



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate C – Land
The Director

Brussels
MOVE.DDG2.C/KS

Mr Rasmus Munk Kolind
Chair of the Board
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By e-mail:
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Subject: Danish legislative initiatives regarding national safety of load requirements

Dear Mr Kolind,

In your letter of 16 December, you requested the Commission's view on the Danish approach to implementing national rules on load requirement, in the aftermath of the consecutive events on the Great Belt bridge.

The topic being covered by point 4.2.2.4.1. "Safety of load" of Commission Implementing Regulation (EU) 2019/773 ⁽¹⁾ (TSI OPE), indeed the requirement of defining general principles on the safety of load is a repetition of what is defined in the EU legislation and should therefore not be regulated at national level. In order to give further support to railway undertakings on how to correctly implement the requirement of TSI OPE, the Agency issued on 16 December 2021 an acceptable means of compliance on safety of load, which is publicly available on the ERA's website ([Operation and Traffic Management TSI | European Union Agency for Railways \(europa.eu\)](https://www.era.europa.eu/operation-and-traffic-management-tsi)).

As explained in the EU Agency for Railways' technical opinion No 2022-6 ⁽²⁾, the requirement to impose by law additional measures for semi-trailers on pocket wagons operating on the Great Belt bridge cannot be accepted as a national rule because it cannot be considered compliant with the following EU legislation:

⁽¹⁾ 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

⁽²⁾ 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

- Article 8 of Directive (EU) 2016/798 ⁽³⁾ requiring new national rules, developed as an urgent preventive measure and in particular following an accident or an incident, to be notified to the Commission.

- Article 4 of Directive (EU) 2016/798 reserving the roles and responsibilities of railway actors while managing risk is a responsibility of the infrastructure manager and railway undertakings, where appropriate in cooperation with each other, not to be decided at the level of a Member State.

- Point 4.2.2.4.1 “Safety of load” of Regulation (EU) 2019/773 (TSI OPE) which requires railway undertaking to make sure that freight vehicles are safely and securely loaded and remain so throughout the journey.

- Point 4.2.3.3.1 of Regulation (EU) 2019/773 (TSI OPE) which requires railway undertakings to define the checks and tests to ensure that any departure is undertaken safely (e.g. doors, load, brakes).

Please rest reassured that the Commission is closely following this development and will consider taking appropriate action if necessary.

Moreover, we read with concern your argumentation and the related interpretation of the Union’s safety and interoperability related legislative framework. Article 4 (of Directive (EU) 2016/798 (RSD) sets rail safety roles and responsibilities of various actors in the rail system. It is for the Member States to ensure that the responsibility for the safe operation of the Union rail system and the control of risk associated is imposed on the infrastructure managers and the railway undertakings operating on the Danish rail network, each for their parts of the system. Rail operators are obliged to implement legally required, efficient and necessary risk control measures.

The railway packages have identified the establishment of safety management systems (SMS) as appropriate means to achieving safety. SMS are subject to safety certification (for railway undertakings) and safety authorisation (for infrastructure managers) prior to implementation and must be followed up by supervision through the National Safety Authorities (NSAs).

European legislation such as the rail safety directive and the technical specifications for interoperability on traffic management and operations (OPE TSI) attribute the responsibility for safety of loading to railway undertakings as spelled out in its Point 4.2.2.4.1 “Safety of load”, which requires that: “The railway undertaking shall make sure that freight vehicles are safely and securely loaded and remain so throughout the journey.” For the safety of load, acceptable means of compliance were created at EU level to guide operators.

According to the action plan, which resulted from the work in Cluster I of the normal JNS procedure led by the European Railways Agency after the Danish accident, measures to ensure secure loading of semi-trailers on pocket wagons provide reliable risk control measures, when implemented correctly. Any railway undertaking wishing to transport semi-trailers on pocket wagons over the Great Belt bridge, must therefore demonstrate that these (or equivalent) measures are taken to ensure the safety of loading.

Therefore, the Commission does not see any need for Member States to regulate on a permanent basis. It shall be left to the SMS of railway undertakings and infrastructure

⁽³⁾ 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

manager SMS, which requires in application of Commission Regulation (EU) 1078/2012 on a common safety method on monitoring ⁽⁴⁾, to identify and monitor the necessary arrangements to “check the correct application and the effectiveness” of the implemented risk control measures.

In practice, this means that the railway undertakings need to ensure and demonstrate their capability to detect and correct in a timely fashion any unsafe loading. The Commission believes the existing EU legal framework to be sufficiently robust to allow safe operations and provide a reference framework for the Danish national safety authority to assess and supervise the application of the SMS of railway undertakings operating on the Great Belt bridge and to act decisively on any identified deficiency.

Furthermore, in application of the provisions of the rail safety directive the risk of trains running over the Great Belt bridge under crosswind exposure is a risk shared between the infrastructure manager and the operating railway undertakings. A holistic view on crosswind safety should lead to the identification of a balanced mix of operational, infrastructural, rolling stock or loading related risk control measures. It is essential that the respective infrastructure manager and railway undertakings are capable of checking and demonstrating the correct application and the effectiveness of their implemented risk control measures, each for their part. In turn, this is subject to the supervision by the Danish national safety authority.

The urgency and importance of the application of infrastructure-related (i.e. speed restriction and traffic stop limits) and rolling stock-related risk control measures (i.e. proper loading incl. adequate hitch locking force) do not justify a rule for a minimum 14 tons gross weight at national level.

I hope this clarifies well your concerns.

Please note that this reply expresses the opinion of DG MOVE. It cannot be interpreted as an official position of the European Commission and is without prejudice to the decision-making of the Court of Justice, which is the sole institution, empowered to provide binding interpretation of the Union law.

Yours sincerely,

Kristian SCHMIDT

⁽⁴⁾ 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, *OJ L 320, 17.11.2012, p. 8*