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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.3.2008
COM (2008) 136 final

2006/0274 (COD)

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

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**Common Position adopted by the Council with a view to adopting a Regulation of the
European Parliament and of the Council amending Regulation (EC) No 881/2004
establishing a European Railway Agency**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (document COM(2006) 785 final – 2006/0274 COD): 13.12.2006

Date of the opinion of the European Economic and Social Committee: 11.7.2007

Date of the opinion of the European Parliament, first reading: 29.11.2007

Date of adoption of the common position (by unanimity) 3.3.2008

2. OBJECTIVE OF THE COMMISSION PROPOSAL

On 13 December 2006 the European Commission adopted a series of measures to support the revitalisation of the railway sector by removing obstacles to the movement of trains throughout the European rail network.

The Commission launched this initiative for two main reasons:

- to facilitate the free movement of trains within the EU by making the procedure for putting locomotives into service more transparent and more efficient.
- to simplify the regulatory environment by consolidating and merging the directives on railway interoperability.

One of these measures consists of amending the Regulation which established the European Railway Agency in order to include new tasks in the aim of facilitating the free movement of trains. Notably:

- to develop a reference document cross-referencing all the national rules applied by the Member States for putting rolling stock into service;
- to organise the systems work of the national safety authorities so as gradually to reduce the number of national rules imposed by each Member State and to identify those which can be deemed to be equivalent;

- to produce technical opinions if requested by the national safety authorities or the Commission.

In addition, the amendment of the Regulation provided an opportunity to clarify a number of different tasks based on the experience acquired following the establishment of the Agency, particularly in the context of setting up the ERTMS (*European Rail Traffic Management System*) system and the registers of rolling stock.

3. COMMENTS ON THE COMMON POSITION

The three institutions tried to secure an early agreement at first reading of this file. However, this was not possible due to the requests of the European Parliament, mainly concerning the role to be played by the Agency in relation to the national safety authorities. The Council's common position adopted by unanimity does not undermine the essential objectives and the underlying approach of the Commission's proposal.

Furthermore, the common position of the Council already incorporates some of the amendments adopted by the European Parliament at first reading and ensures the necessary consistency with the recast of the directives on railway interoperability (proposal COM(2006)783 final – 2006/273 (COD)), on which agreement was reached at first reading.

4. COMMISSION DETAILED COMMENTS

4.1. Amendments of the European Parliament accepted by the Commission and incorporated in full or in part in the common position

All of amendment 2 except the penultimate paragraph because it is up to the Agency and the working party to be set up to organise their work depending on the importance of various parameters.

Amendment 3, but it would be more appropriate not to stipulate a specific date but to link this to the entry into force of the Regulation.

Amendment 7 in line with the agreement at first reading on the proposal to recast the directives on railway interoperability.

With regard to amendment 9, the principle of extending the contracts of temporary agents recruited by the Railway Agency enables continuity of service to be guaranteed, but this principle should be provided for solely for the first ten years of activity of the Agency since the majority of the contracts will have come to an end by 2010. After 2010, the expiry dates of contracts will be staggered, which will provide for better continuity of service.

4.2. Amendments of the European Parliament rejected by the Commission and not incorporated in full or in part in the common position

Amendment 1 is prejudicial to the Executive Director's option to set up any working party he deems necessary to accomplish his task. This is one of the general competences described in Article 30 of the Regulation establishing the Agency.

With regard to amendment 4, it should be noted that, during the negotiations which ended in an agreement at first reading on the proposal to recast the directives on railway interoperability, the three institutions agreed on an amendment providing for a report to be drawn up by the Commission on the possible arrangements for cooperation between national safety authorities and the Agency. Before embarking on the path suggested by amendment 4, this issue should, therefore, be examined in more detail.

Amendment 5: it is premature to ask the Railway Agency to issue a technical opinion on a refusal by the safety authority to issue a safety certificate or safety authorisation (the remedies provided for by the current version of the Directive do not seem inadequate or problematic). On the other hand, the new Article 21a provided for in the text of the common position allows the different tasks of the Agency with regard to its role in ERTMS projects to be clarified. Amendment 8 also relates to this last point.

Amendment 6, because Article 16a should be consistent with the provisions that will be adopted in the amendment of Directive 2004/49/EC on safety on the Community's railways ((proposal COM(2006)784 final – 2006/272 (COD)). This article must comply with the new approach on technical harmonisation and compliance evaluation and the Agency's recent work on safety management systems (SMS). Moreover, the impact study to be carried out by the Agency must not be pre-empted and a commercial model should not be laid down in the legislation while it is still capable of refinement.

5. CONCLUSION

The Commission considers that the common position of the Council adopted by unanimity on 3 March 2008 contributes to the essential objectives and the underlying approach of its proposal, and can therefore support it.