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## Legislation

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Contents

I *Acts whose publication is obligatory*

- ★ **Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system . . . . .** 1
- ★ **Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings . . . . .** 28

## I

(Acts whose publication is obligatory)

**DIRECTIVE 2001/16/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 19 March 2001****on the interoperability of the trans-European conventional rail system**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 156 thereof,

Having regard to the Commission proposal<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(3)</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty<sup>(4)</sup>,

Whereas:

- (1) In order to enable citizens of the Union, economic operators and regional and local authorities to benefit to the full from the advantages deriving from the establishing of an area without internal frontiers, it is appropriate, in particular, to improve the interlinking and interoperability of the national rail networks as well as access thereto, implementing any measures that may prove necessary in the field of technical standardisation, as provided for in Article 155 of the Treaty.
- (2) By signing the Protocol adopted in Kyoto on 12 December 1997 the European Union has undertaken to reduce its gas emissions. These objectives require an adjustment to the balance between the various modes of transport, and consequently an increase in the competitiveness of rail transport.

<sup>(1)</sup> OJ C 89 E, 28.3.2000, p. 1.

<sup>(2)</sup> OJ C 204, 18.7.2000, p. 13.

<sup>(3)</sup> OJ C 317, 6.11.2000, p. 22.

<sup>(4)</sup> Opinion of the European Parliament of 17 May 2000 (OJ C 59, 23.2.2001, p. 106), Council Common Position of 10 November 2000 (OJ C 23, 24.1.2001, p. 15) and Decision of the European Parliament of 13 February 2001.

(3) The Council strategy for the integration of the environment and sustainable development into Community transport policy highlights the need to act to reduce the environmental impact of transport.

(4) The commercial operation of trains throughout the trans-European rail network requires in particular excellent compatibility between the characteristics of the infrastructure and those of the rolling stock, as well as efficient interconnection of the information and communication systems of the different infrastructure managers and operators. Performance levels, safety, quality of service and cost depend upon such compatibility and interconnection, as does, in particular, the interoperability of the trans-European conventional rail system.

(5) To achieve these objectives an initial measure was taken by the Council on 23 July 1996 with the adoption of Directive 96/48/EC concerning the interoperability of the trans-European high-speed rail system<sup>(5)</sup>.

(6) In its White Paper entitled 'A strategy for revitalising the Community's railways' in 1996, the Commission announced a second measure in the conventional rail sector and then ordered a study on the integration of national rail systems, the results of which were published in May 1998 with the recommendation of the adoption of a Directive based on the approach taken in the high-speed sector. This study also recommended that, rather than tackling all the obstacles to interoperability head on, problems should be solved gradually according to an order of priority based on the cost-benefit ratio of each proposed measure. In this study the harmonisation of procedures and rules in use and the interconnection of information and communication systems were shown to be more effective than measures, for example, concerning the infrastructure loading gauge.

<sup>(5)</sup> OJ L 235, 17.9.1996, p. 6.

- (7) The Commission communication on 'Integration of conventional rail systems' recommends the adoption of this Directive and justifies the similarities and main differences compared with Directive 96/48/EC. The main differences lie in the adaptation of the geographical scope, in the extension of the technical scope to take account of the results of the above study and in the adoption of a gradual approach to eliminating obstacles to the interoperability of the rail system, which includes establishing an order of priorities and a timetable for drawing it up.
- (8) In view of that gradual approach and of the time consequently required for the adoption of all the technical specifications for interoperability (TSIs), steps should be taken to avoid a situation where Member States adopt new national rules or undertake projects that increase the heterogeneity of the present system.
- (9) The adoption of a gradual approach satisfies the special needs of the objective of interoperability of the conventional rail system, which is characterised by old national infrastructure and stock requiring heavy investment for adaptation or renewal, and particular care should be taken not to penalise rail economically vis-à-vis other modes of transport.
- (10) In its Resolution of 10 March 1999 on the rail package the Parliament asked that the progressive opening up of the rail sector go hand-in-hand with the fastest and most effective possible technical harmonisation measures.
- (11) The Council meeting on 6 October 1999 asked the Commission to propose a strategy on improving the interoperability of rail transport and reducing bottlenecks with a view to eliminating technical, administrative and economic obstacles to the interoperability of networks without delay while guaranteeing a high level of safety as well as personnel training and qualifications.
- (12) Pursuant to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways<sup>(1)</sup>, railway companies must have increased access to Member States' rail networks, which in turn requires the interoperability of infrastructure, equipment, rolling stock and systems of management and operation, including those staff qualifications and hygiene and safety conditions at work required for the operation and maintenance of the subsystems in question and for the implementation of each TSI. However, it is not the aim of this Directive, directly or indirectly, to harmonise working conditions in the rail sector.
- (13) Member States are responsible for ensuring compliance with the safety, health and consumer protection rules applying to the railway networks in general during the design, construction, putting into service and operation of those railways.
- (14) There are major differences in the national regulations and internal rules and technical specifications which the railways apply, since they incorporate techniques that are specific to the national industries and prescribe specific dimensions and devices and special characteristics. This situation prevents trains from being able to run without hindrance throughout the Community network.
- (15) Over the years, this situation has created very close links between the national railway industries and the national railways, to the detriment of the genuine opening-up of markets. In order to enhance their competitiveness at world level, these industries require an open, competitive European market.
- (16) It is therefore appropriate to define basic essential requirements for the whole of the Community which will apply to the trans-European conventional rail system.
- (17) In view of the extent and complexity of the trans-European conventional rail system, it has proved necessary, for practical reasons, to break this down into subsystems. For each of these subsystems the essential requirements must be specified and the technical specifications determined for the whole of the Community, particularly in respect of constituents and interfaces, in order to meet these essential requirements.
- (18) Implementation of the provisions on the interoperability of the trans-European conventional rail system should not create unjustified barriers in cost-benefit terms to the preservation of the existing rail network of each Member State, but must endeavour to retain the objective of interoperability.
- (19) The technical specifications for interoperability also have an impact on the conditions of use of rail transport by users, and it is therefore necessary to consult these users on aspects concerning them.
- (20) Each Member State concerned should be allowed not to apply certain technical specifications for interoperability in special cases, provided that there are procedures to ensure that these derogations are justified. Article 155 of the Treaty requires Community activities in the field of interoperability to take account of the potential economic viability of projects.

<sup>(1)</sup> OJ L 237, 24.8.1991, p. 25.

- (21) The drawing up of TSIs and their application to the conventional rail system should not impede technological innovation, which should be directed towards improving economic performance.
- (22) Advantage should be taken of the interoperability of the conventional rail system, particularly in the case of freight, to bring about the conditions for greater interoperability between modes of transport.
- (23) To comply with the appropriate provisions on procurement procedures in the rail sector and in particular Directive 93/38/EEC<sup>(1)</sup>, the contracting entities should include technical specifications in the general documents or in the terms and conditions for each contract. To this end it is necessary to build up a body of European specifications in order to serve as references for these technical specifications.
- (24) An international system of standardisation capable of generating standards which are actually used by those involved in international trade and which meet the requirements of Community policy would be in the Community's interest. The European standardisation bodies must therefore continue their cooperation with the international standardisation bodies.
- (25) The contracting entities are to define the further requirements needed to complete European specifications or other standards. These specifications should meet the essential requirements that have been harmonised at Community level and which the trans-European conventional rail system must satisfy.
- (26) The procedures governing the assessment of conformity or of suitability of use of constituents should be based on the use of the modules covered by Decision 93/465/EEC<sup>(2)</sup>. As far as possible and in order to promote industrial development, it is appropriate to draw up the procedures involving a system of quality assurance.
- (27) Conformity of constituents is mainly linked to their area of use in order to guarantee the interoperability of the system and not only to their free movement on the Community market. The suitability for use of the most critical constituents as regards safety, availability or system economy should be assessed. It is therefore not necessary for a manufacturer to affix the CE marking to constituents that are now subject to the provisions of this Directive. On the basis of the assessment of conformity and/or suitability for use, the manufacturer's declaration of conformity should be sufficient.
- (28) That does not affect the obligation on manufacturers to affix the CE marking to certain components in order to certify their compliance with other Community provisions relating to them.
- (29) The subsystems constituting the trans-European conventional rail system should be subjected to a verification procedure. This verification must enable the authorities responsible for authorising their putting into service to be certain that, at the design, construction and putting into service stages, the result is in line with the regulations and technical and operational provisions in force. It must also enable manufacturers to be able to count upon equality of treatment whatever the country. It is therefore necessary to lay down a module defining the principles and conditions applying to 'EC' verification of subsystems.
- (30) The 'EC' verification procedure should be based on TSIs. These TSIs are subject to the provisions of Article 18 of Directive 93/38/EEC. The notified bodies responsible for examining the procedures for conformity assessment and suitability for the use of constituents, together with the procedure for the assessment of subsystems must, in particular in the absence of any European specification, coordinate their decisions as closely as possible.
- (31) These TSIs are drawn up to the order of the Commission by the joint body representing the infrastructure managers, the railway companies and the industry. Representatives of non-member countries, in particular those of the applicant countries, may from the outset be authorised to attend meetings of the joint representative body as observers.
- (32) Directive 91/440/EEC requires a separation of activities, in accounting terms, between transport service operation and railway infrastructure management. This being the case, the specialised services provided by railway infrastructure managers designated as notified bodies should be structured in such a way as to meet the criteria which must apply to this type of body. Other specialised bodies may be notified where these meet the same criteria.
- (33) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 99/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(3)</sup>.

<sup>(1)</sup> Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84). Directive as last amended by Directive 98/4/EC (OJ L 101, 1.4.1998, p. 1).

<sup>(2)</sup> Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (OJ L 220, 30.8.1993, p. 23).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

(34) Interoperability within the trans-European conventional rail system is Community-wide in scale. No individual Member State is in a position to take the action needed in order to achieve this interoperability. In accordance with the principle of subsidiarity, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the proposed action be better achieved by the Community,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER ONE

### General provisions

#### Article 1

1. This Directive sets out to establish the conditions to be met to achieve interoperability within the Community territory of the trans-European conventional rail system, as described in Annex I. These conditions concern the design, construction, putting into service, upgrading, renewal, operation and maintenance of the parts of this system put into service after the date of entry into force of this Directive, as well as the professional qualifications and health and safety conditions of the staff who contribute to its operation.

2. The pursuit of this objective must lead to the definition of a minimum level of technical harmonisation and make it possible to:

- (a) facilitate, improve and develop international rail transport services within the European Union and with third countries;
- (b) contribute to the progressive creation of the internal market in equipment and services for the construction, renewal, upgrading and operation of the trans-European conventional rail system;
- (c) contribute to the interoperability of the trans-European conventional rail system.

#### Article 2

For the purposes of this Directive:

- (a) 'trans-European conventional rail system' means the structure, as described in Annex I, composed of lines and

fixed installations, of the trans-European transport network, built or upgraded for conventional rail transport and combined rail transport, plus the rolling stock designed to travel on that infrastructure;

- (b) 'interoperability' means the ability of the trans-European conventional rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance for these lines. This ability rests on all the regulatory, technical and operational conditions which must be met in order to satisfy the essential requirements;
- (c) 'subsystems' means the result of the division of the trans-European conventional rail system, as shown in Annex II. These subsystems, for which essential requirements must be laid down, are structural and functional;
- (d) 'interoperability constituents' means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the trans-European conventional rail system depends directly or indirectly. The concept of a 'constituent' covers both tangible objects and intangible objects such as software;
- (e) 'essential requirements' means all the conditions set out in Annex III which must be met by the trans-European conventional rail system, the subsystems, and the interoperability constituents including interfaces;
- (f) 'European specification' means a common technical specification, a European technical approval or a national standard transposing a European standard, as defined in points 8 to 12 of Article 1 of Directive 93/38/EEC;
- (g) 'technical specifications for interoperability', hereinafter referred to as 'TSIs', means the specifications by which each subsystem or part subsystem is covered in order to meet the essential requirements and ensure the interoperability of the trans-European conventional rail system;
- (h) 'joint representative body' (JRB) means the body bringing together representatives of the infrastructure managers, railway companies and industry which is responsible for drawing up the TSIs. 'Infrastructure managers' means those referred to in Articles 3 and 7 of Directive 91/440/EEC;
- (i) 'notified bodies' means the bodies which are responsible for assessing the conformity or suitability for use of the interoperability constituents or for appraising the 'EC' procedure for verification of the subsystems;

- (j) 'basic parameters' means any regulatory, technical or operational condition which is critical to interoperability and requires a decision in accordance with the procedure laid down in Article 21(2) before any development of draft TSIs by the joint representative body;
- (k) 'specific case' means any part of the trans-European conventional rail system which needs special provisions in the TSIs, either temporary or definitive, because of geographical, topographical or urban environment constraints or those affecting compatibility with the existing system. This may include in particular railway lines and networks isolated from the rest of the Community, the loading gauge, the track gauge or space between the tracks and rolling stock strictly intended for local, regional or historical use, as well as rolling stock originating from or destined for third countries, as long as this stock does not cross the border between two Member States;
- (l) 'upgrading' means any major modification work on a subsystem or part subsystem which requires fresh authorisation for putting into service within the meaning of Article 14(1);
- (m) 'renewal' means any major substitution work on a subsystem or part subsystem which requires fresh authorisation for putting into service within the meaning of Article 14(1);
- (n) 'existing rail system' means the structure composed of lines and fixed installations of the existing rail system plus the rolling stock of all categories and origin travelling on that infrastructure.

#### Article 3

1. This Directive applies to the provisions concerning, for each subsystem, the interoperability constituents, the interfaces and procedures as well as the conditions of overall compatibility of the trans-European conventional rail system required to achieve its interoperability.
2. The provisions of this Directive shall apply without prejudice to any other relevant Community provisions. However, in the case of interoperability constituents, including interfaces, compliance with the essential requirements of this Directive may require the use of individual European specifications drawn up for that purpose.

#### Article 4

1. The trans-European conventional rail system, subsystems and interoperability constituents including interfaces shall meet the relevant essential requirements.

2. The further technical specifications referred to in Article 18(4) of Directive 93/38/EEC which are necessary to complete European specifications or other standards in use within the Community must not conflict with the essential requirements.

#### CHAPTER II

### Technical specifications for interoperability (TSIs)

#### Article 5

1. Each of the subsystems shall be covered by a TSI. Where necessary, especially for treating categories of lines, hubs or rolling stock separately, or to solve certain interoperability problems as a matter of priority, a subsystem may be covered by several TSIs. In this case the provisions of this Article also apply to the part of the subsystem concerned.
2. Subsystems shall comply with the TSIs; this compliance shall be permanently maintained while each subsystem is in use.
3. To the extent necessary in order to achieve the objectives referred to in Article 1, each TSI shall:
  - (a) indicate its intended scope (part of network or rolling stock referred to in Annex I; subsystem or part of subsystem referred to in Annex II);
  - (b) lay down essential requirements for each subsystem concerned and its interfaces vis-à-vis other subsystems;
  - (c) establish the functional and technical specifications to be met by the subsystem and its interfaces vis-à-vis other subsystems. If need be, these specifications may vary according to the use of the subsystem, for example according to the categories of line, hub and/or rolling stock provided for in Annex I;
  - (d) determine the interoperability constituents and interfaces which must be covered by European specifications, including European standards, which are necessary to achieve interoperability within the trans-European conventional rail system;
  - (e) state, in each case under consideration, the procedures for the assessment of conformity or suitability of use. This includes in particular the modules defined in Decision 93/465/EEC or, where appropriate, the specific procedures, to be used to assess either the conformity or the suitability for use of interoperability constituents and 'EC' verification of subsystems;

(f) indicate the strategy for implementing the TSIs. In particular, it is necessary to specify the stages to be completed in order to make a gradual transition from the existing situation to the final situation in which compliance with the TSIs shall be the norm;

(g) indicate, for the staff concerned, the professional qualifications and health and safety conditions at work required for the operation and maintenance of the above subsystem, as well as for the implementation of the TSIs.

4. Each TSI shall be drawn up on the basis of an examination of an existing subsystem and indicate a target subsystem that may be obtained gradually within a reasonable time-scale. Accordingly, the gradual adoption of the TSIs and compliance therewith will help gradually to achieve the interoperability of the trans-European conventional rail system.

5. The TSIs shall retain, in an appropriate manner, the compatibility of the existing rail system of each Member State. With this objective, provision may be made for specific cases for each set of TSIs, with regard to both infrastructure and rolling stock; special attention must be given to the loading gauge, the track gauge or space between the tracks and wagons from or going to third countries. For each specific case, the TSIs stipulate the implementing rules of the elements of the TSIs indicated in paragraphs 3(c) to (g).

6. The TSIs shall not be an impediment to decisions by the Member States concerning the use of infrastructures for the movement of rolling stock not covered by the TSIs.

#### Article 6

1. Draft TSIs shall be drawn up by the joint representative body under a mandate from the Commission in accordance with the procedure set out in Article 21(2). TSIs shall be adopted and reviewed by the same procedure. They shall be published by the Commission in the *Official Journal of the European Communities*.

2. The joint representative body shall be designated in accordance with the procedure set out in Article 21(2); it shall comply with the rules laid down in Annex VIII. Where the joint representative body does not comply with these rules or does not have the authority needed to draw up a particular TSI, another authorised body shall be designated by the same procedure. In the latter case, the joint representative body must be associated with the work of the other body.

3. The joint representative body or, where appropriate, the authorised body in question shall be responsible for preparing the review and updating of TSIs and making appropriate recommendations to the Committee referred to in Article 21 in order to take account of developments in technology or social requirements.

4. Each draft TSI shall be drawn up in two stages.

First of all, the joint representative body shall identify the basic parameters for this TSI as well as the interfaces with the other subsystems and any other specific cases that may be necessary. The most viable alternative solutions accompanied by technical and economic justification shall be put forward for each of these parameters and interfaces. A decision shall be taken in accordance with the procedure set out in Article 21(2); if necessary, specific cases shall be cited.

The joint representative body shall then draw up the draft TSI on the basis of these basic parameters. Where appropriate, the joint representative body shall take account of technical progress, of standardisation work already carried out, of working parties already in place and of acknowledged research work. An overall assessment of the estimated costs and benefits of the implementation of the TSIs shall be attached to the draft TSI; this assessment shall indicate the likely impact for all the operators and economic agents involved.

5. The drafting, adoption and review of each TSI (including the basic parameters) shall take account of the estimated costs and benefits of all the technical solutions considered together with the interfaces between them, so as to establish and implement the most viable solutions. The Member States shall participate in this assessment by providing the requisite data.

6. The Committee referred to in Article 21 shall be kept regularly informed of the preparatory work on the TSIs. During this work the Committee may formulate any terms of reference or useful recommendations concerning the design of the TSIs and the cost-benefit analysis. In particular, the Committee may, at the request of a Member State, require that alternative solutions be examined and that the assessment of the cost and benefits of these alternative solutions be set out in the report annexed to the draft TSI.

7. On the adoption of each TSI, the date of entry into force of that TSI shall be established in accordance with the procedure provided for in Article 21(2). Where different subsystems have to be put into service simultaneously for reasons of technical compatibility, the dates of entry into force of the corresponding TSIs shall be the same.

8. The drafting and review of the TSIs shall take account of the opinions of the users, as regards the characteristics which have a direct impact on the conditions in which they use the subsystems.

To that end the joint representative body or, where appropriate, the authorised body shall consult associations and bodies representing users during the drafting and review phases of the TSIs.

They shall enclose with the draft TSI a report on the results of this consultation.

The list of associations and bodies to be consulted shall be finalised by the Committee referred to in Article 21 before adopting the mandate of the first TSI and may be re-examined and updated at the request of a Member State or the Commission.

9. The drafting and review of the TSIs shall take account of the opinion of the social partners as regards the conditions referred to in Article 5(3)(g).

To this end, the social partners shall be consulted before the draft TSI is submitted, for adoption or review, to the Committee referred to in Article 21.

The social partners shall be consulted in the context of the Sectoral Dialogue Committee set up in accordance with Commission Decision 98/500/EC<sup>(1)</sup>.

The social partners shall issue their opinion within three months.

#### Article 7

A Member State need not apply one or more TSIs, including those relating to rolling stock, in the following cases and circumstances:

- (a) for a proposed new line, for the upgrading of an existing line, or for any element referred to Article 1(1) at an advanced stage of development or the subject of a contract in course of performance when these TSIs are published;
- (b) for any project concerning the renewal or upgrading of an existing line where the loading gauge, track gauge, space between the tracks, or electrification voltage in these TSIs is not compatible with those of the existing line;
- (c) for a proposed new line or for the proposed renewal or upgrading of an existing line in the territory of that Member State when its rail network is separated or isolated by the sea from the rail network of the rest of the Community;
- (d) for any proposed renewal, extension or upgrading of an existing line, when the application of these TSIs would compromise the economic viability of the project and/or the compatibility of the rail system in the Member State;

<sup>(1)</sup> Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (OJ L 255, 12.8.1998, p. 27).

(e) where, following an accident or a natural disaster, the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of the relevant TSIs;

(f) for wagons from or going to third countries the track gauge of which is different from that of the main rail network of the Community.

In all cases the Member State concerned shall serve prior notice of its intended derogation to the Commission and shall forward to it a file setting out the TSIs or the parts of TSIs that it does not wish to be applied as well as the corresponding specifications that it does wish to apply. The Committee provided for in Article 21 shall analyse the measures envisaged by the Member State. In cases (b), (d) and (f), the Commission shall take a decision in accordance with the procedure in Article 21(2). Where necessary, a recommendation shall be drawn up concerning the specifications to be applied. Nevertheless, in the case of (b) the Commission's decision shall not cover the loading gauge and the track gauge.

### CHAPTER III

#### Interoperability constituents

##### Article 8

Member States shall take all necessary steps to ensure that interoperability constituents:

- (a) are placed on the market only if they enable interoperability to be achieved within the trans-European conventional rail system while at the same time meeting the essential requirements;
- (b) are used in their area of use as intended and are suitably installed and maintained.

These provisions shall not obstruct the placing on the market of these constituents for other applications.

##### Article 9

Member States may not, in their territory and on grounds concerning this Directive, prohibit, restrict or hinder the placing on the market of interoperability constituents for use in the trans-European conventional rail system where they comply with this Directive. In particular, they may not require checks which have already been carried out as part of the procedure of 'EC' declaration of conformity or suitability for use, the components of which are set out in Annex IV.



## Article 10

1. Member States shall consider as complying with the essential requirements of this Directive applying to them those interoperability constituents which bear the 'EC' declaration of conformity or suitability for use.

2. Compliance of an interoperability constituent with the respective essential requirements and, where appropriate, its suitability for use shall be established in relation to the conditions laid down by the corresponding TSI, including any relevant European specifications that may exist.

3. The references to European specifications shall be published in the *Official Journal of the European Communities* and mentioned in the respective TSI. When the relevant European specifications are published after adoption of the TSI, they shall be taken into account as soon as the TSIs are revised.

4. Member States shall publish the references to national standards transposing European standards.

5. As regards the period prior to the publication of a TSI, in the absence of any European specifications and without prejudice to Article 20(5), Member States shall notify to the other Member States and the Commission a list of the standards and technical specifications in use in order to implement the essential requirements. This notification shall be made not later than 20 March 2002.

6. Where a European specification is not yet available at the time of adoption of a TSI and compliance with this specification is an essential precondition to guarantee interoperability, the TSI may refer to the most advanced version available of the draft European specification that has to be complied with or that incorporates all or part of that draft.

## Article 11

Where it appears to a Member State or the Commission that European specifications do not meet the essential requirements, partial or total withdrawal of these specifications from the publications containing them, or their amendment, may be decided upon in accordance with the procedure laid down in Article 21(2) after consultation, where European standards are involved, of the Committee set up under Directive 98/34/EC<sup>(1)</sup>.

<sup>(1)</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 204, 21.7.1998, p. 37). Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

## Article 12

1. Where a Member State finds that an interoperability constituent covered by the 'EC' declaration of conformity or suitability for use and placed on the market is unlikely, when used as intended, to meet the essential requirements, it shall take all necessary steps to restrict its field of application, prohibit its use or withdraw it from the market. The Member States shall forthwith inform the Commission of the measures taken and give the reasons for its decision, stating in particular whether failure to conform is due to:

- (a) failure to meet the essential requirements;
- (b) incorrect application of European specifications where application of such specifications is relied upon;
- (c) inadequacy of European specifications.

2. The Commission shall consult the parties concerned as quickly as possible. Where, following that consultation, the Commission establishes that the measure is justified it shall forthwith inform the Member State that has taken the initiative as well as the other Member States thereof. Where, after that consultation, the Commission establishes that the measure is unjustified it shall forthwith inform the Member State that has taken the initiative and the manufacturer or his authorised representative established within the Community thereof. Where the decision referred to in paragraph 1 is justified by the existence of a gap in European specifications, the procedure defined in Article 11 shall apply.

3. Where an interoperability constituent bearing the 'EC' declaration of conformity fails to comply, the competent Member State shall take appropriate measures against whomsoever has drawn up the declaration and shall inform the Commission and the other Member States thereof.

4. The Commission shall ensure that the Member States are kept informed of the course and results of that procedure.

## Article 13

1. In order to establish the 'EC' declaration of conformity or suitability for use of an interoperability constituent, the manufacturer or his authorised representative established in the Community shall apply the provisions laid down by the relevant TSIs.

2. Assessment of the conformity or suitability for use of an interoperability constituent shall be carried out by the notified body with which the manufacturer or his authorised representative established in the Community has lodged the application.

3. Where interoperability constituents are the subject of other Community directives covering other aspects, the 'EC' declaration of conformity or suitability for use shall, in such instances, state that the interoperability constituents also meet the requirements of those other directives.

4. Where neither the manufacturer nor his authorised representative established in the Community has met the obligations arising out of paragraphs 1, 2 and 3, those obligations shall be incumbent on any person who places interoperability constituents on the market. The same obligations shall apply to whomsoever assembles interoperability constituents or parts of interoperability constituents having diverse origins or manufactures interoperability constituents for his own use, for the purposes of this Directive.

5. Without prejudice to the provisions of Article 12:

(a) in each instance where the Member State finds that the 'EC' declaration of conformity has been drawn up improperly, the manufacturer or his authorised representative established in the Community shall be required to restore the interoperability constituent to a state of conformity and to terminate the infringement under the conditions laid down by that Member State;

(b) where non-conformity persists, the Member State shall take all appropriate steps to restrict or prohibit the placing on the market of the interoperability constituent at issue, or to ensure that it is withdrawn from the market in accordance with the procedures provided for in Article 12.

#### CHAPTER IV

### Subsystems

#### Article 14

1. Each Member State shall authorise the putting into service of those structural subsystems constituting the trans-European conventional rail system which are located or operated in its territory.

To this end, Member States shall take all appropriate steps to ensure that these subsystems may be put into service only if they are designed, constructed and installed in such a way as to meet the essential requirements concerning them when integrated into the trans-European conventional rail system. In particular, they shall check the compatibility of these subsystems with the system into which they are being integrated.

2. Each Member State shall check when they are put into service and at regular intervals thereafter, that these subsystems are operated and maintained in accordance with the essential requirements concerning them.

3. In the event of renewal or upgrading, the manager of the rail infrastructure or enterprise shall send the Member State concerned a file describing the project. The Member State shall examine this file and, taking account of the implementation strategy indicated in the applicable TSI, shall decide whether the size of the works means that a new authorisation for putting into service within the meaning of this Directive is needed. This authorisation for putting into service is required each time the safety level may be affected by the works envisaged.

#### Article 15

Without prejudice to the provisions of Article 19, Member States may not, in their territory and on grounds concerning this Directive, prohibit, restrict or hinder the construction, putting into service and operating of structural subsystems constituting the trans-European conventional rail system which meet the essential requirements. In particular, they may not require checks which have already been carried out as part of the procedure leading to the 'EC' declaration of verification, the components of which are set out in Annex V.

#### Article 16

1. Member States shall consider as being interoperable and meeting the essential requirements concerning them, those structural subsystems constituting the trans-European conventional rail system which are covered by the 'EC' declaration of verification.

2. Verification of the interoperability, in accordance with the essential requirements, of a structural subsystem constituting the trans-European conventional rail system shall be established by reference to TSIs where they exist.

3. As regards the period prior to the publication of TSIs, Member States shall send the other Member States and the Commission, for each subsystem, a list of the technical rules in use for implementing the essential requirements. This shall be notified not later than 20 March 2002.

#### Article 17

Where it appears that the TSIs do not fully meet the essential requirements the Committee referred to in Article 21 may be consulted at the request of a Member State or on the initiative of the Commission.

*Article 18*

1. In order to establish the 'EC' declaration of verification, the procurement entity or its official representative shall invite the notified body that it has selected for that purpose to apply the 'EC' verification procedure referred to in Annex VI.
2. The task of the notified body responsible for the 'EC' verification of a subsystem shall begin at the design stage and cover the entire manufacturing period through to the acceptance stage before the subsystem is put into service. It shall also cover verification of the interfaces of the subsystem in question with the system into which it is incorporated, based on the information available in the relevant TSI and in the registers provided for in Article 24.
3. The notified body shall be responsible for compiling the technical file that has to accompany the 'EC' declaration of verification. This technical file must contain all the necessary documents relating to the characteristics of the subsystem and, where appropriate, all the documents certifying conformity of the interoperability constituents. It should also contain all the elements relating to the conditions and limits of use and to the instructions concerning servicing, constant or routine monitoring, adjustment and maintenance.

*Article 19*

1. Where a Member State finds that a structural subsystem covered by the 'EC' declaration of verification accompanied by the technical file does not fully comply with this Directive and in particular does not meet the essential requirements, it may request that additional checks be carried out.
2. The Member State making the request shall forthwith inform the Commission of any additional checks requested and set out the substantiating reasons therefor. The Commission shall without delay initiate the procedure provided for in Article 21(2).

## CHAPTER V

**Notified bodies***Article 20*

1. Member States shall notify to the Commission and the other Member States the bodies responsible for carrying out the procedure for the assessment of conformity or suitability for use referred to in Article 13 and the verification procedure referred to in Article 18, indicating each body's area of responsibility, and the identification numbers obtained in advance from the Commission. The Commission shall publish in the *Official Journal of the European Communities* the list of bodies, their identification numbers and areas of responsibility, and shall keep the list updated.

2. Member States shall apply the criteria provided for in Annex VII for the assessment of the bodies to be notified. Bodies meeting the assessment criteria provided for in the relevant European standards shall be deemed to meet the said criteria.
3. A Member State shall withdraw approval from a body which no longer meets the criteria referred to in Annex VII. It shall forthwith inform the Commission and the other Member States thereof.
4. Should a Member State or the Commission consider that a body notified by another Member State does not meet the relevant criteria, the matter shall be referred to the Committee provided for in Article 21, which shall deliver its opinion within three months. In the light of the opinion of the Committee, the Commission shall inform the Member State in question of any changes that are necessary for the notified body to retain the status conferred upon it.
5. Where appropriate, coordination of the notified bodies shall be implemented in accordance with Articles 21 and 22.

## CHAPTER VI

**Committee and work programme***Article 21*

1. The Commission shall be assisted by the Committee established by Article 21 of Directive 96/48/EC (hereinafter referred to as 'the Committee').
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

*Article 22*

Once this Directive enters into force, the Committee may discuss any matter relating to the interoperability of the trans-European conventional rail system, including questions relating to interoperability between the trans-European rail system and the rail system of third countries.

*Article 23*

1. The order of priority for the adoption of the TSIs shall be as follows, without prejudice to the order of adoption of the mandates provided for in Article 6(1):

- (a) the first group of TSIs will cover control/command and signalling; telematic applications for freight services; traffic operation and management (including staff qualifications for cross-border services respecting the criteria defined in Annexes II and III); freight wagons; noise problems deriving from rolling stock and infrastructure.

As regards rolling stock, that intended for international use will be developed first;

- (b) the following aspects shall also be discussed in the light of the resources of the Commission and the joint representative body: telematic applications for passenger services, maintenance, with particular regard to safety, passenger carriages, traction units and locomotives, infrastructure, energy and air pollution.

As regards rolling stock, that intended for international use will be developed first;

- (c) at the request of the Commission, a Member State or the joint representative body, the Committee may decide, according to the procedure laid down in Article 21(2), to draw up a TSI for an additional subject without prejudicing the order of priorities set out above in so far as it concerns a subsystem mentioned in Annex II.

2. The Committee, following the procedure laid down in Article 21(2), shall draw up a work programme observing the order of priority referred to in paragraph 1 and that of the other tasks entrusted to it by this Directive.

The TSIs mentioned in the first work programme referred to in paragraph 1(a) shall be drawn up not later than 20 April 2004.

3. The work programme shall consist of the following stages:

- (a) designation of the joint representative body;
- (b) development on the basis of a draft established by the joint representative body of a representative architecture of the conventional rail system, based on the list of subsystems (Annex II), to guarantee consistency between TSIs. This architecture must include in particular the different constituents of this system and their interfaces and act as a reference framework for defining the areas of use of each TSI;

(c) adoption of a model structure for developing TSIs;

(d) adoption of a method of cost-benefit analysis of the solutions set out in the TSIs;

(e) adoption of the mandates needed to draw up the TSIs;

(f) adoption of the basic parameters for each TSI;

(g) approval of draft standardisation programmes;

(h) management of the transition period between the date of entry into force of this Directive and publication of the TSIs, including the adoption of the reference system mentioned in Article 25.

## CHAPTER VII

**Registers of infrastructure and rolling stock***Article 24*

1. The Member States shall ensure that registers of infrastructure and of rolling stock are published and updated annually. Those registers shall indicate the main features of each subsystem or part subsystem involved (e.g. the basic parameters) and their correlation with the features laid down by the applicable TSIs. To that end, each TSI shall indicate precisely which information must be included in the registers of infrastructure and of rolling stock.

2. A copy of those registers shall be sent to the Member States concerned and to the joint representative body and shall be made available to the public.

## CHAPTER VIII

**Transitional provisions***Article 25*

1. The joint representative body shall develop, on the basis of the information notified by the Member States under Articles 10(5) and 16(3), technical documents by the profession and texts of the relevant international agreements, a draft reference system of technical rules ensuring the current degree of interoperability of the trans-European conventional rail system. The Committee shall examine this draft and decide whether it may constitute a reference system pending the adoption of TSIs.

2. Following adoption of the abovementioned reference system, Member States shall inform the Committee of their intention to adopt any national provision or of the development of any project in their territory which diverges from the reference system.

#### CHAPTER IX

#### Final provisions

##### Article 26

Any decision taken pursuant to this Directive concerning the assessment of conformity or suitability for use of interoperability constituents, the checking of subsystems constituting the trans-European conventional rail system and any decision taken pursuant to Articles 11, 12, 17 and 19 shall set out in detail the reasons on which it is based. It shall be notified as soon as possible to the party concerned, together with an indication of the remedies available under the laws in force in the Member State concerned and of the time limits allowed for the exercise of such remedies.

##### Article 27

1. Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive no later than 20 April 2003, with the exception of the provisions specific to each TSI which shall be implemented in accordance with the arrangements specific to each TSI. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

##### Article 28

Every two years, and for the first time 20 April 2005 the Commission shall report to the European Parliament and the Council on the progress made towards achieving interoperability of the trans-European conventional rail system. That report shall also include an analysis of the cases set out in Article 7.

The joint representative body shall develop and regularly update a tool capable of providing, at the request of a Member State or the Commission, a chart of the interoperability level of the trans-European conventional rail system. That tool shall use the information available in the registers provided for in Article 24.

##### Article 29

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

##### Article 30

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2001.

*For the European Parliament*

*The President*

N. FONTAINE

*For the Council*

*The President*

A. LINDH

## ANNEX I

**THE TRANS-EUROPEAN CONVENTIONAL RAIL SYSTEM**

## 1. INFRASTRUCTURE

The infrastructure of the trans-European conventional rail system shall be that on the lines of the trans-European transport network identified in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network<sup>(1)</sup> or listed in any update to the same Decision as a result of the revision provided for in Article 21 of that Decision.

For the purposes of this Directive, this network may be subdivided into the following categories:

- lines intended for passenger services;
- lines intended for mixed traffic (passengers and freight);
- lines specially designed or upgraded for freight services;
- passenger hubs;
- freight hubs, including intermodal terminals;
- lines connecting the abovementioned components.

This infrastructure includes traffic management, tracking, and navigation systems: technical installations for data processing and telecommunications intended for long-distance passenger services and freight services on the network in order to guarantee the safe and harmonious operation of the network and efficient traffic management.

## 2. ROLLING STOCK

The rolling stock shall comprise all the stock likely to travel on all or part of the trans-European conventional rail network, including:

- self-propelling thermal or electric trains;
- thermal or electric traction units;
- passenger carriages;
- freight wagons, including rolling stock designed to carry lorries.

Each of the above categories must be subdivided into:

- rolling stock for international use;
- rolling stock for national use;

taking due account of the local, regional or long-distance use of the stock.

## 3. COMPATIBILITY OF THE TRANS-EUROPEAN CONVENTIONAL RAILWAY SYSTEM

The quality of rail services in Europe depends, inter alia, on excellent compatibility between the characteristics of the infrastructure (in the broadest sense, i.e. the fixed parts of all the subsystems concerned) and those of the rolling stock (including the onboard components of all the subsystems concerned). Performance levels, safety, quality of service and cost depend upon that compatibility.

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<sup>(1)</sup> OJ L 228, 9.9.1996, p. 1.

## ANNEX II

**SUBSYSTEMS**

## 1. LIST OF SUBSYSTEMS

For the purposes of this Directive, the system constituting the trans-European conventional rail system may be broken down into the following two subsystems, either:

## (a) structural areas:

- infrastructure;
- energy;
- control and command and signalling;
- traffic operation and management;
- rolling stock; or

## (b) operational areas:

- maintenance;
- telematics applications for passenger and freight services.

## 2. DESCRIPTION OF THE SUBSYSTEMS

For each subsystem or part of a subsystem, the list of constituents and aspects relating to interoperability is proposed by the joint representative body at the time of drawing up the relevant draft TSI.

Without prejudging the choice of aspects and constituents relating to interoperability or the order in which they will be made subject to TSIs, the subsystems include, in particular:

**2.1. Infrastructure:**

The track, points, engineering structures (bridges, tunnels, etc.), associated station infrastructure (platforms, zones of access, including the needs of persons with reduced mobility, etc.), safety and protective equipment.

**2.2. Energy:**

The electrification system, overhead lines and current collectors.

**2.3. Control and command and signalling:**

All the equipment necessary to ensure safety and to command and control movements of trains authorised to travel on the network.

**2.4. Traffic operation and management:**

The procedures and related equipment enabling a coherent operation of the different structural subsystems, both during normal and degraded operation, including in particular train driving, traffic planning and management.

The professional qualifications which may be required for carrying out cross-border services.

**2.5. Telematics applications:**

In accordance with Annex I, this subsystem comprises two elements:

- (a) applications for passenger services, including systems providing passengers with information before and during the journey, reservation and payment systems, luggage management and management of connections between trains and with other modes of transport;
- (b) applications for freight services, including information systems (real-time monitoring of freight and trains), marshalling and allocation systems, reservation, payment and invoicing systems, management of connections with other modes of transport and production of electronic accompanying documents.

**2.6. Rolling stock:**

Structure, command and control system for all train equipment, traction and energy conversion units, braking, coupling and running gear (bogies, axles, etc.) and suspension, doors, man/machine interfaces (driver, on-board staff and passengers, including the needs of persons with reduced mobility), passive or active safety devices and requisites for the health of passengers and on-board staff.

**2.7. Maintenance:**

The procedures, associated equipment, logistics centres for maintenance work and reserves allowing the mandatory corrective and preventive maintenance to ensure the interoperability of the rail system and guarantee the performance required.

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## ANNEX III

**ESSENTIAL REQUIREMENTS**

## 1. GENERAL REQUIREMENTS

1.1. **Safety**

- 1.1.1. The design, construction or assembly, maintenance and monitoring of safety-critical components and, more particularly, of the components involved in train movements must be such as to guarantee safety at the level corresponding to the aims laid down for the network, including those for specific degraded situations.
- 1.1.2. The parameters involved in the wheel/rail contact must meet the stability requirements needed in order to guarantee safe movement at the maximum authorised speed.
- 1.1.3. The components used must withstand any normal or exceptional stresses that have been specified during their period in service. The safety repercussions of any accidental failures must be limited by appropriate means.
- 1.1.4. The design of fixed installations and rolling stock and the choice of the materials used must be aimed at limiting the generation, propagation and effects of fire and smoke in the event of a fire.
- 1.1.5. Any devices intended to be handled by users must be so designed as not to impair the safe operation of the devices or the health and safety of users if used foreseeably in a manner not in accordance with the posted instructions.

1.2. **Reliability and availability**

The monitoring and maintenance of fixed or movable components that are involved in train movements must be organised, carried out and quantified in such a manner as to maintain their operation under the intended conditions.

1.3. **Health**

- 1.3.1. Materials likely, by virtue of the way they are used, to constitute a health hazard to those having access to them must not be used in trains and railway infrastructure.
- 1.3.2. Those materials must be selected, deployed and used in such a way as to restrict the emission of harmful and dangerous fumes or gases, particularly in the event of fire.

1.4. **Environmental protection**

- 1.4.1. The environmental impact of establishment and operation of the trans-European conventional rail system must be assessed and taken into account at the design stage of the system in accordance with the Community provisions in force.
- 1.4.2. The materials used in the trains and infrastructure must prevent the emission of fumes or gases which are harmful and dangerous to the environment, particularly in the event of fire.
- 1.4.3. The rolling stock and energy-supply systems must be designed and manufactured in such a way as to be electromagnetically compatible with the installations, equipment and public or private networks with which they might interfere.
- 1.4.4. Operation of the trans-European conventional rail system must respect existing regulations on noise pollution.

- 1.4.5. Operation of the trans-European conventional rail system must not give rise to an inadmissible level of ground vibrations for the activities and areas close to the infrastructure and in a normal state of maintenance.

1.5. **Technical compatibility**

The technical characteristics of the infrastructure and fixed installations must be compatible with each other and with those of the trains to be used on the trans-European conventional rail system.

If compliance with these characteristics proves difficult on certain sections of the network, temporary solutions, which ensure compatibility in the future, may be implemented.

2. REQUIREMENTS SPECIFIC TO EACH SUBSYSTEM

2.1. **Infrastructure**

2.1.1. Safety

Appropriate steps must be taken to prevent access to or undesirable intrusions into installations.

Steps must be taken to limit the dangers to which persons are exposed, particularly when trains pass through stations.

Infrastructure to which the public has access must be designed and made in such a way as to limit any human safety hazards (stability, fire, access, evacuation, platforms, etc.).

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

2.2. **Energy**

2.2.1. Safety

Operation of the energy-supply systems must not impair the safety either of trains or of persons (users, operating staff, trackside dwellers and third parties).

2.2.2. Environmental protection

The functioning of the electrical or thermal energy-supply systems must not interfere with the environment beyond the specified limits.

2.2.3. Technical compatibility

The electricity/thermal energy supply systems used must:

- enable trains to achieve the specified performance levels;
- in the case of electricity energy supply systems, be compatible with the collection devices fitted to the trains.

### 2.3. **Control and command and signalling**

#### 2.3.1. Safety

The control and command and signalling installations and procedures used must enable trains to travel with a level of safety which corresponds to the objectives set for the network. The control and command and signalling systems should continue to provide for safe passage of trains permitted to run under degraded conditions.

#### 2.3.2. Technical compatibility

All new infrastructure and all new rolling stock manufactured or developed after adoption of compatible control and command and signalling systems must be tailored to use of those systems.

The control and command and signalling equipment installed in the train drivers' cabs must permit normal operation, under the specified conditions, throughout the trans-European conventional rail system.

### 2.4. **Rolling stock**

#### 2.4.1. Safety

The structure of the rolling stock and of the links between vehicles must be designed in such a way as to protect the passenger and driving compartments in the event of collision or derailment.

The electrical equipment must not impair the safety and functioning of the control and command and signalling installations.

The braking techniques and the stresses exerted must be compatible with the design of the track, engineering structures and signalling systems.

Steps must be taken to prevent access to electrically-live constituents in order not to endanger the safety of persons.

In the event of danger, devices must enable passengers to inform the driver and accompanying staff to contact him.

The access doors must incorporate an opening and closing system which guarantees passenger safety.

Emergency exits must be provided and indicated.

Appropriate provisions must be laid down to take account of the particular safety conditions in very long tunnels.

An emergency lighting system of sufficient intensity and duration is compulsory on board trains.

Trains must be equipped with a public address system which provides a means of communication to the public from on-board staff and ground control.

#### 2.4.2. Reliability and availability

The design of the vital equipment, of the running, traction and braking equipment and of the control and command system must be such as to enable the train to continue its mission, in a specific degraded situation, without adverse consequences for the equipment remaining in service.

### 2.4.3. Technical compatibility

The electrical equipment must be compatible with the operation of the control and command and signalling installations.

In the case of electric traction, the characteristics of the current-collection devices must be such as to enable trains to travel under the energy-supply systems for the trans-European conventional rail system.

The characteristics of the rolling stock must be such as to allow it to travel on any line on which it is expected to operate.

## 2.5. **Maintenance**

### 2.5.1. Health and safety

The technical installations and the procedures used in the centres must ensure the safe operation of the subsystem and not constitute a danger to health and safety.

### 2.5.2. Environmental protection

The technical installations and the procedures used in the maintenance centres must not exceed the permissible levels of nuisance with regard to the surrounding environment.

### 2.5.3. Technical compatibility

The maintenance installations for conventional rolling stock must be such as to enable safety, health and comfort operations to be carried out on all stock for which they have been designed.

## 2.6. **Operation and traffic management**

### 2.6.1. Safety

Alignment of the network operating rules and the qualifications of drivers and on-board staff and of the staff in the control centres must be such as to ensure safe operation, bearing in mind the different requirements of cross-border and domestic services.

The maintenance operations and intervals, the training and qualifications of the maintenance and control centre staff and the quality assurance system set up by the operators concerned in the control and maintenance centres must be such as to ensure a high level of safety.

### 2.6.2. Reliability and availability

The maintenance operations and periods, the training and qualifications of the maintenance and control centre staff and the quality assurance system set up by the operators concerned in the control and maintenance centres must be such as to ensure a high level of system reliability and availability.

### 2.6.3. Technical compatibility

Alignment of the network operating rules and the qualifications of drivers, on-board staff and traffic managers must be such as to ensure operating efficiency on the trans-European conventional rail system, bearing in mind the different requirements of cross-border and domestic services.

## 2.7. Telematics applications for freight and passengers

### 2.7.1. Technical compatibility

The essential requirements for telematics applications guarantee a minimum quality of service for passengers and carriers of goods, particularly in terms of technical compatibility.

Steps must be taken to ensure:

- that the databases, software and data communication protocols are developed in a manner allowing maximum data interchange between different applications and operators, excluding confidential commercial data;
- easy access to the information for users.

### 2.7.2. Reliability and availability

The methods of use, management, updating and maintenance of these databases, software and data communication protocols must guarantee the efficiency of these systems and the quality of the service.

### 2.7.3. Health

The interfaces between these systems and users must comply with the minimum rules on ergonomics and health protection.

### 2.7.4. Safety

Suitable levels of integrity and dependability must be provided for the storage or transmission of safety-related information.

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## ANNEX IV

**CONFORMITY AND SUITABILITY FOR USE OF INTEROPERABILITY CONSTITUENTS**

## 1. INTEROPERABILITY CONSTITUENTS

The 'EC' declaration applies to the interoperability constituents involved in the interoperability of the trans-European conventional rail system, as referred to in Article 3. These interoperability constituents may be:

1.1. **Multiple-use constituents**

These are constituents that are not specific to the railway system and which may be used as such in other areas.

1.2. **Multiple-use constituents having specific characteristics**

These are constituents which are not, as such, specific to the railway system, but which must display specific performance levels when used for railway purposes.

1.3. **Specific constituents**

These are constituents that are specific to railway applications.

## 2. SCOPE

The 'EC' declaration covers:

- either the assessment by a notified body or bodies of the intrinsic conformity of an interoperability constituent, considered in isolation, to the technical specifications to be met;
- or the assessment/judgement by a notified body or bodies of the suitability for use of an interoperability constituent, considered within its railway environment and, in particular in cases where the interfaces are involved, in relation to the technical specifications, particularly those of a functional nature, which are to be checked.

The assessment procedures implemented by the notified bodies at the design and production stages will draw upon the modules defined in Decision 93/465/EEC, in accordance with the conditions referred to in the TSIs.

## 3. CONTENTS OF THE 'EC' DECLARATION

The 'EC' declaration of conformity or of suitability for use and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the instructions and must contain the following:

- the Directive references;
- the name and address of the manufacturer or his authorised representative established within the Community (give trade name and full address, in the case of the authorised representative, also give the trade name of the manufacturer or constructor);
- description of interoperability constituent (make, type, etc.);

- description of the procedure followed in order to declare conformity or suitability for use (Article 13);
  - all the relevant descriptions met by the interoperability constituent and, in particular, its conditions of use;
  - name and address of the notified body or bodies involved in the procedure followed in respect of conformity or suitability for use and date of examination certificate together with, where appropriate, the duration and conditions of validity of the certificate;
  - where appropriate, reference to the European specifications;
  - identification of the signatory empowered to enter into commitments on behalf of the manufacturer or of the manufacturer's authorised representative established within the Community.
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## ANNEX V

**DECLARATION OF VERIFICATION OF SUBSYSTEMS**

The 'EC' declaration of verification and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the technical file and must contain the following:

- the Directive references;
  - name and address of the contracting entity or its authorised representative established within the Community (give trade name and full address; in the case of the authorised representative, also give the trade name of the contracting entity);
  - a brief description of the subsystem;
  - name and address of the notified body which conducted the 'EC' verification referred to in Article 18;
  - the references of the documents contained in the technical file;
  - all the relevant temporary or definitive provisions to be complied with by the subsystems and in particular, where appropriate, any operating restrictions or conditions;
  - if temporary: duration of validity of the 'EC' declaration;
  - identity of the signatory.
-



## ANNEX VI

**VERIFICATION PROCEDURE FOR SUBSYSTEMS**

## 1. INTRODUCTION

'EC' verification is the procedure whereby a notified body checks and certifies, at the request of a contracting entity or of its authorised representative established within the Community, that a subsystem:

- complies with the Directive;
- complies with the other regulations deriving from the Treaty, and may be put into operation.

## 2. STAGES

The subsystem is checked at each of the following stages:

- overall design;
- construction of subsystem, including, in particular, civil-engineering activities, constituent assembly, overall adjustment;
- final testing of the subsystem.

## 3. CERTIFICATE

The notified body responsible for 'EC' verification draws up the certificate of conformity intended for the contracting entity or its authorised representative established within the Community, which in turn draws up the 'EC' declaration of verification intended for the supervisory authority in the Member State in which the subsystem is located and/or operates.

## 4. TECHNICAL FILE

The technical file accompanying the declaration of verification must be made up as follows:

- for infrastructure: engineering-structure plans, approval records for excavations and reinforcement, testing and inspection reports on concrete;
- for the other subsystems: general and detailed drawings in line with execution, electrical and hydraulic diagrams, control-circuit diagrams, description of data-processing and automatic systems, operating and maintenance manuals, etc.;
- list of interoperability constituents, as referred to in Article 3, incorporated into the subsystem;
- copies of the 'EC' declarations of conformity or suitability for use with which the abovementioned constituents must be provided in accordance with Article 13 of the Directive accompanied, where appropriate, by the corresponding calculation notes and a copy of the records of the tests and examinations carried out by the notified bodies on the basis of the common technical specifications;
- certificate from the notified body responsible for 'EC' verification, accompanied by corresponding calculation notes and countersigned by itself, stating that the project complies with this Directive and mentioning any reservations recorded during performance of the activities and not withdrawn; the certificate should also be accompanied by the inspection and audit reports drawn up by the same body in connection with its task, as specified in sections 5.3 and 5.4.

## 5. MONITORING

- 5.1. The aim of 'EC' monitoring is to ensure that the obligations deriving from the technical file have been met during production of the subsystem.

- 5.2. The notified body responsible for checking production must have permanent access to building sites, production workshops, storage areas and, where appropriate, prefabrication or testing facilities and, more generally, to all premises which it considers necessary for its task. The contracting entity or its authorised representative within the Community must send it or have sent to it all the documents needed for that purpose and, in particular, the implementation plans and technical documentation concerning the subsystem.
- 5.3. The notified body responsible for checking implementation must periodically carry out audits in order to confirm compliance with the Directive. It must provide those responsible for implementation with an audit report. It may require to be present at certain stages of the building operations.
- 5.4. In addition, the notified body may pay unexpected visits to the worksite or to the production workshops. At the time of such visits the notified body may conduct complete or partial audits. It must provide those responsible for implementation with an inspection report and, if appropriate, an audit report.

## 6. SUBMISSION

The complete file referred to in paragraph 4 must be lodged with the contracting entity or its authorised agent established within the Community in support of the certificate of conformity issued by the notified body responsible for verification of the subsystem in working order. The file must be attached to the 'EC' declaration of verification which the contracting entity sends to the supervisory authority in the Member State concerned.

A copy of the file must be kept by the contracting entity throughout the service life of the subsystem. It must be sent to any other Member States which so request.

## 7. PUBLICATION

Each notified body must periodically publish relevant information concerning:

- requests for 'EC' verification received;
- certificates of conformity issued;
- certificates of conformity refused.

## 8. LANGUAGE

The files and correspondence relating to the 'EC' verification procedures must be written in an official language of the Member State in which the contracting entity or its authorised representative within the Community is established or in a language accepted by the entity.

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## ANNEX VII

**MINIMUM CRITERIA WHICH MUST BE TAKEN INTO ACCOUNT BY THE MEMBER STATES  
WHEN NOTIFYING BODIES**

1. The body, its Director and the staff responsible for carrying out the checks may not become involved, either directly or as authorised representatives, in the design, manufacture, construction, marketing or maintenance of the interoperability constituents or subsystems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor and that body.
  2. The body and the staff responsible for the checks must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgement or the results of their inspection, in particular from persons or groups of persons affected by the results of the checks.
  3. The body must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the checks; it should also have access to the equipment needed for exceptional checks.
  4. The staff responsible for the checks must possess:
    - proper technical and vocational training;
    - a satisfactory knowledge of the requirements relating to the checks that they carry out and sufficient practice in those checks;
    - the ability to draw up the certificates, records and reports which constitute the formal record of the inspections conducted.
  5. The independence of the staff responsible for the checks must be guaranteed. No official must be remunerated either on the basis of the number of checks performed or of the results of those checks.
  6. The body must take out civil liability insurance unless that liability is covered by the State under national law or unless the checks are carried out directly by that Member State.
  7. The staff of the body are bound by professional secrecy with regard to everything they learn in the performance of their duties (with the exception of the competent administrative authorities in the State where they perform those activities) in pursuance of this Directive or any provision of national law implementing the Directive.
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## ANNEX VIII

**GENERAL RULES TO BE OBSERVED BY THE JOINT REPRESENTATIVE BODY (JRB)**

1. In line with the general Community standardisation procedures, the JRB must work openly and transparently, based on consensus and independent of any particular interests. To this end, all members of the three categories represented on the JRB — infrastructure managers, railway companies and industry — must have the opportunity to express their opinion during the process of drafting TSIs, in accordance with the JRB's rules of procedure and before finalisation of the draft TSIs by the JRB.
  2. If the JRB lacks the expertise required in order to draft a particular TSI, it must inform the Commission immediately.
  3. The JRB must set up the working parties necessary for the purposes of drafting TSIs; these working parties must have a flexible, efficient structure. To this end, the number of experts must be limited. Balanced representation must be ensured between infrastructure managers and railway companies on the one hand and industry on the other; an appropriate balance must be struck between different nationalities. Experts from non-Community countries may sit in on working parties as observers.
  4. Any difficulties which emerge in relation with this Directive and which cannot be resolved by the JRB's working parties must be reported to the Commission without delay.
  5. All the working papers necessary in order to monitor the JRB's work must be placed at the disposal of the Commission and the Committee referred to in Article 21.
  6. The JRB must take all measures necessary to safeguard the confidentiality of any critical information which comes to its knowledge in the course of its activities.
  7. The JRB must take all measures necessary to inform all its members and all experts participating in the working parties of the results of the work of the Committee referred to in Article 21 and of the recommendations made by the Committee and by the Commission.
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**DIRECTIVE 2001/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 19 March 2001**

**on the reorganisation and winding-up of insurance undertakings**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>(4)</sup>, as supplemented by Directive 92/49/EEC<sup>(5)</sup>, and the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance<sup>(6)</sup>, as supplemented by Directive 92/96/EEC<sup>(7)</sup>, provide for a single

authorisation of the insurance undertakings granted by the home Member State supervisory authority. This single authorisation allows the insurance undertaking to carry out its activities in the Community by means of establishment or free provision of services without any further authorisation by the host Member State and under the sole prudential supervision of the home Member State supervisory authorities.

- (2) The insurance directives providing a single authorisation with a Community scope for the insurance undertakings do not contain coordination rules in the event of winding-up proceedings. Insurance undertakings as well as other financial institutions are expressly excluded from the scope of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings<sup>(8)</sup>. It is in the interest of the proper functioning of the internal market and of the protection of creditors that coordinated rules are established at Community level for winding-up proceedings in respect of insurance undertakings.

- (3) Coordination rules should also be established to ensure that the reorganisation measures, adopted by the competent authority of a Member State in order to preserve or restore the financial soundness of an insurance undertaking and to prevent as much as possible a winding-up situation, produce full effects throughout the Community. The reorganisation measures covered by this Directive are those affecting pre-existing rights of parties other than the insurance undertaking itself. The measures provided for in Article 20 of Directive 73/239/EEC and Article 24 of Directive 79/267/EEC should be included within the scope of this Directive provided that they comply with the conditions contained in the definition of reorganisation measures.

- (4) This Directive has a Community scope which affects insurance undertakings as defined in Directives 73/239/EEC and 79/267/EEC which have their head office in the Community, Community branches of insurance undertakings which have their head office in third countries and creditors resident in the Community. This Directive should not regulate the effects of the reorganisation measures and winding-up proceedings vis-à-vis third countries.

<sup>(1)</sup> OJ C 71, 19.3.1987, p. 5, and OJ C 253, 6.10.1989, p. 3.

<sup>(2)</sup> OJ C 319, 30.11.1987, p. 10.

<sup>(3)</sup> Opinion of the European Parliament of 15 March 1989 (OJ C 96, 17.4.1989, p. 99), confirmed on 27 October 1999, Council Common Position of 9 October 2000 (OJ C 344, 1.12.2000, p. 23) and Decision of the European Parliament of 15 February 2001.

<sup>(4)</sup> OJ L 228, 16.8.1973, p. 3. Directive as last amended by European Parliament and Council Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

<sup>(5)</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance directive) (OJ L 228, 11.8.1992, p. 1).

<sup>(6)</sup> OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 95/26/EC.

<sup>(7)</sup> Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance directive) (OJ L 360, 9.12.1992, p. 1).

<sup>(8)</sup> OJ L 160, 30.6.2000, p. 1.

- (5) This Directive should concern winding-up proceedings whether or not they are founded on insolvency and whether they are voluntary or compulsory. It should apply to collective proceedings as defined by the home Member State's legislation in accordance with Article 9 involving the realisation of the assets of an insurance undertaking and the distribution of their proceeds. Winding-up proceedings which, without being founded on insolvency, involve for the payment of insurance claims a priority order in accordance with Article 10 should also be included in the scope of this Directive. Claims by the employees of an insurance undertaking arising from employment contracts and employment relationships should be capable of being subrogated to a national wage guarantee scheme; such subrogated claims should benefit from the treatment determined by the home Member State's law (*lex concursus*) according to the principles of this Directive. The provisions of this Directive should apply to the different cases of winding-up proceedings as appropriate.
- (6) The adoption of reorganisation measures does not preclude the opening of winding-up proceedings. Winding-up proceedings may be opened in the absence of, or following, the adoption of reorganisation measures and they may terminate with composition or other analogous measures, including reorganisation measures.
- (7) The definition of branch, in accordance with existing insolvency principles, should take account of the single legal personality of the insurance undertaking. The home Member State's legislation should determine the way in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking should be treated in the winding-up of an insurance undertaking.
- (8) A distinction should be made between the competent authorities for the purposes of reorganisation measures and winding-up proceedings and the supervisory authorities of the insurance undertakings. The competent authorities may be administrative or judicial authorities depending on the Member State's legislation. This Directive does not purport to harmonise national legislation concerning the allocation of competences between such authorities.
- (9) This Directive does not seek to harmonise national legislation concerning reorganisation measures and winding-up proceedings but aims at ensuring mutual recognition of Member States' reorganisation measures and winding-up legislation concerning insurance undertakings as well as the necessary cooperation. Such mutual recognition is implemented in this Directive through the principles of unity, universality, coordination, publicity, equivalent treatment and protection of insurance creditors.
- (10) Only the competent authorities of the home Member State should be empowered to take decisions on winding-up proceedings concerning insurance undertakings (principle of unity). These proceedings should produce their effects throughout the Community and should be recognised by all Member States. All the assets and liabilities of the insurance undertaking should, as a general rule, be taken into consideration in the winding-up proceedings (principle of universality).
- (11) The home Member State's law should govern the winding-up decision concerning an insurance undertaking, the winding-up proceedings themselves and their effects, both substantive and procedural, on the persons and legal relations concerned, except where this Directive provides otherwise. Therefore all the conditions for the opening, conduct and closure of winding-up proceedings should in general be governed by the home Member State's law. In order to facilitate its application this Directive should include a non-exhaustive list of aspects which, in particular, are subject to the general rule of the home Member State's legislation.
- (12) The supervisory authorities of the home Member State and those of all the other Member States should be informed as a matter of urgency of the opening of winding-up proceedings (principle of coordination).
- (13) It is of utmost importance that insured persons, policy-holders, beneficiaries and any injured party having a direct right of action against the insurance undertaking on a claim arising from insurance operations be protected in winding-up proceedings. Such protection should not include claims which arise not from obligations under insurance contracts or insurance operations but from civil liability caused by an agent in negotiations for which, according to the law applicable to the insurance contract or operation, the agent himself is not responsible under such insurance contract or operation. In order to achieve this objective Member States should ensure special treatment for insurance creditors according to one of two optional methods provided for in this Directive. Member States may choose between granting insurance claims absolute precedence over any other claim with respect to assets representing the technical provisions or granting insurance claims a special rank which may only be preceded by claims on salaries, social security, taxes and rights 'in rem' over the whole assets of the insurance

- undertaking. Neither of the two methods provided for in this Directive impedes a Member State from establishing a ranking between different categories of insurance claims.
- (14) This Directive should ensure an appropriate balance between the protection of insurance creditors and other privileged creditors protected by the Member State's legislation and not harmonise the different systems of privileged creditors existing in the Member States.
- (15) The two optional methods for treatment of insurance claims are considered substantially equivalent. The first method ensures the affectation of assets representing the technical provisions to insurance claims, the second method ensures insurance claims a position in the ranking of creditors which not only affects the assets representing the technical provisions but all the assets of the insurance undertaking.
- (16) Member States which, in order to protect insurance creditors, opt for the method of granting insurance claims absolute precedence with respect to the assets representing the technical provisions should require their insurance undertakings to establish and keep up to date a special register of such assets. Such a register is a useful instrument for identifying the assets affected to such claims.
- (17) In order to strengthen equivalence between both methods of treatment of insurance claims, this Directive should oblige the Member States which apply the method set out in Article 10(1)(b) to require every insurance undertaking to represent, at any moment and independently of a possible winding-up, claims, which according to that method may have precedence over insurance claims and which are registered in the insurance undertaking's accounts, by assets allowed by the insurance directives in force to represent the technical provisions.
- (18) The home Member State should be able to provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in such home Member State, claims by that scheme should not benefit from the treatment of insurance claims under this Directive.
- (19) The opening of winding-up proceedings should involve the withdrawal of the authorisation to conduct business granted to the insurance undertaking unless such authorisation has previously been withdrawn.
- (20) The decision to open winding-up proceedings, which may produce effects throughout the Community according to the principle of universality, should have appropriate publicity within the Community. In order to protect interested parties, the decision should be published in accordance with the home Member State's procedures and in the *Official Journal of the European Communities* and, further, by any other means decided by the other Member States' supervisory authorities within their respective territories. In addition to publication of the decision, known creditors who are resident in the Community should be individually informed of the decision and this information should contain at least the elements specified in this Directive. Liquidators should also keep creditors regularly informed of the progress of the winding-up proceedings.
- (21) Creditors should have the right to lodge claims or to submit written observations in winding-up proceedings. Claims by creditors resident in a Member State other than the home Member State should be treated in the same way as equivalent claims in the home Member State without any discrimination on the grounds of nationality or residence (principle of equivalent treatment).
- (22) This Directive should apply to reorganisation measures adopted by a competent authority of a Member State principles which are similar 'mutatis mutandis' to those provided for in winding-up proceedings. The publication of such reorganisation measures should be limited to the case in which an appeal in the home Member State is possible by parties other than the insurance undertaking itself. When reorganisation measures affect exclusively the rights of shareholders, members or employees of the insurance undertaking considered in those capacities, the competent authorities should determine the manner in which the parties affected should be informed in accordance with relevant legislation.
- (23) This Directive provides for coordinated rules to determine the law applicable to reorganisation measures and winding-up proceedings of insurance undertakings. This Directive does not seek to establish rules of private international law determining the law applicable to contracts and other legal relations. In particular, this Directive does not seek to govern the applicable rules on the existence of a contract, the rights and obligations of parties and the evaluation of debts.
- (24) The general rule of this Directive, according to which reorganisation measures and the winding-up proceedings are governed by the law of the home Member State, should have a series of exceptions in

order to protect legitimate expectations and the certainty of certain transactions in Member States other than the home Member State. Such exceptions should concern the effects of such reorganisation measures or winding-up proceedings on certain contracts and rights, third parties' rights in rem, reservations of title, set-off, regulated markets, detrimental acts, third party purchasers and lawsuits pending.

- (25) The exception concerning the effects of reorganisation measures and winding-up proceedings on certain contracts and rights provided for in Article 19 should be limited to the effects specified therein and should not include any other issues related to reorganisation measures and winding-up proceedings such as the lodging, verification, admission and ranking of claims regarding such contracts and rights, which should be governed by the home Member State's legislation.
- (26) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending should be governed by the law of the Member States in which the lawsuit is pending concerning an asset or a right of which the insurance undertaking has been divested as an exception to the application of the law of the home Member State. The effects of such measures and proceedings on individual enforcement actions arising from these lawsuits should be governed by the home Member State's legislation, according to the general rule of this Directive.
- (27) All persons required to receive or divulge information connected with the procedures of communication provided for in this Directive should be bound by professional secrecy in the same manner as that established in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC, with the exception of any judicial authority to which specific national legislation applies.
- (28) For the sole purpose of applying the provisions of this Directive to reorganisation measures and winding-up proceedings concerning branches situated in the Community of an insurance undertaking whose head office is located in a third country the home Member State should be defined as the Member State in which the branch is located and the supervisory authorities and competent authorities as the authorities of that Member State.
- (29) Where there are branches in more than one Member State of an insurance undertaking whose head office is located outside the Community, each branch should be treated independently with regard to the application of this Directive. In that case the competent authorities, supervisory authorities, administrators and liquidators should endeavour to coordinate their actions,

HAVE ADOPTED THIS DIRECTIVE:

## TITLE I

### SCOPE AND DEFINITIONS

#### Article 1

##### Scope

1. This Directive applies to reorganisation measures and winding-up proceedings concerning insurance undertakings.
2. This Directive also applies, to the extent provided for in Article 30, to reorganisation measures and winding-up proceedings concerning branches in the territory of the Community of insurance undertakings having their head office outside the Community.

#### Article 2

##### Definitions

For the purpose of this Directive:

- (a) 'insurance undertaking' means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;
- (b) 'branch' means any permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which carries out insurance business;
- (c) 'reorganisation measures' means measures involving any intervention by administrative bodies or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
- (d) 'winding-up proceedings' means collective proceedings involving realising the assets of an insurance undertaking and distributing the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or the judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;



- (e) 'home Member State' means the Member State in which an insurance undertaking has been authorised in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;
- (f) 'host Member State' means the Member State other than the home Member State in which an insurance undertaking has a branch;
- (g) 'competent authorities' means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
- (h) 'supervisory authorities' means the competent authorities within the meaning of Article 1(k) of Directive 92/49/EEC and of Article 1(l) of Directive 92/96/EEC;
- (i) 'administrator' means any person or body appointed by the competent authorities for the purpose of administering reorganisation measures;
- (j) 'liquidator' means any person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking, as appropriate, for the purpose of administering winding-up proceedings;
- (k) 'insurance claims' means any amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 1(2) and (3), of Directive 79/267/EEC in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not yet known. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims.

## TITLE II

## REORGANISATION MEASURES

## Article 3

## Scope

This Title applies to the reorganisation measures defined in Article 2(c).

## Article 4

## Adoption of reorganisation measures — Applicable law

1. Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches in other Member States. The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.
2. The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles 19 to 26.
3. The reorganisation measures shall be fully effective throughout the Community in accordance with the legislation of the home Member State without any further formalities, including against third parties in other Member States, even if the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.
4. The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

## Article 5

## Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter of urgency the home Member State's supervisory authorities of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter. The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

## Article 6

## Publication

1. Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public its decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member

State and, furthermore, publish in the *Official Journal of the European Communities* at the earliest opportunity an extract from the document establishing the reorganisation measure. The supervisory authorities of all the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article 5 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2. The publications provided for in paragraph 1 shall also specify the competent authority of the home Member State, the applicable law as provided in Article 4(2) and the administrator appointed, if any. They shall be carried out in the official language or in one of the official languages of the Member State in which the information is published.

3. The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that State provide otherwise.

4. When reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, this Article shall not apply unless the law applicable to these reorganisation measures provides otherwise. The competent authorities shall determine the manner in which the interested parties affected by such reorganisation measures shall be informed in accordance with the relevant legislation.

#### Article 7

#### Information to known creditors — Right to lodge claims

1. Where the legislation of the home Member State requires lodgement of a claim with a view to its recognition or provides for compulsory notification of a reorganisation measure to creditors who have their normal place of residence, domicile or head office in that State, the competent authorities of the home Member State or the administrator shall also inform known creditors who have their normal place of residence, domicile or head office in another Member State, in accordance with the procedures laid down in Articles 15 and 17(1).

2. Where the legislation of the home Member State provides for the right of creditors who have their normal place of residence, domicile or head office in that State to lodge claims or to submit observations concerning their claims, creditors who have their normal place of residence, domicile or head office in another Member State shall have the same right to lodge claims or submit observations in accordance with the procedures laid down in Articles 16 and 17(2).

#### TITLE III

#### WINDING-UP PROCEEDINGS

#### Article 8

#### Opening of winding-up proceedings — Information to the supervisory authorities

1. Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.

2. A decision adopted according to the home Member State's legislation concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, shall be recognised without further formality within the territory of all other Member States and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.

3. The supervisory authorities of the home Member State shall be informed as a matter of urgency of the decision to open winding-up proceedings, if possible before the proceedings are opened and failing that immediately thereafter. The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

#### Article 9

#### Applicable law

1. The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the laws, regulations and administrative provisions applicable in its home Member State unless otherwise provided in Articles 19 to 26.

2. The law of the home Member State shall determine in particular:

- (a) the assets which form part of the estate and the treatment of assets acquired by, or devolving on, the insurance undertaking after the opening of the winding-up proceedings;
- (b) the respective powers of the insurance undertaking and the liquidator;
- (c) the conditions under which set-off may be invoked;

- (d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
- (e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending as provided for in Article 26;
- (f) the claims which are to be lodged against the insurance undertaking's estate and the treatment of claims arising after the opening of winding-up proceedings;
- (g) the rules governing the lodging, verification and admission of claims;
- (h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;
- (i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;
- (j) creditors' rights after the closure of winding-up proceedings;
- (k) who is to bear the cost and expenses incurred in the winding-up proceedings;
- (l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

#### Article 10

##### Treatment of insurance claims

1. Member States shall ensure that insurance claims take precedence over other claims on the insurance undertaking according to one or both of the following methods:
  - (a) insurance claims shall, with respect to assets representing the technical provisions, take absolute precedence over any other claim on the insurance undertaking;
  - (b) insurance claims shall, with respect to the whole of the insurance undertaking's assets, take precedence over any other claim on the insurance undertaking with the only possible exception of:
    - (i) claims by employees arising from employment contracts and employment relationships,
    - (ii) claims by public bodies on taxes,

- (iii) claims by social security systems,
- (iv) claims on assets subject to rights in rem.

2. Without prejudice to paragraph 1, Member States may provide that the whole or a part of the expenses arising from the winding-up procedure, as defined by their national legislation, shall take precedence over insurance claims.

3. Member States which have opted for the method provided for in paragraph 1(a) shall require that insurance undertakings establish and keep up to date a special register in line with the provisions set out in the Annex.

#### Article 11

##### Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of Article 10(1).

#### Article 12

##### Representation of preferential claims by assets

By way of derogation from Article 18 of Directive 73/239/EEC and Article 21 of Directive 79/267/EEC, Member States which apply the method set out in Article 10(1)(b) of this Directive shall require every insurance undertaking to represent, at any moment and independently from a possible winding-up, the claims which may take precedence over insurance claims pursuant to Article 10(1)(b) and which are registered in the insurance undertaking's accounts, by assets mentioned in Article 21 of Directive 92/49/EEC and Article 21 of Directive 92/96/EEC.

#### Article 13

##### Withdrawal of the authorisation

1. Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of the insurance undertaking shall be withdrawn, except to the extent necessary for the purposes of paragraph 2, in accordance with the procedure laid down in Article 22 of Directive 73/239/EEC and Article 26 of Directive 79/267/EEC, if the authorisation has not been previously withdrawn.

2. The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person entrusted

by the competent authorities from carrying on some of the insurance undertakings' activities in so far as that is necessary or appropriate for the purposes of winding-up. The home Member State may provide that such activities shall be carried on with the consent and under the supervision of the supervisory authorities of the home Member State.

#### Article 14

##### Publication

1. The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European Communities*. The supervisory authorities of all the other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 8(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2. The publication of the decision to open winding-up proceedings provided for in paragraph 1 shall also specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

#### Article 15

##### Information to known creditors

1. When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor who has his normal place of residence, domicile or head office in another Member State thereof.

2. The notice referred to in paragraph 1 shall in particular deal with time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims. In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

#### Article 16

##### Right to lodge claims

1. Any creditor who has his normal place of residence, domicile or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2. The claims of all creditors who have their normal place of residence, domicile or head office in a Member State other than the home Member State, including the aforementioned authorities, shall be treated in the same way and accorded the same ranking as claims of an equivalent nature lodgeable by creditors who have their normal place of residence, domicile or head office in the home Member State.

3. Except in cases where the law of the home Member State allows otherwise, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and the amount, whether he alleges preference, security in rem or reservation of title in respect of the claim and what assets are covered by his security. The precedence granted to insurance claims by Article 10 need not be indicated.

#### Article 17

##### Languages and form

1. The information in the notice referred to in Article 15 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing the heading 'Invitation to lodge a claim; time limits to be observed' or, where the law of the home Member State provides for the submission of observations relating to claims, 'Invitation to submit observations relating to a claim; time limits to be observed', in all the official languages of the European Union.

However, where a known creditor is a holder of an insurance claim, the information in the notice referred to in Article 15 shall be provided in the official language or one of the official languages of the Member State in which the creditor has his normal place of residence, domicile or head office.

2. Any creditor who has his normal place of residence, domicile or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. However, in that event the lodgement of his claim or the submission of observations on his claim, as appropriate, shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims', as appropriate, in the official language or one of the official languages of the home Member State.

*Article 18***Regular information to the creditors**

1. Liquidators shall keep creditors regularly informed, in an appropriate manner, in particular regarding the progress of the winding-up.
2. The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

## TITLE IV

**PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS***Article 19***Effects on certain contracts and rights**

By way of derogation from Articles 4 and 9, the effects of the opening of reorganisation measures or of winding-up proceedings on the contracts and rights specified below shall be governed by the following rules:

- (a) employment contracts and employment relationships shall be governed solely by the law of the Member State applicable to the employment contract or employment relationship;
- (b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State in whose territory the immovable property is situated;
- (c) rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be governed by the law of the Member State under whose authority the register is kept.

*Article 20***Third parties' rights in rem**

1. The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the insurance undertaking which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

*Article 21***Reservation of title**

1. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.

2. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

*Article 22***Set-off**

1. The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the insurance undertaking's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

*Article 23***Regulated markets**

1. Without prejudice to Article 20 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

2. Paragraph 1 shall not preclude any action for voidness, voidability, or unenforceability referred to in Article 9(2)(l) which may be taken to set aside payments or transactions under the law applicable to that market.

*Article 24***Detrimental acts**

Article 9(2)(l) shall not apply, where a person who has benefited from a legal act detrimental to all the creditors provides proof that:

- (a) the said act is subject to the law of a Member State other than the home Member State, and
- (b) that law does not allow any means of challenging that act in the relevant case.

*Article 25***Protection of third-party purchasers**

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for a consideration, of:

- (a) an immovable asset,
- (b) a ship or an aircraft subject to registration in a public register, or
- (c) transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State,

the validity of that act shall be governed by the law of the Member State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept.

*Article 26***Lawsuits pending**

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

*Article 27***Administrators and liquidators**

1. The administrator's or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the competent authorities of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. Persons to assist or, where appropriate, represent administrators and liquidators may be appointed, according to the home Member State's legislation, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3. In exercising his powers according to the home Member State's legislation, an administrator or liquidator shall comply with the law of the Member States within whose territory he wishes to take action, in particular with regard to procedures

for the realisation of assets and the informing of employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

#### Article 28

##### Registration in a public register

1. The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

However, if a Member State prescribes mandatory registration, the authority or person referred to in subparagraph 1 shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

#### Article 29

##### Professional secrecy

All persons required to receive or divulge information in connection with the procedures of communication laid down in Articles 5, 8 and 30 shall be bound by professional secrecy, in the same manner as laid down in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC, with the exception of any judicial authorities to which existing national provisions apply.

#### Article 30

##### Branches of third country insurance undertakings

1. Notwithstanding the definitions laid down in Article 2(e), (f) and (g) and for the purpose of applying the provisions of this Directive to the reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of an insurance undertaking whose head office is located outside the Community:

- (a) 'home Member State' means the Member State in which the branch has been granted authorisation according to Article 23 of Directive 73/239/EEC and Article 27 of Directive 79/267/EEC, and
- (b) 'supervisory authorities' and 'competent authorities' mean such authorities of the Member State in which the branch was authorised.

2. When an insurance undertaking whose head office is outside the Community has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Directive. The competent authorities and the supervisory authorities of these Member States shall endeavour to coordinate their actions. Any administrators or liquidators shall likewise endeavour to coordinate their actions.

#### Article 31

##### Implementation of this Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 20 April 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. National provisions adopted in application of this Directive shall apply only to reorganisation measures or winding-up proceedings adopted or opened after the date referred to in paragraph 1. Reorganisation measures adopted or winding up proceedings opened before that date shall continue to be governed by the law that was applicable to them at the time of adoption or opening.

3. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

#### Article 32

##### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### Article 33

##### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2001.

For the European Parliament  
The President  
N. FONTAINE

For the Council  
The President  
A. LINDH

## ANNEX

**SPECIAL REGISTER REFERRED TO IN ARTICLE 10(3)**

1. Every insurance undertaking must keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the home Member State's rules.
  2. Where an insurance undertaking transacts both non-life and life business, it must keep at its head office separate registers for each type of business. However, where a Member State authorises insurance undertakings to cover life and the risks listed in points 1 and 2 of Annex A to Directive 73/239/EEC, it may provide that those insurance undertakings must keep a single register for the whole of their activities.
  3. The total value of the assets entered, valued in accordance with the rules applicable in the home Member State, must at no time be less than the value of the technical provisions.
  4. Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact is recorded in the register and the amount not available is not included in the total value referred to in point 3.
  5. Where an asset employed to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions of point 4, or where such an asset is subject to a reservation of title in favour of a creditor or of a third party or where a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking, the treatment of such asset in case of the winding-up of the insurance undertaking with respect to the method provided for in Article 10(1)(a) shall be determined by the legislation of the home Member State except where Articles 20, 21 or 22 apply to that asset.
  6. The composition of the assets entered in the register in accordance with points 1 to 5, at the time when winding-up proceedings are opened, must not thereafter be changed and no alteration other than the correction of purely clerical errors must be made in the registers, except with the authorisation of the competent authority.
  7. Notwithstanding point 6, the liquidators must add to the said assets the yield therefrom and the value of the pure premiums received in respect of the class of business concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.
  8. If the product of the realisation of assets is less than their estimated value in the registers, the liquidators must be required to justify this to the home Member States' competent authorities.
  9. The supervisory authorities of the Member States must take appropriate measures to ensure full application by the insurance undertakings of the provisions of this Annex.
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