



Information on the European Intermediate Solution for demonstration of the responsibility for maintenance regarding freight wagons owned by other keeper in the frame of an RU's SMS

Background

During the work on applications for safety certificates according to Article 10 of Directive 2004/49/EC, it turned out that, the demonstration by the RUs, within the frame of their SMS, of how responsibility for maintenance of freight wagons performed by other entities in charge of maintenance (ECM) is taken, is associated with some problems, so supporting measures are regarded as necessary.

The maintenance is controlled by the ECM so the RU does not control directly the maintenance of vehicles from other ECM which are in its train. Due to this some Member States have not issued any safety certificates so far.

Solution

To solve the aforementioned problem three measures shall contribute:

- Amendment of Directive 2004/49/EC by Directive 2008/110/EC
- „Memorandum of Understanding“ dated May 14 2009
- European Intermediate Solution from spring 2010

These will be explained in further details hereafter.

Amendment of Directive 2004/49/EC by Directive 2008/110/EC.

For a clear allocation of the responsibility regarding the maintenance of railway vehicles, a new Article 14a *“Maintenance of Vehicles”* has been inserted into Directive 2004/49/EC by Directive 2008/110/EC. This article stipulates among others

- (paragraph 1) Each vehicle shall have an entity in charge of maintenance assigned to it and this entity shall be registered in the NVR;

- (paragraph 2) A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance;
- (paragraph 3) the entity in charge of maintenance shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance;
- (paragraph 4) Each entity in charge of maintenance shall be certified for the maintenance of freight wagons (ECM Certification).

Directive 2008/110/EC amending Directive 2004/49/EC has to be transposed into national law until December 24 2010 by the latest.

„Memorandum of Understanding“ dated May 14 2009

To allow for a short term realisation of the ECM Certification as foreseen in Article 14a (4) of Directive 2004/49/EC – i.e. before transposition of Directive 2008/110/EC into national law – on May 14 2009 ten Member States have signed a “Memorandum of Understanding” (MoU ECM) ¹ *„establishing the basic principles of a common system of certification of entities in charge of maintenance for freight wagons“*. In March 2010 also Switzerland has signed. However, only very few certificates have been issued according to the MoU.

European Intermediate Solution from spring 2010

As the ECM Certification is not yet or only very limited applied the „Railway Interoperability and Safety Committee“ (RISC) representing the transport ministries of the EU Member States has proposed on February 24 and 25 2010 to examine the following European Intermediate Solution:²

The requirements on ECMs of vehicles are laid down in Article 14a of Directive 2004/49/EC. In the particular case where the RU is not the ECM of vehicles³ it operates, [the fulfilment of the following requirements] should [...] allow the NSA to issue a safety certificate.”

¹ confer: http://ec.europa.eu/transport/rail/interoperability/safety_en.htm

² confer „The following solution could be applied:“; page 9 of document 04/49 – DV28, version EN01; RISC 55; Origin EN; draft; Status I: Railway Interoperability and Safety Committee: „Safety Certification of Freight Railway undertakings“

³ The complete text gives evidence that „vehicles“ in this context is only related to freight wagons.

- 1) A declaration of the RU, in the frame of the SMS, explaining the procedures it is using to verify and control that the vehicles are in a safe state of running. Necessary basis for this declaration is a contractual relationship between the RU and the keepers e.g. the GCU and where the keeper is not the ECM additionally a contract between the keeper and the ECM.
- 2) The RU's declaration must describe how the necessary exchange of information is organised between the concerned parties.
- 3) As long as the ECMs are not yet certified according to Article 14a of Directive 2004/49/EC or the MoU ECM, a self declaration of the ECM is sufficient proving that it fulfils the requirements defined by Annexes B and C1 of the MoU ECM, checked by an internal system audit.

Mutual acceptance of national maintenance rules

During the RICS meeting, additionally, the mutual acceptance of different national maintenance standards has been confirmed by the following decision: *“Until a European-wide harmonisation, the specific national⁴ maintenance requirements will be cross-accepted.”*

Impacts on Railway Undertakings, Keepers and ECMs

The examined European Intermediate Solution resp. the transposition of Directive 2008/110/EC into national law allows the RUs to describe their responsibility also for freight wagons maintained by other ECM within their SMS. Referring to the three points mentioned above, the following matters have to be implemented:

1) Procedures within the Safety Management System (SMS) of the RU

The RU has to describe within the frame of its SMS the procedures, with which it receives presumption of safe state of the vehicles maintained by other ECM, and it provides a self declaration, confirming the application of these procedures.

⁴ „National“ in this context regards the maintenance rules, which are applied in a Member State by domestic ECMs/keepers.

These procedures, to be described within the SMS of an RU, contain in particular:

- 1.1. The RU provides procedures ensuring the existence of a contractual relationship with the keeper for all vehicles carried in a train. Such a contractual relationship of the RU with the keeper is given e.g. through the GCU. If an RU or a keeper is not member of the GCU other contractual relationships have to exist. If the keeper is not identical with the ECM a contract between keeper and ECM is existing.
- 1.2. The RU has a procedure to ensure that only those vehicles are carried, whose ECMs
 - are certified according to Article 14a of Directive 2004/49/EC or
 - are certified according to the MoU ECM or
 - have provided their self declaration.

This procedure is, for instance, based on

- 1.2.1. checking the vehicle number through a vehicle number database, e.g. the GCU vehicle database. This GCU database is technically ready, but waiting for the formal amendment procedure for integration in the text of the GCU contract, which started on 29th March 2010 and thus coming into force on 1st October 2010, when adopted unanimously, or on 1st January 2010, when adopted with majority. The database can be filled by the keeper from July 2010 on.
- 1.2.2. checking the keeper marking on the vehicles with a list of all contractual partners of the RU. It is currently clarified whether the keeper marking (VKM) can be implemented in the list of all GCU partners published on the GCU website. The possibility of a vehicle ECM marking is still under discussion with ERA.
- 1.3. The RU monitors regularly whether the relevant ECM Certificate or self declaration has not been withdrawn. If a self declaration has been withdrawn, the RU has to ask the ECM through the keeper to provide a self declaration or the relevant ECM certificate. If no certificate or declaration is provided, the vehicles maintained by the particular ECM will not be carried by the RU,

unless the RU has made special arrangements in its SMS to deal with such wagons.

- 1.4. ERA agreed to publish a list on its website of ECMs being certified or having issued a self declaration. However, ERA will take no responsibility regarding the content. We will inform you in due course about the practical implementation.

2) Necessary exchange of information between concerned parties

For the safe operation of vehicles, it is indispensable to exchange safety related information between ECM, keeper and RU.

- 2.1 The hand over of relevant information from the RU to the keeper and through the keeper to the ECM is regulated in Article 15 of the GCU.
- 2.2 To realise the hand over of relevant information from the ECM towards the RU through the keeper, the sector organisations are working on a proposal "structural exchange of safety related information between ECM and RU". The sector organisations also evaluate how this exchange of information is organised.

3) Self declaration of the ECM

- 3.1 As long as the ECM is not yet certified according to Article 14a of Directive 2004/49/EC or the MoU ECM, the ECM can provide a self declaration confirming that it fulfils the requirements of Annex B and C1 of the MoU. The legal entity signing the Self Declaration must be the same which is registered in the NVR.
- 3.2 This self declaration has to be based on the implementation of a maintenance management system including an internal system audit.
- 3.4 It is highly recommended for the ECM to provide such a certificate according to the MoU ECM or such a self declaration. On the one hand, basically the same criteria have to be fulfilled anyhow in near future within the frame of the ECM Certification according to Article 14a of Directive 2004/49/EC. On the

other hand, vehicles from non-certified ECMs not having provided such a certificate or such a declaration will not be carried anymore, unless the RU has made special arrangements in its SMS to deal with such wagons.

- 3.5 The sector organisations will provide a common format for the self declaration which has been agreed with ERA. (see draft annex to this letter).
- 3.6 Providing a self declaration is also possible for those ECM being residential outside of the European Union, but having vehicles running within the European Union or in and out.

We kindly ask for consideration and are at your disposal for any further queries.

We will inform you as soon as we know whether the request by the sector in its letter of 1/02/2010 about including the Intermediate Solution in the adequate legal framework will be agreed on or not by the EC and the RISC.

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