

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

To the attention of:

Ms. Andrea Zemanská

Head of the Track Access section

Úřad pro přístup k dopravní infrastruktuře

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Czechia

JD/ES/D 2023/8878

Valenciennes, 24/01/2023

Subject: National rules under Article 8 of Directive (EU) 2016/798

Ref: UPDI-3849/22/MM

Dear Ms. Zemanská,

In response to your letter no UPDI-3849/22/MM of 25 November 2022 regarding the rules on the use of brake shoes, imposed by the infrastructure manager, the European Union Agency for Railways (hereafter the 'Agency') provides the following information.

In your letter it is stated that, pursuant to § 22(3) a) of the Czech Railway Act, the infrastructure manager is entitled to give instructions to railway undertakings (issue rules) to ensure a safe rail transport operation. Moreover, the railway undertaking, according to § 35(1) f) of the Czech Railway Act, is obliged to follow the regulations given by the infrastructure manager. As specified in the letter, those regulations (rules) are also imposed on the railway undertakings through the agreements, according to Article 28 of Directive (EU) 2012/34/EU¹ establishing a single European Railway Area.

According to Article 3(8) of Directive (EU) 2016/798² on railway safety, national rules are defined as all binding rules adopted in a Member State, irrespective of the body issuing them, which contain railway safety or technical requirements, other than those laid down by Union or international rules, and which are applicable within that Member State to railway undertakings, infrastructure managers or third parties.

In the Agency's view³, in EU law the source of a 'national rule' may be any body issuing and imposing such requirements. Therefore, a rule from the infrastructure manager shall be treated as a national rule (regulated under Article 26 Regulation (EU) 2016/796 and Article 8 Directive (EU) 2016/798) if it is binding on more than one railway undertaking and contains railway safety or technical requirements.

Considering the legal basis above, in the Agency's view the infrastructure manager in Czechia is sufficiently established to be treated as a body capable of issuing binding national rules.

¹ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.

² Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety.

³ Note: Interpretation of EU law can only be given by the Court of Justice of the European Union.

As this rule has not been formally notified in the dedicated IT-tool – Single Rules Database (SRD), the procedure according to Article 26(6) and (3) of Regulation (EU) 2016/796⁴ applies.

To the Agency's knowledge, the competent bodies for notification in Czechia are the Ministry of Transport and the National Safety Authority. They have been notified about the need to respond to the result of the examination by Agency of the rule, which has led to a negative assessment. In case of negative position to the Agency's negative assessment by the aforementioned competent bodies, the Agency will assess again and possibly issue a formal technical opinion, as foreseen by the assessment procedure under Article 26 of Regulation (EU) 2016/796.

Concerning the question of whether Czechia duly transposed Article 8 of Directive (EU) 2016/798, this may be raised to the European Commission (DG MOVE).

Transposition of national legislation must be notified by the Member States to the European Commission via its dedicated IT application, THEMIS. In case of doubts regarding the process of transposition of EU directives, the European Commission should be consulted as the entity responsible for the verification of transposition measures.

Yours sincerely,


Josef DOPPELBAUER
Executive Director

Copy: Alice Polo, DG MOVE
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⁴ 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 881/2004.