

Memorandum of Understanding

Establishing the basic principles
of a common system of certification of
entities in charge of maintenance
for freight wagons

14 May 2009

Explanatory note

Reference documents

Ref.	Document Title	Document ref.
/1/	ECM Certification – Draft Agency Proposal for the Maintenance System (Package of 8 documents)	Version 0.8 from 07/08/2008
/2/	DIRECTIVE 2008/57/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the interoperability of the rail system within the Community	ID
/3/	NVR Decision	2007/756
/4/	Revised Safety Directive	RSD
/5/	CMW preliminary draft final report	Version 1.0 from 13/08/2008

This note is intended to be read in conjunction with Memorandum of Understanding establishing the basic principles of a common system of certification of entities in charge of maintenance for freight wagons signed on 14 May 2009.

1. Aim

To provide additional background information and answers to frequently asked questions (FAQ) likely to be raised by Member States (MS) or National Safety Authorities (NSA) when they are considering whether to sign the MoU to establish a certification system for certifying entities in charge of maintenance.

2. Legal background

A new Article 14a is inserted in the revised Railway Safety Directive (RSD). This states that *'Each vehicle, before it is placed into service or used on the network, shall have an entity in charge of maintenance (ECM) assigned to it and this entity shall be registered in the National Vehicle Register (NVR) in accordance with Article 33 of the Railway (Interoperability) Directive'*.

A railway undertaking (RU), infrastructure manager (IM), or keeper could be an ECM.

Article 14a also places a duty on ECMs to ensure that the vehicles for which they are in charge of maintenance are kept in a safe state of running by

means of a system of maintenance and requires the Commission, based on a recommendation from the European Railway Agency (ERA), to adopt a measure establishing a system of certification for ECMs.

However, in advance of the ECM measures specified in the revised RSD coming into effect, and for freight vehicles only, Member States can elect to sign up to an interim voluntary certification system that has been developed by a group of NSA representatives, the (ERA) and DG TREN. The certification requirements and ECM maintenance system is described in the MoU and the Annexes respectively.

MS may:

- i) Sign the MoU in the coming months and establish systems necessary so that an ECM can elect to become certified on a voluntary basis or;

Wait, and:

- ii) Establish the scheme to certificate an ECM through the transposition of the revised RSD in 2012 and the Commission Decision on ECM certification expected in 2011.

MS will need to take into account a range of factors in reaching a decision.

3. Frequently asked questions (FAQs) for MS to consider when deciding to sign or not to sign the MoU

FAQ 1 - Is it a mandatory requirement for a MS or an NSA to sign the MoU and therefore put in place a certification scheme for ECM before transposing the revised RSD?

Signing the MoU is not a mandatory requirement. However, there are potential benefits for both MS and stakeholders such as RUs, Keepers and ECMs in establishing the certification scheme in advance of the revised RSD transposition. The benefits are related to the facilitation of development of International freight transport by rail.

Indeed, it will not only provide a useful tool for the RU and IM in their safety certification/authorisation to explain how the maintenance of the wagons they are using is ensured, but also facilitate the preparation of trains and the exchange of wagons.

FAQ 2 - If a MS decides to sign the MoU would it need to establish a legal basis for the scheme described by the MoU?

In advance of the revised RSD coming into force and its Article 14a being fully implemented, there is no legal basis in EC law for the ECM certification

system. This factor would have to be considered by each MS before agreeing to sign the MoU.

Note: Most MS / NSA involved in the working party indicated that it will be necessary to create or use an existing national legal basis to support the voluntary ECM system established through the MoU.

FAQ 3 – If a MS decides to sign the MoU and requires a legal basis then how long would it take to create the ECM certification system?

Typically this process could take between six months and one year and would affect the timescales for establishing an ECM certification scheme. In some MS the activities to put in place the certification scheme could be undertaken in parallel to achieving a legal basis. In other MS these activities may have to take place after the legal basis has been agreed.

FAQ 4 – What sort of factors would a MS take into consideration before agreeing to sign the MoU?

Typically a MS would have to consider:

- The demand from existing keepers (the sector), RUs / IMs to establish a certification scheme in advance of transposing the revised RSD,
- The benefits for the MS and the sector of establishing a scheme in advance of the revised RSD requirements. The benefits are related to the facilitation of development of International freight transport by rail,
- The resource implications for the MS or NSA to establish the scheme before transposing the revised RSD. This involves either certifying an ECM directly, a recognised or accredited body to certify ECMs,
- If delegating the task to the NSA the resource implications for the NSA to process applications to certificate an ECM and undertake the ongoing monitoring activities compared to the resource implications and costs to delegate these tasks to an accredited or recognised body,
- The legal basis for the NSA to be appointed to do the work and where existing legislation exists,
- Whether existing legislation for RUs / IMs requires amending to accommodate ECMs certificated against the voluntary scheme?

Note: any changes made to existing national legislation will need to continue to comply with current EC law (e.g. Article 4 of the existing Railway Safety Directive). See FAQ 9

- Whether a regime is needed for charging an ECM to become certified and monitored
- Acknowledgement that mutual acceptance means mutual recognition of maintenance regimes in use in other MS

FAQ 5 – Can the accreditation and assessment tasks proposed through the MoU continue after the Directive is transposed?

The transposition of the Directive may not lead to any change in these aspects

FAQ 6 - Does the MS or the NSA sign the MoU?

Either can sign the MoU, depending on national legal arrangements.

FAQ 7 - If a MS does not sign the MoU then what are the implications for keepers who want to be certified as an ECM in that MS?

A keeper will have to wait until the MS establishes a certification scheme for ECM through transposition of the revised RSD. This will most probably not be available until 2012.

The keeper will be able to apply for ECM certification in a MS that has signed the MoU but the keeper must understand that the certificate is not transferable into its own MS and consequently the RUs established in its own MS could not recognise any value to the certificate. See FAQ 8.

FAQ 8 - If a MS does not sign the MoU then what are the implications for ECMs who are certified in other MS and wish to operate across the borders and on the network of MS who have not signed the MoU?

An ECM certificate in a MS that has signed the MoU will probably not be mutually recognised by a MS who has not signed the MoU.

Existing arrangements will apply in that MS whereby a RU / IM will have to satisfy itself that wagons not owned or maintained by itself are safe for operations.

FAQ 9 – Do existing MS legislation and processes to issue safety certificates to RU's and safety authorisations to IM's need to be modified to accommodate the new relationship between ECM and RUs / IMs?

If a MS signs the MoU and establishes the voluntary ECM certification system, it will need to check whether existing legislation for the issuing of safety certificates and safety authorisations requires amendment to reflect the new relationship between RU or IM and an ECM. In particular the framework of the safety certification/authorisation application needs to recognise the use of a certified ECM as sufficient proof to explain that maintenance of the wagons used by the RU/IM is well managed. The RU or IM who is contracting directly or indirectly with an ECM may need to modify their existing SMS to reflect the relationship change.

At present RUs / IMs audit keepers to establish that freight vehicles are maintained in accordance with the maintenance file, and are safe to be operated. The ECM certificate will, in the future, provide a level of assurance to the RU / IM that these activities are being undertaken. The level of assurance and limits of liability are described in the revised RSD and MoU Annexes.

FAQ 10 – Does the ECM certification system include the ERA work stream on certification of maintenance workshops?

No, but there are some intended similarities between the two certification schemes.

The recommendation on certification of maintenance workshops has been requested by the Agency regulation 2004/881.

Nevertheless functional links between ECMs and Maintenance Workshops exist in particular at the level of transfer of information. These links have been considered by the Agency when issuing the preliminary draft of the final report in 08/2008.

The certification maintenance workshop is also a tool which may be very useful to help an ECM to ensure in their own process of certification that the performance of the maintenance workshop they are using is sufficient from a safety point of view.

The amendment to the ERA regulation (expected to be adopted by end of 2008) requests the recommendation on maintenance workshops to be consistent with responsibilities and certification mechanisms of RUs and ECMs.

FAQ 11 – Can an existing RU or IM undertake the additional task of an ECM and is additional safety certification required in this case?

Yes, the revised RSD permits an existing RU or IM to undertake the additional task of an ECM in Art 14a. During both the transitional period, when the MoU is used to certify ECM, and in terms of existing safety certification holders, there are two cases :

i) Wagons where maintenance management is performed by an ECM who is also an RU/IM, and is the sole user of these wagons, does not require further certification. This is delivered through recognition of the Safety Certificate / Safety Authorization having the value of the ECM certification for these wagons.

ii) For an existing RU / IM who is currently managing maintenance on wagons which are not only operated by itself may ask to be certified as ECM according to the MoU and be recognized as a certified ECM. This additional certification process must take into account that many of the requirements have already been checked through the SMS delivery process.

FAQ 12 – How does a keeper who owns, maintains or manages a fleet of existing vehicles and is certified as an ECM become registered on the NVR if the vehicles are not interoperable or TSI compliant?

According to the Commission Decision 2007/756 the NVR is not limited to authorised interoperable vehicles but is extended to all vehicles including international traffic and domestic traffic. The field to record the ECM is compulsory.

FAQ 13 – (If the maintenance of a vehicle is managed by a certified ECM) How does an NSA or RU / IM know if a vehicle is maintained by a certified or non-certified ECM or an existing keeper?

The NVR contains a compulsory field related to the entity in charge of maintenance but does not differentiate between whether this entity is certified or not.

The MoU suggests that the Agency publishes and maintains a list of certified ECM

FAQ 14 how does the MoU and its annexes apply to non-EU Member States?

OTIF have proposed to produce some additional clarifying text in the MoU and guidelines for use by non-EU Member states (see Annex F).