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OPINION

ERA/OPI/2023-06

OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

for

Luxembourg

regarding

Negative assessment of a National Rule of Luxembourg 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), as well as the functional and technical harmonisation of requirements within the TSIs made a series of national rules redundant.

1.2 Articles 13 (2) and 14 (4) of Directive (EU) 2016/797 set out exhaustively the cases where national rules may continue to apply:

- New national rules may only be adopted by Member States only 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.
- The application of existing national rules (article 13(2)) is 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),
 - o 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 (1) of Directive (EU) 2016/797, Member States had to notify existing national rules (listed in Article 13 (2)) before 16 December 2016 and are obliged to notify draft national rules. When notifying an existing national rule or a draft national rule, Member States have to provide justification for the existence of national rules (e.g. identification of the related open point) substantiating the case(s) (of Article 13 (2)) under which the rules fall.

1.4 Regarding structural subsystems that are constituting a vehicle, namely on-board control-command and signalling and rolling stock, Member States shall notify their national rules in accordance with article 14 of Directive (EU) 2016/797. 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 The following TSIs are relevant for this technical opinion:

- TSI WAG: Commission Regulation (EU) No 321/2013, amended by Regulations (EU) No 1236/2013, 2015/924, 2019/776 and 2020/387,
- TSI LOC&PAS: Commission Regulation (EU) No 1302/2014, amended by Regulations (EU) No 2016/919, 2018/868, 2019/776 and 2020/387,
- TSI PRM: Commission Regulation (EU) No 1300/2014, amended by Regulation (EU) No 2019/772,
- TSI Noise: Commission Regulation (EU) No 1304/2014, amended by Regulation (EU) No 2019/774,
- TSI CCS: Commission Regulation (EU) No 2016/919 (including ERA/ERTMS/033281 rev 4.0), amended by Regulations (EU) No 2019/776, 2020/387 and 2020/420.

1.6 From 16 June 2019 and pending the deployment of the Single Rules Database, the Reference Document Database (RDD) has been the reference for applicants, MSs/NSAs and the Agency in terms of notification of applicable national rules for vehicle authorisation.

1.7 The scope of this technical opinion covers the examination of revised existing national rules which resulted to a negative assessment by the Agency.

The complete assessment covering the examination of all national rules in addition to TSIs mentioned in section 1.5 will be available in the Reference Document Database.

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 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 For draft rules: According to the provisions of Article 25 (3) of Regulation (EU) 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 For existing rules: 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:

Member States should:

- 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:

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

3.2. Tasks carried out by the Agency in relation to the rules of Luxembourg

Following notification of revised rules by Luxembourg, the Agency has:

- Provided technical support to Luxembourg in the cleaning up of the remaining rules by ensuring:
 - 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).
 - Consistency with the EU framework, including register of infrastructure and responsibilities of actors as defined in the Safety Directive and TSI OPE.
 - That the rule is transparent and not discriminatory.
 - The update of the Reference Document Database.
- Assessed the relevance of the remaining national rules and discussed together with Luxembourg, using the Reference Document Database as a reference.
- Updated the Reference Document Database with the status of the evaluation.
- The following table summarised the actions that were performed by ERA and NSA Luxembourg to review the remaining national rules for vehicle authorisation:

Date	Actions/Activities
October 2022	NSA Luxembourg following publication of Luxembourg ESC/RSC in the ERA technical document and revision of document GI_II_STC_VF version 9 has asked ERA about the evaluation of their revised 8 national rules applicable on top of TSIs.
February 2023 August 2023	<p>– ERA provided a first evaluation to NSA Luxembourg on the revised national rules.</p> <p>Bilateral meetings between ERA and NSA Luxembourg took place on 14 February 2023 and 28 July 2023; the national rules were discussed with focus on one which has been negatively assessed by ERA.</p> <p>Following exchanges with NSA Luxembourg:</p> <ul style="list-style-type: none"> - 3 national rules are not applicable anymore. - 1 rule was withdrawn. - 3 national rules were positively assessed.

Date	Actions/Activities
	- 1 national rule was negatively assessed and should be modified by Luxembourg.
	<ul style="list-style-type: none"> Except for the rules remaining negatively assessed, NSA Luxembourg took into consideration most of the actions proposed by ERA during the assessment and revised its national rules. Following the exchanges between ERA and NSA Luxembourg, the publication of the revised rules in RDD has been performed on 18 August 2023.

This technical opinion contains ERA's evaluation of the remaining national rules which have been negatively assessed.

3.2.1. National rules and acceptable means of compliance of Luxembourg assessed by ERA

Table 1 : Overview of national rules and acceptable means of compliance notified by Luxembourg and subject or not to an assessment by the Agency

National Rules and acceptable means of compliance 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).

Table 1 : Overview of national rules and acceptable means of compliance notified by Luxembourg and subject or not to an assessment by the Agency

National Rules and acceptable means of compliance relates to	Published in RDD	Evaluated	Remarks
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	
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

Table 2 provides an overview of the number of revised national rules notified by Luxembourg in addition to the TSIs referred in section 1 and the results of the examination leading to a positive or negative assessment. Annex 1 provides details of the evaluation leading to negative assessment.

Table 2 : Number of national rules notified by Czech Republic in RDD and results of the examination

Member State	Number of National rules	Results of the examination			Remarks on national rules negatively assessed
		Positive assessment	Negative assessment	Other EU legislation	
Luxembourg	21	18	1	2	1 should be modified

4. The opinion

In accordance with article 26 of Regulation (EU) 2016/796, this technical opinion covers the examination by the Agency of national rules negatively assessed.

Annex 1 contains an assessment table referring to:

- The national rules concerned,
- The Agency assessment of each rule and the reasons why this is Negatively assessed,
- The status of the assessment indicating whether the rule(s) should be modified or repealed.

Valenciennes, 24/10/2023.

Josef DOPPELBAUER
Executive Director

ANNEX 1 Examination of national rules of Luxembourg notified in RDD leading to negative assessment

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

Sub system	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status																																																																																	
RST CCS	ETCS,/ recording device	<p><u>12.2.5.7-Other ETCS requirements (related to existing not interoperable networks):</u></p> <p>NTR Title: GI.II.STC-VF pts 23.3.1.3, 23.3.1.4, 23.3.1.5, 23.3.1.6 et 23.3.1.8.</p>	<p>The national rules related to ETCS and RST:</p> <ul style="list-style-type: none"> - Points 23.1.3, 23.3.1.4 and 23.3.1.8 are positively assessed. - Points 23.3.1.5 and 23.3.1.6 are negatively assessed, see details below 	Negatively assessed, national rule should be modified																																																																																	
CCS	ETCS	<p>23.3.1.5 Sicheres Rücksetzen des Odometrie-Konfidenzintervalls</p> <table border="1"> <tr> <td>Requirement name</td> <td colspan="5">Safe reset of odometry confidence interval</td> </tr> <tr> <td>Country</td> <td colspan="2">Luxembourg</td> <td colspan="2">Identification</td> <td>NTR-LU20</td> </tr> <tr> <td rowspan="2">Related essential requirements</td> <td>Safety</td> <td>Reliability and availability</td> <td>Health</td> <td>Environmental protection</td> <td>Technical compatibility</td> </tr> <tr> <td>X</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Application</td> <td colspan="5">ESC-LU-01-RFN</td> </tr> <tr> <td>National requirement</td> <td colspan="5">The odometer confidence interval shall be reset only using safe distance information. The linking distances transmitted by the infrastructure are considered safe.</td> </tr> <tr> <td>Reason</td> <td colspan="5">A baseline 2 certified infrastructure cannot mitigate risks that are introduced through less restrictive requirements in a subsequent baseline (: CR782). The change introduced by CR782 is not in accordance with the "safety" essential requirement (Directive 2016/79 [3] article 14-4a).</td> </tr> <tr> <td rowspan="2">Relevant ERTMS specification set</td> <td>#1</td> <td>#2</td> <td colspan="3">#3</td> </tr> <tr> <td>Applicable</td> <td>Applicable</td> <td colspan="3">Applicable</td> </tr> <tr> <td>Checking</td> <td colspan="5">Part of the implementation check and approved by the application specific safety case for the vehicle type.</td> </tr> <tr> <td>Timing</td> <td colspan="5">Non time limited requirement. Condition for withdrawal: Revision of STI CCS [4] according to a safe solution for the reset of odometer confidence intervals.</td> </tr> <tr> <td>Version / Date</td> <td colspan="5">v1.0 – 24.07.2020</td> </tr> <tr> <td rowspan="2">Changelog</td> <td>Version</td> <td colspan="4">Change</td> </tr> <tr> <td>v1.0</td> <td colspan="4">New requirement, identified by Baseline 3 conformity check</td> </tr> </table>	Requirement name	Safe reset of odometry confidence interval					Country	Luxembourg		Identification		NTR-LU20	Related essential requirements	Safety	Reliability and availability	Health	Environmental protection	Technical compatibility	X					Application	ESC-LU-01-RFN					National requirement	The odometer confidence interval shall be reset only using safe distance information. The linking distances transmitted by the infrastructure are considered safe.					Reason	A baseline 2 certified infrastructure cannot mitigate risks that are introduced through less restrictive requirements in a subsequent baseline (: CR782). The change introduced by CR782 is not in accordance with the "safety" essential requirement (Directive 2016/79 [3] article 14-4a).					Relevant ERTMS specification set	#1	#2	#3			Applicable	Applicable	Applicable			Checking	Part of the implementation check and approved by the application specific safety case for the vehicle type.					Timing	Non time limited requirement. Condition for withdrawal: Revision of STI CCS [4] according to a safe solution for the reset of odometer confidence intervals.					Version / Date	v1.0 – 24.07.2020					Changelog	Version	Change				v1.0	New requirement, identified by Baseline 3 conformity check				<p>The national rule 23.3.1.5 relates to clause relates to point 4.2.2 On-Board ETCS functionality of CCS TSI.</p> <p>The Agency refers to ETCS Hazard log Subset-113 which read for entry ETCS-H0018 : <i>“Each Trackside specific application safety analysis shall consider that B2 ERTMS/ETCS On-Board may perform a proprietary relocation or a relocation as per CR 782 solution. Each trackside specific application shall provide linking in due course. This includes the provision of linking distances to balises marked as linked in rear of the ETCS level transition in case trackside information referring to such balises is stored in the transition buffer. If the location related information is to be used in situations where linking is not provided (e.g. TSR transmitted by balise group marked as unlinked), the trackside shall include provisions when engineering the distance information. If found not possible to mitigate the hazardous scenarios, each application must evaluate whether the residual risk can be accepted.”</i></p> <p>Therefore a proper risk analysis shall be undergone between on-board and trackside, and mitigation measures , if needed, shall not block BL3MR1 or BL3R2 vehicles to enter into the network. If such vehicles do not include all functions,</p>	Negatively assessed, rule should be modified.
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			<p>performances and interfaces, (.i.e. CR782) , they shall be accompanied with a TSI non application request.</p> <p>Moreover, the Agency indicated that TSI 2023 provides harmonised solution covering the Luxembourg national rule included in BL4R1 .</p> <p>NSA Luxembourg considers that there is an error in TSI, rule should be kept except for baseline 4. For baselines below baseline 4, NSA Luxembourg indicated that if applicant apply solution proposed by Change Request 1370, it is also ok.</p>																																																																																								
RST	Rules relates to recording device	<p>23.3.1.6 Anzeig der Trennung des Speichermediums vom JRU</p> <table border="1"> <tr> <td>Requirement name</td> <td colspan="5">Indication of JRU recording media removal</td> </tr> <tr> <td>Country</td> <td colspan="2">Luxembourg</td> <td colspan="2">Identification</td> <td>NTR-LU21</td> </tr> <tr> <td rowspan="2">Related essential requirements</td> <td>Safety</td> <td>Reliability and availability</td> <td>Health</td> <td>Environmental protection</td> <td>Technical compatibility</td> </tr> <tr> <td>x</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Application</td> <td colspan="5">ESC-LU-01-RFN</td> </tr> <tr> <td>National requirement</td> <td colspan="5">The recommendation from EN62625-1(:2013) [28], §4.2.5.1 is made mandatory. "The operational status and the indication of the presence of the "Onboard Driving Data Recording System" storage media shall be visible in the driving cabin."</td> </tr> <tr> <td>Reason</td> <td colspan="5">Operational rules demand a specific reaction by the driver in the case of absence of storage media or disturbed ODRS [20a].</td> </tr> <tr> <td rowspan="2">Relevant ERTMS specification set</td> <td>#1</td> <td>#2</td> <td colspan="3">#3</td> </tr> <tr> <td>Applicable</td> <td>Applicable</td> <td colspan="3">Applicable</td> </tr> <tr> <td>Checking</td> <td colspan="5">Part of the implementation check and approved by the application specific safety case for the vehicle type.</td> </tr> <tr> <td>Timing</td> <td colspan="5">Non time limited requirement. No condition for withdrawal.</td> </tr> <tr> <td>Version / Date</td> <td colspan="5">v1.1 – 24.07.2020</td> </tr> <tr> <td rowspan="2">Changelog</td> <td>Version</td> <td colspan="4">Change</td> </tr> <tr> <td>v1.1</td> <td colspan="4">Existing requirement formulated as NTR</td> </tr> <tr> <td></td> <td>v1.0</td> <td colspan="4">Non-NTR requirement (ERA/01, 16.12.2013)</td> </tr> </table>	Requirement name	Indication of JRU recording media removal					Country	Luxembourg		Identification		NTR-LU21	Related essential requirements	Safety	Reliability and availability	Health	Environmental protection	Technical compatibility	x					Application	ESC-LU-01-RFN					National requirement	The recommendation from EN62625-1(:2013) [28], §4.2.5.1 is made mandatory. "The operational status and the indication of the presence of the "Onboard Driving Data Recording System" storage media shall be visible in the driving cabin."					Reason	Operational rules demand a specific reaction by the driver in the case of absence of storage media or disturbed ODRS [20a].					Relevant ERTMS specification set	#1	#2	#3			Applicable	Applicable	Applicable			Checking	Part of the implementation check and approved by the application specific safety case for the vehicle type.					Timing	Non time limited requirement. No condition for withdrawal.					Version / Date	v1.1 – 24.07.2020					Changelog	Version	Change				v1.1	Existing requirement formulated as NTR					v1.0	Non-NTR requirement (ERA/01, 16.12.2013)				<p>The national rules 23.3.1.6 relates to point 4.2.9.6 of LOC&PAS TSI and point 4.2.3.5 of OPE TSI.</p> <p>The Agency indicated that TSI LOC&PAS point 4.2.9.6 refers to identified clauses of EN62625-1:2013. Clause 4.2.5.1 of EN62625-1 referred in the national rule is not mandated by the TSI and is defined as an optional function in the EN standard. The National rules cannot impose a recommendation as mandatory.</p> <p>In addition, point 4.2.3.5 of OPE TSI does not require that status and indication should be made available to the driver. In TSI OPE 4.2.3.5 is stated <i>"The data shall be securely sealed and stored and accessible to authorised bodies including Investigating Bodies in carrying out their role pursuant to Article 22 of Directive (EU) 2016/798."</i> Therefore, there is no room for national safety rules defining how indication should be given to the driver and how the driver should react. Those are for the Safety Management System of the concerned operator.</p> <p>NSA Luxembourg indicated that the national rule is linked to the notified national safety rule « RE 04.39.07 » under ERA assessment : « <i>En cas de panne du système au cours de la</i></p>	Negatively assessed, rule should be repealed
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Sub system	Distribution of remaining rules	National rules	Examination of national rules leading to a negative assessment	Agency assessment status
			<p><i>préparation du train à la gare origine, le train peut circuler jusqu'à la gare terminus du train (point limite d'utilisation), à condition que le correspondant UI ait autorisé la circulation du train par écrit suivant son règlement interne. A défaut le train est à supprimer par l'UI opérant. En cas de panne du système en cours de route, le train continue sa marche jusqu'à la gare terminus du train (point limite d'utilisation) ». The rule requires that the driver shall know the state of the recording device, especially in case of failure of the system.</i></p>	