

Regulation on the Safety of the Railway System

(Railway Safety Regulation – ESiV)

of 5 July 2007 (BGBl. [Federal Law Gazette] I p. 1305)

On the basis of

- Section 26(1)(1), (1c) and (1d), respectively in conjunction with Section 26(4)(1) of the General Railway Act (Allgemeines Eisenbahngesetz) of 27 December 1993 (BGBl. I pp. 2378, 2396, 1994 I p. 2439), of which Section 26(1)(1), (1c) and (1d) were last amended by Section 1(7)(a) of the Act of 16 April 2007 (BGBl. I p. 522) and Section 26(4) was last amended by Section 1(16) of the Act of 21 June 2002 (BGBl. I p. 2191),
- Section 26(1)(3) and (5), respectively in conjunction with sentence 1 of Section 26(5) of the General Railway Act of 27 December 1993 (BGBl. I pp. 2378, 2396, 1994 I p. 2439),
- Section 26(1)(9) in conjunction with sentence 5 of Section 26(3) of the General Railway Act of 27 December 1993 (BGBl. I pp. 2378, 2396, 1994 I p. 2439), of which Section 26(1)(9) was last amended by Section 1(4)(a) of the Act of 13 December 2006 (BGBl. I p. 2919) and sentence 5 of Section 26(3) was inserted by Section 1(12)(b) of the Act of 27 April 2005 (BGBl. I p. 1138) and amended by Section 1(9) of the Act of 9 December 2006 (BGBl. I p. 2833), in conjunction with the second section of the Administrative Expenses Act (Verwaltungskostengesetz) of 23 June 1970 (BGBl. I p. 821) in agreement with the Federal Ministry of Finance and the Federal Ministry of Economics and Technology,
- Section 26(1)(11) in conjunction with Section 26(4)(1) of the General Railway Act of 27 December 1993 (BGBl. I pp. 2378, 2396, 1994 I p. 2439), of which Section 26(1)(11) was last amended by Section 1(7)(a) of the Act of 16 April 2007 (BGBl. I p. 522) and Section 26(4) was amended by Section 1(16) of the Act of 21 June 2002 (BGBl. I p. 2191),
- Section 26(1)(13) to (15), respectively in conjunction with Section 26(4)(1) and sentence 1 of Section 26(5) of the General Railway Act of 27 December 1993 (BGBl. I pp. 2378, 2396, 1994 I p. 2439), of which Section 26(1)(13) to (15) was inserted by Section 1(7)(a) of the Act of 16 April 2007 (BGBl. I p. 522) and Section 26(4) was amended by Section 1(16) of the Act of 21 June 2002 (BGBl. I p. 2191),

the Federal Ministry of Transport, Building and Urban Affairs decrees as follows:

§ 1

Scope

(1) This regulation shall apply to standard-gauge public railways, provided that they do not operate regional rail transport networks or service facilities and are not regional railways.

§ 2

Definitions

The following meanings shall apply for the purposes of these regulations:

1. 'Safety rules': all rules which contain requirements for ensuring the operational safety of railways and apply to more than one railway, irrespective of which body establishes these rules;
2. 'Technical specifications for interoperability' (TSI): specifications within the meaning of Chapter II of Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ EC L 235 p. 6) and of Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system (OJ EC L 110 p. 1), in each case last amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (OJ EU L 164 p. 114, L 220 p. 40), which apply to each subsystem or parts thereof with respect to compliance with the fundamental requirements and which ensure interoperability.

§ 3

Safety rules

(1) The Federal Ministry of Transport, Building and Urban Affairs shall notify the Commission of all safety rules established prior to 14 July 2007 and thereafter within the meaning of Annex II of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ EU L 164 p. 44, L 220 p. 16), stating their field of application.

(2) Railways must immediately inform the safety authority, in writing, of all amendments to the safety rules within the meaning of Annex II of Directive 2004/49/EC they have established and which have already been notified in accordance with paragraph 1. Sentence 1 shall apply accordingly to the notification of safety rules which have been issued by the federal states as legal or administrative provisions.

(3) The Federal Ministry of Transport, Building and Urban Affairs shall notify the Commission immediately of all amendments to safety rules which have already been notified in accordance with paragraph 2, provided that the provisions in question do not relate exclusively to the application of technical specifications for interoperability.

(4) As soon as the common safety targets within the meaning of Article 1(e) of Directive 2004/49/EC have been issued in a procedure in accordance with Article 7 of

Directive 2004/49/EC, a railway may not establish and apply a new safety rule which provides for safety requirements going beyond the common safety targets

1. as long as in this respect the procedure in accordance with Article 8(6) and (7) of Directive 2004/49/EC (EC participation procedure) has not been completed or
2. if the Commission has adopted a negative decision in such a procedure.

The railway must submit the draft safety rule to the safety authority. The latter shall notify the Commission thereof, via the Federal Ministry of Transport, Building and Urban Affairs, and shall inform the railway of the outcome of the EC participation procedure.

§ 4

Applying for safety certifications and safety authorisations

- (1) Applications for safety certifications and safety authorisations must be submitted in German.
- (2) As part of the application procedure, the safety authority shall provide applicants, without charge, with application guidelines explaining the requirements for safety certifications and safety authorisations and listing the documents that must be submitted.

§ 5

Notification obligations

- (1) Following the revocation of a national certification within the meaning of Section 7a(4) of the General Railway Act, the safety authority shall immediately notify the safety authority of the other Member State which granted the safety certification on which the national certification was based of its decision.
- (2) The safety authority shall notify the European Railway Agency ('the Agency') within one month of the grant, renewal, amendment or revocation of safety certifications in accordance with Section 7a(2)(1) and of safety authorisations in accordance with Section 7c(2)(1) in conjunction with Section 7b of the General Railway Act. The notification shall include the name and address of the rail transport undertaking, the issue date, the field of application and the period of validity of the safety certification or safety authorisation and, in the event of revocation, the grounds therefor.

§ 6

Safety report

Railways which require a safety certification or safety authorisation are obliged to submit a written safety report in accordance with sentence 2 to the safety authority by 30 June of each year; this report relates to the preceding calendar year. It must contain the following:

1. information relating to the undertaking concerned has reached the targets for the maintenance and enhancement of safety within the meaning of 2(b) of Annex III to Directive 2004/49/EC and implemented the plans and procedures referred to there for reaching those targets;

2. the development of the common safety indicators laid down in Annex I of Directive 2004/49/EC in relation to the relevant undertaking;
3. the results of internal safety checks;
4. information on dangerous events in rail operations that were investigated by the investigation authority responsible for investigating serious accidents in rail operations, and the measures taken as a result.

§ 7

Annual report

- (1) Each year the safety authority shall publish a report concerning its activities in the preceding year and shall send it to the Agency by 30 September of each year at the latest.
- (2) The report shall contain information on:
 1. the development of railway safety, including an aggregation of the common safety indicators in accordance with Annex I to Directive 2004/49/EC;
 2. important changes in legal and administrative provisions concerning railway safety;
 3. execution of the provisions on safety certifications and safety authorisations in general, and
 4. the implementation of railway supervision in general form.

§ 8

Administrative offences

Anyone who, as the responsible party within an undertaking, in contravention of the first sentence of Section 6 of the General Railway Act, intentionally or through negligence fails to submit the safety report or does not submit it correctly, in full or in a timely fashion, shall be guilty of an administrative offence within the meaning of Section 28(1)(6)(b) of the said Act.