safety Directive.

⁽¹⁾ OJ L 225, 12.8.1998, p. 27.

*Article 7***Safety certificates**

With a view to the application of Articles 10 and 15 of the Railway Safety Directive concerning the harmonisation of safety certificates, the Agency shall draft and recommend a harmonised format for safety certificates, including an electronic version, and a harmonised format for applications for safety certificates, including a list of the essential details to be provided.

*Article 8***National safety rules**

1. At the request of the Commission, the Agency shall carry out a technical examination of the new national safety rules submitted to the Commission in accordance with Article 8 of the Railway Safety Directive.

2. The Agency shall examine the compatibility of the above-mentioned rules with the CSMs defined by the Railway Safety Directive and with the TSIs in force. The Agency shall also examine whether these rules enable the CSTs defined by the said Directive to be achieved.

3. If, after taking account of the reasons given by the Member State, the Agency considers that any of these rules either is incompatible with the TSIs or the CSMs or does not allow CSTs to be reached, it shall submit an opinion to the Commission within two months of transmission of the rules to the Agency by the Commission.

*Article 9***Monitoring of safety performance**

1. The Agency shall establish a network with the national authorities responsible for safety and the national authorities responsible for the investigations provided for by the Railway Safety Directive in order to define the content of the common safety indicators listed in Annex I to that Directive and to collect relevant data on railway safety.

2. On the basis of the common safety indicators, national reports on safety and accidents and its own information, the Agency shall submit every two years a report on safety performance, which shall be made public. The first such report shall be published during the Agency's third year of operation.

3. The Agency shall draw on the data collected by Eurostat and shall cooperate with Eurostat to avoid any duplication of

work and to ensure methodological consistency between the common safety indicators and the indicators used in other modes of transport.

*Article 10***Technical opinions**

1. The national regulatory bodies referred to in Article 30 of Directive 2001/14/EC may request a technical opinion from the Agency concerning the safety-related aspects of matters drawn to their attention.

2. The committees provided for in Article 35 of Directive 2001/14/EC and Article 11a of Directive 91/440/EEC may request a technical opinion from the Agency concerning safety-related aspects within their respective areas of competence.

3. The Agency shall give its opinion within two months. This opinion shall be made public by the Agency in a version from which all commercially confidential material has been removed.

*Article 11***Public database of documents**

1. The Agency shall be responsible for keeping a public database of the following documents:

- (a) the licences issued in accordance with Directive 95/18/EC;
- (b) the safety certificates issued in accordance with Article 10 of the Railway Safety Directive;
- (c) the investigation reports sent to the Agency in accordance with Article 24 of the Railway Safety Directive;
- (d) the national rules notified to the Commission in accordance with Article 8 of the Railway Safety Directive.

2. The national authorities responsible for issuing the documents referred to in paragraph 1(a) and (b) shall notify the Agency within one month of each individual decision to issue, renew, amend or revoke them.

3. The Agency may add to this public database any public document or link relevant to the objectives of this Regulation.

CHAPTER 3

INTEROPERABILITY*Article 12***Technical support provided by the Agency**

The Agency shall contribute to the development and implementation of rail interoperability in accordance with the principles and definitions laid down in Directives 96/48/EC and 2001/16/EC. To this end, the Agency shall:

- (a) organise and conduct, on a mandate from the Commission, the work of the working parties referred to in Article 3 on drafting the TSIs and forward the draft TSIs to the Commission;
- (b) ensure that the TSIs are adapted to technical progress and market trends and to the social requirements and propose to the Commission the amendments to the TSIs which it considers necessary;
- (c) ensure coordination between the development and updating of the TSIs on the one hand and the development of the European standards which prove necessary for interoperability on the other and maintain the relevant contacts with the European standardisation bodies;
- (d) assist the Commission in organising and facilitating the cooperation of notified bodies, as described in Article 20(5) of Directives 96/48/EC and 2001/16/EC;
- (e) advise and address recommendations to the Commission relating to the working conditions of all staff executing safety-critical tasks.

*Article 13***Monitoring the work of notified bodies**

Without prejudice to the responsibility of Member States for the notified bodies which they designate, the Agency may, at the request of the Commission, monitor the quality of the work of notified bodies. It shall submit an opinion to the Commission where appropriate.

*Article 14***Monitoring interoperability**

1. The Agency shall recommend, at the request of the Commission, procedures for implementing interoperability of the railway systems by facilitating coordination between railway undertakings and between infrastructure managers, in particular to organise systems migration.
2. The Agency shall monitor progress with the interoperability of the railway systems. Every two years it shall present

and publish a report on progress with interoperability. The first such report shall be published during the Agency's second year of activity.

*Article 15***Interoperability of the trans-European network**

At the request of the Commission, the Agency shall examine, from the point of view of interoperability, any railway infrastructure project for which Community financial support is requested. The Agency shall give an opinion on the conformity of the project with the relevant TSIs within two months of the request. This opinion shall take fully into account the derogations provided for in Article 7 of Directive 96/48/EC and of Directive 2001/16/EC.

*Article 16***Certification of maintenance workshops**

Within 3 years from the start of its activities, the Agency shall develop a European system for certification of maintenance workshops for rolling stock and shall make recommendations with a view to the implementation of the system.

These recommendations shall address in particular the following items:

- structured management system,
- staff with the necessary competences,
- facilities and tools,
- technical documentation and maintenance prescriptions.

*Article 17***Vocational competences**

1. The Agency shall draw up recommendations concerning the determination of common uniform criteria for the vocational competences and the assessment of the staff involved in the operation and maintenance of the railway system. In doing so it shall give priority to drivers and trainers. The Agency shall consult the representatives of the social partners in accordance with the arrangements laid down in Article 4.
2. The Agency shall draw up recommendations with a view to putting in place a system for accreditation of training centres.
3. The Agency shall promote and support exchanges of drivers and trainers between railway companies from different Member States.

*Article 18***Registration of rolling stock**

The Agency shall draw up and recommend to the Commission a standard format for the national vehicle register in accordance with Article 14 of Directives 96/48/EC and 2001/16/EC.

*Article 19***Register of documents on interoperability**

1. The Agency shall keep a public list of the following documents provided for by Directives 2001/16/EC and 96/48/EC:

- (a) the 'EC' declarations of verification of subsystems;
- (b) the 'EC' declarations of conformity of constituents;
- (c) the authorisations for putting into service, including the corresponding registration numbers;
- (d) the registers of infrastructure and rolling stock.

2. The bodies concerned shall submit these documents to the Agency, which shall determine in agreement with Member States the practical procedures for submitting them.

3. When transmitting the documents referred to in paragraph 1, the bodies concerned may indicate which documents are not to be disclosed to the public for reasons of security.

4. The Agency shall set up an electronic database for the documents, taking full account of paragraph 3. This database shall be accessible to the public through a website.

CHAPTER 4

STUDIES AND PROMOTION OF INNOVATION*Article 20***Studies**

Where required for implementation of the tasks set by this Regulation, the Agency shall order studies, financed from its own budget.

*Article 21***Promotion of innovation**

The Commission may entrust the Agency, in accordance with the Agency's work programme and budget, with the task of promoting innovations aimed at improving railway interoper-

ability and safety, particularly the use of new information technologies and tracking and tracing systems.

CHAPTER 5

INTERNAL STRUCTURE AND OPERATION*Article 22***Legal status**

1. The Agency shall be a body of the Community. It shall have legal personality.

2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

3. The Agency shall be represented by its Executive Director.

*Article 23***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and its staff.

*Article 24***Staff**

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency.

2. Without prejudice to Article 26, the powers conferred on the appointing authority and on the contracting authority by the said Staff Regulations and Conditions of Employment shall be exercised by the Agency in respect of its own staff.

3. Without prejudice to Article 26(1), the Agency's staff shall consist of:

- temporary employees recruited by the Agency for a maximum of five years from among professionals from the sector on the basis of their qualifications and experience in the field of railway safety and interoperability;
- officials assigned or seconded by the Commission or Member States for a maximum of five years;

— and of other servants, as defined in the Conditions of Employment of Other Servants of the European Communities, to carry out implementing or secretarial tasks.

4. The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff. Their travel and subsistence expenses, based on rules and scales adopted by the Administrative Board, shall be met by the Agency.

Article 25

Creation and powers of the Administrative Board

1. An Administrative Board is hereby set up.
2. The Administrative Board shall:
 - (a) appoint the Executive Director pursuant to Article 31;
 - (b) adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the Member States, the European Parliament, the Council and the Commission;
 - (c) adopt, by 31 October each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. This work programme shall be adopted without prejudice to the annual Community budgetary procedure. If the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, on a second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
 - (d) exercise its functions in relation to the Agency's budget, pursuant to Chapter 6;
 - (e) establish procedures for decision-making by the Executive Director;
 - (f) define a policy for the visits to be carried out pursuant to Article 33;
 - (g) exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 30(3);
 - (h) establish its rules of procedure.

Article 26

Composition of the Administrative Board

1. The Administrative Board shall be composed of one representative of each Member State and four representatives

of the Commission, as well as of six representatives appointed by the Commission, without the right to vote, each of whom represents at European level one of the following groups:

- railway undertakings
- infrastructure managers
- railway industry
- worker unions
- passengers
- freight customers.

Board members shall be appointed on the basis of their degree of relevant experience and expertise.

2. Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate.

3. The term of office shall be five years and may be renewed once.

4. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 36(2).

Article 27

Chairperson of the Administrative Board

1. The Administrative Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall replace the Chairperson in the event of the Chairperson being unable to attend to his/her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall be three years and may be renewed once. If, however, their membership of the Administrative Board ends at any time during their term of office as Chairperson or Deputy Chairperson, then their term of office shall automatically expire on that date also.

Article 28

Meetings

1. Meetings of the Administrative Board shall be convened by its Chairperson. The Executive Director of the Agency shall participate in the meetings.

2. The Administrative Board shall meet at least twice a year. It shall also meet at the instance of the Chairperson, at the request of the Commission, at the request of the majority of its members or of one-third of the Member States' representatives on the Board.

*Article 29***Voting**

Unless stated otherwise, the Administrative Board shall take its decisions by a two-thirds majority of its members entitled to vote. Each member entitled to vote shall have one vote.

*Article 30***Functions and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competences of the Commission and the Administrative Board.

2. The Executive Director shall:

- (a) prepare the work programme and, after consultation of the Commission, submit it to the Administrative Board;
- (b) make the necessary arrangements for implementation of the work programme and, as far as possible, respond to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation;
- (c) take the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation;
- (d) establish an effective monitoring system in order to compare the Agency's results with its operational objectives and establish a regular assessment system corresponding to recognised professional standards. On this basis the Executive Director shall prepare each year a draft general report and submit it to the Administrative Board;
- (e) exercise the powers laid down in Article 24(2) in respect of the Agency staff;
- (f) draw up estimates of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.

3. The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or unable to attend to his/her duties, one of the Heads of Unit shall take his/her place.

*Article 31***Appointments of the Agency staff**

1. The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to the railway sector. The Administrative Board shall take its decision by a four-fifths majority of all members entitled to vote. The Commission may propose a candidate or candidates.

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

2. The Executive Director shall appoint the other members of the Agency's staff in accordance with Article 24.

3. The term of office of the Executive Director shall be five years. This term of office is renewable once.

*Article 32***Hearing of the Executive Director**

Each year the Executive Director shall present to the European Parliament a general report on the Agency's activities. The European Parliament or the Council may also ask at any time for a hearing of the Executive Director on any subject related to the Agency's activities.

*Article 33***Visits to Member States**

1. In order to perform the tasks entrusted to it by Articles 8, 9, 10, 13 and 15, the Agency may carry out visits to the Member States in accordance with the policy defined by the Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.

2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated Agency officials, and the date on which the visit is to start. The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director specifying the purpose and the aims of their visit.

3. At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

*Article 34***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the course of performance of their duties.

4. The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 35

Languages

1. The Administrative Board shall decide on the linguistic arrangements for the Agency. At the request of a Member of the Administrative Board, this decision shall be taken by unanimity. The Member States may address the Agency in the Community language of their choice.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

Article 36

Participation by third countries

1. The Agency shall be open to participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation.

2. In accordance with the relevant provisions of the above-mentioned agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of the Agency, in particular the nature and extent of such participation. These arrangements shall include, inter alia, provisions on financial contributions and staff. They may provide for representation, without vote, on the Administrative Board.

Article 37

Transparency

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ shall apply to the documents held by the Agency.

The Administrative Board shall adopt the practical measures for implementation of that Regulation.

CHAPTER 6

FINANCIAL PROVISIONS

Article 38

Budget

1. The revenue of the Agency shall consist of:

— a contribution from the Community;

— any contribution from third countries participating in the work of the Agency, as provided for by Article 36;

— charges for publications, training and any other services provided by the Agency.

2. The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following calendar year and shall submit it to the Administrative Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Administrative Board shall adopt, by 31 March at the latest, the draft budget for the following calendar year and submit it to the Commission, which, on the basis of it, shall enter the corresponding estimates in the preliminary draft general budget of the European Union, which it shall submit to the Council in accordance with Article 272 of the Treaty.

6. The Administrative Board shall adopt, by 15 January at the latest, the Agency's budget for the current calendar year, adjusting it, where necessary, to the Community contribution decided on by the budgetary authority.

Article 39

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.

2. Control of commitment and payment of all expenditure and control of the existence and receipt of all revenue of the Agency shall be carried out by the Financial Controller of the Commission.

3. By 31 March at the latest, the Executive Director shall submit to the Commission, the Administrative Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous budgetary year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Executive Director in respect of the implementation of the budget.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

*Article 40***Financial Regulation**

The Administrative Board, after receiving the agreement of the Commission and the endorsement of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall, in particular, specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 185 of the Financial Regulation applicable to the general budget of the European Communities. The annual appropriations for the Agency shall be authorised by the budgetary authority within the limits of the relevant heading of the financial perspective.

*Article 41***Combating fraud**

1. For the purposes of combating fraud, corruption and other unlawful acts, Regulation (EC) No 1073/1999 shall apply in full.
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt the necessary provisions applicable to all Agency staff.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly

state that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of the Agency's funding.

CHAPTER 7

GENERAL AND FINAL PROVISIONS*Article 42***Start of the Agency's activities**

The Agency shall be operational within 24 months of the entry into force of this Regulation.

*Article 43***Evaluation**

Five years after the Agency takes up its duties, the Commission shall carry out an evaluation of implementation of this Regulation, the results obtained by the Agency and its working methods. This evaluation shall take account of the views of the representatives of the railways sector, of the social partners and of customers' organisations. The findings of the evaluation shall be made public. The Commission shall propose, if necessary, an amendment to this Regulation.

Article 44

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

STATEMENT OF THE COUNCIL'S REASONS ⁽¹⁾

⁽¹⁾ See page 3 of this Official Journal.