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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)

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<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>					
<i>Name:</i>					
<i>Organisation:</i>	Traficom (NSA FI)	Traficom (NSA FI)			
<i>Email:</i>					

Document History

<i>Version</i>	<i>Date</i>	<i>Comments</i>
0.1		
0.2		
0.3		

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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		The comments below include also the comments received from the Finnish railway sector.	NWC	Noted
2.		G	NSA FI	The whole process of developing the CSM ASLP in the ERA Working Party stood under high pressure to complete the deliverables in December 2020. The necessary coordination to deliver contributions was limited. This resulted the draft document, especially the Annexes, being difficult to understand and thus not mature.	NWC	Noted

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3.		G,P	NSA FI	<p>We still believe that the draft regulation is very complex and requires considerable resources from all parties bound by the rules. In particular, the uniform application of the rules is going to be challenging especially for smaller actors.</p> <p>When finalising the CSM, the contents of the CSM should be simplified in all possible ways.</p> <p>Since only some parts of the CSM are applicable in the first phase (before ISS) the text of the CSM could be simplified by removing all parts that are not applicable in the first phase.</p> <p>If the text of the CSM cannot be made more understandable we believe that the Agency should devote sufficient resources and time for training and advising of the Member States' actors and railway operators staff.</p>	<p>A</p> <p>R</p> <p>A</p>	<p>The CSM text has been restructured and simplified taking also into account concrete proposals for other parties</p> <p>On a principle level each part of the CSM will be used in one or another manner including during the first phase, by the operators to implement the limited scope or by the GoA to work on the proposals they are required to deliver concerning the reserved appendices.</p> <p>We agree that dissemination and training is necessary and that it should be adequately resourced, to allow the Agency to facilitate the CSM implementation for each entities' staff.</p>

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4.		P	NSA FI	We suggest that the CSM will come into force in more than two phases (before ISS, after ISS). Especially the second step, the full application of the CSM, is a huge step. Each phase as they are described in the TSDs should be implemented successfully on a voluntary basis before moving to the next one.	A	Phasing has been improved and made easily understandable with redrafting Article 11. Each phase is depending of the previous one, leaving the possibility to the GoA to bring improvement proposals, taking into account learning curve. This learning curve will be facilitated in keeping the parts that are not mandatory, as baseline on which every actor can reflect/ work for preparing the next phase. (see previous comment)
5.	Recital 14	U	NSA FI	Where is the corresponding Article or is it just left to the Annexes (Annex VI ?) to cover this recital?	NWC	In practice recitals are for understanding the approach/ philosophy of a legislative text. This recital is supporting article 2 and Annex VI.
6.	Recital 17	U	NSA FI	What is the underlying purpose of this recital? It seems to serve more or less the same purpose as Recital 23.	NWC	Recital 17 is supporting the need of EU coordinated use of collected data, and in turn the GoA setting. Recital 23 is to support the protection of persons regarding the action to report information (non-blaming).

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7.	Article 2	U,P	NSA FI	<p>Paragraph 1 is ambiguous and difficult to understand as it probably tries to refer to a wide range of different natural and legal persons who might be affected by the Regulation. Instead of trying to catch all possible persons to whom the Regulation may be applicable, could it be more useful to define the scope through tasks and actions that are intended to be covered by the Regulation and to state clearly for which actors it is mandatory to report:</p> <p>“This Regulation shall apply to the sharing of data or information concerning the categories of events defined in this Regulation, their occurrence, their occurrence scenarios, their risk control measures and on safety performance management. The reporting is mandatory for safety certificate and safety authorization holders.”</p>	A	<p>We have re-ordered and re-worked the Article 2 to put the emphasis on the main concerned actor first: The operators; and second to clarify that it is a possibility, not an obligation, that any other party may also share information when it is reported in the form structured by the CSM.</p>
8.	Article 4	U		<p>It remains unclear what to report at which frequency. That can be found from the Annexes. Basic requirements should be mentioned in Article 4, to give the railway operators that will have to apply the Regulation a good impression what is expected from them and in which timeline.</p>	NWC	<p>The Agency will support the operators and the authorities indicating clearly what request is applicable at what time and the corresponding deadline.</p> <p>This will be done via e-mail and automatically when the ISS will be available. It will be done manually during the first implementation period.</p> <p>It will support the correct application of the CSM requests.</p>

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9.	Article 8	U	NSA FI	It is not clear which fees will apply and when.	NWC	<p>In theory, when the ISS is established, some operators may wish to use it voluntarily in an extensive way to fulfil specific needs (for examples detailed monitoring, operator's sensors feeding an automated specific monitoring).</p> <p>This article covers the situations where the voluntary use of the ISS by any party – for reporting non-mandatorily requested datasets - would result in increased ISS operation costs or even investment costs (bigger/quicker server needed).</p> <p>As it is impossible to define any voluntary use situation today, the article indicated that fee would be applied to cover voluntary and specific use of the ISS by an entity.</p> <p>This article protects both the entities and the Agency as in such case a specific agreement shall be negotiated.</p> <p>This is to be understood in the remaining context that the Agency is not entitled to make profit, thus fees would be to cover the extra specific cost incurred by the Agency.</p>
10.	Article 9	U	NSA FI	Is there a legal difference between Annexes and Appendices? Are technical support documents (in Appendices) treated somehow differently compared to items in Annexes? In both cases (Art 9 and Art 10) it seems to be for the Agency to recommend revising or supplementing the texts but the process seems in both cases to lead into modifying the Commission delegated Regulation.	NWC	There is no legal difference, both are part of the CSM and both can only be modified by the same process as for the CSM adoption.

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11.	Article 10	U	NSA FI	<p>As regards the two-stage implementation referred to in Paragraph 3 it is somewhat unclear to what extent the Annexes with all their detailed requirements are to be applied in full until ISS is available, even if limited to category A occurrences. Is it already now certain that everything can be done with an immediately available solution provided by the Agency, (not requiring specific IT developments).</p> <p>Any differences between before and after entry into operation of ISS should be clarified in the text.</p>	U NWC	<p>We believe your question is concerning Article 11, not 10.</p> <p>To the exception of non-applicable articles the other articles are applicable, including the part of the CSM requirements called by the applicable articles.</p> <p>Before the entry into operation, the requirements will be implemented with a temporary solution.</p> <p>This solution will be notified and explanation on the practical implementation will be provided.</p>
12.	Article 10	M	NSA FI	In Paragraph 3 there is a reference to a non-existent Paragraph 11.	A	Article 11 is re-drafted to introduce clear and conditional phased implementation.

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

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