

# OPINION

*OPI 2020-13*

## OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

Poland

regarding

Negative assessment of National Rules of Poland in addition to the latest TSIs in force for the Rolling Stock and on-board CCS subsystems notified in the Reference Document Database by Member States according to Article 26 of the Agency Regulation

### Disclaimer:

The present document is a non-legally binding opinion of the European Union Agency for Railways. 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

- 1.1 The scope extension of TSIs (with effect on 01 January 2015), the functional and technical harmonisation of requirements within TSIs made a series of national rules redundant and unnecessary.
- 1.2 The articles 13 and 14 of Directive(EU) 2016/797 indicate clearly cases where national rules may continue to apply:
- New national rules may only be adopted in of the following cases (article 14(4)), :
    - o when a TSI does not fully meet the essential requirements;
    - o as an urgent preventive measure, in particular following an accident.
  - Existing national rules (article 13(2)) are limited to :
    - o where the TSIs do not cover, or do not fully cover, certain aspects corresponding to the essential requirements, including **open points** as referred to in Article 4(6)Case where non-application of one or more TSIs or parts of them has been notified under article 7 of Directive(EU) 2016/797,
    - o Specific cases listed but not described in TSIs,
    - o Ensure technical compatibility with existing network not yet in compliance with TSI,
    - o Vehicles excluded from the scope of TSIs,
    - o Urgent temporary preventive measure, in particular following an accident.
- 1.3 According to article 14 of Directive (EU) 2016/797, Member States had to notify existing national rules before 16 December 2016 and have to notify draft national rules. When notifying an existing national rule or a draft national rule, Members States have to provide justification for the existence of national rules (e.g. identification of the related open-point).
- 1.4 Member States shall notify their national rules for vehicle authorisation. According to the communication of the Commission in RISC, until the Single Rules Database is available, the notification is performed in the Reference Document Database (RDD).
- 1.5 Since 2016, in accordance to the ERA programme plan on cleaning-up of national rules ERA-PRG-006-PPL, Member States and the Agency started the activity on identification and evaluation of national rules in addition to the following TSIs:
- TSI WAG: Commission Regulation (EU) No 321/2013, amended by Regulation (EU) No 1236/2013,
  - TSI LOC&PAS: Commission Regulation (EU) No 1302/2014,
  - TSI PRM: Commission Regulation (EU) No 1300/2014,
  - TSI Noise: Commission Regulation (EU) No 1304/2014,
  - TSI CCS: Commission Regulation (EU) No 2016/919 (including ERA/ERTMS/033281 rev 3.0 dated 04/12/2015).
- 1.6 From 16 June 2019 and pending the Single Rules Database, the Reference Document Database will be the reference for applicants, NSAs and the Agency in terms of applicable national rules for vehicle authorisation.
- 1.7 The scope of the technical opinion covers the examination of national rules (existing or draft) leading to a negative assessment by the Agency.
- 1.8 The complete assessment covering the examination of all national rules (existing or draft) in addition to TSIs mentioned in section 1.5 is available in the Evaluation Report of remaining national rules ERA-PRG-006-REP-RST.

## 2. Legal Background

2.1 According to the provisions of article 13.2 of Directive (EU) 2016/797, national rules and where relevant acceptable national means of compliance shall apply in the cases defined below:

- a) where the TSIs do not cover, or do not fully cover, certain aspects corresponding to the essential requirements, including open points ;
- b) where non-application of one or more TSIs or parts of them;
- c) where a specific case requires the application of technical rules not included in the relevant TSI;
- d) national rules used to specify existing systems, limited to the aim of assessing technical compatibility of the vehicle with the network;
- e) networks and vehicles not covered by TSIs;
- f) as an urgent temporary preventive measure, in particular following an accident.

2.2 According to the provisions of article 14 (9) of Directive (EU) 2016/797, draft national rules and national rules referred to in paragraph 1 shall be examined by the Agency in accordance with the procedures laid down in Articles 25 and 26 of Regulation (EU) 2016/796.

2.3 According to the provisions of Article 25 (3) of the Agency Regulation 2016/796, where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of 1 month:

(a) issue an opinion addressed to the Member State concerned, stating the reasons why the national rule or rules in question should not enter into force and/or be applied; and

(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should not enter into force and/or be applied.

*This shall not prejudice the right of a Member State to adopt a new national rule in accordance with point (c) of Article 8(3) of Directive (EU) 2016/798 or with point (b) of Article 14(4) of Directive (EU) 2016/797*

2.4 According to the provisions of Article 26 (3) of the Agency Regulation 2016/796, where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of 1 month:

(a) issue an opinion addressed to the Member State concerned, stating that the national rule or rules in question has or have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and

(b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should be modified or repealed.

### 3. Analysis

#### 3.1. Tasks under the responsibility of the Member States:

In accordance to rules cleaning-up program plan ERA-PRG-006-PPL from March 2016, Member states were asked to:

- Identify and remove national rules covered by TSIs,
- Relate national rules to the TSIs and to the updated list of parameters defined in Commission Implementing Decision (EU) 2015/2299,
- Clearly refer national rules not related to open point(s) or specific case(s) to TSI requirements in order to identify if they complement/contradict/replace TSIs for compatibility with existing networks,
- Ensure that the requirement is a mandatory rule. Acceptable national means of compliance in accordance to the definition in article 2 (34) of Directive 2016/797 is not considered as a national rule,
- Identify and analyse requirements that don't relate to any of the above, verify, in this case for example if the TSI is deficient/non-exhaustive.

Based on the outcome of this activity, Member States should have:

- Published their national rules in the Reference Document Database and
- Aligned their national legislation for vehicle authorisation with the Reference Document Database.

#### 3.2. Tasks carried out by the Agency

During the project of cleaning up of national rules for vehicle authorisation covered by the Rules cleaning up program plan ERA-PRG-006-PPL, the Agency has:

- Provided technical support to Member States in the cleaning up of the remaining rules by ensuring:
  - o That rules relate to: Open points, Specific cases, Legacy system or rule duly justified for compatibility with existing fixed installation (i.e. a specific case not declared up to now).
  - o Consistency with the EU framework, including register of infrastructure and responsibilities of actors as defined in the Safety Directive and TSI OPE.
  - o That the rule is transparent and not discriminatory.
  - o The update of the Reference Document Database.
- Assessed the relevance of the remaining national rules together with the Member states, using the Reference Document Database as a reference.
- Provided regular reporting to European commission on the progress made.
- Updated the Reference Document Database with the status of the evaluation.
- In accordance with article 25(3) and 26(3) of Agency regulation (EU) 2016/796, the Agency informed officially the Member States and the European Commission through an assessment report, sent by email, on the national rules in addition to latest TSIs (ERA-PRG-006-REP-RST). This report was published on the ERA website and uploaded on the CIRCABC.
- The Agency asked to the Member States to check the report, to provide comments and to take into consideration the actions proposed.
- NSA Poland considered most of the actions proposed by ERA during the rule assessment and revised the national rules. The publication of the revised rules in RDD is under preparation.
- This technical opinion provides the evaluation on the seven remaining national rules concerned by a negative assessment: two rules should be repealed and five rules should be modified taking into account the Agency assessment.

### 3.2.1. National rules subject to assessment by the Agency

The table 1 below provides an overview of national rules notified by Member States and subject or not to an assessment by the Agency:

**Table 1 : Overview of national rules notified by Member States and subject or not to an assessment by the Agency**

National Rules relates to	Published in RDD	Evaluated	Remarks
Vehicles in the scope of Loc&Pas and WAG TSIs	Yes	Yes	Freight wagons, Locomotives, Trainsets / Electric or Diesel Multiple Unit, Passenger coaches, Track machines/OTMs.
Article 13.2(a): Open points listed in TSIs	Yes	Yes	TSIs clearly identify where a national rule may be kept and notified; traceability between TSIs and possible remaining national rules is clearly established, and the corresponding rules are recorded in RDD.  The Agency checked if the national rule covers the scope of the open point.
Article 13.2(a): Other Directives	Yes	No	Corresponding rules are available in RDD. Anyway, it will have to be decided at later stage with the Commission how to deal with these rules, considering the mentioned Directives. As a general principle, the TSIs in force don't cover subjects in the scope of these other EU Directives.  Corresponding parameters are defined in section 3.2.3 of the report ERA-PRG-006-REP-RST
Article 13.2 (b): Non application of TSI	No	No	
Article 13.2 (c): Specific cases mentioned but not described in TSIs	Yes	Yes	TSIs clearly identify where a national rule may be kept and notified. Traceability between TSIs and possible remaining national rules is clearly established, and the corresponding rules are recorded in RDD.  The Agency checked if the national rule covers the scope of the specific case.
Article 13.2(d): Technical compatibility between vehicle and existing network(s)	Yes	Yes	This includes vehicles with ETCS pre-baseline 2 versions (e.g. 2.2.2), additional functionality implemented on-board (e.g. NTRs from other MS) and TSI options implemented trackside (e.g. infill).
Article 13.2 (e): Vehicles not covered by TSIs	No	No	Concern vehicles such as Tram-Train, metric gauge vehicle.
Article 13.2 (f): Urgent temporary preventive measure following an accident	No	No	

**Table 1 : Overview of national rules notified by Member States and subject or not to an assessment by the Agency**

National Rules relates to	Published in RDD	Evaluated	Remarks
TSI potentially deficient or not exhaustive	Yes	Yes	National rules when accepted by the Agency are maintained pending the resolution of the potential deficiency.
Previous versions of TSIs not listed in section 3.1.2 of the report ERA-PRG-006-REP-RST	Yes	No	
Vehicle not TSI compliant authorised before TSIs.	Yes	No	Rules are in RDD for reference/history and are not subject to Agency evaluation.

### 3.2.2. Summary of the results of the examination of national rules

The table 2 below provides an overview of the number of national rules notified by the Member State in addition to the TSIs referred in section 1 and the results of the examination leading to a positive or negative assessment.

The annex 1 provides details of the assessment leading to negative assessment. The national rules subject to discussion/clarification with the Member State are also counted in the column “Negative assessment”.

**Table 2 : number of national rules notified by Member states and results of the examination**

Member State	Number of National rules	Results of the examination		Remarks
		Positive assessment	Negative assessment	
<b>Poland</b>	20	13	7	2 National rule should be repealed 5 National rule should be modified

#### 4. The opinion

In accordance with article 26(3) of Regulation 2016/796, the opinion covers the examination of national rules by the Agency leading to a negative assessment.

The annex 1 provides to the Member State:

- The list of actions to be taken into account,
- An assessment table with :
  - o The national rules concerned,
  - o The Agency assessment of each rule and the reasons why this is not accepted,
  - o The status of the assessment indicating whether the rule(s) should be modified or repealed.

Valenciennes, 17/07/2020



Josef DOPPELBAUER  
Executive Director

## 5. ANNEX 1 – Examination of national rules leading to negative assessment

The table below presents the rules where the evaluation performed by the Agency leads to a negative assessment.

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
RST	Other rules related to compatibility with network / legacy system	<u>7.2.2.4-Lamp controls:</u> § 105, § 108 Order of the Minister of Infrastructure of 18 July 2005 on the general conditions of railway traffic and signalling (Journal of Laws of 2015, item 360)	<p>The national rule refers to clause 4.2.7.1.4 of Loc&amp;Pas TSI 1302/2014.</p> <p><b>Agency:</b> The TSI requirements are harmonising the rules regarding command of head, marker and tail lamps. The reference § 105 - covers aspects related to various configuration of lamps and their usage in various operational situation - not in scope of the parameter and not in scope of the authorisation of vehicles. The reference § 108 (1) - contains requirements for the flashing lights on the front of a locomotive in certain operational conditions. This requirement for flashing front end lights of the locomotive is not a rule for vehicle authorisation, this should be dealt under the Safety Management System of Railway undertaking. There could be other ways that does not require a technical change of a vehicle.</p> <p><b>NSA PL:</b> Rule applicable also to TSI vehicles as network compatibility aspect. Final statement will be presented after getting statement of our national partners.</p>	Reviewed and not accepted – National Rule should be repealed



Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
RST	Other rules related to compatibility with network / legacy system	<p><u>8.2.2.2-Pantograph head geometry:</u> It is permissible to use a pantograph with geometry corresponding to drawing B2 and B7 of EN 50367: 2012.</p>	<p>The national rule refers to clause 4.2.8.2.9.2 of Loc&amp;Pas TSI 1302/2014.</p> <p><b>Agency:</b> The justification for network compatibility requiring that only the pantograph head geometries as depicted in figure B.2 and figure B.7 of EN 50367 are to be provided.</p> <p>Further justification need to be provided by Poland to justify that TSI compliant pantograph 1950 mm as mentioned in TSI Loc&amp;Pas is incompatible with Poland Network.</p> <p>Please also note that the information available in RINF for the parameter 1.1.1.2.3.1 Accepted TSI compliant pantograph heads indicates that TSI compliant pantograph head 1950 mm (type 1) is compatible with Poland Network (&gt; 4800 sections of lines).</p> <p>Further discussion expected.</p> <p><b>NSA PL:</b></p> <p>The rule is applicable to TSI vehicles for network compatibility aspect. Both B2 and B7 type pantograph should be referred as National Rule.</p> <p>NSA PL will submit a request for a specific case. The purpose of the National Rule is not to introduce additional requirements, but only to ensure that a TSI compliant vehicle that would run on the Polish railway network will be equipped with a pantograph geometry B2 or B7.</p> <p>NSA Poland wish to avoid a situation in which a TSI compliant vehicle for 3 kV DC power system with authorisation for placing on the market in Italy or Slovenia equipped with a pantograph with a B1 geometry, for the Polish railway network will have to be equipped with a different pantograph type B2 or B7.</p>	Reviewed and not accepted – National Rule should be modified -

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
			<p>It also does not change the fact that in this case the pantograph type B2 or B7 should be verified in accordance with point 6.2.3.20 LOC&amp;PAS TSI.</p>	

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
RST	Other rules related to compatibility with network / legacy system	<u>8.2.3.3-Contact strip assessment:</u> Annex TE-1	<p>The national rule refers to clause 4.2.8.2.9.4 and more specific 4.2.8.2.9.4.1 and 4.2.8.2.9.4.2 of TSI Loc&amp;Pas 1302/2014.</p> <p><b>Agency:</b> TSI requires that the contact strips shall be geometrically designed to be fitted to one of the pantograph head geometries specified in clause 4.2.8.2.9.2.</p> <p>In addition to the above, there is no particular requirement in the TSI for the contact strip width - this was considered not an interoperable aspect during the TSI drafting.</p> <p>What is the source for the provided value of the contact strip width of 42 mm which you consider damaging for the infrastructure?</p> <p>Please also note that the clause 4.2.8.2.9.2 Pantograph head geometry (IC level) of TSI Loc&amp;Pas defines the pantograph width: (4) The width of pantograph head shall not exceed 0.65 meters.</p> <p>The referenced document TE-1 contains also the procedure for assessment of contact strip including current at standstill which is already covered by the TSI Loc&amp;Pas clause 5.3.11.</p> <p>Please provide the detailed arguments/justification of the necessity of the requirement for the width of the contact strip.</p> <p>Further discussion expected.</p> <p><b>NSA PL:</b> Rule is applicable also to TSI vehicles as network compatibility aspect.</p> <p>The issue of contact strips does not entirely overlap with the TSI. The TSI only talks about the chemical composition - the metal content of the composite, while Annex TE-1 talks about the overlay more broadly:</p> <p>1) The 60 mm contact strip width requirement results from the</p>	Reviewed and not accepted – National Rule should be modified -

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
			<p>construction of section insulators. Contact strips of 42 mm width causes damage to the infrastructure.</p> <p>2) The method of testing the resistance to heating was specified, due to the current at standstill 200A and frequent burns of the contact wire. Overheat of contact wire cause the loss of its physical properties (entry into the metal plasticity zone).</p>	

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
RST	Other rules related to compatibility with network / legacy system	<u>8.3.2-Requirements for electrical installations on-board of a railway vehicle:</u> Annex TE-3 PN-EN 60077 (seria) PN-EN 50343: 2014 PN-EN 45545-5: 2013	<p>The rule refers to clause 5.3.12 of Loc&amp;Pas TSI 1302/2014</p> <p><b>Agency:</b> The topic of the main circuit breaker (IC) is completely covered by TSI. Some of the provided references are related to the assessment of the main circuit breaker (e.g. Annex TE-3, EN 60077-3). Please clarify what are the aspects covered by the rule. Please provide justification for the provided references.</p> <p><b>NSA PL:</b> Rule is applicable also to TSI vehicles as network compatibility aspect. Justification will be presented after getting statement of our national partners.</p>	Reviewed and not accepted – National Rule should be repealed.
RST	Rules related to compatibility with TDS	<u>8.4.2.2.1-Electro-magnetic fields/Induced voltages in the track/under the vehicle:</u> attachment S-02	<p>The national rule refers to clause 4.2.3.3.1.2 of Loc&amp;Pas TSI 1302/2014</p> <p><b>Agency:</b> The referenced document S-02 is relevant but please specify the applicable section(s).</p> <p><b>NSA PL:</b> Rule is applicable also to TSI vehicles as network compatibility aspect. Justification will be presented after getting statement of our national partners.</p>	Reviewed and not accepted - NR to be modified

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
RST	Other rules related to compatibility with network / legacy system	<u>8.5-Protection against electrical hazards:</u> PN EN 50153:2014-11 UIC 533 UIC 550 UIC 611 PN-EN 50388:2012/AC:2014-03 PN-EN 60077 (series), Annex TE-2	<p>The rule relates to clauses 4.2.8.2.10 and 4.2.8.4 of Loc&amp;Pas TSI 1302/2014.</p> <p><b>Agency:</b>            The EN 50388:2012, EN 50388:2012/AC:2013 and EN 50153:2014 are already referenced in the TSI requirements. In the provided document Lista UTK - zalaczniki TE TM TS.pdf the referenced TE-2 is not existing - please clarify.</p> <p>Please identify the deviation from the TSI requirements when applicable otherwise repeal the rule.</p> <p><b>NSA PL:</b>            Rule is applicable also to TSI vehicles as network compatibility aspect. Justification will be presented after getting statement of our national partners.</p>	Reviewed and not accepted - NR to be modified

Subsystem	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
CCS on board	ETCS and GSM-R	<u>12.2.2-STM requirements:</u> Annex TS-1	<p>The national rules refers to clauses 6.2.4.2 and 4.2.6.1 of CCS TSI</p> <p><b>Agency:</b> PKP Radio Stop function is notified as class B train protection system, based on this the following comments are made.</p> <p>Please clarify the scope and application of the rule. Please clarify/confirm the below operating scenarios and include them in the rule. Operating:</p> <ol style="list-style-type: none"> <li>1. in ETCS - no PKP Radio Stop function allowed (would be an exported constrain)</li> <li>2. in ETCS SN mode on a line with GSM-R - no PKP Radio Stop function allowed (would be an exported constrain), exception PKP Radio Stop installed on-board and active</li> <li>3. in ETCS SN mode on a line without GSM-R (PKP Radio system active) - PKP Radio Stop active</li> </ol> <p>The Agency have expressed in general what are the cases in which this rule may be acceptable. The rule may be acceptable in case ETCS/GSMR is not required to be changed.</p> <p><b>NSA PL:</b></p> <p>Annex TS-1 is applicable. NSA PL confirms that STM function requirements does not export any constraint to ETCS and GSM-R. Especially STM does not require using PKP Radio Stop function when operating in ETCS and only required when operating in ETCS SN mode. Also the requirements for STM do not change any requirements for ETCS and GSM-R specified in the TSI CCS.</p>	Reviewed and not accepted - NR to be modified