

Moving Europe towards a sustainable and system without frontiers.

Clarification note

Management of General contract for Use (GCU) in applications for single safety certificates

	<i>Drafted by</i>	<i>Validated by</i>	<i>Approved by</i>
<i>Name</i>	J-M. DECHAMPS	I. MENDEZ	J. DOPPELBAUER
<i>Position</i>	Team Leader	Head of Unit	Executive Director
<i>Signature</i>			

Document History

<i>Version</i>	<i>Date</i>	<i>Comments</i>
1.0	20/11/2023	First version

The purpose of this document is to foster an harmonized EU approach to the safety certification process. Those concerned with this clarification note are encouraged to voluntarily apply it.

The present document is a non-legally binding guidance of the European Union Agency for Railways. It is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.

1. Description of the issue

The freight railway traffic may be organised by the means of exchanging freight wagons between Railway Undertakings (RUs) in agreement with the wagon keepers. To avoid implementing numerous bilateral arrangements on handling wagons between RUs and wagon keepers, the stakeholders collaborate to develop harmonised arrangements.

The General Contract of Use for Wagons (GCU - <https://gcubureau.org/>) is a multilateral contract that has been implemented to comply with the Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV: Appendix D of international convention COTIF 1999 - https://otif.org/en/?page_id=172). The GCU specifies the mutual rights and obligations of wagon keepers and RUs regarding the use of rail freight wagons as a means of transport throughout Europe and beyond.

There are several arrangements about maintenance of freight wagons in the GCU that are a source of confusion between stakeholders and National Safety authorities (NSAs).

In particular, the responsibilities behind the application of Articles 12 and 19 of the GCU are not always clear for RUs, wagon keepers, Entities in Charge of Maintenance (ECMs) and NSAs.

It is also not clear what specific information RUs applying the GCU should provide in their application for a single safety certificate.

Clarifications provided in point 2 below address aspects of application of the EU legislation (in particular [Regulation \(EU\) 2018/762](#) and [Regulation \(EU\) 2019/779](#)) in conjunction with relevant provisions of the [GCU](#). Therefore, the scope of this clarification note only concerns RUs which are [GCU](#) signatories.

2. Clarification

Article 12 Handling of wagons (GCU - edition dated 01 January 2023).

This article states that the RU *'shall carry out the inspections laid down in Appendix 9 (of the GCU) and shall carry out in particular all the safety-related inspections needed on wagons, irrespective of their keeper'*.

The safety-related inspections referred to in Article 12 of the GCU can be assimilated to pre-departure checks in accordance with point 5.1.3 (c) of Annex I to [Regulation \(EU\) 2018/762](#).

When the RU is a signatory of the [GCU](#), it should then consider the appendix 9 of the [GCU](#) as a part of the safety measures that must be developed and put in place to comply with point 3.1.1.1 of Annex I to [Regulation \(EU\) 2018/762](#).

In addition, the RU shall have the competence to properly apply Article 12 of the [GCU](#).

In conclusion, it is expected that the RU can demonstrate the implementation of Article 12 of the [GCU](#) within its Safety Management System (SMS) in accordance with the requirements set out in points 3.1.1.1 and 5.1.3 (c) of Annex I to [Regulation \(EU\) 2018/762](#) and the required competence by application of its competence framework pursuant to point 4 of Annex I to [Regulation \(EU\) 2018/762](#).

Article 19 Handling of damage (GCU - edition dated 01 January 2023).

Article 19.1 of the [GCU](#) states that the RU *'shall arrange for the wagon to be put back to running order in accordance with the provisions of Appendix 10'*.

In addition, Article 19.3 of the GCU states that *'When the damage does not affect the wagon's suitability to run, but makes its use difficult, the RU may carry out work to make the wagon fit for use again without the keeper's agreement, up to an amount of 850 EUR'*.

In both cases, the following steps apply:

- 1) *The RU detects a non-conformity based on Appendix 9 of the GCU or any additional safety measures resulting from its risk assessment (see 5.1.3.c of Annex I to [Regulation \(EU\) 2018/762](#)). Following Article 19.1 of the [GCU](#), it informs the wagon keeper and sends the freight wagon to a maintenance workshop conforming to Article 19.5 (of the GCU).
The RU manages the removal from operation pursuant to the requirements set out in 5.1.3 (e) and 5.2.4 (b) of Annex I to [Regulation \(EU\) 2018/762](#). Moreover, the RU informs the wagon keeper acting as an ECM pursuant to 5.2.5 (a) of Annex I to [Regulation \(EU\) 2018/762](#).*
- 2) *The maintenance workshop collaborating, when appropriate, with the wagon keeper acting as an ECM following Article 7.2 of the GCU proceeds to maintenance delivery in accordance with Appendix 10 of the [GCU](#). It is obvious, at this stage, that the maintenance workshop has to exchange information with the wagon keeper.*
- 3) *The maintenance workshop issues the notice on release to service according to point IV.6 of Annex II to [Regulation \(EU\) 2019/779](#) and communicates it to the RU and to the wagon keeper. This notice includes information on any restrictions for use and is deemed to be validated by the wagon keeper acting as ECM (see section A. CORRECTIVE MAINTENANCE 0. Principle of Appendix 10 of the [GCU](#)). Consequently the reception of work performed by the ECM Fleet Maintenance Management according to point III.5 of Annex II to [Regulation \(EU\) 2019/779](#) is considered as implicitly performed and the notice of release to service is deemed equivalent to the notice on return to operation pursuant to point III.6 of Annex II to [Regulation \(EU\) 2019/779](#).*
- 4) *The RU receives the notice for release to service from the maintenance workshop and adds to the restrictions as stated in this notice:*
 - *any restrictions or instructions issued and communicated by the wagon keeper following Articles 7.2 and 19.4 of the [GCU](#); and*
 - *its own restrictions resulting from the identification of safety measures pursuant to points 3.1.1.1 and 5.1.3 (c) of Annex I to [Regulation \(EU\) 2018/762](#).*
- 5) *The RU manages the return to operation pursuant to the requirements set out in points 5.1.3 (e) and 5.2.4 (c) of Annex I to [Regulation \(EU\) 2018/762](#). Moreover, the RU informs the wagon keeper acting as ECM in accordance with point 5.2.5 (a) of Annex I to [Regulation \(EU\) 2018/762](#).*

Article 19.4 of the [GCU](#) states that ‘The RU that initiated the maintenance in accordance with Appendix 10 shall check whether and to what extent the work requested has been completed based on information received from the workshop. Any restrictions on use (e.g. fitness to run, fitness for service) that become apparent after the repairs must be documented by the RU. On completion of the repairs and failing any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound’.

It means that the RU checks that requested maintenance work has been completed only on the basis of information received from the maintenance workshop. In practice, this means that such information is included in the notice on release to service that the maintenance workshop shall issue in accordance to point IV.6 of Annex II to [Regulation \(EU\) 2019/779](#). It is not the responsibility of the RU to verify this information contained in the notice on release to service. The latter should also specify that the maintenance has been delivered in accordance with Appendix 10 of the [GCU](#).

Article 19.3 of the [GCU](#) states also that ‘By agreement with the keeper, the RU may be authorised to carry out additional work’. It is not clear to what extent maintenance work is envisaged here. Without prejudice to the responsibilities of the ECM as set out in the EU legislation, the requirements for notifying the return to operation by the Fleet Maintenance Management of the ECM are applied (points III.5 and III.6 of Annex II to

[Regulation \(EU\) 2019/779](#)). The RU should seek to get a formal notice of return to operation from the keeper acting as ECM pursuant to point III.6 of Annex II to [Regulation \(EU\) 2019/779](#).

Article 19.5 of the [GCU](#) entails the requirements addressed to the maintenance workshops but does not refer to the obligation to be certified in accordance with Article 10 of [Regulation \(EU\) 2019/779](#). It is then recommended to the GCU Bureau to clarify it.

3. Legal background

COMMISSION DELEGATED REGULATION (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010 (CSM 2018/792)

- [Annex I](#)

(...)

3.1.1.1. *The organisation shall:*

(a) *identify and analyse all operational, organisational and technical risks relevant to the type, extent and area of operations carried out by the organisation. Such risks shall include those arising from human and organisational factors such as workload, job design, fatigue or suitability of procedures, and the activities of other interested parties (see 1. Context of the organisation);*

(b) *evaluate the risks referred to in point (a) by applying appropriate risk assessment methods;*

(c) *develop and put in place safety measures, with identification of associated responsibilities (see 2.3. Organisational roles, responsibilities, accountabilities and authorities);*

(...)

5.1.3. *To control risks where relevant for the safety of operational activities (see 3.1.1. Risk assessment), at least the following shall be taken into account:*

(...)

(c) *preparation of trains or vehicles before movement, including pre-departure checks and train composition;*

(...)

(e) *adaptation of the operation to requests for removal from operation and notification of return to operation issued by entities in charge of maintenance;*

(...)

5.2.4. *To control risks where relevant for the supply of maintenance (see 3.1.1. Risk assessment), at least the following shall be taken into account:*

(...)

(b) *the management of the removal of the asset from operation for maintenance, when defects have been identified or when asset condition degrades outside the limits of a safe operational state as referred to in point (a);*

(c) *the management of the return to operation of the asset with eventual restrictions of use after maintenance has been delivered to ensure it is in a safe operational state;*

(...)

5.2.5. *To control information and communication where relevant for the safe management of assets (see 4.4. Information and communication), the organisation shall take into account:*

(a) the exchange of relevant information within the organisation or with external entities responsible for maintenance (see 5.3. Contractors, partners and suppliers), in particular on safety-related malfunctions, accidents, incidents as well as on eventual restrictions of use of the asset;

(...)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/779 of 16 May 2019 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 445/2011

- *Annex II*

III. Requirements and assessment criteria for the fleet maintenance management function

(...)

5. The organisation shall have a procedure to define the necessary verification measures applied to the maintenance delivered and the release to service of the vehicles.

6. The organisation shall have a procedure to issue a notice of return to operation, including the definition of restrictions of use to ensure the safe running by taking into account the release to service documentation.

(...)

IV. Requirements and assessment criteria for the maintenance delivery function

(...)

6. The organisation shall have procedures to check that performed tasks are in accordance with the maintenance orders and to issue the notice of release to service. The notice of release to service shall include all information that is useful to define restrictions of use.

(...)