

OPINION

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OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

OPINION CONCERNING THE APPLICATION OF TSIs TO NEW EUROTUNNEL SHUTTLES

Disclaimer:

The present document is a non-legally binding opinion of the European Railway Agency. It does not represent the view of other EU institutions and bodies, and is without prejudice to the decision-making processes foreseen by the applicable EU legislation. Furthermore, a binding interpretation of EU law is the sole competence of the Court of Justice of the European Union.



1 General Context

1. In its letter referenced as Ares(2015)4893773 and dated on 6 November 2015 addressed to the European Railway Agency ("ERA"), the European Commission requested ERA to prepare a technical opinion regarding the applicability of TSIs to newly acquired freight shuttles for Eurotunnel. That issue was put forward by the Channel Tunnel Safety Authority (CTSA) during a series of meetings held with the Commission and ERA.
2. During these meetings, participants agreed on the applicability of the Interoperability Directive¹ to the authorization of placing in service of new lorry carriers recently ordered by Eurotunnel for the shuttle service for lorries.
3. However, ERA recognized that the specificities of those vehicles had not been specifically considered during the revision of the TSIs that apply to them. Similarly, France and the UK recognized that no specific case had been required for those vehicles.
4. Consequently, ERA is asked to submit an opinion on whether the non-consideration of those specific vehicles may be considered as deficiencies in the applicable TSIs or not.
5. Additionally, ERA is asked to submit an opinion on the necessity to review the TSIs that are applicable to the other vehicles used for the shuttle service but that are not currently on order (i.e. powerheads, car carriers and amenity coaches).

2 Legal Background

1. As an infrastructure subsystem, the Channel Tunnel² belongs to the trans-European high-speed rail system network (TEN) as defined in Annex I, point 2.1 to Directive 2008/57/EC. It is in the scope of all the TSIs covering fixed installations.
2. The rolling stock crossing the Fixed Link and circulating elsewhere shall be compliant to the applicable TSIs as per the table below:

TSI ³	LOC&PAS	WAG	PRM	NOI
Freight train				
Locomotive	Yes (1)			Yes
Wagons		Yes		Yes
Passenger train				
Passenger MU	Yes (1)		Yes	Yes
Locomotive	Yes (1)			Yes
Coaches	Yes (1)		Yes	Yes

Note (1): the TSI LOC&PAS includes a specific case for these vehicles (point 7.3.2.21).

3. The consequence of applying the Interoperability Directive to the authorization of placing in service of vehicles for shuttle services is that they should be covered by TSIs. However, each TSI has to specify its scope of application. According to the current scope of the TSIs, and given that no specific case

¹ 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 Community - OJ L 191, 18.7.2008, p. 1

² The Channel Tunnel will also be called Fixed Link in the rest of the text.

³ References of TSIs are given in annex 1



exists for the vehicles used for shuttle services (*only* crossing the Fixed Link), they shall be compliant to the applicable TSIs as per the table below:

TSI	LOC&PAS	WAG	PRM	NOI
Freight shuttle				
Powerhead	Yes			Yes
Amenity coach	Yes		Yes	Yes
Lorry carriers		Yes		Yes
Passenger shuttle				
Powerhead	Yes			Yes
Car carriers (with occupants)				

This table presents the current applicability of the TSIs to the different vehicles that compose a freight shuttle and a passenger shuttle.

4. Powerheads are equivalent to locomotives. They are in the scope of the TSI LOC&PAS, including the Channel Tunnel specific case, and of the TSI NOI.
5. The amenity coach is the place where lorry drivers gather during the crossing of the Fixed Link. Currently these coaches are not explicitly excluded from any TSI; they are the scope of the TSI LOC&PAS with the Channel Tunnel specific case, the TSI PRM and the TSI NOI.
6. The lorry carriers are in the scope of the TSI WAG and of the TSI NOI. There is an ongoing contract that has been placed by Eurotunnel for extending their fleet of lorry carriers. As explained in section 1, this contract did not consider the applicability of TSIs.
7. Car carriers are explicitly excluded from the scope of all TSIs. For those vehicles, national rules shall apply.

3 Analysis

3.1 Case of the TSI WAG

1. The issue of the divergences between the lorry carriers specification and the TSI WAG concerns a contract placed in 2015. Eurotunnel ordered new lorry carriers for the freight shuttle service: some characteristics of these vehicles are not compliant to the requirements of the TSI WAG.
2. The Agency made an analysis of these non-compliances in order to assess if the non-inclusion, in the TSI WAG, of these specificities of the lorry carriers for the freight shuttle service could be considered a deficiency of the TSI WAG.
3. After this analysis, the Agency considers that the TSI WAG should not be modified to include any specificity of the lorry carriers for the freight shuttle service: their non-inclusion does not constitute a deficiency of the TSI WAG. In the future, these vehicles shall be compliant to the TSI WAG.
4. For the ongoing project, the divergences between the ordered lorry carriers and the TSI WAG should be considered as derogations according to article 9 (1) (d) of the Interoperability Directive.

3.2 Case of the TSI NOI

1. Due to the characteristics of the Fixed Link on which they exclusively operate, vehicles used for the shuttle service are equipped with a braking system using cast iron brake blocks. Such braking systems generate a rapid wheel wear, resulting in poor noise performance for the vehicles.



2. However, within the boundaries of the Fixed Link on which they exclusively operate, the vehicles used for shuttle service can't meet all conditions specified in the TSI NOI for the measurements of the emitted noise. In particular, the conditions for measuring the pass-by noise and the starting noise values can't be met. Consequently, it is not possible to assess their conformity to several parameters of the TSI NOI.
3. The Agency proposes to exclude the vehicles used for shuttle service from the application of the TSI NOI. The Agency considers that there are several possibilities to make this exclusion effective:
 - a. an explicit exclusion of vehicles operated exclusively in tunnels from the scope of the TSI NOI,
 - b. the addition of a specific case for the vehicles used for shuttle service in the TSI NOI, on request of concerned member states (France and the United Kingdom for the present case),
4. These solutions require a revision of the TSI NOI; they would therefore not be applicable to the lorry carriers for the freight shuttle service currently ordered and for which a derogation to the TSI NOI according to article 9 (1) (d) of the Interoperability Directive would be required.

3.3 Case of the TSI LOC&PAS and of the TSI PRM

1. The TSI LOC&PAS covers both the powerheads and the amenity coaches. Regarding powerheads, no non-compliance to the TSI LOC&PAS is expected: the Channel Tunnel specific case in the TSI should cover already the specificity of the powerheads.
2. Regarding the amenity coaches, a question arises about the status of the lorry drivers that are gathered there during the crossing of the Fixed Link: several requirements from the TSI LOC&PAS and all requirements from the TSI PRM apply to units intended to carry passengers or to passenger trains; should the amenity coaches be considered as passenger units in the context of these TSIs?
3. If lorry drivers were to be considered as passengers, then the requirements of points 4.2.5 (passenger related items), 4.2.10.3.4 (fire containment and control systems), 4.10.2.4 (requirements related to emergency) and 4.2.10.5 (requirements related to evacuation) of the TSI LOC&PAS would apply. In addition, the TSI PRM (that "*applies to rolling stock which is in the scope of the LOC&PAS TSI and which is intended to carry passengers*", point 2.1.2) would also apply, the consequence being that amenity coaches should be equipped with wheelchair spaces, a universal toilet module, passenger information systems indicating the next stop, etc... items that are not necessary given the characteristics of the "lorry drivers as passengers" and of the considered trip. This was obviously not the intention of the current TSIs (no comments were made on this case during their drafting and adoption procedure).
4. If lorry drivers are not considered as passengers, then the requirements listed above in point 3 are not applicable. Consequently, the corresponding functions would need to be covered by notified national rules, considering the specific train composition with lorry carriers and one amenity coach.
5. The Agency considers that lorry drivers cannot be considered as passengers in the context of the current TSI LOC&PAS and TSI PRM, and that a train used for shuttle service and composed of lorry carriers and of one amenity coach cannot be considered as a passenger train; however, this unclarity in the status of the lorry drivers for the type of operation similar to those of Eurotunnel may be considered as a deficiency in the TSI LOC&PAS and in the TSI PRM (and also in other TSIs mentioning passenger trains). However, Eurotunnel has no plan to order powerhead or amenity coaches nor to upgrade/renew the existing ones in the immediate future. The TSIs being currently revised (e.g. LOC&PAS, OPE), their scope of application for amenity coaches can be clarified.

4 The opinion

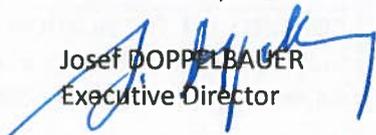
1. Regarding the TSI NOI, the Agency is of the opinion that for the ongoing project, those vehicles should be considered an extension of fleet and treated as derogations according to article 9 (1) (d) of the Interoperability Directive. When the TSI NOI is revised, an exclusion of all vehicles circulating



only in tunnels or a specific case for vehicles used for shuttle service in the Channel Tunnel could be considered. The solution that will be retained will depend upon the number of cases where a similar situation of vehicles operated only in railway tunnels, may occur. If the Channel Tunnel shuttle vehicles are the only occurrence, a specific case may be preferable whereas an exclusion may be more appropriate if other occurrences exist.

2. Regarding the TSI WAG, the Agency is of the opinion that there is no deficiency in the TSI. Lorry carriers for the freight shuttle service shall comply to the TSI WAG. Regarding the ongoing project, those vehicles should be considered an extension of fleet and treated as derogations according to article 9 (1) (d) of the Interoperability Directive. A file containing the information set out in Annex IX of the Interoperability Directive should be submitted. Given their characteristics, those lorry carriers are strictly limited to circulating within the boundaries of the Fixed Link, and the impact of their non-conformities on interoperability is not significant.
3. For the case of an amenity coach included in a train of lorry shuttles, the Agency is of the opinion that such coach should not be considered as a vehicle intended to carry passengers for the application of the current TSIs LOC&PAS and PRM, and is ready to examine this subject in the revision of TSIs, in order to clarify the exact scope of each respective applicable TSI.

Valenciennes, 15.12.2015


Josef DOPPELBAUER
Executive Director

**ANNEX 1**

TSI	Reference
LOC&PAS	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 Union. OJ L 356, 12.12.2014, p. 228–393
WAG	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. 1–56
PRM	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 mobility. OJ L 356, 12.12.2014, p. 110–178
NOI	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/EU. OJ L 356, 12.12.2014, p. 421–437



ANNEX 2

Letter referenced Ares(2015)4893773 dated on 6 November 2015.

