



**National Investigation Body (NIB) Network**

**Peer Review Pilot Phase**

**Annual Report for 2019**

***and***

**Common Peer Review Programme**

## DOCUMENT CHANGE RECORD

The following table records the complete history of this document.

<b>Version:</b>	<b>Date:</b>	<b>Reason for change:</b>	<b>Parts of document affected:</b>
0.1	27/12/2019	First draft	All
0.2	21/01/2020	Common peer review programme added, peer review costs modified, other minor changes	Various
0.3	17/02/2020	Planned programme for 2020 added, associated text amended	Sections 6 - 8
1.0	31/03/2020	Final revision of text for public release	Various

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## 1. BACKGROUND

This Annual Report and Common Review Programme is published by the National Investigation Bodies (NIB) to meet the requirements of Article 22.7 of the European Directive on Rail Safety dated 11 May 2016 (EU 2016/798). The Article states:

*The investigating bodies, with the support of the Agency in accordance with Article 38(2) of Regulation (EU) 2016/796, shall establish a programme of peer reviews where all investigating bodies are encouraged to participate so as to monitor their effectiveness and independence.*

*The investigating bodies, with the support of the secretariat referred to in Article 38(2) of Regulation (EU) 2016/796, shall publish:*

*(a) the common peer-review programme and the review criteria; and*

*(b) an annual report on the programme, highlighting identified strengths and suggestions for improvements.*

*The peer review reports shall be provided to all investigating bodies and to the Agency. Those reports shall be published on a voluntary basis.*

The Peer Review seeks to monitor the effectiveness and independence of a NIB by considering its organization, processes and outputs (eg accident reports, safety recommendations, annual reports). The Peer Review process also seeks to assist development of all NIBs by sharing with them strengths and suggestions for improvements identified during reviews.

The NIBs have appointed a Peer Review Task Force to manage and undertake the reviews. This Task Force comprises representatives from a range of NIBs. The peer review of each state is undertaken by a Panel selected from the Task Force. The output of each review is based on information provided by the NIB being reviewed. This information is provided in a questionnaire and during a visit to the reviewed NIB by the Panel. Details of the questionnaire and the review criteria are given in the NIB Peer Review Handbook for the year in which the review was carried out. This can be found at the NIB Network webpage.

The Peer Review relies on answers given by the NIB in the questionnaire and during the site visit. The Peer Review process is not intended to fully investigate all issues covered by the questionnaire and does not address all issues in the documents used as review criteria. It is targeted at issues where the reviewers believe there will be greatest value to the NIB being reviewed and to other NIBs. Peer Review is a cooperative process involving trust between the parties. Peer reviewers will seek justifications for statements made but, unlike an auditor, will not seek evidence to check the truth of statements.

The relevant Peer Review Panel has prepared a peer review report for each reviewed NIB. The Directive requires that these are published on a voluntary basis and this is done by the reviewed NIB if it wishes to do so. Other NIBs and the Agency are not permitted to provide copies of the reports relating to individual NIBs. Any requests for a copy of a peer review report should therefore be addressed to the NIB which was reviewed.

This 2019 peer review annual report covers peer reviews undertaken in 2018 and 2019 during the pilot phase of the peer review process and is the first to be submitted to the Agency by the NIB Network. The peer reviews undertaken in 2018 were also covered by the 2018 annual report submitted only to the NIB Network. The 2018 peer reviews are also included in the 2019 annual report so that the Agency receives information about them.

This report does not include information relating to peer reviews of countries included in the Instrument for Pre-Accession Assistance (IPA) programme. A meeting with IPA countries and a review of one IPA country's accident investigation body were undertaken by members of the NIB peer review task force in response to a request from the Agency, but did not form part of the NIB peer review programme.

## 2. NIB AND STATE DETAILS

<b>NIBs reviewed</b>				
<b>State</b>	<b>NIB Name</b>	<b>NIB Type</b>	<b>Date of visit by Peer Review Panel</b>	<b>Number of rail mode investigators (full time equivalent)</b>
<b>Romania</b>	Agentia de Investigare Feroviară Română	Single mode (rail only)	3/5/2018	29
<b>Czech Republic</b>	Drážni Inspekce	Single mode (rail only)	3/10/2018	25
<b>Denmark</b>	Havarikommissionen for Civil Luftfart og Jernbane	Multi-modal (air and rail)	8/10/2018	2
<b>Lithuania</b>	Transporto avarijų ir incidentų tyrimo skyrius – Lietuvos Respublikos teisingumo ministerija.	Multi-modal (air, rail and marine)	16/9/2019	1
<b>Norway</b>	Statens Havarikommisjon for Transport	Multi-modal (air, rail, road and marine)	25/9/2019	5

<b>Statistics for railways in reviewed states</b>			
<b>State</b>	<b>Route length (kilometres)</b>	<b>Passenger train-kilometres/year</b>	<b>Freight train-kilometres/year</b>
<b>Romania</b>	10 766	66 million	24 million
<b>Czech Republic</b>	9 500	130 million	38 million
<b>Denmark</b>	2 573	7 million	8 million (approx.)
<b>Lithuania</b>	2335	9 million	6 million
<b>Norway</b>	3848	40 million	8 million
NOTE: Data rounded and refers to the year before the peer review was undertaken.			

Types of investigation undertaken by reviewed NIBs									
State	Heavy rail			Metro railways*		Trams*		Other (trolley bus, cable car, etc)*	
	Investigations required by Directive 2016/798 Article 20(1))	National law requirement outside Article 20(1)*	Discretion to investigate other events*	National law requirement	Discretion to investigate other events	National law requirement	Discretion to investigate other events	National law requirement	Discretion to investigate other events
<b>Romania</b>	Yes	Yes	Yes	Yes	Yes	No	No	No	No
<b>Czech Republic</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Denmark</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
<b>Lithuania</b>	Yes	Only if covered by Article 20(2)		No	No	No	No	No	No
<b>Norway</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No

\* Directive 2016/798 permits, but does not require, a NIB to investigate these accidents and events



### 3. PARTICPATING ORGANISATIONS

3.1. The following NIBs contributed investigators to the Peer Review Task Force during the period covered by this report. All these investigators were a panel member in at least one state peer review. Some also attended state peer reviews as an observer.

- Czech Republic
- Germany
- Ireland
- Norway
- Poland
- Portugal
- Romania
- Sweden
- United Kingdom

3.2. People from the following organisations attended a peer review as an observer. Observers are required to treat information obtained during peer reviews as confidential and must not share this information with their employers.

- Croatia
- The Agency

## 4. INTRODUCTION TO PEER REVIEW FINDINGS

- 4.1. This report gives an overview of findings from the individual state peer reviews in the year covered by this report. It concentrates on issues most likely to influence the effectiveness and independence of NIBs and does not cover every finding of the individual state reviews.
- 4.2. Directive 2016/798 requires that the peer review process considers effectiveness and independence, and that the annual report identifies strengths and suggestions for improvements. The table below links comments on effectiveness and independence with related strengths and suggestions for improvements.
- 4.3. The strengths and suggestions for improvements identified during the peer review process do not apply to all reviewed states.
- 4.4. The peer reviews covered in this report were undertaken before full implementation of Directive 2016/798. This means that the reviews were undertaken when states and NIBs were still permitted to comply with its predecessor, Directive 2004/49. Peer review comments reflect the national legislation in place at the time of the peer review.

## 5. PEER REVIEW FINDINGS

<b>5.1 Effectiveness of investigation activities and developing recommendations</b>		
<b>Topic/comment</b>	<b>Strengths associated with comment</b>	<b>Suggestions for improvement associated with comment</b>
<p>Most NIBs considered in this report appear to be generally carrying out investigations and making recommendations effectively. However, some improvement in effectiveness is possible.</p> <p>Evidence supporting the overall finding that most NIBs were effective included the strengths tabulated in the adjacent column.</p> <p>Greater effectiveness could be achieved by</p> <ul style="list-style-type: none"> <li>• ensuring that the NIB has sufficient resource available to meet the requirements of the Directive and any additional requirements of national law; and</li> <li>• greater coverage of some factors affecting accidents.</li> </ul>	<ol style="list-style-type: none"> <li>i. Robust processes for timely notification of accidents.</li> <li>ii. Rapid attendance at accident sites by deploying investigators from regional offices.</li> <li>iii. Rapid access to railway industry data using the internet.</li> <li>iv. Appropriate documentation compatible with ISO9000 quality system.</li> <li>v. Structured approaches to investigating accidents.</li> <li>vi. Findings and recommendations being well supported by evidence.</li> <li>vii. Translation into English of at least parts of reports to assist both accident investigation and safety improvements in other countries.</li> </ol>	<p>Ensuring that the NIB has sufficient resource and that these resources are directed at events where valuable safety learning is likely to be found can include:</p> <ol style="list-style-type: none"> <li>a. reducing the number of relatively minor events (ie events outside requirements of the Directive) which a NIB is required to investigate;</li> <li>b. increasing staff resource levels, taking account of likely retirements and the time taken to train new investigators;</li> <li>c. increasing resources to ensure effective management of a major accident; and</li> <li>d. access to accident sites and evidence before deciding whether to investigate an event.</li> </ol>

<b>5.1 Effectiveness of investigation activities and developing recommendations (continued)</b>		
<i>Topic/comment</i>	<i>Strengths associated with comment</i>	<i>Suggestions for improvement associated with comment</i>
<p>In one instance, lack of resources and limited budget reduces the effectiveness of the NIB to the extent that the peer review panel question whether it is effective. This NIB had undertaken few investigations and made no recommendations since it was formed. Consideration of effectiveness is one of the reasons for the panel concluding that the state had not established an investigation body as required by Directives 2004/49 and 2016/798.</p>	<ul style="list-style-type: none"> <li>viii. Good cooperation with the media.</li> <li>ix. Good cooperation with rail industry.</li> <li>x. Active participation in the NIB Network in order to exchange safety learning with other NIBs.</li> </ul>	<p>Ensuring coverage of all factors relevant to an accident can include giving greater consideration to:</p> <ul style="list-style-type: none"> <li>a. human factors; and</li> <li>b. underlying factors including safety management systems and the role of the national safety authority.</li> </ul> <p>Providing field agents (railway staff trained by the NIB) in areas which cannot be reached quickly by NIB staff.</p> <p>If a NIB does not yet achieve the requirements of Directives 2004/49 and 2016/798, necessary improvements can include:</p> <ul style="list-style-type: none"> <li>a. Establishing effective relationships with other railway actors, including the provision of adequate resources. Achieving this requires input from state organisations, IMs and RUs. NIBs needing assistance to identify the actions needed can seek advice from the NIB Network.</li> <li>b. Developing effective investigation processes and providing staff with appropriate training. NIBs needing assistance to do this can seek support from the NIB Network.</li> </ul>

<b>5.2 Effectiveness of recommendation implementation</b>		
<b><i>Topic/comment</i></b>	<b><i>Strengths associated with comment</i></b>	<b><i>Suggestions for improvement associated with comment</i></b>
<p>A NIB cannot be considered fully effective if its recommendations are not being properly considered and implemented in a timely manner when appropriate. There is evidence suggesting that this does not always happen.</p> <p>Some NIBs report that that they cannot demonstrate appropriate action is being taken in response to their recommendations. In some instances they have information suggesting that their recommendations are not being implemented. They also report that they are not receiving feedback on action taken in response to their recommendations as required by Article 25 of Directive 2004/49 (to be replaced by Article 26 of Directive 2016/798). In most instances, responsibility for ensuring implementation of recommendations where appropriate and responsibility for providing feedback lies with the national safety authority.</p>	<p>A NIB is seeking more information about actions taken to implement the NIB's recommendations.</p>	<p>If NIBs are not receiving meaningful and timely feedback on actions taken in response to their recommendations, appropriate state organisations should take the action needed to ensure that this happens.</p> <p>If recommendations are not being implemented in a timely manner when appropriate, the state organisations responsible for ensuring proper implementation should take the action needed to achieve implementation.</p> <p>Phrase recommendations to clearly state the criteria to be met before a recommendation should be closed. For example, stating whether action is required or whether a plan to take action is sufficient.</p>

<b>5.3 Independence</b>		
<b><i>Topic/comment</i></b>	<b><i>Strengths associated with comment</i></b>	<b><i>Suggestions for improvement associated with comment</i></b>
<p>Most NIBs indicated that they were acting independently. There is evidence that national law does not always provide explicit guarantees of full independence but there is no evidence suggesting that this is a problem in practice.</p> <p>In one instance, state legislation gives the NIB independence but, in practice, the position of the NIB within the government structure means it is not independent of the judicial authorities and cannot act independently within the NIB Network. It also appears that, in this instance, the NSA is making safety recommendations when these should be made by the NIB. The panel concluded that, to act independently, the role of the NIB needs to be better known, understood and accepted by other railway actors. Consideration of independence is one of the reasons for the panel concluding that this state has not established an investigation body as required by Directives 2004/49 and 2016/798.</p>	<ul style="list-style-type: none"> <li>i. Laws making provision for independence.</li> <li>ii. Working relationships with other parties which take account of NIB independence.</li> </ul>	<p>None except for the NIB which was not acting independently.</p> <p>Practical steps needed for a NIB to achieve independence, as required by Directives 2004/49 and 2016/798, include establishing effective relationships with IMs, RUs and government organisations. This should include considering signing a memorandum of understanding (MoU) with the safety authority and the judicial authority. NIBs needing assistance to do this can seek support from the NIB Network.</p>

## 6. Peer review costs

- 6.1. The NIBs have funded all NIB staff costs and all expenses except travel and accommodation for panel members when attending the on site phase of the 2018 reviews. The Agency has covered panel members' travel and accommodation costs for 2018 but has made no contribution to NIB costs associated with the 2019 peer reviews. The Agency paid the travel and accommodation cost of Agency staff attending peer reviews as observers.
- 6.2. The Peer Review process was started when the NIB Network understood that the Agency would meet the travel and accommodation costs of peer review panel members. The Agency did not do this in 2019 and it is uncertain whether funding will be available in the future. A significant number of NIBs have stated that they will not contribute panel members if these costs are not reimbursed. The peer review process will not be fully effective without participation by most (preferably all) NIBs and will not be fully effective if some types of NIBs (eg small NIBs) are not represented on peer review panels. If the peer review process is not fully effective, opportunities to improve railway safety by improving accident investigation will be lost.
- 6.3. Directive 2016/798 states that participation in the peer review programme is voluntary so there is no direct requirement for national governments to meet panel members' costs. Article 35 of the Regulation 2016/796 indicates that the Agency expects to receive information from an effective peer review programme. The Agency has stated that it is not currently funding panel members costs due to budget limitations.

## 7. Areas of on-going concern

- 7.1. The funding situation (section 6) means that the peer review process may not fully achieve the railway safety improvements available from a fully effective review process. The NIB Network therefore encourages the Agency to provide a means for NIBs to recover peer review panel members' costs from the Agency or from another source. The NIB Network confirms that it is willing to work with the Agency to achieve this.
- 7.2. *Future annual reports will identify themes apparent by considering peer reviews carried out in previous years in addition to those covered by the current annual report. This is not applicable to the 2019 annual report as this is the first to be issued to the Agency.*

## 8. Common Peer Review Programme

8.1. The programme below is published to comply with Paragraph 22(7)(a) of the Directive (EU) 2016/798.

Year	NIBs	Status
2018	Romania, Czech Republic and Denmark	Completed
2019	Norway and Lithuania	Completed
2020	Sweden, Hungary and Croatia	Planned
2021		
2022		

## 9. Conclusion

9.1. The reviews covered by this annual report were undertaken during the pilot phase of the peer review process. This phase was intended to test the peer review process developed by the Task Force and to identify possible improvements.

9.2. The pilot phase has confirmed that the peer review process developed by the Task Force is generally appropriate and delivers outputs which will help all NIBs. The pilot phase has also identified improvements which will be incorporated in future reviews.

9.3. The Task Force would like to thank all the reviewed NIBs for their openness, for their courtesy and for the valuable feedback they have provided to help improve the peer review process.