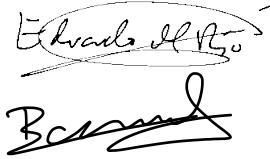




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Line to take

Clarification on the applicability of the phase A concept defined in the Rolling Stock TSIs in case of extension of the area of use

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Document History

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1.0	04/10/2019	Final version

The purpose of this document is to provide applicants and other external stakeholders of the vehicle authorisation business with information in regards to the specific topic referenced in the title. The clarifications contained in this document may be integrated in the next revision of the guidelines for the practical arrangements for the vehicle authorisation process, without prejudice of the formal process foreseen for updating the guideline.

The present document is a non-legally binding guidance of the European Union Agency for Railways. It 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. Description of the issue

The clause 7.1.3.1 of amended LOC&PAS TSI indicates that the TSI assessment basis for a type is defined for a phase A period, with a duration of maximum seven years. During the phase A period the assessment basis for the EC verification procedure to be used by the notified body will not change when a revision of the TSI occurs. A similar provision (with duration of maximum four years) can be found in the clause 7.2.3.1.1 of amended WAG TSI ([link](#)).

The clause 7.5.2.3 in the amended LOC&PAS TSI ([link](#)) specifies that for the extension of the area of use of vehicles authorised for placing in service before 16th June 2016, the vehicles must comply with the revised TSI (or benefit from a non-application pursuant to article 7(1)(c) of Directive (EU) 2016/797). A similar provision can be found in the clause 7.6.1 of amended WAG TSI ([link](#)). This follows from the wording of article 54(3), and articles 4(2) and 21(3) of Directive (EU) 2016/797.

This could imply that the extension of the area of use of already authorised vehicles compliant with TSI 2011/291/EU or HS TSI 2008/232/EC requires full compliance with the amended TSIs, independently of the status of validity of the phase A.

The European Commission is planning an update of the chapters covering the case of the extension of the area of use, in order to allow some flexibility as regards compliance with the TSI requirements while fulfilling the essential requirements. Meanwhile, the line to take described in the section 2 of this document covers the following case: vehicles for which the phase A is still on-going for an intended area of use covering several MSs but that have already received an authorisation in 1 (or more) MS(s).

2. Line to take

Rolling stock designed and evaluated according to the TSI 2011/291/EU or the HS TSI 2008/232/EC does not need to benefit from a granted non-application of the TSI 1302/2014 in case of extension of the area of use as long as the phase A is still valid in the extended area of use. This is applicable for a first authorisation and for the case of extension of area of use. The applicant must justify in its application that the rolling stock is still in phase A and provide the evidence of:

- the contract signed between the applicant and the notified body, and
- the application lodged by the applicant to the notified body requesting the beginning of the EC verification procedure (or any other legally enforceable agreement/communication for the starting of the certification activities).

The contract/application shall cover the area of use in question.

Options included in the original contract/application to cover member states of the area of use (both in case of first authorisation and extension of the area of use) will be considered as part of the original contract/application, with the condition that those options were formalised between the applicant and the notified body within the duration of the phase A and that the EC verification procedure has already begun, counting from the date of signature of the original contract/application.

The date of any addenda in the form of changes to the original contract/application will not be taken into account when defining the starting point for the phase A and the applicability of this line to take.

If the applicant is not able to provide such justification, the full compliance to the amended TSI 1302/2014 is mandatory, or a non-application pursuant to article 7(1)(c) of Directive (EU) 2016/797 must be requested.

The paragraphs above applies mutatis mutandis to the TSI 321/2013.

3. Legal background

a) Directive (EU) 2016/797

- Article 54. Transitional regime for using vehicles

“1. Without prejudice to paragraph 4 of this Article, vehicles which need to be authorised between 15 June 2016 and 16 June 2019 shall be subject to the provisions set out in Chapter V of Directive 2008/57/EC.

2. Authorisations for the placing in service of vehicles which have been granted pursuant to paragraph 1 and all other authorisations granted prior to 15 June 2016, including authorisations delivered under international agreements, in particular RIC (Regolamento Internazionale Carrozze) and RIV (Regolamento Internazionale Veicoli), shall remain valid in accordance with the conditions under which the authorisations have been granted.

3. Vehicles authorised for placing in service pursuant to paragraphs 1 and 2 shall receive a new vehicle authorisation for placing on the market in order to operate on one or more networks which are not yet covered by their authorisation. The placing on the market on those additional networks shall be subject to Article 21.”

b) Commission Implementing Regulation (EU) 2019/776 Annex IV (amendments to the annex of Regulation (EU) No 1302/2014 LOC&PAS TSI)

- 7.1.3.1. Rolling stock subsystem

“[...]

Phase A

(3) Phase A starts once a notified body, which is responsible for EC verification, is appointed by the applicant and ends when the EC type or design examination certificate is issued.

(4) The TSI assessment basis for a type is defined for a phase A period, with a duration of maximum seven years. During the phase A period the assessment basis for EC verification to be used by the notified body will not change.

(5) When a revision of this TSI or of the TSI Noise or the TSI PRM comes into force during the phase A period, it is permissible (but not mandatory) to use the revised version, either totally or for particular sections, unless explicitly otherwise specified in the revision of these TSIs; in case of application limited to particular sections, the applicant has to justify and document that applicable requirements remain consistent, and this has to be approved by the notified body”

- 7.5.2.3. Rules for extension of area of use for existing rolling stock not covered by an EC declaration of verification

“Pursuant to Article 54(2) and (3) of Directive (EU) 2016/797, vehicles authorised for placing in service prior to 15 June 2016 shall receive an authorization for placing on the market according to Article 21 of Directive (EU) 2016/797 in order to operate on one or more networks which are not yet covered by their authorisation. Such vehicles shall thus be conform to this TSI or benefit from a non-application of this TSI pursuant to Article 7(1) of Directive 2016/797/EC.

In order to facilitate the free movement of vehicles, provisions shall be developed to set out which level of flexibility could be granted to such vehicles as well as to vehicles which were not subject to authorization, as regards compliance with the TSI requirements while fulfilling the essential requirements, maintaining the appropriate safety level, and where reasonably practicable, improving it.”

c) Commission Implementing Regulation (EU) 2019/776 Annex I (amendments to the annex of Regulation (EU) No 321/2013 WAG TSI)

- 7.2.3.1.1. Phase A

“Phase A starts once a notified body, which is responsible for EC verification, is appointed by the applicant and ends when the EC type or design examination certificate is issued.

The TSI assessment basis for a type is defined for a phase A period, with a duration of maximum four years. During the phase A period the assessment basis for EC verification to be used by the notified body will not change.

When a revision of this TSI or of the TSI Noise comes into force during the phase A period, it is permissible (but not mandatory) to use the revised version(s), either totally or for particular sections, unless explicitly otherwise specified in the revision of these TSIs. In case of application limited to particular sections, the applicant has to justify and document that applicable requirements remain consistent, and this has to be approved by the notified body.”

- 7.6.1. Rules for extension of area of use for existing rolling stock not covered by an EC declaration of verification

“Pursuant to Article 54(2) and (3) of Directive (EU) 2016/797, vehicles authorised for placing in service prior to 15 June 2016 shall receive an authorization for placing on the market according to Article 21 of Directive (EU) 2016/797 in order to operate on one or more networks which are not yet covered by their authorisation. Such vehicles shall thus be conform to this TSI or benefit from a non-application of this TSI pursuant to Article 7(1) of Directive 2016/797/EC.

In order to facilitate the free movement of vehicles, provisions shall be developed to set out which level of flexibility could be granted to such vehicles as well as to vehicles which were not subject to authorization, as regards compliance with the TSI requirements while fulfilling the essential requirements, maintaining the appropriate safety level, and where reasonably practicable, improving it.”