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**DRAFT STATEMENT OF THE COUNCIL'S REASONS**

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| Subject: | Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004<br>– Draft Statement of the Council's reasons |

## I. INTRODUCTION

On 31 January 2013, the Commission presented to the Council its proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for railways and repealing Regulation (EC) N°881/2004.

On 26 February 2014, the European Parliament voted its opinion at first reading.

On 5 June 2014, the Council reached a political agreement on the draft Regulation. Following legal/linguistic revision, the Council adopted its position at first reading on […], in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

Following the vote in the European Parliament and the adoption of the Council's Bilateral agreement, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. On 17 June 2015, a final compromise was agreed, which was subsequently endorsed by the Committee of Permanent Representatives on 30 June 2015. The European Parliament Committee on Transport and Tourism (TRAN) confirmed the agreement on 10 November 2015, and to this effect addressed a letter to the Chairman of the Permanent Representatives Committee.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee and of the Committee of Regions.

## II. ANALYSIS OF THE POSITION AT FIRST READING

### 1. General

The above-mentioned proposal is part of the Fourth Railway Package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area.

The overall objective of this new legislative package is to enhance the quality and efficiency

of rail services, by removing the remaining market obstacles and reinforcing the harmonisation of interoperability and safety requirements to ensure a higher level of harmonisation of the EU railway network.

Against this background, the purpose of the new Regulation on the European Railway Agency (hereinafter, "the Agency") proposed by the Commission is, therefore, to amend the existing regulatory framework in order to define the new tasks in the field of interoperability and safety to be carried out by the Agency. Those new tasks result from the issuing of safety certificates and vehicle authorisations by the Agency, as proposed by the Commission in the interoperability and safety Directives.

In addition, it is proposed to clarify existing provisions as well as update and strengthen the provisions on the governance aspects of the Agency, in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.

The Council's approach has been to introduce several amendments to the original proposal. The main provisions of the Regulation have been significantly amended. The Council's position at first reading, therefore, amends the original Commission proposal by redrafting it and adding and deleting several provisions of the text. This means that the Council cannot accept the amendments introduced by the European Parliament's opinion at first reading in relation to those provisions.

## 2. Key policy issues

### i) Issuing of safety certificates and vehicle authorisations: respective role of the Agency and of the national safety authorities (Articles 12, 14, 20 and 21)

In order to improve the efficiency of the issuing of the safety certification and vehicle authorisation processes, the Commission envisaged in its original proposal a significant transfer of competences from the national authorities to the Agency in relation to the issuing of safety certificates and vehicle authorisations.

The Council agrees with the Commission's overall approach but considers that the Commission proposal needs to be modified in this respect, in order to introduce more flexibility in the respective responsibilities of the national safety authorities and the Agency in the safety certification and vehicle authorisation processes.

Therefore, the Council modifies the balance initially proposed by the Commission in the division of competences between the Agency and the national safety authorities, with additional safeguards granted to the national safety authorities in specific circumstances.

Under the Council's position, a dual system of vehicle authorisations and safety certifications is set up, where the Agency acts as a one-stop-shop for authorising vehicles intended for cross-border operations and for issuing safety certificates to railway undertakings involved in cross-border traffic, with national safety authorities keeping an important role in carrying out the necessary assessments. For vehicles and railway undertakings involved in national transport only, it remains possible to submit a request for authorisation or certification either to the Agency or to the national safety authority. However, in both cases, the procedure and the decision criteria remain the same.

In addition, the Council's position provides for the establishment and management by the Agency of an information and communications system with one-stop shop functions (Article 12).

The European Parliament supports generally the approach retained by the Council. However, it applies it in a different way through the introduction of a derogation for "isolated rail networks" covering the rail networks of Member States, or part thereof, with a track gauge of 1520 mm.

The Council's position at first reading covers the concerns raised by the European Parliament by including the concept of "isolated networks" under the provisions concerning the cooperation agreements.

Against this background, amendments 4, 49 and 62 could be taken into consideration partially or in spirit by the Council.

**ii) Role of the Agency for the authorisation of placing in service of the European signalling system ERTMS (Article 22)**

In its original proposal, the Commission envisaged the transfer to the Agency of the responsibility for the authorisation of placing in service of trackside control-command and signalling, including the European signalling system ERTMS.

The Council does not share the Commission's approach on this issue and considers that the national safety authorities should continue to authorise the placing in service of ERTMS systems.

However, in order to facilitate an agreement with the European Parliament, which insists on granting to the Agency the responsibility for the authorisation of placing in service the ERTMS systems, a compulsory verification prior to the authorisation is introduced in the Council's text. More specifically, the Council aims at establishing clear rules for cooperation between the parties involved in the case of two different scenarios regarding ERTMS, where changes are needed before the authorisation is issued by the national safety authority or where the Agency finds, after the authorisation is issued by the national safety authority, that there is a lack of technical and operational compatibility between networks and vehicles fitted with ERTMS equipment.

Therefore, amendments 3, 11, 29 and 65 could be taken into consideration only partially by the Council.

**iii) Fees and charges for safety certificates and vehicle authorisations (Article 80)**

While the Commission suggests the use of delegated acts for the determination of the fees and charges for safety certificates and vehicle authorisations, the Council's position aims at mentioning in the Regulation the principles governing the calculation of the fees and charges to be applied by the Agency to applicants for the issuing of authorisations and certifications.

The Council's position lays down in the legal act that these fees and charges should take into account the actual costs incurred by the national safety authorities in carrying out their relevant tasks when issuing safety certificates and vehicle authorisations. To this end, detailed provisions are included in the main body of the Regulation on the modalities for the establishment of fees and charges in order to clarify that the latter shall be set in a transparent, fair and uniform manner in cooperation with Member States, shall not jeopardize the competitiveness of the European railway sector, and that they shall not lead to unnecessary financial burden on applicants. In addition, in order to meet some of the EP concerns, the Council's text clarifies that fees and charges shall also be levied for the issuing of decisions for approval of ERTMS.

Finally, the Council's position provides that measures in relation to the calculation of fees and charges shall be established by means of implementing acts.

The European Parliament requests delegated acts in relation to the determination of fees and charges for safety certificates and vehicle authorisations.

Against this background, amendments 14 and 135 could not be taken into consideration by the Council.

**iv) Liability of the Agency and cooperation with national judicial authorities (Articles 72 and 73)**

The Council considers that further clarification on the accountability of the Agency in the context of issuing vehicle authorisations and safety certificates is necessary. Therefore, new provisions have been added to that effect in the text of the Council's position, in particular through the introduction of a new Article on the cooperation with national judicial authorities. More specifically, the Council's approach clarifies that the immunity of the Executive Director (and of the Agency staff) could be waived, if necessary.

**v) Cooperation of the Agency with national safety authorities (Article 76)**

The Council's position lays down that the Agency and the national safety authorities shall conclude cooperation agreements in the context of vehicle authorisations and safety certificates to facilitate the practical implementation of the new certification and authorisation system. Under this approach, the Agency will be able to subcontract certain certification and authorisation tasks to the national safety authorities.

This approach aims a keeping a sufficient level of flexibility to take into account the specificities of the railway sector, where the tasks cannot be fully separated and are rather shared between the Agency and the national safety authorities. In particular, for networks isolated from the rest of the Union's rail system, cooperation arrangements may be introduced to include the possibility for contracting tasks to the relevant national safety authorities when it is necessary to ensure efficient and proportionate allocation of certification and authorisation.

**vi) Appeal and arbitration procedures/conflict of interest rules (Articles 55-63, Article 51)**

The Council's position aims at reinforcing the provisions on the appeal and arbitration procedures in the Regulation. Therefore, the Council's text reflects the possibility given to the applicant to refer the matter to a national court in case of disagreement with the measure taken by the national safety authority. In addition, the Council introduces new provisions on arbitration procedures to guarantee the possibility for a national safety authority to lodge an appeal against a decision taken by the Agency in case of disagreement.

The European Parliament insists on introducing additional requirements for the appointment of the members of the Board of Appeal, for the exclusion and objection requests and for the examination and decisions on appeals.

In this context, to facilitate an agreement with the European Parliament, the Council's text lays down detailed rules concerning the functioning of the Board of Appeal, including rules on the independence of its members from the parties involved in an appeal or arbitration, on the prevention and management of conflicts of interests of the Agency staff at all levels and on the inclusion of a 3-month time limit for an appeal procedure in order to ensure that appeal cases do not create obstacles or delays.

In this context, amendments 114-117, 122-133, 138-140 and 146 could be accepted partially or in spirit by the Council.

**vii) New governance rules (Articles 47 and 68)**

The Council's text includes important modifications to the governance rules proposed for the Agency in the Commission proposal. This applies in particular to the composition of the Management Board and to the modalities for the dismissal of the Executive Director.

More specifically, as opposed to the Commission proposal, the Council decided to appoint two representatives of the Commission within the Management Board (against four in the Commission proposal), in line with the existing arrangements contained in the Common Approach on decentralised Agencies.

The Council also includes a new obligation for the Commission to propose a list of at least three candidates for the appointment of the Executive Director.

Finally, the Council's position lays down that the power to propose the dismissal of the Executive Director has been granted to one third of the Members of the Management Board.

**viii) Languages (Article 74)**

The Council considers that it is crucial to include additional safeguards in the text on the language issue. The dual system set-up in relation to the issuing of safety certificates and vehicle authorisations would only function properly if both the applicants and the national safety authorities concerned can continue to use their own language, if necessary. This dual mechanism also implies that a close cooperation between the Agency and the national safety authorities is established with workable language arrangements, taking into account the reality on the ground, and in particular the fact that national safety authorities will keep an important role in carrying out the assessments necessary for the issuing of the above authorisations and certifications. Therefore, the Council's position provides that, at the request of a member of the Management Board, the decision on languages shall be taken by unanimity, in line with the current practices deriving from the application of the existing Regulation (EC) n° 881/2004.

**ix) European standards in relation to spare parts (Articles 19 and 45)**

The Council's position provides that the Agency shall issue detailed guidance concerning standards for the relevant European standardisation bodies to complement the mandate given to them by the Commission. Furthermore, the Agency shall contribute to the identification of potential interchangeable spare parts to be standardised, including main interfaces to such spare parts and shall present to the Commission appropriate recommendations.

Therefore, amendments 52, 53, 110 and 156 were accepted partially or in spirit by the Council.

## III. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter that the Chair of the European Parliaments' Committee on Transport and Tourism (TRAN) addressed to the Chairman of the Permanent Representatives Committee on 24 November 2015.

In this letter, the TRAN Chair indicates that he will recommend to the members of the TRAN Committee, and subsequently to the plenary, that they approve the Council's position at first reading without amendments, and conclude the ordinary legislative procedure at the stage of the European Parliament's second reading, in accordance with Article 294 of the TFEU.