

OPINION

ERA/OPI/2014-11

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

QUESTION AND CLARIFICATION NB RAIL - QC - STR-006

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1 General Context

1. In its letter referenced as Ares(2014)4205997 and dated 15th December 2014 addressed to the European Railway Agency (“ERA”), the European Commission (“EC”) requested ERA the *“evaluation, technical opinion, draft answer to QC-STR-006 from NB-Rail”*. In the same request, the EC asks ERA to *“ensure a dialog with NB-Rail to understand their concerns and therefore provide an appropriate answer”*.
2. The QC-STR-006 raises the issue of the validity of certificates in different TSIs.
3. The NB-Rail QC-STR-006 does not contain an explicit question.
It states that *“inconsistencies between drafts [of TSIs] concerning duration of validity of certificates have been identified”*. It contains indication about *“different approaches [which] are difficult to handle and lead to confusion regarding:*
 - *the subject of certification (constituents and/or subsystems)*
 - *the assessment modules*
 - *the duration of the validity*
 - *the contradiction between 6.2.2 and 7.1.3 in the LOC&PAS TSI*
 - *where to find the requirements in the TSI”*.
4. For clarity and consistency, NB-Rail suggests that the duration of validity of the certificates should be:
 - harmonized and
 - located in the same section of each TSI (especially as several TSI's may apply to one subsystem) or
 - located in an amendment of Decision 2010/713/EU.
5. NB-Rail considers that it would be beneficial for the applicant to have the same period of validity for certificates of type examination, of design examination and of suitability for use.
6. In the Plenary meeting num. 43, held the 25th February 2015 in Brussels, NB-Rail approved a new version of the Q/C-STR-006 (version 02a). The content of the Q/C does not change in comparison to the version 01 transmitted by the EC to ERA; minor modifications and details of the TSIs references apply. In order to speed up the communication between ERA and NB-Rail, this ERA Opinion is based only on the Q/C-STR-006 version 02a attached to this opinion as Annex.
7. NB-Rail expressed its comments on the draft text of this ERA Opinion in a dialogue with ERA the 3rd April 2015 (via e-mail).



2 Legal Background

1. Article 5(3) (e) of the Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community¹ provides that *“each TSI shall: ... (e) state, in each case under consideration, which procedures are to be used in order to assess the conformity or the suitability for use of the interoperability constituents, on the one hand, or the ‘EC’ verification of the subsystems, on the other hand. These procedures shall be based on the modules defined in Decision 93/465/EEC”*;
2. Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives has been repealed by Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products. As from 1 January 2011, all technical specifications for interoperability (“TSIs”) entering in force as from such date have to apply the specific modules of Commission Decision 2010/713/EU of 9 November 2010 on modules for the procedures for assessment of conformity, suitability for use and EC verification to be used in the technical specifications for interoperability adopted under Directive 2008/57/EC of the European Parliament and of the Council²;
3. The QC-STR-006 refers to the following TSIs:
 - 3.1. Commission Regulation (EU) No 1299/2014 of 18 November 2014 on the technical specifications for interoperability relating to the ‘infrastructure’ subsystem of the rail system in the European Union³ (“INF TSI”);
 - 3.2. Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union’s rail system for persons with disabilities and persons with reduced mobility⁴ (“PRM TSI”);
 - 3.3. Commission Regulation (EU) No 1301/2014 of 18 November 2014 on the technical specifications for interoperability relating to the ‘energy’ subsystem of the rail system in the Union⁵ (“ENE TSI”);
 - 3.4. Commission Regulation (EU) No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability relating to the ‘rolling stock — locomotives and passenger rolling stock’ subsystem of the rail system in the European Union⁶ (“LOC&PAS TSI”);

¹ OJ L 191, 18.7.2008, p.1.

² OJ L 319, 4.12.2010, p. 1.

³ OJ L 356, 12/12/2014, p.1

⁴ OJ L 356, 12/12/2014, p.110

⁵ OJ L 356, 12/12/2014, p.179

⁶ OJ L 356, 12/12/2014, p.228



- 3.5. Commission Regulation (EU) No 1303/2014 of 18 November 2014 concerning the technical specification for interoperability relating to 'safety in railway tunnels' of the rail system of the European Union⁷ ("SRT TSI");
- 3.6. Commission Regulation (EU) No 1304/2014 of 26 November 2014 on the technical specification for interoperability relating to the subsystem 'rolling stock — noise' amending Decision 2008/232/EC and repealing Decision 2011/229/EU⁸ ("NOI TSI");
- 3.7. Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock — freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC⁹ ("WAG TSI").

3 Analysis

1. As a general statement applicable to all ERA recommendations for drafts TSIs, the duration of the certificates mentioned in the Q/C have been discussed and agreed in the working groups drafting the TSI; consequently, consensus have been reached amongst ERA stakeholders about their values.
2. Concerning the decision on railway modules, ERA considers not appropriate to modify the text of Decision 2010/713/EU to include the duration of the validity of the certificates. In fact this Decision – which is a general document which provides the description to the procedure for the EC conformity assessment, EC suitability for use and EC verification - shall be referred to by each different TSI. The TSIs take into account the industrial peculiarities specific to each subsystem and therefore shall set out the appropriate validities of the relevant certificates.
3. The fact of having different certificates' validities in different TSIs is not perceived by ERA as a problem in the application of the TSI or as an additional obstacle to interoperability. However, ERA recognizes that the readability of the TSIs could be improved to facilitate their dissemination and implementation. ERA has the idea that the TSI application guides ("TSI AGs") could be the appropriate documents in which to add explanatory elements concerning the validity of certificates, including summarising tables.

For this purpose, ERA should clarify in future revision of TSI application guides the main reasons behind the chosen validity of the certificates.

⁷ OJ L 356, 12/12/2014, p.394

⁸ OJ L 356, 12/12/2014, p.421

⁹ OJ L 104, 12.4.2013, p. 1.



4. Concerning the Loc&Pas TSI, **the comments raised by NB-Rail are considered as correct, therefore the following amendments are suggested:**

- Point 7) of paragraph “7.1.3.1. Rolling stock subsystem” should be replaced by the following text to align it to the point (1) of the same paragraph:

“The type or design examination certificate of EC verification for the subsystem is valid for a seven year phase B period after its issue date, even if a revision of this TSI comes into force. During this time, new rolling stock of the same type is permitted to be placed in service on the basis of an EC declaration of verification referring to the type or design examination certificate of EC verification.”

The new text adds “or design” (underlined here for understanding purposes only) to the previous text.

- Point 1) of paragraph “7.1.3.2. Interoperability constituents” should be replaced by the following text:

“This clause concerns an interoperability constituent which is subject, when required, to type examination (module CB) followed by suitability for use (CV) or design examination (module CH1) followed by suitability for use (CV)”.

The new text includes the reference to module CH1 and explains that the combined use of modules CB+CV or CH1+CV is permitted.

The above two amendments should be included as proposed corrections in the list of deficiencies in TSIs, together with the reference to this opinion.

5. Concerning WAG TSI, including the ERA recommendation num. ERA-REC-109-2014-REC issued by ERA the 21st May 2014 and voted positively by RISC the 5th November 2014, NB-Rail identifies a peculiarity concerning the following requirement which is included in a new Article 9a:

“The EC-type or EC design examination certificate for the ‘friction element for wheel tread brakes’ interoperability constituent shall be valid for 10 years.”

NB-Rail highlights the fact that in the WAG TSI only a specific IC has its own duration validity.

Concerning this specific aspect of the WAG TSI, the following clarification applies.

- The validity of 10 years for the certificates related to “friction element for wheel tread brakes” has been discussed and agreed by the working group. ERA considers this validity correct and it should not be amended or corrected. In fact the validity has been mainly chosen in relation to the industrial life cycle of the specific component.



- ERA is establishing a dedicated working group called “WAG TSI Limited revision 2015” which will address, amongst others, the issue of the validity of the certificates for the WAG TSI. In this respect, the aim of the group is to define and align – where feasible and sustainable - the validity of the certificates for wagons to the certificates described in the Loc&Pas TSI. However, discordance between the two sets of certificates might remain, considering the different industrial railway vehicles sector (mainly passengers and freight).

6. Concerning the validity of the EC type examination certificate, EC design examination certificate and the EC suitability for use certificate, ERA reminds that those certificates apply in different steps of the certification process for interoperability constituents or subsystems, with the obvious exclusion of the EC suitability for use certificate, which is applicable only to interoperability constituents.

In addition, the module for suitability for use is a part of the conformity assessment procedure following either the type or the design examination certificates, therefore completely independent from them.

A possible further step towards an overall harmonization could be the alignment of the EC type examination certificates with the EC design examination certificates; however even this task should be handled carefully, considering that H1 modules (i.e. CH1 and SH1) apply in a framework of “full” quality management system as opposed to B modules (i.e. CB and SB).

4 The opinion

The Agency is of the opinion that:

1. Improvements for better readability should be implemented by revisions:
 - 1.1. in TSIs’ AGs, concerning the validity of certificates; and
 - 1.2. in TSIs, concerning their internal harmonised structure.
2. The issues identified by NB-Rail concerning the Commission Regulation (EU) No 1302/2014 (Loc&Pas TSI) clauses 7.1.3.1 and 7.1.3.2 should be categorised in the list of the deficiencies in the TSIs as editorial errors. It is proposed that the related proposed amendments provided in this ERA Opinion 2014-011 be used pending the review of the Loc&Pas TSI.
3. The duration of the validity of the certificates will be further discussed in the future ERA working groups in charge of drafting amendments to the TSIs; however, for the time being, it seems not appropriate to modify the duration of the validity of the certificates stated in each TSI.



4. It is not considered appropriate to modify Commission Decision 2010/713/EU of 9 November 2010 on railway modules by including in it the duration of the validity of the certificates.
5. In general, it is not considered appropriate to have the same validity of the certificates for type examination, for design examination and for suitability for use.

Valenciennes, 09.04.2015

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