

IMPLEMENTATION GUIDE

FOR THE

KEEPER'S SELF DECLARATION (KSD) EUROPEAN INTERMEDIATE SOLUTION

Joint Sector Group



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Annex

- Keepers Self Declaration Template (English / official version)

Version control / amendments:

1.0	first version	26.10.2010
1.1	redrafted version	09.11.2010

This version replaces all previous versions of the KSD Implementation Guide

Brussels, 17.11.2010

1 Definitions

EC	European Commission
ECM	Entity in Charge of Maintenance
ERA	European Railway Agency
EU	European Union
GCU	General Contract of Use for wagons (CUU, AVV)
KSD	Keeper's Self Declaration
MoU	Memorandum of Understanding
MS	Member State (of Europe)
NSA	National Safety Authority
NVR	National Vehicle Register
RU	Railway Undertaking
SMS	Safety Management System

2 Scope of the document

The purpose of this document is

- to summarize the latest information regarding the ECM implementation
- to promote an immediate Keeper's Self Declaration implementation

It should be understood as a joint recommendation from the publishing Associations for their members and all other parties involved 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 and outside if wagons belonging to them are operated in or through EU Member States
- **Railway Undertakings** operating freight trains in EU Member States and Switzerland
- **Entities in Charge of Maintenance** of Freight Wagons

whether they are GCU signatories or not.

It must be clearly stated that all provisions made in this document can be only purely intermediate. Accessible, operational and properly updated NVRs in all Member States are the target system (Directive 2008/57/EC article 33).

3 Background of the Keeper's Self Declaration (KSD) European Intermediate Solution

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 shall be registered in the NVR² latest by November 2010.

The Safety Directive foresees that ECMs for freight wagons shall be certified³. For that purpose,

- The ECM is/must be registered in the NVR as ECM for every freight wagon
- The ECM has to inform the carrying RU/IM of a wagon about any restrictions or specific operating conditions.

But :

- The revised Safety Directive (2008/110/EC) has not been transferred yet into national law in several Member States
- The NVRs are not working yet in an equally operationally useable / accessible way everywhere
- The NVRs are not able today **at a European, cross border level**, to support the RUs in order to meet their obligations under the Safety Directive efficiently.
- The ECM MoU is legally valid only in the 11 countries that signed it and does not make its application mandatory for an ECM.

Given the present conditions, there is a problem for retrieving the relation between wagon / Keeper / ECM:

- The **only valid legal base** for the ECM at present are the EU Safety and Interoperability Directives:
 - For each wagon, an ECM has to be named and registered in the NVR (in addition to the keeper, i.e. no matter if the ECM is identical with the keeper or not).
- **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.**

After the date of application of the certification system, according to the Safety Directive and to their respective SMS, the RUs will need to know if a wagon allocated to a Keeper is linked to an ECM with a valid certificate.

But as some Member States (or their NSAs) are interpreting the requirements laid down in the Safety Directive in a very stringent way, in those countries RUs may only operate freight wagons which are allocated to an ECM covered by a MoU certificate or a Self Declaration provided by the ECM.

The GCU (or another 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 does not provide direct information regarding the ECM. 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...

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

² in accordance with the Railway Interoperability Directive (at the beginning, art. 14 §4 and 5 of Directive 2001/16/EC as modified by directive 2004/50/EC, now art. 33 of Directive 2008/57/EC)

³ as foreseen in Article 14a (4 and 5) of directive 2004/49/EC

In the already existing ECM MoU or Self Certification scheme (see the respective Joint Sector Group ECM Implementation Guide published in August 2010), the respective Certificates from ECMs sent to ERA are/will be published on the publicly accessible ERA website.

However, this still does not provide the necessary link to which Keeper this/these ECM is/are assigned.

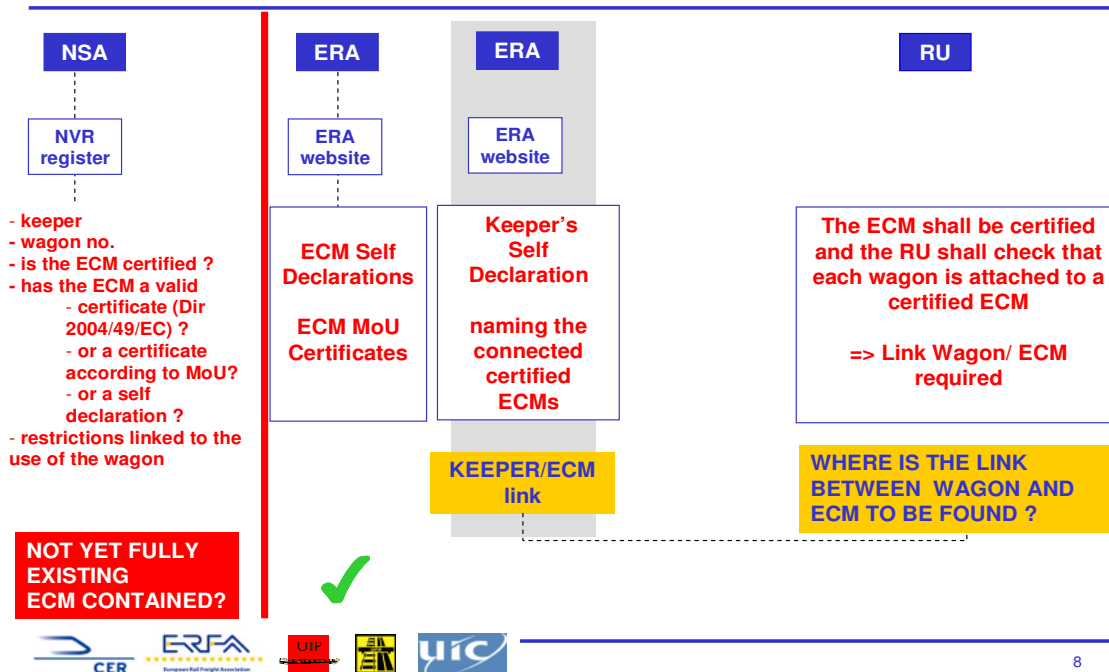
Therefore, in addition to the Certification under the MoU or the ECM Self Declaration, an additional short term European Intermediate Solution needs to be established in order to preserve interoperability of the wagons all over Europe.

4 Implementation of the Keeper's Self Declaration (KSD)

The Joint Sector, in cooperation with the European Commission, ERA and several NSAs, developed the following solution to cover the transition period and to **bridge the information gap between RUs and ECMs**:

- To avoid freight rail business being severely disrupted or even stopped by this problem in some Member States, the Sector proposes, as a **strictly limited interim solution**, the model of a **Keeper's Self Declaration (KSD)**. The keeper will name its assigned ECMs and this declaration will be published from ERA on the same webpage as the MoU certificates and the Self Declarations certificates.
- The KSD does not provide a direct link between the wagon and its ECM, but ascertains the necessary information for the RUs⁴.
- Accessible, operational and properly updated NVRs, including data necessary for wagons' ECMs certification, in all MS remain the target system (according to directive 2008/57/EC article 33). Thus, the Sector deems the proposed solution as indispensable, but being an intermediate solution only until the operational usability of all NVRs is granted.** Secondary sources therefore will never be of better quality or more up to date than NVRs

Proposed solution: how to source the Wagon/ECM-link-information



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⁴ If the MoU or Self Certification of one of the ECMs used by the Keeper is revoked or suspended the Keeper shall inform the RUs about the individual wagons allocated to this particular ECM which will impair their interoperability in Europe..

The Keeper's Self Declaration (KSD) solution is realized as follows:

- The Wagon Keeper declares that the maintenance of his wagons is organized by:
 - a certified ECM (MoU)
 - or a Self Declared ECM.
- This ECM can be:
 - either himself
 - or one or more certified or self declared ECMs [but of course only one ECM per wagon].

This short term interim solution

- facilitates continued and interoperable rail freight operation across Europe;
- provides the RUs with the necessary information which ECMs are designated by the keeper;
- enables the Authorities to complete and implement their legal task regarding the establishment of the NVRs and the certification of the ECMs;
- gives them the necessary time to achieve the definitive target system;

Therefore, 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 Self Declaration

The joint sector organisations have provided a common format for the Keeper's Self Declaration which has been agreed with ERA (**see annex**).

ERA will provide the internet platform to post all Keepers' Self Declarations on its website.

The Sector's Associations therefore strongly recommend to ALL their members concerned and to all Keepers of freight wagons in general to issue the Keeper's Self Declaration.

As a prerequisite ALL ECMs maintaining a part or the whole of their fleet must have provided either their MoU certificate or their own self declaration.

5 Urgent TO DOs for Keepers and RUs

For the Keeper's Self Declaration:

▪ **Vehicle Keepers:**

The Keepers must complete the Keeper's Self Declaration (KSD) using the template form (**see annex**), entering the assigned ECMs (either the Keepers being ECM themselves or using certified other ECMs) but only after ALL the ECMs maintaining a part or the whole of their fleet have provided either their MoU certificate or their own self declaration.

The Keeper's Self Declaration (KSD) must be sent by the wagon keeper **as pdf file** to:
ECM-certificate@portal.era.europa.eu

The ERA will publish the KSDs on a publicly accessible website, created to that effect, next to the ECM MoU Certificates and ECM Self Declarations. ERA will publish KSD's from non EU based companies as well.

The link is to be found on the page: "Safety Certification/Maintenance", box on bottom of page: "Keeper's Self Declarations".

The link is <http://www.era.europa.eu/Core-Activities/Safety/Pages/maintenance.aspx>

▪ **Railway Undertakings:**

Establish a process in their SMS to check if the respective Keeper's Self Declarations (and the connected ECM MoU Certificates or SDs) are published on ERA website

Link: (<http://www.era.europa.eu/Core-Activities/Safety/Pages/maintenance.aspx>)

Further tasks:

• **Vehicle Keepers:**

- register the ECMs in the NVR (per wagon) by November 2010 (where possible)

6 Timeframes

Considering the urgency of the deliverance of the Safety Certificates it is recommended that the Keepers proceed with their Self Declaration immediately..

7 Further information and contact persons

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Annex

- Keeper's Self Declaration Template (English/official)