Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast) (Text with EEA relevance)

DIRECTIVE (EU) 2016/798 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 May 2016

on railway safety

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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 ordinary legislative procedure[(3)],

Whereas:

(1) Directive 2004/49/EC of the European Parliament and of the Council[(4)] has been substantially amended. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Directive 2004/49/EC established a common regulatory framework for railway safety through harmonisation of the content of safety rules, the safety certification of railway undertakings, the tasks and roles of the national safety authorities and the investigation of accidents. Nevertheless, in order to pursue efforts to further develop a single European railway area, it is necessary to thoroughly revise Directive 2004/49/EC.

(3) Metros, trams and other light rail systems are subject in many Member States to local technical requirements and are excluded from the scope of Directive (EU) 2016/797 of the European Parliament and of the Council[(5)]. In order to facilitate the implementation of this Directive and of Directive (EU) 2016/797, both Directives should have the same scope. Therefore, such local systems should be excluded from the scope of this Directive.

(4) Insofar as some concepts referred to in this Directive may be usefully applied to metros and other local systems, Member States should be permitted to decide, without prejudice to the scope of this Directive, to apply certain provisions of this Directive that they

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consider to be appropriate. In such cases, Member States should be allowed not to apply obligations such as the notification of national rules and reporting.

(5) Safety levels in the Union rail system are generally high especially when compared to road transport. Railway safety should be generally maintained and, when practicable, continuously improved, taking into account technical and scientific progress, and the development of Union and international law. Priority should be given to the prevention of accidents. The impact of human factors should also be taken into consideration.

(6) If a Member State introduces a higher level of safety, it should ensure that the rule adopted does not create a barrier to interoperability or result in discrimination.

(7) The main actors in the Union rail system, infrastructure managers and railway undertakings should bear full responsibility for the safety of the system, each for their own part. Whenever appropriate, they should cooperate in implementing risk control measures.

(8) Without prejudice to the responsibility of infrastructure managers and railway undertakings for developing and improving railway safety, the other actors, such as entities in charge of maintenance, manufacturers, carriers, consignors, consignees, fillers, unfillers, loaders, unloaders, maintenance suppliers, keepers, service providers and contracting entities, should not be precluded from assuming responsibility for their products, services and processes. Each actor in the Union rail system should be responsible, vis-à-vis the other actors, for complete and truthful communication of all relevant information to check whether vehicles are fit to run. This concerns, in particular, information on the status and history of a given vehicle, maintenance files, traceability of loading operations, and consignment notes.

(9) Each railway undertaking, infrastructure manager and entity in charge of maintenance should ensure that its contractors and other parties implement risk control measures. To that end, each railway undertaking, infrastructure manager and entity in charge of maintenance should apply the methods for monitoring set out in the common safety methods (‘CSMs’). Their contractors should apply this process through contractual arrangements. In view of the fact that such arrangements are an essential part of the safety management system of railway undertakings and infrastructure managers, railway undertakings and infrastructure managers should disclose their contractual arrangements on request of the European Union Agency for Railways (‘the Agency’) established by Regulation (EU) 2016/796 of the European Parliament and of the Council[6] or the national safety authority in the context of supervision activities.

(10) Member States should promote a culture of mutual trust, confidence and learning in which the staff of railway undertakings and infrastructure managers are encouraged to contribute to the development of safety while confidentiality is ensured.

(11) Common safety targets (‘CSTs’) and CSMs have been gradually introduced to ensure that safety is maintained at a high level and, when necessary and where reasonably practicable, improved. They should provide tools for the assessment of the safety and performance of operators at Union level as well as in the Member States. Common

safety indicators ('CSIs') have been established in order to assess whether systems comply with the CSTs and to facilitate the monitoring of railway safety performance.

(12) National rules, which are often based on national technical standards, are being gradually replaced by rules based on common standards, established by CSTs, CSMs and technical specifications for interoperability ('TSIs'). In order to eliminate the obstacles to interoperability, the volume of national rules, including operating rules, should be reduced as a consequence of extending the scope of the TSIs to the whole of the Union rail system and of closing open points in the TSIs. For that purpose, Member States should keep their system of national rules updated, delete obsolete rules and inform the Commission and the Agency thereof without delay.

(13) National rules should be drafted and published in such a way that any potential user of a national network can understand them. However, such rules often refer to other documents such as national standards, European standards, international standards or other technical specifications which might be partly or fully protected by intellectual property rights. It is appropriate, therefore, that the obligation of publication should not apply to any documents referred to directly or indirectly in the national rule.

(14) National rules often include requirements which are partly relevant for both interoperability and safety purposes. Safety being an essential requirement of Directive (EU) 2016/797, a national rule may be relevant for Directive (EU) 2016/797 and for this Directive. The distinction between the terms 'national safety rules' and 'national technical rules' as defined in Directive 2004/49/EC and Directive 2008/57/EC of the European Parliament and of the Council[(7)] respectively should therefore be removed and replaced by the concept of 'national rules' which are to be notified under Directive (EU) 2016/797 and/or this Directive. National rules are to be notified under Directive (EU) 2016/797 mainly when they relate to the placing on the market or placing in service of structural subsystems. They should be notified under this Directive when they relate to the operation of the Union rail system, or to the specific subjects of this Directive, including the role of the actors, safety certification, safety authorisation and accident investigation.

(15) In view of the gradual approach to eliminating obstacles to the interoperability of the Union rail system and of the time consequently required for the adoption of TSIs, steps should be taken to avoid a situation where Member States adopt new national rules or undertake projects that increase the diversity of the present system except in the specific situations as provided for in this Directive. The safety management system is the recognised tool for controlling risks, whereas infrastructure managers and railway undertakings are responsible for taking immediate corrective action to prevent recurrence of accidents. Member States should avoid establishing new national rules immediately after an accident, unless such new rules are required as an urgent preventive measure.

(16) Train control and signalling systems play a critical role in ensuring railway safety. In this regard, the deployment of the European Rail Traffic Management System (ERTMS) on the Union railway network constitutes an important contribution to improving safety levels.

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(17) In carrying out their duties and fulfilling their responsibilities, infrastructure managers and railway undertakings should implement a safety management system meeting Union requirements and containing common elements. Information on safety and on the implementation of the safety management system should be submitted to the Agency and to the national safety authority in the Member State concerned.

(18) Through its processes, the safety management system should ensure that human capabilities and limitations and the influences on human performance are addressed by applying human factors knowledge and using recognised methods.

(19) Rail freight services should also encompass the transport of dangerous goods. However, a distinction should be made between the objective of this Directive, which is to maintain and, where possible, improve the safety of the Union rail system, and that of Directive 2008/68/EC of the European Parliament and of the Council[8], which is, mainly, to regulate the classification of substances and the specification of their containments, including the safe loading, unloading and use of the containments within the existing railway system. Consequently, without prejudice to Directive 2008/68/EC, the safety management system of the railway undertakings and of the infrastructure managers should duly take into consideration the potential additional risks generated by carrying dangerous goods containments.

(20) All railway undertakings should be subject to the same safety requirements in order to ensure a high level of railway safety and equal conditions. A railway undertaking should hold a safety certificate as a condition of being allowed to obtain access to the railway infrastructure. The safety certificate should provide evidence that the railway undertaking has established its safety management system and that it is able to comply with the relevant safety standards and rules for the relevant area of operation. When the Agency issues a single safety certificate to a railway undertaking having an area of operation in one or more Member States, it should be the only authority to assess whether the railway undertaking has correctly established its safety management system. The national safety authorities concerned by the intended area of operation should be involved in assessing the requirements laid down in the relevant national rules.

(21) Harmonised methods based on Directive 2004/49/EC have been established, to be applied to the actors in the Union rail system and the national safety authorities, on monitoring, conformity assessment, supervision and risk evaluation and assessment. That regulatory framework is sufficiently mature to move progressively towards a ‘single safety certificate’ valid within the area of operation of the railway undertaking concerned.

(22) In order to make the procedures for issuing single safety certificates to railway undertakings more efficient and coherent, it is necessary to assign the Agency a central role in the issuing of such certificates. Where the area of operation is limited to one Member State, the applicant should have the possibility of choosing whether to submit its application for a single safety certificate, through the one-stop shop referred to in Regulation (EU) 2016/796, to the national safety authority of that Member State or to the Agency. The choice made by the applicant should be binding until the application

is completed or terminated. This new regime should make the Union rail system more effective and efficient by reducing administrative burdens for railway undertakings.

(23) The Agency and the national safety authorities should cooperate and share competences as appropriate for the issuing of single safety certificates. Clear procedural and arbitration provisions should be established to address situations where the Agency and the national safety authorities disagree on assessments made in relation to the issuing of single safety certificates.

(24) The new allocation of functions and tasks between national safety authorities and the Agency concerning the issuing of safety certificates should be done efficiently. To that end, cooperation agreements between the Agency and the national safety authorities should be established.

(25) In particular, cooperation agreements are required to take account of the specific geographical and historical situation of certain Member States, while ensuring the proper functioning of the internal market. Where operation is limited to networks requiring specific expertise for geographical or historical reasons, and where such networks are isolated from the rest of the Union rail system, it should be possible for the applicant to fulfil the necessary formalities locally by interacting with the relevant national safety authorities. To that end, for the purposes of reducing administrative burdens and costs, it should be possible for the cooperation agreements to be concluded between the Agency and the relevant national safety authorities to provide for an appropriate allocation of tasks, without prejudice to the ultimate responsibility of the Agency in issuing the single safety certificate.

(26) The railway networks located in the Baltic States (Estonia, Latvia and Lithuania) have 1520 mm track gauge, which is the same as in neighbouring third countries, but different from that of the main rail network within the Union. These Baltic networks have inherited common technical and operational requirements which provide de facto interoperability between them, and, in this respect, the safety certificate issued in one of these Member States might be extended to the rest of these networks. To facilitate the efficient and proportionate allocation of resources for safety certification, and to reduce the financial and administrative burden for the applicant in such cases, the specific cooperation arrangements between the Agency and relevant national safety authorities should include, where necessary, the possibility of contracting tasks to these national safety authorities.

(27) This Directive should not lead to a reduced level of safety and should not increase costs in the Union's railway sector. To that end, the Agency and the national safety authorities should take full responsibility for the single safety certificates they issue, assuming in particular contractual and non-contractual liabilities in that regard. In the event of a judicial inquiry involving the Agency or its staff, the Agency should cooperate fully with the competent authorities of the Member State or States concerned.

(28) A clear distinction should be drawn between, on the one hand, the immediate responsibility of the Agency and the national safety authorities for safety deriving from the issuing of the safety certificates and safety authorisations and, on the other, the national safety authorities' task of providing a national regulatory framework and