

Directive (EU) 2016/798 of the European Parliament and of the Council
of 11 May 2016 on railway safety (recast) (Text with EEA relevance)

CHAPTER IV

NATIONAL SAFETY AUTHORITIES

Article 16

Tasks

1 Each Member State shall establish a national safety authority. Member States shall ensure that the national safety authority has the necessary internal and external organisational capacity in terms of human and material resources. That authority shall be independent in its organisation, legal structure and decision-making from any railway undertaking, infrastructure manager, applicant or contracting entity and from any entity awarding public service contracts. Provided that such independence is guaranteed, that authority may be a department within the national ministry responsible for transport matters.

- 2 The national safety authority shall be entrusted with at least the following tasks:
- a authorising the placing in service of the trackside control-command and signalling, energy and infrastructure subsystems constituting the Union rail system in accordance with Article 18(2) of Directive (EU) 2016/797;
 - b issuing, renewing, amending and revoking vehicle authorisations for placing on the market in accordance with Article 21(8) of Directive (EU) 2016/797;
 - c supporting the Agency in the issuing, renewal, amendment and revocation of vehicle authorisations for placing on the market in accordance with Article 21(5) of Directive (EU) 2016/797 and type authorisations of vehicle in accordance with Article 24 of Directive (EU) 2016/797;
 - d supervising, in its territory, that interoperability constituents are in compliance with the essential requirements as required by Article 8 of Directive (EU) 2016/797;
 - e ensuring that a vehicle number has been assigned in accordance with Article 46 of Directive (EU) 2016/797, without prejudice to Article 47(4) of that Directive;
 - f supporting the Agency in the issuing, renewal, amendment and revocation of single safety certificates granted in accordance with Article 10(5);
 - g issuing, renewing, amending and revoking single safety certificates granted in accordance with Article 10(8);
 - h issuing, renewing, amending and revoking safety authorisations granted in accordance with Article 12;
 - i monitoring, promoting, and, where appropriate, enforcing and updating the safety regulatory framework including the system of national rules;
 - j supervising railway undertakings and infrastructure managers in accordance with Article 17;
 - k where relevant, and in accordance with national law, issuing, renewing, amending and revoking train driving licences in accordance with Directive 2007/59/EC;
 - l where relevant, and in accordance with national law, issuing, renewing, amending and revoking certificates granted to entities in charge of maintenance.

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3 The tasks referred to in paragraph 2 may not be transferred or subcontracted to any infrastructure manager, railway undertaking or contracting entity.

[^{F14} Where a single piece of engineering structure is situated partly in a third country and partly in a Member State, that Member State may designate, in addition to the national safety authority otherwise competent for its territory, and in accordance with Article 3, point (7), point (c), and with an international agreement concluded by the Union or whose conclusion is authorised by the Union, a safety authority competent specifically for that engineering structure and all other elements of the rail infrastructure linked to it ('the specific safety authority'). In accordance with that international agreement, the national safety authority may temporarily assume competence for the part of the engineering structure situated in that Member State.

In the context of any international agreement referred to in the first subparagraph, the Member State concerned shall take all measures at its disposal under that international agreement to ensure that the specific safety authority complies with the Union law. To this effect, and where necessary for reasons of railway safety, the Member State concerned shall without delay make use of the right granted by that international agreement, whereby the national safety authority is entitled to assume sole competence for the part of the engineering structure situated in that Member State.

5 Where a dispute submitted to arbitration in accordance with an international agreement raises a question of interpretation of Union law, the Court of Justice of the European Union ('Court of Justice') shall have jurisdiction to give a preliminary ruling on the question at the request of the arbitral tribunal set up to settle disputes under that international agreement.

The provisions of Union law governing proceedings before the Court of Justice in accordance with Article 267 of the Treaty on the Functioning of the European Union shall apply *mutatis mutandis* to requests for a preliminary ruling of the Court of Justice made pursuant to the first subparagraph.

Where the arbitral tribunal fails to comply with any ruling of the Court of Justice delivered in accordance with the first subparagraph, the Member State concerned shall without delay make use of the right granted by the international agreement, whereby the national safety authority is entitled to assume sole competence for the part of the engineering structure situated in that Member State.]

Textual Amendments

- F1** Inserted by [Regulation \(EU\) 2020/1530 of the European Parliament and of the Council of 21 October 2020 amending Directive \(EU\) 2016/798, as regards the application of railway safety and interoperability rules within the Channel Fixed Link.](#)

Article 17

Supervision

1 National safety authorities shall oversee continued compliance with the legal obligation incumbent on railway undertakings and infrastructure managers to use a safety management system as referred to in Article 9.

For that purpose, the national safety authorities shall apply the principles set out in the relevant CSMs for supervision referred to in point (c) of Article 6(1), ensuring

that supervision activities include, in particular, checking the application by railway undertakings and infrastructure managers of:

- a the safety management system to monitor its effectiveness;
- b the individual or partial elements of the safety management system, including operational activities, the supply of maintenance and material and the use of contractors to monitor their effectiveness; and
- c the relevant CSMs referred to in Article 6. The supervision activities relating to this point shall also apply to entities in charge of maintenance, where appropriate.

2 Railway undertakings shall inform the relevant national safety authorities at least 2 months before starting any new rail transport operation, in order to allow the latter to plan the supervision activities. Railway undertakings shall also provide a breakdown of the categories of staff and the types of vehicles.

3 The holder of a single safety certificate shall inform the competent national safety authorities without delay of any major changes to the information referred to in paragraph 2.

4 The monitoring of compliance with applicable working, driving and rest-time rules for train drivers shall be ensured by competent authorities designated by Member States. Where the monitoring of compliance is not ensured by national safety authorities, the competent authorities shall cooperate with the national safety authorities with a view to allowing the national safety authorities to fulfil their role of supervision of railway safety.

5 If a national safety authority finds that a holder of a single safety certificate no longer satisfies the conditions for certification, it shall ask the Agency to restrict or revoke that certificate. The Agency shall immediately inform all the competent national safety authorities. If the Agency decides to restrict or revoke the single safety certificate, it shall give reasons for its decision.

In the event of disagreement between the Agency and the national safety authority, the arbitration procedure indicated in Article 10(7) shall apply. If the result of that arbitration procedure is that the single safety certificate is to be neither restricted nor revoked, the temporary safety measures referred to in paragraph 6 of this Article shall be suspended.

Where the national safety authority has itself issued the single safety certificate in accordance with Article 10(8), it may restrict or revoke the certificate, giving reasons for its decision, and shall inform the Agency.

The holder of a single safety certificate whose certificate has been restricted or revoked either by the Agency or by the national safety authority shall have the right to appeal in accordance with Article 10(12).

6 If, during supervision, a national safety authority identifies a serious safety risk, it may at any time apply temporary safety measures, including immediately restricting or suspending the relevant operations. If the single safety certificate was issued by the Agency, the national safety authority shall immediately inform the Agency thereof and provide supporting evidence for its decision.

If the Agency finds that the holder of a single safety certificate no longer satisfies the conditions for certification, it shall immediately restrict or revoke that certificate.

If the Agency finds that the measures applied by the national safety authority are disproportionate, it may ask the national safety authority to withdraw or adapt those measures. The Agency and the national safety authority shall cooperate with a view to reaching a mutually acceptable solution. Where necessary, this process shall also

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involve the railway undertaking. If the latter procedure fails, the decision of the national safety authority to apply temporary measures shall remain in force.

The decision of the national safety authority relating to temporary safety measures shall be subject to national judicial review as referred to in Article 18(3). In such a case, the temporary safety measures may apply until the end of the judicial review, without prejudice to paragraph 5.

If the duration of a temporary measure is longer than 3 months, the national safety authority shall ask the Agency to restrict or revoke the single safety certificate and the procedure set out in paragraph 5 shall apply.

7 The national safety authority shall supervise the trackside, control-command and signalling, energy and infrastructure subsystems and ensure that they are in compliance with the essential requirements. In the case of cross-border infrastructures, it will perform its activities of supervision in cooperation with other relevant national safety authorities. If the national safety authority finds that an infrastructure manager no longer satisfies the conditions for its safety authorisation, it shall restrict or revoke that authorisation, giving reasons for its decision.

8 When supervising the effectiveness of the safety management systems of infrastructure managers and railway undertakings, the national safety authorities may take into account the safety performance of actors as referred to in Article 4(4) of this Directive, and, where appropriate, the training centres referred to in Directive 2007/59/EC as long as their activities have an impact on railway safety. This paragraph applies without prejudice to the responsibility of the railway undertakings and infrastructure managers referred to in Article 4(3) of this Directive.

9 The national safety authorities of Member States where a railway undertaking operates shall cooperate in coordinating their supervision activities concerning that railway undertaking to ensure that any key information on the specific railway undertaking is shared, particularly on known risks and its safety performance. The national safety authority shall also share information with other relevant national safety authorities and the Agency if it finds that the railway undertaking is not taking the necessary risk control measures.

That cooperation shall ensure that the supervision has sufficient coverage and that the duplication of inspections and audits is avoided. The national safety authorities may develop a common supervision plan in order to ensure that audits and other inspections are carried out periodically, taking into account the type and extent of transport operations in each of the Member States concerned.

The Agency shall assist such coordination activities by developing guidelines.

10 National safety authorities may address notices to warn infrastructure managers and railway undertakings in cases of non-compliance with their obligations set out in paragraph 1.

11 National safety authorities shall use information gathered by the Agency during the assessment of the file referred to in point (a) of Article 10(5) for the purposes of supervision of a railway undertaking after issuing its single safety certificate. They shall use the information gathered during the process of safety authorisation in accordance with Article 12 for the purposes of supervision of the infrastructure manager.

12 For the purpose of renewing single safety certificates, the Agency, or the competent national safety authorities in the case of a safety certificate issued in accordance with Article 10(8), shall use information gathered during the supervision activities. For the purpose of renewing safety authorisations, the national safety authority shall also use information gathered during its supervision activities.

13 The Agency and the national safety authorities shall make the necessary arrangements to coordinate and ensure the full exchange of information referred to in paragraphs 10, 11 and 12.

Article 18

Decision-making principles

1 The Agency, when considering applications for a single safety certificate in accordance with Article 10(1), and the national safety authorities shall carry out their tasks in an open, non-discriminatory and transparent way. In particular, they shall allow all interested parties to be heard and give reasons for their decisions.

They shall promptly respond to requests and applications and communicate their requests for information without delay and adopt all their decisions within 4 months after all relevant information has been provided by the applicant. They may at any time request the technical assistance of infrastructure managers and railway undertakings or other qualified bodies when they are carrying out the tasks referred to in Article 16.

In the process of developing the national regulatory framework, the national safety authorities shall consult all actors and interested parties, including infrastructure managers, railway undertakings, manufacturers and maintenance providers, users and staff representatives.

2 The national safety authorities shall be free to carry out all inspections, audits and investigations that are needed for the accomplishment of their tasks, and they shall be granted access to all relevant documents and to premises, installations and equipment of infrastructure managers and railway undertakings and, where necessary, of any actor referred to in Article 4. The Agency shall have the same rights in relation to railway undertakings when it carries out its safety certification tasks in accordance with Article 10(5).

3 Member States shall take the measures necessary to ensure that decisions taken by the national safety authorities are subject to judicial review.

4 The national safety authorities shall conduct an active exchange of views and experience, in particular within the network established by the Agency in order to harmonise their decision-making criteria across the Union.

Article 19

Annual report

National safety authorities shall publish an annual report concerning their activities in the preceding year and send them to the Agency by 30 September. The report shall contain information on:

- (a) the development of railway safety, including an aggregation at Member State level of the CSIs, in accordance with Article 5(1);
- (b) important changes in legislation and regulation concerning railway safety;
- (c) the development of safety certification and safety authorisation;
- (d) the results of, and experience relating to, the supervision of infrastructure managers and railway undertakings, including the number and outcome of inspections and audits;

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- (e) the derogations decided in accordance with Article 15; and
- (f) the experience of the railway undertakings and infrastructure managers on the application of the relevant CSMS.