

**TRANSLATOR'S NOTE: THIS IS A PRELIMINARY  
DRAFT TRANSLATION WHICH IS UNREVISED AND  
MAY CONTAIN ERRORS AND/OR OMISSIONS. IT  
HAS BEEN SUPPLIED AT SPEED FOR INFORMATION  
PURPOSES ONLY.**

---

**Fifth Railway Regulations Amendment Act**

**of 16 April 2007**

With the approval of the Federal Council, the Federal Parliament has passed the following Act:

**Article 1**

**Amendment  
of the *Allgemeines Eisenbahngesetz* (General Railway Act)**

The *Allgemeines Eisenbahngesetz* (General Railway Act) of 27 December 1993 (BGBl. I, pp. 2378, 2396, 1994 I p. 2439), last amended by Act of 13 December 2006 (BGBl. p. 2919), shall be amended as follows:

1. The following paragraphs 8 and 9 shall be added to Section 2:

“(8) Regional networks are railways on which no long-distance passenger trains run.

(9) Regional rail systems are railway undertakings which provide transport on regional networks only, including where they run beyond this network to the transit station outside the respective regional rail system network.”

2. Section 5 shall be amended as follows:

(a) Paragraph 1e shall be replaced by the following paragraphs 1e to 1h:

“(1e) The following tasks in respect of standard gauge railways shall be a federal responsibility:

1. authorisation to place in service structural subsystems, within the meaning of the law of the European Communities, related to the conventional rail system and the trans-European high-speed rail system;
2. issue of safety certificates and of safety authorisations;
3. authorisation of training facilities and the supervision of their activities;
4. railway supervision, except for the supervision of compliance with the provisions in Sections 8 to 13 on non-federally-owned railways which require a safety certificate or safety authorisation;

5. railway supervision of the manufacture and placing on the market of parts of subsystems which are interoperability constituents within the meaning of the law of the European Communities related to the conventional rail system and the trans-European high-speed rail system;
6. supervision of the rules laid down by public railways containing requirements to guarantee railway safety and apply to more than one railway, with the exception of the rules of operators of regional rail systems and regional networks;
7. keeping of an official register of rolling stock, insofar as this is to be established according to the law of the European Communities in connection with the conventional rail system and the trans-European high-speed rail system.

The Federal Government shall accomplish the tasks in accordance with sentence 1 through the Federal authority competent for railway supervision, in accordance with paragraph 2 sentence 1, as safety authority.

(1f) The investigation of dangerous incidents in railway operations on railway infrastructure subject to federal supervision shall be a federal responsibility. The Federal Government shall accomplish the task in accordance with sentence 1 through the Federal Ministry of Transport, Building and Urban Affairs as investigation authority, insofar as

1. a serious accident is involved within the meaning of Article 3(1) of 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 (OJ No L 164, p. 44, No L 220, p. 16) or
2. there are sufficient pointers that a dangerous incident other than that referred to in point 1 could have led to a serious accident.

In the other cases, the Federal Railway Authority shall accomplish the task in accordance with sentence 1 as investigation authority. The Federal Ministry of Transport, Building and Urban Affairs may in each individual case revocably assign investigation activities to the Federal Railway Authority. In the case of assignment in accordance with sentence 4, the Federal Railway Authority shall have the powers of the investigation authority in so far as these are necessary to carry out the investigation activities assigned.

(1g) For the accident investigation, the employees of the Federal Railway Authority competent for accident investigation shall be subject solely and directly to the orders of the employee competent for the investigation of the Federal Ministry of Transport, Building and Urban Affairs, insofar as the orders do not relate to the official position of the employees of the Federal Railway Authority.

(1h) The tasks and powers of the authorities competent for law enforcement and penalties in case of regulatory offences shall otherwise remain unaffected.”

(b) The following paragraph 6 shall be added:

“(6) On application by a railway undertaking which also operates regional rail transport beyond the transition station outside the regional network to the next town with a population of over 100 000, the Federal Ministry of Transport, Building and Urban Affairs, after consultation of the Länder concerned, may order on a case by case basis,

that the provisions are applicable to this railway undertaking which apply for regional rail systems, insofar as

1. there is a particular regional need for this,
2. the railway undertaking has provided proof of the necessary competence and
3. the uniformity of the railway supervision is not jeopardised.

The order shall be notified to the applicant and the Länder concerned. It shall be published in the *Bundesanzeiger* (Federal Gazette).”

3. Section 5a shall be amended as follows:

(a) In paragraph 2, point 1, after the words “rolling stock keepers”, the words “training facilities operators within the meaning of Section 7d” shall be inserted.

(b) In paragraph 6, sentence 1, the reference “Section 5, paragraphs 1a, 1b and 2” shall be replaced by the reference “Section 5, paragraphs 1a, 1b, 1e, 1f and 2”.

(c) After paragraph 6, the following paragraph 6a shall be inserted:

“(6a) The provisions of the Administrative Procedures Act on determining the facts in the administrative procedure shall apply mutatis mutandis to the investigation of dangerous incidents in rail transport operation. The authorities competent for the investigation of dangerous incidents in rail transport operation shall be entitled to require a declaration on oath. Witnesses and experts shall be required to give evidence or to produce a survey report; paragraph 5, sentence 3, and Section 65, paragraph 1, sentence 2 of the Administrative Procedures Act shall apply mutatis mutandis.”

4. Section 6 shall be amended as follows:

(a) Paragraph 1, sentence 2, shall be reworded as follows:

“No authorisation shall be required by:

1. non-public railway transport undertakings which provide transport of goods only by rail and use only railway infrastructure which is not used for public transport,
2. keepers of rolling stock which use only railway infrastructure which is not used for public transport,
3. non-public railway infrastructure undertakings,
4. public railway infrastructure undertakings for the operation of service facilities including the tracks and the control command systems in service facilities and for access to services associated with the access to service facilities; sentence 1, point 3 shall not be affected.”

(b) Paragraph 5 shall be worded as follows:

“(5) Any undertaking with its registered office in the Federal Republic of Germany may apply.”

5. Section 7a shall be replaced by the following provisions:

“Section 7a

Safety certificate  
and national certificate  
for railway undertakings

(1) Subject to the provisions of paragraph 4, railway undertakings may not operate on standard gauge public railways without a safety certificate. Sentence 1 shall not apply to regional rail systems only travel nationally.

(2) The safety certificate shall be granted for rail transport services established according to type and spatial comprehensiveness on written application for the rail networks concerned or railways of public railway infrastructure undertakings if the railway undertaking provides proof that it:

1. has established a safety management system which at least meets the requirements of Article 9(2) and (3) of Directive 2004/49/EC, insofar as no additional requirements arise from a legal regulation based on Section 26, paragraph 1, point 14, and
2. meets the special requirements for safe operation for staff and rolling stock on the railway network concerned or the individual railways.

(3) The requirements for the setting up of a safety management system shall be deemed to have been complied with by railway undertakings which have appointed a railway operator whose appointment has been confirmed by the competent railway supervisory authority, insofar as railway undertakings are not involved which provide international railway transport services. Separate proof of fulfilment of the requirements in accordance with paragraph 2, point 1, shall not be necessary for railway undertakings in these cases.

(4) Insofar as a railway undertaking wishing to operate on the public railway already has a safety certificate for similar railway operations issued in another European Community Member State in accordance with Article 10 of Directive 2004/49/EC, it may engage in national rail transport operation only with an additional national certificate. This certificate is to be granted on application for the rail networks concerned or the railways of public railway infrastructure undertakings on

1. Submission of a presentation of the safety management system of the railway undertaking,
2. Submission of the certificate issued in accordance with Article 10(2)(a) of Directive 2004/49/EC and
3. Evidence that the railway undertaking meets the special requirements for safe operation on the railway network concerned or the eligible railways.

(5) In so far as a non-federally-owned railway undertaking with its registered office within the territory of the country applies for a security certificate, the decision is issued after consultation of the Land authority competent for the authorisation in accordance with Section 6.

(6) The safety authority shall decide on an application for the issuing of a safety certificate or national certificate in accordance with paragraph 4 without delay, but within

four months at the latest of the submission of the documents necessary for the decision. If, before the expiry of the time limit, the competent authority finds deficiencies in the documents submitted, it shall give the applicant the opportunity to remedy them. If the authority gives the applicant the opportunity to remedy deficiencies in the documents submitted, the time limit according to sentence 1 shall be stayed until the elimination of the deficiencies.

(7) The safety certificate according to paragraph 1 and the national certificate according to paragraph 4 shall apply, subject to sentence 3, in each case for 5 years. Insofar as an application is made for their extension by six months at the latest before the expiry of the duration of validity, the respective certificate shall be deemed to continue to apply until the decision on the application becomes final. The validity of a national certificate according to paragraph 4 shall end in any case on expiry of the validity of the certificate within the meaning of paragraph 4, sentence 1, by the safety authority of the other Member State.

(8) The holder of the safety certificate according to paragraph 1 or the national certificate according to paragraph 4 shall ensure that the conditions which applied for the issue of the certificate continue subsequently to be satisfied.

#### Section 7b

##### Changes, withdrawal and revocation of the safety certificate and national certificate

(1) If there are major changes to the conditions on which the issuing of a certificate according to Section 7a, paragraph 1 or 4, was based, the railway undertaking shall apply for the change to the safety certificate or the national certificate without delay.

(2) In the case of major changes to legal provisions on operating safety, a certificate according to Section 7a, paragraph 1 or 4, may be changed or revoked in whole or in part.

(3) A certificate according to Section 7a, paragraph 1 or 4, may be revoked in whole or in part if the conditions it contains are not satisfied or the certificate is not used in the prescribed manner. Sentence 1 shall also apply if a certificate is not used before one year has expired following its issue.

(4) Furthermore, the administrative procedure provisions on the cancellation of administrative decisions shall not be affected.

#### Section 7c

##### Safety authorisation

(1) With the exception of service facilities or regional transport networks with no rail link abroad, railway infrastructure undertakings may not operate any standard gauge public railway infrastructure without safety authorisation. Sentence 1 shall not apply to regional rail systems only travel nationally.

(2) The safety authorisation shall be issued on application if the applicant provides proof that it

1. has established a safety management system which at least meets the requirements of Article 9(2) and (3) of Directive 2004/49/EC, insofar as no additional requirements arise from a legal regulation based on Section 26, paragraph 1, point 14, and
  2. meets the special requirements for safe design, maintenance and operation of its railways, including the control and command systems.
- (3) The holder of the safety authorisation shall ensure that the conditions which applied for the issue of the certificate continue subsequently to be satisfied.
- (4) Section 7a, paragraphs 3 and 5 to 7 and Section 7b shall apply *mutatis mutandis*.

#### Section 7d

##### Authorisation of training facilities

- (1) Operators of facilities in which the drivers and on-board accompanying staff or other staff performing tasks with relevance to safety of railway undertakings are provided with training on necessary route knowledge on routes which may be operated only with a safety authorisation, the necessary knowledge on operating rules and procedures, including the signalling and control/command system and emergency procedures applied on the routes operated.
- (2) The authorisation is issued on application by the safety authority if:
1. the applicant possesses the personal and material prerequisites for the communication of the knowledge,
  2. sufficient teaching staff are employed to ensure an appropriate ratio to the number of participants,
  3. suitable training rooms and teaching aids are available,
  4. evidence is provided of progressive further training of the teaching staff and
  5. no facts exist which argue against the personal reliability of the applicant or, in the case of a legal person, the persons called upon to assume its legal representation.
- (3) The authorisation shall be revoked if the conditions for authorisation are no longer met. Furthermore, the provisions on the cancellation of administrative acts remain unaffected.
- (4) Public railways to which a safety certificate or a safety authorisation is issued or which have appointed a railway manager whose appointment has been confirmed by the competent railway supervisory authority, shall require no authorisation in accordance with paragraph 1.

#### Section 7e

##### Access to training facilities

- (1) Railway infrastructure undertakings shall be required to provide drivers and staff on board trains of railway undertakings with training on necessary route knowledge and the necessary knowledge on operating rules and procedures, including the signalling and control/command system and emergency procedures applied on the routes operated, insofar as training is not offered by third parties.
- (2) Those providing training services within the meaning of paragraph 1 shall be required:
  1. to ensure that railway undertakings wishing to apply for a safety certificate have non-discriminatory access to their training facilities and to grant certificates relating to the training, insofar as such training is prescribed to meet requirements of the safety certificate;
  2. to ensure railway infrastructure undertakings non-discriminatory access to their training facilities.
- (3) An appropriate charge may be made for the training services.
- (4) Railway infrastructure undertakings shall be required, if so requested, to attest to the qualifications, experience and participation in training of their present and former members of staff.

#### Section 7f

##### Start of activities

- (1) A railway not requiring a safety certificate or safety authorisation shall require the permission of the supervisory authority for:
    1. the start of activities,
    2. the extension of activities of a railway infrastructure to a line which does not directly adjoin a line it already operates.
  - (2) Permission shall be deemed to have been granted in the absence of the railway receiving a decision from the supervisory authority which is not commensurate with the application within six weeks of submitting its application. Written confirmation of receipt of the application shall be sent to the applicant without delay.
  - (3) Major changes to the railway undertaking authorised in accordance with paragraph 1 which affect operating safety shall be notified to the competent railway supervisory authority 14 days before placing in service.”
6. Section 14, paragraphs 7 to 9, shall be repealed.
  7. Section 26 shall be amended as follows:
    - (a) Paragraph 1 shall be amended as follows:
      - (aa) Point 1 shall be replaced by the following points:
        - “1. on the construction, maintenance, equipment, operation and transport of the railways according to the safety requirements, the state of the art

or international arrangements; the following in particular may be regulated in the process:

- (a) the requirement of authorisations or notifications,
  - (b) regulations on prohibitions or restrictions for the placing in service of rolling stock, infrastructure or parts thereof or their labelling,
  - (c) recurring checks,
  - (d) the keeping of registers or evidence, including their storage,
  - (e) obligations to cooperate of railways, manufacturers, including their agents, bringing into service or keeping of rolling stock, infrastructure or parts thereof,
  - (f) the prevailing procedure, including by way of derogation from the provisions on plan approval procedure;
- 1a. on general conditions for passenger transport by railway undertakings in accordance with the provisions of commercial law; notification and authorisation requirements and the procedure may also be regulated in the process;
  - 1b. on the necessary provisions including the procedure for the protection of the installations and operation of railways against malfunctions and damage;”
- bb) Points 1a and 1b existing hitherto shall become the new points 1c and 1d.
- cc) Point 11 shall be worded as follows:
- “11. on the object, content and scope and the procedure for investigation of dangerous incidents in railway operations including the cooperation with foreign authorities and bodies of the European Communities; the legal regulation may enact regulations in particular on:
- (a) the powers and the investigation procedure of the competent authority,
  - (b) the obligations of railways to cooperate and to notify,
  - (c) the notification and reporting on the investigations carried out,
  - (d) the content, publication and binding character of the safety recommendations of the authorities competent for the investigation of dangerous incidents in railway operations.”
- dd) In point 12, the full stop shall be replaced by a semicolon; the following points shall be added:
- “13. on the procedure for the issue of the safety certificate and the national certificate in accordance with Section 7a and the safety authorisation in accordance with Section 7c;



14. on safety management system requirements within the meaning of Sections 7a and 7c; notification requirements and the procedure may also be regulated in the process;
  15. on requirements concerning the operational safety of public railways; notification and authorisation requirements and the procedure may also be regulated in the process;
  16. on access to training facilities and the requirements regarding training and training facilities; notification and authorisation requirements and the procedure may also be regulated in the process;
  17. on common safety methods to assess the achievement and upholding of the safety requirements;
  18. on common safety targets constituting the minimum which the individual parts of the railway system and the system as a whole must achieve.”
- b) In paragraph 3, sentence 1, and paragraph 6, sentence 1, in each case the indication “paragraph 1, point 1(a)” shall be replaced by the indication “paragraph 1, point 1”.
- c) In paragraph 7,
- (aa) the indication “paragraph 1, point 1” shall be replaced by the indication “paragraph 1 or 2” and
  - (bb) the word “serve” shall be replaced by the words “or serve exclusively for the implementation of the specifications for the register of rolling stock in accordance with Article 14 of Directive 96/48/EC and of Directive 2001/16/EC”.
8. Section 28 shall be amended as follows:
- (a) Paragraph 1 shall be amended as follows:
    - (aa) After point 1, the following points 2 to 2e shall be inserted:
      - “2. contrary to Section 7a, paragraph 1, sentence 1 or paragraph 4, sentence 1, participates in the public railway operation,
      - 2a. contrary to Section 7b, paragraph 1, sentence 1, also in conjunction with Section 7c, paragraph 4, fails to apply or does not apply in time for a change,
      - 2b. contrary to Section 7c, paragraph 1, sentence 1, operates a public railway infrastructure,
      - 2c. operates a training facility without authorisation in accordance with Section 7d, paragraph 1,
      - 2d. if, contrary to Section 7f, paragraph 1, sentence 1, persons in charge in the undertaking start or extend activities without permission,

2e. if, contrary to Section 7f, paragraph 3, persons in charge in the undertaking fails to make report, does not do so correctly or does not do so on time,”.

(bb) Points 2 and 3 existing hitherto shall become the new points 3 and 4.

(cc) Point 4 existing hitherto shall be repealed.

(dd) Point 6 shall be worded as follows:

“6. infringes a legal regulation according to

(a) Section 26, paragraph 1, point 1(a), (b) or (c), point 1b, 11 or 15,

(b) Section 26, paragraph 1, point 1(d) or (e), point 10, 14 or 16, or

(c) Section 26, paragraph 1, point 4 or 5 or paragraph 2, point 1 to 3 or 4

or an enforceable order based on such a legal regulation insofar as the legal regulation refers to this penalty provision for a specific constituent element of an offence or”.

(ee) Points 7 to 8 shall be repealed.

(b) Paragraph 2 shall be worded as follows:

“(2) In the cases set out in paragraph 1, points 5 and 6(b), the irregularity may be subject to a fine of up to ten thousand euro; in the other cases set out in paragraph 1, by a fine of up to fifty thousand euro.”

9. In Section 29, paragraph 2, first phrase, the indication “Section 28, paragraph 1, points 4, 7 or 8” shall be replaced by the indication “Section 28, paragraph 1, points 2a to 2e or 6(c)”.

10. The following Section 35a shall be inserted after Section 35:

#### “Section 35a

##### Advisory Council on Rail Safety

(1) The Advisory Council on Rail Safety shall have the task of advising the Federal Railway Authority in the performance of its tasks as safety authority and of promoting cooperation between the Federal Railway Authority as safety authority and the supreme regional authorities competent for railway supervision.

(2) The Advisory Council on Rail Safety shall be given the opportunity to comment on general questions regarding the application of law by the Federal Railway Authority in the context of the performance of its tasks as safety authority, especially with regard to the principles of the exercise of discretion and the interpretation of unclear legal concepts.

(3) Safety certificates in accordance with Section 7a, paragraph 1, or safety authorisations in accordance with Section 7c, paragraph 1, for non-federally-owned

railways require consultation with the Advisory Council on Rail Safety. In urgent cases, safety certificates or safety authorisations may be issued even without consultation; in such cases, the Advisory Council on Rail Safety shall be informed subsequently.

(4) The Advisory Council on Rail Safety shall be entitled to obtain information and comments from the Federal Railway Authority. The Federal Railway Authority shall be responsible for providing information in this respect.”

11. The following paragraphs shall be inserted after Section 38, paragraph 5:

“(5a) Railway undertakings which have applied for a safety certificate before 1 November 2005 in accordance with Section 14, paragraph 7, in the version valid up to 20 April 2007 and the decision on their application has not yet become final shall receive a safety certificate in accordance with the provisions applicable up to 20 April 2007. The safety certificate in accordance with sentence 1 or a safety certificate issued before 21 April 2007 shall apply no longer than up to the end of 31 December 2010.

(5b) Public railway undertakings already engaging in railway operation on 21 April 2007 shall have up to the end of 31 December 2008 to apply for the safety certificate or the national certificate in accordance with Section 7a.

(5c) Public railway infrastructure undertakings already engaging in railway operation on 21 April 2007 shall have up to 21 October 2007 to apply for the safety authorisation in accordance with Section 7c. Sentence 1 shall not apply to public railway infrastructure undertakings operating service facilities or regional networks with no international link only. If the application is lodged on time, the safety authorisation shall be considered to have been issued provisionally pending the decision on the application becoming final.

(5d) Insofar as a safety certificate issued in accordance with Section 14, paragraph 7, in the version valid until 20 April 2007, has to be supplemented, amended or renewed for other reasons, an application for a safety certificate in accordance with Section 7a, paragraph 1, or a national certificate in accordance with Section 7a, paragraph 4, shall be applied for without delay. The safety certificate or national certificate applied for according to sentence 1 shall in each case be considered to have been issued provisionally pending the decision on the application becoming final.

(5e) Persons who on 21 April 2007 are already operating training facilities within the meaning of Section 7d, paragraph 1 and not exempted from the authorisation requirement in accordance with Section 7d, paragraph 4, shall apply for the authorisation in accordance with Section 7d, paragraph 1, by 21 October 2007. If the application is lodged on time, the authorisation shall be considered to have been issued provisionally pending the decision on the application becoming final.”

## Article 2

### Amendment of the *Bundeseisenbahnverkehrsverwaltungsgesetz* (Federal Railway Traffic Administration Act)

The *Bundeseisenbahnverkehrsverwaltungsgesetz* (Federal Railway Traffic Administration Act) of 27 December 1993 (BGBl. I, p. 2378, 2394), last amended by Article 308 of the Ordinance of 31 October 2006 (BGBl. I, p. 2407), shall be amended as follows:

1. Section 3, point 7, shall be worded as follows:

“7. In accordance with Section 5, paragraph 1g of the General Railway Act, the technical investigation of dangerous incidents in railway operations.”

2. The following provision shall be added:

“Section 5

Advisory Council on Rail Safety

(1) An Advisory Council on Rail Safety shall be formed at the Federal Railway Authority. It shall consist of one representative from each of the supreme regional authorities competent for railway supervision and one representative from the Federal Ministry of Transport, Building and Urban Affairs, who shall take the chair.

(2) The Federal Railway Authority shall conduct the business of the Advisory Council on Rail Safety.

(3) The deliberations shall not be public. The President of the Federal Railway Authority or a person delegated by him or her shall attend the meetings. He or she shall be heard at any time. Further persons may be authorised to participate in the deliberations at the request of a member of the Advisory Council on Rail Safety or the President of the Federal Railway Authority.

(4) The Advisory Council on Rail Safety shall draw up rules of procedure for itself, which shall require the approval of the Federal Ministry of Transport, Building and Urban Affairs.”

**Article 3**

**New publication**

The Federal Ministry of Transport, Building and Urban Affairs may publish the respective wording of the *Allgemeines Eisenbahngesetz* (General Railways Act) and the *Bundeseisenbahnverkehrsverwaltungsgesetz* (Federal Railway Traffic Administration Act) in the version valid from the entry into force of this Act in the *Bundesgesetzblatt* (German Law Gazette).

**Article 4**

**Entry into force**

This Act shall enter into force on the day subsequent to its promulgation.

---

The Act set out above is hereby issued. It shall be promulgated in the *Bundesgesetzblatt* (German Law Gazette).

Berlin, 16 April 2007

The Federal President  
Horst Köhler

The Federal Chancellor  
Dr Angela Merkel

The Federal Minister  
for Transport, Building and Urban Affairs  
W. Tiefensee