

Railway transport: certification of train crews and drivers. 3rd package

2004/0048(COD) - 22/02/2007 - Commission opinion on Parliament's position at 2nd reading

Firstly, the Commission fully accepted amendments which made reference to the right to appeal and giving details regarding the possibility for the competent authority to delegate tasks.

The Commission accepted the following European Parliament amendments in part:

- the agreement on work/rest times: this is not relevant in this instance and reference to it is therefore inappropriate. Checks by employers are already provided for in the common position;

- the certification of crew members directly performing train and passenger safety-related tasks: the Commission supports this requirement which reverts to the scope of its original proposal, which was aimed not only at drivers but also at the train crew performing security-related tasks. However it must be re-worded. In order to immediately specify the scope, a description of the security-related duties of the crew concerned should be annexed to the Directive and paragraph 6 should be amended accordingly.

In August 2000 the CER, the association which represents a large number of railway undertakings and infrastructure managers in the Community, drew up and published a report on the responsibilities of personnel carrying out interoperability services. The report was timed to coincide with the opening up of the market.

On the basis of this report, the Commission proposes identifying the crew members covered by the Directive by specifying their duties, as set out below: checking the effectiveness of the brakes; opening and closing the doors; being involved in train departure procedures; responding to alarm signals; participating in manoeuvres; checking for faults and taking steps in the event of a fault while the train is moving; helping the driver in certain circumstances.

An amendment provides that, in order to amend the annexes to the Directive, the Agency and the social partners must be systematically involved. However, the reference to the Agency Regulation is not relevant. It is necessary to differentiate between the Technical Specifications for Interoperability (TSI) developed by the Agency in accordance with the directives on rail interoperability (Directives 96/48/EC and 2001/16/EC) and annexes to a directive which are subject to the co-decision procedure or, by delegation of powers, to the Committee procedure, but at the Commission's initiative. As a result, this amendment should be re-worded to state that social partners must be properly consulted about requirements which have an impact on working conditions and the health and safety of workers.

The amendment concerning medical examinations is acceptable provided that the expressions "occupational physician" and "accredited physician" are amended.

The Commission **rejected** the following amendments:

- "**Mutual recognition**": the use of this term is not acceptable as the licence is issued on the basis of harmonised criteria. The concept of "validity throughout the territory of the European Union" used in the common position is more appropriate.

- **Driver falling ill**: it would not be practicable to involve the competent authority each time a driver falls ill. Furthermore, it is the railway undertaking or the infrastructure manager which is responsible for rail

safety when a driver works on its behalf, and it is therefore they and not the "employer" which must take the necessary steps in the event of risk.

- **Voluntary leave:** if a driver voluntarily leaves the railway undertaking which trained him, the railway undertaking which recruits that driver be obliged to refund the original railway undertaking the pro rata cost of the training received by the driver on the basis of harmonised criteria which should be established on the basis of a Recommendation drawn up by the Agency.

Despite the fact that in principle the proposal appears to protect the investment made by an employer for training a driver, this amendment is not acceptable for several reasons:

- there are no equivalent clauses in other modes of transport, in particular in the aviation sector in which training is also very expensive;
- a clause of this kind concerns labour law and hence does not seem particularly relevant in this directive;
- the reasons why a driver leaves an employer may be many and varied; if a driver leaves as a result of the employer's fault, this type of reimbursement would not be justified.

However, the Commission could accept a provision under which the matter is resolved on the basis of national or private law.

- **Date of transposition:** the date for transposition proposed by the Parliament (31 December 2007) is unrealistic. A conciliation would appear necessary, and the legislative process should end in autumn 2007. This would not leave the time needed for the Member States to transpose the Directive by the date proposed.

- **Adding the date of the driver's last medical examination to his complementary certificate:** this is not acceptable as it would represent a non-negligible additional cost for railway undertakings /infrastructure managers and would provide no additional guarantee in terms of rail safety.