

Directive (EU) 2016/798 of the European Parliament and of the Council
of 11 May 2016 on railway safety (recast) (Text with EEA relevance)

CHAPTER V

ACCIDENT AND INCIDENT INVESTIGATION

Article 20

Obligation to investigate

1 Member States shall ensure that an investigation is carried out by the investigating body referred to in Article 22 after any serious accident on the Union rail system. The objective of the investigation shall be to improve, where possible, railway safety and the prevention of accidents.

2 The investigating body referred to in Article 22 may also investigate those accidents and incidents which under slightly different conditions might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents of the Union rail system.

The investigating body may decide whether or not an investigation of such an accident or incident is to be undertaken. In making its decision it shall take into account:

- a the seriousness of the accident or incident;
- b whether it forms part of a series of accidents or incidents relevant to the system as a whole;
- c its impact on railway safety; and
- d requests from infrastructure managers, railway undertakings, the national safety authority or the Member States.

3 The extent of investigations and the procedure to be followed in carrying out investigations shall be determined by the investigating body, taking into account Articles 21 and 23 and depending on the lessons it expects to draw from the accident or incident for the improvement of safety.

4 The investigation shall in no case be concerned with apportioning blame or liability.

Article 21

Status of investigation

1 Member States shall define, within the framework of their respective legal system, the legal status of the investigation that is to enable the investigators-in-charge to carry out their task in the most efficient way and within the shortest time.

2 In accordance with their national legislation, Member States shall ensure full cooperation by the authorities responsible for any judicial inquiry, and shall ensure that the investigators are given access as soon as possible to information and evidence relevant for the investigation. In particular, they shall be granted:

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- a immediate access to the site of the accident or incident as well as to the rolling stock involved, the related infrastructure and traffic control and signalling installations;
 - b the right to an immediate listing of evidence and controlled removal of wreckage, infrastructure installations or components for examination or analysis purposes;
 - c unrestricted access to, and use of, the contents of on-board recorders and equipment for the recording of verbal messages and registration of the operation of the signalling and traffic control system;
 - d access to the results of examination of the bodies of victims;
 - e access to the results of examinations of the train staff and other railway staff involved in the accident or incident;
 - f the opportunity to question the railway staff involved in the accident or incident and other witnesses; and
 - g access to any relevant information or records held by the infrastructure manager, railway undertakings, entities in charge of maintenance and national safety authority concerned.
- 3 The Agency shall cooperate with the investigating body when the investigation involves vehicles authorised by the Agency or railway undertakings certified by the Agency. It shall as soon as possible submit all requested information or records to the investigating body and provide explanations, where requested.
- 4 The investigation shall be carried out independently of any judicial inquiry.

Article 22

Investigating body

1 Each Member State shall ensure that investigations of the accidents and incidents referred to in Article 20 are conducted by a permanent body, which shall comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. That body shall be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and conformity assessment body and from any party whose interests could conflict with the tasks entrusted to the investigating body. It shall, furthermore, be functionally independent from the national safety authority, from the Agency and from any regulator of railways.

2 The investigating body shall perform its tasks independently of the other entities referred to in paragraph 1 and shall be able to obtain sufficient resources to do so. Its investigators shall be afforded status giving them the necessary guarantees of independence.

3 Member States shall provide for railway undertakings, infrastructure managers and, where appropriate, the national safety authority to be obliged to immediately notify the accidents and incidents referred to in Article 20 to the investigating body and to provide all available information. Where appropriate, this notification shall be updated as soon as any missing information becomes available.

The investigating body shall decide, without delay and in any event no later than 2 months after receipt of the notification concerning the accident or incident, whether or not to start the investigation.

4 The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than railway accidents and incidents as long as such other investigations do not endanger its independence.

5 If necessary, and provided it does not undermine the independence of the investigating body as provided for in paragraph 1, the investigating body may request the assistance of investigating bodies from other Member States or from the Agency to supply expertise or to carry out technical inspections, analyses or evaluations.

6 Member States may entrust the investigating body with the task of carrying out investigations of railway accidents and incidents other than those referred to in Article 20.

7 The investigating bodies shall conduct an active exchange of views and experience for the purposes of the development of common investigation methods, drawing up common principles for follow up of safety recommendations and adaptation to the development of technical and scientific progress.

Without prejudice to paragraph 1, the Agency shall support the investigating bodies in the performance of this task in accordance with Article 38(2) of Regulation (EU) 2016/796.

The investigating bodies, with the support of the Agency in accordance with Article 38(2) of Regulation (EU) 2016/796, shall establish a programme of peer reviews where all investigating bodies are encouraged to participate so as to monitor their effectiveness and independence. The investigating bodies, with the support of the secretariat referred to in Article 38(2) of Regulation (EU) 2016/796, shall publish:

- a the common peer-review programme and the review criteria; and
- b an annual report on the programme, highlighting identified strengths and suggestions for improvements.

The peer review reports shall be provided to all investigating bodies and to the Agency. Those reports shall be published on a voluntary basis.

Article 23

Investigation procedure

1 An accident or incident referred to in Article 20 shall be investigated by the investigating body of the Member State in which it occurred. If it is not possible to establish in which Member State it occurred or if it occurred on or close to a border installation between two Member States, the relevant investigating bodies shall agree which of them is to carry out the investigation or agree to carry it out in cooperation with each other. The other investigating body shall, in the first case, be allowed to participate in the investigation and fully share its results.

Investigating bodies from other Member States shall be invited, if appropriate, to participate in an investigation where:

- a a railway undertaking established and licensed in one of those Member States is involved in the accident or incident; or
- b a vehicle registered or maintained in one of those Member States is involved in the accident or incident.

Investigating bodies from invited Member States shall be provided with the powers necessary to enable them, when requested, to assist in the collection of evidence for another Member State's investigating body.

Investigating bodies from invited Member States shall be provided with access to the information and evidence necessary to enable them to participate effectively in the investigation with due respect for national laws relating to judicial proceedings.

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This paragraph shall not preclude Member States from agreeing that the relevant bodies shall carry out investigations in cooperation with each other in other circumstances.

2 For each accident or incident the body responsible for the investigation shall arrange for the appropriate means, comprising the necessary operational and technical expertise, to carry out the investigation. The expertise may be obtained from inside or outside the body, depending on the character of the accident or incident to be investigated.

3 The investigation shall be carried out with as much openness as possible, so that all parties can be heard and can share the results. The relevant infrastructure manager and railway undertakings, the national safety authority, the Agency, victims and their relatives, owners of damaged property, manufacturers, the emergency services involved and representatives of staff and users shall be given an opportunity to provide relevant technical information in order to improve the quality of the investigation report. The investigating body shall also take account of the reasonable needs of the victims and their relatives and keep them informed of the progress made in the investigation.

4 The investigating body shall conclude its examinations at the accident site in the shortest possible time in order to enable the infrastructure manager to restore the infrastructure and open it to rail transport services as soon as possible.

Article 24

Reports

1 An investigation of an accident or incident referred to in Article 20 shall be the subject of reports in a form appropriate to the type and seriousness of the accident or incident and the relevance of the investigation findings. The reports shall state the objectives of the investigations as referred to in Article 20(1) and shall contain, where appropriate, safety recommendations.

2 The investigating body shall make public the final report in the shortest possible time and normally not later than 12 months after the date of the occurrence. If the final report cannot be made public within 12 months, the investigating body shall release an interim statement at least on each anniversary of the accident, detailing the progress of the investigation and any safety issues raised. The report, including the safety recommendations, shall be communicated to the relevant parties referred to in Article 23(3) and to bodies and parties concerned in other Member States.

Taking into account experience gained by the investigating bodies, the Commission shall establish, by means of implementing acts, the reporting structure to be followed as closely as possible for accident and incident investigation reports. This reporting structure shall include the following elements:

- a a description of the occurrence and its background;
- b a record of the investigations and inquires, including on the safety management system, the rules and regulations applied, the functioning of rolling stock and technical installations, the organisation of man power, the documentation on the operating system and previous occurrences of a similar character;
- c analysis and conclusions with regard to the causes of the occurrence, including contributory factors, relating to:
 - (i) actions taken by persons involved;
 - (ii) the condition of rolling stock or technical installations;

- (iii) skills of the staff, procedures and maintenance;
- (iv) the regulatory framework conditions; and
- (v) the application of the safety management system.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(3).

3 By 30 September every year the investigating body shall publish an annual report accounting for the investigations carried out in the preceding year, the safety recommendations that were issued and actions taken in accordance with recommendations issued previously.

Article 25

Information to be sent to the Agency

1 Within 7 days of the decision to open an investigation, the investigating body shall inform the Agency thereof. The information shall indicate the date, time and place of the occurrence, as well as its type and its consequences as regards fatalities, injuries and material damage.

2 The investigating body shall send the Agency a copy of the final report referred to in Article 24(2) and of the annual report referred to in Article 24(3).

Article 26

Safety recommendations

1 A safety recommendation issued by an investigating body shall in no case create a presumption of blame or liability for an accident or incident.

2 Recommendations shall be addressed to the national safety authority and, where needed by reason of the character of the recommendation, to the Agency, to other bodies or authorities in the Member State concerned or to other Member States. Member States, their national safety authorities and the Agency shall, within the limits of their competence, take the necessary measures to ensure that the safety recommendations issued by the investigating bodies are duly taken into consideration, and, where appropriate, acted upon.

3 The Agency, the national safety authority and other authorities or bodies or, where appropriate, other Member States to which recommendations have been addressed, shall report back periodically to the investigating body on measures that are taken or planned as a consequence of a given recommendation.