

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

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PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission,

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 procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007⁽³⁾,

Whereas:

- (1) Directive 2004/49/EC⁽⁴⁾ of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways requires infrastructure managers and railway undertakings to establish their safety management systems in such a way that the railway system is at least able to achieve the common safety targets and comply with the national safety rules and safety requirements defined in the technical specifications for interoperability (TSIs) and that the relevant parts of the common safety methods are applied. These safety management systems provide, among other things, for staff training programmes and systems which ensure that staff competence is maintained and that duties are performed in the appropriate manner.
- (2) Directive 2004/49/EC provides that, in order to gain access to railway infrastructure, a railway undertaking has to hold a safety certificate.
- (3) Under Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁵⁾, licensed railway undertakings have had, since 15 March 2003, a right of access to the trans-European freight network for international rail freight services and, from 2007 at the latest, will have a right of access to the entire network for domestic and international freight services. This gradual extension of access rights will inevitably lead to an increase in the movement of train drivers across national borders. The result will be a growing demand for drivers trained and certified for operation in more than one Member State.

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- (4) A study carried out by the Commission in 2002 highlighted the fact that the laws of the Member States on the certification conditions for train drivers differ considerably. Community rules for the certification of train drivers should therefore be adopted to overcome these differences while maintaining the present high level of safety of the railway system in the Community.
- (5) Such Community rules should also contribute to the aims of Community policies on the freedom of movement of workers, freedom of establishment and freedom to provide services in the context of the common transport policy, while avoiding any distortion of competition.
- (6) The aim of these common provisions should be above all to make it easier for train drivers to move from one Member State to another, but also to make it easier for them to move from one railway undertaking to another, and generally for licences and harmonised complementary certificates to be recognised by all railway sector stakeholders. To this end, it is essential that the provisions establish minimum requirements which applicants should meet to obtain a licence or harmonised complementary certificate.
- (7) This Directive follows and is largely based on the historic joint Agreement concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services⁽⁶⁾.
- (8) Even if a Member State excludes from the scope of this Directive drivers exclusively operating on certain categories of rail systems, networks and infrastructure, this should not limit in any way the obligation of that Member State to respect the validity of licences throughout the territory of the European Union or of harmonised complementary certificates on the relevant infrastructure.
- (9) The requirements should cover at least the minimum age for driving a train, the applicant's physical and occupational psychological fitness, professional experience and knowledge of certain matters relating to driving a train, as well as a knowledge of the infrastructures on which he will be required to operate and of the language used on them.
- (10) In order to increase its cost-effectiveness, the training which train drivers should undergo in order to obtain a harmonised complementary certificate should be focused, to the extent that such is possible and desirable from a safety viewpoint, on the particular services to be performed by the driver, such as, for example, shunting, maintenance services, passenger or freight services. When assessing the implementation of this Directive, the European Railway Agency (hereinafter referred to as 'the Agency') should evaluate the need for amending the training requirements specified in the Annex in order better to reflect the new, emerging structure of the market.
- (11) Railway undertakings and infrastructure managers issuing harmonised complementary certificates may themselves provide training for general professional knowledge, linguistic knowledge, knowledge of rolling stock and infrastructures. However, with regard to examinations, any conflict of interests should be avoided, without excluding

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the possibility that an examiner may belong to the railway undertaking or infrastructure manager issuing the harmonised complementary certificate.

- (12) In accordance with Article 13(4) of Directive 2004/49/EC, railway undertakings and infrastructure managers are responsible for the level of training of the drivers they employ. To this end, railway undertakings and infrastructure managers should take into account the training and competences acquired previously by those drivers, in accordance with Article 13(3) of that Directive. It is also important to ensure that a sufficient number of drivers is trained. In this context, it is necessary, however, to take measures to ensure that investments made by a railway undertaking or an infrastructure manager for the training of a driver do not unduly benefit another railway undertaking or infrastructure manager in the case where that driver voluntarily leaves the former for the latter railway undertaking or infrastructure manager. These measures can be of any kind, such as for example national legislation, collective labour agreements, contractual clauses between driver and employer, or agreements determining the rehire of drivers belonging to one undertaking by another in the case where drivers are party to such agreements.
- (13) Staff competences and health and safety conditions are being developed in the context of the interoperability directives, in particular as part of the ‘traffic management and operation’ TSIs. There is a need to ensure coherence between these TSIs and the Annexes to this Directive. The Commission will achieve this by modifying or adapting the relevant TSI to this Directive and its Annexes using the procedures provided for in Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system⁽⁷⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system⁽⁸⁾.
- (14) In order to increase the freedom of movement of workers and safety on Community railways, special attention should be paid to other crew members performing safety-critical tasks on locomotives and trains. Therefore Member States should ensure that other crew members performing safety-critical tasks meet the minimum requirements set out in the TSI on operation and traffic management. Taking account of the national implementation plans to be notified by the Member States in relation to the implementation of that TSI, the Agency should identify possible options for the certification of other crew members performing safety-critical tasks and assess the impact of these different options. On the basis of this report, the Commission should, if appropriate, present a proposal with regard to the conditions and procedures for the certification of other crew members performing safety-critical tasks on locomotives and trains.
- (15) The requirements pertaining to licences and harmonised complementary certificates set out in this Directive should relate solely to the legal conditions entitling a driver to drive a train. All other legal requirements, compatible with Community legislation and applied in a non discriminatory manner, pertaining to railway undertakings, infrastructure managers, infrastructure and rolling stock should equally be complied with before a driver may drive a train on a specific infrastructure.

- (16) This Directive should be without prejudice to the implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁹⁾, and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽¹⁰⁾.
- (17) In order to guarantee the necessary uniformity and transparency, the Community should establish a single certification model, mutually recognised by the Member States, attesting both to train drivers' compliance with certain minimum conditions, and to their professional qualifications and linguistic knowledge, leaving it to the competent authorities in the Member States to issue licences and to railway undertakings and infrastructure managers to issue harmonised complementary certificates.
- (18) The Agency should also examine the use of a smartcard instead of a licence and harmonised complementary certificates. Such a smartcard would have the advantage of combining these two items in one and at the same time could be used for other applications either in the area of security or for driver management purposes.
- (19) All of the information contained in licences, harmonised complementary certificates and the registers of licenses and harmonised complementary certificates should be used by the safety authorities to facilitate evaluation of the staff certification process provided for in Articles 10 and 11 of Directive 2004/49/EC and to speed up the issuing of the safety certificates provided for in those Articles.
- (20) The employment of train drivers certified in accordance with this Directive should not exonerate railway undertakings and infrastructure managers from their obligation to set up a system of monitoring and internal control of the competence and conduct of their train drivers pursuant to Article 9 of and Annex III to Directive 2004/49/EC and should form part of that system. The harmonised complementary certificate should not relieve either railway undertakings or infrastructure managers of their responsibility for safety and, in particular, the training of their staff.
- (21) Certain companies provide the services of train drivers to railway undertakings and infrastructure managers. In such cases, responsibility for ensuring that a driver is licensed and certified in accordance with this Directive should lie with the railway undertaking or infrastructure manager contracting the driver.
- (22) For rail transport to continue to operate effectively, train drivers already working in that profession before the entry into force of this Directive should retain their acquired entitlements during a transition period.
- (23) Unnecessary administrative and financial burdens should be avoided when replacing authorisations to drive issued to drivers before the application of the relevant provisions of this Directive with harmonised complementary certificates and licences which are in conformity with this Directive. Therefore, entitlements to drive previously granted to a driver should be safeguarded, as far as possible. The qualifications and experience of each driver, or group of drivers, should be taken into account by the issuing bodies

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when authorisations are to be replaced. The issuing body should decide, on the basis of qualifications and/or experience, whether it is necessary for a driver or a group of drivers to undergo any additional examination and/or training before they can receive replacement licences and harmonised complementary certificates. Therefore, it should be a matter for the issuing body to decide whether qualifications and/or experience suffice to issue the required licences and harmonised complementary certificates, without there being any need for further examination or training.

- (24) Unnecessary administrative and financial burdens should also be avoided when train drivers change employer. A railway undertaking employing a driver should take into account competences acquired earlier and should dispense with additional examinations and training as far as possible.
- (25) This Directive should not confer any mutual recognition rights relating to entitlements to drive which drivers have obtained before the application of this Directive, albeit without prejudice to the general mutual recognition scheme set up under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽¹¹⁾, which shall continue to apply until the end of the transition period.
- (26) The measures necessary for the implementation of this Directive 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 Commission⁽¹²⁾.
- (27) In particular, the Commission should be empowered to establish the conditions and criteria necessary for the implementation of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, or to supplement it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (28) When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to have recourse to the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption of Community criteria for the choice of examiners and examinations as provided for by this Directive, and for the adaptation to scientific and technical progress of the Annexes to this Directive, as provided for thereby.
- (29) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹³⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (30) Member States should provide for controls regarding compliance with this Directive and appropriate action where a driver infringes any provision of this Directive.
- (31) Member States should provide for appropriate penalties for infringements of national provisions implementing this Directive.

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- (32) Since the objective of this Directive, namely the laying down of a common regulatory framework for the certification of train drivers operating locomotives and trains for the carriage of passengers and goods, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (33) It might prove appropriate, for reasons of cost-effectiveness, to exempt for a limited period of time train drivers operating exclusively on the territory of one Member State from application of the provisions of this Directive pertaining to the obligation for such drivers to hold licences and harmonised complementary certificates in conformity with this Directive. The conditions governing any such exemptions should be clearly defined.
- (34) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement this Directive. Therefore, such Member States should be exempted, for as long as they have no railway system, from the obligation to transpose and implement this Directive,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 221, 8.9.2005, p. 64.](#)
- (2) [OJ C 71, 22.3.2005, p. 26.](#)
- (3) Opinion of the European Parliament of 28 September 2005 ([OJ C 227 E, 21.9.2006, p. 464](#)), Council Common Position of 14 September 2006 ([OJ C 289 E, 28.11.2006, p. 42](#)), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.
- (4) [OJ L 164, 30.4.2004, p. 44.](#) Corrected version in [OJ L 220, 21.6.2004, p. 16.](#)
- (5) [OJ L 237, 24.8.1991, p. 25.](#) Directive as last amended by Directive 2006/103/EC ([OJ L 363, 20.12.2006, p. 344](#)).
- (6) [OJ L 195, 27.7.2005, p. 18.](#)
- (7) [OJ L 235, 17.9.1996, p. 6.](#) Directive as last amended by Commission Directive 2007/32/EC ([OJ L 141, 2.6.2007, p. 63](#)).
- (8) [OJ L 110, 20.4.2001, p. 1.](#) Directive as last amended by Commission Directive 2007/32/EC.
- (9) [OJ L 281, 23.11.1995, p. 31.](#) Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1](#)).
- (10) [OJ L 8, 12.1.2001, p. 1.](#)
- (11) [OJ L 255, 30.9.2005, p. 22.](#) Directive as last amended by Council Directive 2006/100/EC ([OJ L 363, 20.12.2006, p. 141](#)).
- (12) [OJ L 184, 17.7.1999, p. 23.](#) Decision as amended by Decision 2006/512/EC ([OJ L 200, 22.7.2006, p. 11](#)).
- (13) [OJ C 321, 31.12.2003, p. 1.](#)