



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From: General Secretariat of the Council
To: Delegations

No. Cion prop.: 6014/13 TRANS 40 CODEC 227

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on railway safety (Recast)

In view of the Working Party on Land Transport on 3 September 2013, delegations will find attached a revised version of the above-mentioned document.

In order to facilitate the work on the proposal, the text has been transformed into a Word document. The text previously marked with double strikethrough has been deleted. The shaded highlight has been kept, in order to preserve the difference between the old text (Directive 2004/49/EC) and the new changes proposed by the Commission.

The changes with respect to the Commission proposal (doc 6014/13) and W. doc 2013/91 introduced following the discussions in the Land Transport Working Parties on 2, 12, 16 and 17 July, have been marked with **bold** and ~~strikethrough~~. The document contains no change on the recitals.

General scrutiny reservation: all delegations.

Parliamentary reservation: DK and UK.

2013/0016 (COD)

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on railway safety
(Recast)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91
(1) thereof,
Having regard to the proposal from the European Commission¹,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee²,
Having regard to the opinion of the Committee of the Regions³,
Acting in accordance with the ordinary legislative procedure,
Whereas:

(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 certification⁴ have been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.

¹ OJ C , , p..

² OJ C , , p..

³ OJ C , , p..

⁴ OJ L 164, 30.4.2004, p. 44.

- (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.
- (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.
- (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.
- (5) The main actors in the rail system, infrastructure managers and railway undertakings, should bear full responsibility for the safety of the system, each for their own part. Whenever 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 all operators.

- (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.
- (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.
- (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.

- (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.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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.
- (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.
- (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.

- (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.
- (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.
- (20) 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 rail 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.
- (21) 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.

- (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.
- (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 powers⁵.
- (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,

HAVE ADOPTED THIS DIRECTIVE:

⁵ OJ L 55, 28.2.2011, p. 13.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down provisions to ensure the development and improvement of safety of the 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 gradually removing the need for national rules⁶;
- (cc) setting out the principles for issuing, renewing, amending and revoking safety certificates and authorisations;**
- (d) requiring the establishment, 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 system in the Member States, which may be broken down into subsystems for structural and 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, infrastructure managers and other actors of the rail system .

⁶ BE and IT have a reservation to be examined together with Article 8 on national rules.

2. The following systems are excluded from the scope of this Directive:
- (a) metros;⁷
 - (aa) trams and light rail vehicles, and infrastructure that is used exclusively by these vehicles⁸;
 - (b) networks that are functionally separate from the rest of the 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, used by the owner or an operator for the purpose of its freight activities or the transport of persons for non-commercial purposes, and vehicles exclusively used on such infrastructure;⁹
 - (b) infrastructure and vehicles reserved for strictly local, historical or tourist use.
 - (c) light rail infrastructure occasionally used by heavy rail vehicles under the operational conditions of the light rail system, where it is necessary for connectivity purposes for those vehicles only; and
 - (d) vehicles primarily used on light rail infrastructure but equipped with some heavy rail components necessary to enable transit on a confined and limited section of heavy rail infrastructure for connectivity purposes only.¹⁰

⁷ DE insists on referring to the definition of metro, tram and light rail systems included in Article 3(1) of Regulation (EC) 91/2003.

⁸ DE asks to remove point (aa) for the reasons mentioned in footnote 7.

⁹ DE, supported by DK wants to add the following new sentence under 3(a): "*The owner of this railway infrastructure may be a public-owned entity, whose core activities are outside the railway business*".

¹⁰ DE wants to remove points (c) and (d) of paragraph 3 in relation to their request to delete point (aa) of paragraph 2.

Article 3

Definitions

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

- a) 'rail system' means the Union rail system as defined in Article 2 of Directive [xx on interoperability of the rail system];
- (b) 'infrastructure manager' means infrastructure manager as defined in Article 3 of Directive 2012/34/EU establishing a single European railway area¹¹;
- (c) 'railway undertaking' means railway undertaking as defined in Article 3 of Directive 2012/34/EU establishing a single European railway area, ~~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;~~¹²
- (d) 'technical specification for interoperability' (TSI) means a specification adopted in accordance with this Directive by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of the rail system as defined in Article 2 of Directive xx 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 system¹³ (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 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 body entrusted by several Member States with these tasks in order to ensure a unified safety regime;

¹¹ OJ L 343 of 14.12.2012, p. 32.

¹² This definition will need to be amended as well in the interoperability Directive at a later stage.

¹³ BE would like to delete the reference to the different parts of the railway system.

- (h) ‘national rules’ means all **binding** rules adopted at Member State level, irrespective of the body issuing them. These rules contain railway safety or technical requirements imposed within that Member State in addition to European rules and are applicable to railway undertakings, infrastructure managers or third parties;
- (i) ‘safety management system’ means the organisation, arrangements **and procedures** 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;
- (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 the same consequences** 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 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) ‘tram and light rail’ means an urban and/or sub-urban rail transport system with a crashworthiness of CIII (according to EN 15227:2011), and a maximum strength of vehicle of 800kN (PIII according to EN12663-1:2010). 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;¹⁴
- (q) ‘conformity assessment body’ means a body that has been notified or designated to be responsible for conformity assessment activities, including calibration, testing, certification and inspection. A conformity assessment body is classified as a ‘notified body’ following notification by a Member State. A conformity assessment body is classified as a designated body following designation by a Member State;
- (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 rail system depends directly or indirectly, as defined in Article 2 of Directive xx on interoperability of the rail system ;
- (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 referred to in Article 43 of Directive XX on the interoperability of the rail system;
- (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 ;
- (u) ‘vehicle’ means a railway vehicle suitable for circulation on wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems ;
- (v) ‘manufacturer’ means any natural or legal person who manufactures a product in the form of interoperability constituents, ~~or~~ subsystems or vehicles 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;

¹⁴ DE wants to delete this definition and to replace it by the definition included in Article 3(1) of Regulation (EC) 91/2003.

(ww) ‘consignee’ means any natural or legal person who receives the goods;

(x) ‘loader’ means any enterprise that loads packaged goods, ~~including dangerous goods~~¹⁵, 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;

(xx) ‘unloader’ means the enterprise which removes, unloads or discharges packaged goods out or from 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.

(yy) ‘carrier’ means the enterprise which carries out the transport operation, with or without a transport contract.

(z) ‘Agency’ means the European Railway Agency, as established by Regulation (EU) No .../... [Agency Regulation].

(za) ‘contracting authorities’ means contracting authority in the meaning of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹⁶, as far as these products or services are related to the railway sector.

¹⁵ The following recital could be added: *Rail freight services should also encompass the transport of dangerous goods. However, a distinction should be made between the objective of this directive, which is to maintain and, where possible, to improve the safety of railway system, and Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, which mainly regulates the classification of the substance and the specification of their containments, including the safe loading, unloading and use of the containments within the existing railway system. Consequently the safety management system of the railway undertakings and of the infrastructure managers should take due consideration of the potential additional risks generated by carrying dangerous goods containments, however without prejudice to Directive 2008/68/EC which objective is that dangerous goods are transported in safe containments which are interoperable, where appropriate multimodal, and can be transported everywhere under normal operating conditions.*

¹⁶ OJ L 134, 30.4.2004 p.114

- (zb) ‘type of operation’ is characterised by passenger transport, including and excluding high-speed services, freight transport, including and excluding dangerous goods services, and shunting services only;**
- (zc) ‘extent of operation’ is characterised by volume of passenger/goods and the estimated size of the railway undertaking in terms of employees working in the railway sector (micro, small, medium sized, large enterprise).**
- (zd) ‘area of operation’ means a network of one or more Member States where the railway undertaking provides its services.**
- (ze) ‘supervision’ means the arrangements put in place by the national safety authority to oversee safety performance of a railway undertaking after it has been granted a single safety certificate or of an infrastructure manager after it has been granted a safety authorisation.**

CHAPTER II

DEVELOPMENT AND MANAGEMENT OF SAFETY

Article 4

Role of the actors of the rail system in developing and improving railway safety

[Note: Article 4 of the Commission's proposal is replaced by the following text]:

1. With the aim of developing and improving railway safety, Member States shall:
 - (a) ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved taking into consideration the development of Union legislation and technical and scientific progress and giving priority to the prevention of serious accidents;
 - (b) ensure that all applicable legislation is enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system
 - (c) ensure that the responsibility for the safe operation of the rail system and the control of risks associated with it is laid upon the infrastructure managers and railway undertakings obliging them to:
 - (i) implement necessary risk control measures as referred to in Article 6(1(a)), where appropriate in cooperation with each other;
 - (ii) apply Union and national rules;
 - (iii) establish safety management systems in accordance with this Directive;
 - (d) without prejudice to civil liability in accordance with the legal requirements of the Member States, ensure that 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 the third parties referred to in paragraph 5 of this Article;
 - (e) develop and publish annual safety plans setting out the measures envisaged to achieve the relevant safety targets referred to in Article 7.
 - (f) support the Agency in its work to monitor the development of railway safety at European level.

2. The Agency shall ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved taking into consideration the development of Union legislation and technical and scientific progress and giving priority to the prevention of serious accidents.
3. Railway undertakings and Infrastructure managers shall:
 - (a) implement the necessary risk control measures as referred to in Article 6(1(a)), where appropriate in cooperation with other actors;
 - (b) take account of the risks associated with the activities of third parties in their safety management systems;
 - (c) ensure that its contractors implement risk control measures through the application of the common safety methods for monitoring processes set out in the CSM on monitoring referred to in Article 6(1c)-and that this is stipulated in contractual arrangements which shall be disclosed on request of the Agency or the national safety authority.
4. Entities in charge of maintenance shall:
 - (a) implement the necessary risk control measures as referred to in Article 6(1(a)), where appropriate in cooperation with other actors;
 - (b) ensure that its contractors implement risk control measures through the application of the common safety methods for monitoring processes set out in the CSM on monitoring referred to in Article 6(1c) and that this is stipulated in contractual arrangements which shall be disclosed on request of the Agency or the national safety authority.
5. All other actors having a potential impact on safety, including manufacturers, maintenance suppliers, keepers, service providers, contracting authorities, carriers, consigners, consignees, loaders, unloaders, fillers and unfillers shall:
 - (a) implement the necessary risk control measures as referred to in Article 6(1(a)), where appropriate in cooperation with other actors;
 - (b) ensure that rolling stock, installations, accessories, equipment and services supplied by them comply with specified requirements and conditions for use so that they can be safely put into operation by the railway undertaking and/or infrastructure manager;

6. Any actor of the rail system who identifies or is informed of a safety risk related to defects and construction non-conformities or malfunctions of technical equipment, including those of structural sub-systems, shall:
 - (a) take any necessary corrective measure to tackle the safety risk identified;
 - (b) report those risks to the relevant parties involved, to enable them to take any necessary further corrective actions to ensure continuous achievement of the safety performance of the rail system.

7. In the case of exchange of vehicles between railway undertakings, any actor involved shall exchange all information relevant to safe operation including, but not limited to, the status and history of the vehicle, elements of the maintenance files, traceability of loading operations and consignment notes¹⁷. The exchange of information shall include sufficient detail to allow an assessment of the risks of operating the vehicle by the railway undertaking. To the purpose of transmission of such information, the relevant register of information may be used, where appropriate.

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 CSIs shall be established as set out in Annex I.

¹⁷ IT would like to add the traceability of safety critical components.

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.¹⁸

Article 6

Common safety methods

1. The CSMs shall describe how the safety levels, the achievement of safety targets and compliance with other safety requirements are assessed, **including through an independent assessment body**, 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,
 - (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.
 - (e) methods for assessing the safety level and the safety performance of operators at national and European Union level.**
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.~~
- Implementing powers shall be conferred on the Commission in order to issue a mandate to the Agency to draft CSMs and their amendments and to make the relevant recommendations to the Commission, on the basis of a clear justification of the need for a new or amended CSM and its impact on existing rules. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2).**

¹⁸ UK, FR, DE, AT, BU and DK oppose the introduction of delegated acts. Council's Legal Service will be consulted on delegated/implementing acts in general, as requested by several delegations.

~~When~~ **The drafting, adoption and review of the CSMs** ~~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.

The Committee referred to in Article 27 shall be kept regularly informed of the preparatory work on the CSMs.

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.~~¹⁹ **The Commission shall establish, by means of implementing acts, elements of the common safety methods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).**
5. Member States shall make any necessary amendments to their national rules in the light of the adoption of CSMs and revisions to them.

Article 7

Common safety targets

1. The CSTs shall define the minimum safety levels that shall be reached by different parts of the rail system²⁰ and by the system as a whole in each Member State **and in the European Union**, expressed in risk acceptance criteria for:

¹⁹ Commission reservation on the deletion of delegated acts.

²⁰ BE would like to delete the reference to the different parts of the railway system.

- (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.

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

Implementing powers shall be conferred on the Commission in order to issue a mandate to the Agency to draft CSTs and their amendments and to make the relevant recommendations to the Commission, on the basis of a clear justification of the need for a new or amended CST and its impact on existing rules. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2).

~~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.~~

The Commission shall establish, by means of implementing acts, elements of the CSTs. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).²¹

5. Member States shall make any necessary amendments to their national 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.

²¹ Commission reservation on the deletion of delegated acts.

Article 8

National rules

1. **National safety rules notified until the entry into force of this Directive shall apply if they:**
 - (a) **fall into one of the types identified under Annex IA of this Directive, and**
 - (b) **comply with Union law, including in particular TSIs, CSTs and CSMs, and**
 - (c) **would not result in arbitrary discrimination or a disguised restriction on rail transport operation between Member States.**

2. **Member States shall review the national safety rules referred to in paragraph 1 and take the following actions within two years of the entry into force of this Directive:**
 - (a) **repeal any national rule which was not notified or which does not meet one of the criteria of paragraph 1.**
 - (b) **repeal any national rule which has been made redundant by Union legislation, including in particular TSIs, CSTs and CSMs.**

To this end, Member States may use the Rule Management Tool referred to in Article 23(4) of Regulation (EU) N°.../...[Agency Regulation] and may request the Agency to examine specific rules against the criteria of this paragraph.

3. **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 ;**
 - (aa) **where common operating rules of the railway network are not yet covered by the TSIs;**
 - (b) **as an urgent preventive measure, in particular following an accident or an incident;**
 - (c) **where an already notified rule needs to be revised;**

(d) where rules concerning requirements on staff executing safety critical tasks, including selection criteria, medical fitness and vocational training are not yet covered by a TSI or by 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 Community²².

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

4. 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]. Member States shall ensure that the draft is sufficiently developed to allow the Agency to carry out its examination under Article 21(2) of Regulation (EU) N°.../...[Agency Regulation].
5. 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.
6. When they adopt a national rule, Member States shall notify it to the Agency and the Commission through the appropriate IT system in accordance with Article 23 of Regulation (EU) N°.../...[Agency Regulation]. Member States shall ensure that national rules in force, **including those covering the interfaces between vehicles and network** are accessible to all parties concerned and in a terminology that they can understand.
7. National rules notified in accordance with this Article are not subject to the notification procedure set out in Directive 98/34/EC.

²² OJ L 315, 3.12.2007 p.51-78

Article 9

Safety management systems

1. Infrastructure managers and railway undertakings shall establish their safety management systems to ensure that the rail system can achieve at least the CSTs, is in conformity 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, 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.

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).²³

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 rules and with the conditions laid down in their safety certificate. 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:

²³ IT has a reservation on the use of implementing acts.

- (a) information on how the 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, **including information provided by the relevant actors according to Article 4(6);**
- (e) **report on the experience of the proposers with the application of the common safety methods on risk evaluation and assessment.**

5. On the basis of the information provided by the national safety authorities in Articles 18 and 16a, the Agency may issue 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).

CHAPTER III
SAFETY CERTIFICATION AND AUTHORISATION
Article 10²⁴ ²⁵

Single safety certificate

[Note: Article 10 of the Commission's proposal is replaced by the following text]:

1. Access to the railway infrastructure shall be granted only to railway undertakings which hold the single safety certificate issued by the Agency in accordance with paragraph 1d to 1f or by a national safety authority according to paragraph 1g.

The purpose of the single safety certificate is to provide evidence that the railway undertaking has established its safety management system and is able to operate safely in the intended area of operation.

- 1a. In its application for a single safety certificate, the applicant shall specify the type and extent of the railway operations covered and the intended area of operation, ~~i.e. a network or networks within a Member State, or a group of Member States.~~
- 1b. The application shall be accompanied by a file including the documentary evidence:
 - (a) that the railway undertaking has established its safety management system in accordance with Article 9 and meets the requirements laid down in TSIs, CSM and CST and in other relevant legislation in order to control risks and provide transport services safely on the network;
 - (b) where applicable, **ability to comply** ~~compliance~~ with the relevant national rules notified under Article 8.

²⁴ IT, DE, BE and LU have a general reservation on Article 10.

²⁵ LV asks for a derogation for the operators from third countries entering the EU territory in the stations close to the border.

- 1c. The Agency or in the case of paragraph 1g., the national safety authority shall issue the safety certificate within a pre-determined, reasonable time, and, in any case, within four months from receipt of all relevant information.
- 1d. The Agency shall issue a single safety certificate to railway undertakings having an area of operation in one or more Member State(s). In order to issue such certification, the Agency shall:
- (a) assess the elements ~~of the file~~ set out in paragraphs 1b(a) and
 - (b) refer the **entire** applicant's file to the national safety authorities concerned by the intended area of operation for assessing the **elements** ~~file~~ set out in paragraphs 1b(b).

As part of the above assessments ~~and in case of justified doubts~~, the Agency or the national safety authorities are authorised to undertake **visits and** inspections on the sites of the railway undertaking and audits.

In order to issue such certifications, the Agency shall assess the file in relation to all the elements set out in paragraph 1b and according to the procedures to be established in the implementing acts under paragraph 1h.

- 1e. Within one month of the receipt of the request of the applicant, the Agency shall inform the applicant that the file is complete or ask for relevant complementary information, setting a reasonable deadline. With regard to the completeness, relevance and consistency of the file, the Agency may also assess the elements set out in paragraph 1b(b).

The Agency shall take full account of the assessments under paragraph 1**bd** before taking its decision on the issuing of the single safety certificate. The Agency shall issue the certification or inform the applicant of its negative decision, within a pre-determined, reasonable time, and in any case, within four months from receipt of all relevant information.

The Agency shall take full responsibility for the certifications it issues.²⁶

- 1f. When the Agency disagrees with a negative assessment carried out by one or more national safety authorities pursuant to paragraph 1d(b), it shall inform the said authority or authorities, giving reasons for the disagreement. The Agency and the national safety authority or authorities shall cooperate with a view to reaching a mutually acceptable assessment. Where necessary, as decided by the Agency and the national safety authority or authorities, this process shall also involve the applicant. If no mutually acceptable assessment can be found within one month after the Agency has informed the national safety authority or authorities of its disagreement, the Agency shall take its final decision unless the national safety authority or authorities have referred the matter for arbitration to the Board of Appeal established under Article 51 of Regulation (EU) No .../...[Agency Regulation].²⁷ The Board of Appeal shall decide whether to confirm the Agency's draft decision within one month of the request of the national safety authority or authorities.

When the Board of Appeal agrees with the Agency, the Agency may take a decision without delay.

When the Board of Appeal agrees with the negative assessment of the national safety authority, the Agency shall grant a certificate with an area of operations excluding the parts of the network which received a negative assessment.

²⁶ On liability, in addition to a new recital and provisions to be included in the Agency Regulation on liability aspects, the following recital will be inserted in the text of the safety Directive: *"This Directive should not lead to a reduced level of safety in the European Union's railway sector. To this end, the Agency should take full responsibility for the certificates it issues, in particular contractual and non-contractual liabilities which are regulated by Article 66 of the Regulation (EU) No .../...[Agency Regulation] and which stipulates that the Agency make good any damage caused by its departments or by its staff during the performance of their duties. In the event of a judicial inquiry involving the Agency or its staff, the Agency should cooperate fully with the competent authorities of the Member States concerned"*.

²⁷ Article 51 of the Agency Regulation will be amended to include an arbitration procedure and the new role of the Board of Appeals. The process of appeal in the Agency Regulation will be modified and the provisions will reflect the need for appropriate competence, independence and impartiality of the Board in relation to arbitrations.

When the Agency disagrees with a positive assessment of one or more national safety authorities pursuant to paragraph 1d(b), it shall inform the said authority or authorities, giving reasons for disagreement. The Agency and the national safety authority or authorities shall cooperate with a view to reaching a mutually acceptable assessment. Where necessary, as decided by the Agency and the national safety authority or authorities, this process shall also involve the applicant. If no mutually acceptable assessment can be found within one month after the Agency has informed the national safety authority and authorities of its disagreement, the Agency shall take its final decision.

- 1g. Where the area of operation is limited to **one Member State** ~~a network or networks within one Member State only~~, the national safety authority of that Member State may, under its own responsibility and when the applicant so requests, issue a single safety certificate. In order to issue such certifications, the national safety authority shall assess the file in relation to all the elements set out in paragraph 1b and according to the procedures to be established in the implementing act under paragraph 1h. As part of the above assessments ~~and in case of justified doubts~~, the national safety authority is authorised to undertake **visits and** inspections on the sites of the railway undertaking and audits. The national safety authority shall grant the safety certificate, within four months from receipt of all relevant information. The safety certificate shall also be valid without extension of the area of operations for vehicles travelling to the stations of neighbouring Member States with similar network characteristics, when those stations are close to the border, following consultation of the relevant national safety authorities. This consultation may be on a case-by-case basis or set out in a cross-border agreement between national safety authorities.

The national safety authority shall take full responsibility for the safety certificates it issues.

- 1h. The Commission shall establish, not later than four years after the entry into force of this Directive, by means of implementing acts, detailed rules on the certification procedure, including:

- a) detailed guidance for the applicant describing and explaining the requirements for the single safety certificate and listing the required documents;
- b) procedural arrangements for the certification process, such as content and timeframes for each stage of the process;
- c) criteria for assessment of the applicants' files.
- d) the validity period of safety certificates issued by the Agency, in particular in the case of updates of the safety certificate resulting from changes to type, extent and area of operation.**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2). They shall take into account the experience gained during the implementation of Regulation (EC) 653/2007 on the use of a common European format for safety certificates and application documents²⁸ and of Regulation (EU) 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates²⁹. They shall also take into account the experience gained during the implementation of the Cooperation Agreements between the Agency and the national safety authorities referred to in Article 11(1).

- 2. Safety certificates shall specify the type and extent of the railway operations covered and the area of operation. **The safety certificate may also cover sidings owned by the railway undertaking if they are included in its safety management system. In this case, no additional safety authorisation shall be necessary for the sidings concerned.**
- 3. Any decision refusing the issuing of a safety certificate shall be duly substantiated. The applicant may, within a period of one month from receipt of the negative decision, request that the Agency or the national safety authority, as appropriate, review the decision. The Agency or the national safety authority shall have two months from the date of receipt of the request for review to confirm or reverse its decision.

²⁸ OJ L 153, 14.6.2007, p. 9

²⁹ OJ L 326, 10.12.2010, p. 11

If the negative decision of the Agency is confirmed, the applicant may bring an appeal before the Board of Appeal designated under Article 51 of Regulation (EU) No .../... [Agency Regulation]. If the negative decision of a national safety authority is confirmed, the applicant may bring an appeal to the appeal body designated by the competent Member State under Article 17(3). Member States may designate the regulatory body set out in Article 56 of Directive 2012/34/EU establishing a single European railway area for the purpose of this appeal procedure.

4. ~~The railway undertaking shall inform the relevant national safety authorities at least one month before starting operation of any new service to allow them planning the supervision activities. [Shifted to new Article 16a]~~
5. The single safety certificate issued either by the Agency or by a national safety authority **under this Article** according to paragraph 1g, shall be renewed upon application by the railway undertaking at intervals not exceeding five years. It shall be fully or partly updated whenever the type or extent of the operation is substantially altered.

~~The holder of the single safety certificate shall inform without delay the Agency or the competent national safety authorities in case of certificate issued according to paragraph 1g, of any major changes in the conditions of the single safety certificate. It shall furthermore notify the Agency or the competent national safety authority whenever new categories of staff or new types of rolling stock are introduced. [Shifted to new Article 16a]~~

5a. Where the applicant already has a safety certificate issued in accordance with paragraph 1d to ~~1f~~ **1g** and wishes to extend its area of operations **to another Member State**, it shall complement the file with the relevant documents referred to in paragraph 1b concerning the additional area of operation. The applicant shall submit the file to the Agency, which shall, after following the procedures in paragraphs 1c. to 1f., issue an updated certificate covering the extended area of operation. In this case, only the national safety authority concerned by the extension of operation will be consulted for assessing the file set out in paragraph 1b.³⁰

~~{If the applicant received a safety certificate in accordance with paragraph 1g and wishes to extend the area of operation within that Member State, it shall complement the file with the relevant documents referred to in paragraph 1(b) concerning the additional area of operation. It shall submit the file to the national safety authority which shall, after following the procedures in paragraphs 1g., issue an updated authorisation covering the extended area of operation.}~~

5b. The Agency **and the competent national safety authorities** may require the revision of relevant single safety certificates following substantial changes to the safety regulatory framework.

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 concerned by the area of operation of the railway undertaking.~~

~~In case of disagreement between the Agency and the national safety authority, the appealing procedure indicated in article 1f shall be followed.~~

³⁰ ES requests to add: "*Where the applicant already has a safety certificate issued in accordance with paragraph 1g and in the case of the extension to another Member State, the Agency shall not repeat the assessment carried out by the competent national safety authority.*"

~~Where the national safety authority has itself issued the single safety certificate according to paragraph 1g, it may revoke the single safety certificate, giving reasons for its decision and shall inform the Agency. [Shifted to new Article 16a]~~

7. The Agency shall inform the **relevant competent** national safety authorities ~~within one month~~ **without delay and in any case within one month** of the issue, ~~renewal, amendment or revocation~~ of a single safety certificate. **The Agency shall inform the relevant national safety authorities immediately in the case of renewal, amendment or revocation of a single safety certificate.** It shall state the name and address of the railway undertaking, the issue date, the scope, validity and area of operation of the certificate and, in the case of revocation, the reasons for its decision. **In the case of certificates issued by the national safety authorities, the same information shall be provided by the competent national safety authorities to the Agency.**

8. *Shifted to article 11(1)*

Cooperation between the Agency and national safety authorities for issuing single safety certificates and for supervision

[Note: Article 11 of the Commission's proposal is replaced by the following text]:

1. For the purposes of Article 10(1d) and (1e), the Agency and the national safety authorities shall conclude cooperation agreements ~~with national safety authorities~~ in accordance with Article 69 of Regulation .../... [Agency Regulation]. These agreements could be specific or framework agreements, and involve one or more national safety authorities. These agreements shall contain a specified description of tasks and conditions for deliverables, the time-limits applying to their delivery, the apportioning of the fees paid by the applicant. They may also include specific cooperation arrangements in the case of networks requiring specific expertise due to geographical or historical reasons, **including networks which are isolated from the rest of the Union**, with a view to reducing administrative burden and costs to the applicant³¹. These agreements shall be in place before the Agency is entitled to receive applications in accordance with this Directive, and in any case by three years following the date of entry into force of this Directive at the latest.³²
2. ~~The Agency shall continuously monitor the effectiveness of the measures for the issuing of single safety certificates and supervision activities post-certification by national safety authorities and, where appropriate, shall make recommendations to the Commission for improvement. [partly shifted to Article 28]~~

³¹ IT wants to remove the reference to the costs to the applicant, UK and FR have doubts on IT proposal.

³² A new provision will be inserted into the Agency Regulation pursuant to which the administrative board of the Agency is empowered to adopt a framework model for the financial apportioning of the fees paid by the applicant, which will have to be taken into account for the cooperation agreements between the Agency and the national safety authorities to be established under this paragraph.

~~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). [Shifted to Article 9(5)]~~

Article 12

Safety authorisation of infrastructure managers

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

The safety authorisation shall comprise authorisation confirming acceptance of the infrastructure manager's safety management system laid down in Article 9, which shall include the procedures and provisions ~~for meeting~~ **fulfilling** 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.

2. The safety authorisation shall be renewed upon application by the infrastructure manager at intervals of five years. It shall be wholly or partly updated whenever substantial changes are made to the infrastructure, signalling or energy ~~subsystem 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.

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.

4. The national safety authority shall inform the Agency **without delay and in any event** 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.
5. **In the case of cross-border infrastructure, the competent national safety authorities shall cooperate in order to deliver the safety authorisations.**

Article 13

Access to training facilities

1. Member States shall ensure that railway undertakings 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 requirements to obtain the safety certificate and requirements to obtain licences and certificates under Directive 2007/59/EC³³.

The services offered 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.

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

³³ OJ L 315, 3.12.2007, p. 51.

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 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. Railway undertakings and infrastructure managers shall be responsible for the level of training and qualifications of ~~its~~ **their** staff carrying out safety-related work.

Article 14

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 in accordance with Article 43 of 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 maintenance³⁴. To this end, the entity in charge of maintenance shall ensure that vehicles are maintained in accordance with:

³⁴ IT wants to add : "*and granting its full traceability.*" UK, SE and Cion have doubts on IT proposal.

- (a) the maintenance file of each vehicle³⁵;
- (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 **the implementing measures referred to in paragraph 7 Commission Regulation (EU) No 445/2011³⁶**; or by a national safety authority. The recognition process shall also be based on criteria of independence, competence and impartiality.

Where the entity in charge of maintenance is an infrastructure manager **or a railway undertaking**, compliance with **the implementing measures referred to in paragraph 7 Regulation (EU) No 445/2011** shall be checked by the relevant national safety authority pursuant to the procedures referred to in Articles **10 or 12** and shall be confirmed on the certificates specified in those procedures.

5. The certificates granted in accordance with paragraph 4 shall be valid throughout the Union .
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 vehicles³⁷ and shall submit a report to the Commission.**

³⁵ ES wants to add: "*in the case of ECMs dealing with vehicles different from freight wagons, while the certification is not yet compulsory, they shall submit the maintenance file to the concerned national safety authorities.*" Presidency suggests adding this provision as a new intent under Article 4(4).

³⁶ OJ L 122, 11.5.2011, p. 22.

³⁷ IT wants to add the certification of maintenance workshops.

7. **On the basis of the evaluation carried out by the Agency**, the Commission shall, by means of implementing acts, adopt, **where appropriate**, common conditions for certification of the entity in charge of maintenance³⁸ 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.

Article 15

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

1. 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 maintenance 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 Union and for which fulfilment of the requirements referred to in Article 14(3) is ensured by international agreements with third countries;
 - (bb) freight wagons belonging to a pool of freight wagons in shared use with third countries the track gauge of which is different from that of the main rail network within the Union.**
 - (c) vehicles covered by Article 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.

³⁸ IT wants to add the certification of maintenance workshops.

2. 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 43 of Directive xx on interoperability of the rail system, 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 12 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. Where it appears that undue safety risks are being taken on the 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.

CHAPTER IV

NATIONAL SAFETY AUTHORITIES

Article 16

Tasks

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

2. The national safety authority shall be entrusted with at least the following tasks:
 - (a) authorising the placing in service of the **trackside control-command and signalling**³⁹, energy and infrastructure subsystems constituting the rail system in accordance with Article 18(2) of Directive [XX] on interoperability of the rail system;
 - (aa) **issuing vehicle authorisations for placing on the market according to Article 20(1g) of Directive [XX] on interoperability of the rail system;**
 - (b) supervising **in its territory** that the interoperability constituents are in compliance with the essential requirements as required by Article 8 of Directive [XX] on interoperability of the rail system;
 - (c) ~~assigning a~~ **ensuring that a** European vehicle numbering **has been assigned in** accordance with Article 42 of Directive [XX] on interoperability of the rail system **and without prejudice to Article 43(4) of Directive [XX] on interoperability of the rail system.**

³⁹ Commission reservation on ERTMS.

- (d) ~~on request of the Agency supporting the Agency in the issue, renewal, amendment and revocation of single safety certificates granted in accordance with Article 10 (1d) 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;~~
- (dd) issuing, renewing, amending and revoking national safety certificates granted in accordance with Article 10 (1g); ~~checking that the conditions and requirements laid down 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 **and the infrastructure managers according to Article 16a** ~~in accordance with Annex IV to Regulation (EU) No 1158/2010⁴⁰ and with Regulation (EU) No 1077/2012⁴¹;~~
- (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.~~
- (ha) **where relevant, and in accordance with national law, issuing train driving licences in accordance with 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 Community⁴².**
- (hb) **where relevant, and in accordance with national law, issuing ECM certificates in accordance with Article 14.**

⁴⁰ OJ L 326, 10.12.2010, p.11.

⁴¹ OJ L 320, 17.11.2012, p. 3

⁴² OJ L 315, 3.12.2007, p.51-78

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). [Shifted to new Article 16a]~~
4. The tasks referred to in paragraph 2 may not be transferred or subcontracted to any infrastructure manager, railway undertaking or **contracting authority** ~~procurement entity~~.

Article 16a

Supervision

[new article]

1. **National safety authorities shall oversee continued compliance with the legal obligation on a railway undertaking or infrastructure manager to use a safety management system as referred to in Article 9.**
- To this purpose, the national safety authorities shall apply the principles set out in the relevant common safety method for supervision referred to in Article 6(1c), ensuring that supervision activities include checking:**
- (a) the application of the safety management system to control its effectiveness;**
 - (b) the application of individual or partial elements of the safety management system, including operational activities, the supply of maintenance and material and the use of contractors to control their effectiveness;**
 - (c) the application of the common safety method for monitoring set out in Article 6(1c).**

2. The railway undertaking shall inform the relevant national safety authorities at least ~~one~~ **two** months before starting operation of any new service to allow them planning the supervision activities. **The railway undertaking shall also provide the categories of staff and the types of vehicles.** *[paragraph 2 is moved from Article 10(4)]*

3. The holder of the single safety certificate shall inform without delay ~~the Agency or the~~ competent national safety authorities ~~in case of certificate issued according to paragraph 10(1g),~~ of any ~~major~~ changes in the conditions of the single safety certificate **which may affect the activities of supervision.** *[paragraph 3 is moved from Article 10(5)]*

4. 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 shall immediately inform all the national safety authorities concerned by the area of operation of the railway undertaking.** The Agency may revoke the single safety certificate, giving reasons for its decision. ~~The Agency shall immediately inform all the national safety authorities concerned by the area of operation of the railway undertaking.~~ **Pending the final decision of revocation, the national safety authorities concerned may ask the railway undertaking to suspend immediately the operation.**

In case of disagreement between the Agency and the national safety authority, the appealing procedure indicated in article 10(1f) shall be followed.

Where the national safety authority has itself issued the single safety certificate according to paragraph 10(1g), it may revoke the single safety certificate, giving reasons for its decision and shall inform the Agency.

[paragraph 4 is moved from Article 10(6)]

The holder of a single safety certificate whose certificate has been revoked either by the Agency or by the national safety authority, has the right to appeal according to Article 10(3).

5. **The national safety authorities of Member States where the railway undertaking operates shall cooperate in coordinating their supervision activities concerning the railway undertaking 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.**

The cooperation shall ensure that the supervision has sufficient coverage and that the duplication of inspections and audits is avoided. The national safety authorities may develop a common supervision plan in order to ensure that audits and other inspections are carried out regularly, taking into account the type and extent of transport operations in each of the Member States concerned.

6. **The safety authorities shall, if and where necessary, apply the penalties laid down in their respective national legislation according to Article 29 and inform each other of the applications and outcomes of such penalties.**
7. **The national safety authority shall use information gathered by the Agency during the assessment of the file set out in Article 10 (1d(a)) for the purposes of supervision of the railway undertaking after issuing the safety certificate. The national safety authority shall use information gathered during the process of safety authorisation according to Article 12 for the purposes of supervision of the infrastructure manager .**
8. **For the purpose of renewing safety certificates, the Agency or the competent national safety authorities in the case of a safety certificate granted according to Article 10 (1g), shall use information gathered during the supervision activities. For the purpose of renewing safety authorisations, the national safety authority shall also use information gathered during its supervision activities.**

9. **The Agency and the national safety authorities shall make the necessary arrangements to coordinate and ensure the full exchange of information referred to in paragraph 7 and 8.**

Article 17

Decision-making principles

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

They shall promptly respond to requests and applications and communicate their requests for information without delay and adopt all their decisions within four months after all ~~requested~~ **relevant** information has been provided. They may at any time request the technical assistance of infrastructure managers and railway undertakings or other qualified bodies when 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 ~~actors 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. **The Agency shall have the same rights in relation to railway undertakings when it carries out its safety certification tasks according to Article 10(1d).**
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, **in particular** within the network established by the Agency in order to harmonise their decision-making criteria across the Union.
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~~

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 authorisation⁴³;
- (d) results of and experience relating to the supervision of infrastructure managers and railway undertakings, **including the outcome of inspections and audits**;
- (e) the derogations decided in accordance with Article 15 14 (8);
- ~~(f) all inspections or audits of railway undertakings operating in the Member State in the course of supervision activities.~~
- (g) **the experience of the railway undertakings and infrastructure managers on the application of the CSM on risk evaluation and assessment.**

⁴³ LU and SK have a reservation to be seen in the context of the discussion on Chapter III.

CHAPTER V

ACCIDENT AND INCIDENT INVESTIGATION⁴⁴

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 rail system⁴⁵, 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 Union level~~;
- (d) requests from infrastructure managers, railway undertakings, the national safety authority or the Member States.

⁴⁴ The Presidency considers that the provisions related to the independence of the investigating bodies from the Agency should be addressed in the context of the Agency Regulation. LU has a general reservation linked to Article 10.

⁴⁵ SK suggests to add: "*where there is the suspicion that the railway system was not functioning*".

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 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 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~~ **their national** 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 **access to information and evidence relevant for the investigation. In particular they shall be granted:**
 - (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 conformity assessment 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, **from the Agency** 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 **decide on the** start the investigation **without delay and in any event** 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, **and without prejudice to independence of investigating body as set out in paragraph 1**, 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 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 **or from other Member States** 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; or
- **whenever a vehicle registered or authorised to be used in that Member State is involved in the accident or incident.**

Invited representatives of other Member States shall be granted access, on the territory of respective Member State and where appropriate, to the information and evidence referred to in Article 20(2) and shall be authorised to carry out all necessary investigations.

This paragraph shall not preclude Member States from agreeing that the relevant bodies 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, **the Agency**, 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 occurrence⁴⁶. 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.

The Commission shall take into account experience gained by investigating bodies and
~~The Commission~~ shall establish, by means of implementing acts, the **principal** 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).

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.

⁴⁶ DE wants to reinsert Annex V of Directive 2004/47/EC.

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 Agency**, 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

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(42) 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.

Article 27

Committee procedure

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, Article 4 of Regulation (EU) No 182/2011 shall apply.
- 2.3 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third paragraph of Article 5(4) of Regulation (EU) 182/2011 shall apply.⁴⁷

Article 28

Report and further Union action

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 in particular to monitor the effectiveness of the measures for the issuing of single safety certificates.

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

⁴⁷ Commission reservation on the no opinion clause.

Article 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 32(1) and shall notify it without delay of any subsequent amendment affecting them.

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~~ five years⁴⁸ 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.

⁴⁸ Commission reservation on the length of the transitional period.

Article 32

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 2, 3, 4, 8, 10, 16, 18, 20 and Annex I by [specific date to be inserted by OPOCE - ~~two~~ five years after the date of entry into force] at the latest. 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.
~~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~~ two years 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.

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*.

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

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 are to be reported annually by the national safety authorities.

If new facts or errors are discovered after the submission of the report the indicators for one particular year 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 point 1, Regulation (EC) No 91/2003 of the European Parliament and of the Council¹ 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 accident :

- (i) collision of trains with rail vehicles,
- (ii) collision of trains, with obstacle within the clearance gauge,
- (iii) derailment of trains,
- (iv) level crossing accidents, including accidents involving pedestrians at level crossings; **for this type, the accidents shall be broken down in two categories: accidents resulting from a failure of the railway system, and accidents not related to a failure of the railway system.**
- (v) accidents to persons involving rolling stock in motion, with the exception of suicides,
- (vi) fires in rolling stock,
- (vii) other .

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

¹ OJ L 14, 21.1.2003, p. 1.

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) passenger (also in relation to total number of passenger-kilometres and passenger train-kilometres),
- (ii) employee including the staff of contractors,
- (iii) level crossing users,
- (iv) trespassers,
- (v) 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 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 are to be reported under the CSIs on precursors; the accidents that occurred, if significant, are to be reported under the CSIs on accidents referred to in heading 1.

5. Indicators to calculate the economic impact of accidents

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, such as a locomotive travelling on its own, is considered to be a train.

1.5. 'collision of trains' 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 rail vehicle, or with shunting rolling stock :

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.

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

1.8. '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.

1.9. 'accidents to persons 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.

1.10. ‘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.

1.11. ‘other types of accident’ 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).

1.12. ‘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.

1.13. ‘employee (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.

1.14. ‘level crossing user’ means any person using a level crossing to cross the railway line by any mean of transport or by foot.

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

1.16. ‘others (third parties)’ means all persons not defined as ‘passengers’, ‘employees including the staff of contractors’, ‘level crossing user’ or ‘trespassers’.

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

1.18. ‘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 RID¹/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.

¹ 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).

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' 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' means faults related to the continuum and the geometry of track, requiring track obstruction or immediate reduction of permitted speed.

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.

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 may report separately on the four indexes and must report at least an aggregate indicator containing data on all four items.

4.5. 'broken wheel' means a break affecting the essential parts of the wheel 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

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

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 user-side automatic protection and/or warning’ means a level crossing where the 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 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 .

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 is to be used. Only the distance on the national territory of the reporting country 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 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.

ANNEX IA

NOTIFICATION OF NATIONAL SAFETY RULES

[new Annex to be seen in conjunction with Article 8]

Notified national safety rules under 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;**
- 3. common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;**
- 4. rules laying down requirements on additional internal operating rules (company rules) that must be established by infrastructure managers and railway undertakings;**
- 5. 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;**
- 6. rules concerning the investigation of accidents and incidents.**

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

(1) 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
