

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

Clarification note

on competence and emergency management requirements introduced by the 2023 amendments to the TSI OPE

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The present document is a non-legally binding note of the European Union Agency for Railways. It 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.

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1. Acronyms

- RU: Railway Undertaking
- IM: Infrastructure Manager
- SMS: Safety Management System
- CSM: Common Safety Method
- TDD: Train Driver Directive
- TSI OPE: Technical Specification for Interoperability relating to the operation and traffic management subsystem of the rail system within the European Union
- EU: European Union

2. Issue Description

The TSI OPE was amended by the Commission implementing regulation (EU) 2023/1693¹ aiming at taking into account the developments of the Union railway system and related research and innovation activities, and to update references to standards.

Having regard to the role railways are expected to play in a decarbonised transport system, as envisaged in the European Green Deal², and in the light of developments in this field, notably in research and innovation, an extensive revision of the current TSIs was required, in particular with a view to digitalising the railways and making rail freight more attractive.

The 2023 amendments to the 2019 TSI³ aim, in particular, to introduce new requirements for a greater harmonisation of the operational rules of the European Rail Traffic Management System (ERTMS), to add new requirements covering ERTMS trackside engineering information relevant to operation that the infrastructure manager is required to provide to railway undertakings, and to introduce a new format for the European Instructions and feedback from the examination of national rules on safety and operation.

Regulation 2023/1693 also introduced novelties regarding competencies and emergency management, which necessitate clarification in order to:

- facilitate their definition and description in the Safety Management Systems (SMS) of the Railway Undertakings (RUs) and the Infrastructure Managers (IMs),
- make the process of cleaning up national rules smooth and consistent.

This clarification was shared with the European Commission and in the next paragraph the agreed findings are presented.

3. Legal references

The following legal documents are applicable in the context of this clarification note:

¹ Commission Implementing Regulation (EU) 2023/1693 of 10 August 2023 amending Implementing Regulation (EU) 2019/773 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union

² https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

³ 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

- Directive (EU) 2016/798⁴;
- Commission implementing regulation (EU) 2019/773 as amended;
- Commission delegated regulation (EU) 2018/762⁵ as amended;
- Directive 2007/59/EC⁶ as amended.

4. Clarification

4.1. Competences

4.1.1. SMS process and harmonized EU requirements

Legal text (Point 4.2.1.1 as replaced with regulation 2023/1693)

RUs and IMs shall define and describe in their SMS procedures and requirements to train, assess and monitor the competence of their staff executing safety-critical tasks, **except** the requirements laid down in the following provisions:

- training, fitness and certification requirements for train drivers (addressed by Directive 2007/59/EC of the European Parliament and of the Council**);
- elements relevant to professional qualification applicable to staff ‘accompanying trains’ other than the train driver, to which Appendix F of this Annex shall apply;
- elements relevant to professional qualification applicable to staff ‘preparing trains’ other than the train driver, to which Appendix G of this Annex shall apply.

Legal text (Point 4.6.1 as replaced with regulation 2023/1693)

Railway undertakings and Infrastructure managers shall define their own risk-based competence management system within their Safety Management Systems processes, in accordance with Annexes I and Annex II to Commission Delegated Regulation (EU) 2018/762.

It is necessary to clarify that the exception set out in Point 4.2.1.1 is NOT from the SMS competence management system process. The exception points to the harmonized requirements as set out in the Train Driver Directive and in the TSI OPE Appendices F and G. These harmonized requirements shall apply and shall not be subject to description and definition by each RU and IM.

Therefore, Member States are not allowed to set in national rules any additional requirements to those already set out in a harmonized manner by EU legislation. National rules on competences requirements shall not exist, except as permitted by the TSI OPE Appendix I.

However, the process for applying the harmonized EU provisions of Appendix F and G and Train Driver Directive shall be implemented through the SMS (4.6.1 of OPE TSI).

⁴ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety

⁵ 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

⁶ Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community

4.1.2. Documentation of staff

Legal text (Appendix I 2 (f) as replaced with regulation 2023/1693)

Professional competences (see point 4.2.1.1 and 4.6)

- Evidence of professional competences.

Appendix I point 2 contains a list of open points. One of these points is point (f).

It has to be clarified that the second element point (f) concerns merely a harmonized way of providing evidence, namely of documenting the professional competences of staff. This harmonized documentation is used in cases such staff moves to a new employer.

Point (f) does neither introduce nor relate to a national certification regime, which is not permitted as a national rule. Only the format of the evidence/documentation can be considered as a national rule.

4.1.3. Infrastructure Manager competence

Legal text (Appendix I 2 (f) as replaced with regulation 2023/1693)

Professional competences (see point 4.2.1.1 and 4.6 as replaced with regulation 2023/1693)

- Elements relevant to professional qualification for the tasks associated with despatching trains and authorising train movements.

This open point should relate exclusively to IM staff who are signallers and/or IM staff dispatching trains and authorising train movements.

4.1.4. Safety critical tasks and safety related functions

Legal text (Point 4.2.1.1 as replaced with regulation 2023/1693)

In its Safety Management Systems (SMS) established in accordance with Annexes I and II to Commission Delegated Regulation (EU) 2018/762, each RU and IM shall identify its **safety-critical tasks and safety-related functions**, and the staff responsible for executing them.

The harmonised safety critical tasks referred to in the TSI OPE⁷ are those covered by the Train Driver Directive and the TSI OPE Appendices F and G as well as tasks carried out by IM staff dispatching trains and/or authorizing train movements.

Other safety-critical tasks (and the staff executing them) which are not covered by TSI OPE and Train Driver Directive) shall be defined and described in the SMS of RU/IM (e.g. track workers, staff operating in a marshalling yard, etc.).

⁷ as amended by regulation 2023/1693

There are also staff which can have safety related functions; such staff are, for example, train and timetable planners, train driver managers, safety managers (e.g., Betriebsleiter - AT, RSGS – IT).

Both safety critical tasks and safety related functions must be covered by the SMS. There cannot be any national rules on issues such as the identification of such staff, selection principles (except those for train drivers and staff covered by TSI OPE Appendices F and G which set out educational and medical fitness requirements), training methods and requirements or competence schemes. All these aspects shall be described in the RU and IM competence management system processes.

4.1.5. *Medical requirements*

Legal text (4.7.1 as replaced with regulation 2023/1693)

...Railway undertakings and infrastructure managers shall set up and document the process they put in place to meet the medical, psychological and health requirements for their staff within their safety management system in accordance with EU Regulation 2016/762 defining common safety method on SMS.

Medical examinations as specified in point 4.7.2 and 4.7.3 on the individual fitness of staff shall be conducted by a person established as medical doctor or a psychologist qualified to carry out such examinations. The results must be accepted by every IM and RU as proof of fitness of staff or potential staff members.

Such examinations shall allow the member of staff executing safety-critical tasks to undertake similar tasks for another RU or IM, subject to the identification of additional medical, psychological and health requirements in the SMS of the RU or IM and to the satisfactory fitness of staff or potential staff members....

Legal text (Appendix I 2 (g) as replaced with regulation 2023/1693)

Health and safety conditions (see point 4.7)

The SMS of the RU and IM shall set up and document the processes they put in place on the medical requirements be implemented. Train Driver Directive and TSI OPE point 4.7 set them for some staff.

For all other staff (e.g. staff having safety-related functions) the RU and IM should determine what is needed on a risk-based approach (having in place procedures to control the risk, pursuant also to Point 4.7.1.1.). National rules are only permitted for alcohol, drugs, and psychotropic medication limits.

4.2. Emergency management

4.2.1. Methods and procedures

Legal text (Appendix I 1 (i) as replaced with regulation 2023/1693)

Managing an emergency situation and emergency responses (see point 4.2.3.7)

- Role of local/national authorities and emergency services, and their contact details.
- Methods and procedures in emergency situation not covered by the requirement of this Regulation, including notification of accidents and incidents: national instructions on modalities for notifications to authorities.

Appendix I sets out areas for national rules.

It must be clarified that the area under point 1(i) is only limited to aspects of communication with and information transfer to the external entities mentioned;

In parallel, the CSM on SMS requirements contains all RUs' and IM's obligations vis-à-vis planning, execution, monitoring and reviewing of their SMS processes and instructions. In addition, training of all relevant staff to deal with emergency management shall be also part of the SMS.