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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject:	Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on railway safety (Recast) – Draft Statement of the Council's reasons

I. INTRODUCTION

On 31 January 2013, the Commission presented to the Council its proposal for a Directive of the European Parliament and of the Council on railway safety (Recast).

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 Directive. 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 political 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 objective of this proposal is to establish a common approach to safety in order to increase economies of scale for railway undertakings active across the Union, as well as to simplify and reform the administrative procedures for issuing safety certificates, thereby removing the fragmentation of rules across the Union.

More specifically, the objective of the safety Directive is to amend the existing regulatory framework in order to put in place the migration towards an EU single safety certificate for railway undertakings and infrastructure managers, to be issued by the European Railway Agency (hereinafter, "the Agency"). Besides, it aims at clarifying the role and responsibilities of the various actors of the rail system involved in order to ensure adequate risk control at all levels.

The Council's approach has been to introduce several amendments to the original proposal. The main provisions of the Directive 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 respective role of the European Railway Agency and of the national safety authorities (Article 10)

In order to improve the efficiency of the issuing of the safety certification process to railway undertakings and infrastructure managers, the Commission proposes to move towards a single EU safety certificate valid in the whole Union. To that purpose, 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 (Article 10).

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 process.

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

More specifically, the Council sets up a dual system in relation to the issuing of safety certifications, where the Agency acts as a one-stop-shop through the setting-up of a new information and communications system for issuing safety certificates to railway undertakings involved in cross-border traffic, with national safety authorities keeping an important role in carrying out the assessments necessary to the issuing of the above certifications. The compromise also provides that, for railway undertakings involved in national transport only, a choice exists to submit a request for certification either to the Agency or to the national safety authority. However, in both cases, the procedure and the decision criteria remain the same.

The European Parliament supports overall the approach retained by the Council. The latter also covers the concerns raised by the European Parliament by including the concept of "isolated networks" under the provisions concerning the cooperation agreements (see below under point iii).

Against this background, amendment 78 was taken on board partially or in spirit, while amendments 46 and 77 could not be taken into consideration by the Council.

ii) Clarification of the role and responsibilities of the different actors in the safety chain (Article 4)

The Commission proposes to define more precisely the role and responsibilities of the players in the railway chain to take into account the recent evolution of the market and of the legal framework (Article 4).

The Council supports this principle but suggests clarifying further the role and responsibilities of the different actors of the rail system to improve the safety level, through the strengthening of the provisions on the respective role of the actors of the rail system in developing and improving railway safety. Furthermore, the Council considers that infrastructure managers and railway undertakings should have a major responsibility for the safe operation of the train and that they should be obliged to establish safety management systems.

The European Parliament suggests putting all actors in the railway safety chain at the same level of responsibility. In addition, the Parliament envisages to transfer the responsibility of railway undertakings to Member States and the Agency.

Against this background, amendments 12, 18 and 62 could not be retained by the Council.

iii) Cooperation agreements between the Agency and the national safety authorities in the context of certifications for railway undertakings involved in cross-border transport (Article 11)

While the Commission did not include any provisions on cooperation agreements between the Agency and the national safety authorities in its original proposal, the Council considers that it is very important to introduce a new mechanism concerning the conclusion of cooperation agreements between the Agency and national safety authorities to facilitate the practical implementation of the new certification system.

According to this mechanism, the cooperation agreements between the Agency and the national safety authorities may include specific cooperation arrangements in cases of networks requiring specific expertise due to geographical or historical reasons. Besides, where such networks are isolated from the rest of the Union's rail system, such cooperation arrangements may include the possibility for contracting tasks to the relevant national safety authorities when it is necessary to ensure efficient and proportionate allocation of certification.

The European Parliament agrees in principle with the Council's approach but suggests imposing a time limit of one year for the establishment of the contractual agreements. Therefore, amendment 84 was not accepted by the Council.

iv) Adoption of national rules in the field of safety (Article 8 and Annex II)

The Council's position aims at establishing a flexible and workable procedure on national safety rules. Therefore, it introduces the possibility for the Member States to maintain national safety rules already notified under Directive 2004/49/EC in a number of cases as laid down in Article 8(1) and in the new Annex II. In addition, it gives Member States the possibility to adopt new national rules in the field of safety (Article 8(3)).

To take into consideration the EP concerns on national rules, the Council's position nevertheless clarifies the procedures to be applied for the notification of national rules, as well as on the assessment to be made by the Agency (up to a period of 8 months). In addition, the Council's position provides that, when the Agency does not react within the required time limits, the new national rules would be adopted by the Member States or the existing ones would remain valid. The approach retained by the Council aims at avoiding that national rules are validated without their prior assessment by the Agency.

Therefore, amendment 49 was taken on board partially by the Council.

v) Clarification of the supervision activities of the national safety authorities (Article 17)

A new provision (Article 17) is included in the Council's text to stress that far-reaching supervisory powers should be maintained for the national safety authorities in the supervision of the railway undertakings and infrastructure managers. More specifically, this new provision aims at guaranteeing that the new safety certification procedure will not undermine the role of the national safety authorities in their supervision tasks.

In addition, according to the Council's text, if during supervision, a national safety authority identifies a serious safety risk, it may apply temporary safety measures, on which the national authority would have the final say in case of disagreement with the Agency.

vi) Liability of the Agency for issuing safety certificates (recital 27 and Article 10(6))

The Council's position aims at clarifying the accountability of the Agency in the context of issuing safety certificates. A new recital (recital 27) is added to the text in order to recall the legal framework of the Agency's liability, and to underline the importance of a full cooperation with Member States's authorities in the case of railway accidents. Furthermore, the Council's position provides that the Agency is fully responsible for the single safety certificate it issued (Article 10(6)).

vii) Appeal and arbitration procedure (Article 10 paragraphs 7 and12)

While the Commission proposal did not include any specific provisions on appeal procedures, 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.
Similarly, an appeal procedure in case of a disagreement between the national safety authority and the Agency is included in the Council's text.

viii) Duration of the transitional provisions and transposition period (Articles 31 and 33)

According to the Commission's proposal, a period of two years is planned in order to enable the Agency to adapt its organisation, staff recruitment policy and working methods to be able to fulfil its new tasks.

The Council considers that a longer transitional regime than the one initially envisaged by the Commission is more appropriate. The Council text provides that Member States may continue to apply the existing provisions of Directive 2004/49/EC until three years after the date of entry into force of the Directive, coupled with the possibility given to Member States to extend this period for an additional year.

A similar scheme applies to the transposition period.

In this context, amendments 97, 99 and 100 were partially taken into consideration by the Council.

ix) Safety culture and occurrence reporting (Recital 10 and Articles 4 and 9)

While the Commission proposal did not include any specific provisions on this issue, the Council's text covers the promotion of a culture of mutual trust, confidence and learning in which the staff of railway undertakings and infrastructure managers are encouraged to contribute to the development of safety. In addition, the Council's text provides for the possibility to confidentially report ignored safety risks. More specifically, this approach is implemented in the framework of the Safety Management Systems (Article 9) at the level of the undertakings in order to enable them to take any necessary further corrective action to ensure continuous achievement of the safety performance of the Union rail system. Finally, the possibility is given to the Agency to establish a tool that facilitates this exchange of information among the relevant actors.

In this context, amendments 20, 28-32, 59, 74, 94 and 101 were taken on board partially or in spirit by the Council.

x) Structure of the legal act (delegated acts/implementing acts)

In the initial Commission proposal, delegated acts are proposed as an instrument to determine the content of the common safety methods and their amendments (Article 6) and of the common safety targets (Article 7).

In order to facilitate an agreement with the European Parliament, the Council accepts this approach but considers, however, that the Articles for which the Commission should be empowered to adopt delegated acts for the establishment of the safety common methods (CSMs) and for the establishment of the common safety targets (CSTs) have to be accompanied by important safeguards for the Member States. The involvement of the committee of Member States in the preparatory phase of the Agency recommendation is therefore provided at the preparatory stages of the procedure prior to the adoption of the delegated acts in question. More specifically, the Council's text provides that the CSTs and CSMs mandates for a recommendation are adopted as an implementing act through the examination procedure, with the Committee of Member States being kept informed on the Agency works in a systematic and regular manner. Once the recommendation is delivered by the Agency, the CSTs and CSMs are adopted by the Commission as delegated acts.

In this context, amendments 72, 82, 93 and 95 were only accepted partially by the Council.

3. Other amendments adopted by the European Parliament

Further EP amendments not included in the Council's position at first reading concern in particular the:

– inclusion of a new recital concerning the enforcement of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (amendment 8);

- establishment of harmonised rules on minimum maintenance requirements as the Council considers that this matter should remain under the responsibility of the entity in charge of maintenance (amendments 14 and 82).

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.