



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.2.2007
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2004/0048 (COD)

COMMISSION OPINION

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty
on the European Parliament's amendments
to the Council Common Position regarding the
Proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on the certification of train crews operating locomotives and trains on the Community's
rail network**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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(Text with EEA relevance)

1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission shall deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission's opinion on the 33 amendments proposed by Parliament is set out below.

2. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (COM(2004) 0142 – C6 – 0002/2004 – 2004/0048 (COD))	4 March 2004
Date of the opinion of the Committee of Regions	17 November 2004
Date of the opinion of the European Economic and Social Committee	9 February 2005
Date of the opinion of the European Parliament at first reading	28 September 2005
Date of adoption of the Common Position by qualified majority	24 July 2006
Date of adoption of the resolution at second reading by the European Parliament comprising 33 amendments to the Common Position	18 January 2007

3. AIM OF THE PROPOSAL

On 3 March 2004 the Commission proposed a series of measures (the “third railway package”), which the Council began examining in April 2004 and Parliament began examining in October 2004. The package comprises four legislative proposals, including a proposal for a directive on the certification of train crews operating locomotives and trains on the Community's rail network. Drawn up in consultation with the industry and the social partners, this text provides for a mechanism to define more clearly powers and responsibilities

as regards the training of train drivers and crews who perform safety-related tasks, and the assessment and recognition of their qualifications. Train drivers will have to hold a licence certifying their general skills; this licence will be their property and will be valid throughout the Community. The licence will have to be supplemented by a certificate issued by a railway undertaking confirming that specific training has been followed for the line concerned, the rolling stock used and the operational and safety procedures which are specific to that undertaking.

4. THE COMMISSION'S OPINION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS

4.1. Amendments acceptable to the Commission

In summary:

- 16 amendments are acceptable as they stand: 2-3-5-6-7-8-9-12-20-21-22-24-25-28-29-30
- 4 amendments are acceptable in principle: 15-17-18-19
- 5 amendments are acceptable in part: 1-16-26-27-33

4.1.1 Amendments accepted in principle

The right to appeal provided for in amendment 15 is in fact already provided for in Articles 15 and 21 of the Common Position.

Amendments 17 and 18 aim to correct an inconsistency between Article 19(1) and (2), but are themselves imprecisely formulated.

Amendment 19 gives details regarding the possibility for the competent authority to delegate tasks. However, it changes the terminology of the relevant articles and must therefore be re-worded.

4.1.2 Amendments accepted in part

Amendment 1 refers to the agreement on work/rest times. However, this is not relevant in this instance and reference to it is therefore inappropriate.

Checks by employers referred to in amendment 16 are already provided for in Article 18 of the Common Position.

Amendment 26 deals with the certification of crew members directly performing train and passenger safety-related tasks.

The Commission supports this requirement which reverts to the scope of its original proposal, which was aimed not only at drivers but also at the train crew performing security-related tasks. It must be re-worded because:

- paragraph 3 is incompatible with paragraph 2, which does not provide for the intervention of the competent authority;
- Articles 20 and 21 referred to in paragraph 5 should be replaced by Article 22 (registers).

- in order to immediately specify the scope, a description of the security-related duties of the crew concerned should be annexed to the Directive and paragraph 6 should be amended accordingly.

In August 2000 the CER, the association which represents a large number of railway undertakings and infrastructure managers in the Community, drew up and published a report on the responsibilities of personnel carrying out interoperability services. The report was timed to coincide with the opening up of the market.

On the basis of this report, the Commission proposes identifying the crew members covered by the Directive by specifying their duties, as set out below:

- checking the effectiveness of the brakes;
- opening and closing the doors;
- being involved in train departure procedures;
- responding to alarm signals;
- participating in manoeuvres;
- checking for faults and taking steps in the event of a fault while the train is moving;
- helping the driver in certain circumstances.

Amendment 27 provides that, in order to amend the annexes to the Directive, the Agency and the social partners must be systematically involved. However, the reference to the Agency Regulation is not relevant. It is necessary to differentiate between the Technical Specifications for Interoperability (TSI) developed by the Agency in accordance with the directives on rail interoperability (Directives 96/48/EC and 2001/16/EC) and annexes to a directive which are subject to the co-decision procedure or, by delegation of powers, to the Committee procedure, but at the Commission's initiative. As a result, this amendment should be re-worded to state that social partners must be properly consulted about requirements which have an impact on working conditions and the health and safety of workers.

Amendment 33, which refers to medical examinations, is acceptable provided that the expressions "occupational physician" and "accredited physician", which do not comply with Article 11 of the Common Position, are amended.

4.2. Amendments not accepted by the Commission

The Commission cannot accept seven amendments: 10-11-13-14-23-31-32

Amendment 10 provides for a measure already found in Article 18 on the tasks of the competent authority.

Amendment 11, which proposes using the term "mutual recognition", is not acceptable as the licence is issued on the basis of harmonised criteria. The concept of "validity throughout the territory of the European Union" used in the Common Position is more appropriate.

Amendments 13 and 14 are not acceptable as it would not be practicable to involve the competent authority each time a driver falls ill. Furthermore, it is the railway undertaking or the infrastructure manager which is responsible for rail safety when a driver works on its behalf, and it is therefore they and not the "employer" which must take the necessary steps in the event of risk.

Amendment 23 proposes that if a driver voluntarily leaves the railway undertaking which trained him, the railway undertaking which recruits that driver be obliged to refund the original railway undertaking the pro rata cost of the training received by the driver on the basis of harmonised criteria which should be established on the basis of a Recommendation drawn up by the Agency.

Despite the fact that in principle the proposal appears to protect the investment made by an employer for training a driver, this amendment is not acceptable for several reasons:

- there are no equivalent clauses in other modes of transport, in particular in the aviation sector in which training is also very expensive;
- a clause of this kind concerns labour law and hence does not seem particularly relevant in this directive;
- the reasons why a driver leaves an employer may be many and varied; if a driver leaves as a result of the employer's fault, this type of reimbursement would not be justified.

However, the Commission could accept a provision under which the matter is resolved on the basis of national or private law.

Amendment 31 is not acceptable as the date for transposition proposed by the EP (31 December 2007) is unrealistic. A conciliation would appear necessary, and the legislative process should end in autumn 2007. This would not leave the time needed for the Member States to transpose the Directive by the date proposed.

Amendment 32 requires adding the date of the driver's last medical examination to his complementary certificate. This is not acceptable as it would represent a non-negligible additional cost for railway undertakings/infrastructure managers and would provide no additional guarantee in terms of rail safety.

5. CONCLUSION

In accordance with Article 250(2) of the EC Treaty, the Commission is amending its proposal as indicated above.