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Accompanying the

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

"Facilitate interoperability of locomotives across the EU"

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

amending Directive 2004/49/EC on safety of the Community's railways

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

amending Regulation (EC) No 881/2004 establishing a European Railway Agency

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

on the interoperability of the Community rail system

Summary of the Impact Assessment

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COMMISSION STAFF WORKING DOCUMENT

Summary of the Impact Assessment

Lead DG: TREN

Executive summary

PROBLEM DEFINITION

Rolling stock¹ 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 various and divergent national requirements in the Member States for authorising the placing of rolling stock in service.

Existing rolling stock already in operation in one Member State requires further approval from national authorities in other Member States in order to enter into operation there. International operators thus have to go through repeated approval processes in each Member State where they intend to operate.

In fact, the situation is different 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 rolling stock must be demonstrated to be compliant with the national rules of that Member State. These rules 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 culture and tradition and also reflect historical lessons learnt from accidents and incidents that have occurred within individual Member States.

Experience demonstrates that this results in delays and costs to both railway undertakings and manufacturers when placing rolling stock into service in another Member State. However, some bilateral initiatives between Member States² have recently shown that improvements are both achievable and affordable.

For wagons and passenger cars, existing agreements have ensured cross-acceptance on the basis of several conditions, one of which is the registration of wagons and passenger cars with UIC³ members, who in turn take charge of the maintenance of this rolling stock. However, once the European Interoperability and Safety Directives are implemented, the provisions of these agreements will be replaced partially by EU provisions and partially by a new contract on the use of freight wagons. We are therefore in a period of transition, and a “transition guide” is being developed by the Commission in consultation with all stakeholders. This transition guide also deals with rules applicable to existing rolling stock, because this existing

¹ Railway vehicles such as locomotives, multiple units (= passenger coaches with engines), passenger coaches, freight wagons etc.

² An example of such bilateral agreements is the agreement signed in 2006 between the EBA (Eisenbahn Bundesamt = German Railway Safety Authority) and a department of the French Ministry of Transport.

³ Union Internationale des Chemins de Fer – International Union of Railways.

rolling stock is not subject to the procedure for placing in service under the Interoperability Directives (which only cover new or renewed vehicles).

CONSULTATION

In the recent past, the railway sector (users, operators, industry, State authorities) has expressed doubts about both the short-term and long-term efficiency of the existing Directives regarding the cross-acceptance of existing rolling stock (whereas the situation is less critical for new vehicles), and called for more action (both voluntary and regulatory) to be taken.

In 2004, the Commission set up a task force within the Committee on the Interoperability of the Trans-European Rail Network to deal with the cross-acceptance of rolling stock.

Upon concluding its work, the task force prepared a consultation paper, which was presented to the Member State authorities and all the stakeholders at a workshop on 26 April 2006.

After the workshop, the Commission formally launched the consultation on this document. Representatives of relevant European organisations and Member State representatives were invited to express their views on the different options proposed (further described in the present summary report) to overcome the current difficulties.

All the stakeholders and the Member State authorities were in favour of action to improve the situation, including a voluntary approach and support for legislative initiatives.

The present situation (reference scenario)

The current European legislation, in particular the Interoperability Directives (96/48/EC and 2001/16/EC, both revised by 2004/50/EC) and the Railway Safety Directive (2004/49/EC), favours mutual recognition and, consequently, cross-acceptance, in particular through 3 fundamental steps:

- The Interoperability Directives specify that Technical Specifications for Interoperability (TSIs) or, in the absence of TSIs or for particular "specific cases" or "open points", national technical rules should cover all essential requirements relating to the rolling stock subsystem and its interfaces with other subsystems;
- The Interoperability Directives require lists of national rules to be notified to the Commission, hence ensuring the necessary transparency of these rules;
- The Railway Safety Directive requires checks to be carried out of safety and technical compatibility (i.e. two essential requirements of the six mentioned in the Interoperability Directives) when rolling stock is to be used on other networks.

Experience shows that this is not sufficient to guarantee cross-acceptance of existing rolling stock, also because national technical rules are not always notified in time, which hampers the efficiency of current legislation.

In particular:

- Article 14 of Directive 2004/49/EC states that national safety authorities are responsible for the authorisation of existing rolling stock already authorised in one Member State but not yet covered by a TSI. In some Member States, safety and technical rules are still

emerging and are in the process of being identified, documented and published. Furthermore, the conformity assessment process for the approval of rolling stock against national rules can vary from one Member State to another, imposing differing levels of demonstration and proof. Conformity evidence submitted and accepted in one Member State is not generally accepted in another, due to the different national criteria for compliance with the safety rules in place. Further, due to the lack of documentation, emerging rules may be imposed at a late stage in the approval process, resulting in further delay and cost.

- Article 14 of Directive 2001/16/EC states that rolling stock may be put into service only if it is designed and constructed in such a way as to meet the essential requirements concerning this sub-system. In particular, Member States have to check the compatibility of rolling stock with the system into which it is being integrated.

OBJECTIVES

Strategic objectives

The strategic Community objectives in improving the cross-acceptance of railway rolling stock are:

- To complete the internal market, and in particular to ensure the free movement of railway rolling stock within the EU in order to improve the competitiveness of manufacturers, railway undertakings and logistics providers, which in turn will revitalise the rail mode of transport;
- To simplify EU and national legislation in line with the “better regulation” objective;
- To lower the costs of doing business and remove unnecessary red tape, both of which are particularly burdensome for SMEs;
- To reduce the administrative costs of the authorisation process for Member States.

All these objectives are a part of the “Lisbon Strategy” to strengthen employment, economic reform and social cohesion as part of a knowledge-based economy.

Specific objectives

The strategic objectives can be broken down into specific objectives that will enable the strategic objectives to be met. There are two different aspects of cross-acceptance: one concerns new/upgraded/renewed rolling stock and the other relates to existing rolling stock, both with their own specific objectives:

For new/upgraded/renewed rolling stock: the Community legislation aims to bring benefits through the development of TSIs and their application. Here, the specific objectives are to improve the standardisation process, i.e. the development of TSIs , to increase the scope of TSIs to incorporate the work of the Commission’s Task Force , to reduce the number of national rules imposed by Member States on top of the TSIs , and to reduce the time for re-authorisation in each Member State (SO4);

For existing rolling stock: the aim is to set up an EU procedure for the coordinated acceptance of rolling stock , to improve the visibility of national rules , to increase the use of the mutual recognition principle , and to clarify the issue of existing rolling stock in EU legislation .

POLICY OPTIONS

To fulfil the specific objectives, a number of policy options are available. As each individual option can serve more than one specific objective, a table at the end of this chapter indicates whether and how each policy option can deliver the specific objectives.

There are basically three options for improving the cross-acceptance of rolling stock:

Option A: status quo, i.e. to continue current policy, which basically consists in the application of Article 14 of the Interoperability Directives for new/upgraded/renewed rolling stock and the application of Article 14 of the Railway Safety Directive for existing rolling stock;

Option B: a non-regulatory approach, i.e. to publish guidelines for cross-acceptance of existing rolling stock and to ask Member States to apply them (B1), to assign the Agency the task of classifying national rules and identifying those that can be cross-accepted (B2), to mandate the Agency to coordinate parallel acceptance procedures (B3), to assign the Agency the role of a consultative appeal body (B4), to accelerate the development/revision of TSIs (B5), to closely monitor the use of the mutual recognition principle and, where appropriate, launch infringement procedures (B6);

Option C: the regulatory approach, i.e. modification of legislation in order to: completely remove the obligation to authorise rolling stock in each Member State after the first authorisation (C1), clarify the procedure to be applied for existing rolling stock (C2), limit and/or clarify the role of the Member State in authorising rolling stock on its territory (C3), extend the competences of the Agency in order to allow it to deliver authorisations for placing in service which are valid in several Member States (C4), extend the competences of the Agency to allow it to act as a coordination and/or appeal body (C5), extend the competences of the Notified Bodies⁴ to allow them to deliver certificates that are equivalent to national authorisations (C6), extend the competences of the Infrastructure Managers⁵ to allow them to deliver certificates that are equivalent to national authorisations (C7).

These options were presented in the consultation document sent by the Commission to all Member States and to railway stakeholders in April 2006.

Analysis of impacts / comparing the options

In 2006, the Commission performed an Impact Assessment of rolling stock cross-acceptance, utilising the expertise of the European Railway Agency (ERA).

Due to the complexity of the subject and the lack of data (mainly because of commercial sensitivity), the assessment was mostly qualitative in nature.

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The analysis was based on ERA's knowledge of the problem and on the answers provided by the Member States and the stakeholders during the consultation process mentioned above.

For each of the proposed options, the following items were evaluated:

- Current situation
- Projected situation (i.e. natural evolution under already existing provisions)
- Task description and possible task allocation (including administrative aspects, responsibilities, etc.)
- Legal aspects
- Transition / timeline / link with other options (including option A)
- Direct impact: effect on acceptance procedures (costs, delays, barriers)
- Indirect impact: effect on rolling stock design, development
- Institutional impact: effect on national rule frameworks
- Potential impact on the EuropRailway Agency (derived from previous items)
- Opportunities and risks

Findings

Based on the essentially qualitative impact assessment described above, it is recommended that the B1+B2 options should be successively implemented together with the C2+C3 options. Both sets of options require immediate action.

This recommendation is broadly in line with the majority of opinions expressed by the Member States and stakeholders that responded to the Commission's request for position papers, who were in favour of these options owing to the possibility of (relatively) rapid implementation, the simplification of procedures, the estimated benefits and the maintenance of the present division of tasks between the different actors. In contrast, the options giving wider competences to the European Railway Agency (to act as a "pan-European safety authority" for the authorisation of rolling stock) or to other bodies (Notified Bodies, Infrastructure Managers) were considered to conflict with the current move to set up a network of national safety authorities (subsidiarity) and to be ineffective in solving the problem of cross-acceptance.

In addition, the need for the notification of national rules has to be reiterated, as this is a prerequisite for all subsequent work. The ongoing publication and update of TSIs anyway calls for the continuous revision of notified national technical rules.