

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

OPINION

ERA/OPI/2023-01

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

BELGIUM

regarding

9 adopted rules setting requirements on several operational
aspects

Disclaimer:

The present document is a non-legally binding opinion of the European Union Agency for Railways. It does not represent the view of other EU institutions and bodies, and is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.

1. General Context

In line with Article 8 of Directive (EU) 2016/798 (Railway Safety Directive) 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 nine (9) Belgian adopted national rules establishing requirements on several operational aspects.

Belgium notified these rules in the Single Rules Database (SRD)¹ on 24 August 2022. The Agency assessed them and reached the conclusion (also recorded in the SRD) that the notified legal requirements contained references which are not in line with the EU legal framework².

The Agency shared with Belgium its negative assessment on 24 October 2022.

On 22 of December 2022, Belgium notified the Agency in SRD its rejection of the Agency's negative assessment on all 9 adopted safety rules.

This opinion is addressed to Belgium with a copy to the European Commission (EC) and is uploaded on the SRD and on the Agency's website.

2. Legal Background

Article 26 (3) of the Agency Regulation 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have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and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of its negative assessment, stating the reasons why the national rule or rules in question should be modified or repealed.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 the fact that the adopted national rules of Belgium contradict already harmonised European legislation according to the analysis and the Annex to this opinion.

¹ Rule ID BE-SA-310-1-A, Rule ID BE-SA-312-1-A, Rule ID BE-SA-317-1-A, Rule ID BE-SA-318-1-A, Rule ID BE-SA-319-1-A, Rule ID BE-SA-323-1-A, Rule ID BE-SA-324-1-A, Rule ID BE-SA-326-1-A and Rule ID BE-SA-327-1-A (references in SRD).

² Reference to legal documents included in the table under chapter 3 of this opinion.

The applicable EU legislation which is relevant for this opinion is:

- Directive (EU) 2016/798 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) No1169/2010;
- 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) 2015/1136 of 13 July 2015 amending Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment

3. Analysis

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
BE-SA-310-1-A	<p>The Member State refers to one adopted legal document for the notification of the rule as a Type 3 rule 'Common operating rules of the railway network that are not yet covered by TSI's, including rules relating to the signalling and traffic management system. The rule scope is notified as 'other NSR'</p> <p>The following legal document is notified: <u>'Arrêté royal du 30 septembre 2020 déterminant les principes applicables à la sécurité d'exploitation de l'infrastructure ferroviaire'</u>: reference annex 2, point 3 : The infrastructure manager shall prescribe all operational procedures related to the subjects listed below:</p> <p>3. The delivery of an order to the driver: (a) to drive with all pantographs in the lowered position in the overhead contact line zones to be protected and to select the applicable parameters (voltage) for raising the pantographs downstream of these zones, or (b) to drive with interruption of traction or of any device capable of consuming electrical energy in the overhead contact line zones to be protected, for each operating situation in which the delivery of the command is done by means of an operational instruction and/or by means of elements of the lateral signalling device to be observed by the driver.</p>	<p>It is important to refer to following comment recorded in SRD by the MS on this rule: "This is a non-accepted national rule which we do NOT intend to remove."</p> <p>Although the Agency considers the necessity as understandable there is no legal framework under TSI OPE appendix I to notify it. If the Member State wishes to keep the rule, a change request procedure needs to be applied. The rule cannot be accepted.</p>	<p>MS rejected ERA's negative assessment</p>	<p>Following the Agency's recognition of the need to adopt such a national rule, the Belgian State will introduce a change request to adapt the legal framework of Appendix I of the TSI OPE. In the meantime, the Belgian State would like this national rule to continue to be notified within the SRD.</p>	<p>Following the Agency's assessment, the Agency understands that the rule referenced in annex 2 point 3 of the Royal decree points out that the Infrastructure Manager shall prescribe operational procedures related to the delivery of an order to the driver a) to drive with all pantographs in the lowered position or b) to drive with interruption of traction or of any device capable of consuming electrical energy in the overhead contact line zones to be protected. Although the Agency understands the necessity of this rule, its regulatory content shall be part of an interface between the Railway Undertaking and the Infrastructure manager. Even though Regulation 2019/773 (the TSI OPE) appendix I does not oblige the notification of this rule, this type of instructions contained in the rule shall be managed in the safety management system of the companies since it touches an interface process between both the RU and the IM.</p> <p>As such, the rule cannot be accepted. Should Belgium wishes to keep this national rule, it shall introduce a change request.</p>

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BE-SA-312-1-A	<p>The Member State refers to one adopted legal document for the notification of the rule as a Type 3 rule 'Common operating rules of the railway network that are not yet covered by TSI's, including rules relating to the signalling and traffic management system. The rule scope is notified as 'other NSR'.</p> <p>The following legal document is notified: 'Arrêté royal du 30 septembre 2020 déterminant les principes applicables à la sécurité d'exploitation de l'infrastructure ferroviaire': The following reference is notified Annex 3 point 8: 'In accordance with the processes described in its safety management system and in consultation with the infrastructure users, the infrastructure manager shall specify the equipment and means of communication to be provided to the staff accompanying a train.'</p>	<p>It is important to refer to following comment recorded in SRD by the MS on this rule:" This is a non-accepted national rule which we do NOT intend to repeal."</p> <p>The Agency considers that this rule can be made available for information purposes but concerns an interface between the railway undertaking and the infrastructure manager and should be addressed in the safety management system. The content of the rule is assessed and discussed during several bilateral meetings with the Member State.</p> <p>The rule notified has no legal basis to be imposed as national safety rule. The rule cannot be accepted.</p>	<p>MS rejected ERA's negative assessment</p>	<p>The Member State uploaded a document in SRD: Justification BE NR 312</p> <p>Summary: The national rule in 'AR Principes – Annexe 3 – Point 8' must be kept.</p> <p>This rule aims at ensuring that staff accompanying passenger trains are equipped with the following items:</p> <ul style="list-style-type: none"> - a dedicated key 'IOT' (Installation Opérations Terminées) to activate the system on the platforms provided by Infrabel to passenger RU for the departure of passengers trains, in order to communicate to the train driver that the passenger flow has ended, the doors have been closed and the train is ready for departure, in line with the fundamental operational principle No 3 of the TSI OPE (EU) 2019/773. The 'IOT' system, by means of an indication to the driver, is also part of the legacy signalling system in Belgium, covered by App. I – Section 1 of the TSI OPE (EU) 2019/773; - a dedicated key 'Wilka G' to have access to a fixed telephone in the side construction of a level crossing, in order to launch an emergency call to the signaller in case of an accident or immediate danger (e.g. in case the train driver can no longer intervene due to an accident or an incapacitation); - a cell phone of which the contact number is encoded into an Infrabel database (called 'Kuberna') linked to the train running numbers, in order to launch an emergency call (e.g. in case the train driver can no longer intervene due to an accident or an incapacitation) or to receive an emergency call (e.g. in case the train driver cannot be reached) due to an immediate danger requiring the staff accompanying the passenger train to stop the train by means of an emergency brake intervention. This obligation was added after the Pécrot accident (on March 27, 	<p>The rule sets out the equipment and means of communication to be provided to the staff accompanying the train.</p> <ul style="list-style-type: none"> - The first part of the reply covers the safe departure of passenger trains (a.o. closing of the doors). The TSI OPE paragraph 4.2.2.4.2 Safety of passengers states that the RU shall ensure that passenger transport is undertaken safely at the departure and during the journey. The Member State refers to the fundamental operational principle 3 that is part of the acceptable means of compliance (AMOC)- safety of passengers (published on the ERA website). Given that such requirements cannot be regulated with a national rule, the Belgian rule cannot be accepted. IN addition, the TSI OPE paragraph 4.2.3.3.1 (Checks and tests before departure, including brakes and checks during operation) obliges the RU to define the checks and tests to ensure that any departure is undertaken safely (e.g. doors, load, brakes). Also here an AMOC on checks and tests before departure, including brakes and checks during operation is published on the ERA website. Under this light, this topic cannot be part for a national rule and as such it cannot be accepted. The topic needs to be addressed in the safety management system of the companies. - The second and third parts of the reply cover the management of degraded situations related to the communication system between railway undertakings and infrastructure manager. The TSI OPE paragraph 4.2.3.6 covers the degraded operations. Also provisions of the CSM on SMS requirements (Regulations (EU) 2018/762) annex I point 5.1.3 points out to the principles and modalities for the management of degraded

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				<p>2001, in which two passenger trains collided, as one train travelled on the wrong track for kilometres. The accident killed eight people and injured 12).</p> <p>Regarding the 'IOT' system for the departure of passenger trains, passenger RU in Belgium (SNCB, Eurostar and Thalys) are putting into place their replacing systems under their own SMS in order to put of service the 'IOT' system once the RU replacing systems have become performant (e.g. the 'LINDA' system of SNCB currently already in use undergoing testing in real time railway operations). Awaiting the fulfilment of the conditions to put out of service the legacy 'IOT' system as a part of the legacy signalling system in Belgium, covered by App. I – Section 1 of the TSI OPE (EU) 2019/773, staff accompanying passenger trains that still use this 'IOT' system will require the dedicated key 'IOT' to make use of this legacy system for the safe departure of passenger trains.</p> <p>The dedicated 'Wilka G' key is part of degraded fall-back communications in emergency situations, which given its purpose stemming from an age without the availability of mobile phones, could be reviewed as obsolete and deleted based upon a statistical safety risk analysis.</p> <p>The required cell phone for staff accompanying passengers trains has a safety-critical function for emergency situations following a serious railway accident in Belgium in 2022 (at Pécrot on 27th March 2001), at a time that train drivers and staff accompanying passengers trains were not yet equipped with cell phones. Given its safety-critical purpose and also given the well-established use of cell phones by staff accompanying passengers trains based upon the RU organisation for communications within an RU, we strongly oppose the deletion of this organisational requirement which could benefit railway safety in the Union were it to become a harmonised requirement for passenger trains.</p>	<p>situations and related action to be put in place. This cannot be subject to national rules. The management of these situations is left to the management systems of IMs and Rus as it is strongly based on operational risk management. Additional in accordance with the Railway Safety Directive Art. 4, the responsibility for operational risk management is an obligation and responsibility of the RU and the IM (and consequently not of the Member State to regulate). Additional the safety management system has a greater flexibility compared to a more rigid national rule, e.g. in case of change/ amendment needed for the foreseen measures. As a consequence, the Belgian national rule cannot be accepted.</p>

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<p>Generic BE-SA-317-1-A, BE-SA-318-1-A and BE-SA-319-1-A</p>	<p>Generic content for rule BE-SA-317-1-A, BE-SA-318-1-A and BE-SA-319-1-A : The Member State refers to one adopted legal document for the notification of the rules as a Type 5 rule 'Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI'. The rule scope is notified as 'medical fitness and certification' for rule 317 and as 'certification for rule 318 and 319. The following legal document is notified: 'Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l'entretien' : The following references are notified :</p>	<p>Generic assessment for rule BE-SA-317-1-A, BE-SA-318-1-A and BE-SA-319-1-A: It is important to refer to following comment recorded in SRD by the MS on this rule: "When the infrastructure manager ascertains that safety personnel constitute a risk to the safety of rail traffic, he shall take the necessary measures, including the preventive interruption of the performance of safety-critical tasks. The practical arrangements for the preventive interruption of the performance of safety-critical tasks shall be determined by the King. This is not a suspension, but a precautionary measure that aims to put an end to a risk, avoid another accident and allow the infrastructure user to take the appropriate decision in the light of his analysis of</p>	<p>MS rejected ERA's negative assessment</p>	<p>MS justification for rule BE-SA-317-1-A, BE-SA-318-1-A and BE-SA-319-1-A: This provision should be retained as it gives the infrastructure manager a right that cannot be provided for in the safety management system. Indeed, the purpose of this provision is that the measures apply to persons who are not necessarily staff of the infrastructure manager. The measures adopted are therefore intended to apply also to staff members of other infrastructure users than the infrastructure manager himself. This article is particularly necessary because of subcontracting, as one person may perform safety-critical tasks for several infrastructure users simultaneously.</p>	<p>Generic assessment for rule BE-SA-317-1-A, BE-SA-318-1-A and BE-SA-319-1-A : These rules impose principles for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user. Although the Railway Safety Directive permits in principle type 5 rules, such national rules exceptionally permitted shall not contradict or not be in line with EU law. Under this light, the specific requirements in the Belgian rule underwent an additional compatibility check against Regulations (EU) 2018/762, Directive 2016/798 and (EU) 2019/773. More precisely, Annex I point 4.2 of Regulation (EU) 2018/762 stipulates: 4.2.1 The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible, including at least: a) identification of the competencies (incl. knowledge, skills, non-technical behaviours and attitudes) required for safety-related tasks; b) selection principles (basic education level, psychological and physical fitness required); c) initial training, experience and qualification; d) ongoing training and periodic update of existing competencies; e) periodic assessment of competence and checks of psychological and physical fitness to ensure that qualifications and skills are maintained over time; f) specific training in relevant parts of the safety management system in order to deliver their safety-related tasks.</p>
<p>BE-SA-317-1-A</p>	<p>Art. 5: "When the Infrastructure manager establishes or, in accordance with Article 4 §2, is informed that a member of staff of an infrastructure user is endangering the safety of rail traffic, it shall ask the latter to submit to it the document referred to in Article 13 certifying that he is authorised to perform one or more safety-critical tasks."</p>	<p>the light of his analysis of</p>		<p>Furthermore, the intention here is to take preventive measures urgently, even before the infrastructure user is informed of the situation concerning his member of staff. The measure taken by the infrastructure manager is without prejudice to the final decision taken by the infrastructure user, who sometimes takes time to come and see the situation on site.</p>	

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BE-SA-318-1-A	<p>Art. 6 §1: "Where, in application of Article 3 § 3, second paragraph, or Article 5, the infrastructure manager decides to proceed with a preventive measure referred to in Article 70 § 3 of the Railway Codex, he shall to this end hand over to the relevant member of the safety staff a document confirming this preventive measure. The model of this document is set out in Annex 1. The infrastructure manager shall immediately report this to the infrastructure user(s) concerned and, no later than the next working day, to the safety authority in accordance with Article 70 § 4 of the Railway Codex"</p>	<p>the event. It is also in this context that the terminology in this area has deliberately evolved within the legislation. It now refers to the notion of "preventive measure", whereas previously the term "preventive suspension" was the reference and could be confused with a disciplinary suspension. If the measure has been applied by the RU, the IM does not intervene vis-à-vis the IU employee. This notion of precautionary measure is not present in the European legislation. This is a non-accepted national rule which we do NOT intend to remove."</p>			<p>4.2.3 back to work arrangements shall be in place for staff following accidents/incidents or long absences from work, including providing additional training where such a need is identified. In other words, Annex I point 4.2 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks are managed but only in the Safety Management System (SMS) of the Railway Undertaking (RU) – a contrario not at the Member State level through a national rule. Assuming that risks can be generated within hazardous situations related to the activities carried out by the organization, it should be noted that the main scope of an SMS (Safety Management System) is to manage and control risks with the aim of making rail transport as safest as possible. Considering also provision of the CSM on SMS Requirements (EU Reg. 2018/762) at point 5.1.3 of the annexes, the principles and modalities for the management of degraded situations and related actions to be put in place, cannot be subject to national rules. This is left to the management systems of operators and companies as it is strongly based on operational risk management. In addition, The Technical Specifications for Interoperability for the Operation and Traffic Management (TSI OPE), in section 4.6 of its Annex, also defines that the initial and ongoing assessment of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the operational context need to be fully considered by a railway undertaking to identify and to manage the competency requirements for</p>
BE-SA-319-1-A	<p>Art. 6 §2: "The preventive measure covers all the tasks for which the member of the safety staff is certified, even if these tasks are performed at several infrastructure users."</p>	<p>The content of the rule is assessed and discussed during several bilateral meetings with the Member State. The Agency considers that the content of the rule should be up to the railway undertaking, they are the only ones responsible to assess whether the staff employed is competent</p>			

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		<p>or not. This topic should be ensured by the safety management system. The rule cannot be accepted.</p>			<p>staff carrying out safety-related tasks. Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules. The National safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking's Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system. The final conclusion is that the content of the rule cannot be part of a national rule but shall be managed within the safety management system of the infrastructure user. The rules cannot be accepted.</p>
<p>Generic BE-SA-323-1-A and BE-SA-324-1-A</p>	<p>Generic content for rule BE-SA-323-1-A and BE-SA-324-1-A: The Member State refers to one adopted legal document for the notification of the rules as a Type 5 rule 'Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI' The rule scope is notified as 'vocational training & certification'. The following legal document is notified: 'Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel</p>	<p>Summary of assessment for rule BE-SA-323-1-A and BE-SA-324-1-A: It is important to refer to following comment recorded in SRD by the MS on this rule: " This is a non accepted national rule which we do NOT intend to remove." The content of the rule is assessed and discussed during several bilateral meetings with the Member State. The Agency considers that</p>	<p>MS rejected ERA's negative assessment</p>	<p>MS justification for rule BE-SA-323-1-A and BE-SA-324-1-A: The TSI OPE and the CSM SMS are not contradictory in that, on the one hand, the TSI allows Member States to adopt national rules in relation to professional competences (point 4.6) for safety personnel other than train drivers and, on the other hand, the CSM SMS requires railway undertakings to provide for a competence management system (point 4.2). These two regulations should be read not as contradicting but as complementary in the sense that railway undertakings must provide for a competence management system in accordance with the CSM SMS which is based on the national rules adopted in accordance with the open point provided for in the OPE TSI for this purpose.</p>	<p>Generic assessment for rule BE-SA-323-1-A and BE-SA-324-1-A: The rules impose principles for the management of professional qualifications of safety critical staff employed by the infrastructure user. Although the Railway Safety Directive permits in principle type 5 rules, they shall not contradict or repeat EU law. Under this light, the specific requirements in the Belgian rules underwent an additional compatibility check against Regulations (EU) 2018/762, Directive 2016/798 and (EU) 2019/773. More precisely, Annex I point 4.2 of Regulation (EU) 2018/762 stipulates: 4.2.1 The organisation's competence management system shall ensure that staff having a role that</p>

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	<p>des entités en charge de l'entretien 4. The following references are notified:</p>	<p>this info can be made available as guidance, but it cannot be a national safety rule. It is up to the railway undertaking to ensure this topic in its safety management system, see also Regulation 2018/762</p>		<p>Furthermore, the Agency has accepted article 12 of the Royal Decree "Safety Personnel" which makes point 4.7. of the OPE TSI applicable to other safety personnel. What would be the justification for a different assessment depending on whether the competences are professional or psychological competences since the TSI OPE allows the adoption of NRs in both areas with regard to other security personnel? The European Commission did not invalidate articles 11 and 12 of the Royal Decree in question.</p>	<p>affects safety are competent in the safety-related tasks for which they are responsible, including at least: a) identification of the competencies (incl. knowledge, skills, non-technical behaviours and attitudes) required for safety-related tasks; b) selection principles (basic education level, psychological and physical fitness required); c) initial training, experience and qualification; d) ongoing training and periodic update of existing competencies; e) periodic assessment of competence and checks of psychological and physical fitness to ensure that qualifications and skills are maintained over time; f) specific training in relevant parts of the safety management system in order to deliver their safety-related tasks.</p>
<p>BE-SA-323-1-A</p>	<p>Art. 11 §1: "The member of the safety personnel performing a safety-critical task referred to in Annex 2, A, column A meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6. and Appendix G of the OPE TSI for that task. The member of the safety staff performing a safety-critical task referred to in Annex 2, B and C, column A meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6 of the OPE TSI. The member of the safety staff who performs a safety-critical task other than that referred to in Annex 2, identified by the infrastructure user in accordance with Article 8, meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6 of the OPE TSI."</p>	<p>Annex 1 points 4.2 and 3.1.1 (link between competence management and risk management). The rule cannot be accepted.</p>			<p>4.2.2 The organisation shall provide a training programme, as referred to in points (c), (d) and (f) of paragraph 4.2.1, for staff performing safety-related tasks which ensures that: a) the training programme is delivered according to the identified competency requirements and individual needs of the staff; b) where applicable, the training ensures that staff can operate under all operating conditions (normal, degraded and emergency); (c) the duration of the training and the frequency of the refresher training are appropriate for the training objectives; (d) records are kept for all staff (see 4.5.3. Control of documented information); (e) the training programme is regularly reviewed and audited (see</p>

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BE-SA-324-1-A	<p>Art. 11 §2: “The infrastructure user shall define in its safety management system, in addition to the requirements referred to in paragraph 1, the knowledge associated with the performance of each safety-critical task it has identified in accordance with Article 8 and shall complete or modify it as a function of its risk analysis.”</p>				<p>6.2. Internal auditing) and changes made when necessary (see 5.4. Management of change). In other words Annex I point 4.2 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks is managed but only under the Safety Management System (SMS) of the Railway Undertaking (RU) –not at the Member State level through a national rule.</p> <p>Assuming that risks can be generated within hazardous situations related to the activities carried out by the organization, it should be noted that the main scope of an SMS (Safety Management System) is to manage and control risks with the aim of making rail transport as safest as possible. Therefore, railway undertakings are the only ones according to the applicable EU law to define, as part of their SMS, the roles and responsibilities of those carrying out safety-related tasks, identify the relevant competencies and establish training programmes to develop, to document and to maintain their competencies. In addition, The Technical Specifications for Interoperability for the Operation and Traffic Management (TSI OPE), in section 4.6 of its Annex, also defines that the initial and ongoing assessment of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the operational context need to be fully considered by a railway undertaking to identify and to manage the competency requirements for staff carrying out safety-related tasks. Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with</p>

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					<p>national rules. The National Safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking's Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system. Furthermore, a clarification on the acceptance of Art. 12 was asked (Rule ID BE-SA-325-1-A). This article seems only to address high level principles on health and safety prescriptions. Secondly in the CSM on SMS only point 3.1.1.2 addresses high level 'health and safety conditions'. This topic is in our opinion not yet completely harmonised on a EU level, it often relates with specific national legislation (such as medical requirements, rules on medical institutions, periodicity of visits, doctor's analysis, etc.).</p> <p>After the Technical Opinion of the Agency is completed the EC will be acknowledged and following Art. 26 (4) the Member State shall inform the EC of its position on the opinion including the reasons in the event of disagreement.</p> <p>The final conclusion is that the content of the rules cannot be part of a national rule but shall be managed within the safety management system of the infrastructure user. The rules cannot be accepted.</p>

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<p>Generic BE-SA-326-1A and BE-SA-327-1-A</p>	<p>Generic content for rule BE-SA-326-1-A & BE-SA-327-1-A: The Member State refers to one adopted legal document for the notification of the rules as a Type 5 rule 'Rules concerning requirements in respect of staff executing safety-critical tasks, including selection criteria, medical fitness and vocational training and certification, in so far as they are not yet covered by a TSI' The rule scope is notified as 'certification'.</p> <p>The following legal document is notified: 'Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l'entretien' : The following references are notified:</p>	<p>Summary of assessment for rule BE-SA-326-1-A & BE-SA-327-1-A: It is important to refer to following comment recorded in SRD by the MS on this rule: "This is a non accepted national rule which we do NOT intend to remove." The content of the rule is assessed and discussed during several bilateral meetings with the Member State. The Agency considers that this info can be made available as guidance, but it cannot be a national safety rule. It is up to the railway undertaking to ensure this topic in its safety management system, see also Regulation 2018/762 Annex 1 points 4.2. The rule cannot be accepted.</p>	<p>MS rejected ERA's negative assessment</p>	<p>MS's justification for rule BE-SA-326-1-A: Section 4.2 of the CSM does not provide for rules on the preparation and presentation of a certification document so that a national rule can be adopted.</p> <p>This national rule materializes the national rules provided for in the previous articles of the Royal Decree "Safety Personnel" in the safety management system of the railway undertakings, which enables them to carry out their supervisory task.</p> <p>If the SSICF/DVIS cannot check the document in the field, then the obligation is meaningless. The only possible control would then be at the premises of the railway undertakings.</p> <p>According to the SSICF/DVIS, this national rule is a logical consequence of the open point (point on professional competences in connection with point 4.6 of the TSI OPE),</p>	<p>Generic assessment for rule BE-SA-326-1-A and BE-SA-327-1-A: The rules impose principles for the management of professional qualifications of safety critical staff employed by the infrastructure user, more specific the mandatory certification of these staff. Competence management is part of the safety management system. Although the Railway Safety Directive permits in principle type 5 rules, they shall not contradict or repeat EU law. Under this light, the specific requirements in the Belgian rules underwent an additional compatibility check against Regulations (EU) 2018/762, Directive 2016/798 and (EU) 2019/773. More precisely, Annex I point 4.2 of Regulation (EU) 2018/762 stipulates: 4.2.1 The organisation's competence management system shall ensure that staff having a role that affects safety are competent in the safety-related tasks for which they are responsible, including at least: a) identification of the competencies (incl. knowledge, skills, non-technical behaviours and attitudes) required for safety-related tasks; b) selection principles (basic education level, psychological and physical fitness required); c) initial training, experience and qualification; d) ongoing training and periodic update of existing competencies; e) periodic assessment of competence and checks of psychological and physical fitness to ensure that qualifications and skills are maintained over time; f) specific training in relevant parts of the safety management system in order to deliver their safety-related tasks. 4.2.2 The organisation shall provide a training programme, as referred to in points (c), (d) and (f) of paragraph 4.2.1, for staff performing safety-related</p>
<p>BE-SA-326-1-A</p>	<p>Art. 13 §1: "The infrastructure user shall hand over to the member of the safety personnel a document certifying that he is authorised to perform one or more safety-critical tasks. The member of the safety personnel is able to show this document at any time during the performance of his work."</p>				

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
				<p>because without it, the SSICF/DVIS is not able to carry out its task of operational safety.</p> <p>If the railway undertakings are simply given the task of providing such documents as part of their safety management systems, this is beyond the control of the SSICF/DVIS and Infrabel. The provision of an attestation document is in line with the practice of neighbouring Member States.</p> <p>Furthermore, Europe is not consistent in this respect, as there are clear rules for train drivers, but Member States cannot provide for other safety critical tasks.</p> <p>Finally, it should be noted that the term "document" should be understood in a broad sense, including a digital document. Some railway undertakings therefore provide this information on a tablet or smartphone</p>	<p>tasks which ensures that: a) the training programme is delivered according to the identified competency requirements and individual needs of the staff; b) where applicable, the training ensures that staff can operate under all operating conditions (normal, degraded and emergency); (c) the duration of the training and the frequency of the refresher training are appropriate for the training objectives; (d) records are kept for all staff (see 4.5.3. Control of documented information); (e) the training programme is regularly reviewed and audited (see 6.2. Internal auditing) and changes made when necessary (see 5.4. Management of change). Moreover paragraph 2.3.1 states the following: The responsibilities, accountabilities and authorities of staff having a role that affects safety (including management and other staff involved in safety-related tasks) shall be defined at all levels within the organisation, documented, assigned and communicated to them. In other words Annex I point 4.2 and 2.3.1 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks is managed and documented but only under the Safety Management System (SMS) of the Railway Undertaking (RU) – a contrario not at the Member State level through a national rule. Assuming that risks can be generated within hazardous situations related to the activities carried out by the organization, it should be noted that the main scope of an SMS (Safety Management System) is to manage and control risks with the aim of making rail transport as safest as possible. Therefore, railway undertakings are the only ones according to the applicable EU law to define, as part of their SMS, the roles and responsibilities of those carrying out safety-related tasks, identify the</p>
BE-SA-327-1-A	<p>Art. 13 §2: “The document referred to in paragraph 1 shall contain at least the following information: 1° the surname, first name and date of birth; 2° the safety-critical task or tasks authorised; 3° the expiry date of the authorisation; 4° the work post(s) where this task(s) may be performed if this work post requires special knowledge of the local apparatus with regard to railway safety.”</p>			<p>MS's justification for rule BE-SA-327-1-A:</p> <p>The Agency's analysis does not seem to take into account that the TSI OPE does not apply to all safety critical tasks (see scope of 4.6 and 4.7) and that Appendix I allows national rules in certain cases.</p> <p>Article 2 of the Royal Decree clearly states in which case it applies (no relevant or applicable TSI and requirements that relate to "open points").</p> <p>Chapter 3 of the Royal Decree clearly falls within this scope, it aims only for the personnel concerned:</p> <ul style="list-style-type: none"> - to list a series of tasks which, if identified by the IU, should be considered as safety critical; - to set the minimum level of language proficiency; - to make the provisions of points 4.6 and 4.7 mandatory at Belgian level. <p>The document certifying that he is entitled to perform one or more safety-critical tasks is necessary to allow checks by the SSICF/DVIS and Infrabel. This is in line with the practice of neighbouring Member States.</p>	<p>tasks which ensures that: a) the training programme is delivered according to the identified competency requirements and individual needs of the staff; b) where applicable, the training ensures that staff can operate under all operating conditions (normal, degraded and emergency); (c) the duration of the training and the frequency of the refresher training are appropriate for the training objectives; (d) records are kept for all staff (see 4.5.3. Control of documented information); (e) the training programme is regularly reviewed and audited (see 6.2. Internal auditing) and changes made when necessary (see 5.4. Management of change). Moreover paragraph 2.3.1 states the following: The responsibilities, accountabilities and authorities of staff having a role that affects safety (including management and other staff involved in safety-related tasks) shall be defined at all levels within the organisation, documented, assigned and communicated to them. In other words Annex I point 4.2 and 2.3.1 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks is managed and documented but only under the Safety Management System (SMS) of the Railway Undertaking (RU) – a contrario not at the Member State level through a national rule. Assuming that risks can be generated within hazardous situations related to the activities carried out by the organization, it should be noted that the main scope of an SMS (Safety Management System) is to manage and control risks with the aim of making rail transport as safest as possible. Therefore, railway undertakings are the only ones according to the applicable EU law to define, as part of their SMS, the roles and responsibilities of those carrying out safety-related tasks, identify the</p>

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
				<p>It should be noted that the term "document" should be understood in a broad sense, including a digital document. Some RUs therefore provide this information on a tablet or smartphone.</p>	<p>relevant competencies and establish training programmes to develop, to document and to maintain their competencies. In addition, The Technical Specifications for Interoperability for the Operation and Traffic Management (TSI OPE), in section 4.6 of its Annex, also defines that the initial and ongoing assessment of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the operational context need to be fully considered by a railway undertaking to identify and to manage the competency requirements for staff carrying out safety-related tasks. Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules. The National Safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking's Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system. To conclude the document referred to in the Belgian National rule is up to the infrastructure user to manage within the Safety Management System and cannot be part of a national rule. The NSA can always verify the functioning of this SMS through supervision activities. In this light the information that is necessary to supervise can be requested (before or</p>

Rule ID	Rule content and reference in English	Assessment Result	Member State's (MS) position on ERA's negative assessment	MS's justification	ERA's final opinion in English
					after) the inspections takes place to the infrastructure user. The rules cannot be accepted.

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

4. The opinion

The Agency considers that the provisions in the adopted national safety rules of Belgium are not compliant with relevant EU legal requirements as described in the 3. Analysis.

For this reason, in accordance with Article 26 (3) of Regulation 2016/796, the Agency with this opinion confirms its negative assessment. This opinion is addressed to Belgium, with a copy to the European Commission (DG Move).

Valenciennes, 17/01/2023

Signed

Josef DOPPELBAUER
Executive Director

Annex : Light Impact Assessment

Light Impact Assessment

regarding 9 national rules adopted by Belgium setting requirements on several operational aspects.

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1. Context and problem definition																																							
1.1. Problem and problem drivers																																							
<p>In August 2022 Belgium submitted in the Single Rules Database (SRD) a set of nine adopted safety rules establishing requirements for interface processes between the RUs and the IMs and for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user, which should be instead addressed within the company’s safety management systems (based on operational risk management).</p> <p>In line with Article 8 of Directive (EU) 2016/798 (Railway Safety Directive) and in conjunction with Article 26 of Regulation (EU) 2016/796, this opinion covers the examination by the Agency of the Belgian adopted national rules establishing requirements on several operational aspects. According to Art. 8(1) of Regulation (EU) 2016/796, an impact assessment shall accompany the Agency Opinion.</p>																																							
1.2. Evidence of the problem																																							
<p>Several bilaterals took place with Belgium in order to exchange information, assess and discuss the content of the rules. After those meetings Belgium rejected the Agency’s negative assessment for all involved rules, uploading for each of them a justification. The full set of Belgian draft rules in scope, with concise information on the Agency analysis and on the possible impacts, is provided in Appendix 1.</p>																																							
1.3. Baseline scenario																																							
<p>The baseline scenario (Option 0) is the current situation of the EU and national legal framework in Belgium where the set of national rules under analysis is adopted, establishing requirements for interface processes between the RUs and the IMs and for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user. If no action is taken the problem will persist, negatively affecting interoperability and coherence of the EU legal framework across the Union, as well as generating additional costs due to a lack of harmonised requirements for rail operations across Europe.</p>																																							
1.4. Main assumptions																																							
<p>This LIA focuses on the full set of adopted rules under analysis, providing a high-level overview on the expected impacts for different types of stakeholders. Additional details of the rules with a qualitative assessment of the main costs and benefits are presented in Appendix 1.</p>																																							
1.5. Stakeholders affected																																							
<table border="1"> <tr> <td>Railway undertakings (RU)</td> <td><input checked="" type="checkbox"/></td> <td>Member States (MS)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Infrastructure managers (IM)</td> <td><input checked="" type="checkbox"/></td> <td>Third Countries</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Manufacturers</td> <td><input type="checkbox"/></td> <td>National safety authorities (NSA)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Keepers</td> <td><input type="checkbox"/></td> <td>European Commission (EC)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Entity Managing the Change (EMC)</td> <td><input type="checkbox"/></td> <td>European Union Agency for Railways (ERA)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Notified Bodies (NoBo)</td> <td><input type="checkbox"/></td> <td>Citizens living nearby railway tracks</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Associations</td> <td><input type="checkbox"/></td> <td>Persons with reduced mobility (PRM)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Shippers</td> <td><input type="checkbox"/></td> <td>Passengers</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Training centers</td> <td><input type="checkbox"/></td> <td>Other (Please specify) ...</td> <td><input type="checkbox"/></td> </tr> </table>	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"/>	Citizens living nearby railway tracks	<input type="checkbox"/>	Associations	<input type="checkbox"/>	Persons with reduced mobility (PRM)	<input type="checkbox"/>	Shippers	<input type="checkbox"/>	Passengers	<input type="checkbox"/>	Training centers	<input type="checkbox"/>	Other (Please specify) ...	<input type="checkbox"/>	<p>Beside institutions and authorities, the stakeholders impacted are mostly those active in the Belgian market, notably RUs and IMs, including international entities providing cross-border rail services into Belgium.</p>		
Railway undertakings (RU)	<input checked="" type="checkbox"/>	Member States (MS)	<input checked="" type="checkbox"/>																																				
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1.6. Subsidiarity and proportionality

The problem is to be addressed at EU level since, as per the baseline scenario, the current situation generates a suboptimal situation for rail interoperability. In order to preserve interoperability and ensure a harmonised legal framework for the rail sector, according to Art. 8(6) of Directive (EU) 2016/798 and Art. 26(6) of Regulation (EU) 2016/796, if the Agency becomes aware of any national rule, whether notified or not, which has become redundant or is in conflict with the CSMs or any other Union law in the railway field or creates an unjustified barrier to the single railway market, the procedure provided for in Article 26 of Regulation (EU) 2016/796 (i.e. examination of the existing national rules) shall apply.

2. Objectives

2.1. Specific objectives

The specific objective of this initiative is to provide Belgium with an assessment of the problem defined above with regards to the national rules being assessed by the Agency (see also Appendix 1). These rules impact interoperability across Europe and coherence of the EU legal framework.

3. Options

3.1. List of options

Option 0 is the baseline scenario as described above, representing the current situation of the EU and national legal framework in Belgium, where the set of national rules under analysis is applicable.

Option 1 is the sole alternative option and consists of the situation where, following the negative assessment by the Agency, Belgium revokes/amends the adopted legal documents under analysis.

4. Impacts of the options

4.1. Qualitative analysis

Stakeholder assessment

This section focuses on the full set of Belgian rules being assessed by ERA in this TO. Below, a general qualitative non-exhaustive description/overview of impacts for the main stakeholders is provided for the whole group of assessed rules. Additional details on each national rule and on the related costs and benefits estimated are presented in Appendix 1.

<i>Option 0 (Baseline)</i>			
<i>Category of stakeholder</i>	<i>Impact type</i>	<i>Description</i>	<i>Overall Impact</i>
RU	Positive	N/A	Rather negative
	Negative	The current legal framework is preserved and some requirements on several operational aspects (i.e. specifically dealing with interface processes between the RUs and the IMs and with principles for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user) are set out in national safety rules (and not within the railway undertakings' safety management systems based on their own risk analysis and assessment, as per EU law,	

		and with greater flexibility). The adopted rules have to be followed by all relevant RUs (despite their specificities/risks).	
IM	Positive	N/A	Rather negative
	Negative	The current legal framework is preserved and some requirements on several operational aspects (i.e. specifically dealing with interface processes between the RUs and the IMs and with principles for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user) are set out in national safety rules (and not within the companies' safety management systems based on their own risk analysis and assessment, as per EU law, and with greater flexibility). The adopted rules have to be followed by the relevant companies.	
MS/NSA	Positive	No additional effort to amend the adopted legal documents	Neutral
	Negative	Additional effort to ensure the enforcement of the national rules on top of all other existing oversight requirements pertaining to EU law.	
EC/ERA	Positive	N/A	Rather negative
	Negative	The current legal framework is not preserved, going opposite of the policy goal to reduce national rules and with an impact on interoperability across Europe and coherence of the EU legal framework.	

Option 1

<i>Category of stakeholder</i>	<i>Impact type</i>	<i>Description</i>	<i>Overall Impact</i>
RU	Positive	The legal framework to operate in Belgium is modified; management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user and interface processes between the RUs and the IMs are specified according to each company's Safety Management System, as per EU law, and not regulated by national rules.	Rather positive
	Negative	N/A	
IM	Positive	The legal framework to operate in Belgium is modified; management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user and interface processes between the RUs and the IMs are specified according to each company's Safety Management System, as per EU law, and not regulated by national rules.	Rather positive
	Negative	N/A	
MS/NSA	Positive	The Belgian legal framework becomes more aligned with the EU legislation, with no additional effort to ensure the enforcement of the national rules on top of all other existing oversight requirements pertaining to EU law.	Neutral
	Negative	Additional effort to amend the adopted legal documents	
EC/ERA	Positive	The current legal framework with tendency to reduce national rules is preserved, to the benefit of interoperability across Europe and coherence of the EU legal framework.	Rather positive
	Negative	N/A	

Railway system assessment

The following table provides a quick overview of the impact of the options in key aspects for rail safety and interoperability assessment.

	<i>Option 0 (baseline)</i>	<i>Option 1</i>
<i>Safety</i>	Very high	Very high
<i>Interoperability</i>	Rather low	Rather high
<i>Market access</i>	Neutral	Neutral
<i>Competitiveness</i>	Neutral	Neutral
<i>Effectiveness</i>	Rather low	Rather high

Coherency assessment

The EU legal framework is impacted by the national rules under assessment

	<i>Option 0 (baseline)</i>	<i>Option 1</i>
<i>Coherence</i>	Rather low	Rather high

5. Comparison of options and preferred option

5.1. Comparison of options

Below a quick comparison of the options with impact on the key stakeholders, as noted in chapter 4 above, is provided.

	<i>Option 0 (baseline)</i>				<i>Option 1</i>			
<i>Stakeholder impact</i>	RU	IM	NSA/MS	EC/ERA	RU	IM	NSA./MS	EC/ERA
<i>Effectiveness</i>	Rather low				Rather high			
<i>Coherence</i>	Rather low				Rather high			

Colour legend

Very low/neg.	Rather low/neg.	Neutral	Rather high/pos.	Very high/pos.
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5.2. Preferred option(s)

Option 1 is the preferred option and it is recommended to issue a negative Agency opinion with regards to the adopted national rules by Belgium under assessment. Interoperability and coherence of the EU legal framework across the Union risks to be weakened by national rules dealing with interface processes between the RUs and the IMs and the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user, which should be instead addressed within the company’s safety management systems.

The goal of preserving safety is already regulated by the current EU legal framework and by the companies’ Safety Management Systems. Appropriate enforcement of EU rules in place and effective oversight by competent authorities is to be considered as a way forward within Option 1. The draft national rules under analysis are not in line with harmonised EU requirements, creating unnecessary burden on stakeholders with doubtful benefit.

5.3. Risk assessment

This light impact assessment is not based on primary or secondary data but on desk research, expert opinion and justifications/information submitted by the Belgian authorities. This LIA has focused on the

full set of adopted rules, providing a high-level and qualitative overview on the expected impacts for different types of stakeholders. The risk variables are therefore low risk for all options.

Risk variables	Option 0	Option 1
IA Inputs	Low risk	Low risk
IA Outcomes	Low risk	Low risk

6. Monitoring and evaluation
6.1. Monitoring indicators
N/A
6.2. Future evaluations
N/A

7. Sources and methodology												
7.1. Sources												
<table border="1"> <tbody> <tr> <td>Desk research</td> <td><input checked="" type="checkbox"/></td> <td>Interviews</td> <td><input type="checkbox"/></td> </tr> <tr> <td>ERA database</td> <td><input checked="" type="checkbox"/></td> <td>Meetings</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>External database</td> <td><input type="checkbox"/></td> <td>Survey</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	Desk research	<input checked="" type="checkbox"/>	Interviews	<input type="checkbox"/>	ERA database	<input checked="" type="checkbox"/>	Meetings	<input checked="" type="checkbox"/>	External database	<input type="checkbox"/>	Survey	<input type="checkbox"/>
Desk research	<input checked="" type="checkbox"/>	Interviews	<input type="checkbox"/>									
ERA database	<input checked="" type="checkbox"/>	Meetings	<input checked="" type="checkbox"/>									
External database	<input type="checkbox"/>	Survey	<input type="checkbox"/>									
<p>The main sources for this impact assessment have been the Single Rule Database (SRD) (where Belgium notified its adopted national rules and related justifications), desk research of EU legislation relevant in the fields and meetings with in-house ERA staff with expertise in this area.</p>												

Appendix 1. Summary of assessed Belgian rules and costs/benefits

Rule ID	Description of the rules and final ERA opinions	Main SHs impacted	Costs	Benefits
BE-SA-310-1-A	<p>The rule under analysis, referenced in annex 2 point 3 of the Royal decree <i>'Arrêté royal du 30 septembre 2020 déterminant les principes applicables à la sécurité d'exploitation de l'infrastructure ferroviaire'</i>, points out that the Infrastructure Manager shall prescribe operational procedures related to the delivery of an order to the driver (a) to drive with all pantographs in the lowered position in the overhead contact line zones to be protected and to select the applicable parameters (voltage) for raising the pantographs downstream of these zones, or (b) to drive with interruption of traction or of any device capable of consuming electrical energy in the overhead contact line zones to be protected, for each operating situation in which the delivery of the command is done by means of an operational instruction and/or by means of elements of the lateral signalling device to be observed by the driver.</p> <p>Although the Agency understands the necessity of this rule, it is part of an interface between the Railway Undertaking and the Infrastructure manager. Apart from the fact that the TSI OPE appendix I does not foresee any legal basis to notify this rule, this type of instruction should be managed within the safety management system of the companies since it touches an interface process between both the RU and the IM. If the Member State wishes to keep this national rule, it shall introduce a change request. The rule cannot be accepted.</p>	IMs, RUs	<p>The adopted national rule contradicts existing EU requirements, going opposite to the policy goal of reducing national rules.</p> <p>This type of instruction should be managed within the safety management system of the companies since it touches an interface process between the RU and the IM.</p> <p>Coherence of the EU legal framework across the Union risks to be weakened/affected.</p>	<p>The goal of preserving safety is already regulated by the current EU legal framework and by the Safety Management Systems of RUs and IMs.</p> <p>Although the Agency understands the necessity of this rule, if the Member State wishes to keep this national rule, it shall introduce a change request.</p>
BE-SA-312-1-A	<p>The rule under analysis, referenced in Annex 3 point 8 of the Royal decree <i>'Arrêté royal du 30 septembre 2020 déterminant les principes applicables à la sécurité d'exploitation de l'infrastructure ferroviaire'</i>, points out that In accordance with the processes described in its safety management system and in consultation with the infrastructure users, the Infrastructure Manager shall specify the equipment and means of communication to be provided to the staff accompanying a train.</p> <p>In its reply to the first ERA assessment the MS indicated that the rule aims at ensuring that staff accompanying passenger trains are equipped with the following items:</p> <ul style="list-style-type: none"> - a dedicated key 'IOT' (Installation Opérations Terminées) to activate the system on the platforms provided by Infrabel to passenger RU for the departure of passengers trains, in order to communicate to the train driver that the passenger flow has ended, the doors have been closed and the train is ready for departure 	IMs, RUs	<p>The adopted national rule contradicts existing EU requirements, going opposite of the policy goal of reducing national rules.</p> <p>The Agency considers that the content/information of this rule can be made available for information purposes but concerns an interface between the railway undertaking and the infrastructure manager and should be addressed in the safety management system (also with greater flexibility compared to a</p>	<p>The goal of preserving safety is already regulated by the current EU legal framework and by the Safety Management Systems of RUs and IMs.</p> <p>The TSI OPE paragraph 4.2.2.4.2 (Safety of passengers) states that the RU shall ensure that passenger transport is undertaken safely at the departure and during the journey, while TSI OPE paragraph 4.2.3.3.1 (Checks and tests before departure, including brakes and checks during operation) states that the RU shall define the checks and tests to ensure that any departure is undertaken safely (e.g. doors, load, brakes).</p> <p>An AMOC (acceptable means of compliance) on safety of passenger and an AMOC on checks and</p>

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	<ul style="list-style-type: none"> - a dedicated key ‘Wilka G’ to have access to a fixed telephone in the side construction of a level crossing, in order to launch an emergency call to the signaller in case of an accident or immediate danger - a cell phone of which the contact number is encoded into an Infrabel database linked to the train running numbers, in order to launch an emergency call or to receive an emergency call. <p>The Agency considers that the content/information of this rule can be made available for information purposes but concerns an interface between the railway undertaking and the infrastructure manager and should be addressed in the safety management system. The rule notified has no legal basis to be imposed as national safety rule.</p>		<p>more rigid national rule, e.g. in case of change/amendment needed for the foreseen measures).</p> <p>Coherence of the EU legal framework across the Union risks to be weakened/affected.</p> <p>Unnecessary efforts to ensure the enforcement of additional national rules on top of all other existing oversight requirements pertaining to EU law.</p>	<p>tests before departure, including brakes and checks during operation are published on the ERA website.</p> <p>These topics can not be part of a national rule.</p> <p>The TSI OPE paragraph 4.2.3.6 covers the degraded operations. Also provisions of the CSM on SMS requirements (Regulations (EU) 2018/762) annex I point 5.1.3 points out to the principles and modalities for the management of degraded situations and related action to be put in place. This cannot be subject to national rules but is left to the management systems of IMs and Rus as it is strongly based on operational risk management.</p> <p>Additionally, in accordance with the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules.</p>
<p>BE-SA-317-1-A</p> <p>BE-SA-318-1-A</p> <p>BE-SA-319-1-A</p>	<p>The rules under analysis, referenced in the Royal decree ‘<i>Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l’entretien</i>’, point out that :</p> <ul style="list-style-type: none"> • (BE-SA-317-1-A, i.e. art. 5 of the Royal decree) when the Infrastructure Manager establishes or is informed that a member of staff of an infrastructure user is endangering the safety of rail traffic, it shall ask the latter to submit to it the document certifying that he is authorised to perform one or more safety-critical tasks. • (BE-SA-318-1-A, i.e. art. 6 §1 of the Royal decree) where the Infrastructure Manager decides to proceed with a preventive measure, he shall to this end hand over to the relevant member of the safety staff a document confirming this preventive measure. The model of this document is set out in Annex 1. The infrastructure manager shall immediately report this to the infrastructure user(s) concerned and, no later than the next working day, to the safety authority. • (BE-SA-319-1-A, i.e. art. 6 §2 of the Royal decree) the preventive measure covers all the tasks for which the member of the safety staff is certified, even if these tasks are performed at several infrastructure users. <p>In its reply to the first ERA assessment the MS indicated that the measures adopted are intended to apply to persons who are not necessarily staff of</p>	<p>IMs, RUs</p>	<p>The adopted national rules contradict existing EU requirements, by imposing principles for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user, instead of leaving this management to the SMS of the infrastructure user.</p> <p>This goes opposite to the policy goal of reducing national rules, creating unnecessary burden on stakeholders (e.g. RUs especially in case of mistaken/unnecessary preventive measures by the IM).</p> <p>Coherence of the EU legal framework across the Union risks to be weakened/affected.</p>	<p>The goal of preserving safety is already regulated by the current EU legal framework and by the Safety Management Systems of RUs and IMs.</p> <p>Annex I point 4.2 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks is managed under the Safety Management System of the Railway Undertaking (not at the Member State level through a national rule).</p> <p>Considering also the provision of the CSM on SMS Requirements (EU Reg. 2018/762) at point 5.1.3 of the annexes, the principles and modalities for the management of degraded situations and related actions to be put in place, cannot be subject to national rules. This management is left to the management systems of operators and companies as it is strongly based on operational risk management.</p> <p>In addition, the TSI OPE, in section 4.6 of its Annex, also defines that the initial and ongoing assessment</p>

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	<p>the infrastructure manager (i.e. in case of subcontracting, as one person may perform safety-critical tasks for several infrastructure users simultaneously). Furthermore, the intention is to take preventive measures urgently, even before the infrastructure user is informed of the situation concerning his member of staff.</p> <p>The Agency considers that the content of the rule (imposing principles for the management of degraded situations related to the malfunction of safety critical staff employed by the infrastructure user) cannot be part of a national rule but shall be managed within the safety management system of the infrastructure user.</p> <p>Assuming that risks can be generated within hazardous situations related to the activities carried out by the organization, it should be noted that the main scope of an SMS (Safety Management System) is to manage and control risks with the aim of making rail transport as safest as possible.</p>		<p>Unnecessary efforts to ensure the enforcement of additional national rules on top of all other existing oversight requirements pertaining to EU law.</p>	<p>of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the operational context need to be fully considered by a railway undertaking to identify and to manage the competency requirements for staff carrying out safety-related tasks.</p> <p>Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules. The National safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking's Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system.</p>
<p>BE-SA-323-1-A BE-SA-324-1-A</p>	<p>The rules under analysis, referenced in the Royal decree <i>'Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l'entretien'</i>, point out that :</p> <ul style="list-style-type: none"> (BE-SA-323-1-A, i.e. art. 11 §1 of the Royal decree) the member of the safety personnel performing a safety-critical task referred to in Annex 2, A, column A meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6. and Appendix G of the OPE TSI for that task. The member of the safety staff performing a safety-critical task referred to in Annex 2, B and C, column A meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6 of the OPE TSI. The member of the safety staff who performs a safety-critical task other than that referred to in Annex 2, identified by the infrastructure user in accordance with Article 8, meets the minimum requirements for pertinent professional qualifications referred to in clause 4.6 of the OPE TSI. 	<p>IMs, RUs</p>	<p>The adopted national rules contradict existing EU requirements, by imposing principles for the management of professional qualifications of safety critical staff employed by the infrastructure user, instead of leaving this management to the SMS of the infrastructure user.</p> <p>This goes opposite to the policy goal of reducing national rules, creating unnecessary burden on stakeholders (e.g. RUs operating in more countries would need to comply with specific local</p>	<p>The goal of preserving safety is already regulated by the current EU legal framework and by the Safety Management Systems of RUs and IMs.</p> <p>Annex I point 4.2 of Regulation (EU) 2018/762 requires that the competence requirements for staff carrying out safety-related tasks is managed under the Safety Management System of the Railway Undertaking (not at the Member State level through a national rule).</p> <p>In addition, the TSI OPE, in section 4.6 of its Annex, also defines that the initial and ongoing assessment of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the</p>

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	<ul style="list-style-type: none"> (BE-SA-324-1-A, i.e. art. 11 §2 of the Royal decree) the infrastructure user shall define in its safety management system, in addition to the requirements referred to in paragraph 1, the knowledge associated with the performance of each safety-critical task it has identified in accordance with Article 8 and shall complete or modify it as a function of its risk analysis. <p>The Agency considers that the content of the rules (imposing principles for the management of professional qualifications of safety critical staff employed by the infrastructure user) shall be managed within the safety management system of the infrastructure user. It can be made available as guidance, but it cannot be part of a national rule; it is up to the railway undertaking to ensure this topic in its safety management system.</p>		<p>requirements applicable in each country and not harmonised at EU level).</p> <p>Interoperability and coherence of the EU legal framework across the Union risks to be weakened/affected.</p> <p>Unnecessary efforts to ensure the enforcement of additional national rules on top of all other existing oversight requirements pertaining to EU law.</p>	<p>operational context need to be fully considered by a railway undertaking to identify and to manage the competency requirements for staff carrying out safety-related tasks.</p> <p>Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules. The National safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking’s Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system.</p>
<p>BE-SA-326-1-A BE-SA-327-1-A</p>	<p>The rules under analysis, referenced in the Royal decree ‘<i>Arrêté royal du 9 août 2020 déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l’entretien</i>’, point out that :</p> <ul style="list-style-type: none"> (BE-SA-326-1-A, i.e. art. 13 §1 of the Royal decree) the infrastructure user shall hand over to the member of the safety personnel a document certifying that he is authorised to perform one or more safety-critical tasks. The member of the safety personnel is able to show this document at any time during the performance of his work. (BE-SA-327-1-A, i.e. art. 13 §2 of the Royal decree) the document referred to in paragraph 1 shall contain at least the following information: <ul style="list-style-type: none"> › 1) the surname, first name and date of birth; › 2) the safety-critical task or tasks authorised; › 3) the expiry date of the authorisation; › 4) the work post(s) where this task(s) may be performed if this work post requires special knowledge of the local apparatus with regard to railway safety. 	<p>IMs, RUs</p>	<p>The adopted national rules contradict with existing EU requirements, by imposing principles for the management of professional qualifications of safety critical staff employed by the infrastructure user, more specific the mandatory certification of these staff.</p> <p>Competence management is part of the safety management system; it is up to the railway undertaking to ensure this topic in its safety management system.</p> <p>These rules go opposite to the policy goal of reducing national rules, creating unnecessary</p>	<p>The goal of preserving safety is already regulated by the current EU legal framework and by the Safety Management Systems of RUs and IMs.</p> <p>Annex I point 4.2 and 2.3.1 of Regulation (EU) 2018/762 require that the competence requirements for staff carrying out safety-related tasks is managed and documented under the Safety Management System of the Railway Undertaking (not at the Member State level through a national rule).</p> <p>In addition, the TSI OPE, in section 4.6 of its Annex, also defines that the initial and ongoing assessment of staff and the analysis and update of training needs is part of the requirements in the safety management system in line with Regulation (EU) 2018/762. This is because risk assessment and the operational context need to be fully considered by</p>

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	<p>The rules impose principles for the management of professional qualifications of safety critical staff employed by the infrastructure user, more specific the mandatory certification of these staff. The Agency considers that this info can be made available as guidance, but it cannot be a national safety rule. Competence management is part of the safety management system; railway undertakings are the only ones according to the applicable EU law to define, as part of their SMS, the roles and responsibilities of those carrying out safety-related tasks, identify the relevant competencies and establish training programmes to develop, to document and to maintain their competencies.</p> <p>The NSA can always verify the functioning of this SMS through supervision activities. In this light the information that is necessary to supervise can be requested before the inspections takes place to the infrastructure user.</p>		<p>burden on stakeholders with doubtful benefit (e.g. RUs operating in more countries would need to provide different/specific certificates/documents based on local requirements applicable in each country and not harmonised at EU level).</p> <p>Interoperability and coherence of the EU legal framework across the Union risks to be weakened/affected.</p> <p>Unnecessary efforts to ensure the enforcement of additional national rules on top of all other existing oversight requirements pertaining to EU law.</p>	<p>a railway undertaking to identify and to manage the competency requirements for staff carrying out safety-related tasks.</p> <p>Also, according to the Safety Directive (EU Dir. 2016/798) Art. 4, the responsibility for operational risk management is not an issue to be regulated with national rules. The National safety Authorities of the EU Member States shall apply the relevant EU law on supervision and in particular the Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities, to verify through their supervision activities the ability of the railway undertaking's Safety Management Systems to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system.</p>