

Bijlage 3a bij Kamerbrief Werkprogramma Internationaal Spoor

Nederlandse bijdrage aan EU publieke consultatie over herziening machinistenrichtlijn

I thank you for the possibility of replying to the public consultation for the revision of Directive 2007/59/EC (Train Driver Directive (TDD)) on the certification of train drivers operating locomotives and trains on the railway system in the Community, launched on 1 June 2022.

The Netherlands Ministry of Infrastructure and Water Management (hereafter: the Ministry) would like to highlight the following items as a reply to the public consultation, with a view to a possible future revision of the Directive.

EC Impact Assessment policy options, scope and proportionality

With reference to the four preliminary policy options identified by the Commission in the Impact Assessment inception report of 11 January 2022, the Ministry is in favor of policy option 3 'Single EU train driver licence under a common EU accreditation scheme'. In this respect I would like to explain to you that the current Dutch practice under the applicable TDD is more or less similar to the Commissions' identified policy option 2 'Member state led certification'.

The Ministry regards policy option 4 'ERA led train driver certification under a common EU accreditation scheme' as a policy option for a potential future scenario of a single technical interoperable European Railway Area with harmonized ERTMS deployment as basic condition, the rise of automation, the introduction of other (digital) innovations in the rail sector, and EU TSI standardized rolling stock and infrastructure. In the current circumstances the Ministry regards option 4 as disproportionate. Furthermore, supervision and enforcement are currently tasks of the National Safety Authority (NSA). There would be a need for temporary provisions between the scenario of policy option 3 and reaching a potential final future scenario of policy option 4.

For shunting locomotives, the Ministry proposes that simple basic requirements should be applicable for the certificate. However, for the licence, a driver only performing local shunting tasks should be excluded from the implementation of the directive (maintain current TDD Article 2.3 on exemptions from the scope). Requirements for local shunting staff should be part of the TSI OPE.

Licence and certificate, training and examinations

In the current situation and in a policy option 3 scenario there is a need for both licence and complementary certificate (hereafter 'certificate'), also with a view to the rise of self-employed train drivers (see below under 'independent workers'). From the viewpoint of simplification and cost reduction digital certificates are preferred combined with a digital licence, e.g. in a smart card or an app to replace the paper versions. In a future standardized and technical interoperable European Railway Area as described above, a certificate would no longer be required.

In the current situation there are large differences between various Railway Undertakings (RUs) and between various EU member states concerning training and exams for licences and certificates. This needs to be standardized at EU level based on an EU defined single training syllabus (established by ERA) with common EU training and certification requirements, at least for rolling stock. National requirements are still required for knowledge of specific infrastructure. For last mile local shunting (current category A for the certificate) requirements should be basic. For the rail freight sector these EU requirements should be linked to the TEN-T and the current rail freight corridors. We suggest the

Commission to explore the idea of the feasibility of introducing one certificate valid per European rail freight corridor.

Thus, the content of these requirements in the EU needs to be harmonized, but examination and certification should be done at national level under supervision of the NSAs. Examiners need to be trained based on uniform rules and principles. NSAs in the future need to assess and supervise examination institutes, both of licences and certificates, as well as the examiners to guarantee independency and uniformity of examinations. The maximum time between examination and issuing of a licence (including medical checks) should be limited to a reasonable number of weeks, e.g. four, to be included in a revised TDD.

RUs need to acknowledge each other's certificates to allow the transfer of a driver from one RU to another RU. The revision of the current TDD annexes V and VI need to better define the norm for a certificate.

Train driver licences and certificates need to remain registered to ensure proper monitoring. The same applies for examiners. One single register combining licence and certificate leads to questions such as the link to privacy legislation. How does the Commission want to deal with privacy in relation to medical data? How could monitoring and enforcement of such a real time single register by an NSA be done in relation to privacy legislation? We suggest to take these questions into account in the impact assessment.

A certification system for other crew members performing safety-critical tasks

The Ministry does not believe it is necessary that the Commission puts forward a new legislative proposal on a certification system for other crew members performing safety-critical tasks, as TSI OPE is already dealing with this.

Resilience of train operations

With reference to resilience of train operations the Ministry is of the opinion that in the event of a serious disruption to rail traffic, such as the "Rastatt incident", it is important that train drivers can easily cover alternative routes. Requirements for international rerouting due to works on the tracks should be proportional as access to neighbouring networks is key for continuation of the traffic. It is important to prevent unnecessary barriers for cross border access to the labor market. A temporary reduction in language requirements for a specific driver should be compensated by train signalling staff of infrastructure managers (IMs) that should manage both English and mother tongue language (see below on language requirements).

Language requirements

A train driver should be able to speak in the language of the country he/she is driving in and as used by the IM or in English. Level B1 should be the minimum required for train drivers. Train signalling staff of IMs should manage both English and mother tongue language. The use of translation software should be authorized in communication between a train driver and a train signaller, taking into account results of ongoing and/or finished EU R&I rail language projects and also respecting the overall safety requirements.

Physical and psychological requirements

In the context of the current TDD, RUs face many differences between EU member states in physical and psychological requirements. Furthermore, the psychological requirements are not clearly defined, neither the frequency of these psychological examinations nor the related differentiation in

age of a train driver. These requirements should be measurable and norms should be agreed upon at EU level, e.g. concerning the content and frequency of periodic examinations.

With reference to medical requirements, there is a need for harmonized ones, also with a view to the rise of self-employed train drivers. There is a need for mutual recognition of doctors in the various EU member states.

Administrative burden and costs

In order for the rail freight sector to become more competitive, cost efficiency is important. Therefore, standardization and harmonization between EU member states, as described above, is important to reduce costs. Rules should be simple and clear without ambiguities.

Legal instrument

The Ministry supports the use of a direct applicable Regulation with harmonized requirements to replace the current Directive with the necessary temporary provisions and the need for sufficient transposition time. The current Directive has many ambiguities that need to be tackled. In this respect I would like to refer to the attached annex. More simplification and uniform, clear common rules in all EU member states are required. There is also a need for clear definitions, e.g. on categories of train drivers for the certificate. The subsidiarity principle needs to be taken into account: what can be done at national level should stay at national level, such as examinations and certification.

Other

- *independent workers*

The TDD does not appear to apply well to the current situation in which RUs make use of both permanent staff and self-employed train drivers - the latter mainly being hired in situations of sickness or peak periods - so that a self-employed worker always works for a specific employer for a short period. This causes problems in, among other things, the rules concerning continuous training (current Article 23, eighth paragraph).

- *Suspension or withdrawal of licence and/or certificate*

The TDD mentions both the suspension and the withdrawal of train driving licences and certificates. Unlike suspension, the grounds for withdrawal are not elaborated. The difference between permanent suspension (current Article 29, paragraph 4) and withdrawal of a train driving licence is not clear. The use of withdrawal and suspension seems to be mixed in the TDD. We believe this should be solved in a revision of the TDD so that the NSA has the right instruments for suspension or withdrawal. For example, it would be desirable to be able to withdraw a train driving licence on grounds other than physical or psychological grounds. Such grounds could be insufficient qualifications or repeated unsafe behavior. It could be explored if ownership of licences should be changed from a train driver to NSAs (under policy option 3) with a view to possible suspension or withdrawal.

Finally, in the framework of the EU Impact Assessment, the Netherlands Ministry of Infrastructure and Water Management would express its willingness to participate in future targeted European stakeholder meetings concerning the revision of the TDD.

In the attached Annex you will find some findings on the current text of the TDD with suggestions for improvement during the revision of the Directive.

This letter cannot prejudice any future decision making on future legislative developments. I thank you in advance for taking our contribution into consideration.