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Delegations will find attached document COM(2016) 33 final.

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**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 Directive of the European Parliament and of the Council on railway safety (Recast)

(Text with EEA relevance)

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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:

(1) opening domestic passenger markets to competition and making it mandatory to tender for public service contracts;

(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 Agency to make it a 'one stop shop' for issuing EU-wide vehicle authorisations for placing on the market as well as EU-wide safety certificates for operators.

Date the proposal was sent to the European Parliament and to the Council (document COM(2013) 31 final — 2013/0016 COD):	31 January 2013
Date of the opinion of the European Economic and Social Committee:	22 August 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 Council position: 10 December 2015

2. OBJECTIVE OF THE COMMISSION'S PROPOSAL

The main objective of recasting the Railway Safety Directive 2004/49/EC of the European Parliament and of the Council[1] is to simplify the process of granting safety certificates to railway undertakings. It involves changing from the current two-part system [Part A (granted in the Member State where the railway undertaking was first established) and Part B (granted in each Member State where the railway undertaking intends to operate)] to a single EU safety certificate valid throughout the Union.

The proposal also reviews the role of the national safety authorities (NSAs) and the division of responsibilities between them and the European Railway Agency ("the Agency"). Under the proposal, NSAs would focus more on supervising the railway undertakings operating in their respective Member States and on activities where a local presence may be advantageous or which require local language knowledge (such as inspections/audits). The Agency should monitor the activity, performance and organisation of the NSAs and the overall safety performance of the system.

Directive 2004/49/EC has already been substantially amended in the past. Since further amendments are made, the Commission proposed a recast in the interests of clarity.

3. COMMENTS ON THE COUNCIL POSITION

The political agreement adopted by the Transport Council on 10 December 2015 supports the main objectives of the Commission proposal to simplify the process for granting safety certificates. However, the political agreement differs from the Commission proposal in some respects, namely it gives railway undertakings operating in only one Member State the choice to apply for a safety certificate to either the Agency or the domestic NSA. However, in both cases the procedure and the decision criteria would remain the same.

In addition, the Council position:

- clarifies the role and responsibilities of the 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 (Article 4). 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;

- clarifies that the Agency is accountable 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 NSAs in the case of railway accidents. Furthermore, the Council's position provides

[1] Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safetycertification (OJ L 164, 30.4.2004, p. 44).

that the Agency is fully responsible for the single safety certificate it issued (Article 10(6)).

- provides for an appeal procedure for applicants reflecting the possibility given to refer the matter to a national court in case of disagreement with the decision taken by the Agency or by a NSA (Article 10 paragraph 12);

- states in more detail how the Agency and the NSAs are to cooperate when issuing single safety certificates. A procedure to manage divergences between the Agency and an NSA is included in the Council's text (Article 10 paragraph 7);

- provides details on the supervision activities of the NSAs and how they relate to certification. More specifically, this new provision (Article 17) aims at guaranteeing that the new safety certification procedure will not undermine the role of the national safety authorities in their supervision tasks on the railway undertakings and infrastructure managers;

- provides implementing powers to the Commission for establishing the reporting structure for accident and incident investigation reports (Article 24).

The Council position also includes new provisions addressing specific cases and the concerns of some Member States. The new provisions in the Council position are to:

- allow Member States to exclude sidings from the scope of the measures implemented under the Directive;

- allow non-EU operators to reach a station within the EU close to the border without safety certificate;

- provide specific arrangements for cooperation between the Agency and NSAs when supervising networks isolated from the rest of the EU;

- allow a derogation from the system for certifying the bodies responsible for maintaining freight wagons belonging to a pool of freight wagons shared with non-EU countries;

- after a cost-benefit analysis, allow the Agency to establish a tool that facilitates the exchange of safety related information among the relevant actors of the railway chain;

- foster the development of a culture of mutual trust, confidence and learning through the safety management systems of the infrastructure managers and of the railway undertakings;

- stress the importance on development of safety culture, more specifically by requesting to the Agency an evaluation of the development of a safety culture including occurrence reporting and by requesting to the Commission to take appropriate measures on the basis of the Agency's recommendations.

While the Commission considers the above-mentioned points as acceptable, it regrets the following aspects of the Council position:

- the transposition time-limit increased from 2 to 3 years;

- all modifications introduced in relation to the delegated and implementing powers, including the systematic recourse to the non-opinion clause, which is contrary to the letter and to the spirit of Article 5§4 second subparagraph, point b) of Regulation (EU) No 182/2011;

- the suppression of the obligation of the Member State to supply to the Commission information which is clear and precise as regards the transposition of Directives in national law, as acknowledged by the European Parliament, the Council and the Commission in their Joint Political Declaration of 27 October 2011 on explanatory documents.

4. CONCLUSION

The Commission considers that updating legislation on the safety of the railway system is crucial to achieve the objectives of introducing a simplified and unified safety certification framework. It would significantly reduce the wide array of national rules in the EU and, equally importantly, the major discrepancies in Member States' safety certification procedures.

In a spirit of compromise, the Commission accepts the position adopted by the Council thus allowing the European Parliament to adopt the final text in a second reading, together with the other five proposals under the Fourth Railway Package. Indeed, the Commission considers that simultaneously 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 industry.