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REPORT

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1)/Council

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Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 5 December 2013*
4th Railway Package
Proposal for a Regulation of the EP and the Council on the European Union Agency for railways and repealing Regulation (EC) n° 881/2004 (First reading)
- Progress report

I. INTRODUCTION

On 30 January 2013, the Commission submitted to the Council the Fourth Railway Package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area. The package contains three groups of measures, with a view to:

- renewing rules on governance structure in relation to infrastructure management and transport operations (governance pillar);

- ensuring further opening of the market for domestic passenger transport services by rail (market opening pillar); and
- enhancing the quality and efficiency of rail services by removing the remaining market obstacles and reinforcing the harmonisation of interoperability and safety requirements to ensure a higher level of harmonisation of the EU railway network (technical pillar).

The three legislative proposals composing the technical pillar are: a recast of Directive 2008/57/EC on the interoperability of the rail system within the European Union, a recast of Directive 2004/49/EC on railway safety and a new Regulation on the European Union Agency for Railways (Agency Regulation), repealing Regulation (EC) N°881/2004.

The objective of the technical pillar is to increase economies of scale for railway undertakings across the EU, reduce administrative costs and accelerate administrative procedures as well as avoiding disguised discrimination, through new tasks conferred to the Agency for Railways.

The purpose of the new Agency Regulation is, therefore, to define the new tasks in the field of interoperability and safety resulting from the issuing of safety certificates and vehicle authorisations by the Agency. In addition, it is proposed to clarify existing provisions as well as update and strengthen the provisions on the governance aspects of the Agency, in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.

The European Parliament's Committee on Transport and Tourism appointed Mr Roberts ZĪLE (LV/ECR) as rapporteur and is expected to vote on a draft report on 26 November 2013.

II. WORK WITHIN THE COUNCIL BODIES

The detailed examination of the proposal on the Agency by the Working Party on Land Transport started on 22 October and continued on 29 October and 5 November 2013.

The Presidency completed a first read-through of Chapters 9 to 13 of the proposal concerning the organisation of the Agency and the horizontal provisions. In addition, the experience of the European Aviation Safety Agency concerning the transfer of certification tasks from the national aviation authorities to the Agency was presented to the Land Transport Working Party.

However, some work remains to be done, in particular on the new tasks deriving from the enhanced role granted to the Agency in the vehicle authorisation and safety certification processes, as well as on national rules, on the European Rail Traffic Management System (ERTMS) and on the monitoring of the Single European Railway Area.

III. MAJOR OUTSTANDING ISSUES

Based on the partial examination of the above proposal by the Land Transport Working Party, the Presidency can draw the following conclusions:

Fees and charges for safety certificates and vehicle authorisations (Articles 69 and 73)

Several delegations raised serious concerns about the potential impact on costs of the proposed delegation of competences to the Agency as regards the safety certification and vehicle authorisation tasks. In particular, they consider that the costs resulting from the new safety certification and vehicle authorisation procedures are difficult to assess and may in some cases lead to higher charges than the current fees applied for the certificates and authorisations issued by the national safety authorities under the existing system.

Against this background, a majority of delegations would like to obtain additional guarantees and mention in the Regulation the principles governing the calculation of the fees and charges to be applied by the Agency to applicants for safety certificates and vehicle authorisations. In particular, these fees and charges should take into account the actual costs incurred by the national safety authorities in carrying out their relevant tasks when issuing safety certificates and vehicle authorisations.

Delegations also raised concerns about the power of the Commission to adopt delegated acts concerning fees and charges. A large majority of delegations requested that measures concerning fees and charges be established by means of implementing acts.

The Presidency already proposed to include a new recital in order to clarify that fees and charges should be set in a transparent, fair and uniform manner in cooperation with Member States and should not jeopardize the competitiveness of the European industries concerned. In addition, this recital would state that fees and charges should be established on a basis which takes due account of the ability of undertakings to pay and should not lead to unnecessary financial burden on companies. However, several delegations insisted on the need to go beyond a recital and to include detailed provisions on the modalities for the establishment of fees and charges in the main body of the Regulation.

Liability of the Agency (Article 66)

Several delegations asked for clarification on the accountability of the Agency in the context of issuing vehicle authorisations and safety certificates. More specifically, they insisted on the need to specify further in the text of the Regulation that the Agency would be held accountable when carrying out tasks related to safety certifications and vehicle authorisations.

In particular, these delegations questioned the link between Article 64 on privileges and immunities of the Agency staff and Article 66 on the liability of the Agency, notably in order to guarantee that the immunity of the Executive Director (and of the Agency staff) could be waived, if necessary.

Cooperation with national safety authorities (Article 69)

The text of the general approach on the interoperability and safety Directives provides for the possibility of concluding cooperation agreements between the Agency and one or more national safety authorities in the context of vehicle authorisations and safety certificates to facilitate the practical implementation of the new certification and authorisation system. Under this new approach, the Agency will be able to subcontract certain certification and authorisation tasks to the national safety authorities.

Several delegations stressed that framework models should provide for a clear and precise distribution of tasks between the Agency and the national safety authorities, while keeping sufficient flexibility to take into account the specificities of the railway sector, where the tasks cannot be fully separated and are rather shared between the Agency and the national safety authorities (so-called "hybrid model").

Board of Appeal (Article 51)

A majority of delegations underlined the importance of reinforcing the provisions on the Board of Appeal in the Regulation, in particular in order to guarantee the possibility for a national safety authority to lodge an appeal against a decision taken by the Agency in case of disagreement (for instance on the issuing of a safety certificate). Several delegations also insisted on clearer and transparent criteria for the selection of the members of the Board of Appeal. Independence of the members of the Board of Appeal needs to be guaranteed to avoid any conflicts of interest, while ensuring at the same time that the Board members have the necessary expertise. Several delegations requested that an appeal may also be lodged in the absence of any decisions by the Agency or in case the Agency fails to act within the agreed deadline. Finally, clearer provisions need to be introduced to differentiate better between appeal functions, on the one hand, and arbitration functions, on the other hand.

IV. CONCLUSION

Taking into account what is said above and in order to enable the Council preparatory bodies to advance in their work on the above proposal, Coreper and Council are invited to take note of this progress report. In the view of the Presidency, this progress report may constitute a sound basis for further work on this file in the next few months.