Council of the European Union

Brussels, 25 October 2016
(OR. en)

13675/16

Interinstitutional File:
2013/0013 (COD)

TRANS 398
CODEC 1514

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 688 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings

Delegations will find attached document COM(2016) 688 final.

Encl.: COM(2016) 688 final

EUROPEAN
COMMISSION

Brussels, 24.10.2016
COM(2016) 688 final

2013/0013 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings

(Text with EEA relevance)

2013/0013 (COD)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings

(Text with EEA relevance)

1. BACKGROUND

On 30 January 2013, the Commission adopted a comprehensive package of six legislative proposals to deliver better quality and more choice in rail services in Europe.

Improvements in service quality and efficiency are needed to make rail a more attractive choice for passengers and to encourage modal shift. Better value for money and sustainability can be achieved for scarce public funds.

The package also aims to encourage innovation in EU railways to meet user expectations. It does this in three different and interrelated ways by:

(1) opening domestic passenger markets to competition and making tendering for public service contracts compulsory;

(2) strengthening the independence of infrastructure managers so that they control all the core functions of the rail network and ensuring fair access for all to the railway;

(3) strengthening the role of the EU Agency for Railways by making it a 'one stop shop' for issuing EU-wide vehicle authorisations for placing them on the market and EU-wide safety certificates for operators.

Date the proposal was sent to the European Parliament and to the Council (document COM(2013) 26 final — 2013/0013 COD):	31 January 2013
Date of the opinion of the European Economic and Social Committee:	11 July 2013
Date of the opinion of the Committee of Regions:	8 October 2013

Date of the position of the European Parliament, first reading: 26 February 2014

Date of adoption of the position of the Council: 17 October 2016

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The general objective of the Commission proposal for repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings is to eliminate inconsistencies in the EU legal order and, in line with the Commission's REFIT objectives, to contribute to simplification by repealing a legal act that has become obsolete.

Regulation (EEC) No 1192/69 ('the Regulation') is inconsistent and incompatible with legislative provisions currently in force for a number of reasons:

- Since railway undertakings must be managed according to principles that apply to commercial companies, no State compensation for insurance, pensions, or other operating expenditures is permissible (except in the case of compensation for the provision of public services). Not only is this principle established broadly under Treaty State aid rules, but it is more specifically set out in the Guidelines on State aid for railway undertakings (2008/C 184/07).

- The list of railway undertakings eligible for compensation under the Regulation and the classification of types of compensation that can be paid to railway undertakings presuppose an integration of infrastructure management into the activities of railway undertakings which is inconsistent with the principles of separation of essential functions and separation of accounts.

- The Regulation enumerates only 40 railway undertakings eligible for compensation. At the time of its adoption, this did not seem problematic since incumbent railway undertakings competed exclusively with other modes of transport and not with other railway undertakings. However, in the context of a liberalised market, where railway undertakings compete directly with the traditional monopolies, the attribution of financial compensation to certain railway undertakings only is no longer justified. If financial conditions differ for railway undertakings (as a consequence of the Regulation) new entrants are not ensured non-discriminatory access conditions. For example, new entrants may have difficulties to attract personnel from incumbent railway undertakings since the latter may be able to offer more favourable pension conditions through subsidies received under the Regulation.

- Only the compensation payments under Class IV of the Regulation (the costs of level crossing facilities) are compatible with existing legislation. These payments are costs associated with the functions of an infrastructure manager who, under Article 8 of Directive 2012/34/EU, may benefit from State financing. Therefore the provisions of the Regulation related to Class IV payments are also redundant.

3. COMMENTS ON THE COUNCIL POSITION

The position adopted by the Council at first reading on 17 October 2016 endorses the main objectives of the Commission proposal even if the Council agreed to postpone the repeal of

the provisions of the Regulation applicable to the normalisation of accounts concerning Class IV, as laid down in the Annex IV to that Regulation. Therefore they will continue to apply until 31 December 2017.

4. CONCLUSION

The Commission accepts the position adopted by the Council thus allowing the European Parliament to adopt the final text in second reading. Indeed, the Commission considers that adopting both the market and technical pillars would maximise the benefits in terms of the quality of service, efficiency and the competitiveness of the rail transport industry.