

Issuing a safety certificate or safety authorisation

A guide for national safety authorities

Purpose of this guidance

The purpose of this guidance is to address known issues faced by NSAs in relation to general principles underpinning the application for, the validity and update of safety certificate and safety authorisation. It will provide practical information to NSAs so that they can make sure that their safety certification process is appropriate and consistent with the principles.

How to use this guidance

This guidance supplements the Commission Regulation (EC) No 653/2007 on the use of a common European format for safety certificates and application documents, the Commission Regulation (EU) No 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates and the Commission Regulation (EU) No 1169/2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation.

For ease of reading, the relevant EU legislation is referred to in the header of each main section. Frequently asked question(s) are also listed and an answer is proposed in the subsequent (sub-) sections.

Model templates (application documents and standard format for safety authorisation) and specific case studies can be found in the annexes of the document.

The present document is a non-legally binding guidance of the European Railway Agency. It is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.

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1 BACKGROUND

Who can be granted a safety certificate or safety authorisation?

1.1 Definition of Railway Undertaking and Infrastructure Manager

Pursuant to Article 3 of [Directive 2004/49/EC](#) on safety on the Community's railways (Railway Safety Directive, hereinafter also "the RSD"), an Infrastructure Manager (IM) and a Railway Undertaking (RU) are defined as follows:

- **'Infrastructure Manager'** means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;
- **'Railway Undertaking'** means railway undertaking as defined in Directive 2001/14/EC, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only.

Pursuant to [Directive 2012/34/EU](#) establishing a single European railway area and replacing Directive 2001/14/EC, the definition of Railway Undertaking is as follows:

- **'Railway Undertaking'** means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;

There are several aspects to consider under this definition:

- Any undertaking that is licensed under the national provisions transposing Directive 2012/34/EU is and shall be considered as RU.
- As regards other undertakings which are not licensed under the national provisions transposing Directive 2012/34/EU, there are two aspects to consider to decide whether an undertaking is a RU or not under the scope of the RSD¹:
 - o The activity of the undertaking is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction;
 - o The undertakings provide traction only.

The above definitions clearly make a distinction between the railway companies based on their activities:

- The IM is responsible for establishing and maintaining the railway infrastructure which may include the management of infrastructure control and safety systems.

¹ The scope of Directive 2012/34/EU and Directive 2004/49/EC is different. Therefore, it is possible to have RUs not required to have a licence under Article 2 of Directive 2012/34/EU whilst they are required to have a safety certificate under Article 2 of Directive 2004/49/EC (e.g. an undertaking providing only shunting services does not need a license but is considered as RU under Directive 2004/49/EC therefore it needs a safety certificate). The safety on the whole rail system shall be respected and safety requirements shall be applied by any company, irrespective of whether provision of transport of goods and/or passengers is a principal business of the company or not, that uses the rail system not excluded under Article 2(2) of Directive 2004/49/EC. In addition, Member States may exclude certain RUs from the obligations of having a licence under Directive 2012/34/EU (e.g. undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure); however, these RUs may not be excluded from their safety obligations according to Directive 2004/49/EC.

- The RU provides transport of goods and/or passengers by rail with the requirement that it must also ensure traction. Those companies which provide only traction are also considered as RUs.

1.2 Legal requirements

The requirements of the RSD, including the obligation for safety certificate or safety authorisation, are valid only for those companies which fall under its scope.

If a company is considered as an RU either under the RSD or [Directive 2012/34/EU](#) (i.e. it provides transport of goods and/or passengers by rail with traction or only traction), it shall have a safety certificate (Part A and Part B) according to the RSD to be authorised to carry out its activities and to be granted access to an infrastructure.

Those RUs whose principal business is to transport goods and/or passengers shall have a licence according to [Directive 2012/34/EU](#). For these RUs a valid licence² and a safety certificate are the conditions to be granted access to the railway infrastructure.

If a company is considered as an IM (i.e. it establishes and maintains railway infrastructure which may include the management of infrastructure control and safety systems), it shall have a safety authorisation according to the RSD to be authorised to carry out its maintenance activities on an infrastructure.

The assessment of the IM's capacity to operate vehicles on its own network (directly or via subcontractors) for maintenance purpose (i.e. transport of materials for construction or for infrastructure maintenance activities) should be part of its assessment for a safety authorisation, providing it is within the limit of their activities and they are not providing additional services such as transport of goods and/or passengers. In this case, in addition to the requirements and criteria of the [CSM Regulation for Conformity Assessment 1169/2010/EU](#), the NSA issuing the safety authorisation should check the criteria in Annex II of the [CSM Regulation for Conformity Assessment 1158/2010/EU](#) that are specific to maintenance of rolling stock (e.g. criterion B.2). Particular attention should also be paid to the criteria relating to the management of contractors and suppliers (i.e. criteria B, C).

A company which provides infrastructure maintenance services (or transport services of materials for construction) and in that context has to move machines on the IM's network can perform these services under contractual arrangements with the IM. This should be part of the IM's assessment for a safety authorisation under Article 11 of the RSD (i.e. criteria B, C).

It is important to note that first it shall be decided whether a company is considered a RU or IM (or both³) based on its activities, and then the appropriate applications for the required authority documents (licence, safety certificate or safety authorisation) shall be launched.

² Pursuant to the definition of Railway Undertaking provided for in [Directive 2012/34/EU](#), a licence should not be required from a company whose principal business is not to transport goods and/or passengers.

³ In accordance with requirements set out in Section 2 of [Directive 2012/34/EU](#).

2 APPLICATION FOR A SAFETY CERTIFICATE OR SAFETY AUTHORISATION

When and by whom should a Part A and a Part B safety certificate be issued?

What are the parts of the safety management system (SMS) related to the Part A and Part B safety certificates?

If a RU decides to operate a new (part of) line, shall the NSA issue a new Part B safety certificate?

Which information should be included in the application form for safety certificate or safety authorisation?

“The safety certificate shall comprise [...] certification confirming acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe operation of the relevant network. The requirements may include application of TSIs and national safety rules, acceptance of staff's certificates and authorisation to place in service the rolling stock used by the railway undertaking. The certification shall be based on documentation submitted by the railway undertaking as described in Annex IV.”

Art. 10(2)(b) of [Directive 2004/49/EC](#) (Railway Safety Directive)

“The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification in accordance with paragraph 2.

The certification granted in accordance with paragraph 2 must specify the type and extent of the railway operations covered. The certification granted in accordance with paragraph 2(a) shall be valid throughout the Community for equivalent rail transport operations.”

Art. 10(3) of [Directive 2004/49/EC](#) (Railway Safety Directive)

“The safety authority in the Member State in which the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification necessary in accordance with paragraph 2(b).”

Art. 10(4) of [Directive 2004/49/EC](#) (Railway Safety Directive)

2.1 Scope

RU and IM must establish a SMS and make it effective to ensure the safe operation of the railways, each one having the safety responsibility for its part of the system and its own operations.

Once, the company is considered as an RU or an IM and has established its SMS, it shall hold respectively a safety certificate or a safety authorisation in accordance with the RSD.

Any undertaking ensuring traction must have its own safety certificate on the network (see also section 1.1).

The scope of a Part A safety certificate covers all elements of the SMS whereas the scope of a Part B safety certificate only covers the following network specific elements defined in Annex III of the [CSM Regulation for Conformity Assessment 1158/2010/EU](#):

- Competence management system;
- Compliance with applicable network specific national rules;
- Asset management (rolling stock).

As follows, if an RU provides rail transport services only in one Member State, then the company shall have a Part A and a Part B safety certificate granted by the NSA where the RU provides its services.

If an RU wishes to operate in MS other than the one where it first established its operation and was granted its Part A safety certificate, the same RU shall apply for a Part B safety certificate in the other Member State. The NSA of the other Member State may not and shall not require the RU to apply again for Part A safety certificate.

If the NSA of the other Member State has any issues or doubts concerning the Part A safety certificate of the RU, the NSA shall cooperate with the NSA that issued the Part A safety certificate (Cf. Annex I of [CSM Regulation on Conformity Assessment 1158/2010/EU](#)). The NSA issuing the Part A safety certificate should be informed of the issue of the additional Part B safety certificate because starting operation in another Member State may in some cases be an operational/organisational change that the RU should assess (significance of the change) and where necessary proceed with the application of the [CSM Regulation on risk evaluation and assessment 402/2013/EU](#). As a result the identified risk control measure(s) may result in a change of the SMS arrangements requesting for an update of the Part A safety certificate (see also section 4.2).

If an RU decides to establish a new company in another Member State to provide services in that MS, it is entirely up to the company to decide so. However, the new company shall follow all the requirements laid upon RUs in the RSD, i.e. apply for licence, if needed⁴, establish its own SMS and apply for both Part A and Part B safety certificates in the other Member State.

It is not foreseen in the RSD that in this case companies could rely on each other's licences, safety certificates and SMS.

2.1.1 Specific considerations for the granting of Part A safety certificate

Part A safety certificate certifies the acceptance of the RU's SMS and shall be granted by the NSA of the Member State where the RU first establishes its operation (Article 10(3) of the RSD).

A company shall have only one Part A safety certificate which shall be given by the NSA where the company establishes its operation for the first time. Such Part A safety certificate shall be valid throughout the European Union for equivalent rail transport operations.

If the same company extends its operation to another Member State, without establishing a new company in that Member State, the company shall not apply for a new Part A safety certificate. That condition is in line with the principle of free movement of services set out in Article 56 of the Treaty on the Functioning of the European Union: *"Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended."*

2.1.2 Specific considerations for the granting of Part B safety certificate

Part B safety certificate certify the acceptance of the RU's provisions to meet the networks' specific requirements and shall be granted by the NSA of the Member State where the RU first establishes its operation (Article 10(3) of the RSD) and by any other NSA where the RU is planning to operate additional rail transport services (Article 10(4) of the RSD).

NSA's assessment of an application for a Part B safety certificate shall only apply to a RU's capability to comply with the requirements needed to operate on the specific network for which it is seeking a certificate. The assessment of the Part B should link back to the requirements in the Part A. For example, any rules for competence requirements should link to the processes set out for compliance with criteria N in the Part A.

The RSD stipulates in its Article 10(2)(b), 10(3) and 10(4) that a Part B safety certificate is required when entering a rail network. In other words:

⁴ Directive 2012/34/EU establishes the principles and procedures for train path allocation. It states that RUs shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all MS (Article 10). Moreover, IMs shall supply to all RUs in a non-discriminatory manner the minimum access package (Article 13). All basic principles, obligations, rights, etc. set out in this Directive for RUs are applicable only to those undertakings which are licensed in line with the corresponding definition in Article 3(1).

- a) For domestic operations, the RU should only apply for a Part B safety certificate in its own Member State.
- b) For international operations, in addition to its domestic Part B safety certificate, the RU should also apply for a Part B safety certificate in the Member State(s) where it plans its operation(s). However, the assessment of the application for a Part B safety certificate by the neighbouring Member State(s) should be proportionate to the risks incurred and the type and extent of the operation.

If the RU decides to operate on a new line or even on new parts of a same line, the existing Part B safety certificate shall be updated with the new line condition. In any case, the newly updated Part B safety certificate always replaces the previous one (that is no more active in ERADIS database). Therefore, the latest Part B certificate should reflect all line conditions (i.e. all conditions since the first issued Part B safety certificate). However, the reassessment should be proportionate to the change.

The geographical scope of Part B safety certificate should cover the railway network⁵ of a Member State or only a defined part⁶ thereof (Article 10 of RSD) where the RU operates. The RU may operate on the infrastructure of a number of different IMs. The nature of the infrastructure managed by one IM is detailed in its network statement (Articles 3(26) and 27 of Directive 2012/34/EU). In case the network of a Member State is managed by more than one IM, the network statements developed by the IMs give detailed information on the nature of the whole network of the Member State and the RU should then be permitted to have just one Part B certificate. Therefore, it can be concluded that the detailed information on the nature of the infrastructure falling under a Part B safety certificate is specified in the relevant network statement(s).

Section 2.2.1 of Commission Decision 2012/757/EU concerning the [technical specification for interoperability relating to the 'operation and traffic management' subsystem of the rail system in the European Union and amending Decision 2007/756/EC \(TSI OPE\)](#) stipulates that “[A] train will not be considered to be a cross border service if all the vehicles of the train crossing the state border cross it only to the ‘frontier’ location(s), i.e. any location(s) designated as the ‘frontier’ in the network statement of an infrastructure manager and included in its safety authorisation”. Therefore, depending on the arrangements and cooperation agreements between IMs of neighbouring Member States stated in their respective network statement, a new Part B safety certificate **might not be required** for those RUs operating until the frontier location(s) in the other Member State(s) (e.g. first station located beyond the state border). In such cases, the acceptance of the RU's provisions to meet the network specific requirements (between the state border and the frontier location(s)) could be part of the domestic Part B safety certificate granted by the NSA of the Member State where the RU is registered to avoid duplicating work and additional procedural cost. However, the practicality of such an arrangement is left to the decision of the neighbouring Member States as it might be subordinated to the compliance check with the different national rules applying in each Member State, national laws in force, bilateral agreement, treaty etc. In any case, the neighbouring NSAs shall cooperate together during the assessment and post-award supervision to oversee the specific case of the ‘frontier’ location(s).

2.1.3 Contractual arrangements or partnerships

For both domestic and international operations, **the RU which ensures the traction, i.e. the use of traction unit(s) with one or more train drivers, must hold a safety certificate.**

Each of the train drivers and of the traction units can belong to different legal entities and each of them can even operate legally on behalf of other entities, through various contractual arrangements. An RU is an undertaking that, being the *owner* of a traction unit or *having the right* to use it, *operates* it as a means of traction **and** importantly has the responsibility for coordinating and managing the safe running of the train (e.g. train composition, braking performance, pre-departure or en route inspections, train's compatibility with the route).

⁵ The railway network is defined as “the entire railway infrastructure managed by an infrastructure manager” (Article 3(25) of Directive 2012/34/EU).

⁶ It is therefore necessary to specify clearly all the lines where services (passenger, freight or shunting only) are intended to be operated (3.16 of Regulation 653/2007/EC) if the RU does not wish to operate on the whole network.

Without prejudice to the previous conditions, any arrangement made between companies regarding other aspects of the train operation (e.g. commercial aspects, request or use of train path) must not have a negative effect on the obligations of the RU to have a safety certificate. Therefore, an RU should not operate under the safety certificate of another RU⁷.

It must also be distinguished the different functions or roles RUs may have:

- Railway Undertaking providing (the service of) transport of goods and/or passengers;
- Keeper regarding the use of its rolling stock, either using the vehicles themselves or renting them out to others;
- Entities in Charge of Maintenance (ECM) for their own rolling stock as well as for other keepers;
- Employer of train drivers and other staff for their own purposes, but perhaps also “renting out” drivers to other RUs for instance.

The companies (including RUs) leasing (directly or not) either the locomotive (or the train set) or train driver(s) are not undertakings who coordinate and manage the safe running of the train. Those companies are subcontractors, suppliers or partners of a RU and do not hold a safety certificate for that operation. That RU using the locomotive or train set and drivers must however control through its SMS the delivery of safe supplies and services provided by these subcontractors, suppliers or partners (by using the [CSM Regulation on monitoring \(EU\) 1078/2012](#)) and must have a safety certificate.

A company providing services in marshalling yards and train formation facilities (including shunting facilities) shall not be considered as an RU but as an ‘operator of service facility’ (Article 13 of [Directive 2012/34/EU](#)). Therefore, such company is not required to be licenced and hold a safety certificate but needs to comply with further requirements deriving from [Directive 2012/34/EU](#) (which mainly relate to charging in Article 31). The traction in a shunting yard differs from the traction on the open line as specific operational safety measures, e.g. maximum permitted speed, apply when running on-sight or coupling vehicles to hauling locomotive(s). If the operator providing ‘shunting traction only’ operates on the open line, even on short distance, it interferes with the traffic of other RUs and then must have a safety certificate. Similarly, the locomotives operating solely on the open line need to be understood as a train and therefore such companies must also have a safety certificate.

2.2 Forms

Application documents for safety certificate⁸ and safety authorisation are provided for in Annex 1.

Safety authorisation should use the standard format set out in Annex 2.

Guidelines on information to be entered into the application form for safety certificates Part A and Part B are also provided for in the Annex III of [Regulation 653/2007/EC](#) on the use of a common European format for safety certificates and application documents. As far as practicable, unless stated otherwise in the present document, the same guidelines may also apply for safety authorisation. For example, the numbering system introduced in Annex IV of the Regulation 653/2007/EC already identifies a specific code (i.e. 2 1) for safety authorisation.

The RU/IM shall inform the relevant NSA to which it applies for a safety certificate/authorisation of the following particular conditions:

- Whether the RU/IM acts as ECM. Therefore, the safety certificate/authorisation shall reflect the status of the ECM certification, including outsourced maintenance functions (or parts of them) if any;
- Whether the IM operates traffic for construction or maintenance for its own needs (see section 1.1).

⁷ The RU being granted with a Part A and a domestic Part B in the Member State where it is registered must apply for a Part B safety certificate in any other Member State where it starts new operation.

⁸ Applications for Part A and/or Part B certificates submitted in accordance with Articles 10 and 12 of Directive 2004/49/EC shall be in the standard format set out in Annex III to the Regulation 653/2007/EC.

When granting the safety certificate/authorisation, it is recommended that the NSA identifies those conditions in the 'additional information' field of the safety certificate or safety authorisation.

3 VALIDITY OF SAFETY CERTIFICATE

Can the validity of Part B safety certificate be extended beyond the validity of Part A safety certificate?

"In order to be granted access to the railway infrastructure, a railway undertaking must hold a safety certificate... The safety certificate may cover the whole railway network of a Member State or only a defined part thereof. [...]"

Art. 10(1) of [Directive 2004/49/EC](#) (Railway Safety Directive)

"The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification in accordance with paragraph 2. [...] The certification granted in accordance with paragraph 2(a) shall be valid throughout the Community for equivalent rail transport operations.

The safety authority in the Member State in which the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification necessary in accordance with paragraph 2(b)."

Art. 10(3-4) of [Directive 2004/49/EC](#) (Railway Safety Directive)

"The safety certificate shall be renewed upon application by the railway undertaking at intervals not exceeding five years. It shall be wholly or partly updated whenever the type or extent of the operation is substantially altered.

The holder of the safety certificate shall without delay inform the competent safety authority of all major changes in the conditions of the relevant part of the safety certificate. It shall furthermore notify the competent safety authority whenever new categories of staff or new types of rolling stock are introduced.

The safety authority may require that the relevant part of the safety certificate be revised following substantial changes in the safety regulatory framework. If the safety authority finds that the holder of the safety certificate no longer satisfies the conditions for a certification which it has issued, it shall revoke part (a) and/or (b) of the certificate, giving reasons for its decision. The safety authority that has revoked an additional national certification granted in accordance with paragraph 4 shall promptly inform the safety authority that granted the certification under paragraph 2(a) of its decision. Similarly, a safety authority must revoke a safety certificate if it is apparent that the holder of the safety certificate has not used it as intended in the year following its issue."

Art. 10(5) of [Directive 2004/49/EC](#) (Railway Safety Directive)

"The safety authority shall inform the Agency within one month of the safety certificates referred to in paragraph 2(a) that have been issued, renewed, amended or revoked. It shall state the name and address of the railway undertaking, the issue date, scope and validity of the safety certificate and, in case of revocation, the reasons for its decision."

Art. 10(6) of [Directive 2004/49/EC](#) (Railway Safety Directive)

3.1 General context

The RSD establishes the concept of one safety certificate necessary for a RU to be granted access to the railway infrastructure and makes a difference between the geographical validity between its constituting parts. Indeed, a Part A is valid in the whole EU while the relevant Part B is valid only on a specific network in a Member State.

The RSD makes no explicit difference between the validity in time between the two parts of the safety certificate as all the conditions for renewal, update and revocation set out in the RSD are relevant for both parts of the safety certificate.

The general principles of the RSD are reflected in the whole application procedure and the common format for safety certificate and the guidelines as described in [Regulation 653/2007/EC](#).

3.2 Legal requirements

A RU shall have a valid safety certificate of which both parts are valid both in time and geographically. The geographical validity is relevant only for Part B.

As follows, the Part A safety certificate is valid in all EU Member States, and if the RU wishes to operate in other countries than the one in which it first established its operation, then the RU needs to obtain a Part B safety certificate for that network.

In case the Part A of the safety certificate is concerned by renewal, update, suspension or revocation, the relevant Part(s) B of the safety certificate should also be considered by the NSA issuing it.

Indeed, if the Part A safety certificate is up to renewal, then the complete safety certificate with all its parts (i.e. both Part A and Part(s) B) is subject to renewal. This approach can also be justified by the fact that in the course of the application process, it seems clear that the Part B safety certificate is issued based on, amongst others, the Part A safety certificate which includes the SMS processes against which the Part B was assessed.

On the contrary, if a Part B is issued for a new international RU for a shorter period than 5 years (e.g. 1 year) and therefore has to be renewed (much) earlier than Part A (and possibly several other Part B), there seems to be no added value in also renewing the Part A (and possibly several other Part B) at the same time. Additional administrative (formal) workloads without content-related necessity should be avoided.

Even only the change of the numbering of the Part A safety certificate (if nothing changes in the conditions for issuing the new Part A safety certificate) should trigger at least a modification of the Part B safety certificate. The same may also apply to Part B safety certificate the change of which may trigger some changes in the Part A safety certificate. However, the level of assessment needed should be proportionate to the change and is up to the issuing NSA to be decided. Therefore, the co-operation and a quick and efficient system of exchange of information amongst the NSAs concerned is inevitable in case of a renewal, update, suspension or revocation of one part of the safety certificate. However, it is also necessary to consider the administrative burden to the RU dealing with applications and following dialogue with several NSAs at the same time.

The standard formats for each part of the safety certificate allow for the possibility for each part to have different validity periods.

However, whenever either part of the safety certificate has been modified or renewed, the NSA issuing the other part of the safety certificate shall be informed and make a decision whether an assessment is necessary or not and which amendments to such other part of the safety certificate may be required.

Similarly, whenever either part of the safety certificate has been suspended or revoked, the NSA issuing the other part of the safety certificate shall be informed to take the appropriate actions. In case the NSA grants one part of a safety certificate which has a different validity period from the other part, the RU can carry out its activities and be granted access only if both parts of the safety certificate are valid both in time and geographically⁹. Without prejudice to the responsibility of the RU to have valid safety certificate (both Part A and Part B), the NSA issuing the Part B shall check the validity of the relevant Part A and make sure that the Part B will always be linked to a valid Part A.

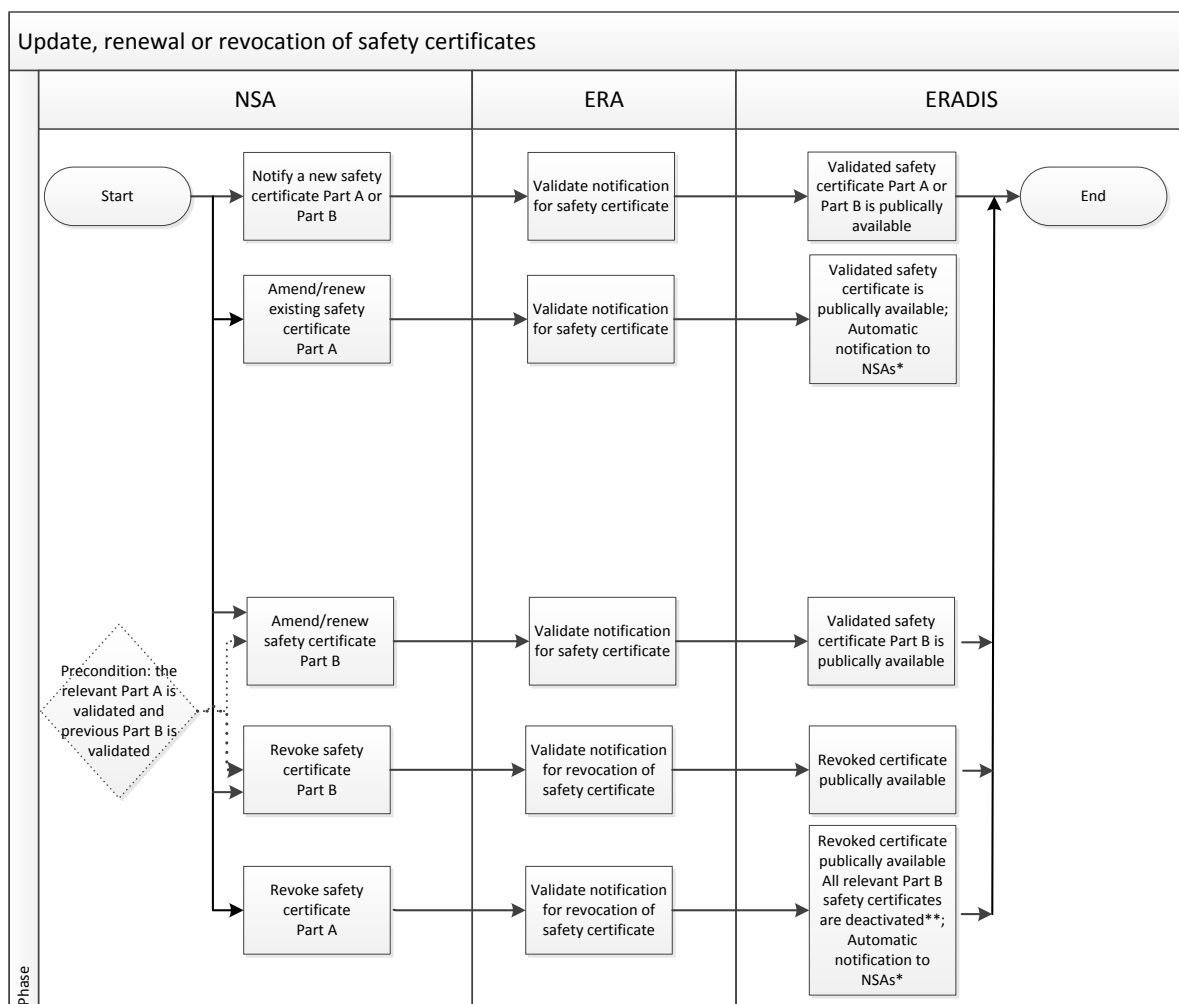
3.3 ERADIS

The [ERADIS](#) database provides public access (among other documents) to the safety certificates issued in accordance with Article 10 of the [Directive 2004/49/EC](#). The safety certificate confirms the acceptance of the provisions adopted by the RU to meet specific requirements necessary for the safe operation on the relevant network in conformity with [Directive 2004/49/EC](#) and applicable national legislation. All safety certificates issued, renewed, amended or revoked by the NSAs must be notified to the Agency via the ERADIS database.

⁹ The geographical validity is relevant only for Part B safety certificates. The Part A safety certificate is valid in all MS and if the RU wishes to operate in other countries than the one in which it first established its operation, then the RU needs to obtain a Part B safety certificate for that network.

The behaviour of the system, as illustrated by the hereafter flowchart, is the following:

- In case of renewal or amendment of Part A safety certificate, during the transition phase (i.e. the notification of a renewed or amended Part A safety certificate is not yet validated in ERADIS database), the former Part A safety certificate and relevant Part B safety certificate(s) should remain valid until its validity end date. Note that Part B safety certificates refer to the unique European Identification Number (EIN) of the relevant Part A safety certificate. Therefore the NSA must renew, amend or issue a new Part B safety certificate to be linked to the renewed or amended Part A safety certificate. Part B remains valid until its own validity end date. Once Part A expires, if Part B had longer validity period, it will not expire but will be still shown as valid until the validity end date. However, RUs should have both Parts of the safety certificate valid in order to perform their activities. The validity start date of a safety certificate is independent from the duration of the validation process of the notification in ERADIS database. The RU can start its operation from the validity start date of the safety certificate issued by the NSA.
- In case of revocation of Part A safety certificate, all related Part B safety certificates become inactive since a Part B cannot be valid without any related valid Part A.
- In case of revocation of Part B safety certificate(s), the relevant Part A safety certificate remains valid and active.



- (*) *The automatic notification functionality is not yet available in ERADIS and it is expected to be implemented in release 3.9. The notification will not only target the NSA amending/renewing or revoking the Part A safety certificate but also the other NSAs issuing the relevant Part B safety certificate(s).*
- (**) *In the current ERADIS release, only domestic Part B safety certificate becomes inactive when revoking the relevant Part A. A change will be implemented in release 3.9 to make inactive all Part B safety certificates once the relevant Part A is revoked.*

3.4 Pragmatic approach

In case the Part B is granted close to the end of validity of the relevant Part A, there would be a need to re-issue a new Part B within a short period of time which may create administrative burden and possibly additional cost of renewal. Similarly, it often occurs that international RUs start their operations on a limited number of lines and apply after a few years for extending their services to more lines. In any case new Part B safety certificates should be re-issued as soon as the relevant Part A is renewed. The NSA should have a proportionate approach to the Part B reassessment.

This issue is not related specifically to ERADIS but to certification process itself and to mutual cooperation of NSAs, which should be strengthened in order to deal properly with Part B safety certificates issued to international RUs (see also section 3.2).

The following good practices should be observed by the NSAs when issuing the Part A safety certificates:

- The validity of the new safety certificate should not start prior to the end validity of the original safety certificate;
- New safety certificates should be promptly notified to ERA and when applicable, no later than the end of validity of the previous safety certificates;
- The validity period of new safety certificates is recommended to be granted as far as possible for five years¹⁰. Member States may voluntarily reduce the validity period of safety certificates to enforce their decisions (e.g. implementation of a corrective action plan within an agreed time plan). In such case, it is of prime importance that all NSAs strengthen even more their mutual co-operation in order to deal properly with Part B safety certificates issued to international RUs.
- In case of update/renewal of a Part A safety certificate, the applicants are advised to apply as far as reasonably practicable for both Part A and Part B safety certificates at the same time. However, the NSA shall ensure that the Part A safety certificate is granted first or that both certificates are granted together as provided for in Regulation 653/2007/EC (Annex I(6) of [CSM Regulation for Conformity Assessment 1158/2010/EU](#)). As mentioned above, in such case, it is of prime importance that all NSAs strengthen even more their mutual co-operation in order to avoid situations where the (conformity) assessment for Part B safety certificate(s) only starts after the granting of the updated/renewed Part A safety certificate and therefore, the railway company operates without valid Part B safety certificate(s). The update/renewal of Part B safety certificate(s) should be proportionate to the nature and importance of the changes (see also section 4).

¹⁰ Depending on the transposition of Article 10(5) of the Directive 2004/49/EC in each Member State, the validity period of safety certificates might be shorter than five years.

4 UPDATE OF SAFETY CERTIFICATE OR SAFETY AUTHORISATION

When shall a safety certificate or safety authorisation be updated?

“The safety certificate shall be renewed upon application by the railway undertaking at intervals not exceeding five years. It shall be wholly or partly updated whenever the type or extent of the operation is substantially altered.

The holder of the safety certificate shall without delay inform the competent safety authority of all major changes in the conditions of the relevant part of the safety certificate. It shall furthermore notify the competent safety authority whenever new categories of staff or new types of rolling stock are introduced.

The safety authority may require that the relevant part of the safety certificate be revised following substantial changes in the safety regulatory framework. [...]

Art. 10(5) of [Directive 2004/49/EC](#) (Railway Safety Directive)

“The safety authorisation shall be renewed upon application by the infrastructure manager at intervals not exceeding five years. It shall be wholly or partly updated whenever substantial changes are made to the infrastructure, signalling or energy supply or to the principles of its operation and maintenance. The holder of the safety authorisation shall without delay inform the safety authority of all such changes.

The safety authority may require that the safety authorisation be revised following substantial changes to the safety regulatory framework. [...]

Art. 11(2) of [Directive 2004/49/EC](#) (Railway Safety Directive)

“‘Type’ of service is characterised by passenger transport, including and excluding high-speed services, freight transport, including and excluding dangerous goods services, and shunting services only.

‘Extent’ of service and of the railway undertaking is characterised by volume of passenger/goods and the estimated size of the railway undertaking in terms of employees working in the railway sector (micro, small, medium sized, large enterprise).

‘Type’ and ‘extent’ of services for all Part B Certificates, carried out globally by the same railway undertaking in one or more States, must be covered by ‘type’ and ‘extent’ of services of the Part A Certificate.”

Guidelines for compilation, [Regulation 653/2007/EC](#)

4.1 General context

The [RSD](#) sets out conditions for renewal, update and revocation of safety certificate and safety authorisation.

The type and extent of railway operations are defined in the guidelines annexed to the [Regulation 653/2007/EC](#).

4.2 Legal requirements

The RSD requires updated (or amended) safety certificates or authorisations to be applied for where the railway company (i.e. the RU or the IM) proposes making substantial changes to certain aspects of their operation. However, the RSD does not define or provide guidance on what is meant by “substantial changes”.

The NSA should determine on whether an amended certificate or authorisation is merited on a case-by-case basis¹¹.

¹¹ The reassessment undertaken by the NSA to decide whether (or not) the safety certificate or authorisation is to be amended can be brought about by the NSA’s supervisory activities for the relevant RU/IM.

The question of new or increased risk to the railway company's operation may need to be considered as a factor, although in some cases, amended certificates may be required when risks could be considered to be reduced by either:

- Changing the type of operation to a potentially lower risk type e.g. changing from freight transport including dangerous goods to freight transport without dangerous goods, or;
- Substantially reducing the extent of their operation.

As part of its SMS arrangements, the RU (and the IM) must establish a change management process. Together with the application of the [CSM Regulation on risk evaluation and assessment \(EU\) 402/2013](#), the railway company must determine whether the change is significant and if so, apply the risk assessment process of the aforementioned CSM Regulation. However, non-significant changes do not prevent the RU (or the IM) to leave the (safety) risks uncontrolled; it must still be managed under their risk management process contained in their SMS. As a result of the application of the risk management process, the RU (or the IM) should identify where necessary any risk control measures and monitor their continuous implementation (as part of the application of the [CSM Regulation on monitoring \(EU\) 1078/2012](#)).

Prior to the granting of safety certificate (or safety authorisation), the NSAs make sure RUs (or IMs) have all arrangements in place (e.g. risk assessment and change management processes) which should include their process for notifying when substantial change takes place. The detailed check to ensure that documentation is up to date and is effectively applied on the ground is a supervisory task taking place after the granting of the safety certificate (or safety authorisation) in accordance with the [CSM Regulation on supervision \(EU\) 1077/2012](#).

The NSA shall be informed by the holder of the safety certificate of all major changes in the conditions of the relevant part of the safety certificate and by the holder of the safety authorisation of all substantial changes made to the infrastructure, signalling or energy supply or to the principles of its operation and maintenance.

Based on the collected information, the NSA should evaluate whether the change and its inherent risk(s) are already adequately managed and controlled by the RU (or the IM) through its SMS arrangements (mainly risk assessment and change management processes – see criterion M in Annex II of the [CSM Regulation for Conformity Assessment 1158/2010/EU](#) and [CSM Regulation for Conformity Assessment 1169/2010/EU](#)). The NSA should on this basis decide whether reassessment is needed (i.e. re-issuing of (part(s)) of safety certificate or safety authorisation) and supervisory tasks should be considered in the strategy and plan (for the control of the correct application of the SMS processes). The scope of the reassessment should in any case be proportionate to the nature and significance of the change(s).

For examples:

- A change of legal denomination of the railway company should not require for reassessment whilst internal restructuring of the railway company could have adverse effects on its SMS arrangements forming part of the Part A safety certificate;
- An RU starting new operation in another Member State (especially cross-border traffic) may be identified as an operational change leading to the application of the risk assessment process of the [CSM Regulation on risk evaluation and assessment \(EU\) 402/2013](#) and as a result may also require changes in the SMS arrangements (forming part of the safety certificate) depending on the risk control measures identified by the proposer (of the change). In general the provisions in the Part A safety certificate should be laid down in a way that they are valid for different infrastructures (or MS) since the Part A is valid throughout the EU.

4.2.1 Updated safety certificate

The safety certificate structure¹² provides three categories which describe the type and extent of an operation they are:

¹² Standard format for safety certificate Part A and Part B are respectively provided for in Annex VI of ECM Regulation (amending Annex I of Regulation (EC) 653/2007) and in Annex II of the Regulation (EC) 653/2007.

- Type of service¹³;
- Volume of goods/passengers, and;
- Number of employees.

These three categories provide the basis for considering whether changes in type and extent of an operation are substantial.

Any change of operation between these categories or adding categories to the operation will need an amended certificate to be issued. This applies whether the change concerned arises from business developments within a company or the takeover of another company's operations. For example, a railway undertaking operating freight wagons following a merger or acquisition is a substantial change in its type and extent of service and therefore, would require for an amendment of its safety certificate (both Part A and Part B). As mentioned above, the scope of the assessment should in any case be proportionate to the risk type resulting from the change(s):

- Changes to a lower risk type (e.g. from passenger transport including high-speed services to passenger transport excluding high-speed services) will generally be an administrative exercise with only a minimal check on the implications for the railway company's SMS;
- Changes to a higher risk type (e.g. from freight transport excluding dangerous goods services to freight transport including dangerous goods services) should be regarded as a substantial change and require a full assessment of the changes to the railway company's SMS and provisions for safe operation described in their application;
- Changes that add extra higher risk types of operation to existing types should be regarded as substantial and require a full assessment of the changes. For example:
 - o Moving to a driver-only operation from a previous driver/guard operation;
 - o Introduction of new/upgraded stock which might lead to higher risk from the platform-train interface and train dispatch even though the RU is still delivering a passenger service;
 - o Changes in stock on a service, for example the move from diesel multiple units or electric multiple units to services with locomotive and coaching stock and the increased risks this might present around doors, higher passenger loadings;
 - o Freight operators who go into the passenger market either running charters or ancillary services to passenger train operators.

Any change of operation between these categories will need an amended certificate to be issued to accurately reflect the operation, but diversifying and expanding the scope of activities (e.g. freight operators providing services to train operators with mixed experiences) does not mean the change is substantial. That latter case will likely require an administrative issuing of a revised certificate.

Assessment of whether a change in extent should be considered as substantial needs to be done on a case-by-case basis. A major factor to consider is whether the change will either significantly increase risk or introduce significant new risk to the railway company's operation:

- Changes of route: a change could be substantial if an operation is proposed for a line or part of a network on which there have previously been no operations by that company (except for temporary diversions) and this new route would significantly increase the risk, e.g. exposure to a new risk (to the operator) such as operation through a sub-surface station.
- Increases in frequency of service: where there is an increase in frequency of service, this could be regarded as substantial where it significantly increases the risk, e.g. potential risks arising from congestion.

¹³ Principal types of service are passenger transport including/excluding high-speed services, freight transport including/excluding dangerous goods services and shunting only.

- Increases in route passenger-km per year or freight tonne-km per year: the issue to consider here is whether the increase in route km substantially changes the scale of the operation and the risks the railway company has to manage. These will have to be viewed on a case-by-case basis and a pragmatic view taken.

4.2.2 Updated safety authorisation

An updated safety authorisation should be applied for where there is a proposed substantial change to the:

- Infrastructure, including control-command and signalling subsystems;
- Any energy supply used in connection with the infrastructure; or
- The principles of operation and maintenance of such infrastructure or energy supply.

Assessment of whether a change in any of the above should be considered as substantial needs to be done on a case-by-case basis. A major factor to consider is whether the change will either significantly increase risk or introduce significant new risk to the railway company's operation.

Change to the infrastructure

Substantial changes could include:

- Any completely new line that employs novel technology, e.g. fundamentally new forms of track-bed construction or new tunnels, bridges, viaducts that involve new technology in their construction that increases the risk;
- Any major structure, whose type did not previously exist on the infrastructure, e.g. tunnel, viaduct, level crossing, new stations that increase the risk such as sub-surface stations;
- New forms of signalling system;
- New links to other infrastructures which would give rise to a considerable increase in local traffic flow on the infrastructure in question and an increase in risk as a result.

Change of energy supply

Substantial changes could include:

- Introduction of any energy supply which requires its own permanent infrastructure, where none currently exists, e.g. electrification;
- Introduction of any energy supply which requires its own permanent infrastructure which is significantly different to an existing one, e.g. change from 3rd/4th rail to overhead supply, or;
- Any other change to the energy supply, which creates a significantly different risk, other than where the energy source is solely contained within the vehicle itself.

Change in principles of operation and maintenance

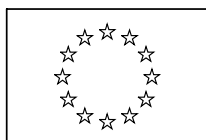
Substantial changes in the principles of operation could include:

- Introduction of fully automated working to safety critical areas, or;
- Introduction of novel signalling systems e.g. the European Rail Transport Management System.

Substantial changes in the principles of maintenance could include:

- Significant changes in maintenance intervals for safety critical infrastructure;
- Change to automated maintenance systems, or;
- Management of infrastructure maintenance by a contractor.

ANNEX 1 APPLICATION DOCUMENTS



SAFETY CERTIFICATE APPLICATION

Application for Safety Certificates confirming acceptance of the railway undertaking's Safety Management System - Safety Certificate (Part A) - and/or confirming acceptance of provisions adopted by the railway undertaking to meet specific requirements necessary for safe operation on the relevant network - Safety Certificate (Part B) - in conformity with Directive 2004/49/EC and applicable national legislation

SAFETY AUTHORITY REFERENCE NUMBER

SAFETY ORGANISATION/AUTHORITY CONTACT INFORMATION

1.1 Safety organisation/authority addressed for the request

1.2 Complete postal address (street, postal code, city, country)

2.1 This application is for a PART A CERTIFICATE

☐

2.2 New certificate

☐

2.4 Updated/amended certificate

☐

2.3 Renewed certificate

☐

2.5 EU Identification Number of the previous Part A Certificate

Type(s) of service(s) requested (select one or more) and estimated total volume of goods/passengers

Passenger transport	2.6 including high-speed services	<input type="checkbox"/>	2.8 Less than 200 million passenger-km per year	<input type="checkbox"/>
	2.7 excluding high-speed services	<input type="checkbox"/>	2.9 200 million or more passenger-km per year	<input type="checkbox"/>
Freight transport	2.10 including dangerous goods services	<input type="checkbox"/>	2.12 Less than 500 million tonne-km per year	<input type="checkbox"/>
	2.11 excluding dangerous goods services	<input type="checkbox"/>	2.13 500 million or more tonne-km per year	<input type="checkbox"/>

2.14 Shunting only

☐

2.15 Service to begin in

The applying railway undertaking belongs to the following categories for estimated number of employees

2.16 Micro enterprise

☐

2.18 Medium sized enterprise

☐

2.17 Small enterprise

☐

2.19 Large enterprise

☐

3.1 This application is for a PART B CERTIFICATE ☐

3.2 New certificate ☐

3.4 Updated/amended certificate ☐

3.3 Renewed certificate ☐

3.5 EU Identification Number of the previous Part B Certificate _____

Type(s) of service(s) requested and estimated volume of goods/passengers on the network where Part B will apply (one or more to be selected)

Passenger transport	3.6 including high-speed services	<input type="checkbox"/>	3.8 Less than 200 million passenger-km per year	<input type="checkbox"/>
	3.7 excluding high-speed services	<input type="checkbox"/>	3.9 200 million or more passenger-km per year	<input type="checkbox"/>
Freight transport	3.10 including dangerous goods services	<input type="checkbox"/>	3.12 Less than 500 million tonne-km per year	<input type="checkbox"/>
	3.11 excluding dangerous goods services	<input type="checkbox"/>	3.13 500 million or more tonne-km per year	<input type="checkbox"/>
3.14 Shunting only	<input type="checkbox"/>			
3.15 Service to begin in				
3.16 Lines intended to be operated				

If the applicant already holds a valid Part A Certificate (acceptance of the Safety Management System) it should provide the following information

3.17 EU Identification Number of Safety Certificate – Part A _____

3.18 State that has issued the Safety Certificate – Part A _____

IF THE APPLICANT ALREADY HOLDS ONE (OR MORE) VALID PART B CERTIFICATE(S) IT SHOULD PROVIDE THE FOLLOWING INFORMATION

4.1 EU Identification Number(s) of issued Safety Certificate(s) – Part B _____

IF THE APPLICANT HAS A LICENCE AND IS APPLYING FOR PART A AND/OR PART B CERTIFICATE(S) IT SHOULD PROVIDE THE FOLLOWING INFORMATION

4.2 EU Notification Number of the Licence _____

4.3 State that has issued the Licence _____

APPLICANT'S INFORMATION

5.1 Legal denomination _____

5.2 Railway undertaking name _____ 5.3 Acronym _____

5.4 Complete postal address (street, postal code, city, country) _____

5.5 Phone number _____ 5.6 Fax number _____

5.7 Email address _____ 5.8 Website _____

5.9 National registration number _____ 5.10 VAT No _____

5.11 Other information _____

Contact person information

6.1 Family name and first name _____

6.2 Complete postal address (street, postal code, city, country) _____

6.3 Phone number _____ 6.4 Fax number _____

6.5 Email address _____

Applicant _____

(first name, family name)

Date _____

Signature _____

Internal reference number _____

Date application received _____

SPACE RESERVED FOR THE ADDRESSED
OFFICE/AUTHORITY



FRONT PAGE FOR ANNEXES TO THE APPLICATION FORM

DOCUMENTS SUBMITTED FOR

PART A

- 7.1 ☐ Summary of the manual of the Safety Management System as referred to in Art. 9 and Annex III of Directive 2004/49/EC
- 7.2 ☐ Copy of the Licence (if applicable) 7.3 ☐ Not applicable

PART B

- 8.1 ☐ Copy of the Part A Certificate
- 8.2 ☐ Copy of the Licence (if applicable) 8.3 ☐ Not applicable
- 8.4 ☐ Copy of insurance or financial cover for liability, annexed to the Licence
- 8.5 ☐ List of necessary rules and TSI's with reference to the processes in the Safety Management System and documents how they are implemented
- 8.6 ☐ List of different categories of staff, either employed or contracted
- 8.7 ☐ Description of staff related processes of the Safety Management System required by national rules or TSI's and reference to the national relevant certificates where necessary
- 8.8 ☐ List of different types of rolling stock
- 8.9 ☐ Description of rolling stock related processes in the Safety Management System required by national rules or TSI's and reference to the national relevant certificates where necessary
- 8.10 ☐ Other (specify)

Internal reference number

Date application received

SPACE RESERVED FOR THE ADDRESSED
OFFICE/AUTHORITY



SAFETY AUTHORISATION APPLICATION

Application for Safety Authorisation confirming acceptance of the infrastructure manager's Safety Management System and the provisions adopted by the infrastructure manager to meet requirements necessary for the safe design, maintenance and operation in conformity with Directive 2004/49/EC and applicable national legislation

SAFETY AUTHORITY REFERENCE NUMBER

SAFETY ORGANISATION/AUTHORITY CONTACT INFORMATION

1.1. Safety organisation/authority addressed for the request

1.2. Complete postal address (street, postal code, city, country)

APPLICANT'S INFORMATION

2.1. Legal denomination

2.2. Infrastructure manager name

2.3. Acronym

2.4. Complete postal address
(street,

postal code, city, country)

2.5. Phone number

2.6. Fax number

2.7. Email address

2.8. Website

2.9. National registration number

2.10. VAT No

2.11. Other information

Contact person information

3.1. Family name and first name

3.2. Complete postal address
(street, postal code, city,
country)

3.3. Phone number

3.4. Fax number

3.5. Email address

APPLICATION DETAILS

This application is for a

4.1. new authorisation ☐

4.2. Updated/amended authorisation ☐

4.3. renewed authorisation ☐

4.4. EU Identification Number of the
previous Safety Authorisation _____

4.5. The applying infrastructure manager operates freight wagons to transport materials for construction or for infrastructure maintenance activities: YES/NO

The applying infrastructure manager belongs to the following categories for estimated number of employees

4.6. Micro enterprise ☐

4.8. Medium sized enterprise ☐

4.7. Small enterprise ☐

4.9. Large enterprise ☐

IF THE APPLICANT ALREADY HOLDS A VALID SAFETY AUTHORISATION IT SHOULD PROVIDE THE FOLLOWING INFORMATION

5.1. EU Identification Number of
Safety Authorisation _____

SUBMITTED DOCUMENTS

6.1. ☐ Summary of the manual of the Safety Management System as referred to in Art. 9 and Annex III of Directive 2004/49/EC

6.2. ☐ Other (specify) _____

Applicant _____
(first name, family name)

Date _____

Signature _____

Internal reference number

Date application received _____

SPACE RESERVED FOR THE ADDRESSED
OFFICE/AUTHORITY

ANNEX 2 STANDARD FORMAT FOR SAFETY AUTHORISATION¹⁴



SAFETY AUTHORISATION

Safety Authorisation confirming acceptance of the Safety Management System
within the European Union in conformity with Directive 2004/49/EC
and applicable national legislation

EU IDENTIFICATION NUMBER:

1. AUTHORISED INFRASTRUCTURE MANAGER

Legal denomination:	
Infrastructure Manager name:	Acronym:
National registration number:	VAT No:

2. ORGANISATION ISSUING AUTHORISATION

Organisation:
Country:

3. AUTHORISATION INFORMATION

This is a - new authorisation <input type="checkbox"/> - renewed authorisation <input type="checkbox"/> - updated/amended authorisation <input type="checkbox"/>	ECM (entity in charge of maintenance) certificate: YES/NO ECM certificate number: EU Identification Number of the previous authorisation:
Validity from:	to:
Particulars of Infrastructure(s):	
Infrastructure Manager size:	
Scope of ECM activities:	
Covers tank wagons for dangerous goods: YES/NO	
Covers other wagons specialised in transport of dangerous goods: YES/NO	

¹⁴ This format is not prescribed by EU legislation but recommended for use.

4. APPLICABLE NATIONAL LEGISLATION

--

5. ADDITIONAL INFORMATION

--

Date issued

--

Internal reference number

--

Signature

--

Authority's stamp

--

ANNEX 3 CASE STUDY EXAMPLES

1. The emergency department of an IM uses specialised and motorised vehicles, which are transported with a van over the road and then placed on the rail to intervene where the accident occurred. The IM has neither a safety certificate nor a licence.

Should the IM be considered as RU and then, apply for a safety certificate?

The use of such vehicles does not change the principal activity (or business) of the IM to provide transport of goods and/or passengers by rail. The [technical specification of interoperability relating to the subsystem Traffic Operation and Management of the trans-European conventional rail system \(TSI OPE\)](#) sets the requirement for the IM to establish specific measures to manage emergency situations together with the RUs or representatives of the RUs which shall be then included in the SMS of the IM (and the RUs).

As follows, since in this case the IM is not considered as an RU, it shall not obtain any safety certificate. Neither it shall be licensed according to Directive 2012/34/EU (previously Directive 95/18/EC) as its principal business has not changed to transport of goods/passengers. It shall hold a safety authorisation.

In the course of the assessment of conformity of the IM's SMS, the processes for managing an emergency situation should have been under scrutiny. The NSA could then assess the existence of the necessary provisions to control the risks of these activities in the IM's SMS.

The above case and related conclusion can also be expanded to the question regarding the situation where the IM uses subcontractors, e.g. to transport materials for maintenance tasks or to project sites when building new lines.

2. An international RU operates on the infrastructure of a neighbouring Member State not beyond the first station located after the state border.

Should a Part B safety certificate still be granted to the international company?

This RU plans to operate in another neighbouring Member State and applies for a safety certificate (Part B) to the NSA of that Member State whereas the RU does not know yet when its operation will start.

Should the NSA of the neighbouring Member State grant a Part B safety certificate for a railway company that has not yet started any operation in its Member State and that does not know when it will be able to start its operation? How can it be controlled by the NSAs of both neighbouring Member States?

Article 10.2(b) of Directive 2004/49/EC (the Railway Safety Directive) requires an RU to obtain a network specific safety certificate (Part B) from the NSA in the Member State it wishes to operate in, after it has obtained a Part A safety certificate valid throughout the European Union. So, a RU operating in the neighbouring Member State should apply for a safety certificate in relation to conducting its operations in the neighbouring Member State.

If an RU operates until the 'frontier' location(s), i.e. any location(s) designated as the 'frontier' in the network statement of an IM and included in its safety authorisation (e.g. the first station beyond the border), then it should already have demonstrated the capability to meet the network specific requirements (whilst the network (or parts of it) extends physically beyond the geographical border of a neighbouring MS as part of cooperation arrangements between IMs) and therefore have already

been granted a domestic Part B safety certificate covering also the frontier location (see section 2.1.2). Those network specific requirements should be included in the network statement of the IM allocating the infrastructure capacity (see Annex IV of [Directive 2012/34/EU](#)). Under the above conditions, provided that both neighbouring MS decide so, the RU may not be required to apply for a Part B safety certificate to the NSA of the neighbouring Member State.

The Part B safety certificate can be granted to the applicant if it complies with the assessment criteria of the [CSM Regulation for Conformity Assessment 1158/2010/EU](#). However, pursuant to Article 10(5) of the RSD, the NSA must revoke a safety certificate if it is apparent that the holder of the safety certificate has not used it as intended¹⁵ in the year following its issue. Furthermore, as soon as this RU makes decision to (effectively) operate in the other Member State to which it applied for the Part B safety certificate, the NSA of this Member State shall conduct at the earliest supervision activities. Pursuant to Article 9(4) of the RSD, the RU shall submit to the NSA an annual safety report. The RU shall submit this report to the concerned Member States for their respective part (i.e. information related to Part A and Part B for the first Member State where the RU is registered, and to Part B for the second Member State).

3. Business arrangements (e.g. joint venture agreement) exist between railway undertakings whereby the railway operation (e.g. passenger traffic), including traction, in a Member State by an international RU (i.e. registered in another Member State) are covered by the safety certificate Parts A and B of an incumbent RU of that Member state; the international RU being subcontractor of the incumbent RU.

The Part A safety certificate of the incumbent RU covers the way it arranged the distribution of the safety tasks with its subcontractors and its monitoring of the delegated safety tasks.

The Part B covers in particular how the incumbent RU accepts the rolling stock and the safety personnel from its sub-contractors, but also the practical arrangements for the exchange of documentation and information.

Should the international RU apply for a Part B safety certificate in the Member State of the incumbent RU? Who is providing “traction”? Which company is responsible for the safe operation?

The safety certificate is the evidence that the RU has established its SMS and therefore, the RU has put in place the necessary arrangements to manage and control all risks associated with its activity, including the supply of maintenance and material and the use of contractors and, where appropriate and reasonable, the risks arising as a result of activities by other parties (including other RUs on the network). The main issue in this context is those that create the risk have the information and knowledge to control them.

In relation to Part B safety certificate, Annex III of the [CSM Regulation on Conformity Assessment 1158/2010/EU](#) specifies that the RU has to provide documentation on the TSIs or parts of TSIs and, where relevant, national safety rules and other rules applicable to its operations, its staff and its rolling stock, as well as documentation on the different types of rolling stock used for the operation in general (which could cover rolling stock of contractors).

The fact that the SMS of the incumbent RU covers the operation of subcontractors working for the RU does not mean that such subcontractors are relieved from their obligation to have their own safety certificate if they operate as a RU (and it would even be an obligation for the incumbent RU to check that their contractors comply with all applicable laws). The fact that the incumbent RU would

¹⁵ For the same type and extent of operation.

by contract accept all potential liabilities resulting from the activities of its subcontractors does not mean that those subcontractors are exempted of their own obligations under applicable laws.

Besides that, it is important to determine which legal entity ensuring the traction for the international RU in the Member State, i.e. the one having the responsibility for coordinating and managing the safe running of the train, is the RU that needs to have its own safety certificate.

As follows, if the incumbent RU subcontracts railway services and traction to an international RU, the safety certificate of the incumbent RU cannot be used by an international RU who operates a traction unit with one or more train drivers on the network, even on behalf of the incumbent RU. The safety certificate of an RU can only cover its own operations and not those of other legal entities, such as subcontractors or even subsidiaries with their own legal personality, or foreign branches with no distinct legal personality.

There will always be an option for a RU to contract with another RU (or other legal entities) for the leasing of rolling stock and/or hiring of personnel but it does not discharge both parties from their safety responsibilities under the RSD. The contracting RU has the responsibility, as part of its SMS, to clearly specify in the contract what it requires from the subcontractor to do and the quality of the outputs it expects from the subcontractor to deliver, as well as to monitor the outputs of the subcontractor to make sure it meets the original specification in the contract. The sub-contracted RU should cover the operational elements in their SMS and both should have effective co-operation and co-ordination arrangements.

As regards the Part A safety certificate, both the incumbent RU and the international RU should have its own valid Part A safety certificate.

As regards the Part B safety certificate, it is clear that any RU must have the Part B safety certificate with respect to the network on which it provides railway services.

Therefore, likewise the Part A safety certificate, the Part B safety certificate of the incumbent RU cannot be used by the international RU who operates a traction unit with one or more train drivers on the network where the incumbent RU operates, even it does so on behalf of the incumbent RU. The Part B safety certificate of an RU can only cover its own operations and not those of other legal entities.

As follows, the international RU should have its own Part B safety certificate for the network on which it operates, even it does so on behalf of the incumbent RU.

If the incumbent RU would take over, through contractual arrangements, the operation of a train from the international RU when the train enters into the territory of the Member State where the incumbent RU operates, then each RU could operate the same train on the network of the Member State where it has obtained its part B safety certificate.

To conclude:

- Neither Part A nor Part B safety certificates of the incumbent RU can be used by another RU who ensures traction (i.e. the use of locomotive(s) and train driver(s)) and who has the responsibility for coordinating and managing the safe running of the train on the network where the incumbent RU operates, even as a contractor on behalf of the incumbent RU.
- Both Part A and part B safety certificates of an RU can only cover its own operations and not those of other legal entities, be it contractors or subsidiaries or other RUs.
- RU can only operate on a network, and thereby is responsible for its safe operation, if it has a valid Part A and Part B safety certificates, irrespective of its contractual arrangements concluded with other RUs or other legal entities concerning its operation.
- Hence, the railway operations of international RUs in a Member State which are subcontractors of the incumbent RU of that Member State cannot be by the Part A and Part B safety certificates of the incumbent RU. **Responsibilities for safety and obligations to have safety certificate may not derive in the contractual arrangements from the basic principles laid down in the RSD.**

The above case and related principles and conclusion could also apply to joint venture agreement binding two companies registered in two different neighbouring Member States where train composition mixes locomotives and wagons from both companies and the train crew is changed over at the border.