

Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (repealed)

DIRECTIVE 2004/49/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

(Railway Safety Directive) (repealed)

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⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee⁽²⁾,

Having regard to the Opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 23 March 2004,

Whereas:

- (1) In order to pursue efforts to establish a single market for rail transport services, initiated by Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁵⁾, it is necessary to establish a common regulatory framework for railway safety. Member States have until now developed their safety rules and standards mainly on national lines, based on national technical and operational concepts. Simultaneously, differences in principles, approach and culture have made it difficult to break through the technical barriers and establish international transport operations.
- (2) Directive 91/440/EEC, Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings⁽⁶⁾ and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification⁽⁷⁾ provide the first steps towards regulation of the European rail transport market by opening the market for international rail freight services. However, the provisions on safety have proved to be insufficient and differences between safety requirements remain, which

affect the optimum functioning of rail transport in the Community. It is of particular importance to harmonise the content of safety rules, safety certification of railway undertakings, the tasks and roles of the safety authorities and the investigation of accidents.

- (3) Metros, trams and other light rail systems are in many Member States subject to local or regional safety rules and are often supervised by local or regional authorities and not covered by the requirements on Community interoperability or licensing. Trams are furthermore often subject to road safety legislation and could therefore not be fully covered by railway safety rules. For these reasons and in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, Member States should be allowed to exclude such local rail systems from the scope of this Directive.
- (4) Safety levels in the Community rail system are generally high, in particular compared to road transport. It is important that safety is at the very least maintained during the current restructuring phase, which will separate functions of previously integrated railway companies and move the railway sector further from self-regulation to public regulation. In line with technical and scientific progress, safety should be further improved, when reasonably practicable and taking into account the competitiveness of the rail transport mode.
- (5) All those operating the railway system, infrastructure managers and railway undertakings, should bear the full responsibility for the safety of the system, each for their own part. Whenever it is appropriate, they should cooperate in implementing risk control measures. Member States should make a clear distinction between this immediate responsibility for safety and the safety authorities' task of providing a national regulatory framework and supervising the performance of the operators.
- (6) The responsibility of infrastructure managers and railway undertakings for operating the railway system does not preclude other actors such as manufacturers, maintenance suppliers, wagon keepers, service providers and procurement entities from assuming responsibility for their products or services in accordance with the provisions of Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system⁽⁸⁾ and of Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system⁽⁹⁾ or of other relevant Community legislation.
- (7) Requirements on safety of the subsystems of the trans-European rail networks are laid down in Directive 96/48/EC and Directive 2001/16/EC. However, those Directives do not define common requirements at system level and do not deal in detail with the regulation, management and supervision of safety. When minimum safety levels of the subsystems are defined by technical specifications for interoperability (TSIs) it will be increasingly important to establish safety targets at the system level as well.
- (8) Common safety targets (CSTs) and common safety methods (CSMs) should be gradually introduced to ensure that a high level of safety is maintained and, when and where necessary and reasonably practicable, improved. They should provide tools for assessment of the safety level and the performance of the operators at Community level as well as in the Member States.

- (9) Information on safety of the railway system is scarce and not generally publicly available. It is thus necessary to establish common safety indicators (CSIs) in order to assess that the system complies with the CSTs and to facilitate the monitoring of railway safety performance. However, national definitions relating to the CSIs may apply during a transitional period and due account should therefore be taken of the extent of the development of common definitions of the CSIs when the first set of CSTs is drafted.
- (10) National safety rules, which are often based on national technical standards, should gradually be replaced by rules based on common standards, established by TSIs. The introduction of new specific national rules which are not based on such common standards should be kept to a minimum. New national rules should be in line with Community legislation and facilitate migration towards a common approach to railway safety. All interested parties should therefore be consulted before a Member State adopts a national safety rule that requires a higher safety level than the CSTs. In such cases the new draft rule should be subject to examination by the Commission, which should adopt a Decision if it appears that the draft rule is not in conformity with Community legislation or constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operation between Member States.
- (11) The current situation, in which national safety rules continue to play a role, should be regarded as a transitional stage, leading ultimately to a situation in which European rules will apply.
- (12) The development of CSTs, CSMs and CSIs as well as the need to facilitate progress towards a common approach to railway safety requires technical support at Community level. The European Railway Agency established by Regulation (EC) No /of the European Parliament and of the Council OJ L is set up to issue recommendations concerning CSTs, CSMs and CSIs and further harmonisation measures and to monitor the development of railway safety in the Community.
- (13) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system, fulfilling Community requirements and containing common elements. Information on safety and the implementation of the safety management system should be submitted to the safety authority in the Member State concerned.
- (14) The safety management system should take into account the fact that Council Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁽¹⁰⁾ and its relevant individual directives are fully applicable to the protection of the health and safety of workers engaged in railway transport. The safety management system should also take account of Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail⁽¹¹⁾.
- (15) To ensure a high level of railway safety and equal conditions for all railway undertakings, they should be subject to the same safety requirements. The safety certificate should give evidence that the railway undertaking has established its safety management system and is able to comply with the relevant safety standards

and rules. For international transport services it should be enough to approve the safety management system in one Member State and give the approval Community validity. Adherence to national rules on the other hand should be subject to additional certification in each Member State. The ultimate aim should be to establish a common safety certificate with Community validity.

- (16) In addition to the safety requirements laid down in the safety certificate, licensed railway undertakings must comply with national requirements, compatible with Community law and applied in a non-discriminatory manner, relating to health, safety and social conditions, including legal provisions relating to driving time, and the rights of workers and consumers as provided for in Articles 6 and 12 of Directive 95/18/EC.
- (17) Every infrastructure manager has a key responsibility for the safe design, maintenance and operation of its rail network. In parallel to safety certification of railway undertakings the infrastructure manager should be subject to safety authorisation by the safety authority concerning its safety management system and other provisions to meet safety requirements.
- (18) Member States should make efforts to assist applicants wishing to enter the market as railway undertakings. In particular they should provide information and act promptly on requests for safety certification. For railway undertakings operating international transport services, it is important for the procedures to be similar in different Member States. Although the safety certificate will contain national parts for the foreseeable future, it should nevertheless be possible to harmonise the common parts of it and facilitate the creation of a common template.
- (19) Certification of train staff and authorisation of placing in service of in-use rolling stock for the different national networks are often insurmountable barriers to new entrants. Member States should ensure that facilities for the training and certification of train staff necessary to meet requirements under national rules are available to railway undertakings applying for a safety certificate. A common procedure should be established for authorisation of placing in service of in-use rolling stock.
- (20) Driving times and rest periods for train drivers and train staff performing safety tasks have an important impact on the safety level of the rail system. These aspects fall under Articles 137 to 139 of the Treaty and are already subject to negotiations between the social partners under the Sectoral Dialogue Committee set up in accordance with Commission Decision 98/500/EC⁽¹²⁾.
- (21) The development of a safe Community railway system requires the establishment of harmonised conditions for delivering the appropriate licences to train drivers and on-board accompanying staff performing safety tasks, for which the Commission has announced its intention to propose further legislation in the near future. As far as other staff charged with safety-critical tasks are concerned, their qualifications are already being specified under Directives 96/48/EC and 2001/16/EC.
- (22) As part of the new common regulatory framework for railway safety, national authorities should be set up in all Member States to regulate and supervise railway safety. To facilitate cooperation between them at Community level, they should be given

the same minimum tasks and responsibilities. The national safety authorities should be granted a high degree of independence. They should carry out their tasks in an open and non-discriminatory way to help to create a single Community rail system and cooperate to coordinate their decision-making criteria, in particular concerning safety certification of railway undertakings operating international transport services.

- (23) Serious accidents on the railways are rare. However, they can have disastrous consequences and raise concern among the public about the safety performance of the railway system. All such accidents should, therefore, be investigated from a safety perspective to avoid recurrence and the results of the investigations should be made public. Other accidents and incidents could be significant precursors to serious accidents and should also be subject to safety investigations, when it is necessary.
- (24) A safety investigation should be kept separate from the judicial inquiry into the same incident and be granted access to evidence and witnesses. It should be carried out by a permanent body that is independent of the actors of the rail sector. The body should function in a way which avoids any conflict of interest and any possible involvement in the causes of the occurrences that are investigated; in particular, its functional independence should not be affected if it is closely linked to the national safety authority or regulator of railways for organisational and legal structure purposes. Its investigations should be carried out under as much openness as possible. For each occurrence the investigation body should establish the relevant investigation group with necessary expertise to find the immediate causes and underlying causes.
- (25) The reports on investigations and any findings and recommendations provide crucial information for the further improvement of railway safety and should be made publicly available at Community level. Safety recommendations should be acted upon by the addressees and actions reported back to the investigating body.
- (26) Since the objectives of the proposed action, namely to coordinate activities in the Member States to regulate and supervise safety and to investigate accidents and to establish at Community level common safety targets, common safety methods, common safety indicators and common requirements of safety certificates, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (27) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission⁽¹³⁾.
- (28) This Directive aims at reorganising and bringing together the relevant Community legislation on railway safety. Consequently, provisions for safety certification of railway undertakings that were previously set out in Directive 2001/14/EC should, together with all references to safety certification, be repealed. Directive 95/18/EC included requirements on safety qualifications of operational staff and on safety of rolling stock that are covered by the requirements on safety certification of this Directive and

Status: This is the original version (as it was originally adopted).

should therefore no longer be part of the licensing requirements. A licensed railway undertaking should hold a safety certificate in order to be granted access to the railway infrastructure.

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

HAVE ADOPTED THIS DIRECTIVE:

- (1) [OJ C 126 E, 28.5.2002, p. 332.](#)
- (2) [OJ C 61, 14.3.2003, p. 131.](#)
- (3) [OJ C 66, 19.3.2003, p. 5.](#)
- (4) Opinion of the European Parliament of 14 January 2003 ([OJ C 38 E, 12.2.2004, p. 92](#)), Council Common Position of 26 June 2003 ([OJ C 270 E, 11.11.2003, p. 25](#)) and Position of the European Parliament of 23 October 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 22 April 2004 and Council Decision of 26 April 2004.
- (5) [OJ L 237, 24.8.1991, p. 25.](#) Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council ([OJ L 75, 15.3.2001, p. 1](#)).
- (6) [OJ L 143, 27.6.1995, p. 70.](#) Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council ([OJ L 75, 15.3.2001, p. 26](#)).
- (7) [OJ L 75, 15.3.2001, p. 29.](#) Directive as amended by Commission Decision 2002/844/EC ([OJ L 289, 26.10.2002, p. 30](#)).
- (8) [OJ L 235, 17.9.1996, p. 6.](#)
- (9) [OJ L 110, 20.4.2001, p. 1.](#)
- (10) [OJ L 183, 29.6.1989, p. 1.](#)
- (11) [OJ L 235, 17.9.1996, p. 25.](#) Directive as last amended by Commission Directive 2003/29/EC ([OJ L 90, 8.4.2003, p. 47](#)).
- (12) Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level ([OJ L 225, 12.8.1998, p. 27](#)).
- (13) [OJ L 184, 17.7.1999, p. 23.](#)