

OPINION

ERA/OPI/2014-1

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

QUESTION AND CLARIFICATION NB RAIL - QC-RST-015

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1 General Context

1. In its letter MOVE/B2/LV/fz Ares (2014) dated 11th February 2014 (Ref.Ares(2014)338925) addressed to the Executive Director of the European Railway Agency (“ERA”), the European Commission requested ERA to prepare the technical opinion regarding the question / clarification issued by NB-RAIL numbered Q&C-RST-015 Issue 01 dated 12th December 2012.
2. The question is related to the conformity assessment of interoperability constituents, and to the possibility to assess them at subsystem level instead of at component level.
3. The question is raised for application of the following Technical Specifications for Interoperability:
 - a. Commission decision 2008/232/EC relating to the ‘rolling stock’ subsystem of the trans-European high speed rail system¹.
 - b. Commission decision 2008/164/EC relating to ‘persons with reduced mobility’ in the trans-European conventional and high-speed rail system².
 - c. Commission decision 2006/861/EC amended by decision 2009/107/EC relating to ‘rolling stock - freight wagons’ of the trans-European conventional rail system³.
 - d. Commission decision 2011/291/EU relating to the ‘rolling stock subsystem – Locomotives and Passenger rolling stock’ of the trans-European conventional rail system⁴.
4. NB-RAIL proposal is to assess interoperability constituents at subsystem level in case a complete assessment at component level is considered as not possible, due to the interfaces between the constituent and the vehicle (subsystem).
5. In such a case, NB-RAIL view is that the component does not meet the concept of Interoperability Constituent as defined in the guide for application of TSIs published on ERA website (ERA/GUI/07-2011/INT), in particular its points G10 and G 11.

2 Legal Background

1. In its Article 3(f), 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 Community⁵ (“Interoperability Directive”) defines the interoperability constituents as follows: *“any elementary component, group of*

¹ OJ L 84, 28.3.2008, p. 132.

² OJ L 64, 7.3.2008, p. 72.

³ OJ L 344, 8.12.2006, p. 1. Commission decision 2006/861/EC has been repealed by Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem ‘rolling stock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 (OJ L 104, 12.4.2013, p. 1).

⁴ OJ L 139, 26.5.2011, p. 1.

⁵ OJ L 191, 18.7.2008, p.1



components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem, upon which the interoperability of the rail system depends directly or indirectly. The concept of a ‘constituent’ covers both tangible objects and intangible objects such as software;”.

2. Legal provisions applicable to placing on the market and for ‘EC’ declaration of conformity or suitability for use of interoperability constituents are defined in the chapter III of the directive 2008/57/EC. These legal provisions are different from those applicable to placing in service and for establishing the ‘EC’ declaration of verification of subsystems in the chapter IV of the same directive.
3. The guide for application of TSIs provides details in line with these legal provisions.
4. TSIs are drafted in accordance with the requirements of the Interoperability Directive, in particular by determining the interoperability constituents and interfaces which are necessary to achieve interoperability within the rail system and 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.
5. In particular, the TSIs include a specific clause or article defining conditions under which a subsystem may contain interoperability constituents not holding an EC declaration, i.e. conditions under which they may be assessed at subsystem level:
 - a. Commission decision 2008/232/EC relating to the ‘rolling stock’ subsystem of the trans-European high speed rail system:
See clause 6.3.2, defining a transition period from 15/04/2008 to 14/04/2014.
 - b. Commission decision 2008/164/EC relating to ‘persons with reduced mobility’:
See clause 6.3.3, defining a transition period from 29/03/2008 to 28/03/2014.
 - c. Commission decision 2006/861/EC amended by decision 2009/107/EC relating to ‘rolling stock - freight wagons’ of the trans-European conventional rail system:
This decision is repealed by the Commission regulation 2013/321/EU applicable from 01/01/2014; see article 8 defining a transition period from 13/04/2014 to 12/04/2023.
 - d. Commission decision 2011/291/EU relating to the ‘rolling stock subsystem – Locomotives and Passenger rolling stock’ of the trans-European conventional rail system:
See article 6 and clause 6.3 defining a transition period from 01/06/2011 to 31/05/2017.



3 Analysis

1. From the legal requirements listed above, it appears that strict conditions have to be met in order to be exempted from a conformity assessment at the level of interoperability constituents. Additionally, this exemption is a transition measure limited in time.
2. In the document Q&C-RST-015, NB-RAIL does not refer to the legal provisions listed in § 2 above.
3. NB-RAIL mentions a technical problem and questions the relevance of having certain components specified as interoperability constituents in the TSIs.
4. The definition of interoperability constituents is made during the drafting process of the TSIs, with the involvement of the railway sector according to working methods of ERA.
5. ERA reminds that during the drafting of conventional rail TSIs from 2007 to 2010, clarifications were brought regarding interoperability constituents; in particular, in line with Article 10(1.(b) of the interoperability Directive ("*...ensure that interoperability constituents are used in their area of use as intended and are suitably installed and maintained*"), it was clarified that:
 - a. Having an interoperability constituent specified in a TSI does not mean that any constituent having an 'EC' declaration of conformity or suitability for use can be integrated in any subsystem having an 'EC' declaration of verification.
 - b. The 'area of use' of an interoperability constituent shall be defined.
This means that at subsystem level, this 'area of use' has to be considered in order to select a proper interoperability constituent.
 - c. The characteristics to be checked at the level of the interoperability constituent and those to be checked at subsystem level after integration of the constituent shall be clearly defined.
6. For TSIs drafted before 2006, in particular those listed in points a) and b) of § 1 and 2 above, there are cases where the principles above are not sufficiently explicitly described. These TSIs were recently revised, and were improved; in particular, it has been proposed to abandon or give flexibility for the following interoperability constituents:
 - a. Windscreen: this constituent is no more retained as interoperability constituent in the revised TSI LOC&PAS that received a positive vote during the RISC 68 in October 2013 (item 06-ST020EN06).
 - b. Toilet module: the following clause is added in the revised TSI PRM that received a positive vote during the RISC 69 in January 2014 (item 03-ST27EN03):

6.1.3.2 Toilet Module and Universal Toilet Module



When a toilet module or a universal toilet module is not built as an independent compartment, its characteristics can be assessed at subsystem level.

The corresponding Commission regulations are planned to enter into force before the end of 2014.

7. Considering that the transition phases reminded in points a) and b) of § 2 above ended respectively on 14/04/2014 and 28/03/2014, the components listed in point 6 above require now an assessment of conformity or of suitability for use as interoperability constituents, which will become useless and irrelevant after the entry into force of revised TSIs. This situation create additional technical and administrative burden to manufacturers or applicants that should be avoided.

4 The opinion

1. Whereas it cannot be considered that there is any error in TSIs listed in points a) and b) of § 1 above, but considering the planned revision of the TSIs, the end of the transition period for allowance of non-certified interoperability constituents listed in § 3 point 6 above creates a source of unnecessary administrative burden and cost.
2. Consequently, the technical opinion of the Agency is the following:
 - a. Commission decision 2008/232/EC relating to the 'rolling stock' subsystem of the trans-European high speed rail system:

As long as this decision is applied, it should be allowed to incorporate into subsystems the interoperability constituent 'Driver's cab windscreens' listed in chapter 5 and specified in clause 4.2.2.7 not holding an EC declaration under the conditions set out in clause.6.3.2
 - b. Commission decision 2008/164/EC relating to 'persons with reduced mobility':

As long as this decision is applied, it should be allowed to incorporate into subsystems the interoperability constituent 'Standard and universal toilet modules' listed in clause 5.3.2 and specified in clause 4.2.2.6. not holding an EC declaration under the conditions set out in clause 6.3.3.
 - c. In other cases, interoperability constituents shall hold and EC declaration according to the conditions specified in the applicable TSI.

Valenciennes, 20 MAI 2014

Marcel VERSLYPE
Executive Director



ANNEX

Letter MOVE/B2/LV/fz Ares (2014) dated 11th February 2014 (Ref.Ares(2014)338925), including request to the Agency and Q&C-RST-015.