Council of the European Union

Brussels, 27 January 2016
(OR. en)

5613/16

Interinstitutional File:
2013/0014 (COD)

TRANS 28
CODEC 88

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 January 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 36 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 the new Regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

Delegations will find attached document COM(2016) 36 final.

Encl.: COM(2016) 36 final

EUROPEAN
COMMISSION

Brussels, 26.1.2016
COM(2016) 36 final

2013/0014 (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 the new Regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

(Text with EEA relevance)

2013/0014 (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 the new Regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

(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:

(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) 27 final — 2013/0014 COD):	31 January 2013
Date of the opinion of the European Economic and Social Committee:	10 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 Council position: 10 December 2015

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The Regulation on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 is one of six legislative proposals adopted on 30 January 2013 by the Commission in the Fourth Railway Package,

The main objective of revising Regulation establishing the European Railway Agency ("the Agency")[1] is to strengthen the role of the Agency and 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. The revised Regulation would also enhance the Agency's role in the supervision of national rules, give it the right to request the removal of unnecessary rules and to monitor national safety authorities (NSAs), and give it a more prominent role as the 'system authority' for the European Rail Traffic Management System (ERTMS) and telematics applications.

The Commission also proposed amending the founding act of the Agency to align it with the Joint Statement and the Common Approach of the Parliament, Council and the Commission on decentralised agencies [2](covering governance structure, multi-annual work programming and the simplification of staff procedures).

Due to a substantial amount of changes to the tasks of the Agency and its internal organisation, the Commission proposed to replace Regulation 881/2004/EU by a new act.

3. COMMENTS ON THE COUNCIL POSITION

The position at first reading adopted by the Transport Council on 10 December 2015 supports the main objectives of the Commission proposal to strengthen the role of the Agency. However, it deviates on some aspects, in particular that railway undertakings/manufacturers operating in only one Member State would be given the choice to apply for a safety certificate or vehicle authorisation either to the Agency or to the domestic NSA.

In addition, the Council position:

- sets out detailed provisions on the functioning of the Agency's working group;

  It indicates in particular a procedure in order to adopt transparency rules to be applied in such a context.

- provides the Agency with the tools needed to act as an one stop shop via an information and communication system;

[1] Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2005

[2] Joint Statement and the Common Approach of the Parliament, Council and the Commission on decentralised agencies signed on 19 July 2012

This tool will keep the Agency and national safety authorities informed about all applications for authorisations/safety certifications, stage of the procedure and their outcome.

- clarifies the Agency's role in progressive reduction of national rules;

  The text provides for examination of national measures from the point of view of railway safety and interoperability and compatibility with competition rules in order to achieve a gradual reduction of national rules. An opinion based on independent and neutral expertise is essential at Union level. In this context, it frames the role of Agency when issuing such opinion.

- lists the Agency's additional tasks related to the monitoring of NSAs and notified bodies;

  The Agency will monitor the performance and decision making of those bodies with a view to a greater harmonisation at Union level.

- specifies how the board of appeal will function;

  In particular, it 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.

- defines the conditions for adopting an implementing act on fees payable to the Agency.

  It sitpulates that fees and charges shall be established in a transparent, fair and uniform manner and not jeopardize the competitiveness of the European railway sector.

The Commission regrets the fact that compared to the original proposal which it presented the Council position deviates from some key provisions agreed under the Common Approach on EU decentralised agencies, by the European Parliament, the Council and the Commission in 2012. This concerns in particular:

- the appointment of two Commission representatives to the Management Board instead of four;

- granting the power to propose the dismissal of the Executive Director to one third of the members of the Management Board, when under the Common Approach the procedure for dismissing the Executive Director should mirror the appointment procedure;

- The Commission also emphasises that appointing an observer from among the members of the Management Board to follow the Commission's procedure for

selecting the Executive Director should not lead to any duplication of roles in the selection and appointment procedures.

4. CONCLUSION

The Commission considers that revising the Agency's Regulation is crucial to achieving the objective of introducing a simplified and unified framework for the railway industry.

That is why, 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 second reading, together with the other five proposals of 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 railway industry.