

OPINION

ERA/OPI/2015-1

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

*QUESTION AND CLARIFICATION FROM NB-RAIL QC-INF-016 – PROLONGATION OF TRANSITION PERIOD
UNDER HS INF TSI (2008/217/EC)*

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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 (2014)4207484 and dated on 15 December 2014 addressed to the European Railway Agency (“ERA”), the European Commission – DG MOVE B2 requested ERA to prepare a technical opinion regarding a request put forward by NB Rail to extend the transition period defined under section 6.6 of the Annex to Commission Decision 2008/217/EC concerning the technical specification of interoperability relating to ‘infrastructure’ subsystem of the trans-European high-speed rail system (“HS INF TSI”)¹.
2. The justification for this request is that, as the annex to Commission Regulation No 1299/2014 concerning the technical specification of interoperability relating to ‘infrastructure’ subsystem of rail system in the European Union (“INF TSI”)² envisages a transition period ending on 31 May 2021 for issuing an EC certificate of verification to subsystems that contains ICs not holding an EC declaration of conformity and/or suitability for use, it should be possible to extend the transition period of HS INF TSI so that ICs not holding a EC declaration of conformity and/or suitability for use can still be incorporated into subsystems assessed against the HS INF TSI.

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 Community³ (“Interoperability Directive”) defines the ICs as follows: *“any elementary component, group of 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 Interoperability Directive. 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. Article 5 of Commission Decision 2008/217/EC and point 6.6 of the HS INF TSI define a transition period during which interoperability constituents not holding an EC declaration of conformity

¹ OJ L 77, 19.3.2008, p. 1.

² OJ L356, 12.12.2014 p1. Commission Regulation (EU) No 1299/2014 repeals Commission Decision 2008/217/EC with effect as from from 1 January 2015 (Article 11).

³ OJ L 191, 18.7.2008, p.1.



and/or suitability for use may be incorporated into subsystems. During such transition period, subsystems containing such non-certified interoperability constituents can be assessed and certified according to conditions defined in point 6.6.3 of the HS INF TSI. This transition period started from the entry into force of the HS INF TSI and lasted for six years.

4. The interoperability constituents concerned and their characteristics are defined, respectively, in points 5.2 and 5.3 of HS INF TSI. They are the following:
 - The rail (5.3.1),
 - The rail fastening systems (5.3.2.)
 - Track sleepers and bearers (5.3.3)
 - Switches and Crossings (5.3.4)
 - Water Filling Connector (5.3.5)
5. Article 7 of the Commission Regulation (EU) No 1299/2014 and point 6.5 of the INF TSI also define a transition period during which interoperability constituents not holding an EC declaration of conformity and/or suitability for use may be incorporated into subsystems. Such transition period will end on 31 May 2021. On the other hand, Article 7(4) of the Commission Regulation (EU) No 1299/2014 states that, from 1 January 2016, newly produced ICs shall be covered by the EC declaration of conformity or suitability for use
6. The INF TSI does not retain all the above mentioned components as interoperability constituents. The only components that are retained as interoperability constituents for the infrastructure subsystem and their characteristics are listed in points 5.2 and 5.3, respectively, of the INF TSI and are:
 - The rail (5.3.1)
 - The rail fastening systems (5.3.2)
 - Track sleepers (5.3.3)
7. Article 6 of the Commission Decision 2011/275/EU concerning the technical specification of interoperability relating to 'infrastructure' subsystem of the trans-European conventional rail system ("CR INF TSI")⁴ envisages a transition period of 10 years for issuing an EC certificate of verification for a subsystem that contains ICs not holding a EC declaration of conformity and/or suitability for use.
8. The CR INF TSI defines in point 5.2 the following interoperability constituents:
 - The rail (5.3.1)

⁴ OJ L 126, 14.5.2011, p. 53. Commission Regulation (EU) No 1299/2014 also repeals Commission Decision 2011/275/EC with effect as from from 1 January 2015.



- The rail fastening systems (5.3.2)
- Track sleepers (5.3.3)

3 Analysis

1. The revision and merging of the HS INF TSI and CR INF TSI has led to the suppression of the status of interoperability constituents for some components. As a matter of fact, already in the CR INF TSI the number of ICs was reduced from 5, in the HS INF TSI, to 3, in the CR INF TSI: the reason behind this reduction is explained in detail in the accompanying reports to CR INF TSI.
2. The INF TSI, that has repealed the HS and CR INF TSIs, has followed the same logic of the CR INF TSI, in keeping only 3 ICs for the Infrastructure subsystem, namely, the rail, the track sleepers and the rail fastening systems.
3. According the HS INF TSI, the transition period during which it was possible to issue an EC certificate of verification for a subsystem containing ICs without a EC declaration of conformity and/or suitability for use, has expired. In other words, if an ongoing project has to be assessed against the HS INF TSI after the date of expiration, the ICs used in this project shall have an EC declaration of conformity and/or suitability for use.
4. For the ICs defined in the HS INF TSI and that are not retained in the INF TSI (namely, switches and crossings, including bearers and water filling connectors) such an assessment at IC level would raise additional administrative and technical burden and costs without any long-term benefit. This because, having these ICs been withdrawn, their EC declaration of verification and/or suitability for use will become useless and irrelevant and this assessment would have no technical justification as it is not considered necessary anymore under the INF TSI. An extension of the transition period for these components, for ongoing projects to be assessed against the HS INF TSI, appears to be a logic consequence.
5. For the ICs defined in the HS INF TSI and that are retained in the INF TSI, the concept of transition period is still valid in the INF TSI itself and will last until 31 May 2021. As suggested by NB Rail in its QC-INF-016, it is not understandable why the very same ICs could be incorporated into the 'infrastructure' subsystem with or without an EC declaration of verification and/or suitability for use, depending on which TSI the subsystem is assessed against (HS INF TSI or INF TSI, respectively). Also for these components, the extension of the transition period seems to be justified, given that also in the CR INF TSI a transition period of 10 years is envisaged for these 3 ICs.
6. Article 7 (4) of the Commission Regulation (EU) No 1299/2014 sets out the requirement for the newly produced ICs to be covered by an EC declaration of verification and/or suitability for use



from 1 January 2016. Consequently, only the ICs produced before that date could possibly not be covered by an EC declaration of verification and/or suitability for use. The period between 1 January 2016 and 31 May 2021 seems to be sufficient for the consumption of the stock of ICs not covered by an EC declaration in subsystems assessed against the HS INF TSI or the INF TSI. This fact too supports the pertinence of the extension of the transition period in the HS INF TSI.

4 The opinion

1. Taking into account the legislative development of the TSIs concerning the 'infrastructure' subsystem, and in particular the revised list of infrastructure interoperability constituents defined therein, the end of the transition period for non-certified interoperability constituents defined in point 6.6 of the HS INF TSI creates a source of unnecessary administrative burden and cost.
2. As it is not envisaged to initiate a revision of the existing text of the HS INF TSI, and although it cannot be considered that there is any error in HS INF TSI, the Agency is of the opinion that as long as the HS INF TSI is applied, in conformity with Article 11 of the Commission Regulation (EU) No 1299/2014, the transition period defined in point 6.6 of HS INF TSI may be extended up to 31 May 2021.

Valenciennes, 16.2.2015

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Executive Director