

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

OPINION

ERA/OPI/2025-4

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

AUSTRIA

regarding

Thirty-three (33) notified adopted national rules setting out
requirements on 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 thirty-three (33) Austrian adopted national rules setting requirements on several operational aspects.

Austria notified these rules in the Single Rules Database (SRD) on 31st of May 2024¹, 1st of June 2024² & on 3rd of June 2024³. 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, are not in line with the EU legal framework, mainly Commission implementing Regulation (EU) 2019/773 (TSI OPE) and Commission Delegated Regulation (EU) 2018/762 establishing common safety methods on safety management system requirements (CSM-SMS)⁴.

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 30/10/2024 and 18/12/2024.

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 25 and 26 May 2025, Austria notified the Agency via SRD its rejection of the Agency's negative assessment of thirty-three (33) 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:

¹ Only for rule ID [AT-SA-1414-1-A](#)

² Only for following rules: [AT-SA-1310-1-A](#), [AT-SA-1309-1-A](#), [AT-SA-1308-1-A](#) & [AT-SA-1305-1-A](#)

³ For the remaining rules covered by this opinion

⁴ Detailed information as also the reference to the legal acts is included in the table in part 3 of 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 thirty-three (33) notified adopted rules are provisions contained in one legal document ‘Verordnung über den Bau und Betrieb von Eisenbahnen’. The rules were notified as type 3 rules with the following scopes defined: ‘other NSR’, Signalling rules, local operational rules and operation during works.

In the table below details on the notified content of the negatively assessed rules, the MS position and the Agency’s analysis can be consulted.

No	Rule ID	Rule content	Notified as	ERA assessment result	Member State's (MS) position on ERA's negative assessment	MS position (translated in English)	ERA's final opinion
1	AT-SA-1414-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §128: Special provisions	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as 'special provisions' as a Type 3 rule as 'other NSR'. The rule as notified is applicable for Infrastructure Managers and Railway undertakings and sets out provisions on what railway undertakings (RU) and infrastructure managers (IM) should do in degraded/exceptional situations. These topics need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation is already covered by the OPE TSI with regard to train journeys. The regulation should therefore be amended so that it is limited to those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
2	AT-SA-1310-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §133: Behavior of operational staff in the event of illness and fatigue	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains provisions on the behavior of operational staff in the event of illness and fatigue. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	ERA summarises that the amendment to the OPE TSI adopted in 2023 has significantly reduced the scope for national rules in connection with the competence of staff entrusted with safety-related tasks. In addition, the ERA refers to the requirements of Regulation (EU) 2018/762 and concludes that the national safety rules should be repealed. Austria states that the provisions do not constitute requirements for the competence of personnel. Rather, the provision contains general provisions for the behaviour of staff during working hours and requirements and rules relating to sickness and fatigue that are not covered by Union law. The contradiction with the OPE TSI is therefore not recognised. From Austria's point of view, it is also incomprehensible why there are clear requirements in this respect for all modes of transport, but why this should be left exclusively to the SMS of the companies in the railway sector.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
3	AT-SA-1309-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §132: Conduct of operational staff on duty	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains provisions on the conduct of operational staff while on duty. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	a.) Background: The provisions oblige company employees to behave in a certain way while on duty. For example, staff members are prohibited from consuming alcoholic beverages or other substances that may impair their work while on duty or on standby duty, or from starting work if they are under the influence of such beverages or substances. Furthermore, the provisions contain the general requirement that staff members may not be deployed if they are ill or overtired. It also stipulates that certain staff members may not be deployed if they or a member of their domestic community is suffering from a notifiable disease and there is a risk of transmission of the disease in rail transport. b.) Legal assessment: In summary, the ERA states that the amendment to the OPE TSI adopted in 2023 has significantly reduced the scope for national rules in connection with the competence of staff entrusted with safety-related tasks. In addition, the ERA refers to the requirements of Regulation (EU) 2018/762	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.

						and concludes that the national safety rules should be repealed. Austria states that the provisions do not constitute requirements for staff competence. Rather, the provision contains general provisions for the behaviour of staff during working hours and requirements and regulations in connection with sickness and fatigue that are not covered by Union law. The contradiction with the OPE TSI is therefore not recognised. From Austria's point of view, it is also incomprehensible why there are clear requirements in this respect for all modes of transport, but why this should be left exclusively to the SMS of the companies in the railway sector	
4	AT-SA-1308-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §129: Definitions and general provisions	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the definitions and general provisions on operational staff. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation is already covered by the OPE TSI with regard to train journeys. The regulation should therefore be amended so that it is limited to those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
5	AT-SA-1305-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen Annex 6: Braking table	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the braking table. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted nor can be kept as national rule.
6	AT-SA-1302-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §126: Provisions for 'Nebenfahrten'	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions for 'Nebenfahrten' (journeys that cannot be carried out as train or shunting operations). The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted nor can be kept as national rule.
7	AT-SA-1300-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §125: Documents, records, information	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains provisions on documents, records and information. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation is already covered by the OPE TSI with regard to train journeys. The regulation should therefore be amended so that it is limited to those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
8	AT-SA-1299-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §124: Order 'run on sight'	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule contains provisions on the arrangements on when driving on sight might be applied. The rule is applicable for railway undertakings and infrastructure managers. Running on sight is not an area for national rules (the TSI OPE defines high level principles in appendix B2.9 common operational	MS rejected ERA's negative assessment	The regulations relate to the national signalling system, for which national regulations are still permitted in accordance with the OPE TSI. Accordingly, the regulation was accepted by the Agency as part of the first evaluation. The Agency does not explain why the regulation - contrary to the original evaluation - can no longer be accepted as a national safety regulation. It should also be noted that the legal situation has not changed as a result of the amendment to the OPE TSI in 2023. For this	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. This rule clearly describes the order 'run on sight' which is covered under Appendix B2.9 of the TSI OPE. If the Member State

			traffic management system;	rules). If the Member State considers this needs a change, a change request can be submitted. The rule cannot be accepted.		reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	considers this need to change, a change request can be submitted. The rule cannot be accepted.
9	AT-SA-1298-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §123: Breaking down of trains, breaking/coupling	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on interruption of trains/separation of trains (a.o. coupling). The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation is already covered by the OPE TSI with regard to train journeys. The regulation should therefore be amended so that it is limited to those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
10	AT-SA-1297-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §122: Banking of trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on banking/postponement of trains (execution of operational journeys). The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements, national signalling system) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
11	AT-SA-1296-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §121: Unscheduled stop, cancellation of stops	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules concerning unscheduled stops, cancellation of stops. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements, national signalling system) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. The rule is it is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
12	AT-SA-1295-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §120: Stopping point	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules concerning stopping points. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations relate to the national signalling system, for which national regulations are still permitted in accordance with the OPE TSI. Accordingly, the regulation was accepted by the Agency as part of the first evaluation. The Agency does not explain why the regulation - contrary to the original evaluation - can no longer be accepted as a national safety regulation. It should also be noted that the legal situation has not changed as a result of the amendment to the OPE TSI in 2023. For this reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. The rule relates to requirements that describe in detail how the IM/RU should act in case of 'stopping points'. This rule relates to an interface between the IM and the RU and therefore cannot be accepted as national rule but needs to be addressed in the companies' safety management system. To complement, the Regulation 2018/762 annex I point 5.1.3 sets out that the RU needs to control risks where relevant for the safety of operational activities and shall consider certain elements that are identified under the same point. The rule cannot be accepted.
13	AT-SA-1294-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §119: Entry tracks, entry and exit changes	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules concerning entry tracks, entry and exit changes. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations relate to the national signalling system, for which national regulations are still permitted in accordance with the OPE TSI. Accordingly, the regulation was accepted by the Agency as part of the first evaluation. The Agency does not explain why the regulation - contrary to the original evaluation - can no longer be accepted as a national safety regulation. It should also be noted that the legal situation has not changed as a result of the amendment to the OPE TSI in 2023. For this	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. The rule relates to requirements that describe in detail how the IM/RU should act to enter tracks and on entry and exit changes. This rule relates to an interface between the IM and the RU and can therefore not be accepted as national rule but needs to be addressed in the companies' safety management system. To complement, the

						reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	Regulation 2018/762 annex I point 5.1.3 sets out that the RU needs to control risks where relevant for the safety of operational activities and shall consider certain elements that are identified under the same point. The rule cannot be accepted.
14	AT-SA-1293-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §118: Signal observance	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules on signal observation. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations concern the national signalling system, for which national regulations continue to be permitted in accordance with the OPE TSI. For this reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. The rule relates to requirements that describe in detail how the RU should act to observe the signals. The Regulation 2018/762 annex I point 5.1.3 sets out that the RU needs to control risks where relevant for the safety of operational activities and shall consider certain elements that are identified under the same point. The rule cannot be accepted and needs to be addressed in the safety management system.
15	AT-SA-1292-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §117: Departing of trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules on train departure. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
16	AT-SA-1291-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §116: Regulation of traffic, modifications, deviations	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on regulation of traffic, modifications and deviations. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
17	AT-SA-1290-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §115: Staffing of passenger trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on staffing of passenger trains. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	From the point of view of the Republic of Austria, this regulation is still necessary, as the TSIs do not specify any requirements with regard to passenger changes.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
18	AT-SA-1289-1-A	Verordnung über den Bau und Betrieb von Eisenbahnen §114: Staffing of traction units and trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on staffing of traction units and trains. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national trains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.

19	AT-SA-1288-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §113:</u> Running speed	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on the running speed (related to the type of rolling stock, parameters of the lines, type of brakes, etc.). The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
20	AT-SA-1287-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §112:</u> Securing of subsequent and oncoming trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- local operational rule. The TSI OPE, as amended in 2023, does not admit any national rule on local operational rules other than rules of a strictly local nature relating to specific local conditions, when not mentioned in RINF in accordance with Article 14(11) of Directive (EU) 2016/797. The rule reflects on the rules on securing of subsequent and oncoming trains in stations, block stations, crossing points and junctions. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document is not limited to specific local conditions. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- local operational rule but does not fit the scope and needs to be addressed in the companies' safety management system. The rule is already covered within European legislation. The rule cannot be accepted nor can be kept in national legislation.
21	AT-SA-1285-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §109:</u> Departure, checking and securing the route	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the rules on route, checking and securing the route/journey. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations concern the national signalling system, for which national regulations continue to be permitted in accordance with the OPE TSI. For this reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. This article relates to rules that describe in detail how the IM and RU should act on checking and securing the train journey/route. This rule relates to an interface between the IM and the RU and therefore cannot be accepted as national rule but needs to be addressed in the companies' safety management system. To complement, the Regulation 2018/762 annex I point 5.1.3 sets out that the RU needs to control risks where relevant for the safety of operational activities and shall consider certain elements that are identified under the same point. The rule cannot be accepted.
22	AT-SA-1284-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §109:</u> Departure without exit signal	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the provisions on departure without exit signal. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. Train departure is covered within point 4.2.3.3 of the TSI OPE where high level principles are covered, if the Member State considers this needs a change, a change request can be submitted. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations concern the national signalling system, for which national regulations continue to be permitted in accordance with the OPE TSI. For this reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. This article relates to rules on train departure which is covered within point 4.2.2.3 of the TSI OPE. If the Member State considers this need to change, a change request can be submitted. The rule cannot be accepted.
23	AT-SA-1283-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §108:</u> Track system, end of the entry track, overlap	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the provisions on track system, end of the entry track and overlap. The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in	MS rejected ERA's negative assessment	The regulations relate to the national signalling system, for which national regulations are still permitted in accordance with the OPE TSI. Accordingly, the regulation was accepted by the Agency as part of the first evaluation. The Agency does not explain why the regulation - contrary to the original evaluation - can no longer be accepted as a national safety regulation. It should also be noted that the legal situation has not changed as a result of the amendment to the OPE TSI in 2023. For this	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. This article relates to rules that describe in detail how the IM and RU should act to enter tracks and on end of the entry track and protective routes. This rule relates to an interface between the IM and

			traffic management system;	the company's safety management system. The rule cannot be accepted.		reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	the RU and therefore cannot be accepted as national rule but needs to be addressed in the companies' safety management system. To complement, the Regulation 2018/762 annex I point 5.1.3 sets out that the RU needs to control risks where relevant for the safety of operational activities and shall consider certain elements that are identified under the same point. The rule cannot be accepted.
24	AT-SA-1282-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §107:</u> Changes in the characteristics of the train	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on changes in the characteristics of the train and is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
25	AT-SA-1280-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §105:</u> Length of trains	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on the length of trains and is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
26	AT-SA-1279-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §104:</u> Marshalling	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on train composition and is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
27	AT-SA-1278-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §103:</u> Brake test	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on the brake test and is applicable for railway undertakings. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
28	AT-SA-1276-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §101:</u> Dimensions and load	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the provisions on mass and load and is applicable for railway undertakings, entities in charge of maintenance and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted nor can be kept in national legislation.

29	AT-SA-1275-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §100:</u> General provisions for train movement	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains the general provisions for train journeys and is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document needs to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
30	AT-SA-1273-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §99:</u> General provisions for movement	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule as 'other NSR'. The rule contains general provisions for movements/journeys. The rule is applicable for railway undertakings and infrastructure managers. This rule does not fit the scope of a national rule under Article 8 of Directive (EU) 2016/798. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency that the regulation with regard to train movements is already covered by the OPE TSI. The regulation is therefore to be amended so that it is limited to areas in which national rains are still permitted in accordance with Annex I of the OPE TSI (e.g. shunting movements) and those railways that are not part of the Union rail system. It is planned 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. The rule is notified as 'other NSR', only rules that fit the scope of appendix I of the TSI OPE can be accepted as national safety rule. The rule is a clear example of arbitrary provisions that can lead to discrimination and constraints for interoperability. The rule is already covered within European legislation. The rule cannot be accepted.
31	AT-SA-1271-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §98:</u> Construction and maintenance work	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Operation during works. The rule reflects on the provisions on construction and maintenance work (but has nothing to do with the operations as such). The rule is applicable for railway undertakings and infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	The regulations relate to operation during construction work, for which national regulations are still permitted in accordance with the OPE TSI. Accordingly, the regulation was accepted by the Agency as part of the first evaluation. The Agency does not explain why the regulation - contrary to the original evaluation - can no longer be accepted as a national safety regulation. It should also be noted that the legal situation has not changed as a result of the amendment to the OPE TSI in 2023. For this reason, Austria continues to believe that the regulation is necessary as a national safety regulation.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. This article relates to rules that describe in detail how the IM and RU should plan, inform and how to signal constructions and maintenance works. This rule does not meet the notified scope 'operation during works' as it does not relate to the operations during construction/works. The rule needs to be addressed in the company's safety management system. The rule cannot be accepted.
32	AT-SA-1270-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §97:</u> Endangered crew (track workers)	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Operation during works. The rule reflects on when the procedure endangered crew should be used (has nothing to do with the operations as such). The rule is applicable for infrastructure managers. The rule relates to competences of track workers. 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 rule does not fit in the notified scope and cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule describes the need to define suitable measures that the IM needs to apply in case of endangered crew. The rule needs to be addressed in the company's safety management system. The rule cannot be accepted nor can be kept in national legislation.
33	AT-SA-1267-1-A	<u>Verordnung über den Bau und Betrieb von Eisenbahnen §94:</u> Completely disturbed communication between the block posts	3. Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system;	The rule is notified as a Type 3 rule under the area for NRs (TSI OPE Appendix I)- Signalling rules-Rules related to the operational use of the national signalling system. The rule reflects on the provisions on completely disturbed communication between the block posts (the IM needs to draw up regulations) and is applicable for infrastructure managers. The rule referred to in the legal document need to be addressed in the company's safety management system. The rule cannot be accepted.	MS rejected ERA's negative assessment	Austria agrees with the Agency's evaluation that the scheme does not fulfil the definition of a national provision within the meaning of Art. 8 of Directive 798/2016. For this reason, Austria will remove the rule from the list of notified national rules. However, the Republic of Austria does not consider it necessary to repeal or amend the rule itself.	The Agency upholds its first assessment. The additional argumentation does not provide elements to review the Agency's position. The rule is notified as a signalling rule but does not fit this notification scope. Signalling rules are limited to setting what the signal requirements are and with this information the RU/IM can develop operational procedures. This article relates to completely disturbed communication between the block posts which is already covered within appendix B and appendix C of the TSI OPE. If the Member State considers this need to change, a change request can be submitted. The rule cannot be accepted nor can be kept in national legislation.

4. The opinion

The Agency is of the opinion that the provisions in the thirty-three (33) adopted national safety rules of Austria are not compliant with relevant EU legal requirements 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, 25/06/2025

Signed

Oana GHERGHINESCU
Executive Director

Annex 1

Impact Note

Regarding thirty-three (33) notified adopted 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, 16/03/22)

1. Context and assessment of impacts
1.1. The national rule in object
<p>In line with article 26 (3) of Regulation (EU) 2016/796, this opinion covers the examination of thirty-three (33) adopted national rules notified by Austria in the Single Rules Database (SRD) on 31st of May 2024, 1st of June 2024 & on 3rd of June 2024.</p> <p>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:</p> <ul style="list-style-type: none"> 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, conflict with already harmonised EU legislation, 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
<p>The Agency shared its negative assessment with Austria between 30/10/2024 and 18/12/2024. 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 25 and 26 May 2025, Austria notified the Agency via SRD its rejection of the Agency's negative assessment of thirty-three (33) adopted national rules.</p> <p>The negatively assessed thirty-three (33) notified adopted rules are provisions contained in contained in one legal document 'Verordnung über den Bau und Betrieb von Eisenbahnen'. The rules were notified as type 3 rules with the following scopes defined: 'other NSR', Signalling rules, local operational rules and operation during works.</p> <p>In chapter 3 of this opinion the Agency provides an overview of the rules, divided in categories according to the Agency's assessment. In particular, various rules are:</p> <ul style="list-style-type: none"> <u>out of scope of the assessment of national rules</u> 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). <u>in areas already regulated in EU legal framework</u>, 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. <p>For three (3) of the national rules the opinion suggests that, if the Member State considers the need for a change in provisions already covered by the TSI OPE (Regulation (EU) 2019/773) it can submit a change request for consideration within the established process.</p>

1.3. Assessment of impacts

The thirty-three (33) 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"/>

2. Preferred option**2.1. Recommendation**

No alternative options are to be assessed, and it is confirmed a negative assessment of the adopted rules in question notified by Austria.