



Final Report of the Task Force on National Safety Rules Activities and Results in 2011-2012

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Executive summary

Since the European Union took efforts to revitalize the railway market they have been working towards a single European railway market. National Safety Rules (NSR) were seen as one of the major obstacles to achieve this goal. The Railway Safety Directive (RSD) introduced in 2004 measures for the gradual harmonisation and reduction of NSR, and to help improving transparency of NSR in Member States. Nevertheless, even after several years, limited progress has been made in Member States. Therefore in December 2010 RISC decided to set up a Task Force (TF) on NSR with the purpose to clarify uncertainties about NSR and develop proposals for best practice.

This is the Final Report on activities and results of the TF in 2011-2012. It covers four major topics: the definition of NSR and overlaps with other rules, the procedures for improving transparency of the rule systems, proposals for the future legal framework and procedures to clean-up the rule systems.

1. Definition of NSR and overlaps with other rules (Section 3.1.1)

According to the current definition (RSD Article 3(h)), NSR are “*all rules containing railway safety requirements imposed at Member State level and applicable to more than one railway undertaking, irrespective of the body issuing them*”. The Task Force clarified five important points concerning the scope of NSR:

- NSR are addressed to RUs and may concern, among others, their interfaces with IMs.
- NSR can be rules of any competent party, when given legal status and binding character by the Member State.
- NSR may apply on the whole railway system in MS or on some parts.
- **Locally applied requirements/instructions** (sometimes known as “local rules”) are not NSR. Nevertheless, any such document has to be in line with the RSD Article 4(3), in particular RU and IM interfaces shall be coordinated. Such local requirements/instructions have to be transparent, non-discriminatory and published, e.g. in the Infrastructure Register, and they must not contain any requirements in addition to existing NSR (i.e. no hidden NSR).
- **NSR set railway-specific requirements that shall be limited to exceptions allowed by common EU rules, e.g. open points and specific cases in the OPE TSIs.** The NSR may not be more prescriptive than necessary to meet the safety objective.
- Any other rules and requirements are not recognised as NSR and do not need to be notified as NSR, e.g. national measures transposing Directives or implementing TSIs, information to RUs by various bodies.

To clarify which NSR may remain, the TF developed the **Rule Management Tool**. It lists requirements already covered by EU rules where MS may not impose any NSR, as well as exceptions in EU rules which leave room for some NSR.

The tool shows that most remaining NSR belong to operating NSR, when allowed by the OPE TSIs and EU legislation concerning the transport of dangerous goods. MS may also keep risk acceptance criteria and criteria for significant change, until covered in the European legislation.

Other rules, that might have been considered as NSR in the past, are either replaced by common EU rules, or do not fit within the scope for NSR as described above. This concerns most of type 1 NSR (national safety methods and targets), type 2 NSR (RU safety certification and SMS) and type 4 NSR (operation, signalling and traffic control), as well as any rules in ex-type 3 (rolling stock), type 5 (requirements for internal rules), type 6 (staff competences and fitness) and type 7 (accident and incident investigation). **MS should revise, clarify and/or reduce these rules as appropriate. Notifications in Notif-IT should be updated accordingly.**



The Rule Management Tool will be developed continuously, following the harmonization at EU level. The tool will serve many purposes. It will help MS in revising their NSR and EC in monitoring related progress. It will also be used by the Agency and EC for the evaluation of the notified rules.

TF has identified some overlaps between NSR and rules covered by other Directives. Related examples are provided in the Rule Management Tool.

There is an **entire overlap of remaining operating NSR (type 4) and National Technical Rules (NTR) for subsystem “Operation and Traffic Management”** according to Article 17 (3) of the Railway Interoperability Directive (IOD). When MS decide to establish such rules, they shall be notified as draft rules following the procedure for NSR according to RSD Article 8(7).

There is also **some overlap between NSR, NTR and national provisions for the transport of dangerous goods according to Directive 2008/68/EC and its Annex RID**. Different Directives have different purpose and criteria for national rules. Therefore, when a rule for the transport of dangerous goods falls within NSR definition, it shall always be notified in draft following the procedure for NSR according to RSD Article 8(7), regardless if the notification is or is not required under Directive 2008/68/EC and RID. Same shall apply in case of other potential overlaps.

2. Procedures for improving transparency of the NSR system (Section 3.1.2)

The RSD imposes a number of principles, responsibilities and tasks of MS and NSA that apply on different stages of NSR development. They are explained in the report. By summarising all obligations when developing an NSR, the TF explained the process to be followed by MS for establishing and revising NSR in line with EU legislation:

- Each time when OPE TSIs, CSMs and CSTs (or other relevant EU legislation) are adopted or amended, MS shall screen their NSR, keep and revise NSR for allowed exceptions.
- If the MS believes that an operating NSR is necessary on its territory in addition to allowed exceptions (e.g. open points), this NSR may only be justified based on a missing requirement in the OPE TSIs. In this case MS should follow the procedure concerning deficiencies in TSIs (IOD Article 7).
- Similar process should be followed for deficiencies in CSMs and CSTs, taking into account the rationale for NSR in the RSD, and by analogy with the process in IOD Article 7.

When there is a justified need for NSR, the TF analysed legal requirements and discovered best practice for their establishment and enforcement, including wide consultation in the Member State, and publication of adopted rules. **MS should verify their existing practice accordingly and make relevant steps for improvement of NSR transparency.**

The TF clarified that, on the current stage of market opening, most NSR may affect operation of RUs from other Member States and have to be notified in draft to the Commission in order to verify the impact of the rule on the European level. The purpose is to prevent introduction of rules which may have a discriminatory effect, constitute a disguised restriction on rail transport operations between MS and / or infringe EU law. **Notification of draft NSR is an essential step in rule-making process before adopting a rule. Non-respect of this procedure may lead to the infringement procedure.**

Therefore the TF saw a need to develop a work-flow for draft rules in the Commission’s database Notif-IT. Within the new Notif-IT module for draft rules stakeholders will be given the opportunity to comment on drafts. These comments will be taken into account in the evaluation by the Commission, assisted by the Agency. In case of serious doubts the Commission will take appropriate measures. It will also be possible to use Notif-IT to inform the Commission about non-notified binding rules so that the Commission takes necessary steps.

TF has clarified that it is not a good practice to introduce rules in an urgent manner. Nevertheless for some “urgent” rules it was recognized, that there might be safety reasons to adopt



them, before the Commission has completed their evaluation as a draft rule. The adoption of any rule will not stop their evaluation. The Commission will also check if there were grounds for urgency.

3. Proposals for the future legal framework (Section 3.2)

The clarification of the current legal framework and analysis of existing practice led the TF to suggest some changes to the legal framework that would simplify the NSR system and help its consistent evolution pursuing the objectives of the RSD.

TF proposes to merge NSR and NTR to National Rules. National Rules shall follow the same procedure in Notif-IT. Other requirements for rule establishment and publication should be clarified and streamlined based on this report. The process for deficiencies in CSM and CST should be aligned with the process for deficiencies in TSIs in IOD Article 7.

Taking into account the progress with the harmonized European legislation, especially TSIs, CSTs and CSMs, there remains limited space for National Rules (see Rule Management Tool). **The TF proposes to clarify the rationale for remaining rules and delete Annex II from the RSD.** For this purpose, the TF advises using the rationale for NTR in IOD Article 17(3) which sets out clearly the link between the scope of the harmonized European legislation and the room left for National Rules.

4. Procedures to clean up the rule systems in MS (Section 3.3)

The TF proposes the Member States to use this report for cleaning up their rule systems. This work is required by the RSD and IOD and has to be given higher priority than before. NSR revision shall be a systematic, transparent and recurrent process following the development of EU legislation. Following this process, the number of the National Rules will diminish significantly.

The Agency will disseminate the results of the TF and further promote the work to be done by MS and NSA. The Agency intends to enhance the bilateral and multilateral cooperation and coordination, especially through the Network of contact persons for NSR notification and RISC. A particular focus will be on the application and update of the Rule Management Tool, improvement of Notif-IT and monitoring of the progress made by MS in cleaning up their rule systems.



1 Introduction

Since the adoption of the first “White Book”¹ the different safety rules in the Member States of the European Union were seen as one of the biggest barriers to pursue the aim of a single market for rail transport services. With the adoption of the Railway Safety Directive (RSD) /1/ the will to harmonize national safety rules (NSRs) towards European harmonized measures was implemented legally. To reach this goal the RSD imposes legal obligations on Member States in order to improve transparency of the NSR by defining key principles for the development of NSR, as well as the obligation to notify all existing NSR, their consequent amendments and new NSR.

In spite of these efforts the results were not sufficient. Therefore the establishment of the Task Force on National Safety Rules (NSR TF) was decided by the Railway Interoperability and Safety Committee (RISC) in December 2010 /2/ taking into account reports of the European Railway Agency (the Agency) concerning publication and availability of national safety rules (NSR) in the Member States /3-4/ and the related Recommendation to the Commission /5/.

The work of the Task Force aimed at achieving greater transparency of NSR and their replacement by common EU rules through:

- developing a systematic approach to implementation of the requirements in the Directive taking into account their purpose and changing legal environment,
- promoting reasonable improvements in practice in short to mid term.

The Interim Report /6/ informed on the issues discussed by the Task Force during 2011; issues which needed further discussion were pointed out.

The present Final Report informs on all Task Force activities and results and summarises the guidance and advice for good practice developed by the Task Force during 2011-2012. The Final Report is aimed to provide a concentrated guidance for the wide audience concerned by NSR development, notification and application.

This report will be presented to the RISC for discussion and related actions. The report will be further disseminated to the wide audience in the Member States, in order to better inform the parties concerned about their tasks and rights and to promote in this way the achievement of RSD objectives.

2 General Information

The Task Force was composed of the representatives of the Member States and Norway, the Agency and chaired by the Commission.

Four Member States delegated to the Task Force their representatives on the Ministry level: France, Slovakia, Spain and United Kingdom. Four Member States are represented by their NSAs: representatives from Germany, Finland and Luxembourg were involved from the beginning and Norwegian NSA delegated their representative in the autumn 2011.

Four meetings were organised in 2011: on 17 March, 20 May, 21 September and 7 December.

Five meetings were held in 2012: on 19 January, 27 March, 31 May, 4 July and 23 October.

The Terms of Reference and Work Plan are provided in the Annexes 1 and 2.

¹ Commission White Paper of 30 July 1996: "A strategy for revitalising the Community's railways" [[COM\(96\) 421 final](#)].



3 Results of the Task Force

In accordance with the Terms of Reference, the Task Force had three main tasks to:

- (1) develop a common understanding of the requirements in the Directive concerning:
 - (1.1) the definition and general purpose of NSR;
 - (1.2) development of NSR with a view to their gradual harmonisation and replacement by common EU rules;
 - (1.3) related roles and activities in the Member States and RISC, and
 - (1.4) related roles and activities of the Commission and the Agency;
- (2) review the list of NSR types in Annex II of the Directive;
- (3) support the Member States in their tasks by providing useful advice, sharing experience, developing good practice and a common approach on required systematic processes aiming at:
 - (3.1) better management of the NSR system,
 - (3.2) improving the accessibility of national safety rules for railway actors, and
 - (3.3) developing comprehensive and transparent systems of national safety rules.

The results of discussions and clarifications on the items above, and guidance for better implementation of the current legal framework are presented in Section 3.1.

In order to achieve a common understanding of the definition of NSR beside of other rules applicable to railways², and on related procedures, the Agency made sure that all its Units dealing with different rules are involved in the process of preparing the requested clarifications. Following the clarifications, the discussions led to proposals on future procedure how to “clean-up” the existing system of rules in the Member States.

Based on the Agency’s proposals, the Task Force identified changes to the legal framework that would help its consistent application and simplify the system of national rules. The related ideas are presented in Section 3.2. The Commission intends to use these ideas for developing its proposal for the 4th Railway Package.

The improvement of the current situation and the implementation of the future changes to the legal framework does not require new tasks or procedures but a progress with existing tasks. Section 3.3 summarises key measures to promote improvements in practice in the transition period from the current practice with NSR towards the target system.

Section 3.4 informs about the intended programm for disseminating the results of the Task Force, as a support to the Member States and stakeholders in the railway sector.

3.1 Clarification on the current legal framework for NSR

This section provides an overview of the legal requirements, related guidance and advice for good practice in relation to NSR. Issues are grouped into two sections: the scope of NSR (3.1.1) and related roles and procedures (3.1.2).

² For example: National Technical Rules (NTR), “agreements” between IM and RU, technical regulations for products and Information Society services, provisions on transport of dangerous goods, etc. (see Section 3.1.1)



3.1.1 What are NSR?

3.1.1.1 NSR definition, status and scope

The RSD provides a definition of NSR in Article 3(h). According to the definition, National Safety Rules mean “*all rules containing railway safety requirements imposed at Member State level and applicable to more than one railway undertaking, irrespective of the body issuing them*”.

This definition provides a very general description of the purpose and scope of NSR. Therefore a number of frequently asked questions (FAQ) needs to be answered in order to clarify this definition: (1) what is NSR status and who can issue NSR, (2) who shall apply NSR, (3) on which networks, (4) what is the purpose for NSR in terms of railway safety and (5) how to distinguish between NSR and other documents?

Question 1: What is NSR status and who can issue NSR?

According to the NSR definition and Article 8(1) of the RSD two conclusions can be made concerning NSR status and bodies allowed to issue NSR:

- (1) Member States shall establish binding NSR at national level. This means that:
 - Only Member States have competence to establish NSR.
 - Only binding safety rules established at Member State level are NSR.
- (2) Rules can be NSR, “*irrespective of the body issuing them*”. This implies that:
 - Rules may be issued by national authorities with law-making powers (so-called direct rules): the King/Queen, the President, the Parliament, the Government, ministries, NSA, even municipalities, etc.
 - Rules of other parties (so-called indirect rules) can become NSR if, in line with the first condition, a Member State establishes the necessary legal base which will depend on internal organisation of that Member State.

It is a frequent practice that a third party (infrastructure manager (IM), railway undertaking (RU), Standardization Organization, International Organization, etc.) issues certain rules which are later imposed at Member State level. While the legal base for the direct rules issued by the ordinary legislative process is obvious, the legal base for indirect rules is of particular interest. In some cases NSAs are empowered to issue binding NSR, as provided in RSD Article 16(2)(f). In all cases the Member States shall ensure that the NSA and third parties which issue certain NSR are given the task to issue such NSR by law (i.e. the task to issue NSR is officially given by law); otherwise their rules can not be considered as NSR.

From the legal point of view NSRs are ‘binding’ when two conditions are fulfilled:

- The issuing body was delegated with necessary legislative powers to establish the particular rule. In case of indirect rules a Member State may:
 - either authorize a third party (e.g. an IM or RU) to issue safety rules within the specified scope
 - recognise established rules of third parties as NSR (e.g. standards, UIC leaflets or OSJD rules) by providing references to such rules in national legislation
- Users (more than one RU) are obliged to comply with this rule.

Examples for insufficient legal base were regarded as rules established by sector organizations without having the explicit legal power or direct applicability of indirect rules without transferring act to



national legislation, e.g. “National traffic safety rules mean all the legal acts of the Republic of ... and the documents of the infrastructure manager” was not regarded as specific enough as far as “documents” were concerned.

All notified rules are checked by the Commission, if they have a legal base and if they were made binding by a Member State according to the RSD. If there is no legal base, a rule is not NSR and is not registered by the Commission in Notif-IT.

When the legal base is missing, the legal clarity and certainty are lost and it is doubtful if the particular rule has to be applied in the Member State or not. This may have implications on RUs’ activities and safety performance. If NSRs are put into force in a Member State but not notified to the European Commission, the Member State may be subject to an infringement procedure. It was pointed out during the Task Force meetings that the national courts have the jurisdiction regarding NSRs.

Question 2: Who shall apply NSR?

According to the NSR definition, NSRs are rules applicable to more than one RU. In other words, these rules are primarily addressed to RUs. In practice, many rules cover RUs’ interfaces with IMs; some other NSRs may concern RU communication with other bodies. There might be some rules primarily addressed to IMs and other bodies. Any rules which have no relevance to RUs are not NSR.

The Task Force analysed if it would make sense to include any rules applicable to IMs in the NSR definition. The RSD includes some contradictory provisions which may let think that this should be the case³. The Member States may have some legislation that imposes certain requirements on IMs with no relevance to RUs. Such requirements are outside the scope of NSR. The Task Force has discussed if such rules should be included in the scope of NSR in future. The conclusion was that there is no obvious need to do this. The confusion in the RSD should be removed while working on the 4th Railway Package.

Question 3: On which networks do NSR apply?

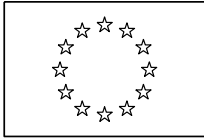
Firstly it should be noted that the geographical scope of NSR corresponds to the scope of national measures transposing the RSD. If a Member State applies any of the exclusions according to RSD Article 2(2) the safety rules relating to these exclusions do not fall under the scope of NSR and related obligations. NSR notifications in Notif-IT include information of the Member States about such exclusions.

A second question is if each NSR should apply to the whole network in a Member State covered by RSD requirements (because NSR are “national” rules) or there could be some NSR applicable to certain parts of the network and / or local rules.

It was clarified that the term “national” refers rather to the legal status of NSR than their geographical scope, i.e. the geographical scope of some individual rules can differ from the scope of national measures transposing the RSD. For example, there might be some NSR applicable only to high-speed or conventional networks. Depending on various constraints, there might be some NSR applicable to particular lines, e.g. TEN lines are covered by TSI requirements and off-TEN lines are still subject to NSR for a limited period of time when the revised TSIs will enter into force on the whole network. Details concerning the geographical scope of the notified NSR are published in Notif-IT.

As regards locally applied requirements / instructions (sometimes known as “local rules”), there is no common definition. Most frequently, local rules are issued by IM and enforced via contracts for the access to railway infrastructure. Some rules and restrictions may also be issued by local authorities, e.g. restrictions on transport of dangerous goods.

³ Examples: definition of type 5 NSR and Article 7(6)



Therefore each Member State should consider such rules case by case, taking into account if local rules introduce a substantial difference in the work of RUs, i.e. if they create, modify or restrict rights, freedoms and obligations of RUs, including their tasks, procedures and working methods. If this is the case, local rules should be given NSR status at Member State level following the process in section 3.1.2.2, before enforcing such rules on the basis of the contractual arrangements between IMs and RUs. An example: if a local rule regulates a subject within the scope of open points and specific cases in the TSI OPE, it shall be established at Member State level.

Often, so called “local rules” do not change the existing legal framework but summarise requirements relevant to a particular part of the network and / or its operational situation (company rules / instructions), and provide related information such as speed restrictions or paths to use for the transport of oversized cargo or dangerous goods, other operating limits and conditions of use of certain infrastructure objects derived from the structural TSIs and manufacturers’ manuals (information). Such “local rules” are not NSR but still have to be transparent, non-discriminatory and published, e.g. in the Infrastructure Register.

It should be underlined that there can be no hidden NSR and no extra layer of NSR in the documents of IMs in relation to RUs’ access to the network. The RSD, Article 4(3) implies company rules be consistently coordinated and agreed among IMs and RUs in order to control risks. EC could clarify this principle in the 4th Railway Package.

Question 4: What is the purpose for NSR in terms of railway safety?

Article 4 of the RSD establishes the obligation for the Member States to “*ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved, taking into consideration the development of Community legislation and technical and scientific progress and giving priority to the prevention of serious accidents*”.

In order to comply with this obligation, the RSD imposes a number of tasks on Member States, including the obligation to establish NSR (Articles 4(1) and 8(1)). Recital 11 clarifies that the current situation, in which NSR continue to play a role, should be regarded as a transitional stage, leading ultimately to a situation in which European rules will apply. Recital 10 declares the objective that NSR, which are often based on national technical standards, should gradually be replaced by rules based on common standards, established by TSIs.

For that purpose the RSD has established a system that foresees the harmonisation of the safety requirements in the railway sector through the development of TSIs, CSTs, CSMs and CSIs based on the support of the Agency that issues recommendations and monitors the development of railway safety in the European Union. Consequently, each time a new legal act on railway safety matters enters into force at EU level, the scope and content of NSR shall be revised accordingly. Moreover, the principle of sincere cooperation under Article 4(3) of the Treaty on European Union (TEU)⁴ requires the Member States to sustain from introducing new and contradictory NSR in advance of the date of entry into force of EU requirements in the same field or the deadline for their transposition .

During the transitional period towards harmonised safety requirements the Member States should limit their "legislative production" on railway safety. As follows from Article 8(5), the introduction of NSR should not be considered as a possibility to impose additional barriers for the provision of rail

⁴ “3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.”



transport services. As stated in Recital 10, *"The introduction of new specific national rules which are not based on such common standards should be kept to a minimum."* In addition, *"[n]ew national rules should be in line with Community legislation and facilitate migration towards a common approach to railway safety"* (recital 10) and *"fostering the development of a single European rail transport system"* (Article 4(1)). In other words, NSR is a temporary complementing element to EU legislation, for the issues not yet covered by EU legislation.

The original need for NSR in 2004 is well explained in Article 4(1) and Recital 4:

- Firstly, the NSR concept moves the railway sector further from self-regulation to public regulation and thus helps improving transparency of existing safety requirements, reducing conflict of interest and providing a level-playing field for incumbent and new RUs across the European Union.
- Secondly, NSRs clarify safety responsibilities and interfaces of the old and new actors in the sector and thus help at the very least maintaining railway safety in the phase of restructuring the railway sector.

In the current stage where most of EU rules have been adopted, the room for existing and new NSRs has been reduced significantly – the scope of NSRs is limited to exceptions allowed by EU legislation. More details can be found in the next section about rule classification.

A frequent misunderstanding is that a Member State might regard the establishment of new NSRs as the only available means to maintain and improve railway safety as required in RSD Article 4(1). Consequently the Member State or its NSA may introduce unnecessary requirements and checks which affects safety management system (SMS), safety certification and operations of RUs. This should not be the case.

When new NSR are necessary and justified for safety reasons, they should be strictly limited to the objective envisaged and should be the adequate mean to achieve the safety objective. This provision of Article 8(5) of the Directive seems to refer to the proportionality principle: the measure cannot go beyond what is necessary in order to achieve the safety objective.

Reflecting on admissible level of details of NSRs, a good practice would be to avoid issuing detailed prescriptive rules in favour of more general rules defining the objectives to be achieved in a way open to more than one solution.

The level of details in the OPE TSIs /18-19/ should serve for orientation: these TSIs support the optimal coordination between RU and IM aiming at safe and uninterrupted train traffic. Examples from OPE TSIs:

- "Rule book can be on paper or electronic".
- "The train rear end signal must be two steady red lights or two reflective plates". That is an operational requirement. The detailed requirements on luminosity and size are defined in the structural TSIs and they need a NoBo-assessment.

Careful reflection on the level of details in NSR reduces the chance of mixing the authorities' responsibility for safety regulatory framework and checks with the direct responsibility for managing safety and risk control which the RSD allocates to RUs and IMs. This is especially relevant for the operational rules. National authorities should not take on the role which has to be fulfilled by safety management systems (SMS) of RUs and IMs.

It should be avoided that the sector follows the traditional approach that existed before the introduction of the RSD, where operational procedures are specified although they are not absolutely necessary to manage the interface especially between RU and IM and are not completely covered by an SMS.



A last word should be said to highlight that NSR set railway-specific requirements as per definition. Requirements that are not railway-specific cannot be regarded as NSR. However, certain requirements that are not railway-specific might also need to be reflected in the SMS of RU/IM, e.g. horizontal national laws on health and safety at work and environment protection.

Question 5: How to distinguish between NSRs and other documents?

Based on the principle that MS may have NSRs only when it is allowed by EU legislation, the scope of NSR is limited to exceptions allowed by EU legislation, such as the conditions set out in IOD Article 17(3), including open points and specific cases in the TSIs OPE, or where set out in CSMs and CSTs.

By conclusion, other documents cannot be regarded as NSR. Next to NSRs there are two major sets of other documents which RUs, IMs and other parties needs to know:

1) Transposition measures which are national measures transposing EU legislation in the field of railway safety and interoperability, e.g.:

- national legislation implementing the RSD, IOD, Train Driver Directive and CSTs.

2) Information by different bodies which is not NSR, e.g.:

- NSA procedures for safety certification,
- Procedures of the NIB and police for accident investigation,
- Information from the rescue bodies,
- IM information and coordinated interfaces with RUs⁵.

This is a new understanding resulting from discussions and clarifications in the Task Force based on existing legal framework. This view is taken into account and further developed in the Section 3.1.1.2 concerning NSR classification and remaining NSR according to RSD Annex II.

While the legal status of the informative documents is self-evident, up to now there was no common view as to the need to include various transposition measures in the notifications of NSR. On the one hand there is a clear obligation to notify such measures to the Commission, e.g. in RSD Article 33. On the other hand the general wording of NSR types in RSD Annex II introduced a confusion as to whether such measures also need to be notified as NSR. This was indeed recommended in the past and a number of NSR notifications include measures transposing RSD requirements for safety certification and accident investigation, Train Drivers Directive /7/, RID, etc. The only clear exception from the notification as NSR were rules wholly related to the implementation of TSIs (RSD Article 8(4)).

The intention of the Task Force was to clarify and simplify the system of NSRs, and to reduce related administrative burden without prejudice to the accessibility of information. The double notification of transposition measures is not justified from this point of view. It brings no added value in terms of transparency – other procedures ensure publication and monitoring of such measures in a more comprehensive way.

Information about transposition measures is usually provided by the NSAs and NIBs; moreover the NSAs have a legal obligation in RSD Article 12 to include such measures in their guidance for the purpose of safety certification and authorisation.

The Commission checks notified transposition measures and publishes their references in EurLex. When EU Directives leave to the Member States some room for manoeuvre, e.g. to decide which lines to exclude from the RSD scope or which accidents to entrust to NIBs next to serious accidents, there is no need to justify related national requirements by following NSR evaluation procedure in Notif-IT.

⁵ RSD Article 4(3) provides for the coordination of IM and RU SMS at their interface. IM and RU company operating rules shall be based on the results of such coordination.



The same conclusion is valid for the national legislation removing inconsistencies between existing NSR and adopted TSIs, CSMs and CSTs. To further facilitate access to such national measures, Notif-IT could include links to Eur-Lex, national official journals and websites of NSAs and NIBs.

A different case is when national laws are established for the purpose of transposing or implementing a piece of EU legislation and which also include some provisions on a different subject. Among such provisions there might be some NSR. For example, a national law transposing the Train Driver Directive may also indicate the permissible limits of alcohol before journey (this is allowed by the OPE TSIs). In any case, “gold-plating” is not allowed, i.e. requirements going beyond what is required by EU legislation, adding obligations and procedures.

3.1.1.2 NSR according to RSD Annex II

Classification of NSR is provided in RSD Annex II. It is stated in Annex II that it ‘includes’ the types of rules listed in this Annex. This led some Member States to think that other types of NSR can exist. It was clarified that the list of NSR types is a closed one and no other types of NSR can exist. This conclusion is made taking into account both legal texts and the intended purpose for this Annex.

The original version of the RSD 2004 contained seven categories of existing NSR in order to classify the existing rules into groups reflecting their intended use according to the system of safety management set out by the RSD. According to the numbering of the Annex, NSR are called «type-1» or «type-2» rules etc.

The Task Force identified that Member States often had difficulties to correctly classify NSRs under one type. At the same time, many rules which still exist on national level have become obsolete because there is European legislation in force instead and have to be withdrawn subsequently.

In order to classify and reduce NSR Member States can refer to the Rule Management Tool⁶ in Annex 3 with details on how to use it and about future updates. This tool lists all the existing common legislation, where no NSR should exist and, consequently, all identified groups of NSR which are not yet replaced by common legislation. It also shows other examples of rules which are not NSR, in order to address frequent questions⁷.

Summarizing the findings, below is a general description of all categories of NSR⁸:

“Rules concerning existing national safety targets and safety methods” (type 1-rules)

Very few of these rules have been notified in the past and since the common safety methods (CSMs) and common safety targets (CSTs) came into force, the national safety methods and targets are now replaced by them. However, the CSM on risk evaluation and assessment (CSM RA) /8/ leaves the room for two kinds of NSR: risk acceptance criteria and criteria for significant change.

“Rules concerning requirements on safety management systems and safety certification of railway undertakings” (type 2-rules)

After the Member States have implemented the RSD (by 30 April 2006), the old NSR shall be replaced by national requirements for SMS and safety certification of railway undertakings in line with common requirements in the RSD. With the introduction of a common templates for safety certificates and related applications (Regulation (EC) 653/2007 /9/) and CSM for assessing conformity with the requirements for obtaining railway safety certificates (CSM CA) /10/, there is practically no room for national rules in this type.

⁶ In the absence of the final decision, this document was called “NSR Reference List” in the Interim Report

⁷ This refers to safety-related requirements of other kind such as NNTRs, regulation for products, transposition measures and other requirements which do not fulfil criteria for NSR.

⁸ Remaining NSR shall comply with existing EU legislation and be subject to a periodic review (Section 3.1.2.2)



According to the CSM RA the criteria for significant change when the update of the Safety Certificate Part B is required⁹ may remain as NSR.

“Rules concerning requirements for the authorisation of placing in service and maintenance of new and substantially altered rolling stock that is not yet covered by a TSI. The notification shall include rules for exchange of rolling stock between railway undertakings, registration systems and requirements on testing procedures“ (ex-type 3-rules)

Directive 2008/110/EC of 16 December 2008 changed Annex II and removed type 3-rules completely.

The work on the Rule Management Tool allowed to clarify previous uncertainties concerning the new status of these rules. A major part of these rules are seen as National Technical Rules (NTR) and should be transferred to the section of the Notif-IT database, where NTR and National Reference Documents for Vehicle Authorisation are stored. Many rules are now replaced by TSIs and remaining issues are to be managed within the company’s SMS. National legislation on registration systems must comply with adopted common rules; if any legislation exist in this field, it is not NTR but a transposition measure of common provisions for registers. Examples are included in the Rule Management Tool.

“Common operating rules of the railway network that are not yet covered by TSIs, including rules relating to the signalling and traffic management system” (Type 4 rules)

Type 4 rules are the common safety operating requirements that all railway undertakings and their staff must respect. Type 4 NSR applicable on the TEN network have been and will be replaced by the OPE TSIs. The current version of the OPE TSIs includes open points, specific cases and few other exceptions which may be covered by NSR. Details are given the Rule Management Tool.

The scope of the OPE TSIs is not yet extended to the off-TEN network; however their application is recommended and takes place on a voluntary basis in many MS. If MS wishes to keep NSR for off-TEN network, it should carefully consider the purpose and limitations for the NSR as described above in Section 3.1.1.1. The Member States should in particular avoid introducing rules for off-TEN network which will be covered by the extended scope of the OPE TSIs. Relevant legal text was already agreed in RISC and will soon enter into force¹⁰.

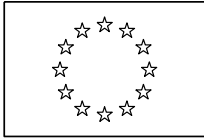
In relation to remaining type 4 NSR, it should be underlined that any operating NSR should be at the same level of detail as the OPE TSIs. Type 4 NSR must be network-related and interface-related: the rule must cover an interface between RU and IM and/or emergency services. If there is no interface between RU and IM and/or emergency services, the rule is internal to RU/IM and shall neither be imposed at Member State level, nor notified as NSR. There should be no type 4 NSR describing interfaces between RUs – these are subject to their company decisions and rules (also irrelevant to OPE TSIs).

“Rules laying down requirements on additional internal operating rules (company rules) that must be established by infrastructure managers and railway undertakings” (Type 5 rules)

Type 5 rules shall include the requirements for railway undertakings and infrastructure managers to establish additional internal rules. Member States often showed problems to correctly identify these rules, in fact many rules notified here were indeed type 4-rules. A developed understanding of the SMS and introduction of the CSM CA showed that this type of rules is redundant as the SMS shall cover all risks in all safety-related activities of RUs and IMs. Therefore its is useless that NSR point out some processes. Moreover, this may be a misleading signal to RUs and IMs, and may lead to non-comprehensive SMS.

⁹ RSD Article 10(5)

¹⁰ In March 2012 the RISC adopted the legal text merging the OPE TSIs for high-speed and conventional railway networks and extending the scope of these TSIs to the whole railway network. The Decision by the Commission is expected by the end of 2012. The expected date of entry into force is 1 January 2014.



“Rules concerning requirements on staff executing safety critical tasks, including selection criteria, medical fitness and vocational training and certification as far as they are not yet covered by a TSI” (Type 6 rules)

These notified rules shall describe the safety requirements for staff executing safety critical tasks. These are requirements for the staff ability to occupy their post. Eventual tasks associated with that post and fitness requirements before each journey might be specified in type 4 NSR.

The NSR notified under this type became obsolete with the coming into force of the following EU legislation: Directives 2007/59/EC (Train Drivers Directive), 2008/68/EC (inland transport of dangerous goods) /11/, CSM CA Part N, OPE TSIs, and the various other TSIs (sections 4.6 and 4.7), ECM scheme for freight wagon maintenance /12/ and RID 2011 (§§ 1.3).

Even though the scope of the OPE TSIs is not yet extended to the off-TEN network, their application is recommended and often takes place on a voluntary basis in many MS. When the OPE TSIs do not apply, the CSM CA still applies and replaces NSR. According to CSM CA RUs decide on task allocation and management of related staff abilities and competences, directly linked with the nature of their tasks, specific activities of their company and associated risks.

“Rules concerning the investigation of accidents and incidents” (Type 7 rules)

These rules describe who is responsible for the investigation, which events are subject to investigation and how the investigation of accidents and incidents in the railway system shall be carried out and reported in the Member State.

According to the analysis made by the TF, there is no more room for NSR in this area and – as a consequence – type 7-rules will no longer exist in future. Some elements are covered by the CSM CA and RID. Other elements belong to transposition measures of the RSD Chapter V (including the choice of some options left open to the Member States), general rules on reporting and investigation of the accidents in the country, further information by the NIB and other investigating bodies and the company’s own procedures as part of their SMS (see Section 3.1.1.1, Question 5) .

Event though these documents are not NSR, they shall be applied as part of the RU SMS in order to ensure retrieving the root causes of each incident or accident, and continuous improvement with the view of prevention of new undesirable events. As for any aspect of RU activity, the application of the CSM on Monitoring /13/ by RUs (and other parties where relevant) and the CSM on Supervision /14/ by the NSA will support the achievement of this objective.



3.1.1.3 NSR overlap with NTR

One of the most frequently asked questions about NSR is about their overlap with notified National Technical Rules (NTR) under the Interoperability Directive 2008/57/EC. Both NTR and TSI which replace NTR and NSR are based on safety requirements along with other essential requirements (Annex III of the IOD). This fact lies at the origin of the question about overlap. This question is further complicated by the overlap of NTR with technical regulations for products and Information Society services notified under Directive 98/34/EC /16/ (technical regulations). Clarity on the scope of this overlap and related procedures was needed to reduce the administrative burden.

To assist Member States to better understand under which Directive they shall notify national rules, the European Commission drafted a working document. By request of the RISC, the Task Force contributed to this draft by clarifying general questions on the notification procedures. Open questions on the legal overlap of rules remained open at this stage. The attached version in Annex 4 was presented to the network of safety authorities and the RISC in the first quarter of 2012.

Concerning the legal overlap between NSR and NTR, the Task Force clarified the following:

- Certain overlaps between NSR and NTR can occur. Only type 4 and type 6 NSR according to RSD Annex II may relate to TSIs and may be covered by NTR. The Task Force considers that the only relevant TSI for these rules is the TSI Operation and Traffic Management. There is no overlap between NTR for the authorisation of vehicles and structural subsystems and NSR for the operation.
- In the field of operating rules the distinction between NSR and NTR appears artificial when comparing their purpose, scope and intended use – there is a complete overlap of these rules. It is more important to know if a rule has to be notified in Notif-IT or not. It is expected that the 4th Railway Package will remove this unnecessary overlap (see Section 3.2) and will provide, as a consequence, a single procedure for any National Rule to be notified in the NOTIF-IT database.
- Overlapping Rules shall be notified once as NSR, according to the procedure for NSR in Article 8(7) of the RSD. Draft operating rules: the Member States shall continue to notify by paper; as soon as the module for draft rules is developed¹¹, all rules shall be notified in NOTIF-IT as NSR.
- The formal obligation to register adopted operating rules in the Notif-IT module for NTR remains until Directives are amended.

Concerning the overlap between NSR, NTR and technical regulations, it was discussed that:

- There is no overlap between NSR and technical regulations covered by Directive 98/34/EC.
- Draft NTR that set out requirements for products must be notified under Directive 98/34/EC and after their adoption they must also be notified under Directive 2008/57/EC.
- Two databases of the Commission are used for this purpose: TRIS and Notif-IT. The Task Force promotes removing the overlap of these notification tools. The Commission is investigating the possibility to link its databases in order to reduce workload for the notification of NTR and technical regulations. This does not depend on legal changes.

¹¹ In 2013



3.1.1.4 NSR overlap with national provisions on transport of dangerous goods

Another identified overlap is between NSR and national provisions on transport of dangerous goods under Directive 2008/68/EC. This Directive and its annex RID include a number of cases where national provisions could be introduced by the Member States.

The Task Force reviewed exceptions and more stringent national provisions allowed by Directive 2008/68/EC; in some cases the notification of draft or adopted provisions is foreseen; in some cases other Member States are informed or involved in decision-making on drafts. Exceptions in RID are complementary; in these cases the RID procedure applies. This is a complex picture.

It has been clarified and agreed that:

- Directive 2008/68/EC and its RID Annex lay down harmonised requirements for the transport of dangerous goods without prejudice to the general rule on market access (Article 3(2)). In particular these requirements must not be conflicting with general EU legislation on railway safety and interoperability.
- National provisions for the transport of dangerous goods under Directive 2008/68/EC and RID apply in addition to requirements on EU railways established in the RSD, IOD, TSIs, CSMs and CSTs, and must not be conflicting with them.
- National provisions for the transport of dangerous goods may not affect safety certificates of RUs or authorisations of vehicles.
- Member States should avoid mixing specific provisions for the transport of dangerous goods with the content of more general NSR and NTR. In other words, there should be no conflict of legislation.
- However, some overlap is not totally excluded. Identified cases of potential overlap are described and classified in the Rule Management Tool (Annex 3).
- When there is an overlap, the following procedures should apply in parallel:
 - o Compliance check and notification of draft under RSD Article 8(7) (in case of overlap with NSR) or Directive 98/34/EC (in case of overlap with NTR)
 - o Transparency and notification under Directive 2008/68/EC and or RID.
 - o The Commission will ensure the coordination among the Committees involved in these two procedures and will issue one Decision at the end of those procedures.
- There is also a need for related clarifications within the 4th Railway Package (RSD, IOD). For instance, it should be made clear that the obligation of notification under the RSD and IOD does not replace the obligation of notification under Directive 2008/68/EC and other Directives, and vice versa. If possible, the notification procedure should be simplified in the future.

Further clarifications may follow in the Final Report of the study “Analysis of the interaction and coherence between railway and dangerous goods legislation in the European Union”¹².

3.1.1.5 Do other overlaps exist?

At EU level there is other legislation which influences safety-related processes of RUs and IMs. The directives dealing with the occupational health and safety and environmental issues are good examples. This results in two frequently asked questions:

¹² Expected in the end of 2012



- How to classify and handle related national legislation? Is it NSR to be notified?
- How to implement such common and national requirements at company level?

In reply to the first question it should be noted that the principles of Better Regulation apply to EU legislation, including the principles of consistency in order to avoid legal conflicts and over-regulation. Therefore, in principle the scope of different EU instruments is normally different and should not result in double notifications.

However, some overlaps may appear when the Member States implement different Directives. For example, a Member State may merge railway safety requirements and other requirements in a single act addressed to RUs or there might be a lack of training and coordination leading to a conflict of some specific provisions with the general provisions covered by the RSD and NSR. Such practice should be avoided as far as possible. Indeed, in case of any doubt it is advised to notify a draft as NSR.

A practical example can be given in relation to the implementation of Seveso III /17/. According to Article 2(2), this Directive shall not apply in some cases, including the operations in marshalling yards¹³. This means that there are no specific provisions in Seveso III for the marshalling yards, only general provisions in the RSD. However some Member States may authorise their local authorities to issue certain requirements which implement some provisions of Seveso III on marshalling yards, potentially in conflict with the RSD. Such requirements cannot be introduced without prior check by the Commission. They have to be notified as draft NSR according to RSD Article 8(7).

How do RUs and IMs adapt their activities in case of specific requirements applicable beside the RSD? The answer is that they have to integrate related specific processes into their SMS. Guidance for this is provided on the Agency's website¹⁴.

3.1.2 What procedures to follow in relation to NSR?

This section summarizes principles and procedures applied to NSR development, transparency and notification, including related legal requirements and advice for good practice.

3.1.2.1 Roles and responsibilities

According to RSD, NSR life-cycle looks as follows: drafting, assessment, consultation at MS level, notification of the draft, approval, publication, notification of adopted text, dissemination, assistance to rule users, monitoring of application, enforcement and update. The table below summarises responsibilities and tasks of different parties in relation to different phases of the NSR life-cycle. Relevant guidance can be found in the following sections.

The Member States shall ensure that the development of the NSR system fulfils these principles:

- NSR shall be laid down, applied and enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system - RSD Article 4(1).
- NSR (as other measures to develop and improve safety) take account of the need for a system-based approach - RSD Article 4(2).
- NSR have to be in clear language that can be understood by the parties concerned – RSD Article 8 (1).

Meaning and application of these principles is described together with MS tasks further in this report.

¹³ "(c) the transport of dangerous substances and directly related intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards"

¹⁴ <http://www.era.europa.eu/tools/sms/Pages/Integration-of-management-systems.aspx>



Phase in the NSR life-cycle	Responsibilities and tasks	References to EU law	References in this report ¹⁵
Drafting	MS are obliged to establish NSRs which shall be binding	RSD Art. 4(1) and 8(1)	3.1.1 3.1.2.2
	NSA support MS by promoting, and, where appropriate, developing the system of NSR	RSD Art. 16(2)(f)	3.1.2.3 Annexes 3 to 5
Assessment	MS shall ensure that each NSR needs to be justified next to the set of EU rules	RSD Art. 4(1) and 8(5)	3.1.1, 3.1.2.2 Annexes 3 to 4
Consultation at MS level	A MS that considers the introduction of a NSR has to consult all interested parties in due time	RSD Art. 4(1) and 8(6)	3.1.2.2 3.1.2.3 Annex 6
	In the process of developing the national regulatory framework, the NSA shall consult all persons involved and interested parties, including IMs, RUs, manufacturers and maintenance providers, users and staff representatives	RSD Art. 17(1)	
Notification of the draft	In the cases required by Art. 8(6), the MS has to submit the draft NSR to the Commission stating the reasons for introducing it	RSD Art. 8(7)	3.1.2.2 3.1.2.4 Annex 7
	The Commission immediately informs the MS when it has serious doubts about the draft Stakeholders will be invited to comment on the notified drafts in Notif-IT	RSD Art. 8(7)	
	The Commission may request ERA's opinion	AR Art. 9a	
	The Commission adopts a Decision addressed to the MS concerned if it finds that the draft safety rule is incompatible with the CSMs or with achieving at least the CSTs, or that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between MS. Other MS are involved during RISC procedure	RSD Art. 8(7) and 27(2)	
Approval	In case of serious doubts, the MS concerned shall suspend the adoption, entry into force or implementation of the rule until a Decision is adopted, within a period of six months.	RSD Art. 8(7)	3.1.2.2 3.1.2.4
	It is meaningless to adopt NSRs without fulfilling the procedure for draft notification and validation – stakeholders can complain to national courts in order to annul the rule	RSD Art. 8(6-7)	Annex 7

¹⁵ These references help to find guidance on existing tasks. For possible future changes, please consult Sections 3.2 and 3.3, and Annex 10



Phase in the NSR life-cycle	Responsibilities and tasks	References to EU law	References in this report ¹⁵
Publication and dissemination	MS shall ensure NSRs are published and made available to all IMs, RUs, applicants for a safety certificate and applicants for a safety authorisation	RSD Art. 8(1)	3.1.2.5
	NSA shall list all requirements for safety certification purpose, identify rules valid for the part of infrastructure in question and make all documents available	RSD Art. 12(2)	Annex 9
Notification of adopted text	MS shall forthwith notify the Commission of any amendment to the notified NSRs and of any new such rule	RSD Art. 8 (4)	3.1.2.2 3.1.2.4
	Commission, assisted and advised by ERA validates and registers the notifications	RSD Art. 8 (4) AR Art. 19(1)	Annexes 7 to 8
Assistance to rule users	MS shall ensure that NSR are understood by all IMs, RUs and applicants	RSD Art. 8(1)	3.1.2.5 Annex 9
	NSA shall give detailed guidance on how to obtain safety certificate. An application guidance document shall explain relevant requirements and be made available to the applicants free of charge.	RSD Art. 12(2-3)	
Monitoring of application	MS shall ensure NSR are applied	RSD Art. 4(1)	3.1.2.3 Annex 5
	NSA supervise RUs and monitor the system of NSR. This includes collection of feedback and return of experience that leads NSA to promote updates to NSR.	RSD Art. 16(2) CSM on Supervision	
	RUs and IMs monitor how their activities comply with NSR	CSM on Monitoring	-
	Commission shall monitor that the introduction of new specific national rules by Member States is kept to a minimum	RSD Art. 8 (5)	3.1.1.1
	Stakeholders can complain about non-notified rules to the Commission The Commission will evaluate rules and make necessary steps as necessary	RSD Art. 8 TFEU	3.1.2.2
Enforcement	MS shall ensure NSRs are enforced	RSD Art. 4(1)	3.1.1.1
	NSA support MS by enforcing the system of NSRs, where appropriate	RSD Art. 16(2)(f)	3.1.2.4 Annex 5
Update	see 'drafting'		

Figure 1.: Responsibilities and tasks for NSR



3.1.2.2 Process for revising and reducing NSRs

This section clarifies the process for revising and reducing NSRs considering the scope for remaining NSRs and responsibilities of the Member States as presented above.

As follows from the RSD, at the final stage, outside of European harmonised requirements and company rules covered by SMS, there will be no space left for national rules (see Figure 2). During an interim phase common rules will include open points and specific cases (in TSIs) and other kind of exceptions (in other EU legislation). This will be the frame where national rules may be notified as NSR. Outside of these rules, IM information, as well as company rules and coordinated interfaces of IM and RU will be covered by their respective SMS (see Figure 3).

During the current situation there is still a “grey zone” of uncertainty concerning the status of some documents which may or may not be NSR (see Figure 4). This “grey zone” has to be clarified now.

This represents a challenge for various bodies. The existing grey zone has some potential for development of the OPE TSIs or other common requirements. It also has some potential for some temporal NSRs (for exceptions in EU legislation) and for reducing redundant NSRs in line with EU legislation. These developments will also influence company rules of RUs and IMs (see Figure 6). The key role is with the Member States to classify existing rules within the “grey zone” following the guidance in Section 3.1.1 and to make relevant steps. It is also important that RUs and IMs assume their safety responsibilities in application of existing common requirements and NSR.

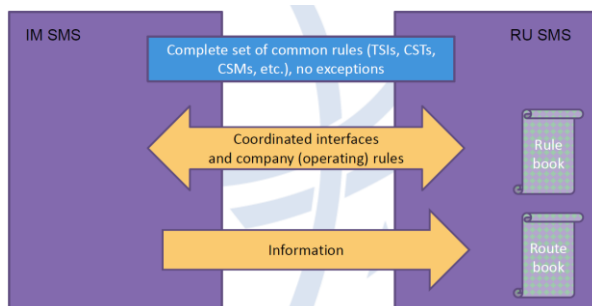


Figure 2.: Ultimate goal for safety regulatory framework in the EU

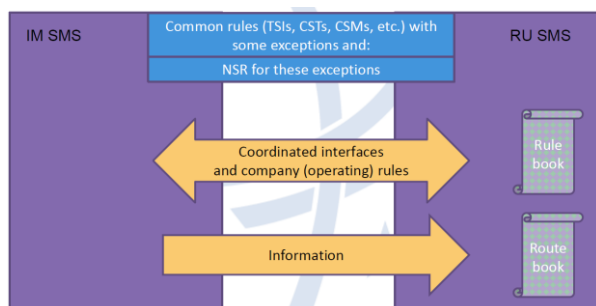


Figure 3.: Ideal situation in transition period

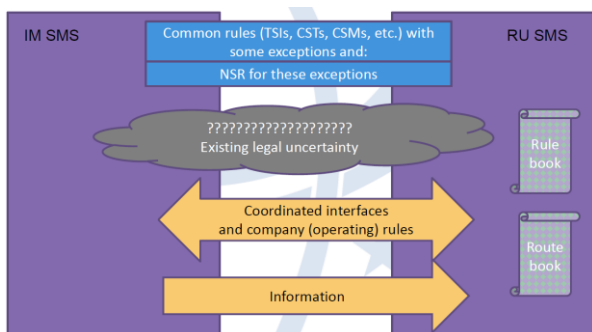


Figure 4.1: Current situation

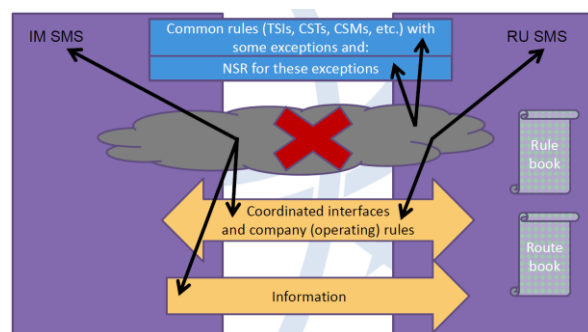


Figure 5.: How to deal with the grey zone?

The following Figure 6 explains the legislative process that should be used to clarify the existing uncertainties and bring NSR in compliance with EU legislation. This figure is based on the analysis of existing requirements in the RSD and IOD.

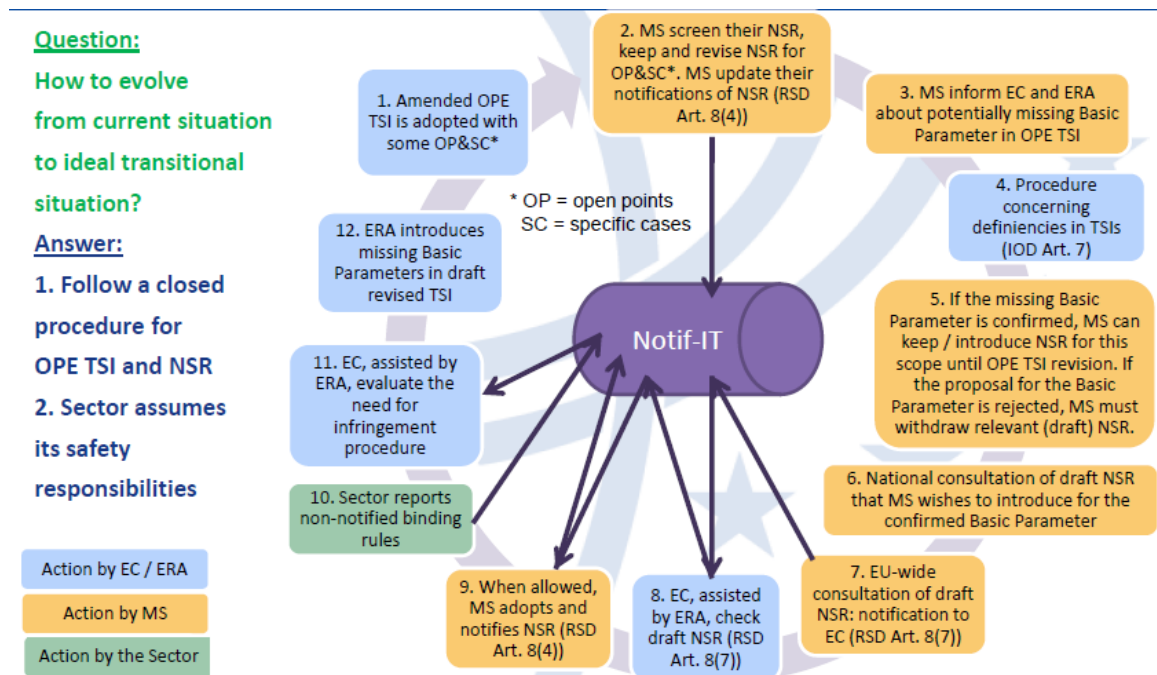


Figure 6.: Grey zone challenge for MS, IMs, RUs, ERA and EC in relation to type 4 NSR and OPE TSIs

Here is the description of the process in Figure 6:

- Each time there is an amendment to common requirements (step 1), the system of NSRs should be checked, amended and reduced accordingly; ditto for NSR notifications (step 2).
- Before considering the need for a new requirement, MS should ensure that existing requirements are duly enforced and consistently applied by RUs and IMs (enforcement and supervision actions related to the step 2).
- If there is a justified need for a new requirement, MS should refrain from unilateral measures and first check with the Commission if there is a missing basic parameter in common requirements (steps 3 and 4). If there is a confirmation concerning the need to amend common requirements, ERA starts developing a recommendation and MS can draft a temporal NSR for the same scope (step 5). If there is no need for a new basic parameter, MS shall cancel its intentions for a new NSR (step 5).
- When allowed to establish NSR, MS have to first carry out a national-wide consultation (step 6) and then notify their draft to the Commission which will check the appropriateness of intended rule to the agreed objective (step 7).
- Only those drafts validated by the Commission (step 8) can be adopted and enforced by the Member State (step 9). Only then they can be implemented, regardless the body issuing rules (an authority, IM, etc.); any adopted rule shall be notified, too (step 9).
 - If the Commission concludes (step 8) that the rule is not NSR per definition, the Member State will be advised to withdraw it from Notif-IT and to clarify the rule status in the national legal system (e.g; it may be not NSR but other kind of legislation).
 - If the Commission concludes (step 8) that the rule cannot be accepted as NSR due to its content, the member State will have to withdraw the rule from both Notif-IT and



national legal system. If the Member State ignores the advice and enforces the rule as NSR (step 9), it will lead to the infringement procedure (step 11).

- If the Member State modifies the rule in line with the scope of NSR and conclusions of the Commission, the modified draft shall be re-submitted (step 7) and the step 8 shall be repeated.
- Any interested party may inform the Commission about a non-notified NSR (step 10). Notif-IT will include an additional functionality to facilitate such communication. The Commission will take an appropriate action (step 11).
- When a missing basic parameter is drafted by ERA (step 12) and introduced in EU legislation (step 1), a temporal NSR shall be withdrawn (step 2).

Note 1: This process describes mandatory steps for NSRs. In case of the overlap with NTR and national provisions for the transport of dangerous goods, additional steps of information or notification might be necessary before or after adopting the rule (see Sections 3.1.1.3 and 3.1.1.4).

Note 2: Figure 6 is based on example of type 4 NSR which is the largest group of NSR, in the process of being reduced by the OPE TSIs. Same process applies to all other NSR. In this case it is sufficient to use other relevant references:

- reference to the OPE TSIs shall be replaced by the reference to other relevant piece of EU legislation;
- reference to open points and specific cases shall be replaced by the reference to other relevant exceptions;
- instead of procedure for deficiencies in the IOD, similar procedure in RSD or other Directives apply (this should be made clearer when the RSD is amended).

3.1.2.3 Good practice for establishing and drafting NSR in MS

The procedures for rule establishment and enforcement are largely covered by national constitutional arrangements. In addition, the RSD provides some important requirements to promote wider transparency of related processes (see Section 3.1.2.1.). Improvements could be advised on three aspects in this activity:

- How to make the NSR-related processes more consistent?
- How to improve the transparency and availability of NSR through consultation of the interested parties?
- How to react in urgent cases such as serious accidents?

Below is advice on good practice in these matters.

System based approach

A key condition for drafting and justifying NSR is to ensure that this process follows a system-based approach. Annex 5 suggests good practice for systematic approach to managing NSR systems. It explains in more detail related responsibilities of the Member States and their NSAs, as well as key elements and principles for developing a consistent and transparent NSR system. A correct and systematic approach help to save the efforts of all parties concerned by NSR establishment and application.

Consultations at MS level

RSD requirements for transparency and non-discrimination are general principles of EU legislation. Safety legislation in railways should respect such principles in order to avoid that safety rules are



conceived and applied in a way that would result in discrimination, in particular against operators established in other Member States. Indeed, the final objective is to foster the development of a single European rail transport system. To this end, all interested parties have to be consulted about draft NSR.

It must be understood that national consultation is a mandatory process for any NSR, even if the same NSR is later notified to the Commission. These two steps have different targets:

- The consultation on national level has the primary target to influence the rulemaking-process in a way that all relevant parties can be involved (such as RUs, IMs, railway manufacturers, social partners, conveying industry, passenger representations) in order to contribute to the NSR which is under consultation. Comments by these parties may address any issues from the strategic choice of an appropriate option, task allocation and level of detail, to editorial issues such as user-friendliness of the text.
- The consultation on a European level aims to identify an arbitrary discrimination or a disguised restriction on rail transport operation between Member States.

Annex 6 provides a practical guide to best practice in the national consultation of stakeholders on draft NSR.

NSR in urgent cases

Another issue requiring a careful attention when establishing rules is how to deal with so called urgent cases. The RSD does not explicitly consider rules that have to be applied urgently in a Member State to keep the level of safety according to Article 4. There are no special provisions in the RSD in relation to “urgent” rules. Therefore the purpose for any “urgent” NSR or equivalent “ad-hoc” measures should be carefully considered and fully justified.

The Agency is developing a “Quick response procedure to accidents and incidents”¹⁶ in order to:

- Avoid isolated decisions taken immediately after serious accidents, repetitive incidents or a new risk by national actors could impede EU legal rules and standards, interoperability and safety or efficiency of rail transport
- Define a procedure, commonly recognised by NSAs, NIBs and NRBs
- Define the content of the procedure, its conditions for activation and implementation by stakeholders and its possible outcomes

Having analysed EU Directives applicable to other safety-critical sectors, it could be concluded that the way to manage railway safety as set out in the RSD is similar to the general mechanism to ensure safety in different sectors:

- Conformity with essential requirements, market surveillance, alert systems, networking, evolution of EU rules, etc.
- No immediate link between a risk and a new rule
- MS have different measures from voluntary and provisional to longer-term
- These measures shall be proportional to the seriousness of risk and degree of urgency
- Restrictions are under EU control; justification of a unilateral measure by MS is required
- Information exchange and transparency are important

There are no evident grounds to compromise transparency of urgent measures in the railway sector. Therefore any NSR, including an “urgent” rule should follow the same steps in establishment and

¹⁶ It is expected to approve the final draft in June 2013.



revision as set for NSR in the RSD. Indeed, the Task Force recognised the need for some flexibility as to deadlines. This is reflected in good practice for consultation (Annex 6) and flowchart for draft NSR notification (Annex 7).

When an authority has to take an urgent measure (NSR) in order to maintain a level of safety, then the Member State concerned has to notify a draft or the measure adopted to the Commission as soon as possible. In that case the Commission will check if there is a ground for urgency. Should the Commission come to positive conclusions, the rule may continue to apply. In a contrary case, the rule will have to be revised or revoked, depending on conclusions. Non-respect of the process to be followed for “urgent” NSR (consultation and notification of a draft) or mis-use of the “urgency” grounds may lead to an infringement procedure. The Commission intends to clarify this in the 4th Railway Package.

As noted above, the urgency has to be justified. New safety rules are often deemed to protect health and life of humans, animals or plants (precautionary principle), as well as environment. In this regard it is useful to refer to the Commission guidance paper on the nature and extent of risk assessment for safety-related rules: Communication from the Commission on the precautionary principle (COM(2000) 1 final) (available on [EurLex](#) in 11 languages). Some general guidance can also be found in the guide Free movement of goods. Guide to the application of Treaty provisions governing the free movement of goods (2010) (available on [EC website](#) in 21 languages).

This guidance leads to same conclusions as RSD analysis above:

- Urgency does not justify deviations from harmonised EU legislation.
- Urgent rules, as any other rules must not constitute a means of arbitrary discrimination or disguised restriction on trade between MS.
- Urgent rules, as any other rules must be appropriate, proportional and justified through the risk assessment (real risk or scientific uncertainty on identified potential risks).
- Urgent rules cannot apply longer than these risks exist.
- Purely hypothetical considerations and rules aiming at zero risk do not provide acceptable grounds for NSR.

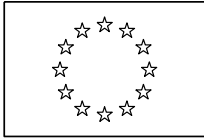
To conclude, it should be noted that it is very difficult to justify a safety rule following an accident without knowing root causes of that accident. The root causes should be established in result of the transparent investigation by the NIB, as required by the RSD. Relevant corrective actions by RUs and IMs should be considered in the first place rather than introduction of an “urgent rule” which would have a doubtful effect on safety and certainly – a negative effect on the common market.

3.1.2.4 Notification of draft and adopted NSRs

Notification of established rules takes place since April 2005. During that time relevant guidelines and electronic notification tools were made available by the Agency and the Commission. The notification is an instrument to achieve transparency and to allow all interested parties to retrieve information about railway safety requirements in EU-Member States. Relevant requirements for notification of established rules are found in RSD Articles 8(2) and 8(4).

State of play of the handling of the notified NSR is that they are firstly checked by the Agency if a rule fulfils NSR definition, if the rule is correctly classified and if a notification contains other information as required in RSD Article 8(2) and 8(4) before they are checked by the Commission. When the checks were positive, the NSR are published in Notif-IT. Legal requirements and workflow in Notif-IT are presented in Annex 8.

So far, draft rules were not reflected by the work-flow of the Notif-IT database, however there will be a module for draft NSR in future releases of Notif-IT. The obligation to notify draft NSR is clearly



established in Article 8 (6) and (7) of the RSD. Subsequently, all new draft NSR, that have to be notified according to Article 8 (6) of the RSD have presently to be notified to the European Commission through traditional channels. This allows the Commission to check the appropriateness of the notified rules according to criteria given in these Articles, in order to prevent creation of possible obstacles by means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States. Legal requirements and the future workflow in Notif-IT can be consulted in Annex 7.

If a draft rule was rejected by the Commission, it cannot be enforced and applied. If an adopted rule was refused to register in Notif-IT, the Member State shall check what should be the further use of such rule and if it should be revised or cancelled.

Article 8(6) deals with consultation obligation in two sensitive cases and refers to the notification obligation in Article 8(7)¹⁷. Article 8(7) details procedure on draft NSR notifications and related decisions by the Commission¹⁸. There is no definition of a “draft” in this Article but the prevailing interpretation is that these are the drafts meant in Article 8(6).

In theory, almost all rules may affect operation of RUs from other Member States because of the opening of the rail market. Therefore, in principle, all rules have potential for the specified negative impact and should be notified in draft before enforcing them at MS level. The other case is when a draft NSR has to be notified when it requires a higher safety level than the CSTs which are already adopted. Annex 7 provides some further details in the Flowchart for defining which NSR to notify in draft.

It has been confirmed that the EC cannot use any other reasons for its decisions concerning draft NSRs in addition to the reasons listed in RSD Article 8(7). It was highlighted that the Member States shall notify any rules which “may affect” operations and the EC takes decisions only if their serious doubts are confirmed based on the examination of a draft rule.

Another important issue is to know at which stage of development a draft should be notified in order to fulfil the RSD and avoid delays at national level. It was suggested to analyse the example of Directive 98/34/EC which refers to the notion of "draft standard" and "draft technical regulation". A concern was raised as regards to possible amendments to the notified drafts in relation to the estimated duration of draft NSR evaluation (two month for rules which do not raise serious doubts and eight month for rules which need EC decision).

“Urgent” rules are not excluded from this procedure to be notified as a draft rule. If, for some reasons, a Member State enforces the rule prior to EC decision, the Commission will analyse the rule anyway.

¹⁷ *If, after the adoption of CSTs, a Member State intends to introduce a new national safety rule which requires a higher safety level than the CSTs, or if a Member State intends to introduce a new national safety rule which may affect operations of railway undertakings from other Member States on the territory of the Member State concerned, the Member State shall consult all interested parties in due time and the procedure in paragraph 7 shall apply.*

¹⁸ *The Member State shall submit the draft safety rule to the Commission for examination, stating the reasons for introducing it.*

If the Commission finds that the draft safety rule is incompatible with the CSMs or with achieving at least the CSTs, or that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States, a Decision, addressed to the Member State concerned, shall be adopted in accordance with the procedure referred to in Article 27(2).

If the Commission has serious doubts as to the compatibility of the draft safety rule with the CSMs or with achieving at least the CSTs, or considers that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States, the Commission shall immediately inform the Member State concerned, which shall suspend the adoption, entry into force or implementation of the rule until a Decision is adopted, within a period of six months, in accordance with the procedure referred to in Article 27(2).



3.1.2.5 Good practice for NSR dissemination in MS

As follows from RSD requirements in Articles 8(1), 12(2) and 12(3), the MS and NSAs have primary responsibility for NSR publication and availability. Notif-IT improves accessibility at EU level but does not formally substitute national databases.

There is a need for improvements regarding these requirements. Furthermore, it was noted that there is a big need for stakeholders to get guidance and proactive assistance from NSAs. Details on legal requirements and suggestions for improvements can be found in the Guidance on dissemination and availability of NSR provided as Annex 9.

3.2 Suggestions for the future legal framework for NSRs

An important issue in the work program of the Task Force was to identify potential for simplification of the NSR system in order to reduce redundant rules and procedures and to concentrate limited resources on the achievement of the key objectives for NSRs.

This objective is partly achieved by clarifying the existing legal framework for NSR in Section 3.1. Main TF points in that regard:

- Any NSR shall be established at Member State level, published, made available and registered in Notif-IT.
- The scope of NSR is limited to exceptions allowed by EU legislation. Examples: open points and specific cases in OPE TSIs, exceptions in the CSM on risk assessment.
- Other documents cannot be regarded as NSRs. Examples: various transposition measures, information by different bodies and IM, internal rules resulting from the coordinated interfaces between IM and RU, IM local rules resulting from the implementation of NSR.

Further clarification and simplification requires legislative amendments in the framework of the 4th Railway Package. The changes suggested by the Task Force do not have revolutionary character but constitute a logic consequence of developed common requirements and clarifications which are summarised in this report. Main ERA points concerning further simplification and clarification of EU legislation:

- To merge definitions of NSRs and NTRs into national rules (NRs). This is necessary because the overlap between operating NSRs and NTRs is totally artificial. Merging two groups of rules would improve the consistency of related processes, simplify the regulatory landscape and reduce workload for all parties. This does not mean that a new confusion will arise between those rules used for subsystem and vehicle authorisation, and safety-operating rules. Such confusion can be easily avoided by the accurate wording of amendments and related legal techniques.
- To align the new definition of NRs with the rationale of the NTR description in IOD Article 17(3). This would improve clarity on the scope of allowed remaining rules and their revision. Obligation of the Member States to establish rules has to be replaced with task for MS is to revise and reduce existing rules in line with EU legislation.
- To withdraw RSD Annex II (there will be no need for it in case of clarified rule definition and considering the allowed scope for remaining rules).
- To include a formal procedure in RSD for deficiencies in CSMs and CSTs, by analogy with the procedure in IOD Art. 7 for deficiencies in TSIs.
- To clarify, streamline and simplify existing procedures in RSD, IOD, Directives 98/34/EC, Directive 2008/68/EC and the Agency Regulation concerning establishing, publishing, notifying and authorising NR.



Details concerning this vision and related legislative changes can be found in Annex 10.

3.3 Transition process

Findings in this report concerning the current legal framework for NSRs and desirable changes do not lead to any new task for the Member States and their authorities. On the contrary, they help their work following the principles of Better Regulation.

The Member States should concentrate their efforts on the following two main issues in order to promote transition towards the target system of NSRs:

- Member States should clean their systems of NSRs in order to bring them in compliance with existing EU requirements: revise NSRs as necessary and remove redundant NSRs from their national legal systems, national sources of NSRs and Notif-IT. The Member States should follow the process in Section 3.1.2.2. and use the Rule Management Tool in Annex 3. This should be a recurrent process taking into account the development of EU legislation.
- Those documents which are not considered to be NSRs anymore may remain valid. However it is necessary to revise and change their status accordingly in the national legal systems, national sources of NSRs and Notif-IT.

This process has to be monitored and supported by the Agency and the Commission when required. In particular, there is a need for the Agency to increase the cooperation with the Member States. Such cooperation may take place on two levels:

- **Monitoring and coordination with all Member States.** In the first place, the Agency will increase cooperation through the Network of contact persons for NSR notification in order to discuss the way forward and promote the progress. The enhanced cooperation will include: the coordination of NSR revision and reduction, use and update of the Rule Management Tool, further improvement of Notif-IT in response to the changes in the NSR system and the needs of users, development of good practice in other NSR-related activities, as well as feedback and monitoring of progress in these activities. This would be a continuation of the work of the Task Force. The results would be reported to the NSA network and RISC.
- **Direct contacts with the individual Member States.** Such contacts would be dedicated for an in-depth consultations concerning existing notified and non-notified rules.

The Agency will ensure the exchange of information between these activities for revising and reducing NSR and other activities for developing common EU requirements.

It is expected that RISC will take note of the results of the Task Force, approve this report and encourage the Member States to foster the revision of their NSR systems in line with the guidance in this report. No other particular decisions are required from RISC. If necessary, further decisions can be made in the RISC depending on evolution of the NSR systems in the Member States in terms of transparency and compliance with EU legislation.

3.4 Dissemination of TF results

In order to facilitate the process of NSR revision in the Member States, the Agency intends to disseminate the results of the NSR TF as wide as possible.

Taking into account the continuous ongoing obligations and tasks of the Member States, delays caused by previous uncertainties and expected benefits, there is a need for an intensive campaign for disseminating TF results. In 2013 it is necessary to deliver concentrated information to the key players in charge of rule development and application. This intensive campaign should be followed by other events in 2014 aimed at the consolidation of the knowledge of those players.



Activities in the following years will depend on the progress with NSRs, the needs for further dissemination and available resources. As necessary, these details will be reflected in the Agency's Work Program.

Taking into account currently available resources, the following dissemination program is proposed:

- 2012: preparatory phase with RISC, NSAs, NIBs
- 2013: concentrated information on the current and future framework to the widest possible audience at the lowest possible effort:
 - o presentations and workshops to RISC (including stakeholders) and ERA networks (especially contact persons for NSR and NTR)
 - o regional workshops in the Member States and one for IPA-countries
 - o ERA and EC website
 - o articles in the railway / transportation law press
 - o publicity in conferences
- 2014: detailed workshops, taking into account the updated Rule Management Tool:
 - o workshops in smaller regions and IPA-countries which are candidates to EU
 - o refresher training for national bodies
- 2015: follow-up, taking into account the adopted 4th Railway Package:
 - o follow-up workshops in most problematic MS and workshops on request
 - o refresher training for and feedback from NR contact persons
 - o refresher presentations for and feedback from national bodies
 - o refresher presentations for and feedback from the sector
- 2016: consolidation of the knowledge, taking into account feedback:
 - o follow-up workshops in other MS or regions
 - o refresher training for NR contact persons
 - o report to RISC, NSAs, NIBs

The Agency will organize most of the events above. It is expected that Task Force members will join the Agency in the workshops, in order to share their knowledge and support common result.

Beside the planned events, the usual channels for profound bilateral cooperation between the Agency and Member States are open.

4 Annexes

Annex 1: Terms of Reference



NSR TF ToR

Annex 2: Work Plans 2011 and 2012



Work Plan 2011



Work Plan 2012



Annex 3: NSR Management Tool

Rule Management Tool, version 1.0



Explanatory note regarding the use and update of the Rule Management Tool

1. Purpose

The Rule Management Tool provides an overview about the existing European railway legislation replacing NSR – focusing on safety. As far as possible this tool lists all areas where NSR may remain, as well as key areas where the notified NSR should be withdrawn in line with EU legislation. Additionally, other examples are taken into account such as worker protection and railway security; this is to reply to FAQ regarding rules which are not NSR. The aim of the Rule Management Tool is to give Member States guidance about the existing legislative framework in order to allow them to adjust their legislation to the European law.

2. Intended use

During the evaluations of notified National Safety Rules and during the European Commission's Task Force on National Safety Rules it became obvious that in many Member States there are still a number of redundant, repetitive, contradictory and unnecessary National Safety Rules which are not in line with the European framework. For this reason the European Railway Agency has developed the attached Rule Management Tool. It is intended to achieve the aims above and assist the Member States as good as possible.

3. Content

The Tool has three parts. First part focuses on remaining NSR and old NSR already replaced by EU law. Second part gives a number of examples of NTR or rules for products in the meaning of Directive 98/34/EC which are frequently notified in place of NSR. Third part gives a number of examples of other kind of legislation which applies in the Member States but is not considered as NSR. Second and third parts include some cases where a rule can be classified as NSR, NTR or other, depending on its content.

In each part there are seven columns:

- Column one is for numbering the examples. This number may change from edition to edition when new rules are added or examples are deleted, which are no longer deemed as suitable.
- The second column provides an orientation to the user how to classify the various examples, i.e. rules according to Annex II of the RSD, NTR, product rules or other rules.
- In the third column «Task / responsibility» a short description of the content is provided in order to better understand the subject which is regulated by the various examples.



- The fourth column «Requirements covered by common rules (ref. to TSIs, CST, CSM, etc.)» provides a reference to the legal texts as far as they exist on a European level.
- The 5th and the 6th columns contain descriptions, in how far the common European rules make the rules on national level obsolete. «No room for NSR» means that existing NSR in this area have to be withdrawn by the Member State in order to comply with European requirements.
- The last, comment-column helps to clarify unclear issues and gives more specific guidance.

4. Updates of the Rule Management Tool

In order to adjust the Rule Management Tool to future legal changes on a European level and to new developments in the European railway market the European Railway Agency will continuously update this Rule Management Tool in the future. The staff in charge of NSR in the ERA Safety Unit will continuously monitor the legislative changes in the European Railway environment and at least once a year (by the end of the calendar year) make a proposal for changes to the Network of contact persons for NSR. The Network will be asked to provide their views on the proposals, as well as other feedback regarding their experiences with the Rule Management Tool. After these discussions and extensive in-house consultations, the proposal will be forwarded to the NSA Network and RISC in order to promote the proposed changes and to encourage Member States implementing them. The new version, when approved by the RISC, will be prepared and published on the Agency website <http://www.era.europa.eu/Core-Activities/Safety/>.

Annex 4: DV42

DV 42 is a working document of the RISC concerning “Communication of draft technical regulations and notification of rules related to the railway system under Directives 98/34/EC, 2004/49/EC and 2008/57/EC – clarification of objectives, scope and procedures”. It provides general information on the scope of NSR, NTR and rules for products and information society services, the scope of their overlap and notification procedures to follow in different cases.





Annex 5: Good practice for applying systematic approach to NSR

Once the system of National Safety Rules is established in a Member State it needs to be monitored and further developed¹⁹. The Task Force described the NSR System and gave examples for a systematic approach to NSR system management.

Purpose, principles and responsibilities for monitoring and developing NSR

It was clarified in the Task Force that the RSD requires a systematic approach to NSR as an integral part of national regulatory frameworks for railway safety in Member States. This follows from RSD Articles 4(1), 4(2) and 16(2)(f). The sector is looking for better and more transparent NSR which will have a positive influence on efficiency of the railway system. The Task Force saw here some space for improvement and agreed that a more systematic approach to NSR systems is needed.

The overall responsibility for NSR is given to the Member States (Section 3.1.2.1.). In summary, Member States shall ensure that:

- Those NSR which are necessary for safe railway operation are comprehensive, non-discriminatory, established transparently, made available to all interested parties (RUs, IMs, NSAs and other parties concerned) and understood by them.
- Those rules which are not justified or replaced by common requirements are timely removed from the national regulatory frameworks and NSA practice (guidelines, procedures, decisions).

This is a very complex objective in terms of required activities, organisation and principles to respect. It is important to note that the responsibility and tasks of the Member States should be allocated to those authorities which have real powers to control processes and to influence results. Some Member States have allocated their tasks in RSD Article 4 and 8 to the NSA. This provides that the NSA has enough power and there is no conflict of interest. Formalised roles and processes may help to avoid potential difficulties.

The RSD places the NSAs in a central position between the sector, national authorities issuing safety policies and rules, NIB issuing safety recommendations and the Agency developing common rules and facilitating exchange among NSAs. With regard to such position RSD assigns some specific tasks to NSAs in order to support the Member States:

- Guidance to RUs concerning applicable NSR (RSD Article 12 (2) and (3))
- Consultation of stakeholders (RSD Article 17(1))
- “[M]onitoring, promoting, and, where appropriate, enforcing and developing the safety regulatory framework including the system of national safety rules” (RSD Article 16(2)(f))

It was underlined that the latter task includes four elements:

- **Supervision** of NSR application and appropriate reaction in case of non-compliance
- **Monitoring** efficiency of existing safety framework and relevant conclusions
- **Promoting** necessary changes of NSR system, i.e. sharing the conclusions above and related proposals with rule-makers, and follow-up of legislative developments.

¹⁹ The term « development » in this report means any action leading to revision of NSR, including changes to existing NSR in line with new rules at EU level, reduction of NSR and introduction of new rules where justified.



- **Rule-making** activities, if a Member State grants such powers to the NSA.

To be able to fulfil this task, NSA should take a proactive position. NSA responsibility for NSR should be recognised by the bodies issuing rules. These bodies should maintain dialogue and information exchange with NSA and consult NSA on their drafts of NSR.

Key elements for building and managing a NSR system in a Member State

NSR system management at Member State level includes the definition of the framework for NSR system and related activities, and coordination of these activities. The Task Force agreed the graph below which illustrates the key elements for building and managing the NSR system in a Member State.

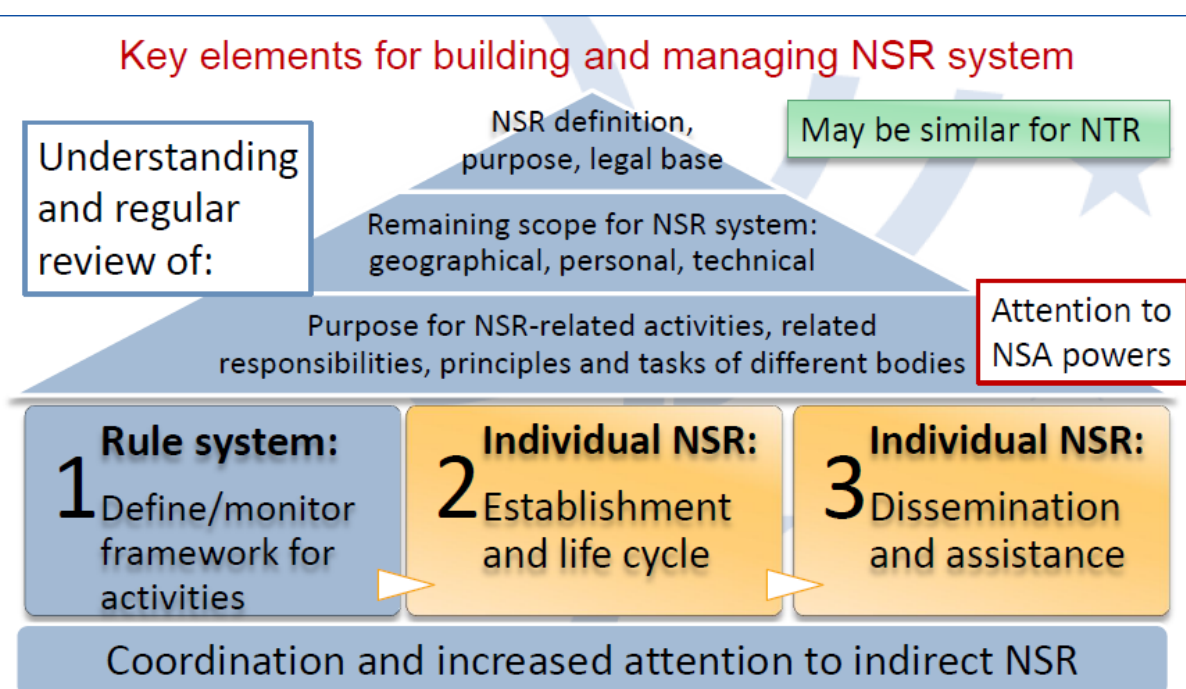
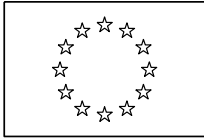


Figure 7.: Key elements for building and managing the NSR system in a Member State

This graph suggests that building and managing NSR system in a Member State begins with understanding conceptual issues which are shown in the pyramid: NSR definition and purpose, status and legal base, scope for NSR system next to common rules, purpose for NSR-related activities, related responsibilities, principles and tasks of different bodies.

A next step is to implement the concepts above, i.e. create the framework for NSR-related activities in the Member State. This includes allocation and communication of relevant responsibilities, clear definition of the tasks of all parties involved in NSR development, their coordination and cooperation, review and design of related procedures and putting relevant processes in place. This may be done by legislative and / or administrative tools, as appropriate (see box 1 on Figure 7). Specified framework should cover all forms of NSR, all parts of railway networks and all parties concerned by NSR.



It is crucial in this process to define a responsible body²⁰ with relevant powers which will oversee (monitor) the whole NSR system, related activities and interfaces between various parties involved. When it appears necessary, this body should initiate relevant measures²¹ to improve the NSR system and its management so that the Member State continuously fulfils its tasks in a way required in the RSD.

This body should cooperate with the NSA²² which has a key role in monitoring the NSR system. If any other parties monitor rules (e.g. their own rules or specific groups of rules), they should cooperate with NSA on that subject. The Task Force suggests that NSR system monitoring means verification of NSR relevance, consistency, comprehensiveness and compliance with EU law.

The verification of NSR relevance includes the following elements:

- Monitoring the effect of established rules and safety performance
- Collection of feedback from users and other interested parties
- Monitoring conditions which led to establishing rules and may trigger further changes
- Follow-up of developments of EU legislation

Such background facilitates routine work in the Member State – establishment and dissemination of individual rules (boxes 2 and 3 on Figure 7). This has direct impact on rule quality and transparency.

Work with indirect rules might require additional actions. This specific shall be always kept in mind by any body involved in the NSR-related activities.

Key principles for managing and monitoring NSR systems

RSD Articles 4(1) and 8 provide principles which are relevant for both NSR content and the way how rules are established, enforced and applied. NSR shall be “open”, “non-discriminatory” (also no “arbitrary discrimination”) and “kept to the minimum”. They shall also “prevent further barriers from being created” and shall not cause “disguised restriction on operations of RUs from other Member States”.

Transparency and non-discrimination are general principles in EU. The RSD pays a special attention to NSR in order to eliminate some artificial barriers in national legislation observed before 2004, and to promote further competition among RUs and development of railway transport.

Elements in this annex will be helpful to check whether current arrangements in a Member State are sufficient. In any case, monitoring the NSR system and NSR-related activities shall be a continuous task.

The meaning of discrimination is explored in Annex 7, Part I.10. In order to avoid such effect, it is advised to carry out a proportionality test for each NSR, i.e. to compare the draft with intended objectives for a rule and other available means to achieve those objectives.

Another principle for the content of NSR is “*a clear language which can be understood by the parties concerned*” (RSD Article 8(1)). The provisions for a rule to be clear were discussed in the Task Force. A rule should clarify at least:

- The rule status, purpose and the application context
- Responsibilities and roles it creates; margins of flexibility it leaves to stakeholders

²⁰ This does not mean that a Member State should establish a new body for this task.

²¹ It is essential that monitoring results and, where necessary, relevant proposals are shared with the bodies which can influence and improve the state of the art.

²² If it is not an NSA itself



-
- Interfaces between subsystems and actors concerned by the rule
 - Definitions, references, abbreviations

Further aspects may help to understand a rule:

- Involvement of stakeholders in discussion on rule purpose and drafting
- Less ambiguous but not prescriptive requirements
- User-friendliness of the text
- Assistance to stakeholders



Annex 6: Practical guide to best practice in the national consultation of stakeholders on draft NSR

1. Introduction

MS that considers the introduction of a NSR has to consult all interested parties in due time - as a general practice in application of Articles 4((1), 2nd sentence) and specifically for the purpose of Article 8(6).

Article 4 establishes a general statement in the sense that "*Member States shall ensure that safety rules are laid down, applied and enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system.*"

This obligation seems to be a general one and should be applied not only to the NSR but also to other national laws such as laws implementing TSIs, in particular when Member States adopt the internal rules for their implementation and their subsequent enforcement.

In addition, Article 17(1) requires on NSA level that "*in the process of developing the national regulatory framework, the [NSA] shall consult all persons involved and interested parties, including infrastructure managers, railway undertakings, manufacturers and maintenance providers, users and staff representatives*".

The obligation of consultation becomes of particular importance when the Member States have to apply the procedure according to Article 8(6) in 2 cases after the adoption of CSTs:

- 1.- the new NSR requires a higher safety level than the CSTs,
- 2.- the new NSR may affect operations of railway undertakings from other Member States on the territory of the Member State concerned.

Article 8 (6) establishes that Member States have to consult *draft NSR* with "all interested parties in due time". Recital 10 states that "*All interested parties should therefore be consulted before a Member State adopts a national safety rule that requires a higher safety level than the CSTs.*"

These obligations are in line with the general principles laid down in the White Paper on European Governance²³. This White Paper concerns the way in which the European Union uses the powers given by its citizens. It proposes opening up the policy-making process to get more people and organizations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This should help people to see how Member States, by acting together within the Union, are able to tackle their concerns more effectively²⁴.

The principles set in the White Paper on European Governance can serve as a guide for Member States who are following their obligations to consult originating from the Railway Safety Directive. Apart from this, there is further material publicly available regarding consultation published by other States, organisations and local communities. For further information please refer to the end of this guide.

2. Principles

In February 2010, the European Railway Agency (Agency) delivered a recommendation to the European Commission on the publication of NSR in order to make the relevant information more

²³ COM(2001) 428 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf

²⁴ White Paper on European Governance, Executive Summary



easily accessible²⁵. In this recommendation the Agency highlighted that an effective consultation process has an important role to play in the understanding and, consequently, the application of the safety rules, beyond the formal legal requirement.

The inclusive approach to be followed when developing and implementing policies requires consulting as widely as possible on major policy initiatives. To achieve a maximum benefit from the consultation process, the following Commission principles of the named White Paper above should be taken seriously when organizing a consultation:

- what issues are being developed
- what mechanisms are being used to consult
- who is being consulted and why
- what has influenced decisions in the formulation of draft policies

For consultation to be equitable, the organizer of the consultation should ensure adequate coverage of the following parties in a consultation process:

- those affected by the policy
- those who will be involved in implementation of the policy, or
- bodies that have stated objectives giving them a direct interest in the policy.

It should be assured to provide sufficient time for planning and responses to invitations and written contributions. The organizer of the consultation should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days' notice for meetings. On receipt of contributions, they should be acknowledged. Results of open public consultation should be displayed on the relevant websites .N. B. While high-level legislation requires broad consultation, lower-level NSR or indirect NSR do not always benefit from the same procedure though it has a big impact on daily work of the parties concerned.

3. Example

The United Kingdom has a long tradition in consultation. For its mainline rail-network, there is the Rail Safety and Standards Board (RSSB) which is in charge of the Railway Group Standards (RSG). Proposals for new or amended standards are accepted from any party and reviewed by the relevant Standards Committee assisted by the Steering Committee of experts.

In case of «limited», i.e. minor amendments the consultation is held within the Standards Committee only. The «Full» consultation procedure is applied in case of new standards or major revisions. In this case, beside all Standards Committee members, all transport operators, representative associations and others (e.g. trade unions, passenger groups) are consulted. All comments are collected and undergo an assessment. The internet site www.rgsonline.co.uk is used to publish all consultations. Appeals in the standard making process go to the RSSB Board or to the ORR as supervisory authority.

4. References and Sources

EU

- [Consultations on EU policies](#)

²⁵ Final report on the publication and availability of national safety rules in all EU Member states, Norway and for the Channel Tunnel, <http://www.era.europa.eu/Document-Register/Pages/publication-and-availability-of-national-safety-rules.aspx>



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- [Consultation in relation to the impact assessment](#)
 - [Minimal consultation standards](#)
 - [Transparency register](#)
 - [The code of conduct for lobbyists](#)

UK

[Government consultation websites](#)

OECD

[Background Document on Public Consultation](#)

City of Montreal

[Deux guides pratiques en matière de consultation publique](#)



Annex 7: Notification and consultation of draft NSR via Notif-IT

This annex provides a comprehensive guidance concerning procedure for the notification of draft NSR to the Commission and related consultation procedure at EU level. Considering the state of art with the liberalisation in the railway market and development of common legislation in the field of railway safety and interoperability, most of NSR have to follow this process.

The annex contains two parts. The first part informs about legal requirements in RSD concerning draft NSR and provides their interpretation where necessary. It also includes a flowchart for defining which NSR to notify in draft.

The second part includes the workflow for NSR notification via Notif-IT and its explanatory note. In order to simplify the work, this workflow includes registration of those NSR which are adopted following this procedure. Legal obligations in relation to the notification and registration of adopted rules are explained in Annex 8, Part I.

Part I:

RSD requirements on submission/notification²⁶ of the draft NSR to the Commission - Article 8(6) and 8(7)

I.1. Why to notify?

Directive 2004/49/EC is designed to protect, by means of preventive control, freedom to provide railway transport services (recitals 1 and 2). This notification is not a simple information to the Commission since the Directive imposes an obligation on the Commission to analyse the compatibility of such *draft* measure with certain EU law (in particular the principle of non discrimination). The systematic control made by the Commission has to be effective and serves a useful purpose in that NSR may constitute an arbitrary discrimination or a disguised restriction on rail transport operations between Member States.

The notification, therefore, affords the Commission an opportunity to examine whether the draft NSR in question creates obstacles to the provision of services contrary to the EU Treaty.

I.2. Obligation to notify

The obligation to submit *draft* NSR is clearly established in Article 8(6) and 8(7) of the Directive.

“6. If, after the adoption of CSTs, a Member State intends to introduce a new national safety rule which requires a higher safety level than the CSTs, or if a Member State intends to introduce a new national safety rule which may affect operations of railway undertakings from other Member States on the territory of the Member State concerned, the Member State shall consult all interested parties in due time and the procedure in paragraph 7 shall apply.”

“7. The Member State shall submit the draft safety rule to the Commission for examination, stating the reasons for introducing it.”

I.3. Which draft NSR has to be notified?

Member States submit to the Commission draft safety rules if after the adoption of CSTs:

- a new NSR requires a higher safety level than the CSTs,

²⁶ Notification and submission are used as synonymous and not as different concepts.



- a new NSR may affect operations of railway undertakings from other Member States on the territory of the Member State concerned.

The Member States have the responsibility to take the decision case by case whether the draft NSR *"may affect operations of railway undertakings from other Member States on the territory of the Member State concerned referred to in Article 8 (6)"*.

The Directive in its Article 2(2) provides for the possibility for the Member State to exclude from the implementing measures adopted to transpose the Directive certain cases like metros, trams and other light rail systems or networks that are functionally separate from the rest of the railways and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these networks.

It is clear from this provision that in case a Member State decides to make use of this possibility the NSR will not concern the cases excluded. However, if metros, trams, etc. are covered by the transposition measures, Article 8 of the Directive applies to these networks, too.

In general and due to the fact that rail transport, in particular freight is open to competition it will be difficult to find cases where a NSR may not affect operations of railway undertakings from other Member States. Therefore it seems that the large majority of the NSR *"may affect operations of railway undertakings from other Member States"*.

If a Member State does not apply any of the exclusion cases according to Article 2(2) the draft safety rules relating to these cases shall be considered under this procedure.

The flowchart below helps identifying safety rules for the notification as NSR. This flowchart is based on the clarified criteria for a rule to be NSR, as well as further criteria for draft NSR notification in RSD Article 8. The purpose of the whole notification process is to prevent contradicting and non-justified rules. Accordingly, the flowchart helps to raise awareness about most sensitive cases and promote compliance of NSR with EU legislation.



Flowchart for selecting draft NSR for

I.4. When shall draft NSR be notified to the Commission?

Article 8(7) clearly establishes that the NSR has to be notified at the stage of ***draft***, i.e. before the measure is adopted by the competent authorities. It seems that a notification that intervenes after the adoption of a NSR but before its entry into force is contrary to the Directive since the measure is no longer a "draft".

If a Member State submits a draft NSR to the Commission under Article 8(7) and takes the responsibility to adopt the draft rule before any Commission reaction, the Commission has in any case to examine its contents under Article 8(7) of the Directive, even if the rule is already adopted.

The authorities of the Member States might have doubts on the term "draft". At what stage of preparation of a NSR the text becomes a "draft" that should be submitted to the Commission? There is not a clear and definitive answer to this question. However, the authorities of the Member States should submit the draft once it is at a final stage of preparation in order to avoid submitting further modified versions to the Commission that would complicate the procedure. However, a draft may be modified till it is formally adopted. In order to solve the problem it could be useful to refer to the procedure in Directive 98/34/EC:

"draft technical regulation", the text of a technical specification or other requirement or of a rule on services, including administrative provisions, formulated with the aim of enacting it or of



ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made;

"draft standard", document containing the text of the technical specifications concerning a given subject, which is being considered for adoption in accordance with the national standards procedure, as that document stands after the preparatory work and as circulated for public comment or scrutiny.

Directive 98/34/EC, Article 8(1), § 3 requires that "*Member States shall communicate the draft again under the above conditions if they make changes to the draft that have the effect of significantly altering its scope, shortening the timetable originally envisaged for implementation, adding specifications or requirements, or making the latter more restrictive*".

I.5. Information about the notification of draft safety rule

Article 8 (7) requires the Member State to submit the draft safety rule and to state the reasons for introducing it.

For NSR in force at the date of application of the Directive, Article 8 (2) establishes that "*The notification shall further provide information on the principal content of the rules with references to the legal texts, on the form of legislation and on which body or organisation is responsible for its publication.*"

In general, the notification should include all relevant information that explains the reasons for its adoption in particular the necessity and the proportionality of the measure. It is not excluded that the Commission could request further information during the procedure.

I.6. Urgent draft NSR

The Directive does not establish specific provisions for the submission of urgent draft NSR according to Article 8 (6-7), in particular exoneration of submission for urgent draft NSR or of ex-post notification (notification after the adoption of the NSR). On the other hand it might be necessary due to safety reasons that a Member State or a NSA puts in force urgent NSR.

It seems that the urgent adoption of a NSR would request an *urgent* notification to the Commission and, whenever possible, an *urgent* answer from the Commission. If necessary, Member State can adopt the measure immediately after urgent notification to the Commission; the notification does not have a suspensive effect (see point 2.4.8).

I.7. Legal consequences of non-notification of draft NSR

When the submission of a draft NSR is obligatory, the absence of submission might render the NSR, once formally adopted by the Member State, illegal in relation to Article 8 (6-7).

The obligation established under Article 8(7) of the Directive seems to lay down a precise obligation on Member States to submit certain draft NSR to the Commission before they are adopted. We wonder what would be the effects of a non submitted NSR for third parties. Two questions should be further examined:

- First, should Directive 2004/49/EC be interpreted as meaning that a breach of the obligation to submit draft NSR, which constitutes a procedural defect in the adoption of the NSR concerned, renders such safety rules inapplicable so that they may not be enforced against individuals?
- Secondly, it has to be analysed whether the inapplicability of NSR adopted in breach of Article 8 (7) of Directive 2004/49/EC can be invoked in civil/criminal proceedings between private individuals concerning contractual rights and obligations.



I.8. Suspension of the adoption, entry into force or implementation of the NSR

The submission of the draft NSR does not have a suspensive effect. Therefore, if the Commission does not inform the Member State concerned on its serious doubts, the NSR may be adopted, enter into force and being implemented.

After the submission the Commission has to make an assessment of the measure and, if it has serious doubts, the Commission shall inform the Member State concerned *"which shall suspend the adoption, entry into force or implementation of the rule until a Decision is adopted, within a period of six months"*.

It is helpful that the Commission and the Member State start a dialogue on the draft NSR before the Commission informs officially on its serious doubts.

The Commission is obliged to inform the Member States in case of serious doubts. Thus, the Commission cannot adopt a decision declaring the incompatibility of the NSR if, before that, it has not informed the Member State on its serious doubts.

The information by the Commission to the Member State on its serious doubts has automatically a suspensive effect (suspension of the adoption, entry into force or implementation of the NSR).

I.9. Analysis by the Commission of the Notified draft NSR

Article 8(7) establishes the grounds for the analysis of the adequacy of the draft NSR:

- the draft safety rule is incompatible with the CSMs;
- the draft safety rule is incompatible with achieving at least the CSTs;
- it constitutes a means of arbitrary discrimination;
- it constitutes a disguised restriction on rail transport operations between Member States;

It seems that the Commission cannot invoke any other reason in the framework of this procedure.

The Commission may request technical expertise to the European Railway Agency according to Articles 9a or 21b of the Agency Regulation (EC) 881/2004²⁷.

It seems that the other Member States are not associated to this procedure. All Member States are only associated during the procedure established in Article 27(2) of the Directive which is applicable for the adoption of the final decision of the Commission. However, it does not seem excluded that the Commission informs or even submits the draft NSR for comments (to other Member States) before the adoption of the Decision. For this reason it seems justified that the draft NSR are available in the specific notification database²⁸.

²⁷ Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency, OJ L 220, 21/06/2004, p.3, amended by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 (OJ L 354, 31.12.2008, p.51) (Agency Regulation).

²⁸ Publication of draft NSR and adopted NSR shall be without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, in particular Article 4 (1) and (2) which may restrict publication for public security reasons, etc.



I.10. Arbitrary discrimination and disguised restriction

The notions of "arbitrary discrimination" and "disguised restriction" are present in Article 36 of the Treaty on the Functioning of the European Union (TFEU or Treaty) concerning the prohibition of quantitative restrictions between Member States. These notions are also used in secondary legislation.²⁹

Article 34 and 35 TFEU prohibits quantitative restrictions on imports and exports and all measures having equivalent effect. However, under Article 36 TFEU, certain prohibitions or restrictions could be accepted if they are justified among others on grounds of public morality, public policy or public security and the protection of health and life of humans. Last sentence of this Article establishes that *"Such prohibitions or restrictions shall not however, constitute a means of arbitrary discrimination or a disguised restriction of trade between Member States"*.

Examples of "arbitrary discrimination" could be the following:

- discriminate imports in favour of national production,
- a restriction that is applicable in a more stringent way to exports in relation to the products sold in the national market,
- a restriction that imposes restriction to goods of certain Member States and not to other Member States.

In general, "arbitrary discriminations" refer to the different treatment of identical situations.

In addition, a better treatment of non national products is not considered as discrimination contrary to EU Law.

Examples of "disguised restriction" could be the following:

- measures that under a safety motivation are applicable only to operators established in other Member States while the national operators are not subject to these rules or are benefiting of certain exonerations not granted to other operators,
- a NSR that would make compulsory certain specifications of the rolling stock of a national operator (for instance the historical operator) to all operators if the other national/EU operators have no possibility to meet with these specifications.

The fulfilment of the objective of railway safety does not allow Member State to adopt measures which have as effect to grant a competitive advantage to one or several domestic operators.

Could an "unequal treatment" be considered compatible with the Treaty in so far as it is not an "arbitrary" discrimination? In other words, could some degree of differentiated treatment be accepted if it is proportionate and can be justified on the basis of objective differences between domestic and other EU products/operators? In principle, the different treatment of non comparable situations does not automatically bring about a discriminatory treatment.

In general, it has to be avoided that under the cover of a "safety rule" Member States adopt measures which are not adapted to its safety finality. The proportionality test should serve the purpose of distinguishing between what could be considered as an acceptable NSR.

I.11. Commission decision and appeal

The Commission, after having informed the Member State on its serious doubts, may adopt a decision confirming the reasons for its serious doubts or a decision dissipating the doubts and allowing the Member State to adopt and implement the NSR.

²⁹ The origin of the expression "arbitrary discrimination" is in Article XX of GATT.



It is not excluded that the Commission could adopt a conditional decision or a decision concerning partial acceptance of a rule.

The Decision has to be adopted within 6 months from the information of the Commission's serious doubts, and in accordance with the procedure referred to in Article 27 (2) of the Directive.

The Commission has to respect the rights of defence of the Member State. Therefore, before adopting its decision the Member State will be given the opportunity to provide its opinion on the draft Commission position.

The Commission decision could be challenged before the General Court (annulment procedure).

I.12. Procedure applicable to the draft NSR submitted to the Commission not subject to "serious doubts"

The Directive does not refer clearly what happens with the draft NSR submitted to the Commission that do not raise serious doubts.

It is clear that these NSR can be adopted, enter into force and be implemented.

However, how and when do the MS know that the Commission has no serious doubts? The Directive does not impose an obligation to the Commission to inform on this.

The Commission has to analyse whether the NSR raises "serious doubts" in a reasonable period of time. If after this period the Member State has not received the "serious doubts' letter" it means that the measure does not raise difficulties. To support the Member State the Commission should inform them as soon as possible if it has no serious doubts.

Part II:

Explanatory note to the workflow in Notif-IT for submission of draft NSR according to RSD Article 8(7)

II.1. Workflow



Notif-IT workflow for submission of draft NS

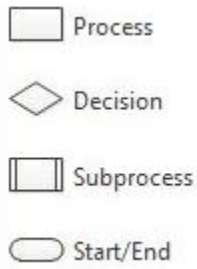
II.2. Purpose

RSD Article 8(7) requires the submission of certain draft NSR. Insofar this was done through traditional channels. Electronic notification requires to develop a new module in Notif-IT. The Task Force has clarified relevant process based on legal requirements in RSD.

The flowchart above is meant to give a visual overview over the process of the notification of draft NSR via Notif-IT when the new module is ready.

II.3. Meaning of shapes

The flowchart is created in Visio which has the following basic shapes:



Blue shapes are used for the start, processes and decisions. Green shapes show positive results; red shapes show negative results. Yellow shapes highlight steps with possible different outcome.

A number of marks is used to show the development of rule status in Notif-IT. The duration of different steps is shown on the left bar.

II.4. Process overview

The whole process would take from 4 to 9 months, depending on the findings of the Commission. The following main steps should be highlighted:

- Submission of a draft rule by a Member State
- Publication of the draft in Notif-IT for transparency reasons
- In parallel: pre-evaluation by ERA and public consultation (2 months)
- Examination by the Commission (2 months)
- Only in case the Commission has serious doubts – further examination of the rule (6 months)
- Immediate communication of results to the member State and via Notif-IT
- Rule adoption, amendment or withdrawal by the Member State
- Information about adopted rules in Notif-IT and final validation by ERA and the Commission.

II.5. Process description

II.5.1. Submission of a draft rule by a Member State (step 1)

The Interim Report of the NSR Task Force clarifies when RSD requires the notification of a draft NSR.

With the draft rule the Member States have to provide more or less the same legal references as they currently do for adopted NSR (RSD Articles 8(2) and (4)), as well as reasons for introducing the draft (RSD Article 8(7)).

II.5.2. Publication of the draft in Notif-IT (step 2)

For transparency reasons, every notified draft NSR will be automatically published in Notif-IT. External users will be able to follow the change of rule status in the Member State and the progress of its evaluation in Notif-IT. On the contrary, to avoid confusion of potential rule users, information about serious doubts will not be visible to public, only definite conclusions will be published.

II.5.3. Pre-evaluation by ERA (steps 3a and 4a)

At this stage ERA does not check the rule content in detail. The pre-evaluation is to verify rule status – whether it is NSR or not (RSD Article 3(h)), rule classification (RSD Annex II) and the accuracy of



accompanying information in rule notification. For that, ERA will check the rule according to same 10 questions as in the flowchart according to RSD Article 8(4):

- | | |
|-------------|--|
| Question 1 | Is the rule an NSR according to Art. 3h – contains railway safety requirements? |
| Question 2 | Is the rule an NSR according to Art. 3h – is imposed at MS level? |
| Question 3 | Is the rule an NSR according to Art. 3h – is applicable to more than 1 RU? |
| Question 4 | Information requirements for rules notified according to Art. 8(2) and 8(4) – area of application? |
| Question 5 | Information requirements for rules notified according to Art. 8(2) and 8(4) – principle content of rule? NB. Principle content of new or amending rules should indicate that rule is “not wholly relating to a TSI”. |
| Question 6 | Information requirements for rules notified according to Art. 8(2) and 8(4) – form of legislation and legal references? |
| Question 7 | Information requirements for rules notified according to Art. 8(2) and 8(4) – body responsible for publishing rule? |
| Question 8 | Rule version: new or amendment to existing rule, are details of existing rule entered? |
| Question 9 | Is the rule correctly classified; are the selected sub-categories correct according to RSD Annex II? |
| Question 10 | Text of rules uploaded? |

ERA’s findings will be recorded in Notif-IT (within two months at the latest). Eventually, additional questions may be identified at a later stage, e.g. did the Member State provide reasons for the draft.

II.5.4. Public consultation (steps 3b and 4b)

Once the draft is uploaded to Notif-IT, other member States and the sector are invited to submit their comments within two months. To facilitate this process and to increase the reliability and the usefulness of the comments, the Task Force will clarify the difference between the purpose for national consultation and consultation via Notif-IT.

Submitted comments will be made public. The comments are important for transparency and for further decision-making by the Member State concerned, the Commission, ERA and RISC.

II.5.5. Examination by the Commission (steps 5, 6, 7a and 7b)

First of all the Commission will verify whether the submitted rule is NSR. This requires that the first three questions above are answered positively. If a rule is NSR, the Commission evaluates if it has serious doubts as to the compatibility of the draft rule with the CSMs or with achieving at least the CSTs, or considers that it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States. Two months is the shortest reasonable time for that.

The Commission will consider such need for translating draft rules case by case.

II.5.6. If a rule is not NSR (steps 7a to 9a)

If a rule is not NSR (step 7a), the Member State is advised to withdraw it (step 8a(1)). If the Member State modifies the rule so that it qualifies as NSR (step 8a(2)), the modified draft shall be submitted



(step 1) and the steps above shall be repeated. If the Member State ignores the advice and enforces the rule as NSR (step 8a(3)), it will lead to the infringement procedure (step 9a)³⁰.

II.5.7. If a rule is NSR and the Commission has no serious doubts (steps 8c to 15c)

If there are no serious doubts (step 8c), this is noted in Notif-IT and the Commission informs the Member State which is allowed to adopt the rule (step 9c)³¹.

When the rule is adopted, the Member State shall immediately notify the adopted final text according to RSD Article 8(4), with remaining information according to the 10 questions above (step 10c). This is done in the same module where the draft NSR was notified. ERA and the Commission immediately validate the new information and check whether there was any substantial change of the final text compared to the evaluated draft rule (steps 11c, 12c and 13c).

In the step 14c(1) the Commission checks if there was any substantial change of the text. If there was no substantial change of text, rule validation is complete (step 15c). Should the Commission find that the Member State changed or added some substantial provisions to the final text (step 14c(2)), it will be requested to re-submit the rule for detailed examination (return to step 1)³². The results of validation by the Commission are visible in Notif-IT and are also communicated by a letter to the Permanent Representative.

II.5.8. If a rule is NSR and the Commission has serious doubts (steps 8b to 19d(2))

In case the Commission has serious doubts about submitted draft (step 8b), the Member State must immediately suspend adoption, entry into force and application of the rule (step 9b), as required in RSD Article 8(7). Alternatively, the member State may withdraw the rule (step 8a(1)). If the rule is neither suspended nor withdrawn, the Commission will launch the infringement procedure (step 9a).

If the rule raises serious doubts and is not withdrawn, the Commission has six months for a more detailed examination to find out whether the draft safety rule is incompatible with the CSMs or with achieving at least the CSTs, or whether it constitutes a means of arbitrary discrimination or a disguised restriction on rail transport operations between Member States (steps 10b(1) to 10b(4)).

Relevant Decision shall be adopted by the Commission in accordance with the procedure in RSD Article 27(2). This procedure is a mandatory step at that stage of the process (step 10b(1)). Depending on the draft, precedent cases and other circumstances, the Commission may ask ERA for its opinion according to Article 9a or 21b of the Agency Regulation (steps 10b(2) and 10b(3)). The Commission may also consider having an informal discussion with the Member State (step 10b(4)). The outcome of these steps will be taken into account for EC Decision (step 11b).

If the Commission adopts its Decision (steps 12b(1)), the Member State must follow this Decision and withdraw the rule (steps 13b and 14b) or amend the rule when requested (step 13d). If no amendments are required or if there was no Decision at the end of the six months period (step 12b(2)), the Member State can adopt the submitted draft rule (step 13d).

³⁰ This does not apply when the rule is further applied for a different purpose than NSR.

³¹ If it happens that the Member State has justified reasons to adopt the draft earlier than the Commission communicates its findings, it shall update relevant information in Notif-IT. The Commission will continue rule analysis taking into account this information.

³² Same applies at any time if the submitted draft is substantially amended prior to its adoption (see Annex 3 of the Interim Report).

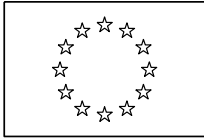


Any adopted rule shall then be notified in the same module according to RSD Article 8(4), with remaining information according to the 10 questions above (step 13d). ERA and the Commission immediately validate the new information and check whether EC Decision, if there was any, is wholly implemented (steps 14d, 15d and 16d).

If the EC's Decision is fully implemented or if there was no EC Decision, the rule validation is complete (steps 17d(1) and 18d(1)). If EC Decision is not wholly implemented, the rule is not validated (step 17d(2)) and the infringement procedure will follow (step 19d(2)). The infringement procedure is also launched if the Member State refuses to withdraw the rule when requested by EC Decision (step 13b). The results of validation by the Commission are visible in Notif-IT and are also communicated by a letter to the Permanent Representative.

II.6. User Guide

A more detailed User Guide will be prepared when this Notif-IT module is ready for use.



Annex 8: Notification of adopted NSR via Notif-IT

This annex provides a comprehensive guidance concerning procedure for the notification of adopted NSR to the Commission.

The annex contains two parts. The first part informs about legal requirements in RSD and provides their interpretation where necessary. The second part includes the workflow for NSR notification via Notif-IT and its explanatory note. This workflow applies only to those NSR which do not have to be notified in draft (see Annex 7, Part I).

Part I:

RSD requirements on notification of adopted NSR to the Commission - Article 8(4)

I.1. Obligation to notify

The obligation to notify to the Commission NSR is clearly established in Article 8(2) and 8 (4) of the Directive.

"2. Before 30 April 2005 Member States shall notify the Commission of all the relevant national safety rules in force, as set out in Annex II..."

"4. Member States shall forthwith notify the Commission of any amendment to the notified national safety rules and of any new such rule that might be adopted, unless the rule is wholly relating to the implementation of TSIs."

In addition, paragraph 5 of Article 8 establishes that *"In order to keep the introduction of new specific national rules to a minimum and thus prevent further barriers from being created, and with a view to the gradual harmonisation of safety rules, the Commission shall monitor the introduction of new national rules by Member States."*

I.2. Why to notify?

Two major reasons for the notification of adopted NSR were identified:

- a) Monitoring by the Commission which has a role in ensuring that any new rules, or changes to rules, respect EU legislation and do not impose an unnecessary market entry barrier and will therefore monitor these changes through the notification process in line with Article 8(5).
- b) Transparency at EU level and access to information. For this purpose the Agency Regulation (EC) 881/2004, Article 19(1) requires that national safety rules notified to the Commission are published by the Agency.

I.3. What has to be notified?

NSR are defined in Article 3(h) and Annex II. At present only obligation in Article 8(4) remains relevant. Member States shall notify the following adopted rules:

- An amendment to the national safety rules which should have been notified before 30 April 2005 or later;
- Any new such rule that might be adopted, unless the rule is wholly relating to the implementation of TSIs;
- Amendments to the abovementioned rules.



The procedure in Article 8(4) does not exclude from the obligation to notify draft NSR where relevant, as described in Section 2.4 above.

I.4. When shall it be notified?

Article 8(4) requires the Member States to forthwith (immediately) notify the adopted NSR. Ideally, the notification should be done without delay after rule adoption, in order to allow rule registration in the Notif-IT before it comes into force.

However, contrary to the procedure established in Article 8(7), Article 8(4) requires the notification of *adopted* rules (this kind of NSR do not have to be notified as *draft*).

I.5. Content of the notification

For National Safety Rules in force at the date of application of the Directive, Article 8 (2) establishes that *"The notification shall further provide information on the principal content of the rules with references to the legal texts, on the form of legislation and on which body or organisation is responsible for its publication."*

It is logical that notifications of amendments or new rules according to Article 8(4) shall also include this information. In addition, it must be made clear in the notification how the rule relates to Annex II (which type it is) and that it is not wholly implementing TSIs.

I.6. Analysis and registration of adopted notified NSR

First of all the Commission checks that the notified rules comply with rule definition in Article 3(h) and classification in Annex II. It also has to be checked if notifications include complete and correct information required by Articles 8(2) and (4). The Agency is involved in this process, taking into account its task in Article 19(1) of the Agency Regulation.

Based on Article 8(5) the Commission monitors the introduction of new national rules by the Member States in order to keep it to a minimum and thus prevent further barriers from being created, and with a view to the gradual harmonisation of safety rules.

If the Commission finds out that a Member State failed to notify a draft rule according to Article 8(7), it may consider relevant actions including the infringement procedure.

I.7. Legal status of non-notified and non-registered NSR

The notification ex-post of this kind of NSR adopted by a Member State is not a condition for their validity, therefore NSR that would not have been the object of an ex-post notification to the Commission is not illegal per se and thus it has to be applied. However, the Commission may start an infringement procedure for absence of notification and in case such NSR would be contrary to EU legislation.

Part II:

Explanatory note to the workflow in Notif-IT for official notification of NSR according to RSD Article 8(4)

II.1. Workflow



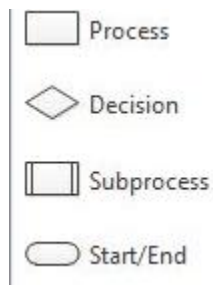
Notif-IT workflow for
official notification of I

II.2. Purpose

The flowchart above is meant to give a visual overview over the process of the notification of adopted NSR via Notif-IT according to RSD Article 8(4). This process has been used since the introduction of Notif-IT on 1 June 2010; no change is planned.

II.3. Meaning of shapes

The flowchart is created in Visio which has the following basic shapes:



Blue shapes are used for the start, processes and decisions. Green shapes show positive results; red shapes show negative results. Yellow shapes highlight steps with possible different outcome.

A number of marks is used to show the development of rule status in Notif-IT from rule notification to publication. The duration of different steps is shown on the left bar.

II.4. Two options for preparing notifications

Steps I to Vc show the process for the pre-evaluation of a rule. This process is optional. These steps offer the Member States a possibility to make major corrections of their notifications before they are officially sent to the Commission³³.

Steps 1 to 10 show the official notification and publication according to RSD Article 8(4).

II.5. What is checked by ERA and EC?

In the process according to RSD Article 8(4) there is no detailed check of the rule content.

The pre-evaluation and evaluation by ERA, as well as validation by the Commission aim to verify rule status – whether it is NSR or not (RSD Article 3(h)), rule classification (RSD Annex II) and the accuracy of accompanying information in rule notification (RSD Articles 8(2) and (4)). Annex 3 of the Interim Report describes the legal base for this process.

In these checks ERA and Commission answer 10 questions via Notif-IT:

- | | |
|------------|---|
| Question 1 | Is the rule an NSR according to Art. 3h – contains railway safety requirements? |
| Question 2 | Is the rule an NSR according to Art. 3h – is imposed at MS level? |
| Question 3 | Is the rule an NSR according to Art. 3h – is applicable to more than 1 RU? |

³³ Beside that, it is also possible to clarify minor questions via ERA helpdesk: NSR@era.europa.eu or request a meeting if necessary.



- Question 4 Information requirements for rules notified according to Art. 8(2) and 8(4) – area of application?
- Question 5 Information requirements for rules notified according to Art. 8(2) and 8(4) – principle content of rule? NB. Principle content of new or amending rules should indicate that rule is “not wholly relating to a TSI”.
- Question 6 Information requirements for rules notified according to Art. 8(2) and 8(4) – form of legislation and legal references?
- Question 7 Information requirements for rules notified according to Art. 8(2) and 8(4) – body responsible for publishing rule?
- Question 8 Rule version: new or amendment to existing rule, are details of existing rule entered?
- Question 9 Is the rule correctly classified; are the selected sub-categories correct according to RSD Annex II?
- Question 10 Text of rules uploaded?

Positive answers to all questions lead to rule publication at the end of the process. Questions or negative answers require clarification or amendment of the rule and/or its notification by the Member State.

If, after clarification, there is at least one negative answer to questions 1, 2 and 3, the notified rule is not NSR and has to be withdrawn from Notif-IT.

II.6. Pre-evaluation

Step I. The Member State creates a notification in Notif-IT and sends it to ERA for pre-evaluation.

Depending on the number of clarifications advised by ERA, the member State may choose to repeat pre-evaluation or submit the official notification.

If the Member State disagrees with ERA’s conclusions (step Vc) it can choose to submit an official notification to the Commission in order to get their opinion (step 1).

II.7. Official notification

Step 1. The pre-evaluated rule can now be sent to the Commission. If no pre-evaluation was done the notification has to be created at this stage.

Steps 2 to 5b. The official notifications are first checked by ERA. This takes less time in case the rule was pre-evaluated; only new and changed information is checked in this case.

The Commission checks the notification, based on ERA’s conclusions (steps 6 and 7). The conclusions of the Commission may be different indeed (steps 8a and 8b). Results of validation by the Commission are visible in Notif-IT and are also communicated by a letter to the Permanent Representative.

II.8. What is published?

Ten questions and related clarifications are not made public in Notif-IT. Rules under (pre-) evaluation by ERA and validation by EC, as well as not validated rules are not published. Only validated rule notifications are published.

II.9. User Guide

Further details on the process are described in the Notif-IT User Guide (available in the Notif-IT).



Annex 9: Good practice for NSR dissemination and assistance

Legal requirements

Relevant RSD requirements are found in Articles 8(1), 12(2) and 12(3).

- **Publication:**
 - *RSD Art. 8(1): MS shall ensure that NSR are published*
- **Availability:**
 - *RSD Art. 8(1): MS shall ensure that NSR are made available to all IMs, RUs & applicants*
 - *RSD Art. 12(2): NSA shall list all requirements for safety certification purpose, identify rules valid for the part of infrastructure in question and make all documents available*
- **Guidance and assistance**
 - *RSD Art. 8(1): MS shall ensure that NSR are ... understood by all IMs, RUs & applicants*
 - *RSD Art. 12(2): NSA shall give detailed guidance on how to obtain safety certificate...*
 - *RSD Art. 12(3): An application guidance document shall explain requirements ... and be made available to the applicants free of charge*

The MS and NSAs have primary responsibility for NSR publication and availability. Notif-IT improves accessibility at EU level but does not formally substitute national databases. It is important to underline that the obligation for rule publication and dissemination goes along with and is not superseded by the obligation for rule notification.

Tasks to improve

The Agency's report on the publication of national safety rules in the Member States showed that improvements could be made to make the information more easily accessible in order to ease RU work as required by RSD.

The Task Force discussed the Agency's proposal that NSR-related information and guidance on using other NSR sources should be concentrated on the NSA websites. This contributes to the tasks given to the safety authorities relating to guidance on safety certification.

There are safety authority websites, which support the accessibility of the safety rules to some extent; however, improvements can still be made, especially in relation to indirect rules. We suggest that these websites should be developed according to the identified good practice described below.

Taking into account legal obligations in RSD and close links between RUs and NSAs, the Agency's proposal was supported. A more proactive approach is needed to assist stakeholders in finding and understanding rules.

Considering the current state with the notifications and registration, Notif-IT contains a general disclaimer that applicable NSR should be double checked with NSAs. Therefore it was discussed that Notif-IT should provide a list of NSA websites and websites of the National Official Journals. This is a temporary need until it is ensured that NSR are notified consistently.

When NSA is sure that NSR notifications of their respective MS are complete and up-to-date in Notif-IT, it is sufficient for the NSA to refer to Notif-IT rather than developing mirroring website content.



However there still might be a need for some explanations or information which is not in Notif-IT, e.g. guidance for applicants for safety certificates. See details below.

Good practise for NSA websites

Having analysed websites of all NSAs, RSD requirements and reported wishes from stakeholders, the Agency suggested that the following useful tips could be used when updating the NSA websites. These tips were discussed and recommended by the Task Force:

1. All notified rules and references to indirect rules should be included

We suggest that the safety authority websites should provide access to all notified safety rules, including those rules issued by the infrastructure manager and railway undertaking, and links to third party rules, which for reasons of copyright cannot be published³⁴.

This is necessary because it is difficult to find the notified safety rules amongst all other legislation (only few countries highlight NSR) and the existence of indirect rules are not always clear (the rules, or links to the rules, are mostly not provided). Direct safety rules are available through Official Journal but stakeholders must have knowledge of the legal references to easily find the rules. To be able to find the indirect rules it is necessary to know the body issuing the rules.

2. A rubric for NSR on the top/second menu level

To make it easier to find the NSR section on the website a rubric for NSR should be put on the top/second menu level. It is very important for new applicants to get a complete overview of the NSRs in force. A top level rubric, in other languages if possible, makes this much easier than to have to go through 20 subpages in a foreign language. Even when the website is built up in a different way the top level rubric is not contradictive and can be cross-linked with other rubrics.

3. A list of rules with a hyperlink to their text should be provided

For better overview a list of rules should be put on the website. This list should contain only the NSRs to avoid confusion. To make it easier to find the actual text of the rules hyperlinks to the rule text should be provided. This list should appear when clicking on the NSR rubric mentioned above. For rules protected by copyright a link to the body responsible for publication should be provided.

4. Other languages than the national language can be useful to aid navigation to rules

As mentioned in point 2 above optional languages are helpful. If website version in foreign language(s) contains less information than website version in the national language(s), their content shall anyway be consistent and not misleading. For example, an empty section may give a misleading indication that no requirement exist while there is one. Cross-links between language versions help to avoid this problem. It is even better if also the rule text is translated but this makes it necessary to make sure that the translated text is in line with the text provided in national language (same version, complete text). It is up to each Member State to decide the need for translations depending on the volume of international traffic.

5. Make sure that the uploaded rules are the versions currently in force

It is not always clear that the legislation on the websites of the official journals is the official version. The situation is similar for consolidated and collated texts. NSA should explain status

³⁴ There might be other issues with rule publication, e.g. public security and other as mentioned in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, in particular its Article 4 (1) and (2).



of such publications on its website when this is not clearly explained in the original rule sources.

Sometimes revoked rules must be kept on the website for the reason of consistency. In this case it is very important to mark them properly.

6. It should be possible to get a copy of the rule in electronic and paper forms

This will simplify for the stakeholders to obtain their own copies of the rules and should be introduced where the hyperlinks to the rule text is provided. Third party rules with copy right are, by obvious reasons, excluded from this.

7. Flags on new rules and updates is important to make the stakeholders aware of changes

This makes it easy for the stakeholders to see when changes/additions are made to the NSRs.

8. Various forms of supplementary help should be included

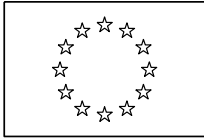
When supplementary help is provided this should be included on the website. Guidance documents, contact information to help desks and other useful information can be included here.

9. Provide links to third party websites (for indirect rules)

Indirect rules are often published by the bodies that establish these rules. Some notified indirect rules are available only for subscribers, clients or on request.

To increase the transparency of the indirect safety rules, they should be made publicly available for all interested parties. This relates to the task of the safety authorities set out in Article 12(2) of the Railway Safety Directive to list all requirements for applicants for safety certification, to make available all relevant documents and to identify the rules that are valid for a defined limited part of an infrastructure.

It is preferable to provide indirect NSR on the NSA website or at least provide the list of third parties issuing rules and their websites where rules can be found.



Annex 10: Vision on National Rules

Three major topics have been addressed by the NSR TF:

- **Clarification on the current situation** = How to reduce existing NSR in line with the current EU legislation? What should be/not be considered as NSR? For that purpose we are drafting guidance for the Member States called “the NSR Management Tool” (consultation of the ERA Units is in progress).
- **Future framework** = How to clarify and simplify the system of national requirements in the future? For that the ideas for the 4th Railway Package should be proposed.
- **Transition process** = How to proceed between current and future situation?

Concerning the **Future Framework** (potential amendments of the current legislative framework) the following needs have been identified (Part I):

- To merge definitions of NSR and NTR into national rules (NR).
- To align the new definition of NR with the rationale of the NTR description in IOD Article 17(3). In other words it must be made clearer that NR may only exist within the scope of exceptions from the common EU rules.
- To withdraw RSD Annex II.
- To include a formal procedure in RSD for deficiencies in CSMs and CSTs, by analogy with the procedure in IOD Art. 7 for deficiencies in TSIs.
- To clarify, streamline and simplify existing procedures in RSD, IOD, Directives 98/34/EC, Directive 2008/68/EC and Agency Regulation concerning establishing, publishing, notifying and authorising NR.

These proposed amendments to the current legislation are detailed in Part II. These changes should be considered for the 4th Railway Package.

The table in Part I contains the **Clarifications** (1st column) on the current situation which are considered important for the correct implementation of the current legislation. Where identified issues cannot be solved only with clarifications on the correct implementation of the current legislation, amendments to the current legislation (2nd column) are reported in the table.

Finally, concerning the **Transition process**, the “NSR Management Tool” will help the Member States to withdraw the NSR which have not be considered as NSR anymore. It is also considered that dissemination of information by ERA on the correct implementation of the current legislation and on the future framework should have a significant effect for the reductions of the current NSR and future NR amount.



Part I:

Clarifications on the correct implementation of the existing legislation and identification of potential amendments

	Clarification on current situation with NSR	What does TF suggest in relation to the future framework?
1.	Only MS have competence to establish NSR.	Same in future: Only MS should have competence for NSR. But their task to establish rules should be replaced by the task to revise and reduce rules in line with EU legislation.
2.		To merge definitions of NSR and NTR into national rules (NR).
3.		To align the new definition of NR with the rationale of the NTR description in IOD Article 17(3).
4.	<p>Based on the principle that MS may have NSR only when it is allowed by EU legislation, the scope of NSR is limited to exceptions allowed by EU legislation, such as open points and specific cases in the TSIs OPE or where set out in CSMs and CSTs³⁵.</p> <ul style="list-style-type: none"> Each time when OPE TSIs, CSMs and CSTs are adopted or amended, MS shall screen their NSR, keep and revise NSR for allowed exceptions. Before introducing any other NSR, MS shall see if a basic parameter is missing in the OPE TSIs. In this case MS should follow the procedure concerning deficiencies in TSIs (IOD Art. 7). Similar process shall be followed for deficiencies in CSMs and CSTs. If the requirement is confirmed to be missing, MS may consider the need for an NSR. The authorised NSR will apply temporarily until TSI OPE/CST/CSM is amended. National provisions concerning the transport of dangerous goods by rail established under Directive 2008/68/EC and RID have to be consistent with the general EU legislation for railways, including RSD, IOD, Train Driver Directive, TSIs, CSMs and CSTs. 	<p>In the future there will be no need for the RSD Annex II.</p> <p>RSD should include a formal procedure for deficiencies in CSMs and CSTs, by analogy with the procedure in IOD Art. 7 for deficiencies in TSIs.</p>
5.	<p>By conclusion, other documents cannot be regarded as rules. Next to NSR there are two major sets of other documents which RUs, IMs and other parties needs to know:</p> <p>1) Transposition measures which are national measures transposing EU legislation in the field of railway safety and interoperability, e.g.:</p> <ul style="list-style-type: none"> national legislation implementing the RSD, Train Driver Directive and CSTs. <p>2) Information by different bodies is not NSR, e.g.:</p> <ul style="list-style-type: none"> NSA procedures for safety certification, Procedures of the NIB and police for accident investigation, Information from the rescue bodies, IM information and coordinated interfaces with RUs³⁶. 	
6.		Existing procedures in RSD, IOD, Directives 98/34/EC and 2008/68/EC and Agency Regulation for establishing, publishing, notifying and authorising NR should be clarified, streamlined and simplified where necessary.
7.		Existing procedures for using Notif-IT and TRIS databases should be simplified to eliminate unnecessary burden and concentrate NR information in Notif-IT.
8.	MS have to publish and make available NSR	MS have to publish and make available all NR free of charge ³⁷ .
9.	All NSR have to be published in Notif-IT ³⁸	All NR will have to be notified in draft ³⁹

³⁵ This principle was already confirmed for NTR. The current discussion is limited to NSR.

³⁶ RSD Article 4(3) provides for the coordination of IM and RU SMS at their interface. IM and RU company operating rules shall be based on the results of such coordination.

³⁷ Copyright is an issue to be clarified in relation to the principle to provide rules free of charge.

³⁸ Publication of some notified rules may be restricted in line with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

³⁹ Except purely editorial change of a rule without any change of substance



Transition requires MS to clean existing NSR in line with points 4&5 (see Section 3.3).
Dissemination by ERA is important (see Section 3.4).

Part II:

Proposals for amendments of the NSR-related legislative framework – inputs to 4th Railway Package

	<u>What does TF suggest in relation to the future framework?</u> <i>(Conclusions from Part I)</i>	EU legislation to be amended (to discuss)	Comments
1.	(1) Only MS should have competence for NSR. But their task to establish rules should be replaced by the task to revise and reduce rules in line with EU legislation.	Articles 8(1) and 8(4)	Current wording is misleading, i.e. the objective for MS to establish rules may be overestimated and lead to unjustified rules.
2.	(2) To merge definitions of NSR and NTR into national rules (NR).	RSD Art. 3(h) IOD Art. 17(3) All references to NSR and NTR, e.g.: RSD Art. 6(5), 7(6), 9(1) IOD Art. 25(4) AR Art. 9a, 9b, 19(1)(f)	The use of rule definition shall be more consistent in order to make it clear that there is no difference between rules to be established, notified and applied. For that, it is necessary to replace references to RSD Article 8 and Annex II by references to NR definition.
3.	(3) To align the new definition of NR with the rationale of the NTR description in IOD Article 17(3).	RSD Art. 3(h) IOD Art. 17(3)	IOD Art. 17(3) provides for a clear list of cases where NTR may exist and shall be notified. Same clarity is needed for NSR in RSD Art. 8.
4.	(4) In the future there will be no need for the RSD Annex II.	RSD Annex II can be deleted because the new NR definition will be sufficiently clear. References to RSD Annex II shall be deleted.	This proposal takes into account the principles of RSD and IOD, progress with EU legislation, the scope of the notified rules, the need to remove redundant and discriminating rules, as well as NSR/NTR overlap and redundant notification obligations.
5.	(4) RSD should include a formal procedure for deficiencies in CSMs and CSTs, by analogy with the procedure in IOD Art. 7 for deficiencies in TSIs.	RSD Art. 6 and 7	
6.	(6) Existing procedures in RSD, IOD, Directives 98/34/EC and 2008/68/EC and Agency Regulation for establishing, publishing, notifying and authorising NR should be clarified, streamlined and simplified where necessary.	RSD, IOD, Directive 98/34/EC (notification of rules for products and information society services), Directive 2008/68/EC (inland transport of dangerous goods) and Agency Regulation	



	<u>What does TF suggest in relation to the future framework?</u> <i>(Conclusions from Part I)</i>	EU legislation to be amended (to discuss)	Comments
7.		RSD Art. 8 IOD Art. 17(3) Dir. 98/34/EC Art. 8-10	For NR which are also rules for products and information society services: Check if it is possible to cancel the notification obligation under Dir. 98/34/EC and apply procedure under RSD/IOD, similar to the existing procedure in RSD Art. 8(7).
8.		RSD Art. 8 IOD Art. 17(3) Dir. 2008/68/EC Art. 1(4-5) and 5	For NR which are also rules for the transport of dangerous goods: * Clarify in the RSD that its scope applies to the transport of dangerous goods * Clarify that in Dir. 2008/68/EC+RID provide for specific provisions which allow dangerous goods to be accepted for transport on railways. In other term, it means that dangerous goods fulfilling the specific provisions in Dir. 2008/68/EC+RID, shall be considered as any other freight loads which shall comply with general requirements of RSD, IOD, TDD, TSIs, CSMs, CSTs... * Simplify/clarify the notification and authorisation of TDG NR
9.		RSD Art. 4(1), 8(6) and 17(1) IOD Art. 17(3)	For the establishment of NR: Clarify that the MS obligation of consulting all stakeholders concerned applies to all rules.
10.		RSD Art. 8 IOD Art. 17(3)	For the notification of NR: Some issues have to be clarified for MS, e.g. status of Notif-IT, status of non-notified NR, no exceptions of notification of draft rules for the urgency reasons
11.		AR Art. 19(1)	For the obsolete ERA task: EC keeps Notif-IT → delete ERA task to publish NR
12.	(7) Existing procedures for using Notif-IT and TRIS databases should be simplified to eliminate unnecessary burden and concentrate NR information in Notif-IT.	None	Directives do not specify which database is to be used
13.	(8) MS have to publish and make available all NR free of charge.	RSD Art. 8(1) and 12(2) IOD Art. 17(3) Directive 2008/68/EC	Today all NR are available but not all are free of charge. There should be no copyright on rules, except for standards ⁴⁰ .

⁴⁰ Copyright is an issue to be clarified in relation to the principle to provide rules free of charge.



	<u>What does TF suggest in relation to the future framework?</u> <i>(Conclusions from Part I)</i>	EU legislation to be amended (<i>to discuss</i>)	Comments
14.	(9) All NR will have to be notified in draft ⁴¹	RSD Art. 8 IOD Art. 17(3)	Current situation: * draft and adopted NSR are notified under RSD Art. 8 and Dir. 2008/68/EC on the inland transport of dangerous goods * draft NTR are notified under Dir. 98/34/EC and Dir. 2008/68/EC, adopted NTR under these two Directives and IOD In result, some rules escape from notification.

⁴¹ Except purely editorial change of a rule without any change of substance



Annex 11: References

N°	Description	Reference	Version
/1/	Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)	2004/49/EC Railway Safety Directive	Corrigendum Amended by Directives 2008/57/EC, 2008/110/EC and 2009/149/EC
/2/	Railway Interoperability and Safety Committee. Summary report of the 59 th meeting held on 14 and 15 December 2010 in Brussels	08/57- SR59	EN01
/3/	Evaluation of the way in which national safety rules published and made available Final report	ERA/REP/04-009/SAF	1.0
/4/	Evaluation of the way in which national safety rules are published and made available Supporting Paper to Final Report	ERA/INF/02-009/SAF	1.0
/5/	Recommendation for the publication of national safety rules in order to make the relevant information more easily accessible	ERA/REC/04-009/SAF	1.0
/6/	Interim Report of the Task Force on National Safety Rules. Activities in 2011	27/01/2012	1.1
/7/	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 (Train Drivers Directive)	2007/59/EC Train Drivers Directive	-
/8/	Commission Regulation (EC) No 352/2009 of 24 April 2009 on the adoption of a common safety method on risk evaluation and assessment	Regulation (EC) No 352/2009 CSM RA	-
/9/	Commission Regulation (EC) No 653/2007 of 13 June 2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive 2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC	Regulation (EC) No 653/2007	-



N°	Description	Reference	Version
/10/	Commission Regulation (EU) No 1158/2010 of 9 December 2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates	Regulation (EU) 1158/2010 CSM CA	-
/11/	Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods	2008/68/EC	-
/12/	Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007	Regulation (EU) No 445/2011 ECM certification scheme	-
/13/	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	CSM on Monitoring	
/14/	Commission Regulation (EU) No 1077/2012 of 16 November 2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation	CSM on Supervision	
/15/	Directive 2008/57/EC on the interoperability of the rail system within the Community (Recast)	2008/57/EC Railway Interoperability Directive	Amended by Directive 2009/131/EC
/16/	Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services	Directive 98/34/EC	Amended by Directive 2006/96/EC and the Act concerning the conditions of accession of 10 MS
/17/	Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC	Directive 2012/18/EU Seveso III	-
/18/	Commission Decision 2008/231/EC of 1 February 2008 concerning the technical specification of interoperability relating to the operation subsystem of the trans-European high-speed rail system adopted referred to in Article 6(1) of Council Directive 96/48/EC and repealing Commission Decision 2002/734/EC of 30 May 2002	HS OPE TSI	Amended by Decisions 2010/640/EU and 2012/464/EU



N°	Description	Reference	Version
/19/	Commission Decision 2011/314/EU of 12 May 2011 concerning the technical specification for interoperability relating to the 'operation and traffic management' subsystem of the trans-European conventional rail system	CR OPE TSI	Amended by Decision 2012/464/EU