

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

OPINION

ERA/OPI/2023-5

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

BELGIUM

regarding

three notified draft national rules

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 25 (3) of Regulation (EU) 2016/796, this opinion covers the examination of three draft national rules of Belgium by the European Union Agency for Railways (the Agency or ERA) leading to a negative assessment.

Belgium notified these draft rules in the Single Rules Database (SRD)¹ on 23 November 2022. The Agency assessed them and reached the conclusion (also recorded in the SRD) that the notified draft rules contain requirements which according to the Agency's opinion are not in line with the EU legal framework².

The Agency shared with Belgium its negative assessment on 21 February 2023.

On 12 April 2023, Belgium notified the Agency via SRD its rejection of the Agency's negative assessment of these three draft national rules.

This opinion is addressed to Belgium with a copy to the European Commission.

It is uploaded on the Single Rules Database (SRD) and on the Agency's website.

2. Legal Background

Article 25 (2) and (3) of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/20041 (Agency Regulation) sets out the following:

"2. Where, after the examination referred to in paragraph 1, the Agency considers that the draft national rules enable the essential requirements for railway interoperability to be fulfilled, the CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operations between Member States, the Agency shall inform the Commission and the Member State concerned of its positive assessment. In that case, the Commission may validate the rules in the IT system referred to in Article 27.

Where the Agency within 2 months of receipt of the draft national rule or within the extended time period agreed in accordance with paragraph 1 does not inform the Commission and the Member State concerned of its assessment, the Member State may proceed with the introduction of the rule without prejudice to Article 26.

3. 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 the reasons why the national rule or rules in

question should not enter into force and/or be applied; and

(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should not enter into force and/or be applied..."

This opinion is issued pursuant to Article 25 (3 a) of the Regulation (EU) 2016/796.

This opinion points out the fact that the draft national rules of Belgium contradict already harmonised EU legislation according to the analysis and the Annex to this opinion.

¹ Rule ID [BE-SA-467-1-D](#), Rule ID [BE-SA-470-1-D](#), Rule ID [BE-SA-471-1-D](#) (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 2007/59/EC of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community
- Commission implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009
- Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety
- Commission delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010
- Commission 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

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-467-1-D	<p>Belgium refers to one draft 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 area for NRs (TSI OPE Appendix I) 'train visibility front end (see 4.2.2.1.2) – existing non TSI conform vehicles.' The following draft document is notified: <u>Projet d'arrêté royal déterminant les principes applicables à la sécurité d'exploitation de l'infrastructure ferroviaire (version consolidée)</u>: reference Article 6 : "Notwithstanding paragraph 8.2 of VVESI - Book 4: Operation and Traffic Management - Book Volume "Trains" - Bundle 4.1 - Regulations for trains, version 9, freight trains equipped with reflective plates shall be permitted on lines or parts of lines of the railway network designated by the Minister. The Minister makes his decision on the basis of a joint opinion of the Federal Public Authority Mobility and Transport and the Rail Safety and Interoperability Agency that takes into account the views of actors in the rail sector. The derogation shall take effect from the date on which the designation by the Minister takes effect and shall end on the date on which the lines or parts of the lines, by decision of the Minister, are no longer designated. From the date on which, in accordance with the second paragraph, goods trains equipped with reflective plates are permitted, vehicles at the head of a train operating on the lines designated by the Minister and where permissive driving is applied</p>	<p>After having reviewed the draft rule, it seems that it relates to the specific case of Belgium expected following TSI OPE point 4.2.2.1.3.2 which is not an area where NR's are permitted (after end of January 2019). The rule also seems to duplicate the TSI OPE clause 4.2.2.1.2 that already has requirements regarding luminous intensity of vehicle headlamps.</p> <p>The rule also repeats what is already covered within the TSI OPE/CSM on SMS on operational requirements that the RU should consider.</p> <p>Point 4.2.2.1.3.2 of TSI OPE lays down the following: "Member States shall in particular endeavour to permit the use of reflective plates on rail freight corridors, with a view to prioritize the current bottlenecks. These sections and details of any conditions pertaining to them shall be recorded in the RINF. Until the information is encoded in RINF, the infrastructure manager shall ensure the information is communicated to railway undertakings by other appropriate means. The infrastructure manager shall identify the sections of lines on which 2 steady red lights are required in the RINF." Taking into account the above stated arguments, it is not up to the Member State to draft additional</p>	<p>MS rejected ERA's negative assessment</p>	<p>The Agency assessed this national provision negatively in that it is redundant with the TSI OPE and, moreover, the validity of the regime contained in this provision is limited in time. According to section 4.2.2.1.3.2 of the TSI OPE, Belgium has a specific case to continue to apply its " notified national rules that require freight trains to be equipped with 2 steady red lights as a condition to run on sections of [its] network, where this is justified by operating practices already in place and/or national rules notified before end of January 2019."</p> <p>Therefore, Belgium is allowed until 1 January 2026 to maintain its national rule in Article 6 of the Royal Decree "Principles" allowing freight trains to run with two steady red lights.</p> <p>However, the same section of the TSI OPE, under the subtitle "Cooperation with neighbouring countries", invites the States benefiting from this specific case to "endeavour to permit the use of reflective plates on rail freight corridors, with a view to prioritise the current bottlenecks."</p> <p>The purpose of paragraph 1 of draft Article 6 submitted for the Agency's opinion is to implement this obligation for the Member States, since it is intended to empower the Minister to determine the lines or parts of lines of the rail network on which freight trains may run with reflective plates before 1</p>	<p>According to Article 25 (2) Regulation (EU) 2016/796, the Agency assesses whether the draft national rules respect the TSIs in force. In force means that the Agency assesses draft national rules against the <u>existing EU legislation and more precisely the TSIs in force as published in the official journal of the EU.</u></p> <p>Rule ID BE-SA-467-1-D is a draft new rule.</p> <p>The TSI OPE point 4.2.2.1.3 (in force today) states following: "Belgium, France, Italy, Portugal, Spain and UK may continue to apply notified national rules that require freight trains to be equipped with 2 steady red lights as a condition to run on sections of their network, where this is justified by operating practices already in place and/or national rules notified before end of January 2019."</p> <p>This exists for already existing notified national rules. To this end, no new national rules are allowed. New national rules should go in the direction of the phasing out defined in the TSI OPE: "The following deadlines shall apply for accepting freight trains equipped with two reflective plates: (a) 1 January 2026 for Belgium and France;"</p> <p>The future TSI OPE as voted and published in the comitology Register states following with regard to the head lamp: point 4.2.2.1.2, paragraph 5 is replaced by the following: 'In order to access lines identified in RINF where</p>

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	<p>as stated in the RINF shall be equipped with headlamps whose luminous intensity complies with point 5 of Part 4. 2.7.1.1 of the Annex to Commission Regulation (EU) No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability relating to the 'rolling stock - locomotives and passenger trains' subsystem of the rail system within the European Union."</p>	<p>rules within this area already covered by EU legislation. Because the rule relates to the specific case for Belgium, this is expected to disappear from the TSI OPE the rule should be repealed accordingly. Under this light, the conclusion is that the draft rule cannot be accepted.</p>		<p>January 2026. This provision is therefore not a redundancy of section 4.2.2.1.3.2. of the TSI OPE but an anticipated implementation of the latter, in line with the above-mentioned subtitle.</p> <p>Paragraph 2 of draft Article 6 concerns the luminous intensity of vehicle headlamps on lines or parts of lines of the rail network on which the Minister has authorised the running of freight trains equipped with reflective plates before 1 January 2026. This does not constitute a redundancy with section 4.2.2.1.2. of the OPE TSI, as this point is only intended to determine that head-end vehicles operating on lines designated by the Minister (and on which freight trains equipped with reflective plates may operate) must necessarily be equipped with headlights whose luminous intensity complies with point 5 of part 4. 2.7.1.1 of the Annex to Regulation (EU) No 1302/2014, which amounts to an anticipated implementation of section 4.2.2.1.2 of the TSI OPE, in line with the above-mentioned subtitle "Cooperation with neighbouring countries".</p>	<p>permissive driving is used, by the dates mentioned below for the harmonisation of the rear-end signal as per Section 4.2.2.1.3.2, the luminous intensity of vehicle headlamps shall be in accordance with the level defined for the full-beam headlamps in point (5) of Section 4.2.7.1.1 of the Annex to Commission Regulation (EU) 1302/2014* (Loc&Pas TSI)."</p> <p>Consequently, the Belgian draft rule has been assessed as redundant not being compliant with the current TSI OPE in force and for this reason cannot be accepted.</p>
<p>BE-SA-470-1-D</p>	<p>The Member State refers to one draft legal document for the notification of the rule 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 & certification'. The following draft legal document is notified: <u>'Projet d'arrêté royal déterminant les principes</u></p>	<p>This draft rule imposes the mandatory certification of safety critical staff accompanying a passenger train. Competence management is part of the safety management system. SMS requirements cannot be duplicated within national legislation. This topic was extensively discussed during bilaterals with the Member State and is also part of the argumentation within Technical Opinion ERA/OPI/2023-1.</p>	<p>MS rejected ERA's negative assessment</p>	<p>During RISC 98, the integration of a new provision in Appendix I of the TSI OPE allowing Member States to adopt national rules concerning the evidence that persons performing safety-critical tasks have the required professional competences, was approved.</p> <p>Draft Article 7/3 of the "Royal Decree on Safety Personnel" also serves the same purpose in that it requires infrastructure users to issue to their staff members performing</p>	<p>According to Article 25 (2) Regulation (EU) 2016/796, the Agency assesses whether the draft national rules respect the TSIs in force. In force means that the Agency assesses draft national rules against the existing EU legislation and more precisely the TSIs in force as published in the official journal of the EU. As a result, the Agency's mandate is the assessment of the draft national rules against the existing EU legal framework.</p>

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	<p><u>applicables à la sécurité d'exploitation de l'infrastructure ferroviaire (version consolidée):</u> "Art. 7/3. § 1. The infrastructure user shall hand over to the member of the safety staff performing the safety-critical task related to accompanying a passenger train a document certifying that he is authorised to do so. The member of the safety personnel shall be able to show this document at any time during the performance of his work. § 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 which is authorised; 3° the expiry date of the authorisation; 4° the equipment and lines for which he is authorised to perform the safety-critical task relating to accompanying a passenger train."</p>	<p>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. This is particularly important for those RUs that operate across borders and have developed a risk-based competence management system that can be consistently applied wherever they operate and not have to apply different Member State requirements. The draft rule cannot be accepted.</p>		<p>safety-critical tasks a document certifying that they are qualified to perform these tasks. Consequently, given that Appendix I of the TSI OPE will shortly include the topic "Evidence of professional competences" as an open point and that the content of this Article 7/3 is based on this concept, Belgium proposes to retain this draft national rule and to continue the ERA assessment procedure with regard to this future TSI OPE.</p>	<p>Having said this even with the future TSI OPE as voted and published in the comitology Register the arguments below is still relevant. The TSI OPE needs to be read and interpreted together with other existing EU legislation and not in isolation.</p> <p>The Belgian draft rule imposes obligations for the management of professional qualifications of safety critical staff employed by the infrastructure users, setting more precisely the requirement for mandatory documented certification of staff accompanying a passenger train.</p> <p>Article 25 (2) of Regulation 2016/796 sets out that draft national rules do not result in arbitrary discrimination or a disguised restriction on rail transport operations between Member States.</p> <p>Besides, 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).</p> <p>Moreover, Regulation (EU) 2018/762, annex I point 4.2 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.</p>

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					<p>Point 4.2.2 d) covers that records for all staff are kept.</p> <p>The future TSI OPE as voted in its appendix I lists an open point on 'professional competences' and refers to point 4.2.1.1 and 4.6 of the TSI OPE.</p> <p>Point 4.2.1.1 states that the RU (and IM) shall define and describe in their SMS procedures and requirements to train, assess and monitor the competence of their staff executing safety-critical tasks. Any qualification acquired based on the procedures and rules defined in the SMS of the RU (or IM) shall be recorded in the concerned SMS. The documents providing evidence of training, experience and professional competences shall be delivered to the concerned staff executing safety-critical tasks upon request. The draft national rule imposes that a staffmember accompanying a passenger train shall have a document at any time during the performance of his work, stating he is authorised to do the tasks he performs. A document is no evidence of professional competences, the only evidence can be found within the safety management system of the RU.</p> <p>To conclude, the record/document referred to in the Belgian draft national rule is up to the operator to manage within the Safety Management System and cannot be part of a national rule.</p> <p>By regulation the evidence with a national rule, the result could be an arbitrary discrimination or a disguised restriction on rail</p>

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					<p>transport operations between Member States. This is because operators from other Member States who do not fulfil the requirements of Belgian rule on evidence (even though it is the RU who and not the Member State competent to do this) may have less favorable conditions to operate on the Belgian network.</p> <p>For these reasons, the draft rule is negatively assessed. Had this rule been positively assessed it would lower the level of interoperability because of the potential for staff to hold a number of certificates with different requirements when cross border trains operate in Belgium.</p> <p>As a result it would lead to indirect discrimination for staff accompanying a train working for a foreign RU entering Belgium and at the end unjustified national requirements in the Single European Railway Area.</p>
<p>BE-SA-471-1-D</p>	<p>The Member State refers to one draft legal document for the notification of the rule 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 draft legal document is notified : <u>'Projet d'arrêté royal déterminant les exigences applicables au personnel de sécurité et au personnel des entités en charge de l'entretien (version consolidée)'</u></p> <p>Art 10 contains following: The infrastructure user evaluates language skills as part of the</p>	<p>This draft rule imposes the mandatory certification of languages of safety critical staff. Within the article 10 there is also a reference to Article 13 which imposes the mandatory certification (including what should be mentioned on this certificate). This topic was extensively discussed during bilaterals with the Member State and is also part of the argumentation within Technical Opinion ERA/OPI/2023-1.</p> <p>The certification of safety critical staff is part of the competence management and covered within the safety management system of the company.</p>	<p>MS rejected ERA's negative assessment</p>	<p>The negative assessment made by the Agency stems from the fact that this amendment to Article 10 of the "Royal Decree on Safety Personnel" refers to the certification document referred to in Article 13 of the same Royal Decree.</p> <p>Since the new TSI OPE voted in RISC 98 now provides in its Appendix I for the possibility for Member States to adopt national rules concerning the establishment of evidence that persons performing safety-critical tasks have the required professional competences, Belgium considers that this provision is not in</p>	<p>According to Article 25 (2) Regulation (EU) 2016/796, the Agency assesses whether the draft national rules respect the TSIs in force. In force means that the Agency assesses draft national rules against the existing EU legislation and more precisely the TSIs in force as published in the official journal of the EU. As a result, the Agency's mandate is the assessment of the draft national rules against the existing EU legal framework. Having said this even with the new TSI OPE as voted and published in the comitology Register the arguments below still stands.</p> <p>Read also the Agency's argumentation on the previous point.</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>assessment process leading to the issuance of the certification document referred to in Article 13 and bases its evaluation on three language proficiency levels :</p> <p>1° sufficient language knowledge in the French language;</p> <p>2° sufficient language knowledge in the Dutch language;</p> <p>3° proficiency in French and Dutch.</p>	<p>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 draft rule cannot be accepted.</p>		<p>contradiction with (future) European law and can be retained.</p> <p>Belgium proposes that the ERA assessment procedure for this draft national rule should henceforth be carried out in the light of this future TSI OPE.</p>	<p>The certification of safety critical staff is part of the competence management and covered within the safety management system of the company. It is the IM that determines the working language under Directive 2012/34/EU and confirmed in EU Regulation 2019/773 paragraph 4.2.1.5 and integrate this in the network statement(also applicable for foreign RU's). The RU then has the responsibility to take this into account in their safety management system. The draft rule cannot be accepted. See also Regulation 2018/762 Annex 1 points 4.2. The draft rule cannot be positively assessed and accepted for this reason.</p>

4. The opinion

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

For this reason, in accordance with Article 25 (3) of Regulation (EU) 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, 03/05/2023

SIGNED

Josef DOPPELBAUER
Executive Director

Annex 1

Impact Note

Three draft national rules by Belgium setting requirements for rear-end reflective plates for freight trains and certification of staff executing safety-critical tasks

Issued as per Art. 8(1) of Regulation (EU) 2016/796 and the Impact Assessment procedure adopted by the ERA Management Board (Decision n.290, 16/03/2022)

1. Context and assessment of impacts
1.1. The national rules in object
<p>As part of the assessment of the national safety rules under Article 8 of Directive (EU) 2016/798 in conjunction with article 25 of Regulation (EU) 2016/796, the Agency received from Belgium the notification of three new draft national rules. The relevant national legal act sets out requirements on:</p> <ul style="list-style-type: none"> a) Use of reflective plates for freight trains, specific case of Belgium under point 4.2.2.1.3.2 of Commission Implementing Regulation (EU) 2019/773 (TSI OPE). (SRD ref. BE-SA-467-1-D) b) Evidence of professional competence of staff executing safety-critical tasks with regards to passenger trains. (SRD ref. BE-SA-470-1-D) c) Language requirements for staff executing safety-critical tasks. (SRD ref. BE-SA-471-1-D) <p>All these draft national rules, beside the legal assessment, may have an impact on interoperability.</p>
1.2. Analysis performed
<p>With regards to the rule indicated as a) in section 1.1 above:</p> <p>Belgium is one of the few MS that has a temporary specific case until 2026 in the TSI OPE, restricting access to its network to freight trains equipped only with reflective plates, instead of rear end lights. In its first assessment, the Agency provided evidence that the proposed national rule is within the sphere where no new rules are allowed since 2019 and that the rule is already covered within the TSI OPE/CSM on Safety Management System (SMS) on operational requirements that the railway undertakings (RUs) and infrastructure managers (IMs) should consider. Moreover, the Agency reminded Belgium that it is the IM which is encoding data in RINF with regards to the sections of lines on which 2 steady red lights are required. Therefore, it is the IM that has the knowledge and the responsibility within its SMS and it should not be a government Minister deciding on access conditions to sections of lines.</p> <p>With regards to the rule indicated as b) in section 1.1 above:</p> <p>In its first assessment, the Agency provided substantial evidence that the draft national rule in subject is in contradiction with existing EU legal acts which state that the competence requirements, training, qualifications for staff carrying out safety-related tasks should be managed under the Safety Management System (SMS) of each individual company. Instead of checking legal compliance of certificates, not harmonised at EU level, of individual staff members performing safety critical tasks, the NSAs shall use all available legal instruments, such as 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 Safety Management Systems of each company to function properly and address all relevant risks, including those arising from the human and organisational factors and impacting the competence management system. In its analysis, the Agency believes that responsibilities for risk management are well covered by EU legal acts and that it should be the SMS of the companies being assessed rather than the paper certificates of the individuals.</p> <p>With regards to the rule indicated as c) in section 1.1 above:</p> <p>In its first assessment, the Agency provided substantial evidence that the draft national rule in subject is in contradiction with existing EU legal acts which state that the competence requirements, training, qualifications for staff carrying out safety-related tasks should be managed under the Safety Management</p>

System (SMS) of each individual company. As noted in the Analysis, the use of languages for communication between staff members is already covered by the TSI OPE and the other EU legal provisions that it is the operating language specified by the IM which applies. As noted in the [network statement](#) of Infrabel, the operating languages in Belgium for drivers are French and/or Dutch depending on which region the driver is operating in. Moreover, Infrabel allows for specific derogations for cross-border RUs with limited operations in Belgium and retains the right to perform checks and in case forbid access to the specific drivers failing to comply with the applicable language regime. Therefore, the IM designs within its SMS the best approach to ensure safety of driving operations and it is not justified the adoption of a national rule on a separate language certification requirement for other staff performing safety-critical operations.

1.3. Assessment of impacts

With regards to the rule indicated as a) in section 1.1 above:

The Agency performed in 2021 a Light Impact Assessment of TSI OPE's Article 4.2.2.1.3.2: *Deadlines for accepting freight trains equipped with two reflective plates* supportive of Belgium's specific case. The impacts were therefore already adequately assessed. It is confirmed that, although the new draft rule aims to allow trains equipped only with reflective plates ahead of 2026 on some sections identified by the Minister's act thus increasing interoperability in Belgium, the new draft rule cannot be accepted. Beside the legal arguments available in this Opinion, the Agency believes that it should be up to the IM to take decisions allowing, ahead of 2026, access to parts of its network to trains equipped only with reflective plates. In fact, the IM has currently the obligation to outline, based on its SMS and knowledge of the network geography, safety and traffic management systems available, access conditions on its network within RINF. This provides full clarity to all domestic and international RUs, as access conditions are transparently recorded in a single register. Should the draft national rule be accepted, interoperability of RUs, especially cross-border, would be negatively impacted as information on network access would be scattered in a government act rather than be available in RINF.

With regards to the rule indicated as b) in section 1.1 above:

The draft national rule in subject by Belgium falls within the scope of the Light Impact Assessment 'Revision of the Common Safety Methods on Conformity Assessment and the Common Safety Methods on Supervision' performed by the Agency in February 2017. The impacts were therefore already adequately assessed and it is confirmed that the rule would compromise uniformity of application of well-established EU requirements on SMS, increase the risk of low transparency of the national rules framework that stakeholders have to comply within Belgium as well as interoperability of RUs. In particular, the draft rule in subject imposes that individuals performing safety-critical tasks accompanying passenger trains carry on them at all times a certificate. This requirement would be applicable to all companies operating on the Belgian rail network regardless of the scope and type of their operations. This has a negative impact on interoperability given that the rule is Belgium-specific. For example, a RU holding a valid SSC and with a perfectly compliant SMS which wishes to extend its area of operations into Belgium would need to provide its staff with paper certificates, not harmonised at EU level, summarising the staff certified tasks, as well as equipment and lines he/she is allowed to operate. These certificates would become de facto a license for accompanying staff of passenger trains into Belgium which is not foreseen within the current EU legal framework. The draft rule would generate important compliance costs on RUs. It is concluded that the draft national rule in subject would generate negative impacts on interoperability, undue compliance costs for RUs, costs for the NSA checking staff certificates as well as the risk to discourage RUs entering the Belgian market.

With regards to the rule indicated as c) in section 1.1 above:

The draft national rule in subject by Belgium falls within the scope of the Light Impact Assessment ‘Revision of the Common Safety Methods on Conformity Assessment and the Common Safety Methods on Supervision’ performed by the Agency in February 2017. The impacts were therefore already adequately assessed and it is confirmed that the rule would compromise uniformity of application of well-established EU requirements on SMS, increase the risk of low transparency of the national rules framework that stakeholders have to comply within Belgium as well as interoperability of RUs. In particular, the draft rule in subject imposes an unclear language certification of individuals performing safety-critical tasks. This requirement would be applicable to all companies operating on the Belgian rail network regardless of the scope and type of their operations. This has a negative impact on interoperability given that the rule is Belgium-specific. Such certification of languages is not foreseen within the current EU legal framework. The draft rule would generate important compliance costs on RUs. It is concluded that the draft national rule in subject would generate negative impacts on interoperability, undue compliance costs for RUs, costs for the NSA checking staff certificates as well as the risk to discourage RUs entering the Belgian market.

1.4. Stakeholders affected

Railway undertakings (RU)	<input checked="" type="checkbox"/>	Member States (MS)	<input 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 type="checkbox"/>
Entity Managing the Change (EMC)	<input type="checkbox"/>	European Union Agency for Railways (ERA)	<input type="checkbox"/>
Notified Bodies (NoBo)	<input type="checkbox"/>	Shippers	<input type="checkbox"/>
Associations	<input type="checkbox"/>	Other (Please specify) ...	<input type="checkbox"/>

2. Preferred option

2.1. Recommendation

No alternative options are to be assessed and it is confirmed a negative assessment of the three draft national rules in subject by Belgium.