Commission Regulation (EU) 2019/554 of 5 April 2019 amending Annex VI to Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community (Text with EEA relevance)

COMMISSION REGULATION (EU) 2019/554

of 5 April 2019

amending Annex VI to Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 31 thereof,

Whereas:

(1) Point 8 of Annex VI to Directive 2007/59/EC establishes the level of language skills to be fulfilled by train drivers, so that they can communicate actively and effectively in routine, degraded and emergency situations. Moreover, it gives the possibility of exempting the train drivers from the required level of language skills in sections between the borders and the stations situated close to the borders and designated for cross border operations. In order to enhance flexibility without any negative impact on safety, it is necessary to amend point 8 of Annex VI to Directive 2007/59/EC.

(2) The requirements specified in point 8 of Annex VI to Directive 2007/59/EC are not considered to be the most effective means of ensuring a high level of safety while allowing efficient operation of the rail network. This is particularly true in case of disruptions on the railway network of a Member State requiring the use of deviation routes through neighbouring Member States. In those cases, train drivers with specific language skills are sought at short notice to drive on the deviation routes, hence ensuring the continuity of operations.

(3) It is necessary to explore alternative options to the current language requirements allowing for greater flexibility but ensuring at least an equivalent level of safety with the current requirements. Those options could consist in more targeted language requirements (i.e. with focus on rail specific terminology), or to a lower general language level combined with alternative means to support effective communication. They should ensure an active and effective communication in routine, degraded and emergency situations.

(4) In order to obtain reliable results on the effectiveness of the alternative options, it is necessary to test the alternative means in day-to-day operations. Therefore, the impact of those alternative options should be examined under real conditions in the framework of pilot projects conducted in two phases. In the first phase, infrastructure managers and railway undertakings should carry out pilot projects using alternative means and involving train drivers who fulfil the requirements under point 8 of Annex VI to Directive 2007/59/EC. If in the first phase those pilot projects prove that the alternative means effectively complement the language skills of the driver, then in the second phase the pilot projects should be carried out with train drivers having a lower level of language skills than those required in point 8 of Annex VI to Directive 2007/59/EC and using the alternative means proved effective in the first phase. A derogation should be requested jointly by the railway undertaking and infrastructure manager to the Commission for carrying out the second phase.

(5) The respective roles and responsibilities of all parties involved, such as the Commission, national safety authorities and the European Union Agency for Railways, in the process of submitting and assessing the requests for derogation as well as carrying out the pilot projects should be clarified.

(6) The involvement of the national safety authorities is crucial in the process of submitting the requests for derogation. Their positive opinion should accompany the application submitted jointly by the rail undertaking and infrastructure manager.

(7) The preparation and assessment of impacts of the envisaged pilot projects require time. It is however necessary to have a legal ground/justification for more flexibility as regards the language requirements as soon as possible, in order to carry out the pilot projects as soon as possible in order to be prepared for possible disruptions on the EU rail network. For that reason, the new rules should be applicable without the need of further transposition by the Member States.

(8) Point 8 of Annex VI consists of a self-standing set of rules that can be understood without recourse to other parts of that Annex or to Directive 2007/59/EC. Therefore, this amending act should provide for directly applicable rules.

(9) For reasons of clarity, the whole point 8 should be replaced, although the amendments do not concern the whole point.

(10) For the staff performing safety-critical tasks involving a direct interface between a railway undertaking and an infrastructure manager, the professional qualifications and health and safety conditions at work are defined in Commission Decision 2012/757/EU[(2)]. The requirements of Decision 2012/757/EU are complementary to those set out in Annex VI of Directive 2007/59/EC.

(11) In accordance with Article 31 of Directive 2007/59/EC, the bodies represented in the European Social Dialogue Committee Railways were consulted.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 32(1) of Directive 2007/59/EC,

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) 2019/554. (See end of Document for details)*

Article 1

Point 8 of Annex VI to Directive 2007/59/EC is replaced by the following:

8. LANGUAGE

(1) Drivers who have to communicate with the infrastructure manager on critical safety issues must have the necessary language skills in at least one of the languages indicated by the infrastructure manager concerned. Their language skills must allow them to communicate actively and effectively in routine, degraded and emergency situations. They must be able to use the messages and communication method specified in the "Operations and traffic management" TSI.

(2) In order to satisfy the requirements provided for in paragraph 1, drivers must be able to understand (both orally and in writing) and to communicate (both orally and in writing) according to level B1 of the Common European Framework of Reference for Languages (CEFR) established by the Council of Europe.

(3) In case where the train operations take place in sections between the borders and the stations situated close to the borders and designated for cross border operations, drivers of trains operated by a railway undertaking may be exempted by the infrastructure manager from the requirements of paragraph 2, provided that the following procedure is applied:

(a) the railway undertaking shall request the infrastructure manager for a derogation with regard to the concerned drivers. In order to ensure a fair and equal treatment of the applicants, the infrastructure manager shall apply to each submitted request for derogation the same assessment procedure, which shall be part of the network statement;

(b) the infrastructure manager shall grant a derogation if the railway undertaking demonstrates that it has made sufficient arrangements for ensuring communication between the concerned drivers and the staff of the infrastructure manager in routine, degraded and emergency situations, as provided for in paragraph 1;

(c) railway undertakings and infrastructure managers shall ensure that the concerned staff is aware of those rules and arrangements and receive appropriate training through their safety management systems.

(4) One or several railway undertakings in cooperation with one or several infrastructure managers ("the applicants") may carry out pilot projects to test alternative means of ensuring the effective communication required by paragraph 1. The following procedure shall apply:

(a) the applicants shall identify the parts of the network and nature of the services concerned, the initial duration of the pilot project and in particular:

i) specify the scope of the pilot project,

ii) indicate what alternative language competences they propose to apply,

iii) describe which additional tools they propose to use to support communication in routine, degraded and emergency situations,

iv) demonstrate how the alternative language competences and additional tools ensure at least an equivalent level of safety to full compliance with the requirements of paragraph 1, when integrated in their respective Safety Management Systems[3],

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v) explain how they shall implement the pilot project in their Safety Management System, including training programs and documentation of the results, and

vi) consult the representatives of the concerned staff in the process of preparing the application.

(b) The applicants shall request the opinion of the concerned national safety authority/ authorities that issued their single safety certificate(s) or safety authorisation(s), and of the European Union Agency for Railways, where it is the safety certification body ("the authorising entity or entities"). Each authorising entity shall issue an opinion on whether the alternative means ensure at least an equivalent level of safety to full compliance with the requirements of paragraph 1, within 60 days from the day the last authorising entity concerned has received the request. In case several authorising entities are involved, they are encouraged to work together and ensure coordination.

The opinions shall assess in particular whether the following conditions are fulfilled:

i) the proposed alternative language competences and other tools for communication are sufficient to ensure effective communication between the concerned drivers and the staff of the infrastructure manager in routine, degraded and emergency situations.

ii) the safety management systems of the applicants have been adapted to using alternative language competences and other tools for communication.

iii) the applicants have provided evidence that these tools have been tested under operational conditions involving drivers fulfilling the language requirements of paragraph 2.

iv) all concerned staff of the railway undertaking and infrastructure manager have received appropriate training through their safety management systems.

In the event of diverging opinions, the provisions of point (5) second subparagraph shall apply.

(c) The applicants shall jointly submit to the Commission an application for derogation from paragraph 2, including the opinions of the authorising entity or entities and the detailed description of the pilot project on which the opinions are based. Alternatively, the participants in the project can designate a coordinator among them, who may submit the joint application on behalf of all participants in the project.

(5) The Commission shall, within 60 days after receiving a complete application, grant a derogation from paragraph 2:

(a) where the opinions of the authorising entity or entities are positive; and

(b) where it is demonstrated that equal and non-discriminatory treatment of all applications as well as legal coherence at Union level is ensured.

In the event of diverging opinions, or a failure of one or more authorising entities to deliver an opinion within the prescribed time limit, the applicants may request the Commission to find a mutually acceptable solution, in cooperation with the parties involved. If no mutually acceptable solution can be found within 90 days after receiving a request for derogation, the pilot project shall be deemed to be refused. The Commission may request the opinion of the European Union Agency for Railways, and shall do so where the opinion of each authorising entity is negative.