

Bijlage 3b bij Kamerbrief Werkprogramma Internationaal Spoor: tabel bij Afschrift TDD Consultatie

Articles	Comments
Article 2 Scope 1. This Directive shall apply to train drivers operating locomotives and trains on the railway system in the Community for a railway undertaking requiring a safety certificate or an infrastructure manager requiring a safety authorisation. 2. Member States shall not, on the basis of national provisions pertaining to other staff on board freight trains, prevent freight trains from crossing borders or providing domestic transport in their territory. 3. Without prejudice to the Article 7, Member States may exclude from the measures they adopt in implementation of this Directive train drivers operating exclusively on: (a) metros, trams and other light rail systems; (b) networks that are functionally separate from the rest of the rail system and are intended only for the operation of local, urban or suburban passenger and freight services; (c) privately owned railway infrastructure that exists solely for use by the infrastructure owners for their own freight operations; (d) sections of track that are temporarily closed to normal traffic for the purpose of maintaining, renewing or upgrading the railway system.	NL proposes a strict alignment of the scope of the Train Driver Directive (TDD) with that of the Railway safety directive (RSD) and Interoperability directive. Paras. 1 and 3 make for a rather complex system for determining the scope of the TTD. According to paragraph 1 the TDD applies to train drivers operating locomotives and trains on the railway system for an RU requiring a safety certificate as defined in Directive 2016/798 (RSD). So, if an RU does not require a safety certificate for some part of the railway system because of the scope of the RSD, its train drivers fall outside the scope of the TDD for the part of the railway system that is excluded from the scope of the RSD. Such aligning of scopes of these connected directives seems logical. Para. 3 however confuses matters by listing exemptions as optional whereas Art. 2(2) RSD has already placed the rail systems concerned beyond the scope of the RSD. Art. 2(1) TDD should suffice in these cases. <i>"Without prejudice to the Article 7..."</i> These words in paragraph 3 suggest that a licence would be valid on rail systems as listed under a) to d). In view of the scope determined by para. 1 this would not be the case as the rail system concerned is already excluded from the scope of the RSD. Consequently, a safety certificate (within the meaning of the RSD) for the use of that rail system is not required. As Recital #5 of the Interoperability directive states: "Metros, trams and other light rail systems are subject in many Member States to local technical requirements. Such local public transport systems are usually not subject to licensing within the Union. Trams and light rail systems are furthermore often subject to road legislation because of shared infrastructure. For those reasons, such local systems do not need to be interoperable and should therefore be excluded from the scope of this Directives." The different technical requirements and legal framework for such local systems do not accommodate for the automatic validity of the licence. It should therefore be clear that excluded rail systems are not part of the scope of application. <i>Paragraph 2:</i>

	For the sake of clarity, the TTD should not apply to other crew members as they are already regulated in the TSI OPE (Regulation 2019/773).
Article 4 Community certification model 1. All train drivers shall have the necessary fitness and qualifications to drive trains and shall hold the following documents: (a) a licence demonstrating that the driver satisfies minimum conditions as regards medical requirements, basic education and general professional skills. The licence shall identify the driver and the issuing authority and shall state the duration of its validity. The licence shall comply with the requirements of Annex I, until the Community certification model is adopted, as provided for in paragraph 4; (b) one or more certificates indicating the infrastructures on which the holder is authorised to drive and indicating the rolling stock which the holder is authorised to drive. Each certificate shall comply with the requirements of Annex I. 2. However, the requirement to hold a certificate for a specific part of infrastructure shall not apply in the exceptional cases listed hereafter, provided that another train driver who possesses a valid certificate for the infrastructure concerned sits next to the driver during driving: (a) when a disturbance of the railway service necessitates the deviation of trains or maintenance of tracks, as specified by the infrastructure manager; (b) for exceptional, one-off services which use historical trains; (c) for exceptional, one-off freight services, provided that the infrastructure manager agrees; (d) for the delivery or demonstration of a new train or locomotive; (e) for the purposes of training and examining drivers. The use of this possibility shall be a decision of the railway undertaking and may not be imposed by the relevant infrastructure manager or by the competent authority.	Art. 4.2: <i>"The use of this possibility shall be a decision of the railway undertaking and may not be imposed by the relevant infrastructure manager or by the competent authority."</i> This subparagraph seems to unintentionally ignore the possibility of an infrastructure manager as an employer of train drivers. Article 4.2. c <i>"For exceptional, one-off freight services, provided that the infrastructure manager agrees";</i> <i>"Whenever an additional driver is used as provided for above, the infrastructure manager shall be informed beforehand."</i> NL does not see the added value of these provisions and proposes to delete them.

Whenever an additional driver is used as provided for above, the infrastructure manager shall be informed beforehand. 3. The certificate shall authorise driving in one or more of the following categories: (a) category A: shunting locomotives, work trains, maintenance railway vehicles and all other locomotives when they are used for shunting; (b) category B: carriage of passengers and/or of goods. A certificate may contain an authorisation for all categories, covering all codes as referred to in paragraph 4. 4. By 4 December 2008 the Commission shall adopt, on the basis of a draft prepared by the Agency, a Community model for the licence, the certificate and the certified copy of the certificate, and also determine their physical characteristics, taking into account therein anti-forgery measures. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(3). By 4 December 2008, the Commission shall adopt the measures designed to amend non-essential elements of this Directive, by supplementing it, and concerning the Community Codes for the different types in categories A and B as referred to in paragraph 3 of this Article in accordance with the regulatory procedure with scrutiny referred to in Article 32(3) and on the basis of a recommendation from the Agency.	
Article 6 Ownership, language and issuing bodies 1. A licence shall be owned by its holder and shall be issued by the competent authority as defined in Article 3(a). Where a competent authority or its agent issues a licence in a national language which is not a Community language, it shall draw up a bilingual version of the licence using one of the Community languages. 2. A certificate shall be issued by the railway undertaking or the infrastructure manager who employs or contracts the driver. The certificate shall be owned by the undertaking or manager issuing it. However, in accordance with Article 13(3) of Directive 2004/49/EC, drivers shall be entitled to obtain a certified copy. Where a	<i>"A licence shall be owned by its holder":</i> The legal meaning of ownership presents problems with the characteristics of a licence, which, for instance, may be withdrawn or suspended. Article 17 already states that a licence remains valid in the case of cessation of employment.

railway undertaking or an infrastructure manager issues a certificate in a national language which is not a Community language, it shall draw up a bilingual version of the certificate using one of the Community languages.	
Article 11 Basic requirements 1. Applicants shall have successfully completed at least nine years' education (primary and secondary) and have successfully concluded basic training equivalent to level 3 referred to in Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community (3). 2. Applicants shall provide confirmation of their physical fitness by passing a medical examination conducted by, or under the supervision of — to be decided by the Member State — a medical doctor accredited or authorized in accordance with Article 20. The examination shall cover at least the criteria indicated in sections 1.1, 1.2, 1.3 and 2.1 of Annex II. 3. Applicants shall demonstrate their occupational psychological fitness by passing an examination conducted by, or under the supervision of — to be decided by the Member State — a psychologist or a medical doctor accredited or authorized in accordance with Article 20. The examination shall cover at least the criteria indicated in section 2.2 of Annex II. 4. Applicants shall have demonstrated their general professional competence by passing an examination covering at least the general subjects listed in Annex IV.	<i>Para. 1:</i> Council Decision 85/368/EEC has been repealed. Clarification of basic training requirements is needed.
Article 16 Periodic checks 1. In order for a licence to remain valid, its holder shall undergo periodic examinations and/or tests relating to the requirements referred to in Article 11(2) and (3). With regard to medical requirements, the minimum frequency shall be observed in accordance with the provisions of section 3.1 of Annex II. These medical checks shall be conducted by, or under the supervision of, medical doctors accredited or authorized in accordance with Article 20. As far as general professional knowledge is concerned, the provisions of Article 23(8) shall apply.	It would be helpful if a maximum period between the medical checks and application or renewal of a licence is determined. <i>"As far as general professional knowledge is concerned, the provisions of Article 23(8) shall apply."</i> Does this provision imply that a licence may be suspended if a driver does not have proof of training to maintain general professional knowledge? <i>"When renewing a licence, the competent authority shall verify in the register provided</i>

When renewing a licence, the competent authority shall verify in the register provided for in Article 22(1)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph. 2. In order for a certificate to remain valid, its holder shall undergo periodic examinations and/or tests relating to the requirements referred to in Articles 12 and 13. The frequency of those examinations and/or tests shall be determined by the railway undertaking or the infrastructure manager employing or contracting the driver in accordance with its own safety management system, and respect the minimum frequencies set out in Annex VII. For each of these checks the issuing body shall confirm by a statement on the certificate and in the register provided for in Article 22(2)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph. 3. Where a periodic check is missed or gives a negative result, the procedure laid down in Article 18 shall be applied.	<i>for in Article 22(1)(a) that the driver has met the requirements referred to in the first subparagraph of this paragraph.”</i> Is (the maintenance of) general professional knowledge one of the requirements to which the second paragraph refers? The reference to Article 22(1)(a) concerns the register of licences. Under point 28 of Commission Decision 2010/17/EC, the inclusion of general knowledge in the register is considered optional. Does this mean that the verification by the NSA of the upkeep of general professional knowledge is optional? As continuous training is a responsibility of the RU without common standards, how can registration in the licence register be effected?
Article 17 Cessation of employment When a driver ceases to work for a railway undertaking or an infrastructure manager, it shall inform the competent authority without delay. The licence shall remain valid, provided that the conditions in Article 16(1) remain fulfilled. A certificate shall become invalid when its holder ceases to be employed as a driver. However, the holder shall receive a certified copy of it and of all documents providing evidence of his training, qualifications, experience and professional competences. When issuing a certificate to a driver, a railway undertaking or infrastructure manager shall take account of all those documents.	This article suggests that the NSA registers which train driver is employed by which railway undertaking(s). However, this is not the case and, moreover, is impracticable. How to deal with self-employed drivers? They often work for several railway undertakings at the same time. We propose to delete the first sentence of Article 17 because of placing an unnecessary administrative burden on both the RU/IM and the NSA.
Article 18 Monitoring of drivers by railway undertakings and infrastructure managers 1. Railway undertakings and infrastructure managers shall be required to ensure, and to check, that the licences and certificates of the drivers they employ or contract are valid. They shall set up a system for monitoring their drivers. If the results of such monitoring call into question a driver's competence for the job	<i>"As soon as a railway undertaking or infrastructure manager is aware or is informed ..."</i> This should be third paragraph instead of a subparagraph of para. 2. <i>"Furthermore, it shall ensure that ..."</i> This provision should be a separate paragraph.

and the continuing validity of his licence or certificate, railway undertakings and infrastructure managers shall immediately take the necessary action. 2. If a driver considers that his state of health calls into question his fitness for the job, he shall immediately inform the railway undertaking or infrastructure manager, whichever is appropriate. As soon as a railway undertaking or infrastructure manager is aware or is informed by a medical doctor that the health of a driver has deteriorated to a point where his fitness for the job is called into question, it shall immediately take the necessary action, including the examination described in section 3.1 of Annex II and, if necessary, the withdrawal of the certificate and the updating of the register provided for in Article 22(2). Furthermore, it shall ensure that at no time during their service drivers are under the influence of any substance which is likely to affect their concentration, attention or behaviour. The competent authority shall be informed without delay of any cases of work incapacity of more than three months.	<i>"The competent authority shall be informed without delay of any cases of work incapacity of more than three months."</i> This provision belongs to the proposed third paragraph.
Article 19 Tasks of the competent authority 1. The competent authority shall fulfil the following tasks in a transparent and non-discriminatory manner: a) issuing and updating licences, and providing duplicates, as provided for in Articles 6 and 14; (b) ensuring periodic examinations and/or tests as provided for in Article 16(1); c) suspending and withdrawing licences, and notifying the issuing body of reasoned requests for the suspension of certificates, as provided for in Article 29; (d) if so designated by the Member State, authorized persons or bodies as provided for in Articles 23 and 25; e) ensuring that a register of persons and bodies accredited or authorized as provided for in Article 20 is published and updated; (f) keeping and updating a register of licences as provided for in Articles 16(1) and 22(1); (g) monitoring the drivers' certification process as provided for in Article 26;	<i>"c) suspending and withdrawing licences"</i> The TDD mentions withdrawing of licences as a possibility. However it is unclear when this would be the case. It is also unclear how withdrawing of licences differs from permanent suspension of licences (art. 29). The Train Drivers Directive mentions both the suspension and withdrawal of licences and certificates. Unlike suspension, the grounds for withdrawal are not elaborated. The difference between permanent suspension (Article 29(4) Mrl) and withdrawal of a train driving licence is not clear. <i>"4. Where a competent authority delegates or contracts tasks referred to in points (a) or (b) of paragraph 1 to a railway undertaking, at least one of the following conditions shall be complied with:</i> <i>a) the railway undertaking issues licences only to its own drivers;"</i> We would like to see a clarification added to this provision that it is up to the Member State to decide whether or not the NSA should be allowed to delegate these tasks.

(h) carrying out inspections as provided for in Article 29; i) establishing national criteria for examiners as provided for in Article 25(5). The competent authority shall respond quickly to requests for information and present any requests for additional information without delay when preparing licences. 2. The competent authority shall not delegate the tasks referred to in points c), (g) and (i) of paragraph 1 to third parties. 3. Any delegation of tasks shall be transparent and non-discriminatory and shall not give rise to a conflict of interests. 4. Where a competent authority delegates or contracts tasks referred to in points (a) or (b) of paragraph 1 to a railway undertaking, at least one of the following conditions shall be complied with: a) the railway undertaking issues licences only to its own drivers; (b) the railway undertaking does not enjoy exclusivity in the territory concerned for any of the delegated or contracted tasks. 5. Where a competent authority delegates or contracts tasks, the authorized representative or contractor shall be required, in performing such tasks, to comply with the obligations imposed on competent authorities by this Directive. 6. Where a competent authority delegates or contracts tasks, it shall set up a system for checking how those tasks have been carried out and shall ensure that the conditions laid down in paragraphs 2, 4 and 5 are complied with.	
Article 20 Accreditation and recognition 1. Persons or bodies accredited under this Directive shall be accredited by an accreditation body appointed by the Member State concerned. The accreditation process shall be based on criteria of independence, competence and impartiality, such as the relevant EN 45 000 series European standards and on the evaluation of a dossier submitted by candidates which provides appropriate evidence of their skills in the area in question. 2. As an alternative to the accreditation provided for in paragraph 1, a Member State	Commission Decision 2011/765/EU only speaks of recognition – not accreditation. Art. 11 requires medical doctors and psychologists to be recognised or accredited. However, the absence of common criteria for this recognition stands in the way of mutual acceptance between MS.

may provide that persons or bodies recognised under this Directive shall be recognised by the competent authority or a body appointed by the Member State concerned. Recognition shall be based on criteria of independence, competence and impartiality. However, in cases when the particular competence sought is extremely rare, an exception to this rule shall be allowed after a positive opinion is given by the Commission in accordance with the regulatory procedure referred to in Article 32(2). The criterion of independence does not apply in the case of the training referred to in Article 23(5) and (6). 3. The competent authority shall ensure the publication and updating of a register of persons and bodies which have been accredited or recognised under this Directive.	
Article 29 Controls by the competent authority 1. The competent authority may at any time take steps to verify, on board trains operating in its area of jurisdiction, that the train driver is in possession of the documents issued pursuant to this Directive. 2. Notwithstanding verification as provided for in paragraph 1, in the event of negligence at the workplace the competent authority may verify if the driver in question complies with the requirements set out in Article 13. 3. The competent authority may carry out enquiries regarding compliance with this Directive by drivers, railway undertakings, infrastructure managers, examiners and training centres pursuing their activities in its area of jurisdiction. 4. If the competent authority finds that a driver no longer satisfies one or more required conditions, it shall take the following measures: (a) if it concerns a licence issued by the competent authority, the competent authority shall suspend the licence. The suspension shall be temporary or permanent depending on the scale of the problems created for rail safety. It shall immediately inform the driver concerned and his employer of its reasoned decision, without prejudice to the right of review provided for in Article 21. It shall indicate the procedure to be followed for recovering the licence;	Para. 4: <i>"If the competent authority finds that a driver no longer satisfies one or more required conditions ... the competent authority shall suspend the licence"</i> Do the required conditions only entail the physical and psychological requirements, or also general professional knowledge? If so, it is not clear how this would be proven. Could dangerous behavior be grounds for suspension of the licence? 4.a: <i>"The suspension shall be temporary or permanent"/ "De schorsing is voorlopig of definitief"</i>. The Dutch version differs from the English version, thereby changing the meaning to 'provisional suspension' and 'final decision'. We propose to correct the Dutch translation by replacing 'voorlopig' by 'tijdelijk' and 'definitief' by 'permanent'. <i>Permanent suspension versus withdrawal of licence:</i> Art. 29 does not mention 'withdrawal' of licences. Under what circumstances may a licence be withdrawn?

(b) if it concerns a licence issued by a competent authority in another Member State, the competent authority shall approach that authority and provide a reasoned request either that a further inspection be carried out or that the licence be suspended. The requesting competent authority shall inform the Commission and the other competent authorities of its request. The authority that issued the licence in question shall examine the request within four weeks and notify the other authority of its decision. The authority that issued the licence shall also inform the Commission and the other competent authorities of the decision. Any competent authority may prohibit train drivers from operating in its area of jurisdiction pending notification of the issuing authority's decision;

(c) if it concerns a certificate, the competent authority shall approach the issuing body and request either that a further inspection be carried out or that the certificate be suspended. The issuing body shall take appropriate measures and report back to the competent authority within a period of four weeks. The competent authority may prohibit train drivers from operating in its area of jurisdiction pending the report of the issuing body, and shall inform the Commission and the other competent authorities thereof.

At all events, if the competent authority considers that a particular driver creates a serious threat to the safety of the railways, it shall immediately take the necessary action, such as asking the infrastructure manager to stop the train and prohibiting the driver from operating in its area of jurisdiction for as long as necessary. It shall inform the Commission and the other competent authorities of any such decision.

In all cases the competent authority, or the body designated for this, shall update the register provided for in Article 22.

5. If a competent authority considers that a decision taken by a competent authority in another Member State pursuant to paragraph 4 fails to comply with the relevant criteria, the matter shall be referred to the Commission which shall deliver its opinion within three months. If necessary, corrective measures shall be proposed to the Member State concerned. In the event of disagreement or dispute, the matter shall be referred to the Committee referred to in Article 32(1), and the Commission shall take whatever measures are necessary in accordance with the regulatory procedure referred to in Article 32(2). A Member State may maintain a prohibition on a driver driving on its territory in accordance

with paragraph 4 until the matter is concluded in accordance with this paragraph.	
Annex VII	<i>Frequency of examinations:</i> the Dutch translation of 'every three years' in a, b and c is inconsistent ('om de 3 jaar' in a and b, and 'iedere 3 jaar' in c). This leads to confusion and misunderstanding. We propose to use the same translation for these words in a, b and c. Furthermore, it is not clear at which date 'every 3 years or after any absence of more than one year' starts, e.g. is this the start of the calendar year? The current terminology leads to misunderstanding about the frequency term of examinations and we suggest a reformulation.