



ERA SAFETY UNIT – SAFETY REPORTING SECTOR	
GUIDANCE ON SAFETY RECOMMENDATIONS IN TERMS OF ARTICLE 25 DIRECTIVE 2004/49/EC	
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0. AMENDMENT RECORD

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Version 2.0	Michael Rebentisch		<ul style="list-style-type: none">• implementation of sections 7.7, 7.8 and 8.3 (“part 2”) into the guidance.• Editorial modifications in the whole document due to comments from the members of the networks

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2. INTENDED USERS OF THIS GUIDANCE

- Members of national investigation bodies (NIBs) who are drafting safety recommendations
- Members of national safety authorities (NSAs) who are concerned with reports and recommendations by Investigation Bodies
- Members of other bodies who are the subject of recommendations by investigation bodies (e.g. emergency services)
- For information purposes: the railway undertakings (RUs), infrastructure managers (IMs) and other actors in the railway sector who are interested in the processes of accident investigation.





3. GLOSSARY

EC	European Community
ERA	European Railway Agency
EU	European Union
IM	Infrastructure manager
NIB	National investigation body
NSA	National safety authority
RU	Railway undertaking
TF	Task force





4. INTRODUCTION

Safety recommendations in terms of Article 25 are a key element in the process of learning lessons from accidents and incidents.

With regard to Article 21 (7) of Directive 2004/49/EC this guidance is intended as a reference manual for accident investigation bodies and other parties directly or indirectly concerned by Article 25 of Directive 2004/49/EC, providing further information and examples to facilitate a common understanding of the handling of safety recommendations from railway accident investigations across the European Union.

This guidance is prepared by the European Railway Agency with the support of Task Force 3 “Safety Recommendations” with participation of NIB and NSA members.

As the European Railway Agency (ERA) is aware that there might be specific national characteristics due to differing implementations of the Directive 2004/49/EC this guidance is not intended to give guidance on specific national legislation.

This guidance it is not to be used as a substitute for the Directive 2004/49/EC.

The guidance is not legally binding.

The guidance will be reviewed by the NIB network and the NSA network, if necessary updated to reflect the progress of the European legal acts and standards, as well as to reflect the experience deriving from accident investigation over time. The reader is invited to consult the website of the European Railway Agency for information about the latest available edition of the guidance (www.era.europa.eu).

This guidance is a part of the framework “Guidance for accident investigation in terms of Articles. 19 – 25 of Directive 2004/49/EC”.



5. PRINCIPLES FOR THIS GUIDANCE

To facilitate the reading of this guidance, the original text of Directive 2004/49/EC is stated before the corresponding item of guidance.

To differentiate the text of Directive 2004/49/EC from the guidance, it is presented in "Bookman Old Style" Italic Font, exactly as here.





6. THE INTERFACE BETWEEN NIB AND NSA

Safety recommendations in terms of Article 25 are the main interface between the NIB and the NSAs. If a safety recommendation of a NIB is addressed to the NSA, this initiates a follow-up process within the responsibility of the NSA.

The Directive 2004/49/EC envisages different tasks and roles for the NIBs and NSAs:

The NIB's role is to investigate accidents and incidents and through analysis decide if the lessons learned from an occurrence require a recommendation that would facilitate safety improvement. The role of NIBs is limited to the safety aspects.

The role of the NSA covers a much wider range of tasks and includes monitoring, promoting and, where appropriate, enforcing and developing the safety regulatory framework including the system of national safety rules (Article 16 (2) f)).

Relating to safety recommendations issued by the NIB, the NSA's role is to ensure the NIBs recommendations are duly taken into consideration and, where appropriate, acted upon. It is within the scope of responsibility of the NSA, in conjunction with the national rail sector, to monitor and oversee the implementation and dissemination of recommendations. The actors in the railway sector will normally decide in the first instance how they wish to implement and, if necessary and where appropriate, the NSA will intervene and enforce in accordance with the Member State's safety legislation.

The NSA's role is to consider whether there is a wider relevance and range of impact for a safety recommendation for the national railway sector and direct a recommendation accordingly.

Please note:

The national railway sector includes actors from other Member States which hold a certification in terms of Article 10.

The NSA shall report back at least annually to the investigation body on measures that are taken or planned as a consequence of the recommendation.





7. GUIDANCE FOR RECOMMENDATIONS IN TERMS OF ARTICLE 23 AND ARTICLE 25

7.1. Definition of safety recommendation

A **safety recommendation** in terms of Directive 2004/49/EC is a proposal of a national investigation body to improve railway safety, based on the results of the investigation of one or more accidents or incidents.

7.2. The character of a safety recommendation

Article 22 (3) is very important for the understanding of the character of safety recommendations:

“The investigation shall be carried out with as much openness as possible, so that all parties can be heard and can share the results. The relevant infrastructure manager and railway undertakings, the safety authority, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users shall be regularly informed of the investigation and its progress and, as far as practicable, shall be given an opportunity to submit their opinions and views to the investigation and be allowed to comment on the information in draft reports”

A safety recommendation is the final result of an accident investigation. As Article 22 (3) requires as much openness as possible of the whole investigation process a safety recommendation shouldn't be a surprise for anybody involved in an accident or incident.

In case of safety-relevant findings all parties have to react as soon as reasonably possible according to their responsibilities as recorded in the Directive 2004/49/EC in particular Article 4 (3) and (4), in each stage of an investigation. The principles of Article 19 - 25 do not change these responsibilities.

So a safety recommendation has a character as a public, formal and documented act which has to be traced in a public, comprehensible and documented form.

The general procedure of an investigation is shown in figure 1.

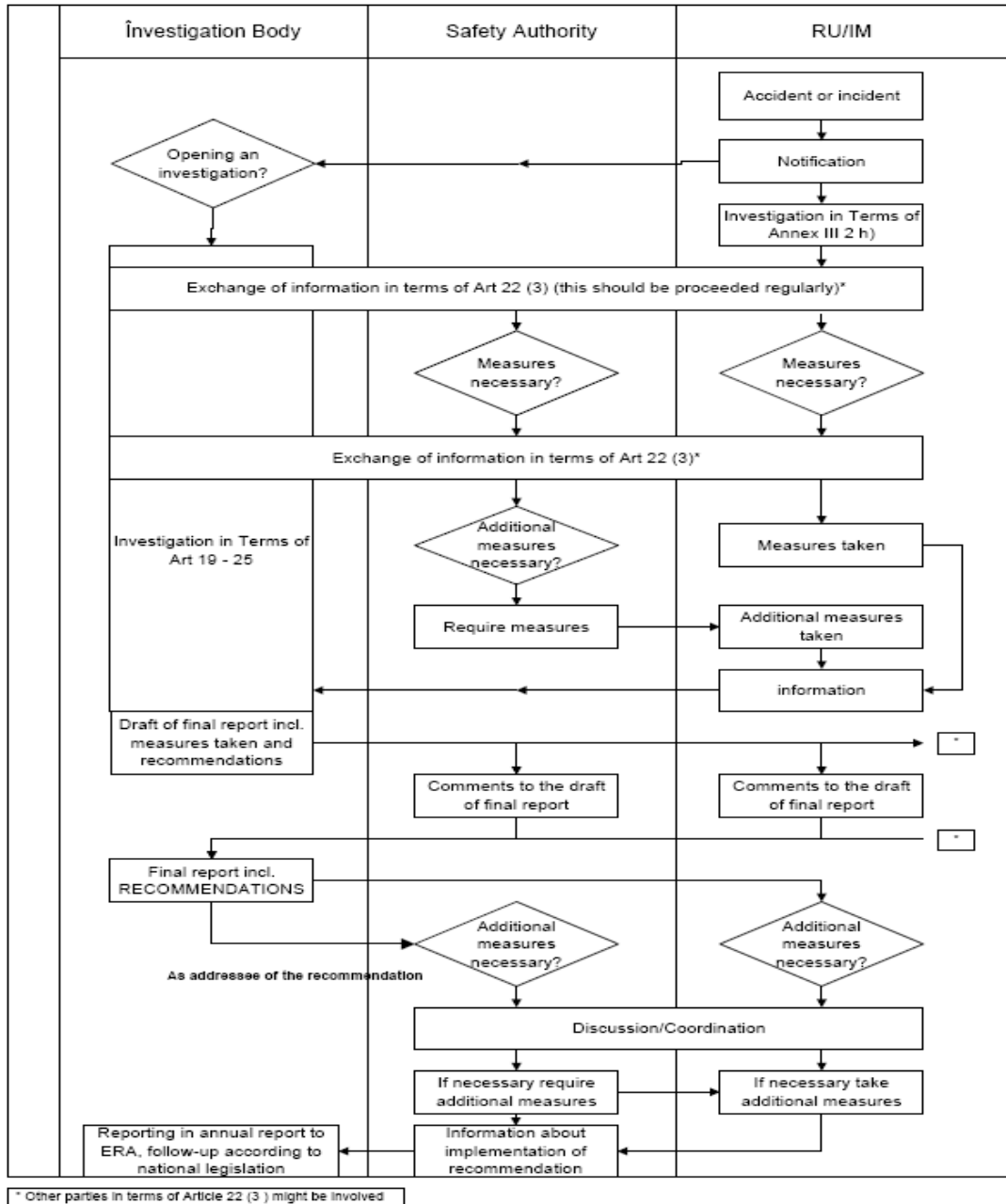


Figure 1: General procedure of an accident investigation. The most common case is illustrated in which the safety authority is involved, please note that other bodies maybe also be involved.



7.3. Obligation of communication of the final report

Article 23 (2) contains requirements to the communication of the results of the investigation of accidents and incidents:

“The investigation body shall make public the final report in the shortest possible time and normally not later than 12 months after the date of occurrence. The report shall, as close as possible, follow the reporting structure laid down in Annex V. The report, including the safety recommendation, shall be communicated to the relevant parties referred to in Article 22 (3) and to bodies and parties concerned in other Member States.”

The last sentence unambiguously requires that the final report has to be sent to all parties involved in the accident or incident. As it is not the task of the NIB to find out whether other actors in the national railway sector or on European level might be affected by a similar issue the passage “bodies and parties concerned in other Member States” also has to be read in this spirit.

So the issue to whom the report (including recommendations) has to be communicated (stated in Article 23 (2)) may not be confused with the issue to whom a recommendation has to be addressed (stated in Article 25 (2)).

7.4. Guidance to Article 23 (1)

“An investigation of an accident or incident referred to in Article 19 shall be subject of reports in a form appropriate to the type and seriousness of the accident or incident and the relevance of the investigation findings. The reports shall state the objectives of the investigations as referred in Article 19 (1) and contain, where appropriate, safety recommendations.”

With regard to Article 23 investigation reports contain safety recommendations, **where appropriate**. This means that not every report must contain safety recommendations.





A safety recommendation is a key instrument investigation bodies have. So this instrument should be used regularly but not excessively. If safety recommendations are rarely articulated the NSA and other respective addressees would not become familiar with this instrument and the follow-up procedures. By contrast, overuse may lead to the danger of the addressees dealing with safety recommendations as an unpleasant routine task.

The aim of a safety recommendation in terms of Directive 2004/49/EC is to improve the safety of the rail system both at a national and a European level.

Due to the fact that

- all actors in the railway sector have safety responsibilities with regard to Directive 2004/49/EC and to the national legislation,
- any measures already taken would normally be reported in the investigation report (Annex V),
- an investigation shall be carried out with as much openness as possible (Article 22 (3))

in most cases the findings of the investigation are well-known by the different individuals and organisations involved a long time before the investigation report is published. So in many cases the responsible actor in the railway sector may have already reacted appropriately and in consultation with the NSA and the NIB before the investigation is finished, and supporting evidence of implementation is available.

In such cases it should be considered carefully whether a safety recommendation is necessary or not. Actors should not wait for a recommendation before taking action to improve safety following an accident or incident.

Example

The NIB identifies a problem as part of its investigation and informs the parties involved. Appropriate action is taken and implementation is complete before the final





investigation report is issued. Then a recommendation is not necessary. It is sufficient to mention the action taken in the final report.

Example

NIB Y identifies a problem as part of its investigation and informs NSA Y. NSA Y initiates action but this is not complete before the report is published. In this case the recommendations should be in the report. However, the response of the NSA and work in progress may be noted in the report.

A safety recommendation may not be necessary if

- the circle of potentially affected actors also is known and has been informed e.g. by the manufacturer of a device or by another body about possible safety risks,
- if the content of the recommendation would be solely concerned with compliance with existing rules and standards.

Please note:

Where the causes of an accident or incident involves non-compliance, the reasons should be investigated; recommendations in this area may be necessary.

Please note:

It is not the task of the NIB to evaluate which actors in the railway sector might be affected by the same safety issue that has been identified in relation to the specific actors in an accident. However, all NIBs should always be aware that the facts and findings of a current investigation may have a wider range of impact. So a safety recommendation is necessary if there is indication that another RU, IM, manufacturer, holder or other actor in the railway sector might be affected by the same issues raised through the investigation. In cases where a finding may or may not adhere to other IMs or RUs than investigated an “open” recommendation may be the result, e.g. a recommendation to the NSA to consider if the detected problem do point on a general problem which is relevant



to all/other IMs or RUs. Such a safety recommendation will support the NSA in checking this.

7.5. Guidance to Article 25 (1)

“A safety recommendation issued by an investigating body shall in no case create a presumption of blame or liability for an accident or incident.”

As it is within the spirit of the Directive 2004/49/EC to carry out accident investigations without apportioning blame, the whole final report should avoid phrases which might give an indication concerning blame. In addition, the names of the involved persons shouldn't be included in the final report.

In this spirit it is important not to finish an investigation with a result such as “the xxxx didn't follow the rules” but to investigate why this happened and to also identify the underlying and the root causes.

The phrasing of Article 25 (1) is unambiguous and needs no further explanation. When drafting a safety recommendation it is important to ensure that as neutral as possible formulations are used. Where possible avoid phrases such as "mistake", "lack", etc.

Please note:

It is recognised that there may be some situations in which a specific and prescriptive recommendation is required, and that this may require reference to specific organisational issues or technical failures. In general recommendations will identify a specific safety goal (which should be both measurable and achievable) to be achieved by the actors in the railway sector.

Please note:

A specific safety goal which should be achieved after an accident or incident shouldn't be confused with a common safety target in terms of Article 7.



Example:

A series of derailments of freight wagons were caused by a material defect in wheel rims produced by a specified company during a defined period.

In this case it is unavoidable to specify the necessary measures in detail and to name the manufacturer in the safety recommendation. However, the recommended action should not create a presumption of liability.

7.6. Guidance to Article 25 (2)

“Recommendations shall be addressed to the Safety Authority and, where needed by reason of the character of the recommendation, to other bodies or authorities in the Member State or to other Member States. Member States and their Safety Authorities shall take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration and, where appropriate, acted upon.”

For safety recommendations in terms of Article 25 the following elements shall be clearly expressed:

- **Addressee of the safety recommendation**
- **Organisation or type of organisation to whom a recommendation is directed**
- **Recommended measure(s)**

The following explanations might help to phrase a safety recommendation appropriately.





7.6.1. Addressee of safety recommendations

There are only three addressees of a safety recommendation foreseen in Article 25 (2):

- a. The safety authority
- b. Other bodies or authorities in the Member State
- c. Other Member States

Each safety recommendation must be clearly addressed to one or several of the named institutions.

Please note:

Addressee in terms of Article 25 is the authority or body under whose authority the implementation of a safety recommendation lies.

Please note:

The phrasing of Article 25 (“*where needed by the character of the recommendation*”) shows, that addressees other than the Safety Authority should be an exception.

Please note:

The phrasing of Article 25 “*other bodies or authorities*” is intended to refer to public bodies and doesn’t include organisations which are under the authority of the NSA such as RU’s, IM’s, manufacturer, owner or other actors in the railway sector.

Please note:

Addressing a recommendation to a NSA doesn’t mean that RU’s, IM’s and other parties are released from the responsibility for safety they have according





to Article 9 and Annex III of Directive 2004/49/EC, according to Directive 2001/95/EC (general product safety), another regulation or national legislation.

Please note:

Regarding the obligation to communicate the final report including the recommendations to other parties see section 7.3.

7.6.1.1. Addressing a safety recommendation to the NSA

The NSA should be the most common addressee of a safety recommendation. Only the NSA has

- all the necessary information to check whether the recommendation might affect a wider range of RUs, IMs or other parties in the national railway sector,
- the power to oversee measures within the scope of its authority in the national railway sector,
- the power to enforce measures, if the actors don't react appropriately according to their responsibilities,
- the power to withdraw a safety authorisation or a safety certificate as an ultimate measure,
- the power to promote and, where appropriate, enforce and develop the safety regulatory framework (Article 16 f))

Please note:

To address a safety recommendation to the NSA doesn't change the responsibilities according to Article 9 and Annex III of Directive 2004/49/EC, according to Directive 2001/95/EC or other regulation. In practice the involved RUs, IMs, rolling-stock owners and manufacturers are aware of any deficiency identified during an investigation (Article 22 (3)). As these parties have responsibility for safety according to Directive 2004/49/EC, according to Directive 2001/95/EC or other regulation usually they will make proposals for



solutions to the NSA. It is for the NSA to accept the proposal or to require other or additional measures.

Please note:

To address a safety recommendation to the safety authority doesn't imply that there will be a delay. As Article 22 (3) requires as much openness as possible, all involved parties are informed before the official issue of a safety recommendation and have to take appropriate measures.

Please note:

Regarding the obligation to communicate the final report including the recommendations to other parties see section 7.3.

7.6.1.2. Addressing a safety recommendation to other bodies or authorities in the Member State

Where an addressee would not fall within the scope of the actors that are under the umbrella of the NSA, the NIB may address recommendations directly to other bodies or authorities in the Member States, usually outside of the railway sector, which have the power to enforce the recommended measures. For example the emergency services, the road authorities, the police etc.

In this instance the reporting and feedback on actions taken will be made directly from that body to the NIB and the NIB will report on the response to the recommendation in its annual report.

Example:

After a level-crossing accident the NIB made findings about deficiencies in the road-side equipment. A recommendation might be addressed to the responsible road-authority.





Example:

After a train collision the control centre of the emergency services was informed about the occurrence correctly by the railway undertaking. Due to a technical communication problem the emergency services were first directed to a wrong place. As a result, the rescue of the injured persons was delayed. A recommendation might be addressed to the authority responsible for the emergency service.

Please note:

As other bodies and authorities may not be familiar with Directive 2004/49/EC in such cases it is recommended to advise them of the obligations of the addressee regarding Article 25 (3) when issuing a recommendation to them.

7.6.1.3. Addressing a safety recommendation to other Member States

Where an addressee would fall within the scope of another Member State the NIB may address recommendations directly to another Member State.

As it is not foreseen in the EU-legislation that a NIB has direct access to bodies or authorities in other Member States, a recommendation to another Member State must be disseminated via the government of the Member State. The format of dissemination from the NIB to the government of the Member State takes different formats in different Member States due to different structure and context for NIBs, NSAs and ministries.

In addition there are two options for informing the NSA of another Member State more directly:

1. If the investigation identifies issues in other Member States, or there are vehicles, staff or anything else from another Member State that has a role in the accident, the competent NIB should inform the NIB of the other





Member State about the occurrence and invite it to carry out the investigation in cooperation (Article 22 (1)). In this case the safety recommendation can be drafted by both NIB's together, and both NIB's can send it to the addressee in its own country.

2. If the investigation identifies issues in other Member States, or there are vehicles, staff or anything else from another Member State that has a role in the accident, the competent NIB could address a recommendation to the NSA to inform the NSA(s) of (an)other Member State(s) via NSA-network about the accident, the results of the investigation, the measures taken and the recommendations given by NIB. It is the responsibility of the NSA of the other Member State, to consider the appropriate measures in its own Member State.

Please note:

The procedures above do not replace the formal addressing of another Member State. This guidance will be revised in the light of further developments.

Please note:

A NSA can't initiate concrete measures in another Member State. The NSA in the other Member State should act within its own responsibility. So it is appropriate only for a NSA **to inform** the NSA of another Member State, of recommendations arising from the investigation and the measures it has taken.

7.6.2. Organisation or type of organisation to whom a recommendation is directed

Within the recommendation the NIB would normally indicate the organisation (or organisation type) to whom the recommendation is directed.





Example:

A train derailed as a result of a track defect. The investigation shows that due to the illness of the responsible staff member of the IM xy the data of the last regular inspection has not been evaluated as prescribed. As a consequence the track defect wasn't detected in time.

In such cases, in which the responsible organisation is clear and it is reasonable to assume that other organisations are not affected, the organisation might be indicated in the safety recommendation.

7.6.3. Recommended measures

Most recommendations fall into one of three categories

- a) recommendations aimed at the **causes** of an accident or incident,
- b) recommendations aimed at the **consequences** of an accident or incident
- c) recommendation aimed at **other observations** during an investigation of an accident or incident.

a) Recommendations in terms of the causes of an accident or incident:

The recommended measures must directly been derived from the identified:

- direct and immediate causes of the occurrence including contributory factors relating to actions taken by persons involved or the condition of rolling stock or technical installation,
- underlying causes relating to skills, procedures and maintenance,
- root causes relating to the regulatory framework conditions and application of the safety management system.





Consequently there should be a high degree of probability that after the implementation of the recommended measure a similar accident under similar circumstances is unlikely to reoccur. General requirements and specifications, which do not relate directly to the accident, should be avoided.

Example:

A serious accident occurred at a level-crossing without gates. The investigation shows as a direct cause that the visibility conditions at this level-crossing were not in accordance with the technical rules because a garage was built after the last inspection of the level crossing.

Appropriate recommended measures might be:

- to improve the visibility conditions of this level-crossing by removing the garage
- to fit **this** level-crossing with gates (e.g. when the traffic conditions changed)

but not

- to fit **all** level-crossing with gates.

Example:

A serious accident occurred at a level-crossing without gates. The investigation shows as a root cause that there were no systematic procedures to check the visibility of level-crossings.

Appropriate recommended measures might be:

- to implement appropriate procedures into the Safety Management System,





but not

- to make concrete prescriptions about the procedures.

b) Recommendations in terms of the consequences of an accident or incident:

The recommended measures must directly be derived from the identified consequences of the accident.

Consequently there should be a high degree of probability that after the implementation of the recommended measure the consequence of a similar accident would be lower.

Example:

After a fire in a train three people died because they couldn't open the door of the thirty-year-old passenger coach.

An appropriate recommended measure might be

- to change the mechanism of the door locking system of the involved coach type and/or
- to evaluate the functioning of the mechanism of all coach types

but not

- to change the mechanism of the door locking system of all coach types

Example:

After a fire in a locomotive two fire fighters were hurt by the explosion of a transformer on the locomotive. The investigation showed that the fire





fighters were equipped with the wrong equipment to extinguish fires in connection with electric devices.

An appropriate measure recommended **to the fire service** might be

- to equip the Fire Brigade with appropriate equipment to fight fires on railway facilities in coordination with the railway undertaking.

c) Recommendations in terms of other observations:

Recommendations can also arise as a result of observations made during the investigation. These can relate to safety issues identified as part of the investigation but which are not directly related to the causes or consequences of the accident.

The principles for measures which might be recommended are the same as named under a) and b) especially that the recommended measure must be derived directly from a finding.

7.7. General guidelines on formulation and drafting recommendations

- For clarity, each recommendation should only address one issue.
- If there is more than one recommendation in a report it is useful to number them and group them e.g. according to the addressee (in most cases the NSA) There should be a clear link between one identified cause or contributory factor and a recommendation, unless it is related to an observation not directly linked with the accident or incident.
- A recommendation should be drafted succinctly, avoiding the use of unnecessary or ambiguous words.
- The wording should be such that there is clarity regarding what action/change is required. The addressee must clearly understand which action the NIB recommends.





- The wording of a recommendation should facilitate clear assessment whether the recommended measure is implemented entirely, partly or not at all.
- There should be normally no prioritisation between the issued recommendations. However, if necessary from the viewpoint of the NIB, the urgency of a recommended action may be highlighted.
- Usually a Safety Recommendation should guide the affected parties on what safety objective is to be achieved rather than give prescriptive solutions.

Please note:

There are circumstances however which may warrant a more prescriptive solution. The following example from the ERA-database shows one option for drafting a prescriptive recommendation:

Organisation X shall carry out a detailed review of the design and maintenance of Points type Z to understand the risk of catastrophic failure. Organisation X should implement revisions to the design and maintenance practices as warranted by the review.

The review should include but not be limited to consideration of:

- a) Actual loading on critical components as a result of traffic. Assessments should be validated by field measurements
- b) Possible degraded condition permitted by the maintenance and inspection regimes
- c) The practicality and reliability of the maintenance and inspection regimes taking into account human factors, line access time and equipment and staff competencies

7.8. Good practice for drafting recommendations

This section gives examples of good practice for drafting recommendations.

As it is one objective of Directive 2004/49/EC at least to keep the current safety level of the European rail system, the recurrence of an accident should be avoided at a European level. Thus all NIBs drafting safety recommendations should be aware of the European-wide interest in their recommendations. A common framework of drafting recommendations would assist sharing of information between Member States.



To get an overview about the current practice on drafting safety recommendations the Agency-accident-database was evaluated. This evaluation shows that in the Member States safety recommendations are drafted with a variety of formats and approaches.

The evaluation of the accident database showed that safety recommendations contain at least some of the elements listed below:

a) Headline

Some of the Member States use a headline for each single recommendation, some other structure their recommendations as enumeration. In the cases where headlines are used usually the number of the recommendation (see b)) is at least part of the headline.

b) Number

A numeration system supports the traceability of a recommendation. Currently most Member States use national systems for numeration. A long term aim should be an EU-wide common principal of numeration.

c) Introduction

Some Member States give a short introduction of two sentences maximum to a safety recommendation e.g. by giving the link to the identified cause. Such an introduction may support the understanding of the context of a recommendation.

Please note:

The authors of safety recommendations should be aware that users of the ERA accident database are not often able to read the whole accident report due to insufficient language knowledge or from time restrictions. Usually only parts of a report (summary, recommendations and perhaps the causes) will be translated to English by the Agency. For this reason it is very important that the final reports follow the structure given in Directive 2004/49/EC, Annex V. For details see the document “GUIDANCE ON GOOD REPORTING PRACTICE”





Please note:

A short introduction may facilitate the understanding of a safety recommendation without further information. The discussion with the NIBs showed that there is no common approach to drafting recommendations in a way that they are comprehensible without further information (“stand-alone”-recommendations). From the viewpoint of some NIBs “stand-alone”-recommendations are not desirable, because there is a risk of misunderstanding without reading the whole investigation report.

However, other NIBs prefer the approach of “stand-alone”-recommendations which are comprehensible without further context.

Please note:

A short introduction also may support the author of a recommendation to ensure that the recommendation is directly linked to one identified specific causal factor of the accident.

d) The intention of the recommendation

As the intention of safety recommendations should always meet the intention of Directive 2004/49/EC (e.g. recital 4 last sentence: “*safety should be further improved, when reasonable practicable*”) naming the intention of a recommendation may be useful for understanding when the NSA is not the addressee of a recommendation.

e) The organisation which issues the recommendation

Some NIBs always mention expressly the issuer of a recommendation in each single recommendation. This practice may support the understanding of a safety recommendation in particular of those NIBs who support the “stand-alone”-approach.





f) The addressee of the recommendation

Most of the NIBs always name the addressee expressly in the recommendation. Some other mention the addressee in an introduction (*“The following recommendations are addressed to X:”*) in particular in cases, when more than one recommendation is addressed to one addressee. Other NIBs expressly mention the addressee as a reference to each single recommendation.

Please note:

The practice to name the addressee within the recommendation supports sharing information between EU-NIBs as well as with the public. Experience shows that in ERA-database the information about the addressee is often not included.

Please note:

For reasons of traceability the addressee should be named in the **national language**, even in the English translation. For clarification it may be useful to add the type of organisation (e.g. RU, IM, emergency service), e.g. in brackets.

g) The recommended measure

Usually the recommended measure contains information about

- **The action required by the addressee**

Please note:

Only in such cases when

- the recommendation mention the addressee expressly **and**
- the addressee is not the “end-implementer” of a safety recommendation

it is necessary to mention the action which is required by the addressee himself. In such cases usually the required action is a very basic action, e.g.,





“to **request** the RU xy to take an action” or “to **ask** all IMs using special devices to take a measure.”

The first example below shows such a recommendation.

- **the organisation to whom the recommendation is directed (for the difference between addressed and directed see section 7.6)**

The organisation or body to whom the recommendation is directed is the “end implementer” of a safety recommendation. This organisation or body usually should be stated clearly in each recommendation.

Please note:

It is not the task of the NIB to check whether other parties are concerned by the same problem. However, the NIBs should take into account that other parties may be concerned, and draft their recommendation accordingly, e.g. by using phrases like “all RUs using locomotive type xxxx”.

Please note:

If a specific “end-implementer” has to be named in a safety recommendation for comprehensibility and traceability this specific end-implementer should be named **in the particular national language**, even in the English translation. For clarification it may be useful to add the type of organisation, e.g. in brackets. (e.g. “... recommends to EBA (NSA) to request DB Netz AG (IM) to analyse ...”)

- **The action has to be taken by the organisation to whom a recommendation is directed**

The action which has to be taken by the “end-implementer” is the core part of a recommendation. This action must be stated clearly in a safety recommendation.





Please note:

As prescriptive recommendations should be an exception the required “action” usually should be phrased by setting safety objectives.

- **Time horizon**

Some NIBs set time horizons within their recommendation. As only the addressee is responsible for the process of considering the recommendation, including the time aspect, it may be useful only in special cases to name defined timelines for the implementation of a recommendation by the NIB.

h) Reference to sections in the final report

Some NIBs refer, within the recommendation itself or in an additional remark, to the section of the final investigation report the recommendation is linked to. This practice is useful in all cases when the link to the reason for a recommendation is not stated in the recommendation itself (eg in an introduction – see c)) or identifiable otherwise.

The evaluation of the ERA database shows that no recommendation contains all listed elements. The following two examples may support the understanding of the section above. It has to be highlighted that both examples only were selected as reference for the elements of safety recommendations as mentioned above:

First example from ERA-database:

Safety recommendation	Reference
<p>Safety recommendation JB no. 2008/17T</p> <p>A wagon with a partially blocked brake pipe was not identified during brake testing despite the fact that several persons and service groups were involved. CargoNet AS’s internal procedures do not provide adequate instructions for supporting fault localisation and responses to problems which arise during brake testing. It is recommended that the National Railway Inspectorate order CargoNet AS to assess whether current internal rules on brake testing, including expertise requirements, are adequate and are carried out as prescribed, and to supplement rules and training plans with instructions on fault localisation and responses to fault situations.</p>	a), b)
	c)
	f), g)





Second example from ERA-database:

Safety recommendation	Reference
<p>26 The intention of this recommendation is to assist the emergency services to optimise their response to an accident.</p> <p>Cumbria Police should carry out a review of, and change as appropriate, its management, procedures and training relating to the rapid and accurate location of an accident from information received in emergency calls in the control room so that received information is filtered effectively and without loss of significant data.</p> <p>This recommendation arises from paragraph 656.</p>	<p>b) d)</p> <p>g)</p> <p>h)</p>
<p>Recommendation 26 is addressed to Cumbria Police in accordance with Regulation 12 (1) (b).</p>	<p>f)</p>

Both recommendations are drafted in accordance with the general guidelines (see section 7.7).





8. GUIDANCE ON THE FOLLOW-UP OF SAFETY RECOMMENDATIONS IN TERMS OF ARTICLE 23 (3) AND ARTICLE 21 (7)

8.1. Guidance to Article 23 (3)

“Each year the investigating body shall publish by 30. September at the latest an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously.”

The phrasing of Article 23 (3) is unambiguous. The annual report must contain at least the following elements:

- the investigations carried out in the preceding year,
- the safety recommendations that were issued,
- actions taken in accordance with recommendations issued previously.

Article 23 (3) doesn't prescribe a special form for this content.

The annual report of the investigation body to the Agency is required to contain the safety recommendations issued during the year of reporting and the actions taken in accordance with recommendations issued previously (Article 23 (3)).

The publication of the safety recommendations issued by the NIB and the responses of the NSA respective the other addressees of the recommendation provides all actors in the railway sector a public transparency of "lessons learned" from accidents.

Good practice:

Many NIB's of the Member States use templates for every accident investigated which contains a short description of the accident and for each recommendation a section to record the follow-up. Examples of current templates in use by NIBs are given in Annex 1.



8.2. Guidance to Article 25 (3)

“The safety authority and other authorities or bodies or, when appropriate, other Member States to which recommendations have been addressed, shall report back at least annually to the investigating body on measures that are taken or planned as a consequence of the recommendation.”

Reporting back allows the NIB to consider the effectiveness of the recommendations it has made and to use the feedback to improve the development of future recommendations. Other NIBs will have a benefit also when the feedback reports are publicly available.

The feedback report should be given as soon as possible but within 12 months. If there is no final decision about the implementation of the recommendation or the implementation process hasn't been finished it is necessary to report at least annually on each open recommendation.

As

- the feedback of the NSA's to the recommendations of the NIB is not an obligatory part of the NSA's annual report in terms of Article 18,
- the requirements of the Directive 2004/49/EC for the timescale of the annual reports of the NSAs are different from those for the feedback reports after safety recommendations,
- the addressees of the NSA's annual report and the feedback report are different,
- other addressees than the NSA are not obliged to submit an annual report to the ERA,

it is necessary for NSA's and other addressees of safety recommendations to give feedback in a separate report, other than the NSA annual report.





8.3. Guidance on the follow-up of recommendations in terms of Article 21 (7)

“The investigation bodies shall conduct an active exchange of views and experience for the purpose of developing common investigation methods, drawing up common principles for follow-up of safety recommendations and adaption to the development of technical and scientific progress.”

Following Article 21 (7) there is a obligation for the investigation bodies to draw up common principles for follow-up of safety recommendations.

8.3.1. Content of the report from the addressee to the NIB

The required content of the report of the addressee of a recommendation to the NIB is clearly stated in Article 25 (3): the report must name measures that **are taken, planned, in the process of implementation or not taken** as a consequence of the recommendation.

Please note:

When the addressee reports planned measures a time frame for the implementation should also be reported. If there are not definite timescales the addressee should explain why.

8.3.2. Duration of the obligation on reporting measures

As it is the task of the addressee of a recommendation to report back *“at least annually”* (Article 25 (3)) and the duty of reporting back is linked with **each** recommendation (please note the singular form *“... of the recommendation.”* at the end of Article 25 (3)) this obligation continues until a certain point in time.

There are three most common possibilities:





-
- The addressee and the end-implementer doesn't come to an agreement; in such cases the addressee will require the end-implementer to take measure. This means case a) or b).

Good practice:

In the cases b) and c) it is good practice to involve the NIB in the discussion and to keep the NIB informed.

8.3.3. Decision when a measure is implemented

It is within the discretion of the addressee to decide when a recommended measure (or another measure to deal with the identified risk) is to be considered as "implemented".

8.3.4. Responsibility of the NIB receiving the report

There is no obligation for the NIB

- to check the content of the report of the addressee
- to comment on the report
- to comment on or to agree with the measures the addressee has taken, if he didn't follow the recommendation.

Only the addressee of a recommendation – in coordination with the end-implementer(s) - is in charge of ensuring the implementation of the recommendation, to implement it in a modified form or not to implement it.

The only responsibility of the NIBs is to report actions taken after a recommendation to the Agency within their annual report in terms of article 23 (3).



Please note:

Even if there is no obligation to check or to comment on the report of the addressee the NIB may comment on the kind of the measures planned or taken, the intended time frame or other issues. This includes the possibility to express an deviating opinion about the assessment of the addressee that a recommendation is implemented.

Please note:

One of the reasons why the addressees have to report back is to give the NIB the opportunity to review its practice in drafting recommendations. Generally it should be the objective of a NIB that most of the recommendations are accepted by the addressee. So it is up to the quality management system of the NIB to evaluate the reasons why a recommendation is not implemented. This of course doesn't mean that recommendations should be phrased to the satisfaction of everybody.

Another important reason for the obligation of reporting back is to contribute to a better understanding of the NIB about changes to the environment for future investigations.

Part of the quality management system of the NIB usually is a data tool which facilitates the NIB to check both the recommendations and the reports of the addressee of former similar accidents.

Good practice:

In some Member States when issuing a safety recommendation the NIB asks the addressee of the recommendation for short-term feedback (e.g. within one month) about the addressee's and/or the end implementers decision to implement a recommendation or not, about the time frame of implementation and other information.





Annex 1

Accident In Schlummerland East Station			On 21.12.2006 at 13.38 at km 243,1		
Description of the accident/incident: A 12-year-old schoolboy who was waiting on platform 2 for regional train RT 12221, was killed after he was thrown toward a passing freight FTE 34581 due to the slipstream of the train. FTE 34581 passed the station with a speed of 120 km/h.					
Final investigation report from 16.10.2007 issued by AIB					
Recommendation Nr . 1		Recommendation: The NSA should initiate the Railway Infrastructure Company (RIC) to carry out a risk analysis for freight trains passing stations on platform tracks. The results of the risk analysis should be taken into account to initiate further measures.		Status:	
Date 22.10.2007		Answer of addressee NSA gave an order to RIC to carry out a risk analysis. Results are expected for April 2008		Remarks NIB NSA followed the recommendation but the recommendation can't be closed before the results are available.	
Date 5.5.2008		Answer of addressee The results of the risk analysis showed that the risk is tolerable up to a speed of 100 km/h. NSA has ordered RIC to set a speed limit of 100 km/h for freight trains passing stations on platform tracks. The measure will be realized on July 1 st 2008.		Remarks NIB NIB is satisfied with the measure, recommendation can be closed after the realization of the measure.	
Recommendation Nr. 2		Recommendation: The NSA should consider to order a speed limit for freight trains passing stations on platform tracks until the results of the risk analysis (Rec. Nr. 1) are available.		Status:	
Date: 22.10.2007		Answer of addressee On 18.10.2007 NSA gave an order to RIC to reduce the speed limit for freight trains passing stations on platform tracks on 80 km/h RIC confirmed the implementation of the measure on 19.10.2007		Remarks NIB: NSA followed the recommendation. The recommendation is fully implemented. The recommendation can be closed.	
Date		Answer of addressee		Remarks NIB	

Figure 2: Example for template





Date and time			
Location			
Type of accident			
Train type and number:			
Road vehicle			
		In the train	In the road vehicle
Persons on board	Crew:		
	Passengers:		
Fatally injured:	Crew:		
	Passengers:		
Seriously injured:	Crew:		
	Passengers:		
Slightly injured:	Crew:		
	Passengers:		
Damages of rolling stock:			
Damages on track equipment			
Other damages			
Summary (including short summary of events and cause)			
Final report issued:			
Recommendation Nr	(Pre text = reason to the recommendation)		
	(Recommendation)		
Date	Status	Comments	
Recommendation Nr	(Pre text = reason to the recommendation)		
	(Recommendation)		
Date	Status	Comments	
Recommendation Nr	(Pre text = reason to the recommendation)		
	(Recommendation)		
Date	Status	Comments	

Figure 3: Example for template





Equipment Type	Place	Time	Date	Incident
Three Car Class 175 Diesel Multiple Unit 1C62 (HR)	Oubeck North near Lancaster	13:56	4 November 2005	Derailment due to Landslide
RAIB Report No:	19/2006		Published:	2 November 2006

Summary

Passenger train, 1C62, operated by Trans Pennine Express, travelling on the Preston to Lancaster section of the West Coast Main Line, derailed after running into a landslip in a cutting at Oubeck North. The trailing wheel set on the leading bogie derailed to the right. No other wheels were derailed. The train travelled a further 1430 m before coming to rest in an upright position. There was no collision with structures or other trains and there were no injuries as a result of this derailment. Two coupler lateral bump stops were dislodged from the leading vehicle and came to rest 200 m after the landslip. They caused damage to the under frame, including holing the fuel tank on the leading vehicle. There was extensive damage to the rail fastenings over the length of track that the train ran on in a derailed state. Additionally, eighteen rail fractures were identified.

Recommendations

RECOMMENDATION	2
<p>Network Rail should identify priority cutting slopes prone to earth flow failure due to drainage flows from neighbouring property. These should be prioritised according to their likelihood of failure (eg on the basis of catchment area, slope angle and history of previous failures) and the consequence on the safe operation of trains. For priority cuttings, Network Rail should ensure that it understands all associated drainage arrangements, that they are adequate and that their functionality is maintained. Alternatively they should isolate their land from the effects of such drainage flows (eg by implementing engineered collector drains).</p>	
<p>Comment</p> <p>Network Rail rejected the recommendation on the grounds that all cutting slopes are now being prioritised taking into account the parameters identified. Network Rail states it is not practicable for them to understand all associated drainage arrangements on priority sites, although where adverse impact is clearly identifiable, this is included in the prioritisation. It is not possible for Network Rail to isolate its land from hidden drainage flows, or those created by outside parties, unless they are readily observable. Under case law (Rylands v Fletcher 1868) landowners are responsible for the satisfactory discharge of water run-off from their property.</p> <p>ORR is considering the response.</p>	
Status	Amber = Open





RECOMMENDATION	3	
<p>Network Rail should review their overall earthwork and drainage examination regime to introduce the five actions listed below:</p> <ul style="list-style-type: none"> • Identify whether reliance is placed on examinations additional to those described in NR/SP/CIV/065 in managing the risk associated with cuttings. Network Rail should ensure that any additional examinations are clearly identified, undertaken at the correct periodicities and that formal arrangements exist for reporting findings back to the responsible earthworks and drainage engineer. • Ensure that, as far as practicable, the actions required to identify precursors to cutting failures can be completely and correctly executed. • Ensure that proper allowance is made in any risk assignment to compensate for any lack of accessibility, inadequate information or, the inability to fully complete an examination due to any practical or other constraints. • Ensure a consistent and suitable approach to evaluation of the findings from examinations. • Introduction of a requirement that a percentage of all marginal and serviceable cuttings are subjected to independent spot checking. 		
Comment		
<p>Network Rail has considered and carried out the recommendation.</p> <p>ORR regards the recommendation as closed.</p>		
Status	Green 1 = Closed	

Figure 4: Example for template