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2013/0016 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on railway safety**

**(Recast)**

(Text with EEA relevance)

{COM(2013) 27}

{COM(2013) 30}

{SWD(2013) 8}

{SWD(2013) 9}

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Recent EU policy developments in the railway field**

In its White Paper ‘Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system’, adopted on 28 March 2011, the Commission announced its vision to establish a Single European Railway Area and clarified that this objective implies creating the internal railway market where European railway undertakings can provide services without unnecessary technical and administrative barriers.

Additionally, the European Council conclusions of January 2012 highlight the importance of releasing the growth-creating potential of a fully integrated Single Market, including as regards network industries<sup>1</sup>. Furthermore, the Commission Communication on Action for Stability, Growth and Jobs adopted on 30 May 2012<sup>2</sup> stresses the importance of reducing further the regulatory burden and barriers to entry in the rail sector, making therefore country specific recommendations in that direction. In the same vein, the Commission adopted on 6 June 2012 the Communication on strengthening the governance of the single market, which likewise stresses the importance of the transport sector<sup>3</sup>.

In the last decade, the EU railway market has seen massive changes, gradually introduced by three legislative ‘railway packages’ (with some accompanying acts) intended to open up the national markets and make railways more competitive and interoperable at the EU level, while maintaining high level of safety. However, despite the considerable development of the ‘EU acquis’ establishing an internal market for rail transport services, the modal share of rail in intra-EU transport has remained modest. Therefore the Commission has planned to come forward with the Fourth Railway Package in order to enhance the quality and efficiency of rail services by removing the remaining market obstacles. The present Directive is a component of the Fourth Railway Package focusing on the removal of remaining administrative and technical barriers, in particular by establishing a common approach to safety and interoperability rules to increase economies of scale for railway undertakings active across the EU, decreasing administrative costs and accelerating administrative procedures, as well as to avoiding disguised discrimination.

#### **1.2. Legal framework for rail safety**

In order to pursue efforts to establish a single market for rail transport services, it is necessary to establish a common regulatory framework for railway safety. Member States have until now developed their safety rules and standards mainly on national lines, based on national technical and operational concepts. Simultaneously, differences in principles, approach and culture have made it difficult to break through the technical barriers and establish international transport operations.

Directive 91/440/EEC, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings<sup>4</sup> and Directive 2001/14/EC of the European Parliament and of the

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/127599.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/127599.pdf).

<sup>2</sup> COM (2012) 299 final.

<sup>3</sup> COM(2012) 259 final.

<sup>4</sup> OJ L 143, 27.6.1995, p. 70.

Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification<sup>5</sup> was a first steps towards regulation of the European rail transport market by opening the market for international rail freight services. However, the provisions on safety proved to be insufficient and differences between safety requirements among the Member States affected the optimum functioning of rail transport in the EU.

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<sup>6</sup>, represented a great improvement towards establishment of a common regulatory framework for railway safety. The Directive established a framework for harmonising the content of safety rules, safety certification of railway undertakings, the tasks and roles of the safety authorities and the investigation of accidents, to discourage Member States from continuing to develop on national lines their safety rules and standards based on national technical and operational concepts.

### **1.3. Why amend Directive 2004/49/EC?**

Article 10 (7) of Directive 2004/49/EC prescribes that 'Before 30 April 2009 the Agency shall evaluate the development of safety certification and submit a report to the Commission with recommendations on a strategy for migration towards a single Community safety certificate' replacing the current two part system (Part A/B). Single EU safety certificate development and implementation has always been a long term objective. It was never a question of if but when it would be introduced.

In its interim report of 2009, the European Railway Agency, hereafter "the Agency", explained that it was too early to make a recommendation and that more information was needed in order to ensure an informed debate. The Agency submitted a report in July 2012 with a Recommendation proposing a strategy for the migration<sup>7</sup>.

Following the Recommendation of the Agency, the Commission considers that the current regulatory framework is sufficiently mature to migrate progressively towards a 'single safety certificate'. With this objective, the role of the national safety authorities needs to be revised and the responsibilities reallocated between them and the Agency.

The revision of the Railway Safety Directive is also an opportunity to adapt the text to take into account the evolution of the railway market where new professional actors or entities have been created. The lessons from severe railway accidents show that these actors may assume important responsibilities in matter of safety. In the past, the vertically integrated railway undertakings were able to control internally the quality of all processes, such as the maintenance of rolling stock or loading operations. The present trend of outsourcing activities or services is leading to the emergence of new actors subject to increasing economic and financial pressure, while internal control is decreasing. This may have consequences for safety, unless a new way of monitoring is established, through contractual or other arrangements, to ensure that risk control measures are duly implemented by all relevant actors.

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<sup>5</sup> OJ L 75, 15.3.2001, p. 29.

<sup>6</sup> OJ L 164, 30.4.2004, p. 44.

<sup>7</sup> Recommendation on the migration to a single EU safety certificate, ERA/REC/10/2011, 3.7.2012.

Another important reason for amending the text concerns the national rules addressing safety concerns. A Task Force on this subject was established and its findings are taken into account in this proposal.

Other amendments of the text are related to:

- Clarification of existing provisions and new definitions: aimed to improve consistency with similar provisions used in the Directive XX on the interoperability of the rail system within the European Union (hereinafter the ‘Interoperability Directive’).
- Updates due to the evolution of the legislative framework: provisions concerning national rules, as well as references to comitology procedures and delegated acts.
- Editorial changes: consolidation of previous amendments in the text of the Directive, renumbering of articles and annexes, elimination of obsolete provisions and references to other component of the Fourth Railway Package.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

DG MOVE prepared an impact assessment to support legislative proposals on improving efficiency and competitiveness of the Single European Railway Area in the field of interoperability and safety.

An Impact Assessment Steering Group (IASG) was created in June 2011. All DGs were invited to participate, however the main interested services are DGs ENTR, EMPL, SG, SJ, HR, RTD, BUDG, REGIO, ENER and ELARG.

The Commission services have discussed the developments of Single European Railway Area with sector representatives on an on-going basis. In 2010-2011 it conducted also an ex post evaluation of Regulation 881/2004 establishing the Agency.

In order to support the Commission in the impact assessment process, an external consultant was tasked to prepare an impact assessment support study and to undertake a targeted consultation of stakeholders.

The targeted consultation of interested parties started on 18 November 2011 with an internet survey which finished on 30 December 2011. It was followed by interviews with the most significant stakeholders and stakeholder workshop in February 2012.

Given the technical nature of the initiative, no public consultation was carried out. However, the Commission has taken care that all interested parties have been consulted in due time and discussions have covered all the key elements of the initiative.

More information on the impact assessment and the results of the stakeholder consultation is provided in the Impact Assessment Report<sup>8</sup>.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

This section provides detailed comments and explanations concerning the significant changes in the text of the Directive. Editorial changes and obvious modifications are not commented.

### **CHAPTER I**

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<sup>8</sup> Commission Staff Working Document accompanying the ‘Legislative proposals to eliminate remaining administrative and technical barriers in the field of interoperability and safety on the EU railway market’.

Article 1: no comments.

Article 2: adaptation of the scope to make it consistent with the ‘Interoperability Directive’.

Article 3: new definitions and a few amendments to improve consistency with similar definitions used in the Interoperability Directive.

## CHAPTER II

Article 4: clarification on role and responsibilities of the players in the railway chain to take into account to recent evolution of the market and of the legal framework.

Articles 5, 6 and 7: updates due to the evolution of the legal framework.

Article 8: adaptation of the provisions related to national rules to take into account the evolution of the legal framework (adoption of TSI) and alignment with the Interoperability Directive.

Article 9: no comments.

## CHAPTER III

Article 10: introduction of the system of single safety certificate for railways undertakings replacing the former system of safety certificate and its two parts : ‘Part A’ and ‘Part B’.

Article 11: former Article 11 adapted to the process of move towards a single safety certificate taking into account the new role of the Agency.

Article 12: former Article 11 without major changes

Article 13: no comments.

Article 14 and 15: re-numbering of the former Article 14a updated.

Former Article 15: obsolete.

## CHAPTER IV

Article 16 to 18: amendments taking into account the new role of the national safety authorities in the process of move towards a single safety certificate and reallocation of responsibilities between them and the Agency.

## CHAPTER V

Article 19: no comments.

Article 20: clarification stressing cooperation between the national investigation body and the judicial authorities in case of investigation following an accident.

Article 21 to 25: no comments.

## CHAPTER VI

Article 26: new provision on delegated acts taking into account the entry into force of the Treaty on the Functioning of the European Union.

Article 27: modification of the Committee procedure taking into account the entry into force of the Treaty on the Functioning of the European Union.

Article 28: former article 31 updated.

Article 29: former article 32 without comments.

Former article 26: obsolete

Former articles 29 and 30 of Directive 2004/49/EC concern amendments to Directives 95/18/EC and 2001/14/EC respectively. They will be obsolete when the Recast of the First Railway Package repealing these two Directives will enter into force.

Article 30: transitional provisions.

Article 31: new article concerning the role of Agency opinions and recommendations

Article 32: former article 33 with clarifications in matter of the transposition.

Article 33: repeal of Directive 2004/49/EC, recasted.

Article 34: former article 34 on entry into force, adapted.

Article 35: former article 35 on addressees, adapted.

ANNEX I: former ANNEX I with some adaptation.

Former ANNEX II: obsolete, following the adaptation of the national rules.

Former ANNEX III: obsolete, following introduction of an implementing act.

Former ANNEX IV: obsolete, following introduction of the system of single EU safety certificate.

Former ANNEX V: obsolete, following introduction of an implementing act.

New ANNEX II: correlation table.

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↓ Corrigendum, OJ L 220, 21.6.2004, p. 16 (adapted)
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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union ~~establishing the European Community~~, and in particular Article ~~74~~ ~~⊗~~ 91 ~~⊗~~ (1) thereof,  
Having regard to the proposal from the European Commission<sup>1</sup>,  
After transmission of the draft legislative act to the national Parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>3</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 1 (adapted)

~~In order to pursue efforts to establish a single market for rail transport services, initiated by Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>4</sup>, it is necessary to establish a common regulatory framework for railway safety. Member States have until now developed their safety rules and standards mainly on national lines, based on national technical and operational concepts. Simultaneously, differences in principles, approach and culture have made it difficult to break through the technical barriers and establish international transport operations.~~

↓ new

(1) 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<sup>5</sup> have been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 2 (adapted)

~~Directive 91/440/EEC, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings<sup>6</sup> and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the~~

<sup>1</sup> OJ C , , p..

<sup>2</sup> OJ C , , p..

<sup>3</sup> OJ C , , p..

<sup>4</sup> ~~OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 1).~~

<sup>5</sup> OJ L 164, 30.4.2004, p. 44.

<sup>6</sup> ~~OJ L 143, 27.6.1995, p. 70. Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council (OJ L 75, 15.3.2001, p. 26).~~



~~levying of charges for the use of railway infrastructure and safety certification<sup>7</sup> provide the first steps towards regulation of the European rail transport market by opening the market for international rail freight services. However, the provisions on safety have proved to be insufficient and differences between safety requirements remain, which affect the optimum functioning of rail transport in the Community. It is of particular importance to harmonise the content of safety rules, safety certification of railway undertakings, the tasks and roles of the safety authorities and the investigation of accidents.~~

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↓ new

(2) Directive 2004/49 established a common regulatory framework for railway safety, through harmonisation of the content of safety rules, the safety certification of railway undertakings, the tasks and roles of the national safety authorities and the investigation of accidents. Nevertheless, to pursue efforts to establish a single market for rail transport services, that Directive needs thorough revision.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 3 (adapted)

~~Metros, trams and other light rail systems are in many Member States subject to local or regional safety rules and are often supervised by local or regional authorities and not covered by the requirements on Community interoperability or licensing. Trams are furthermore often subject to road safety legislation and could therefore not be fully covered by railway safety rules. For these reasons and in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, Member States should be allowed to exclude such local rail systems from the scope of this Directive.~~

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↓ new

(3) Metros, trams and other light rail systems are subject in many Member States to local or regional safety rules and are often supervised by local or regional authorities and not covered by the requirements for interoperability or licensing within the Union. Trams are furthermore often subject to road safety legislation and could therefore not be fully covered by railway safety rules. For these reasons such local rail systems should be excluded from the scope of this Directive. This does not prevent Member States from applying the provisions of this Directive to local rail systems on a voluntary basis if they deem this appropriate.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 4 (adapted)

~~Safety levels in the Community rail system are generally high, in particular compared to road transport. It is important that safety is at the very least maintained during the current restructuring phase, which will separate functions of previously integrated railway companies and move the railway sector further from self-regulation to public regulation. In line with~~

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<sup>7</sup> ~~OJ L 75, 15.3.2001, p. 29. Directive as amended by Commission Decision 2002/844/EC (OJ L 289, 26.10.2002, p. 30).~~

~~technical and scientific progress, safety should be further improved, when reasonably practicable and taking into account the competitiveness of the rail transport mode.~~

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↓ new

- (4) Safety levels in the Union's rail system are generally high, in particular compared to road transport. In line with technical and scientific progress, safety should be further improved, when reasonably practicable and taking into account the expected improvement in the competitiveness of rail transport.
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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

- (5) ~~All those operating~~ The main actors in the railway system, infrastructure managers and railway undertakings, should bear ~~the~~ full responsibility for the safety of the system, each for their own part. Whenever ~~it is~~ appropriate, they should cooperate in implementing risk control measures. Member States should make a clear distinction between this immediate responsibility for safety and the ☒ national ☒ safety authorities' task of providing a national regulatory framework and supervising the performance of ~~the all~~ operators.
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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 6 (adapted)

~~The responsibility of infrastructure managers and railway undertakings for operating the railway system does not preclude other actors such as manufacturers, maintenance suppliers, wagon keepers, service providers and procurement entities from assuming responsibility for their products or services in accordance with the provisions of Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system<sup>8</sup> and of Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system<sup>9</sup> or of other relevant Community legislation.~~

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↓ new

- (6) The responsibility of infrastructure managers and railway undertakings for operating the rail system does not preclude other actors such as manufacturers, carriers, consignors, fillers, loaders entities in charge of maintenance, maintenance suppliers, wagon keepers, service providers and procurement entities from assuming responsibility for their products or services. To avoid the risk that the responsibilities are not properly assumed, each relevant actor should be made responsible for its particular process. Each actor in the rail system should be responsible in respect to the other actors for complete and truthful communication of all relevant information to check if the vehicles are fit to run. In particular that concerns information on the status and history of the vehicle, maintenance files, traceability of loading operations, and consignment notes.

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<sup>8</sup> ~~OJ L 235, 17.9.1996, p. 6.~~

<sup>9</sup> ~~OJ L 110, 20.4.2001, p. 1.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 7 (adapted)

~~Requirements on safety of the subsystems of the trans-European rail networks are laid down in Directive 96/48/EC and Directive 2001/16/EC. However, those Directives do not define common requirements at system level and do not deal in detail with the regulation, management and supervision of safety. When minimum safety levels of the subsystems are defined by technical specifications for interoperability (TSIs) it will be increasingly important to establish safety targets at the system level as well.~~

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↓ new

(7) Each railway undertaking, infrastructure manager and entity in charge of maintenance should ensure that its contractors and other parties implement risk control measures. To this end, they should apply the methods for monitoring set out in the common safety methods (CSMs). Their contractors should apply this process through contractual arrangements. Because such arrangements are an essential part of the safety management system of railway undertakings and infrastructure managers, railway undertakings and infrastructure managers should disclose their contractual arrangements on request of the European Union Agency for Railways (hereafter "the Agency") or the national safety authority in the context of supervision activities.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 8 (adapted)

~~Common safety targets (CSTs) and common safety methods (CSMs) should be gradually introduced to ensure that a high level of safety is maintained and, when and where necessary and reasonably practicable, improved. They should provide tools for assessment of the safety level and the performance of the operators at Community level as well as in the Member States.~~

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↓ new

(8) Common safety targets (CSTs) and CSMs have been gradually introduced to ensure that safety is maintained at a high level and, when necessary and where reasonably practicable, improved. They should provide tools for assessment of the safety and performance of operators at Union level as well as in the Member States. Common safety indicators (CSIs) have been established in order to assess whether systems comply with the CSTs and to facilitate the monitoring of railway safety performance.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 9 (adapted)

~~Information on safety of the railway system is scarce and not generally publicly available. It is thus necessary to establish common safety indicators (CSIs) in order to assess that the system complies with the CSTs and to facilitate the monitoring of railway safety performance. However, national definitions relating to the CSIs may apply during a transitional period and due account should therefore be taken of the extent of the development of common definitions of the CSIs when the first set of CSTs is drafted.~~

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↓ new

(9) National rules, which are often based on national technical standards, have been gradually replaced by rules based on common standards, established by CSTs, CSMS and technical specifications for interoperability (TSIs). In order to eliminate the obstacles to interoperability, the amount of national rules should be reduced as a consequence of extending the scope of the TSIs to the whole Union's rail system and of closing open points in the TSIs. For this purpose the Member States should keep their system of national rules updated, delete obsolete rules and thereof inform the Commission and the the Agency.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 10  
(adapted)

~~National safety rules, which are often based on national technical standards, should gradually be replaced by rules based on common standards, established by TSIs. The introduction of new specific national rules which are not based on such common standards should be kept to a minimum. New national rules should be in line with Community legislation and facilitate migration towards a common approach to railway safety. All interested parties should therefore be consulted before a Member State adopts a national safety rule that requires a higher safety level than the CSTs. In such cases the new draft rule should be subject to examination by the Commission, which should adopt a Decision if it appears that the draft rule is not in conformity with Community legislation or constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operation between Member States.~~

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↓ new

(10) In view of the gradual approach to eliminating obstacles to the interoperability of the rail system and of the time consequently required for the adoption of TSIs, steps should be taken to avoid a situation where Member States adopt new national rules or undertake projects that increase the diversity of the present system. The safety management system is the recognised tool for preventing accidents and railway undertakings are responsible for taking immediate corrective action to prevent re-occurrence of accidents. Member States should not decrease the responsibility of the railway undertakings by establishing new national rules immediately after an accident.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 11  
(adapted)

~~The current situation, in which national safety rules continue to play a role, should be regarded as a transitional stage, leading ultimately to a situation in which European rules will apply.~~

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↓ new

(11) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system meeting

Union requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the Agency and to the national safety authority in the Member State concerned.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 12  
(adapted)

~~The development of CSTs, CSMs and CSIs as well as the need to facilitate progress towards a common approach to railway safety requires technical support at Community level. The European Railway Agency established by Regulation (EC) No 881/2004 of the European Parliament and of the Council<sup>10</sup> is set up to issue recommendations concerning CSTs, CSMs and CSIs and further harmonisation measures and to monitor the development of railway safety in the Community.~~

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↓ new

(12) To ensure a high level of railway safety and equal conditions for all railway undertakings, the latter should be subject to the same safety requirements. A licensed railway undertaking should hold a safety certificate in order to obtain access to the railway infrastructure. The safety certificate should provide evidence that the railway undertaking has established its safety management system and is able to comply with the relevant safety standards and rules. For international transport services, it should be enough to approve the safety management system only once at Union level.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 13  
(adapted)

~~In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system, fulfilling Community requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the safety authority in the Member State concerned.~~

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↓ new

(13) Harmonised methods based on Directive 2004/49/EC have been established to be applied to the railway undertakings and the national safety authorities on monitoring, conformity assessment, supervision and on risk evaluation and assessment. This regulatory framework is sufficiently mature to move progressively towards a 'single safety certificate', valid throughout the Union. The move to a single safety certificate should make the rail system more effective and efficient by reducing administrative burdens for the railway undertakings.

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<sup>10</sup> See page 3 of this Official Journal.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 14  
(adapted)

~~The safety management system should take into account the fact that Council Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>11</sup> and its relevant individual directives are fully applicable to the protection of the health and safety of workers engaged in railway transport. The safety management system should also take account of Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail<sup>12</sup>.~~

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↓ new

(14) The single safety certificate should be issued on the basis of the evidence that the railway undertaking has established its safety management system. Establishing this evidence may require not only on-site inspections to the railway undertaking but also the supervision aimed to assess that the railway undertaking continues to apply duly its safety management system after having been granted the single safety certificate.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 15  
(adapted)

~~To ensure a high level of railway safety and equal conditions for all railway undertakings, they should be subject to the same safety requirements. The safety certificate should give evidence that the railway undertaking has established its safety management system and is able to comply with the relevant safety standards and rules. For international transport services it should be enough to approve the safety management system in one Member State and give the approval Community validity. Adherence to national rules on the other hand should be subject to additional certification in each Member State. The ultimate aim should be to establish a common safety certificate with Community validity.~~

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↓ new

(15) Infrastructure manager should have a key responsibility for the safe design, maintenance and operation of its rail network. The infrastructure manager should be subject to safety authorisation by the national safety authority concerning its safety management system and other provisions to meet safety requirements.

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<sup>11</sup> OJ L 183, 29.6.1989, p. 1.

<sup>12</sup> OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 16  
(adapted)

~~In addition to the safety requirements laid down in the safety certificate, licensed railway undertakings must comply with national requirements, compatible with Community law and applied in a non-discriminatory manner, relating to health, safety and social conditions, including legal provisions relating to driving time, and the rights of workers and consumers as provided for in Articles 6 and 12 of Directive 95/18/EC.~~

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↓ new

(16) The certification of train staff is often an insurmountable barrier to new entrants. Member States should ensure that facilities for the training and certification of train staff necessary to meet requirements under national rules are available to railway undertakings intending to operate on the relevant network.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 17  
(adapted)

~~Every infrastructure manager has a key responsibility for the safe design, maintenance and operation of its rail network. In parallel to safety certification of railway undertakings the infrastructure manager should be subject to safety authorisation by the safety authority concerning its safety management system and other provisions to meet safety requirements.~~

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↓ new

(17) The entity in charge of maintenance should be certified for freight wagons. Where the entity in charge of maintenance is an infrastructure manager, this certification should be included in the procedure for safety authorisation. The certificate issued to such an entity should guarantee that the maintenance requirements of this Directive are met for any freight wagon for which the entity is in charge. This certificate should be valid in the whole Union and should be issued by a body able to audit the maintenance system set up by the entity. As freight wagons are frequently used in international traffic and as the entity in charge of maintenance may want to use workshops established in more than one Member State, the certification body should be able to implement its controls throughout the Union.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 18  
(adapted)

~~Member States should make efforts to assist applicants wishing to enter the market as railway undertakings. In particular they should provide information and act promptly on requests for safety certification. For railway undertakings operating international transport services, it is important for the procedures to be similar in different Member States. Although the safety certificate will contain national parts for the foreseeable future, it should nevertheless be~~

~~possible to harmonise the common parts of it and facilitate the creation of a common template.~~

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↓ new

(18) The national safety authorities should be fully independent in their organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant and procurement entity. They should carry out their tasks in an open and non-discriminatory way and cooperate with the Agency to create a single rail area and coordinate their decision-making criteria. To increase efficiency, two or more Member States may decide to merge the staff and resources of the respective national safety authorities.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 19  
(adapted)

~~Certification of train staff and authorisation of placing in service of in-use rolling stock for the different national networks are often insurmountable barriers to new entrants. Member States should ensure that facilities for the training and certification of train staff necessary to meet requirements under national rules are available to railway undertakings applying for a safety certificate. A common procedure should be established for authorisation of placing in service of in-use rolling stock.~~

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↓ new

(19) When a national safety authority is requested to supervise a railway undertaking established in different Member States, the other relevant national safety authorities should be informed by the Agency and the latter should ensure the necessary coordination of supervision activities.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 20  
(adapted)

~~Driving times and rest periods for train drivers and train staff performing safety tasks have an important impact on the safety level of the rail system. These aspects fall under Articles 137 to 139 of the Treaty and are already subject to negotiations between the social partners under the Sectoral Dialogue Committee set up in accordance with Commission Decision 98/500/EC<sup>13</sup>.~~

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<sup>13</sup> ~~Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (OJ L 225, 12.8.1998, p. 27).~~



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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 21  
(adapted)

~~The development of a safe Community railway system requires the establishment of harmonised conditions for delivering the appropriate licences to train drivers and on board accompanying staff performing safety tasks, for which the Commission has announced its intention to propose further legislation in the near future. As far as other staff charged with safety-critical tasks are concerned, their qualifications are already being specified under Directives 96/48/EC and 2001/16/EC.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 22  
(adapted)

~~As part of the new common regulatory framework for railway safety, national authorities should be set up in all Member States to regulate and supervise railway safety. To facilitate cooperation between them at Community level, they should be given the same minimum tasks and responsibilities. The national safety authorities should be granted a high degree of independence. They should carry out their tasks in an open and non-discriminatory way to help to create a single Community rail system and cooperate to coordinate their decision-making criteria, in particular concerning safety certification of railway undertakings operating international transport services.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 23  
(adapted)

~~(2320) Serious accidents on the railways are rare. However, they can have disastrous consequences and raise concern among the public about the safety performance of the railway system. All such accidents should, therefore, be investigated from a safety perspective to avoid recurrence and the results of the investigations should be made public. Other accidents and incidents ☒ should also be subject to safety investigations when they ☒ could be significant precursors to serious accidents and should also be subject to safety investigations, when it is necessary.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 24  
(adapted)

~~(2421) A safety investigation should be kept separate from the judicial inquiry into the same incident and ☒ should ☒ be granted access to evidence and witnesses. It should be carried out by a permanent body that is independent of the actors of the rail sector. The body should function in a way which avoids any conflict of interest and any possible involvement in the causes of the occurrences that are investigated; in particular, its functional independence should not be affected if it is closely linked to the national safety authority or regulator of railways for organisational and legal structure purposes. Its investigations should be carried out under as much openness as possible.~~

For each occurrence the investigation body should establish the relevant investigation group with necessary expertise to find the immediate causes and underlying causes.

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↓ new

- (22) In order to improve the efficiency of activities of an investigation body and to help it in discharging its duties, the investigation body should have timely access to the site of an accident, where necessary in good cooperation with the judicial authority. The reports on investigations and any findings and recommendations provide crucial information for the further improvement of railway safety and should be made publicly available at Union level. Safety recommendations should be acted upon by the addressees and actions reported back to the investigating body.
- (23) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (24) Since the objectives of the actions proposed in this Directive, namely coordinating activities in the Member States in order to regulate and supervise safety, investigating accidents and establishing common safety targets, common safety methods, common safety indicators and common requirements for single safety certificates cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 those objectives.
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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 25  
(adapted)

~~The reports on investigations and any findings and recommendations provide crucial information for the further improvement of railway safety and should be made publicly available at Community level. Safety recommendations should be acted upon by the addressees and actions reported back to the investigating body.~~

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↓ new

- (25) In order to supplement and amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of common safety methods and their revision, and revision of common safety indicators and common safety targets. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (26) In order to ensure uniform conditions for the implementation of this Directive, the implementing powers should be conferred on the Commission relating to the requirements for the safety management system and its elements, review of the system for certification of the entities in charge of maintenance for freight wagons and extension to other rolling stocks and the principal content of the accident and incident

investigation report. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>14</sup>.

(27) The obligation to transpose this Directive into national law should be confined to those provisions representing a substantive change as compared with the earlier Directive. The obligation to transpose the provisions that are unchanged arises under the earlier Directive.

(28) This Directive should be without prejudice to the obligation of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex IV, part B,

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 26  
(adapted)

~~Since the objectives of the proposed action, namely to coordinate activities in the Member States to regulate and supervise safety and to investigate accidents and to establish at Community level common safety targets, common safety methods, common safety indicators and common requirements of safety certificates, 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 those objectives.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 27  
(adapted)

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission<sup>15</sup>.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 28  
(adapted)

~~This Directive aims at reorganising and bringing together the relevant Community legislation on railway safety. Consequently, provisions for safety certification of railway undertakings that were previously set out in Directive 2001/14/EC should, together with all references to safety certification, be repealed. Directive 95/18/EC included requirements on safety qualifications of operational staff and on safety of rolling stock that are covered by the requirements on safety certification of this Directive and should therefore no longer be part of~~

<sup>14</sup> OJ L 55, 28.2.2011, p. 13.

<sup>15</sup> OJ L 184, 17.7.1999, p. 23.

~~the licensing requirements. A licensed railway undertaking should hold a safety certificate in order to be granted access to the railway infrastructure.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 recital 29  
(adapted)

~~The Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

~~The purpose of this Directive is~~ ☒ This Directive lays down provisions ☒ to ensure the development and improvement of safety of the ~~Community's~~ ☒ Union's ☒ railways and improved access to the market for rail transport services by:

- (a) harmonising the regulatory structure in the Member States;
- (b) defining responsibilities between the actors ☒ of the rail system ☒ ;
- (c) developing common safety targets and common safety methods with a view to ~~greater harmonisation of~~ ⇒ gradually removing the need for ⇐ national rules;
- (d) requiring the establishment, ~~in every~~ ⇒ for each ⇐ Member State, of a ☒ national ☒ safety authority and an accident and incident investigating body;
- (e) defining common principles for the management, regulation and supervision of railway safety.

#### *Article 2*

##### **Scope**

1. This Directive applies to the ☒ rail ☒ railway system in the Member States, which may be broken down into subsystems for structural and ~~operational~~ ⇒ functional ⇐ areas. It covers safety requirements on the system as a whole, including the safe management of infrastructure and of traffic operation and the interaction between railway undertakings ⇒ , ⇐ ~~and~~ infrastructure managers ⇒ and other actors of the rail system ⇐.

2. ⇒ The following systems are excluded from the scope of this Directive: ⇐

~~Member States may exclude from the measures they adopt in implementation of this Directive:~~

(a) metros, trams and ~~other~~ light rail systems;

(b) networks that are functionally separate from the rest of the ~~rail~~  railway  system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks;

3. Member States may exclude from the scope of the measures implementing this Directive:

~~(a)~~ privately owned railway infrastructure  and vehicles exclusively used on such infrastructure where this  exists solely for use by the ~~infrastructure~~ owner for its own freight operations;

(b) infrastructure and vehicles reserved for strictly local, historical or tourist use.

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↓ 2008/110/EC Art. 1.1

~~(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;~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

### Article 3

#### Definitions

For the purpose of this Directive, the following definitions ~~shall~~ apply:

~~(a) 'railway system' means the totality of the subsystems for structural and operational areas, as defined in Directives 96/48/EC and 2001/16/EC, as well as the management and operation of the system as a whole;~~

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↓ new

(a) 'rail system' means the Union rail system as defined in Article 2 of Directive [xx on interoperability of the rail system];

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~(b) 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;~~

↓ new

(b) 'infrastructure manager' means infrastructure manager as defined in Article 2 of Directive 2001/14/EC<sup>16</sup>;

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

⇒ new

(c) 'railway undertaking' means railway undertaking as defined in Article 2 of Directive 2001/14/EC, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction, including undertakings which provide traction only;

(d) 'technical specification for interoperability (TSI)' means ~~a the specifications~~ by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of ~~the trans-European high-speed and conventional the rail systems system~~ as defined in Article 2 of Directive xx Directive 96/48/EC and Directive 2001/16/EC; ~~⇒ on interoperability of the rail system;~~ ⇒

(e) 'common safety targets (CSTs)' means the safety levels that must at least be reached by different parts of the rail system (such as the conventional rail system, the high speed rail system, long railway tunnels or lines solely used for freight transport) and by the system as a whole, expressed in risk acceptance criteria;

~~(f) 'common safety methods (CSMs)' means the methods to be developed to describe how safety levels and achievement of safety targets and compliance with other safety requirements are assessed;~~

⊗ (f) 'common safety methods (CSMs)' means the methods describing the assessment of safety levels and achievement of safety targets and compliance with other safety requirements; ⊗

(g) ⊗ 'national ⊗ safety authority' means the national body entrusted with the tasks regarding railway safety in accordance with this Directive or any binational body entrusted by ⊗ several ⊗ Member States with these tasks in order to ensure a unified safety regime ~~for specialised cross-border infrastructures;~~

(h) 'national safety rules' means all ⇒ binding ⇐ rules containing railway safety ⇒ or technical ⇐ requirements imposed at Member State level and applicable to ~~more than one~~ railway ~~undertaking~~ ⇒ undertakings ⇐, irrespective of the body issuing them;

(i) 'safety management system' means the organisation and arrangements established by an infrastructure manager or a railway undertaking to ensure the safe management of its operations;

(j) 'investigator-in-charge' means a person responsible for the organisation, conduct and control of an investigation;

<sup>16</sup> OJ L 75, 15.3.2001, p. 29

(k) 'accident' means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;

(l) 'serious accident' means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the infrastructure or the environment, and any other similar accident with an obvious impact on railway safety regulation or the management of safety; 'extensive damage' ☒ above ☒ means damage that can immediately be assessed by the investigating body to cost at least EUR 2 million in total;

(m) 'incident' means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of ~~operation~~ ☒ operations ☒;

(n) 'investigation' means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

(o) 'causes' means actions, omissions, events or conditions, or a combination thereof, which led to the accident or incident;

~~(p) 'Agency' means the European Railway Agency, the Community agency for railway safety and interoperability;~~

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↓ new

(p) 'light rail' means an urban and/or sub-urban rail transport system with lower capacity and lower speeds than heavy rail and metro systems, but higher capacity and higher speeds than tram systems. Light rail systems may have their own right-of-way or share it with road traffic and usually do not exchange vehicles with long-distance passenger or freight traffic;

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

(q) 'notified bodies' means the bodies which are responsible for assessing the conformity or suitability for use of the interoperability constituents or for appraising the ~~EC~~ 'EC' procedure for verification of the subsystems, ~~as defined in Directives 96/48/EC and 2001/16/EC;~~

(r) 'interoperability constituents' means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the ~~high speed or conventional~~ rail system depends directly or indirectly, as defined in ⇒ Article 2 of Directive xx on interoperability of the rail system ⇐ ~~Directive 96/48/EC and 2001/16/EC. The concept of a 'constituent' covers both tangible objects and intangible objects such as software;~~

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↓ 2008/110/EC Art. 1.2 (adapted)  
⇒ new

(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~~ ⇒ national vehicle register referred to as ~~(NVR) provided for in Article 33 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008~~ ☒ in Article 43 of Directive XX on ☒ the interoperability of the rail system ~~within the Community (recast)~~<sup>47</sup>; ~~(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 ☒ national vehicle register ☒ ~~NVR~~;

(u) 'vehicle' means a railway vehicle suitable for circulation on its own wheels on railway lines, with or without traction ⇒ in a fixed or variable composition ⇐ . A vehicle is composed of one or more structural and functional subsystems ~~or parts of such subsystems~~;

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↓ new

(v) 'manufacturer' means any natural or legal person who manufactures an interoperability constituent or subsystem or has it designed or manufactured, and markets it under his name or trademark;

(w) 'consignor' means the enterprise which consigns goods either on its own behalf or for a third party;

(x) 'loader' means any enterprise that loads packaged goods, including dangerous goods, small containers or portable tanks onto a wagon or a container or which loads a container, bulk-container, multiple-element gas container, tank-container or portable tank onto a wagon;

(y) 'filler' means any enterprise that loads goods, including dangerous goods, into a tank (tank-wagon, wagon with demountable tank, portable tank or tank-container) into a wagon, large container or small container for carriage in bulk, or into a battery-wagon or multiple-element gas container.

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<sup>17</sup> ~~OJ L 191, 18.7.2008, p. 1.~~



↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

## CHAPTER II

### DEVELOPMENT AND MANAGEMENT OF SAFETY

#### Article 4

#### ⇒ Role of the actors of the rail system in developing and improving ⇐ ~~Development and improvement of~~ railway safety

1. Member States ⇐ and the Agency ⇐ shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved, taking into consideration the development of ~~Community~~ ⇐ Union ⇐ legislation and technical and scientific progress and giving priority to the prevention of serious accidents.

~~Member States shall ensure that safety rules are laid down, applied and enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system.~~

~~2. Member States shall ensure that measures to develop and improve railway safety take account of the need for a system-based approach.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
→<sub>1</sub> 2008/110/EC Art. 1.3  
⇒ new

2. Member States shall ensure that the responsibility for the safe operation of the railway system and the control of risks associated with it is laid upon the infrastructure managers and railway undertakings, obliging them:

- a) to implement necessary risk control measures, where appropriate in cooperation with each other,
- b) to apply ⇐ Union and ⇐ national ~~safety rules and standards,~~
- c) to establish safety management systems in accordance with this Directive.

Without prejudice to civil liability in accordance with the legal requirements of the Member States, each infrastructure manager and railway undertaking shall be made responsible for its part of the system and its safe operation, including supply of material and contracting of services, vis-à-vis users, customers, the workers concerned and third parties. ⇐ The risks associated with the activities of third parties shall also be taken into account in the safety management systems of infrastructure managers and railway undertakings. ⇐

34. ~~This shall be without prejudice to the responsibility of each~~ ⇐ Each ⇐ manufacturer, maintenance supplier, →<sub>1</sub> keeper ←, service provider and procurement entity ⇐ ⇐ shall ⇐ ensure that rolling stock, installations, accessories and equipment and services supplied by them comply with the specified requirements and ~~the~~ conditions for use specified, so that they can be safely put into operation by the railway undertaking and/or infrastructure manager.

4. All actors having a relevant role in safety operations shall implement the necessary risk control measures, where appropriate in cooperation with the others. In addition to railway undertakings and infrastructure managers those actors include:

- (a) the entities in charge of the maintenance of vehicles;
- (b) the consignors, the loaders and the fillers, which have a role in safe loading operations,
- (c) the manufacturers, which are responsible for the design and manufacturing of safe railway vehicles, parts, components or sub-assemblies of vehicle, railway infrastructure, energy and track side control command, as well as issuing of the preliminary maintenance documentation associated to the vehicle.

5. Each railway undertaking, infrastructure manager and entity in charge of maintenance shall ensure that its contractors implement risk control measures. To this end, each railway undertaking, infrastructure manager and entity in charge of maintenance shall apply the common methods for monitoring processes set out in the Regulation (EU) 1078/2012<sup>18</sup>. Their contractors shall apply this process through contractual arrangements. Railway undertakings, infrastructure managers and entities in charge of maintenance shall disclose their contractual arrangements on request of the Agency or the national safety authority.

6. Any actor of the rail system who identifies a safety risk related to defects and construction non-conformities or malfunctions of technical equipment, including those of structural sub-systems, shall report those risks to the other parties involved to enable them to take any necessary corrective actions to ensure continuous achievement of the safety performance of the rail system.

7. In case of exchange of vehicles between railways undertakings, all actors shall exchange all information relevant to safe operation. Such information shall include information on the status and history of the vehicle, elements of the maintenance files, traceability of loading operations, and consignment notes. It shall be sufficiently detailed to allow an assessment of the risks of operating the vehicle by the railway undertaking.

## *Article 5*

### **Common safety indicators**

1. In order to facilitate the assessment of the achievement of the CST and to provide for the monitoring of the general development of railway safety Member States shall collect information on common safety indicators (CSIs) through the annual reports of the national safety authorities as referred to in Article 18.

~~The first reference year for the CSIs shall be 2006; they shall be reported on in the annual report the following year.~~

The CSIs shall be established as set out in Annex I.

<sup>18</sup> OJ L 320, 17.11.2012, p. 8.

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↓ new

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 concerning the revision of Annex I, in particular to update the CSIs taking into account of the technical progress and to adapt the common methods for calculating accident costs.

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↓ 2008/110/EC Art. 1.4 (adapted)

~~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).~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

## Article 6

### Common safety methods

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↓ 2008/110/EC Art. 1.5(a)  
(adapted)

~~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).~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

~~2. Draft CSMs and draft revised CSMs shall be drawn up by the Agency under mandates which shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~The draft CSMs shall be based on an examination of existing methods in the Member States.~~

~~3.1. The CSMs shall describe how the safety level  levels  , and the achievement of safety targets and compliance with other safety requirements, are assessed, by elaborating and defining:~~

- (a) risk evaluation and assessment methods,
- (b) methods for assessing conformity with requirements in safety certificates and safety authorisations issued in accordance with Articles 10 and 11,

and

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↓ 2008/110/EC Art. 1.5(b)

~~(e) 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;~~

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↓ new

(c) methods for supervision to be applied by national safety authorities and methods for monitoring to be applied by railway undertakings, infrastructure managers and entities in charge of maintenance;

(d) any other methods covering a process of the safety management system which need to be harmonised at Union level.

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↓ 2008/110/EC Art. 1.5(c)

~~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 implement elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory examination procedure with scrutiny referred to in Article 27(2a).~~

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↓ new

2. The Commission shall issue mandates to the Agency to draft the new CSMs referred in point 1(d), to review and update all CSMs to take account of developments in technology or social requirements and to make the relevant recommendations to the Commission.

When drafting the recommendations, the Agency shall take account of the opinion of the users and of the stakeholders. The recommendations shall enclose a report on the results of this consultation and a report assessing the impact of the new CSM to be adopted.

3. 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 in view of generally maintaining and where reasonably practicable, continuously improving safety.

4. The Commission shall be empowered to adopt delegated acts laying down CSMs and revised CSMs in accordance with Article 26.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

5. Member States shall make any necessary amendments to their national safety rules in the light of the adoption of CSMs and revisions to them.

#### Article 7

### Common safety targets

~~1. The CSTs shall be developed, adopted and revised following the procedures laid down in this Article.~~

~~2. Draft CSTs and draft revised CSTs shall be drawn up by the Agency under mandates which shall be adopted in accordance with the procedure referred to in Article 27(2).~~

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↓ 2008/110/EC Art. 1.6(a)  
(adapted)

~~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).~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

~~1.4.~~ The CSTs shall define the ☒ minimum ☒ safety levels that ~~must at least~~ ☒ shall ☒ be reached by different parts of the railway system and by the system as a whole in each Member State, expressed in risk acceptance criteria for:

- (a) individual risks relating to passengers, staff including the staff of contractors, level crossing users and others, and, without prejudice to existing national and international liability rules, individual risks relating to unauthorised persons on railway premises;
  - (b) societal risks.
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↓ new

2. The Commission shall issue a mandate to the Agency to draft revised CSTs and to make the relevant recommendations to the Commission.

3. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. The revised CSTs shall reflect any priority areas where safety needs to be further improved.

4. The Commission shall be empowered to adopt delegated acts laying down revised CSTs in accordance with Article 26.

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↓ 2008/110/EC Art. 1.6(b)  
(adapted)

~~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).~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

5.6 Member States shall make any necessary amendments to their national ~~safety~~ rules in order to achieve at least the CSTs, and any revised CSTs, in accordance with the implementation timetables attached to them. They shall notify these rules to the Commission in accordance with Article 8(3).

### Article 8

#### National ~~safety~~ rules

~~In application of this Directive, Member States shall establish binding national safety rules and shall ensure that they are published and made available to all infrastructure managers, railway undertakings, applicants for a safety certificate and applicants for a safety authorisation in clear language that can be understood by the parties concerned.~~

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↓ new

1. Member States may lay down new national rules only in the following cases:

- (a) where rules concerning existing safety methods are not covered by a CSM;
- (b) as an urgent preventive measure, in particular following an accident.

Member States shall ensure that national rules take account of the need for a system-based approach.

2. If a Member State intends to introduce a new national rule, it shall notify the draft of that rule to the Agency and the Commission using the appropriate IT system in accordance with article 23 of Regulation (EU) No .../... [Agency Regulation].

3. If the Agency becomes aware of any national rule notified or not which that has become redundant or is in conflict with the CSMs or any other Union legislation adopted after the application of the national rule the procedure established in article 22 of Regulation (EU) No .../... [Agency Regulation] shall apply.

4. Member States shall ensure that national rules are made available free of charge and in a language that can be understood by all parties concerned.

5. National rules notified in accordance with this Article are not subject to the notification procedure set out in Directive 98/34/EC.

~~2. Before 30 April 2005 Member States shall notify the Commission of all the relevant national safety rules in force, as set out in Annex II, and indicate their area of application.~~

~~The notification shall further provide information on the principal content of the rules with references to the legal texts, on the form of legislation and on which body or organisation is responsible for its publication.~~

~~3. Not later than four years after the entry into force of this Directive, the Agency shall evaluate the way in which national safety rules are published and made available in accordance with paragraph 1. It shall also make appropriate recommendations to the Commission for the publication of such rules in order to make the relevant information more easily accessible.~~

~~4. Member States shall forthwith notify the Commission of any amendment to the notified national safety rules and of any new such rule that might be adopted, unless the rule is wholly relating to the implementation of TSIs.~~

~~5. In order to keep the introduction of new specific national rules to a minimum and thus prevent further barriers from being created, and with a view to the gradual harmonisation of safety rules, the Commission shall monitor the introduction of new national rules by Member States.~~

~~6. If, after the adoption of CSTs, a Member State intends to introduce a new national safety rule which requires a higher safety level than the CSTs, or if a Member State intends to introduce a new national safety rule which may affect operations of railway undertakings from other Member States on the territory of the Member State concerned, the Member State shall consult all interested parties in due time and the procedure in paragraph 7 shall apply.~~

~~7. The Member State shall submit the draft safety rule to the Commission for examination, stating the reasons for introducing it.~~

~~If the Commission finds that the draft safety rule is incompatible with the CSMs or with achieving at least the CSTs, or that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States, a Decision, addressed to the Member State concerned, shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~If the Commission has serious doubts as to the compatibility of the draft safety rule with the CSMs or with achieving at least the CSTs, or considers that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States, the Commission shall immediately inform the Member State concerned, which shall suspend the adoption, entry into force or implementation of the rule until a Decision is adopted, within a period of six months, in accordance with the procedure referred to in Article 27(2).~~

## Article 9

### Safety management systems

~~1. Infrastructure managers and railway undertakings shall establish their safety management systems to ensure that the railway system can achieve at least the CSTs, is in conformity with the national safety rules described in Article 8 and Annex II and with safety requirements laid~~

down in the TSIs, and that the relevant parts of CSMs ☒ and rules notified under Article 8 ☒ are applied.

2. The safety management system shall meet the requirements ~~and contain the elements laid down in Annex III~~, adapted to the character, extent and other conditions of the activity pursued. It shall ensure the control of all risks associated with the activity of the infrastructure manager or railway undertaking, including the supply of maintenance and material and the use of contractors. Without prejudice to existing national and international liability rules, the safety management system shall also take into account, where appropriate and reasonable, the risks arising as a result of activities by other parties.

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↓ new

The Commission shall establish, by means of implementing acts, elements of the safety management system. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

3. The safety management system of any infrastructure manager shall take into account the effects of operations by different railway undertakings on the network and make provisions to allow all railway undertakings to operate in accordance with TSIs and national ~~safety~~ rules and with ☒ the ☒ conditions laid down in their safety certificate. ~~It shall furthermore~~ ☒ The safety management systems shall ☒ be developed with the aim of coordinating the emergency procedures of the infrastructure manager with all railway undertakings that operate on its infrastructure.

4. Each year all infrastructure managers and railway undertakings shall submit to the ☒ national ☒ safety authority before 30 June an annual safety report concerning the preceding calendar year. The safety report shall contain:

- (a) information on how the ~~organisation's~~ organisation's corporate safety targets are met and the results of safety plans;
- (b) the development of national safety indicators, and of the CSIs laid down in Annex I, as far as it is relevant to the reporting organisation;
- (c) the results of internal safety auditing;
- (d) observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the ☒ national ☒ safety authority.



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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16  
⇒ new

## CHAPTER III

### SAFETY CERTIFICATION AND AUTHORISATION

#### Article 10

~~Safety certificates~~ ⇒ Single safety certificate ⇐

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↓ new

1. Access to the railway infrastructure shall be granted only to railway undertakings which hold the single safety certificate.
  2. The single safety certificate shall be granted by the Agency on the basis of the evidence that the railway undertaking has established its safety management system in accordance with Article 9 and meets the requirements laid down in TSIs and in other relevant legislation in order to control risks and provide transport services safely on the network.
  3. The single safety certificate shall specify the type and extent of the railway operations covered. It shall be valid throughout the Union for equivalent operations.
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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~1. In order to be granted access to the railway infrastructure, a railway undertaking must hold a safety certificate as provided for in this Chapter. The safety certificate may cover the whole railway network of a Member State or only a defined part thereof.~~

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↓ 2008/110/EC Art. 1.7(a)

~~The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet the 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.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~2. The safety certificate shall comprise:~~

~~(a) certification confirming acceptance of the railway undertaking's safety management system as described in Article 9 and Annex III,~~

~~and~~

↓ 2008/110/EC Art. 1.7(b)

~~(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.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~3. The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification in accordance with paragraph 2.~~

~~The certification granted in accordance with paragraph 2 must specify the type and extent of the railway operations covered. The certification granted in accordance with paragraph 2(a) shall be valid throughout the Community for equivalent rail transport operations.~~

~~4. The safety authority in the Member State in which the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification necessary in accordance with paragraph 2(b).~~

↓ new

4. Three months before the start of operation of any new service, the railway undertaking shall notify to the relevant national safety authority the documentation confirming that:

- (a) the railway undertaking will follow the operating rules, including national rules made available to them in accordance with Article 8(4), and assess the safety of their operation, taking into account the requirements in Commission Regulation (EC) No 352/2009<sup>19</sup> and ensuring that they are managing all risks through their safety management system and that they are making all necessary arrangements to operate safely;
- (b) the railway undertaking has made the arrangements necessary for cooperation and coordination with the infrastructure manager(s) of the network(s) where it proposes to operate;
- (c) the railway undertaking has taken any action necessary to ensure the safe operation of the service;
- (d) the railway undertaking has a licence issued in accordance with Council Directive 95/18/EC<sup>20</sup>;
- (e) the type and extent of its intended operation corresponds to that specified in its single safety certificate.

If the national safety authority has doubts concerning the fulfilment of one or more conditions it shall request more information from the railway undertaking. However, this exchange may

<sup>19</sup> OJ L 108, 29.4.2009, p. 4.

<sup>20</sup> OJ L 143, 27.6.1995, p. 70.

not have any suspensive or delaying effect on the start of operation. If the national safety authority finds evidence that one or more conditions are not met, it shall refer the matter to the Agency, which shall take the appropriate measures, including revocation of the certificate.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16  
⇒ new

5. The single safety certificate shall be renewed upon application by the railway undertaking at intervals not exceeding five years. It shall be wholly or partly updated whenever the type or extent of the operation is substantially altered.

The holder of the single safety certificate shall ~~without delay~~ inform the ⇒ Agency ⇐ ~~competent safety authority~~ without delay of ~~all~~ any major changes in the conditions of the ~~relevant part of the single~~ safety certificate. It shall furthermore notify the ⇒ Agency ⇐ ~~competent safety authority~~ whenever new categories of staff or new types of rolling stock are introduced.

The ⇒ Agency ⇐ ~~safety authority~~ may require that the ~~relevant part of the single~~ safety certificate be revised following substantial changes ⇒ to ⇐ ~~in~~ the safety regulatory framework.

~~6. If the safety authority finds that the holder of the safety certificate no longer satisfies the conditions for a certification which it has issued, it shall revoke part (a) and/or (b) of the certificate, giving reasons for its decision. The safety authority that has revoked an additional national certification granted in accordance with paragraph 4 shall promptly inform the safety authority that granted the certification under paragraph 2(a) of its decision.~~

~~Similarly, a safety authority must revoke a safety certificate if it is apparent that the holder of the safety certificate has not used it as intended in the year following its issue.~~

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⇓ new

6. If a national safety authority finds that a holder of a single safety certificate no longer satisfies the conditions for certification, it shall ask the Agency to revoke it. The Agency may revoke the single safety certificate, giving reasons for its decision. The Agency shall immediately inform all the national safety authorities of the networks on which the railway undertaking operates.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16  
⇒ new

~~7.6.~~ The ⇒ Agency ⇐ ~~safety authority~~ shall inform the ~~Agency~~ ⇒ national safety authorities ⇐ within one month of the issue, renewal, amendment or revocation of a ⇒ single ⇐ safety certificate ~~certificates referred to in paragraph 2(a) that have been issued, renewed, amended or revoked.~~ It shall state the name and address of the railway undertaking, the issue date, the scope and validity of the ~~safety~~ certificate and, in the case of revocation, the reasons for its decision.

~~7. Before 30 April 2009 the Agency shall evaluate the development of safety certification and submit a report to the Commission with recommendations on a strategy for migration towards~~

~~a single Community safety certificate. The Commission shall take appropriate action following the recommendation.~~

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↓ new

8. The Agency shall continuously monitor the effectiveness of the measures for the issuing of single safety certificates and supervision by national safety authorities and, where appropriate, shall make recommendations to the Commission for improvement. These may include a recommendation for a CSM covering a process of the safety management system which needs to be harmonised at Union level, as referred to in Article 6(1)(d).

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↓ new

## Article 11

### Applications for single safety certificates

1. Applications for single safety certificates shall be submitted to the Agency. The Agency shall take a decision on an application without delay and in any event not more than four months after all required information and any supplementary information requested by the Agency has been submitted. If the applicant is requested to submit supplementary information, such information shall be submitted promptly.

2. The Agency shall provide detailed guidance on how to obtain the single safety certificate. It shall list all requirements that have been laid down for the purpose of Article 10(2) and shall publish all relevant documents.

3. An application guidance document describing and explaining the requirements for the single safety certificates and listing the required documents shall be made available to applicants free of charge. The national safety authorities shall cooperate with the Agency in disseminating such information.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

## Article ~~11~~ 12

### Safety authorisation of infrastructure managers

1. In order to be allowed to manage and operate a rail infrastructure, the infrastructure manager ~~must~~ shall obtain a safety authorisation from the national safety authority in the Member State where ~~he~~ it is established.

The safety authorisation shall comprise:

(a) authorisation confirming acceptance of the infrastructure manager's safety management system ~~as described~~ laid down in Article 9 and Annex III, which shall include the procedures and provisions ~~fulfilling~~ for meeting the requirements necessary for the safe design, maintenance and operation of the railway infrastructure, including, where appropriate, the maintenance and operation of the traffic control and signalling system.

and

~~(b) authorisation confirming acceptance of the provisions of the infrastructure manager to meet specific requirements necessary for the safe design, maintenance and operation of the railway infrastructure including, where appropriate, the maintenance and operation of the traffic control and signalling system.~~

2. The safety authorisation shall be renewed upon application by the infrastructure manager at intervals ~~not exceeding~~ ⇨ of ⇐ five years. It shall be wholly or partly updated whenever substantial changes are made to the infrastructure, signalling or energy supply or to the principles of its operation and maintenance. The holder of the safety authorisation shall without delay inform the national safety authority of all such changes.

The national safety authority may require that the safety authorisation be revised following substantial changes to the safety regulatory framework.

If the national safety authority finds that an authorised infrastructure manager no longer satisfies the conditions for a safety authorisation it shall revoke the authorisation, giving reasons for its decisions.

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↓ new

3. The national safety authority shall take a decision on an application for safety authorisation without delay and in any event not more than four months after all the information required and any supplementary information requested has been submitted.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~34.~~ The national safety authority shall inform the Agency within one month of the safety authorisations that have been issued, renewed, amended or revoked. It shall state the name and address of the infrastructure manager, the issue date, the scope and validity of the safety authorisation and, in case of revocation, the reasons for its decision.

#### Article 12

##### ~~Application requirements relating to safety certification and safety authorisation~~

~~1. The safety authority shall take a decision on an application for safety certification or safety authorisation without delay and in any event not more than four months after all information required and any supplementary information requested by the safety authority has been submitted. If the applicant is requested to submit supplementary information, such information shall be submitted promptly.~~

~~2. In order to facilitate the establishment of new railway undertakings and the submission of applications from railway undertakings from other Member States, the safety authority shall give detailed guidance on how to obtain the safety certificate. It shall list all requirements that have been laid down for the purpose of Article 10(2) and make all relevant documents available to the applicant.~~

~~Special guidance shall be given to railway undertakings that apply for a safety certificate concerning services on a defined limited part of an infrastructure, specifically identifying the rules that are valid for the part in question.~~

~~3. An application guidance document describing and explaining the requirements for the safety certificates and listing the documents that must be submitted shall be made available to the applicants free of charge. All applications for safety certificates shall be submitted in the language required by the safety authority.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

### Article 13

#### Access to training facilities

1. Member States shall ensure that railway undertakings ~~applying for a safety certificate~~ have fair and non-discriminatory access to training facilities for train drivers and staff accompanying the trains, whenever such training is necessary for operating services on their network or, for fulfilling the fulfilment of requirements to obtain the safety certificate  and requirements to obtain licences and certificates under Directive 2007/59/EC<sup>21</sup> .

The services offered ~~must shall~~ include training on necessary route knowledge, operating rules and procedures, the signalling and control command system and emergency procedures applied on the routes operated.

Member States shall also ensure that infrastructure managers and their staff performing vital safety tasks have fair and non-discriminatory access to training facilities.

If the training services do not include examinations and granting of certificates, Member States shall ensure that railway undertakings have access to such certification ~~if it is a requirement of the safety certificate~~.

The national safety authority shall ensure that the provision of training services or, where appropriate, the granting of certificates meets the ~~safety~~ requirements laid down in  Directive 2007/59/EC, in  TSIs or national ~~safety~~ rules ~~described~~  referred to  in Article 8 ~~and Annex II~~.

2. If the training facilities are available only through the services of one single railway undertaking or the infrastructure manager, Member States shall ensure that they are made available to other railway undertakings at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

3. When recruiting new train drivers, staff on board trains and staff performing vital safety tasks, railway undertakings ~~must shall~~ be able to take into account any training, qualifications and experience acquired previously from other railway undertakings. For this purpose, such members of staff shall be entitled to have access to, obtain copies and communicate all documents attesting to their training, qualifications and experience.

4. ~~In every case each railway undertaking and each infrastructure manager~~  Railway undertakings and infrastructure managers  shall be responsible for the level of training and qualifications of its staff carrying out safety-related work ~~as set out in Article 9 and Annex III~~.

↓ 2008/57/EC Art. 40

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<sup>21</sup> OJ L 315, 3.12.2007, p. 51.

*Article 14~~4~~*

**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 national vehicle register NVR in accordance with Article ~~4333~~ of ~~the Railway Interoperability~~ Directive XX on interoperability of the rail system.
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 ⇒ Commission Regulation (EU) No 445/2011<sup>22</sup> ⇐ ~~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 ⇒ Regulation (EU) No 445/2011 ⇐ ~~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~~ ⊗ Article 12 ⊗ ~~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;~~

<sup>22</sup> OJ L 122, 11.5.2011, p. 22.

~~(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.~~

~~56. The certificates granted in accordance with paragraph 45 shall be valid throughout the  Union  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.~~

↓ new

6. By 31 May 2014, the Agency shall evaluate the system of certification of the entity in charge of maintenance for freight wagons and shall consider the opportunity for an extension of that system to all vehicles and shall submit a report to the Commission.

7. The Commission shall, by means of implementing acts, adopt common conditions for certification of the entity in charge of maintenance for all vehicles by 24 December 2016.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (2).

The certification system applicable to freight wagons adopted by Regulation (EU) No 445/2011 shall continue to apply until the implementing acts referred to in the first subparagraph are adopted.

↓ 2008/110/EC Art. 1.8 (adapted)  
⇒ new

#### Article 15

### Derogations from the system of certification of the entities in charge of maintenance

18. Member States may decide to fulfil the obligations to identify the entity in charge of maintenance and to certify it through alternative measures  respect to the system of certification established in article 14  , 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  Union  and for which fulfilment of the requirements referred to in



Article 14(3) ~~paragraph 3~~ is ensured by international agreements with third countries;

- (c) vehicles ~~identified in~~  covered by  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.

~~2. Such alternative measures~~  Alternative measures referred to in paragraph 1  shall be implemented through derogations to be granted by the relevant national safety authority  or the Agency  :

- (a) when registering vehicles pursuant to Article ~~4333~~ of Directive xx on interoperability of the rail system ~~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 ~~1244~~ of this Directive, as far as the identification or certification of the entity in charge of maintenance is concerned.

~~3. 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~~  Union  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.

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

#### ~~Article 15~~

##### ~~Harmonisation of safety certificates~~

~~1. Before 30 April 2009 decisions on common harmonised requirements in accordance with Article 10(2)(b) and Annex IV and a common format for application guidance documents shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~2. The Agency shall recommend common harmonised requirements and a common format for application guidance documents under a mandate which shall be adopted in accordance with the procedure referred to in Article 27(2).~~

## CHAPTER IV

### NATIONAL SAFETY AUTHORITIES

#### *Article 16*

##### **Tasks**

1. Each Member State shall establish a safety authority. This authority ~~may be the Ministry responsible for transport matters and~~ shall be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant and procurement entity.

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↓ new

2. The national safety authority shall be entrusted with at least the following tasks:

- (a) authorising the placing in service of the energy and infrastructure subsystems constituting the rail system in accordance with Article 18(2) of Directive XX on interoperability of the rail system;
- (b) supervising that the interoperability constituents are in compliance with the essential requirements as required by Article [x] of Directive [XX] on interoperability of the rail system;
- (c) assigning a European vehicle numbering in accordance with Article 42 of Directive [XX] on interoperability of the rail system;
- (d) on request of the Agency, supporting it in the issue, renewal, amendment and revocation of single safety certificates granted in accordance with Article 10 and checking that the conditions and requirements laid down in them are met and that railway undertakings are operating in accordance with the requirements of Union or national law;
- (e) issuing, renewing, amending and revoking safety authorisations granted in accordance with Article 12 and checking that the conditions and requirements laid down in them are met and that infrastructure managers are operating in accordance with the requirements of Union or national law;
- (f) monitoring, promoting, and, where appropriate, enforcing and updating the safety regulatory framework including the system of national rules;
- (g) supervising the railway undertakings in accordance with Annex IV to Regulation (EU) No 1158/2010<sup>23</sup> and with Regulation (EU) No 1077/2012<sup>24</sup>;
- (h) supervising that vehicles are duly registered in the national vehicle register and that safety-related information contained in it is accurate and up to date.

3. The national safety authority of the Member State where the railway undertaking operates shall make necessary arrangements to coordinate with the Agency and other safety authorities to ensure that any key information on the specific railway undertaking is shared, particularly on known risks and its safety performance. The national safety authority shall also share information with other relevant national safety authorities if it finds that the railway undertaking is not taking the necessary risk control measures.

It shall inform the Agency immediately of any concerns about the safety performance of the railway undertakings under supervision. The Agency shall take appropriate action provided for in Article 10(6).

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~2. The safety authority shall be entrusted with at least the following tasks:~~

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<sup>23</sup> OJ L 326, 10.12.2010, p.11.

<sup>24</sup> OJ L 320, 17.11.2012, p. 3

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↓ 2008/110/EC Art. 1.9(a)

~~(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;~~

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↓ 2008/110/EC Art. 1.9(b)

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~(e) supervising that the interoperability constituents are in compliance with the essential requirements as required by Article 12 of Directives 96/48/EC and 2001/16/EC;~~

~~(d) authorising the placing in service of new and substantially altered rolling stock that is not yet covered by a TSI;~~

~~(e) the issue, renewal, amendments and revocation of relevant parts of safety certificates and of safety authorisations granted in accordance with Articles 10 and 11 and checking that conditions and requirements laid down in them are met and that infrastructure managers and railway undertakings are operating under the requirements of Community or national law;~~

~~(f) monitoring, promoting, and, where appropriate, enforcing and developing the safety regulatory framework including the system of national safety rules;~~

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↓ 2008/110/EC Art. 1.9(c)

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

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

4. The tasks referred to in paragraph 2 may not be transferred or subcontracted to any infrastructure manager, railway undertaking or procurement entity.

#### Article 17

##### Decision-making principles

1. The ~~the~~ national ~~the~~ safety ~~authority~~ ~~the~~ authorities ~~the~~ shall carry out ~~its~~ ~~the~~ their ~~the~~ tasks in an open, non-discriminatory and transparent way. In particular ~~the~~ ~~the~~ they ~~the~~ shall allow all parties to be heard and give reasons for ~~its~~ ~~the~~ their ~~the~~ decisions.

~~the~~ ~~the~~ They ~~the~~ shall promptly respond to requests and applications and communicate ~~its~~ ~~the~~ their ~~the~~ requests for information without delay and adopt all ~~its~~ ~~the~~ their ~~the~~ decisions within four months after all requested information has been provided. ~~the~~ ~~the~~ They ~~the~~ may at any time request the technical assistance of infrastructure managers and railway undertakings

or other qualified bodies when ~~it is~~ they are carrying out the tasks referred to in Article 16.

In the process of developing the national regulatory framework, the national safety authority shall consult all persons involved and interested parties, including infrastructure managers, railway undertakings, manufacturers and maintenance providers, users and staff representatives.

2. The Agency and the national safety authorities shall be free to carry out all inspections and investigations that are needed for accomplishment of their tasks and they shall be granted access to all relevant documents and to premises, installations and equipment of infrastructure managers and railway undertakings.

3. Member States shall take the measures necessary to ensure that decisions taken by the national safety authority are subject to judicial review.

4. The national safety authorities shall conduct an active exchange of views and experience within the network established by the Agency in order to harmonise their decision-making criteria across the Union. ~~for the purpose of harmonising their decision-making criteria across the Community. Their cooperation shall in particular aim at facilitating and coordinating the safety certification of railway undertakings which have been granted international train paths in accordance with the procedure laid down in Article 15 of Directive 2001/14/EC.~~

~~The Agency shall support the safety authorities in these tasks.~~

↓ new

5. The scope of cooperation between the Agency and the national safety authorities in all matters relating to inspections on site related to issuing the single safety certificate and supervision of the railway undertakings after issuing the single safety certificate shall be set out in contractual or other arrangements between the Agency and the national safety authorities.

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

### Article 18

#### Annual report

Each year the national safety authority shall publish an annual report concerning its activities in the preceding year and send it to the Agency by 30 September at the latest. The report shall contain information on:

- (a) the development of railway safety, including an aggregation at Member State level of the CSIs laid down in Annex I;
- (b) important changes in legislation and regulation concerning railway safety;
- (c) the development of safety certification and safety authorisation;
- (d) results of and experience relating to the supervision of infrastructure managers and railway undertakings;

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↓ 2008/110/EC Art. 1.10  
(adapted)  
⇒ new

(e) the derogations ~~that have been~~ decided in accordance with Article ~~14a~~  
⊗ 14 ⊗ (8):

⇒ (f) all inspections or audits of railway undertakings operating in the Member State  
in the course of supervision activities. ←

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

## CHAPTER V

### ACCIDENT AND INCIDENT INVESTIGATION

#### *Article 19*

##### **Obligation to investigate**

1. Member States shall ensure that an investigation is carried out by the investigating body referred to in Article 21 after serious accidents on the railway system, the objective of which is possible improvement of railway safety and the prevention of accidents.

2. In addition to serious accidents, the investigating body referred to in Article 21 may investigate those accidents and incidents which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the European rail system.

The investigating body shall, at its discretion, decide whether or not an investigation of such an accident or incident shall be undertaken. In its decision it shall take into account:

- (a) the seriousness of the accident or incident;
- (b) whether it forms part of a series of accidents or incidents relevant to the system as a whole;
- (c) its impact on railway safety on a Community Union level,  
and
- (d) requests from infrastructure managers, railway undertakings, the national safety authority or the Member States.

3. The extent of investigations and the procedure to be followed in carrying out such investigations shall be determined by the investigating body, taking into account ~~the principles and the objectives of~~ Articles 20 and 22 and depending on the lessons it expects to draw from the accident or incident for the improvement of safety.

4. The investigation shall in no case be concerned with apportioning blame or liability.

#### *Article 20*

##### **Status of investigation**

1. Member States shall define, in the framework of their respective legal system, the legal status of the investigation that ~~will~~ shall enable the investigators-in-charge to carry out their task in the most efficient way and within the shortest time.

~~2. In accordance with the legislation in force in the Member States and, where appropriate, in cooperation with the authorities responsible for the judicial inquiry, the investigators shall, as soon as possible, be given:~~

↓ new

2. In accordance with the legislation in force, Member States shall ensure full cooperation by the authorities responsible for the judicial inquiry, and shall ensure that the investigators are, as soon as possible, given:

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

- (a) access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations;
- (b) the right to an immediate listing of evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes;
- (c) access to and use of the contents of on-board recorders and equipment for recording of verbal messages and registration of the operation of the signalling and traffic control system;
- (d) access to the results of examination of the bodies of victims;
- (e) access to the results of examinations of the train staff and other railway staff involved in the accident or incident;
- (f) the opportunity to question the railway staff involved and other witnesses;
- (g) access to any relevant information or records held by the infrastructure manager, the railway undertakings involved and the ☒ national ☒ safety authority.

3. The investigation shall be accomplished independently of any judicial inquiry.

#### *Article 21*

#### **Investigating body**

1. Each Member State shall ensure that investigations of accidents and incidents referred to in Article 19 are conducted by a permanent body, which shall comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. This body shall be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It shall furthermore be functionally independent from the ☒ national ☒ safety authority and from any regulator of railways.

2. The investigating body shall perform its tasks independently of the organisations referred to in paragraph 1 and shall be able to obtain sufficient resources to do so. Its investigators shall be afforded status giving them the necessary guarantees of independence.

3. Member States shall make provision that railway undertakings, infrastructure managers and, where appropriate, the  national  safety authority, are obliged immediately to report accidents and incidents referred to in Article 19 to the investigating body. The investigating body shall be able to respond to such reports and make the necessary arrangements to start the investigation no later than one week after receipt of the report concerning the accident or incident.

4. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than railway accidents and incidents as long as such investigations do not endanger its independence.

5. If necessary the investigating body may request the assistance of investigating bodies from other Member States or from the Agency to supply expertise or to carry out technical inspections, analyses or evaluations.

6. Member States may entrust the investigating body with the task of carrying out investigations of railway accidents and incidents other than those referred to in Article 19.

7. The investigating bodies shall conduct an active exchange of views and experience for the purpose of developing common investigation methods, drawing up common principles for follow-up of safety recommendations and adaptation to the development of technical and scientific progress.

The Agency shall support the investigating bodies in this task.

## *Article 22*

### **Investigation procedure**

1. An accident or incident referred to in Article 19 shall be investigated by the investigation body of the Member State in which it occurred. If it is not possible to establish in which Member State it occurred or if it occurred on or close to a border installation between two Member States the relevant bodies shall agree which one of them ~~will~~ shall carry out the investigation or shall agree to carry it out in cooperation. The other body shall in the first case be allowed to participate in the investigation and fully share its results.

Investigation bodies from another Member State shall be invited to participate in an investigation whenever a railway undertaking established and licensed in that Member State is involved in the accident or incident.

This paragraph shall not preclude Member States from agreeing that the relevant bodies ~~should~~ shall carry out investigations in cooperation in other circumstances.

2. For each accident or incident the body responsible for the investigation shall arrange for the appropriate means, comprising the necessary operational and technical expertise to carry out the investigation. The expertise may be obtained from inside or outside the body, depending on the character of the accident or incident to be investigated.

3. The investigation shall be carried out with as much openness as possible, so that all parties can be heard and can share the results. The relevant infrastructure manager and railway undertakings, the  national  safety authority, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users shall be regularly informed of the investigation and its progress and, as far as

practicable, shall be given an opportunity to submit their opinions and views to the investigation and be allowed to comment on the information in draft reports.

4. The investigating body shall conclude its examinations at the accident site in the shortest possible time in order to enable the infrastructure manager to restore the infrastructure and open it to rail transport services as soon as possible.

### *Article 23*

#### **Reports**

1. An investigation of an accident or incident referred to in Article 19 shall be the subject of reports in a form appropriate to the type and seriousness of the accident or incident and the relevance of the investigation findings. The reports shall state the objectives of the investigations as referred to in Article 19(1) and contain, where appropriate, safety recommendations.

2. The investigating body shall make public the final report in the shortest possible time and normally not later than 12 months after the date of the occurrence. ~~The report shall, as close as possible, follow the reporting structure laid down in Annex V.~~ The report, including the safety recommendations, shall be communicated to the relevant parties referred to in Article 22(3) and to bodies and parties concerned in other Member States.

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↓ new

The Commission shall establish, by means of implementing acts, the content of accident and incident investigation reports. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

3. Each year the investigating body shall publish by 30 September at the latest an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

### *Article 24*

#### **Information to be sent to the Agency**

1. Within one week after the decision to open an investigation the investigating body shall inform the Agency thereof. The information shall indicate the date, time and place of the occurrence, as well as its type and its consequences as regards fatalities, injuries and material damage.

2. The investigating body shall send the Agency a copy of the final report referred to in Article 23(2) and of the annual report referred to in Article 23(3).



## Article 25

### Safety recommendations

1. A safety recommendation issued by an investigating body shall in no case create a presumption of blame or liability for an accident or incident.
2. Recommendations shall be addressed to the  Agency, to the national  safety authority and, where needed by reason of the character of the recommendation, to other bodies or authorities in the Member State or to other Member States. Member States and their  national  safety authorities shall take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration, and, where appropriate, acted upon.
3. The  national  safety authority and other authorities or bodies or, when appropriate, other Member States to which recommendations have been addressed, shall report back at least annually to the investigating body on measures that are taken or planned as a consequence of the recommendation.

## CHAPTER VI

### FINAL PROVISIONS

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↓ 2008/110/EC Art. 1.11 (adapted)
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## ~~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).~~

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↓ new
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## Article 26

### Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 5(2) and 7(2) shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 5(2) and 7(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 5(2) and 7(2) shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council, or if, before expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. The period shall be extended by two months at the initiative of the European Parliament or the Council.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16  
⇒ new

#### Article 27

#### Committee procedure

~~1. The Commission shall be assisted by the Committee set up by Article 21 of Directive 96/48/EC.~~

⇒ 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇐

~~2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

⇒ 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. ⇐

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

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↓ 2008/110/EC Art. 1.12(a)  
(adapted)

~~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.~~

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

~~3. Where reference is made to this paragraph, Article 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

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↓ 2008/110/EC Art. 1.12(b)

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

#### Article 28

#### Implementing measures

~~1. Member States may bring any measures concerning the implementation of this Directive to the attention of the Commission. Appropriate decisions shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~2. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of provisions concerning safety certification and safety authorisation, and within two months of receipt of such a request decide in accordance with the procedure referred to in Article 27(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and the Member States.~~

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

## ~~CHAPTER VII~~

### ~~GENERAL AND FINAL PROVISIONS~~

#### ~~Article 29~~

#### ~~Amendments to Directive 95/18/EC~~

~~Directive 95/18/EC is hereby amended as follows:~~

~~1. Article 8 shall be replaced by the following:~~

#### ~~Article 8~~

~~The requirements relating to professional competence shall be met when an applicant railway undertaking has or will have a management organisation which possesses the knowledge and/or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.’»~~

~~2. in the Annex, Section II shall be deleted.~~

#### ~~Article 30~~

#### ~~Amendments to Directive 2001/14/EC~~

~~Directive 2001/14/EC is hereby amended as follows:~~

~~1. the title shall be replaced by the following:~~

~~‘Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure’»~~

~~2. in Article 30(2), point (f) shall be replaced by the following:~~

~~‘(f) arrangements for access in accordance with Article 10 of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community’s railways<sup>25</sup> as amended by Directive 2004/51/EC of the European Parliament~~

<sup>25</sup>

~~OJ L 237, 24.8.1991, p. 25.~~

~~and of the Council of 30 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways<sup>26</sup>.~~

~~3. Article 32 shall be deleted;~~

~~4. in Article 34, paragraph 2 shall be replaced by the following:~~

~~'2. At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of provisions concerning charging, capacity allocation, and within two months of receipt of such a request decide in accordance with the procedure referred to in Article 35(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.'~~

Article ~~31~~  28

### Report and further ~~Community~~ Union action

~~The Commission shall submit to the European Parliament and to the Council before 30 April 2007 and every five years thereafter a report on the implementation of this Directive.~~

On the basis of relevant information provided by the Agency, the Commission shall submit to the European Parliament and to the Council before [specific date to be inserted by OPOCE - five years after the date of entry into force] and every five years thereafter a report on the implementation of this Directive.

The report shall be accompanied where necessary by proposals for further ~~Community~~  Union  action.

Article ~~32~~  29

### Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate, non-discriminatory and dissuasive.

The Member States shall notify those rules to the Commission by the date specified in Article ~~33~~  32(1)  and shall notify it without delay of any subsequent amendment affecting them.

<sup>26</sup> ~~OJ L 164, 30.4.2004, p. 164.~~

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↓ new

*Article 30*

**Transitional provisions**

Annexes III and V to Directive 2004/49/EC shall apply until the date of application of the implementing acts referred to in Articles 6(2) and (3), 9(2), 14(7) and 23(2) of this Directive.

Until [specific date to be inserted by OPOCE - *two years after the date of entry into force*], the national safety authorities shall continue to grant safety certificates in accordance with the provisions of Directive 2004/49/EC. Such safety certificates shall be valid until their date of expiry.

*Article 31*

**Recommendations and opinions and of the Agency**

The Agency shall provide recommendations and opinions in accordance with Article 15 of Regulation .../... [Agency Regulation] for the purpose of application of this Directive. These recommendations and opinions will serve as basis for any Union measure adopted pursuant this Directive.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)  
⇒ new

*Article ~~33~~ 32*

**~~Implementation~~ Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ Articles 2, 3, 4, 8, 10, 16, 18, 20 and Annex I by ⇒ [specific date to be inserted by OPOCE - *two years after the date of entry into force*] ~~30 April 2006~~ at the latest. ~~They shall forthwith inform the Commission thereof.~~ They shall forthwith communicate to the Commission the text of those provisions.

2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. ⇒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ~~The methods of making such reference shall be laid down by Member States.~~

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↓ new

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.

3. The obligation to transpose and implement this Directive shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no rail system is established within their territory.

However, as soon as a public or private entity submits an official application to build a railway line with a view to its operation by one or more railway undertakings, the Member States concerned shall put in place legislation to implement this Directive within one year from receipt of the application.

#### Article 33

##### **Repeal**

Directive 2004/49/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from [specific date to be inserted by OPOCE –two years after the *date of entry into force*], without prejudice to the obligations of the Member States concerning the time limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

#### Article 34

##### **Entry into force**

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

↓ new

Articles 10 and 11 shall apply from [specific date to be inserted by OPOCE - two years after the *date of entry into force*].

↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16 (adapted)

#### Article 35

##### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

☒ *For the European Parliament*

☒ *The President*

*For the Council* ☒

*The President* ☒

## ANNEX I

### **COMMON SAFETY INDICATORS**

Common safety indicators ~~shall~~  are to  be reported annually by the  national  safety authorities. ~~The first reporting period shall be 2010.~~

~~Indicators relating to activities referred to in Article 2(2), (a) and (b), should be accounted for separately, if they are submitted.~~

If new facts or errors are discovered after the submission of the report the indicators for one particular year ~~shall~~  are to  be amended or corrected by the  national  safety authority at the first convenient opportunity and at the latest in the next annual report.

For indicators relating to accidents under ~~heading~~  point  1, Regulation (EC) No 91/2003 of the European Parliament and of the Council ~~of 16 December 2002 on rail transport statistics<sup>1</sup>~~  shall  is to  be applied as far as the information is available.

#### **1. Indicators relating to accidents**

1.1. Total and relative (to train-kilometres) number of significant accidents and a break-down on the following types of ~~accidents~~  accident  :

- (i) ~~collisions~~  collision  of trains  with rail vehicles  , ~~including collisions with obstacles within the clearance gauge,~~
- (ii) collision of trains, with obstacle within the clearance gauge,
- (iii) ~~derailments~~  derailment  of trains,
- (iv) level crossing accidents, including accidents involving pedestrians at level crossings,
- (v) accidents to persons ~~caused by~~  involving  rolling stock in motion, with the exception of suicides,
- (vi) fires in rolling stock,
- (vii) ~~others~~  other  .

Each significant accident ~~shall~~  is to  be reported under the type of the primary accident, even if the consequences of the secondary accident are more severe, ~~e.g. for example~~ a fire following a derailment.

1.2. Total and relative (to train-kilometres) number of persons seriously injured and killed by type of accident divided into the following categories:

- (i) ~~passengers~~  passenger  (also in relation to total number of passenger-kilometres and passenger train-kilometres),
- (ii) ~~employees~~  employee  including the staff of contractors,
- (iii) level crossing users,
- (iv) ~~unauthorised persons on railway premises~~  trespassers  ,

<sup>1</sup> OJ L 14, 21.1.2003, p. 1.

(v) ~~others~~  other .

## **2. Indicators relating to dangerous goods**

Total and relative (to train-kilometres) number of accidents involving the transport of dangerous goods divided into the following categories:

- (i) accidents involving at least one railway vehicle transporting dangerous goods, as defined by the Appendix,
- (ii) number of such accidents in which dangerous goods are released.

## **3. Indicators relating to suicides**

Total and relative (to train-kilometres) number of suicides.

## **4. Indicators relating to precursors of accidents**

Total and relative (to train-kilometres) number of:

- (i) broken rails,
- (ii) track buckles  and track misalignments ,
- (iii) wrong-side signalling failures,
- (iv) signals passed at danger,
- (v) broken wheels ~~and axles~~ on rolling stock in service,
- (vi) broken axles on rolling stock in service.

All precursors are to be reported, both resulting and not resulting in accidents. Precursors resulting in an accident ~~shall~~  are to  be reported under the CSIs on precursors; the accidents that occurred, if significant, ~~shall~~  are to  be reported under the CSIs on accidents referred to in heading 1.

## **5. Indicators to calculate the economic impact of accidents**

~~Total in euro and relative (to train-kilometres):~~

~~– number of deaths and serious injuries multiplied by the Value of Preventing a Casualty (VPC),~~

~~– cost of damages to environment,~~

~~– cost of material damages to rolling stock or infrastructure,~~

~~– cost of delays as a consequence of accidents.~~

~~Safety authorities shall report either the economic impact of all accidents, or the economic impact of significant accidents only. This choice shall be clearly indicated in the annual report referred to in Article 18.~~

~~The VPC is the value society attributes to the prevention of a casualty and as such shall not form a reference for compensation between parties involved in accidents.~~

↓ new

The Agency shall define unit costs on the basis of data collected until the entry into force of this Directive.



## **6. Indicators relating to technical safety of infrastructure and its implementation**

6.1. Percentage of tracks with Automatic Train Protection (ATP) in operation, percentage of train-kilometres using operational ATP systems.

6.2. Number of level crossings (total, per line kilometre and track kilometre) by the following eight types:

(a) active level crossings with:

- (i) automatic user-side warning,
- (ii) automatic user-side protection,
- (iii) automatic user-side protection and warning,
- (iv) automatic user-side protection and warning, and  interlocked  rail-side protection,
- (v) manual user-side warning,
- (vi) manual user-side protection,
- (vii) manual user-side protection and warning;

(b) passive level crossings.

## **7. Indicators relating to the management of safety**

Internal audits accomplished by infrastructure managers and railway undertakings as set out in the documentation of the safety management system. Total number of audits accomplished and the number as a percentage of audits required (and/or planned).

## **8. Definitions**

Common definitions for the CSIs and methods to calculate the economic impact of accidents are laid down in the Appendix.

## Appendix

### *COMMON DEFINITIONS FOR THE CSIS AND METHODS TO CALCULATE THE ECONOMIC IMPACT OF ACCIDENTS*

#### **1. Indicators relating to accidents**

1.1. 'significant accident' means any accident involving at least one rail vehicle in motion, resulting in at least one killed or seriously injured person, or in significant damage to stock, track, other installations or environment, or extensive disruptions to traffic. Accidents in workshops, warehouses and depots are excluded.

1.2. 'significant damage to stock, track, other installations or environment' means damage that is equivalent to EUR 150000 or more.

1.3. 'extensive disruptions to traffic' means that train services on a main railway line are suspended for six hours or more.

1.4. 'train' means one or more railway vehicles hauled by one or more locomotives or railcars, or one railcar travelling alone, running under a given number or specific designation from an initial fixed point to a terminal fixed point. A light engine, ~~i.e. such as~~ a locomotive travelling on its own, is considered to be a train.

1.5. 'collision of trains, ~~including collisions with obstacles within the clearance gauge~~' means a front to front, front to end or a side collision between a part of a train and a part of another ~~train, or with~~ ☒ train or rail vehicle, or with shunting rolling stock ☒ :

~~(i) shunting rolling stock,~~

~~(ii) objects fixed or temporarily present on or near the track (except at level crossings if lost by a crossing vehicle or user).~~

☒ 1.6. 'collision with obstacles within the clearance gauge' means a collision between a part of a train and objects fixed or temporarily present on or near the track (except at level crossings if lost by a crossing vehicle or user). Collision with overhead contact lines shall be included. ☒

~~1.67~~ 'train derailment' means any case in which at least one wheel of a train leaves the rails.

~~1.78~~ 'level crossing accidents' means accidents at level crossings involving at least one railway vehicle and one or more crossing vehicles, other crossing users such as pedestrians or other objects temporarily present on or near the track if lost by a crossing vehicle/user.

~~1.89~~ 'accidents to persons ~~caused by~~ ☒ involving ☒ rolling stock in motion' means accidents to one or more persons who are either hit by a railway vehicle or by an object attached to, or that has become detached from, the vehicle. Persons who fall from railway vehicles are included, as well as persons who fall or are hit by loose objects when travelling on board vehicles.

~~1.910~~ 'fires in rolling stock' means fires and explosions that occur in railway vehicles (including their load) when they are running between the departure station and the destination, including when stopped at the departure station, the destination or intermediate stops, as well as during re-marshalling operations.

~~1.1011~~ 'other types of ☒ accident ☒ ~~accidents~~' means all accidents other than those already mentioned (train collisions, train derailments, at level crossing, to persons caused by rolling stock in motion and fires in rolling stock).

1.112. ‘passenger’ means any person, excluding members of the train crew, who makes a trip by rail. For accident statistics, passengers trying to embark/disembark onto/from a moving train are included.

1.113. ‘ employee  employees (staff of contractors and self-employed contractors are included)’ means any person whose employment is in connection with a railway and is at work at the time of the accident. It includes the crew of the train and persons handling rolling stock and infrastructure installations.

1.114. ‘level crossing  user  users’ means ~~all~~  any person  persons using a level crossing to cross the railway line by any mean of transport or by foot.

1.115. ‘~~unauthorised persons on railway premises~~’  ‘trespasser’  means any person present on railway premises where such presence is forbidden, with the exception of level crossing users.

1.116. ‘others (third parties)’ means all persons not defined as ‘passengers’, ‘employees including the staff of contractors’, ‘level crossing  user  users’ or ‘~~unauthorised persons on railway premises~~’  ‘trespassers’ .

1.117. ‘ death  deaths (killed person)’ means any person killed immediately or dying within 30 days as a result of an accident, excluding suicides.

1.118. ‘~~injuries~~  injured  (seriously injured person)’ means any person injured who was hospitalised for more than 24 hours as a result of an accident, excluding attempted suicides.

## **2. Indicators relating to dangerous goods**

2.1. ‘accident involving the transport of dangerous goods’ means any accident or incident that is subject to reporting in accordance with RID<sup>1</sup>/ADR section 1.8.5.

2.2. ‘dangerous goods’ means those substances and articles the carriage of which is prohibited by RID, or authorised only under the conditions prescribed therein.

## **3. Indicators relating to suicides**

3.1. ‘suicide’ means an act to deliberately injure oneself resulting in death, as recorded and classified by the competent national authority.

## **4. Indicators relating to precursors of accidents**

4.1. ‘broken rail ~~rails~~’ means any rail which is separated in two or more pieces, or any rail from which a piece of metal becomes detached, causing a gap of more than 50 mm in length and more than 10 mm in depth on the running surface.

4.2. ‘track  buckle and track misalignment  ~~buckles~~’ means faults related to the continuum and the geometry of track, requiring track obstruction or immediate reduction of permitted speed ~~to maintain safety~~.

4.3. ‘wrong side signalling failure’ means any  technical  failure of a signalling system (either to infrastructure or to rolling stock), resulting in signalling information less restrictive than that demanded.

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<sup>1</sup> RID, Regulations concerning the International Carriage of Dangerous Goods by Rail, as adopted under Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

4.4. 'Signal Passed at Danger (SPAD)' means any occasion when any part of a train proceeds beyond its authorised movement.

Unauthorised movement means to pass:

- a trackside colour light signal or semaphore at danger, order to STOP, where an Automatic Train Control System (ATCS) or ATP system is not operational,
- the end of a safety related movement authority provided in an ATCS or ATP system,
- a point communicated by verbal or written authorisation laid down in regulations,
- stop boards (buffer stops are not included) or hand signals.

Cases in which vehicles without any traction unit attached or a train that is unattended run away past a signal at danger are not included. Cases in which, for any reason, the signal is not turned to danger in time to allow the driver to stop the train before the signal are not included.

National ~~safety authorities~~ ~~Safety Authorities~~ may report separately on the four indexes and ~~shall~~  must  report at least an aggregate indicator containing data on all four items.

4.5. 'broken  wheel  wheels and broken axles' means a break affecting the essential parts of the wheel ~~or the axle and~~ creating a risk of accident (derailment or collision).

4.6 'broken axle' means a break affecting the essential parts of the axle creating a risk of accident (derailment or collision).

## 5. Common methodologies to calculate the economic impact of accidents

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↓ new

The Agency shall develop a methodology for calculation of the unit costs starting from the data collected before the entry into force of this Directive

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↓ 2009/149/EC Art. 1 and Annex (adapted)

~~5.1. The Value of Preventing a Casualty (VPC) is composed of:~~

- ~~1. Value of safety *per se*: Willingness to Pay (WTP) values based on stated preference studies carried out in the Member State for which they are applied.~~
- ~~2. Direct and indirect economic costs: cost values appraised in the Member State, composed of:
  - ~~— medical and rehabilitation cost,~~
  - ~~— legal court cost, cost for police, private crash investigations, the emergency service and administrative costs of insurance,~~
  - ~~— production losses: value to society of goods and services that could have been produced by the person if the accident had not occurred.~~~~

~~5.2. Common principles to appraise the value of safety *per se* and direct/indirect economic costs:~~

~~For the value of safety *per se*, the assessment of whether available estimates are appropriate or not shall be based on the following considerations:~~

estimates shall relate to a system for valuation of mortality risk reduction in the transport sector and follow a WTP approach according to stated preference methods, the respondent sample used for the values shall be representative of the population concerned. In particular, the sample has to reflect the age/income distribution along with other relevant socio-economic/demographic characteristics of the population, method for eliciting WTP values: survey design shall be such that questions are clear/meaningful to respondents.

Direct and indirect economic costs shall be appraised on the basis of the real costs borne by society.

5.3. 'Cost of damage to environment' means costs that are to be met by Railway Undertakings/Infrastructure Managers, appraised on the basis of their experience, in order to restore the damaged area to its state before the railway accident.

5.4. 'Cost of material damage to rolling stock or infrastructure' means the cost of providing new rolling stock or infrastructure, with the same functionalities and technical parameters as that damaged beyond repair, and the cost of restoring repairable rolling stock or infrastructure to its state before the accident. Both are to be estimated by Railway Undertakings/Infrastructure Managers on the basis of their experience. Also includes costs related to leasing rolling stock, as a consequence of non availability due to damaged vehicles.

5.5. 'Cost of delays as a consequence of accidents' means the monetary value of delays incurred by users of rail transport (passengers and freight customers) as a consequence of accidents, calculated by the following model:

<p><b>VT</b></p>	<p>=</p>	<p>monetary value of travel time savings</p> <p>Value of time for a passenger of a train (an hour)</p> $VT_p = [VT \text{ of work passengers}] * [\text{Average percentage of work passengers per year}] + [VT \text{ of non-work passengers}] * [\text{Average percentage of non-work passengers per year}]$ <p>VT measured in EUR per passenger per hour</p> <p>Value of time for a freight train (an hour)</p> $VT_f = [VT \text{ of freight trains}] * [(Tonne-Km)/(Train-Km)]$ <p>VT is measured in EUR per freight tonne per hour</p> <p>Average tonnes of goods transported per train in one year = <math>(Tonne-Km)/(Train-Km)</math></p>
<p><b>€<sub>M</sub></b></p>	<p>=</p>	<p>Cost of 1 minute of delay of a train</p> <p><i>Passenger train</i></p> $€_{MP} = K_1 * (VT_p/60) * [(Passenger-Km)/(Train-Km)]$ <p>Average number of passengers per train in one year = <math>(Passenger-Km)/(Train-Km)</math></p> <p><i>Freight train</i></p> $€_{MF} = K_2 * (VT_f/60)$ <p>Factors K<sub>1</sub> and K<sub>2</sub> are between the value of time and the value of delay, as</p>

	<p><del>estimated by stated preference studies, to take into account that the time lost as a result of delays is perceived significantly more negatively than normal travel time.</del></p> <p><del>Cost of delays of an accident = <math>C_{MP}^*</math>(Minutes of delay of passenger trains) + <math>C_{MF}^*</math>(Minutes of delay of freight trains)</del></p>
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### ~~Scope of the model~~

~~Cost of delays is to be calculated for all accidents, both significant and non-significant.~~

~~Delays are to be calculated as follows:~~

~~— real delays on the railway lines where accidents occurred,~~

~~— real delays or, if not possible, estimated delays on the other affected lines.~~

### **6. Indicators relating to technical safety of infrastructure and its implementation**

6.1. ‘Automatic Train Protection (ATP)’ means a system that enforces obedience to signals and speed restrictions by speed supervision, including automatic stop at signals.

6.2. ‘level crossing’ means any level intersection between the railway and a passage, as recognised by the infrastructure manager and open to public or private users. Passages between platforms within stations are excluded, as well as passages over tracks for the sole use of employees.

6.3. ‘passage’ means any public or private road, street or highway, including footpaths and bicycle paths, or other route provided for the passage of people, animals, vehicles or machinery.

6.4. ‘active level crossing’ means a level crossing where the crossing users are protected from or warned of the approaching train by the activation of devices when it is unsafe for the user to traverse the crossing.

- Protection by the use of physical devices:
  - half or full barriers,
  - gates.
- Warning by the use of fixed equipment at level crossings:
  - visible devices: lights,
  - audible devices: bells, horns, klaxons, etc.,
  - physical devices, e.g. vibration due to road bumps.

Active level crossings are classified as:

1. ‘Level crossing with ~~crossing~~-user-side automatic protection and/or warning’ means a level crossing where the ~~crossing~~ protection and/or warning are activated by the approaching train ☒ or where there is interlocked rail-side protection ☒.

These level crossings are classified as:

- (i) automatic user-side warning,
- (ii) automatic user-side protection,
- (iii) automatic user-side protection and warning,

(iv) automatic user-side protection and warning, and rail-side protection.

‘~~☒~~ Interlocked ~~☒~~ Rail-side protection’ means a signal or other train protection system that only permits a train to proceed if the level crossing is user-side protected and free from incursion; the latter by means of surveillance and/or obstacle detection.

2. ‘Level crossing with ~~crossing~~-user-side manual protection and/or warning’ means a level crossing where protection and/or warning is manually activated ~~☒~~ by a railway employee ~~☒~~ and there is not an interlocked ~~☒~~ rail-side protection ~~☒~~ ~~railway signal showing, to the train, a running aspect only when protection and/or warning of level crossing are activated.~~

These level crossings are classified as:

(v) manual user-side warning,

(vi) manual user-side protection,

(vii) manual user-side protection and warning.

6.5. ‘Passive level crossing’ means a level crossing without any form of warning system and/or protection activated when it is unsafe for the user to traverse the crossing.

### **7. Indicators relating to the management of safety**

7.1. ‘audit’ means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.

### **8. Definitions of the scaling bases**

8.1. ‘train-km’ means the unit of measure representing the movement of a train over one kilometre. The distance used is the distance actually run, if available, otherwise the standard network distance between the origin and destination ~~shall ☒~~ is to ~~☒~~ be used. Only the distance on the national territory of the reporting country ~~shall ☒~~ is to ~~☒~~ be taken into account.

8.2. ‘passenger-km’ means the unit of measure representing the transport of one passenger by rail over a distance of one kilometre. Only the distance on the national territory of the reporting country ~~shall ☒~~ is to ~~☒~~ be taken into account.

8.3. ‘line km’ means the length measured in kilometres of the railway network in Member States, whose scope is laid down in Article 2. For multiple-track railway lines, only the distance between origin and destination is to be counted.

8.4. ‘track km’ means the length measured in kilometres of the railway network in Member States, whose scope is laid down in Article 2. Each track of a multiple-track railway line is to be counted.

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

~~ANNEX II~~

~~NOTIFICATION OF NATIONAL SAFETY RULES~~

~~National safety rules that are to be notified to the Commission according to the procedure described in Article 8 include:~~

- ~~1. rules concerning existing national safety targets and safety methods;~~
  - ~~2. rules concerning requirements on safety management systems and safety certification of railway undertakings;~~
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↓ 2008/110/EC Art. 1.13

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↓ Corrigendum, OJ L 220,  
21.6.2004, p. 16

- ~~4. common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;~~
- ~~5. rules laying down requirements on additional internal operating rules (company rules) that must be established by infrastructure managers and railway undertakings;~~
- ~~6. rules concerning requirements on staff executing safety critical tasks, including selection criteria, medical fitness and vocational training and certification as far as they are not yet covered by a TSI;~~
- ~~7. rules concerning the investigation of accidents and incidents.~~



## ANNEX III

### SAFETY MANAGEMENT SYSTEMS

#### 1. REQUIREMENTS ON THE SAFETY MANAGEMENT SYSTEM

The safety management system must be documented in all relevant parts and shall in particular describe the distribution of responsibilities within the organisation of the infrastructure manager or the railway undertaking. It shall show how control by the management on different levels is secured, how staff and their representatives on all levels are involved and how continuous improvement of the safety management system is ensured.

#### 2. BASIC ELEMENTS OF THE SAFETY MANAGEMENT SYSTEM

The basic elements of the safety management system are:

- (a) a safety policy approved by the organisation's chief executive and communicated to all staff;
- (b) qualitative and quantitative targets of the organisation for the maintenance and enhancement of safety, and plans and procedures for reaching these targets;
- (c) procedures to meet existing, new and altered technical and operational standards or other prescriptive conditions as laid down
  - in TSIs,
  - or
  - in national safety rules referred to in Article 8 and Annex II,
  - or
  - in other relevant rules,
  - or
  - in authority decisions,and procedures to assure compliance with the standards and other prescriptive conditions throughout the life cycle of equipment and operations;
- (d) procedures and methods for carrying out risk evaluation and implementing risk control measures whenever a change of the operating conditions or new material imposes new risks on the infrastructure or on operations;
- (e) provision of programmes for training of staff and systems to ensure that the staff's competence is maintained and tasks carried out accordingly;
- (f) arrangements for the provision of sufficient information within the organisation and, where appropriate, between organisations operating on the same infrastructure;
- (g) procedures and formats for how safety information is to be documented and designation of procedure for configuration control of vital safety information;
- (h) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventive measures are taken;
- (i) provision of plans for action and alerts and information in case of emergency, agreed upon with the appropriate public authorities;

~~(j) provisions for recurrent internal auditing of the safety management system.~~

## ANNEX IV

### DECLARATIONS FOR NETWORK SPECIFIC PART OF SAFETY CERTIFICATE

~~The following documents must be submitted to enable the safety authority to deliver the network specific part of the safety certificate:~~

~~documentation from the railway undertaking on the TSIs or parts of TSIs and, where relevant, national safety rules and other rules applicable to its operations, its staff and its rolling stock and how compliance is ensured by the safety management system;~~

~~documentation from the railway undertaking on the different categories of staff employed or contracted for the operation, including evidence that they meet requirements of TSIs or national rules and have been duly certified;~~

~~documentation from the railway undertaking on the different types of rolling stock used for the operation, including evidence that they meet requirements of TSIs or national rules and have been duly certified.~~

~~To avoid duplication of work and to reduce the amount of information only summary documentation should be submitted concerning elements that comply with TSIs and other requirements of Directives 96/48/EC and 2001/16/EC.~~

## **ANNEX V**

# **PRINCIPAL CONTENT OF ACCIDENT AND INCIDENT INVESTIGATION REPORT**

## **1. SUMMARY**

The summary shall contain a short description of the occurrence, when and where it took place and its consequences. It shall state the direct causes as well as contributing factors and underlying causes established by the investigation. The main recommendations shall be quoted and information shall be given on the addressees.

## **2. IMMEDIATE FACTS OF THE OCCURRENCE**

### **1. The occurrence:**

date, exact time and location of the occurrence,

description of the events and the accident site including the efforts of the rescue and emergency services,

the decision to establish an investigation, the composition of the team of investigators and the conduct of the investigation.

### **2. The background to the occurrence:**

staff and contractors involved and other parties and witnesses,

the trains and their composition including the registration numbers of the items of rolling stock involved,

the description of the infrastructure and signalling system – track types, switches, interlocking, signals, train protection,

means of communication,

works carried out at or in the vicinity of the site,

trigger of the railway emergency plan and its chain of events,

trigger of the emergency plan of the public rescue services, the police and the medical services and its chain of events.

### **3. Fatalities, injuries and material damage:**

passengers and third parties, staff, including contractors,

cargo, luggage and other property,

rolling stock, infrastructure and the environment.

### **4. External circumstances:**

weather conditions and geographical references.

## **3. RECORD OF INVESTIGATIONS AND INQUIRIES**

### **1. Summary of testimonies (subject to the protection of identity of the persons):**

railway staff, including contractors,

other witnesses.

## ~~2. The safety management system:~~

~~the framework organisation and how orders are given and carried out,~~

~~requirements on staff and how they are enforced,~~

~~routines for internal checks and audits and their results,~~

~~interface between different actors involved with the infrastructure.~~

## ~~3. Rules and regulations:~~

~~relevant Community and national rules and regulations,~~

~~other rules such as operating rules, local instructions, staff requirements, maintenance prescriptions and applicable standards.~~

## ~~4. Functioning of rolling stock and technical installations:~~

~~signalling and control command system, including registration from automatic data recorders,~~

~~infrastructure,~~

~~communications equipment,~~

~~rolling stock, including registration from automatic data recorders.~~

## ~~5. Documentation on the operating system:~~

~~measures taken by staff for traffic control and signalling,~~

~~exchange of verbal messages in connection with the occurrence, including documentation from recordings,~~

~~measures taken to protect and safeguard the site of the occurrence.~~

## ~~6. Man-machine organisation interface:~~

~~working time applied to the staff involved,~~

~~medical and personal circumstances with influence on the occurrence, including existence of physical or psychological stress,~~

~~design of equipment with impact on man-machine interface.~~

## ~~7. Previous occurrences of a similar character.~~

## ~~4. ANALYSIS AND CONCLUSIONS~~

### ~~1. Final account of the event chain:~~

~~establishing the conclusions on the occurrence, based on the facts established in heading 3.~~

### ~~2. Discussion:~~

~~analysis of the facts established in heading 3 with the aim of drawing conclusions as to the causes of the occurrence and the performance of the rescue services.~~

### ~~3. Conclusions:~~

~~direct and immediate causes of the occurrence including contributory factors relating to actions taken by persons involved or the condition of rolling stock or technical installations.~~

~~underlying causes relating to skills, procedures and maintenance,~~

~~root causes relating to the regulatory framework conditions and application of the safety management system.~~

#### ~~4. Additional observations:~~

~~deficiencies and shortcomings established during the investigation, but without relevance to the conclusions on causes.~~

#### ~~5. MEASURES THAT HAVE BEEN TAKEN~~

~~Record of measures already taken or adopted as a consequence of the occurrence.~~

#### ~~6. RECOMMENDATIONS~~



## **ANNEX II**

### **PART A**

Repealed Directive with list of the successive amendments thereto  
(referred to in Article 32)

Directive 2004/49/EC	(OJ L 164, 30.4.2004, p. 44)
Directive 2008/57/EC	(OJ L 191, 18.7.2008, p. 1)
Directive 2008/110/EC	(OJ L 345, 23.12.2008, p. 62)
Commission Directive 2009/149/EC	(OJ L 313, 28.11.2009, p. 65)
Corrigendum, 2004/49/EC	(OJ L 220, 21.6.2004, p. 16)

### **PART B**

**Time limits for transposition into national law**  
(referred to in Article 32)

Directive	Deadline for transposition
2004/49/EC	30 April 2006
2008/57/EC	19 July 2010
2008/110/EC	24 December 2010
2009/149/EC	18 June 2010

### ANNEX III

#### **CORRELATION TABLE**

Directive 2004/49/EC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 12
Article 12	Article 11
Article 13	Article 13
Article 14a (1) to (7)	Article 14
Article 14a (8)	Article 15
Article 15	--
Article 16	Article 16
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20	Article 20
Article 21	Article 21
Article 22	Article 22
Article 23	Article 23



Article 24	Article 24
Article 25	Article 25
Article 26	--
--	Article 26
Article 27	Article 27
Article 28	--
Article 29	--
Article 30	--
Article 31	Article 28
Article 32	Article 29
--	Article 30
--	Article 31
Article 33	Article 32
--	Article 33
Article 34	Article 34
Article 35	Article 35
Annex I	Annex I
Annex II	--
Annex III	--
Annex IV	--
Annex V	--
--	Annex II