

GUIDELINES FOR THE KEEPER'S "ECM DECLARATION"

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2.4	Correction of weblink in section 5.3, update section 7	13.02.2014

This version replaces all previous versions of the "**Keeper's Self Declaration Implementation Guide**"

Brussels, 13.02.2014

1 Definitions

ATMF	Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (Appendix G to COTIF 1999)
COTIF	Convention concerning International Carriage by Rail
EC	European Commission
ECM	Entity in Charge of Maintenance
ERA	European Railway Agency
ERADIS	European Railway Agency Database for Interoperability and Safety
EU	European Union
GCU	General Contract of Use for wagons (CUU, AVV)
MoU	Memorandum of Understanding
MS	Member State (of European Union)
NSA	National Safety Authority
NVR	National Vehicle Register
OTIF	Intergovernmental Organisation for International Carriage by Rail
RU	Railway Undertaking
SMS	Safety Management System

2 Scope of the document

The purpose of this document is to promote immediate **Keeper's ECM Declaration Guidelines**.

It should be understood as a joint recommendation from the publishing Associations for their members and all other parties involved enabling them to follow the outlined provisions.

This document however does not bear any legal responsibility and it does not replace the relevant information from the original sources, namely the respective national and international legal provisions in force.

This document is addressed to all

- **Freight Wagon Keepers** domiciled in the European Union or OTIF States for wagons belonging to them and operated in or through EU Member States and/or OTIF States;
- **Railway Undertakings** operating freight trains in or through EU Member States or OTIF States;
- **Entities in Charge of Maintenance** of Freight Wagons

It must be clearly stated that all provisions made in this document shall be only intermediate. Accessible, operational and properly updated NVRs in all EU Member States and COTIF States are the target system (see for example Directive 2008/57/EC Article 33).

3 Background of the Keeper's ECM Declaration

The Railway Safety Directive¹ requires that each vehicle shall have an Entity in Charge of Maintenance (ECM) assigned to it and Decision 2007/756/EC of 9th November 2007 requires that this entity must be registered in the NVR². Equivalent requirements are outlined in Appendix G of COTIF 1999³.

In addition both the Safety Directive and Appendix G of COTIF 1999 require that an ECM for a freight wagon must be certified by May 31st 2013⁴.

After May 31st 2013 RUs will need to know if a wagon allocated to a Keeper is linked to a certified ECM with a valid certificate⁵:

- Articles 5 (1) of both the Regulation EU/445/2011 and Annex A of Appendix G of COTIF 1999 require that *“Each railway undertaking or infrastructure manager shall ensure that the freight wagons it operates, before their departure, have a certified entity in charge of maintenance and that the use of the wagon corresponds to the scope of the certificate”*.

Article 12 (7) of the Regulation EU/445/2011 provides an exemption for *“Railway undertakings and infrastructure managers which are already certified in accordance with Articles 10 and 11 of Directive 2004/49/EC by no later than 31 May 2012”* that they do not *“need to apply for an ECM certificate for the original period of validity of their certificates for maintaining the wagons they are responsible for as entity in charge of maintenance”*. *Such exemption does not apply for RUs having obtained a Safety Certificate according to other provisions.*

Given the present situation there is a problem for retrieving the relation between Wagon(number) / Keeper / certified ECM:

- The only valid legal base for the ECM at present are the EU Safety and Interoperability Directives and the equivalent provisions in COTIF 1999. NVRs therefore are the only official source to link Wagon number, Keeper and ECM.
- The registration of certified ECMs and Keepers in accessible and fully operational NVRs is the main legal task at hand for the NSAs and constitutes the definite target system.

The GCU (or another bilateral contract the RU has in place with regard to the use of a freight wagon) is a contract between the RUs and the Keepers. The GCU (and the GCU Wagon Database) does not provide direct information regarding the ECM allocated to a certain wagon. Until the NVRs are not fully usable throughout Europe at the same level of content and accessibility, it is difficult for the RUs to establish the link between the wagon and the ECM.

Therefore, in addition to the Certification of ECMs under the EU-Regulation, the COTIF provisions or the MoU an intermediate solution needs to be established in order to preserve legally compliant interoperability of the wagons all over Europe.

¹ Article 14a (1), 2004/49/EC (amended by the directive 2008/110/EC).

² In accordance with the Railway Interoperability Directive (Article. 33 of Directive 2008/57/EC).

³ ATMF, Articles 13 (Registers) and 15, § 2 (Maintenance).

⁴ As foreseen in Article 14a (para (4) and (5)) of directive 2004/49/EC and Article 15, § 2 ATMF (Appendix G of COTIF 1999).

⁵ Awarded according the MoU or the Regulation EU/445/2011 or Annex A of Appendix G COITIF 1999.

4 Implementation of the Keeper's ECM Declaration

The Associations in cooperation with ERA developed the following solution to bridge the information gap between RUs and ECMs:

- To avoid freight rail business being severely disrupted or even stopped by this problem the Sector proposes the model of a "Keeper's ECM Declaration". The keeper will name its assigned ECM(s) and this declaration will be published by ERA on their webpage and thus ascertains the necessary information for the RUs.

The Keeper's ECM Declaration solution is realized as follows:

- The Wagon Keeper declares that the maintenance of his wagons is organized by:
 - an ECM certified according Regulation EU/445/2011 or the MoU
 - or
 - an ECM certified according COTIF 1999, Appendix G, Annex A.
- This ECM can be:
 - either himself and/or
 - one or more certified ECMs[but of course only one ECM per wagon].

As far as a RU fulfils the criteria outlined in Article 12 (7) of the Regulation EU/445/2011 and wants to make use of this exemption it must clearly make a reference to its Safety Certificate in the Declaration.

It is absolutely recommended for **all keepers**, no matter if they are domiciled in a EU MS or in a Non EU MS to provide such a "Keeper ECM Declaration" no later than May 31st 2013 to the European Railway Agency. This Declaration will replace the "Keeper's Self Declaration" established on the basis of the Sector's Implementation Guidelines (Version 1.1, November 9th 2010).

A common format for the "Keeper's ECM Declaration" is attached to this Guidelines.

The Sector's Associations therefore strongly recommend to ALL Keepers of freight wagons concerned to submit their "Keeper's ECM Declaration" by no later than May 31st 2013 to the ERA Safety Unit.

5 TO DOs for Keepers, RUs and ERA

▪ Vehicle Keepers:

- 1) The Keepers must complete the “ECM Declaration” using the template form, entering the assigned ECM(s) (either the Keepers being ECM themselves or using certified other ECM(s)) but only after such ECM Certificate or the RUs Safety Certificate - in case the exemption outlined in Article 12 (7) of the Regulation EU/445/2011 applies - was made publicly available on ERADIS:
 - ECM Certificate based on Certification against Regulation EU/445/2011 or Annex A of Appendix G, COTIF: https://pdb.era.europa.eu/safety_docs/ecm/certificates/default.aspx?DocType=1 (Section ECM – Certificates – ECM Certificates - ECM Certificates Database)
 - ECM Certificate based on Certification against the MoU: https://pdb.era.europa.eu/safety_docs/ecm/certificates/default.aspx?DocType=2 (Section ECM – Certificates – ECM MoU Certificates – ECM MoU Certificates Database)
 - Safety Certificate of a RU making use of the exemption outlined in Article 12 (7) of Regulation EU/445/2011: https://pdb.era.europa.eu/safety_docs/scert/search_results.aspx
- 2) The Keeper's ECM Declaration must be sent by eMail from the wagon keeper **as EXCEL- AND signed pdf file** to:
 - keeper-ecm@era.europa.eu
- 3) ERA will publish the Declarations on a publicly accessible website both for EU-MS and Non EU-MS based companies:
 - <http://www.era.europa.eu/Document-Register/Pages/keepers-self-declarations.aspx>
- 4) **The Keeper must immediately update its Declaration upon each change (e.g. change of address, change of ECM(s) for its wagons, designation of an additional ECM for part of its wagons, knowledge of limiting the scope, suspension or revocation of certificate for it(s) ECM).**

▪ Railway Undertakings (RUs):

- 1) The RUs should establish a process in their SMS to check regularly if the respective Keeper's ECM Declaration (and the connected ECM Certificate(s), MoU Certificate(s), Safety Certificate or COTIF Certificate(s)) are published on ERADIS.

▪ European Railway Agency (ERA):

- 1) In case of revocation, suspension or limiting the scope of an awarded ECM certificate or ECM information in the part of the Safety Certificate in accordance with Regulation 445/2011/EU, Article 12(7) the European Railway Agency (ERA) will be informed by the update of ERADIS.
- 2) Upon receiving the information according to 1) above
 - a) ERA will inform immediately the NSA.
 - b) ERA will “red flag” the respective Keeper's ECM Declaration(s) on its website.

6 Timeframes

It is recommended that the Keepers proceed with their Declaration immediately, but latest by May 31st 2013.

7 Further information and contact persons

For further information please contact one of the persons listed below:

- UIC: Bernard Schmitt schmitt@uic.org
- UIP: Gilles Peterhans gilles.peterhans@uiprail.org
- ERFA: Pierre Tonon p.t@erfarail.eu

- ERA: Nathalie Duquenne nathalie.duquenne@era.europa.eu

For sending the declaration:

keeper-ecm@era.europa.eu

Annex

Template Keeper's ECM Declaration (English)