

Memorandum of Understanding (MoU)

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

Brussels, 14 May 2009

1. PREAMBLE

- (1) The entry into force of the new 1999 COTIF¹ Convention on 1st July 2006 has brought in new rules governing contracts for the use of vehicles. According to its CUV appendix², wagon keepers are no longer obliged to register their wagons with a railway undertaking. The former RIV³ Agreement between railway undertakings has ceased to apply and was partially replaced on the same date by a new private and voluntary agreement the General Contract of Use (GCU)⁴ between railway undertakings and wagon keepers whereby the latter are in charge of the maintenance of their wagons. In order to reflect these changes and to make easier the implementation of Article 10 of Directive (EC) No 2004/49 (hereinafter referred to as "Railway Safety Directive") on safety certification of railway undertakings, the European Commission (hereinafter referred to as "the Commission") adopted on 13 December 2006 a proposal of modification of that Directive. This amendment was adopted on 16 December 2008 under Directive 2008/110/EC⁵. This MoU is based on that amendment.
- (2) Before a vehicle is placed in service, according to the rules for authorising new vehicles and those relating to existing vehicles, or used on the network, an Entity in Charge of its Maintenance (hereinafter referred to as "ECM") will be a mandatory requirement and is to be identified in the National Vehicle Register. A railway undertaking, an infrastructure manager or a keeper could be such an ECM.
- (3) In accordance with the revised Railway Safety Directive and for freight wagons only, the ECM shall be certified in accordance with a system to be developed by the European Railway Agency (hereinafter referred to as "the Agency") and to be adopted by the Commission. Where this ECM is a railway undertaking (RU) or an infrastructure manager (IM), this certification should be included in the procedure for safety certification or authorisation. The certificate delivered to such entity would ensure that all applicable maintenance requirements are met for any freight wagon of which it is in charge. This certificate should be valid in the whole Community and should be delivered by a body able to audit the maintenance management system set up by such entities. As freight wagons are frequently used in international traffic and as an ECM may want to use workshops established in more than one Member State, the certification body should be able to perform its controls in the whole Community.

¹ Convention concerning International Carriage by Rail (COTIF)

² Uniform Rules concerning Contracts of Use of Vehicles

³ *Regolamento Internazionale Veicoli*

⁴ The GCU website: <http://www.gcuoffice.org/spip.php?article15>

⁵ Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) (OJ L 345, 23.12.2008, p. 62)

- (4) The increasing opening of the railway traffic markets results in additional interfaces, in particular between the ECMs of freight wagons and the railways companies.
- (5) The stakeholders, as represented by ERFA⁶, CER⁷, UIC⁸ and UIP⁹ have repeatedly stated their substantial interest in a certification system for ECMs to be set up on a voluntary basis, with a view to the adoption of the certification system in accordance with Article 14a(5) of Directive 2004/49/EC. This possibility was discussed in the working group "role of the keeper" and considered to be a good solution for the transition period. This solution can be implemented by means of a Memorandum of understanding (MoU) between the appropriate authorities of the Member States of the European Union.
- (6) As railway traffic does not stop at the borders of the European Union, it would make sense, in anticipation of the intended revision of Appendix G (ATMF) of the COTIF 1999 and its adjustment to Community legislation, to extend such an agreement also to interested non EU Member States of OTIF¹⁰. This would accommodate the legitimate interest of the stakeholders in a use of freight wagons as generous as possible.

2. AGREEMENT:

The signatories conclude the following agreement:

2.1. Goal

2.1.1. Recognition:

This MoU aims at setting up a provisional voluntary system of certification of ECMs in the case of freight wagons. It establishes the principle of mutual recognition of certificates granted to ECMs.

2.1.2 Certification:

Any RU or IM, which is, as stated in its safety certificate, operating vehicles for which maintenance is carried out by an ECM certified according to this MoU, will be understood to satisfy all safety requirements concerning maintenance of those vehicles which may be imposed by any National Safety Authority (NSA) under a safety certificate or safety authorisation issued in compliance with Articles 10 or 11 of the Railway Safety Directive.

⁶ European Rail Freight Association

⁷ Community of European Railways Infrastructure Companies

⁸ International Union of Railways

⁹ International Union of Private Wagons

¹⁰ Intergovernmental Organisation for International Carriage by Rail

This is without prejudice to the responsibility, under Article 4 of the Railway Safety Directive, of railway undertakings and infrastructure managers for the safe operation of trains.

Such certification will not prevent the hauling RU or IM to do any necessary safety visual, auditory checks and measurements before starting a train. These checks are the last and most important safety means to detect any "non safe" events which may have happened during the previous trip of the vehicle or where a train preparation check has detected a lack of maintenance.

2.1.3 Common Understanding:

This MoU will support a common understanding of the role and tasks of the ECM and interfaces with other actors.

2.2. Role and tasks of the ECM

The ECM will ensure that vehicles are maintained in accordance with:

- a) the maintenance file of each vehicle;
- b) the requirements in force including maintenance rules and TSI provisions.

The ECM is responsible for following up the maintenance process and rules of a vehicle.

The tasks of the ECM and its interfaces with the actors are further developed in Annex B.

2.3. Certification of the ECM under this MoU

- 2.3.1. An ECM may be certified if it has implemented a system for maintenance which includes the requirements given by Annex B.
- 2.3.2. An ECM will be certified by a body fulfilling the requirements mentioned in Annex D.
- 2.3.3. The initial certification of the ECM and its ongoing inspection will comply with the criteria and procedures set out in Annex C. Use of the forms given in Annex E is recommended.
- 2.3.4. To obtain certification of its Maintenance System an ECM has to hold a civil liability insurance.
- 2.3.5. The cost of the certification and ongoing inspection procedure will be met by the ECMs.

2.4. Validity of certificates of an ECM

- 2.4.1. The ECM certification will be renewed at least every five years and it can be revoked by the issuing certification body, if the ECM does not fulfil the relevant requirements.
- 2.4.2. The ECM certificates granted under the provisions of this MoU will be valid throughout the Community.

2.5. Requirements for the certification bodies

- 2.5.1. The Certification Body (hereinafter referred to as “CB”) will fulfil the following minimum requirements, further detailed in Annex D:

- (a) The CB will be organisationally, functionally and in its decisions independent from railway undertakings, infrastructure managers, wagon keepers and ECMs and will not perform similar services.
- (b) The CB and the deployed personnel will have the required professional competence in particular regarding the organisation of the maintenance of freight wagons and the appropriate maintenance systems.
- (c) The CB will ensure that it makes its decisions impartially.
- (d) The CB will hold civil liability insurance, unless a member state is liable under a national legal provision.

- 2.5.2. Member states will implement an appropriate recognition or accreditation process. Both the accreditation and recognition process will be based on criteria of independence, competence and impartiality, such as the relevant European standards.

Competent authorities will publish an application form to be used by bodies which intend to act as CBs for ECMs or a list of detailed criteria to be recognised as competent to do so. The competent authorities have the right to undertake audits from time to time of the compliance with Annex B of the approval/recognition procedure.

A CB being assessed under paragraph 2.3.2 has a declaration of its competence on the basis of the relevant European standards, this will be considered by the Member state when assessing the body.

- 2.5.3. The Agency will consider the need to establish a CB Coordination Group and if appropriate, the Commission will mandate the Agency to organise such a group. Each body acting as certification body for ECMs and, where appropriate, the competent authorities will keep a list of the ECMs certified by them. These lists will be kept up-to-date and notified to the Agency to be published.
- 2.5.4. Each Member State will notify the Agency of the list of CBs. That notification will be done one year after the signature of this MoU for the first time and then in all cases of changes. The CBs have to notify to the Agency the ECMs they have

certified and also those, whose certification have been refused. The Agency will publish and keep up-to-date a consolidated list of ECM certification bodies.

2.6. International cooperation

2.6.1. Competent authorities of OTIF states which are not EU Member States will be able to sign this MoU. To this effect, the General Directorate for Energy and Transport of the Commission (DG TREN) will liaise with the OTIF Secretariat General in order to organise the signature by OTIF non EU Member States who would like to sign this MoU.

Due to differences between Community legislation and the COTIF 1999 convention, specific provisions applicable to non EU signatories are necessary and are detailed in Annex F.

2.7. Governance of this MoU

2.7.1. This agreement will be signed by the competent authorities of the EU Member States. It will apply in each Member State from the date of signature by the representative of that Member State and, where appropriate, when the Member State has taken the national measures needed to apply the MoU. The Member States notify this date to DG TREN.

2.7.2. DG TREN will publish it and keep up-to-date the lists of signatories and the date of the application in the Member States (Annex A).

2.7.3. The Agency will organise an exchange of experience between NSAs, under Article 6(5) of its Regulation (EC) No 881/2004 (Agency Regulation) and Article 17(4) of the Railway Safety Directive with a view to a uniform application of this MoU.

2.7.4. This agreement will lose its validity as soon as a certification system for ECMs adopted under Community legislation enters into force.

Done at Brussels, 14 May 2009

For Austria:

Dipl. Ing. Michael Walter
Railway and Interoperability Committee (RISC) Member
Ministry of Transport



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For Belgium:

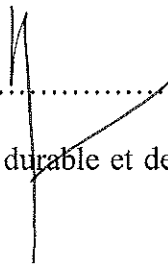
Mr Pierre Forton
Directeur général Transport Terrestre
Service Public Fédéral Mobilité et Transports



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For France:

Mr Denis Huneau
Ingénieur général des ponts et chaussées
Ministère de l'écologie, de l'énergie, du développement durable et de l'aménagement du territoire
(pour le Ministre, par délégation)



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For Germany:

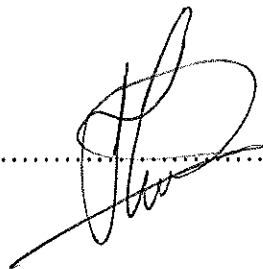
Mr Michael Harting
Deputy Director General of the Department "Railways"
Federal Ministry of Transport, Building and Urban Affairs



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For Greece:

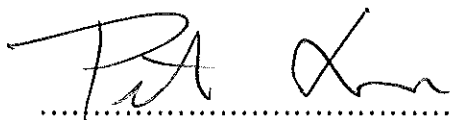
Mr. George Patris
Transport Attaché
Permanent Representation of Greece to the EU



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For Hungary:

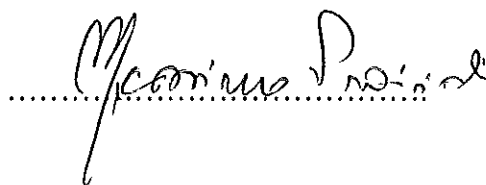
Mr. Péter Lányi
Deputy General Director
Ministry of Transport, Telecommunication and Energy



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For Italy:

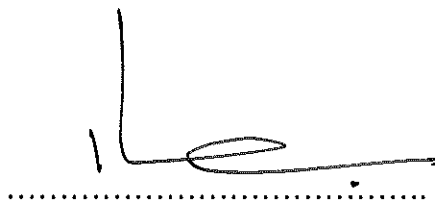
Mr. Massimo Provinciali
Direttore Generale
Ministero delle Infrastrutture e dei Trasporti



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For Luxemburg:

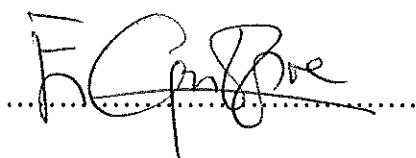
M. François Jaeger
Directeur Gestion Réseau
(pour le Gouvernement, par délégation)



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For The Netherlands:

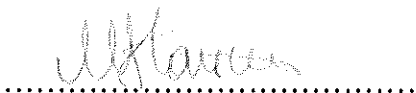
Drs. E. Griffioen
Chief Inspector
National Safety Authority



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For Romania:

Dr. Marin Stancu
Deputy Director
Ministry of Transport and Infrastructure
Directorate for Infrastructure and Railway Transport



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List of Annexes:

- Annex A: List of EU Member States and OTIF non EU Member States applying this MoU
- Annex B: Requirements to the ECM for setting up its Maintenance System
- Annex C: Assessment Criteria and Procedures
 - Annex C1 – Assessment Criteria
 - Annex C2 – Assessment Procedures
- Annex D: Accreditation and recognition of CB
- Annex E: Forms
 - Annex E1 – Application form
 - Annex E2 – Certificate form
- Annex F: Specific provisions applicable to OTIF non EU signatories