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## Document Review – Comment Sheet

*Document commented: Common Safety Methods on the assessment of Safety Level and Safety Performance of railway operators at national and Union level (CSM ASLP)*

<i>Requestor:</i>	Consultation.ERA1219@era.europa.eu
<i>Deadline for submitting comments:</i>	17 March 2021

	<i>Reviewer 1</i>	<i>Reviewer 2</i>	<i>Reviewer 3</i>	<i>Reviewer 4</i>	<i>Reviewer 5</i>
<i>Date:</i>	16 March 2021				
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### *Document History*

<i>Version</i>	<i>Date</i>	<i>Comments</i>
0.1		

0.2		
0.3		

*Conventions:*

<i>Type of Comment</i>		<i>Reply by requestor</i>	
<i>G</i>	General	<i>R</i>	Rejected
<i>M</i>	Mistake	<i>A</i>	Accepted
<i>U</i>	Understanding	<i>D</i>	Discussion necessary
<i>P</i>	Proposal	<i>NWC</i>	Noted without need to change

*Review Comments <if necessary add extra lines in the table>*

<i>N°</i>	<i>Reference (e.g. Art, §)</i>	<i>Type</i>	<i>Reviewer</i>	<i>Reviewer's Comments, Questions, Proposals</i>	<i>Reply</i>	<i>Proposal for the correction or justification for the rejection</i>
1.		G	MWV	Providing the CSM-ASLP in the respective translations, in this case in German, would be helpful and welcome. Individual translations require additional effort in the sector and have an imminent risk of different interpretations of the methods and goals intended by the legislator.	A	The CSM will be translated in all applicable EU language as it is the case for the other CSMs.

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2.		G	MWV	<p>In the comments below the German Association of the Petroleum industry is asking for further clarification and improvement, as some issues are not clearly identifiable in the individual regulations.</p> <p>The appendices should be designed in such a way that they can be understood without further guidelines.</p> <p>Within the CSM ASLP there are many parallels to existing national and international reporting obligations, at least for Germany, and to the content of the annual safety report. Multiple reports should be avoided at all costs.</p> <p>Reporting obligations for events involving dangerous goods are sufficiently covered by TDG legislation and other reporting obligations.</p>	NWC	<p>The CSM is not asking for multiple reporting, on the contrary the future Information Sharing System could be used to report in only one repository the railway legislation reporting requirements, as well as the reporting in accordance with TDG legislation. This repository will be accessible to TDG competent authorities.</p> <p>The CSM is ready to significantly simplify the effort of the operators and authorities related to TDG occurrence reporting.</p> <p>Of course, the use of this opportunity will depend on the decisions taken by TDG competent authorities in the context of the current revision of the chapter 1.8.5.</p>
3.	Art 2, Art 4	G, U	MWV	<p>The scope of the proposed delegated regulation is unclear. The definition in Art 2.1 (“any party who may contribute”) is too general and raises the question whether the reporting obligations in Art 4 apply to</p> <ul style="list-style-type: none"> <li>- “any party who may contribute” (Art 2.1),</li> <li>- “railway operators” (wording of Art 4) or to</li> <li>- “any railway operator holding a valid safety certificate or safety authorisation to operate on the European Union railway system“ (scope as defined in article 2.2)</li> </ul>	A	<p>This has been clarified with the redrafting of article 2 and 4, giving clearly visible requirements to railway operators and other entities.</p>

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4.	Art 4	P	MWV	It should be clarified that the reporting obligations for collection of data used for the assessments in article 4 are only applicable to “railway operators holding a valid safety certificate or safety authorisation to operate on the European Union railway system” as defined in Art 2.2	A	Article 4 was re-drafted and clarified.  Your suggestion is covered by the article 2 and do not need to be repeated in each article.
5.	Art 3 (a), Art 4	G	MWV	Art. 3 (a) defines railway operators as “any infrastructure manager and any railway undertaking”. The proposed delegated regulation lacks a definition of railway infrastructure. Therefore, the scope may include private branch lines or sidings, including private railway infrastructure at industrial production sites.  Applying the reporting obligations of Art 4 to private railway infrastructure at industrial production sites would introduce additional reporting burden for industrial operators. The safety of private railway infrastructure and operations at industrial production sites is governed by supervisory authorities. This includes regular safety checks and reporting obligations on the occurrences of events.	NWC  NWC	The Union railway system is defined by Article 2(1) of Directive (EU) 2016/797, including its Annex I.  This is covered by the Directive (EU) 2016/798 introducing the CSM ASLP as secondary legislation.  The application to this type of infrastructure is depending on the decision taken by each EU MS in accordance with their transposition of the Article 3(2) of this Directive.

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6.	Art 3 (a)	P	MWV	<p>It should be clarified that, for the purposes of the proposed draft delegated regulation, railway infrastructure excludes private railway infrastructure at industrial production sites.</p> <p>This could be accomplished by applying the definition of Council Directive 91/440/EEC, which refers to Annex I.A of Commission Regulation (EEC) No 2598/70: "Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings:"</p>	NWC	See comment 3, it depends on national transposition law.
7.	Art. 5 Paragraph 4	U	MWV	<p>From the draft of the CSM ASLP it is not clear what influence the assessment of the safety level and the safety-related performance of an individual railway company have on the supervision of the ERA or National safety authority (NSA). In particular, it is not clear what effects it has on the safety certification / safety approval if a descending safety level is found in a company</p>	NWC	<p>The CSM ASLP does not change the roles and responsibilities established by the other EU legislation pieces.</p> <p>The CSM ASLP does not provide extra role the Agency can already exercise, notably in terms of technical opinion or recommendation.</p> <p>In the same spirit, the CSM ASLP does not change the role of the NSAs that is to supervise the operators and, when necessary require improvement of operator's weaknesses.</p> <p>It is thus considered that potential consequences of weak performance need to be considered by the NSAs within the supervision regime. The harmonised assessments of SL and SP are one input supporting to the implementation of the supervision activities.</p>

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8.	Art. 7 Paragraph 5	U	MWV	According to article 7 paragraph 5 it is unclear if NSA can still use their own national systems or are they obliged to use the Information Sharing System.	NWC	<p>Article 7(4) obliges the reporting entities to report into the ISS.</p> <p>Article 7(6) allows any entity to continue to use their system. This is applicable to the NSAs.</p> <p>Article 7(8) allows reporting with indirect channel to the ISS, meaning that an operator can continue to report to the NSA and the NSAs will forward the information in the ISS.</p>
9.	Art. 7 Paragraph 5	P	MWV	Clarification that the national system used by the NSA is still the leading system in case of hearings or requests for information.	R	<p>The harmonised data reporting are shared with the ISS.</p> <p>Article 7(11) indicate that any modifications of data and information retained in the Information Sharing System are notified to the connected systems (including NSA systems when applicable) which should be then updated accordingly to ensure full consistency with the Information Sharing System.</p> <p>To ensure EU wide harmonised implementation of the CSM Article 7(8) and 7(9) clearly indicate that despite the datasets harmonised by the CSM should be the same in both the connected systems and in the ISS, in case of doubt the ISS will prevail as it is the harmonised reference system.</p>

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10.	Art. 11	U	MWV	With this article CSM ASLP is interfering with the existing reporting system without it becoming apparent whether and how the existing reporting system should be revised. This will lead to multiple reports during the implementation. Further this contradicts Recital No. 18 declared in the present draft of the CSM ASLP. Therefore we propose changing Art. 11 to avoid multiple reporting.	NWC	We disagree that it will lead to multiple report because the ISS is especially designed to share data allowing only one reporting by the operators. Then the data are automatically forwarded to connected systems.  The discussions at the WP9 and NSA Network concluded that NSAs system should undergo further harmonisation, if needed, to streamline the national rules, simplifying further the reporting of operators in the future, thanks to the ISS
11.	Art. 11	P	MWV	Therefore we propose changing Art. 11 to avoid multiple reporting.	NWC	There is no multiple reporting organised by the CSM, on the contrary the CSM is establishing a simplification (harmonisation), also to be implemented by the concerned authorities to facilitate the reporting efforts of the operators.
12.	Art. 11 Paragraph 3	M	MWV	Article 11 (3) refers to Article 11 (10), which is not included in the present draft.	A	Corrected with the clarification of Article 11.
13.	Annex I and Annex III	G	MWV	The scope and frequency of the reports are described in detail in Annex I and Annex III. The present draft does not specify in which form these reports are to be made to ERA.	NWC	The content is fully specified in the datasets.  The process is defined in Annex VI.  The practical details of the reporting will be describe with the ISS description and guides

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14.	Annex I 3. SR 3.1.2.	U	MWV	Under the data item "Occurrence location" the description of the event location and its geographical coordinates are to be reported. How should the location of the incident be designated, are abbreviations according to Directive 100 of the DB AG, international operating point number, primary code according to TSI TAF / TAP permitted?	A	Clarification added for this data item. Reference to RINF (harmonised description of the infrastructure) is provided.

15.	Art 5.1.2.1	G	MWV	<p>The Data set for reporting the context of the occurrence of an event includes “LOADING/FILLING” and “UNLOADING/EMPTYING” if they involve dangerous goods – even though these are not considered as railway operations.</p> <p>Reporting obligations for events involving dangerous goods are sufficiently covered by TDG legislation as specified in RID 1.8.5 - Notifications of occurrences involving dangerous goods:</p> <p>- “If a serious accident or incident takes place during loading, filling, carriage or unloading of dangerous goods on the territory of an RID Contracting State, the loader, filler, carrier, unloader, consignee or if the case may be the railway infrastructure manager, respectively, shall ascertain that a report conforming to the model prescribed in 1.8.5.4 is made to the competent authority of the RID Contracting State concerned at the latest one month after the occurrence”.</p> <p>Loading/filling and unloading/emptying in general are covered by multiple regulations that apply to industrial activities and include reporting obligations to supervisory authorities.</p> <p>There is no justification to double existing reporting obligations: A requirement to report to ERA in addition to reporting required by TDG legislation and reporting obligations to supervisory authorities would increase burden,</p>	A	<p>Those reporting items have been noted as <u>Optional</u> in the context of this CSM.</p> <p>It is also indicated in a comment that those items may be subject to other legislation requirements.</p> <p>Thus it is both in line with railway legislation and dangerous goods legislation.</p>
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				but not bring any safety benefit to industrial operators.		
16.	Art 5.1.2.1	P	MWV	Delete "LOADING/FILLING" and UNLOADING/EMPTYING", because - these activities are not considered as railway operations, and - reporting obligations for events involving dangerous goods are sufficiently covered by TDG legislation and other reporting obligations.	NWC	We agree that it is covered by the TDG legislation, however the amendment indicated in the previous comment provides a solution to the issues you have commented, taking into account consistently all applicable EU legislation, and giving flexibility to the EU MS who would like also to use the ISS for this purpose.
17.	Art. 7	G, U	MWV	We understand that the RU / IM has to report quarterly data, which is already included in the safety report once a year. This means in addition to the cumulative report in the safety report, four additional reports are required each year, for which the companies must implement appropriate data acquisition during the year. This represents an additional effort, which is not offset by any benefit for the RU / IM.	NWC	With reference to the answer to the comments 8 and 10 we would like to emphasize that the CSM uses also those datasets but in a disaggregated way (occurrence per occurrence) as currently reported to the NSAs.  Therefore it is more a question of sharing the same information for the benefits of harmonised assessments but not really additional information.  The sharing of this information between the NSAs systems (when they exist) will be facilitated by the ISS.
18.	Art. 7	P	MWV	It should be analysed if four additional reports are necessary for the target of the CSM ASLP	NWC	Taking into account previous answer, it means that the ISS will deliver the quarterly estimation without extra work of the operators, reporting each occurrence separately.
19.	Art. 7.2.	U	MWV	Under data Items the term "operation of terminals" is used. This term is not defined in the current draft of the CSM ASLP nor in the safety directive. What is the definition of "terminal"?	NWC	Directive (EU) 2016/797 : 'network' means the lines, stations, <u>terminals</u> , and all kinds of fixed equipment needed to ensure safe and continuous operation of the Union rail system;

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20.	Art. 7.2.	P	MWV	Introducing the definition of "terminals" within the CSM ASLP	NWC	Logically, from the Directive (EU) 2016/797 definition it is every parts of the network not being lines or stations.
21.	Annex II Art. 3.4.	U	MWV	In the description of the data set in section 3, reference is made to "area P", "area D", "area C" and "area A". In the present draft of the CSM ASLP it is not clear what is to be understood by this and what IM / RU should specifically report on. Are these the areas from Appendix V Article 5 No. 1 to 4?	A	Annex II 3.4 will be changed (area P,...) to be consistent with table in article 5 of appendix B.
22.	Annex II Art. 3.4.	P	MWV	Clarification what is meant by "area P", "area D", "area C" and "area A.	A	Annex II 3.4 will be changed (area P,...) to be consistent with table in article 5 of appendix B.
23.	Annex III	G	MWV	The procedure specified in Annex III requires a certain methodological competence with regard to the preparation of results and reports (see specifications for ROS and RRCM). Ensuring this methodological competence in small and medium-sized railway companies is critically seen, especially in the light of the already existing shortage of skilled workers. With regard to other modes of transport, comparable requirements are not known. This represents a disadvantage for the rail transport, in particular compared to the road transport. Further with this requirement there is a considerable risk that only large railway companies will be able to meet these requirements and that the European railway market will develop into a supply oligopoly in the higher-level network.	NWC	This is not a new requirement from the CSM ASLP. This CSM is only establishing an harmonised way to share relevant information.  Every operator holding a certificate or an authorisation is required to investigate occurrence causes in accordance with CSM on SMS.  The ISS will provide support as well as guides developed by the Group of Analysts.



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26.	Annex VI	U	MWV	Annex VI stipulates that inquiries must be made via the system using the appropriate form. It is not clear how the reporting process in the ISS is initiated. According to Annex VI Part D, ERA creates the request. To do this, however, ERA would first have to have knowledge of the event in order to start the request.	NWC	The requests to operators are directly covered by re-drafted article 4, without extra Agency request needed.

*Note: This table could be changed according to the requestor's needs*

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