



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.2006
COM(2006) 784 final

2006/0272 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2004/49/EC on safety on the Community's railways

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

At present, the national procedures for the approval of locomotives are regarded as among the most serious barriers to the creation of new railway undertakings in the freight sector and as a major stumbling block affecting the interoperability of the European rail system. As no Member State has the power to determine unilaterally that the operating authorisation it has issued will be valid on the territory of other Member States, a Community initiative is needed to harmonise and simplify the national procedures and to have more systematic recourse to the principle of mutual recognition.

This extension will entail amending the Rail Interoperability Directives (96/48/EC, 2001/16/EC, 2004/50/EC), Regulation (EC) No 881/2004 on the European Railway Agency (hereinafter referred to as the “Agency”), and the Railway Safety Directive (2004/49/EC). This last mentioned amendment is the subject of the present proposal.

- **General context**

This proposal is part of a wider initiative aimed at bringing about improvements to the technical part of the rail regulatory framework, namely the Rail Interoperability Directives, the Railway Safety Directive and the Regulation establishing the Agency.

Firstly, one of the crucial aspects that still has to be improved in order to facilitate the free movement of trains concerns the procedure for the approval of locomotives. According to the manufacturers and rail undertakings, these procedures are often very long drawn-out and highly expensive; furthermore, in their view, certain demands on the part of the competent authorities would be hard to justify even on purely technical grounds.

Secondly, as part of the programme for simplifying legislation, the Commission intends to consolidate and merge the Railway Interoperability Directives.

Thirdly, with its ten years' experience of implementing the Interoperability Directives, the Commission has a duty to propose several improvements to the technical part of the regulatory framework.

This proposal seeks to amend Directive 2004/49/EC on rail safety. It should be taken in conjunction with the joint proposals on the merging/recasting of the Rail Interoperability Directives 96/48/EC and 2001/16/EC and on the amending of Regulation (EC) No 881/2004 establishing a European Railway Agency (hereinafter referred to as “the Agency”).

- **Existing provisions in the area of the proposal**

The procedure for bringing railway rolling stock into service is the subject of Article 14 of the Rail Interoperability Directives and of Article 14 of the Railway Safety Directive. The notification of national rules is the subject of Article 16 of the Rail

Interoperability Directives and of Article 8 of the Railway Safety Directive.

- **Consistency with other policies and objectives of the Union**

This initiative will help to make rail transport more competitive. By reducing transport chain costs it will bolster the competitiveness of EU industry as a whole. A dynamic rail sector will also consolidate the European rail industry's position as a world leader, while at the same time safeguarding employment in the sector. A more competitive rail transport sector will also help the European Union to fulfil its basic commitments with regard to sustainable development and the struggle against climate change.

Consequently, this initiative forms part of the revised strategy for growth and jobs. Furthermore, it reduces the administrative costs linked to the actions taken by the national safety authorities.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

This initiative came about in response to strong pressure from the interested parties themselves. The first signs of the difficulties in question became apparent in the course of a safety certification study carried out in 2004. Following this study, the Commission set up a Working Party which presented its recommendations at the end of 2005. The Commission prepared a consultative document in April 2006 which identified several options and presented it to all the parties concerned (national authorities responsible for railway safety, industry, operators, infrastructure managers, European standardisation bodies, etc.) at a workshop. Written positions were collected from all parties and examined as part of an impact study prepared in accordance with current standards.

Summary of responses and how they have been taken into account

Regarding the initiative requested by the players in the sector, all of the responses were in favour of a Commission initiative. Where they differed was in respect of the positions they took with regard to the various options. The impact assessment sets out the various options and the positions of the various players in relation to these options. The Commission took account of the different opinions in drawing up its proposal, which pursues a twofold objective: first, to launch work that can be undertaken straightaway without waiting for new legislative provisions to enter into force and, second, to amend the legislation so as to provide a sure legal framework for assigning rights and responsibilities to the parties concerned by the authorisation procedure for placing railway rolling stock in service.

- **Collection and use of expertise**

Scientific/expertise domains concerned

National procedures for the approval of railway rolling stock, national technical and/or safety rules, costs and deadlines associated with these procedures, etc.

Methodology used

The Commission guidelines of 15 June 2005 (SEC(2005) 791), which were updated in 2006, were used.

Main organisations/experts consulted

The expertise of the European Railway Agency was used in evaluating the various positions expressed by sector stakeholders and in assessing the impact of the various options.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences was not mentioned.

Please refer to the impact assessment.

Means used to make the expert advice publicly available

The impact assessment is published on the Internet.

• **Impact assessment**

Reference scenario: to restrict ourselves to applying existing legislation and intervening only when complaints are made.

Non-regulatory options: to publish the working group's recommendations on existing cross-acceptance of rolling stock and to ask Member States to apply them, to ask the Agency to classify national rules and to identify equivalences, to ask the Agency to assume an advisory or appellate role in the national approval procedures for placing into service, to speed up the development and review of European standards, to verify that the principle of mutual recognition is being applied properly and, if necessary, to launch infringement proceedings.

Regulatory options: to amend legislation in order to: make it unnecessary for operators to obtain authorisation in each Member State, to clarify the procedure for existing rolling stock, to enable the Agency to issue authorisations for placing in service, to enable the Agency to assume a coordination, advisory and/or appellate role, to enable the bodies responsible for verifying conformity to issue authorisations for placing in service, to enable infrastructure managers to issue authorisations for placing in service.

The Commission has carried out an impact assessment as provided for in its Legislative and Work Programme. The report can be found at http://ec.europa.eu/transport/rail/index_en.html.

3) LEGAL ELEMENTS OF THE PROPOSAL

• **Summary of the proposed action**

The proposed solution involves drawing up a procedure at Community level covering

two aspects.

To begin with, the Agency is to be asked to identify the different national procedures and technical rules in force, and to draw up and update a list of requirements that can be verified only once. At the same time, the Member States are being asked, pending the amendment of the legislation, to apply on a voluntary basis those Working Party recommendations already published by the Commission.

Secondly, recourse to the principle of mutual recognition of entry-into-service authorisations already issued by Member States is to be made compulsory. In keeping with this principle, rolling stock in respect of which an entry-into-service authorisation has already been issued in one Member State will not, in appropriate cases, need to undergo further certification in another Member State except with regard to additional national requirements attributable, for instance, to the local system specifications.

- **Legal basis**

Article 71

- **Subsidiarity principle**

The principle of subsidiarity applies insofar as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal may not be achieved to a sufficient extent by the action of Member States for the following reasons:

This initiative seeks to deal with the problem of rolling stock authorised for entry into service in one Member State but not automatically accepted in another Member State. There is a transnational aspect to this problem that cannot be addressed by a national initiative, since no Member State can take it upon itself to authorise the entry into service of rolling stock in the territory of another Member State.

The aims of the proposal may be better achieved through Community action for the following reasons:

The principle of territoriality with regard to entry-into-service authorisations is enshrined in the Railway Interoperability and Rail Safety Directives, and no action taken solely at national level would be capable of achieving the objective pursued under the present proposal. The most appropriate way to achieve the objective pursued under the present proposal is by amending the Railway Safety Directive.

The establishment of a reference table containing the national rules, the adoption of such a table by the Commission, the future decisions taken by the Commission establishing the equivalence of certain national rules, the outlay in time and money on approving the rolling stock – these represent the most revealing indicators when it comes to demonstrating whether the objectives pursued under the present proposal have been achieved.

By amending Article 14 of the Railway Safety Directive it is possible to specify which part of an authorisation must be mutually recognised and which part is strictly linked to

the compatibility of the vehicle in question with the infrastructure referred to. The option whereby the decision to authorise entry into service would be centralised and placed in the hands of the Agency has not been taken up. This shows that the proposal has been limited to what Member States cannot achieve by national initiatives.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

This proposal forms part of a package consisting of:

- a Communication
- a proposal on the amendment of the Regulation establishing a European Railway Agency [(EC) No 881/2004]
- a proposal on the merging/recasting of the Railway Interoperability Directives (96/48/EC and 2001/16/EC)
- a proposal on the amendment of the Railway Safety Directive (2004/49/EC).

The proposals have been drafted in such a way as to minimise the number of amendments required.

This proposal has virtually no impact whatsoever on the Commission's operating budget. As far as the Agency is concerned, this is less than €2.2 million for the first five years, falling subsequently to less than €0.5 million. As for the competent authorities and the industry itself, the expected benefits outweigh all else, given that the main aim is to simplify the procedure for authorising entry into service by eliminating redundant verifications and reducing regulation.

- **Choice of instruments**

Proposed instrument: directive.

Other means would not have been adequate for the following reasons:

A Directive needs to be amended.

4) BUDGETARY IMPLICATION

For the Agency, the impact will be less than €2.2 million for the first five years, falling subsequently to less than €0.5 million (see Financial Statement attached to the proposal amending Regulation (EC) No 881/2004¹).

¹ COM(2006) 785, 13.12.2006.

5) ADDITIONAL INFORMATION

• **Simplification**

The proposal introduces simplified administrative procedures applicable to entities and private individuals.

Rolling stock in respect of which an entry-into-service authorisation has already been issued in one Member State will not, in appropriate cases, need to undergo further certification in another Member State except with regard to additional national requirements attributable, for instance, to the local system specifications.

The proposal is included in the Commission's Work and Legislative Programme under the reference 2006/TREN/005.

• **European Economic Area**

This draft instrument concerns a matter covered by the EEA Agreement and should therefore be extended to the European Economic Area.

• **Detailed explanation of the proposal by chapter or by article**

1. Certification of the existing rolling stock (Article 14² and new Annex VI)
 - The file to be lodged is divided into four parts: the first two parts are linked to information that has already been checked on the date of first entry into service; the third part is linked to the life of the vehicle after its first entry into service (and may therefore be the subject of checks); the fourth part is linked to the technical compatibility between vehicle and infrastructure (and must therefore be the subject of checks).
 - If an authority in another Member State has already issued an entry-into-service authorisation, the mutual recognition principle will apply. Consequently, the authority will not, in principle, be able to request additional duties with regard to the file already issued.
 - In order to reduce the possibility of an authority seeking additional powers, the Agency is being asked to develop a reference tool modelled on the national rules in force and to compare those rules in respect of each parameter, with a view to identifying which are eligible for mutual recognition. The list of parameters and the way in which the reference tool is to be made up are the subject of a new Annex VI. The Agency will produce recommendations which the Commission will transform into decisions after the Committee has delivered its opinion.
2. Relationship between the railway companies and the wagon keepers (new Article 14a)

The entry into force of the new 1999 COTIF Convention has brought in new rules

² Using the Article numbering of Directive 2004/49/EC.

governing contracts for the use of vehicles and, consequently, the former RIV Agreement between railway undertakings has ceased to apply. Under the new arrangements, supplemented by the new GCU agreement in which both the railway undertakings and the wagon keepers can participate, the latter are no longer obliged to register their wagons with a railway undertaking. The Railway Safety Directive needs to be amended in order to define the concept of 'keeper' and to specify the relationship between keepers and railway undertakings, notably in the field of maintenance.

It is proposed to introduce a new Article 14a, based on the following principles:

- Every time a vehicle is placed in service, someone with “responsibility” for maintenance must be clearly identified, as stipulated in the “wagons” TSI, adopted by the Commission on 28 July 2006.
- The person responsible may be the keeper of vehicles. The term “keeper” has not been defined in the Community legislation and, in order to avoid any new inconsistencies in relation to the COTIF 1999 legal system, it is proposed that the existing definition should be used.
- Whenever a railway undertaking requests a safety certificate, it must demonstrate that the wagons it is using are operated and maintained in accordance with the rules in force, whether they are Community wagons (cf., in particular, wagons TSI) or national wagons.
- Accordingly, the railway undertakings are being asked to clarify, in the light of their safety management arrangements, the system and procedures which they are putting in place to ensure that the mixed use of wagons from different keepers does not jeopardise rail safety.
- It is expected that the Agency, after evaluating the procedures put in place by the railway undertakings for managing their relations with the keepers, will be in a position to make a recommendation, if necessary, on the establishment of a certification system for keepers.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2004/49/EC on safety on the Community's railways
(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 71(1) thereof,

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁶,

Whereas:

- (1) With a view to pursuing the efforts to create a single market in rail transport services, the European Parliament and the Council have adopted Directive 2004/49/EC⁷ establishing a common regulatory framework for railway safety.
- (2) Article 14 of Directive 2004/49/EC has established a common procedure for authorising the placing in service of rolling stock. However, experience has shown that the implementation of such a procedure at national level is often complicated and subject to national requirements that are different and lacking in transparency, or are even repetitive. Consequently, this procedure poses a major obstacle to the creation of new railway undertakings, particularly in the freight sector. Steps should therefore be taken to clarify the procedure for certifying the existing rolling stock and defining the relevant limits and implementing rules. In particular, in the spirit of the principle of mutual recognition, measures should be taken, involving the placing of limits on the number of elements that the competent authority may examine, so as to make it easier to obtain an entry-into-service authorisation in a Member State other than the one which issued the initial authorisation.

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 164, 30.4.2004, p. 44. Corrected version in OJ L 220, 21.6.2004, p. 3.

- (3) To this end, all of the technical and safety rules in force in each Member State should be classified under three groups and the results of this classification presented in a reference document. The first group should cover the international rules along with any national rules that have been declared equivalent and in respect of which a check carried out in a single Member State is sufficient in railway safety terms. The second group should cover all other national rules as well as rules that have not yet been classified. The third group should cover the rules that are necessary to ensure technical compatibility between the rolling stock featuring in the authorisation application and the envisaged infrastructure.
- (4) The European Railway Agency, set up under Regulation (EC) No 881/2004⁸, has a mandate to develop technical specifications for interoperability (TSIs), and must therefore, as a first step, examine the existing national technical rules. Furthermore, under Directive 2004/49/EC, it must publish the national safety rules. Lastly, it must harmonise the criteria for the safety certification of the railway undertakings – a task that will also include requirements governing the acceptance of the rolling stock used by these undertakings. Consequently, the Agency is the most appropriate body to devise the abovementioned reference document.
- (5) Following developments at international level and, in particular, following the entry into force of the new 1999 COTIF Convention, it is necessary to define the concept of “wagon keeper” and to specify the relationship between railway undertakings and keepers, notably in the field of maintenance.
- (6) Since the main objective of the proposed action, namely the simplification of the Community procedure for the certification of railway rolling stock, 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 set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (7) Directive 2004/49/EC provides that certain measures 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 Commission⁹.
- (8) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory control procedure for measures of general scope intended to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing them by the addition of new non-essential elements.
- (9) In particular, the Commission should be authorised to revise and adapt Annexes, to adopt and revise common safety measures and common safety objectives, and also to establish a maintenance certification system for keepers. Since these measures are of general scope and are designed to amend non-essential elements of Directive 2004/49/EC or to supplement it by the addition of new non-essential elements, they

⁸ OJ L 164, 30.4.2004, p 1.

⁹ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

should be adopted in accordance with the regulatory control procedure provided for in Article 5a of Decision 1999/468/EC.

(10) Directive 2004/49/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2004/49/EC is amended as follows.

1) The following definition is added to Article 3:

"s) 'keeper' means the person or entity who, being the owner of a vehicle or having the right to dispose of it, exploits the vehicle economically in a permanent manner as a means of transport."

2) In Article 4(4) the term 'wagon operator' is replaced by 'wagon keeper'.

3) Article 5(2) is replaced by the following:

"Before 30 April 2009, Annex I shall be revised, particularly with a view to incorporating therein the CSI common definitions and the common methods for calculating the cost of accidents. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

4) Article 6 is amended as follows:

a) Paragraph (1) is replaced by the following:

"1. An initial series of CSMs covering, as a minimum, the methods described in paragraph 3(a) shall be adopted by the Commission before 30 April 2008. They shall be published in the *Official Journal of the European Union*.

A second series of CSMs covering the remaining methods described in paragraph 3 shall be adopted by the Commission before 30 April 2010. They shall be published in the *Official Journal of the European Union*.

These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

b) Paragraph (4) is replaced by the following:

"4. The CSMs shall be revised at regular intervals, taking into account the experience gained from their application and the global development of railway safety and the obligations on Member States as laid down in Article 4(1). This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

5) Article 7 is amended as follows:

a) In paragraph (3), the first and second indents are replaced by the following:

"The first set of draft CSTs shall be based on an examination of existing targets and safety performance in the Member States and shall ensure that the current safety performance of the rail system is not reduced in any Member State. They shall be adopted by the Commission before 30 April 2009 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a).

The second set of draft CSTs shall be based on the experience gained from the first set of CSTs and their implementation. They shall reflect any priority areas where safety needs to be further improved. They shall be adopted by the Commission before 30 April 2011 and shall be published in the *Official Journal of the European Union*. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

b) Paragraph (5) is replaced by the following:

"5. The CSTs shall be revised at regular intervals, taking into account the global development of railway safety. This measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

6) Article 10 is amended as follows:

a) In paragraph (1), the second subparagraph is replaced by the following:

"The purpose of the safety certificate is to provide evidence that the railway undertaking has established its safety management system and can meet requirements laid down in TSIs and other relevant Community legislation and in national safety rules in order to control risks and provide transport services on the network in complete safety."

b) In paragraph (2), point (b) is replaced by the following:

"(b) certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the supply of its services on the relevant network in complete safety. These requirements may concern the application of the TSIs and national safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate the rolling stock used by the railway undertaking. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV."

- (7) Article 14 is replaced by the following:

“Article 14

Placing in service of existing stock

1. Rolling stock that has been authorised to enter into service in one Member State under Article 10 shall be the subject of authorisation to enter into service in any other Member State pursuant to this Article, if such authorisation is required by the Member State(s) concerned.

However, in the case of rolling stock bearing an EC declaration of verification, Article 14(8) of Directive .../..EC (*) [*Directive on the interoperability of the rail system*] shall apply.

2. The applicant shall submit to the competent safety authority a complete technical file on the rolling stock or type of rolling stock together with details of planned use on the network. The file shall contain the following information:
 - a) documentary evidence that the placing in service of the rolling stock has been authorised in another Member State together with documentation on the procedure followed in order to show that the rolling stock complied with the safety requirements in force;
 - b) the technical data, the maintenance programme and the operational characteristics;
 - c) the records that show the rolling stock’s history of operation, maintenance and, where applicable, technical modifications undertaken after the authorisation;
 - d) evidence on technical and operational characteristics that shows that the rolling stock is compatible with the infrastructures and fixed installations (energy supply system, signalling and control command system, track gauge and infrastructure gauges, maximum permitted axle load and other constraints of the network).
3. The information referred to in paragraph 2(a) and (b) cannot be called into question by the safety authority, save where the latter is able to demonstrate the existence of a safety risk. After the adoption of the reference document referred to in Article 14a, the safety authority may not invoke in this regard any Group A rule listed in this document.
4. The safety authority may ask for additional information to be supplied, for risk analyses to be carried out or for tests to be conducted on the network in order to verify that the information referred to in paragraph 2(c) and (d) complies with the national rules in force as notified to the Commission pursuant to Article 8 of the present Directive or to Article 16 of Directive .../..EC [*Directive on the interoperability of the rail system*]. However, after the adoption of the reference document referred to in Article 14a of the present

Directive, it will only be possible to carry out such verification on the basis of the national rules relating to Group B or C or featuring in this document.

The safety authority shall define, in agreement with the applicant, the scope and content of the additional information, the risk analyses or the tests requested. As far as the tests are concerned, the safety authority shall make representations to the infrastructure manager to ensure that they can take place within three months of the request.

5. All applications for an entry-into-service authorisation submitted in accordance with this Article shall be the subject of a decision by the safety authority, to be taken as soon as possible and not later than:
 - a) four months after submission of the technical dossier referred to in paragraph 2;
 - b) where applicable, two months after provision of the additional information or risk analyses requested by the safety authority pursuant to paragraph 4;
 - c) where applicable, two months after provision of the results of the tests requested by the safety authority pursuant to paragraph 4;

In the absence of a decision within the prescribed time limits, the rolling stock in question shall be deemed to have been authorised.

The entry-into-service authorisation may stipulate conditions of use and other restrictions.

6. Any negative decision taken by the competent safety authority shall be duly substantiated, and the applicant may, within a period of one month from notification, request that the decision be reviewed. The safety authority shall then have a month to confirm or reverse its decision. If its decision remains negative, the matter may be brought before the inspection body pursuant to Article 30 of Directive 2001/14/EC.
7. Whenever an item of rolling stock is due to be placed in service pursuant to this Article, the Agency may be approached with a request for technical advice pursuant to Article 8a of Regulation (EC) No 881/2004.
8. Member States may issue entry-into-service authorisations for existing items of rolling stock covering a series of rolling stock. To that end, the safety authorities shall notify the applicant of the procedure to be followed."

- (8) The following Articles 14a and 14b are inserted:

"Article 14a

Classification of the national rules

1. In order to facilitate the procedure for authorising the entry into service of the existing rolling stock referred to in Article 14, the national rules shall be assigned to three groups pursuant to Annex VI.
2. The Agency shall facilitate the allocation of the national rules in order to permit the adoption of a reference document pursuant to Article 8a of Regulation (EC) No 881/2004. The national authorities shall cooperate with the Agency in this task.
3. On the basis of the Agency's recommendations and in accordance with the procedure described in Article 27(2), the Commission shall adopt the reference document as well as any decision to update.

Article 14b

Maintenance of the rolling stock

1. Whenever an item of rolling stock is placed in service, a legal entity to be responsible for maintenance shall be designated for each vehicle. This entity may be the railway undertaking itself, one of its subcontractors or the keeper of the vehicle.
2. In order to demonstrate, in the context of the safety certification provided for in Article 10, that the rolling stock is being maintained in accordance with the requirements in force, the railway undertaking shall give details of the legal entities on which responsibility for maintenance has been conferred and shall provide documentation explaining the procedures applied by those entities in carrying out such maintenance.
3. Where a railway undertaking uses wagons belonging to several keepers and where responsibility for maintenance has been conferred on those keepers, the railway undertaking shall put in place the procedures needed to verify compliance with the requirements in force. Where appropriate, the Commission shall establish a maintenance certification system for keepers based on a recommendation from the Agency. This measure, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

- (9) Article 26 is replaced by the following:

"Article 26

Adaptation of the Annexes

The Annexes shall be adapted to scientific and technical progress. This measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory control procedure referred to in Article 27(2a)."

- (10) In Article 27, the following paragraph 2a is inserted:

"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."

- (11) Annex VI, the text of which is reproduced in the Annex to this Directive, is hereby added.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [*24 months after the entry into force of this Directive*]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these provisions, the latter shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down 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.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

Parameters to be checked in conjunction with the placing in service of existing rolling stock and the classification of the national rules

1. LIST OF PARAMETERS

(1) Background information

- information relating to the national legal framework in force
- special national conditions
- maintenance book
- operational log book

(2) Infrastructure characteristics

- pantographs
- on-board supply equipment and electromagnetic compatibility impact
- loading gauge
- miscellaneous safety equipment, e.g. control and command, track-to-train communication systems

(3) Rolling stock characteristics

- vehicle dynamics
- vehicle superstructure
- draw and buffer gear
- bogie and running gear
- wheel set / wheel set bearing
- brake equipment
- technical systems requiring monitoring; e.g. compressed air system
- front / side windows
- doors
- devices for passing
- control systems (software)

- drinking water and wastewater systems
- environmental protection
- fire protection
- health and safety in the workplace
- tank and tank wagons
- pressure discharge containers
- load securing
- marking
- welding techniques

2. CLASSIFICATION OF THE RULES

The national rules relating to the parameters identified above are attributed to one of the following three groups. Rules and restrictions of a strictly local nature are not involved; their verification involves checks to be put in place by mutual agreement between the railway undertakings and the infrastructure managers.

Group A

Group A covers:

- international standards,
- national rules deemed to be equivalent, in railway safety terms, to national rules of other Member States.

Group B

Group B covers all rules that do not fall within the scope of Group A or Group C, or that it has not yet been possible to classify in one of these groups.

Group C

Group C covers rules that are strictly necessary and are associated with technical infrastructure characteristics, in order to ensure safe and interoperable use in the network concerned (e.g. the loading gauge).