

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

OPINION

ERA/OPI/2024-1

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

Denmark

regarding

One (1) adopted rule setting requirements on infrastructure
manager on technical safety 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 26 (3) of Regulation (EU) 2016/796, this opinion covers the examination of one adopted national rule of Denmark by the European Union Agency for Railways (the Agency or ERA) leading to a negative assessment.

Denmark notified the adopted rule (DK-SA-914-1-A) in the Single Rules Database (SRD) on 25 October 2023. The Agency assessed the rule and reached the conclusion (also recorded in the SRD) that the notified adopted rule contained requirements which according to the Agency's opinion do not meet the scope of notification of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety.

The Agency shared its negative assessment with Denmark on 21 December 2023. Denmark rejected the Agency assessment on 20 February 2024.

This opinion is addressed to Denmark 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 26 (3) of the Regulation (EU) 2016/796 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have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and*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 rule of Denmark does not meet the scope of the assessment according to the analysis in this opinion.

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

- *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 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

The rule sets out the following requirements on the infrastructure managers' technical safety rules. The rule was adopted on 1 June 2022 and came into force on 1 July 2022.

The rule contains, among other things:

- Requirements for regulatory assessors' assessment of new or changed technical safety rules
- The DK NSA's approval of the regulatory assessor, terms of reference and technical safety rules
- Application for self-management of technical safety rules
- Functional requirements for technical safety rules
- Deviation from technical safety rules

Denmark has informed the Agency that the Executive Order containing the national rule was issued with a termination clause, which means that the Order will automatically be revoked 15 June 2024. From that date all infrastructure managers must handle their technical safety rules by themselves without approval by the DK NSA.

As the rule had been adopted, the Commission advised Denmark to renotify the rule so that it was publicly available in the SRD.

The adopted rule notified on 25 October 2023 has predominately a similar content as the original draft rule no DK-SA-205-1-D, notified on 15 December 2021 and negatively assessed by the Agency on 3 February 2022. This assessment was not accepted by the Member State and a revised rule was adopted.

In substance, the renotified adopted rule (DK-SA-914-1-A) does not change the requirements assessed by the Agency in the original opinion on the draft rule (DK-SA-205-1-D). The Agency's view was that the rule was not fundamentally in line with EU legislation. It puts additional obligations on the infrastructure manager that are already covered by EU legislation as set out in paragraph 2 of this opinion. None of the amendments introduced since the submission of the draft rule and its subsequent adoption have brought the adopted rule in line with EU legislation. Based on the initial assessment of the draft rule (DK-SA-205-1-D), the Agency issued a technical opinion on 20 May 2022 number ERA-OPI-2022-2 available here: <https://www.era.europa.eu/content/opinion-opi2022-2-european-union-agency-railways-denmark-regarding-draft-national-rule>.

The Agency maintains that the content of its technical opinion on the draft rule notified continues to remain valid and relevant for the adopted rule (DK-SA-914-1-A). This includes the impact analysis which confirmed the Agency's assessment.

4. The opinion

The Agency considers that the provisions in the adopted national safety rule of Denmark (DK-SA-914-1-A) do not meet the scope of notification of a national rule in the field of safety, according to Article 8 of Directive (EU) 2016/798 on railway safety.

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

Valenciennes, /03/2024

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