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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

REGULATION (EC) No 1370/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2007
on public passenger transport services by rail and by road and repealing Council Regulations (EEC)
Nos 1191/69 and 1107/70

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71 and 89 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Article 16 of the Treaty confirms the place occupied by services of general economic interest in the shared values of the Union.

(2) Article 86(2) of the Treaty lays down that undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

(3) Article 73 of the Treaty constitutes a *lex specialis* in relation to Article 86(2). It establishes rules applicable to the compensation of public service obligations in inland transport.

(4) The main objectives of the Commission's White Paper of 12 September 2001 'European transport policy for 2010: time to decide' are to guarantee safe, efficient and high-quality passenger transport services through regulated competition, guaranteeing also transparency and performance of public passenger transport services, having regard to social, environmental and regional development factors, or to offer specific tariff conditions to certain categories of traveller, such as pensioners, and to eliminate the disparities between transport undertakings from different Member States which may give rise to substantial distortions of competition.

(5) At the present time, many inland passenger transport services which are required in the general economic interest cannot be operated on a commercial basis. The competent authorities of the Member States must be able to act to ensure that such services are provided. The mechanisms that they can use to ensure that public passenger transport services are provided include the following: the award of exclusive rights to public service operators, the grant of financial compensation to public service operators and the definition of general rules for the operation of public transport which are applicable to all operators. If Member States, in accordance with this Regulation, choose to exclude certain general rules from its scope, the general regime for State aid should apply.

⁽¹⁾ OJ C 195, 18.8.2006, p. 20.

⁽²⁾ OJ C 192, 16.8.2006, p. 1.

⁽³⁾ Opinion of the European Parliament of 14 November 2001 (OJ C 140 E, 13.6.2002, p. 262), Council Common Position of 11 December 2006 (OJ C 70 E, 27.3.2007, p. 1) and Position of the European Parliament of 10 May 2007. Council Decision of 18 September 2007.

- (6) Many Member States have enacted legislation providing for the award of exclusive rights and public service contracts in at least part of their public transport market, on the basis of transparent and fair competitive award procedures. As a result, trade between Member States has developed significantly and several public service operators are now providing public passenger transport services in more than one Member State. However, developments in national legislation have led to disparities in the procedures applied and have created legal uncertainty as to the rights of public service operators and the duties of the competent authorities. Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway ⁽¹⁾, does not deal with the way public service contracts are to be awarded in the Community, and in particular the circumstances in which they should be the subject of competitive tendering. The Community legal framework ought therefore to be updated.
- (7) Studies carried out and the experience of Member States where competition in the public transport sector has been in place for a number of years show that, with appropriate safeguards, the introduction of regulated competition between operators leads to more attractive and innovative services at lower cost and is not likely to obstruct the performance of the specific tasks assigned to public service operators. This approach has been endorsed by the European Council under the Lisbon Process of 28 March 2000 which called on the Commission, the Council and the Member States, each in accordance with their respective powers, to 'speed up liberalisation in areas such as ... transport'.
- (8) Passenger transport markets which are deregulated and in which there are no exclusive rights should be allowed to maintain their characteristics and way of functioning in so far as these are compatible with Treaty requirements.
- (9) In order to be able to organise their public passenger transport services in the manner best suited to the needs of the public, all competent authorities must be able to choose their public service operators freely, taking into account the interests of small and medium-sized enterprises, under the conditions stipulated in this Regulation. In order to guarantee the application of the principles of transparency, equal treatment of competing operators and proportionality, when compensation or exclusive rights are granted, it is essential that a public service contract between the competent authority and the chosen public service operator defines the nature of the public service obligations and the agreed reward. The form or designation of the contract may vary according to the legal systems of the Member States.
- (10) Contrary to Regulation (EEC) No 1191/69, the scope of which extends to public passenger transport services by inland waterway, it is not considered advisable for this Regulation to cover the award of public service contracts in that specific sector. The organisation of public passenger transport services by inland waterway and, in so far as they are not covered by specific Community law, by national sea water is therefore subject to compliance with the general principles of the Treaty, unless Member States choose to apply this Regulation to those specific sectors. The provisions of this Regulation do not prevent the integration of services by inland waterway and national sea water into a wider urban, suburban or regional public passenger transport network.
- (11) Contrary to Regulation (EEC) No 1191/69, the scope of which extends to freight transport services, it is not considered advisable for this Regulation to cover the award of public service contracts in that specific sector. Three years after the entry into force of this Regulation the organisation of freight transport services should therefore be made subject to compliance with the general principles of the Treaty.
- (12) It is immaterial from the viewpoint of Community law whether public passenger transport services are operated by public or private undertakings. This Regulation is based on the principles of neutrality as regards the system of property ownership referred to in Article 295 of the Treaty, of the freedom of Member States to define services of general economic interest, referred to in Article 16 of the Treaty, and of subsidiarity and proportionality referred to in Article 5 of the Treaty.
- (13) Some services, often linked to specific infrastructure, are operated mainly for their historical interest or tourist value. As the purpose of these operations is manifestly different from the provision of public passenger transport, they need not therefore be governed by the rules and procedures applicable to public service requirements.
- (14) Where the competent authorities are responsible for organising the public transport network, apart from the actual operation of the transport service, this may cover a whole range of other activities and duties that the competent authorities must be free either to carry out themselves or entrust, in whole or in part, to a third party.

⁽¹⁾ OJ L 156, 28.6.1969, p. 1. Regulation as last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29.6.1991, p. 1).

- (15) Contracts of long duration can lead to market foreclosure for a longer period than is necessary, thus diminishing the benefits of competitive pressure. In order to minimise distortions of competition, while protecting the quality of services, public service contracts should be of limited duration. The extension of such contracts could be subject to positive confirmation from users. In this context, it is necessary to make provision for extending public service contracts by a maximum of half their initial duration where the public service operator must invest in assets for which the depreciation period is exceptional and, because of their special characteristics and constraints, in the case of the outermost regions as specified in Article 299 of the Treaty. In addition, where a public service operator makes investments in infrastructure or in rolling stock and vehicles which are exceptional in the sense that both concern high amounts of funds, and provided the contract is awarded after a fair competitive tendering procedure, an even longer extension should be possible.
- (16) Where the conclusion of a public service contract may entail a change of public service operator, it should be possible for the competent authorities to ask the chosen public service operator to apply the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses ⁽¹⁾. This Directive does not preclude Member States from safeguarding transfer conditions of employees' rights other than those covered by Directive 2001/23/EC and thereby, if appropriate, taking into account social standards established by national laws, regulations or administrative provisions or collective agreements or agreements concluded between social partners.
- (17) In keeping with the principle of subsidiarity, competent authorities are free to establish social and qualitative criteria in order to maintain and raise quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility, environmental protection, the security of passengers and employees as well as collective agreement obligations and other rules and agreements concerning workplaces and social protection at the place where the service is provided. In order to ensure transparent and comparable terms of competition between operators and to avert the risk of social dumping, competent authorities should be free to impose specific social and service quality standards.
- (18) Subject to the relevant provisions of national law, any local authority or, in the absence thereof, any national authority may choose to provide its own public passenger transport services in the area it administers or to entrust them to an internal operator without competitive tendering. However, this self-provision option needs to be strictly controlled to ensure a level playing field. The competent authority or group of authorities providing integrated public passenger transport services, collectively or through its members, should exercise the required control. In addition, a competent authority providing its own transport services or an internal operator should be prohibited from taking part in competitive tendering procedures outside the territory of that authority. The authority controlling the internal operator should also be allowed to prohibit this operator from taking part in competitive tenders organised within its territory. Restrictions on the activities of an internal operator do not interfere with the possibility of directly awarding public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. Furthermore, the direct award of public service contracts for heavy rail does not preclude the possibility for competent authorities to award public service contracts for public passenger transport services on other track-based modes, such as metro and tramway, to an internal operator.
- (19) Subcontracting can contribute to more efficient public passenger transport and makes it possible for undertakings to participate, other than the public service operator which was granted the public service contract. However, with a view to the best use of public funds, competent authorities should be able to determine the modalities for subcontracting their public passenger transport services, in particular in the case of services performed by an internal operator. Furthermore, a subcontractor should not be prevented from taking part in competitive tenders in the territory of any competent authority. The selection of a subcontractor by the competent authority or its internal operator needs to be carried out in accordance with Community law.
- (20) Where a public authority chooses to entrust a general interest service to a third party, it must select the public service operator in accordance with Community law on public contracts and concessions, as established by Articles 43 to 49 of the Treaty, and the principles of transparency and equal treatment. In particular, the provisions of this Regulation are to be without prejudice to the obligations applicable to public authorities by virtue of the directives on the award of public contracts, where public service contracts fall within their scope.

⁽¹⁾ OJ L 82, 22.3.2001, p. 16.

- (21) Effective legal protection should be guaranteed, not only for awards falling within the scope of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾ and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽²⁾, but also for other contracts awarded under this Regulation. An effective review procedure is needed and should be comparable, where appropriate, to the relevant procedures set out in Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ⁽³⁾ and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽⁴⁾.
- (22) Some invitations to tender require the competent authorities to define and describe complex systems. These authorities should therefore have power, when awarding contracts in such cases, to negotiate details with some or all of the potential public service operators once tenders have been submitted.
- (23) Invitations to tender for the award of public service contracts should not be mandatory where the contract relates to modest amounts or distances. In this respect, greater amounts or distances should enable competent authorities to take into account the special interests of small and medium-sized enterprises. Competent authorities should not be permitted to split up contracts or networks in order to avoid tendering.
- (24) Where there is a risk of disruption in the provision of services, the competent authorities should have power to introduce emergency short-term measures pending the award of a new public service contract which is in line with all the conditions for awarding a contract laid down in this Regulation.
- (25) Public passenger transport by rail raises specific issues of investment burden and infrastructure cost. In March 2004, the Commission presented a proposal to amend Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾ so as to guarantee access for all Community railway undertakings to the infrastructure of all Member States for the purpose of operating international passenger services. The aim of this Regulation is to establish a legal framework for compensation and/or exclusive rights for public service contracts and not the further opening of the market for railway services.
- (26) In the case of public services, this Regulation allows each competent authority, within the context of a public service contract, to select its operator of public passenger transport services. Given the differences in the way Member States organise their territory in this respect, competent authorities may justifiably be allowed to award public service contracts directly for railway travel.
- (27) The compensation granted by competent authorities to cover the costs incurred in discharging public service obligations should be calculated in a way that prevents overcompensation. Where a competent authority plans to award a public service contract without putting it out to competitive tender, it should also respect detailed rules ensuring that the amount of compensation is appropriate and reflecting a desire for efficiency and quality of service.
- (28) By appropriately considering the effects of complying with the public service obligations on the demand for public passenger transport services in the calculation scheme set out in the Annex, the competent authority and the public service operator can prove that overcompensation has been avoided.
- (29) With a view to the award of public service contracts, with the exception of emergency measures and contracts relating to modest distances, the competent authorities should take the necessary measures to advertise, at least one year in advance, the fact that they intend to award such contracts, so as to enable potential public service operators to react.
- (30) Directly awarded public service contracts should be subject to greater transparency.

⁽¹⁾ OJ L 134, 30.4.2004, p. 1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

⁽²⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Council Directive 2006/97/EC.

⁽³⁾ OJ L 395, 30.12.1989, p. 33. Directive as amended by Directive 92/50/EEC (OJ L 209, 24.7.1992, p. 1).

⁽⁴⁾ OJ L 76, 23.3.1992, p. 14. Directive as last amended by Directive 2006/97/EC.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

- (31) Given that competent authorities and public service operators will need time to adapt to the provisions of this Regulation, provision should be made for transitional arrangements. With a view to the gradual award of public service contracts in line with this Regulation, Member States should provide the Commission with a progress report within the six months following the first half of the transitional period. The Commission may propose appropriate measures on the basis of these reports.
- (32) During the transitional period, the application of the provisions of this Regulation by the competent authorities may take place at different times. It may therefore be possible, during this period, that public service operators from markets not yet affected by the provisions of this Regulation tender for public service contracts in markets that have been opened to controlled competition more rapidly. In order to avoid, by means of proportionate action, any imbalance in the opening of the public transport market, competent authorities should be able to refuse, in the second half of the transitional period, tenders from undertakings, more than half the value of the public transport services performed by which are not granted in accordance with this Regulation, provided that this is applied without discrimination and decided in advance of an invitation to tender.
- (33) In paragraphs 87 to 95 of its judgment of 24 July 2003 in Case C-280/00 *Altmark Trans GmbH* ⁽¹⁾, the Court of Justice of the European Communities ruled that compensation for public service does not constitute an advantage within the meaning of Article 87 of the Treaty, provided that four cumulative conditions are satisfied. Where those conditions are not satisfied and the general conditions for the application of Article 87(1) of the Treaty are met, public service compensation constitutes State aid and is subject to Articles 73, 86, 87 and 88 of the Treaty.
- (34) Compensation for public services may prove necessary in the inland passenger transport sector so that undertakings responsible for public services operate on the basis of principles and under conditions which allow them to carry out their tasks. Such compensation may be compatible with the Treaty pursuant to Article 73 under certain conditions. Firstly, it must be granted to ensure the provision of services which are services of general interest within the meaning of the Treaty. Secondly, in order to avoid unjustified distortions of competition, it may not exceed what is necessary to cover the net costs incurred through discharging the public service obligations, taking account of the revenue generated thereby and a reasonable profit.
- (35) Compensation granted by the competent authorities in accordance with the provisions of this Regulation may therefore be exempted from the prior notification requirement of Article 88(3) of the Treaty.
- (36) This Regulation replaces Regulation (EEC) No 1191/69, which should therefore be repealed. For public freight transport services, a transitional period of three years will assist the phasing out of compensation not authorised by the Commission in accordance with Articles 73, 86, 87 and 88 of the Treaty. Any compensation granted in relation to the provision of public passenger transport services other than those covered by this Regulation which risks involving State aid within the meaning of Article 87(1) of the Treaty should comply with the provisions of Articles 73, 86, 87 and 88 thereof, including any relevant interpretation by the Court of Justice of the European Communities and especially its ruling in Case C-280/00 *Altmark Trans GmbH*. When examining such cases, the Commission should therefore apply principles similar to those laid down in this Regulation or, where appropriate, other legislation in the field of services of general economic interest.
- (37) The scope of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway ⁽²⁾ is covered by this Regulation. That Regulation is considered obsolete while limiting the application of Article 73 of the Treaty without granting an appropriate legal basis for authorising current investment schemes, in particular in relation to investment in transport infrastructure in a public private partnership. It should therefore be repealed in order for Article 73 of the Treaty to be properly applied to continuing developments in the sector without prejudice to this Regulation or Council Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings ⁽³⁾. With a view to further facilitating the application of the relevant Community rules, the Commission will propose State aid guidelines for railway investment, including investment in infrastructure in 2007.
- (38) With a view to assessing the implementation of this Regulation and the developments in the provision of public passenger transport in the Community, in particular the quality of public passenger transport services and the effects of granting public service contracts by direct award, the Commission should produce a report. This report may, if necessary, be accompanied by appropriate proposals for the amendment of this Regulation,

⁽¹⁾ [2003] ECR I-7747.

⁽²⁾ OJ L 130, 15.6.1970, p. 1. Regulation as last amended by Regulation (EC) No 543/97 (OJ L 84, 26.3.1997, p. 6).

⁽³⁾ OJ L 156, 28.6.1969, p. 8. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

1. The purpose of this Regulation is to define how, in accordance with the rules of Community law, competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.

To this end, this Regulation lays down the conditions under which competent authorities, when imposing or contracting for public service obligations, compensate public service operators for costs incurred and/or grant exclusive rights in return for the discharge of public service obligations.

2. This Regulation shall apply to the national and international operation of public passenger transport services by rail and other track-based modes and by road, except for services which are operated mainly for their historical interest or their tourist value. Member States may apply this Regulation to public passenger transport by inland waterways and, without prejudice to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ⁽¹⁾, national sea waters.

3. This Regulation shall not apply to public works concessions within the meaning of Article 1(3)(a) of Directive 2004/17/EC or of Article 1(3) of Directive 2004/18/EC.

Article 2

Definitions

For the purpose of this Regulation:

- (a) 'public passenger transport' means passenger transport services of general economic interest provided to the public on a non-discriminatory and continuous basis;
- (b) 'competent authority' means any public authority or group of public authorities of a Member State or Member States which has the power to intervene in public passenger transport in a given geographical area or any body vested with such authority;

- (c) 'competent local authority' means any competent authority whose geographical area of competence is not national;
- (d) 'public service operator' means any public or private undertaking or group of such undertakings which operates public passenger transport services or any public body which provides public passenger transport services;
- (e) 'public service obligation' means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward;
- (f) 'exclusive right' means a right entitling a public service operator to operate certain public passenger transport services on a particular route or network or in a particular area, to the exclusion of any other such operator;
- (g) 'public service compensation' means any benefit, particularly financial, granted directly or indirectly by a competent authority from public funds during the period of implementation of a public service obligation or in connection with that period;
- (h) 'direct award' means the award of a public service contract to a given public service operator without any prior competitive tendering procedure;
- (i) 'public service contract' means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; depending on the law of the Member State, the contract may also consist of a decision adopted by the competent authority:
 - taking the form of an individual legislative or regulatory act, or
 - containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator;
- (j) 'internal operator' means a legally distinct entity over which a competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments;

⁽¹⁾ OJ L 364, 12.12.1992, p. 7.

- (k) 'value' means the value of a service, a route, a public service contract, or a compensation scheme for public passenger transport corresponding to the total remuneration, before VAT, of the public service operator or operators, including compensation of whatever kind paid by the public authorities and revenue from the sale of tickets which is not repaid to the competent authority in question;
- (l) 'general rule' means a measure which applies without discrimination to all public passenger transport services of the same type in a given geographical area for which a competent authority is responsible;
- (m) 'integrated public passenger transport services' means interconnected transport services within a determined geographical area with a single information service, ticketing scheme and timetable.

Article 3

Public service contracts and general rules

1. Where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public service obligations, it shall do so within the framework of a public service contract.

2. By way of derogation from paragraph 1, public service obligations which aim at establishing maximum tariffs for all passengers or for certain categories of passenger may also be the subject of general rules. In accordance with the principles set out in Articles 4 and 6 and in the Annex, the competent authority shall compensate the public service operators for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation. This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts.

3. Without prejudice to the provisions of Articles 73, 86, 87 and 88 of the Treaty, Member States may exclude from the scope of this Regulation general rules on financial compensation for public service obligations which establish maximum tariffs for pupils, students, apprentices and persons with reduced mobility. These general rules shall be notified in accordance with Article 88 of the Treaty. Any such notification shall contain complete information on the measure and, in particular, details on the calculation method.

Article 4

Mandatory content of public service contracts and general rules

1. Public service contracts and general rules shall:

- (a) clearly define the public service obligations with which the public service operator is to comply, and the geographical areas concerned;

- (b) establish in advance, in an objective and transparent manner,
 - (i) the parameters on the basis of which the compensation payment, if any, is to be calculated, and
 - (ii) the nature and extent of any exclusive rights granted,

in a way that prevents overcompensation. In the case of public service contracts awarded in accordance with Article 5(2), (4), (5) and (6), these parameters shall be determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the public service operator and a reasonable profit;

- (c) determine the arrangements for the allocation of costs connected with the provision of services. These costs may include in particular the costs of staff, energy, infrastructure charges, maintenance and repair of public transport vehicles, rolling stock and installations necessary for operating the passenger transport services, fixed costs and a suitable return on capital.

2. Public service contracts and general rules shall determine the arrangements for the allocation of revenue from the sale of tickets which may be kept by the public service operator, repaid to the competent authority or shared between the two.

3. The duration of public service contracts shall be limited and shall not exceed 10 years for coach and bus services and 15 years for passenger transport services by rail or other track-based modes. The duration of public service contracts relating to several modes of transport shall be limited to 15 years if transport by rail or other track-based modes represents more than 50 % of the value of the services in question.

4. If necessary, having regard to the conditions of asset depreciation, the duration of the public service contract may be extended by a maximum of 50 % if the public service operator provides assets which are both significant in relation to the overall assets needed to carry out the passenger transport services covered by the public service contract and linked predominantly to the passenger transport services covered by the contract.

If justified by costs deriving from the particular geographical situation, the duration of public service contracts specified in paragraph 3 in the outermost regions may be extended by a maximum of 50 %.

If justified by the amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment and if the public service contract is awarded in a fair competitive tendering procedure, a public service contract may have a longer duration. In order to ensure transparency in this case, the competent authority shall transmit to the Commission within one year of the conclusion of the contract the public service contract and elements justifying its longer duration.

5. Without prejudice to national and Community law, including collective agreements between social partners, competent authorities may require the selected public service operator to grant staff previously taken on to provide services the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23/EC. Where competent authorities require public service operators to comply with certain social standards, tender documents and public service contracts shall list the staff concerned and give transparent details of their contractual rights and the conditions under which employees are deemed to be linked to the services.

6. Where competent authorities, in accordance with national law, require public service operators to comply with certain quality standards, these standards shall be included in the tender documents and in the public service contracts.

7. Tender documents and public service contracts shall indicate, in a transparent manner, whether, and if so to what extent, subcontracting may be considered. If subcontracting takes place, the operator entrusted with the administration and performance of public passenger transport services in accordance with this Regulation shall be required to perform a major part of the public passenger transport services itself. A public service contract covering at the same time design, construction and operation of public passenger transport services may allow full subcontracting for the operation of those services. The public service contract shall, in accordance with national and Community law, determine the conditions applicable to subcontracting.

Article 5

Award of public service contracts

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directives 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 6 of this Article shall not apply.

2. Unless prohibited by national law, any competent local authority, whether or not it is an individual authority or a group of authorities providing integrated public passenger transport services, may decide to provide public passenger transport services itself or to award public service contracts directly to a legally distinct entity over which the competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments. Where a competent local authority takes such a decision, the following shall apply:

- (a) for the purposes of determining whether the competent local authority exercises control, factors such as the degree of representation on administrative, management or supervisory bodies, specifications relating thereto in the articles of association, ownership, effective influence and control over strategic decisions and individual management decisions shall be taken into consideration. In accordance with Community law, 100 % ownership by the competent public authority, in particular in the case of public-private partnerships, is not a mandatory requirement for establishing control within the meaning of this paragraph, provided that there is a dominant public influence and that control can be established on the basis of other criteria;
- (b) the condition for applying this paragraph is that the internal operator and any entity over which this operator exerts even a minimal influence perform their public passenger transport activity within the territory of the competent local authority, notwithstanding any outgoing lines or other ancillary elements of that activity which enter the territory of neighbouring competent local authorities, and do not take part in competitive tenders concerning the provision of public passenger transport services organised outside the territory of the competent local authority;
- (c) notwithstanding point (b), an internal operator may participate in fair competitive tenders as from two years before the end of its directly awarded public service contract under the condition that a final decision has been taken to submit the public passenger transport services covered by the internal operator contract to fair competitive tender and that the internal operator has not concluded any other directly awarded public service contract;
- (d) in the absence of a competent local authority, points (a), (b) and (c) shall apply to a national authority for the benefit of a geographical area which is not national, provided that the internal operator does not take part in competitive tenders concerning the provision of public passenger transport services organised outside the area for which the public service contract has been granted;

- (e) if subcontracting under Article 4(7) is being considered, the internal operator shall be required to perform the major part of the public passenger transport service itself.

3. Any competent authority which has recourse to a third party other than an internal operator, shall award public service contracts on the basis of a competitive tendering procedure, except in the cases specified in paragraphs 4, 5 and 6. The procedure adopted for competitive tendering shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination. Following the submission of tenders and any preselection, the procedure may involve negotiations in accordance with these principles in order to determine how best to meet specific or complex requirements.

4. Unless prohibited by national law, the competent authorities may decide to award public service contracts directly either where their average annual value is estimated at less than EUR 1 000 000 or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services.

In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 2 000 000 or where they concern the annual provision of less than 600 000 kilometres of public passenger transport services.

5. In the event of a disruption of services or the immediate risk of such a situation, the competent authority may take an emergency measure. This emergency measure shall take the form of a direct award or a formal agreement to extend a public service contract or a requirement to provide certain public service obligations. The public service operator shall have the right to appeal against the decision to impose the provision of certain public service obligations. The award or extension of a public service contract by emergency measure or the imposition of such a contract shall not exceed two years.

6. Unless prohibited by national law, competent authorities may decide to make direct awards of public service contracts where they concern transport by rail, with the exception of other track-based modes such as metro or tramways. In derogation from Article 4(3), such contracts shall not exceed 10 years, except where Article 4(4) applies.

7. Member States shall take the necessary measures to ensure that decisions taken in accordance with paragraphs 2 to 6 may be reviewed effectively and rapidly, at the request of any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement, on the grounds that such decisions have infringed Community law or national rules implementing that law.

Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made so that any alleged illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it may be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the Treaty and independent of both the contracting authority and the review body.

Article 6

Public service compensation

1. All compensation connected with a general rule or a public service contract shall comply with the provisions laid down in Article 4, irrespective of how the contract was awarded. All compensation, of whatever nature, connected with a public service contract awarded directly in accordance with Article 5(2), (4), (5) or (6) or connected with a general rule shall also comply with the provisions laid down in the Annex.

2. At the written request of the Commission, Member States shall communicate, within a period of three months or any longer period as may be fixed in that request, all the information that the Commission considers necessary to determine whether the compensation granted is compatible with this Regulation.

Article 7

Publication

1. Each competent authority shall make public once a year an aggregated report on the public service obligations for which it is responsible, the selected public service operators and the compensation payments and exclusive rights granted to the said public service operators by way of reimbursement. This report shall distinguish between bus transport and rail transport, allow the performance, quality and financing of the public transport network to be monitored and assessed and, if appropriate, provide information on the nature and extent of any exclusive rights granted.

2. Each competent authority shall take the necessary measures to ensure that, at least one year before the launch of the invitation to tender procedure or one year before the direct award, the following information at least is published in the *Official Journal of the European Union*:

- (a) the name and address of the competent authority;
- (b) the type of award envisaged;
- (c) the services and areas potentially covered by the award.

Competent authorities may decide not to publish this information where a public service contract concerns an annual provision of less than 50 000 kilometres of public passenger transport services.

Should this information change after its publication, the competent authority shall publish a rectification accordingly as soon as possible. This rectification shall be without prejudice to the launching date of the direct award or of the invitation to tender.

This paragraph shall not apply to Article 5(5).

3. In the case of a direct award of public service contracts for transport by rail, as provided for in Article 5(6), the competent authority shall make public the following information within one year of granting the award:

- (a) name of the contracting entity, its ownership and, if appropriate, the name of the party or parties exercising legal control;
- (b) duration of the public service contract;
- (c) description of the passenger transport services to be performed;
- (d) description of the parameters of the financial compensation;
- (e) quality targets, such as punctuality and reliability and rewards and penalties applicable;
- (f) conditions relating to essential assets.

4. When so requested by an interested party, a competent authority shall forward to it the reasons for its decision for directly awarding a public service contract.

Article 8 Transition

1. Public service contracts shall be awarded in accordance with the rules laid down in this Regulation. However, service contracts or public service contracts as defined in Directive 2004/17/EC or 2004/18/EC for public passenger transport services by bus or tram shall be awarded in accordance with the procedures provided for under those Directives where such contracts do not take the form of service concessions contracts as defined in those Directives. Where contracts are to be awarded in accordance with Directives 2004/17/EC or 2004/18/EC, the provisions of paragraphs 2 to 4 of this Article shall not apply.

2. Without prejudice to paragraph 3, the award of public service contracts by rail and by road shall comply with Article 5 as from 3 December 2019. During this transitional period Member States shall take measures to gradually comply with Article 5 in order to avoid serious structural problems in particular relating to transport capacity.

Within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

3. In the application of paragraph 2, no account shall be taken of public service contracts awarded in accordance with Community and national law:

- (a) before 26 July 2000 on the basis of a fair competitive tendering procedure;
- (b) before 26 July 2000 on the basis of a procedure other than a fair competitive tendering procedure;
- (c) as from 26 July 2000 and before 3 December 2009 on the basis of a fair competitive tendering procedure;
- (d) as from 26 July 2000 and before 3 December 2009 on the basis of a procedure other than a fair competitive tendering procedure.

The contracts referred to in (a) may continue until they expire. The contracts referred to in (b) and (c) may continue until they expire, but for no longer than 30 years. The contracts referred to in (d) may continue until they expire, provided they are of limited duration comparable to the durations specified in Article 4.

Public service contracts may continue until they expire where their termination would entail undue legal or economic consequences and provided that the Commission has given its approval.

4. Without prejudice to paragraph 3, the competent authorities may opt, in the second half of the transitional period specified in paragraph 2, to exclude from participation in the award of contracts by invitation to tender those public service operators which cannot provide evidence that the value of the public transport services for which they are receiving compensation or enjoy an exclusive right granted in accordance with this Regulation represents at least half the value of all the public transport services for which they are receiving compensation or enjoy an exclusive right. Such exclusion shall not apply to public service operators running the services which are to be tendered. For the application of this criterion, no account shall be taken of public service contracts awarded by emergency measure as referred to in Article 5(5).

Where competent authorities make use of the option referred to in the first subparagraph, they shall do so without discrimination, exclude all potential public service operators meeting this criterion and inform the potential operators of their decision at the beginning of the procedure for the award of public service contracts.

The competent authorities concerned shall inform the Commission of their intention to apply this provision at least two months before the publication of the invitation to tender.

Article 9

Compatibility with the Treaty

1. Public service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules paid in accordance with this Regulation shall be compatible with the common market. Such compensation shall be exempt from the prior notification requirement laid down in Article 88(3) of the Treaty.

2. Without prejudice to Articles 73, 86, 87 and 88 of the Treaty, Member States may continue to grant aid for the transport sector pursuant to Article 73 of the Treaty which meets transport coordination needs or which represents reimbursement for the discharge of certain obligations inherent in the concept of a public service, other than those covered by this Regulation, and in particular:

- (a) until the entry into force of common rules on the allocation of infrastructure costs, where aid is granted to undertakings which have to bear expenditure relating to the infrastructure used by them, while other undertakings are not subject to a like burden. In determining the amount of aid thus granted, account shall be taken of the infrastructure costs which competing modes of transport do not have to bear;
- (b) where the purpose of the aid is to promote either research into, or development of, transport systems and technologies which are more economic for the Community in general.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

Such aid shall be restricted to the research and development stage and may not cover the commercial exploitation of such transport systems and technologies.

Article 10

Repeal

1. Regulation (EEC) No 1191/69 is hereby repealed. Its provisions shall however continue to apply to freight transport services for a period of three years after the entry into force of this Regulation.

2. Regulation (EEC) No 1107/70 is hereby repealed.

Article 11

Reports

After the end of the transitional period specified in Article 8(2), the Commission shall present a report on the implementation of this Regulation and on the developments in the provision of public passenger transport in the Community, assessing in particular the development of the quality of public passenger transport services and the effects of direct awards, accompanied, if necessary, by appropriate proposals for the amendment of this Regulation.

Article 12

Entry into force

This Regulation shall enter into force on 3 December 2009.

For the Council
The President
M. LOBO ANTUNES

ANNEX

Rules applicable to compensation in the cases referred to in Article 6(1)

1. The compensation connected with public service contracts awarded directly in accordance with Article 5(2), (4), (5) or (6) or with a general rule must be calculated in accordance with the rules laid down in this Annex.
2. The compensation may not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator. The effects shall be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met. In order to calculate the net financial effect, the competent authority shall be guided by the following scheme:

costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule,

minus any positive financial effects generated within the network operated under the public service obligation(s) in question,

minus receipts from tariff or any other revenue generated while fulfilling the public service obligation(s) in question,

plus a reasonable profit,

equals net financial effect.

3. Compliance with the public service obligation may have an impact on possible transport activities of an operator beyond the public service obligation(s) in question. In order to avoid overcompensation or lack of compensation, quantifiable financial effects on the operator's networks concerned shall therefore be taken into account when calculating the net financial effect.
4. Costs and revenue must be calculated in accordance with the accounting and tax rules in force.
5. In order to increase transparency and avoid cross-subsidies, where a public service operator not only operates compensated services subject to public transport service obligations, but also engages in other activities, the accounts of the said public services must be separated so as to meet at least the following conditions:
 - the operating accounts corresponding to each of these activities must be separate and the proportion of the corresponding assets and the fixed costs must be allocated in accordance with the accounting and tax rules in force,
 - all variable costs, an appropriate contribution to the fixed costs and a reasonable profit connected with any other activity of the public service operator may under no circumstances be charged to the public service in question,
 - the costs of the public service must be balanced by operating revenue and payments from public authorities, without any possibility of transfer of revenue to another sector of the public service operator's activity.
6. 'Reasonable profit' must be taken to mean a rate of return on capital that is normal for the sector in a given Member State and that takes account of the risk, or absence of risk, incurred by the public service operator by virtue of public authority intervention.

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7. The method of compensation must promote the maintenance or development of:
- effective management by the public service operator, which can be the subject of an objective assessment, and
 - the provision of passenger transport services of a sufficiently high standard.
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REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2007
on rail passengers' rights and obligations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 ⁽³⁾,

Whereas:

- (1) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (2) The Commission's communication 'Consumer Policy Strategy 2002-2006' ⁽⁴⁾ sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.
- (4) Users' rights to rail services include the receipt of information regarding the service both before and during the journey. Whenever possible, railway undertakings and ticket vendors should provide this information in advance and as soon as possible.
- (5) More detailed requirements regarding the provision of travel information will be set out in the technical specifications for interoperability (TSIs) referred to in Directive

2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽⁵⁾.

- (6) Strengthening of the rights of rail passengers should build on the existing system of international law on this subject contained in Appendix A — Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol). However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too.
- (7) Railway undertakings should cooperate to facilitate the transfer of rail passengers from one operator to another by the provision of through tickets, whenever possible.
- (8) The provision of information and tickets for rail passengers should be facilitated by the adaptation of computerised systems to a common specification.
- (9) The further implementation of travel information and reservation systems should be executed in accordance with the TSIs.
- (10) Rail passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for rail travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and to non-discrimination. *Inter alia*, special attention should be given to the provision of information to disabled persons and persons with reduced mobility concerning the accessibility of rail services, access conditions of rolling stock and the facilities on board. In order to provide passengers with sensory impairment with the best information on delays, visual and audible systems should be used, as appropriate. Disabled persons and persons with reduced mobility should be enabled to buy tickets on board a train without extra charges.

⁽¹⁾ OJ C 221, 8.9.2005, p. 8.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 490), Council Common Position of 24 July 2006 (OJ C 289 E, 28.11.2006, p. 1), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

⁽⁴⁾ OJ C 137, 8.6.2002, p. 2.

⁽⁵⁾ OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).

- (11) Railway undertakings and station managers should take into account the needs of disabled persons and persons with reduced mobility, through compliance with the TSI for persons with reduced mobility, so as to ensure that, in accordance with Community public procurement rules, all buildings and rolling stock are made accessible through the progressive elimination of physical obstacles and functional hindrances when acquiring new material or carrying out construction or major renovation work.
- (12) Railway undertakings should be obliged to be insured, or to make equivalent arrangements, for their liability to rail passengers in the event of accident. The minimum amount of insurance for railway undertakings should be the subject of future review.
- (13) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.
- (14) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.
- (15) Where a Member State grants railway undertakings an exemption from the provisions of this Regulation, it should encourage railway undertakings, in consultation with organisations representing passengers, to put in place arrangements for compensation and assistance in the event of major disruption to a rail passenger service.
- (16) It is also desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
- (17) It is in the interests of rail passengers that adequate measures be taken, in agreement with public authorities, to ensure their personal security at stations as well as on board trains.
- (18) Rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time.
- (19) Railway undertakings should define, manage and monitor service quality standards for rail passenger services.
- (20) The contents of this Regulation should be reviewed in respect of the adjustment of financial amounts for inflation and in respect of information and service quality requirements in the light of market developments as well as in the light of the effects on service quality of this Regulation.
- (21) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.
- (22) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.
- (23) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (24) It is an aim of this Regulation to improve rail passenger services within the Community. Therefore, Member States should be able to grant exemptions for services in regions where a significant part of the service is operated outside the Community.
- (25) Railway undertakings in some Member States may experience difficulty in applying the entirety of the provisions of this Regulation on its entry into force. Therefore, Member States should be able to grant temporary exemptions from the application of the provisions of this Regulation to long-distance domestic rail passenger services. The temporary exemption should, however, not apply to the provisions of this Regulation that grant disabled persons or persons with reduced mobility access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (26) Urban, suburban and regional rail passenger services are different in character from long-distance services. Therefore, with the exception of certain provisions which should apply to all rail passenger services throughout the Community, Member States should be able to grant exemptions from the application of the provisions of this Regulation to urban, suburban and regional rail passenger services.
- (27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (28) In particular, the Commission should be empowered to adopt implementing measures. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes rules as regards the following:

- (a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport,
- (b) the liability of railway undertakings and their insurance obligations for passengers and their luggage,
- (c) the obligations of railway undertakings to passengers in cases of delay,
- (d) the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail,
- (e) the definition and monitoring of service quality standards, the management of risks to the personal security of passengers and the handling of complaints, and
- (f) general rules on enforcement.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Article 2

Scope

1. This Regulation shall apply to all rail journeys and services throughout the Community provided by one or more railway undertakings licensed in accordance with Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings ⁽²⁾.
2. This Regulation does not apply to railway undertakings and transport services which are not licensed under Directive 95/18/EC.
3. On the entry into force of this Regulation, Articles 9, 11, 12, 19, 20(1) and 26 shall apply to all rail passenger services throughout the Community.
4. With the exception of the provisions set out in paragraph 3, a Member State may, on a transparent and non-discriminatory basis, grant an exemption for a period no longer than five years, which may be renewed twice for a maximum period of five years on each occasion, from the application of the provisions of this Regulation to domestic rail passenger services.
5. With the exception of the provisions set out in paragraph 3 of this Article, a Member State may exempt from the application of the provisions of this Regulation urban, suburban and regional rail passenger services. In order to distinguish between urban, suburban and regional rail passenger services, Member States shall apply the definitions contained in Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽³⁾. In applying these definitions, Member States shall take into account the following criteria: distance, frequency of services, number of scheduled stops, rolling stock employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, train codes and timetables.
6. For a maximum period of five years, a Member State may, on a transparent and non-discriminatory basis, grant an exemption, which may be renewed, from the application of the provisions of this Regulation to particular services or journeys because a significant part of the rail passenger service, including at least one scheduled station stop, is operated outside the Community.
7. Member States shall inform the Commission of exemptions granted pursuant to paragraphs 4, 5 and 6. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. No later than 3 December 2014, the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to paragraphs 4, 5 and 6.

⁽²⁾ OJ L 143, 27.6.1995, p. 70. Directive as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

⁽³⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'railway undertaking' means a railway undertaking as defined in Article 2 of Directive 2001/14/EC ⁽¹⁾, 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; this also includes undertakings which provide traction only;
2. 'carrier' means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;
3. 'substitute carrier' means a railway undertaking, which has not concluded a transport contract with the passenger, but to whom the railway undertaking party to the contract has entrusted, in whole or in part, the performance of the transport by rail;
4. 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems; the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
5. 'station manager' means an organisational entity in a Member State, which has been made responsible for the management of a railway station and which may be the infrastructure manager;
6. 'tour operator' means an organiser or retailer, other than a railway undertaking, within the meaning of Article 2, points (2) and (3) of Directive 90/314/EEC ⁽²⁾;
7. 'ticket vendor' means any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
8. 'transport contract' means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;
9. 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;
10. 'through ticket' means a ticket or tickets representing a transport contract for successive railway services operated by one or several railway undertakings;
11. 'domestic rail passenger service' means a rail passenger service which does not cross a border of a Member State;
12. 'delay' means the time difference between the time the passenger was scheduled to arrive in accordance with the published timetable and the time of his or her actual or expected arrival;
13. 'travel pass' or 'season ticket' means a ticket for an unlimited number of journeys which provides the authorised holder with rail travel on a particular route or network during a specified period;
14. 'Computerised Information and Reservation System for Rail Transport (CIRSRT)' means a computerised system containing information about rail services offered by railway undertakings; the information stored in the CIRSRT on passenger services shall include information on:
 - (a) schedules and timetables of passenger services;
 - (b) availability of seats on passenger services;
 - (c) fares and special conditions;
 - (d) accessibility of trains for disabled persons and persons with reduced mobility;
 - (e) facilities through which reservations may be made or tickets or through tickets may be issued to the extent that some or all of these facilities are made available to users;
15. 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers;
16. 'General Conditions of Carriage' means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
17. 'vehicle' means a motor vehicle or a trailer carried on the occasion of the carriage of passengers.

⁽¹⁾ Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 75, 15.3.2001, p. 29). Directive as last amended by Directive 2004/49/EC.

⁽²⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).

CHAPTER II

TRANSPORT CONTRACT, INFORMATION AND TICKETS*Article 4***Transport contract**

Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.

*Article 5***Bicycles**

Railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits.

*Article 6***Exclusion of waiver and stipulation of limits**

1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.
2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.

*Article 7***Obligation to provide information concerning discontinuation of services**

Railway undertakings or, where appropriate, competent authorities responsible for a public service railway contract shall make public by appropriate means, and before their implementation, decisions to discontinue services.

*Article 8***Travel information**

1. Without prejudice to Article 10, railway undertakings and ticket vendors offering transport contracts on behalf of one or more railway undertakings shall provide the passenger, upon request, with at least the information set out in Annex II, Part I in relation to the journeys for which a transport contract is offered by the railway undertaking concerned. Ticket vendors offering transport contracts on their own account, and tour operators, shall provide this information where available.
2. Railway undertakings shall provide the passenger during the journey with at least the information set out in Annex II, Part II.

3. The information referred to in paragraphs 1 and 2 shall be provided in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment.

*Article 9***Availability of tickets, through tickets and reservations**

1. Railway undertakings and ticket vendors shall offer, where available, tickets, through tickets and reservations.
2. Without prejudice to paragraph 4, railway undertakings shall distribute tickets to passengers via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) telephone, the Internet or any other widely available information technology;
 - (c) on board trains.
3. Without prejudice to paragraphs 4 and 5, railway undertakings shall distribute tickets for services provided under public service contracts via at least one of the following points of sale:
 - (a) ticket offices or selling machines;
 - (b) on board trains.
4. Railway undertakings shall offer the possibility to obtain tickets for the respective service on board the train, unless this is limited or denied on grounds relating to security or antifraud policy or compulsory train reservation or reasonable commercial grounds.
5. Where there is no ticket office or selling machine in the station of departure, passengers shall be informed at the station:
 - (a) of the possibility of purchasing tickets via telephone or the Internet or on board the train, and of the procedure for such purchase;
 - (b) of the nearest railway station or place at which ticket offices and/or selling machines are available.

*Article 10***Travel information and reservation systems**

1. In order to provide the information and to issue tickets referred to in this Regulation, railway undertakings and ticket vendors shall make use of CIRSRT, to be established by the procedures referred to in this Article.

2. The technical specifications for interoperability (TSIs) referred to in Directive 2001/16/EC shall be applied for the purposes of this Regulation.

3. The Commission shall, on a proposal to be submitted by the European Railway Agency (ERA), adopt the TSI of telematics applications for passengers by 3 December 2010. The TSI shall make possible the provision of the information, set out in Annex II, and the issuing of tickets as governed by this Regulation.

4. Railway undertakings shall adapt their CIRSRT according to the requirements set out in the TSI in accordance with a deployment plan set out in that TSI.

5. Subject to the provisions of Directive 95/46/EC, no railway undertaking or ticket vendor shall disclose personal information on individual bookings to other railway undertakings and/or ticket vendors.

CHAPTER III

LIABILITY OF RAILWAY UNDERTAKINGS FOR PASSENGERS AND THEIR LUGGAGE

Article 11

Liability for passengers and luggage

Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.

Article 12

Insurance

1. The obligation set out in Article 9 of Directive 95/18/EC as far as it relates to liability for passengers shall be understood as requiring a railway undertaking to be adequately insured or to make equivalent arrangements for cover of its liabilities under this Regulation.

2. The Commission shall submit to the European Parliament and the Council a report on the setting of a minimum amount of insurance for railway undertakings by 3 December 2010. If appropriate, that report shall be accompanied by suitable proposals or recommendations on this matter.

Article 13

Advance payments

1. If a passenger is killed or injured, the railway undertaking as referred to in Article 26(5) of Annex I shall without delay, and in any event not later than fifteen days after the establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases where damage was caused by the negligence or fault of the passenger or where the person who received the advance payment was not the person entitled to compensation.

Article 14

Contestation of liability

Even if the railway undertaking contests its responsibility for physical injury to a passenger whom it conveys, it shall make every reasonable effort to assist a passenger claiming compensation for damage from third parties.

CHAPTER IV

DELAYS, MISSED CONNECTIONS AND CANCELLATIONS

Article 15

Liability for delays, missed connections and cancellations

Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.

Article 16

Reimbursement and re-routing

Where it is reasonably to be expected that the delay in the arrival at the final destination under the transport contract will be more than 60 minutes, the passenger shall immediately have the choice between:

- (a) reimbursement of the full cost of the ticket, under the conditions by which it was paid, for the part or parts of his or her journey not made and for the part or parts already made if the journey is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return service to the first point of departure at the earliest opportunity. The payment of the reimbursement shall be made under the same conditions as the payment for compensation referred to in Article 17; or
- (b) continuation or re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
- (c) continuation or re-routing, under comparable transport conditions, to the final destination at a later date at the passenger's convenience.

*Article 17***Compensation of the ticket price**

1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and destination stated on the ticket for which the ticket has not been reimbursed in accordance with Article 16. The minimum compensations for delays shall be as follows:

- (a) 25 % of the ticket price for a delay of 60 to 119 minutes,
- (b) 50 % of the ticket price for a delay of 120 minutes or more.

Passengers who hold a travel pass or season ticket and who encounter recurrent delays or cancellations during its period of validity may request adequate compensation in accordance with the railway undertaking's compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation.

Compensation for delay shall be calculated in relation to the price which the passenger actually paid for the delayed service.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the Treaty establishing the European Community is applied.

2. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.

*Article 18***Assistance**

1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

- (a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied;
- (b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;
- (c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

4. Railway undertakings shall, at the request of the passenger, certify on the ticket that the rail service has suffered a delay, led to a missed connection or that it has been cancelled, as the case might be.

5. In applying paragraphs 1, 2 and 3, the operating railway undertaking shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

CHAPTER V

DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY*Article 19***Right to transport**

1. Railway undertakings and station managers shall, with the active involvement of representative organisations of disabled persons and persons with reduced mobility, establish, or shall have in place, non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost. A railway undertaking, ticket vendor or tour operator may not refuse to accept a reservation from, or issue a ticket to, a disabled person or a person with reduced mobility, or require that such person be accompanied by another person, unless this is strictly necessary in order to comply with the access rules referred to in paragraph 1.

Article 20

Information to disabled persons and persons with reduced mobility

1. Upon request, a railway undertaking, a ticket vendor or a tour operator shall provide disabled persons and persons with reduced mobility with information on the accessibility of rail services and on the access conditions of rolling stock in accordance with the access rules referred to in Article 19(1) and shall inform disabled persons and persons with reduced mobility about facilities on board.

2. When a railway undertaking, ticket vendor and/or tour operator exercises the derogation provided for in Article 19(2), it shall upon request inform in writing the disabled person or person with reduced mobility concerned of its reasons for doing so within five working days of the refusal to make the reservation or to issue the ticket or the imposition of the condition of being accompanied.

Article 21

Accessibility

1. Railway undertakings and station managers shall, through compliance with the TSI for persons with reduced mobility, ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility.

2. In the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers shall make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.

Article 22

Assistance at railway stations

1. On departure from, transit through or arrival at, a staffed railway station of a disabled person or a person with reduced mobility, the station manager shall provide assistance free of charge in such a way that that person is able to board the departing service, or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules referred to in Article 19(1).

2. Member States may provide for a derogation from paragraph 1 in the case of persons travelling on services which are the subject of a public service contract awarded in conformity with Community law, on condition that the competent authority has put in place alternative facilities or arrangements guaranteeing an equivalent or higher level of accessibility of transport services.

3. In unstaffed stations, railway undertakings and station managers shall ensure that easily accessible information is displayed in accordance with the access rules referred to in Article 19(1) regarding the nearest staffed stations and directly available assistance for disabled persons and persons with reduced mobility.

Article 23

Assistance on board

Without prejudice to the access rules as referred to in Article 19(1), railway undertakings shall provide disabled persons and persons with reduced mobility assistance free of charge on board a train and during boarding and disembarking from a train.

For the purposes of this Article, assistance on board shall consist of all reasonable efforts to offer assistance to a disabled person or a person with reduced mobility in order to allow that person to have access to the same services in the train as other passengers, should the extent of the person's disability or reduced mobility not allow him or her to have access to those services independently and in safety.

Article 24

Conditions on which assistance is provided

Railway undertakings, station managers, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility in line with Articles 22 and 23 in accordance with the following points:

- (a) assistance shall be provided on condition that the railway undertaking, the station manager, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance at least 48 hours before the assistance is needed. Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;
- (b) railway undertakings, station managers, ticket vendors and tour operators shall take all measures necessary for the reception of notifications;
- (c) if no notification is made in accordance with point (a), the railway undertaking and the station manager shall make all reasonable efforts to provide assistance in such a way that the disabled person or person with reduced mobility may travel;

- (d) without prejudice to the powers of other entities regarding areas located outside the railway station premises, the station manager or any other authorised person shall designate points, within and outside the railway station, at which disabled persons and persons with reduced mobility can announce their arrival at the railway station and, if need be, request assistance;
- (e) assistance shall be provided on condition that the disabled person or person with reduced mobility present him or herself at the designated point at a time stipulated by the railway undertaking or station manager providing such assistance. Any time stipulated shall not be more than 60 minutes before the published departure time or the time at which all passengers are asked to check in. If no time is stipulated by which the disabled person or person with reduced mobility is required to present him or herself, the person shall present him or herself at the designated point at least 30 minutes before the published departure time or the time at which all passengers are asked to check in.

Article 25

Compensation in respect of mobility equipment or other specific equipment

If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility, no financial limit shall be applicable.

CHAPTER VI

SECURITY, COMPLAINTS AND QUALITY OF SERVICE

Article 26

Personal security of passengers

In agreement with public authorities, railway undertakings, infrastructure managers and station managers shall take adequate measures in their respective fields of responsibility and adapt them to the level of security defined by the public authorities to ensure passengers' personal security in railway stations and on trains and to manage risks. They shall cooperate and exchange information on best practices concerning the prevention of acts, which are likely to deteriorate the level of security.

Article 27

Complaints

1. Railway undertakings shall set up a complaint handling mechanism for the rights and obligations covered in this Regulation. The railway undertaking shall make its contact details and working language(s) widely known to passengers.

2. Passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint shall either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

3. The railway undertaking shall publish in the annual report referred to in Article 28 the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken.

Article 28

Service quality standards

1. Railway undertakings shall define service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex III.

2. Railway undertakings shall monitor their own performance as reflected in the service quality standards. Railway undertakings shall each year publish a report on their service quality performance together with their annual report. The reports on service quality performance shall be published on the Internet website of the railway undertakings. In addition, these reports shall be made available on the Internet website of the ERA.

CHAPTER VII

INFORMATION AND ENFORCEMENT

Article 29

Information to passengers about their rights

1. When selling tickets for journeys by rail, railway undertakings, station managers and tour operators shall inform passengers of their rights and obligations under this Regulation. In order to comply with this information requirement, railway undertakings, station managers and tour operators may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the European Union institutions and made available to them.

2. Railway undertakings and station managers shall inform passengers in an appropriate manner, at the station and on the train, of the contact details of the body or bodies designated by Member States pursuant to Article 30.

Article 30

Enforcement

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

Article 31

Cooperation between enforcement bodies

Enforcement bodies as referred to in Article 30 shall exchange information on their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.

CHAPTER VIII

FINAL PROVISIONS

Article 32

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 3 June 2010 and shall notify it without delay of any subsequent amendment affecting them.

Article 33

Annexes

Measures designed to amend non-essential elements of this Regulation by adapting the Annexes thereto, except Annex I, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

Article 34

Amending provisions

1. Measures designed to amend non-essential elements of this Regulation by supplementing it and necessary for the implementation of Articles 2, 10 and 12 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

2. Measures designed to amend non-essential elements of this Regulation by adjusting the financial amounts referred to therein, other than in Annex I, in light of inflation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(2).

Article 35

Committee procedure

1. The Commission shall be assisted by the Committee instituted by Article 11a of Directive 91/440/EEC.

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

Article 36

Report

The Commission shall report to the European Parliament and the Council on the implementation and the results of this Regulation by 3 December 2012, and in particular on the service quality standards.

The report shall be based on information to be provided pursuant to this Regulation and to Article 10b of Directive 91/440/EEC. The report shall be accompanied where necessary by appropriate proposals.

Article 37

Entry into force

This Regulation shall enter into force 24 months after the date of its publication in the *Official Journal of the European Union*.

For the Council
The President
M. LOBO ANTUNES

ANNEX I

**Extract from Uniform Rules concerning the contract for international carriage
of passengers and luggage by rail (CIV)***Appendix A*

**to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the
Protocol for the modification of the Convention Concerning International Carriage by Rail of 3 June 1999**

TITLE II

CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE*Article 6***Contract of carriage**

1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.
2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.
3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

*Article 7***Ticket**

1. The General Conditions of Carriage shall determine the form and content of tickets as well as the language and characters in which they are to be printed and made out.
2. The following, at least, must be entered on the ticket:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the conclusion and contents of the contract of carriage and enabling the passenger to assert the rights resulting from this contract.
3. The passenger must ensure, on receipt of the ticket, that it has been made out in accordance with his instructions.
4. The ticket shall be transferable if it has not been made out in the passenger's name and if the journey has not begun.
5. The ticket may be established in the form of electronic data registration, which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the ticket represented by those data.

*Article 8***Payment and refund of the carriage charge**

1. Subject to a contrary agreement between the passenger and the carrier, the carriage charge shall be payable in advance.
2. The General Conditions of Carriage shall determine under what conditions a refund of the carriage charge shall be made.

*Article 9***Right to be carried. Exclusion from carriage**

1. The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.

2. The General Conditions of Carriage may provide that passengers who:

- (a) present a danger for safety and the good functioning of the operations or for the safety of other passengers,
- (b) inconvenience other passengers in an intolerable manner,

shall be excluded from carriage or may be required to discontinue their journey and that such persons shall not be entitled to a refund of their carriage charge or of any charge for the carriage of registered luggage they may have paid.

*Article 10***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities.

*Article 11***Cancellation and late running of trains. Missed connections**

The carrier must, where necessary, certify on the ticket that the train has been cancelled or the connection missed.

TITLE III

CARRIAGE OF HAND LUGGAGE, ANIMALS, REGISTERED LUGGAGE AND VEHICLES

Chapter I

Common provisions*Article 12***Acceptable articles and animals**

1. The passenger may take with him articles which can be handled easily (hand luggage) and also live animals in accordance with the General Conditions of Carriage. Moreover, the passenger may take with him cumbersome articles in accordance with the special provisions, contained in the General Conditions of Carriage. Articles and animals likely to annoy or inconvenience passengers or cause damage shall not be allowed as hand luggage.

2. The passenger may consign articles and animals as registered luggage in accordance with the General Conditions of Carriage.

3. The carrier may allow the carriage of vehicles on the occasion of the carriage of passengers in accordance with special provisions, contained in the General Conditions of Carriage.

4. The carriage of dangerous goods as hand luggage, registered luggage as well as in or on vehicles which, in accordance with this Title are carried by rail, must comply with the Regulation concerning the Carriage of Dangerous Goods by Rail (RID).

*Article 13***Examination**

1. When there is good reason to suspect a failure to observe the conditions of carriage, the carrier shall have the right to examine whether the articles (hand luggage, registered luggage, vehicles including their loading) and animals carried comply with the conditions of carriage, unless the laws and prescriptions of the State in which the examination would take place prohibit such examination. The passenger must be invited to attend the examination. If he does not appear or cannot be reached, the carrier must require the presence of two independent witnesses.
2. If it is established that the conditions of carriage have not been respected, the carrier can require the passenger to pay the costs arising from the examination.

*Article 14***Completion of administrative formalities**

The passenger must comply with the formalities required by customs or other administrative authorities when, on being carried, he has articles (hand luggage, registered luggage, vehicles including their loading) or animals carried. He shall be present at the inspection of these articles save where otherwise provided by the laws and prescriptions of each State.

*Chapter II****Hand luggage and animals****Article 15***Supervision**

It shall be the passenger's responsibility to supervise the hand luggage and animals that he takes with him.

*Chapter III****Registered luggage****Article 16***Consignment of registered luggage**

1. The contractual obligations relating to the forwarding of registered luggage must be established by a luggage registration voucher issued to the passenger.
2. Subject to Article 22 the absence, irregularity or loss of the luggage registration voucher shall not affect the existence or the validity of the agreements concerning the forwarding of the registered luggage, which shall remain subject to these Uniform Rules.
3. The luggage registration voucher shall be prima facie evidence of the registration of the luggage and the conditions of its carriage.
4. Subject to evidence to the contrary, it shall be presumed that when the carrier took over the registered luggage it was apparently in a good condition, and that the number and the mass of the items of luggage corresponded to the entries on the luggage registration voucher.

*Article 17***Luggage registration voucher**

1. The General Conditions of Carriage shall determine the form and content of the luggage registration voucher as well as the language and characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
2. The following, at least, must be entered on the luggage registration voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;

- (c) any other statement necessary to prove the contractual obligations relating to the forwarding of the registered luggage and enabling the passenger to assert the rights resulting from the contract of carriage.
3. The passenger must ensure, on receipt of the luggage registration voucher, that it has been made out in accordance with his instructions.

Article 18

Registration and carriage

1. Save where the General Conditions of Carriage otherwise provide, luggage shall be registered only on production of a ticket valid at least as far as the destination of the luggage. In other respects the registration of luggage shall be carried out in accordance with the prescriptions in force at the place of consignment.
2. When the General Conditions of Carriage provide that luggage may be accepted for carriage without production of a ticket, the provisions of these Uniform Rules determining the rights and obligations of the passenger in respect of his registered luggage shall apply *mutatis mutandis* to the consignor of registered luggage.
3. The carrier can forward the registered luggage by another train or by another mode of transport and by a different route from that taken by the passenger.

Article 19

Payment of charges for the carriage of registered luggage

Subject to a contrary agreement between the passenger and the carrier, the charge for the carriage of registered luggage shall be payable on registration.

Article 20

Marking of registered luggage

The passenger must indicate on each item of registered luggage in a clearly visible place, in a sufficiently durable and legible manner:

- (a) his name and address;
- (b) the place of destination.

Article 21

Right to dispose of registered luggage

1. If circumstances permit and if customs requirements or the requirements of other administrative authorities are not thereby contravened, the passenger can request luggage to be handed back at the place of consignment on surrender of the luggage registration voucher and, if the General Conditions of Carriage so require, on production of the ticket.
2. The General Conditions of Carriage may contain other provisions concerning the right to dispose of registered luggage, in particular modifications of the place of destination and the possible financial consequences to be borne by the passenger.

Article 22

Delivery

1. Registered luggage shall be delivered on surrender of the luggage registration voucher and, where appropriate, on payment of the amounts chargeable against the consignment.

The carrier shall be entitled, but not obliged, to examine whether the holder of the voucher is entitled to take delivery.

2. It shall be equivalent to delivery to the holder of the luggage registration voucher if, in accordance with the prescriptions in force at the place of destination:
 - (a) the luggage has been handed over to the customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
 - (b) live animals have been handed over to third parties.

3. The holder of the luggage registration voucher may require delivery of the luggage at the place of destination as soon as the agreed time and, where appropriate, the time necessary for the operations carried out by customs or other administrative authorities, has elapsed.
4. Failing surrender of the luggage registration voucher, the carrier shall only be obliged to deliver the luggage to the person proving his right thereto; if the proof offered appears insufficient, the carrier may require security to be given.
5. Luggage shall be delivered at the place of destination for which it has been registered.
6. The holder of a luggage registration voucher whose luggage has not been delivered may require the day and time to be endorsed on the voucher when he requested delivery in accordance with paragraph 3.
7. The person entitled may refuse to accept the luggage if the carrier does not comply with his request to carry out an examination of the registered luggage in order to establish alleged damage.
8. In all other respects delivery of luggage shall be carried out in accordance with the prescriptions in force at the place of destination.

Chapter IV

Vehicles

Article 23

Conditions of carriage

The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall specify in particular the conditions governing acceptance for carriage, registration, loading and carriage, unloading and delivery as well as the obligations of the passenger.

Article 24

Carriage voucher

1. The contractual obligations relating to the carriage of vehicles must be established by a carriage voucher issued to the passenger. The carriage voucher may be integrated into the passenger's ticket.
2. The special provisions governing the carriage of vehicles, contained in the General Conditions of Carriage, shall determine the form and content of the carriage voucher as well as the language and the characters in which it is to be printed and made out. Article 7(5) shall apply *mutatis mutandis*.
3. The following, at least, must be entered on the carriage voucher:
 - (a) the carrier or carriers;
 - (b) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules; this may be indicated by the acronym CIV;
 - (c) any other statement necessary to prove the contractual obligations relating to the carriage of vehicles and enabling the passenger to assert the rights resulting from the contract of carriage.
4. The passenger must ensure, on receipt of the carriage voucher, that it has been made out in accordance with his instructions.

Article 25

Applicable law

Subject to the provisions of this Chapter, the provisions of Chapter III relating to the carriage of luggage shall apply to vehicles.

TITLE IV

LIABILITY OF THE CARRIER

Chapter I

Liability in case of death of, or personal injury to, passengers

Article 26

Basis of liability

1. The carrier shall be liable for the loss or damage resulting from the death of, personal injuries to, or any other physical or mental harm to, a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.
2. The carrier shall be relieved of this liability
 - (a) if the accident has been caused by circumstances not connected with the operation of the railway and which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
 - (b) to the extent that the accident is due to the fault of the passenger;
 - (c) if the accident is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.
3. If the accident is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of his liability in accordance with paragraph 2, letter c), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse which the carrier may have against the third party.
4. These Uniform Rules shall not affect any liability which may be incurred by the carrier in cases not provided for in paragraph 1.
5. If carriage governed by a single contract of carriage is performed by successive carriers, the carrier bound pursuant to the contract of carriage to provide the service of carriage in the course of which the accident happened shall be liable in case of death of, and personal injuries to, passengers. When this service has not been provided by the carrier, but by a substitute carrier, the two carriers shall be jointly and severally liable in accordance with these Uniform Rules.

Article 27

Damages in case of death

1. In case of death of the passenger the damages shall comprise:
 - (a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
 - (b) if death does not occur at once, the damages provided for in Article 28.
2. If, through the death of the passenger, persons whom he had, or would have had, a legal duty to maintain are deprived of their support, such persons shall also be compensated for that loss. Rights of action for damages of persons whom the passenger was maintaining without being legally bound to do so, shall be governed by national law.

Article 28

Damages in case of personal injury

In case of personal injury or any other physical or mental harm to the passenger the damages shall comprise:

- (a) any necessary costs, in particular those of treatment and of transport;
- (b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

*Article 29***Compensation for other bodily harm**

National law shall determine whether and to what extent the carrier must pay damages for bodily harm other than that for which there is provision in Articles 27 and 28.

*Article 30***Form and amount of damages in case of death and personal injury**

1. The damages under Article 27(2) and Article 28(b) must be awarded in the form of a lump sum. However, if national law permits payment of an annuity, the damages shall be awarded in that form if so requested by the injured passenger or by the persons entitled referred to in Article 27(2).

2. The amount of damages to be awarded pursuant to paragraph 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at 175 000 units of account as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

*Article 31***Other modes of transport**

1. Subject to paragraph 2, the provisions relating to the liability of the carrier in case of death of, or personal injury to, passengers shall not apply to loss or damage arising in the course of carriage which, in accordance with the contract of carriage, was not carriage by rail.

2. However, where railway vehicles are carried by ferry, the provisions relating to liability in case of death of, or personal injury to, passengers shall apply to loss or damage referred to in Article 26(1) and Article 33(1), caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from the said vehicles.

3. When, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport, the carrier shall be liable pursuant to these Uniform Rules.

*Chapter II****Liability in case of failure to keep to the timetable****Article 32***Liability in case of cancellation, late running of trains or missed connections**

1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

- (a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- (b) fault on the part of the passenger; or
- (c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.

Chapter III

Liability in respect of hand luggage, animals, registered luggage and vehicles

SECTION 1

Hand luggage and animals

Article 33

Liability

1. In case of death of, or personal injury to, passengers the carrier shall also be liable for the loss or damage resulting from the total or partial loss of, or damage to, articles which the passenger had on him or with him as hand luggage; this shall apply also to animals which the passenger had brought with him. Article 26 shall apply *mutatis mutandis*.

2. In other respects, the carrier shall not be liable for the total or partial loss of, or damage to, articles, hand luggage or animals the supervision of which is the responsibility of the passenger in accordance with Article 15, unless this loss or damage is caused by the fault of the carrier. The other Articles of Title IV, with exception of Article 51, and Title VI shall not apply in this case.

Article 34

Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33(1), he must pay compensation up to a limit of 1 400 units of account per passenger.

Article 35

Exclusion of liability

The carrier shall not be liable to the passenger for loss or damage arising from the fact that the passenger does not conform to the formalities required by customs or other administrative authorities.

SECTION 2

Registered luggage

Article 36

Basis of liability

1. The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.

2. The carrier shall be relieved of this liability to the extent that the loss, damage or delay in delivery was caused by a fault of the passenger, by an order given by the passenger other than as a result of the fault of the carrier, by an inherent defect in the registered luggage or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) the absence or inadequacy of packing;
- (b) the special nature of the luggage;
- (c) the consignment as luggage of articles not acceptable for carriage.

Article 37

Burden of proof

1. The burden of proving that the loss, damage or delay in delivery was due to one of the causes specified in Article 36(2) shall lie on the carrier.

2. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 36(3), it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

Article 38

Successive carriers

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the luggage with the luggage registration voucher or the vehicle with the carriage voucher, shall become a party to the contract of carriage in respect of the forwarding of luggage or the carriage of vehicles, in accordance with the terms of the luggage registration voucher or of the carriage voucher and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible for the carriage over the entire route up to delivery.

Article 39

Substitute carrier

1. Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.

2. All the provisions of these Uniform Rules governing the liability of the carrier shall apply also to the liability of the substitute carrier for the carriage performed by him. Articles 48 and 52 shall apply if an action is brought against the servants or any other persons whose services the substitute carrier makes use of for the performance of the carriage.

3. Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

4. Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.

5. The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.

6. This Article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

Article 40

Presumption of loss

1. The person entitled may, without being required to furnish further proof, consider an item of luggage as lost when it has not been delivered or placed at his disposal within 14 days after a request for delivery has been made in accordance with Article 22(3).

2. If an item of luggage deemed to have been lost is recovered within one year after the request for delivery, the carrier must notify the person entitled if his address is known or can be ascertained.

3. Within thirty days after receipt of a notification referred to in paragraph 2, the person entitled may require the item of luggage to be delivered to him. In that case he must pay the charges in respect of carriage of the item from the place of consignment to the place where delivery is effected and refund the compensation received less, where appropriate, any costs included therein. Nevertheless he shall retain his rights to claim compensation for delay in delivery provided for in Article 43.

4. If the item of luggage recovered has not been claimed within the period stated in paragraph 3 or if it is recovered more than one year after the request for delivery, the carrier shall dispose of it in accordance with the laws and prescriptions in force at the place where the item of luggage is situated.

*Article 41***Compensation for loss**

1. In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:
 - (a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding 80 units of account per kilogram of gross mass short or 1 200 units of account per item of luggage;
 - (b) if the amount of the loss or damage suffered is not established, liquidated damages of 20 units of account per kilogram of gross mass short or 300 units of account per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. The carrier must in addition refund the charge for the carriage of luggage and the other sums paid in relation to the carriage of the lost item as well as the customs duties and excise duties already paid.

*Article 42***Compensation for damage**

1. In case of damage to registered luggage, the carrier must pay compensation equivalent to the loss in value of the luggage, to the exclusion of all other damages.
2. The compensation shall not exceed:
 - (a) if all the luggage has lost value through damage, the amount which would have been payable in case of total loss;
 - (b) if only part of the luggage has lost value through damage, the amount which would have been payable had that part been lost.

*Article 43***Compensation for delay in delivery**

1. In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of 24 hours after delivery has been requested, but subject to a maximum of 14 days:
 - (a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of 0,80 units of account per kilogram of gross mass of the luggage or 14 units of account per item of luggage, delivered late;
 - (b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of 0,14 units of account per kilogram of gross mass of the luggage or 2,80 units of account per item of luggage, delivered late.

The methods of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

2. In case of total loss of luggage, the compensation provided for in paragraph 1 shall not be payable in addition to that provided for in Article 41.
3. In case of partial loss of luggage, the compensation provided for in paragraph 1 shall be payable in respect of that part of the luggage which has not been lost.
4. In case of damage to luggage not resulting from delay in delivery the compensation provided for in paragraph 1 shall, where appropriate, be payable in addition to that provided for in Article 42.
5. In no case shall the total of compensation provided for in paragraph 1 together with that payable under Articles 41 and 42 exceed the compensation which would be payable in case of total loss of the luggage.

*SECTION 3***Vehicles***Article 44***Compensation for delay**

1. In case of delay in loading for a reason attributable to the carrier or delay in delivery of a vehicle, the carrier must, if the person entitled proves that loss or damage has been suffered thereby, pay compensation not exceeding the amount of the carriage charge.
2. If, in case of delay in loading for a reason attributable to the carrier, the person entitled elects not to proceed with the contract of carriage, the carriage charge shall be refunded to him. In addition the person entitled may, if he proves that loss or damage has been suffered as a result of the delay, claim compensation not exceeding the carriage charge.

*Article 45***Compensation for loss**

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed 8 000 units of account. A loaded or unloaded trailer shall be considered as a separate vehicle.

*Article 46***Liability in respect of other articles**

1. In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed 1 400 units of account.
2. So far as concerns articles stowed on the outside of the vehicle, including the boxes referred to in paragraph 1, the carrier shall be liable in respect of articles placed on the outside of the vehicle only if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such a loss or damage or recklessly and with knowledge that such loss or damage would probably result.

*Article 47***Applicable law**

Subject to the provisions of this Section, the provisions of Section 2 relating to liability for luggage shall apply to vehicles.

*Chapter IV***Common provisions***Article 48***Loss of right to invoke the limits of liability**

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a fixed amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

*Article 49***Conversion and interest**

1. Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.

2. The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 55 or, if no such claim has been made, from the day on which legal proceedings were instituted.
3. However, in the case of compensation payable pursuant to Articles 27 and 28, interest shall accrue only from the day on which the events relevant to the assessment of the amount of compensation occurred, if that day is later than that of the claim or the day when legal proceedings were instituted.
4. In the case of luggage, interest shall only be payable if the compensation exceeds 16 units of account per luggage registration voucher.
5. In the case of luggage, if the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

Article 50

Liability in case of nuclear incidents

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

Article 51

Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

Article 52

Other actions

1. In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
2. The same shall apply to any action brought against the servants and other persons for whom the carrier is liable pursuant to Article 51.

TITLE V

LIABILITY OF THE PASSENGER

Article 53

Special principles of liability

The passenger shall be liable to the carrier for any loss or damage:

- (a) resulting from failure to fulfil his obligations pursuant to
 1. Articles 10, 14 and 20,
 2. the special provisions for the carriage of vehicles, contained in the General Conditions of Carriage, or
 3. the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), or
- (b) caused by articles and animals that he brings with him,

unless he proves that the loss or damage was caused by circumstances that he could not avoid and the consequences of which he was unable to prevent, despite the fact that he exercised the diligence required of a conscientious passenger. This provision shall not affect the liability of the carrier pursuant to Articles 26 and 33(1).

TITLE VI

ASSERTION OF RIGHTS

*Article 54***Ascertainment of partial loss or damage**

1. When partial loss of, or damage to, an article carried in the charge of the carrier (luggage, vehicles) is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the article and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.
2. A copy of the report must be supplied free of charge to the person entitled.
3. Should the person entitled not accept the findings in the report, he may request that the condition of the luggage or vehicle and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

*Article 55***Claims**

1. Claims relating to the liability of the carrier in case of death of, or personal injury to, passengers must be addressed in writing to the carrier against whom an action may be brought. In the case of a carriage governed by a single contract and performed by successive carriers the claims may also be addressed to the first or the last carrier as well as to the carrier having his principal place of business or the branch or agency which concluded the contract of carriage in the State where the passenger is domiciled or habitually resident.
2. Other claims relating to the contract of carriage must be addressed in writing to the carrier specified in Article 56(2) and (3).
3. Documents which the person entitled thinks fit to submit with the claim shall be produced either in the original or as copies, where appropriate, the copies duly certified if the carrier so requires. On settlement of the claim, the carrier may require the surrender of the ticket, the luggage registration voucher and the carriage voucher.

*Article 56***Carriers against whom an action may be brought**

1. An action based on the liability of the carrier in case of death of, or personal injury to, passengers may only be brought against the carrier who is liable pursuant to Article 26(5).
2. Subject to paragraph 4 other actions brought by passengers based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of carriage on which the event giving rise to the proceedings occurred.
3. When, in the case of carriage performed by successive carriers, the carrier who must deliver the luggage or the vehicle is entered with his consent on the luggage registration voucher or the carriage voucher, an action may be brought against him in accordance with paragraph 2 even if he has not received the luggage or the vehicle.
4. An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
5. An action may be brought against a carrier other than those specified in paragraphs 2 and 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.
6. To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.
7. If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

*Article 58***Extinction of right of action in case of death or personal injury**

1. Any right of action by the person entitled based on the liability of the carrier in case of death of, or personal injury to, passengers shall be extinguished if notice of the accident to the passenger is not given by the person entitled, within 12 months of his becoming aware of the loss or damage, to one of the carriers to whom a claim may be addressed in accordance with Article 55(1). Where the person entitled gives oral notice of the accident to the carrier, the carrier shall furnish him with an acknowledgement of such oral notice.
2. Nevertheless, the right of action shall not be extinguished if
 - (a) within the period provided for in paragraph 1 the person entitled has addressed a claim to one of the carriers designated in Article 55(1);
 - (b) within the period provided for in paragraph 1 the carrier who is liable has learned of the accident to the passenger in some other way;
 - (c) notice of the accident has not been given, or has been given late, as a result of circumstances not attributable to the person entitled;
 - (d) the person entitled proves that the accident was caused by fault on the part of the carrier.

*Article 59***Extinction of right of action arising from carriage of luggage**

1. Acceptance of the luggage by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or delay in delivery.
2. Nevertheless, the right of action shall not be extinguished:
 - (a) in case of partial loss or damage, if
 1. the loss or damage was ascertained in accordance with Article 54 before the acceptance of the luggage by the person entitled,
 2. the ascertainment which should have been carried out in accordance with Article 54 was omitted solely through the fault of the carrier;
 - (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the luggage by the person entitled, if he
 1. asks for ascertainment in accordance with Article 54 immediately after discovery of the loss or damage and not later than three days after the acceptance of the luggage, and
 2. in addition, proves that the loss or damage occurred between the time of taking over by the carrier and the time of delivery;
 - (c) in case of delay in delivery, if the person entitled has, within twenty-one days, asserted his rights against one of the carriers specified in Article 56(3);
 - (d) if the person entitled proves that the loss or damage was caused by fault on the part of the carrier.

*Article 60***Limitation of actions**

1. The period of limitation of actions for damages based on the liability of the carrier in case of death of, or personal injury to, passengers shall be:
 - (a) in the case of a passenger, three years from the day after the accident;
 - (b) in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident.

2. The period of limitation for other actions arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

3. The period of limitation provided for in paragraph 2 shall run for actions:

- (a) for compensation for total loss, from the fourteenth day after the expiry of the period of time provided for in Article 22(3);
- (b) for compensation for partial loss, damage or delay in delivery, from the day when delivery took place;
- (c) in all other cases involving the carriage of passengers, from the day of expiry of validity of the ticket.

The day indicated for the commencement of the period of limitation shall not be included in the period.

4. [...]

5. [...]

6. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

TITLE VII

RELATIONS BETWEEN CARRIERS

Article 61

Apportionment of the carriage charge

- 1. Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.
- 2. Article 6(3), Article 16(3) and Article 25 shall also apply to the relations between successive carriers.

Article 62

Right of recourse

- 1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:
 - (a) the carrier who has caused the loss or damage shall be solely liable for it;
 - (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
 - (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
- 2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

Article 63

Procedure for recourse

- 1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 may not be disputed by the carrier against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

2. A carrier exercising his right of recourse must present his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.
3. The court or tribunal shall give its decision in one and the same judgment on all recourse claims brought before it.
4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.
5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to paragraph 4.
6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

Article 64

Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 61 and 62.

ANNEX II

**MINIMUM INFORMATION TO BE PROVIDED BY RAILWAY UNDERTAKINGS
AND/OR BY TICKET VENDORS****Part I: Pre-journey information**

General conditions applicable to the contract

Time schedules and conditions for the fastest trip

Time schedules and conditions for the lowest fares

Accessibility, access conditions and availability on board of facilities for disabled persons and persons with reduced mobility

Accessibility and access conditions for bicycles

Availability of seats in smoking and non-smoking, first and second class as well as couchettes and sleeping carriages

Any activities likely to disrupt or delay services

Availability of on-board services

Procedures for reclaiming lost luggage

Procedures for the submission of complaints.

Part II: Information during the journey

On-board services

Next station

Delays

Main connecting services

Security and safety issues.

*ANNEX III***MINIMUM SERVICE QUALITY STANDARDS**

Information and tickets

Punctuality of services, and general principles to cope with disruptions to services

Cancellations of services

Cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.)

Customer satisfaction survey

Complaint handling, refunds and compensation for non-compliance with service quality standards

Assistance provided to disabled persons and persons with reduced mobility.

REGULATION (EC) No 1372/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 October 2007
amending Council Regulation (EC) No 577/98 on the organisation of a labour force sample
survey in the Community
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

(1) In accordance with the Lisbon Strategy, and as confirmed by the mid-term review of that strategy in 2005, Europe must focus its policies further on growth and employment in order to achieve the Lisbon goals.

(2) The development of the Community and the operation of the internal market increase the need for comparable data which allow the impact of the structure and distribution of wages on the labour market to be assessed, particularly as a means of analysing progress as regards economic and social cohesion.

(3) In order to carry out the tasks assigned to it, the Commission requires data on the ranking of wages by socio-economic characteristics and also in relation to different forms of paid employment, which are essential to analyse and understand the labour market and the changes taking place in the structure of the labour force. In this regard, the advantages of having data on wages by deciles in relation to other employment characteristics are widely recognised.

(4) The Community Labour Force Survey is essentially the first and most authoritative reference source for labour market information in the European Union, and information on wages, as a fundamental variable to explain labour market

behaviour, should be a standard element of this survey in order to allow for a more complete analysis of labour markets.

(5) The Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom ⁽²⁾, has been consulted in accordance with Article 3 of that Decision.

(6) Council Regulation (EC) No 577/98 ⁽³⁾ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 577/98 is hereby amended as follows:

1) in Article 4(1), point (l) shall be replaced by the following:

‘(l) wages from the main job;’

2) Article 6 shall be replaced by the following:

Article 6

Transmission of the results

Within twelve weeks of the end of the reference period, the Member States shall forward to Eurostat the results of the survey, without direct identifiers.

Where administrative data are used to supply data corresponding to the survey characteristic “wages from the main job”, that data may be forwarded to Eurostat within twenty-one months of the end of the reference period.’

⁽¹⁾ Opinion of the European Parliament of 10 July 2007 (not yet published in the Official Journal) and Council Decision of 9 October 2007.

⁽²⁾ OJ L 181, 28.6.1989, p. 47.

⁽³⁾ OJ L 77, 14.3.1998, p. 3. Regulation as last amended by Regulation (EC) No 2257/2003 of the European Parliament and of the Council (OJ L 336, 23.12.2003, p. 6).

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

DIRECTIVES

DIRECTIVE 2007/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 October 2007

amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 ⁽³⁾,

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁴⁾ was designed to facilitate the adaptation of the Community's railways to the requirements of the single market and to improve their efficiency.
- (2) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of

railway infrastructure capacity and the levying of charges for the use of railway infrastructure ⁽⁵⁾ concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.

- (3) In its White Paper European transport policy for 2010: time to decide, the Commission announced its intention to continue building the internal market in rail services by proposing to open up the market in international passenger services.

- (4) The aim of this Directive is to address the opening of the market for international rail passenger services within the Community, and it should therefore not concern services between a Member State and a third country. In addition, Member States should be able to exclude from the scope of this Directive services transiting the Community.

- (5) International rail services currently present a very contrasting picture. Long-distance services (for instance night trains) are in difficulty and several of them have recently been withdrawn by the railway undertakings operating them in order to limit losses. The market for international high-speed services, on the other hand, has seen a sharp increase in traffic and will continue its vigorous development with the doubling and interconnection of the trans-European high-speed network by 2010. Nevertheless, there is strong competitive pressure from low-cost airlines in both cases. It is therefore essential to stimulate new initiatives by promoting competition between railway undertakings.

⁽¹⁾ OJ C 221, 8.9.2005, p. 56.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 460), Council Common Position of 24 July 2006 (OJ C 289 E, 28.11.2006, p. 30), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

⁽⁴⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

⁽⁵⁾ OJ L 75, 15.3.2001, p. 29. Directive as last amended by Directive 2004/49/EC (OJ L 164, 30.4.2004, p. 44), corrected by OJ L 220, 21.6.2004, p. 16.

- (6) It is not possible to open up the market in international passenger services without detailed provisions on infrastructure access, substantial progress on interoperability and a strict framework for rail safety at national and European level. All of these elements are now in place following the transposition of Directive 2001/12/EC ⁽¹⁾ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC, Directive 2004/51/EC ⁽²⁾ of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC, Directive 2001/13/EC ⁽³⁾ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC, Directive 2001/14/EC, and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways ⁽⁴⁾. It is necessary for this new regulatory framework to be supported by established, consolidated practice by the proposed date for opening up the market for international passenger services. This will require a certain time. The target date for opening up the market should therefore be 1 January 2010.
- (7) The number of railway services without intermediate stops is very limited. In the case of journeys with intermediate stops, it is essential to authorise new market entrants to pick up and set down passengers along the route in order to ensure that such operations have a realistic chance of being economically viable and to avoid placing potential competitors at a disadvantage to existing operators, which have the right to pick up and set down passengers along the route. This right should be without prejudice to Community and national regulations concerning competition policy.
- (8) The introduction of new, open-access, international services with intermediate stops should not be used to bring about the opening of the market for domestic passenger services, but should merely be focused on stops that are ancillary to the international route. On that basis, their introduction should concern services whose principal purpose is to carry passengers travelling on an international journey. The determination of whether that is the service's principal purpose should take into account criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service. This determination should be made by the respective national regulatory body at the request of an interested party.
- (9) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road ⁽⁵⁾ authorises Member States and local authorities to award public service contracts. These contracts may contain exclusive rights to operate certain services. It is therefore necessary to ensure that the provisions of that Regulation are consistent with the principle of opening up international passenger services to competition.
- (10) Opening up international passenger services, which include the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the possibility to limit the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.
- (11) Some Member States have already moved towards opening up the market for rail passenger services by transparent, open competitive tendering for the provision of certain such services. They should not have to provide full open access to international passenger services, since this competition for the right to use certain rail routes has involved a sufficient test of the market value of running those services.
- (12) The assessment of whether the economic equilibrium of the public service contract could be compromised should take into account predetermined criteria such as the impact on the profitability of any services which are included in a public service contract, including consequential impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops on both sides of the border and timing and frequency of the proposed new service. Respecting such an assessment and the decision of the relevant regulatory body, Member States might authorise, modify or deny the right of access for the international passenger service sought, including the levying of a charge on the operator of a new international passenger service, in line with the economic analysis and in accordance with Community law and the principles of equality and non-discrimination.

⁽¹⁾ OJ L 75, 15.3.2001, p. 1.

⁽²⁾ OJ L 164, 30.4.2004, p. 164, corrected by OJ L 220, 21.6.2004, p. 58.

⁽³⁾ OJ L 75, 15.3.2001, p. 26.

⁽⁴⁾ OJ L 164, 30.4.2004, p. 44, corrected by OJ L 220, 21.6.2004, p. 16.

⁽⁵⁾ See page 1 of this Official Journal.

- (13) In order to contribute to the operation of passenger services on lines fulfilling a public service obligation, Member States should be able to authorise the authorities responsible for those services to impose a levy on passenger services which fall within the jurisdiction of those authorities. That levy should contribute to the financing of public service obligations laid down in public service contracts awarded in conformity with Community law. It should be imposed in accordance with Community law, and in particular with the principles of fairness, transparency, non-discrimination and proportionality.
- (14) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. In particular, if for organisational or legal purposes it is closely linked to the competent authority involved in the award of the public service contract under consideration, its functional independence should be ensured. The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts.
- (15) This Directive constitutes a further phase of the opening of the rail market. Some Member States have already opened up the market for international passenger services on their territory. In this context, this Directive should not be understood as creating obligations for those Member States to grant, before 1 January 2010, access rights to railway undertakings licensed in a Member State where similar rights are not granted.
- (16) In order to encourage investment for services using specialised infrastructure, such as high-speed railway lines, applicants need to be able to plan and require legal certainty reflecting the substantial long-term investment involved. It should therefore be possible for those undertakings normally to conclude framework agreements with a term of up to 15 years.
- (17) The national regulatory bodies should, on the basis of Article 31 of Directive 2001/14/EC, exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.
- (18) The application of this Directive should be evaluated on the basis of a report to be presented by the Commission two years after the date of opening up the market in international passenger services. This report should also assess the development of the market, including the state of the preparation of a further opening-up of the passenger rail market. In this report the Commission should also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission should take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission should, if appropriate, propose complementary measures to facilitate any such opening, and should assess the impact of any such measures.
- (19) The measures necessary for the implementation of Directives 91/440/EEC and 2001/14/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (20) In particular, the Commission should be empowered to adapt the Annexes to those Directives. Since those measures are of general scope and are designed to amend non-essential elements of those Directives, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (21) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement Directives 91/440/EEC and 2001/14/EC. Therefore, such Member States should be exempted, for as long as they have no railway system, from the obligation to transpose and implement these Directives.
- (22) Since the objective of this Directive, namely the development of the Community's railways, cannot be sufficiently achieved by the Member States, given the need to ensure fair and non-discriminatory conditions of access to infrastructure and to take account of the obviously international dimension of the way in which important parts of the rail networks operate, as well as the need for coordinated transnational action, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (23) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
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- ⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).
- ⁽²⁾ OJ C 321, 31.12.2003, p. 1.

- (24) Directives 91/440/EEC and 2001/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC is hereby amended as follows:

- the following paragraph shall be added to Article 2:

‘4. Member States may exclude from the scope of this Directive any railway service carried out in transit through the Community and which begins and ends outside the Community territory.’;

- the fourth indent of Article 3 shall be deleted;
- the following indent shall be inserted in Article 3 after the fifth indent:

— “international passenger service” shall mean a passenger service where the train crosses at least one border of a Member State and where the principal purpose of the service is to carry passengers between stations located in different Member States; the train may be joined and/or split, and the different sections may have different origins and destinations, provided that all carriages cross at least one border’;

- the following indent shall be inserted in Article 3 after the sixth indent:

— “transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory.’;

- the first indent of Article 5(3) shall be deleted;
- the phrase ‘and international groupings’ shall be deleted in Article 8(1);
- Article 10(1) shall be deleted;
- the following paragraphs shall be inserted in Article 10:

‘3a. Railway undertakings within the scope of Article 2 shall be granted by 1 January 2010 the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

The right of access to the infrastructure of the Member States for which the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 1 January 2012.

Whether the principal purpose of the service is to carry passengers between stations located in different Member States shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC following a request from the relevant competent authorities and/or interested railway undertakings.

3b. Member States may limit the right of access defined in paragraph 3a on services between a place of departure and a destination which are covered by one or more public service contracts conforming to the Community legislation in force. Such limitation may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where the exercise of this right would compromise the economic equilibrium of a public service contract.

Whether the economic equilibrium would be compromised shall be determined by the relevant regulatory body or bodies referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis and based on pre-determined criteria, following a request from:

- the competent authority or competent authorities that awarded the public service contract,
- any other interested competent authority with the right to limit access under this Article,
- the infrastructure manager, or
- the railway undertaking performing the public service contract.

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within two months of receipt of all relevant information. The regulatory body shall give the grounds for its decision and specify the time period within which, and the conditions under which,

- the relevant competent authority or competent authorities,
- the infrastructure manager,

- the railway undertaking performing the public service contract, or
- the railway undertaking seeking access;

may request a reconsideration of the decision.

3c. Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Community law. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.

3d. The provisions of this Directive shall not require a Member State to grant, before 1 January 2010, the right of access referred to in paragraph 3a to railway undertakings and their directly or indirectly controlled subsidiaries, licensed in a Member State where access rights of a similar nature are not granted.

3e. Member States shall take the necessary measures to ensure that the decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.

3f. Without prejudice to paragraph 3b, Member States may, under the conditions laid down in this Article, authorise the authority responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.

In that case, railway undertakings providing domestic or international rail passenger transport services shall be subject to the same levy on the operation of routes which fall within the jurisdiction of that authority.

The levy is intended to compensate the authority for public service obligations laid down in public service contracts awarded in conformity with Community law. The revenue raised from such levy and paid as compensation may not exceed what is necessary to cover all or part of the cost incurred in the relevant public service obligations taking into account the relevant receipts and a reasonable profit for discharging those obligations.

The levy shall be imposed in accordance with Community law, and shall respect in particular the principles of fairness, transparency, non-discrimination and proportionality, in particular between the average price of the service to the

passenger and the level of the levy. The total levies imposed pursuant to this paragraph shall not endanger the economic viability of the rail passenger transport service on which they are imposed.

The relevant authorities shall keep the information necessary to ensure that the origin of the levies and their use can be traced. Member States shall provide the Commission with this information.;

9. Article 10(8) shall be replaced by the following:

'8. By 1 January 2009, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of this Directive.

This report shall address:

- the implementation of this Directive in the Member States, and in particular its impact in the Member States as referred to in the second subparagraph of paragraph 3a and the effective working of the various bodies involved;
- market developments, in particular international traffic trends, activities and market share of all market actors, including new entrants.;

10. the following paragraph shall be added to Article 10:

'9. By 31 December 2012, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of the provisions of paragraphs 3a to 3f.

The application of this Directive shall be evaluated on the basis of a report to be presented by the Commission two years after the date of the opening-up of the market in international passenger services.

This report shall also assess the development of the market, including the state of the preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (*) and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission shall, if appropriate, propose complementary measures to facilitate any such opening, and shall assess the impact of any such measures.

(*) OJ L 315, 3.12.2007, p. 1.'

11. Article 11(2) shall be replaced by the following:

‘2. Measures designed to amend non-essential elements of this Directive and relating to the adaptation of the Annexes thereto shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11a(3).’;

12. Article 11a(3) shall be replaced by the following:

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

13. the following subparagraph shall be added to Article 15:

‘The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.’

Article 2

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

1. the following point shall be added to Article 1(3):

‘(e) transport operations in the form of railway services which are carried out in transit through the Community.’;

2. the following point shall be added to Article 2:

‘(n) “transit” shall mean the crossing of the Community territory which is carried out without loading or unloading of goods, and/or without picking up of passengers nor setting them down in the Community territory.’;

3. the following paragraph shall be added to Article 13:

‘4. When an applicant intends to request infrastructure capacity with a view to operating an international passenger service as defined in Article 3 of Directive 91/440/EEC, it shall inform the infrastructure managers and the regulatory bodies concerned. In order to enable the assessment of the purpose of the international service to carry passengers between stations located in different Member States, and the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service defined in a public service contract, any other interested competent authority with a right to limit access under Article 10(3b) of Directive 91/440/EEC and any railway undertaking performing the public service contract on the route of this international passenger service is informed.’;

4. Article 17(5) shall be replaced by the following:

‘5. Framework agreements shall in principle cover a period of five years, renewable for periods equal to their original duration. The infrastructure manager may agree to a

shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

5a. For services using specialised infrastructure referred to in Article 24 which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be for a period of 15 years. Any period longer than 15 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan.

The applicant’s requirements may in this case call for detailed definition of the capacity characteristics — including the frequency, volume and quality of train paths — which are to be provided to the applicant for the duration of the framework agreement. The infrastructure manager may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in Article 27.

As from 1 January 2010, an initial framework agreement may be drawn up for a period of five years, renewable once, on the basis of the capacity characteristics used by applicants operating services before 1 January 2010, in order to take account of specialised investments or the existence of commercial contracts. The regulatory body referred to in Article 30 shall be responsible for authorising the entry into force of such an agreement.’;

5. the following sentence shall be inserted before the final sentence of Article 30(1):

‘It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.’;

6. Article 34(3) shall be replaced by the following:

‘3. Measures designed to amend non-essential elements of this Directive and relating to the adaptation of the Annexes thereto shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 35(3).’;

7. Article 35(3) shall be replaced by the following:

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

8. the following subparagraph shall be added to Article 38:

‘The obligations for transposition and implementation of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.’

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 4 June 2009. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be determined by the Member States.

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

3. The provisions of points 2, 5, 6 and 7 of Article 1 shall apply from 1 January 2010.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

DIRECTIVE 2007/59/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 23 October 2007****on the certification of train drivers operating locomotives and trains on the railway system in the Community**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the Opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007 ⁽³⁾,

Whereas:

- (1) Directive 2004/49/EC ⁽⁴⁾ of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways requires infrastructure managers and railway undertakings to establish their safety management systems in such a way that the railway system is at least able to achieve the common safety targets and comply with the national safety rules and safety requirements defined in the technical specifications for interoperability (TSIs) and that the relevant parts of the common safety methods are applied. These safety management systems provide, among other things, for staff training programmes and systems which ensure that staff competence is maintained and that duties are performed in the appropriate manner.
- (2) Directive 2004/49/EC provides that, in order to gain access to railway infrastructure, a railway undertaking has to hold a safety certificate.
- (3) Under Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁵⁾, licensed railway undertakings have had, since 15 March 2003, a right of access to the trans-European freight network for international rail freight services and, from 2007 at the

latest, will have a right of access to the entire network for domestic and international freight services. This gradual extension of access rights will inevitably lead to an increase in the movement of train drivers across national borders. The result will be a growing demand for drivers trained and certified for operation in more than one Member State.

- (4) A study carried out by the Commission in 2002 highlighted the fact that the laws of the Member States on the certification conditions for train drivers differ considerably. Community rules for the certification of train drivers should therefore be adopted to overcome these differences while maintaining the present high level of safety of the railway system in the Community.
- (5) Such Community rules should also contribute to the aims of Community policies on the freedom of movement of workers, freedom of establishment and freedom to provide services in the context of the common transport policy, while avoiding any distortion of competition.
- (6) The aim of these common provisions should be above all to make it easier for train drivers to move from one Member State to another, but also to make it easier for them to move from one railway undertaking to another, and generally for licences and harmonised complementary certificates to be recognised by all railway sector stakeholders. To this end, it is essential that the provisions establish minimum requirements which applicants should meet to obtain a licence or harmonised complementary certificate.
- (7) This Directive follows and is largely based on the historic joint Agreement concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services ⁽⁶⁾.
- (8) Even if a Member State excludes from the scope of this Directive drivers exclusively operating on certain categories of rail systems, networks and infrastructure, this should not limit in any way the obligation of that Member State to respect the validity of licences throughout the territory of the European Union or of harmonised complementary certificates on the relevant infrastructure.

⁽¹⁾ OJ C 221, 8.9.2005, p. 64.

⁽²⁾ OJ C 71, 22.3.2005, p. 26.

⁽³⁾ Opinion of the European Parliament of 28 September 2005 (OJ C 227 E, 21.9.2006, p. 464), Council Common Position of 14 September 2006 (OJ C 289 E, 28.11.2006, p. 42), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.

⁽⁴⁾ OJ L 164, 30.4.2004, p. 44. Corrected version in OJ L 220, 21.6.2004, p. 16.

⁽⁵⁾ OJ L 237, 24.8.1991, p. 25. Directive as last amended by Directive 2006/103/EC (OJ L 363, 20.12.2006, p. 344).

⁽⁶⁾ OJ L 195, 27.7.2005, p. 18.

- (9) The requirements should cover at least the minimum age for driving a train, the applicant's physical and occupational psychological fitness, professional experience and knowledge of certain matters relating to driving a train, as well as a knowledge of the infrastructures on which he will be required to operate and of the language used on them.
- (10) In order to increase its cost-effectiveness, the training which train drivers should undergo in order to obtain a harmonised complementary certificate should be focused, to the extent that such is possible and desirable from a safety viewpoint, on the particular services to be performed by the driver, such as, for example, shunting, maintenance services, passenger or freight services. When assessing the implementation of this Directive, the European Railway Agency (hereinafter referred to as 'the Agency') should evaluate the need for amending the training requirements specified in the Annex in order better to reflect the new, emerging structure of the market.
- (11) Railway undertakings and infrastructure managers issuing harmonised complementary certificates may themselves provide training for general professional knowledge, linguistic knowledge, knowledge of rolling stock and infrastructures. However, with regard to examinations, any conflict of interests should be avoided, without excluding the possibility that an examiner may belong to the railway undertaking or infrastructure manager issuing the harmonised complementary certificate.
- (12) In accordance with Article 13(4) of Directive 2004/49/EC, railway undertakings and infrastructure managers are responsible for the level of training of the drivers they employ. To this end, railway undertakings and infrastructure managers should take into account the training and competences acquired previously by those drivers, in accordance with Article 13(3) of that Directive. It is also important to ensure that a sufficient number of drivers is trained. In this context, it is necessary, however, to take measures to ensure that investments made by a railway undertaking or an infrastructure manager for the training of a driver do not unduly benefit another railway undertaking or infrastructure manager in the case where that driver voluntarily leaves the former for the latter railway undertaking or infrastructure manager. These measures can be of any kind, such as for example national legislation, collective labour agreements, contractual clauses between driver and employer, or agreements determining the rehire of drivers belonging to one undertaking by another in the case where drivers are party to such agreements.
- (13) Staff competences and health and safety conditions are being developed in the context of the interoperability directives, in particular as part of the 'traffic management and operation' TSIs. There is a need to ensure coherence between these TSIs and the Annexes to this Directive. The Commission will achieve this by modifying or adapting the relevant TSI to this Directive and its Annexes using the procedures provided for in Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system ⁽¹⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system ⁽²⁾.
- (14) In order to increase the freedom of movement of workers and safety on Community railways, special attention should be paid to other crew members performing safety-critical tasks on locomotives and trains. Therefore Member States should ensure that other crew members performing safety-critical tasks meet the minimum requirements set out in the TSI on operation and traffic management. Taking account of the national implementation plans to be notified by the Member States in relation to the implementation of that TSI, the Agency should identify possible options for the certification of other crew members performing safety-critical tasks and assess the impact of these different options. On the basis of this report, the Commission should, if appropriate, present a proposal with regard to the conditions and procedures for the certification of other crew members performing safety-critical tasks on locomotives and trains.
- (15) The requirements pertaining to licences and harmonised complementary certificates set out in this Directive should relate solely to the legal conditions entitling a driver to drive a train. All other legal requirements, compatible with Community legislation and applied in a non discriminatory manner, pertaining to railway undertakings, infrastructure managers, infrastructure and rolling stock should equally be complied with before a driver may drive a train on a specific infrastructure.
- (16) This Directive should be without prejudice to the implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾, and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁴⁾.
- (1) OJ L 235, 17.9.1996, p. 6. Directive as last amended by Commission Directive 2007/32/EC (OJ L 141, 2.6.2007, p. 63).
- (2) OJ L 110, 20.4.2001, p. 1. Directive as last amended by Commission Directive 2007/32/EC.
- (3) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
- (4) OJ L 8, 12.1.2001, p. 1.

- (17) In order to guarantee the necessary uniformity and transparency, the Community should establish a single certification model, mutually recognised by the Member States, attesting both to train drivers' compliance with certain minimum conditions, and to their professional qualifications and linguistic knowledge, leaving it to the competent authorities in the Member States to issue licences and to railway undertakings and infrastructure managers to issue harmonised complementary certificates.
- (18) The Agency should also examine the use of a smartcard instead of a licence and harmonised complementary certificates. Such a smartcard would have the advantage of combining these two items in one and at the same time could be used for other applications either in the area of security or for driver management purposes.
- (19) All of the information contained in licences, harmonised complementary certificates and the registers of licences and harmonised complementary certificates should be used by the safety authorities to facilitate evaluation of the staff certification process provided for in Articles 10 and 11 of Directive 2004/49/EC and to speed up the issuing of the safety certificates provided for in those Articles.
- (20) The employment of train drivers certified in accordance with this Directive should not exonerate railway undertakings and infrastructure managers from their obligation to set up a system of monitoring and internal control of the competence and conduct of their train drivers pursuant to Article 9 of and Annex III to Directive 2004/49/EC and should form part of that system. The harmonised complementary certificate should not relieve either railway undertakings or infrastructure managers of their responsibility for safety and, in particular, the training of their staff.
- (21) Certain companies provide the services of train drivers to railway undertakings and infrastructure managers. In such cases, responsibility for ensuring that a driver is licensed and certified in accordance with this Directive should lie with the railway undertaking or infrastructure manager contracting the driver.
- (22) For rail transport to continue to operate effectively, train drivers already working in that profession before the entry into force of this Directive should retain their acquired entitlements during a transition period.
- (23) Unnecessary administrative and financial burdens should be avoided when replacing authorisations to drive issued to drivers before the application of the relevant provisions of this Directive with harmonised complementary certificates and licences which are in conformity with this Directive. Therefore, entitlements to drive previously granted to a driver should be safeguarded, as far as possible. The qualifications and experience of each driver, or group of drivers, should be taken into account by the issuing bodies when authorisations are to be replaced. The issuing body should decide, on the basis of qualifications and/or experience, whether it is necessary for a driver or a group of drivers to undergo any additional examination and/or training before they can receive replacement licences and harmonised complementary certificates. Therefore, it should be a matter for the issuing body to decide whether qualifications and/or experience suffice to issue the required licences and harmonised complementary certificates, without there being any need for further examination or training.
- (24) Unnecessary administrative and financial burdens should also be avoided when train drivers change employer. A railway undertaking employing a driver should take into account competences acquired earlier and should dispense with additional examinations and training as far as possible.
- (25) This Directive should not confer any mutual recognition rights relating to entitlements to drive which drivers have obtained before the application of this Directive, albeit without prejudice to the general mutual recognition scheme set up under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾, which shall continue to apply until the end of the transition period.
- (26) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (27) In particular, the Commission should be empowered to establish the conditions and criteria necessary for the implementation of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
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- ⁽¹⁾ OJ L 255, 30.9.2005, p. 22. Directive as last amended by Council Directive 2006/100/EC (OJ L 363, 20.12.2006, p. 141).
- ⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (28) When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to have recourse to the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption of Community criteria for the choice of examiners and examinations as provided for by this Directive, and for the adaptation to scientific and technical progress of the Annexes to this Directive, as provided for thereby.
- (29) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (30) Member States should provide for controls regarding compliance with this Directive and appropriate action where a driver infringes any provision of this Directive.
- (31) Member States should provide for appropriate penalties for infringements of national provisions implementing this Directive.
- (32) Since the objective of this Directive, namely the laying down of a common regulatory framework for the certification of train drivers operating locomotives and trains for the carriage of passengers and goods, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (33) It might prove appropriate, for reasons of cost-effectiveness, to exempt for a limited period of time train drivers operating exclusively on the territory of one Member State from application of the provisions of this Directive pertaining to the obligation for such drivers to hold licences and harmonised complementary certificates in conformity with this Directive. The conditions governing any such exemptions should be clearly defined.
- (34) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such Member States should be exempted, for as long as they have no railway system, from the obligation to transpose and implement this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

OBJECTIVE, SCOPE AND DEFINITIONS

Article 1

Objective

This Directive lays down the conditions and procedures for the certification of train drivers operating locomotives and trains on the railway system in the Community. It specifies the tasks for which the competent authorities of the Member States, train drivers and other stakeholders in the sector, in particular railway undertakings, infrastructure managers and training centres, are responsible.

Article 2

Scope

1. This Directive shall apply to train drivers operating locomotives and trains on the railway system in the Community for a railway undertaking requiring a safety certificate or an infrastructure manager requiring a safety authorisation.

2. Member States shall not, on the basis of national provisions pertaining to other staff on board freight trains, prevent freight trains from crossing borders or providing domestic transport in their territory.

3. Without prejudice to the Article 7, Member States may exclude from the measures they adopt in implementation of this Directive train drivers operating exclusively on:

- (a) metros, trams and other light rail systems;
- (b) networks that are functionally separate from the rest of the rail system and are intended only for the operation of local, urban or suburban passenger and freight services;
- (c) privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations;
- (d) sections of track that are temporarily closed to normal traffic for the purpose of maintaining, renewing or upgrading the railway system.

Article 3

Definitions

For the purposes of this Directive:

- (a) 'competent authority' means the safety authority referred to in Article 16 of Directive 2004/49/EC;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

- (b) 'train driver' means a person capable and authorised to drive trains, including locomotives, shunting locomotives, work trains, maintenance railway vehicles or trains for the carriage of passengers or goods by rail in an autonomous, responsible and safe manner;
- (c) 'other crew members performing safety-critical tasks' means staff on board the train who are not train drivers but who help to ensure the safety of the train and of the passengers and goods being transported;
- (d) 'railway system' means the system composed of the railway infrastructures, comprising lines and fixed installations of the rail system plus the rolling stock of all categories and origin travelling on that infrastructure, as defined in Directives 96/48/EC and 2001/16/EC;
- (e) 'infrastructure manager' means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or on part of a network may be allocated to different bodies or undertakings;
- (f) 'railway undertaking' means any railway undertaking as defined in Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure ⁽¹⁾, 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. The term also includes undertakings which provide traction only;
- (g) 'technical specifications for interoperability' or 'TSIs' means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and to ensure the interoperability of the trans-European high-speed and conventional rail systems as defined in Directives 96/48/EC and 2001/16/EC;
- (h) 'Agency' means the European Railway Agency established by Regulation (EC) No 881/2004 ⁽²⁾ of the European Parliament and of the Council of 29 April 2004;
- (i) 'safety certificate' means the certificate issued to a railway undertaking by a competent authority in accordance with Article 10 of Directive 2004/49/EC;
- (j) 'certificate' means the harmonised complementary certificate indicating the infrastructure on which the holder is authorised to drive and the rolling stock which the holder is authorised to drive;

- (k) 'safety authorisation' means the authorisation issued to an infrastructure manager by a competent authority in accordance with Article 11 of Directive 2004/49/EC;
- (l) 'training centre' means an entity accredited or recognised by the competent authority to give training courses.

CHAPTER II

CERTIFICATION OF DRIVERS

Article 4

Community certification model

1. All train drivers shall have the necessary fitness and qualifications to drive trains and shall hold the following documents:
 - (a) a licence demonstrating that the driver satisfies minimum conditions as regards medical requirements, basic education and general professional skills. The licence shall identify the driver and the issuing authority and shall state the duration of its validity. The licence shall comply with the requirements of Annex I, until the Community certification model is adopted, as provided for in paragraph 4;
 - (b) one or more certificates indicating the infrastructures on which the holder is authorised to drive and indicating the rolling stock which the holder is authorised to drive. Each certificate shall comply with the requirements of Annex I.
2. However, the requirement to hold a certificate for a specific part of infrastructure shall not apply in the exceptional cases listed hereafter, provided that another train driver who possesses a valid certificate for the infrastructure concerned sits next to the driver during driving:
 - (a) when a disturbance of the railway service necessitates the deviation of trains or maintenance of tracks, as specified by the infrastructure manager;
 - (b) for exceptional, one-off services which use historical trains;
 - (c) for exceptional, one-off freight services, provided that the infrastructure manager agrees;
 - (d) for the delivery or demonstration of a new train or locomotive;
 - (e) for the purposes of training and examining drivers.

⁽¹⁾ OJ L 75, 15.3.2001, p. 29. Directive as last amended by Directive 2004/49/EC.

⁽²⁾ OJ L 164, 30.4.2004, p. 1. Corrected version in OJ L 220, 21.6.2004, p. 3.

The use of this possibility shall be a decision of the railway undertaking and may not be imposed by the relevant infrastructure manager or by the competent authority.

Whenever an additional driver is used as provided for above, the infrastructure manager shall be informed beforehand.

3. The certificate shall authorise driving in one or more of the following categories:

- (a) category A: shunting locomotives, work trains, maintenance railway vehicles and all other locomotives when they are used for shunting;
- (b) category B: carriage of passengers and/or of goods.

A certificate may contain an authorisation for all categories, covering all codes as referred to in paragraph 4.

4. By 4 December 2008 the Commission shall adopt, on the basis of a draft prepared by the Agency, a Community model for the licence, the certificate and the certified copy of the certificate, and also determine their physical characteristics, taking into account therein anti-forgery measures. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3).

By 4 December 2008, the Commission shall adopt the measures designed to amend non-essential elements of this Directive, by supplementing it, and concerning the Community Codes for the different types in categories A and B as referred to in paragraph 3 of this Article in accordance with the regulatory procedure with scrutiny referred to in Article 32(3) and on the basis of a recommendation from the Agency.

Article 5

Anti-fraud measures

Competent authorities and issuing bodies shall take all necessary steps to avoid the risks of falsification of licences and certificates and tampering with the registers provided for in Article 22.

Article 6

Ownership, language and issuing bodies

1. A licence shall be owned by its holder and shall be issued by the competent authority as defined in Article 3(a). Where a competent authority or its agent issues a licence in a national language which is not a Community language, it shall draw up a bilingual version of the licence using one of the Community languages.

2. A certificate shall be issued by the railway undertaking or the infrastructure manager who employs or contracts the driver. The certificate shall be owned by the undertaking or manager issuing it. However, in accordance with Article 13(3) of Directive 2004/49/EC, drivers shall be entitled to obtain a certified copy.

Where a railway undertaking or an infrastructure manager issues a certificate in a national language which is not a Community language, it shall draw up a bilingual version of the certificate using one of the Community languages.

Article 7

Geographical validity

1. A licence shall be valid throughout the whole territory of the Community.
2. A certificate shall be valid only on those infrastructures and rolling stock identified on it.

Article 8

Recognition of certification documents of train drivers of third countries

The certification documents of train drivers of a third country operating exclusively on border-crossing sections of a Member State's railway system may be recognised by that Member State in accordance with any bilateral agreements with the third country in question.

CHAPTER III

CONDITIONS FOR OBTAINING THE LICENCE AND THE CERTIFICATE

Article 9

Minimum requirements

1. To obtain a licence, applicants shall satisfy the minimum requirements set out in Articles 10 and 11. To obtain a certificate and for it to remain valid, applicants shall hold a licence and satisfy the minimum requirements set out in Articles 12 and 13.
2. A Member State may apply more stringent requirements with regard to the issuing of licences on its own territory. Nevertheless, it shall recognise licences issued by other Member States, in accordance with Article 7.

Section I

Licence

Article 10

Minimum age

Member States shall prescribe the minimum age of licence applicants, which shall be at least 20 years. However, a Member State may issue licences to applicants from the age of 18 years, the validity of such a licence then being limited to the territory of the issuing Member State.

*Article 11***Basic requirements**

1. Applicants shall have successfully completed at least nine years' education (primary and secondary) and have successfully concluded basic training equivalent to level 3 referred to in Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community ⁽¹⁾.

2. Applicants shall provide confirmation of their physical fitness by passing a medical examination conducted by, or under the supervision of — to be decided by the Member State — a medical doctor accredited or recognised in accordance with Article 20. The examination shall cover at least the criteria indicated in sections 1.1, 1.2, 1.3 and 2.1 of Annex II.

3. Applicants shall demonstrate their occupational psychological fitness by passing an examination conducted by, or under the supervision of — to be decided by the Member State — a psychologist or a medical doctor accredited or recognised in accordance with Article 20. The examination shall cover at least the criteria indicated in section 2.2 of Annex II.

4. Applicants shall have demonstrated their general professional competence by passing an examination covering at least the general subjects listed in Annex IV.

Section II**Certificate***Article 12***Linguistic knowledge**

The linguistic knowledge criterion referred to in Annex VI shall be met for the infrastructure for which the certificate is being applied.

*Article 13***Professional qualifications**

1. Applicants shall have passed an examination testing their professional knowledge and competence relating to the rolling stock for which the certificate is sought. This examination shall cover at least the general subjects listed in Annex V.

2. Applicants shall have passed an examination testing their professional knowledge and competence relating to the infrastructures for which the certificate is sought. This examination shall cover at least the general subjects listed in Annex VI. Where appropriate, the examination shall also cover linguistic knowledge, in accordance with section 8 of Annex VI.

3. Applicants shall be trained by the railway undertaking or the infrastructure manager in relation to its safety management system provided for by Directive 2004/49/EC.

CHAPTER IV**PROCEDURE FOR OBTAINING THE LICENCE
AND THE CERTIFICATE***Article 14***Obtaining a licence**

1. The competent authority shall publish the procedure to be followed for obtaining a licence.

2. All licence applications shall be lodged with the competent authority by the candidate driver or any entity on his behalf.

3. Applications submitted to the competent authority may be for the grant of a new licence, the updating of licence particulars, a renewal or a duplicate.

4. The competent authority shall issue the licence as soon as possible and no later than one month after receiving all the necessary documents.

5. A licence shall be valid for 10 years, subject to Article 16(1).

6. A licence shall be issued in a single original. Any duplication of a licence, other than by the competent authority where a duplicate is requested, shall be prohibited.

*Article 15***Obtaining a certificate**

Each railway undertaking and infrastructure manager shall set up its own procedures for issuing and updating certificates in accordance with this Directive, as part of its safety management system, as well as appeals procedures allowing drivers to request a review of a decision relating to the issue, updating, suspension or withdrawal of a certificate.

In the event of disagreement, the parties may appeal to the competent authority or any independent appeal body.

Railway undertakings and infrastructure managers shall update, without delay, a certificate whenever the certificate holder has obtained additional authorisations relating to rolling stock or infrastructure.

⁽¹⁾ OJ L 199, 31.7.1985, p. 56.

*Article 16***Periodic checks**

1. In order for a licence to remain valid, its holder shall undergo periodic examinations and/or tests relating to the requirements referred to in Article 11(2) and (3). With regard to medical requirements, the minimum frequency shall be observed in accordance with the provisions of section 3.1 of Annex II. These medical checks shall be conducted by, or under the supervision of, medical doctors accredited or recognised in accordance with Article 20. As far as general professional knowledge is concerned, the provisions of Article 23(8) shall apply.

When renewing a licence, the competent authority shall verify in the register provided for in Article 22(1)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph.

2. In order for a certificate to remain valid, its holder shall undergo periodic examinations and/or tests relating to the requirements referred to in Articles 12 and 13. The frequency of those examinations and/or tests shall be determined by the railway undertaking or the infrastructure manager employing or contracting the driver in accordance with its own safety management system, and respect the minimum frequencies set out in Annex VII.

For each of these checks the issuing body shall confirm by a statement on the certificate and in the register provided for in Article 22(2)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph.

3. Where a periodic check is missed or gives a negative result, the procedure laid down in Article 18 shall be applied.

*Article 17***Cessation of employment**

When a driver ceases to work for a railway undertaking or an infrastructure manager, it shall inform the competent authority without delay.

The licence shall remain valid, provided that the conditions in Article 16(1) remain fulfilled.

A certificate shall become invalid when its holder ceases to be employed as a driver. However, the holder shall receive a certified copy of it and of all documents providing evidence of his training, qualifications, experience and professional competences. When issuing a certificate to a driver, a railway undertaking or infrastructure manager shall take account of all those documents.

*Article 18***Monitoring of drivers by railway undertakings and infrastructure managers**

1. Railway undertakings and infrastructure managers shall be required to ensure, and to check, that the licences and certificates of the drivers they employ or contract are valid.

They shall set up a system for monitoring their drivers. If the results of such monitoring call into question a driver's competence for the job and the continuing validity of his licence or certificate, railway undertakings and infrastructure managers shall immediately take the necessary action.

2. If a driver considers that his state of health calls into question his fitness for the job, he shall immediately inform the railway undertaking or infrastructure manager, whichever is appropriate.

As soon as a railway undertaking or infrastructure manager is aware or is informed by a medical doctor that the health of a driver has deteriorated to a point where his fitness for the job is called into question, it shall immediately take the necessary action, including the examination described in section 3.1 of Annex II and, if necessary, the withdrawal of the certificate and the updating of the register provided for in Article 22(2). Furthermore, it shall ensure that at no time during their service drivers are under the influence of any substance which is likely to affect their concentration, attention or behaviour. The competent authority shall be informed without delay of any cases of work incapacity of more than three months.

CHAPTER V

TASKS AND DECISIONS OF THE COMPETENT AUTHORITY*Article 19***Tasks of the competent authority**

1. The competent authority shall fulfil the following tasks in a transparent and non-discriminatory manner:

- (a) issuing and updating licences, and providing duplicates, as provided for in Articles 6 and 14;
- (b) ensuring periodic examinations and/or tests as provided for in Article 16(1);
- (c) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension of certificates, as provided for in Article 29;
- (d) if so designated by the Member State, recognising persons or bodies as provided for in Articles 23 and 25;

- (e) ensuring that a register of persons and bodies accredited or recognised as provided for in Article 20 is published and updated;
- (f) keeping and updating a register of licences as provided for in Articles 16(1) and 22(1);
- (g) monitoring the drivers' certification process as provided for in Article 26;
- (h) carrying out inspections as provided for in Article 29;
- (i) establishing national criteria for examiners as provided for in Article 25(5).

The competent authority shall respond quickly to requests for information and present any requests for additional information without delay when preparing licences.

2. The competent authority shall not delegate the tasks referred to in points (c), (g) and (i) of paragraph 1 to third parties.

3. Any delegation of tasks shall be transparent and non-discriminatory and shall not give rise to a conflict of interests.

4. Where a competent authority delegates or contracts tasks referred to in points (a) or (b) of paragraph 1 to a railway undertaking, at least one of the following conditions shall be complied with:

- (a) the railway undertaking issues licences only to its own drivers;
- (b) the railway undertaking does not enjoy exclusivity in the territory concerned for any of the delegated or contracted tasks.

5. Where a competent authority delegates or contracts tasks, the authorised representative or contractor shall be required, in performing such tasks, to comply with the obligations imposed on competent authorities by this Directive.

6. Where a competent authority delegates or contracts tasks, it shall set up a system for checking how those tasks have been carried out and shall ensure that the conditions laid down in paragraphs 2, 4 and 5 are complied with.

Article 20

Accreditation and recognition

1. Persons or bodies accredited under this Directive shall be accredited by an accreditation body appointed by the Member State concerned. The accreditation process shall be based on criteria of independence, competence and impartiality, such as

the relevant EN 45 000 series European standards and on the evaluation of a dossier submitted by candidates which provides appropriate evidence of their skills in the area in question.

2. As an alternative to the accreditation provided for in paragraph 1, a Member State may provide that persons or bodies recognised under this Directive shall be recognised by the competent authority or a body appointed by the Member State concerned. Recognition shall be based on criteria of independence, competence and impartiality. However, in cases when the particular competence sought is extremely rare, an exception to this rule shall be allowed after a positive opinion is given by the Commission in accordance with the regulatory procedure referred to in Article 32(2).

The criterion of independence does not apply in the case of the training referred to in Article 23(5) and (6).

3. The competent authority shall ensure the publication and updating of a register of persons and bodies which have been accredited or recognised under this Directive.

Article 21

Decisions of the competent authority

1. The competent authority shall state the reasons for its decisions.

2. The competent authority shall ensure that an administrative appeals procedure is set up allowing employers and drivers to request a review of a decision relating to any application under this Directive.

3. Member States shall take the necessary steps to ensure judicial review of the decisions taken by a competent authority.

Article 22

Registers and exchange of information

1. The competent authorities shall be required to:

- (a) keep a register of all licences issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed. This register shall contain the data prescribed in section 4 of Annex I for every licence, which shall be accessible using the national number allotted to each driver. It shall be regularly updated;
- (b) supply, upon reasoned request, information on the status of such licences to the competent authorities of the other Member States, the Agency or any employer of drivers.

2. Each railway undertaking and infrastructure manager shall be required to:

- (a) keep a register, or ensure that a register is kept, of all certificates issued, updated, renewed, amended, expired, suspended, withdrawn or reported lost, stolen or destroyed. This register shall contain the data prescribed in section 4 of Annex I for every certificate, as well as data relating to the periodic checks provided for in Article 16. It shall be regularly updated;
- (b) cooperate with the competent authority of the Member State where they are domiciled in order to exchange information with the competent authority and give it access to data required;
- (c) supply information on the content of such certificates to the competent authorities of the other Member States upon their request, when this is required as a consequence of their transnational activities.

3. Train drivers shall have access to the data concerning them which is stored in the registers of competent authorities and of railway undertakings, and shall be provided with a copy of that data on request.

4. The competent authorities shall cooperate with the Agency in order to ensure the interoperability of the registers provided for in paragraphs 1 and 2.

To this end, by 4 December 2008, the Commission shall adopt, on the basis of a draft prepared by the Agency, the basic parameters of the registers to be set up, such as data to be recorded, their format and the data exchange protocol, access rights, the duration of data retention and the procedures to be followed in cases of bankruptcy. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3).

5. The competent authorities, infrastructure managers and railway undertakings shall ensure that the registers provided for in paragraphs 1 and 2 and the modes of operation of such registers comply with Directive 95/46/EC.

6. The Agency shall ensure that the system set up in paragraph 2(a) and (b) complies with Regulation (EC) No 45/2001.

CHAPTER VI

TRAINING AND EXAMINATION OF DRIVERS

Article 23

Training

1. The training of drivers shall include a part relating to the licence and reflecting general professional knowledge as described in Annex IV, and a part relating to the certificate and reflecting specific professional knowledge, as described in Annexes V and VI.

2. The training method shall satisfy the criteria laid down in Annex III.

3. The detailed training objectives are defined in Annex IV for the licence, and in Annexes V and VI for the certificate. These detailed training objectives may be supplemented by either:

- (a) the relevant TSIs adopted in accordance with Directive 96/48/EC or Directive 2001/16/EC. In this case, the Commission shall ensure consistency between the TSIs and Annexes IV, V and VI; or
- (b) the criteria proposed by the Agency pursuant to Article 17 of Regulation (EC) No 881/2004. These criteria, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3).

4. Pursuant to Article 13 of Directive 2004/49/EC, Member States shall take steps to ensure that candidate drivers have fair and non-discriminatory access to the training needed to fulfil the conditions for obtaining the licence and the certificate.

5. Training tasks relating to general professional knowledge as provided for in Article 11(4), linguistic knowledge as provided for in Article 12 and professional knowledge relating to rolling stock as provided for in Article 13(1) shall be performed by persons or bodies accredited or recognised in accordance with Article 20.

6. Training tasks relating to infrastructure knowledge as provided for in Article 13(2), including route knowledge and operating rules and procedures, shall be performed by persons or bodies accredited or recognised by the Member State where the infrastructure is located.

7. With regard to licences, the general system for the recognition of professional qualifications established by Directive 2005/36/EC shall continue to apply to the recognition of the professional qualifications of drivers who are nationals of a Member State and have obtained their training certificate in a third country.

8. A process of continuous training shall be set up in order to ensure that staff competences are maintained, in accordance with point 2(e) of Annex III to Directive 2004/49/EC.

Article 24

Cost of training

1. Member States shall ensure that the necessary measures are taken in order to ensure that investments made by a railway undertaking or an infrastructure manager for the training of a driver do not unduly benefit another railway undertaking or infrastructure manager in the case where that driver voluntarily leaves the former for the latter railway undertaking or infrastructure manager.

2. Particular attention shall be paid to the implementation of this Article in the report provided for in Article 33, in particular as regards point (f) thereof.

Article 25

Examinations

1. The examinations and examiners intended for the purpose of checking the requisite qualifications shall be determined:

- (a) for the part relating to the licence: by the competent authority when laying down the procedure to be followed to obtain a licence in accordance with Article 14(1);
- (b) for the part relating to the certificate: by the railway undertaking or the infrastructure manager when laying down the procedure to be followed to obtain a certificate in accordance with Article 15.

2. The examinations referred to in paragraph 1 shall be overseen by competent examiners, accredited or recognised in accordance with Article 20, and shall be organised in such a way as to avoid any conflict of interest.

3. Infrastructure knowledge evaluation, including route knowledge and operation rules, shall be performed by persons or bodies accredited or recognised by the Member State where the infrastructure is located.

4. The examinations referred to in paragraph 1 shall be organised in such a way that any conflict of interests is avoided, without prejudice to the possibility that the examiner may belong to the railway undertaking or infrastructure manager issuing the certificate.

5. The choice of examiners and examinations may be subject to Community criteria established on the basis of a draft prepared by the Agency. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 32(4).

In the absence of such Community criteria, the competent authorities shall establish national criteria.

6. There shall be theoretical and practical examinations at the end of the training course. Driving ability shall be assessed during driving tests on the network. Simulators may also be used for examining the application of operational rules and driver performance in particularly difficult situations.

CHAPTER VII

ASSESSMENT

Article 26

Quality standards

The competent authorities shall ensure that all activities associated with training, the assessment of skills and the updating of licences and certificates are the subject of continuous monitoring

under a quality standards system. This shall not apply to activities already covered by the safety management systems put in place by railway undertakings and infrastructure managers in accordance with Directive 2004/49/EC.

Article 27

Independent assessment

1. An independent assessment of the procedures for the acquisition and assessment of professional knowledge and competences, and of the system for the issuing of licences and certificates, shall be carried out in each Member State at intervals of not more than five years. This shall not apply to activities already covered by the safety management systems put in place by railway undertakings and infrastructure managers in accordance with Directive 2004/49/EC. The assessment shall be carried out by qualified persons who are not themselves involved in the activities concerned.

2. The results of these independent assessments shall be duly documented and brought to the attention of the competent authorities concerned. If necessary, Member States shall take appropriate measures to remedy any shortcomings brought to light by the independent assessment.

CHAPTER VIII

OTHER CREW MEMBERS

Article 28

Report on other crew members

1. The Agency shall, in a report to be presented by 4 June 2009, and taking into account the TSI on operation and traffic management developed under Directives 96/48/EC and 2001/16/EC, identify the profile and tasks of other crew members performing safety-critical tasks whose professional qualifications accordingly contribute to railway safety which should be regulated at Community level by means of a system of licences and/or certificates which may be similar to the system established by this Directive.

2. On the basis of this report the Commission shall, by 4 June 2010, present a report and, if appropriate, bring forward a legislative proposal on a certification system for the other crew members referred to in paragraph 1.

CHAPTER IX

CONTROLS AND PENALTIES

Article 29

Controls by the competent authority

1. The competent authority may at any time take steps to verify, on board trains operating in its area of jurisdiction, that the train driver is in possession of the documents issued pursuant to this Directive.

2. Notwithstanding verification as provided for in paragraph 1, in the event of negligence at the workplace the competent authority may verify if the driver in question complies with the requirements set out in Article 13.

3. The competent authority may carry out enquiries regarding compliance with this Directive by drivers, railway undertakings, infrastructure managers, examiners and training centres pursuing their activities in its area of jurisdiction.

4. If the competent authority finds that a driver no longer satisfies one or more required conditions, it shall take the following measures:

- (a) if it concerns a licence issued by the competent authority, the competent authority shall suspend the licence. The suspension shall be temporary or permanent depending on the scale of the problems created for rail safety. It shall immediately inform the driver concerned and his employer of its reasoned decision, without prejudice to the right of review provided for in Article 21. It shall indicate the procedure to be followed for recovering the licence;
- (b) if it concerns a licence issued by a competent authority in another Member State, the competent authority shall approach that authority and provide a reasoned request either that a further inspection be carried out or that the licence be suspended. The requesting competent authority shall inform the Commission and the other competent authorities of its request. The authority that issued the licence in question shall examine the request within four weeks and notify the other authority of its decision. The authority that issued the licence shall also inform the Commission and the other competent authorities of the decision. Any competent authority may prohibit train drivers from operating in its area of jurisdiction pending notification of the issuing authority's decision;
- (c) if it concerns a certificate, the competent authority shall approach the issuing body and request either that a further inspection be carried out or that the certificate be suspended. The issuing body shall take appropriate measures and report back to the competent authority within a period of four weeks. The competent authority may prohibit train drivers from operating in its area of jurisdiction pending the report of the issuing body, and shall inform the Commission and the other competent authorities thereof.

At all events, if the competent authority considers that a particular driver creates a serious threat to the safety of the railways, it shall immediately take the necessary action, such as asking the infrastructure manager to stop the train and prohibiting the driver from operating in its area of jurisdiction for as long as necessary. It shall inform the Commission and the other competent authorities of any such decision.

In all cases the competent authority, or the body designated for this, shall update the register provided for in Article 22.

5. If a competent authority considers that a decision taken by a competent authority in another Member State pursuant to paragraph 4 fails to comply with the relevant criteria, the matter shall be referred to the Commission which shall deliver its opinion within three months. If necessary, corrective measures shall be proposed to the Member State concerned. In the event of disagreement or dispute, the matter shall be referred to the Committee referred to in Article 32(1), and the Commission shall take whatever measures are necessary in accordance with the regulatory procedure referred to in Article 32(2). A Member State may maintain a prohibition on a driver driving on its territory in accordance with paragraph 4 until the matter is concluded in accordance with this paragraph.

Article 30

Penalties

Without prejudice to any other penalties or procedures established by this Directive, the Member States shall lay down 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 shall be effective, proportionate, non-discriminatory and dissuasive. The Member States shall notify the Commission of those provisions by the date specified in the first subparagraph of Article 36(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER X

FINAL PROVISIONS

Article 31

Adaptation of the Annexes

1. Measures designed to amend non-essential elements of this Directive by adapting the Annexes to scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 32(4).

2. Where the adaptations concern health and safety conditions, or professional competences, the Commission shall ensure that the social partners are consulted prior to their preparation.

Article 32

Committee

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

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

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

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

4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 33

Report

The Agency shall evaluate the development of the certification of train drivers in accordance with this Directive. It shall submit to the Commission, not later than four years following the adoption of the basic parameters of the registers provided for in Article 22(4), a report containing, where appropriate, improvements to be made to the system as regards:

- (a) the procedures for issuing licences and certificates;
- (b) the accreditation of training centres and examiners;
- (c) the quality system put in place by the competent authorities;
- (d) the mutual recognition of certificates;
- (e) the adequacy of the training requirements specified in Annexes IV, V and VI in relation to the market structure and the categories mentioned in Article 4(2)(a);
- (f) the interconnection of registers and mobility in the employment market.

Furthermore, in this report the Agency may, if appropriate, recommend measures regarding the theoretical and practical examination of the professional knowledge of applicants for the harmonised certificate for rolling stock and relevant infrastructure.

The Commission shall take appropriate measures on the basis of these recommendations and shall propose, if necessary, changes to this Directive.

Article 34

Use of smartcards

By 4 December 2012, the Agency shall examine the possibility of using a smartcard combining the licence and certificates provided for in Article 4, and shall prepare a cost/benefit analysis thereof.

Measures designed to amend non-essential elements of this Directive and relating to the technical and operating specifications for such a smartcard shall be adopted on the basis of a draft prepared by the Agency and in accordance with the regulatory procedure with scrutiny referred to in Article 32(3).

If the implementation of the smartcard does not entail any modification to this Directive or the Annexes hereto, the specifications of the smartcard shall be adopted in accordance with the regulatory procedure referred to in Article 32(2).

Article 35

Cooperation

Member States shall assist one another in the implementation of this Directive. Competent authorities shall cooperate during this phase of implementation.

The Agency shall assist this cooperation and organise appropriate meetings with representatives of the competent authorities.

Article 36

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 4 December 2009. They shall forthwith inform the Commission thereof.

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. The methods of making such reference shall be laid down by Member States.

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

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

Article 37

Gradual phasing-in and transition periods

This Directive shall be phased in gradually as indicated below.

1. The registers provided for in Article 22 shall be set up within two years of the adoption of the basic parameters of the registers provided for in Article 22(4).

2. (a) Within two years of the adoption of the basic parameters of the registers provided for in Article 22(4), certificates or licences shall be issued in accordance with this Directive to drivers performing cross-border services, cabotage services or freight services in another Member State, or work in at least two Member States, without prejudice to the provisions of point 3.

From that same date, all train drivers performing the services listed above, including those not yet licensed or certified in accordance with this Directive, shall comply with the periodic checks provided for in Article 16.

- (b) Within two years of the setting-up of the registers provided for in point 1, all new licences and certificates shall be issued in accordance with this Directive, without prejudice to the provisions of point 3.
- (c) Within seven years of the setting-up of the registers provided for in point 1, all drivers shall hold licences and certificates in conformity with this Directive. The issuing bodies shall take into account all professional competencies already acquired by each driver in such a way that this requirement does not generate unnecessary administrative and financial burdens. Entitlements to drive previously granted to drivers shall be safeguarded, as far as possible. The issuing bodies may nevertheless decide, for individual drivers or for groups of drivers, as appropriate, that additional examinations and/or training are necessary in order to obtain licences and/or certificates under this Directive.
3. Drivers authorised to drive in accordance with the provisions which applied prior to the application of point 2(a) or (b) may continue to pursue their professional activities on the basis of their entitlements, and without applying the provisions of this Directive, for up to seven years from the setting-up of the registers provided for in point 1.

In the case of apprentices who started an approved education and training programme or an approved training course prior to the application of point 2(a) or (b), Member States may certify these apprentices in accordance with existing national provisions.

For drivers and apprentices referred to in this point, the competent authority or authorities involved may, in exceptional cases, grant exemptions from the medical requirements laid down in Annex II. The validity of any licence issued with such exemption shall be limited to the territory of the Member States concerned.

4. Competent authorities, railway undertakings and infrastructure managers shall ensure the gradual application of periodic checks corresponding to those provided for by Article 16 to drivers who do not hold licences and certificates in conformity with this Directive.
5. Where a Member State so requests, the Commission shall ask the Agency, in consultation with that Member State, to carry out a cost/benefit analysis of the application of the provisions of this Directive to train drivers operating exclusively on the territory of that Member State. The cost/benefit analysis shall cover a period of 10 years. This cost/benefit analysis shall be submitted to the Commission within two years of the setting-up of the registers provided for in point 1.

If this cost/benefit analysis shows that the costs of applying the provisions of this Directive to such train drivers outweigh the benefits, the Commission shall, in accordance with the regulatory procedure referred to in Article 32(2), adopt a decision within six months following the submission of the results of this cost/benefit analysis. The decision may be that the provisions of point 2(b) and (c) of this Article do not have to be applied to such train drivers for a period of up to 10 years on the territory of the Member State concerned.

No later than 24 months prior to the expiry of this temporary exemption period, the Commission, taking into account relevant developments in the railway sector in the Member State concerned, may, in accordance with the regulatory procedure referred to in Article 32(2), request the Agency to carry out another cost/benefit analysis, to be submitted to the Commission no later than 12 months prior to the expiry of this temporary exemption period. The Commission shall take a decision in accordance with the procedure described in the second subparagraph of this point.

Article 38

Entry into force

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

Article 39

This Directive is addressed to the Member States.

Done at Strasbourg, 23 October 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

ANNEX I

COMMUNITY MODEL LICENCE AND HARMONISED COMPLEMENTARY CERTIFICATE**1. CHARACTERISTICS OF THE LICENCE**

The physical characteristics of the train driver's licence must be in conformity with ISO standards 7810 and 7816-1.

The card must be made of polycarbonate.

The methods for verifying the characteristics of the driving licences to ensure that they are consistent with international standards must comply with ISO standard 10373.

2. CONTENTS OF THE LICENCE

The front of the licence must contain:

- (a) the words 'Train driver's licence' printed in large type in the language or languages of the Member State issuing the licence;
- (b) the name of the Member State issuing the licence;
- (c) the distinguishing sign of the Member State issuing the licence in accordance with the country's ISO 3166 code, printed in negative in a blue rectangle and encircled by 12 yellow stars;
- (d) information specific to the licence issued, numbered as follows:
 - (i) the surname of the holder;
 - (ii) other name(s) of the holder;
 - (iii) the date and place of birth of the holder;
 - (iv) — the date of issue of the licence,
 - the date of expiry of the licence,
 - the name of the issuing authority,
 - the reference number assigned to the employee by the employer (optional);
 - (v) the number of the licence giving access to data in the national register;
 - (vi) a photograph of the holder;
 - (vii) the signature of the holder;
 - (viii) the permanent place of residence or postal address of the holder (optional);
- (e) the words 'European Communities model' in the language or languages of the Member State issuing the licence and the words 'Train driving licence' in the other languages of the Community, printed in yellow to form the background of the licence;
- (f) the reference colours:
 - blue: Pantone Reflex blue,
 - yellow: Pantone yellow;

- (g) additional information, or medical restrictions for use imposed by a competent authority in accordance with Annex II, in code form.

The codes shall be decided by the Commission, in accordance with the regulatory procedure referred to in Article 32(2) and on the basis of a recommendation from the Agency.

3. CERTIFICATE

The certificate must contain:

- (a) the surname of the holder;
- (b) other name(s) of the holder;
- (c) the date and place of birth of the holder;
- (d) — the date of issue of the certificate,
— the date of expiry of the certificate,
— the name of the issuing authority,
— the reference number assigned to the employee by the employer (optional);
- (e) the number of the licence giving access to data in the national register;
- (f) a photograph of the holder;
- (g) the signature of the holder;
- (h) the permanent place of residence or postal address of the holder (optional);
- (i) the name and address of the railway undertaking or infrastructure manager for which the driver is authorised to drive trains;
- (j) the category in which the holder is entitled to drive;
- (k) the type or types of rolling stock which the holder is authorised to drive;
- (l) the infrastructures on which the holder is authorised to drive;
- (m) any additional information or restrictions;
- (n) language skills.

4. MINIMUM DATA CONTAINED IN NATIONAL REGISTERS

- (a) Data relating to the licence:

All data appearing on the licence plus data relating to checking requirements set out in Article 11 and 16.

- (b) Data relating to the certificate:

All data appearing on the certificate plus data relating to checking requirements set out in Articles 12, 13 and 16.

ANNEX II

MEDICAL REQUIREMENTS

1. GENERAL REQUIREMENTS

1.1. Drivers must not be suffering from any medical conditions or be taking any medication, drugs or substances which are likely to cause:

- a sudden loss of consciousness,
- a reduction in attention or concentration,
- sudden incapacity,
- a loss of balance or coordination,
- significant limitation of mobility.

1.2. Vision

The following requirements as regards vision must be complied with:

- aided or unaided distance visual acuity: 1,0; minimum of 0,5 for the worse eye,
- maximum corrective lenses: hypermetropia + 5/myopia -8. Derogations are authorised in exceptional cases and after having obtained the opinion of an eye specialist. The medical doctor then takes the decision,
- near and intermediate vision: sufficient, whether aided or unaided,
- contact lenses and glasses are authorised when periodically checked by a specialist,
- normal colour vision: use of a recognised test, such as Ishihara, as well as another recognised test if required,
- field of vision: full,
- vision for both eyes: effective; not required when person has adequate adaptation and sufficient compensation experience. Only in case he lost binocular vision after starting his job,
- binocular vision: effective,
- recognition of colour signals: the test shall be based on recognition of single colours and not on relative differences,
- sensitivity to contrasts: good,
- no progressive eye diseases,
- lens implants, keratotomies and keratectomies are allowed only on condition that they are checked on a yearly basis or at intervals set by the medical doctor,
- ability to withstand dazzle,
- coloured contact lenses and photochromatic lenses are not allowed. UV filter lenses are allowed.

1.3. Hearing and speaking requirements

Sufficient hearing confirmed by an audiogram, i.e.:

- hearing good enough to hold a phone conversation and to be able to hear warning sounds and radio messages.

The following values should be taken as guidelines:

- the hearing deficiency must not be higher than 40 dB at 500 and 1 000 Hz,
- the hearing deficiency must not be higher than 45 dB at 2 000 Hz for the ear with the worst air conduction of sound,
- no anomaly of the vestibular system,
- no chronic speech disorder (given the necessity to exchange messages loudly and clearly),
- the use of hearing aids is allowed in special cases.

1.4. Pregnancy

In the event of poor tolerance or a pathological condition, pregnancy must be considered to be a reason for the temporary exclusion of drivers. Legal provisions protecting pregnant drivers must be applied.

2. MINIMUM CONTENT OF THE EXAMINATION BEFORE APPOINTMENT

2.1. Medical examinations:

- a general medical examination,
- examinations of sensory functions (vision, hearing, colour perception),
- blood or urine tests, testing among others for diabetes mellitus, insofar as they are necessary to judge the candidate's physical aptitude,
- an Electro-Cardiogram (ECG) at rest,
- tests for psychotropic substances such as illicit drugs or psychotropic medication and the abuse of alcohol calling into question the fitness for the job,
- cognitive: attention and concentration; memory; perception; reasoning,
- communication,
- psychomotor: reaction time, hand coordination.

2.2. Occupational psychological examinations

The purpose of the occupational psychological examinations is to assist in the appointment and management of staff. In determining the content of the psychological evaluation, the examination must assess that the applicant driver has no established occupational psychological deficiencies, particularly in operational aptitudes or any relevant personality factor, which are likely to interfere with the safe exercise of the duties.

3. PERIODIC EXAMINATIONS AFTER APPOINTMENT

3.1. Frequency

Medical examinations (physical fitness) must be taken at least every three years up to the age of 55, thereafter every year.

In addition to this frequency, the medical doctor accredited or recognised under Article 20 must increase the frequency of examinations if the health of the member of staff so requires.

Without prejudice to Article 16(1) an appropriate medical examination must be carried out when there is a reason to doubt that a holder of the licence or certificate no longer fulfils the medical requirements set out in section 1 of Annex II.

Physical fitness must be checked regularly and after any occupational accident or any period of absence following an accident involving persons. The medical doctor accredited or recognised under Article 20 can decide to carry out an additional appropriate medical examination, particularly after a period of at least 30 days' sick leave. The employer must ask the medical doctor accredited or recognised under Article 20 to check the physical fitness of the driver if the employer had to withdraw the driver from service for safety reasons.

3.2. Minimum content of the periodic medical examination

If the driver complies with the criteria required for the examination which is carried out before appointment, the periodic examinations must include as a minimum:

- a general medical examination,
- an examination of sensory functions (vision, hearing, colour perception),
- blood or urine tests to detect diabetes mellitus and other conditions as indicated by the clinical examination,
- tests for drugs where clinically indicated.

In addition, an ECG at rest is also required for train drivers over 40 years of age.

*ANNEX III***TRAINING METHOD**

There must be a good balance between theoretical training (classroom and demonstrations) and practical training (on-the-job experience, driving with supervision and driving without supervision on tracks which are closed off for training purposes).

Computer-aided training must be accepted for individual learning of the operational rules, signalling situations, etc.

The use of simulators, although not obligatory, may be useful for the effective training of drivers; they are particularly useful for training in abnormal working conditions or for rules infrequently applied. They have a particular advantage in their ability to provide learning-by-doing capability for events that cannot be trained in the real world. In principle, simulators of the latest generation must be used.

Concerning the acquisition of route knowledge, the approach to be favoured must be where the train driver accompanies another driver for an appropriate number of journeys along the route, in daylight as well as at night. Videos of the routes as seen from the driver's cab may be used, among other methods, as an alternative training method.

ANNEX IV

GENERAL PROFESSIONAL KNOWLEDGE AND REQUIREMENTS REGARDING THE LICENCE

The general training has the following objectives:

- acquiring the knowledge and procedures regarding of railway technologies, including safety principles and the philosophy behind operational regulations,
- acquiring knowledge and procedures regarding the risks related to railway operation and the various means to be used to combat them,
- acquiring knowledge and procedures regarding the principles guiding one or more railway operating modes,
- acquiring knowledge and procedures regarding trains, their composition and technical requirements on traction units, wagons, coaches and other rolling stock.

In particular, drivers must be able to:

- understand the specific requirements for working in the profession of driver, its importance, and the professional and personal demands (long periods of work, being away from home, etc.),
 - apply staff safety rules,
 - identify rolling stock,
 - know and apply a working method in a precise manner,
 - identify the reference and applications documents (manual of procedures and manual of lines as defined in the 'Operations' TSI, driver's manual, breakdown manual, etc.),
 - learn behaviours which are compatible with safety-critical responsibilities,
 - identify the procedures applicable to accidents involving persons,
 - distinguish the hazards involved in railway operations in general,
 - know the principles governing traffic safety,
 - apply the basic principles of electrotechnology.
-

ANNEX V

**PROFESSIONAL KNOWLEDGE OF ROLLING STOCK AND REQUIREMENTS
REGARDING THE CERTIFICATE**

After completing specific training in relation to rolling stock, drivers must be able to carry out the following tasks:

1. TESTS AND CHECKS PRIOR TO DEPARTURE

Drivers must be able to:

- collect the documentation and the necessary equipment,
- check the capacities of the traction unit,
- check the information entered in the documents on board the traction unit,
- ensure, by performing the checks and tests specified, that the traction unit is capable of providing the required traction power, and that the safety equipment is operating,
- checking the availability and functionality of the prescribed protection and safety equipments at the handover of a locomotive or at the start of a trip,
- perform any routine preventive maintenance operations.

2. KNOWLEDGE OF ROLLING STOCK

To operate a locomotive, drivers must be familiar with all the controls and indicators placed at their disposal, in particular those concerning:

- traction,
- braking,
- traffic safety-related elements.

In order to detect and locate anomalies in the rolling stock, report them and determine what is required to repair them, and in certain cases, to take action, drivers must be familiar with:

- mechanical structures,
- suspension and attachment equipment,
- running gear,
- safety equipment,
- fuel tanks, fuel supply system, exhaust equipment,
- the meaning of markings on the inside and outside of the rolling stock, in particular the symbols used for the transportation of dangerous goods,
- trip registration systems,
- electrical and pneumatic systems,
- collection of current and high-voltage systems,
- communication equipment (ground-to-train radio, etc.),
- arrangements of trips,

- the constituent parts of the rolling stock, their purpose, and the devices specific to the hauled stocks, in particular the system of stopping the train by venting the brake pipe,
- braking system,
- the parts specific to traction units,
- traction chain, motors and transmission.

3. TESTING THE BRAKES

Drivers must be able to:

- check and calculate, before departure, that the train's braking power corresponds to the braking power required for the line, as specified in the vehicle documents,
- check the functioning of the various components of the braking system of the traction unit and of the train, as appropriate, before departure, at start-up and during running.

4. OPERATING MODE AND MAXIMUM SPEED OF THE TRAIN IN RELATION TO THE LINE CHARACTERISTICS

Drivers must be able to:

- take note of information given to them before departure,
- determine the type of running and the limit speed of the train on the basis of variables such as speed limits, weather conditions or any signalling changes.

5. DRIVING THE TRAIN IN A WAY WHICH DOES NOT DAMAGE INSTALLATIONS OR VEHICLES

Drivers must be able to:

- use all available control systems in accordance with the applicable rules,
- start the train taking account of adhesion and power constraints,
- apply the brakes for decelerations and stops, taking account of the rolling stock and installations.

6. ANOMALIES

Drivers must:

- be able to be attentive to unusual occurrences concerning the behaviour of the train,
- be able to inspect the train and identify signs of anomalies, distinguish between them, react according to their relative importance and try to remedy them, always giving priority to the safety of rail traffic and persons,
- know the available means of protection and communication.

7. OPERATING INCIDENTS AND ACCIDENTS, FIRES AND ACCIDENTS INVOLVING PERSONS

Drivers must:

- be able to take steps to protect the train and summon assistance in the event of an accident involving persons on board the train,
- be able to determine whether the train is transporting dangerous goods and identify them on the basis of train documents and wagon lists,
- know the procedures relating to the evacuation of a train in case of emergency.

8. CONDITIONS FOR CONTINUING RUNNING AFTER AN INCIDENT INVOLVING ROLLING STOCK

After an incident, drivers must be able to assess whether the vehicle can continue to run and under what conditions, so as to inform the infrastructure manager of those conditions as soon as possible.

Drivers must be able to determine if an expert evaluation is necessary before the train can continue.

9. IMMOBILISATION OF THE TRAIN

Drivers must be able to take measures to ensure that the train, or parts thereof, does not start up or move unexpectedly, even in the most difficult conditions.

Furthermore, drivers must have knowledge about measures which can stop a train or parts thereof in case it has started to move unexpectedly.

ANNEX VI

**PROFESSIONAL KNOWLEDGE OF INFRASTRUCTURE AND REQUIREMENTS
REGARDING THE CERTIFICATE****Matters relating to infrastructure**

1. TESTING THE BRAKES

Drivers must be able to check and calculate, before departure, that the train's braking power corresponds to the braking power required for the line, as specified in the vehicle documents.

2. TYPE OF OPERATION AND MAXIMUM TRAIN SPEED ACCORDING TO THE LINE CHARACTERISTICS

Drivers must be able to:

- take note of information given to them, such as the speed limits or any signalling changes,
- determine the type of running and the limit speed of the train on the basis of the characteristics of the line.

3. KNOWLEDGE OF THE LINE

Drivers must be able to anticipate problems and react appropriately in terms of safety and other performances, such as punctuality and economic aspects. They must therefore have a thorough knowledge of the railway lines and installations on their route and of any alternative routes agreed on.

The following aspects are important:

- operational conditions (changes of track, one-way running, etc.),
- perform a route check and consult the relevant documents,
- identification of tracks that can be used for a given type of running,
- the applicable traffic rules and the meaning of the signalling system,
- the operations regime,
- the block system and associated regulations,
- station names and the position, and distance-sighting of stations and signal boxes to adapt driving accordingly,
- transition signalling between different operating or power supply systems,
- speed limits for the different train categories driven,
- topographical profiles,
- particular braking conditions, for example on lines with a steep downward gradient,
- particular operating features: special signals, signs, departure conditions, etc.

4. SAFETY REGULATIONS

Drivers must be able to:

- start the trains only when all prescribed conditions are fulfilled (timetable, start order or signal, operation of signals if required, etc.),
- observe track-side and in-cab signals, interpret them immediately and without error, and act as specified,
- run the train safely according to the specific modes of operation: apply special modes if instructed, temporary speed restrictions, running in opposite direction, permission to pass signals at danger, switching operations, turns, running through construction sites, etc.,
- respect scheduled or supplementary stops, and if necessary perform supplementary operations for passengers during these stops, notably opening and closing the doors.

5. DRIVING THE TRAIN

Drivers must be able to:

- know the train's position on the line at all times,
- apply the brakes for decelerations and stops, taking account of the rolling stock and installations,
- adjust the running of the train in accordance with the timetable and any orders given on saving energy, taking account of the characteristics of the traction unit, the train, the line and the environment.

6. ANOMALIES

Drivers must be able to:

- be attentive, insofar as train operation permits, to unusual occurrences concerning the infrastructure and the environment: signals, tracks, energy supply, level crossings, track surrounding, other traffic,
- know particular distances to clear obstacles,
- inform the infrastructure manager as soon as possible of the place and nature of anomalies observed, making sure that the information has been understood,
- taking into account the infrastructure, ensure or take measures to ensure the safety of traffic and persons, whenever necessary.

7. OPERATING INCIDENTS AND ACCIDENTS, FIRES AND ACCIDENTS INVOLVING PERSONS

Drivers must be able to:

- take steps to protect the train and summon assistance in the event of an accident involving persons,
- determine where to stop the train in the event of a fire and facilitate the evacuation of passengers, if necessary,
- provide useful information on the fire as soon as possible if the fire cannot be brought under control by the driver acting alone,
- inform the infrastructure manager of these conditions as soon as possible,
- assess whether the infrastructure allows the vehicle to continue to run and under which conditions.

8. LANGUAGE TESTS

Drivers who have to communicate with the infrastructure manager on critical safety issues must have language skills in the language indicated by the infrastructure manager concerned. Their language skills must be such that they can communicate actively and effectively in routine, adverse and emergency situations.

They must be able to use the messages and communication method specified in the 'Operations' TSI. Drivers must be able to communicate according to level 3 of the following table:

Language and communication level

The oral qualification in a language can be subdivided into five levels:

Level	Description
5	— can adapt the way he/she speaks to any interlocutor — can put forward an opinion — can negotiate — can persuade — can give advice
4	— can cope with totally unforeseen situations — can make assumptions — can express an argued opinion
3	— can cope with practical situations involving an unforeseen element — can describe — can keep a simple conversation going
2	— can cope with simple practical situations — can ask questions — can answer questions
1	— can talk using memorised sentences

ANNEX VII

FREQUENCY OF EXAMINATIONS

The minimum frequency of the periodic checks shall be as follows:

- (a) linguistic knowledge (only for non-native speakers): every three years or after any absence of more than one year;
 - (b) infrastructure knowledge (including route and operation rules knowledge): every three years or after any absence of more than one year on the relevant route;
 - (c) knowledge of rolling stock: every three years.
-