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I

(Information)

COUNCIL

COMMON POSITION (EC) No 19/2006

adopted by the Council on 24 July 2006

**with a view to adopting Regulation (EC) No.../2006 of the European Parliament and of the Council
of ... on international rail passengers' rights and obligations**

(2006/C 289 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,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the Opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) In the framework of the common transport policy, it is important to safeguard users' rights for international rail passengers travelling between the Member States and to improve the quality and effectiveness of international rail passenger services between the Member States in order to help the increase of the share of rail transport in relation to other modes of transport.
- (2) The Commission's communication 'Consumer Policy Strategy 2002-2006' ⁽⁴⁾ sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.

- (4) Users' rights for rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings and ticket vendors should provide this information in advance and as soon as possible.

- (5) More detailed requirements regarding the provision of travel information will be set out in the technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽⁵⁾.

- (6) Strengthening of the rights of international rail passengers should build on the existing system of international law on this subject contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol).

- (7) Railway undertakings should cooperate to facilitate the transfer of international rail passengers from one operator to another by the provision of through tickets, whenever possible.

- (8) The provision of information and tickets for international rail passengers should be facilitated by the adaptation of computerised systems to a common specification.

⁽¹⁾ OJ C 221, 8.9.2005, p. 8.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28.9.2005 (not yet published in the Official Journal), Council common position of 24 July 2006 (OJ...) (not yet published in the Official Journal) and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ C 137, 8.6.2002, p. 2.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1. Directive as amended by Directive 2004/50/EC (OJ L 164, 30.4.2004, p. 114).

- (9) The further implementation of travel information and reservation systems should be executed in accordance with the TSIs.
- (10) International rail passenger services should benefit citizens in general. Consequently, persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for rail travel comparable to those of other citizens. Persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and to non-discrimination. Inter alia, special attention should be given to the provision of information to persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Persons with reduced mobility should be enabled to buy tickets on board a train without extra charges.
- (11) Railway undertakings should be obliged to be insured, or to make equivalent arrangements, for their liability to international rail passengers in the event of accident. The minimum amount of insurance for railway undertakings should be the subject of future review.
- (12) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of an international service should lead to greater incentives for the international rail passenger market, to the benefit of passengers.
- (13) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.
- (14) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (15) It is in the interests of international rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (16) International rail passengers should be able to submit a complaint to any railway undertaking or ticket vendor involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time.
- (17) Railway undertakings should define, manage and monitor service quality standards for international rail passenger services.
- (18) The content of this Regulation should be reviewed in respect of the adjustment of financial amounts for inflation and information and service quality requirements in the light of market developments as well as in the light of the effects on service quality of this Regulation.
- (19) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.
- (20) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (21) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights in international rail traffic, cannot be sufficiently achieved by the Member States alone in view of the significant international dimensions and the need for international coordination of international passenger journeys 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.
- (22) It is an aim of this Regulation to support cross-border integration in areas where citizens of two or more neighbouring Member States work and reside — to a substantial degree — in the other Member State. Therefore, Member States should be enabled temporarily to grant exemptions for individual cross-border services. These services might provide transport either in a conurbation or region located in two or more Member States, in regions where a significant part of the service is operated outside the Community, where a short section of the route passes through another Member State or where it crosses into another Member State only to make the final stop.
- (23) The measures necessary for the implementation of this Regulation 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⁾.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules as regards the following:

- a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport,
- b) the liability of railway undertakings and their insurance obligations for passengers and their luggage,
- c) the obligations of railway undertakings to passengers in cases of delay,
- d) the protection of, and assistance to, persons with reduced mobility travelling by rail,
- e) the definition and monitoring of service quality standards for international services, the management of risks to the personal security of passengers and the handling of complaints, and
- f) general rules on enforcement.

Article 2

Scope

1. Subject to paragraphs 2, 3 and 4, this Regulation shall apply throughout the Community to international journeys on domestic and international services, provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings⁽¹⁾.

2. Chapter IV and Article 25 shall apply only to international journeys on international services.

3. Chapter V shall also apply to domestic journeys on international services.

4. For a maximum period of 5 years, a Member State may, on a transparent and non-discriminatory basis, grant a temporary exemption, which may be renewed, from application of the provisions of this Regulation to particular international services or international journeys, which are in an extraordinary situation because:

- a) the international service provides transport to meet the transport needs of a conurbation or a region located in two or more Member States, or

- b) a significant part of the international service, including at least one scheduled station stop, is operated outside the Community, or

- c) the international service begins and ends in the same Member State and a section passes through one other Member State, with or without commercial stops, for a distance of less than 100 km, or

- d) the international service crosses one Member State border and terminates at the station closest to the border.

Member States shall notify the Commission of such an exemption. The Commission shall determine whether an exemption is in accordance with this Article.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'railway undertaking' means a railway undertaking as defined in Article 2 of Directive 2001/14/EC⁽²⁾, 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;
2. 'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;
3. 'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to whom the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail;
4. '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⁽³⁾, 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;
5. 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager;

⁽¹⁾ OJ L 143, 27.6.1995, p. 70. Directive as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

⁽²⁾ 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 (OJ L 75, 15.3.2001, p. 29). Directive as last amended by Directive 2004/49/EC.

⁽³⁾ Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25). Directive as last amended by Directive 2004/51/EC of the European Parliament and the Council (OJ L 164, 30.4.2004, p. 164).

6. 'tour operator' means an organiser or retailer, other than a railway undertaking, within the meaning of Article 2, points (2) and (3) of Directive 90/314/EEC ⁽¹⁾;
7. 'ticket vendor' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
8. 'transport contract' means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;
9. 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
10. 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings;
11. 'international journey' means a passenger journey by rail between two Member States under a single transport contract whereby, between the place of departure and the place of destination, a passenger crosses at least one border of a Member State and where, under the same contract, the passenger travels on at least one international service. The passenger may, depending on the places of departure and destination in the transport contract, also travel on one or more domestic services;
12. 'domestic journey' means a passenger journey by rail under a single transport contract whereby a passenger does not cross a border of a Member State;
13. 'international service' means a rail passenger service which starts and ends in the Community and crosses at least one border of a Member State;
14. 'domestic service' means a rail passenger service which does not cross a border of a Member State;
15. 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival;
16. 'Computerised Information and Reservation System for Rail Transport (CIRSRT)' means a computerised system containing information about rail services offered by railway undertakings; the information stored in the CIRSRT on passenger services shall include information on:
 - (a) schedules and timetables of passenger services;
 - (b) availability of seats on passenger services;
 - (c) fares and special conditions;
- (d) accessibility of trains for persons with reduced mobility;
- (e) facilities through which reservations may be made or tickets or through tickets may be issued to the extent that some or all of these facilities are made available to users;
17. 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;
18. 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
19. 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

CHAPTER II

TRANSPORT CONTRACT, INFORMATION AND TICKETS

Article 4

Transport contract

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

Article 5

Exclusion of waiver and stipulation of limits

1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.
2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.

Article 6

Obligation to provide information concerning discontinuation of international services

Railway undertakings shall make public by appropriate means, and before their implementation, decisions to discontinue international services.

⁽¹⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

*Article 7***Travel information**

1. Without prejudice to Article 9, railway undertakings and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the international journeys for which a transport contract is offered by the railway undertaking concerned. Ticket vendors offering transport contracts on their own account, and tour operators, shall provide this information where available.

2. Railway undertakings shall provide the passenger during the international journey with at least the information set out in Annex II, Part II.

3. The information set out in paragraphs 1 and 2 shall be provided in the most appropriate format.

*Article 8***Availability of tickets, through tickets and reservations**

1. Railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations. Without prejudice to paragraph 2, railway undertakings shall distribute tickets to passengers via at least one of the following points of sale:

- (a) ticket offices or selling machines;
- (b) telephone/internet or any other widely available information technology;
- (c) on board trains.

2. Railway undertakings shall offer the possibility to obtain tickets for the respective service on board the train, unless this is limited or denied on security or antifraud policy or compulsory train reservation or reasonable commercial grounds.

*Article 9***Travel information and reservation systems**

1. In order to provide the information and to issue tickets referred to in this Regulation, railway undertakings and ticket vendors shall make use of CIRSRT to be established by the procedures referred to in this Article.

2. The technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC shall be applied for the purposes of this Regulation.

3. The Commission shall, on a proposal to be submitted by the European Railway Agency (ERA), adopt the TSI of telematics applications for passengers by ... (*). The TSI shall make possible the provision of the information, set out in Annex II, and the issuing of tickets as governed by this Regulation.

(*) One year after the adoption of this Regulation.

4. Railway undertakings shall adapt their CIRSRT according to the requirements set out in the TSI in accordance with a deployment plan set out in that TSI.

5. Subject to the provisions of Directive 95/46/EC, no railway undertaking or ticket vendor shall disclose personal information on individual bookings to other railway undertakings and/or ticket vendors.

CHAPTER III**LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE***Article 10***Liability for passengers and luggage**

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

*Article 11***Insurance**

1. The obligation set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring a railway undertaking to be adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation.

2. The Commission shall submit to the European Parliament and the Council a report on the setting of a minimum amount of insurance for railway undertakings by ... (*). If appropriate it shall be accompanied by suitable proposals or recommendations on this matter.

*Article 12***Advance payments**

1. If a passenger is killed or injured, the railway undertaking shall without delay, and in any event not later than fifteen days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

CHAPTER IV

DELAYS, MISSED CONNECTIONS AND CANCELLATIONS*Article 13***Liability for delays, missed connections and cancellations**

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

*Article 14***Reimbursement and re-routing**

Where it is reasonably to be expected that the delay in the arrival at the final destination under the transport contract will be more than 60 minutes, the passenger shall immediately have the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the international journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity. The payment of the reimbursement shall be made under the same conditions as the payment for compensation referred to in Article 15; or
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.

*Article 15***Compensation of the ticket price**

1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay for which the ticket has not been reimbursed in accordance with Article 14. The minimum compensations for delays shall be as follows:

- (a) 25 % of the ticket price for a delay of 60 to 119 minutes,
- (b) 50 % of the ticket price for a delay of 120 minutes or more.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territory of a Member State.

2. The compensation of the ticket price shall be paid within 14 days after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger if vouchers or other services would be of no value to the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.

*Article 16***Assistance**

1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

- (a) meals and refreshments in reasonable relation to the waiting time, if available on the train or in the station;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the international railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

4. Railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled, as the case might be.

5. In applying paragraphs 1, 2 and 3, the operating railway undertaking shall pay particular attention to the needs of persons with reduced mobility and any accompanying persons.

CHAPTER V

PERSONS WITH REDUCED MOBILITY

Article 17

Information to persons with reduced mobility

1. Upon request, the railway undertaking, the ticket vendor or the tour operator shall provide persons with reduced mobility with information on the accessibility of rail services and on access conditions of rolling stock as well as the facilities on board.

2. The railway undertaking shall establish non discriminatory access rules applicable in relation to the transport of persons with reduced mobility, in order to meet applicable safety requirements established by law. On request, railway undertakings, ticket vendors and/or tour operators shall immediately make these rules available.

Article 18

Right to transport

1. A railway undertaking, a ticket vendor or a tour operator shall not refuse, on the grounds of reduced mobility, to accept a reservation or to issue a ticket. Reservations and tickets shall be offered to persons with reduced mobility at no additional cost.

2. Notwithstanding paragraph 1, a railway undertaking, ticket vendor and/or tour operator may refuse to accept a reservation from, or to issue a ticket to, a person with reduced mobility, or require that such person be accompanied by another person in line with the access rules mentioned in Article 17(2).

3. When a railway undertaking, ticket vendor and/or tour operator exercise the derogation under paragraph 2, it shall upon request inform the person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to make the reservation or to issue the ticket or the imposition of the condition of being accompanied.

Article 19

Assistance at railway stations

1. On departure from, transit through or arrival at, a staffed railway station of a person with reduced mobility, the station manager shall provide assistance free of charge in such a way that the person is able to board the departing service, to change to the connecting service or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules established under Article 17(2). For the purpose of this Article a station shall not be considered

staffed if the safety, security, ticket sales or revenue protection duties of the on-duty staff necessarily preclude them from offering such assistance.

2. Member States may provide for a derogation from paragraph 1 in the case of persons travelling on services which are the subject of a public service contract procured in accordance with the Community law in force, on condition that the competent authority has put in place alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services.

Article 20

Assistance on board

Without prejudice to the access rules as referred to in Article 17(2), a railway undertaking shall provide a person with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train.

For the purposes of this Article, assistance on board shall be assistance offered to a person with reduced mobility in order to allow this person to have access to the same services in the train as other passengers should the extent of the person's reduced mobility not allow him or her to have access to those services independently and in safety.

Article 21

Conditions on which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance to persons with reduced mobility in line with Articles 19 and 20 in accordance with the following points:

- (a) the assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;
- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the person with reduced mobility may travel.
- (d) Without prejudice to the powers of other entities regarding areas located outside the railway station premises, the station manager shall designate points, within and outside the railway station, at which persons with reduced mobility can announce their arrival at the railway station and, if need be, request assistance.

(e) Assistance shall be provided on condition that the person presents him or herself at the designated point:

- at a time stipulated in advance by the railway undertaking which shall be no more than 90 minutes before the published departure time or,
- if no time stipulated, not later than 30 minutes before the published departure time.

Article 22

Compensation in respect of mobility equipment or other specific equipment

If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by persons with reduced mobility, no financial limit shall be applicable.

CHAPTER VI

SECURITY, COMPLAINTS AND QUALITY OF SERVICE

Article 23

Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security.

Article 24

Complaints

1. Railway undertakings shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The railway undertaking shall do so in cooperation with the ticket vendor. It shall make contact details and its working language(s) widely known to passengers.

2. Passengers may submit a complaint to any of the railway undertakings or to the ticket vendor involved. Within 20 days, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

3. The railway undertaking shall publish in the annual report mentioned in Article 25 the number and categories of

received complaints, processed complaints, response time and possible improvement actions undertaken.

Article 25

Service quality standards

1. Railway undertakings shall define service quality standards for international services and implement a quality management system to maintain the service quality. The service quality standards shall at least cover the items listed in Annex III.

2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. Railway undertakings shall publish each year a report on their service quality performance together with their annual report. These results shall also be published on the internet website of the railway undertakings.

CHAPTER VII

ENFORCEMENT

Article 26

Enforcement

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

Article 27

Cooperation between enforcement bodies

Enforcement bodies as referred to in Article 26 shall exchange information on their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

CHAPTER VIII

FINAL PROVISIONS

Article 28

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by ... (*) and shall notify it without delay of any subsequent amendment affecting them.

Article 29

Annexes

The Annexes, except Annex I, shall be modified in accordance with the procedure referred to in Article 31(2).

Article 30

Amending provisions

1. The measures necessary for the implementation of Articles 2, 9 and 11 shall be adopted in accordance with the procedure referred to in Article 31(2).
2. The financial amounts referred to in this Regulation, other than in Annex I, shall be modified in respect of inflation in accordance with the procedure referred to in Article 31(2).

Article 31

Committee procedure

1. The Commission shall be assisted by the Committee instituted by Article 11a of Directive 91/440/EEC.
 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. The Committee shall adopt its Rules of Procedure.

Article 32

Report

The Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation by ... (**), in particular on the service quality levels.

The report shall be based on information to be provided pursuant to this Regulation and to Article 10b of Directive 91/440/EEC. The report shall be accompanied where necessary by appropriate proposals.

Article 33

Entry into force

This Regulation shall enter into force 18 months after the date 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 Brussels,

For the European Parliament
The President

...

For the Council
The President

...

(*) Six months after the entry into force of this Regulation.

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

ANNEX I

EXTRACT FROM UNIFORM RULES CONCERNING THE CONTRACT FOR INTERNATIONAL CARRIAGE OF PASSENGERS AND LUGGAGE BY RAIL (CIV)*Appendix A*

To the Convention Concerning International Carriage by Rail (COTIF) of 9 may 1980, as modified by the protocol for the modification of the Convention Concerning International Carriage by Rail of 3 june 1999

TITLE II

CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE*Article 6***Contract of carriage**

1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

*Article 7***Ticket**

1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
2. The following, at least, must be entered on the ticket:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.
4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

*Article 8***Payment and refund of the carriage charge**

1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

*Article 9***Right to be carried. Exclusion from carriage**

1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.

2. The General Conditions of Carriage may provide that passengers who:

- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers,
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

*Article 10***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities.

*Article 11***Cancellation and late running of trains. Missed connections**

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

TITLE III

CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES

CHAPTER I

Common Provisions*Article 12***Acceptable articles and animals**

1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.

2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.

4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

*Article 13***Examination**

1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.

2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

Article 14

Completion of administrative formalities

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

CHAPTER II

Hand Luggage and Animals

Article 15

Supervision

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

CHAPTER III

Registered Luggage

Article 16

Consignment of registered luggage

1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

Article 17

Luggage registration voucher

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply mutatis mutandis.
2. The following, at least, must be entered on the luggage registration voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

Article 18

Registration and carriage

1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.

2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.

3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

Article 19

Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

Article 20

Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

Article 21

Right to dispose of registered luggage

1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.

2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

Article 22

Delivery

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:

- (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) live animals have been handed over to third parties.

3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.

4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.

5. Luggage shall be delivered at the place of destination for which it has been registered.

6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.

7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.

8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

CHAPTER IV

Vehicles

Article 23

Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

Article 24

Carriage voucher

1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
3. The following, at least, must be entered on the carriage voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

Article 25

Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

TITLE IV

LIABILITY OF THE CARRIER

CHAPTER I

Liability in case of Death of, or Personal Injury to, Passengers

Article 26

Basis of liability

1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
2. The carrier shall be relieved of this liability
 - (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
 - (b) to the extent that the accident is due to the fault of the passenger;
 - (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.

4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.

5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

Article 27

Damages in case of death

1. In case of death of the passenger the damages shall comprise:

- (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
- (b) if death does not occur at once, the damages provided for in Article 28.

2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

Article 28

Damages in case of personal injury

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

Article 29

Compensation for other bodily harm

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

Article 30

Form and amount of damages in case of death and personal injury

1. The damages under Article 27(2) and Article 28, letter b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).

2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

Article 31

Other modes of transport

1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.

2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.

3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

CHAPTER II

Liability in case of Failure to Keep to the Timetable

Article 32

Liability in case of cancellation, late running of trains or missed connections

1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent,
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

CHAPTER III

Liability in respect of Hand Luggage, Animals, Registered Luggage and Vehicles

Section 1

Hand luggage and animals

Article 33

Liability

1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply *mutatis mutandis*.

2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

Article 34

Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

*Article 35***Exclusion of liability**

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

*Section 2***Registered luggage***Article 36***Basis of liability**

1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.
2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.
3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:
 - (a) the absence or inadequacy of packing;
 - (b) the special nature of the luggage;
 - (c) the consignment as luggage of articles not acceptable for carriage.

*Article 37***Burden of proof**

1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.
2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

*Article 38***Successive carriers**

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

*Article 39***Substitute carrier**

1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.
2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.

3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.
4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.
5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.
6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

Article 40

Presumption of loss

1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within fourteen days after a request for delivery has been made in accordance with Article 22(3).
2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.
3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43.
4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

Article 41

Compensation for loss

1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
 - (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
 - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

Article 42

Compensation for damage

1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
2. The compensation shall not exceed:
 - (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
 - (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

*Article 43***Compensation for delay in delivery**

1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of twenty-four hours after delivery has been requested, but subject to a maximum of fourteen days:
 - (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
 - (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.
- The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.
2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.
3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

*Section 3**Vehicles**Article 44***Compensation for delay**

1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

*Article 45***Compensation for loss**

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

*Article 46***Liability in respect of other articles**

1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

*Article 47***Applicable law**

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

*CHAPTER IV***Common Provisions***Article 48***Loss of right to invoke the limits of liability**

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

*Article 49***Conversion and interest**

1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.
2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

*Article 50***Liability in case of nuclear incidents**

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

*Article 51***Persons for whom the carrier is liable**

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

*Article 52***Other actions**

1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

TITLE V

LIABILITY OF THE PASSENGER*Article 53***Special principles of liability**

The passenger shall be liable to the carrier for any loss or damage:

(a) resulting from failure to fulfil his obligations pursuant to

1. Articles 10, 14 and 20,
2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage, or
3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), or

(b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

TITLE VI

ASSERTION OF RIGHTS*Article 54***Ascertainment of partial loss or damage**

1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
2. A copy of the report must be supplied free of charge to the person entitled.
3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

*Article 55***Claims**

1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

*Article 56***Carriers against whom an action may be brought**

1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.

3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

Article 58

Extinction of right of action in case of death or personal injury

1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within twelve months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
2. Nevertheless, the right of action shall not be extinguished if
 - (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
 - (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
 - (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
 - (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

Article 59

Extinction of right of action arising from carriage of luggage

1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
2. Nevertheless, the right of action shall not be extinguished:
 - (a) in case of partial loss or damage, if
 1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled,
 2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
 - (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he
 1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage, and
 2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
 - (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
 - (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

*Article 60***Limitation of actions**

1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:

- (a) in the case of a passenger, three years from the day after the accident;
- (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

3. The period of limitation provided for in paragraph 2 shall run for actions:

- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. [...]

5. [...]

6. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

TITLE VII**RELATIONS BETWEEN CARRIERS***Article 61***Apportionment of the carriage charge**

1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.

2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

*Article 62***Right of recourse**

1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

- (a) the carrier who has caused the loss or damage shall be solely liable for it;
- (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
- (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.

2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

*Article 63***Procedure for recourse**

1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.
2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.
3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

*Article 64***Agreements concerning recourse**

The carriers may conclude agreements which derogate from Articles 61 and 62.

*ANNEX II***MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS AND/OR BY TICKET VENDORS****PART I: PRE JOURNEY INFORMATION**

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for the lowest fares

Accessibility, access conditions and availability on board of facilities for persons with reduced mobility

Accessibility and access conditions for bicycles

Availability of seats in smoking and non-smoking, first and second class as well as couchettes and sleeping carriages

Any activities likely to disrupt or delay services

Availability of on-board services

Procedures for reclaiming lost luggage

Procedures for the submission of complaints.

PART II: INFORMATION DURING THE JOURNEY

On-board services

Next station

Delays

Main connecting services

Security and safety issues.

*ANNEX III***MINIMUM SERVICE QUALITY STANDARDS**

Information and tickets

Punctuality of international services, and general principles to cope with disruptions of services

Cancellations of international services

Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with quality

Assistance provided to persons with reduced mobility.

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

The Commission presented the proposal for a Regulation on rights and obligations for passengers in international rail transport on 3 March 2004 as one of the four proposals of the Third Railway Package ⁽¹⁾.

On 28 September 2005, the European Parliament voted its opinion in 1st reading.

On 24 July 2006, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee ⁽²⁾ and of the Committee of the Regions ⁽³⁾.

II. Analysis of the Common Position

1. General

The negotiations on the Regulation on rights and obligations of passengers in international rail transport took place against the background of two publications by the European Commission, namely its White paper 'European transport policy for 2010: time to decide' ⁽⁴⁾ and its Communication to the Council and the European Parliament 'Towards an integrated European transport area' ⁽⁵⁾. In these publications the Commission stresses the need to put the users of the transport system back at the heart of the European transport policy and to do away with shortcomings in service levels for international passenger transport by rail. The proposal for a Regulation is also a response to the complaints the Commission received from European citizens concerning the inadequate quality of service provided by railway undertakings on international rail passenger services.

The Common Position as agreed by the Council therefore establishes rules concerning:

- information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and implementation of a computerised information and reservation system for rail transport;
- liability of railway undertakings and their insurance obligations for passengers and their luggage;
- minimum obligations of railway undertakings to passengers in the event of delay, missed connections and cancellations;
- protection of and assistance to persons with reduced mobility travelling by rail;
- definition and monitoring of service quality standards for international services, the management of risks to the personal security of passengers and the handling of complaints;
- general rules on enforcement.

2. Key policy issues

i) *Compatibility with COTIF/CIV*

Some of the arrangements which the Commission presented in its proposal were prompted by the provisions of the COTIF (the Convention concerning International Carriage by Rail) and its CIV Appendix (Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail).

⁽¹⁾ The other 3 legislative proposals concern:

- a Directive amending Directive 91/440/EEC on the development of the Community's railways (doc. 7147/04 TRANS 107 CODEC 335)
- a Directive on the certification of train crews operating locomotives and trains on the Community's rail network railways (doc. 7148/04 TRANS 108 CODEC 336)
- a Regulation on quality obligations for rail freight services (doc. 7150/04 TRANS 110 CODEC 338).

⁽²⁾ OJ C 221, 8.9.2005, p. 8.

⁽³⁾ OJ C 71, 22.03.2005, p. 26.

⁽⁴⁾ doc. 11932/01 TRANS 131 AVIATION 70 MAR 76.

⁽⁵⁾ COM (2002) 18, 23.01.2002.

In order to ensure coherence between Community legislation and the international agreement, the Council, at its meeting of 21 April 2005, decided to incorporate certain COTIF/CIV provisions into the new text. This was done by means of introductory Articles (4, 10 and 13) that refer to extracts from the COTIF/CIV contained in Annex I of the Regulation. The provisions in question allow compatibility with the COTIF/CIV and avoid the need to legislate on matters already covered by the COTIF/CIV (rules on transport contracts, liability of railway undertakings in respect of passengers and their luggage, delays, missed connections and cancellations).

The European Parliament followed a similar approach in its opinion in first reading by adopting amendments which — in full or in part — call for the application of the respective COTIF/CIV provisions (Amendments 138/rev + 32, 50, 80, 81, 83 and 108). The European Parliament also suggested the deletion of a series of CIV-incompatible provisions from the original Commission text (e.g. amendments 34, 35, 52, 53, 54 and 108).

ii) *Scope*

The overall scope of Council's Common Position covers international journeys throughout the Community undertaken on domestic and international services, which are provided by one or more railway undertakings.

a) Limitations: domestic services

The Council decided to limit the scope with regards to delays, missed connections and cancellations (Chapter IV) and service quality standards (Chapter VI, Article 25). In order to avoid an excessive financial burden, the following provisions shall only apply to international journeys on international services and exclude providers of domestic services:

- (for parts of an international journey) the obligations concerning reimbursement and re-routing, compensation of the ticket price, and of assistance in case of delays in arrival or departure;
- all the obligations concerning the setting up and monitoring of, and reporting on, service quality systems and their management.

b) Limitations: temporary exemptions

The Council also decided to limit the scope of its Common Position in so far as it provides for temporary exemptions granted to Member States for certain regional cross-border services and international services where a significant part of the service is being operated outside the Community. Member States applying such provisions will have to notify the Commission, which will then determine whether an exemption is in accordance with the provisions of the draft Regulation.

In providing the possibility to grant such exemptions, the Council intended to leave it to the Member States to address those issues in such exceptional situations, thus avoiding an additional financial burden for the service providers.

c) Enlarged scope: Persons with reduced mobility

One of the main goals of this draft Regulation is to make rail travel more accessible to Persons with reduced mobility (PRM). Consequently, the Council decided to go further than the Commission had done in its proposal and to make the provisions for PRMs also applicable to domestic journeys on international services.

In its opinion in first reading, the European Parliament decided to follow a different path and to make the provisions of this draft Regulation applicable to all rail passengers (amendment 11 et al). The Council considers that such an approach is premature and prefers to see its Common Position as complementing the Market Access Directive, which legislates only on the opening of the international rail passenger market.

iii) *Computerised Information and Reservation system for Rail Transport (CIRSRT)*

In order to provide the information and to issue tickets in accordance with the draft Regulation, the Council decided to introduce an obligation for railway undertakings and ticket vendors to make use of a Computerised Information and Reservation system for Rail Transport (CIRSRT). The procedures for establishing this system are set out in Article 9 paragraphs 2, 3 and 4 of Council's Common Position and rely on the Technical Specifications of Interoperability of Directive 2001/16/EC ⁽¹⁾ (Chapter II and Annex II, 2.5). By setting up this system the Council moved away from the Commission proposal, which based the access to travel information on the concept of system vendors. The Council considered the involvement of such intermediaries as unnecessary and therefore decided to address the relevant provisions directly to the railway undertakings and ticket vendors.

iv) *Delays, missed connections and cancellations*

As already pointed out, Council chose to align the provisions concerning a railway undertaking's liability in case of delays, missed connections and cancellations with the relevant chapter of COTIF/CIV. Moreover, the Council decided to include special provisions for reimbursement and re-routing, the compensation of the ticket price and the obligation to provide assistance to passengers in case of a delay in arrival or departure. As for the compensation of the ticket price, Council's Common Position is more in line with the European Parliament's position (amendment 61) and provides for a simpler and more transparent scheme than that proposed by the Commission. The provision adopted is determined by the length of the delay which functions as the basis for the amount of compensation. In addition, the Council made the form of payment of compensation more flexible (vouchers and/or other services or cash), which also follows a suggestion of the European Parliament (amendment 124).

v) *Special Provisions for Persons with reduced mobility*

In order to facilitate travelling by rail, the Council's Common Position establishes special provisions as regards the rights to transport, the assistance to be provided at railway stations and on board trains and the conditions under which such assistance is available, compensation in respect of mobility equipment and information to be given to persons with reduced mobility. By doing so, the Council seeks to ensure equal access to rail travel at no additional cost for the passengers concerned. The Council is confident that these provisions will contribute to allowing persons with reduced mobility to benefit from the same travel opportunities as other citizens.

3. Other issues

i) *Security, Complaints and Quality of Service*

The personal security of passengers has recently become a core principle in the field of transport. That is why Council's Common Position contains provisions obliging the stakeholders to take adequate measures — in agreement with public authorities — to ensure the passengers' personal security at railway stations and on trains and to manage risks. By extending these obligations to station managers, the Council followed a suggestion of the European Parliament (amendment 100).

The Common Position as adopted by the Council also obliges railway undertakings — in cooperation with their ticket vendors — to establish a complaint handling mechanism for the rights and obligations covered in the draft Regulation. Moreover, railway undertakings will have to publish an annual report listing the complaints received and their handling.

Concerning the quality of service, the Common Position contains provisions obliging railway undertakings to define service quality standards and to implement a system to maintain service quality. Annex III of the draft Regulation contains a minimum list of items, which have to be covered in these standards. Railway undertakings will also be obliged to publish a report on their service quality performance on an annual basis.

⁽¹⁾ OJ L 110, 20.4.2001, p. 1.

With these measures, the Council aims at advancing consumer protection in the field of international passenger rail travel and to promote enhanced service quality standards among the railway undertakings.

ii) *Enforcement*

The Common Position as adopted by the Council also stipulates an obligation for the Member State to designate a body (or bodies) responsible for the enforcement of the draft Regulation. Moreover, the Common Position obliges these enforcement bodies to cooperate and to exchange information with a view to promoting coordinated decision-making principles across the Member States.

III. **Conclusion**

In establishing its Common Position, the Council has taken full account of the proposal of the Commission and the European Parliament's opinion in first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have — in spirit, partially or in full — already been covered in its Common Position. The decision to avoid 'double legislation' and therefore to integrate certain COTIF/CIV provisions clearly underlines the spirit of understanding between the two co-legislators.

As regards the main issue of disagreement — the inclusion of domestic rail passenger transport within the scope of the draft Regulation — the Council considers its approach to be a balanced and appropriate response.

COMMON POSITION (EC) No 20/2006**adopted by the Council on 24 July 2006**

with a view to adopting Directive 2006/.../EC of the European Parliament and of the Council of ... amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC of the European Parliament and of the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

(2006/C 289 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁴⁾ was designed to facilitate the adaptation of the Community's railways to the requirements of the single market and to improve their efficiency.
- (2) 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 ⁽⁵⁾ concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.
- (3) In its White Paper European transport policy for 2010: time to decide, the Commission announced its intention to continue building the internal market in rail services by proposing to open up the market in international passenger services.
- (4) The aim of this Directive is to address the opening of the market for international rail passenger services within the Community, and it should therefore not concern services between a Member State and a third

country. In addition, Member States should be able to exclude from the scope of this Directive services transiting the Community.

- (5) International rail services currently present a very contrasting picture. Long-distance services (for instance night trains) are in difficulty and several of them have recently been withdrawn by the railway undertakings operating them in order to limit losses. The market for international high-speed services, on the other hand, has seen a sharp increase in traffic and will continue its vigorous development with the doubling and interconnection of the trans-European high-speed network by 2010. Nevertheless, there is strong competitive pressure from low-cost airlines in both cases. It is therefore essential to stimulate new initiatives by promoting competition between railway undertakings.

- (6) It is not possible to open up the market in international passenger services without detailed provisions on infrastructure access, substantial progress on interoperability and a strict framework for rail safety at national and European level. All of these elements are now in place following the transposition of Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC ⁽⁶⁾, Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC ⁽⁷⁾, Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC ⁽⁸⁾, Directive 2001/14/EC, and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways ⁽⁹⁾. It is necessary for this new regulatory framework to be supported by established, consolidated practice by the proposed date for opening up the market for international passenger services. This will require a certain time. The target date for opening up the market should therefore be 1 January 2010.

⁽¹⁾ OJ C 221, 8.9.2005, p. 56.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (not yet published in the Official Journal), Council Common Position of 24 July 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2004/51/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 164). Corrected by OJ L 220, 21.6.2004, p. 58.

⁽⁵⁾ OJ L 75, 15.3.2001, p. 29. Directive as last amended by Directive 2004/49/EC (OJ L 164, 30.4.2004, p. 44). Corrected by OJ L 220, 21.6.2004, p. 16.

⁽⁶⁾ OJ L 75, 15.3.2001, p. 1.

⁽⁷⁾ OJ L 164, 30.4.2004, p. 164. Corrected by OJ L 220, 21.6.2004, p. 58.

⁽⁸⁾ OJ L 75, 15.3.2001, p. 26.

⁽⁹⁾ OJ L 164, 30.4.2004, p. 44. Corrected by OJ L 220, 21.6.2004, p. 16.

- (7) The number of railway services without intermediate stops is very limited. In the case of journeys with intermediate stops, it is essential to authorise new market entrants to pick up and set down passengers along the route in order to ensure that such operations have a realistic chance to be economically viable and to avoid placing potential competitors at a disadvantage to existing operators, which have the right to pick up and set down passengers along the route. This right should be without prejudice to Community and national regulations concerning competition policy.
- (8) The introduction of new, open-access, international services with intermediate stops should not be used to bring about the opening of the market for domestic passenger services, but should merely be focused on stops that are ancillary to the international route. On that basis, their introduction should concern services whose principal purpose is to carry passengers travelling on an international journey. The determination of whether that is the service's principal purpose should take into account criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service. This determination should be made by the respective national regulatory body at the request of an interested party.
- (9) Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway⁽¹⁾ authorises Member States and local authorities to award public service contracts. These contracts may contain exclusive rights to operate certain services. It is therefore necessary to ensure that the provisions of that Regulation are consistent with the principle of opening up international passenger services to competition.
- (10) Opening up international passenger services, which include the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the possibility to limit the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.
- (11) Some Member States have already moved towards opening up the market for rail passenger services by transparent, open competitive tendering for the provision of certain such services. They should not have to provide full open access to international passenger services, since this competition for the right to use certain rail routes has involved a sufficient test of the market value of running those services.
- (12) The assessment of whether the economic equilibrium of the public service contract could be compromised should take into account pre-determined criteria such as the impact on the profitability of any services which are included in a public service contract, including consequential impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops on both sides of the border and timing and frequency of the proposed new service. Respecting such an assessment and the decision of the relevant regulatory body, Member States might authorise, modify or deny the right of access for the international passenger service sought, including the levying of a charge on the operator of a new international passenger service, in line with the economic analysis and in accordance with Community law and the principles of equality and non-discrimination.
- (13) In order to ensure the financing of public service obligations, it is appropriate to allow Member States to raise a levy on passenger services in their territory in accordance with Community law.
- (14) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. In particular, if for organisational or legal purposes it is closely linked to the competent authority involved in the award of the public service contract under consideration, its functional independence should be ensured. The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts.
- (15) This Directive constitutes a further phase of rail market opening. Some Member States have already opened up the market for international passenger services on their territory. In this context, this Directive should not be understood as creating obligations for those Member States to grant, before 1 January 2010, access rights to railway undertakings licensed in a Member State where similar rights are not granted.

⁽¹⁾ OJ L 156, 28.6.1969, p. 1. Regulation as last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29.6.1991, p. 1).

- (16) The national regulatory bodies should, on the basis of Article 31 of Directive 2001/14/EC, exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.
- (17) The application of this Directive should be evaluated on the basis of a report to be presented by the Commission two years after the date of opening up the market in international passenger services.
- (18) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement Directives 91/440/EEC and 2001/14/EC. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement these Directives.
- (19) Since the objective of this Directive, namely the development of the Community's railways, cannot be sufficiently achieved by the Member States, given the need to ensure fair and non-discriminatory conditions of access to infrastructure and to take account of the obviously international dimension of the way in which important parts of the rail networks operate, as well as the need for coordinated transnational action, 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 set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.
- (20) In accordance with point 34 of the Interinstitutional agreement on better law-making⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.
- (21) Directives 91/440/EEC and 2001/14/EC should therefore be amended accordingly,
- ‘4. Member States may exclude from the scope of this Directive any railway service carried out in transit through the Community and which begins and ends outside the Community territory.’;
- 2) the fourth indent of Article 3 shall be deleted;
- 3) the following indent shall be inserted in Article 3 after the fifth indent:
- “international passenger service” shall mean a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border’;
- 4) the following indent shall be inserted in Article 3 after the sixth indent:
- “transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory.’;
- 5) the first indent of Article 5(3) shall be deleted;
- 6) the phrase ‘and international groupings’ shall be deleted in Article 8(1);
- 7) paragraph (1) of Article 10 shall be deleted;
- 8) the following paragraphs shall be inserted in Article 10:
- ‘3a. Railway undertakings within the scope of Article 2 shall, by 1 January 2010, be granted the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

- 1) the following paragraph shall be added to Article 2:

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

The right of access to the infrastructure of the Member States for which the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 1 January 2012.

Whether the principal purpose of the service is to carry passengers between stations located in different Member States shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC following a request from the relevant competent authorities and/or interested railway undertakings.

3b. Member States may limit the right of access defined in paragraph 3a on services between a place of departure and a destination which are covered by one or more public service contracts conforming to the Community legislation in force. Such limitation may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

Whether the economic equilibrium would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis and based on pre-determined criteria, following a request from:

- the competent authority or competent authorities that awarded the public service contract;
- any other interested competent authority with the right to limit access under this Article;
- the infrastructure manager, or
- the railway undertaking performing the public service contract.

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within two months of receipt of all relevant information. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which

- the relevant competent authority or competent authorities;
- the infrastructure manager;
- the railway undertaking performing the public service contract, or
- the railway undertaking seeking access,

may request a re-consideration of the decision.

3c. Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before... on the basis of a fair competitive tendering procedure and in accordance with

the relevant principles of Community law. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.

3d. The provisions of this Directive shall not require a Member State to grant, before 1 January 2010, the right of access referred to in paragraph 3a to railway undertakings and their directly or indirectly controlled subsidiaries, licensed in a Member State where access rights of a similar nature are not granted.

3e. Member States shall take the necessary measures to ensure that the decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.

3f. Without prejudice to paragraph 3b, Member States may, under the conditions laid down in this Article, authorise relevant authorities to raise a levy on all rail passenger transport services on their territory in order to contribute to the financing of public service obligation compensation in the framework of public services contracts concluded in accordance with Community law.

In conformity with Community law, the compensation referred to in the first subparagraph may not exceed what is necessary to cover all or part of the cost incurred in the discharge of public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

The levy shall be raised in accordance with Community law, in particular respecting the principles of fairness, transparency, non-discrimination and proportionality, in particular between the price of the service and the level of the levy. The obligation to contribute to the financing of the public service obligations' compensation shall not endanger the economic viability of the international passenger service.

The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.;

9) Article 10(8) shall be replaced by the following:

'8. By 1 January 2009, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 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.’;

10) the following paragraph shall be added to Article 10:

‘9. By 31 December 2012, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions a report on the implementation of the provisions of paragraph 3.’;

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

‘The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.’.

Article 2

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

1) the following point shall be added to paragraph (3) of Article 1:

‘e) transport operations in the form of railway services which are carried out in transit through the Community.’;

2) the following point shall be added to Article 2:

‘n) “transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory.’;

3) the following paragraph shall be added to Article 13:

‘4. When an applicant intends to request infrastructure capacity with a view to operating an international passenger service as defined in Article 3 of Directive 91/440/EEC, it shall inform the infrastructure managers and the regulatory bodies concerned. In order to enable the assessment of the purpose of the international service to carry passengers between stations located in different Member States, and the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service defined in a public service contract, any other interested competent authority with a right to limit access under Article 10(3b) of Directive 91/440/EEC and any railway undertaking performing the public service contract on the route of this international passenger service is informed.’;

4) Article 17(5) shall be replaced by the following:

‘5. Framework agreements shall in principle cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period

longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

5a. For services using specialised infrastructure referred to in Article 24 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

The applicant’s requirements may in this case call for detailed definition of the capacity characteristics — including the frequency, volume and quality of train paths — which are to be provided to the applicant for the duration of the framework agreement. The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 27.

As from 1 January 2010, an initial framework agreement may be drawn up for a period of 5 years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 30 shall be responsible for authorising the entry into force of such an agreement.’;

5) the following sentence shall be inserted before the final sentence of Article 30(1):

‘It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.’;

6) the following subparagraph shall be added to Article 38:

‘The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.’.

Article 3

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

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

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

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

Article 5

This Directive is addressed to the Member States.

3. The provisions of points 2, 5, 6 and 7 of Article 1 shall apply from 1 January 2010.

Done at Brussels,

Article 4

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

For the European Parliament

The President

For the Council

The President

...

...

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission presented the proposal for a Directive amending Directive 91/440/EEC on the development of the Community's railways, the so-called 'Rail Market Access proposal', on 3 March 2004 as one of the four proposals of the Third Railway Package ⁽¹⁾.

On 28 September 2005, the European Parliament voted its opinion in 1st reading.

On 24 July 2006, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee ⁽²⁾ and of the Committee of the Regions ⁽³⁾.

II. ANALYSIS OF THE COMMON POSITION

1. General

The negotiations on the opening of the market for international rail passenger services took place in a policy context shaped by the Commission's White Paper on European transport policy for 2010 ⁽⁴⁾, as well as by the First and the Second railway Package. In the White Paper the Commission announced its intention to continue building the internal market for rail services by inter alia, proposing to open up the market for international passenger services. The First and the Second Railway Package contain detailed provisions on infrastructure access, interoperability and rail safety at national and European level, thereby providing a framework, which would permit opening the market for freight services and for international passenger services.

At its meeting of 5 December 2005, the Council was able to reach Political Agreements on three of the four legislative proposals of the Third Railway Package: the Rail Market Access proposal, which is the subject of this document, and the proposals on Passengers' rights and obligations and on Train crews — thereby paving the way for the adoption of three Common Positions.

Central to the Council's discussions on the Rail Market Access proposal was the relation between this proposal and the revised proposal on public passenger transport services by rail and by road — the so-called 'Public Service Obligations proposal' ⁽⁵⁾. Consequently, at the Council meeting of 5 December 2005, a Political Agreement on the Rail Market Access proposal could only be reached by addressing the relation between both proposals and giving guidance to several elements of the Public Service Obligations proposal in a Statement to the minutes made by the Council and the Commission (see Annex I).

⁽¹⁾ The other 3 legislative proposals concern:

- a Regulation on rights and obligations for passengers in international rail transport (doc. 7149/04 TRANS 109 CODEC 337);
- a Regulation on quality obligations for rail freight services (doc. 7150/04 TRANS 110 CODEC 338);
- a Directive on the certification of train crews operating locomotives and trains on the Community's rail network railways (doc. 7148/04 TRANS 108 CODEC 336).

⁽²⁾ OJ C 221, 9.9.2005, p. 56.

⁽³⁾ OJ C 71, 22.03.2005, p. 26.

⁽⁴⁾ doc. 11932/01 TRANS 131 AVIATION 70 MAR 76.

⁽⁵⁾ doc. 11508/05 TRANS 155 CODEC 657.

2. Key policy issues

2.1. *Opening the market for international rail passenger services*

Opening the market can — through the introduction of competition — contribute to more efficient and more attractive European rail services. By agreeing to grant, by 1 January 2010, to railway undertakings for the purpose of operating international passenger services, the right of access to the infrastructure of all Member States, the Council follows the compromise reached with Parliament at the time of the conciliation procedure on the Second Railway Package ⁽¹⁾. Opening the market for international rail passenger services by 2010 would allow operators to prepare in an appropriate manner. It would also coincide with both a doubling and further interconnection of trans-European high-speed lines, and with a consolidation of the framework as established by the First and the Second railway package.

Opening the market for international services including cabotage will have a strong impact on Member States where international transport forms an important share of total rail passenger services. With that in mind, Council wants to leave these Member States more time to prepare for market opening, by allowing them to grant the right of access by 1 January 2012 at the latest.

Consequently, the Council does not agree with Parliament's view to open international rail passenger services by 2008, and all other forms of rail passenger services by 2012 (Amendments 2, 8 and 9 as regards the timetable for market opening for rail passenger services; Amendments 6 and 12 on the preparation of evaluation reports by the Commission on the opening of the markets for national and international rail passenger services).

2.2. *Right to pick up and set down passengers in the same Member State*

The Council, like the European Parliament, accepts the Commission's proposal to allow international rail passengers services to pick up and set down passengers at stations located in the same Member State. Council is of the opinion that this so-called cabotage transport is necessary to make viable international services possible.

However, the Council wants to avoid that a right of access for international rail passenger services, which include cabotage, leads to the opening of the market for domestic rail passenger services. Therefore, the Common Position allows granting the right of access only to those international services, which have as a 'principal purpose' the carriage of passengers between stations located in different Member States. In the Common Position, a procedure is foreseen for determining the purpose of international service for which access is requested.

2.3. *Safeguarding public transport services*

In essence, the Common Position on the Rail Market Access proposal reflects the balance the Council has found between market opening on the one hand and safeguarding public transport services on the other hand. In finding this balance, the Council has added three elements to the Commission proposal: a procedure for determining whether opening the market for international rail passenger services compromises a public transport service; a clarification on the modalities for granting the right of access; and a provision which allows Member States to charge a levy on international rail passenger services. The balance between market opening and safeguarding of public services is also expressed in the Statement made by the Council and the Commission to the minutes of the Council's meeting of 5 December 2005 (see Annex I).

⁽¹⁾ This compromise is incorporated in recital 4 of Directive 2004/51 and reads that 'With regard to market opening for international passenger transport services, the date of 2010 proposed by the Commission has to be considered as an objective allowing all operators to prepare in an appropriate manner.'

2.3.1. Procedure

To clarify when the right of access can be limited, the Common Position contains a procedure for determining if an international rail passenger service would compromise the economic equilibrium of a public transport service. An important element of this procedure regards an objective economic analysis undertaken by the regulatory body of the impact of the international rail passenger service on public transport services. The Council has taken this idea from Parliament's Amendment 10.

2.3.2. Modulation of the limitation of the right of access

With a view to bringing more flexibility to the decision to grant access rights, the Common Position makes it clear that — after the determination that the economic equilibrium of a public transport service would be compromised — several modalities exist for limiting the right of access for international rail passenger services. In line with the principles of equality and non-discrimination, the Council indicates that Member States can authorise, modify or deny the right of access, including by the levying of a charge on the operator of a new international passenger service. By having the possibility to support public transport services with levies charged on international rail passenger service, Member States have more leeway to open the market while safeguarding public services.

2.3.3. Equalization

In some Member States, profitable rail passenger services contribute through a levy to public transport services, which operate at a loss. The Council wants to make clear that such a levy can also be charged to railway undertakings, which are granted the right of access. Such an obligation to contribute to public service obligations' compensations is restricted to the territory of the Member State that charges the levy. Moreover, the levy should not endanger the economic viability of the international passenger service. Finally, in the Common Position it is envisaged that if a Member State chooses to levy such charges, it is obliged to provide the Commission with the necessary information. With regard to equalization, Portugal made a statement in the TTE Council of December 2005 (Annex II).

2.4. Framework Agreements

The Council, like the Parliament, thinks it is necessary to complement the opening of the market for international rail passenger services with arrangements for a more stable and predictable climate for investments in the infrastructure for these services, and in particular for services using specialised infrastructure. Consequently, taking inspiration from Parliament's Amendments 5, 7 and 13, Council proposes to modify the provisions with regard to framework agreements in Directive 2001/14/EC⁽¹⁾. Where the Parliament proposes to allow for services using specialised infrastructure, which require substantial and long-term investment framework agreements with a duration of 10 years, the Council is of the opinion that a 15 years' duration is more appropriate.

2.5. Reciprocity-clause

Like Parliament, in its Amendments 3 and 11, the Council wants to include in the Rail Market Access proposal a provision allowing Member States, which have opened their market for international rail passenger services, to withhold the right of access for undertakings licensed in a Member State where access rights of a similar nature are not granted.

⁽¹⁾ 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 (OJ L 75, 15.3.2001, p. 29).

2.6. Other significant issues

2.6.1. Transit

In the Common Position, the Council clarifies that the aim of the Rail Market Access proposal is to open the market for international rail passenger services within the Community and that transport services of goods and passengers, which begin and end in third countries and which transit Community territory, are not included within the scope of the proposal. Lithuania made a Statement to the minutes on the issue of transit (see Annex III).

2.6.2. Concession based system

The Commission proposal is based on the principle of competition on the rails. The Council follows this principle, but acknowledges that also other principles are possible regarding the introduction of competition which, moreover, are already applied in practice. With that in mind, the Council is in favour of allowing Member States for a transitory period, not to provide full open access to international rail passenger services in cases where the right to use certain rail routes has already involved a sufficient test of market value through the principle of competition for the rails.

2.6.3. Exemption from implementation for Malta/Cyprus

Taking into account of the fact that Malta and Cyprus do not have a railway system, and that the prospects of them having one are very limited, Council exempts these two Member States from the obligation to implement the Rail Market Access Directive.

3. European Parliament Amendments.

The response of the Council to the Amendments 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 is set out above in relation to the key issues.

In addition, the Council has accepted Amendment 2 as regards the reference to Directive 2004/49, Amendment 4 as regards the mentioning of the first Public Service Obligations proposal of the Commission of July 2000, and Amendment 7 in full.

The Council does not accept Amendment 4 as regards the adoption of a Common Position on the Public Service Obligations proposal and Amendment 6 as regards the obligation for the Commission to present an impact assessment on the opening of the networks for national passenger services by 2005.

III. CONCLUSION

After careful consideration of the Parliament's opinion, the Council has come to a Common Position reflecting a balance between opening the market for international rail passenger services, on the one hand, and safeguarding public transport services, on the other hand. In finding this balance, the Council has drawn on several important Amendments of Parliament. Whilst the Council has not been able to fully accept the Parliament's approach on the pace of granting rights of access, the Common Position sets out a timetable, which would enable both operators and authorities to prepare the opening of the market for rail passenger services in an appropriate manner.

ANNEX I

STATEMENT OF THE COUNCIL AND THE COMMISSION FOR INCLUSION IN THE MINUTES OF THE COUNCIL

In reaching a political agreement on a common position on the Directive amending Council Directive 91/440/EEC on the development of the Community's railways, the Council also agrees the following points.

1. The opening of the railway market in the Community can only be achieved step by step and in conformity with the demands of a public service.
 2. This means that, for passenger transport, the opening of the market through the current legislative proposals only concerns international rail passenger services, including cabotage, and not domestic passenger services.
 3. The future regulation on public passenger transport by rail and road, the main aim of which is to establish the legal framework for compensation of public service contracts, rather than the opening of the market for railway services, should permit direct award of public service contracts for railway services; and that such direct award should not require any further opening of the market rail passenger services beyond what has been agreed in the Directive amending Directive 91/440.
 4. Similarly, maintaining the possibility for public authorities to provide for the operation of integrated rail networks is an issue of importance for the Council which notes that this may require the PSO Regulation to provide for the direct award of contracts for such networks.
 5. It will be necessary to ensure coherence between the Directive amending Directive 91/440 and the PSO Regulation in the framework of future discussions on the Regulation, in order to provide greater legal clarity.
 6. The issues that will need to be clarified in reaching agreement on the PSO Regulation include, in particular:
 - the definition of long distance, urban and regional railway transport, in line with the principle of subsidiarity, because of the specific circumstances of different competent authorities;
 - determining the responsibility for financing international public services contracts;
 - the scale of investment in the calculation of the length of public service contracts.
 7. The Council commits itself to try to find a political agreement on the PSO Regulation as soon as possible in 2006. Significant progress needs to be achieved in the coming six months, paying particular attention to the general principles of transparency, subsidiarity and legal clarity.
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ANNEX II**STATEMENT BY THE PORTUGUESE REPUBLIC**

Portugal reiterates its support for the objective of liberalisation of rail transport and is therefore voting in favour of the Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways.

Nevertheless, it regrets the approval of a new Article 1(8)(3f) allowing Member States to impose a new levy on international rail passenger services in order to contribute to public service contracts.

This legislative solution will impair the normal development of the European market and will affect access for passengers from peripheral Member States to Europe's other regions. Furthermore, it is contrary to the promotion of modal shift, one of the main objectives of Community policy for the sector.

Portugal hopes that during the next stage of the co-decision legislative procedure, this provision can be revised in order to mitigate the negative effects it could have on the liberalisation of international passenger transport.

ANNEX III**DECLARATION BY LITHUANIA FOR INCLUSION IN THE MINUTES OF THE COUNCIL**

Lithuania understands that the provisions provided in the document 14737/05 ADD 1 under Art 1 (0), (2a) and Art. 1a (0a), (0aa) are fully consistent with Council Regulation No 693/2003 of 14 April 2003 establishing a specific Facilitated Rail Transit Document.

COMMON POSITION (EC) No 21/2006**adopted by the Council on 14 September 2006****with a view to adopting Directive 2006/.../EC of the European Parliament and of the Council of ...
on the certification of train drivers operating locomotives and trains on the railway system in the
Community**

(2006/C 289 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 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the Opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways ⁽⁴⁾ requires infrastructure managers and railway undertakings to establish their safety management systems in such a way that the railway system is at least able to achieve the common safety targets and comply with the national safety rules and safety requirements defined in the technical specifications for interoperability ('TSIs') and that the relevant parts of the common safety methods are applied. These safety management systems provide, among other things, for staff training programmes and systems which ensure that staff competence is maintained and that duties are performed in the appropriate manner.
- (2) Directive 2004/49/EC provides that, in order to gain access to railway infrastructure, a railway undertaking has to hold a safety certificate.
- (3) Under Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾, licensed railway undertakings have had, since 15 March 2003, a right of access to the trans-European freight network for international rail freight services and, from 2007 at the latest, will have a right of access to the entire network for domestic and international freight services. This gradual extension of access rights will inevitably lead to an increase in the movement of train drivers across national borders. The result will be a

growing demand for drivers trained and certified for operation in more than one Member State.

- (4) A study carried out by the Commission in 2002 highlighted the fact that the laws of the Member States on the certification conditions for train drivers differ considerably. Community rules for the certification of train drivers should therefore be adopted to overcome these differences while maintaining the present high level of safety of the railway system in the Community.
- (5) Such Community rules should also contribute to the aims of Community policies on the freedom of movement of workers, freedom of establishment and freedom to provide services in the context of the common transport policy, while avoiding any distortion of competition.
- (6) The aim of these common provisions should be above all to make it easier for train drivers to move from one Member State to another, but also to make it easier for them to move from one railway undertaking to another, and generally for licences and harmonised complementary certificates to be recognised by all railway sector stakeholders. To this end, it is essential that the provisions establish minimum requirements which applicants should meet to obtain a licence or harmonised complementary certificate.
- (7) Even if a Member State excludes from the scope of this Directive drivers exclusively operating on certain categories of rail systems, networks and infrastructure, this should not limit in any way the obligation of that Member State to respect the validity of licences throughout the territory of the European Union or of harmonised complementary certificates on the relevant infrastructure.
- (8) The requirements should cover at least the minimum age for driving a train, the applicant's physical and occupational psychological fitness, professional experience and knowledge of certain matters relating to driving a train, a knowledge of the infrastructures on which he will be required to operate and of the language used on them.

⁽¹⁾ OJ C 221, 8.9.2005, p. 64.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28.9.2005 (not yet published in the Official Journal), Council Common Position of 14 September 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 164, 30.4.2004, p. 44.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2004/51/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 164).

- (9) In order to increase its cost-effectiveness, the training which train drivers should undergo in order to obtain a harmonised complementary certificate should be focused, to the extent that such is possible and desirable from a safety viewpoint, on the particular services to be performed by the driver, such as, for example, shunting, maintenance services, passenger or freight services. When assessing the implementation of this Directive, the European Railway Agency (hereinafter referred to as 'the Agency') should evaluate the need for amending the training requirements specified in the Annex in order better to reflect the new, emerging structure of the market.
- (10) Railway undertakings and infrastructure managers issuing harmonised complementary certificates may themselves provide training for general professional knowledge, linguistic knowledge, knowledge of rolling stock and infrastructures. However, with regard to examinations, any conflict of interests should be avoided, without prejudice to the fact that an examiner may belong to the railway undertaking or infrastructure manager issuing the harmonised complementary certificate.
- (11) Staff competences and health and safety conditions are being developed in the context of the interoperability directives, in particular as part of the 'traffic management and operation' TSIs. There is a need to ensure coherence between these TSIs and the Annexes to this Directive. This will be achieved by means of amendments to be adopted by the Commission under a Committee procedure, on the basis of an opinion delivered by the same Committee.
- (12) The requirements pertaining to licences and harmonised complementary certificates set out in this Directive should relate solely to the legal conditions entitling a driver to drive a train. All other legal requirements, compatible with Community legislation and applied in a non discriminatory manner, pertaining to railway undertakings, infrastructure managers, infrastructure and rolling stock should equally be complied with before a driver may drive a train on a specific infrastructure.
- (13) This Directive should be without prejudice to the implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾, and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾.
- (14) In order to guarantee the necessary uniformity and transparency, the Community should establish a single certification model, mutually recognised by the Member States, attesting both to train drivers' compliance with certain minimum conditions, and to their professional qualifications and linguistic knowledge, leaving it to the competent authorities in the Member States to issue licences and to railway undertakings and infrastructure managers to issue harmonised complementary certificates.
- (15) The Agency should also examine the use of a smartcard instead of a licence and harmonised complementary certificates. Such a smartcard would have the advantage of combining these two items in one and at the same time could be used for other applications either in the area of security or for driver management purposes.
- (16) All of the information contained in licences, harmonised complementary certificates and the registers of licenses and harmonised complementary certificates should be used by the safety authorities to facilitate evaluation of the staff certification process provided for in Articles 10 and 11 of Directive 2004/49/EC and to speed up the issuing of the safety certificates provided for in those Articles.
- (17) The employment of train drivers certified in accordance with this Directive should not exonerate railway undertakings and infrastructure managers from their obligation to set up a system of monitoring and internal control of the competence and conduct of their train drivers pursuant to Article 9 of and Annex III to Directive 2004/49/EC and should form part of that system. The harmonised complementary certificate should not relieve either railway undertakings or infrastructure managers of their responsibility for safety and, in particular, the training of their staff.
- (18) Certain companies provide the services of train drivers to railway undertakings and infrastructure managers. In such cases, responsibility for ensuring that a driver is licensed and certified in accordance with this Directive should lie with the railway undertaking or infrastructure manager contracting the driver.
- (19) For rail transport to continue to operate effectively, train drivers already working in that profession before the entry into force of this Directive should retain their acquired entitlements during a transition period.
- (20) Unnecessary administrative and financial burdens should be avoided when replacing authorisations to drive issued to drivers before the application of the relevant provisions of this Directive with harmonised complementary certificates and licences which are in conformity with this Directive. Therefore, entitlements to drive previously granted to a driver should be safeguarded, as far as possible. The qualifications and experience of each driver, or group of drivers, should be taken into account

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

by the issuing bodies when authorisations are to be replaced. The issuing body should decide, on the basis of qualifications and/or experience, whether it is necessary for a driver or a group of drivers to undergo any additional examination and/or training before they can receive replacement licences and harmonised complementary certificates. Therefore, it should be a matter for the issuing body to decide whether qualifications and/or experience suffice for the issue of the required licences and harmonised complementary certificates, without there being any need for further examination or training.

- (21) Unnecessary administrative and financial burdens should also be avoided when train drivers change employer. A railway undertaking employing a driver should take into account competences acquired earlier and should dispense with additional examinations and training as far as possible.
- (22) This Directive should not confer any mutual recognition rights relating to entitlements to drive which drivers have obtained before the application of this Directive, albeit without prejudice to the general mutual recognition scheme set up under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾, which shall continue to apply until the end of the transition period.
- (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 procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (24) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making ⁽³⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (25) Member States should provide for controls regarding compliance with this Directive and appropriate action where a driver infringes any provision of this Directive.
- (26) Member States should provide for appropriate penalties for infringements of national provisions implementing this Directive.
- (27) Since the objective of this Directive, namely the laying down of a common regulatory framework for the certification of train drivers operating locomotives and trains for the carriage of passengers and goods, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Directive,

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.

- (28) It might prove appropriate, for reasons of cost-effectiveness, to exempt for a limited period of time train drivers operating exclusively on the territory of one Member State from application of the provisions of this Directive pertaining to the obligation for such drivers to hold licences and harmonised complementary certificates in conformity with this Directive. The conditions governing any such exemptions should be clearly defined.
- (29) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement the provisions of this Directive. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

OBJECTIVE, SCOPE AND DEFINITIONS

Article 1

Objective

This Directive lays down the conditions and procedures for the certification of train drivers operating locomotives and trains on the railway system in the Community. It specifies the tasks for which the competent authorities of the Member States, train drivers and other stakeholders in the sector, in particular railway undertakings, infrastructure managers and training centres, are responsible.

Article 2

Scope

1. This Directive shall apply to train drivers operating locomotives and trains on the railway system in the Community for a railway undertaking requiring a safety certificate or an infrastructure manager requiring a safety authorisation.

2. Member States shall not, on the basis of national provisions pertaining to other staff on board freight trains, prevent freight trains from crossing borders or providing domestic transport in their territory.

⁽¹⁾ OJ L 255, 30.9.2005, p. 22.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

3. Without prejudice to the Article 7, Member States may exclude from the measures they adopt in implementation of this Directive train drivers operating exclusively on:

- (a) metros, trams and other light rail systems;
- (b) networks that are functionally separate from the rest of the rail system and are intended only for the operation of local, urban or suburban passenger and freight services;
- (c) privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations;
- (d) sections of track that are temporarily closed to normal traffic for the purpose of maintaining, renewing or upgrading the railway system.

Article 3

Definitions

For the purposes of this Directive:

- (a) 'competent authority' means the safety authority referred to in Article 16 of Directive 2004/49/EC;
- (b) 'train driver' means a person capable and authorised to drive trains, including locomotives, shunting locomotives, work trains, maintenance railway vehicles or trains for the carriage of passengers or goods by rail in an autonomous, responsible and safe manner;
- (c) 'railway system' means the system composed of the railway infrastructures, comprising lines and fixed installations of the rail system plus the rolling stock of all categories and origin travelling on that infrastructure, as defined 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 conventional rail system ⁽²⁾;
- (d) 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or 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 on part of a network may be allocated to different bodies or undertakings;
- (e) 'railway undertaking' means any railway undertaking as defined in 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 ⁽³⁾, 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. The term also includes undertakings which provide traction only;

- (f) 'technical specifications for interoperability' or 'TSIs' means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and to 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;
- (g) 'Agency' means the European Railway Agency established by Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency ⁽⁴⁾;
- (h) 'safety certificate' means the certificate issued to a railway undertaking by a competent authority in accordance with Article 10 of Directive 2004/49/EC;
- (i) 'certificate' means the harmonised complementary certificate indicating the infrastructure on which the holder is authorised to drive and the rolling stock which the holder is authorised to drive;
- (j) 'safety authorisation' means the certificate issued to an infrastructure manager by a competent authority in accordance with Article 11 of Directive 2004/49/EC;
- (k) 'training centre' means an entity accredited or recognised by the competent authority to give training courses.

CHAPTER II

CERTIFICATION OF DRIVERS

Article 4

Community certification model

1. All train drivers shall have the necessary fitness and qualifications to drive trains and shall hold the following documents:

- (a) a licence demonstrating that the driver satisfies minimum conditions as regards medical requirements, basic education and general professional skills. The licence shall identify the driver and the issuing authority and shall state the duration of its validity. The licence shall comply with the requirements of Annex I, until the Community certification model is adopted, as provided for in paragraph 4;
- (b) one or more certificates indicating the infrastructures on which the holder is authorised to drive and indicating the rolling stock which the holder is authorised to drive. Each certificate shall comply with the requirements of Annex I.

⁽¹⁾ OJ L 235, 17.9.1996, p. 6. Directive as last amended by Directive 2004/50/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 114).

⁽²⁾ OJ L 110, 20.4.2001, p. 1. Directive as last amended by Directive 2004/50/EC.

⁽³⁾ OJ L 75, 15.3.2001, p. 29. Directive as last amended by Directive 2004/49/EC.

⁽⁴⁾ OJ L 164, 30.4.2004, p. 1. Corrected by OJ L 220, 21.6.2004, p. 3.

2. However, the requirement to hold a certificate for a specific part of infrastructure shall not apply in the exceptional cases listed hereafter, provided that another train driver who possesses a valid certificate for the infrastructure concerned sits next to the driver during driving:

- (a) when a disturbance of the railway service necessitates the deviation of trains or maintenance of tracks, as specified by the infrastructure manager;
- (b) for exceptional, one-off services which use historical trains;
- (c) for exceptional, one-off freight services, provided that the infrastructure manager agrees;
- (d) for the delivery or demonstration of a new train or locomotive;
- (e) for the purposes of training and examining drivers.

The use of this possibility shall be a decision of the railway undertaking and may not be imposed by the relevant infrastructure manager or by the competent authority.

Whenever an additional driver is used as provided for above, the infrastructure manager shall be informed beforehand.

3. The certificate shall authorise driving in one or more of the following categories:

- (a) category A: shunting locomotives, work trains, maintenance railway vehicles and locomotives when they are used for shunting;
- (b) category B: carriage of passengers and/or of goods.

A certificate may contain an authorisation for all categories, covering all codes as referred to in paragraph 4.

4. By ... (*) the Commission shall adopt, in accordance with the procedure referred to in Article 31(2), and on the basis of a draft prepared by the Agency, a Community model for the licence, the certificate and the certified copy of the certificate, and also determine their physical characteristics. In doing so, the Commission shall take into account anti-forgery measures.

By ... (*), the Commission shall adopt the Community Codes for the different types in categories A and B as referred to in paragraph 3, in accordance with the procedure referred to in Article 31(2), on the basis of a recommendation from the Agency.

Article 5

Anti-fraud measures

Competent authorities and issuing bodies shall take all necessary steps to avoid the risks of falsification of licences and certificates and tampering with the registers provided for in Article 22.

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

Article 6

Ownership, language and issuing bodies

1. A licence shall be owned by its holder and shall be issued by the competent authority defined in Article 3 point (a). Where a competent authority or its agent issues a licence in a national language which is not a Community language, it shall draw up a bilingual version of the licence using one of the Community languages.

2. A certificate shall be issued by the railway undertaking or the infrastructure manager who employs or contracts the driver. The certificate shall be owned by the undertaking or manager issuing it. However, in accordance with Article 13(3) of Directive 2004/49/EC, drivers shall be entitled to obtain a certified copy. Where a railway undertaking or an infrastructure manager issues a certificate in a national language which is not a Community language, it shall draw up a bilingual version of the certificate using one of the Community languages.

Article 7

Geographical validity

1. Licences shall be valid throughout the whole territory of the Community.

2. Certificates shall be valid only on those infrastructures and rolling stock identified on it.

Article 8

Recognition of certification documents of train drivers of third countries

The certification documents of train drivers of a third country operating exclusively on border-crossing sections of a Member State's railway system may be recognised by that Member State in accordance with any bilateral agreements with the third country in question.

CHAPTER III

CONDITIONS FOR OBTAINING THE LICENCE AND THE CERTIFICATE

Article 9

Minimum requirements

1. To obtain a licence, applicants shall satisfy the minimum requirements set out in Articles 10 and 11. To obtain a certificate and for it to remain valid, applicants shall hold a licence and satisfy the minimum requirements set out in Articles 12 and 13.

2. A Member State may apply more stringent requirements with regard to the issuing of licences on its own territory. Nevertheless, it shall recognise licences issued by other Member States, in accordance with Article 7.

SECTION I

Licence

Article 10

Minimum age

Member States shall prescribe the minimum age of licence applicants, which shall be at least 20 years. However, a Member State may issue licences to applicants from the age of 18 years, the validity of such a licence then being limited to the territory of the issuing Member State.

Article 11

Basic requirements

1. Applicants shall have successfully completed at least nine years' education (primary and secondary) and have successfully concluded basic training equivalent to level 3 referred to in Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community ⁽¹⁾.
2. Applicants shall provide confirmation of their physical fitness by passing a medical examination conducted by, or under the supervision of — to be decided by the Member State — a medical doctor recognised or accredited in accordance with Article 20. The examination shall cover at least the criteria indicated in sections 1.1, 1.2, 1.3 and 2.1 of Annex II.
3. Applicants shall demonstrate their occupational psychological fitness by passing an examination conducted by, or under the supervision of — to be decided by the Member State — a psychologist or a medical doctor recognised or accredited in accordance with Article 20. The examination shall cover at least the criteria indicated in section 2.2 of Annex II.
4. Applicants shall have demonstrated their general professional competence by passing an examination covering at least the general subjects listed in Annex IV.

SECTION II

Certificate

Article 12

Linguistic knowledge

The linguistic knowledge criterion referred to in Annex VI shall be met for the infrastructure for which the certificate is being applied.

Article 13

Professional qualifications

1. Applicants shall have passed an examination testing their professional knowledge and competence relating to the rolling

stock for which the certificate is sought. This examination shall cover at least the general subjects listed in Annex V.

2. Applicants shall have passed an examination testing their professional knowledge and competence relating to the infrastructures for which the certificate is sought. This examination shall cover at least the general subjects listed in Annex VI. Where appropriate, the examination shall also cover linguistic knowledge in accordance with section 8 of Annex VI.

3. Applicants shall be trained by the railway undertaking or the infrastructure manager in relation to its safety management system provided for by Directive 2004/49/EC.

CHAPTER IV

PROCEDURE FOR OBTAINING THE LICENCE AND THE CERTIFICATE

Article 14

Obtaining a licence

1. The competent authority shall publish the procedure to be followed for obtaining a licence.
2. All licence applications shall be lodged with the competent authority by the candidate driver or any entity on his behalf.
3. Applications submitted to the competent authority may be for the grant of a new licence, the updating of licence particulars, a renewal or a duplicate.
4. The competent authority shall issue the licence as soon as possible and no later than one month after receiving all the necessary documents.
5. A licence shall be valid for 10 years, subject to Article 16(1).
6. A licence shall be issued in a single original. Any duplication of a licence, other than by the competent authority where a duplicate is requested, shall be prohibited.

Article 15

Obtaining a certificate

Each railway undertaking and infrastructure manager shall set up its own procedures for issuing and updating certificates in accordance with this Directive, as part of its safety management system, as well as appeals procedures allowing drivers to request a review of a decision relating to the issue, updating, suspension or withdrawal of a certificate.

Railway undertakings and infrastructure managers shall update, without delay, a certificate whenever the certificate holder has obtained additional authorisations relating to rolling stock or infrastructure.

⁽¹⁾ OJ L 199, 31.7.1985, p. 56.

*Article 16***Periodic checks**

1. In order for a licence to remain valid, its holder shall pass periodic examinations and/or tests relating to the requirements referred to in Article 11(2) and (3). With regard to medical requirements, the minimum frequency shall be observed in accordance with the provisions of section 3.1 of Annex II. These medical checks shall be conducted by, or under the supervision of, medical doctors recognised or accredited in accordance with Article 20. As far as general professional knowledge is concerned, the provisions of Article 23(8) shall apply.

When renewing a licence, the competent authority shall verify in the register provided for in Article 22(1)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph.

2. In order for a certificate to remain valid, its holder shall undergo periodic examinations and/or tests relating to the requirements referred to in Articles 12 and 13. The frequency of those examinations/tests shall be determined by the railway undertaking or the infrastructure manager employing or contracting the driver in accordance with its own safety management system, and respect the minimum frequencies given in Annex VII.

For each of these checks the issuing body shall confirm by a statement on the certificate and in the register provided for in Article 22(2)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph.

3. Where a periodic check is missed or gives a negative result, the procedure laid down in Article 18 shall be applied.

*Article 17***Cessation of employment**

When a driver ceases to work for a railway undertaking or an infrastructure manager, it shall inform the competent authority without delay.

The licence shall remain valid, provided that the conditions in Article 16(1) remain fulfilled.

A certificate shall become invalid when its holder ceases to be employed as a driver. However, the holder shall receive a certified copy of it as evidence of his professional competences. When issuing a certificate to a driver, a railway undertaking or infrastructure manager shall take account of these competences.

*Article 18***Monitoring of drivers by railway undertakings and infrastructure managers**

1. Railway undertakings and infrastructure managers shall be required to ensure, and to check, that the licences and certificates of the drivers they employ or contract are valid.

They shall set up a system for monitoring their drivers. If the results of such monitoring call into question a driver's competence for the job and the continuing validity of his licence or certificate, railway undertakings and infrastructure managers shall immediately take the necessary action.

2. If a driver considers that his state of health calls into question his fitness for the job, he shall immediately inform the railway undertaking or infrastructure manager, whichever is appropriate.

As soon as a railway undertaking or infrastructure manager is aware or is informed by a doctor that the health of a driver has deteriorated to a point where his fitness for the job is called into question, it shall immediately take the necessary action, including the examination described in section 3.1 of Annex II. Furthermore, it shall ensure that at no time during their service drivers are under the influence of any substance which is likely to affect their concentration, attention or behaviour. The competent authority shall be informed without delay of any cases of work incapacity of more than three months.

CHAPTER V

TASKS AND DECISIONS OF THE COMPETENT AUTHORITY*Article 19***Tasks of the competent authority**

1. The competent authority shall fulfil the following tasks in a transparent and non-discriminatory manner:

- (a) issuing and updating licences, and providing duplicates, as provided for in Articles 6 and 14;
- (b) ensuring periodic examinations and/or tests as provided for in Article 16(1);
- (c) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension of certificates, as provided for in Article 28;
- (d) if so designated by the Member State, recognising persons or bodies as provided for in Articles 23 and 24;
- (e) ensuring that a register of persons and bodies accredited or recognised as provided for in Article 20 is published and updated;
- (f) ensuring that a register of licences as provided for in Articles 16(1) and 22 is kept and updated;
- (g) monitoring the drivers' certification process as provided for in Article 25;

- (h) carrying out inspections as provided for in Article 28;
- (i) establishing national criteria for examiners as provided for in Article 24(5).

The competent authority shall respond quickly to requests for information and present any requests for additional information without delay when preparing licences.

2. The competent authority shall not delegate the tasks referred to in points (c), (f) and (g) of paragraph 1 to third parties.

3. Any delegation of tasks shall be transparent and non-discriminatory and shall not give rise to a conflict of interests.

4. Where a competent authority delegates or contracts tasks referred to in points (a) or (b) of paragraph 1 to a railway undertaking, at least one of the following conditions shall be complied with:

- (a) the railway undertaking issues licences only to its own drivers;
- (b) the railway undertaking does not enjoy exclusivity in the territory concerned for any of the delegated or contracted tasks.

5. Where a competent authority delegates or contracts tasks, the authorised representative or contractor shall be required, in performing such tasks, to comply with the obligations imposed on competent authorities by this Directive.

6. Where a competent authority delegates or contracts tasks, it shall set up a system for checking how those tasks have been carried out and shall ensure that the conditions laid down in paragraphs 2, 4 and 5 are being complied with.

Article 20

Accreditation and recognition

1. Persons or bodies accredited under this Directive shall be accredited by an accreditation body appointed by the Member State concerned. The accreditation process shall be based on criteria of independence, competence and impartiality, such as the relevant EN 45 000series European standards and on the evaluation of a dossier submitted by candidates which provides appropriate evidence of their skills in the area in question.

2. As an alternative to the accreditation provided for in paragraph 1, a Member State may provide that persons or bodies recognised under this Directive shall be recognised by the competent authority or a body appointed by the Member State concerned. Recognition shall be based on criteria of independence, competence and impartiality. However, in cases when the particular competence sought is extremely rare, an exception to this rule shall be allowed after a positive opinion by the Commission is given following the procedure referred to in Article 31(2).

The criterion of independence does not apply in the case of the training referred to in Article 23(5) and (6).

3. The competent authority shall ensure the publication and updating of a register of persons and bodies which have been accredited or recognised under this Directive.

Article 21

Decisions of the competent authority

1. The competent authority shall state the reasons for its decisions.

2. The competent authority shall ensure that an administrative appeals procedure is set up allowing employers and drivers to request a review of a decision relating to any application under this Directive.

3. Member States shall take the necessary steps to ensure judicial review of the decisions taken by a competent authority.

Article 22

Registers and exchange of information

1. The competent authorities shall be required to:

- (a) keep a register of all licences issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed. This register shall contain the data prescribed in section 4 of Annex I for every licence, which shall be accessible using the national number allotted to each driver. It shall be regularly updated;
- (b) supply, upon reasoned request, information on the status of such licences to the competent authorities of the other Member States, the Agency or any employer of drivers.

2. Each railway undertaking and infrastructure manager shall be required to:

- (a) keep a register, or ensure that a register is kept, of all certificates issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed. This register shall contain the data prescribed in section 4 of Annex I for every certificate, as well as data relating to the periodic checks provided for in Article 16. It shall be regularly updated;
- (b) cooperate with the competent authority of the Member State where they are domiciled in order to exchange information with the competent authority and give it access to data required;
- (c) supply information on the content of such certificates to the competent authorities of the other Member States upon their request, when this is required as a consequence of their transnational activities.

3. The competent authorities shall cooperate with the Agency in order to ensure the interoperability of the registers provided for in paragraphs 1 and 2. To this end the Commission shall adopt before ... (*), in accordance with the procedure referred to in Article 31(2) and on the basis of a draft prepared by the Agency, the basic parameters of the registers to be set up, such as data to be recorded, their format and the data exchange protocol, access rights, the duration of data retention and the procedures to be followed in cases of bankruptcy.

4. The competent authorities, infrastructure managers and railway undertakings shall ensure that the registers provided for in paragraphs 1 and 2 and the modes of operation of such registers comply with Directive 95/46/EC.

5. The Agency shall ensure that the system set up in paragraph 2 points (a) and (b) complies with Regulation (EC) No 45/2001.

CHAPTER VI

TRAINING AND EXAMINATION OF DRIVERS

Article 23

Training

1. The training of drivers shall include a part relating to the licence and reflecting general professional knowledge as described in Annex IV, and a part relating to the certificate and reflecting specific professional knowledge, as described in Annexes V and VI.

2. The training method shall satisfy the criteria laid down in Annex III.

3. The detailed training objectives are defined in Annex IV for the licence, and in Annexes V and VI for the certificate. They may be supplemented by either:

- (a) the relevant TSIs - the Commission shall, following the procedure referred to in Article 31(2), ensure coherence between the TSIs and the Annexes to this Directive — or,
- (b) the criteria proposed by the Agency pursuant to Article 17 of Regulation (EC) No 881/2004 and adopted by the Commission in accordance with Article 31(2) of this Directive.

4. Pursuant to Article 13 of Directive 2004/49/EC, Member States shall take steps to ensure that candidate drivers have fair and non-discriminatory access to the training needed to fulfil the conditions for obtaining the licence and the certificate.

5. Training tasks relating to general professional knowledge as provided for in Article 11(4), linguistic knowledge as provided for in Article 12 and professional knowledge relating to rolling stock as provided for in Article 13(1) shall be performed by persons or bodies accredited or recognised in accordance with Article 20.

6. Training tasks relating to infrastructure knowledge as provided for in Article 13(2), including route knowledge and

operating rules and procedures, shall be performed by persons or bodies accredited or recognised by the Member State where the infrastructure is located.

7. With regard to licences, the general system for the recognition of professional qualifications established by Directive 2005/36/EC shall continue to apply to the recognition of the professional qualifications of drivers who are nationals of a Member State and have obtained their training certificate in a third country.

8. A process of continuous training shall be set up in order to ensure that staff competences are maintained, in accordance with point 2(e) of Annex III to Directive 2004/49/EC.

Article 24

Examinations

1. The examinations and examiners intended for the purpose of checking the requisite qualifications shall be determined:

- (a) for the part relating to the licence: by the competent authority when laying down the procedure to be followed to obtain a licence in accordance with Article 14(1);
- (b) for the part relating to the certificate: by the railway undertaking or the infrastructure manager when laying down the procedure to be followed to obtain a certificate in accordance with Article 15.

2. The examinations referred to in paragraph 1 shall be overseen by competent examiners, accredited or recognised in accordance with Article 20, and shall be organised in such a way as to avoid any conflict of interest.

3. Infrastructure knowledge evaluation, including route knowledge and operation rules, shall be performed by persons or bodies accredited or recognised by the Member State where the infrastructure is located.

4. The examinations referred to in paragraph 1 shall be organised in such a way that any conflict of interests is avoided, without prejudice to the possibility that the examiner may belong to the railway undertaking or infrastructure manager issuing the certificate.

5. The choice of examiners and examinations may be subject to Community criteria proposed by the Agency and adopted by the Commission under the procedure referred to in Article 31(2). In the absence of such Community criteria, the competent authorities shall establish national criteria.

6. There shall be theoretical and practical examinations at the end of the training course. Driving ability shall be assessed during driving tests on the network. Simulators may also be used for examining the application of operational rules and driver performance in particularly difficult situations.

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

CHAPTER VII

ASSESSMENT

Article 25

Quality standards

The competent authorities shall ensure that all activities associated with training, the assessment of skills and the updating of licences and certificates are the subject of continuous monitoring under a quality standards system. This shall not apply to activities already covered by the safety management systems put in place by railway undertakings and infrastructure managers in accordance Directive 2004/49/EC.

Article 26

Independent assessment

1. An independent assessment of the procedures for the acquisition and assessment of professional knowledge and competences, and of the system for the issuing of licences and certificates, shall be carried out in each Member State at intervals of not more than five years. This shall not apply to activities already covered by the safety management systems put in place by railway undertakings and infrastructure managers in accordance with Directive 2004/49/EC. The assessment shall be carried out by qualified persons who are not themselves involved in the activities concerned.

2. The results of these independent assessments shall be duly documented and brought to the attention of the competent authorities concerned. If necessary, Member States shall take appropriate measures to remedy any shortcomings brought to light by the independent assessment.

CHAPTER VIII

CERTIFICATION OF OTHER STAFF

Article 27

Report on other staff

The Agency shall, in a report to be presented by ... (*) identify the profile and tasks of other staff on locomotives and trains who perform safety-critical tasks and whose professional qualifications accordingly contribute to railway safety, which should be regulated at Community level by means of a system of licences and/or certificates which may be similar to the system established by this Directive.

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

CHAPTER IX

CONTROLS AND PENALTIES

Article 28

Controls by the competent authority

1. The competent authority may at any time take steps to verify, on board trains operating in its area of jurisdiction, that the train driver is in possession of the documents issued pursuant to this Directive.

2. Notwithstanding verification as provided for in paragraph 1, in the event of negligence at the workplace the competent authority may verify if the driver in question complies with the requirements set out in Article 13.

3. The competent authority may carry out enquiries regarding compliance with this Directive by drivers, railway undertakings, infrastructure managers, examiners and training centres pursuing their activities in its area of jurisdiction.

4. If the competent authority finds that a driver no longer satisfies one or more required conditions, it shall take the following measures:

- (a) if it concerns a licence issued by the competent authority: the competent authority shall suspend the licence. The suspension shall be temporary or permanent depending on the scale of the problems created for rail safety. It shall immediately inform the driver concerned and his employer of its reasoned decision, without prejudice to the right of appeal provided for in Article 21. It shall indicate the procedure to be followed for recovering the licence;
- (b) if it concerns a licence issued by a competent authority in another Member State, the competent authority shall approach that authority and provide a reasoned request either that a further inspection be carried out or that the licence be suspended. The requesting competent authority shall inform the Commission and the other competent authorities of its request. The authority that issued the licence in question shall examine the request within four weeks and notify the other authority of its decision. The authority that issued the licence shall also inform the Commission and the other competent authorities of the decision. Any competent authority may prohibit train drivers from operating in its area of jurisdiction pending notification of the issuing authority's decision;
- (c) if it concerns a certificate: the competent authority shall approach the issuing body and request either that a further inspection be carried out or that the certificate be suspended. The issuing body shall take appropriate measures and report back to the competent authority within a period of four weeks. The competent authority may prohibit train drivers from operating in its area of jurisdiction pending the report of the issuing body, and shall inform the Commission and the other competent authorities thereof.

At all events, if the competent authority considers that a particular driver creates a serious threat to the safety of the railways, it shall immediately take the necessary action, such as asking the infrastructure manager to stop the train and prohibiting the driver from operating in its area of jurisdiction for as long as necessary. It shall inform the Commission and the other competent authorities of any such decision.

In all cases the competent authority, or the body designated for this, shall update the register provided for in Article 22.

5. If a competent authority considers that a decision taken by a competent authority in another Member State pursuant to paragraph 4 fails to comply with the relevant criteria, the matter shall be referred to the Commission which shall deliver its opinion within three months. If necessary, corrective measures shall be proposed to the Member State concerned. In the event of disagreement or dispute, the matter shall be referred to the Committee mentioned in Article 31(1), and the Commission shall take whatever measures are necessary in accordance with the procedure referred to in Article 31(2). A Member State may maintain a prohibition on a driver driving on its territory in accordance with paragraph 4 until the matter is concluded in accordance with this paragraph.

Article 29

Penalties

Without prejudice to any other penalties or procedures established by this Directive, the Member States shall lay down 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 shall be effective, proportionate, non-discriminatory and dissuasive. The Member States shall notify the Commission of those provisions by the date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER X

FINAL PROVISIONS

Article 30

Adaptation of the Annexes

The Annexes shall be adapted to scientific and technical progress, in accordance with the procedure referred to in Article 31(2).

Article 31

Committee

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. The Committee shall adopt its Rules of Procedure.

Article 32

Report

The Agency shall evaluate the development of the certification of train drivers in accordance with this Directive. It shall submit to the Commission, not later than four years following the adoption of the basic parameters of the registers, as provided for in Article 22(3), a report containing, where appropriate, improvements to be made to the system as regards:

- (a) the procedures for issuing licences and certificates;
- (b) the accreditation of training centres and examiners;
- (c) the quality system put in place by the competent authorities;
- (d) the mutual recognition of certificates;
- (e) the adequacy of the training requirements specified in Annexes IV, V and VI in relation to the market structure and the categories mentioned in point (a) of Article 4(2);
- (f) the interconnection of registers and mobility in the employment market.

Furthermore, in this report the Agency may, if appropriate, recommend measures regarding the theoretical and practical examination of the professional knowledge of applicants for the harmonised certificate for rolling stock and relevant infrastructure.

The Commission shall take appropriate measures on the basis of these recommendations and shall propose, if necessary, changes to this Directive.

Article 33

Use of smartcards

The Agency shall examine by ... (*) the possibility of using a smartcard combining the licence and certificates provided for in Article 4 and shall prepare a cost/benefit analysis. Where appropriate, the Commission shall adopt, in accordance with the procedure referred to in Article 31(2) and on the basis of a draft prepared by the Agency, the technical and operating specifications for such a smartcard. The introduction of the smartcard may require adaptation of the annexes in accordance with Article 30.

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

Article 34

Cooperation

Member States shall assist one another in the implementation of this Directive. Competent authorities shall cooperate during this phase of implementation.

The Agency shall assist this cooperation and organise appropriate meetings with representatives of the competent authorities.

Article 35

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary 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 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 Member States.

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

3. The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta as long as no railway system is established within their territory.

Article 36

Gradual phasing-in and transition periods

This Directive shall be phased in gradually as indicated below.

1. The registers provided for in Article 22 shall be set up within two years from the adoption of the basic parameters of the registers provided for in Article 22(3).
2. (a) Within two years from the adoption of the basic parameters of the registers provided for in Article 22(3), certificates or licences shall be issued in accordance with this Directive to drivers performing cross-border services, cabotage services or freight services in another Member State, or work in at least two Member States, without prejudice to the provisions of point 3.

From that same date, all train drivers performing the services listed above, including those not yet licensed or certified in accordance with this Directive, shall comply with the regular checks as envisaged by Article 16.

(*) Twenty-four months from the date of entry into force of this Directive.

- (b) Within two years from the setting-up of the registers provided for in point 1, all new licences and certificates shall be issued in accordance with this Directive, without prejudice to the provisions of point 3.

- (c) Within seven years from the setting-up of the registers provided for in point 1, all drivers shall hold licences and certificates in conformity with this Directive. The issuing bodies shall take into account all professional competencies already acquired by each driver in such a way that this requirement does not generate unnecessary administrative and financial burdens. Entitlements to drive previously granted to drivers shall be safeguarded, as far as possible. The issuing bodies may nevertheless decide, for individual drivers or for groups of drivers, as appropriate, that additional examinations and/or training are necessary in order to obtain licences and/or certificates under this Directive.

3. Drivers, authorised to drive in accordance with the provisions which applied prior to the application of the provisions of this Directive under point 2(a) or (b) may continue to pursue their professional activities on the basis of their entitlements, and without applying the provisions of this Directive, for up to seven years from the setting up of the registers provided for in point 1.

In the case of apprentices who started an approved education and training programme or an approved training course prior to the application of the provisions of this Directive under point 2(a) or (b), Member States may certify these apprentices in accordance with existing national provisions.

For drivers and apprentices referred to in this point, the competent authority or authorities involved may, in exceptional cases, grant exemptions from the medical requirements laid down in Annex II. The validity of any licence issued with such exemption shall be limited to the territory of the Member States concerned.

4. Competent authorities, railway undertakings and infrastructure managers shall ensure the gradual application of regular checks corresponding to those provided for by Article 16 to drivers who do not hold licences and certificates in conformity with this Directive.
5. Where a Member State so requests, the Commission shall ask the Agency, in consultation with that Member State, to carry out a cost/benefit analysis of the application of the provisions contained in this Directive to train drivers operating exclusively on the territory of that Member State. The cost/benefit analysis shall cover a period of ten years. This cost/benefit analysis shall be submitted to the Commission within two years from the setting-up of the registers provided for in point 1.

If this cost/benefit analysis shows that the costs of applying the provisions of this Directive to such train drivers outweigh the benefits, the Commission, in accordance with the procedure referred to in Article 31(2), shall adopt a decision within six months following the submission of the results of this cost/benefit analysis. The decision may be that the provisions of point 2(b) and (c) of this Article do not have to be applied to such train drivers for a period of up to ten years on the territory of the Member State concerned.

No later than 24 months prior to the expiry of this temporary exemption period, the Commission, taking into account relevant developments in the railway sector in the Member State concerned, may, in accordance with the procedure referred to in Article 31(2), request the Agency to carry out another cost/benefit analysis, to be submitted to the Commission no later than 12 months prior to the expiry of this temporary exemption period. The Commission shall take a decision in accordance with the procedure described in the second subparagraph of this point.

Article 37

Entry into force

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

Article 38

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

...

For the Council
The President

...

ANNEX I

COMMUNITY MODEL LICENCE AND HARMONISED COMPLEMENTARY CERTIFICATE**1. CHARACTERISTICS OF THE LICENCE**

The physical characteristics of the train driver's licence must be in conformity with ISO standards 7810 and 7816-1.

The card must be made of polycarbonate.

The methods for verifying the characteristics of the driving licences to ensure that they are consistent with international standards must comply with ISO standard 10373.

2. CONTENTS OF THE LICENCE

The front of the licence must contain:

- (a) the words 'Train driver's licence' printed in large type in the language or languages of the Member State issuing the licence;
- (b) the name of the Member State issuing the licence;
- (c) the distinguishing sign of the Member State issuing the licence in accordance with the country's ISO 3166 code, printed in negative in a blue rectangle and encircled by 12 yellow stars;
- (d) information specific to the licence issued, numbered as follows:
 - (i) the surname of the holder;
 - (ii) other name(s) of the holder;
 - (iii) the date and place of birth of the holder;
 - (iv) — the date of issue of the licence,
 - the date of expiry of the licence,
 - the name of the issuing authority,
 - the reference number assigned to the employee by the employer (optional);
 - (v) the number of the licence giving access to data in the national register;
 - (vi) a photograph of the holder;
 - (vii) the signature of the holder;
 - (viii) the permanent place of residence or postal address of the holder (optional);
- (e) the words 'European Communities model' in the language or languages of the Member State issuing the licence and the words 'Train driving licence' in the other languages of the Community, printed in yellow to form the background of the licence;
- (f) the reference colours:
 - blue: Pantone Reflex blue,
 - yellow: Pantone yellow;
- (g) additional information, or medical restrictions for use imposed by a competent authority in accordance with Annex II, in code form.

The codes shall be decided by the Commission, following the procedure referred to in Article 31(2), on the basis of a recommendation from the Agency.

3. CERTIFICATE

The certificate must contain:

- (a) the surname of the holder;
- (b) other name(s) of the holder;
- (c) the date and place of birth of the holder;
- (d) — the date of issue of the certificate,
 - the date of expiry of the certificate,
 - the name of the issuing authority,
 - the reference number assigned to the employee by the employer (optional);

- (e) the number of the licence giving access to data in the national register;
- (f) a photograph of the holder;
- (g) the signature of the holder;
- (h) the permanent place of residence or postal address of the holder (optional);
- (i) the name and address of the railway undertaking or infrastructure manager for which the driver is authorised to drive trains;
- (j) the category in which the holder is entitled to drive;
- (k) the type or types of rolling stock which the holder is authorised to drive;
- (l) the infrastructures on which the holder is authorised to drive;
- (m) any additional information or restrictions;
- (n) language skills.

4. MINIMUM DATA CONTAINED IN NATIONAL REGISTERS

- (a) Data relating to the licence:
All data appearing on the licence plus data relating to checking requirements set out in Article 11 and 16.
 - (b) Data relating to the certificate:
All data appearing on the certificate plus data relating to checking requirements set out in Articles 12, 13 and 16.
-

ANNEX II

MEDICAL REQUIREMENTS

1. GENERAL REQUIREMENTS

1.1. Drivers must not be suffering from any medical conditions or be taking any medication, drugs or substances which are likely to cause:

- a sudden loss of consciousness,
- a reduction in attention or concentration,
- sudden incapacity,
- a loss of balance or coordination,
- significant limitation of mobility.

1.2. Vision

The following requirements as regards vision must be complied with:

- aided or unaided distance visual acuity: 1,0; minimum of 0,5 for the worse eye,
- maximum corrective lenses: hypermetropia +5/myopia -8. Derogations are authorised in exceptional cases and after having obtained the opinion of an eye specialist. The medical doctor then takes the decision,
- near and intermediate vision: sufficient, whether aided or unaided,
- contact lenses and glasses are authorised when periodically checked by a specialist,
- normal colour vision: use of a recognised test, such as Ishihara, as well as another recognised test if required,
- field of vision: full,
- vision for both eyes: effective; not required when person has adequate adaptation and sufficient compensation experience. Only in case he lost binocular vision after starting his job,
- binocular vision: effective,
- recognition of colour signals: the test shall be based on recognition of single colours and not on relative differences,
- sensitivity to contrasts: good,
- no progressive eye diseases,
- lens implants, keratotomies and keratectomies are allowed only on condition that they are checked on a yearly basis or at intervals set by the medical doctor,
- ability to withstand dazzle,
- coloured contact lenses and photochromatic lenses are not allowed. UV filter lenses are allowed.

1.3. Hearing and speaking requirements

Sufficient hearing confirmed by an audiogram, i.e.:

- hearing good enough to hold a phone conversation and to be able to hear warning sounds and radio messages.

The following values should be taken as guidelines:

- the hearing deficiency must not be higher than 40 dB at 500 and 1 000 Hz,
- the hearing deficiency must not be higher than 45 dB at 2 000 Hz for the ear with the worst air conduction of sound,
- no anomaly of the vestibular system,
- no chronic speech disorder (given the necessity to exchange messages loudly and clearly),
- the use of hearing aids is allowed in special cases.

1.4. Pregnancy

In the event of poor tolerance or a pathological condition, pregnancy must be considered to be a reason for the temporary exclusion of drivers. Legal provisions protecting pregnant drivers must be applied.

2. MINIMUM CONTENT OF THE EXAMINATION BEFORE APPOINTMENT

2.1. Medical examinations:

- a general medical examination,
- examinations of sensory functions (vision, hearing, colour perception),
- blood or urine tests, testing among others for diabetes mellitus, insofar as they are necessary to judge the candidate's physical aptitude,
- an Electro-Cardiogram (ECG) at rest,
- tests for psychotropic substances such as illicit drugs or psychotropic medication and the abuse of alcohol calling into question the fitness for the job,
- cognitive: attention and concentration; memory; perception; reasoning,
- communication,
- psychomotor: reaction time, hand coordination.

2.2. Occupational psychological examinations

The purpose of the occupational psychological examinations is to assist in the appointment and management of staff. In determining the content of the psychological evaluation, the examination must assess that the applicant driver has no established occupational psychological deficiencies, particularly in operational aptitudes or any relevant personality factor, which are likely to interfere with the safe exercise of the duties.

3. PERIODIC EXAMINATIONS AFTER APPOINTMENT

3.1. Frequency

Medical examinations (physical fitness) must be taken at least every three years up to the age of 55, thereafter every year.

In addition to this frequency, the medical doctor must increase the frequency of examinations if the health of the member of staff so requires.

Without prejudice to Article 16(1) an appropriate medical examination must be carried out when there is a reason to doubt that a holder of the licence or certificate no longer fulfils the medical requirements set out in section 1 of Annex II.

Physical fitness must be checked regularly and after any occupational accident. The medical doctor or the medical service of the undertaking can decide to carry out an additional appropriate medical examination, particularly after a period of at least 30 days' sick leave. The employer must ask the physician to check the physical fitness of the driver if the employer had to withdraw the driver from service for safety reasons.

3.2. Minimum content of the periodic medical examination

If the driver complies with the criteria required for the examination which is carried out before appointment, the periodic examinations must include as a minimum:

- a general medical examination,
- an examination of sensory functions (vision, hearing, colour perception),
- blood or urine tests to detect diabetes mellitus and other conditions as indicated by the clinical examination,
- tests for drugs where clinically indicated.

In addition, an ECG at rest is also required for train drivers over 40 years of age.

ANNEX III

TRAINING METHOD

There must be a good balance between theoretical training (classroom and demonstrations) and practical training (on-the-job experience, driving with supervision and driving without supervision on tracks which are closed off for training purposes).

Computer-aided training must be accepted for individual learning of the operational rules, signalling situations, etc.

The use of simulators, although not obligatory, may be useful for the effective training of drivers; they are particularly useful for training in abnormal working conditions or for rules infrequently applied. They have a particular advantage in their ability to provide learning-by-doing capability for events that cannot be trained in the real world. In principle, simulators of the latest generation must be used.

Concerning the acquisition of route knowledge, the approach to be favoured must be where the train driver accompanies another driver for an appropriate number of journeys along the route, in daylight as well as at night. Videos of the routes as seen from the driver's cab may be used, among other methods, as an alternative training method.

ANNEX IV

GENERAL PROFESSIONAL KNOWLEDGE AND REQUIREMENTS REGARDING THE LICENCE

The general training has the following objectives:

- acquiring the knowledge and procedures regarding of railway technologies, including safety principles and the philosophy behind operational regulations,
- acquiring knowledge and procedures regarding the risks related to railway operation and the various means to be used to combat them,
- acquiring knowledge and procedures regarding the principles guiding one or more railway operating modes,
- acquiring knowledge and procedures regarding trains, their composition and technical requirements on traction units, wagons, coaches and other rolling stock.

In particular, drivers must be able to:

- understand the specific requirements for working in the profession of driver, its importance, and the professional and personal demands (long periods of work, being away from home, etc.),
- apply staff safety rules,
- identify rolling stock,
- know and apply a working method in a precise manner,
- identify the reference and applications documents (manual of procedures and manual of lines as defined in the 'Operations' TSI, driver's manual, breakdown manual, etc.),
- learn behaviours which are compatible with safety-critical responsibilities,
- identify the procedures applicable to accidents involving persons,
- distinguish the hazards involved in railway operations in general,
- know the principles governing traffic safety,
- apply the basic principles of electrotechnology.

ANNEX V

PROFESSIONAL KNOWLEDGE OF ROLLING STOCK AND REQUIREMENTS REGARDING THE CERTIFICATE

After completing specific training in relation to rolling stock, drivers must be able to carry out the following tasks:

1. TESTS AND CHECKS PRIOR TO DEPARTURE

Drivers must be able to:

- collect the documentation and the necessary equipment,
- check the capacities of the traction unit,
- check the information entered in the documents on board the traction unit,
- ensure, by performing the checks and tests specified, that the traction unit is capable of providing the required traction power, and that the safety equipment is operating,
- checking the availability and functionality of the prescribed protection and safety equipments at the handover of a locomotive or at the start of a trip,
- perform any routine preventive maintenance operations.

2. KNOWLEDGE OF ROLLING STOCK

To operate a locomotive, drivers must be familiar with all the controls and indicators placed at their disposal, in particular those concerning:

- traction,
- braking,
- traffic safety-related elements.

In order to detect and locate anomalies in the rolling stock, report them and determine what is required to repair them, and in certain cases, to take action, drivers must be familiar with:

- mechanical structures,
- suspension and attachment equipment,
- running gear,
- safety equipment,
- fuel tanks, fuel supply system, exhaust equipment,
- the meaning of markings on the inside and outside of the rolling stock, in particular the symbols used for the transportation of dangerous goods,
- trip registration systems,
- electrical and pneumatic systems,
- collection of current and high-voltage systems,
- communication equipment (ground-to-train radio, etc.),
- arrangements of trips,
- the constituent parts of the rolling stock, their purpose, and the devices specific to the hauled stocks, in particular the system of stopping the train by venting the brake pipe,
- braking system,
- the parts specific to traction units,
- traction chain, motors and transmission.

3. TESTING THE BRAKES

Drivers must be able to:

- check and calculate, before departure, that the train's braking power corresponds to the braking power required for the line as specified in the vehicle documents,
- check the functioning of the various components of the braking system of the traction unit and of the train, as appropriate, before departure, at start-up and during running.

4. OPERATING MODE AND MAXIMUM SPEED OF THE TRAIN IN RELATION TO THE LINE CHARACTERISTICS

Drivers must be able to:

- take note of information given to them before departure,
- determine the type of running and the limit speed of the train on the basis of variables such as speed limits, weather conditions or any signalling changes.

5. DRIVING THE TRAIN IN A WAY WHICH DOES NOT DAMAGE INSTALLATIONS OR VEHICLES

Drivers must be able to:

- use all available control systems in accordance with the applicable rules,
- start the train taking account of adhesion and power constraints,
- apply the brakes for decelerations and stops, taking account of the rolling stock and installations.

6. ANOMALIES

Drivers must:

- be able to be attentive to unusual occurrences concerning the behaviour of the train,
- be able to inspect the train and identify signs of anomalies, distinguish between them, react according to their relative importance and try to remedy them, always giving priority to the safety of rail traffic and persons,
- know the available means of protection and communication.

7. OPERATING INCIDENTS AND ACCIDENTS, FIRES AND ACCIDENTS INVOLVING PERSONS

Drivers must:

- be able to take steps to protect the train and summon assistance in the event of an accident involving persons on board the train,
- be able to determine whether the train is transporting dangerous goods and identify them on the basis of train documents and wagon lists,
- know the procedures relating to the evacuation of a train in case of emergency.

8. CONDITIONS FOR CONTINUING RUNNING AFTER AN INCIDENT INVOLVING ROLLING STOCK

After an incident, drivers must be able to assess whether the vehicle can continue to run and under what conditions, so as to inform the infrastructure manager of those conditions as soon as possible.

Drivers must be able to determine if an expert evaluation is necessary before the train can continue.

9. IMMOBILISATION OF THE TRAIN

Drivers must be able to take measures to ensure that the train, or parts thereof, does not start up or move unexpectedly, even in the most difficult conditions.

Furthermore, drivers must have knowledge about measures which can stop a train or parts thereof in case it has started to move unexpectedly.

ANNEX VI

PROFESSIONAL KNOWLEDGE OF INFRASTRUCTURE AND REQUIREMENTS REGARDING THE CERTIFICATE**Matters relating to infrastructure****1. TESTING THE BRAKES**

Drivers must be able to check and calculate, before departure, that the train's braking power corresponds to the braking power required for the line as specified in the vehicle documents.

2. TYPE OF OPERATION AND MAXIMUM TRAIN SPEED ACCORDING TO THE LINE CHARACTERISTICS

Drivers must be able to:

- take note of information given to them, such as the speed limits or any signalling changes,
- determine the type of running and the limit speed of the train on the basis of the characteristics of the line.

3. KNOWLEDGE OF THE LINE

Drivers must be able to anticipate problems and react appropriately in terms of safety and other performances, such as punctuality and economic aspects. They must therefore have a thorough knowledge of the railway lines and installations on their route and of any alternative routes agreed on.

The following aspects are important:

- operational conditions (changes of track, one-way running, etc.),
- perform a route check and consult the relevant documents,
- identification of tracks that can be used for a given type of running,
- the applicable traffic rules and the meaning of the signalling system,
- the operations regime,
- the block system and associated regulations,
- station names and the position and distance-sighting of stations and signal boxes to adapt driving accordingly,
- transition signalling between different operating or power supply systems,
- speed limits for the different train categories driven,
- topographical profiles,
- particular braking conditions, for example on lines with a steep downward gradient,
- particular operating features: special signals, signs, departure conditions, etc.

4. SAFETY REGULATIONS

Drivers must be able to:

- start the trains only when all prescribed conditions are fulfilled (timetable, start order or signal, operation of signals if required, etc.),
- observe track-side and in-cab signals, interpret them immediately and without error, and act as specified,
- run the train safely according to the specific modes of operation: apply special modes if instructed, temporary speed restrictions, running in opposite direction, permission to pass signals at danger, switching operations, turns, running through construction sites, etc.,
- respect scheduled or supplementary stops, and if necessary perform supplementary operations for passengers during these stops, notably opening and closing the doors.

5. DRIVING THE TRAIN

Drivers must be able to:

- know the train's position on the line at all times,
- apply the brakes for decelerations and stops, taking account of the rolling stock and installations,
- adjust the running of the train in accordance with the timetable and any orders given on saving energy, taking account of the characteristics of the traction unit, the train, the line and the environment.

6. ANOMALIES

Drivers must be able to:

- be attentive, insofar as train operation permits, to unusual occurrences concerning the infrastructure and the environment: signals, tracks, energy supply, level crossings, track surrounding, other traffic,
- know particular distances to clear obstacles,
- inform the infrastructure manager as soon as possible of the place and nature of anomalies observed, making sure that the information has been understood,
- taking into account the infrastructure, ensure or take measures to ensure the safety of traffic and persons, whenever necessary.

7. OPERATING INCIDENTS AND ACCIDENTS, FIRES AND ACCIDENTS INVOLVING PERSONS

Drivers must be able to:

- take steps to protect the train and summon assistance in the event of an accident involving persons,
- determine where to stop the train in the event of a fire and facilitate the evacuation of passengers, if necessary,
- provide useful information on the fire as soon as possible if the fire cannot be brought under control by the driver acting alone,
- inform the infrastructure manager of these conditions as soon as possible,
- assess whether the infrastructure allows the vehicle to continue to run and under which conditions.

8. LANGUAGE TESTS

Drivers who have to communicate with the infrastructure manager on critical safety issues must have language skills in the language indicated by the infrastructure manager concerned. Their language skills must be such that they can communicate actively and effectively in routine, adverse and emergency situations.

They must be able to use the messages and communication method specified in the 'Operations' TSI. Drivers must be able to communicate according to level 3 of the following table:

Language and Communication Level

The oral qualification in a language can be subdivided into five levels:

Level	Description
5	— can adapt the way he/she speaks to any interlocutor — can put forward an opinion — can negotiate — can persuade — can give advice
4	— can cope with totally unforeseen situations — can make assumptions — can express an argued opinion
3	— can cope with practical situations involving an unforeseen element — can describe — can keep a simple conversation going
2	— can cope with simple practical situations — can ask questions — can answer questions
1	— can talk using memorised sentences

ANNEX VII

FREQUENCY OF EXAMINATIONS

The minimum frequency of the periodic checks shall be as follows:

- (a) linguistic knowledge (only for non-native speakers): every three years or after any absence of more than one year;
 - (b) infrastructure knowledge (including route and operation rules knowledge): every three years or after any absence of more than one year on the relevant route;
 - (c) knowledge of rolling stock: every three years.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission presented the proposal for a Directive on the certification of train crews operating locomotives and trains on the Community's rail network railways on 3 March 2004 as one of the four proposals of the Third Railway Package ⁽¹⁾.

On 28 September 2005, the European Parliament voted its opinion in 1st reading.

On 14 September 2006, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee ⁽²⁾ and of the Committee of the Regions ⁽³⁾.

II. Analysis of the Common Position

1. General

The negotiations on the certification of train crews took place in a policy context shaped by the Commission's White Paper on European transport policy for 2010 ⁽⁴⁾, as well as by the First and the Second Railway Package. In the White Paper the Commission underlined the need for 'engine drivers who could drive anywhere on the trans-European network'. The First and the Second Railway Package contain detailed provisions on infrastructure access, interoperability and rail safety at national and European level, thereby providing the framework necessary for opening the market for freight services and for international passenger services.

With regard to market opening, it became clear that common rules had to be adopted on certification of train drivers to facilitate their interoperability and to guarantee conditions for the free movement of workers in the rail sector.

The Common Position as agreed by Council lays down the conditions and procedures for the certification of train drivers operating locomotives and trains on the railway system in the Community. It specifies the tasks for which the competent authorities of the Member States, the train drivers and other stakeholders in the sector, in particular the railway undertakings, infrastructure managers and training centres, are responsible. Moreover, the proposal sets minimum requirements for physical and mental fitness, obligatory periodic checks and the description of skills a driver must have. The draft Directive will apply to train drivers only. Other train crew on board locomotives and trains who participate directly or indirectly in driving and/or in other safety critical tasks will not be covered by its provisions. It also contains a specific procedure for temporary exemption from its scope of domestic drivers who only circulate within the borders of the Member States.

2. Key policy issues

(i) *Exclusion of other staff*

The proposal of the Commission foresaw a scope covering the certification of drivers and of other train crew on board locomotives and trains who participate directly or indirectly in driving and/or in other safety critical tasks. The inclusion of 'other crew' stems from an undertaking by the Commission in the context of negotiations pertaining to the Second Railway Package ⁽⁵⁾.

⁽¹⁾ The other 3 legislative proposals concern:

- Regulation on rights and obligations for passengers in international rail transport (doc. 7149/04 TRANS109 CODEC 337);
- Regulation on quality obligations for rail freight services (doc. 7150/04 TRANS 110 CODEC 338);
- Directive amending Directive 91/440/EEC on the development of the Community's Railways (doc. 7147/04 TRANS 107 CODEC 335).

⁽²⁾ OJ C 221, 9.9.2005, p. 20.

⁽³⁾ OJ C 71, 22.03.2005, p. 26.

⁽⁴⁾ doc. 11932/01 TRANS 131 AVIATION 70 MAR 76.

⁽⁵⁾ cf. Directive 2004/49/EC on the Community's railways (Safety Directive) (OJ L 220, 21.06.2004, p. 16-31 (recital 21)).

Council examined carefully the European Parliament's first reading position suggesting the inclusion of train crews within the scope of the draft Directive and the addition of a mechanism for certification in Article 25.

However, in its Common Position, the Council nevertheless limits the scope of the draft Directive to train drivers. While not opposing the principle of certification of 'other crew', Council considers such an extended scope as premature as it is not known which personnel will fall into such a category, nor which tasks they shall perform. Consequently, a provision has been added to the draft Directive giving the European Railway Agency the task to draw up a report identifying the profile and tasks of such other staff. This report shall be presented two years after the entry into force of this Directive (cf. Article 25).

Council has also included a special provision safeguarding the free circulation of freight trains throughout the territory of the European Union (cf. Article 3, second alinea).

ii) *Certification of 'domestic drivers'*

Following the Commission proposal, the Council decided to apply the provisions of this draft Directive to all train drivers within the Community. This implies that domestic drivers who only circulate within the borders of a Member State are also included within its scope.

However, the Council decided that a Member State may request from the Commission that the European Railway Agency carry out a cost/benefit analysis of the application of the provisions in the Directive to train drivers operating exclusively on the territory of that Member State. If this analysis shows that the costs of the application of the provisions contained in this Directive to such train drivers outweigh the benefits, the Commission shall adopt a decision within 6 months following the submission of the results of this cost/benefit analysis. The decision of the Commission based on this analysis may have the effect that the Directive does not have to be applied to domestic train drivers for a period of up to 10 years on the territory of the Member State concerned. If need be, a new exemption period can be granted under a similar procedure. (cf. Article 34.5)

The European Parliament shares Council's views in that respect and adopted a similar procedure in the second part of its amendment 40.

iii) *Gradual phasing in*

In its proposal the Commission suggests a phasing-in period in three stages, spread over the years 2006 to 2015.

In its opinion in first reading (first part of amendment 40), the European Parliament followed the Commission's approach, but decided to advance the dates by one year.

In its Common Position the Council follows the Commission's three step approach in principle, but does not tie the individual stages to fixed dates. The phasing-in (the delivery of 'new' licences and/or certificates in conformity with this Directive), which the Council adopted, presents itself as follows:

Starting from the date on which the necessary national registers will have been set up:

1. after 1 year: application to new drivers — involved in cross-border services, cabotage or freight services in another Member State, or working in more than one Member State -and to drivers that already worked on those services, but who require a new licence or certificate;
2. after 3 years: application to all drivers who need a new licence or certificate;
3. after 8 years: application to all drivers.

A flanking provision contained in Article 34.3 ensures that a driver may continue driving on the basis of his existing entitlements, until the provisions of paragraph 34.2 a), b) or c) apply.

III. Amendments of the European Parliament

Council was able to accept in full amendments 27, 36 and 44 of the European Parliament. As already explained above, Council rejected amendments 7, 9, 11, 34, 35 and 40 (first part). Concerning amendments 15, 24, 25, 26, 32, 38, 39, and 45 Council decided to follow the European Commission and to reject them. Amendments 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14, 17, 18, 19, 21, 22, 23, 28, 29, 30, 31, 33, 37, 40 (second part) 41, 42, 43, 46 and 47 are similar to Council's Common Position or close to the spirit in which it has been drafted.

IV. Conclusion

In establishing its Common Position, the Council has taken full account of the proposal of the Commission and the European Parliament's opinion in first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have — in spirit, partially or in full — already been covered in its Common Position.

Concerning the two main issues of disagreement — the inclusion of train crews within the scope of the draft Directive and the timing of its phasing-in (dates) — Council considers its solutions to be a balanced and appropriate response.

COMMON POSITION (EC) No 22/2006**adopted by the Council on 25 September 2006****with a view to adopting Regulation (EC) No .../... of the European Parliament and of the Council
of ... on the law applicable to non-contractual obligations (ROME II)**

(2006/C 289 E/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.
- (2) According to Article 65(b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.
- (4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

- (5) The Hague Programme ⁽⁴⁾, adopted by the European Council on 5 November 2004, called on work to be pursued actively on the rules of conflict of laws regarding non-contractual obligations ('Rome II').
- (6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.
- (7) The material scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁵⁾ ('Brussels I') and the Rome Convention on the law applicable to contractual obligations ⁽⁶⁾.
- (8) This Regulation should apply irrespective of the nature of the court or tribunal seised.
- (9) Claims arising out of '*acta iure imperii*' should include claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Therefore, these matters should be excluded from the scope of this Regulation.
- (10) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.
- (11) The concept of a non-contractual obligation varies from one Member State to another. Therefore for the purposes of this Regulation non-contractual obligation should be understood as an autonomous concept.

⁽¹⁾ OJ C 241, 28.9.2004, p. 1.

⁽²⁾ Opinion of the European Parliament of 6 July 2005 (OJ C 157 E, 6.7.2006, p. 371), Council Common Position of 25 September 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁵⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

⁽⁶⁾ OJ C 27, 26.1.1998, p. 34.

- (12) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.
- (13) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.
- (14) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.
- (15) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.
- (16) The general rule in this Regulation should be the '*lex loci damni*' provided for in Article 4(1). Article 4(2) should be seen as an exception to this general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an 'escape clause' from Article 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.
- (17) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.
- (18) The conflict rule in matters of product liability should meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Creation of a cascade system of connecting factors, together with a foreseeability clause, is a balanced solution in regard to these objectives. The first element to be taken into account is the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country. The other elements of the cascade are triggered if the product was not marketed in that country, without prejudice to Article 4(2) and to the possibility of a manifestly closer connection to another country.
- (19) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair competition, the conflict rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected generally satisfies these objectives.
- (20) The non-contractual obligations arising out of restrictions of competition in Article 6(3) should cover infringements of both national and Community competition law. The law applicable to such non-contractual obligations should be the law of the country on whose market the restriction has, or is likely to have, effect, provided that the effect is direct and substantial. Where the damage is sustained in more than one country, the application of the law of any of those countries should be limited to the damage which occurred in that country.
- (21) Examples of cases covered by Article 6(3) include prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market.
- (22) Regarding environmental damage, Article 174 of the Treaty, which provides that there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of the principle of discriminating in favour of the person sustaining the damage. The question of when the person seeking compensation can make the choice of the law applicable should be determined in accordance with the law of the Member State in which the court is seised.
- (23) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term 'intellectual property rights' should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.
- (24) The exact concept of industrial action, such as strike action or lock-out, varies from one Member State to another and is governed by each Member State's internal rules. Therefore, this Regulation assumes as a general

principle that the law of the country where the industrial action was taken should apply, with the aim of protecting the rights and obligations of workers and employers.

- (25) The special rule on industrial action in Article 9 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of the representative organisations of workers as provided for in the law of the Member States.
- (26) Provision should be made for special rules where damage is caused by an act other than a tort/delict, such as unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*.
- (27) *Culpa in contrahendo* for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should include the violation of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.
- (28) To respect the intentions of the parties and to enhance legal certainty, the parties should be allowed to make an express choice as to the law applicable to a non-contractual obligation. Protection should be given to weaker parties by imposing certain conditions on the choice.
- (29) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions.
- (30) In order to strike a reasonable balance between the parties, account must be taken, in so far as appropriate, of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligation is governed by the law of another country. The term 'rules of safety and conduct' should be interpreted as referring to all regulations having any relation to safety and conduct, including, for example, road safety rules in the case of an accident.
- (31) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of conflict-of-law rules relating to non-contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying down provisions designed to

contribute to the proper functioning of the internal market insofar as they cannot be applied in conjunction with the law designated by the rules of this Regulation.

- (32) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the Official Journal of the European Union on the basis of information supplied by the Member States.
- (33) The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to non-contractual obligations.
- (34) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of the Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to attain that objective.
- (35) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Material scope

- 1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and

commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (*'acta iure imperii'*).

2. The following shall be excluded from the scope of this Regulation:

- (a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
- (b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- (c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
- (e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
- (f) non-contractual obligations arising out of nuclear damage;
- (g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

4. For the purposes of this Regulation, 'Member State' shall mean any Member State other than Denmark.

Article 2

Non-contractual obligations

1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2. This Regulation shall apply also to non-contractual obligations that are likely to arise.

3. Any reference in this Regulation to:

- (a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and
- (b) damage shall include damage that is likely to occur.

Article 3

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

CHAPTER II

TORTS/DELICTS

Article 4

General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 5

Product liability

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:

- (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 6

Unfair competition and acts restricting free competition

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.

3. The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country on whose market the restriction has, or is likely to have, effect.

4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 7

Environmental damage

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

Article 8

Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not

governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 9

Industrial action

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

CHAPTER III

UNJUST ENRICHMENT, NEGOTIORUM GESTIO AND CULPA IN CONTRAHENDO

Article 10

Unjust enrichment

1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 11

Negotiorum gestio

1. If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1, and the parties have their habitual residence in the same country when the event giving rise to the damage occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the act was performed.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 12

Culpa in contrahendo

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

2. Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:

- (a) the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or
- (b) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or
- (c) where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.

Article 13

Applicability of Article 8

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

CHAPTER IV

FREEDOM OF CHOICE

Article 14

Freedom of choice

1. The parties may agree to submit non-contractual obligations to the law of their choice:

- (a) by an agreement entered into after the event giving rise to the damage occurred;
- or

- (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

2. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs, are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs, are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

CHAPTER V

COMMON RULES

Article 15

Scope of the law applicable

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally;
- (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

Article 16

Overriding mandatory provisions

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

*Article 17***Rules of safety and conduct**

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

*Article 18***Direct action against the insurer of the person liable**

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

*Article 19***Subrogation**

Where a person ('the creditor') has a non-contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

*Article 20***Multiple liability**

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

*Article 21***Formal validity**

A unilateral act intended to have legal effect and relating to a non-contractual obligation shall be formally valid if it satisfies the formal requirements of the law governing the non-contractual obligation in question or the law of the country in which the act is performed.

*Article 22***Burden of proof**

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of

non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER VI

OTHER PROVISIONS*Article 23***Habitual residence**

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

*Article 24***Exclusion of renvoi**

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

*Article 25***States with more than one legal system**

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

*Article 26***Public policy of the forum**

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy ('*ordre public*') of the forum.

*Article 27***Relationship with other provisions of Community law**

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

*Article 28***Relationship with existing international conventions**

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them insofar as such conventions concern matters governed by this Regulation.

CHAPTER VII

FINAL PROVISIONS*Article 29***List of conventions**

1. By ... (*), Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:

- (i) a list of the conventions referred to in paragraph 1;
- (ii) the denunciations referred to in paragraph 1.

*Article 30***Review clause**

Not later than ... (**), the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.

*Article 31***Application in time**

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

*Article 32***Date of application**

This Regulation shall apply from ... (***), except for Article 29, which shall apply from ... (*).

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament

The President

...

For the Council

The President

...

(*) 12 months after the date of the adoption of this Regulation.

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

(***) 18 months after the date of adoption of this Regulation.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Council reached general agreement on the text of the draft Regulation on the law applicable to non-contractual obligations on 1-2 June 2006. This led to the adoption of a common position on 25 September 2006 under the co-decision procedure.

The Council took its decision by qualified majority. The delegations of Estonia and Latvia voted against due to their reservations on Article 9 on industrial action and its implications for the freedom to provide services. ⁽¹⁾

When adopting its position, the Council took into account the opinion of the European Parliament delivered at first reading on 6 July 2005. ⁽²⁾

The purpose of this proposal is to lay down a uniform set of rules of law applicable to non-contractual obligations, irrespective of the country of the court in which an action is brought. This should increase certainty as to the applicable law and improve the predictability of legal disputes and the free movement of judgements.

II. ANALYSIS OF THE COMMON POSITION

1. General

The Council's common position follows largely the same line as the Commission's original proposal as modified by the amended proposal submitted to the Council on 22 February 2006 ⁽³⁾.

The principal changes made to the text are as follows:

1. In comparison with the original Commission proposal the scope of the instrument has been clarified and further elaborated. Civil and commercial matters do not cover liability of the State for acts and omissions in the exercise of state authority ('*acta iure imperii*'). An additional exclusion has been added to Article 1(2) (g) to reflect the discussions and the final compromise on violations of privacy and rights relating to personality.
2. The Regulation follows the same logic as the original Commission proposal in the sense that the Regulation sets out a general rule for the law applicable to a tort/delict. The general rule consists of applying the law of the country where damage occurred. This has not changed as compared to the original Commission proposal. Article 4(2) sets out an exception from the general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an 'escape clause' from Articles 4(1) and 4(2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.

As a matter of principle, the general rule should be applicable to all non-contractual obligations covered by the Regulation. Only in certain limited, duly justified circumstances should the general rule be derogated from and special rules applied. In accordance with the conditions specified in Article 14 the parties may agree to submit non-contractual obligations to the law of their choice.

3. In comparison with the original Commission proposal, the scope of the special rules has been further clarified in order to facilitate their practical application. The Regulation currently contains special rules in matters of product liability, unfair competition, environmental damage, infringements of intellectual property and industrial action.
4. Negotiations over violations of privacy and rights relating to personality caused difficulties to many delegations. The Council examined this issue on numerous occasions and carefully considered all options on the negotiating table, including the proposal by the European Parliament.

⁽¹⁾ See ref to I/A-item note 12219/2006 CODEC 838 JUSTCIV 181;

⁽²⁾ See 10812/05 CODEC 590 JUSTCIV 132;

⁽³⁾ See 6622/06 JUSTCIV 32 CODEC 171;

Nevertheless, as a final compromise and in an attempt to reconcile the conflicting interests, the Council decided to delete the special rule on violations of privacy and rights relating to personality at this stage. As indicated above, such matters are currently excluded from the scope of the Regulation by Article 1(2) g.

However, this has to be read together with Article 30. The review clause, proposed by the European Parliament and currently contained in Article 30, makes provision for a report to be submitted by the Commission at the latest four years after the date of entry into force of the Regulation. The report should consider in particular non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

5. Differently from the original Commission proposal, the Regulation now also contains a rule on industrial action in line with the proposal of the European Parliament. With the aim of balancing the interests of workers and employers, this rule consists of applying the law of the country where the industrial action was taken. However, this provision caused such difficulties to two delegations that they voted against the common position.
6. The original proposal of the Commission contained one provision for non-contractual obligations arising out of acts other than torts/delicts. The Regulation now includes a specific chapter with separate provisions on unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*.
7. The Articles on mandatory provisions, relationship with other Community law provisions and relationship with existing international conventions have further been simplified.
8. The Regulation now contains, as requested by the European Parliament, a review clause, which obliges the Commission to submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Regulation. In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.

Other amendments are of a more formal nature and have been made to render the text easier to read.

After revision by Legal/Linguistic Experts, the text and the recitals have been re-numbered. A table in the Annex sets out the respective numbers as set out in the common position and as they were indicated in the original proposal.

2. Parliament's amendments

The Council has accepted many of European Parliament's amendments. In some cases, however, the discussions in the Council and the revision of the text by Legal/Linguistic Experts showed the need for certain technical clarifications. In order to ensure correspondence to the provisions of the Regulation, the recitals have been adapted and updated.

The changes made to Articles 1, 2, 4, 9, 10, 11, 12, 28 and 30 require the inclusion of additional recitals.

Recitals 1-5 have been updated in order to take account of the latest developments at political level. Accordingly, the reference to the 1998 Action Plan has been replaced by guidelines contained in the Hague Programme adopted by the European Council in 2004.

a) *Amendments accepted in their entirety*

Amendments 12, 17, 21, 22, 35, 37, 39, 40, 45, 51, 52 and the oral amendments can be accepted as presented by the European Parliament since they contribute either to the clarity and consistency of the instrument or to questions of detail.

b) *Amendments accepted in substance*

Amendments 2, 15, 18, 19, 20, 23, 24, 28, 31, 34, 38, 45, 54 can be accepted in substance subject to re-drafting.

Amendment 2 is covered by current recitals (29) and (31).

The substance of amendment 15 is taken over by recital (24).

The changes proposed by amendment 18 are reflected in substance in Articles 2 and 1(1).

Amendments 19 and 20 are included in the text of Articles 1(2) b and 1(2) d. However, the drafting has been simplified, in particular due to the inclusion of Article 2.

Amendment 23 is accepted in substance. However, the Council considers that in view of the changes made to recital (9) and Article 1(1) this amendment is redundant.

The Council consider that the changes proposed by amendment 24 are covered in substance by the changes made to Articles 16, 26 and 27, as well as recital (31).

The Council can accept the principle of amendments 28 and 34, which would change the structure and the title of the sections. The Council considers that this is reflected in the current structure of the Regulation, which is divided into, Chapter I — Scope, Chapter II — Torts/delicts, Chapter III — Unjust enrichment, negotiorum gestio and culpa in contrahendo, Chapter IV — Freedom of choice and Chapter V — Common provisions, and would serve the same purpose.

Amendment 31 introduces a new provision on industrial action. This is in line with the negotiations in the Council. However, the substance of the rule has been further elaborated in Article 9 and by recitals (24) and (25).

The substance of amendment 38 is taken over by Article 14. However, the Council has tried to simplify the wording and render it more flexible.

The substance of amendment 46 is taken over by Article 18.

c) Amendments accepted in part

Amendment 3, 14, 25, 26, 36, 44, 53 and 54 can be accepted in part.

Amendment 3 is only partly acceptable since the recital relates to Article 4 and amendment 26 on Article 4 is not fully accepted. The first sentence of the amendment is reflected in substance in the current text of recitals (13) and (14). The last part of the amendment is reflected in the current text of recital (28).

Amendment 14 proposes, firstly, to add the words 'in so far as appropriate' so as to add emphasis to the discretion of the court and, secondly, to exclude this possibility in matters of violations of privacy and unfair competition. While the Council can accept the first part of the amendment, matters of violations of privacy have been excluded from the scope, and the Council sees no justification for making an exception for cases of unfair competition.

Amendment 25 is acceptable in principle. However, the conditions for expressing ex ante choice should in view of the Council be laid down in clear and unequivocal terms.

Amendment 26 relates to the general rule contained in Article 4.

With regard to Article 4(1) the Council can accept the changes proposed.

On the other hand, the Council cannot accept the changes to paragraph 2. Paragraph 2 brings in a specific rule on traffic accidents which would subject the non-contractual obligation and the amount of damages to two different laws. As the Commission has stated in its revised proposal ⁽¹⁾ this solution diverges from the law in force in the Member States and cannot therefore be adopted without prior in-depth analysis. It is accordingly proposed that the question be considered in detail in the report foreseen by Article 30.

⁽¹⁾ See 6622/06 JUSTCIV 32 CODEC 171;

As to Article 4(3), it should be seen as an escape clause from Articles 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country. In the light of this, the Council sees no need for listing specific factors.

Amendment 36 relates to the new Article 10. While in principle the changes proposed are acceptable, the Council considers that the law of the country in which enrichment took place is a more appropriate connecting factor in case the applicable law cannot be determined on the basis of Article 10(1) or (2).

The first part of amendment 44 is acceptable to the Council. However, in the course of the negotiations it was agreed to delete paragraph (2) that would create fundamental problems to certain Member States and therefore the Council cannot accept this part of the amendment.

Amendment 53 is accepted in part. The Council considers that it would be more appropriate to have the Regulation take automatically precedence over conventions concluded exclusively between two or more of the Member States insofar as such conventions concern matters governed by the Regulation. The amendment proposed to Article 28(3) is not accepted since the Hague Convention provides for a specific regime on traffic accidents and many of the Member States that are contracting parties to the Convention expressed their wish to preserve this regime. In this context, regard should be had to the review clause in Article 30, which makes a specific reference to traffic accidents.

The Council welcomes the review clause as proposed by amendment 54. However, the Council suggests that a more generic review clause is more appropriate to ensure effective evaluation in the framework of the existing competencies (see Article 30).

d) Amendments rejected

Amendments 1, 4, 5, 6, 8, 10, 11, 13, 16, 27, 29, 32, 33, 41, 42, 43, 47, 49, 50, 56 and 57 are rejected.

Amendment 1 refers to the Rome I Regulation. However, until the Regulation is adopted, it is more appropriate to refer to the existing 1980 Rome I Convention on the law applicable to contractual obligations.

Amendment 4 relates to the changes proposed to the general rule (amendment 26). Since amendment 26 was rejected in part, the corresponding changes to the recital would have to be rejected.

In view of the changes made to the scope of the Regulation, the Council sees no need for amendment 5.

Amendment 6, 8, 11 and 13 would adapt the recitals to reflect the deletion of several special rules from the Regulation as proposed by amendments 27 (product liability), 29 (unfair competition and acts restricting free competition) and 33 (violations of the environment). The Council cannot accept the deletion of these special rules, therefore the corresponding amendments to the recitals would have to be rejected as well. However, the Council has made an effort to clearly define the scope of these special rules in order to facilitate their practical application.

Amendments 10 and 56 would have to be rejected since non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, have been excluded from the scope of the Regulation

Amendment 16 is not acceptable to the Council, since the Council rejects amendment 42 to which this amendment corresponds.

Amendment 27 would abolish the special rule on product liability. The Council considers that the application of the general rules in cases of product liability would not allow foreseeing the applicable law with reasonable certainty. Creation of a cascade system of connecting factors, together with a foreseeability clause, appears to be a balanced solution in view of this objective.

Amendment 29 proposes to delete the specific rule on unfair competition. The Council cannot accept that. The rule in Article 6 is not an exception to the general rule contained in Article 4(1) but rather clarifies it in order to determine where the damage arises. In matters of unfair competition, the rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the place where the competitive relations or the collective interests of consumers are affected, or in case of restrictions of competition, the country where the restriction has or is likely to have effect, generally satisfy these objectives. The non-contractual obligations arising out of restrictions of competition in Article 6(3) should cover infringements of both Community and national competition law.

Amendment 32 is related to amendment 26 which is rejected by the Council to the extent it relates to traffic accidents. For the same reasons as indicated above, this amendment is rejected.

The Council cannot accept the deletion of the special rule for environmental damage as proposed by amendment 33. The proposed rule reflects the 'polluter pays' principle promoted by the Community and already applied in several Member States.

The Council cannot accept amendment 41 since it would appear to be in contradiction with the changes proposed by amendment 40 which the Council accepts.

Amendments 42 and 43 address the question of the application of foreign law by the court. The Council rejects these amendments since this question should be tackled in a different context.

Since amendment 22 was accepted, amendment 47 is redundant in the view of the Council.

The Council considers that the clarification contained in Article 23(2) is sufficient for the purposes of natural persons acting in the course of their business activities. Thus, amendment 49 is rejected.

Amendment 50 aims at clarifying the concept of public policy. It would be difficult for the time-being to lay down common criteria and reference instruments for the purposes of defining public policy. For these reasons amendment 50 is rejected.

Amendment 57 relates to Article 6 of the original Commission proposal. The Council examined this issue on numerous occasions and carefully considered all options on the negotiating table, including the solution proposed by the European Parliament. However, as a final compromise and in an attempt to reconcile the conflicting interests, the Council proposes to delete the special rule on violations of privacy and rights relating to personality at this stage. Accordingly amendment 57 has to be rejected. Instead the Regulation provides in Article 1(2) (g) for an exclusion from the scope.

However, this should be read together with Article 30. The review clause contained in Article 30 makes provision for a report to be submitted by the Commission at the latest four years after the date of entry into force of the Regulation. The report shall consider in particular non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

III. CONCLUSION

The Council considers that the text of the common position on Regulation on the law applicable to non-contractual obligations creates a balanced system of conflict-of-law rules in the field of non-contractual obligations and achieves the desired uniformity of rules of applicable law. Furthermore, the common position is in broad terms in line with the original proposal of the Commission and the opinion of the European Parliament.

ANNEX

TABLE OF CORRESPONDENCE

The original Commission proposal	The Council's common position
Recital (1)	Recital (1)
new	Recital (2)
Recital (2)	deleted
Recital (3)	Recital (3)
new	Recital (4)
new	Recital (5)
Recital (4)	Recital (6)
Recital (5)	Recital (7)
new	Recital (8)
new	Recital (9)
new	Recital (10)
new	Recital (11)
Recital (6)	Recital (12)
Recital (7)	Recital (13)
Recital (8)	Recital (14)
new	Recital (15)
new	Recital (16)
Recital (9)	Recital (17)
Recital (10)	Recital (18)
Recital (11)	Recital (19)
new	Recital (20)
new	Recital (21)
Recital (12)	deleted
Recital (13)	Recital (22)
Recital (14)	Recital (23)
new	Recital (24)
new	Recital (25)
Recital (15)	Recital (26)
new	Recital (27)
Recital (16)	Recital (28)
Recital (17)	Recital (29)
Recital (18)	Recital (30)
Recital (19)	Recital (31)

The original Commission proposal	The Council's common position
Recital (20)	Recital (32)
new	Recital (33)
Recital (21)	Recital (34)
Recital (22)	Recital (35)
Recital (23)	Recital (36)
Article 1	Article 1
new	Article 2
Article 2	Article 3
Article 3	Article 4
Article 4	Article 5
Article 5	Article 6
Article 6	deleted
Article 7	Article 7
Article 8	Article 8
new	Article 9
Article 9(1)	Article 12
Article 9(2)	Article 10(2), 11(2), 12(2)b
Article 9(3)	Article 10
Article 9(4)	Article 11
Article 9(5)	Article 10(4), 11(4), 12(2)c
Article 9(6)	Article 13
Article 10	Article 14
Article 11	Article 15
Article 12	Article 16
Article 13	Article 17
Article 14	Article 18
Article 15(1)	Article 19
Article 15(2)	Article 20
Article 16	Article 21
Article 17	Article 22
Article 18	deleted
Article 19	Article 23
Article 20	Article 24

The original Commission proposal	The Council's common position
Article 21	Article 25
Article 22	Article 26
Article 23	Article 27
Article 24	deleted
Article 25	Article 28
Article 26	Article 29
new	Article 30
Article 27 second section	Article 31
Article 27 first and third sections	Article 32