

**EUROPEAN COMMISSION**

Cabinet of Vice President Antonio TAJANI

Head of Cabinet  
Antonio PRETO

02 07 2008

Brussels,  
JFC/aws D (2008) 622

Dear Sir,

First of all, let me thank you for consulting us on the technical solutions you are considering in view of increasing the maximum speed on a number of conventional lines in the Netherlands. Vice-President Tajani asked to me to reply to your letter.

Commission Decision 2006/679/EC<sup>1</sup> laying down the Technical Specification for Interoperability ("TSI") relating to the control-command and signalling subsystem of the trans-European conventional rail system provides that "Member States shall ensure that the functionality of the legacy Class B systems referred to in Annex B of the TSI as well as their interfaces are kept in terms of scope as currently specified". Therefore, modifying an existing system (such as adding a new code as foreseen in the ATB code 147 option), is a change of the functionality of the existing system and is therefore forbidden. Obviously, state aids cannot be granted to support a project which is illegal.

As regards the situation in Belgium, no formal notification has been sent to the Commission on the introduction of the TBL1+. The Commission services have been invited to a "consultation meeting" where they have raised their concerns about the compatibility with the EU legislation. The fact that the "modified" system would not be requested to access lines in Belgium does not exempt the Belgian authorities to comply with the Technical Specification for Interoperability.

The possible cases for derogations are laid down in article 7 of Directive 2001/16/EC of 19 March 2001 of the European Parliament and of the Council on the interoperability of the conventional rail system<sup>2</sup>.

Mr Peter KOK  
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of the Kingdom of The Netherlands to the  
European Union  
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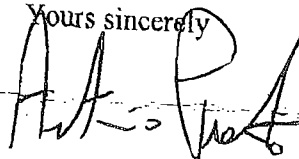
<sup>1</sup> OJ L 284, 16.10.2006, p. 1.

<sup>2</sup> OJ L 110, 20.4.2001, p. 1; Directive as amended by Directive 2004/50/EC (OJ L 164, 30.4.2004, p. 114).

The procedure for derogation according to article 7(d) foresees that the Member States submit a file explaining why the economic viability of the project would be compromised. Such a file should be assessed by the Commission. The Commission may then seek the opinion of the Railway Interoperability Committee.

The fact that adapting a national system would be a cheaper option in the short term, in particular for the trains already equipped with the national system, cannot be invoked as a reason to justify a derogation to the relevant legally applicable TSI of ERTMS on the basis of article 7(d).

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. A. P.' followed by a flourish.