



ITA-COSUF

ITA Committee on Operational  
Safety of Underground Facilities

# Fundamental Issues Session

## Legal Aspects: Independence and Responsibilities

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# Background

- Lawyer for 20+ years
- Professor of Engineering & Medicine
- Active member
  - PIARC
  - ITA
  - COSUF
  - NFPA
  - ITIG
  - JSSMS (JAPAN)
- TUNNEL FATALITY INVESTIGATOR

# An EU Twist

- Ive just opened (as the tunnel operator/tunnel manager/safety officer) a tunnel in the Balkans (Trying to be EU compliant)
- Ive just closed (as the tunnel operator/tunnel manager/safety officer) a tunnel in the Balkans (Trying to be EU compliant)

# Legal Issues

● This is the polite way of raising the following important questions

- Will I go to jail?
- Will I lose my job?
- Will they fine me lots of money?



Which are related to the  
fundamental international question

- **ARE THEY PAYING  
ME ENOUGH TO DO  
THIS JOB!!!!!!**

# Answer

- It depends upon your countries laws and upon the organisational structure of your tunnels
- Strictly under the EU directive – the safety officers job is the key position for safety improvement options – a highly rewarding position

# This EU Directive

- Respects sovereignty of each country on HOW it achieves (in detail) the MINIMUM objectives
- It is not prescriptive of all matters

# Essential for tunnels

## – Respect Sovereignty

- Italy's thousands of tunnels
- Sweden's low population/rare tunnels
- Luxembourg's unpopular safety officers
- Czech republic's speeding drivers
- Slovenia's 2001+ highway construction
- Spain's "internal" division of regulatory regime
- Netherlands quantitative risk assessment
- United Kingdoms ALARP principle
- Norway's fjords (Snow, Snow & reindeer excrement)
- Etc

# Good News

- Under the EU Directive 2004/54/EC Tunnel Safety Officers are NOT principally responsible for decisions
- Safety Officers are subject matter experts offering advice , and assistance



# Bad News

- You are NOT subject to the EU directive (your country is)
- You are subject to the Legal framework of your country – your projects.
- Your responsibilities WILL vary from country to country (and even management structure to management structure)

# Obligation (minimum if directive incorporated in your tunnel arrangements)

## ● Obligation is to:

- Arrange and coordinate safety related matters
- Offer expert opinions

# Obligations

Task	Obligation	Source
Ensure Tunnel meets minimum safety requirements	Member State	Article 3 Paragraph 1

# Obligations

Task	Obligation	Source
Responsibility for ensuring all aspects of the safety of the tunnel are assured	Administrative Authority	Article 4 Paragraph 1
Commissioning Tunnels in accordance with EU procedures	Administrative Authority	Article 4 Paragraph 4
Power to suspend or restrict tunnel operations if safety requirements not met	Administrative Authority	Article 4 Paragraph 5
Ensure testing and inspecting tunnels on a regular basis and drawing up safety requirements	Administrative Authority	Article 4 Paragraph 6a
Ensuring operational schemes for the training and equipping of emergency services	Administrative Authority	Article 4 Paragraph 6b
Defining the procedure for immediate closure of a tunnel in an emergency	Administrative Authority	Article 4 Paragraph 6c
Implementing necessary risk reduction measures	Administrative Authority	Article 4 Paragraph 6d

# Obligations

Task	Obligation	Source
Verify regular inspections are carried out by inspection entity to ensure compliance with Directive	Administrative Authority	Article 12 Paragraph 1
Where inspection entity finds tunnel does not comply with Directive define conditions for continuing to operate or for reopening	Administrative Authority	Article 12 Paragraph 3
Decide whether or not to open the tunnel after review of Tunnel Managers safety documentation and Safety Officers report (and any conditions)	Administrative Authority	Annex 2 Clause 3.4



# Actual Obligations Tunnel Managers

Task	Obligation	Source
Nomination of the Safety Officer	Tunnel Manager with prior approval of Administrative Authority	Article 6 Paragraph 1
Management of the tunnel	Tunnel Manager	Article 5 Paragraph 1
Incident report of any significant accident or incident	Tunnel Manager	Article 5 Paragraph 3
Analysis of circumstances of significant accident or incident or conclusions that can be drawn from it	Tunnel Manager	Article 5 Paragraph 4
Compile safety documentation	Tunnel Manager	Annex 2 Clause 1.2

# Actual Obligations Tunnel Managers

<b>Task</b>	<b>Obligation</b>	<b>Source</b>
Consult Safety Officer when preparing safety documentation	Tunnel Manager	Annex 2 Clause 1.2
Keep safety documentation up to date and provide a copy to the Safety Officer	Tunnel Manager	Annex 2 Clause 2.2
Transmit safety documentation prior to commissioning to the Safety Officer	Tunnel Manager	Annex 2 Clause 3.3
Inform Safety Officer of any change in construction, operation or proposed modifications for comment	Tunnel Manager	Annex 2 Clause 4.2
Cooperatively organise periodic exercises with Emergency Services and the Safety Officer	Tunnel Manager	Annex 2 Clause 5

# Safety Officer

- As a minimum – what is it?

# Safety Officer

- May be tunnel staff or emergency services
- Shall be independent in all road tunnel safety issues
- Shall not be under instructions from an employer with respect to road tunnel safety issues

# Be Careful

- Remember yesterday – in the Netherlands fire services argue the probability of an event is 1!
- Big responsibility – don't abuse it
- Be very careful *how* you conduct yourself as it can severely impact the tunnel manager, administrative authority, member state.
- Be very careful that you *do* provide the independent advise and assistance required (to discharge your legal responsibilities)



# Independence ?

- Means lack of control but does not mean insulation from views of Tunnel Manager or other stakeholders
- There is no “pure” independence for a safety officer because of the need for payment, reward and promotion (no matter for whom you work)
- BUT the freedom to express an opinion (which may not be well received ) is an example of an aspect of “independence”
- Example –
  - The views of Emergency Services, Tunnel Manager could be expressed to the Safety Officer so long as the Safety Officer is not bound to follow those views

# Independence ?

- Ability to WRITE unpopular opinions without recrimination

# Independence

- Independence demands the ability to express an opinion freely but does not require isolation from the views, opinions and desires of other parties
- A Safety Officer should make themselves aware of the opinions of differing stakeholders

# Sweden – Independence?

- “Neither the tunnel owner nor any other person may hinder or try to interfere in the fulfilment of the task of the safety co-ordinator”
- A special law has been drafted to protect the safety officers independence.
- But even in Sweden with this law great sensitivity must be shown by the safety officer to the stress he poses to the operator (eg delays in arranging meetings)



# Responsibility

- Sensitivity to the impact of what you write
- Importance that you DO write
- Essential that duty discharged professionally



# RESPONSIBILITY

- NOT YOUR RESPONSIBILITY THAT YOU ARE INDEPENDENT
- INDEPENDENCE IS A REQUIREMENT OF THE DIRECTIVE – LIABILITY LIES WITH THOSE RESPONSIBLE FOR THE STRUCTURE – NOT YOU!

# Lesson 1

- Understand the impact of your expert opinions on the Tunnel Manager and Administrative authority.

# YOU DON'T MAKE DECISIONS

- Each speaker yesterday confirmed that in their country the decisions are NOT made by them
- The directive makes it clear that safety officers DO NOT make decisions

# Lesson 2

- You are NOT the decision maker.

# Actual Obligations Safety Officer

The Safety Officer can be a member of the tunnel staff or emergency services

Task	Obligation	Source
Coordinate all measures to ensure the safety of users and operational staff	Safety Officer	Article 6 Paragraph 1
Ensure coordination with Emergency Services	Safety Officer	Article 6 Paragraph 2a
Take part in the preparation of the operational schemes for Emergency Services	Safety Officer	Article 6 Paragraph 2a
Take part in planning, implementation and evaluation of emergency operations	Safety Officer	Article 6 Paragraph 2b
Take part in definition of safety schemes, specification of the structure, equipment and operations	Safety Officer	Article 6 Paragraph 2c
Verify that operational staff and Emergency Services are trained	Safety Officer	Article 6 Paragraph 2d



# Actual Obligations Safety Officer – Cont.

<b>Task</b>	<b>Obligation</b>	<b>Source</b>
Take part in organisation of regular exercises	Safety Officer	Article 6 Paragraph 2d
Give advice on commissioning of the structure, equipment and operation of tunnels	Safety Officer	Article 6 Paragraph 2e
Verify that the tunnel structure are maintained and repaired	Safety Officer	Article 6 Paragraph 2f
Take part in evaluation of any significant incident or accident referred to you by the Tunnel Manager	Safety Officer	Article 6 Paragraph 2g
Provide opinion as to safety documentation prepared by Tunnel Manager	Safety Officer	Annex 2 Clause 1.2
Keep a copy of safety documentation	Safety Officer	Annex 2 Clause 2.1

# Actual Obligations

## Safety Officer – Cont.

<b>Task</b>	<b>Obligation</b>	<b>Source</b>
Give opinion on adequacy of Tunnel Managers safety documentation for opening	Safety Officer	Annex 2 Clause 3.3
Examine proposed modification works and give opinion to the Tunnel Manager	Safety Officer	Annex 2 Clause 4.3
Cooperate with Tunnel Manager and Emergency Services to organise joint exercises	Safety Officer	Annex 2 Clause 5
Evaluate with Emergency Services the results of joint exercises, draw up a report and make appropriate proposals	Safety Officer	Annex 2 Clause 5b

# Evaluation of any significant accident or incident

- Legal obligation is on the Tunnel Manager to prepare the report
- Safety Officer's legal requirement is "evaluation" of the incident or the accident
- Failure of Tunnel Manager to report is not the responsibility of the Safety Officer
- Safety Officer should report the failure of the Tunnel Manager. The failure of the Tunnel Manager is not the failure of the Safety Officer!

# Safety Officer

- Not a decision maker
- Provides opinions
- Obligated to verify and validate some matters
- Obligated to organise and consult
- Not obliged to make actual decisions



# Tunnel Manager

- Not obliged to follow recommendations of Safety Officer
- Is obliged to seek the Safety Officers opinion



# Administrative Authority

- Not obliged to follow Safety Officers or Tunnel Managers recommendations
- Is obliged to act responsibly

# Lesson 3

- You are under no duty to enforce your opinion. The tunnel manager, administrative authority and state DO NOT have to follow your advice.
- (Legally (usually) all they have to do is consider it)

# Discussion

- Safety Officer can readily discharge their duties by providing their opinion, support and assistance as outlined in the Directive
- The advice of the Safety Officer does not have to be acted on by the Tunnel Manager or other parties

# Failure of Other Parties

The failure of a Tunnel Manager to seek the advice of the Safety Officer or to fail to provide documentation to the Safety Officer is not a failure of the Safety Officer

- A Safety Officer should advise the relevant parties of that failure but is not obliged to remedy it

# Legal Subtleties

- Each country within the European Union has their own rich legal history and traditions



# ADVICE

The following specific questions should be resolved for your job.

- Has the Directive been converted into law within your country?
  - If so get a copy of the local laws

# Determine in Your Country

- What standard will be applied to you as a Safety Officer
  - What 'you' could reasonably have done: or
  - What would a 'person' in your position be expected to have done?

# Does Liability Arise From -

- Positive acts?
- Failure to act?

# Recommendations

- Draw up an action table which contains all of the duties you are required to perform
- Ensure that you perform each of these functions
- Where you cannot perform the function due to inaction by a third party advise the Tunnel Manager of that fact
- Where you cannot perform the function due to your own limitations (money, expertise etc) immediately advise the Tunnel Manager of the issue and request assistance to remedy



# Conclusions

- Safety Officer has the least responsibility and most professional satisfaction of all roles under the EU Directive
- Responsibly discharging your obligations can readily be both a noble and low risk endeavour
- You are not the decision maker.
- Decision makers do not have to follow your advice.
- Discharge your responsibilities professionally – your opinions create legal obligations for those you advise.
  
- Be careful what you wish for!
  - If you want a standard risk model for tunnels – beware – if it is also applied to the trans European road network you might never get funding again!!
- Enjoy
  - (be thankful you are not a Tunnel Manager!)
  - Only you can decide if they are paying you  
**enough!**