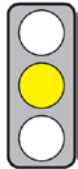


KEY ISSUES

Objective of the Regulation: The granting of safety certifications and authorisations for rail vehicles are to be made on EU level to facilitate market entry and to reduce the cost and duration of the granting process.

Parties affected: Railway undertakings, rail vehicle manufacturers, railway authorities.



Pros: The Granting safety certifications and authorisations on EU-level strengthens the internal market and competition.

Cons: National railway authorities should participate in the authorisation process with their role being clearly defined.

CONTENT

Title

Proposal COM(2013) 27 of 30 January 2013 for a **Regulation** of the European Parliament and of the Council on the **European Union Agency for Railways** and repealing Regulation (EC) No. 881/2004

Proposal COM(2013) 30 of 30 January 2013 for a **Directive** of the European Parliament and of the Council on the **interoperability of the rail system** within the European Union (Recast)

Proposal COM(2013) 31 of 30 January 2013 for a **Directive** of the European Parliament and of the Council on **railway safety** (Recast)

Brief Summary

► Background

- EU railway law consists of several legislative acts which have been issued in a number of “packages” and which, to a certain extent, build upon one another (see [cepBackground](#))
- The 4th Railway Package is intended to increase the quality and efficiency of rail services and further develop the Single European Railway Area. It contains a total of six legislative proposals.
- Railway undertakings need to obtain a safety certificate (“certificate”) to be allowed to use railway infrastructure. The process is long and costly, with cost up to 70,000 Euro [SWD(2013) 8, p. 9 et seq.].
- Railway vehicles need to obtain an authorisation for their use. The authorisation process takes up to 2 years and costs a maximum of 2 million Euro per locomotive type [SWD(2013) 8, p. 9 et seq.].
- Certification and authorisation processes are long and costly, since
 - they are fragmented between the European Railway Agency (ERA) and national agencies and because among EU regulation 11,000 national rules exist,
 - many national railway authorities are under-staffed and
 - mutual recognition of certifications and authorisations is not ensured.

► Objectives

- By 2015, the Commission intends to reduce by 25%,
 - the duration of the certification process for new railway undertakings,
 - the duration and cost of the authorisation process for railway vehicles.
- For this purpose
 - national rules should be reduced or made more coherent,
 - an EU-wide uniform single certification should be introduced,
 - the ERA should hold more power.
- The Commission proposes
 - to replace the ERA-Regulation [(EC) No. 881/2004] with a new Regulation [COM(2013) 27],
 - to recast [COM(2013) 30] the Directive on interoperability (2008/57/EC) and
 - to recast [COM(2013) 31] the Directive on railway safety (2004/49/EC).

► Definitions

- “Rail systems” include rail networks and vehicles [COM(2013) 30, amended Art. 2 (1) in conjunction with amended Annex I].
- “Interoperability” means the ability of a rail system to allow the safe and uninterrupted movement of trains [COM(2013) 30, amended Art. 2 (2)].

- “Interoperability constituents” means any component incorporated into a subsystem on which the interoperability of the rail system depends [COM(2013) 30, amended Art. 2 (6)].
- “Essential requirements” are all conditions that must be met by the rail system, the subsystems, and the interoperability constituents [COM(2013) 30, Art. 2 (7) in conjunction with Annex III].
- “Technical specifications for interoperability” (TSIs) are specifications on a subsystem that ensure the interoperability with the rail system [COM(2013) 30, amended Art. 2 (9)].
- “Common safety targets (CSTs)” are minimum levels of safety [COM(2013) 31, Art. 3 (e)].
- “Common safety methods (CSMs)” are the methods to comply with the CSTs [COM(2013) 31, amended Art. 3 (f)].

► **Scope**

The provisions for interoperability [COM(2013) 30, amended Art.1] and the safety requirements [COM(2013) 31, amended Art. 2]

- apply to railway undertakings, infrastructure managers and “other actors of the rail system”,
- do not apply to metros, trams, light rail systems and networks that are functionally separate from the rest of the railway system.

► **Technical specifications for interoperability (TSIs)**

- The Commission mandates the ERA to draft TSIs and their amendments and to make recommendations in this respect [COM(2013) 30, new Art. 5 (1)].
- The Commission adopts delegated acts which lay down TSIs that have been recommended by the ERA [COM(2013) 30, new Art. 5 (10)].

► **Common safety targets (CSTs) and common safety methods (CSMs)**

- The Commission mandates the ERA,
 - to draft CSTs and their amendments and to make recommendations in this respect [COM(2013) 31, new Art. 7 (2)] and
 - to draft CSMs and their amendments and to make recommendations in this respect [COM(2013) 31, new Art. 6 (2)].
- The Commission adopts delegated acts,
 - to lay down CSTs as recommended by the ERA [COM(2013) 31, new Art. 7 (4)] and
 - to lay down CSMs as recommended by the ERA [COM(2013) 31, new Art. 6 (4)].

► **National Rules**

- Member States may only lay down new national rules for a TSI and a CSM, if [COM(2013) 30, new Art. 14 (3); COM(2013) 31, new Art. 8 (1)]
 - a TSI does not fully meet the “essential requirements”,
 - rules for existing safety methods are not covered by a CSM, or
 - as an urgent preventive measure, in particular following an accident.
- New national rules shall be examined by the ERA [COM(2013) 27, Art.21 (1) in conjunction with COM(2013) 30, new Art. 14 and COM(2013) 31, new Art. 8].
- Should the ERA find that a new national rule leads to discrimination or a restriction on rail transport operations between Member States, the ERA is to make a recommendation to the concerned Member State [COM(2013) 27, Art. 21 (2) and (3)].
- If the Member State does not take action on the recommendation within 2 months, the Commission may demand the Member State to modify or suspend the rule [COM(2013) 27, Art. 21 (4)].

► **Safety certificate**

- Safety certificates are granted by the ERA [COM(2013) 31, Art. 10 (2)].
- The certificates should be granted on the basis of evidence that the railway undertaking has a safety management system and meets the requirements of the TSIs [COM(2013) 27, Art. 12 in conjunction with COM(2013) 31, new Art. 10 (2)].
- The safety certificate [COM(2013) 31, amended Art. 10 (3) and (5)],
 - specifies the type and extent of the railway operations,
 - is valid for five years and
 - is valid for equivalent operations throughout the EU.
- Three months before the start of operations of any new service, the railway undertaking shall submit further documentation for examination by the relevant national safety authority, e.g. documentation on the fulfilment of national rules, on the compliance of type and extent of its intended operation with the specification of its safety certificate and on the arrangements for cooperation and coordination with the infrastructure manager [COM(2013) 31, new Art. 10 (4)].
- If a national safety authority finds that the holder of a safety certificate no longer fulfils the conditions for the certification, it shall ask the ERA to revoke the certificate [COM(2013) 31, new Art. 10 (6)].

► **Authorisations for rail vehicles**

- Authorisations for making rail vehicles available for the first time (“placing on the market”) are issued by the ERA [COM(2013) 30, new Art. 2 (29), new Art. 20 (2) in conjunction with COM(2013) 27, Art. 16].

- The authorisation
 - provides information on the vehicle's compliance with relevant TSIs and with national rules [COM(2013) 30, Art. 20 (2)] and
 - is valid in all Member States [COM(2013) 30, Art. 20 (5)].
- Railway undertakings may only place a vehicle in service ("placing in service") after the technical compatibility between the vehicle and the route and the compliance with TSIs, CSMs and national rules has been examined in consultation with the infrastructure manager [COM(2013) 30, new Art. 21 in conjunction with amended Art. 2 (16)].

Main Changes to the Status Quo

- ▶ Previously, new and revised TSIs, CSTs and CSMs had to be adopted by a board of national representatives. The Commission can now adopt delegated acts on such itself.
- ▶ Previously, security certifications were granted by national railway agencies, now by the ERA.
- ▶ Previously, railway undertakings needed two-piece security certifications of which the first part was valid in all Member States, and the second to be granted by each Member State in which the undertaking intended to provide rail transport services. Now, railway undertakings only need one certification, uniform throughout the EU, besides submitting further documentation to national agencies for examination.
- ▶ Authorisations by national railway agencies for placing in service will be replaced through authorisations by the ERA for placing on the market and an assessment of the compatibility and the regularity of rail vehicles.

Statement on Subsidiarity by the Commission

According to the Commission, national regulations are an obstacle to the single European railway area. Measures are therefore necessary at EU level. [SWD(2013) 8, p. 3]

Policy Context

see [cepBackground](#)

Legislative Procedure

30 January 2013 Adoption by the Commission

Open Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and Transport
Committee of the European Parliament:	Transport and Tourism (leading), Rapporteur: COM(2013) 27: Roberts Zile (ECR-Group, LV) COM(2013) 30: Izaskun Bilbao Barandica (ALDE-Group, E) COM(2013) 31: Michael Cramer (Greens/EFA-Group, DE)
Leading German Federal Ministry:	Transport (leading)
Committee of the German Bundestag:	Transport (leading); Consumer Protection; EU Affairs; Tourism; Economy; Budget
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 91 TFEU (Transport)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Grants of safety certifications and authorisations for placing on the market made by the ERA and **thus on EU-level strengthen the internal market** by lowering administrative burden in cost **and** duration on railway vehicle manufacturers as on railway undertakings that offer cross-border transport services. Moreover, such measures will facilitate market entry to other Member States in particular for small-sized railway undertakings which strengthens **competition**.

In accordance with the recommendations of the impact assessment [SWD(2013) 8, p. 26], **national railway authorities should** not only be included in the process of certification, but **share competences with the ERA in granting authorisations with its role being clearly defined** by the Interoperability Directive. While the ERA should have all decision-making power as intended by the Commission, national railway authorities must be included in the authorisation process for its wider knowledge that is due to its experience and spatial proximity to resident undertakings. An inclusion may speed up procedures and may further lower administrative burdens since in practice, authorisations require on-site inspections and railway vehicle manufactures often make contact with national authorities early, keeping in touch throughout the development process.

The obligatory consultation with infrastructure managers on placing in service by railway undertakings could force small-sized undertakings to engage with its, most likely, greatest competitor, if the infrastructure manager belongs to an undertaking that also provides railway services. Railway undertakings should therefore be able to commission independent agencies (e.g. TÜV, DEKRA etc.) with the placing in service, which then have to cooperate with the infrastructure manager.

Impact on Efficiency and Individual Freedom of Choice

The empowerment of the Commission to amend a TSI, CST, or CSM by adoption of delegated acts without the consent of a board of national representatives lowers the cost of decision-making by omitting lengthy negotiations between Member States. However, there is the risk of failure to take account of special circumstances of Member States. Such will lead to lower quality and probability of acceptance of new technical provisions, which may discredit an harmonisation on EU-level.

Making the ERA examine new national rules with the possibility of objection hampers bureaucratic and protectionist regulations. In addition, transparency for railway undertakings and rail vehicle manufacturer will be increased, as national rules can be retrieved centrally.

The obligation of railway undertakings to submit further documentation for examination by national authorities, after it has been granted a safety certificate, associates with additional cost, but too numerous and different national rules make it necessary. This obligation should be dropped after all technical and safety provisions have been harmonised.

Impact on Growth and Employment

A faster and less expensive authorisation of rail vehicles has a rather positive effect on growth and employment in the rail vehicle industry.

Impact on Europe as Business Location

Negligible.

Legal Assessment

Competence

Unproblematic. For the purpose of pursuing a common transport policy the EU may especially adopt regulations on international transport, the conditions under which non-resident carriers may operate transport services within a Member State, measures to improve transport safety, as other „appropriate provisions“ (Art. 91 (1) TFEU). Furthermore, the EU may contribute to the establishment and development of a trans-European transport network (TEN-T; see [cepPolicyBrief](#); Art. 170 (1) TFEU), to complete the internal market and for the strengthening of its economic, social and territorial cohesion (Art. 174 TFEU). Thereby the EU may promote the interoperability of national transport networks as well as the access to such networks (Art. 170 (2) TFEU).

Subsidiarity

Unproblematic.

Compatibility with EU Law

That the Commission may adopt delegated acts on TSIs is cause for concern. Though TSIs are technical specifications for which delegated acts are appropriate, sufficient knowledge and experience of national authorities should adequately be taken into account.

Conclusion

Granting safety certifications and authorisations on EU-level strengthens the internal market and competition. National railway authorities should participate in the process of authorisation with their role being clearly defined.