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Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

INF. 1

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Joint Coordinating Group of Experts
(Video conference, 7 and 8 September 2021)

Agenda item 3: Review of and report on the list of priority items agreed at the previous meeting

4 b – Operation and maintenance: actors and terminology: e.g. carrier vs RU, tank-wagon operator vs keeper

Definition of tank-wagon operator

Transmitted by European Union Agency for Railways (ERA)



Making the railway system
work better for society.

13th RID Standing Working Group – 15-19 November 2021

Informal document

Topic: Operator versus Keeper in RID

Proposer: European Union Agency for Railways (ERA)

Introduction

The recent adoption of ITCO proposal by the Joint Meeting, clearly distinguishing the roles of the tank-container owner and of the tank-container operator, is a good opportunity to also improve RID in this respect for tank-wagons.

As agreed at the Joint Coordinating Group of Experts of 8-9 September 2020, all actors involved in both sets of legislations should have no doubts about their responsibilities. Terminology used only in RID legislation could be specific for certain terms, but not for the terms also used in general Railway legislation.

The topic covered by this document is also on the agenda of the 4th meeting of the Joint Coordinating Group of Expert (JCGE) in September 2021.

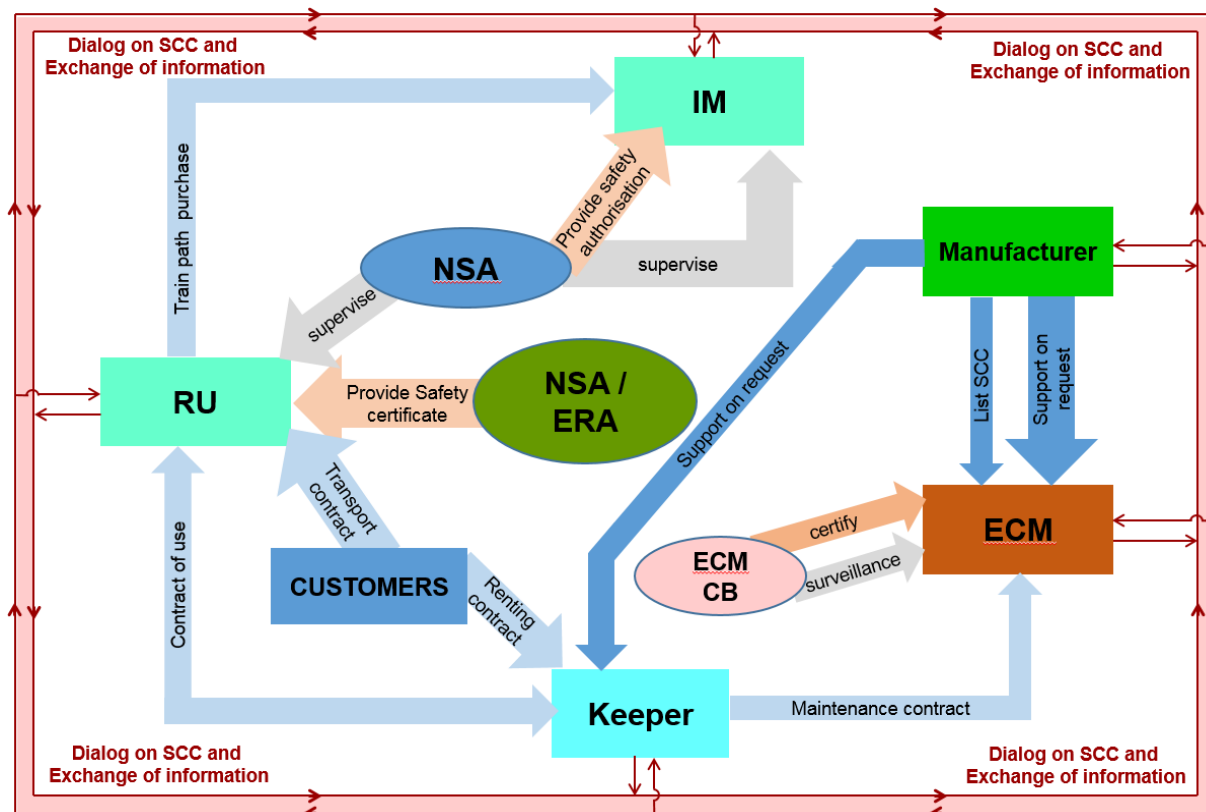
Background

At the time of adoption of RID 2021 version, ERA indicated that it could not agree with the suggested *equivalence* of the terms Operators and Keeper, in combination with the new definition of tank-wagon operator which reads as following:

Tank-wagon operator⁽⁵⁾: “means any *enterprise* in whose name the *tank-wagon* is registered or approved for transport.

ERA analysed all the instances where relevant terms, like ‘Operator’, ‘Keeper’, ‘Carrier’ appears in RID in order to streamline the usage of these terms with the EU railway legislation, including also the usage of the term ‘Railway Undertaking’ and ‘Entities in Charge of Maintenance’ for ensuring safe transport operations.

To ensure this objective, different roles (ECM, RU/IM, keeper, maintenance workshop) can be encompassed by one or several entities provided that they fulfil their intended responsibilities.



The responsibilities of railway parties are stated in the Safety Directive, in Articles 4, 14a and 16 (for NSAs) and mainly in RID, chapter 1.4 (for the participants to the transport chain). Regarding the maintenance of vehicles, responsibilities are also stated in the ECM regulation. Details on the applicable responsibilities are provided in Annex.

ERA took also into account the new Common Safety Method addressed by ERA to the European Commission for future adoption, which uses the term 'Operator' in accordance with the European Commission mandate 2018/8887 to designate the 'Railway Undertakings' and the 'Infrastructure Managers'.

The term 'carrier' is defined in the Railway Safety Directive (Directive (EU) 2016/798) and is used in different part of the RID where, in some places, it takes the meaning of "Railway undertaking". Whilst the term Railway Undertaking has never been used in RID, there should not be any change on this topic as the term "carrier" has been used in other mode legislation dealing with Transport of Dangerous Goods. The consistency between RID, ADR and ADN can be preserved concerning the usage of the term 'Carrier' which do not require any amendment.

Possible proposal for amendments in RID

As a result of its analysis, ERA considers that a solution to the issue could be found if the term 'Keeper' would be used in RID and if the definition of the 'tank-wagon operator' would be aligned with the definition adopted in the case of the tank-container operators. Such a solution would require the amendments listed hereinafter.

Amend the definition of the 'tank-wagon operator' as following

"Tank-wagon operator"⁵ means any *enterprise* in whose name the *tank-wagon* is **registered or approved for transport operated.**

INF. 1

Replace the footnote (5) in the new definition of ‘tank-wagon operator’ by the following one

5) Within the EU, the ‘tank-wagon operator’ is to be understood as the ‘Railway Undertaking’ in accordance with Directive (EU) 2016/798.

(5) The term "operator" is equivalent to the term "keeper" as defined in Article 2, n) of Appendix G to COTIF (ATMF) and in Article 3s of the Rail Safety Directive (Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings, and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification) and in Article 2s of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community.

Add the definition of ‘Keeper’ in 1.2.1 (or simply refer to the definition of ‘keeper’ in the Railway Safety Directive and in the ATMF when the term ‘keeper’ is used)

“Keeper” means the natural or legal person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in a vehicle register referred to in Article 47 of Directive (EU) 2016/797;

Add the words ‘or the keeper’ in 1.4.2.2.8

1.4.2.2.8 The carrier shall ensure that the information to be made available to the entity in charge of maintenance (ECM), either directly or via the operator or the keeper of the tank-wagon, as defined in Article 15 § 3 of Appendix G to COTIF (ATMF) and in Annex A to ATMF also covers the tank and its equipment.

Add a new footnote (xx) after ‘in particular’ in section 1.4.3.5

In the context of 1.4.1, the tank-wagon operator shall in particular^{xx,13}:

xx) When the performance of (an) activity(ies) necessary to fulfil the provisions of section 1.4.3.5 are procured to a keeper, the tank-wagon operator shall ensure the fulfilment of the procured activities through a contractual arrangement.

Replace the words ‘operator’ by ‘keeper’ in 4.3.2.1.7

4.3.2.1.7 The tank record shall be retained by the owner or ~~operator~~ the keeper, who shall be able to provide this documentation at the request of the competent authority,

and who shall ensure that it is available to the entity in charge of maintenance (ECM).
The tank record, including the relevant information concerning the activities of the ECM,

The tank record

shall be maintained throughout the life of the tank and retained for 15 months after the tank is taken out of service.

Should a change of owner or ~~operator keeper~~ occur during the life of the tank, the tank record shall be transferred without delay to the new owner or ~~operator keeper~~.

Copies of the tank record or all necessary documents shall be made available to the expert for tests, inspections and checks on tanks in accordance with 6.8.2.4.5 or 6.8.3.4.18, on the occasion of periodic inspections or exceptional checks.

Delete the words 'or name of operator' in 6.8.2.5.2

6.8.2.5.2 The following particulars shall be inscribed on both sides of the tank-wagon (on the tank itself or on plates):

– vehicle keeper mark ~~or name of operator~~¹⁶

Annex

1. Definition and responsibilities of railway actors within the EU

Railway Safety Directive (DIRECTIVE (EU) 2016/798)

- The term operator is generically used to designate the 'Railway Undertaking' (RU) or the 'Infrastructure Manager' (IM).
- **Art.3** 'railway undertaking' means a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking is to ensure traction, including undertakings which provide traction only;
- **Art. 3** 'keeper' means the natural or legal person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in a vehicle register referred to in Article 47 of Directive (EU) 2016/797;
- **Art 4** defines the role of actors for safety development and improvement of the Union rail System;
- **Art 4.3** defines specific safety requirements for the RUs and IMs;
- **Art 4.4** defines specific safety requirements for the other railway actors such as manufacturers, maintenance suppliers, keepers, service providers, contracting entities, carriers, consignors, consignees, loaders, unloaders, fillers and unfillers;

Directive 2012/34/EU (Single European Railway Area)

- **Art 3.** 'railway undertaking' means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;
- The terms "operator", mainly refers to Railway undertaking

Interoperability Directive (DIRECTIVE (EU) 2016/797)

- **Art. 2** 'railway undertaking' means a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking is to ensure traction; this also includes undertakings which provide traction only
- **Art. 2** 'keeper' means the natural or legal person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in a vehicle register referred to in Article 47;

Technical specification for Interoperability relating to the operation and traffic management subsystem - TSI OPE (COMMISSION IMPLEMENTING REGULATION (EU) 2019/773),

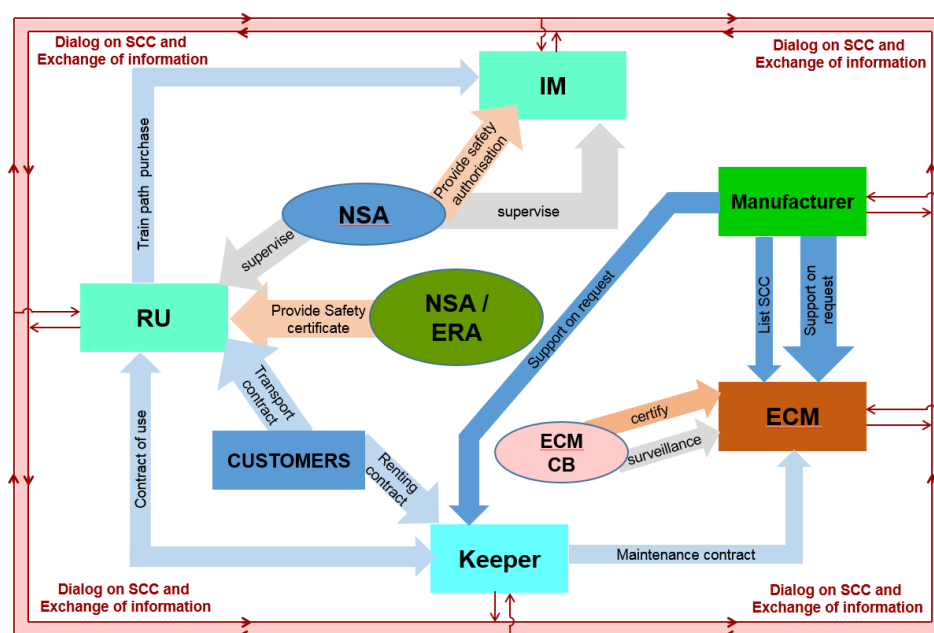
- There are several references to RU and keeper that highlight how the two subjects have different responsibilities that can be combined in a single legal entity but which in fact belong to two different subjects of the railway system.

Entity in Charge of Maintenance (ECM) regulation (COMMISSION IMPLEMENTING REGULATION (EU) 2019/779),

- The term operator is used in several places of this regulation, meaning RUs or IMs. The term keeper is also used and clearly distinguished from the other railway actors.

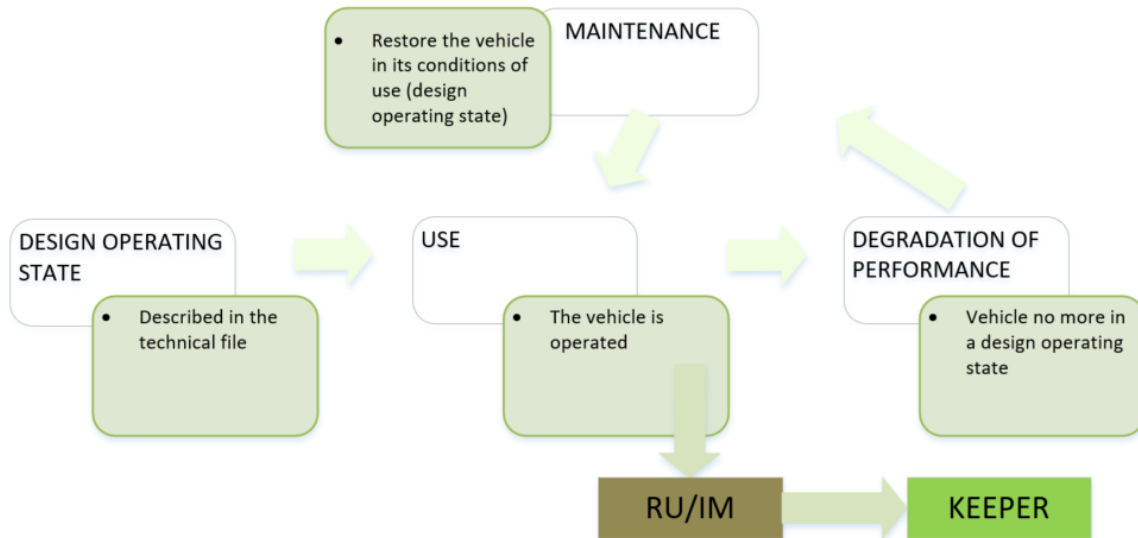
2. Detailed description of the railway actors' roles

The different roles (ECM, RU/IM, keeper, maintenance workshop) can be encompassed by one or several entities (or companies) provided that they fulfil their intended responsibilities.



The responsibilities of railway actors are stated in the Safety Directive, in Articles 4, 14a and 16 (for NSAs) and the RID, chapter 1.4 (for the transport of dangerous goods). Regarding the maintenance of vehicles, responsibilities are also stated in the ECM regulation

Keeper responsibilities



Note: the box 'RU/IM' refers to the role of the RU or of an IM acting in the role of a RU

Based on Article 4(4) of the Safety Directive it can be understood that responsibilities of the keeper are to implement the necessary risk control measures, where appropriate in cooperation with other actors, to assure in a contractual way with RUs (or IMs acting as RUs) that vehicles (and when requested additional services) provided meet consistently the safety requirements.

It must be noted that a RU may directly assume (integrate) the role of the keeper within its company, without subcontracting this (keeper) role to another company. An ECM may also assume the role of keeper but it is not a legal obligation.

Therefore, the three roles – RU, Keeper, ECM – are legally distinguished in Directive (EU) 2016/798 even if they may be all assumed by the railway undertaking.

However, when a keeper is contracted by a RU, the contract of use of vehicles established with the keeper shall cover all the relevant requirements, including at least: Obligations and tasks related to safety issues including the obligations related to the exchange of relevant information or the traceability of safety related documents.

Also based on article 4(4) of the Safety Directive it can be understood that responsibilities of the keeper are to assure to RUs (or IMs acting as RUs) that vehicles provided meet consistently the appropriate legal requirements.

In particular, the keeper should assure to RUs (or IMs acting as RUs) that the vehicles provided have:

- a valid authorization for placing on the market;
- an ECM registered in the NVR;
- all initial documentation of maintenance of vehicles involved was consigned to ECM uncharged.

For freight wagons and for vehicles other than freight wagons, in the case of Art. 3. 2 b of the ECM Regulation, the keeper should assure also to Rus (or IMs acting as RUs) that the ECM certificate is valid.

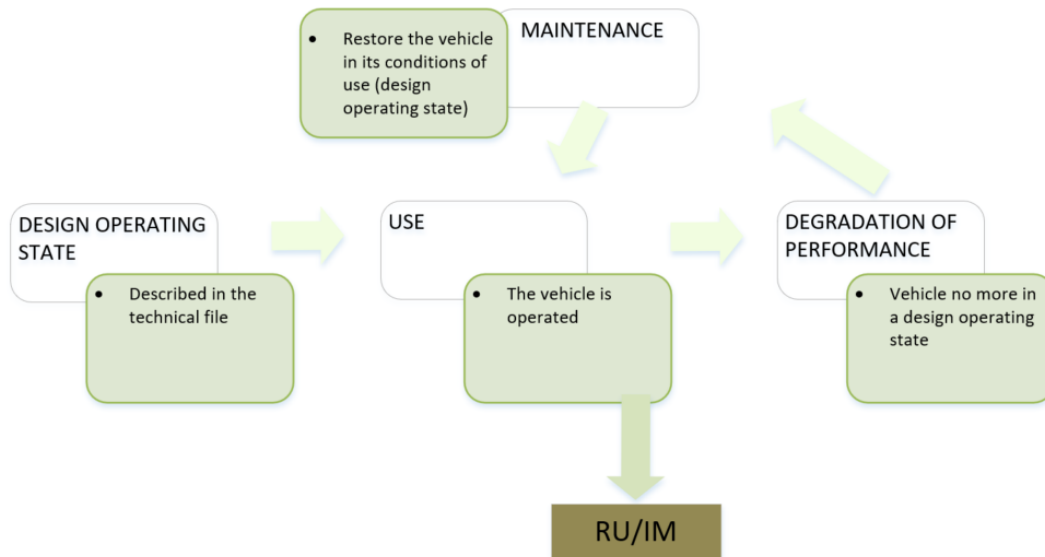
For not having his vehicles being put out of operation, the keeper should pay attention to the following responsibilities:

- The keeper may select an ECM and contracts with it
- The keeper may make contractual arrangements with subcontractors (e.g. maintenance workshops), but nevertheless the ECM is responsible to take the decision if the subcontractor is sufficiently competent to be authorised to perform maintenance tasks. To this end an agreement should be achieved between the keeper and the ECM.
- The keeper acting as registration holder has to ensure that the data it addresses to the registration entity is correct and has to get assurance that the ECM holds a valid certificate for freight wagons and for vehicles other than freight wagons, in the case of Art. 3. 2 b of the ECM Regulation. Nevertheless when the keeper is not the registration holder, as it is the main interlocutor for the RUs, it should assure that the vehicle is compliant with the legislation in force and thus that data stated in the NVR is correct and that the ECM holds a valid certificate (only for freight wagons and for vehicles other than freight wagons, in the case of Art. 3. 2 b of the ECM Regulation).
- As main interlocutor of the RUs/IMs, the keeper should assure that a vehicle is put, in due time, at disposal of the ECM to perform maintenance tasks in consistency with the decisions of the Fleet Maintenance Management (ECM-F3).
- For freight wagons and for vehicles other than freight wagons, in the case of Art. 3. 2 b of ECM Regulation: the keeper should take specific actions if ECM certificate is suspended or revoked (e.g. assign another ECM, inform its customers including RUs).

Suspension and revocation of ECM certificates imply that the ECM registered in NVRs is not compliant anymore to the legislation in force and therefore that the registration of the vehicle should be suspended forbidding this latter to be operated.

- The keeper should specify to the RUs (or IMs acting as RUs) the conditions of use of the wagons, especially if there are specific conditions (e.g. type of goods transportable, specific operational limitations).
- In any case the keeper should participate actively to the exchange of information between ECMs and RUs (or IMs acting as RUs) when there is no direct contractual arrangement on exchange of information between ECMs and RUs (or IMs acting as RUs).
- The keeper has to implement the necessary risk control measures and has to cooperate with other actors.

RU Responsibilities (or IM operating a vehicle with the role of a RU)



Note: the box 'RU/IM' refers to the role of the RU or of an IM acting in the role of a RU

The Railway Safety Directive states in Article 4(3) that RUs shall be made responsible for safe operation and to fulfil this responsibility, it requires that they establish a SMS.

According to the Art 9(2) of the Safety Directive, the RU is responsible to control all the risks related to the supply of maintenance and therefore has to implement control measures to get assurance that vehicles are maintained in such a way that they can be used safely when put in trains.

- The RU must get assurance, that the maintenance provided by the ECM leads to a safe state of running of the vehicles.
- The ECM is responsible for the maintenance and the RU, within its risk control, must get assurance that the ECM is capable to comply with its responsibility and that maintenance is sufficiently effective to make the vehicles in a safe state of running.
- The ECM certification is the effective and efficient way to bring this assurance to the RUs. Therefore, the RUs should not be required to re-evaluate the maintenance system of ECM already being granted with ECM certificate.
- By virtue of point 5.1.3. c) of annex I of Regulation (EU) 2018/762, the RU shall ensure the freight wagons and other vehicles in the case of Art. 3. 2 b of the ECM Regulation it operates, before their departure, have a certified ECM. The Certificate must be delivered by a duly accredited or recognized certification body or by an NSA entitled by its MS as certification body. The certificate has also to be within its validity period.
- In addition, the RUs check that the scope of the certificate corresponds to the three kinds of wagons (tank wagons for dangerous goods, other wagons for dangerous goods, or other wagons).
- By virtue of Article 5(4) of the ECM Regulation, the RU shall provide information on the real operations performed. In particular, the mileage and specific operational conditions are requested by the ECM to update the maintenance file. This provision of information should be organised through the contractual arrangements between the RU and the ECM or between the

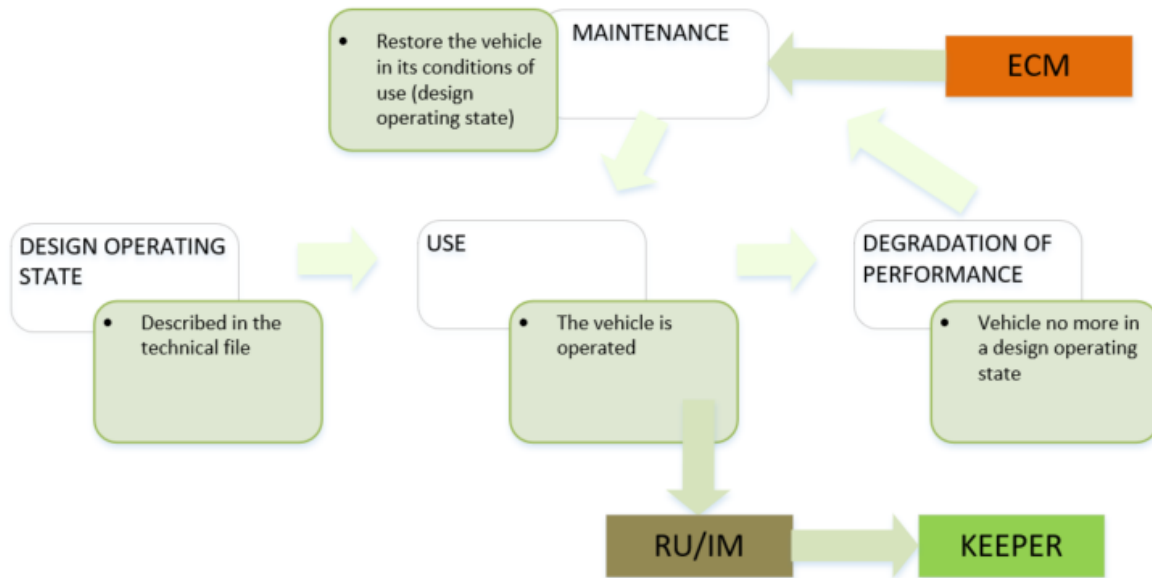
RU and the keeper (the keeper plays the role of intermediate).

- By virtue of Article 5(5) of the ECM Regulation, all contracting parties shall exchange information on safety-related malfunctions, accidents, incidents, near-misses, and other dangerous occurrences as well as on any possible restriction on the use of freight wagons.
- The RU shall fulfil its duties about transmission of information with its commercial partners – i.e. other RUs/IMs, keepers and ECMs since there could be direct relations between RU and ECM (e.g. RU assuming also the role of keeper or RU imposing contractually the ECM and requesting for direct exchange of information).

Manufacturer responsibilities

- initial identification of safety-critical components
- provide the complete technical file with specific maintenance instructions recorded in the technical files of subsystems referred to in Article 15(4) of Directive (EU) 2016/797
- provide recommendations for maintenance as part of the initial documentation
- exchange of Information with the ECM and other actors
- manage information on safety critical components and appropriate maintenance instructions related to them through reference in the technical file of subsystems referred to in Article 15(4) of Directive (EU) 2016/797
- Provide technical and engineering support on SCCs and their safe integration when an ECM/Keeper addresses a request; this can be done by agreement or contractual arrangements.

ECM responsibilities



All ECMs shall satisfy the requirements of Annex II to COMMISSION IMPLEMENTING REGULATION (EU) 2019/779.

ECM must set up and keep updated the maintenance file (maintenance development part II.4 b and II.5 annex II).

ECM must ensure that the implementation of the first maintenance file is done correctly (maintenance development part II.4 c annex II).

ECM must coordinate all those activities and supervise its subcontractors.

Exchange of information - Article 5(1) of ECM regulation.

The ECM has to address return to operation issues to RUs and keepers.

Regarding the vehicles, responsibilities are also stated in the ECM regulation. The ECM should ensure that it continuously meet the relevant requirements set out in Article 14(3) of the safety directive and in article 4, 5(1), 5(3), 5(5) and Annex II of the ECM Regulation and apply them consistently. This assurance is provided to other railway parties by the mean of the mandatory ECM certification.

The ECM has the responsibility for setting out the maintenance file for each vehicle and to ensure that this maintenance file is correctly applied.

As part of the maintenance management function, the ECM must perform itself the necessary coordination and monitoring of all its maintenance activities. These tasks may be partially outsourced but coordination and monitoring, as a whole, remains one of the main and crucial task of the management function of the ECM in accordance with Article 14(3) of the safety directive. The other maintenance functions may be performed (totally or partially) internally or (totally or partially) outsourced. This includes the call for technical expertise when not available internally, for instance from manufacturers of vehicles or components, and the use of contracted maintenance workshops.

Regardless of the outsourcing arrangements in place, the ECM shall be responsible for the outcome of

maintenance activities it manages and shall establish a system to monitor performance of those activities. In addition, the ECM must apply the CSM on monitoring.

The ECM must inform its clients about any change in the status of its certificate (amended, renewed or revoked) that may cause contractual liability issue.