

COMMISSION DECISION (EU) 2021/1364**of 9 July 2021****authorising Poland to apply an extension of certain periods specified in Articles 9, 10 and 11 of Regulation (EU) 2021/267 of the European Parliament and of the Council***(notified under document C(2021) 5030)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/267 of the European Parliament and of the Council of 16 February 2021 laying down specific and temporary measures in view of the persistence of the COVID-19 crisis concerning the renewal or extension of certain certificates, licences and authorisations, the postponement of certain periodic checks and periodic training in certain areas of transport legislation and the extension of certain periods referred to in Regulation (EU) 2020/698 ⁽¹⁾, and in particular Article 9(4), Article 10(4) and Article 11(4) thereof,

Whereas:

- (1) Article 9(1) of Regulation (EU) 2021/267 extends the time limits for the renewal of the single safety certificates referred to in Article 10(13) of Directive (EU) 2016/798 of the European Parliament and of the Council ⁽²⁾ which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (2) Article 9(2) of Regulation (EU) 2021/267 extends the validity of the safety authorisations referred to in Article 12(2) of Directive (EU) 2016/798 which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (3) Article 10(1) of Regulation (EU) 2021/267 extends the time limits for the renewal of the safety certificates referred to in Article 10(5) of Directive 2004/49/EC of the European Parliament and of the Council ⁽³⁾ which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (4) Article 10(2) of Regulation (EU) 2021/267 extends the time limits for the renewal of the safety authorisations referred to in Article 11(2) of Directive 2004/49/EC which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (5) Article 11(1) of Regulation (EU) 2021/267 extends the validity of train drivers' licences which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (6) Article 11(2) of Regulation (EU) 2021/267 extends the time limits for the completion, by the holder of a train driver's licence, of the periodic checks which would otherwise have expired or would otherwise expire between 1 September 2020 and 30 June 2021.
- (7) By letter of 31 May 2021, Poland submitted a reasoned request for an authorisation to apply an extension of certain periods specified in Articles 9, 10 and 11 of Regulation (EU) 2021/267. Poland provided additional information in support of its request on 4, 11, 16, 21 and 23 June 2021.

⁽¹⁾ OJ L 60, 22.2.2021, p. 1.

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

⁽³⁾ 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 (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44).

- (8) Through its reasoned request, Poland seeks an authorisation to apply an extension of six months of the period between 1 September 2020 and 30 June 2021 specified in Article 9(1) and (2), in Article 10(1) and (2), and in Article 11(1) and (2) of Regulation (EU) 2021/267.
- (9) According to the information provided by Poland, the renewal of single safety certificates, the renewal of safety authorisations, the renewal of licences of train drivers operating locomotives and trains and the completion of relevant periodic checks is likely to remain impracticable beyond 30 June 2021, due to measures that it has taken to prevent or contain the spread of COVID-19.
- (10) In particular as regards the validity of the safety certificates and of safety authorisations referred to in Article 9(1) and (2) and Article 10(1) and (2) of Regulation (EU) 2021/267, Poland considers that further extensions of their validity are necessary in order to avoid the risk of several railway undertakings and infrastructure managers not having their certificates or authorisations renewed on time.
- (11) According to the information provided by Poland, the national Regulation of the Minister for Health of 20 March 2020, declaring the existence of the pandemic, is still in force in that Member State. Among the measures adopted to prevent or contain the spread of COVID-19, firstly, a general obligation was imposed since 4 October 2020 on the staff of the Polish Office of Rail Transport (the national safety authority), which is the authority responsible for issuing and renewing safety certificates and safety authorisations, to work remotely. This working system was in force until the beginning of June 2021, when that authority implemented a hybrid-working model, with half of the staff working remotely, and the other half working at the office.
- (12) Secondly, according to the information submitted by Poland, during this eight-month period, the Polish Office of Rail Transport experienced serious limitations in the completion of the audits and inspections necessary for the renewal of safety certificates and safety authorisations affecting the mobility of the inspectors when carrying out on the spot supervisory activities. Due to the national measures in place, constraints such as the closing of hotels resulted in the impossibility for inspectors to stay overnight to carry out supervisory activities related to night-time inspections of surveillance activities, which resulted in additional delays in the necessary procedures.
- (13) Therefore, those restrictions have also affected the supervised entities, which also had consequences on the timely procedures for the renewal of safety certificates and safety authorisations. According to Poland, such restrictions resulted in situations where the supervised entities rejected the physical presence from inspectors, or accepted it only with a long delay. In certain cases, remote checks were allowed but experience has shown that they usually take longer, as the visual inspection of railway vehicles, technical facilities or railway infrastructures has to be carried out solely on the basis of the documentation provided by the supervised entity. There is also a frequent need of repeated requests for the provision of additional evidence, which also is likely to delay the procedures.
- (14) The impact on the normal workflow of the national safety authority of the measures adopted by Poland to prevent and contain the spread of COVID-19 may affect the capacity of that entity to process the incoming processes of renewal of safety certificates and safety authorisations. The accumulation of such a large number of incoming applications presents a risk for that authority of not being able to process them in a timely manner, and of issuing the required certificates and authorisations after the applicable deadline.
- (15) As regards Article 11(1) and (2) of Regulation (EU) 2021/267, according to the information provided by Poland, the renewal of train driving licences and the completion of relevant periodic checks will also remain impracticable beyond 30 June 2021 due to measures taken by Poland to prevent or contain the spread of COVID-19.

- (16) Based on the information provided by that Member State, the Polish Office of Rail Transport is also the entity responsible for issuing and renewing train driving licences. As explained in recitals 11 to 13, the measures applicable to the staff of that national safety authority to work remotely have affected the workflow of their services.
- (17) According to the information provided by Poland, there are over 17 000 train drivers in that Member State. Train driver licences have been issued since 2011 to all those drivers, in accordance with the Polish Ordinance of the Minister of Infrastructure of 18 February 2011 regarding train driver licences. As those licences have a period of validity of 10 years, most of them would expire in 2021. Therefore, also in this case, the accumulation of such a large number of incoming applications may present a risk for that authority of not being able to process them in a timely manner, and of only being able to issue the required licences after the deadline.
- (18) Specifically as regards the periodic checks of train drivers, based on the information provided by Poland, all periodic checks of knowledge and skills were suspended as of 16 April 2020 by the national legislation introduced to fight the spread of the pandemic. On 5 December 2020, further national measures suspended the performance of medical and psychological examinations for train drivers – and thus the need to attend these tests in person – during the pandemic, although only until 31 January 2021.
- (19) According to Poland, the re-establishment of those tests as of 1 February 2021 results in a large number of train drivers who would need to carry out their periodic checks, and have their licences renewed, within a very short period of time. There is currently a significant backlog in that Member State of periodic checks still to be performed, which accumulated due to the suspension of periodic medical and psychological examinations of train drivers.
- (20) Moreover, although the possibility of carrying out periodic medical and psychological examinations of train drivers has been resumed, the fact that social distancing measures are still in place, together with the limited capacity of the medical services – as part of the medical personnel in that Member State was moved to help on the COVID-19 front – still cause significant difficulties for the completion of those checks.
- (21) In addition, the same measures were also applied to the training and examination of other railway staff, which should also result in the limitation of the capacity of the relevant entities to carry out the periodic checks of train drivers within the applicable deadlines.
- (22) According to the information provided by Poland, despite the fact that the pandemic has been evolving favourably, the emergency measures have not yet been lifted, and the virus is still considered dangerous. While the current situation allows for a slow recovery of the economy and for a progressive return to normality, there is still a real risk of a possible fourth wave of the disease, particularly given the existence of new variants.
- (23) According to Poland, the request for extensions for the maximum allowable periods of six months is necessary given the uncertainty surrounding the country's epidemiological situation. Based on the information provided by that Member State, an extension for a period shorter than six months would also not allow to stabilise the situation of the train driver's professional group, or avoid the accumulation of tests, due to the fact that not all drivers would be able to carry them out within a shorter period of time.
- (24) Based on the information provided by Poland, all railway undertakings and infrastructure managers in that Member State still have their Safety Management Systems ('SMS') in place, which guarantee the appropriate safety level in railway transport. Moreover, according to that Member State, all procedures ensuring a high level of safety of rail traffic under SMS remain unchanged, and therefore it is not possible that the extension of the validity of the documents in question would result in any increase in the risk to rail transport safety. The requested extension should therefore not lead to disproportionate risks in terms of transport safety and security.
- (25) Poland should therefore be authorised to apply an extension of the periods between 1 September 2020 and 30 June 2021 specified in Article 9(1) and (2), in Article 10(1) and (2), and in Article 11(1) and (2) of Regulation (EU) 2021/267.
- (26) Poland has agreed that this Decision be adopted and notified in English,

HAS ADOPTED THIS DECISION:

Article 1

Poland is authorised to apply an extension of six months of the period between 1 September 2020 and 30 June 2021 specified in Article 9(1) and (2), in Article 10(1) and (2), and in Article 11(1) and (2) of Regulation (EU) 2021/267.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 9 July 2021.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission
