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RECOMMENDATION FOR SECOND READING

on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive relating to cableway installations designed to carry persons (14248/3/1998 - C5-COD 1994/0011)

Committee on Legal Affairs and the Internal Market

Rapporteur: Bill Miller

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<i>Symbols for procedures</i>	<i>Abbreviations for committees</i>
<p>* : Consultation procedure <i>majority of the votes cast</i></p> <p>**I : Cooperation procedure (first reading) <i>majority of the votes cast</i></p> <p>**II : Cooperation procedure (second reading) <i>majority of the votes cast, to approve the common position</i> <i>majority of Parliament's component Members, to reject or amend the common position</i></p> <p>*** : Assent procedure <i>majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty</i></p> <p>***I : Codecision procedure (first reading) <i>majority of the votes cast</i></p> <p>***II : Codecision procedure (second reading) <i>majority of the votes cast, to approve the common position</i> <i>majority of Parliament's component Members, to reject or amend the common position</i></p> <p>***III : Codecision procedure (third reading) <i>majority of the votes cast to approve the joint text</i></p> <p>(The type of procedure depends on the legal basis proposed by the Commission.)</p>	<p>I. AFET: Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy</p> <p>II. BUDG: Committee on Budgets</p> <p>III. CONT: Committee on Budgetary Control</p> <p>IV. LIBE: Committee on Citizens' Freedoms and Rights, Justice and Home Affairs</p> <p>V. ECON: Committee on Economic and Monetary Affairs</p> <p>VI. JURI: Committee on Legal Affairs and the Internal Market</p> <p>VII. INDU: Committee on Industry, External Trade, Research and Energy</p> <p>VIII. EMPL: Committee on Employment and Social Affairs</p> <p>IX. ENVI: Committee on the Environment, Public Health and Consumer Policy</p> <p>X. AGRI: Committee on Agriculture and Rural Development</p> <p>XI. PECH: Committee on Fisheries</p> <p>XII. REGI: Committee on Regional Policy, Transport and Tourism</p> <p>XIII. CULT: Committee on Culture, Youth, Education, the Media and Sport</p> <p>XIV. DEVE: Committee on Development and Cooperation</p> <p>XV. AFCO: Committee on Constitutional Affairs</p> <p>XVI. FEMM: Committee on Women's Rights and Equal Opportunities</p> <p>XVII. PETI: Committee on Petitions</p>

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PROCEDURAL PAGE

At its sitting of 6 April 1999 Parliament delivered its opinion at first reading on the proposal for a European Parliament and Council Directive relating to cableway installations designed to carry persons.

At the sitting of 23 July 1999 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market.

The committee appointed Mr Bill Miller rapporteur at its meeting of 31 August 1999.

It considered the common position and the draft recommendation for second reading at its meetings of 22 September and 12 October 1999.

At the latter meeting it unanimously adopted the draft resolution.

The following were present for the vote: Palacio Vallelersundi, chairman, Rothley and Beysen, vice-chairmen; Miller, rapporteur; Berger, Cederschiöld, Gebhardt, Grossetête, Harbour, Hautala, Koukiadis, Lechner, Lehne, MacCormick, Manders, Niebler, Uca, Thors, Wallis and Zacharakis.

The recommendation for second reading was tabled on 18 October 1999.

The deadline for tabling amendments to the common position will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive relating to cableway installations designed to carry persons (14248/3/1998 - C5-00/30/1999 - 1994/0011(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council's common position (14248/3/1998 -C5-0030/1999,
 - having regard to its opinion at first reading on the Commission proposal to Parliament and the Council COM(1993)646¹,
 - having regard to the amended Commission proposal COM(1995)523²,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0028/1999),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and the Commission.

Common position of the Council

Amendments by Parliament

(Amendment 1)

Recital 1

(1) Whereas cableway installations designed to carry persons are designed, manufactured, put into service and operated with the object of providing a service to users; whereas, principally, cableway installations are

(1)Whereas cableway installations designed to carry persons are designed, manufactured, put into service and operated with the object of carrying persons; whereas, principally, cableway installations are mountain lift

¹ OJ C 070, 8.3.1994, p. 8.

² OJ C 022, 26.1.1996, p. 12.

mountain lift systems used in high-altitude tourist resorts and consisting of funicular railways, cable cars, gondolas, chairlifts and drag lifts, but may also consist of cableway installations used in urban transport facilities; whereas some types of cableway installation may use other, completely different basic principles which cannot be excluded a priori; whereas, therefore, provision should be made for introducing specific requirements designed to achieve the same safety objectives as those laid down in this Directive;

systems used in high-altitude tourist resorts and consisting of funicular railways, cable cars, gondolas, chairlifts and drag lifts, but may also consist of cableway installations used in urban transport facilities; whereas some types of cableway installation may use other, completely different basic principles which cannot be excluded a priori; whereas, therefore, provision should be made for introducing specific requirements designed to achieve the same safety objectives as those laid down in this Directive;

(Amendment 2)
Recital 6

(6) Whereas steps should be taken to define, on a Community-wide basis, essential safety, health, environmental protection and consumer protection requirements applicable to cableway installations, subsystems and their safety components; whereas without this, mutual recognition of regulatory provisions would create insoluble political and technical difficulties as regards interpretation and liability; whereas, by the same token, standardisation without prior definition of a framework of harmonised regulatory requirements is not sufficient to solve the problem;

(6) Whereas steps should be taken to define, on a Community-wide basis, essential human safety and health, environmental protection and consumer protection requirements applicable to cableway installations, subsystems and their safety components; whereas without this, mutual recognition of regulatory provisions would create insoluble political and technical difficulties as regards interpretation and liability; whereas, by the same token, standardisation without prior definition of a framework of harmonised regulatory requirements is not sufficient to solve the problem;

(Amendment 3)
Recital 9

(9) Whereas users from all Member States and even beyond must be ensured a satisfactory level of safety; whereas, in order to meet this requirement, it is necessary to define procedures and examination, control and inspection methods; whereas this necessitates the use of standardised technical devices which must be incorporated in cableway installations;

(9) Whereas persons using cableways, from all Member States and even beyond, must be ensured a satisfactory level of safety; whereas, in order to meet this requirement, it is necessary to define procedures and examination, control and inspection methods; whereas this necessitates the use of standardised technical devices which must be incorporated in cableway installations;

(Amendment 4)
Recital 31

(31) Whereas a modus vivendi between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty was reached on 20 December 1994.

Deleted

(Amendment 5)
Article 1(2) first paragraph

2. For the purposes of this Directive "cableway installations designed to carry persons" shall mean installations made up of several components, designed, manufactured, assembled and put into service with the object of providing a passenger transport service.

2. For the purposes of this Directive "cableway installations designed to carry persons" shall mean capital equipment made up of several components, designed, manufactured, assembled and put into service with the object of carrying persons;

(Amendment 6)
Article 1(6)

6. This Directive shall not apply to:

- lifts within the meaning of Directive 95/16/EC⁵;
- cable-operated tramways of traditional construction;
- installations used for agricultural purposes;
- on-site or mobile equipment for use in fairgrounds and/or amusement parks which are designed for leisure purposes and not as a means for transporting persons;
- on-site installations used for industrial purposes;
- cable-operated ferries;
- rack railways;
- chain-driven installations.

6. This Directive shall not apply to:

- lifts within the meaning of Directive 95/16/EC⁵;
- cable-operated tramways of a traditional construction;
- installations used for agricultural purposes;
- on-site or mobile equipment for use in fairgrounds and/or amusement parks, which are designed for leisure purposes and not as a means for transporting persons;
- mining installations or on-site installations used for industrial purposes;
- cable-operated vessels;
- rack railways;
- chain-driven installations

⁵ Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 213, 7.9.1995, p. 1).

(Amendment 7)
Article 8

1. Where a Member State ascertains that a safety component bearing the CE conformity marking placed on the market and used in accordance with its intended purpose is liable to endanger the safety and the health of persons and, where appropriate, the safety of property, it shall take all appropriate measures to restrict its conditions of use or prohibit its use.

Delete

The Member State shall immediately inform the Commission of any such measure, indicating the reasons for its decisions and whether non-conformity is due, in particular, to:

- (a) failure to satisfy the essential requirements referred to in Article 3(1);
- (b) incorrect application of the European specifications referred to in Article 2(2) insofar as application of those specifications is invoked;
- (c) a shortcoming in the European specifications referred to in Article 2(2).

2. The Commission shall enter into consultation with the parties concerned at the earliest opportunity. Where, after such consultation, the Commission finds that:

- the measures are justified, it shall immediately so inform the Member State which took the initiative and the other Member States; where the decision referred to in paragraph 1 is based on shortcomings in European specifications, the Commission shall, after consulting the parties concerned, initiate the procedure referred to in Article 2(7) if the Member State which has taken the decision intends to maintain it;
- the measures are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community and the Member State which took the measures.

3. Where a safety component bearing the CE conformity marking is found not to comply, the competent Member State shall take appropriate action against whomsoever affixed that marking and drew up the EC declaration of conformity and shall so inform the Commission and the other Member States.

4. The Commission shall ensure that the Member States are kept informed of the outcome of the procedure.

(Amendment 8)
Article 12

1. Where a Member State ascertains that a subsystem with an EC declaration of conformity as referred to in Article 11(1), used in accordance with its intended purpose, is liable to endanger the safety and health of persons, and, where applicable, the safety of property, it shall take all appropriate measures to restrict its conditions of use or prohibit its use. The Member State concerned shall immediately inform the Commission of the measures taken, indicating the reasons for its decision and whether non-conformity is due, in particular, to:

Delete

- (a) failure to satisfy the essential requirements referred to in Article 3(1);
- (b) incorrect application of the European specifications referred to in Article 2(2) insofar as application of those specifications is invoked;

(c) shortcomings in the European specifications referred to in Article 2(2).

2. The Commission shall enter into consultation with the parties concerned at the earliest opportunity. Where, after such consultation, the Commission finds that:

- the measures are justified, it shall immediately so inform the Member State which took the initiative and the other Member States; where the decision referred to in paragraph 1 is based on shortcomings in the European specifications, the Commission shall, after consulting the parties concerned, initiate the procedure referred to in Article 2(7) if the Member State which has taken the decision intends to maintain it;
- the measures are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community or, in their absence, any natural or legal person having placed the subsystem in question on the market, and the Member State which took the measures.

3. Where a subsystem with an EC declaration of conformity is found not to comply, the competent Member State shall take appropriate action against whomsoever drew up the EC declaration of conformity and shall so inform the Commission and the other Member States.

4. The Commission shall ensure that the Member States are kept informed of the outcome of the procedure.

(Amendment 9)
Article 15

If a Member State finds that an approved installation which is used in accordance with its intended purpose is liable to endanger the safety and the health of persons and, where appropriate, the safety of property, it shall take all appropriate measures to restrict the conditions of operation of the installation or to prohibit the operation thereof. (delete)

(Amendment 10)
CHAPTER IVa
SAFEGUARDS
Article 16a (new)

1. Where a Member State ascertains that a safety component bearing the CE conformity marking placed on the market and used in accordance with its intended purpose or a subsystem with an EC declaration of conformity as referred to in Article 11(1), used in accordance with its intended purpose, is liable to endanger the safety and health of persons, and, where applicable, the safety of property, it shall take all appropriate measures to restrict the conditions of use of the component or subsystem or prohibit its use.

The Member State concerned shall immediately inform the Commission of any such measure, indicating the reasons for its decision and whether non-conformity is due, in particular, to:

(a) failure to satisfy the essential requirements referred to in Article 3(1);

(b) incorrect application of the European specifications referred to in Article 2(2) insofar as application of those specifications is invoked;

(c) shortcomings in the European specifications referred to in Article 2(2).

2. The Commission shall enter into consultation with the parties concerned at the earliest opportunity. Where, after such consultation, the Commission finds that:

- the measures are justified, it shall immediately so inform the Member State which took the initiative and the other Member States; where the decision referred to in paragraph 1 is based on shortcomings in the European specifications, the Commission shall, after consulting the parties concerned, initiate the procedure referred to in Article 2(7) if the Member State which has taken the decision intends to maintain it;
- the measures relating to a safety component are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community and the Member State which took the measures,
- the measures relating to a subsystem are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community or, in their absence, any natural or legal person having placed the subsystem in question on the market, and the Member State which took the measures.

3. Where a safety component bearing the CE conformity marking is found not to comply, the competent Member State shall take appropriate action against whomsoever affixed that marking and drew up the EC

declaration of conformity and shall so inform the Commission and the other Member States.

4. Where a subsystem with an EC declaration of conformity is found not to comply, the competent Member State shall take appropriate action against whomsoever drew up the EC declaration of conformity and shall so inform the Commission and the other Member States.

5. The Commission shall ensure that the Member States are kept informed of the outcome of the procedure.

(Amendment 11)
Article 16b (new)

Where a Member State ascertains that an authorised installation used in accordance with its intended purpose is liable to endanger the safety and health of persons, and, where applicable, the safety of property, it shall take all appropriate measures to restrict its conditions of operation or prohibit its operation.

(Amendment 12)
Article 22(4)

4. The Commission shall report to the European Parliament and the Council on the implementation of this Directive, and in particular Article 18 thereof, not later than(*) and, if necessary, submit any proposal for appropriate amendments.

4. The Commission shall report to the European Parliament and the Council on the implementation of this Directive, and in particular on Articles 1(6) and 18 thereof, not later than (**) and, if necessary, submit any proposal for appropriate amendments.

EXPLANATORY STATEMENT

1. General remarks

This proposal, for which the Committee on Economic and Monetary Affairs was responsible at first reading, now falls within the sphere of the Committee on Legal Affairs and the Internal Market (Annex VI of the amended Rules of Procedure).

The proposal for a directive is based on Articles 47(2), 55 and 95 of the EC Treaty.

The proposal is basically technical in nature, seeking to complete the internal market and the fields of cableway by installation designed to carry persons.

Its aims are twofold:

- the free movement of cableway installations, and
- the safety of cableway installations.

These two aims are linked to the extent that free movement is possible in practice only if all Member States' rules include the same essential safety requirements. Each Member State would remain responsible for carrying out the provisions of the directive and in particular those relating to safety and the environment, but in order to avoid any avoidance of the provisions completing the single market, assessment is to be carried out by bodies notified by the Member State on the basis of their recognised ability to perform this type of work. The Commission will publish a list of these independent bodies. When a manufacturer submits a tender he will appoint one of the notified bodies to deal with his application, thus ensuring a degree of impartiality.

This directive has been eagerly awaited by the industry³, which is hoping for harmonisation of standards.

In practice, to talk of cableway installation 'manufacturers' is somewhat misleading; the term 'assemblers' would be better, as the industry works largely on a subcontracting basis. The main equipment producers are Germany, Austria, France, Italy and Switzerland.

Despite a number of accidents, which always attract media attention, cable transport is very safe by comparison with other means of transport such as the motor car.

³ OITAF (Organizzazione internazionale trasporti a fune) which consists of cableway operators and companies, manufacturers of installations and the national or user supervisory authorities has its aim the harmonisation of rules applicable to cableway transport.

These installations are subject to Directives 85/337/EEC⁴ on environmental impact assessment and EEC⁵ on public procurement procedures.

2. Assessment of the common position in the light of Parliament's first reading amendments

Parliament's opinion at first reading contained amendments concerning installations under construction or not yet in service, seeking to increase safety of installations, to have transfrontier installations covered by the directive and to make it clear that skiers were third parties within the meaning of the directive.

In its amended proposal the Commission adopted most of Parliament's amendments.

The Council adopted most of Parliament's 21 amendments; seven of them practically unchanged, six of them in simplified form and four of them in part. Four amendments were not adopted.

On the matter of installations under construction, the Council included Parliament's amendment but modified its scope; Member States may decide not to comply with the essential requirements of the directive for installations under construction for which authorisation had already been issued before the directive came into force.

The Council rejected Parliament's amendment to make it clear that third parties include skiers, not wishing to make special mention of them as they naturally fell into the category of third parties. Although it was Parliament's intention to lay emphasis on the category forming the numerical majority of accident victims, in a spirit of conciliation the rapporteur is prepared not to insist on the amendment.⁶

The Council has also divided installations into 'safety components' and 'subsystems' (e.g. cabins and cables). The latter may be placed on the market and move freely if they meet certain essential requirement listed in Annex II; a CE marking is introduced and only safety components bearing the CE marking may be regarded as meeting the safety requirements without special justification.

⁴ Council Directive 85/337/EEC of 27.6.1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40) as last amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5)

⁵ OJ L 1999, 9.8.1993, p. 84, last amended by Directive 98/4/EC (OJ L 101, 1.4.1998, p. 1).

⁶ In practice the courts often take a very broad view of the cableway operators' liability towards skiers:

- Cour de cassation, 1ère ch. Civile, 4 July 1995, Bull No 301, p. 466. A user who, at a chairlift departure point, after failing to mount it properly, failed to drop to the ground and take the safety escape route, was not liable. The chairlift operator was liable, as he was responsible for user safety.
- Amtsgericht Kempten, 19 July 1995, C 544/95 B, SpuRt 1/97, p. 34. The Court held the cableway operator liable for an iced-over ski run, having a duty to maintain it.
- Cour d'appel de Grenoble (chambre d'accusation) 28 April 1998, Case 222/98. The area in the resort covered by the operator's contractual duty of care includes all areas accessible from the mechanical lifts. Boundaries must be marked by a continuous barrier clearly preventing any customer coming from a mechanical lift from crossing it inadvertently.

Under the common position, each Member has to lay down procedures for authorising the construction and the putting into service of installations which are located within its territory, including installation infrastructures (civil engineering).

The rapporteur does not see any need to object to these two changes made by the Council.

On the other hand, on several other points the Council's position calls for amendment by Parliament.

3. **Applicability of the directive to all persons carried**

The Council adopted Parliament's amendment amending the title of the directive from '*designed to carry passengers*' to '*designed to carry persons*'.

On the matter of safety standards it is difficult to see why different standards should apply. The common position with a view to adopting this directive is ambiguous on this point. Thus while Article 1(1) states that the directive shall apply to cableway *installations designed to carry persons*, paragraph 2 of that article refers to the provisions of a *passenger transport service*, which is more restrictive.

Amendments 1, 2, 3 and 5 seek to remove this ambiguity and make it clear where it was not clear before that the directive relates to cableway installations for the carriage of persons in general and on this point bring the proposed directive into line with guideline No 3 of the interinstitutional agreement of 22 December 1998 on the drafting of legislative texts.⁷

Although there is no direct connection to this matter, we should also mention the tragic accident to the Pic de Bure cable-lift at Saint-Etienne en Dévoluy (French Alps) on 1 July 1999 which drew attention to the disparities which may exist in the same Member State between public and in-house cableways.⁸ In the case in question, the cable-car was carrying 'Centre national de la recherche scientifique' research staff to an observatory, who were not therefore regarded as the public (passengers). The cable-car was of the single-track shuttle type with only one winding cable, two carrier cables and no cabin brake.

The French authorities are in the process of drawing up a single set of rules.

In other Member States such as Austria there is no distinction between public passenger installations and in-house installations.

⁷ OJ C73, 17.3.1999, p. 1.

⁸ In France the two sets of rules are as follows: for carrying the public (passengers), the Decree of 25 June 1985, published in the French OJ of 2 August 1995; and for service installations, the Decree of 17 May 1989 published in the official bulletin of the Ministry of Transport, January 1999.

4. **Review clause**

In the same spirit, one might well ask whether there is any justification for the considerable number of exceptions from the directive (Article 1(6)), which were inserted by the Council into its common position. While these exceptions may be accepted at this stage in the harmonisation process, in view of the considerable disparities between national laws, it would seem justifiable to review the matter after four years in the light of experience with the directive.

This is the aim of Amendment 12.

5. **Safeguard clauses**

Safeguard clauses are included at three points in the text: in Article 8 for safety components, Article 12 for subsystems and in Article 13 for installations. These repetitions pointlessly inflate and complicate the text. The rapporteur therefore believes that these articles should be consolidated and headed 'safeguards' (deleting some 200 unnecessary words).

That is what Amendments 7 to 10 seek to achieve.

Conclusion

This text is generally satisfactory and the amendments should not disrupt the proposal but seek, in a concern for greater legal security, to clarify a number of points and to amplify a number of provisions with a view to averting practical difficulties in applying the directive.