

ATTESTING THE SAFETY-CRITICAL COMPETENCE OF TRAIN CREW

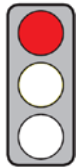
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KEY ISSUES

Objective of the Report: The Commission is announcing measures to improve safety standards and the freedom of movement for train crews whilst also reducing the costs for rail companies.

Parties affected: Member States, rail companies, train crew members performing safety-critical tasks.

Pro: -



Contra: (1) Freedom of movement for staff on board trains is not restricted under the current legal position.

(2) EU-wide certification of the safety-critical competences of train crew results in additional costs, the expected savings are doubtful.

(3) Extending the scope of the TSI OPE to cover other domestic transport is in breach of the principle of subsidiarity and is unnecessary because it provides no added value.

CONTENT

Title

Report COM(2013) 33 of 30 January 2013: on **the profile and tasks of other train crew members**

Brief Summary

► Context

- EU railway law consists of several legislative acts which have been issued in a number of “packages” and which, to a certain extent, build upon one another (see [cepBackground](#)).
- The 4th Railway Package is intended to increase the quality and efficiency of rail services and further develop the Single European Railway Area. It contains a total of six legislative proposals and several non-legislative documents.
- Until now, the EU-wide standard certification of safety-critical qualifications has only applied to train drivers (Directive 2007/59/EC), not to “other train crew members”.
- “Other train crew members” - hereinafter: train crew - refers to train staff in passenger trains other than the train driver, who are entrusted with operational safety tasks – particularly door closing, train departure, passenger evacuation (Art. 3 c Directive 2007/59/EC).
- The European Railway Agency (ERA) estimates
 - the number of train crew in the EU, Norway and Switzerland at 70,000 and
 - the number of train crew who change rail company at 2,000 to 4,000 per year.
 The estimates are based on details from rail companies from eleven Member States and the assumption that an average train crew member works for 35 years and, in that time, changes rail company once or twice.

► Objective

- The Commission wants to introduce EU-wide standard training and certification as proof that train crew are competent to carry out “safety-critical core tasks”. The Report sets out its ideas in this regard.
- “Safety-critical core tasks” are:
 - door closing,
 - train departure and
 - passenger protection and evacuation in the case of breakdown and emergency situations.
- The Commission is principally aiming
 - to improve cross-border worker mobility,
 - to achieve a high standard level of safety in railway transport,
 - to reduce costs for rail companies that employ train crew from other rail companies, and
 - improve the overall quality of the profession of rail crew worker.

► **Report of the European Railway Agency (ERA)**

- The ERA submitted a report to the Commission in 2010 pursuant to the Directive on the certification of train drivers (Art. 28 Directive 2007/59/EC), about "the profile and tasks of other train crew members performing safety-critical tasks" (p. 2).
- The ERA found that
 - the basic requirements applicable to train crew - e.g. minimum age, education, linguistic skills, medical and psychological checks – are already very similar throughout the EU (p. 4),
 - the rail companies carry out regular training courses in order to ensure a standard level of knowledge and skill,
 - in the Member States, there are a total of 48 different operational safety tasks for train crew which are regulated either at national or company level, and
 - there are binding certification systems for the recognition of the professional qualifications of train crew in five Member States.
- Based on the existing rules in the Member States, the ERA has drawn up two profile patterns for the main requirements and tasks (p. 10 et seq.).
 - Profile PP2 only contains the common "safety-critical core tasks", i.e. door closing, train departure and passenger protection and evacuation.
 - Profile PP1 also contains rules on "train preparation" (p. 4) such as checking brake status and train composition.

► **Need for an EU standard certification for train crew**

- Train crew members who change rail company generally have to undergo new safety training in the new company because their safety-critical qualifications are often not compatible with the qualifications required by the new company. This results in costs for the new rail company and may thus make it more difficult to change job.
- EU-wide standard certificates reduce the number of expensive and time-consuming safety training courses because train crew will be able to prove that they have already taken part in earlier training courses.
- Small rail companies "have more experience with the mobility of workers" (p. 5) because they regularly hire train crew from the "incumbents" (p. 5). They will thus gain more from a standard certification system.
- A harmonised certification system is "appropriate" in view of the opening up of the domestic passenger markets proposed in the context of the 4th Railway Package [COM(2013) 29; p. [cepPolicyBrief](#)].
- The Community of European Railways (CER) and European Rail Infrastructure Managers (EIM) consider, however, that
 - the existing legislation already provides all the necessary requirements and
 - standard EU certification for other crew members will not bring any useful new element to those already defined, but will involve high costs.
- The Commission believes that the lack of a standard certification system restricts worker mobility even though there is "no evidence" (p. 5) for this and it has not received any complaints on this issue (p. 5).

► **"TSI OPE"**

- The "Technical Specifications for Interoperability" (TSI) are provisions with statutory effect relating to interoperable – that is to say safe and uninterrupted (Art. 2 b Directive 2008/57/EC) – rail traffic (Art. 2 i Directive 2008/57/EC). Part of the TSI is made up of provisions on "traffic operation and management" (OPE).
- TSIs are currently drafted by the ERA at the request of the Commission and have to be adopted by a committee of representatives of the Member States. The 4th Railway Package provides for new or amended TSIs to be issued by the Commission by way of delegated acts [COM(2013) 30; see [cepPolicyBrief](#)].
- The TSI OPE currently only applies to the Trans-European Transport Network (TEN-T).
- The TSI OPE currently contains
 - minimum requirements for safety, operational readiness, environmental protection and the technical compatibility of interoperable rail traffic, as well as
 - minimum requirements for staff, including, inter alia, the "professional qualifications" of train crew (TSI OPE, Annex J), but
 - no specifications for the content of training or certificates for train crew.
- There are currently separate TSI OPEs for conventional and high-speed rail traffic. From 2014 there will be a joint TSI OPE (Art. 7 Decision 2012/757/EU).

► Planned measures by the Commission - Amendment of the TSI OPE

– EU standard training courses for train crew

- The Commission wants to introduce EU-wide harmonised training courses for train crew in their safety-critical core tasks.
- This will not include those tasks performed by train crew which, due to differing technical solutions, vary greatly, such as door closing.
- The precise content of the training courses is to be specified in the TSI OPE.
- The rail companies are to be responsible for organising the training sessions. Training should be provided either internally by the company or by an external training centre.

– EU standard certification of participation in training

- The Commission wants a certificate of participation in training which is valid throughout the EU.
- The certificate will be designed by the ERA.
- The content of the certificate will be specified in the TSI OPE.
- The standard EU certificate is to become part of the obligatory safety management system of the rail companies (Art. 9 Directive 2004/49/EC).
- The crew member should receive a copy of the certificate.

– Extension of the TSI OPE to cover the whole EU railway network

- The Commission wants to extend the scope of the TSI OPE beyond the TEN-T to cover the whole railway network in the Member States.

Statement on Subsidiarity by the Commission

The Commission does not consider the question of subsidiarity.

Policy Context

EU railway law consists of several legislative acts which have been issued in a number of “packages” and which, to a certain extent, build upon one another (see [cepBackground](#)). The Commission Report forms part of the 4th Railway Package which aims to increase the quality and efficiency of rail traffic, to advance the Single European Railway Area and open up the domestic passenger markets (p. 7).

Options for Influencing the Political Process

Directorate General:	DG Mobility and Transport (leading)
Committees of the European Parliament:	Transport and Tourism (leading), Rapporteur (N.N.); Employment and Social Affairs.
Federal Ministries:	N.N. (leading)
Committees of the German Bundestag:	Transport, Construction and Urban Development (leading); Rapporteur: Martin Burkert (SPD); Economy and Technology; Food, Agriculture and Consumer Protection; Employment and Social Affairs; Tourism; EU Affairs; Budgetary Committee;

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Reducing obstacles to employee mobility contributes to achieving one of the fundamental freedoms in the internal market. **Employee mobility is not, however, significantly restricted by varying national rules on the safety-critical tasks of train crew.** The Commission has had no complaints nor does it have any evidence of this. The reason for the low level of cross-border employee mobility remains the language barrier and people's strong preference for their home country.

The current legal provisions of the Member States relating to the safety-critical qualifications of train crew, are sufficient to ensure a high level of safety for train passengers. Additional EU-wide mandatory and standard training courses for train crew are therefore unnecessary. The argument for an EU-wide standard level of safety cannot apply either, because it is not the primary responsibility of the EU to provide for the safety standards of rail transport within the Member States. Otherwise national transport rules – from the wearing of helmets by cyclists to the speed limit on the motorway – would also have to be fully harmonised.

Impact on Efficiency and Individual Freedom of Choice

EU-wide standard safety training courses for train crew will tend to **lead** to additional administrative work and thus **to additional costs - both for the rail companies and for the administration.** In principle, these costs could be set off against savings at company level because safety training courses will no longer be

required for new staff members who have already been employed in other rail companies where they passed their certified safety training. The proposed obligation to provide a certificate of participation to every train crew employee is important in this regard. However, train crew already have the right, when changing employer, to receive an attestation confirming their participation in safety training courses (Art. 13 (3) of the Directive on rail safety 2004/49/EC). **Whether any savings will be achieved must be doubtful, to say the least.** Tasks which are specific to the company or the train, such as the closing of doors, - rightly - do not have to be harmonised so the rail companies would still have to carry out training for new recruits. Training courses will not therefore disappear but will just become shorter. In addition, the cost of training does not seem to be a major problem for the rail companies because they regularly hold training courses to maintain the knowledge level of their train crews regarding safety issues.

Even assuming that savings are made, their level is questionable because the Commission's figure of 2,000 to 4,000 train crew members who change company each year, and who will potentially gain from the proposed harmonisation, was actually an estimate based on arbitrary assumptions.

Extending the scope of the TSI OPE to cover the whole rail network provides no added value. Basically, nothing will change for the large rail companies who offer services on Trans-European rail networks because – unlike smaller operators – all their internal company regulations are in any case based on the TSI OPE. Thus it will be smaller operators who will be affected by the additional regulations and therefore also the additional costs, which will, in principle, weaken their position as against their large competitors. The Member States should therefore remain responsible for the rest of the rail network.

Impact on Growth and Employment

Minimal.

Impact on Europe as a Business Location

None.

Legal Assessment

Legislative competence

The EU is competent to introduce a standard certificate of safety-critical competence (Art. 53 TFEU; recognition legislation). It can also specify minimum training targets in this regard (Art. 53 TFEU; coordinating legislation). Although Art. 53 TFEU only refers expressly to self-employed work, it also applies to employees (ECJ, Case C-141/04, *Peros*). However, the EU is not competent to determine the overall content and organisation of the relevant training of train crew; this is a matter for the Member States (Art. 166 (1) TFEU).

Subsidiarity

EU-wide harmonised certificates for safety-critical qualifications are just as incompatible with the principle of subsidiarity as is extending the scope of application of the TSI OPE to include purely domestic matters. In neither case are there any cross-border issues. Although the Commission claims that standard certificates would improve cross-border mobility, this is simply an assumption. The Commission has no meaningful evidence of the obstruction of cross-border mobility caused by a failure to recognise qualification certificates.

Impact on German law

The TSI OPE, brought in by Directive 2008/57/EC, have been implemented in Germany by the "Transeuropäische Eisenbahn-Interoperabilitätsverordnung" (Trans-European Railway Interoperability Regulation - TEIV). In the case of amendments to the TSI OPE, the TEIV must therefore be adapted, particularly Section 4 and Annexes 1 and 2.

The safety management required under Art. 9 and Annex III of the Directive on railway safety (Directive 2004/49/EC) has been implemented in Germany in Sections 4, 7a and 7c of the "*Allgemeine Eisenbahngesetz*" (General Railway Act - AEG). These rules must also be amended where necessary.

Conclusion

Employee mobility is not restricted by varying national rules on the safety-critical tasks of train crew. EU-wide standard safety training courses for train crew lead to additional costs - both for the rail companies and for the administration. Whether any savings will also be achieved must be doubtful. Extending the scope of the TSI OPE to cover the whole rail network is unnecessary and provides no added value. EU-wide harmonised certificates of safety-critical qualifications and the extension of the scope of the TSI OPE to include purely domestic circumstances are in breach of the principle of subsidiarity.