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Annuls and replaces the notice of
27 February 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF RAIL TRANSPORT

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, all stakeholders are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of rail transport no longer apply to the United Kingdom. This has in particular the following consequences in the different areas of rail transport:

1. MANAGEMENT AND USE OF RAILWAY INFRASTRUCTURE

According to Chapter III of Directive 2012/34/EU establishing a single European railway area,⁴ in order to provide rail transport services, railway undertakings need a licence: they are entitled to apply for it in the EU Member State where they are established. The licence is valid throughout the territory of the Union, as long as the undertaking fulfils the obligations laid down in Chapter III of Directive

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, OJ L 343 14.12.2012, p. 32.

2012/34/EU. As of the withdrawal date, licences issued by the United Kingdom will no longer be valid in the EU-27. Railway undertakings holding such a licence and wishing to continue operating in the EU-27 as of the withdrawal date will have to apply for a new licence in an EU-27 Member State in accordance with Chapter III of Directive 2012/34/EU.

Railway undertakings providing cross-border services between the United Kingdom and the EU-27 and wishing to continue after the withdrawal date, will have to comply with the legal requirements applicable both in the EU-27 and the United Kingdom. These undertakings will therefore have to ensure that they have a licence valid in the EU-27 for the sections of the cross-border services located in the territory of the EU-27. It follows from Article 17(1) of Directive 2012/34/EU that establishment in one of the EU-27 Member States is a precondition for acquiring an EU-27 licence.

2. RAILWAY SAFETY

According to Article 10 of Directive 2004/49/EC on safety on the Community's railways,⁵ access to railway infrastructure in the Union by a railway undertaking is subject to having obtained a safety certificate issued by a Member State. As of the withdrawal date, safety certificates delivered in the United Kingdom pursuant to Article 10 of the Directive will no longer be valid in the EU-27. Railway undertakings holding such a certificate and wanting to continue operating in the EU-27 as of the withdrawal date will have to apply for a new certificate in an EU-27 Member State⁶ in accordance with Article 10 of Directive 2004/49/EC.

According to Article 14a(4) of Directive 2004/49/EC, each entity in charge of maintenance (ECM) of freight wagons is subject to a certification requirement. As of the withdrawal date, certificates issued by the United Kingdom will no longer be valid in the EU-27.⁷ ECMs holding a certificate delivered by the United Kingdom and wishing to continue their professional activities in the European Union will have to apply for a certificate in an EU-27 Member State.

In addition, as of the withdrawal date, ECMs may apply for a certificate according to the legal framework of the Convention concerning international carriage by rail (COTIF), to which the 26 EU Member States with a railway system⁸ are parties.⁹

⁵ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (Railway Safety Directive), OJ L 164, 30.4.2004, p. 44.

⁶ More specifically, they will need a safety certificate part A issued by a EU-27 Member State in order to operate in the EU and safety certificates part B from each of the Member States in which they would operate.

⁷ This also holds for certificates by ECM certification bodies recognised by the United Kingdom or accredited by the United Kingdom accreditation body in accordance with Article 10 of Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 (OJ L 122, 11.5.2011, p. 22).

⁸ Malta and Cyprus do not have a railway system.

3. RAILWAY INTEROPERABILITY¹⁰

- Placing on the market of railway products covered by Directive 2008/57/EC: For those products, the European Union's Technical Specifications for Interoperability set out the applicable conformity assessment procedures and whether, for each of them, a third party intervention (Notified Body or Designated Body) is required or not. In terms of the placing on the market of such products, this notice should be read in conjunction with the generic notice to economic operators subject to Union legislation in the field of industrial products,¹¹ particularly its section 2 on conformity assessment procedures and Notified Bodies. The consequences of the withdrawal of the United Kingdom from the EU set out in the generic notice fully apply to certificates issued by bodies notified (in the case of Notified Bodies) or designated (in the case of Designated Bodies) by the United Kingdom (hereafter "Notified Bodies/Designated Bodies in the United Kingdom"). The following paragraphs deal with the specific cases concerning the placing on the market and use of interoperability constituents and the placing in service of vehicles and subsystems.
- Placing on the market and use of interoperability constituents: According to Articles 10 and 13(2) of Directive 2008/57/EC on the interoperability of the rail system within the Community,¹² the placing on the market of an interoperability constituent may require an assessment of conformity/suitability for use established by a Notified Body. Where an assessment established by a Notified Body is required, the consequences of the withdrawal of the United Kingdom from the EU set out in the generic notice on industrial products referred to in the preceding paragraph fully apply.

An interoperability constituent placed on the market before the withdrawal date with a certificate of conformity/suitability for use issued by a Notified Body in the United Kingdom can be used, during the duration of validity of the certificates of conformity/suitability for use, in subsystems or vehicles the placing in service of which has been authorised before the withdrawal date.

- Placing in service of vehicles and subsystems: According to Article 21 of Directive 2008/57/EC, before being used on a network, a railway vehicle has to be authorised to be placed in service by the national safety authority which is

⁹ See Article 15(2) of Appendix G to COTIF, and the Uniform Rules set out in accordance with that Article, in relation to the ECM certification in the COTIF framework. For the interaction between the ECM certifications pursuant to Directive 2004/49/EC and to the COTIF framework, see Article 3a(5) of the same Appendix.

¹⁰ The principles set out in this section will also apply in the framework of Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast) (OJ L 138, 26.5.2016, p. 44) when the relevant provisions become applicable in the respective EU Member States.

¹¹ https://ec.europa.eu/growth/single-market/goods_en.

¹² Directive 2008/57/EU of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community, OJ L 191, 18.7.2008, p. 1.

competent for this network in accordance with that Directive. Authorisations for placing in service of vehicles pursuant to Article 21 of Directive 2008/57/EC delivered in the EU-27 before the withdrawal date will retain their validity after the withdrawal date even if they have been authorised based on certificates of verification issued by Notified Bodies/Designated Bodies in the United Kingdom. The same applies to authorisations for placing in service of subsystems according to Articles 15 and 20 of Directive 2008/57/EC. As of the withdrawal date, however, authorisations for placing in service pursuant to Articles 15, 20 and 21 of Directive 2008/57/EC shall be based on certificates of verification issued by Notified Bodies/Designated Bodies in the EU-27.

As of the withdrawal date, the use of railway material authorised in the United Kingdom in international traffic in the EU will be governed by COTIF, and in particular the Appendices G¹³ and F¹⁴ thereto.

4. TRAIN DRIVER CERTIFICATION

- Directive 2007/59/EC¹⁵ lays down the conditions and procedures for the certification of train drivers operating locomotives and trains on the railway system in the Union. In particular, it requires that the train driver obtains a specific licence and a specific certificate. The licence is issued by a competent authority of a Member State while the certificate is issued by the railway undertakings and infrastructure managers. According to Article 7, a licence issued by a Member State is valid throughout the territory of the Union while the certificate is valid on those infrastructures and rolling stock identified on it. As of the withdrawal date, licenses and certificates for train drivers issued in the United Kingdom will no longer be valid in the EU-27.
- Train drivers with a licence/certificate issued in the United Kingdom and working in another Member State should take the necessary steps in order to obtain certification documents valid in the EU-27 as of the withdrawal date. Therefore, railway undertakings or infrastructure managers in the EU employing train drivers with certification documents issued in the United Kingdom are invited to inform these persons of the need to obtain new certification documents valid in the EU-27 as of the withdrawal date.
- Railway undertakings providing cross-border services between the United Kingdom and the EU-27 and wishing to continue after the withdrawal date, will have to ensure that the drivers on the sections of such cross-border services

¹³ "Uniform rules concerning the technical admission of railway material used in international traffic". For the interaction between the vehicle authorisations pursuant to Directive 2008/57/EC and pursuant to the COTIF framework, see Article 3a of Appendix G to COTIF.

¹⁴ "Uniform rules concerning the validation of technical standards and the adoption of uniform technical prescriptions applicable to railway material intended to be used in international traffic".

¹⁵ Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, OJ L 315, 3.12.2007, p. 51.

which are located in the EU-27 territory have required licences/certificates issued in the EU-27.

The website of the Commission on rail transport (https://ec.europa.eu/transport/modes/rail_en) provides for general information concerning the rules for rail transport in the Union. These pages will be updated with further information, where necessary.

European Commission
Directorate-General for Mobility and Transport