



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION OF THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

"Facilitating the movement of locomotives across the European Union"

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"Facilitating the movement of locomotives across the European Union"

1. INTRODUCTION

In the context of the review of the September 2001 White Paper on European transport policy¹, the Commission reaffirmed the environmental and societal advantages of railways, and the key role they can play in ensuring sustainable mobility. On that occasion, the Commission announced initiatives *to remove technical and operational barriers to international rail activities with the help of the rail industry and the European Railway Agency*.

Rail transport did in fact experience an unprecedented rise in popularity during the 19th century and the first half of the 20th century before spiralling into decline with the upsurge of car ownership and commercial aviation. In order to arrest this downward trend, the European Community has adopted legislation whose main aim is to revive rail transport through the gradual development of an integrated European railways area.

The foundations were laid with the adoption of Directives 91/440, 95/18 and 95/19 on the separation of accounts, infrastructure charging and capacity allocation. In parallel, the first measures were adopted in order to eliminate the "technical" barriers hindering the development of rail transport. The **Rail Interoperability Directives**² made it possible to launch the technical work needed to define the technical specifications for interoperability (TSIs), which are essential to ensure that trains can run safely and seamlessly throughout the entire trans-European rail transport network.

Adopted at the end of 2000, the **first railway package** enables any railway company licensed in accordance with Community criteria to be granted access to the railway infrastructure on fair and non-discriminatory terms to provide pan-European services, starting with international freight services on the trans-European rail freight network. On the basis of decisions in the first railway package, the September 2001 White Paper on European transport policy clearly advocated the continued development of a European railway area.

This is the basis on which the **second railway package** was adopted, on 30 April 2004, comprising a precise timetable for more extensive opening up of the freight market on 1 January 2007, a Railway Safety Directive, a Regulation establishing a European Railway Agency and an updating of the Railway Interoperability Directives.

¹ See COM(2006) 314: Keep Europe Moving – Sustainable mobility for our continent; mid-term review of the Transport White Paper published by the European Commission in 2001.

² Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail network, OJ L 235, 17 September 1996, and Directive 2001/16/CE of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system, OJ L 110, 20 April 2001.

Since March 2004, the Commission has put forward a **third railway package** with new proposals, this time on the opening up, by 2010, of the international passenger transport market, the certification of train crews and passengers' rights. On 24 July 2006, the Council adopted its common position on the third package, which is currently at the second reading stage. Once the third package has been adopted, it will be true to say that the European regulatory framework for the railway sector is complete, which does not mean that improvements cannot be made.

This initiative is aimed precisely at making such improvements to the technical part of the regulatory framework, namely the Railway Interoperability Directives, the Rail Safety Directive and the Regulation establishing the European Railway Agency (hereinafter referred to as "the Agency").

Firstly, as stated in the report on the implementation of Annex XIII of the first package, **one of the crucial points still requiring improvement to facilitate the movement of trains concerns the procedure for the approval of locomotives**. According to manufacturers and railway companies, this procedure is still often very long and too costly. They believe there is little justification on purely technical grounds for some of the requirements imposed by the competent authorities. This is the problem which the Commission proposes to resolve through this initiative by providing for changes to the legislative framework and asking the competent authorities of the Member States to adjust their procedures with immediate effect.

Secondly, in the framework of the **programme for simplifying legislation**³ the Commission proposes consolidating and merging the Railway Interoperability Directives (96/48, 2001/16, 2004/50).

Thirdly, drawing on its **ten years' experience** of implementing the "Interoperability" Directives⁴, and working on the basis of the Member States' contribution to the work done by the committee assisting the Commission and the contributions which were forthcoming from all stakeholders to the development of the TSIs, the Commission intends to propose a series of improvements to the technical part of the regulatory framework.

2. SIMPLIFYING NATIONAL PROCEDURES FOR THE APPROVAL OF LOCOMOTIVES

2.1. Difficulties encountered

Rolling stock accepted for operational service within one Member State is not necessarily cross-accepted for operation in any other Member State. The cross-acceptance of rolling stock is subject to the various and divergent national requirements in the Member States for authorising the placing of rolling stock in service. International operators have to go through repeated approval processes in each Member State where they intend to operate, often requiring the provision of evidence not mutually recognised by Member States. Experience demonstrates that this results in delays and costs to both railway undertakings and manufacturers when placing rolling stock into service.

³ See COM(2005) 535 and COM(2006) 690: Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment.

⁴ See also the Commission's report on the implementation of the interoperability directives adopted on 6 November 2006.

The situation differs according to the type of rolling stock.

As far as locomotives and multiple units are concerned, in order to obtain authorisation to enter into service in another Member State, in-use locomotives must be demonstrated to be compliant with the national rules of that Member State. National rules will comprise specifications and standards relating to infrastructure compatibility and also specific national safety requirements. Railway infrastructures across the Member States have differing characteristics, such as infrastructure gauge, electro-magnetic interference characteristics, traction power supply voltages and control command systems. Specific national safety requirements have their basis in national technical characteristics and also reflect historical lessons learnt from accidents and incidents that have occurred within individual Member States.

Recent studies⁵ have shown that similar safety rules exist across all Member States, for example for vehicle rear-end indication, the fire safety of rolling stock, the operation of passenger doors, emergency lighting etc. However, the detailed national criteria for demonstrating compliance with these rules vary enormously. Nonetheless, the level of railway safety does not vary a great deal between Member States, indicating that the approach to safety is comparable across national railways.

In some Member States, safety and technical rules are still emerging and are in the process of being identified, documented and published, as provided for in the Railway Interoperability and Safety Directives. However, a preliminary assessment of these rules has revealed significant divergences regarding the interpretation of what is a national safety rule, along with a failure to notify rules for a number of reasons, for example when rules are considered to be covered by IPR. Consequently, there is still a lack of full visibility across the EU railways of the national rules in place for the approval of rolling stock. This presents manufacturers and railway undertakings with additional problems when seeking authorisation of new or in-use rolling stock, as they risk incorporating specific national requirements late into the design of the vehicle, causing delay in or increasing the cost of placing rolling stock in service.

For wagons and passenger cars, existing agreements such as RIC and RIV have ensured cross-acceptance on the basis of a number of conditions, one of which is the registration of wagons and passenger cars with UIC members, who in turn take charge of the maintenance of this rolling stock. Once the European Interoperability and Safety Directives are implemented, the provisions of RIV/RIC will be replaced partially by EU provisions and partially by the new GCU contract. Until all TSIs are adopted, infrastructure and rolling stock registers are in place, national safety authorities are set up and able to place rolling stock in service, including registration, and Member States have fully implemented the Interoperability and Safety Directives, we are in a period of transition. It is important that all actors know their responsibilities and which provisions they have to apply during this transitional period. This is why a “transition guide” has been developed by the Commission in consultation with all stakeholders and the Member States. The principle of mutual acceptance of existing wagons/cars marked RIV/RIC is already accepted.

⁵ NERA study on Safety Regulations and Standards for European Railways, February 2000, and IVE study on the Safety Certification of Railway Undertakings, June 2005.

2.2. The perspective of industry

Historically, national rolling stock manufacturers have had close relationships with the nationalised railway industry in the design and placing into service of rolling stock. Knowledge of national specificities became an 'in-house' competence for manufacturers, contributing to a closed manufacturing market. The impact of the Single Market and Community railway legislation, together with a shrinking rolling stock market, is encouraging rolling stock manufacturers to compete and enter other markets outside their own Member State. Unfortunately, the divergent, and non-visible, rules and processes have frustrated them as they involve the costly development of specific national solutions, extensive approval processes and late modifications and changes to vehicle design.

2.3. Current solutions: bilateral / multilateral agreements

International cross-accepted rolling stock has been successfully introduced as a result of close bilateral cooperation between suppliers, railway undertakings and national railway administrations. The work carried out through the cooperation of these parties demonstrates that, where there is a will, there is also the ability to achieve consensus and results. Examples of such bilateral cooperation are the agreement signed in 2006 between EBA and a department of the French Ministry of Transport and the agreement on the Rotterdam-Genoa corridor.

However, such ventures are not without difficulty and have tended to be extensive, resource-intensive and costly processes. Evidence shows that the proportion of cross-accepted rules is actually quite small in comparison to the national rules still in place. Further, the benefits of these cooperative relationships are limited to the Member States involved and do not provide an opportunity to share the best-practice lessons learnt. In addition, there is a risk that the proliferation of such "variable geometry" agreements will not open the market, but instead will contribute to further fragmentation and complication.

2.4. The Treaty and relevant Community legislation

2.4.1. Interoperability Directives

The Interoperability Directives (2001/16/EC on Conventional Rail and 96/48/EC on High Speed Rail) require the railways to move towards harmonisation of systems and operations through the progressive adoption of Technical Specifications for Interoperability (TSIs).

Annex I describes the principles laid down in the Interoperability Directives and the status of the TSI adoption process. It further describes the procedure for placing rolling stock in service.

As shown in Annex II, once a subsystem is certified to be in conformity with a TSI, the resulting certificate must be accepted by all Member States and the conformity assessment must not be repeated. Conformity assessment against the TSIs is carried out by Notified Bodies.

However, authorisation in each Member State for placing in service is still required by Article 14 of the Interoperability Directives for the reasons detailed in Annex I.

2.4.2. *The Railway Safety Directive*

The Infrastructure Directive (2001/14/EC)⁶ established the principles of harmonised safety certification and licensing of railway undertakings in order for a railway undertaking to enter into operational service, which are accepted by all Member States. The Railway Safety Directive (2004/49/EC)⁷ further develops the principles of safety certification and creates a common framework for safety and its regulation. As explained in Annex III, national safety authorities are responsible under Article 14 for the authorisation of in-use rolling stock not yet covered by a TSI.

2.4.3. *The mutual recognition principle*

During the consultation process, it became evident that the mutual recognition principle was not sufficiently applied in the rail sector.

There are two main types of instrument for eliminating regulatory non-fiscal barriers to the free movement of goods within the EU, namely the approximation or harmonisation of national legislation and, in the absence of harmonisation, mutual recognition under Articles 28 and 30 of the EC Treaty.

Under the mutual recognition principle, Member States of destination cannot forbid the marketing or placing in service on their territories of products that are lawfully marketed or placed in service in another Member State and which are not subject to Community harmonisation, even if the products in question were manufactured according to different technical and quality rules than those that must be met for their own products. The only exception to this principle are restrictions imposed by the Member State of destination on the grounds set out in Article 30 of the EC Treaty or on the basis of overriding requirements of general public importance as recognised by the Court of Justice's case law, provided they are proportionate.

The mutual recognition principle and its possible application to the rail sector are further described in Annex IV. The conclusion is that the mutual recognition principle can be partly applied to existing rolling stock. Actually, this is what has been proposed by the Task Force of Member State representatives set up in 2005 by the Commission and in the attached Commission proposal for modifying the Railway Safety Directive.

However, the use of the mutual recognition principle also suffers from fundamental problems such as lack of awareness of enterprises and national authorities about the existence of the mutual recognition principle, as well as legal uncertainty about the scope of the principle and the burden of the proof. These problems are further detailed in Annex IV. They have been taken into account in considering all the options for facilitating the cross-acceptance of rolling stock.

⁶ Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

⁷ Part of the second package, adopted in 2004 and to be implemented in Member States by April 2006.

2.5. Aims and options

In the spring of 2006, an initial consultation document was drafted to highlight the problems, the aims and the options. It was presented to the members of the "interoperability" committee (which is competent in this area) and the various organisations which represent the railway sector (UIC, CER, UNIFE, UIP, etc) at a workshop held on 27 April 2006. The results of the workshop were encouraging and a number of official positions had reached the Commission by the end of June 2006. The Commission's analysis of these positions has enabled a solution to be found consisting of both non-legislative measures which can be implemented immediately and a legislative proposal.

2.6. Impact assessment

All the options have been subject to an impact assessment in accordance with the Communication of 16 March 2005 from the Commission to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union.

The impact assessment results are given in the Commission's report published at: http://ec.europa.eu/transport/rail/index_en.html. A summary of this analysis is attached to this Communication.

3. CONCLUSION: SOLUTIONS ADOPTED

3.1. Recommendation and legislative proposal

The solutions which emerge from the impact assessment are:

- to propose that the Member States apply the guide developed by the task-force with immediate effect. The Commission has published this guide on its website at: http://ec.europa.eu/transport/rail/safety/cross-acceptance_en.htm - Chapter 3 below sets out the main points;
- to amend the legislation in order to clarify the procedure for authorising the placing into service of new rolling stock (see Article 14 of the Railway Interoperability Directives) and existing rolling stock (see Article 14 of the Railway Safety Directive).

The recommendation that the Member States should apply the guide immediately is justified by the fact that, by adjusting their procedures, the competent authorities may rapidly create favourable conditions for the emergence of new services, especially in the freight sector, which would dovetail with the full opening up of the rail freight market on 1 January 2007.

The legislative amendment is necessary not only to create rights for manufacturers, keepers of wagons and railway companies as well as for the competent authorities, but also to create a precise framework procedure, which could be a valuable aid for the newly created national safety authorities. For the record, national safety authorities are starting to be set up in several Member States, and it appears that the skilled personnel needed are difficult to find.

3.2. Guide for the approval of existing rolling stock

The use of the common checklist (Annex V) for cross-acceptance projects by all Member States is recommended.

Member States should fill in a table of requirements based on the common checklist and following the guidelines given in Annex VI. Member States are also encouraged to use these guidelines together on a bi- or multilateral basis for actual projects.

The European cross-acceptance process should be permanently monitored by the Agency (ERA). The Agency should extend and update this cross-acceptance tool on the basis of Member State contributions. It could do this under its mandate for the development of TSIs, because an analysis of the technical rules in a given subsystem should be the first step in developing a TSI; in addition, national rules notified to the Commission under Article 8 of the Railway Safety Directive are forwarded to the Agency for assessment and publication.

3.3. Codification-merger-recasting of the Railway Interoperability Directives

Directives 96/48/EC and 2001/16/EC on the interoperability of the trans-European high-speed rail system⁸ and the interoperability of the trans-European conventional rail system⁹, respectively, were substantially amended in 2004¹⁰. For the sake of clarity, the opportunity of the new changes proposed by the Commission in this Communication should be taken to recast them.

Furthermore, the differences between a high-speed rail system and the conventional rail system do not justify having two separate directives. In fact, the work carried out in developing the TSIs showed that, for some subsystems, a single TSI can serve for both systems. The two "Interoperability" Directives should therefore be incorporated into a single instrument, and this is the subject of the attached proposal.

The amendment to which this initiative refers concerns the procedure for placing rolling stock into service. It is therefore proposed to amend the future integrated "Interoperability" Directive to simplify and clarify this procedure.

Moreover, as soon as these two directives have been integrated and amended, it would be prudent to clarify and improve certain matters on the basis of the many interpretations made by the "interoperability" committee.

3.4. Amendment of the Rail Safety Directive

Chapter 2 justifies the need to amend Article 14 of Directive 2004/49/CE. The solution proposed is to establish a Community procedure consisting of:

- the introduction of the principle of mutual recognition by other Member States of authorisations already issued by a Member State for placing equipment into service. According to this principle, rolling stock already authorised to be put into service in one Member State should not be required to undergo complementary certification in another

⁸ OJ L 235, 17.9.1996, p. 6.

⁹ OJ L 110, 20.4.2001, p. 1.

¹⁰ Directive 2004/50/EC.

Member State as regards the additional national requirements arising, for example, from local system specifications;

- the extension of the Agency's powers to enable it to make an inventory of the different national procedures and technical regulations in force and to establish and update (extend) the list of requirements where compliance should be checked once only because the requirements concern internationally accepted rules or can be deemed to be equivalent to them.

Furthermore, the entry into force of the new COTIF Convention 1999 brought in new rules regarding contracts for the use of vehicles and thus led to the revocation of the former RIV agreement between railway companies. There is therefore a proposal to define the keeper of a wagon and to specify the relationship between the company and the keeper, in particular as regards maintenance.

These two substantial changes are the subject of the proposed amendment of the Safety Directive, as attached.

3.5. Amendment of the Regulation establishing a European Railway Agency

The new tasks proposed for the Agency in the framework of the mutual recognition of locomotives are to:

- develop a reference document cross-referencing all the national rules applied by the Member States for putting rolling stock into service;
- 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;
- produce technical opinions if requested by the national safety authorities or the Commission.

In addition, the amendment of the Regulation has provided an opportunity to clarify or spell out a number of different points based on the experience gained following the establishment of the Agency.