

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

OPINION

2022-5

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

Austria

regarding

a national rule of Austria establishing requirements for driving and operating a locomotive independently laid down in the General Railway Act (Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen §21b. (3))

Disclaimer:

The present document is a non-legally binding opinion of the European Union Agency for Railways. It does not represent the view of other EU institutions and bodies, and is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.

1. General Context

The European Union Agency for Railways (hereafter the Agency) became aware of an Austrian rule establishing requirements for driving and operating a locomotive independently (Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen §21b. (3)).

This rule has been assessed against the relevant EU law requirements, resulting in this opinion.

This opinion is addressed to Austria with a copy to the European Commission (DG MOVE).

2. Legal Background

Article 26 (2) and (3) of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004¹ (Agency Regulation) sets out the following:

“ 2. Where, after the examination referred to in paragraph 1, the Agency considers that the national rules enable the essential requirements for railway interoperability to be fulfilled, the CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operations between Member States, the Agency shall inform the Commission and the Member State concerned of its positive assessment. In that case, the Commission may validate the rules in the IT system referred to in Article 27.

Where the Agency does not inform the Commission and the Member State concerned within 2 months of receipt of the national rules, or within the extended time period agreed in accordance with paragraph 1, the rule shall remain valid.

3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of 1 month:

(a) issue an opinion addressed to the Member State concerned, stating that the national rule or rules in question has or have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and

(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should be modified or repealed.”

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

- Directive (EU) 2016/798 of 11 May 2016 on railway safety
- Directive (EU) 2016/797 of 11 May 2016 on the interoperability of the rail system within the European Union
- Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work
- Commission delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010
- Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision 2012/757 EU
- Commission Regulation (EU) No 1078/2012 of 16 November 2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance

- Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012
- Commission Implementing Regulation (EU) 2015/1136 of 13 July 2015 amending Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment

3. Background and analysis

The Agency became aware of the Austrian national rule establishing requirements for driving and operating a locomotive independently on 10 February 2022.

The Agency wrote a formal letter to Austria on the 24th of February 2022 explaining the following:

- On the 5th of February 2021, the Austrian Ministry sent to the Agency an Excel file with references to the details of all Austrian revised national rules¹.
- Several bilateral discussions were held between the Agency and Austria, during which the Agency clarified its position on all Austrian rules contained in the Excel document.
- The Agency examined (pursuant to Article 8 (6) of the Directive (EU) 2016/798 in conjunction with Article 26 of the Regulation (EU) 2016/796) § 21b of the Austrian General Railway Act (Gesamte Rechtsvorschrift für Eisenbahngesetz) 'Driving and operating a locomotive independently'.
- The Agency could not find in the Excel file shared by Austria on 5 February 2021 any reference to the rule under § 21b of the General Railway Act. However, the legal document including this rule was part of the submission by email last year (2021). This rule was neither part of the Excel file nor was it brought to the attention during any bilateral discussion.
- §21 of the General Railway Act establishes certain requirements for driving and operating a locomotive independently. To be more specific, §21 point (3) introduces the following requirements: *"if a train driver or other operating staff is witnessing an accident in which a person is killed or is seriously injured and this occurs directly in connection with his or her work, he or she shall be released from any work for a period of 72 hours from the time they cease the assigned tasks related to the accident. In this context, the staff member must be provided in any case emergency mental health care by trained internal or external persons. This can be deviated from, when the internal or external staff judges that the involved staff member is medical and psychologically fit for duty."*
- The Agency concludes that if this rule had been notified in the Single Rules Database (SRD), it is not guaranteed that the Agency would have accepted it as compliant with all EU legal requirements.
- The Agency's position is that the above-described rule is not in line with Union legislation because: Section 4.7.2.2.3 of the Annex of the Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 states clearly that the railway undertaking is the one responsible to set up a system in place to ensure that additional examinations and assessment are undertaken as appropriate. This should also be considered together with the Commission Delegated Regulation (EU) 2018/762 Annex 1 requirement 4.2.3, according to which back to work arrangements shall be in place for staff following accidents/incidents or long absences from work, including providing additional training where such a need is identified. The Railway Undertaking/infrastructure Manager are the sole responsible for implementing such requirements in their safety management system. For this reason, it cannot be allowed to impose national safety rules on these topics. To this end, the Agency is of the opinion that the rule § 21 b. (3) is contradicting already harmonised EU law.

A reply from Austria was received on the 24th of March 2022 explaining the following:

¹ The assessment process of these rules by the Agency is currently in its final phase.

- You write that the provision in § 21b(3) of the Austrian Railway Act 1957 (short: EIsbG) is not included in the list of national provisions to be notified under Article 8(6) of Directive (EU) 2016/798 in conjunction with Article 26 of Regulation (EU) 2016/796, nor has it been referred to in the previous bilateral meetings. It is then stated that the provision cited would be contrary to EU law because point 4.7.2.2.3. of the Annex to Implementing Regulation (EU) 2019/773 already contains a provision to that effect. As regards the provision of Section 21b(3) EIsbG, it should be noted at the outset that this provision was inserted into the EIsbG by the amendment published in BGBl. I No 143/2020. With this amendment, the 4th railway package was implemented, in particular Directive (EU) 2016/798 on railway safety (recast) and Directive (EU) 2016/797 on the interoperability of the rail system within the European Union (recast). Among other things, the last sentence of the third subparagraph of Article 9(5) of Directive (EU) 2016/798 had to be transposed, which provides, inter alia, for the provision of psychological support to the victims of the accident. The provision in Paragraph 21b(3) of the EIsbG thus ensures that railway undertakings are not wrongly assumed that the obligation relates solely to railway users and not to employees of railway undertakings who suffer (psychological) damage as a result of accidents. In some cases, railway undertakings have argued that after the unavoidable crossing of a person as part of a suicide the train driver should first complete his journey and after a psychological examination within the timetable should be carried out.
- In so far as reference is made here to point 4.7.2.2.3. of the Annex to Implementing Regulation (EU) 2019/773 (TSI OPE), it should be recalled that this provision refers only to a psychological examination and only refers to a psychological examination after a dangerous irregularity or an accident as a result of human error on the part of the person concerned, but does not provide for the psychological examination of a member of staff wholly unjustifiably responsible for the incident, with a clear time limit (before further employment in the railway sector) and even no emergency mental health care is foreseen. The before mentioned provision of the TSI OPE is thus only marginally consistent with the provision of Section 21b(3) EIsbG and addresses in some cases entirely different aspects.
- In view of the diversity of the content of the rules, it is not possible to understand the preliminary view taken by the European Railway Agency. Even if the rules were not so different in terms of content and there was no necessary implementation of EU law, it would not be possible to assume an obligation to notify on the basis of the bilateral discussions to date during the 'cleaning-up of national rules' process. During the discussions so far, the representatives of the European Union Agency for Railways took the view that the notification provided for in Article 8 of Directive (EU) 2016/798 and Article 26 of Regulation (EU) 2016/796 would only be subject to national rules which railway undertakings would have to prove to the relevant national safety authority in the context of the procedures carried out by the European Union Railway Agency as the safety certification body. Other national provisions could remain in force without notification, compliance with which could also be verified as part of supervision and, in extreme cases, also lead to a restriction and revocation of a safety certificate under Directive (EU) 2016/798. Accordingly, numerous notified national rules have been identified as an interim result by the European Union Agency for Railways, which would simply not have to be notified. Furthermore, during the bilateral discussions, the view was taken that all staff protection requirements in implementation of the Occupational Health and Safety Framework Directive 89/391/EEC or the individual directives based on this would in no way have to be notified because, within the meaning of the definition in Article 3(8) of Directive (EU) 2016/798, the implementation of a requirement under EU law was not a national provision and that the ERA would in any case fully verify the application of such requirements under EU law in the context of the examination of the safety management system.

The Agency replied to Austria on the 26th of April 2022 asking for its final position including following argumentation:

- This topic is related to Art. 8 (6) of the Directive (EU) 2016/798 and is not part of the ongoing bilateral discussions regarding the Austrian notification of national safety rules via the Excel sheet into the Single Rules Database (SRD). For this reason and to ensure traceability we prefer to answer in writing. As you correctly state in your letter, rules that transpose EU legislation shall not be notified into SRD. In your letter you describe that this rule results from transposition grounds based on Art. 9 (5) of the Directive (EU) 2016/798. However, the material part of Art. 9 (5) is limited to assistance for victims and their families. The back to work arrangements for staff is managed within the safety management system according to Commission Delegated Regulation (EU) 2018/762 Annex 1 paragraph 4.2.3. Consequently, the substance of the rule is falling within the scope of the TSI OPE, introducing national requirements which are in contradiction with the aforementioned point in the TSI. Under this light, the Agency remains at its initial position that the rule § 21b (3) of the Austrian General Railway Act (Eisenbahngesetz) is not in line with Union legislation (going, as it does, beyond the requirements of the TSI).

Based on the statements above, the Agency in this reply has focused on technical points within its mandate. On the top of it, the European Commission (in copy to this letter) may want to comment at a later stage on the transposition point you make of Directive (EU) 2016/798.

The final position of Austria was received on the 9th of May 2022, the letter included following:

- In your letter, you state that, from the Agency's point of view, Article 9(5) of Directive (EU) 2016/797 on the interoperability of the railway system in the European Union refers only to assistance to accident victims and their family members and therefore employees of railway undertakings would not fall within its scope.
- As already stated in our letter of 24 March, we certainly take the view that employees of railway undertakings who suffer damage as a result of accidents (psychological) must also receive assistance within the meaning of Article 9(5) of Directive (EU) 2016/797. This was therefore done by the Austrian legislator when transposing Directive (EU) 2016/797 with the provision of Section 21b(3) of the Austrian Railways Act 1957 (short: EisbG) accordingly.
- With regard to the provision 4.2.3 of Commission Delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods regarding safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, which you refer to, it is only aimed at the reintegration of staff which returns to work after an accident/event or after a long period of absence. On the contrary, Paragraph 21b(3) of the EisbG is aimed at providing direct assistance to employees after a major accident and is therefore not comparable with the provision 4.2.3 of Delegated Regulation (EU) 2018/762 due to the different treatments.
- For this reason, we do not see any reason to deviate from our position already set out in detail in the letter of 24 March.

The Agency is of the opinion that the Directive 2016/798 is not transposed correctly. Article 9(5) of this Directive states the following:

The safety management system of any infrastructure manager shall take into account the effects of operations by different railway undertakings on the network and shall provide for all railway undertakings to be able to operate in accordance with TSIs and national rules and with the conditions laid down in their safety certificate.

Safety management systems shall be developed with the aim of coordinating the emergency procedures of the infrastructure manager with all railway undertakings that operate on its infrastructure, and with the

emergency services, so as to facilitate the rapid intervention of rescue services, and with any other party that could be involved in an emergency situation. For cross-border infrastructure, the cooperation between the relevant infrastructure managers shall facilitate the necessary coordination and preparedness of the competent emergency services on both sides of the border.

Following a serious accident, the railway undertaking shall provide assistance to victims helping them in complaints procedures under Union law, in particular Regulation (EC) No 1371/2007 of the European Parliament and of the Council², without prejudice to the obligations of other parties. Such assistance shall use channels for communicating with victims' families and include psychological support for accident victims and their families.

The last paragraph of the above mentioned Directive points out to the psychological assistance for accident victims and their families. The psychological assistance for employees as the way the accident is to be dealt with shall be part of the railway undertaking's safety management system. The measures laid down in the safety management system need to be reviewed and updated regularly which requires a flexibility that is not offered by a national safety rule.

4. The opinion

The substance of the Austrian national rule falls under the scope of the TSI OPE, raising simultaneously potential issues of transposition of Directive (EU) 2016/798.

The national rule of Austria establishing requirements for driving and operating a locomotive independently laid down in the General Railway Act (Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen §21b. (3)) introduces national requirements which are in contradiction with Commission Delegated Regulation (EU) 2018/762 Annex 1 paragraph 4.2.3.

In parallel, a potential issue of transposition of Directive (EU) 2016/798 may be raised by the European Commission – as this is the opinion of the Agency. The details can be consulted under chapter 3 of this opinion.

The Agency is of the opinion that detailed national rules at the level of an EU Member State on emergency situations shall not exist.

Under this light, the Austrian General Railway Act §21b(3) contradicts with the following EU legislation:

- Regulation (EU) 2019/773 (TSI OPE); more specific point 4.2.3.7 which gives the responsibility for an IM to define the measures to manage emergency situations and restore the line to normal operation, to publish them and to make them available to all. The framework of the emergency plan must be established by the IM in cooperation with the railway undertakings. It is then up to the railway undertaking, in the form of internal procedures, to integrate the emergency plan into its safety management system, taking into account the risks inherent in the operation and the specificities of the organisation.
- Regulation (EU) 2018/762 annex I point 5.5 which contains clear requirements on emergency management taken into account the risks and also the interested parties.
- Regulation (EU) 2018/762 annex I point 3.1.1.2: when assessing risk, an organisation shall take into account the need to determine, provide and sustain a safe working environment which conforms to applicable legislation, in particular Directive 89/391/EEC
- Directive (EU) 2016/798 Art. 4 wherein is stated that EU Member States shall ensure that the responsibility for the safe operation of the Union rail system and the control of risks associated with

² Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14)

it is laid upon the infrastructure managers and railway undertakings each for its part of the system. Following the same Article also contracting entities shall implement the necessary risk control measures, where appropriate in cooperation with other actors.

Based on the above mentioned argumentation in accordance with Article 26 (3) of Regulation 2016/796, this opinion covers the examination of the Austrian rule establishing requirements for driving and operating a locomotive independently laid down in the General Railway Act §21b. (3) which leads to a negative assessment.

Following this opinion, Austria is requested to state its position regarding the Agency's assessment.

This opinion is shared with the European Commission (DG MOVE).

Valenciennes, 07/07/2022

Signed

Josef DOPPELBAUER
Executive Director

ANNEX 1: Light Impact Assessment

Light Impact Assessment

regarding a national rule of Austria establishing requirements for driving and operating a locomotive independently laid down in the General Railway Act (Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen §21b. (3))

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1. Context and problem definition**1.1. Problem and problem drivers**

The Agency became aware via the European Commission on the 10th of February 2022 of the Austrian national rule in force establishing requirements for driving and operating a locomotive independently. In particular, paragraph § 21b(3) of the Austrian Railway Act 1957 (i.e. EisbG - Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen) introduces the following requirements: *“if a train driver or other operating staff is witnessing an accident in which a person is killed or is seriously injured and this occurs directly in connection with his or her work, he or she shall be released from any work for a period of 72 hours from the time they cease the assigned tasks related to the accident. In this context, the staff member must be provided in any case emergency mental health care by trained internal or external persons. This can be deviated from, when the internal or external staff judges that the involved staff member is medical and psychologically fit for duty.”*

Section 4.7.2.2.3 of the Annex of the Commission Implementing Regulation (EU) 2019/773 (on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union) states clearly that the railway undertaking and the infrastructure manager are the ones responsible to set up a system in place to ensure that additional medical examinations and psychological assessments are undertaken as appropriate (where there is reasonable ground for doubting the medical or psychological fitness of a member of staff). This should also be considered together with the Commission Delegated Regulation (EU) 2018/762 Annex 1 requirement 4.2.3, according to which back to work arrangements shall be in place for staff following accidents/incidents or long absences from work, including providing additional training where such a need is identified. The Railway Undertaking/Infrastructure Manager are the sole responsible for implementing such requirements in their safety management system.

In accordance with Article 26(3) of Regulation 2016/796, this opinion covers the examination of the Austrian rule establishing requirements for driving and operating a locomotive independently laid down in the General Railway Act §21b.(3) which led to a negative assessment. According to Art. 8(1) of Regulation (EU) 2016/796, this impact assessment is accompanying the Agency Opinion.

4.2. 1.2. Evidence of the problem

The reply from Austria (received on the 24th of March 2022) to the first assessment of this national rule made by the Agency, indicated that paragraph 21b(3) of the EisbG aims at ensuring that the provision of psychological support by RUs to the victims of an accident (as for the last sentence of the third subparagraph of Article 9.5 of Directive EU 2016/798) is also applied to employees of railway undertakings who suffer (psychological) damage as a result of accidents. Austria in the reply indicated that in some cases, railway undertakings have argued that after witnessing a suicide the train driver should first complete his journey and then a psychological examination within the timetable should be carried out.

The Agency replied to Austria on the 26th of April 2022 asking for its final position. This reply pointed out that the last sentence of the third subparagraph of Art. 9 (5) is limited to assistance for victims and their families. The Agency remained at its initial position that the rule § 21b (3) of the Austrian General Railway Act (Eisenbahngesetz) is not in line with Union legislation (going beyond the requirements of that legislation).

In its final position on the 9th of May 2022, Austria confirmed its view/position that employees of railway undertakings who suffer (psychological) damage as a result of accidents must also receive assistance within the meaning of Article 9(5) of Directive (EU) 2016/797.

4.3. 1.3. Baseline scenario																																							
The baseline scenario (Option 0) is the current situation of the EU and national legal framework in Austria, where the General Railway Act §21b.(3) lays down the Austrian rule establishing requirements for driving and operating a locomotive independently. If no action is taken the problem will persist, negatively affecting interoperability, competitiveness and market access as well as generating extra costs due to a lack of harmonised requirements for rail operations across the Union.																																							
4.4. 1.4. Main assumptions																																							
It is assumed that the Austrian authorities expect limited additional effort required to fulfil the requirement.																																							
It is also assumed that, in case of an accident, there could be unavailability or delay of trained (internal or external) persons providing emergency mental health care.																																							
4.5. 1.5. Stakeholders affected																																							
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Besides institutions and authorities, the stakeholders impacted are mostly those active in the Austrian railway market notably RUs and IMs, including international entities providing cross-border rail services into Austria.																																							
4.6. 1.6. Subsidiarity and proportionality																																							
The problem is to be addressed at EU level since, as per the baseline scenario, the current situation generates a suboptimal situation for rail interoperability. In order to preserve interoperability and ensure a harmonised legal framework for the rail sector, according to Art. 8(6) of Directive (EU) 2016/798 and Art. 26(6) of Regulation (EU) 2016/796, if the Agency becomes aware of any national rule, whether notified or not, which has become redundant or is in conflict with the CSMs or any other Union law in the railway field or creates an unjustified barrier to the single railway market, the procedure provided for in Article 26 of Regulation (EU) 2016/796 (i.e. examination of the existing national rules) shall apply.																																							

2. Objectives	
4.7. 2.1. Specific objectives	
The specific objective of this initiative is to provide Austria with an assessment of the problem defined above with regards to paragraph § 21b(3) of the Austrian Railway Act 1957 (short: EisbG), which is having an impact on interoperability, competitiveness and market access.	

3. Options
4.8. 3.1. List of options
<p>Option 0 is the baseline scenario as described above, representing the current situation of the EU and national legal framework in Austria, where the General Railway Act §21b.(3) lays down the Austrian rule establishing requirements for driving and operating a locomotive independently.</p> <p>Option 1 is the sole alternative option and consists in the scenario where, following the negative assessment by the Agency, Austria revokes paragraph § 21b(3) of the Austrian Railway Act 1957 (short: EisbG)</p>

4. Impacts of the options			
4.9. 4.1. Qualitative analysis			
Stakeholder assessment			
<i>Option 0 (Baseline)</i>			
<i>Category of stakeholder</i>	<i>Impact type</i>	<i>Description</i>	<i>Overall Impact</i>
RU	Positive	N/A	Rather negative
	Negative	<p>The current legal framework is maintained and the psychological assistance for employees after accidents is specified in a national safety rule, and not within the railway undertakings' safety management systems (based on their specificities/risks and on the particular case/situation), with greater rigidity of the foreseen measures.</p> <p>In case of some accidents (e.g. suicides or trespassers accidents), when the train driver (or other operating staff) witness the death or serious injury of a person, he/she shall be released from any work for a period of 72 (unless judged differently by trained internal or external persons providing emergency mental health care). Additional costs for RUs are foreseen, also considering that:</p> <ul style="list-style-type: none"> - In case of unavailability or delay of trained (internal or external) persons providing emergency mental health care, the train driver (or other operating staff) shall be released from any work, irrespective of the specific case/situation; - The replacement of the train driver can somehow and in some circumstances be difficult/expensive (e.g. in case of RUs operating international services), requiring the (immediate) availability and the displacement of another train driver to complete the journey. - Within the context of the CSIs, for the last three-years period 2018-2020 Austria reported an annual average of 79 suicides and 8 attempted suicides, 5 unauthorised persons seriously injured and 6 killed (and 20 level-crossing users serious injured and 10 killed). 	
IM	Positive	N/A	Rather negative
	Negative	<p>The current legal framework is maintained and the psychological assistance for employees after accidents is specified in a national safety rule, and not within the railway undertakings' safety management systems (based on their specificities/risks and on the particular case/situation), with greater rigidity of the foreseen measures.</p> <p>This leads to additional costs for IMs in case of some accidents, mainly:</p>	

		<ul style="list-style-type: none"> - due to the possible prolonged time needed to restore the operations/services on the section of line interested by the accident (due to the replacement of the train driver); - If/when the accident occur during maintenance operations (of the network), involving a yellow fleet train. 	
Rail operators' Staff	Positive	The current legal framework is maintained and the psychological assistance for employees after accidents is specified in a national safety rule with more prescriptive/rigid measures/provision.	Rather positive
	Negative	N/A	
MS	Positive	The current legal framework is maintained and no additional efforts are needed to revoke § 21b(3) of the Austrian Railway Act 1957 (EisbG).	Neutral
	Negative	Additional effort to ensure the enforcement of the national rule on top of all other existing oversight requirements pertaining to EU law. The psychological assistance for employees after accidents is set/dealt with in a national safety rule, and not within the railway undertakings' safety management systems (based on their specificities/risks and on the particular case/situation), with greater rigidity of the foreseen measures.	
ERA	Positive	N/A	Rather negative
	Negative	The current legal framework is maintained, going opposite to the policy goal of reducing national rules and with a negative impact on interoperability, competitiveness and market access.	
EU	Positive	N/A	Rather negative
	Negative	The current legal framework is maintained, going opposite to the policy goal of reducing national rules and with a negative impact on interoperability, competitiveness and market access.	

<i>Option 1</i>			
<i>Category of stakeholder</i>	<i>Impact type</i>	<i>Description</i>	<i>Overall Impact</i>
RU	Positive	RUs deal with the psychological assistance for employees after accidents within their safety management systems. Some savings can be expected due to more flexible/specific measures laid down in the SMSs which can also be reviewed and updated regularly with a flexibility that is not offered by a national safety rule.	Rather positive
	Negative	N/A	
IM	Positive	IMs deal with psychological assistance for employees after accidents within their SMSs. Some savings can be expected due to more flexible/specific measures laid down in the SMSs which can also be reviewed and updated regularly with a flexibility that is not offered by a national safety rule.	Rather positive
	Negative	N/A	
Rail operators' Staff	Positive	The psychological assistance for employees after accidents is dealt within the rail operators' safety management system (and not in a national rule) with more flexibility.	Rather positive
	Negative	N/A	
MS	Positive	The Austrian legal framework becomes more aligned with the EU Legislation, with no additional effort needed to ensure the enforcement of the national rule on top of all other existing oversight requirements pertaining to EU law.	Neutral
	Negative	Some efforts are needed to revoke § 21b(3) of the Austrian Railway Act 1957 (short: EisbG).	
ERA	Positive	The policy goal of reducing national rules is preserved, with a positive impact on interoperability, competitiveness and market access. The	Rather positive

		psychological assistance for employees after accidents is dealt within the rail operators' safety management system (and not in a national rule).	
	Negative	N/A	
EC	Positive	The policy goal of reducing national rules is preserved, with a positive impact on interoperability, competitiveness and market access. The psychological assistance for employees after accidents is dealt within the rail operators' safety management system (and not in a national rule).	Rather positive
	Negative	N/A	

Railway system assessment

The following table provides a quick overview of the impact of the options in key aspects for rail safety and interoperability assessment.

	<i>Option 0 (baseline)</i>	<i>Option 1</i>
<i>Safety</i>	Very high	Very high
<i>Interoperability</i>	Very low	Very high
<i>Market access</i>	Rather low	Rather high
<i>Competitiveness</i>	Rather low	Rather high
<i>Effectiveness</i>	Rather low	Very high

Coherency assessment

	<i>Option 0 (baseline)</i>	<i>Option 1</i>
<i>Coherence</i>	Very low	Very high

5. Comparison of options and preferred option

4.10. 5.1. Comparison of options

Below a quick comparison of the options with impact on the key stakeholders, as noted in chapter 4 above, is provided.

	<i>Option 0 (baseline)</i>						<i>Option 1</i>					
<i>Stakeholder impact</i>	RU	IM	Staff	MS	ERA	EC	RU	IM	Staff	MS	ERA	EC
<i>Effectiveness</i>	Rather low						Very high					
<i>Coherence (optional)</i>	Very low						Very high					

Colour legend

Very low/neg.	Rather low/neg.	Neutral	Rather high/pos.	Very high/pos.
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4.11. 5.2. Preferred option(s)

Option 1 is the preferred option and it is recommended to issue a negative Agency opinion with regards to the national rule by Austria under assessment. Interoperability, competitiveness, market access and coherence of the EU legal framework across the Union risk to be weakened by a national rule dealing with the psychological assistance for employees after accidents, which should be instead addressed within the rail operators' safety management system (with a higher flexibility, not offered by a national safety rule). The goal of preserving safety is already ensured by the current EU legal framework and by the SMSs of rail operators. Appropriate enforcement of EU rules in place and effective oversight by competent

authorities is to be considered as a way forward within Option 1. The national rule in subject creates unnecessary burden on stakeholders with doubtful benefit.

4.12. 5.3. Risk assessment

This light impact assessment is not based on primary or secondary data but on expert opinion and evidence submitted by the Austrian authorities. The risk variables are therefore low risk for all options.

Risk variables	Option 0	Option 1
IA Inputs	Low risk	Low risk
IA Outcomes	Low risk	Low risk

6. Monitoring and evaluation

4.13. 6.1. Monitoring indicators

N/A

4.14. 6.2. Future evaluations

N/A

7. Sources and methodology

4.15. 7.1. Sources

Desk research	<input checked="" type="checkbox"/>	Interviews	<input type="checkbox"/>
ERA database	<input type="checkbox"/>	Meetings	<input checked="" type="checkbox"/>
External database	<input type="checkbox"/>	Survey	<input type="checkbox"/>

The main sources for this impact assessment have been desk research of EU legislation relevant in the fields and meetings with (and experts knowledge of) in-house ERA staff.