TEN/111
TEN/112
TEN/113
TEN/114
2nd railway package

Brussels, 19 September 2002

OPINION

of the Economic and Social Committee

on the

Proposal for a Directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

COM(2002) 21 final – 2002/0022 (COD)

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system

COM(2002) 22 final – 2002/0023 (COD)

Proposal for a Regulation of the European Parliament and of the Council establishing a European Railway Agency

COM(2002) 23 final – 2002/0024 (COD)

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways

COM(2002) 25 final – 2002/0025 (COD)

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On 21 and 22 February 2002 the Council decided to consult the Economic and Social Committee, under Articles 71(1) and 156 of the Treaty establishing the European Community, on the:

> *Proposal for a Directive of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification*
> COM(2002) 21 final – 2002/0022 (COD)
> *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system*
> COM(2002) 22 final – 2002/0023 (COD)
> *Proposal for a Regulation of the European Parliament and of the Council establishing a European Railway Agency*
> COM(2002) 23 final – 2002/0024(COD)
> *Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways*
> COM(2002) 25 final – 2002/0025(COD)[1].

The Section for Transport, Energy, Infrastructure and the Information Society which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 September 2002. The rapporteur was **Mr Konz**.

At its 393rd plenary session of 18/19 September 2002 (meeting of 19 September) the Economic and Social Committee adopted the following opinion by 118 votes to eight with 12 abstentions.

1. Introduction

1.1 In its Resolution on the White Paper A Strategy for revitalising the Community's railways of 13 January 1998 the European Parliament argued in favour of upgrading the railways to a priority means of transport and for gradual liberalisation of access to European railway infrastructure, subject to the provision of social flanking measures.

1.2 The Stockholm and Gothenburg European Councils assigned priority objective status to the continued reform of the European rail transport sector by means of a second package of measures to be drawn up by the end of 2001.

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1 The second railway package, which is submitted by the Commission for decision, also includes:

a) a Communication from the Commission to the Council and the European Parliament – Towards an integrated European railway area (COM(2002) 18 final, and

b) a Recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the Convention concerning International Carriage by Rail (COTIF) (COM(2002) 24 final), which the EESC has taken into account in its opinion in view of their importance.

1.3 The Commission's White Paper of 12 September 2001[2] mapped out the path. In the strategy proposed by the Commission for re-establishing a balance between the various modes of transport the revitalisation of the rail sector plays an important part.

1.4 Despite numerous positive experiences, new market initiatives and the restructuring of long-established railway undertakings in a number of Member States, the Commission feels that the process of change is not progressing fast enough, given what is at stake. The Commission points out that the railways' share of overland goods transport has fallen from 35% in 1970 to 14% today.

1.5 The precondition for further initiatives is the implementation in national law (deadline: 15 March 2003) of the first railway package, also known as the infrastructure package, which comprises Directives 2001/12, 13 and 14 (EC)[3]. These directives spell out the role and responsibilities of the various rail-sector players:

a) the railway undertakings are responsible for transporting passengers and goods by rail;
b) the infrastructure managers are responsible for building and maintaining infrastructure, ensuring that services can be operated as safely as possible and providing a) with access to railway infrastructure under clearly defined, non-discriminatory and appropriate conditions;
c) the regulatory bodies are responsible for settling any disputes between a) and b).

The relations between these three players must be part of a legal framework which guarantees the transparency of the information provided to operators, legal certainty in contractual relationships and neutrality in the fundamental tasks:

a) licensing of railway undertakings;
b) allocation of infrastructure capacity and
c) levying of charges for the use of infrastructure.

1.6 Directive 2001/16/EC[4] on the interoperability of the conventional rail system is to be integrated into this body of rules.

1.7 The Commission feels that the **problems of the rail sector**, which still suffers from the conservatism and protectionism of another century (with cross-border rail traffic still mainly managed in the old way, by national operators handing over trains and responsibilities at the borders), **must be tackled more speedily** with the aim of establishing an integrated European railway area.

1.8 In order to achieve this objective as rapidly as possible and implement the principle of free movement of services, the Commission proposes that **all railway undertakings established and**

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2 COM(2001) 370 final

3 OJ L 75, 15.3.2001, pp. 1, 26, 51 – ESC Opinion OJ C 209, 22.7.1999, p. 22

4 OJ L 110, 20.4.2001, p. 1, ESC Opinion OJ C 204, 18.7.2000, p. 13

licensed in the European Union should have access in all Member States to the railway network for both domestic freight services (i.e. regular domestic transport services performed by foreign railway undertakings, including cabotage, i.e. occasional domestic transport services combined with cross-border services) **and cross-border freight services**.

1.9 As preconditions for this the Commission sets out to ensure:

a) maintenance of the **safety standard** of European rail transport, which is generally very high, particularly in relation to its main competitor, road transport;

b) more rapid progress on **interoperability**, as the lack of this on the European rail network is, alongside infrastructure bottlenecks, one of the main obstacles to pan-European rail services;

c) establishment of an **integrated European railway area**.

1.10 To this end the Commission has simultaneously submitted to the Council and the European Parliament **five proposals** in the form of legislative measures which will pass through the legislative process together as the **second railway package**. The aim of the package is to iron out legal and technical shortcomings.

2. **General comments**

2.1 Ten months after the entry into force of the first railway package, the infrastructure package, the Commission is submitting a second package of measures.

2.2 In its Communication entitled Towards an integrated European railway area (COM(2002) 18 final) which accompanies the legislative texts the Commission lists three essential types of measure for revitalising the railways:

a) a fair system for charging all modes of transport for the use of infrastructure;
b) development of the trans-European transport network, with the emphasis on railways, and removal of bottlenecks in the European rail network;
c) completion of the legal framework.

2.3 The EESC also draws attention to the key importance of the harmonisation of labour and social legislation as a contribution to balanced competition between rail, road and inland waterway.

Even if there is some progress in this area following adoption of Directives 2000/34/EC and 2002/15/EC, which must be implemented in national law by 1 August 2003 and 23 March 2005 respectively, excessive working hours and inadequate rest periods will continue to be prevalent for road haulage drivers and inland waterway workers.

The EESC also considers that the application of labour and social legislation should be encouraged and harmonised by means of appropriate inspections and sanctions.

In an own-initiative Opinion of 25 February 1987[5] the EESC called for "the harmonisation of certain social provisions governing working conditions between the different modes of transport".

2.4 The second railway package now submitted by the Commission deals exclusively with the third issue, the completion of the legal framework. In the Communication the Commission has already announced the submission of a third package.

2.5 According to the Commission, the second package will contain a series of **urgently needed measures** to flank the opening up of the international rail freight market introduced by the first package (the infrastructure package).

The most important of the proposed measures, the Directive on **safety on the Community's railways**, is designed to maintain the high level of safety in the rail sector.

2.6 It is also clear that a European internal rail transport market will remain a theoretical concept until **interoperability of the European rail network** is achieved. The adaptation of the Directive on the interoperability of the trans-European high-speed rail system (Directive 96/48/EC[6]) to bring it into line with the Directive on interoperability of the trans-European conventional rail system (Directive 2001/16/EC) with regard to staff qualifications and the health and safety of workers, with the social partners being consulted, is welcome. It is also recognised that interoperability does not only concern technical systems but also the staff working in and with that system. The definition of necessary qualifications is only one aspect of staff interoperability. This approach is entirely consistent with the process, initiated by the Lisbon European Council, of comprehensively involving the European social partners at all levels.

2.7 A **European Railway Agency** is a useful instrument to flank and support both safety in the rail sector and the achievement of interoperability. But this must not mean the creation of a new bureaucracy which sets up obstacles rather than providing support. Moreover, it will be effective only if **all** players are consulted.

2.8 The proposed new **amendment of Regulation 91/440/EEC[7]** raises the question of the appropriateness of accelerating the opening of the market for goods transport on the European rail network. **From 15 March 2003** there will be open market access for international rail freight transport on the **trans-European rail freight network (TERFN)**, including port feeders. Thus, over the next six months, 50,000 km, or some **80%** of the EU rail network, will be opened up.

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5 Own-initiative Opinion on the stocktaking and prospects for a common rail policy, OJ C 105, 21.4.1987, p. 13.

6 OJ L 235, 17.9.1996, p. 6, ESC Opinion OJ C 397, 31.12.1994, p. 8

7 OJ L 237, 24.8.1991, p. 25, ESC Opinion OJ C 225, 10.9.1990, p. 27

From 15 March 2008 there is to be free and non-discriminatory access for international goods transport to the entire European rail network.

2.9 The opening of the market introduced by the infrastructure package is the result of a laborious compromise process between the Council and the European Parliament. During the discussions it became clear that capacity bottlenecks and a need for high levels of investment in order to achieve technical interoperability posed real obstacles. It was also clear that further measures were needed in relation to rail transport safety and staff interoperability.

2.10 To this end, the EESC feels that experience should first be gathered of the implementation of the liberalisation measures which entered into force only on 15 March 2001 and which must be implemented in national law by 15 March 2003. The proposals put forward by the Commission in the Directive on safety on the Community's railways (COM(2002) 21 final) will in particular require the reorganisation of powers and responsibilities in a number of areas, and a number of new authorities and competent bodies will have to be established without delay and made operational.

2.11 The conditions for a liberalised internal rail transport market quoted in the Commission's communication will need to be created: a fair system of charging all modes of transport for the use of infrastructure, the development of the trans-European transport network, with the emphasis on railways, the removal of the bottlenecks in the European rail network and the completion of the legal framework. The infrastructure package contained some far-reaching decisions to which the railway undertakings and railway workers first need to adapt.

3. Comments on the individual legislative texts

3.1 Market access – amendment of Directive 91/440/EEC (COM(2002) 25 final)

3.1.1 The proposed new amendment of Directive 91/440/EEC is aimed above all at accelerating the liberalisation process in the international rail freight sector.

3.1.2 The first railway package (infrastructure) and the second package together require the establishment in many Member States of a number of authorities, competent bodies and new areas of responsibility (see Article 20(1) of the proposal for a safety directive):

– regulatory body (Directive 2001/14/EC)
– charging body (Directive 2001/14/EC)
– allocation body (Directive 2001/14/EC)
– notified body (Directive 96/48/EC and Directive 2001/16/EC)
– safety authority (proposal for a Safety Directive)
– accident investigation body (proposal for a Safety Directive)

as well as the European Railway Agency (proposal for a regulation).

3.1.3 The railway sector is to be reorganised in the short term. People working in the industry know that the establishment of new bodies, the adoption of new legislation and its implementation and supervision will take a number of years, particularly if the aim is complete restructuring of the sector. In an extremely safety-sensitive system such as rail transport, with millions of passengers and large quantities of goods being transported daily, this is, in the absence of a proactive policy for the railways and investment in them an immense undertaking, and there are likely to be considerable practical difficulties.

3.1.4 Particular attention will need to be paid to safety requirements.

3.1.5 With the exception of Article 1(2), which proposes that Article 7(2), as it appears in Directive 2001/12/EC, be dropped, all the other changes relate to abandonment of the **principle of gradual market opening for international goods transport on the European railway network**.

3.1.6 Under the gradual approach, market opening for international rail freight is required from 15 March 2003 in respect of the trans-European rail freight network (TERFN), as defined in the annex to the directive, and from 15 March 2008 in respect of the whole European rail network.

3.1.7 The new Commission proposals would mean **bringing forward market opening for international goods transport on the whole European rail network by one or two years**, depending on the length of the legislative procedure. The Commission proposals also provide for the introduction of "cabotage": occasional domestic transport services combined with cross-border services.

3.1.8 The Commission proposes that, from the date of implementation of the proposal for a directive in national law, **all** railway undertakings based and authorised in the European Union should have **access to the railway network for domestic and cross-border rail freight services in all Member States**.

3.1.9 Article 7(1) of Directive 91/440/EEC, as amended by Directive 2001/12/EC, requires the Member States to lay down safety standards and rules and to ensure that their application is monitored. These provisions are fleshed out in the Commission's proposal for a Directive on railway safety (COM(2002) 21 final). In the interests of legal consistency this article should be dropped from the Directive on market access. This change alone will not, however, necessarily require amendment of Directive 91/440/EEC or Directive 2001/21/EC. Rather, it can be done via the safety directive itself. This procedure is already used in relation to Article 27 of the draft safety directive, which proposes the amendment of Directive 95/18/EC[8].

3.1.10 In general terms, the EESC points out that in view of:

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8 OJ L 143, 27.6.1995, p. 70, ESC Opinion, OJ C 393, 31.12.1994, p. 56

– the requirements for restructuring of the national railway systems arising from the measures adopted in the framework of the railway infrastructure package,
– the delay in adopting and implementing the provisions for the harmonisation of safety rules, and
– the lack of harmonisation of social conditions for cross-border railway workers,

it would be **premature** to accelerate the opening-up of the market **at this point, without the effects of the measures already adopted being known**.

3.2 Amendment of Directives 96/48/EC and 2001/16/EC on the interoperability of the trans-European rail system (COM(2002) 22 final)

3.2.1 The proposed amendments to the two interoperability directives are a further development, an adaptation to the experience gathered and an approximation of the two directives, taking into account staff qualifications and worker health and safety, including consultation of the social partners in the Sectoral Dialogue Committee established by Commission Decision 98/500/EC[9]. The scope of the directive is also extended to cover the **whole** conventional rail network. The drawing-up of technical specifications for interoperability (TSIs) is also entrusted to the new European Railway Agency.

3.2.2 The EESC welcomes these adjustments in principle, whilst making comments on a number of individual articles, as the interlinking and interoperability of the European rail network will provide easier access to this transport system and improve traffic flow. It calls, however, for transparency and openness with regard to the future role of the AEIF[10], which at present acts as the joint representative body made up of representatives of UIC, UNIFE and IUPT[11]. This question also arises in relation to the new European Railway Agency, which will be a public body with a public-sector remit.

3.2.3 The EESC would like to point out that the achievement of interoperability is a long and costly process. The necessary financial resources will have to be made available. The Commission and the Member States have a particular responsibility here, as the achievement of the objectives of European rail policy depends to a great extent on the progress made on interoperability and the elimination of bottlenecks in the European rail network.

3.2.4 It should also be borne in mind that the requirements for interoperability of the high-speed network on the one hand and the conventional rail network on the other differ significantly. The multiple use of infrastructure by passenger and goods trains, i.e. trains of differing speed, composition

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9 OJ L 255, 12.8.1998, p. 27

10 AEIF: European Association for Railway Interoperability

11 UIC: International Union of Railways
UNIFE: Union of European Railway Industries
IUPT: International Union of Public Transport

and tonnage, is a feature of the conventional rail network. Moreover, the transport of dangerous goods takes place exclusively on the conventional rail network.

3.2.5 **Amendment of Directive 96/48/EC**

3.2.5.1 **Article 1(1) (Amendment of Article 1)**

The scope of the directive is extended to cover the maintenance of components of the high-speed network. This ought logically also to apply to staff qualifications and health and safety requirements. A reference to maintenance staff should therefore be added to Article 1.

3.2.5.2 **Article 1(3)(a) (Amendment of Article 5(1))**

It is not clear what is meant by technical specifications for the carriage of high value-added goods or applications necessary in order to interconnect the high-speed rail system with airports. Clarification is needed.

3.2.5.3 **Article 1(3)(b) (New Article 5(3)(h))**

Failure to take account of qualifications and workplace health and safety was a shortcoming of Directive 96/48/EC. This urgently needs to be remedied. The TSIs already adopted under the directive should be revised/amplified in order to take account of these factors.

3.2.5.4 **Article 1(4) (Amendment of Article 6(7))**

The EESC welcomes consultation of the social partners on staff-related issues. This consultation should not, however, take place only at the end of the process of drawing up the relevant TSIs. The drawing up of qualification, health and safety standards at European level is a considerable task involving not only technical expertise but also expert knowledge of railway staff and employment. The European social partners should therefore be involved throughout the process through the Sectoral Dialogue Committee.

3.2.5.5 **Article 1(8) (Amendment of Article 14(3))**

It needs to be made clear here when this requirement applies to the infrastructure manager and when its applies to the railway undertaking. It should also be made clear which state body is responsible.

3.2.5.6 **Article 1(16) (Insertion of new Article 22(a)(1))**

In relation to the register of infrastructure, it should be made clear whether what is required is a classification of the infrastructure or rather a list of all the technical details of the infrastructure.

3.2.6 **Amendment of Directive 2001/16/EC**

3.2.6.1 **Article 2(2) (Insertion of new Article 1(3))**

This paragraph should be expanded to state that from 1 January 2008 an inventory of the relevant conventional rail infrastructure will be drawn up and published.

3.2.6.2 **Article 2(5) (Article 6(9))**

The social partners should not be consulted only after submission of a completed draft TSI, but rather they should be involved throughout the process of drawing up the TSI.

3.3 **Proposal for a Directive on safety on the Community's railways (COM(2002) 21 final)**

3.3.1 The EESC wholeheartedly welcomes the safety directive submitted by the Commission. It is one of the preconditions for ensuring the highest possible level of safety of rail transport in a European internal market. On reading the Commission draft three main points arise:

a) The proposed provisions rest to a large extent on measures which are initially to be implemented in the Member States. Only in the second phase (the Commission proposes a period of five years after the entry into force of the directive) are European harmonisation of safety targets and procedures or a European safety licence to be envisaged. Even then some areas (staff (Article 12(1) and (2), aspects of safety certification (Article 10(2)(a) and (3)) will straight away be dealt with by means of mutual recognition. This raises the possibility of gaps and inconsistencies in the European approach to safety.

b) The Commission itself quotes statements by safety experts that a sharper separation between rolling stock and rail infrastructure and in the organisational and regulatory superstructure will bring with it greater risks, necessitating clear cooperation between all players. It should not be forgotten that the European legislation calls existing operational practices into question, thus placing on the European legislative authorities a heavy responsibility for the careful shaping of the safety framework.

However, the Commission also points out that experience in Member States which have completely separated infrastructure management and traffic management shows that this division of operational responsibility can indeed be implemented without endangering the system's safety.

c) The importance of staff and staff qualifications and other skills in relation to safety is referred to at several points in the safety directive, as well as in the interoperability directives and the European Railway Agency regulation. And yet the worker representatives at national and European level are assigned a secondary role. The safety directive does not even mention the European social partners. Provision is made for late-stage consultation in the interoperability directive and the European Railway Agency regulation. This is far from sufficient.

3.3.2 The provisions of the safety directive need to be carefully and regularly reviewed.

3.3.3 The EESC would make the following specific comments and recommendations in relation to the proposal for a safety directive:

3.3.3.1 **The European Community should set its own target for the level of railway safety in the European internal market**. The proposal for a directive should begin with a chapter entitled Objectives, stating that the aim should be the highest possible level of safety.

3.3.3.2 **Article 3(c) Railway undertakings**

The definition of "railway undertaking" should be identical with the definition in Directive 91/440/EEC, as it appears in Article 1(4) of Directive 2001/12/EC of 15 March 2001. This is necessary in the interests of legal certainty. If the provisions of the safety directive are intended to be applied to undertakings which have no licence, this should be made clear in a separate paragraph.

3.3.3.3 **Article 3(k) Serious accident**

There should be a definition of near-misses here, as referred to in Annex I. This is important for accident prevention.

3.3.3.4 **Article 4(1) Development and improvement of railway safety**

Here too the goal of the highest possible level of safety should be set for the Member States. The general goal should be the prevention of all accidents. The Commission proposal on the other hand makes the prevention of serious accidents the priority. It is important that these high requirements should be made a general objective, as Article 5 on common safety targets (CST) and common safety methods (CSM) provides for the drawing-up of harmonised **minimum** levels of safety on the basis of risk acceptance criteria and in accordance with cost-benefit considerations. In an internal market with fifteen and more different levels of national risk acceptance there is a danger of lowest-common-denominator harmonisation.

3.3.3.5 **Article 4(2), second paragraph**

Infrastructure managers and railway undertakings are not only responsible for the safety of users, customers and third parties, but also for that of their own staff. A reference to staff should be added. Account is correctly taken of staff in Article 5(3)(a).

3.3.3.6 **Article 5 Common safety targets, common safety methods**

A theoretical approach is set out here which leaves many questions unanswered. The common safety targets and methods should, however, be the cornerstone of a harmonised safety

system. The details are left entirely up to the Member States, and an attempt is to be made within five years to introduce European harmonisation.

The EESC has doubts about the scope allowed for cost-benefit analyses in the formulation of safety targets, as well as about the risk acceptance provision. European dialogue between the social partners is particularly necessary in relation to the risk acceptance issue and the methods and content of cost-benefit analyses. It seems inappropriate first to call on the Member States to introduce national systems and only then to introduce European harmonisation.

3.3.3.7 **Article 9 (1) and (3) Safety management**

Railway undertakings and infrastructure managers are to establish safety management systems on their own, individual responsibility. It is not clear, however, how safety management and emergency measures are to be coordinated, particularly in the case of cross-border trains, even if the infrastructure manager is declared responsible for coordination with the other railway undertakings. This is everyday practice in an integrated railway undertaking.

3.3.3.8 **Article 10 Safety certificates**

Article 10(3): Making safety certificates valid throughout the Community raises doubts in relation to safety management as long as no system of common safety management has been established. The elements of the safety management system listed in Annex III are very general and provide no guarantee of compatibility with a different network.

Article 10(5): The possibility of the safety certificate being revoked is rightly mentioned. The directive contains no list of criteria for revocation, however. Non-compliance with conditions could be interpreted in very different ways in different Member States. And particularly where there is free access to infrastructure in cross-border traffic, this would lead to distortions of competition.

Article 10(6): The Agency should also be informed of the issue of safety certificates under Article 10(2)(b) and it should maintain an appropriate register.

3.3.3.9 **Article 11 Application requirements**

In Article 11(2) the clause "in order to facilitate the establishment of new railway undertakings and the submission of applications from railway undertakings from other Member States" should be deleted. This is a general objective of Community rail policy. The safety directive should provide assistance **to all** in obtaining safety certificates.

3.3.3.10 **Article 12 Training and certification of train staff**

Article 12(1) deals with the recognition of train drivers and staff accompanying the trains in another Member State. As in relation to Article 10, the principle applies here too that

recognition should take place only when harmonised European rules have been established for these staff members who are important from a safety aspect.

The interoperability directives require rules to be laid down on vocational qualification in the process of drawing up TSIs. In Article 12(1) recognition should be made dependent on the adoption and implementation of the relevant provisions in the interests of consistency.

A reference to technical knowledge should be included in the second paragraph of Article 12(2).

In Article 12(3) the concept of a "reasonable and non-discriminatory price" should make allowance for costs incurred by the railway undertaking in establishing and maintaining in-house training facilities.

3.3.3.11 **Article 19 Status of investigation**

Article 19(2)(e) and (f) allows investigators, when conducting inquiries into accidents and incidents, to question railway staff involved and to have access to the results of interviews. Here it must be ensured that staff members questioned have the right to support from their trade union representatives, and that these representatives are present in every case. Affected staff members must have the right to decline to participate in initial inquiries at the site of the accident.

A new Article 19(2)(h) should be added making provision for the psychological counselling of staff involved in serious accidents or attacks.

3.3.3.12 **Article 21 Accomplishment of investigations**

Article 21(3) requires investigations to be open and for the results to be shared. The union representatives of the affected staff should always be involved.

Moreover, in the event of an accident or incident occurring in a country other than the country of residence of the staff of the affected train, trade union representatives should be informed and involved in the country in which the accident occurred and at the undertaking employing the staff members concerned.

3.3.3.13 **Annex I Common safety indicators**

Verbal and physical attacks on train drivers can pose a serious safety risk and should be taken into consideration in drawing up indicators, e.g. under the second point, dealing with incidents.

3.3.3.14 **Annex III Safety management systems**

The holding of a social dialogue at the undertaking must be part of the safety management systems, in relation to the risk of both operational and workplace accidents.

3.4 **Regulation establishing a European Railway Agency (COM(2002) 23 final)**

3.4.1 The EESC welcomes the establishment of a European Railway Agency as an instrument for technical support for improving interoperability and as a contribution to ensuring a high level of safety in the European rail transport sector. This is a logical consequence of the increased importance of the European level in guaranteeing the highest possible level of transport safety, which was also recognised with the proposals for a safety agency in the maritime shipping and civil aviation sectors.

3.4.2 **Article 2 Type of acts of the Agency**

The powers of the Agency are restricted to recommendations and opinions addressed to the Commission. The EESC feels that the establishment of the Railway Agency should not give rise to new bureaucracy which would merely place new obstacles in the path of the sector, and that at this time the Agency should not be assigned decision-making or regulatory powers.

3.4.3 **Article 3 Participation of professionals from the sector**

This article governs the participation of the sector in relation to the membership of working parties on the basis of the work programme of the European Railway Agency. The EESC welcomes this involvement. It is essential that the expertise of sector professionals be exploited with a view to drawing up well founded opinions and recommendations.

The EESC feels that the social partners are part of the rail sector and should have the same opportunities for participation as other players. This should be made clear in Article 3, particularly in view of the specific reference to the AEIF, which is made up of UIC, UNIFE and IUPT and has only technical competence.

3.4.4 **Article 4 Consultation of the social partners**

Provision is made for consultation of the social partners only **after** the Agency has drawn up its recommendations, i.e. with no provision for their participation, for example, in the working parties. The activity of the Agency (particularly in implementation of Articles 16 and 17 and of numerous provisions of the safety and interoperability directives) will have a significant impact on the social environment and working conditions of railway employees. The social partners should, therefore, be more closely involved and at a much earlier stage.

It should be made clear that safety concerns not only the technical and organisational side but also the working environment.

The end of the first paragraph of the Article should be amended to read "… the social partners in the Sectoral Dialogue Committee established by Commission Decision 98/500/EC[12]".

3.4.5 **Article 7 Safety certificates**

Harmonisation of safety certificates for certain kinds of transport is a goal worth striving for in the long term. However, before the Agency can be instructed to draft a harmonised format for safety certificates, the provisions of the safety directive must first be adopted and implemented in practice and in national law. This is also stated in the safety directive.

An assessment should first be carried out involving all the players in the sector including the social partners. This requirement should be incorporated into the text of the regulation.

3.4.6 **Article 13 Inspection**

It is not clear from the text what consequences will follow for the Commission from the inspections and checks carried out by the notified bodies or from the Agency's opinions. Is the Agency to perform the function of a supervisory authority?

3.4.7 **Article 17 Vocational qualifications**

In drawing up the requirements for the qualifications of train drivers, physical and psychological fitness are also highly relevant, as is the frequency with which certificates are required to be renewed. Account should also be taken of the additional staff qualifications needed for cross-border services and activities for which the railway undertaking requires separate safety certificates.

It should also be borne in mind that it is not only train drivers who are relevant to the safety of rail transport. A number of other functions are also directly concerned with rail transport safety, such as train crew, movements inspectors, train composition planners, carriage and wagon examiners, maintenance workers etc.

The EESC welcomes the exchange of train drivers and training staff between railway undertakings in different Member States.

3.4.8 **Article 24 Staff**

The EESC is glad that the Agency is to be staffed by railway professionals. The "professionals from the sector" (Article 24(3), first indent of the proposal for a regulation) should

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12 OJ L 255, 12.8.1998, p. 27

include persons with proven qualifications in the safety and health of workers at work[13] and in vocational training in the railway sector.

3.5 **Negotiating mandate for Community accession to the COTIF (COM(2002) 24 final)**

3.5.1 The EESC supports the accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.

3.5.2 The Committee has no comments on the provisions contained in the annex to the Recommendation for a Council Decision.

4. **Final comments**

4.1 The EESC supports the Commission in its efforts to maintain and further strengthen the high level of safety of the European railways, press ahead with interoperability, eliminate the shortcomings in the trans-European rail network and guarantee all railway undertakings authorised for the transport of goods free and non-discriminatory access to the entire European rail network.

Ultimately, the aim is to create the main conditions for the further development of continuous, cross-border transport of goods on the European rail network. The revitalisation of Europe's railways is all the more urgent, given that it will not be possible for the road haulage sector alone to absorb the generally forecast increase of at least 40% in goods transport over the next ten years – and more than doubled volumes of cross-border goods transport.

4.2 The EESC also agrees with the Commission that the current situation in the transport sector is unsatisfactory, both for the majority of the population and for manufacturing industry, and that society is no longer willing to accept the social costs of road traffic, which are estimated at between 3.5 and 5% of the GNP of the individual Member States.

But as the transport sector is an important component of a country's overall economy, it needs to operate efficiently, reliably, safely, and in an environmentally friendly and energy-saving way, in order to ensure the balanced development of the other sectors of the economy, balanced land use and the harmonious development of society. The transport of goods and passengers by rail could offer a real alternative, if we succeed in revitalising Europe's railways and in harnessing the railways' specific characteristics such as safety, reliability and a high level of efficiency in high-volume, long-distance transport.

The key to this lies in the development of an efficient and demand-orientated infrastructure by government, in the improved competitiveness of rail transport vis-à-vis its competitors, and in a drastic improvement in the quality of services offered, e.g. with cross-border

13 Council Directive 89/391/EEC of 12 June 1989 – OJ L 183, 29.6.1989, p. 1

services from point A to point B being offered by a single railway undertaking, as well as in unrestricted cooperation between railway employees at stations and on board cross-border trains.

And the overriding concern in railway operation must continue to be safety!

4.3 In this spirit the EESC shares the concern of rail safety professionals and railway employees, as well as of many rail users, that forced liberalisation could lead to large-scale deregulation. The breaking-up of long-established national railway undertakings into small units, the outsourcing of major areas and routes and the withdrawal of government from necessary investment in rail infrastructure and rolling stock would run counter to the generally declared objective of revitalising Europe's railways, impede the development of uninterrupted cross-border rail services and destroy many established synergies between infrastructure and operation of services.

4.4 In the light of this and in accordance with the subsidiarity principle, it should continue to be left to the discretion of the Member States whether to go further than the accounting separation required between infrastructure and operation of services and the transfer of the main functions to an independent body, as provided for in Directive 91/440/EEC.

4.5 In general terms, railway workers and their trade unions must also be fully involved at an early stage in procedures to ensure operational safety and in any necessary restructuring of their railway undertakings, as these issues are closely bound up with the everyday working practices of these workers.

Railway users (and customers) should also be consulted on this process at an early stage.

4.6 In the event of an accident the prime concern must be to identify the causes with a view to preventing future tragedies, rather than to apportion blame.

4.7 The EESC will continue to advocate improved working conditions for professional road haulage drivers and mobile inland waterway workers – not only in the interests of general transport safety and the safety and health protection of the workers concerned, but also **in the interests of equal competition with other modes of transport**.

The EESC would also draw attention to the crucial importance of uniform and strict application of social legislation, and it calls for the Directive on the enforcement of driving and rest periods in road haulage (Directive 88/599) to be amended and strengthened accordingly.

In point 23 of the Presidency Conclusions the Barcelona European Council of 15-16 March 2002 stressed "the importance of safety in heavy goods traffic and the need to ensure **compliance with and the further development of the social provisions**" and requested the Council "to conclude its work on the relevant draft regulation before the end of 2002".

4.8 As long as these social distortions of competition persist and until fair prices are charged for the use of infrastructure for goods transport, the choice of mode of transport will continue to be made on the basis of the lowest cost of freight, which will inevitably work to the disadvantage of rail freight volumes and railway employment. In the period 1990-1999 alone half of all jobs at the EU's national railway undertakings were lost, the total falling from 1.3 million to 694,000.

The EESC can well understand railway workers' fears for their jobs and for the future of their companies. It therefore calls on the social partners of the rail sector to conduct an ongoing social dialogue in the Sectoral Dialogue Committee, at and with the help of the Commission, and to extend this to the individual Member States.

4.9 Against this background the EESC welcomes the announcement by the Commission that it will shortly be submitting a framework directive on fair pricing of infrastructure use in the transport sector. In contrast to other modes of transport, the inclusion of environmental costs is already required in relation to the **rail sector** by Directive 2001/14/EC. The EESC points out that there has still been no specific follow-up to the 1995 Green Paper or the 1998 White Paper, and that this is essential if there is to be a credible rail transport policy.

4.10 For this reason the EESC has long advocated **fair** competition between the various modes of transport and liberalisation (**but not uncontrolled** deregulation) of access to the European rail network, without however denying the advantages of suitable, voluntary and transparent cooperation between old-established and new railway undertakings.

4.11 Cooperation of this kind, as exemplified by the pan-European Belifret "freightway" (a continuous cross-border corridor established in November 1997 for the transport of goods by rail from Antwerp (Muizen) via Luxembourg, Metz and Lyons to southern Spain and Italy, with a one-stop shop with Luxembourg railways (CFL)), promotes the competitiveness of the participating railway undertakings and serves the interests of quality, reliability and safety in rail transport. The services offered are closely geared to the demands of industrial customers, freight forwarders and logistics companies.

4.12 The EESC considers improved quality and greater customer and rail network user-orientation to be essential preconditions for revitalising Europe's railways.

The keys to success are the establishment of fair conditions of competition and considerable strengthening of inter-modal transport in the framework of a comprehensive technological and organisational modernisation and innovation strategy. The GALILEO programme[14] could have a key role to play here in the future.

But first, the political will must be there, the necessary resources for investment must be available and the commitment and cooperation of railway workers, users and customers created.

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14 See also EESC Opinion, OJ C 311, 7.11.2001, p. 19.

4.13 For the EESC the revitalisation of the European railways, with a high degree of safety and reliability, remains an important precondition for the urgently needed restoration of the balance between the various modes of transport, and this is essential for a sustainable transport policy and the completion of the internal market.

Brussels, 19 September 2002

The President of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Göke Frerichs	**Patrick Venturini**

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N.B.: Appendix overleaf.

APPENDIX
to the Opinion
of the Economic and Social Committee
(in accordance with Rule 54 of the Rules of Procedure)

The following amendment, which received at least a quarter of the votes cast, was defeated in the course of the discussion of the text of the opinion:

Point 3.1.10 Amend to read as follows:

> *"The EESC welcomes the Commission proposal to accelerate the opening-up of rail freight markets. The timescales appear to be well balanced, between two requirements: (a) to bring about, as soon as possible, a revitalising liberalisation before too many large parts of the railway system are excluded through insufficient competitive capacity, and (b) to set up the new, integrated system for safety and interoperability which is needed. The Committee wishes to stress in particular how important it is for the Member States to devote the maximum effort to implementing the measures required for safety harmonisation."*

Reason

Self-evident.

Result of the voting:

For:	42
Against:	73
Abstentions:	18.