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**COMMUNICATION FROM THE EUROPEAN 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 at first reading with a view to the adoption of a  
Regulation of the European Parliament and of the Council concerning a European rail  
network for competitive freight**

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**(Text with EEA relevance)**

**1. BACKGROUND**

Date of forwarding of the proposal to the EP and the Council 11.12.2008  
(document COM(2008) 852 final – 2008/0247 (COD)):

Date of the opinion of the European Parliament at first reading: 23.04.2009

Date of the opinion of the European Economic and Social 15.07.2009  
Committee:

Date of the opinion of the Committee of the Regions: 07.10.2009

Date of adoption of the Council's position adopted unanimously at 22.02.2010  
first reading

**2. PURPOSE OF THE COMMISSION'S PROPOSAL**

The proposal for a Regulation aims at encouraging Member States, and above all rail infrastructure managers, to develop a European rail network 'for competitive freight' made up of freight-oriented international rail corridors.

These corridors will allow freight trains to benefit from good-quality train paths and make them more reliable and competitive. The creation of the corridors will also help free up additional capacity for rail freight.

The Commission therefore proposes focusing on the following four issues when creating these corridors:

- strengthening cooperation between rail infrastructure managers with regard both to the operational management of infrastructure and to investments, in particular by putting in place a governance structure for each corridor;
- increasing the reliability of the infrastructure capacities allocated to freight on these corridors;

- encouraging greater coordination between rail infrastructure management and goods terminal management (maritime and inland ports, marshalling yards, etc.);
- guaranteeing non-discriminatory access to these corridors for all operators.

### **3. GENERAL COMMENTS ON THE COUNCIL'S POSITION**

The Council's position at first reading maintains the basic principles put forward in the Commission's original proposal. However, some elements – corridor selection, cooperation between infrastructure managers and the priority accorded to transporting goods – have been watered down.

Moreover, other elements – such as the provisions on authorised applicants and the requirement to use one-stop shops for requests for international train paths – have been removed altogether.

Despite these amendments, the Commission still considers the Council's position at first reading to be consistent with the objectives of its original proposal.

### **4. DETAILED COMMENTS ON THE COUNCIL'S POSITION AT FIRST READING**

#### ***4.1. Main amendments to the Commission's proposal***

##### **– Selection of rail freight corridors (Article 3)**

The Commission's original proposal provides for the creation of one to three corridors per Member State selected on the basis of well-founded proposals put forward by the Member States concerned and rail infrastructure managers. The Council proposes a two-phase approach: the selection of a first set of corridors under the codecision procedure annexed to the Regulation and their establishment within three years of the Regulation's being adopted; the selection of other corridors (at least one per Member State) on the basis of well-founded proposals put forward by the Member States.

While the objective of the proposal is to create corridors that meet market needs, the first set of corridors will be determined politically. This political approach also goes against the primary objective of the legislative proposal: to help improve infrastructure management at a transnational level, which is different to the objective of building new infrastructure.

##### **– Governance of corridors (Article 7)**

The Commission's original proposal provides for governance driven mainly by action on the part of rail infrastructure managers by creating a governing body with a director and the status of an independent legal entity. The Council wanted this body to have a leaner structure (with no director or status of independent legal entity) and, based on the experience gained on certain ERTMS corridors, it wanted to enable Member States to exercise supervision by creating an executive board composed of Member State representatives.

The Commission can accept the addition of such supervision provided it does not jeopardise the managerial independence of the infrastructure managers.

– One-stop shop (OSS) (Article 12)

The original proposal provides that any request for an international train path must be made through a one-stop shop for the corridor. The Council's position at first reading makes use of this one-stop shop optional. The Commission can accept this amendment.

– Allocation of capacity for freight trains (Article 13)

This article is the key feature of the Regulation. The proposal effectively aims at guaranteeing reliable and additional capacity for freight trains by laying down a suitable procedure for meeting users' needs. Demand for freight train capacity depends on market needs and cannot be determined and fixed a year in advance, as is the case for passenger trains.

That is why the Commission's proposal provides for capacities to be allocated in advance for use when annual timetables are being compiled as well as for capacity to be kept in reserve within the annual timetables so as to satisfy ad-hoc requests for train paths for freight trains.

Although the Council followed the Commission's proposal and made it even more operational (by specifying predetermined train paths), it wishes to limit the impact of this advance capacity allocation and this capacity reserve by introducing a reference to the needs of passenger transport.

– Priority rules in the event of incidents (Article 15)

The Commission's proposal provides that a train running on time may remain on time in the event of disturbance. The Council's position at first reading proposes that it is also necessary to "*minimise the overall network recovery time*" (A) "with regard to the needs of all types of transport" (B).

The addition made by the Council (A) is made redundant by Directive 2001/14/EC. As a legal provision, B is not sufficiently clear or easily comprehensible. It could give rise to interpretations that may be inconsistent with the objectives of the Regulation.

– Amendment to the list of criteria governing the creation or modification of corridors

The Commission's proposal and the political agreement of 11 June 2009 provided for the possibility of amending this list of criteria, which is given in Annex II, under the relevant committee procedure (regulatory procedure with scrutiny – PRAC).

Following the entry into force of the Treaty on the Functioning of the EU, the committee procedure has been replaced by delegated acts. In this respect, the Commission's position is as follows:

- Limitation of the Commission's powers: The Council wanted to limit the Commission's powers, with regard to delegated acts, by obliging the Commission to observe the secondary legislation and by taking into account significant elements of railway policy.

This addition by the Council does not correspond to the requirements of delegated acts. Also, this addition is redundant as it goes without saying that the Commission – as guardian of the Treaties – will observe the secondary legislation.

- Delegation of powers and objection to delegated acts: In accordance with its Communication on the implementation of Article 290 of the TFEU and based on an analysis of the specific measures provided for in the Council position, and also in view of the right of revocation provided for in the Council's text, the Commission would prefer the delegation of powers to be for an indefinite period, but can accept the Council's approach (five years with tacit renewal). In addition, the Commission regrets that the Council has introduced at first reading a period of three months for the Council and Parliament to express objections. The Commission would prefer a period of two months to express objections, which could be extended by one month at the initiative of the Council or the Parliament. This would help increase the efficiency of the procedures, without calling into question the principle of a total period of three months.
- Consultation of experts: The Commission has taken note of the recital which makes the consultation of experts obligatory in the preparatory phase of delegated acts. The Commission considers that groups of experts cannot have a formal institutional role. Such a recital cannot therefore be included in the text of the basic instrument. The Commission also refers in this context to its Communication of 9 December 2009.

#### **4.2. *Parliamentary amendments incorporated in full or in part in the Council's position at first reading***

##### **– Governance of corridors**

Two bodies are responsible for organising corridor governance: the management board, made up of representatives of the infrastructure managers, and the executive board, made up of representatives of the Member States (amendment 31). The Commission's original proposal provided for only one body, composed of representatives of the infrastructure managers.

Additional supervision by Member States is possible, provided it does not jeopardise the managerial independence of the infrastructure managers.

##### **– Traffic management rules**

Parliament (amendment 62) and the Council have relaxed the traffic management rules in the event of disturbance. The Commission can accept that the rule 'a punctual freight train should remain on time' should apply 'as far as possible', and not systematically.

However, the Commission cannot accept that this rule should not be applied at peak times, i.e. during periods of the day when it can be activated. Moreover, it is of the opinion that the objective of restoring the situation to normal as quickly as possible is already covered by existing legislation. Consequently, including this objective in the text serves no purpose.

#### **4.3. *Parliamentary amendments approved by the Commission and not incorporated in the Council's position at first reading***

##### **– Allocation of capacity**

Parliament's amendments in this respect (and in particular, amendments 52 and 54-58) do not alter the substance of the Commission's original proposal. However, the Council's position at first reading contains references to passenger transport which muddle the message and appear out of place in a legal instrument designed to give more guarantees to freight trains.

##### **– Selection of corridors**

The Council's position at first reading is different to Parliament's position in that it introduces an annex with a list of corridors agreed under the co-decision procedure.

## **5. CONCLUSION**

The Commission considers that, despite being too political in its approach and not sufficiently geared towards the actual needs of the market and although lacking in ambition with regard to the additional guarantees given by the infrastructure to freight trains, the Council's position adopted unanimously at first reading can contribute to achieving the general objectives of its proposal.

The Commission expresses its reservations about the framework introduced by the Council with regard to the use of delegated acts by the Commission, as specified in Article 4(8).

The Commission can therefore support the Council's position at first reading.