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**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council regulation on establishing a European Railway Agency (Agency Regulation) (8558/2/2003 – C5-0296/2003 – 2002/0024(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Gilles Savary

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*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 Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 14 January 2003 Parliament adopted its position at first reading on the proposal for a European Parliament and Council regulation on establishing a European Railway Agency (Agency Regulation) (COM(2002) 23 – 2002/0024 (COD)).

At the sitting of 3 July 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (8558/2/2003 – C5-0296/2003).

The committee had appointed Gilles Savary rapporteur at its meeting of 21 February 2002.

It considered the common position and draft recommendation for second reading at its meetings of 8 July 2003, 30 September 2003 and 1 October 2003.

At the last meeting it adopted the draft legislative resolution by 44 votes to 2, with 0 abstentions.

The following were present for the vote: Rijk van Dam, vice-chairman and acting chairman; Gilles Savary, vice-chairman and rapporteur and Helmuth Markov, vice-chairman; Sylviane H. Ainaridi, Emmanouil Bakopoulos, Graham H. Booth (for Alain Esclopé), Philip Charles Bradbourn, Luigi Cocilovo, Danielle Darras, Jean-Maurice Dehousse (for Garrelt Duin), Jan Dhaene, Giovanni Claudio Fava, Markus Ferber (for Christine de Veyrac), Jacqueline Foster, Mathieu J.H. Grosch, Cristina Gutiérrez Cortines (for Carlos Ripoll y Martínez de Bedoya, pursuant to Rule 153(2)), Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Dieter-Lebrecht Koch, Giorgio Lisi, Sérgio Marques, Emmanouil Mastorakis, Erik Meijer, Bill Miller (for John Hume), Enrique Monsonís Domingo, Francesco Musotto, Josu Ortuondo Larrea, Peter Pex, Wilhelm Ernst Piecyk, Samuli Pohjamo, Bernard Poignant, Alonso José Puerta, Reinhard Rack, Ingo Schmitt, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Hannes Swoboda (for Mark Francis Watts), Joaquim Vairinhos, Jaime Valdivielso de Cué (for José Javier Pomés Ruiz , pursuant to Rule 153(2)), Ari Vatanen and Herman Vermeer.

The recommendation for second reading was tabled on 2 October 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a European Parliament and Council regulation on establishing a European Railway Agency (Agency Regulation) (8558/2/2003 – C5-0296/2003 – 2002/0024(COD))

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (8558/2/2003 – C5-0296/2003),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2002) 23<sup>2</sup>),
  - 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 Regional Policy, Transport and Tourism (A5-0323/2003),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> P5\_TA(2003) 0007.

<sup>2</sup> OJ C 126E, 28.5.2002, p.323.

Amendment 1  
Recital 22

(22) In order to ensure effectively the accomplishment of the functions of the Agency, ***the Member States*** and the Commission should be represented on an Administrative Board vested with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, approve its work programme, adopt its budget, define a policy for visits to the Member States and appoint the Executive Director.

(22) In order to ensure effectively the accomplishment of the functions of the Agency, ***the Council*** and the Commission should be represented on an Administrative Board vested with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, approve its work programme, adopt its budget, define a policy for visits to the Member States and appoint the Executive Director.

*Justification*

*See justification to Amendment 6.*

Amendment 2  
Recital 23

(23) In order to guarantee the transparency of the Administrative Board's decisions, representatives of the sectors concerned should attend its deliberations, but without the right to vote, that right being reserved to the representatives of public authorities who are answerable to the democratic control authorities. ***The representatives of the sector should be appointed by the Commission on the basis of their representativeness at European level for railway undertakings, infrastructure***

(23) In order to guarantee the transparency of the Administrative Board's decisions, representatives of the sectors concerned ***(railway undertakings, infrastructure managers, the railway industry, unions representing railway undertakings' employees, rail freight users and rail passengers)*** should participate in the deliberations, but without the right to vote, which is reserved for the representatives of public authorities who must answer to the democratic control authorities. ***The representatives of the sectors concerned***

***managers, railway industry, workers unions, passengers and freight customers.***

***shall be nominated by their respective European professional organisations.***

*Justification*

*This amendment reinstates (first reading) amendment 5 (P5\_TA (2003) 0007)*

Amendment 3

Article 1, subparagraph 3 a (new)

***The Agency shall have sole responsibility in the context of the functions and powers assigned to it by law. The allocation of similar functions and powers to national offices is accordingly ruled out.***

*Justification*

*Reinstates the European Parliament's position at first reading.*

Amendment 4

Article 3, paragraph 1, subparagraph 1 a (new)

***Whenever the work provided for in Articles 6, 12, 16 and 17 has a direct impact on the working conditions, health and safety of workers in the industry, representatives from the workers' organisations shall participate in the relevant working parties.***

*Justification*

*Article 16 also refers to the necessary competences of maintenance workshop staff. Consequently workers' representatives should also be involved in this work.*

Amendment 5  
Article 4, paragraph 1

Whenever the work provided for in Articles 6, 12 and 17 has a direct impact on the social environment or working conditions in the railway sector, the Agency shall consult the social partners within the framework of the sectoral dialogue committee set up pursuant to Commission Decision 98/500/EC.

Whenever the work provided for in Articles 6, 7, 12, **16** and 17 has a direct impact on the social environment or working conditions of workers in the industry the Agency shall consult the social partners within the framework of the social dialogue committee set up pursuant to Commission Decision 98/500/EC.

*Justification*

*This amendment reinstates first reading amendment 15 (P5\_TA (2003) 0007).*

Amendment 6  
Article 5a (new)

**Article 5a**

***Creation of advisory committees***

***Two permanent advisory committees shall be set up within the Agency:***

***(a) to facilitate the implementation of Article 6(4) of this Regulation, a committee of national safety authorities and inspection bodies defined by Directive 2003/.../EC (on railway safety);***

***(b) to facilitate the implementation of Article 9 of this Regulation, a committee of national investigating bodies as referred to in Directive 2003/.../EC (on railway safety).***

***These committees shall meet at least once a year and, where necessary, at the initiative of the Executive Director of the Agency, to assist the Agency in the performance of its tasks.***



*Justification*

*This amendment reinstates first reading amendment 19 (P5\_TA (2003) 0007).*

Amendment 7

Article 17, title

‘Vocational *competences*’

‘Vocational *qualifications*’

*Justification*

*It is essential to call upon the knowledge of the social partners in order to ensure consistency in devising and further developing not only technical requirements but also those relating to health and safety at work. Restricting the text to only one group of employees is counter-productive, since rail traffic is a compound product in which infrastructure and traffic management (including staff) must act together as effectively as possible.*

Amendment 8

Article 17, paragraph 2

**2. The Agency shall draw up recommendations with a view to putting in place a system for accreditation of training centres.**

**2. For the general qualifications, the Agency shall determine, by major type of equipment, the minimum qualifications and training required for the occupations involved in the implementation of safety and interoperability in order to ensure safe operation.**

*Justification*

*It is essential to call upon the knowledge of the social partners in order to ensure consistency in devising and further developing not only technical requirements but also those relating to health and safety at work. Restricting the text to only one group of employees is counter-productive, since rail traffic is a compound product in which infrastructure and traffic management (including staff) must act together as effectively as possible.*

Amendment 9

Article 17, paragraph 2 a (new)

**2a. The Agency shall seek gradually to put in place a system for accreditation of training facilities, without prejudice to the full responsibility of each railway**

***undertaking for authorising, and recognising the aptitude of, its on-train staff. In any event, the accreditation system must take into account the various aspects of the training needed to drive a train safely, namely general training (which may be a core curriculum) and sectoral training, i.e. ensuring familiarity with the engine, the specific nature of the line on which it will be driven, and a sufficient degree of continuous training to cover the various changes in technology and in the line.***

*Justification*

*It is essential to call upon the knowledge of the social partners in order to ensure consistency in devising and further developing not only technical requirements but also those relating to health and safety at work. Restricting the text to only one group of employees is counter-productive, since rail traffic is a compound product in which infrastructure and traffic management (including staff) must act together as effectively as possible.*

Amendment 10

Article 26, paragraph 1, subparagraph 1

1. The Administrative Board shall be composed of ***one representative of each Member State*** and four representatives of the Commission, as well as of six representatives ***appointed by the Commission***, without the right to vote, ***each of whom represents*** at European level one of the following groups:

- railway undertakings
- infrastructure managers
- railway industry
- worker unions
- passengers
- freight customers.

1. The Administrative Board shall be composed of ***six representatives of the Council*** and four representatives of the Commission, as well as of six representatives without the right to vote. ***Each of these six representatives, who represent*** at European level one of the following groups:

- railway undertakings
- infrastructure managers
- railway industry
- worker unions
- passengers
- freight customers

***shall be appointed by the Commission from a shortlist of three names submitted by their respective representative organisations.***

*Justification*

*Replaces the rapporteur's original amendment 6. This is a compromise amendment which the*

*Council and the Commission can be expected to accept.*

Amendment 11  
Article 30, Paragraph 1, letter (f)

(f) ***draw up estimates*** of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.

(f) ***prepare a draft statement of estimates*** of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.

*Justification*

*Amendment made necessary by:*

*-the entry into force of the new framework financial regulation, Council Regulation No 1605/2002*

*-the adoption of standard provisions concerning the organisation of agencies (involving successive amendment of each of the existing agencies' constituent acts along identical lines).*

*This amendment, together with amendments 12-30, proposes the changes required after the entry into force of the above-mentioned legislation.*

Amendment 12  
Article 35, paragraph 1

***1. The Administrative Board shall decide on the linguistic arrangements for the Agency. At the request of a Member of the Administrative Board, this decision shall be taken by unanimity. The Member States may address the Agency in the Community language of their choice.***

***1. The provisions of Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community shall apply to the Agency.***

*Justification*

*This amendment reinstates first reading amendment 38 (P5\_TA (2003) 0007).*

Amendment 13  
Article 37, first paragraph

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall apply to the documents held by the Agency.

**1.** Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall apply to the documents held by the Agency.

*Justification*

*See justification to am. 11.*

Amendment 14  
Article 37, second paragraph

The Administrative Board shall adopt the practical measures for implementation of that Regulation.

**2.** The Administrative Board shall adopt the practical measures for implementation of Regulation *(EC) No. 1049/2001 within six months of the entry into force of this regulation.*

*Justification*

*See justification to am. 11.*

Amendment 15  
Article 37, paragraph 2 a (new)

**2 a.** *Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of*

***a complaint with the Ombudsman or the bringing of an action before the Court of Justice under Articles 195 and 230 of the EC Treaty respectively.***

*Justification*

*See justification to am. 11.*

Amendment 16  
Article 38, paragraph -1 (new)

***-1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Agency.***

***The revenue and expenditure shown in the budget shall be in balance.***

*Justification*

*See justification to am. 11.*

Amendment 17  
Article 38, paragraph 3

***3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following calendar year and shall submit it to the Administrative Board together with an establishment plan.***

***3. Each year, the Administrative Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft***

*establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest.*

*Justification*

*See justification to am. 11.*

Amendment 18  
Article 38, paragraph 4

**4. Revenue and expenditure shall be in balance.**

**4. The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.**

*Justification*

*See justification to am. 11.*

Amendment 19  
Article 38, paragraph 5

**5. The Administrative Board shall adopt, by 31 March at the latest, the draft budget for the following calendar year and submit it to the Commission, which, on the basis of it, shall enter the corresponding estimates in the preliminary draft general budget of the European Union, which it shall submit to the Council in accordance with Article 272 of the Treaty.**

**5. On the basis of this statement of estimates, the Commission shall enter the estimates it considers necessary, as regards the establishment plan and the amount of the grant charged to the budget, in the preliminary draft general budget of the European Communities, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.**

*Justification*

*See justification to am. 11.*

Amendment 20  
Article 38, paragraph 6

***6. The Administrative Board shall adopt, by 15 January at the latest, the Agency's budget for the current calendar year, adjusting it, where necessary, to the Community contribution decided on by the budgetary authority.***

***6. The budgetary authority shall authorise the appropriations available for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.***

*Justification*

*See justification to am. 11.*

Amendment 21  
Article 38, paragraph 6 a (new)

***6a. The budget shall be adopted by the Administrative Board. It shall become final after the final adoption of the general budget of the European Union. If necessary, it shall be adjusted accordingly.***

*Justification*

*See justification to am. 11.*

Amendment 22  
Article 38, paragraph 6 b (new)

***6 b. The Administrative Board shall notify the budgetary authority as soon as possible if it intends to embark on any project likely to have a significant financial impact on the financing of the budget, particularly in the case of buildings projects such as the rental or purchase of buildings. It shall inform the Commission accordingly. Should a branch of the budgetary authority announce that it intends to deliver an opinion on the project, it must forward the opinion to the Administrative Board within six weeks of notification thereof.***

*Justification*

*See justification to am. 11.*

Amendment 23  
Article 39, paragraph 2

***2. Control of commitment and payment of all expenditure and control of the existence and receipt of all revenue of the Agency shall be carried out by the Financial Controller of the Commission.***

***2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for***



***that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the General Financial Regulation.***

*Justification*

*See justification to am. 11.*

Amendment 24  
Article 39, paragraph 3

3. By 31 March at the latest, ***the Executive Director shall submit to the Commission, the Administrative Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous budgetary year.***

3. By 31 March at the latest ***following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.***

***The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.***

*Justification*

*See justification to am. 11.*

Amendment 25  
Article 39, paragraph 4

**4. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Executive Director in respect of the implementation of the budget.**

**4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Administrative Board for an opinion.**

*Justification*

*See justification to am. 11.*

Amendment 26  
Article 39, paragraph 4 a (new)

**4a. The Administrative Board shall deliver an opinion on the Agency's final accounts.**

*Justification*

*See justification to am. 11.*

Amendment 27  
Article 39, paragraph 4 b (new)

**4b. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council and the Court of Auditors, together with the Administrative Board's opinion.**

*Justification*

*See justification to am. 11.*

Amendment 28  
Article 39, paragraph 4 c (new)

***4c. The final accounts shall be published.***

*Justification*

*See justification to am. 11.*

Amendment 29  
Article 39, paragraph 4 d (new)

***4d. The Agency's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.***

*Justification*

*See justification to am. 11.*

Amendment 30  
Article 39, paragraph 4 e (new)

***4e. The Executive Director shall submit to the European Parliament, at the latter's request, in accordance with Article 146(3) of the General Financial Regulation, any information required for the smooth application of the discharge procedure for the financial year in question.***

*Justification*

*See justification to am. 11.*

Amendment 31

Article 39, paragraph 4 f (new)

***4f. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of year  $n + 2$  give a discharge to the executive director in respect of the implementation of the budget for year  $n$ .***

*Justification*

*See justification to amendment 11.*

Amendment 32

Article 40

***The Administrative Board, after receiving the agreement of the Commission and the endorsement of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall, in particular, specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 185 of the Financial Regulation***

***The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council***

*applicable to the general budget of the European Communities. The annual appropriations for the Agency shall be authorised by the budgetary authority within the limits of the relevant heading of the financial perspective.*

*Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.*

*Justification*

*See justification to am. 11.*

## **EXPLANATORY STATEMENT**

### **I. The European Railway Agency : an essential technical tool for Europe's railways**

On 14 January 2003, Parliament gave its opinion on first reading on a new package of measures designed to revitalise the rail sector and consolidate and harmonise its legal framework. On 25 June 2003 the Council adopted a common position on those proposals, including the Regulation establishing a European Railway Agency.

The Council, like Parliament, supports the establishment of this new Community agency, which will provide essential technical support for the task of achieving interoperability and improving rail safety.

The Railway Agency will have no legislative competence, and no regulatory powers or autonomous supervisory powers. It will be an essentially technical tool at the disposal of the Commission, for the purpose of :

- making technical preparations for the development of common safety standards and a system for monitoring performance in the field of safety;
- drawing up, and monitoring the application of, technical specifications for interoperability (TSIs), including a system for the certification of maintenance workshops and a system for the registration of rolling stock;
- working on the determination of common uniform criteria for the vocational competences of staff involved in the operation and maintenance of the railway system.

In other words, the Agency will be a tool at the service of the Commission, the Member States and rail authorities, with the task of delivering technical opinions on specific questions.

To enable the agency to carry out these tasks, it will be required to monitor the situation in Member States, provide a forum for discussion between all players in the rail sector and submit proposals to the European Executive (the Commission and Member States/comitology).

### **II. Parliament amendments (first reading)**

On first reading, Parliament adopted by an overwhelming majority amendments aimed at:

- enabling the Agency to forge a European-wide rail culture involving all players in the rail sector (am 1);
- ensuring that the working parties set up by the Agency are drawn from representatives of the whole rail sector, including representatives of rail staff when dealing with questions relating to working conditions and employee health and safety (am 14);
- strengthening and institutionalising consultation with and between the competent national authorities (am. 19);
- ensuring the inclusion of representatives of the accession countries (am. 10) and enabling them to participate in the Administrative Board (am. 36);

- ensuring balanced representation of the various interests involved on the Administrative Board (Ams 2, 5, 35);

- strengthening Parliament's oversight powers in relation to the appointment and dismissal of the executive director (am.32);

- amending the provisions relating to the tasks and powers of the executive director (am. 31) and the provisions relating to visits to Member States (am. 37) to bring them into line with the arrangements for the Maritime Safety Agency.

Parliament also adopted budgetary amendments and an amendment concerning the seat of the Agency (am. 48).

### **III. The common position of the Council: striking a reasonably satisfactory balance in the light of Parliament's wishes**

Many of Parliament's amendments have been taken up by the Council with only minimal changes of wording. The Commission approved the common position:

a) The Council endorses the view that the Agency should contribute to the development of a European railway culture by facilitating dialogue and the exchange of good practice between all players in the rail sector (recital 7; Article 1). The Council takes on board (Article 26) Parliament's proposal concerning the representation of the industry on the administrative board, but only partially accepts Parliament's proposals concerning the composition of working parties (Article 3).

b) The Council has accepted Parliament's proposals concerning the tasks and remit of the executive director (Article 30), his appointment (Article 31) and visits to Member States (Article 33).

c) The Council has substantially modified Article 17 (professional qualifications). In line with the provisions of the directives on safety and interoperability, the Council has reduced the Agency's input to drawing up recommendations concerning the determination of common uniform criteria for the training of staff involved in the operation and maintenance of the railway system and the putting in place of a system for the accreditation<sup>1</sup> of training centres. In so doing, the Council prefers to await the outcome of the work of the social partners with regard to drivers' licences, on the one hand, and the working conditions of drivers and on-board staff (rest periods, working hours) on the other hand. But the Council has increased the powers of the Agency with regard to the working conditions of staff executing safety-critical tasks (Article 12(e)), in respect of which the Agency may make recommendations.

d) The Council has taken on board Parliament's proposals concerning the involvement of the new Member States (Article 1; Article 36). The Council has not, however, accepted Parliament's proposal to enable the Agency to carry out forward studies (am. 27).

### **IV. Rapporteur's comments**

Your rapporteur considers that several points of the common position need to be changed.

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<sup>1</sup> Translator's note : 'agrément' in the French version of the Council common position ; 'accreditation' in the English version of that document

#### **4.1. The Railway Agency: forging a European railway culture**

Although this idea has been taken on board to some extent by the Council, it has not been carried to its logical conclusion in the following three areas:

##### **4.1.a Involvement of all players in the rail sector, including the Unions representing railway staff, in the operation of the Agency (Article 3)**

The Council has preferred to maintain the Commission's initial proposal, which merely provides for 'ex post' consultation of the social partners (Article 4). Your rapporteur regards this as inadequate.

Whereas it is expressly stated that representatives of sectors of the rail industry and of users should participate in the work of the agency at a preliminary stage (in the working parties - Article 3(1)) and subsequently (ex post consultation - Articles 4 and 5), staff representatives are restricted to ex post consultation alone (Article 4). There is no justification for this difference in treatment, particularly as the working conditions/safety aspects must be taken fully into account in the drafting of TSIs (new Article 12(3)) and CSTs (common safety targets).

Your rapporteur is convinced that involving all players at the earliest possible stage, where necessary, would act as a powerful catalyst and contribute to the emergence of a culture of consultation, dialogue and compromise at European level in a sector which is still dominated by very marked national cultures.

##### **4.1.b: Appointment of qualified persons to the Administrative Board**

The Council has increased the number of qualified persons on the Administrative Board, and also included representatives of passengers. In line with Parliament's vote, your rapporteur believes that these persons should not be appointed by the Commission, but nominated by their respective professional organisations, which would enhance their credentials. The Administrative Board would thus have a statutory obligation to represent all sectors of the rail industry.

##### **4.1.c Strengthening and institutionalising consultation with and between the competent national authorities**

Parliament adopted, on first reading, Amendment 19, which sought to establish:

- a permanent advisory committee of national safety authorities
- a permanent advisory committee of national bodies responsible for investigating rail accidents.

These committees would be institutionalised and, in your rapporteur's opinion, would be useful consultative bodies for the purpose of supporting the work of the agency. The Council has opted for an approach that spreads responsibilities too widely (establishing a network of national safety authorities and national investigatory authorities - Articles 3(3) and 9(1)). Parliament's amendment was clearer.

#### **4.2. Council representation on the Administrative Board: ensuring balanced governance**



The Council has imposed one representative per Member State on the administrative board (Article 26), whereas the Commission and Parliament proposed that there should be six Council representatives. The Council has also decided that the executive director should be appointed by a four-fifths majority of all members (Article 31(1)), whereas Parliament and the Commission proposed a two-thirds majority. Your rapporteur is concerned by these changes.

The Agency is an executive body, and the Member States are already represented on the Article 21 committee (which delivers a decisive opinion in the field of interoperability and safety). The Member States should not, therefore, be represented in the Agency as co-legislators (one representative per Member State). On the contrary, equality between the two branches of the executive - the Commission and the Council - should be maintained.

The election of the executive director by a four-fifths majority is not acceptable unless the Member States alone do not constitute a majority, which is another reason for limiting Council representation to six members.

Your rapporteur proposes, therefore, that Parliament's original position be resubmitted. In a spirit of compromise, he also proposes that Parliament resubmit Amendment 38 (the working languages of the Agency) to ensure all Member States have equal access to Agency documents.

#### **4.3 Financial and budgetary aspects**

The entry into force of the new General Financial Regulation on 1 January 2003 has not been taken into account in the common position, despite Parliament's amendments. New general guidelines for all the agencies are in the process of being adopted in line with the Commission's proposal for amendment of the constituent acts of Community bodies following the adoption of the new Financial Regulation.

It is necessary, therefore, to bring the provisions relating to the Railway Agency into line with the standards provisions which will apply in future. The Commission has drawn our attention to this point.