

## RECOMMENDATION

of the Team for implementation of the action plan for improvement of the approach to risk-based safety management

**on the cooperation of managers and manufacturers of subsystems regarding risk management in linear investments**

### Date of issue

22 August 2022, version 1

### The Recommendation is addressed to

infrastructure managers and manufacturers of structural subsystems

### Content of the Recommendation

1. Entities covered by the obligation to implement the risk management process should cooperate with each other in the course of its implementation.

This cooperation should consist, for example, in: a) establishing an expert team composed of representatives of entities subject to the risk management obligation; (b) exchange of information, including parties potentially interested in the changes, on hazards, including those contained in the manager's hazard record, that are relevant to the manufacturer of the subsystem; (c) constant exchange of information on transferred hazards and safety measures.

2. It is recommended that the infrastructure manager act as the lead proposer (within the meaning of Article 3(11) of Regulation 402/2013<sup>1</sup>) in the risk management process.

This entity should be responsible for involving all other entities in jointly carrying out the risk assessment, risk management and safe integration of the change into the entire railway system.

### Related regulations

Article 1(6) of the Act Amending the Act on Railway Transport of 23 July 2021<sup>2</sup>;

Article 2(1), Article 3(11) and Recital 9 of Regulation 402/2013

Article 17b of the Act on Railway Transport was repealed on 26 August 2021 under Article 1(6) of the Act Amending the Act on Railway Transport of 23 July 2021 (Journal of Laws of 2021, item 1556).

---

<sup>1</sup> Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (O.J. EU L 121 of 03.05.2013, p. 8, as amended).

<sup>2</sup> Act Amending the Act on Railway Transport of 23 July 2021 (Journal of Laws of 2021, item 1556)

Pursuant to the repealed Article 17b, the railway undertaking, the infrastructure manager, the entity in charge of maintenance of the railway vehicle (ECM), the manufacturer or its authorized representative, the administrator, the importer, the upgrading contractor, the investor and the contracting entity were obliged to implement the risk management process to the extent and on the terms set out in Regulation No. 402/2013.

The above change was justified by the fact that Regulation 402/2013 which specifies a catalogue of entities obliged to apply it is directly applicable in the Polish legal order. Thus, when making changes to the railway system, railway market entities are subject to risk management obligations, if so results from Regulation 402/2013.

The above means that, contrary to the opinions emerging on the market, the repealing of Article 17b of the Act on Railway Transport does not mean that the entities indicated therein, including the manufacturer of the subsystem and its authorized representative, have been completely released from the obligation to participate in the risk management process.

Recital 9 of Regulation 402/2013 introduces the institution of the "proposer", i.e. is the undertaking or organisation responsible for the introduction of a given change. In turn, Article 2(1) of Regulation 402/2013 stipulates that this Regulation applies to the proposer defined in Article 3(11) when making any change to the railway system in a Member State.

The above-mentioned Article 3(11) of Regulation 402/2013 defines the petitioner as:

- a railway undertaking or an infrastructure manager which implements risk control measures
- an entity in charge of maintenance;
- a contracting entity or a manufacturer which invites a notified body to apply the 'EC' verification procedure;
- an applicant for an authorisation for the placing in service of structural sub-systems.

Thus, the manufacturer of the sub-system, fulfilling the above, is also a "proposer" within the meaning of Regulation 402/2013. The fact of repealing of Article 17b of the Act on Railway Transport does not affect this situation.

To confirm this, it can be added that pursuant to Article 17(1ba)(6) of the Act on Railway Transport, the manager may oblige the manufacturer of the subsystem to implement the necessary risk control measures.

Moreover, the question that needs to be resolved is whether the entities obliged to carry out the risk management process should carry it out jointly or separately, and what should their possible cooperation look like?

The Office of Rail Transport recommends that in the case of changes consisting in the construction, renewal or modernization of structural subsystems

for fixed installations, the institution of a lead proposer should be introduced. Due to the specifics of the Polish railway market in this area, such an entity should be the infrastructure manager. This entity would be responsible for involving all other actors - including the manufacturer of the subsystem as shown above - in jointly carrying out the risk assessment, risk management and safe integration of the change into the entire railway system.

The infrastructure manager and the manufacturer of the subsystem may also, at the design stage, contractually agree which of them will be responsible for carrying out the process of assessing the significance of the change and possibly assessing the risk. As for the infrastructure manager, as the leading (main) petitioner, we recommend that it implement the possibility of contractually obliging contractors to carry out the above-mentioned processes.

Moreover, it is good practice to create a joint team consisting of representatives of entities, regardless of which of them will be responsible for carrying out the process of assessing the significance of the change and assessing the risk.

**Deputy Team Leader**

**JAN SIUDECKI**  
**DIRECTOR FOR THE TECHNOLOGY**  
**AND PRODUCT DEPARTMENT**  
*/Document signed with a qualified electronic*  
*signature./*

For more information, call: 22 749 15 30

Office of Railway Transport - Technology and Product Department

The President of the Office of Railway Transport processes the provided personal data in compliance with the law. For detailed information, visit [www.utk.gov.pl/pl/rodo](http://www.utk.gov.pl/pl/rodo)