

ADVICE

ERA/ADV/2013-1

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

RAILWAY SAFETY IN POLAND

Disclaimer:

The present document is a non-legally binding advice of the European Railway Agency. It does not represent the view of other EU institutions and bodies, and 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 General Context

1. In its letter of 4 February 2013, the European Commission (hereinafter referred to as 'Commission' or 'EC') has requested the European Railway Agency (hereinafter referred to as the 'Agency' or 'ERA') to issue an advice concerning railway safety in Poland.
2. The Commission's request was triggered by a complaint of the Trade Union of Train Drivers in Poland of 12 November 2012 concerning the railway safety in Poland addressed to the Agency in order to *"undertake interventional actions with the target of immediate improvement of the railway traffic safety in Poland"*.
3. In line with the Commission's request, the objective of this advice is to ascertain EC whether the minimum railway safety standards are met in Poland, including compliance with Directive 2004/49/EC of the European Parliament and Directive 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 certification¹ (hereinafter referred to as 'Railway Safety Directive' or 'RSD') and with Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community² (hereinafter referred to as 'Train Drivers Directive' or 'TDD').
4. In order for the Agency to issue its advice, the Commission has identified the following areas to be analysed:
 1. Transposition and implementation of Railway Safety and Train Drivers Directives in Poland;
 2. Operation and correct fulfilment of their tasks by the Polish national safety authority (hereafter referred to as the 'NSA') and the national investigation body (hereafter referred to as the 'NIB') (including level of staffing and reactions to safety threats and accidents);
 3. National rules and their compliance with the EU legal framework;
 4. Organisation of work of train drivers, with a focus on risks to railway safety;
 5. State of the railway infrastructure (with auxiliary devices) and rolling stock with a view of ensuring railway safety.
5. To fulfil the request from the Commission, the technical areas mentioned under the previous point were analysed by seven 'fact findings' projects implemented under a Programme Management approach. The main findings of the seven projects in regards to the railway safety situation in Poland were reported in an accompanying report to the present advice.

¹ OJ L 164, 30.4.2004, p. 44.

² OJ L 315, 3.12.2007, p. 51.



2 Legal Background

1. In consideration of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency³ (hereinafter referred to as the 'Agency Regulation'), Article 21b provides the Commission with the possibility to request an advice from the Agency in matters requiring specific know-how.
2. In order to carry out the analysis, the Agency has taken into account the relevant EU legislation and national laws, in particular those transposing the Railway Safety Directive and the Train Drivers Directive as well as notified National Safety Rules. The detailed list of legislation considered for this advice is given in Tables 4 and 5 of the accompanying report.

3 Analysis

1. This chapter focuses on the main general findings of the seven detailed assessments regarding the railway safety situation in Poland, as reported in the accompanying report to this advice.
2. It is important to highlight that no definitive answer can be given whether the Polish railway system is safe or not. Judgement on safety cannot be a binary (yes/no) answer. The approach taken by the Agency to carry out this work was to identify - based on factual findings - strengths and weaknesses of the Polish railway system and the implications that these findings might have on the railway safety in Poland.
3. As regards the transposition of the Railway Safety Directive and the Train Drivers Directive, the analysis has shown that the national legislation transposing these two directives is insufficient and unclear. In particular:
 - The obligation for the NSA to approve internal company rules of railway undertakings (hereafter referred to as 'RUs') and infrastructure managers (hereafter referred to as 'IMs') incorrectly allocates some of the responsibilities of RUs and IMs to the NSA and weakens the key role of the safety management system (hereafter referred to as 'SMS') of the RUs and IMs.
 - The incorrect transposition of the definition of 'serious accidents' limits the scope of accidents which are envisaged in the RSD to be mandatorily investigated by the NIB.
 - Key definitions of the Train Drivers Directive, such as 'train driver', 'other crew members', 'complimentary certificates', 'training centres', have not been adequately transposed.
4. In relation to the operation of the NSA and NIB and fulfilment of their tasks, our assessment has highlighted that their role, as foreseen in the RSD, is restricted in the following ways:
 - The NSA cannot fully carry out its supervision activities, such as the audits of RUs and IMs SMS, including the competence of drivers in the RUs and the management of infrastructure by IMs, because of requirements in the national legislation on public administration.
 - The NIB cannot fulfil its primary task to investigate accidents and incidents as its main role is to supervise and in some cases to chair investigations by inter-company and local committees.

³ OJ L 164, 30.04.2004, p. 1.



5. As to the national rules and their compliance with the EU legislation, it was found that the key concern is the understanding of the scope and purpose of national rules in the context of the EU legislation. The fact that in accordance with the current Polish national law the NSA shall approve the internal company rules maintains a confusion in the respective roles of the company rules and of the national rules and, in particular, does not fully ensure the transparency of National Safety Rules.
6. With regard to the organisation of the work train drivers, we have identified the following key concerns:
 - Due to train drivers' shortage on the labour market and to difficult operational conditions linked with the state of the network, overtime is currently a quite frequent issue for train drivers.
 - The supervision of RUs in relation to their drivers' working hours is not considered to be a direct task for the NSA because the supervision of working time as a matter of health protection is undertaken by the Labour Inspectorate who liaise and co-ordinate with the NSA.
7. In relation to the state of the railway infrastructure (with auxiliary devices) with a view of ensuring railway safety, based on the data received, the Agency found that the infrastructure in Poland is below standard and the signalling systems are often operating in a degraded mode (use of replacement signals) due to the number of failures and malfunctions. This situation results in an increased need for maintenance and more frequent repairs. Working in degraded mode is common and frequently requires the introduction of operational restrictions as risk mitigation measures.
8. As regards rolling stock, almost all traction units (locomotives, EMUs, DMUs, motor cars) are equipped with the automatic warning system (SHP) and train-to-track radio system of Polish types. Additionally, the traction units are equipped with the driver's vigilance (dead-man) system. In general in Poland, the state of the rolling stock does not significantly affect the safety of rail operations.
9. As an overall conclusion it is clear that despite the successful opening of the rail market in Poland, which now has more than 80 railway undertakings operating on the Polish network, the approach to safety has not yet been adapted to the new framework. The move away from the previous legal framework, based largely on rules, to the philosophy established by the Railway Safety Directive which requires a risk based approach to safety management systems has yet to be fully achieved.



4 The advice

1. Following our analysis, findings and conclusion, that Poland has not fully transposed the relevant EU legislation and has not assured a complete development of a safety culture based on safety management system, the Agency advises the Commission to request Poland to develop an action plan to bring about a safety regulatory framework allowing the full implementation of safety management systems, including risk-based decision making in this system.
2. In particular the Commission should request that the implementation of the action plan proposed by Poland will result in the following achievements:
 - a) The correct transposition and implementation of the Railway Safety Directive. In particular, this should ensure necessary adjustments of the roles, responsibilities and powers of the NSA and NIB at a level which enables them to carry out and focus on the tasks foreseen in the Railway Safety Directive and other EU legislation complementing it. As a minimum this revision should allow:
 - the removal of the obligation for the NSA to approve internal company rules,
 - the amendment of the definition of ‘serious accident’ in the national law,
 - the modification of the national law limiting the NSA power in supervision,
 - the modification of the national law limiting the NIB power in investigation, and
 - the adaptation of the level of resources of the NSA and the NIB, as necessary, in relation with their reviewed tasks.
 - b) Clarity of the roles and responsibilities of the other actors for railway safety, such as RUs and IMs.
 - c) Clarity of the scope of national rules, and in particular the revision of National Safety Rules in line with EU legislation, as well as ensuring that all rules are established, published, applied and notified in a transparent way.
 - d) The correct transposition of the definitions in the Train Drivers Directive and the appropriate implementation of this Directive.
 - e) The promotion of the management of operational risks, including the competence and fitness of drivers and the co-ordination of interfaces between the RU and IM, based on the full implementation of Safety Management Systems.
 - f) The review of the ‘Multi-annual Programme of the Railway Investments’ in Poland, developed by the IMs in collaboration with the NSA, in order to improve the infrastructure maintenance and renewal and to ensure a significant reduction in the frequency of degraded mode operation, a higher protection of level-crossings and the gradual implementation of ATP systems.
 - g) The review of the existing methods and rules related to the implementation of the projects co-financed from the EU funds in order to ensure these projects are implemented in a timely manner and to help the railway sector delivering the necessary investments in a more efficient manner.
3. The Commission should consider requesting the Agency to monitor the progress of the above actions in Poland.



4. The nature of some of the findings relate to transition to a new regulatory structure and are therefore unlikely to be unique to Poland. The Commission should consider requesting the Agency to develop a plan to deliver similar advice over the following two years for the other five Member States showing the highest levels of risks in the annual assessments of the achievement of the common safety targets and national reference values. This group represents a cluster of safety risk that is several times greater than the EU average.

Valenciennes, 29 OCT. 2013

A large, stylized handwritten signature in blue ink, which appears to be 'M. Verslype', is written over the printed name and title.

Marcel VERSLYPE
Executive Director



ANNEX 1

Request to the Agency for an Opinion/Advice

Requesting organization (name, address)	European Commission, DG MOVE B.2	
Contact information	▪ [REDACTED]	
Legal base	Opinion	<input type="checkbox"/> Agency Regulation Article 9a ⁱ <input type="checkbox"/> Agency Regulation Article 10 (2a) ⁱⁱ <input type="checkbox"/> Agency Regulation Article 10 (2b) together with Directive 2008/57/EC Article 7 (1) ⁱⁱⁱ <input type="checkbox"/> Agency Regulation Article 13 ^{iv} <input type="checkbox"/> Agency Regulation Article 15 ^v
	Advice	<input checked="" type="checkbox"/> Agency Regulation Article 21b (2b) ^{vi}
Objective	The ERA advice will be taken into account by DG MOVE to ascertain whether the minimum railway safety standards (including compliance with Railway Safety Directive and Train Drivers Directive) are met in Poland; in particular, the issues raised in a letter of 12 November 2012 from Trade Union of Train Drivers in Poland will have to be confirmed/falsified.	
Scope	Railway Safety Directive, Train Drivers Directive, national rules	
Task Description	<p>To analyse:</p> <ol style="list-style-type: none"> 1. Transposition and implementation of Railway Safety and Train Drivers Directives in Poland; 2. Operation and correct fulfilment of their tasks by the Polish NSA and NIB (including level of staffing and reactions to safety threats and accidents); 3. National rules and their compliance with the EU legal framework; 4. Organisation of work of train drivers, with a focus on risks to railway safety; 5. State of the railway infrastructure (with auxiliary devices) and rolling stock with a view of ensuring railway safety. <p>The analysis shall be reinforced by a field visit in Poland and interviews with the relevant stakeholders (at least NSA, NIB, IM, operators, Trade Union of Train Drivers). DG MOVE Representative may take part in the visit.</p>	
Key input documents	letter of 12 November 2012 from Trade Union of Train Drivers in Poland	

ⁱ “(1) At the request of the Commission, the Agency shall carry out a technical examination of the new national rules submitted to the Commission in accordance with Article 8 of the Railway Safety Directive or Article 17(3) of [the Interoperability] Directive.”

ⁱⁱ “The Agency may be called upon to provide technical opinions:

(a) by ... the Commission, on the equivalence of national rules for one or more parameters listed in Section 1 of Annex VII to the Railway Interoperability Directive.”

ⁱⁱⁱ “2b. The Agency may be called upon by the Commission to provide technical opinions on urgent modifications to TSIs, in accordance with Article 7(1) of the Railway Interoperability Directive.”

“1. If, after its adoption, it appears that a TSI does not fully meet the essential requirements, the committee referred to in Article 29 may be consulted at the request of a Member State or upon the initiative of the Commission.

The Commission may request a technical opinion from the Agency. The Commission, with the involvement of the committee, shall analyse the technical opinion.”

^{iv} “1. Without prejudice to the responsibility of Member States for the notified bodies which they designate, the Agency may, at the request of the Commission, monitor the quality of the work of those bodies. It shall submit an opinion to the Commission where appropriate.”

^v “Without prejudice to the derogations provided for by Article 9 of the Railway Interoperability Directive, the Agency shall, at the request of the Commission, examine, from the point of view of interoperability, any project involving the design and/or construction or the renewal or upgrading of the subsystem for which an application for Community financial aid has been submitted. Within a period to be agreed with the Commission according to the importance of the project and the resources available and which cannot extend beyond two months, the Agency shall give an opinion on whether the project conforms with the relevant TSIs.”

^{vi} “1. Within the limits of Article 30(2)(b), the Agency shall, at the request of the Commission, assist the Commission in the implementation of the Community legislation aimed at enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system.

2. This assistance shall be limited in time and scope, and carried out without prejudice to all other tasks assigned to the Agency in this Regulation and may include:

...(b) providing technical advice in matters requiring specific know-how.”

In case of an advice, the present form is primarily intended to be used for requests concerning derogations submitted under Article 9 of the Interoperability Directive, as well as Interpretative Questions, Member State notifications and Questions & Clarifications relating to TSIs.