



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate C – Land
The Director

Brussels
MOVE.DDG2.C/KS

Mr Jens Kirketerp Jensen
Chair of the Board
Dansk Banegods

By e-mail:
info@banegods.dk

Subject: Danish legislative initiatives regarding safety of load

Dear Mr Kirketerp Jensen,

In your letter of 11 February 2023, (registered as Ares(2023)1462579) and an update provided by you, you shared with the Commission information on the development of the Danish legislative initiatives concerning the transport of semi-trailers on pocket wagons, and amendments to the Danish Railway Act. The Commission and the European Union Agency for Railways cooperate closely with the Danish authorities to ensure the compliance of these draft legal measures with the relevant EU requirements and with the assessment process established under the 4th Railway package of 2016.

In my previous letter I explained that the Agency has issued technical opinion No 2022-6 ⁽¹⁾ in which it negatively assessed both discussed measures on the grounds of their non-compliance with Directive (EU) 2016/798 ⁽²⁾ and Commission Implementing Regulation (EU) 2019/773 ⁽³⁾ OPE TSI). Since that opinion was issued, we have remained in contact with the Danish authorities to clarify details and advise them on possible less onerous alternative approaches which could be implemented to ensure safe operation of trains under strong crosswinds on the Great Belt bridge.

⁽¹⁾ EU Agency's for Railways technical opinion No 2022-6 on Order n 1361 – 28/09/2022 of Denmark on operating pocket wagons with semi-trailers and two new draft safety rules notified in the Single Rules Database as DK-SA-289-1-D and DK-SA-295-1-D

⁽²⁾ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast), OJ L 138, 26.5.2016, p. 102

⁽³⁾ 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, OJ L 139I , 27.5.2019, p. 5

Agency experts have recently visited Copenhagen for a direct exchange. During the meeting it was clarified that one of the main responsibilities of railway undertakings and infrastructure managers is to ensure that all risks are sufficiently controlled, and adequate mitigating measures are put in place. It is the role of National Safety Authorities to *supervise* these companies in this respect and to enforce relevant legal provisions. Where rail companies infringe applicable rules, NSAs must apply the penalties regime established in accordance with Article 30 of Directive (EU) 2016/798.

This comprehensive EU-level system of risk management, supervision and enforcement allows to adequately manage any risk in the railway sector without the need for further supplementing rules through national rules. In the context of safe rail freight across the Great Belt bridge, NSAs supervision powers should be used to ensure that all involved companies take suitable action to address the risk of inadequate securing of semi-trailers on pocket wagons. It is however of paramount importance that risk control measures are left to be applied by the respective companies under their safety management systems. Such an approach is in line with Article 4 of Directive (EU) 2016/798 and allows to guarantee safety and interoperability of railways in the European Union.

The Agency shared these clarifications with the representatives of Danish authorities who have subsequently modified the draft of one of the proposed amendments to Railway Act. They removed the proposal on criminal punishment for unsafe placing of goods. We are still awaiting further feedback on the remainder of the amendments concerning the additional requirements for securing semi-trailers on pocket wagons.

The Commission and the Agency are committed to ensuring adequate follow-up as foreseen by the relevant legislation. I strongly believe though that the detailed discussion held at expert's level helped the Danish authorities to better understand our concerns and to find possible alternative solutions which are in line with our common commitment to building a safe and efficient Single European Railway Area.

Yours sincerely,

(electronically signed)

Kristian Schmidt