

Moving Europe towards a sustainable and  
safe railway system without frontiers.

# OPINION

*ERA/OPI/2025-1*

## OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

AUSTRIA

regarding

eighty (80) notified adopted national rules setting requirements  
on several operational aspects

### Disclaimer:

The present document is a non-legally binding opinion of the European Union Agency for Railways. 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

In line with Article 8 of Directive (EU) 2016/798 (Railway Safety Directive or RSD) and Article 26 of Regulation (EU) 2016/796 (the Agency Regulation), this opinion covers the examination by the European Union Agency for Railways (hereinafter the Agency or ERA) of eighty (80) Austrian adopted national rules setting requirements on several operational aspects.

Austria notified these rules in the Single Rules Database (SRD) on 31 May 2024 & on 14 June 2024<sup>1</sup>. The Agency assessed it and reached the conclusion (also recorded in the SRD) that the notified adopted rules contain requirements which according to the Agency's opinion:

- do not meet the scope of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety,
- are not in line with the EU legal framework, mainly Regulation (EU) 2019/773 (TSI OPE) and Regulation (EU) 2018/762 establishing common safety methods on safety management system requirements (CSM-SMS)<sup>2</sup>.

In agreement with the Member State, the timeframe for the Agency's assessment of the notified rules was extended until 31/12/2024. The Agency shared with the Austria its negative assessment between 2/07/2024 and 9/10/2024.

Considering the high number of notified rules, the Member State had the 2-months' timeframe for submitting their position extended to 31 January 2025. Between 29 and 30 January 2025, Austria notified the Agency via SRD its rejection of the Agency's negative assessment of eighty (80) adopted national rules.

This opinion is addressed to Austria with a copy to the European Commission (EC).

It is uploaded on the Single Rules Database (SRD) and on the Agency's website.

## 2. Legal Background

Article 26 (3) of the Regulation (EU) 2016/796 sets out the following:

*Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of 1 month:*

*(a) issue an opinion addressed to the Member State concerned, stating that the national rule or rules in question has or have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and*

*(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should —be modified or repealed.*

This opinion is issued pursuant to Article 26 (3) of the Regulation (EU) 2016/796.

This opinion points out that the national rules adopted by Austria are not within the scope of the assessment and/or conflict with already harmonised EU legislation, according to the analysis and the Annex to this opinion. The applicable EU legislation which is relevant for this opinion is:

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<sup>1</sup> Only for rule ID [AT-SA-1455-1-A](#)

<sup>2</sup> The adopted rules have been listed in the table under chapter 3 of this opinion. Detailed information and reference to legal acts are included in the table under chapter 3 in this opinion.

- Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety,
- Commission implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision 2012/757/EU,
- 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,
- Commission Regulation (EU) No 1078/2012 of 16 November 2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance,
- Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012,
- Commission implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009

### 3. Analysis

The negatively assessed eighty (80) notified adopted rules are provisions contained in several adopted legal documents. The majority (76) of the rules were notified as type 5 rules with the scope defined as ‘certification, medical fitness, selection criteria and vocational training’ applicable for different operational staff. Also, four type 4 rules were notified with the scope defined as ‘other NSR’. The adopted rules are part of five different legal documents<sup>3</sup>.

In chapter 3 of the opinion the Agency provides an overview of the rules, categorised in two groups according to the Agency’s assessment.

A table containing the notified content of the negatively assessed rules, the Agency’s analysis and position on them is provided in Annex 2 of this opinion.

| No | Category  | Rule ID   | General position of the Agency  |
|----|---|---|---|
| 1  | Rules out of scope of the assessment of national rules under Article 8 of Directive (EU) 2016/798 | <a href="#">AT-SA-1409-1-A;</a><br><a href="#">AT-SA-1410-1-A;</a><br><a href="#">AT-SA-1411-1-A;</a><br><a href="#">AT-SA-1412-1-A;</a><br><a href="#">AT-SA-1418-1-A;</a><br><a href="#">AT-SA-1419-1-A;</a><br><a href="#">AT-SA-1427-1-A;</a><br><a href="#">AT-SA-1428-1-A;</a><br><a href="#">AT-SA-1487-1-A;</a><br><a href="#">AT-SA-1488-1-A;</a><br><a href="#">AT-SA-1489-1-A;</a><br><a href="#">AT-SA-1490-1-A;</a><br><a href="#">AT-SA-1491-1-A;</a><br><a href="#">AT-SA-1492-1-A;</a><br><a href="#">AT-SA-1493-1-A;</a><br><a href="#">AT-SA-1494-1-A;</a><br><a href="#">AT-SA-1495-1-A;</a><br><a href="#">AT-SA-1496-1-A;</a><br><a href="#">AT-SA-1497-1-A;</a><br><a href="#">AT-SA-1498-1-A;</a><br><a href="#">AT-SA-1499-1-A;</a><br><a href="#">AT-SA-1500-1-A;</a><br><a href="#">AT-SA-1501-1-A.</a> | <p>The Agency’s initial assessment of the adopted rules in the SRD is herewith confirmed.</p> <p><u>Justification:</u></p> <p>In relation to the Agency’s initial negative assessment, Austria had the opportunity to provide additional arguments or its position in relation the Agency’s assessment. Austria’s position on the Agency’s negative assessment did not contain valid arguments against the Agency’s initial assessment in SRD.</p> <p><u>General Agency’s comment on Austria’s adopted rules:</u></p> <p>Elements of definitions, transpositions of EU legislation and rules applicable for companies excluded by for the Directive (EU) 2016/798 (RSD), cannot be considered as a national rule under Article 8 of RSD and Appendix I of the Annex to Regulation (EU) 2019/773 (TSI OPE).</p> <p>Therefore, such provisions cannot be notified under Article 8 of Directive (EU) 2016/798 (RSD) and therefore cannot be assessed as a national rule relevant for safety certification process.</p> <p>As per definition of a national rule (Article 3 (8) of Directive (EU) 2016/798), these are “<i>all binding rules adopted in a Member State, irrespective of the body issuing them, which contain railway safety or technical requirements, other than those laid down by Union or international rules, and which are applicable within that Member State to railway undertakings, infrastructure managers or third parties</i>”.</p> <p>In other words, only rules purely setting up such requirements (operational context) shall be notified for the Agency’s assessment in the Single Rules Database (Safety).</p> <p>For infrastructure out of scope of Directive (EU) 2016/798:</p> <p>In case such infrastructure is covered by the notified adopted rules, then such infrastructure can be excluded from the scope of Directive (EU) 2016/798. This is because according to Article</p> |

<sup>3</sup> Information on the specific legal act can be consulted directly in the SRD as also by reference in annex 2 of this opinion.

| No | Category  | Rule ID   |  | General position of the Agency  |
|----|---|---|--|---|
|    |   |   |  | <p>10(3)(b) RSD, these rules are not part of the national rules to be taken into account as defined in Article 8 of RSD.</p> <p>In case such infrastructure falls within the RSD's scope, the requirements for SMS apply, as prescribed in Commission Delegated Regulation (EU) 2018/762.</p>   |
| 2  | Rules in areas already regulated in EU legal framework, including Regulation (EU) 2019/773 and Regulation (EU) 2018/762 | <a href="#">AT-SA-1426-1-A;</a><br><a href="#">AT-SA-1429-1-A;</a><br><a href="#">AT-SA-1430-1-A;</a><br><a href="#">AT-SA-1431-1-A;</a><br><a href="#">AT-SA-1432-1-A;</a><br><a href="#">AT-SA-1433-1-A;</a><br><a href="#">AT-SA-1434-1-A;</a><br><a href="#">AT-SA-1435-1-A;</a><br><a href="#">AT-SA-1436-1-A;</a><br><a href="#">AT-SA-1437-1-A;</a><br><a href="#">AT-SA-1438-1-A;</a><br><a href="#">AT-SA-1439-1-A;</a><br><a href="#">AT-SA-1440-1-A;</a><br><a href="#">AT-SA-1441-1-A;</a><br><a href="#">AT-SA-1442-1-A;</a><br><a href="#">AT-SA-1443-1-A;</a><br><a href="#">AT-SA-1444-1-A;</a><br><a href="#">AT-SA-1445-1-A;</a><br><a href="#">AT-SA-1446-1-A;</a><br><a href="#">AT-SA-1447-1-A;</a><br><a href="#">AT-SA-1448-1-A;</a><br><a href="#">AT-SA-1449-1-A;</a><br><a href="#">AT-SA-1450-1-A;</a><br><a href="#">AT-SA-1451-1-A;</a><br><a href="#">AT-SA-1452-1-A;</a><br><a href="#">AT-SA-1453-1-A;</a><br><a href="#">AT-SA-1454-1-A;</a><br><a href="#">AT-SA-1455-1-A;</a><br><a href="#">AT-SA-1456-1-A;</a> | <a href="#">AT-SA-1457-1-A;</a><br><a href="#">AT-SA-1458-1-A;</a><br><a href="#">AT-SA-1461-1-A;</a><br><a href="#">AT-SA-1462-1-A;</a><br><a href="#">AT-SA-1463-1-A;</a><br><a href="#">AT-SA-1464-1-A;</a><br><a href="#">AT-SA-1465-1-A;</a><br><a href="#">AT-SA-1466-1-A;</a><br><a href="#">AT-SA-1467-1-A;</a><br><a href="#">AT-SA-1468-1-A;</a><br><a href="#">AT-SA-1469-1-A;</a><br><a href="#">AT-SA-1470-1-A;</a><br><a href="#">AT-SA-1471-1-A;</a><br><a href="#">AT-SA-1472-1-A;</a><br><a href="#">AT-SA-1473-1-A;</a><br><a href="#">AT-SA-1474-1-A;</a><br><a href="#">AT-SA-1475-1-A;</a><br><a href="#">AT-SA-1476-1-A;</a><br><a href="#">AT-SA-1477-1-A;</a><br><a href="#">AT-SA-1478-1-A;</a><br><a href="#">AT-SA-1479-1-A;</a><br><a href="#">AT-SA-1480-1-A;</a><br><a href="#">AT-SA-1481-1-A;</a><br><a href="#">AT-SA-1482-1-A;</a><br><a href="#">AT-SA-1483-1-A;</a><br><a href="#">AT-SA-1484-1-A;</a><br><a href="#">AT-SA-1485-1-A;</a><br><a href="#">AT-SA-1486-1-A;</a> | <p>The Agency's initial assessment of the adopted rules in the SRD is herewith confirmed.</p> <p><u>Justification:</u></p> <p>In relation to the Agency's initial negative assessment, Austria had the opportunity to provide additional arguments or its position in relation the Agency's assessment. Austria's position on the Agency's negative assessment did not contain valid arguments against the Agency's initial assessment in SRD.</p> <p><u>General Agency's comment on Austria's adopted rules:</u></p> <p>Concerning Austria's argumentation in relation to these rules, the Agency stresses that Commission Implementing Regulation (EU) 2019/773 (TSI OPE) is directly applicable. This means that its provisions shall not be duplicated or further supplemented in the national law.</p> <p>It is for the RU/IM to develop their respective SMSs on the basis of the requirements specified in EU law, including TSI OPE and Commission Delegated Regulation (EU) 2018/762 (CSM-SMS). A national rule shall not introduce additional requirements for the SMS other than those set out in EU legislation.</p> <p>Moreover, identification and allocation of roles and responsibilities to staff, including staff performing safety-critical tasks, is a responsibility of the RU (or IM for their staff) and should be a part of the SMS of the RU/IM, according to requirement 2.3.1 of Annex I/II of CSM SMS.</p> <p>Based on the context, the activities and the assessment of the associated risks, the IMs and RUs must make arrangements in their respective SMSs to properly inform and provide the appropriate documentation to the affected staff in line with the requirements of Annex I/II of CSM SMS.</p> <p>In cases the notified rules partially cover aspects that could be assessed under areas for national rules or open points (e.g. additional information for the operational use of national signalling system, maximum speeds in degraded mode or elements allowed under communication aspects) listed in Appendix I of the Annex to the TSI OPE, the content of such rules needs to be thoroughly revised for compliance with EU legal framework.</p> |

#### 4. The opinion

The Agency is of the opinion that the provisions in the eighty (80) adopted national safety rules of Austria are either not compliant with relevant EU legal requirements or do not meet the scope of notification of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety, as described in part 3 Analysis of this opinion.

For this reason, in accordance with Article 26 (3) of Regulation (EU) 2016/796, the Agency with this opinion confirms its negative assessment.

This opinion is addressed to Austria, with a copy to the European Commission (DG Move).

Valenciennes, 25/02/2025

SIGNED

Pio GUIDO  
Executive Director a.i.

# Annex 1

## Impact Note

*Regarding eighty (80) notified draft national rules setting requirements on several operational aspects*

Issued as per Art. 8(1) of Regulation (EU) 2016/796 and the Impact Assessment procedure adopted by the ERA Management Board (Decision n.290, 16/03/2022)

## 1. Context and assessment of impacts

### 1.1. The national rule in object

In line with article 26 (3) of Regulation (EU) 2016/796, this opinion covers the examination of eighty (80) adopted national rules notified by Austria in the Single Rules Database (SRD) on 31 May 2024 & on 14 June 2024.

The Agency assessed them and reached the conclusion (also recorded in the SRD) that the notified adopted rules contain requirements which according to the Agency's opinion:

1. *do not meet the scope of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety,*
2. *are not in line with the EU legal framework, mainly Regulation (EU) 2019/773 (TSI OPE) and Regulation (EU) 2018/762 establishing common safety methods on safety management system requirements (CSM-SMS).*

### 1.2. Analysis performed

The Agency shared its negative assessment with Austria between 2/07/2024 and 9/10/2024. Considering the high number of notified rules, the Member State had the 2-months' timeframe for submitting their position extended to 31 January 2025. Between 29 and 30 January 2025, Austria notified the Agency via SRD its rejection of the Agency's negative assessment of eighty (80) adopted national rules.

The negatively assessed eighty (80) notified adopted rules are provisions contained in several (5) adopted legal documents. Details about the specific legal acts concerned are available in the SRD and also in annex 2 of this technical opinion.

In chapter 3 of this opinion the Agency provides an overview of the rules, divided in categories according to the Agency's assessment. Some rules belong to more than one category, considering their content. In particular, various rules are:

3. out of scope of the assessment of national rules under Article 8 of Directive (EU) 2016/798. Elements of definitions, transpositions of EU legislation and rules applicable for companies excluded under Directive (EU) 2016/798 (RSD), cannot be considered as a national rule under Article 8 of RSD and Appendix I of the Annex to Regulation (EU) 2019/773 (TSI OPE). Therefore, such provisions cannot be notified under Article 8 of Directive (EU) 2016/798 (RSD) and therefore cannot be assessed as a national rule relevant for safety certification process. In other words, only rules purely setting up such requirements (operational context) shall be notified for the Agency's assessment in the Single Rules Database (Safety).
4. in areas already regulated in EU legal framework, including Regulation (EU) 2019/773 and Regulation (EU) 2018/762. The TSI OPE Regulation (EU) 2019/773 is directly applicable. This means that its provisions shall not be duplicated or further supplemented in the national law. It is for the RU/IM to develop their respective SMSs on the basis of the requirements specified in EU law, including the TSI OPE and the CSM-SMS Regulation, (EU) 2018/762. A national rule shall not introduce additional requirements for the SMS other than those set out in EU legislation. Moreover, identification and allocation of roles and responsibilities to staff, including staff performing safety-critical tasks, is a responsibility of the RU (or IM for their staff) and should be a part of the SMS of the RU/IM, according to requirement 2.3.1 of Annex I/II of CSM SMS Regulation. Based on the context, the activities and the assessment of the associated risks, the IMs and RUs must make arrangements in their respective SMSs to properly inform and provide the appropriate documentation to the affected staff in line with the requirements of Annex I/II of CSM SMS Regulation.



**1.3. Assessment of impacts**

The eighty (80) adopted national safety rules of Austria are not compliant with relevant EU legal requirements or do not meet the scope of notification of a national rule in the field of safety (according to Article 8 of Directive EU 2016/798 on railway safety).

They fall within the scope of the Light Impact Assessment 'Revision of the Common Safety Methods on Conformity Assessment and the Common Safety Methods on Supervision' performed by the Agency in February 2017 and of the Full Impact Assessment on the TSI OPE Revision carried out in 2018. The impacts were therefore already adequately assessed and it is confirmed that these rules would compromise uniformity of application of well-established EU requirements on SMS and increase the risk of low transparency of the national rules framework that stakeholders have to comply within Austria.

In particular the rules negatively assessed do not fall under the RSD or in an area for national rules, or they duplicate or are not in line with requirements and/or procedures to be addressed in the companies' Safety Management System. It is for the SMS of RU/IM to develop their processes and procedures on the basis of the requirements specified in EU law, including TSI OPE Regulation (EU) 2019/773. A national rule should not prescribe additional requirements for the safety management systems of railway undertakings and infrastructure managers since such requirements have been defined in Regulation (EU) 2018/762. Moreover, a number of the rules are clear examples of arbitrary provisions that can lead to discrimination and constraints for interoperability.

Interoperability and coherence of the EU legal framework across the Union risk to be weakened by duplicating or further supplementing, in the national law, requirements already covered (in a harmonised way) at European level, going against the policy goal of reducing national rules and creating unnecessary burden on stakeholders (including unnecessary efforts to ensure the enforcement of the additional national rules on top of all other existing oversight requirements pertaining to EU law), with no (or doubtful) benefit.

**1.4. Stakeholders affected**

|                                  |                                     |  |                                     |
|----------------------------------|-------------------------------------|--|-------------------------------------|
| Railway undertakings (RU)        | <input checked="" type="checkbox"/> | Member States (MS)                       | <input checked="" type="checkbox"/> |
| Infrastructure managers (IM)     | <input checked="" type="checkbox"/> | Third Countries                          | <input type="checkbox"/>            |
| Manufacturers                    | <input type="checkbox"/>            | National safety authorities (NSA)        | <input checked="" type="checkbox"/> |
| Keepers                          | <input type="checkbox"/>            | European Commission (EC)                 | <input checked="" type="checkbox"/> |
| Entity Managing the Change (EMC) | <input type="checkbox"/>            | European Union Agency for Railways (ERA) | <input checked="" type="checkbox"/> |
| Notified Bodies (NoBo)           | <input type="checkbox"/>            | Shippers                                 | <input type="checkbox"/>            |
| Associations                     | <input type="checkbox"/>            | Other (Please specify) ...               | <input type="checkbox"/>            |

|   |
|---|
| <b>2. Preferred option</b>  |
| <b>2.1. Recommendation</b>  |
| No alternative options are to be assessed and it is confirmed a negative assessment of the draft rules in question notified by Austria. |

## Annex 2: Table containing the content and assessment of eighty (80) adopted rules notified by Austria in SRD

| No | Rule ID                        | Rule content  | Notified as   | ERA assessment result   | Member State's (MS) position on ERA's negative assessment | MS position   | ERA's final opinion   |
|----|--------------------------------|---|---|---|---|---|---|
| 1  | <a href="#">AT-SA-1409-1-A</a> | <b>§ 21a Eisenbahngesetz 1957:</b> Rules regarding safety related internal rules for railway staff concerning operating and training  | Type 4<br>Other NSR   | The referred rule reflects on general rules regarding safety related internal rules for railway staff for operating and training. This should be managed within the companies SMS. The rule cannot be accepted.   | MS rejected ERA's negative assessment                     | The agency's position that the rule should be cancelled cannot be shared. The rule is still necessary for companies that do not fall under the scope of the Safety Directive. There is also a scope of application for regulations that fall under Annex I of the TSI OPE (e.g. shunting). In addition, para. 5 of Section 21a already provides for far-reaching exemptions from the authorisation requirements (e.g. where there are already requirements under EU law)    | The Agency upholds its first assessment. If the application of the rule applies to companies that are excluded from the scope of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not acceptable to be notified as a national safety rule.   |
| 2  | <a href="#">AT-SA-1410-1-A</a> | <b>§ 59 Eisenbahngesetz 1957:</b> operating rules regarding track access in the network statement   | Type 4<br>Other NSR   | The referred rule reflects on the obligation of the IM to make sure that it states operating rules regarding track access in the network statement. The track access rights should be published in the network statement as laid down by Directive 2012/34/EU. The operating rules are to be implemented and laid down by the company's safety management system according to Regulation (EU) 2018/762.   | MS rejected ERA's negative assessment                     | The agency's position is not shared. The provision merely obliges infrastructure managers to publish all information required for access to the infrastructure in the Network Statement. This corresponds to Art. 27 and Annex IV of the Serac Directive (Directive 2012/34/EU).  | The Agency upholds its first assessment. The additional argumentation points out that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and is therefore not acceptable to be notified as a national safety rule. |
| 3  | <a href="#">AT-SA-1411-1-A</a> | <b>§ 7 Eisenbahnverordnung 2003:</b> Rules to create the railway undertakings' and infrastructure managers' internal safety rules within the meaning of § 21 Abs. 3 EibG            | Type 4<br>Other NSR   | The referred rule reflects on the obligation of the IM and RU to create internal safety rules. This should be managed within the companies SMS. The rule cannot be accepted.  | MS rejected ERA's negative assessment                     | The agency's position that the rule should be cancelled cannot be shared. The rule is still necessary for companies that do not fall under the scope of the Safety Directive. There is also a scope of application for regulations that fall under Annex I of the TSI OPE (e.g. shunting). In addition, para. 5 of Section 21a already provides for far-reaching exemptions from the authorisation requirements (e.g. where there are already requirements under EU law)    | The Agency upholds its first assessment. If the application of the rule applies to companies that are excluded from the scope of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not acceptable to be notified as a national safety rule.   |
| 4  | <a href="#">AT-SA-1412-1-A</a> | <b>§ 8 Eisenbahnverordnung 2003:</b> Rules regarding their internal detailed orders   | Type 4<br>Other NSR   | The referred rule states the following: Operational instructions § 8:<br>(1) The railway undertaking shall, where necessary, by means of operational instructions, specify the general instructions contained in service instructions for the individual case.<br>(2) The Staff Rules shall specify which provisions of the Instructions are to be issued in any event and how they are to be published. This should be managed within the companies SMS. The rule cannot be accepted.  | MS rejected ERA's negative assessment                     | The agency's position that the rule should be cancelled cannot be supported. The rule is still necessary for companies that do not fall under the scope of the Safety Directive. There is also a scope of application for regulations that fall under Annex I of the TSI OPE (e.g. shunting). In addition, para. 5 of Section 21a already provides for far-reaching exemptions from the authorisation requirements (e.g. where there are already requirements under EU law) | The Agency upholds its first assessment. If the application of the rule applies to companies that are excluded from the scope of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not acceptable to be notified as a national safety rule.   |
| 5  | <a href="#">AT-SA-1418-1-A</a> | <b>§ 21c Eisenbahngesetz 1957:</b> Rules regarding the ministers' authority to issue regulations for categories and training of safety related tasks and requirements for examiners | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including | The rule sets out requirements regarding the minister's authority on rules for competence provisions (definition of necessary aptitude, operation of training facilities in terms of qualification, determination of whether staff has certificates, registration of competences etc.). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. | MS rejected ERA's negative assessment                     | The agency's position that the rule should be cancelled cannot be shared. The rule is still necessary for companies that do not fall under the scope of the Safety Directive. There is also a scope of application for regulations that fall under Annex I of the TSI OPE (e.g. shunting).  | The Agency upholds its first assessment. If the application of the rule applies to companies that are excluded from the scope of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not  |

|   |                                |  |  |   |                                       |  |   |
|---|--------------------------------|--|--|---|---------------------------------------|--|---|
|   |                                |  | selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       |  | acceptable to be notified as a national safety rule.  |
| 6 | <a href="#">AT-SA-1419-1-A</a> | <b>§ 30 Eisenbahngesetz 1957:</b><br>Regulations on „Eisenbahnaufsichtsorganen“ to monitor the behavior of people towards railway facilities | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out requirements on „Eisenbahnaufsichtsorganen“ to monitor the behavior of people towards railway facilities: The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally considering Railway Safety Directive 2016/798 Art. 3, 4 and 9, certain safety and operational responsibilities cannot be appointed to one person/function. Responsibilities for risk management are appointed to the organisation. The rule cannot be accepted. | MS rejected ERA's negative assessment | The agency's position is not shared. From Austria's point of view, this is a misconception of the tasks and scope of the Eisenbahnaufsichtorgane". Rather, this provision transfers sovereign tasks to companies. Corresponding regulations also exist in other modes of transport (cf. power to issue orders of a pilot of an aircraft or the captain of a ship)" | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. if the application of the rule does not apply to one of the types identified under Annex II of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not acceptable to be notified as a national safety rule.  |
| 7 | <a href="#">AT-SA-1426-1-A</a> | <b>§ 129 Eisenbahnbau- und betriebsverordnung:</b><br>Definition, general provisions   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on operational staff including instructions, information, amount of training and keeping records. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  | MS rejected ERA's negative assessment | The agency's argument cannot be fully accepted. The provision in question does not contain any specific requirements regarding the qualifications of the staff. Rather, the provision merely contains general requirements that must then be implemented by the railway undertakings within the scope of their SMS.  | The Agency upholds its first assessment. Austria's position on the statement that this provision only contain general requirements to be implemented by the railway undertakings within the scope of their SMS cannot be accepted. Concerning the argumentation of the Member State, the Agency stresses that TSI OPE Regulation (EU) 2019/773 is directly applicable. This means that its provisions should not be duplicated or further supplemented in the national law. It is for the RU/IM to develop their respective SMSs on the basis of the requirements specified in EU law, including Regulation (EU) 2019/773 (TSI OPE) and Regulation (EU) 2018/762 (CSM-SMS). A national rule shall not introduce additional requirements for the SMS other than those set out in EU legislation. |

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| 8  | <a href="#">AT-SA-1427-1-A</a> | <b>§ 130 Eisenbahnbau- und betriebsverordnung:</b> General requirements for operational staff             | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on general requirements for operational staff (age, mental and physical fitness, language). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)irrelevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency's reasoning and will adapt the corresponding provisions. Essentially, the scope of the regulation is to be limited to those railways that are not part of the Union rail system. In addition, those parts which, according to Annex I of the TSI OPE, are still subject to national regulation, including for railway undertakings falling within the scope of the TSI (in particular the operating system, signalling system and shunting), are to be regulated in a separate (and separately notified) regulation. Those aspects that are already regulated by the TSI OPE will then no longer apply to the Union rail system in Austria. The Republic of Austria intends to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI) | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. If the application of the rule applies to companies that are excluded from the scope of Directive (EU) 2016/798 (RSD) then Art. 8 cannot apply and is therefore not acceptable to be notified as a national safety rule. |
| 9  | <a href="#">AT-SA-1428-1-A</a> | <b>§ 131 Eisenbahnbau- und betriebsverordnung:</b> Training and examination of operational staff          | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions for training and examination of operational staff. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)irrelevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  | MS rejected ERA's negative assessment | Austria agrees with the Agency's reasoning and will adapt the corresponding provisions. Essentially, the scope of the regulation is to be limited to those railways that are not part of the Union rail system. In addition, those parts which, according to Annex I of the TSI Operation, are still subject to national regulation, including for railway undertakings falling within the scope of the TSI (in particular the operating system, signalling system and shunting), are to be regulated in a separate (and separately notified) regulation. Those aspects that are already regulated by the TSI Operation will then no longer apply to the Union rail system in Austria. It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI)      | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798. Competence management is part of the RU's/IM's safety management system. The rule cannot be accepted.                     |
| 10 | <a href="#">AT-SA-1429-1-A</a> | <b>§ 132 Eisenbahnbau- und betriebsverordnung:</b> Rules regarding staff's behaviour during working hours | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions for the staff behaviour during working hours. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)irrelevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   | MS rejected ERA's negative assessment | In principle, it should be noted that the provisions are not requirements relating to the competence of staff. Rather the rule sets out generic provisions for the staff behaviour during working hours and contains requirements that are not covered by Union law. The contradiction with the TSI OPE is therefore not seen.   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Competence management (including safe behaviour) is part of the RU's/IM's safety management system. The rule cannot be accepted.   |
| 11 | <a href="#">AT-SA-1430-1-A</a> | <b>§ 133 Eisenbahnbau- und betriebsverordnung:</b> Rules regarding staff's behaviour in                   | 5. Rules concerning requirements in respect of staff   | The rule sets out provisions for dealing with staff in cases of illness and fatigue. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching   | MS rejected ERA's negative assessment | In principle, it should be noted that the provisions are not requirements relating to the competence of staff. Rather the rule sets out provisions for the staff in case of illness and fatigue. The contradiction with the TSI OPE is therefore not seen. It is incomprehensible  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Competence management  |

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|    |                                | case of illness and over-fatigue  | executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;  | trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | why there are clear guidelines in this respect in all modes of transport, but in the railway this should be left exclusively to the SMS of the companies   | (including provisions for staff in case of illness and fatigue) is part of the RU's/IM's safety management system. The rule cannot be accepted.  |
| 12 | <a href="#">AT-SA-1431-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung 1.</b><br><b>Abschnitt:</b> 1. section, general | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | This rule only contains a title and no content. This cannot be assessed under the national rules process (Article 8 of Directive (EU) 2016/798). See also assessment on Rule ID AT-SA-1432-1-A until Rule ID AT-SA-1453-SA-1-A. The rule cannot be accepted.   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 13 | <a href="#">AT-SA-1432-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §1:</b><br>scope                                | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they                               | The rule sets out provisions on competence (scope - training and required aptitude for qualified activities in railway operations and vehicle service). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  | are not yet covered by a TSI;  | are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | - the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.   |  |
| 14 | <a href="#">AT-SA-1433-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §2:</b><br>eligibility | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (eligibility) The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signaller and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                       | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 15 | <a href="#">AT-SA-1434-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §3:</b><br>minimum age | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (minimum age - selection criteria). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signaller and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |



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| 16 | <a href="#">AT-SA-1435-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §4:</b><br>physical eligibility | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (physical eligibility - selection criteria). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment.<br>The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 17 | <a href="#">AT-SA-1436-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §5:</b><br>mental eligibility   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (mental eligibility - selection criteria). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Also on Health and safety conditions the TSI OPE 2023 does not permit anything else than alcohol, drugs and psychotropic medication limits. The rule cannot be accepted. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment.<br>The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 18 | <a href="#">AT-SA-1437-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §6:</b><br>reliability          | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical  | The rule sets out provisions on competence (reliability-selection criteria). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,  | The Agency upholds its first assessment.<br>The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for  |



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|    |                                |   | fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | <ul style="list-style-type: none"> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul>   | interoperability. The rule cannot be accepted.   |
| 19 | <a href="#">AT-SA-1438-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §7:</b> training principles   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (training principles - criteria). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 20 | <a href="#">AT-SA-1439-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §8:</b> specialized knowledge | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (specialised knowledge). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.          | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training</li> </ul>   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |   |  |  |                                       | is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 21 | <a href="#">AT-SA-1440-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §9:</b><br>Completion of training         | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (completion of training-presence in training). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 22 | <a href="#">AT-SA-1441-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §10:</b><br>Conformation of participation | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (confirmation of participation). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 23 | <a href="#">AT-SA-1442-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §11:</b><br>examinations                  | 5. Rules concerning requirements in respect of staff   | The rule sets out provisions on competence (examination). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of   |

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|    |                                |   | executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;  | movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       | accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  | Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted.  |
| 24 | <a href="#">AT-SA-1443-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §12:</b><br>Procedure for the examination | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (Procedure for the examination). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 25 | <a href="#">AT-SA-1444-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §13:</b><br>certification                 | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in  | The rule sets out provisions on competence (certification). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|----|--------------------------------|--|--|---|---------------------------------------|--|--|
|    |                                |  | so far as they are not yet covered by a TSI;   | role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted.  |                                       | check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 26 | <a href="#">AT-SA-1445-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §14:</b><br>First aid and emergency life-saving measures | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on first aid (training on emergency management). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 27 | <a href="#">AT-SA-1446-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §15:</b><br>Practical training                           | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (practical training). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.              | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |   |  |  |                                       | implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.   |  |
| 28 | <a href="#">AT-SA-1447-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §16:</b><br>Qualification   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (qualification). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br><br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 29 | <a href="#">AT-SA-1448-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §17:</b><br>Common provisions on permit cards, identifications and certificates | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (common provisions on permit cards, identifications and certificates). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br><br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 30 | <a href="#">AT-SA-1449-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §18:</b><br>permit cards  | 5. Rules concerning requirements in respect of staff executing safety-critical tasks,  | The rule sets out provisions on competence (permit cards). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br><br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to   |

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|    |                                |  | including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted.  |                                       | the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.   | discrimination and constraints for interoperability. The rule cannot be accepted.  |
| 31 | <a href="#">AT-SA-1450-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §19:</u> identifications | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence (identifications). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 32 | <a href="#">AT-SA-1451-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §20:</u> certificate     | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they                               | The rule sets out provisions on competence (certificate). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |



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|    |                                |   | are not yet covered by a TSI;   | of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted.  |                                       | <p>themselves or others, and</p> <ul style="list-style-type: none"> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul>  |   |
| 33 | <a href="#">AT-SA-1452-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §21:</u><br>verifications | <p>5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;</p> | <p>The rule sets out provisions on competence (verifications - providing evidence upon request staff). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.</p> <p>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted.</p> | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | <p>The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted.</p> |
| 34 | <a href="#">AT-SA-1453-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §22:</u><br>Register      | <p>5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;</p> | <p>The rule sets out provisions on competence (register). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.</p> <p>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. Additionally the competence management system of the RU/IM shall make sure records are kept for all staff. The rule cannot be accepted.</p>  | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | <p>The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted.</p> |

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| 35 | <a href="#">AT-SA-1454-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung 2.</b><br><b>Abschnitt:</b> 2. section, qualified tasks | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | This rule only contains a title and no content. This cannot be assessed under the national rules process (Article 8 of Directive (EU) 2016/798). See also assessments on Rule ID AT-SA-1455-1-A until Rule ID AT-SA-1472-SA-1-A. The rule cannot be accepted.  | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 36 | <a href="#">AT-SA-1455-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §23:</b><br>Railway operation                           | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (entry on railway premises). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety)-relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 37 | <a href="#">AT-SA-1456-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §24:</b><br>Guarding of level crossings                 | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical  | The rule sets out provisions on competence, training and examination of tasks (securing/guarding of level crossings). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety)-relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for  |



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|    |                                |   | fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | <ul style="list-style-type: none"> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul>  | interoperability. The rule cannot be accepted.   |
| 38 | <a href="#">AT-SA-1457-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §25:</b><br>Operations coordination | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (operational coordination). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                           | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 39 | <a href="#">AT-SA-1458-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §26:</b><br>Operations assistance   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (operational assistance on behalf of the dispatcher). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training</li> </ul>   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  |  |   |                                       | is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 40 | <a href="#">AT-SA-1461-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §29:</b><br>securing vehicles    | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (vehicle safety tasks). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 41 | <a href="#">AT-SA-1462-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §30:</b><br>brake test           | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (braking tasks). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.       | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 42 | <a href="#">AT-SA-1463-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §31:</b><br>movement preparation | 5. Rules concerning requirements in respect of staff   | The rule sets out provisions on competence, training and examination of tasks (preparation of operational train documents). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of   |

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|    |                                |   | executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;  | and/or IM staff dispatching trains and authorizing train movements. This rule seems not to be limited to this IM staff.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       | accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  | Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted.  |
| 43 | <a href="#">AT-SA-1464-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §32:</b><br>shunting            | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (shunting). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 44 | <a href="#">AT-SA-1465-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §33:</b><br>shunting management | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in  | The rule sets out provisions on competence, training and examination of tasks (shunting management). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|----|--------------------------------|--|--|--|---------------------------------------|--|--|
|    |                                |  | so far as they are not yet covered by a TSI;   | role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 45 | <a href="#">AT-SA-1466-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §34:</b><br>train evacuation | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (evacuation of trains). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.            | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 46 | <a href="#">AT-SA-1467-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §35:</b><br>train attendance | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (a.o. staff accompanying a train). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  |  |  |                                       | implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.   |  |
| 47 | <a href="#">AT-SA-1468-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §36:</u><br>loading inspection | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (loading). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.            | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 48 | <a href="#">AT-SA-1469-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §37:</u><br>vehicle inspection | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on competence, training and examination of tasks (vehicle inspection). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 49 | <a href="#">AT-SA-1470-1-A</a> | <u>Eisenbahn-Eignungs- und Prüfungsverordnung §38:</u><br>vehicle check      | 5. Rules concerning requirements in respect of staff executing safety-critical tasks,  | The rule sets out provisions on competence, training and examination of tasks (vehicle inspection). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to   |

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|    |                                |  | including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       | the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.   | discrimination and constraints for interoperability. The rule cannot be accepted.  |
| 50 | <a href="#">AT-SA-1471-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §39:</b><br>Staff to monitor the behavior of people towards railway facilities | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions to appoint a supervisory body to evaluate the training and examination. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 51 | <a href="#">AT-SA-1472-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §40:</b><br>operational management   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they                               | The rule sets out provisions on competence, training and examination of tasks (operational management). The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |



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|    |                                |  | are not yet covered by a TSI;  | are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       | <p>themselves or others, and</p> <ul style="list-style-type: none"> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul>  |  |
| 52 | <a href="#">AT-SA-1473-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §41:</b> training facilities                 | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | This rule only contains a title and no content. This cannot be assessed under the national rules process (Article 8 of Directive (EU) 2016/798). See also assessment on Rule ID AT-SA-1474-1-A, AT-SA-1475-SA-1-A, AT-SA-1476-SA-1-A and AT-SA-1477-SA-1-A. The rule cannot be accepted.  | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 53 | <a href="#">AT-SA-1474-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §41:</b> Organisation of training facilities | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on training facilities. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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| 54 | <a href="#">AT-SA-1475-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §42:</b><br>Teaching staff                   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on the assignment of teachers to training facilities. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 55 | <a href="#">AT-SA-1476-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §43:</b><br>Permit application               | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on the application to operate as a training facility. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 56 | <a href="#">AT-SA-1477-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §44:</b><br>Approbation as training facility | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical  | The rule sets out provisions on the approval to operate as a training facility. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for  |



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|    |                                |  | fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       | <ul style="list-style-type: none"> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul>  | interoperability. The rule cannot be accepted.   |
| 57 | <a href="#">AT-SA-1478-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung</b><br><b>4.Abschnitt:</b> examiners | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | This rule only contains a title and no content. This cannot be assessed under the national rules process (Article 8 of Directive (EU) 2016/798). See also assessment on Rule ID AT-SA-1479-1-A, AT-SA-1480-SA-1-A, AT-SA-1481-SA-1-A, AT-SA-1482-SA-1-A and AT-SA-1483-SA-1-A. The rule cannot be accepted.   | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.</li> </ul> | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 58 | <a href="#">AT-SA-1479-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §45:</b> requirements                | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on expert examiners. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements. The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | <p>The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also</p> <ul style="list-style-type: none"> <li>- the interests of the NSA to be able to supervise on site,</li> <li>- the interests of the person himself to be deployed only for the activities for which he is qualified,</li> <li>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and</li> <li>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training</li> </ul>   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  |  |  |                                       | is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 59 | <a href="#">AT-SA-1480-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §46:</b> application             | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out requirements on the application to be expert examiner. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 60 | <a href="#">AT-SA-1481-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §47:</b> appointment as examiner | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on the appointment of expert examiners. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.     | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 61 | <a href="#">AT-SA-1482-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §48:</b> register of examiners   | 5. Rules concerning requirements in respect of staff   | The rule sets out provisions on the list/register of expert examiners. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of   |

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|    |                                |   | executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;  | train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  | Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted.  |
| 62 | <a href="#">AT-SA-1484-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §49:</b> responsibilities of examiners                  | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out provisions on the responsibilities of examiners. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 63 | <a href="#">AT-SA-1484-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung</b><br><b>5.Abschnitt:</b> 5. section, final provisions | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in  | This rule only contains a title and no content. This cannot be assessed under the national rules process (Article 8 of Directive (EU) 2016/798). See also assessment on rule ID AT-SA-1485-1-A and AT-SA-1486-1-A. The rule cannot be accepted.   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to   | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  | so far as they are not yet covered by a TSI;   |  |                                       | check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 64 | <a href="#">AT-SA-1485-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §50:</b><br>recognition of completed trainings | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out requirements for recognition of completed trainings. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                   | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place. | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |
| 65 | <a href="#">AT-SA-1486-1-A</a> | <b>Eisenbahn-Eignungs- und Prüfungsverordnung §51:</b><br>temporary arrangements             | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | The rule sets out transitional provisions on railway fitness, licenses and examinations. The TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | The TSI OPE in the version of Implementing Regulation (EU) 2023/1693 now transfers key aspects relating to the training and professional qualification of staff entrusted with safety-related tasks to the railway undertakings. The scope for national regulations has been restricted in this context. For this reason, it is necessary to amend the existing provisions accordingly. With regard to the objective of the national safety rules, it should be taken into account that proof of professional qualification does not only affect the interests of the railway undertaking or infrastructure manager employing a person, but in particular also<br>- the interests of the NSA to be able to supervise on site,<br>- the interests of the person himself to be deployed only for the activities for which he is qualified,<br>- the interests of infrastructure managers who are unable to continuously train their employees for a wide variety of verifications from different railway undertakings, e.g. to check whether persons encountered in areas not intended for general access can be assigned to a railway undertaking and can enter these areas without endangering themselves or others, and<br>- the interests of other railway undertakings or other infrastructure managers who need to check the exact qualifications of a person under another SMS and what additional training is required under 4.2.1.1. of the OPE 2023 TSI to enable that person to operate safely within their own SMS (identification of additional training needs). It is intended to  | The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. Although the rule fits the scope of Art. 8 of the RSD, it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule cannot be accepted. |

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|    |                                |  |  |  |                                       | implement the planned changes by 16 December 2025 (implementation of Annex C of the OPE TSI). Until then, however, it is necessary for the NSR to remain in place.  |  |
| 66 | <a href="#">AT-SA-1487-1-A</a> | <b>Gefahrgutbeförderungsgesetz</b><br><b>§ 11:</b> Rules regarding nomination, tasks, training and examination of safety adviser for carriage of dangerous goods | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the requirements for the dangerous goods safety advisor (DGSA). ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                       | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. The additional argumentation points out that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and is therefore not acceptable to be notified as a national safety rule.                                      |
| 67 | <a href="#">AT-SA-1488-1-A</a> | <b>Gefahrgutbeförderungsgesetz</b><br><b>§ 1:</b> area, organisation   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the organisation and scope of training for the dangerous goods safety advisor (DGSA). ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 68 | <a href="#">AT-SA-1489-1-A</a> | <b>Gefahrgutbeförderungsgesetz</b><br><b>§ 2:</b> recognition of training organisers   | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and  | Rule relates to the recognition of training organisers on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part  | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |

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|    |                                |   | vocational training and certification, in so far as they are not yet covered by a TSI;   | of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.  |                                       |   |  |
| 69 | <a href="#">AT-SA-1490-1-A</a> | <u><b>Gefahrgutbeförderungsgesetz</b></u><br><b>§ 3:</b> qualification of training organisers | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the qualification of training organisers on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 70 | <a href="#">AT-SA-1491-1-A</a> | <u><b>Gefahrgutbeförderungsgesetz</b></u><br><b>§ 4:</b> length of trainings                  | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the length of training on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                   | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |



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| 71 | <a href="#">AT-SA-1492-1-A</a> | <u><b>Gefahrgutbeförderungsgesetz</b></u><br><b>§ 5:</b> qualification of teaching staff | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the qualification of teaching staff on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 72 | <a href="#">AT-SA-1493-1-A</a> | <u><b>Gefahrgutbeförderungsgesetz</b></u><br><b>§ 6:</b> Teaching material               | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the teaching materials for training on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 73 | <a href="#">AT-SA-1494-1-A</a> | <u><b>Gefahrgutbeförderungsgesetz</b></u><br><b>§ 7:</b> number of participants          | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in  | Rule relates to the number of participants for training on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signalers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into  | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |

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|    |                                |   | so far as they are not yet covered by a TSI;   | account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       |   |  |
| 74 | <a href="#">AT-SA-1495-1-A</a> | <b>Gefahrgutbeförderungsgesetz § 8:</b> language  | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to language requirements for training on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 75 | <a href="#">AT-SA-1496-1-A</a> | <b>Gefahrgutbeförderungsgesetz § 9:</b> performance of trainings and checks                           | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to training courses and inspections on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc. When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 76 | <a href="#">AT-SA-1497-1-A</a> | <b>Gefahrgutbeförderungsgesetz § 10:</b> granting or renewal of safety advisers' training certificate | 5. Rules concerning requirements in respect of staff executing safety-   | Rule relates to training and examination requirements on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).   | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be   | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of   |



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|----|--------------------------------|--|--|--|---------------------------------------|--|--|
|    |                                |  | critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI;   | It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc.<br>When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       | checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap.   | Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted.  |
| 77 | <a href="#">AT-SA-1498-1-A</a> | <u>Gefahrgutbeförderungsgesetz</u><br><b>§ 11:</b> examinations after primary training | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to training and examination requirements on dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc.<br>When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap. | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 78 | <a href="#">AT-SA-1499-1-A</a> | <u>Gefahrgutbeförderungsgesetz</u><br><b>§ 12:</b> examination performance             | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to requirements for the training centre in relation to dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc.<br>When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they   | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap. | The Agency upholds its first assessment. In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |

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|    |                                |  |  | are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.   |                                       |  |   |
| 79 | <a href="#">AT-SA-1500-1-A</a> | <b>Gefahrgutbeförderungsgesetz</b><br><b>§ 13:</b> examinations after further training | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the continuous training and examination in relation to dangerous goods. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc.<br>When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific.                                   | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap. | The Agency upholds its first assessment.<br>In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |
| 80 | <a href="#">AT-SA-1501-1-A</a> | <b>Gefahrgutbeförderungsgesetz</b><br><b>§ 14:</b> support measures by employers       | 5. Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI; | Rule relates to the responsibility of the employer to make sure the dangerous goods safety advisor (DGSA) can be trained. ERA considers that this national rule constitutes a transposition measure of Directive 2008/68/EC on the inland transport of dangerous goods. ERA cannot assess this rule under the national rules process (Article 8 of Directive (EU) 2016/798).<br>It should also be noted that TSI OPE, as amended in 2023, does not admit any national rule on competence as the open point in Appendix I on professional competence relates exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorizing train movements.<br>The Regulation (EU) 2018/762 defines the responsibility of the Rus/IMs, as part of their Safety Management System (SMS), to define their own organisation including all (safety-)relevant tasks, competences and training programs, etc.<br>When defining their internal roles and organisation they should take into account a wide range of factors, such as the results of risk assessment including HOF, in line with the scope and the area of operations. In addition, the Regulation (EU) 2018/762, annex I point 4.2.1 mandates that: 'The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible...'. These cannot be defined in national rules but should be part of a risk-based approach that is company specific. | MS rejected ERA's negative assessment | Austria agrees with the Agency that the rule is an implementation of Union law. For this reason, Austria believes that the rule cannot be repealed. Should the rule no longer constitute a national safety rule, this would mean that compliance could no longer be checked as part of the issuing of the single safety certificate or as part of supervision under railway law and would therefore lead to a safety-relevant gap. | The Agency upholds its first assessment.<br>In the additional argumentation it is confirmed that the rule concerns a transposition of an EU Directive. This means the rule does not fall under the scope of Article 8 of the Directive (EU) 2016/798 and therefore is not acceptable to be notified as a national safety rule. The rule cannot be accepted. |