

DIRECTIVES

DIRECTIVE 2008/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 December 2008****amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) With a view to pursuing the efforts to create a single market in rail transport services, the European Parliament and the Council have adopted Directive 2004/49/EC ⁽³⁾ establishing a common regulatory framework for railway safety.
- (2) Originally, authorisation procedures for placing in service railway vehicles were dealt with by Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system ⁽⁴⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽⁵⁾ for new or upgraded parts of the Community rail system, and Directive

2004/49/EC for vehicles already in use. In accordance with better regulation, and with a view to simplifying and modernising Community legislation, all provisions regarding authorisations for placing railway vehicles in service should be incorporated in a single legal text. Therefore, the current Article 14 of Directive 2004/49/EC should be deleted and a new provision regarding authorisation of placing in service vehicles already in use should be included in Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) ⁽⁶⁾, (hereinafter referred to as the 'Railway Interoperability Directive'), that has replaced Directives 96/48/EC and 2001/16/EC.

- (3) The entry into force of the 1999 Convention concerning International Carriage by Rail (COTIF) on 1 July 2006 brought in new rules governing contracts for the use of vehicles. According to the CUV (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic) appended thereto, wagon keepers are no longer obliged to register their wagons with a railway undertaking. The former 'Regolamento Internazionale Veicoli' (RIV) Agreement between railway undertakings has ceased to apply and was partially replaced by a new private and voluntary agreement (General Contract of Use for Wagons, GCU) between railway undertakings and wagon keepers whereby the latter are in charge of the maintenance of their wagons. In order to reflect these changes and to facilitate the implementation of Directive 2004/49/EC as far as safety certification of railway undertakings is concerned, the concept of the 'keeper' and the concept of 'entity in charge of maintenance' should be defined, as well as the specification of the relationship between these entities and railway undertakings.
- (4) The definition of the keeper should be as close as possible to the definition used in the 1999 COTIF Convention. Many entities can be identified as a keeper of a vehicle, for example, the owner, a company making business out of a fleet of wagons, a company leasing vehicles to a railway undertaking, a railway undertaking or an infrastructure manager using vehicles for maintaining its infrastructure. These entities have the control over the vehicle with a view to its use as a means of transport by the railway undertakings and the infrastructure managers. In order to avoid any doubt, the keeper should be clearly identified in the National Vehicle Register (NVR) provided for in Article 33 of the Railway Interoperability Directive.

⁽¹⁾ OJ C 256, 27.10.2007, p. 39.

⁽²⁾ Opinion of the European Parliament of 29 November 2007 (OJ C 297 E, 20.11.2008, p. 133), Council Common Position of 3 March 2008 (OJ C 122 E, 20.5.2008, p. 10) and Position of the European Parliament of 9 July 2008 (not yet published in the Official Journal). Council Decision of 1 December 2008.

⁽³⁾ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 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 (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44). Corrected by OJ L 220, 21.6.2004, p. 16.

⁽⁴⁾ OJ L 235, 17.9.1996, p. 6.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1.

⁽⁶⁾ OJ L 191, 18.7.2008, p. 1.

- (5) In order to ensure consistency with existing railway legislation and avoid undue burden, Member States should be allowed to exclude heritage, museum and tourist railways from the scope of this Directive.
- (6) Before a vehicle is placed in service or used on the network, an entity in charge of its maintenance should be identified in the NVR. A railway undertaking, an infrastructure manager or a keeper could be an entity in charge of maintenance.
- (7) Member States should be allowed to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures in the case of vehicles registered in a third country and maintained according to the law of that country, vehicles which are used on networks or lines the track gauge of which is different from that of the main rail network within the Community and for which the requirement to identify an entity in charge of maintenance is ensured alternatively by international agreements with third countries and vehicles used by heritage, museum and tourist railways or military equipment and special transport requiring an ad hoc national safety authority permit to be delivered prior to the service. In these situations the relevant Member State should be allowed to accept vehicles on the network for which it is competent without an entity in charge of maintenance being assigned to these vehicles or without such an entity being certified. However, such derogations should be subject to formal decisions of the relevant Member State and be analysed by the European Railway Agency (hereinafter referred to as the 'Agency') in the context of its report on safety performance.
- (8) When a railway undertaking or infrastructure manager uses a vehicle for which no entity in charge of maintenance is registered or for which the entity in charge of maintenance is not certified, it should control all risks associated with the use of such a vehicle. The capacity to control such risks should be demonstrated by the railway undertaking or the infrastructure manager through the certification of their safety management system and, where applicable, through their safety certification or authorisation.
- (9) For freight wagons, the entity in charge of maintenance should be certified according to a system to be developed by the Agency and to be adopted by the Commission. Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager, this certification should be included in the procedure for safety certification or authorisation. The certificate delivered to such an entity would guarantee that the maintenance requirements of this Directive are met for any freight wagon of which it is in charge. This certificate should be valid in the whole Community and should be delivered by a body able to audit the maintenance system set up by such entities. As freight wagons are frequently used in international traffic and as an entity in charge of maintenance may want to use workshops established in more than one Member State, the certification body should be able to perform its controls in the whole Community.
- (10) Maintenance requirements are being developed in the context of the Railway Interoperability Directive, in particular as part of the 'rolling stock' technical specifications for interoperability (TSIs). As a result of the entry into force of this Directive there is a need to ensure coherence between these TSIs and the certification requirements for the entity in charge of maintenance to be adopted by the Commission. The Commission will achieve this by modifying, where appropriate, the relevant TSIs using the procedure envisaged by the Railway Interoperability Directive.
- (11) Since the objective of this Directive, namely further developing and improving safety on the Community's railways, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (12) The measures necessary for the implementation of Directive 2004/49/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (13) In particular, the Commission should be empowered to revise and adapt the Annexes to Directive 2004/49/EC, to adopt and revise common safety methods and common safety targets, and also to establish a maintenance certification system. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (14) A Member State which has no railway system and which does not envisage having one in the near future, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such a Member State should be exempted, for as long as it has no railway system, from the obligation to transpose and implement this Directive.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (15) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.
- (16) Directive 2004/49/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2004/49/EC is hereby amended as follows:

1. the following points shall be added to Article 2(2):

- (d) heritage vehicles that run on national networks provided that they comply with national safety rules and regulations with a view to ensuring safe circulation of such vehicles;
- (e) heritage, museum and tourist railways that operate on their own network, including workshops, vehicles and staff.;

2. the following points shall be added to Article 3:

- (s) “keeper” means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) (*), (hereinafter referred to as the “Railway Interoperability Directive”);
- (t) “entity in charge of maintenance” means an entity in charge of maintenance of a vehicle, and registered as such in the NVR;
- (u) “vehicle” means a railway vehicle suitable for circulation on its own wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems or parts of such subsystems.

(*) OJ L 191, 18.7.2008, p. 1.;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

3. in Article 4(4) the term ‘wagon keeper’ shall be replaced by ‘keeper’;

4. Article 5(2) shall be replaced by the following:

‘2. Before 30 April 2009 Annex I shall be revised, in particular to incorporate therein the common definitions of the CSIs and the common methods for calculating accident costs. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

5. Article 6 shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

‘1. An initial series of CSMs covering, as a minimum, the methods described in paragraph 3(a) shall be adopted by the Commission before 30 April 2008. They shall be published in the *Official Journal of the European Union*.

A second series of CSMs covering the remaining methods described in paragraph 3 shall be adopted by the Commission before 30 April 2010. They shall be published in the *Official Journal of the European Union*.

These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

- (b) point (c) of paragraph 3 shall be replaced by the following:

‘(c) as far as they are not yet covered by TSIs, methods to check that the structural subsystems of the railway system are operated and maintained in accordance with the relevant essential requirements.’;

- (c) paragraph 4 shall be replaced by the following:

‘4. The CSMs shall be revised at regular intervals, taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States as laid down in Article 4(1). This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

6. Article 7 shall be amended as follows:

- (a) the first and second subparagraphs of paragraph 3 shall be replaced by the following:

'3. The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. It shall be adopted by the Commission before 30 April 2009 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

The second set of draft CSTs shall be based on the experience gained from the first set of CSTs and their implementation. It shall reflect any priority areas where safety needs to be further improved. It shall be adopted by the Commission before 30 April 2011 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

- (b) paragraph 5 shall be replaced by the following:

'5. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. This measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

7. Article 10 shall be amended as follows:

- (a) the second subparagraph of paragraph 1 shall be replaced by the following:

'The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet requirements laid down in TSIs and other relevant Community legislation and in national safety rules in order to control risks and provide transport services safely on the network.';

- (b) point (b) of paragraph 2 shall be replaced by the following:

'(b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe supply of its services on the relevant network. These requirements may concern the application of the TSIs and national safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate vehicles used by railway undertakings. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.';

8. the following Article shall be inserted:

'Article 14a

Maintenance of vehicles

1. Each vehicle, before it is placed in service or used on the network, shall have an entity in charge of maintenance assigned to it and this entity shall be registered in the NVR in accordance with Article 33 of the Railway Interoperability Directive.

2. A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance.

3. Without prejudice to the responsibility of the railway undertakings and infrastructure managers for the safe operation of a train as provided for in Article 4, the entity shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. To this end, the entity in charge of maintenance shall ensure that vehicles are maintained in accordance with:

(a) the maintenance file of each vehicle;

(b) the requirements in force including maintenance rules and TSI provisions.

The entity in charge of maintenance shall carry out the maintenance itself or make use of contracted maintenance workshops.

4. In the case of freight wagons, each entity in charge of maintenance shall be certified by a body accredited or recognised in accordance with paragraph 5, or by a national safety authority. The accreditation process shall be based on criteria of independence, competence and impartiality, such as the relevant EN 45 000 series European standards. The recognition process shall also be based on criteria of independence, competence and impartiality.

Where the entity in charge of maintenance is a railway undertaking or an infrastructure manager, compliance with the requirements to be adopted under paragraph 5 shall be checked by the relevant national safety authority pursuant to the procedures referred to in Articles 10 or 11 and shall be confirmed on the certificates specified in those procedures.

5. Based on a recommendation by the Agency, the Commission shall, by 24 December 2010, adopt a measure establishing a system of certification of the entity in charge of maintenance for freight wagons. Certificates granted in accordance with this system shall confirm compliance with the requirements referred to in paragraph 3.

The measure shall include the requirements concerning:

- (a) the maintenance system established by the entity;
- (b) the format and validity of the certificate granted to the entity;
- (c) the criteria for accreditation or recognition of body or bodies responsible for issuing certificates and ensuring controls necessary for the functioning of the certification system;
- (d) the date of application of the certification system, including a transition period of one year for existing entities in charge of maintenance.

This measure, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

Based on a recommendation by the Agency, the Commission shall, by 24 December 2018 review this measure in order to include all vehicles and to update, if necessary, the certification system applicable to freight wagons.

6. The certificates granted in accordance with paragraph 5 shall be valid throughout the Community.

7. The Agency shall evaluate the certification process implemented in accordance with paragraph 5 by submitting a report to the Commission, no later than three years after the entry into force of the relevant measure.

8. Member States may decide to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures, in the following cases:

- (a) vehicles registered in a third country and maintained according to the law of that country;
- (b) vehicles which are used on networks or lines the track gauge of which is different from that of the main rail network within the Community and for which fulfilment of the requirements referred to in paragraph 3 are ensured by international agreements with third countries;
- (c) vehicles identified in Article 2(2), and military equipment and special transport requiring an ad hoc national safety authority permit to be delivered prior to the service. In this case derogations shall be granted for periods not longer than five years.

Such alternative measures shall be implemented through derogations to be granted by the relevant national safety authority:

- (a) when registering vehicles pursuant to Article 33 of the Railway Interoperability Directive, as far as the identification of the entity in charge of maintenance is concerned;
- (b) when delivering safety certificates and authorisations to railway undertakings and infrastructure managers pursuant to Articles 10 and 11 of this Directive, as far as the identification or certification of the entity in charge of maintenance is concerned.

Such derogations shall be identified and justified in the annual safety report referred to in Article 18 of this Directive. Where it appears that undue safety risks are being taken on the Community rail system, the Agency shall immediately inform the Commission thereof. The Commission shall make contact with the parties involved and, where appropriate, request the Member State to withdraw its derogation decision.;

9. Article 16(2) shall be amended as follows:

(a) point (a) shall be replaced by the following:

- ‘(a) authorising the placing in service of the structural subsystems constituting the rail system in accordance with Article 15 of the Railway Interoperability Directive and checking that they are operated and maintained in accordance with the relevant essential requirements;’;

(b) point (b) shall be deleted;

(c) point (g) shall be replaced by the following:

'(g) supervising that vehicles are duly registered in the NVR and that safety related information contained therein, is accurate and kept up to date;'

10. the following point shall be added to Article 18:

'(e) the derogations that have been decided in accordance with Article 14a(8).';

11. Article 26 shall be replaced by the following:

'Article 26

Adaptation of the Annexes

The Annexes shall be adapted to scientific and technical progress. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).';

12. Article 27 shall be amended as follows:

(a) the following paragraph shall be inserted:

'2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof;'

(b) paragraph 4 shall be deleted;

13. point 3 of Annex II shall be deleted.

Article 2

Implementation and transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2010. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

The obligations for transposition and implementation of this Directive shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their respective territories.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 December 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

B. LE MAIRE