EUROPEAN UNION AGENCY FOR RAILWAYS

Making the railway system work better for society.

TECHNICAL ADVICE

ERA/ADV/2017-1

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

THE EUROPEAN COMMISSION

regarding newly produced interoperability constituents for the infrastructure subsystem

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1. General context

In its letter referenced as Ares(2017)1948154 and dated 12 April 2017 addressed to the European Union Agency for Railways ("The Agency"), the European Commission – Directorate C Land – requested the Agency to prepare a technical advice regarding a request put forward by NB Rail to clarify the requirements on Interoperability Constituents ('ICs') in the assessment processes of the 'infrastructure' subsystem.

The justification for this request is that the requirements on newly produced ICs set out in Article 7(4) of the Commission Regulation (EU) No 1299/2014 of 18 November 2014 on the technical specification for interoperability relating to 'infrastructure' subsystem of rail system in the European Union (INF TSI)[1] appear to be not fully aligned with the requirements set out in point 6.5 of the Annex to the INF TSI, on the transition period during which INF subsystems may still allow for ICs not holding an EC declaration.

2. Legal background

In its Article 41, Regulation (EU) 2016/796 ('Agency Regulation')[2], of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 provides the Commission with the possibility to request an advice from the Agency *".....in matters requiring specific knowledge...".*

Article 7(1) of the Commission Regulation (EU) No 1299/2014 on INF TSI provides with the possibility that *an 'EC' certificate of verification for a subsystem that contains interoperability constituents which do not have an'EC' declaration of conformity or suitability for use, may be issued during a transitional period ending on 31 May 2021 provided that the requirements laid down in point 6.5 of the Annex are met.*

Article 7(4) of the above Regulation sets out that *from 1 January 2016, newly produced interoperability constituents shall be covered by the EC declaration of conformity or suitability for use.*

Point 6.5 of the INF TSI (Annex to the above Regulation) states the conditions under which, during the transitional period, an 'EC' certificate of verification may be issued for subsystems containing ICs without 'EC' declaration of conformity or suitability for use.

3. Analysis

According to Article 7(1) of the Commission Regulation (EU) No 1299/2014 on INF TSI, it is possible for a NoBo to issue, until the **31 May 2021,** an 'EC' certificate of verification for a subsystem containing ICs not holding an 'EC' declaration of conformity or suitability for use, provided that the requirements set out in point 6.5 of the Annex to INF TSI are complied with.

The period between the date of application of INF TSI (i.e. 1 January 2015) and the date of 31 May 2021 is generally referred to as the 'transitional period'.

A similar transitional period exists for the repealed Commission Decision 2011/275/EU concerning the technical specifications for interoperability relating to 'infrastructure' subsystem of the trans-European conventional rail system (CR INF TSI)[3]: article 6 establishes a transitional period of 10 years, starting from the date of application of the CR INF TSI that is the 1 June 2011 and ending, therefore, on the 31 May 2021.

A transitional period was also defined in Article 5 of the repealed Commission Decision 2008/217/EC concening the technical specification for interoperability relating to 'infrastructure' subsystem of the trans-European high speed rail system (HS INF TSI)[4], but this period has expired. However, following a request put

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[1] OJ L356, 12.12.2014 p1.

[2] OJ L 138, 26.5.2016, p. 1.

3 OJ L 126, 14.52011, p. 53, Commission Regulation (EU) No 1299/2014 repeals Commission Decision 2011/275/EC with effect as from from 1 January 2015 (Article 11).

[4] OJ L 77, 19.3.2008 p1. Commission Regulation (EU) No 1299/2014 repeals Commission Decision 2008/217/EC with effect as from from 1 January 2015 (Article 11).

forward by NB-Rail, the Agency issued an opinion (ERA/OPI/2015-1) according to which the transitional period defined in the HS INF TSI could be extended until 31 May 2021.

Hence, all three TSIs referring to the 'infrastructure' subsystem have a transitional period expiring by the end of May 2021, during which an 'EC' certificate of verification for a subsystem containing ICs not holding an 'EC' declaration of conformity or suitability for use may be issued, provided that certain requirements are met.

However, according to Article 7(4) of the Commission Regulation (EU) No 1299/2014 on INF TSI, starting from 1 January 2016, all newly produced ICs shall hold an'EC' declaration of conformity or suitability for use.

The term 'Newly produced ICs' has to be understood as those ICs manufactured after 1 January 2016 and that, therefore, must be covered by an 'EC' declaration of conformity or suitability for use, no matter if they belong to a new or to an existing design. The date of 1 January 2016 should be regarded as the 'date of production/manufacturing'. This statement is in line with the 'suggested resolution/interpretation' of NB Rail in its QC-INF-019.

The transitional period applies to those subsystems that incorporate ICs manufactured before 1 January 2016 not holding an 'EC' declaration of conformity or suitability for use. As already stated in the opinion ERA/OPI/2015-1, this period between 1 January 2016 and 31 May 2021 appears to be sufficient for the consumption of the stock of ICs not holding an 'EC' declaration of conformity or suitability for use.

It should be underlined that similar provisions are included in other TSIs as well, therefore the above principle should also apply. There are, however, some complex interoperability constituents (e.g. OCL – overhead contact line in 'energy' subsystem) which are not manufactured, but assembled on spot, from typical elements during the process of incorporation of the IC into subsystem, and which have been placed on the market before entering into force of the relevant TSI. For this kind of ICs, non-application of the above provisions should be considered. It should still be allowed to use these ICs without EC declaration until the end of transitional period as defined in the relevant regulation.

4. The advice

The advice of the Agency is that the terms 'Newly produced ICs' defined in Article 7(4) of the INF TSI should be understood as those ICs manufactured after 1 January 2016. Consequently:

- ICs manufactured before 1 January 2016 may be used even when they are not covered by an 'EC' declaration of conformity or suitability for use. A NoBo may issue, up to 31 may 2021, an 'EC' certificate of verification for the subsystems containing such ICs.
- ICs manufactured after 1 January 2016 shall be covered by an 'EC' declaration of conformity or suitability for use.
- The same principle should be applied by analogy to other TSIs that contain similar provisions.
- Above mentioned provisions should not be applicable to complex ICs which are not manufactured, but assembled on spot, from typical elements during the process of incorporation of the IC into subsystem, and which have been placed on the market before entering into force of the relevant TSI. The notified body should be allowed to issue the 'EC' certificate of verification for a subsystem containing such ICs without EC declaration until the end of transitional period as defined in the relevant regulation. These ICs have to fulfil the requirements of the relevant regulations.

Valenciennes, 23.06.2017

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