

**P6\_TA(2007)0557**

**Safety on the Community's railways \*\*\*I**

**European Parliament legislative resolution of 29 November 2007 on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/49/EC on safety on the Community's railways (COM(2006)0784 – C6-0493/2006 – 2006/0272(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0784),
  - having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0493/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism (A6-0346/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text.
  3. Instructs its President to forward its position to the Council and the Commission.

**Position of the European Parliament adopted at first reading on 29 November 2007  
with a view to the adoption of directive 2008/.../EC of the European Parliament and of  
the Council amending Directive 2004/49/EC on safety on the Community's railways**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission **||**,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) With a view to pursuing the efforts to create a single market in rail transport services, the European Parliament and the Council have adopted Directive 2004/49/EC<sup>4</sup> establishing a common regulatory framework for railway safety.

---

<sup>1</sup> OJ C 256, 27.10.2007, p 39.

<sup>2</sup> OJ C

<sup>3</sup> *Position of the European Parliament of 29 November 2007.*

<sup>4</sup> OJ L 164, 30.4.2004, p. 44. Corrected version in OJ L 220, 21.6.2004, p. 16.

- (2) Article 14 of Directive 2004/49/EC has established a common procedure for authorising the placing in service of rolling stock. However, experience has shown that the implementation of such a procedure at national level is often complicated and subject to national requirements that are different and lacking in transparency, or are even repetitive. Consequently, this procedure poses a major obstacle to the creation of new railway undertakings, particularly in the freight sector. Steps should therefore be taken to clarify the procedure for certifying the existing rolling stock and defining the relevant limits and implementing rules. In particular, in the spirit of the principle of mutual recognition, measures should be taken, involving the placing of limits on the number of elements that the competent authority may examine, so as to make it easier to obtain an entry-into-service authorisation in a Member State other than the one which issued the initial authorisation.
- (3) To this end, all of the technical and safety rules in force in each Member State should be classified under three groups and the results of this classification presented in a reference document. The first group should cover the international rules along with any national rules that have been declared equivalent and in respect of which a check carried out in a single Member State is sufficient in railway safety terms. The second group should cover all other national rules as well as rules that have not yet been classified. The third group should cover the rules that are necessary to ensure technical compatibility between the rolling stock featuring in the authorisation application and the envisaged infrastructure.
- (4) The European Railway Agency, set up under Regulation (EC) No 881/2004<sup>1</sup>, has a mandate to develop technical specifications for interoperability (TSIs), and must therefore, as a first step, examine the existing national technical rules. Furthermore, under Directive 2004/49/EC, it must publish the national safety rules. Lastly, it must harmonise the criteria for the safety certification of the railway undertakings – a task that will also include requirements governing the acceptance of the rolling stock used by these undertakings. Consequently, the Agency is the most appropriate body to devise the abovementioned reference document.

---

<sup>1</sup> OJ L 164, 30.4.2004, p 1. *Corrected version in OJ L 220, 21.6.2004, p. 3.*

- (5) Following developments at international level and, in particular, following the entry into force of the new *Convention concerning International Carriage by Rail* (1999 COTIF Convention), it is necessary to define the concept of “wagon keeper” and to specify the relationship between railway undertakings and keepers, notably in the field of maintenance.
- (6) Since the main objective of the proposed action, namely the simplification of the Community procedure for the certification of railway rolling stock, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (7) Directive 2004/49/EC provides that certain measures *are to* be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.
- (8) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory control procedure *with scrutiny* for *the adoption of* measures of general scope *and designed* to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing *the instrument with* new non-essential elements.

---

<sup>1</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (9) In particular, the Commission should be ***empowered*** to revise and adapt Annexes, to adopt and revise common safety measures and common safety objectives, and also to establish a maintenance certification system for keepers, ***such measures being necessary for the implementation of Directive 2004/49/EC***. Since ***those*** measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC, ***inter alia by supplementing it with new non-essential elements, they must*** be adopted in accordance with the regulatory ***■*** procedure ***with scrutiny*** provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to have recourse to the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption of the measures provided for in Directive 2004/49/EC.***
- (10) ***In accordance with paragraph 34 of the Inter-institutional agreement on better law-making<sup>1</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between Directive 2004/49/EC and their transposition measures, and to make those tables public.***
- (11) Directive 2004/49/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 2004/49/EC is amended as follows.

- (1) ***The following point (f) shall be added to Article 1:***

***"(f) contributing to the achievement of the objectives of Directive 89/391/EEC on improving the safety and health of workers at work and laying down specific provisions in order to minimise the risks posed by rail operations for staff.";***

---

<sup>1</sup> OJ C 321, 31.12.2003, p. 1.

(2) *Article 3 shall be amended as follows:*

a) *point (h) shall be replaced by the following:*

*"(h) 'national safety rules' means all rules laying down railway safety requirements imposed at Member State level in order to ensure that the rail system, the subsystems, the constituents, including the interfaces, meet the essential requirements and are applicable to more than one railway undertaking or one or more infrastructure managers, irrespective of the body issuing them;"*

b) *the following point (ha) shall be inserted:*

*"(ha) 'essential requirements' means all the conditions set out in Annex III of Directive .../.../EC of the European Parliament and of the Council of ... [Interoperability Directive]\*+ which must be met by the rail system, the subsystems, and the interoperability constituents, including interfaces;*

---

*\* OJ L ...";*

c) *the following point (s) shall be added:*

*"s) 'keeper' means the person or entity **that**, being the owner of a vehicle or having the right to **use** it, exploits the vehicle **■** as a means of transport **and is registered as such in the National Vehicle Register referred to in Article [...]** of Directive .../.../EC [Interoperability Directive]++.";*

(3) *in Article 4(4) the term 'wagon operator' shall be replaced by 'vehicle keeper';*

---

<sup>+</sup> *OJ: please insert number and date of the Directive.*

<sup>++</sup> *OJ: please insert number of the Directive.*

- (4) Article 5(2) *shall be* replaced by the following:

"2. Before 30 April 2009, Annex I shall be revised, particularly with a view to incorporating therein the CSI common definitions and the common methods for calculating the cost of accidents. ***The measures*** designed to amend non-essential elements of this Directive, ***inter alia by supplementing it with new elements, relating to the implementation of this paragraph*** shall be adopted in accordance with the regulatory procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b).***";

- (5) Article 6 *shall be* amended as follows:

- a) *paragraph 1 shall be* replaced by the following:

"1. An initial series of CSMs covering, as a minimum, the methods described in paragraph 3(a) shall be adopted by the Commission before 30 April 2008. They shall be published in the Official Journal of the European Union.

A second series of CSMs covering the remaining methods described in paragraph 3 shall be adopted by the Commission before 30 April.2010. They shall be published in the Official Journal of the European Union.

***The measures*** designed to amend non-essential elements of this Directive, ***inter alia*** by supplementing it ***with new elements, relating to the implementation of this paragraph*** shall be adopted in accordance with the || regulatory procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b).***";

- b) *paragraph (4) shall be replaced by the following:*

"4. The CSMs shall be revised at regular intervals, taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States as laid down in Article 4(1). ***The measures*** designed to amend non-essential elements of this Directive, *inter alia* by supplementing it ***with new elements, relating to the implementation of this paragraph*** shall be adopted in accordance with the regulatory || procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b).***";

- (6) Article 7 *shall be* amended as follows:

- a) *in paragraph 3, the first and second subparagraphs shall be replaced by the following:*

"The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. They shall be adopted by the Commission before 30 April 2009 and shall be published in the Official Journal of the European Union. ■

The second set of draft CSTs shall be based on the experience gained from the first set of CSTs and their implementation. They shall reflect any priority areas where safety needs to be further improved. They shall be adopted by the Commission before 30 April 2011 and shall be published in the Official Journal of the European Union. ***The measures*** designed to amend non-essential elements of this Directive, *inter alia* by supplementing it ***with new elements, relating to the first and second draft CSTs*** shall be adopted in accordance with the regulatory || procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b).***";

b) *in paragraph 3, the following subparagraph shall be added:*

***"Before drafting or revising CSTs, a cost-benefit analysis must demonstrate that the expected effect of the development of CSTs shall improve the level of transport safety and the optimum use of the railway system.";***

c) *paragraph 5 shall be replaced by the following:*

***"5. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. The measures designed to amend non-essential elements of this Directive, *inter alia* by supplementing it with new elements, relating to the implementation of this paragraph shall be adopted in accordance with the regulatory || procedure with scrutiny referred to in Article 27(2a). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b)."***

(7) Article 10 *shall be* amended as follows:

a) *in paragraph 1, the second subparagraph shall be replaced by the following:*

***"The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet requirements laid down in TSIs and other relevant Community legislation and in national safety rules in order to control risks and provide transport services on the network under a high level of safety.";***

b) *in paragraph 2, point (b) shall be replaced by the following:*

"(b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the supply of its services on the relevant network ***under a high level of*** safety. These requirements may concern the application of the TSIs and national safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate the rolling stock used by the railway undertaking. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.";

(8) Article 14 *shall be replaced by the following:*

"Article 14

*Placing in service of railway vehicles*

***Railway vehicles*** that *have* been authorised to ***be placed in*** service in one Member State **■** shall be subject ***to a further*** authorisation ***prior to being placed*** in service in any other Member State pursuant to ***the requirements laid down in Articles [...] of Directive .../...EC [Interoperability Directive].<sup>+</sup>***";

**■**

---

<sup>+</sup> OJ: please insert number of the Directive.

(9) the following Article 14a **■** *shall be* inserted:

**■**

**"Article 14a**

***Maintenance of vehicles***

1. Whenever **a vehicle** is placed in service, a **keeper** shall be designated for each vehicle. ***The keeper shall be responsible for the maintenance of the vehicle. A railway undertaking may be a keeper.***
2. ***The railway undertaking shall be responsible for the operating safety of vehicles placed in service on the network.*** In order to demonstrate, in the context of the safety certification provided for in Article 10, that the rolling stock is being maintained in accordance with the requirements in force, the railway undertaking shall give details of the **keepers** and shall provide documentation explaining the procedures applied by those **keepers** in carrying out such maintenance.
3. Where a railway undertaking uses **vehicles for which it is not the keeper**, the railway undertaking shall put in place the procedures needed to verify compliance with the requirements in force ***including maintenance rules in accordance with the TSI provisions. In the event of a change of keeper, the previous keeper shall provide all the maintenance files in his possession to the new keeper before the change is recorded in the National Vehicle Register.***
4. The Commission shall establish, ***by 1 January 2010, a mandatory*** maintenance certification system for keepers ***of wagons and other vehicles*** based on a recommendation from the Agency. ***The*** measures, designed to amend non-essential elements of this Directive, ***inter alia*** by supplementing it ***with new elements***, shall be adopted in accordance with the regulatory procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b).***";

(10) *the following Article 17a shall be inserted:*

**"Article 17a**

***Decisions subject to opinions by the Agency***

***The Agency may be requested, by an applicant, to provide a technical opinion on a decision in the negative taken by a safety authority as regards the granting of a safety certificate or a safety authorisation pursuant to Articles 10 and 11."***

(11) Article 26 *shall be replaced by the following:*

**"Article 26**

***Adaptation of the Annexes***

***The measures*** designed to amend non-essential elements of this Directive, ***by adapting the Annexes to scientific and technical progress***, shall be adopted in accordance with the regulatory || procedure ***with scrutiny*** referred to in Article 27(2a). ***On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 27(2b)."***

(12) *in Article 27, the following paragraphs 2a and 2b shall be inserted:*

***"2a.*** Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

***2b.*** ***Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."***

**I**

## Article 2 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ...\*. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these provisions, the latter shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 3

This Directive shall enter into force on the [...] day following the day of its publication in the Official Journal of the European Union.

## Article 4

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament  
The President

For the Council  
The President

---

\* 24 months after the entry into force of this Directive.

I