



INF. 7

9 November 2021

(English only)

RID: 13th Session of the RID Committee of Experts' standing working group
(Geneva, 15 – 19 November 2021)

Subject: NSA BE comments on the understanding of the ERA Guidance on safety certificate applications in relation to Dangerous Goods

Transmitted by the European Union Agency for Railways (ERA)

SUMMARY

Executive summary: Comments on informal document INF.5 (Belgium) submitted to the last session of JCGE (7 and 8 November 2021).

Related document: Informal document INF.5 (Belgium) submitted to the last session of JCGE (7 and 8 November 2021).

Introduction

1. ERA welcomes the questions raised by Belgium at the JCGE.
2. After discussing the questions directly with NSA Belgium and the TDG Competent Authority of Belgium ERA is aiming at providing the clarifications hereinafter to RID experts, as those clarifications are of general application and not specific to Belgium.

Background

3. In the last meeting of the JCGE Working Group (7 and 8 November 2021) an informal question INF.5 by Belgium was raised over interpretation of a phrase in the application guide for safety certificate applications published by ERA. In particular, it is concerning the relationship between the RID legal framework and the legal framework concerning the Safety Management System requirements which operators must meet in order to gain Safety Certificate.

4. Subsequent to this issue being raised ERA had a bilateral discussion and in conjunction with Belgium has devised a proposed clarification.
5. Under the 4th Railway Package arrangements set out in the Directive on Railway Safety (EU) 2016/798¹ a railway undertaking (as defined in that Directive), must have a safety certificate in order to run trains in the Single European Railway Area.
6. The Safety Directive directs the creation of regulations to manage this. The key pieces of regulation are the Common Safety Method for Safety Management System Requirements (EU) 2018/762² and the Practical Arrangements for Safety Certification (EU) 2018/763³.
7. To support these regulations there is associated guidance⁴. The first of these sets out the requirements that a company's safety management system must meet to be granted a safety certificate and the second of these details how this is done by an applicant.
8. What is important to recognize is that an applicant who wishes to operate in more than one member state must apply to ERA for a Safety Certificate covering those member states whilst an applicant operating in only one member state can choose to apply either to the relevant national safety authority or to ERA.
9. It should also be noted that the safety management system requirements that ERA will assess covers also operational risks. One can see therefore that there is the potential for an overlap with the legislative regime applicable to dangerous goods, especially when considering the duties of the Dangerous Goods Safety Advisers.
10. This is further complicated by the fact that the legal authority for the regulation of dangerous goods legislation is not necessarily held by the NSA, who it the legal supervisory entity established by the Railway Safety Directive for any category of railway service, including dangerous goods, but can reside in another body.
11. To address these issues ERA has adopted the following approach.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0798&qid=1635424987755&from=EN>

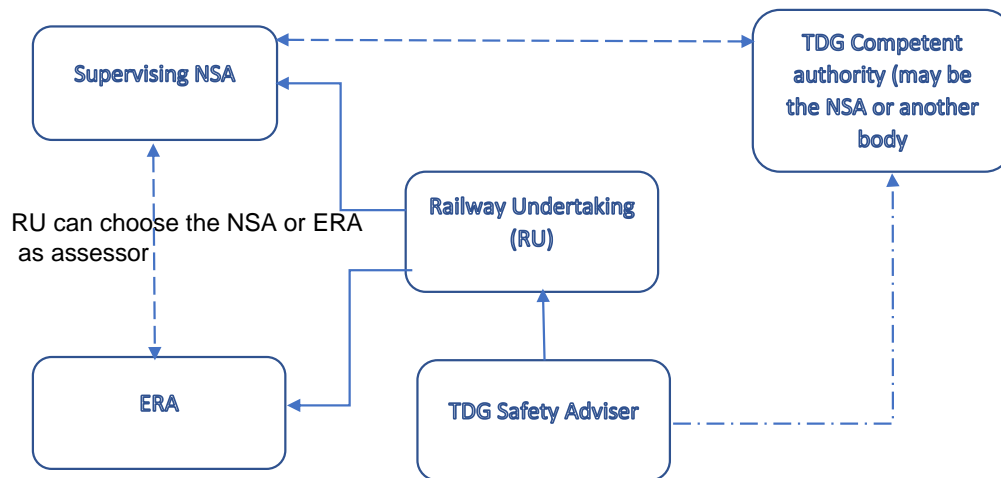
² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0762&qid=1635424924831&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0763&from=EN>

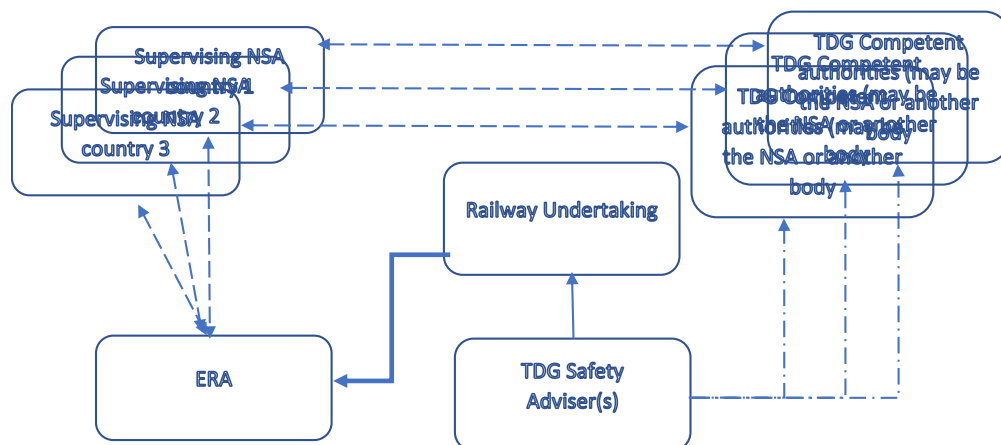
⁴ https://www.era.europa.eu/applicants/applications-single-safety-certificates_en

Communication channels

Area of use is only one country



Area of use is composed of more than one country (most of the cases)



ERA approach

12. Clarification has been given by ERA to Belgium as to the meaning of the remark in the safety management systems guidance concerning dangerous goods.
13. The position of ERA is that where there is existing legislation with which compliance can be demonstrated such as Directive 2008/68 (EC) (including the RID Annex), then this can be used as evidence as appropriate as conformance with the requirements set out in Regulation 2018/762 (EU) on Safety Management System Requirements.
14. Clearly, there is a set of requirements in Directive 2008/68 (EC) which may fall into this category. For example, some of the duties of the Dangerous Goods Safety adviser where these relate to the SMS or on train preparation where there may be reference to dangerous goods which overlap with requirements set out in the TSI Operations and Traffic Management (EU)2019/773.
15. The ERA assessors will therefore contact the NSA(s) and ask whether it is also the TDG competent authority in accordance with RID. If it is, the ERA assessor will further ask the

NSA for any information relating to the implementation of the TDG Directive requirements in that member state including information coming from the supervision of the concerned Railway Undertaking by the NSA in accordance with the CSM on Supervision.

16. The question that will be asked by the ERA assessors is as follows:

'Can the arrangements for the management of dangerous goods described by the company in its SMS practically function as described in the process covering this procedure?'

A note of advice has also been given to the ERA assessors, as follows:

'Note: it is the NSA responsibility, if needed after consultation of the TDG CA, to confirm that the contact arrangements between the RU and the IM and any other relevant bodies which are described in the dangerous goods procedure are the correct ones and the process as described in the Railway Undertaking's SMS is the one agreed for that member state according to the provisions of the Inland TDG Directive (including its RID annex) and other relevant legislation.'

17. The above question and note have been added to the checklist that ERA provides for its assessors and will be further reinforced at the next internal assessors plenary meeting held by ERA (December).
18. ERA will further check as part of the assessment of the application for a Single Safety Certificate that, a Dangerous Goods Safety Adviser has been appointed who holds an appropriate qualification and that there is a procedure within the Safety Management System procedures which deals with the management of dangerous goods.
19. ERA will also ask for a copy of the last report made by the dangerous goods safety adviser for the management of the company. The purpose of these checks is to establish that an appropriately qualified person is in place and that a procedure (which should reference the relevant requirements of RID is in place) as part of the need to establish that appropriate requirements are in place to manage dangerous goods railway transport operations.

Justification

20. The aim of the approach is to avoid duplication between the work of the various authorities (NSA / TDG CA), to provide those ERA staff carrying out assessment 1) the harmonized approach to be adopted and 2) reliable evidence supporting the assessment.
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