



STATUTORY INSTRUMENTS.

**S.I. No. 70 of 2011**



EUROPEAN COMMUNITIES (RAILWAY SAFETY) REGULATIONS  
2011

**(Prn. A11/0306)**

EUROPEAN COMMUNITIES (RAILWAY SAFETY) REGULATIONS  
2011

I, PAT CAREY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008<sup>1</sup> and Commission Directive 2009/149/EC of 27 November 2009<sup>2</sup>, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Railway Safety) Regulations 2011.

2. The Railway Safety Act 2005 (No. 31 of 2005) is amended—

(a) in section 2(1)—

(i) by including, in the appropriate places, the following additional definitions:

“ ‘annual report’ means the report published by the Commission under section 28A;

‘Railway Interoperability Directive’ means Directive 2008/57/EC of 17 June 2008 of the European Parliament and of the Council;

‘vehicle’ means a railway vehicle suitable for circulation on its own wheels on railway lines, with or without traction composed of one or more structural and functional subsystems or parts of such subsystems.”, and

(ii) by substituting for the definition of “Directive” the following:

“ ‘Directive’ means Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004, as amended by the following:

(a) the Railway Interoperability Directive;

(b) Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008;

<sup>1</sup>OJ No. L345, 23.12.2008, p.62.

<sup>2</sup>OJ No. L313, 28.11.2009, p.65.

(c) Commission Directive 2009/149/EC of 27 November 2009;”,

(b) in section 38A(1)—

(i) by including, in the appropriate places, the following additional definitions:

“ ‘ECM’ means an entity in charge of maintenance (within the meaning of the Directive);

‘freight wagon’ means a non-self propelled vehicle designed for the purpose of transporting freight or other materials to be used for activities such as construction or infrastructure maintenance;

‘keeper’ has the meaning assigned to it in the Directive;

‘NVR’ means the national vehicle register kept by the Commission pursuant to Article 33 of the Railway Interoperability Directive;

‘TSI’ means technical specification for interoperability and has the meaning assigned to it in the Railway Interoperability Directive.”, and

(ii) by deleting the definition of “technical specification for interoperability”,

(c) by substituting for section 40(8) the following:

“(8) Subsection (7) does not apply to a railway undertaking that operates a railway service immediately before the commencement of this section in respect of the period specified in sections 45(1) and 46(1).”;

(d) by inserting after section 43A the following:

*“Maintenance of vehicles.*

**43B.** (1) Each vehicle, before it is placed in service or used on the network, shall have an ECM assigned to it and details of this assignment shall be registered in the NVR.

(2) For the purpose of this section a railway operator, an infrastructure manager or a keeper may be an ECM.

(3) Without prejudice to the responsibility of the railway operators and infrastructure managers for the safe operation of a train under Part 3 and this Part, the ECM shall, by means of its maintenance system, ensure that the vehicles for which it is in charge are kept in a safe state.

- (4) Pursuant to subsection (3), the ECM shall ensure that vehicles are maintained in accordance with—
- (a) the maintenance file of each vehicle, and
  - (b) any other requirements, including maintenance rules and TSI provisions.
- (5) The ECM shall carry out the maintenance itself or make use of contracted maintenance workshops.
- (6) In the case of a freight wagon, the ECM concerned shall be certified by a body accredited or recognised in accordance with Article 14a(5) of the Directive, or by a safety authority.
- (7) Where the ECM is a railway operator or an infrastructure manager, compliance with the requirements adopted under Article 14a(5) of the Directive shall be checked by the Commission pursuant to sections 45 and 46 and confirmed on the certificates and authorisations specified in those procedures.
- (8) In the case of vehicles specified in Article 2(2) of the Directive, military equipment and special transport requiring an *ad hoc* permit from the Commission to be delivered prior to the service, the obligations under this section to identify and certify the ECM may be fulfilled through alternative measures.
- (9) Where alternative measures are used, the Commission shall grant a derogation from—
- (a) the requirement to identify the ECM when registering vehicles pursuant to Article 33 of the Railway Interoperability Directive, and
  - (b) the requirement to identify or certify the ECM when issuing safety certificates to railway operators and authorisations to infrastructure managers pursuant to sections 45 and 46.
- (10) A derogation may be granted for a period not longer than 5 years.
- (11) Where a derogation is granted, the Commission shall include it and specify the reasons for its granting in the annual report.
- (12) The Commission shall comply with any request from the European Commission to withdraw a derogation where it appears that undue safety risks are being taken on the Community rail system.
- (13) In this section ‘derogation’ means a derogation granted under subsection (9).”

(e) by substituting for section 45(5) the following:

“(5) “Subsection (4) does not apply in respect of the periods specified in subsection (1), section 44(2) and section 46 (11).”

(f) in section 46—

(i) by substituting for subsection (3) the following:

“(3) A safety case submitted by a railway operator to the Commission for safety certification under this section shall (in addition to any elements specified in this Act) contain the following:

(a) a description of the railway operator’s safety management system in accordance with Article 9 and Annex III to the Directive, as referred to in Article 10(2)(a) of the Directive,

(b) documentation as described in Annex IV to and referred to in Article 10(2)(b) of the Directive, outlining the provisions adopted by the railway operator to meet specific requirements that are necessary for the safe supply of its services on the relevant network and which may concern—

(i) application of TSIs,

(ii) application of other Community legislation relating to railway safety,

(iii) application of national safety rules,

(iv) application of network operating rules,

(v) rules applicable to its operations, staff and rolling stock,

(vi) acceptance of staff’s certificates, and

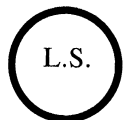
(vii) authorisation to operate vehicles in use.”, and

(ii) in subsection (4), by substituting “Article 11(1)(a)” for “Article 10(2)(a)”

(g) in section 49, by substituting for subsection (9) the following:

“(9) Where a railway undertaking proposes to appoint a suitably qualified person for the purposes of section 42(9), 43(8), 45(2), 46(6)(b), 50(1) or 50(6), the railway undertaking shall notify the Commission in writing of the proposal at least 21 days in advance of the proposed appointment date.”, and

(h) in section 50B, by substituting “keeper” for “wagon keeper”.



GIVEN under my Official Seal,  
17 February 2011.

PAT CAREY,  
Minister for Transport.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The purpose of these Regulations is to give effect to Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008, amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) and Directive 2009/149/EC of the European Parliament and of the Council of 27 November 2009 amending Directive 2004/49/EC of the European Parliament and of the Council as regards Common Safety Indicators and common methods to calculate accident costs.

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