European Railway Agency

Executive Director

ADVICE

ERA/ADV/2013-6

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

CLARIFICATION OF SECTION 6.4 OF CCS TSI

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1 General Context

1. This document is the advice of the European Railway Agency following the request for advice sent by the European Commission, DG MOVE, Directorate B, on March 21st 2013 (reference MOVE/B.2/IV/sh/459142). The original request is attached as Annex 1 to this advice.
2. The request for advice is related to the clarification of the section 6.4 of the Annex III to Commission Decision 2012/88/EU of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system[1] (hereafter referred to as CCS TSI). The current text of Section 6.4 is attached as Annex 2 to this advice.
3. The clarification is requested because the current text does not prevent different interpretations regarding the use of EC certificates of subsystem verification and of Intermediate Statements of Verification (ISV) in case of partial compliance with the CCS TSI.
4. In fact, the feedback from projects involving new installations or upgrade/renewals of control-command and signalling subsystems (hereafter referred to as CCS subsystem) (especially for the ERTMS part) shows that different understandings exist about the documentation supporting the certification and its use by the NSA when taking decisions related to authorisation for placing in service.
5. Feedback has been collected in working groups managed by the Agency, the NSA Focus group on ERTMS, ad hoc group of NoBos (see Annex 4 of this advice), and also by checking deliverables of EU funded projects.
6. The information collected shows that in several cases NSAs are requested to authorise the placing in service of CCS subsystems where the TSI has not been fully applied (ETCS functions are not implemented because they are not considered as necessary for the specific application).

2 Legal Background

1. Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency[2] (hereafter referred to as Agency Regulation), Article 21b provides the European Commission with the possibility to request an advice from the Agency concerning *"...the implementation of the Community legislation aimed at enhancing the level of interoperability of railway systems..."*.
2. The request for advice is related to the certification and authorisation of CCS subsystems and the use of different documents, like "certificates" and "Intermediate Statements of Verification" (hereafter referred to as ISV).
3. According to the Agency, the relevant articles in the 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 Community[3] (hereafter referred to as Interoperability Directive) are the following:
   a. Article 9(1): *"In the absence of relevant specific cases, a Member State need not to apply one or more TSIs in accordance with this article in the following cases:..."*.

[1] OJ L 51, 23.2.2012, p. 51
[2] OJ L 164, 30.04.2004, p. 1.
[3] OJ L 191, 18.7.2008, p. 1.

b. Article 9(2): *"In the cases referred to in paragraph 1, the Member State concerned shall communicate to the Commission a file containing the information set out in Annex IX. The Commission shall analyse the measures proposed by the Member State and shall inform the committee referred to in Article 29".*
c. Article 17(3): *"Member States shall draw up, for each subsystem, a list of the technical rules in use for implementing the essential requirements and notify this list to the Commission when:*
   - *no relevant TSI exists, or*
   - *a derogation has been notified under Article 9, or*
   - *a specific case requires the application of technical rules not included in the relevant TSI."*
d. Article 18(4): "*The notified body may issue intermediate statements of verification to cover certain stages of the verification procedure or certain parts of the subsystem.*"
e. Article 18(5): "*If the relevant TSIs allow, the notified body may issue certificates of conformity for (…) certain parts of those subsystems."*
f. Article 20(1): "*In the event of renewal or upgrading the contracting entity or the manufacturer shall send the Member State concerned a file describing the project. The Member State shall examine this file and (…) shall decide whether (…) a new authorisation for placing into service within the meaning of this Directive is needed. (…) If a new authorisation is needed, the Member State shall decide to which extent the TSIs need to be applied to the project.*"
g. Article 20(2): "*When a new authorisation is required and if the TSI is not fully applied, the Member State shall notify the following information to the Commission:*
   - *the reason why the TSI is not fully applied,*
   - *the technical characteristics applicable in place of the TSI,*
   - *the bodies responsible for applying, in case of thise characteristics, the verification procedures referred to in Article 18."*
h. Article 20(3): "*The Commission shall communicate the information referred to in paragraph 2 to the Agency, which shall publish it.*"
i. Annex VI, section 2.3.1: *"(…) Where a subsystem has not been assessed for its conformity with all relevant TSIs (e.g. in case of a derogation, partial application of TSIs for upgrade or renewal, transitional period in a TSI or a specific case), the EC certificate shall give the precise reference to the TSIs or their parts whose conformity has not been examined by the notified body during the EC verification procedure."*
j. Annex VI, section 2.3.2: *"Where 'EC' ISV certificates have been issued the notified body responsible for the "EC" verification of the subsystem takes these 'EC' ISV certificates into account and , before issuing the 'EC' certificate of verification, it:*
   - *verifies that the 'EC' certificates cover correctly the relevant requirements of the TSI(s),*
   - *checks all aspects that are not covered by the "EC" ISV certificate(s), and*
   - *checks the final testing of the subsystem as a whole."*

4. In addition, Decision 2010/713/EU of 9 November 2010 on modules for the procedures for assessment of conformity, suitability for use and EC verification to be used in the technical specifications for interoperability adopted under Directive 2008/57/EC of the European Parliament and of the Council[4] states for all the modules of EC verification that *"where the subsystem … is subject to derogation, upgrade, renewal or specific case, the EC certificate shall also indicate the precise reference to the TSI(s) or their parts to which conformity has not been examined during EC verification procedure".*

[4] OJ L 319, 4.12.2010, p. 1.

3 Analysis

3.1 Understanding of the legal framework

From the above mentioned articles, the understanding of the Agency is the following:

1. ISVs are always allowed, but their use is limited to cover certain stages of the verification procedure or certain parts of the subsystem and need to be "integrated" with the verification of other parts, including the final test of the whole subsystem to be authorised (see points 3.d. and j. above).
2. The TSIs may (if technically possible) subdivide a subsystem into parts, in such a way that a part can be certified independently of the others (see points 3.e above).
3. The Member State may, under conditions defined in the Interoperability Directive, allow the placing in service of subsystems where the TSIs have not been fully applied (see points 3.a., b., c. f, g and h.above); such authorisation shall be supported by certificates, clearly indicating which requirements of the TSIs are respected and which not (see points 3.h. and i.above).

3.2 Feedback from experience of implementation of CCS TSI

1. Several meetings of the NSA Focus group and of the ad hoc group of NoBos have been held to address the implementation of the CCS TSI. See minutes of meetings listed in Annex 4 of this advice.
2. According to information collected and to the feedback from the projects where ERTMS is implemented, the following practical cases can occur and need to be taken into consideration.

Case 1
The track-side and on-board CCS subsystems are made up by the following parts according to Section 2.2 of the CCS TSI:

1. Train protection (track-side and on-board)
2. Radio communication voice (track-side and on-board)
3. Train detection (only track-side)

These parts are functionally independent and Member States usually allow their renewal or upgrade in different times, in line with Section 7.2.1 of the CCS TSI. Already the first versions of CCS TSIs allowed separate certification and placing in service of these parts. EC certificates of verification referring only to one or two parts are common practice.

Case 2
Before the starting of works, the Member State, where this is allowed by the Interoperability Directive, e.g. in case of derogation under Article 9 or in cases foreseen by Article 20, permits a not full application of CCS TSI (e.g. non implementation of an ETCS function or of an interface of a piece of equipment). All stakeholders (e.g. applicant, assessors) know from the beginning of the project the extent of application of the CCS TSI and all project documentation (including assessments) is prepared in this clear context.

Case 3
Originally no limitation regarding compliance with the TSIs is planned, but (e.g. because of delays), the applicant asks for an authorisation for placing in service when full compliance is not (yet) achieved; the missing TSI functions are compensated, for instance, with operational provisions or reduced performance (lower speed, etc.).
This is a change of scope in the project that should be allowed only if:

a. the Member State (according to the process defined in Article 9 or 20 of the Interoperability Directive) accepts it, and
b. all stakeholders are able to take their responsibility related to the change (review of the project and of the work done so far – assessments included - taking into consideration that the scope of work has been changed).

Once this change has been accepted, the process as described in Case 2 follows.

3.3 Use of ISVs and of certificates

1. With reference to Article 18 and Annex VI of the Interoperability Directive, during the EC verification procedure, a distinction is necessary between the use of:
   a. ISVs, that are the description of an intermediate state and are intended to be used by another assessor, responsible of the final certificate;
   b. EC Certificates of subsystem verification, that are intended to support decisions of NSAs related to authorisation to placing in service.

This distinction is not clear in the CCS TSI in force and improvements are necessary.

2. While no detailed requirement on the content of an ISV can be specified (as it depends on the part and/or stage to which the ISV refers), it is important that the content of certificates and technical files supporting the authorisation to placing in service is harmonised as much as possible to facilitate their EU wide use, for example for additional authorisations of vehicles, or as a provision of information to operators that must decide about compatibility between vehicles and track-side. The CCS TSI in force already specifies how conditions and limits of use in case of partial application of TSI need to be managed in the certificates..

3. In some projects currently in progress, the NSAs have expressed a preference for accepting ISVs as a support for a "time limited" authorisation of a subsystem, when the applicant asks for placing in service of a subsystem for which the implementation has reached only a certain "step" and is not finalised (see case 3 above).

   The reason is that the NSA considers this approach as a valid way to "force" applicants to respect the original commitment for the full compliance with the TSIs, while at the same time allowing the beginning of some railway service.

   With regard to this practice, the Agency notes however that the authorisation of a subsystem should in any case confirm the respect of essential requirements on the basis of documents submitted by the applicant (declarations, certificates, technical files) and with a clear link to the responsibilities of the different stakeholders. The authorisation should not be used to respect the contractual obligations, which can be enforced by the contracting entity by means of contracts and funding decisions.

4 The advice

1. Taking into account the present legal framework and the current practice in the Membre States as described above, the Agency advises the Commission to modify the current text of section 6.4 of the CCS TSI in force according to the proposal in Annex 3 of this advice.

2. This proposal:
   - clarifies that for parts defined in the CCS TSI the NoBo may issue EC certificates of verification;
   - clarifies that a certificate may be issued for a subsystem not assessed for full compliance with the TSIs, in accordance with the provisons of Article 9, 17(3) or 20 of the Interoperability Directive;
   - confirms the requirements, already existing in the CCS TSI in force, on the content of the certificates and on the coordination between NoBos and ERA;
   - clarifies that ISVs should not be used alone to support authorisation for placing in service. This principle is not specific to the CCS TSI.

Valenciennes, 10 JUIN 2013

Marcel VERSLYPE
Executive Director

ANNEX 1

Request to the Agency for an Opinion/Advice

Requesting organization (name, address)	DG MOVE B2	
Contact information	Isabelle Vandoorne	
Legal base	**Opinion**	☐ Agency Regulation Article 9a ☐ Agency Regulation Article 10 (2a) ☐ Agency Regulation Article 10 (2b) together with Directive 2008/57/EC Article 7 (1) ☐ Agency Regulation Article 13 ☐ Agency Regulation Article 15
	Advice	☒ Agency Regulation Article 21b (2b)
Objective	Clarification of the TSI as regards ISV	
Scope	Section 6.4 of CCS TSI	
Task Description	Section 6.4 of the CCS TSI deals with the case of subsystems or interoperability constituents partially compliant with TSI requirements. In subsection 6.4.1 an explicit reference is made to art. 18(4) of the Directive and the use of ISVs; The remaining text of 6.4.1 and the text of 6.4.2 seem addressing the case of certificates issued for parts of subsystems when it is allowed by a TSI. In addition, subsection 6.4.3 refers, under defined conditions, to the putting in service of not fully TSI compliant subsystems, but the last paragraph states that "only an ISV may be issued".It could be understood that subsection 6.4.3 refers to cases considered in Art 20 of the Directive, but this is not clear from the text. Clarifications of these clauses of the TSI are necessary.	
Key input documents	CCS TSI	

ANNEX 2

The current text of Section 6.4 of the CCS TSI in force

6.4. Provisions for partial conformity

6.4.1. Introduction

Under Article 18(4) of the Railway Interoperability Directive, *"the Notified Body may issue Intermediate Statement Verifications (ISVs) to cover certain stages of the verification procedure or certain parts of the subsystem"*.

As pointed out in section 2.2 (Scope) of this TSI, the Control-Command and Signalling Subsystems include three parts, which are specified in section 4.1 (Introduction).

Section 6.4.2 deals with the verification of these parts of the Control-Command and Signalling Subsystems.

Section 6.4.3 deals with the verification of partial conformity of Control-Command and Signalling Subsystems when there are restricted conditions of use of its interoperability constituent(s).

6.4.2. Assessment of parts of Control-Command and Signalling Subsystems

Assessing whether a Control-Command and Signalling Track-side or On-board Subsystem complies with the requirements of this TSI is a process that may be performed in successive steps – one for each of the three parts. At each step, the assessor checks only whether that particular part complies with the TSI requirements.

Regardless of which module is chosen, the Notified Body shall verify that:

1. the TSI requirements for the part in question have been respected,
2. the TSI requirements already assessed are not prejudiced.

Functions already assessed and unchanged and which are not affected by this step do not need to be checked again.

6.4.3. Partial conformity of Control-Command and Signalling Subsystems due to restricted conditions of use of its interoperability constituent(s).

A partial certificate of conformity for an interoperability constituent can be issued even if some function, interface or performance has not been implemented, provided that:

1. the non implemented function, interface or performance is not required for integrating the interoperability constituent into a subsystem because of specific conditions of use, for example[5],
    a) the on-board ERTMS/ETCS interface to STM if the interoperability constituent is intended for installation on vehicles where no external STM is needed,
    b) the RBC interface to other RBCs, if the RBC is intended for use in an application where no neighbouring RBCs are planned,
2. the certificate indicates which functions, interfaces or performance are not implemented and states the corresponding restrictions on the use of the interoperability constituent. This

[5] The procedures described in this Chapter do not prejudice the possibility of grouping constituents together.

information will make it possible to identify the conditions under which the interoperability constituent can be used and the restrictions that will apply to the interoperability of a subsystem incorporating it.

In any event, the conditions for issuing such certificates with restrictions shall be coordinated between the Notified Bodies and the Agency in a working group set up under Article 21a (5) of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation)6.

When the interoperability constituent is integrated into a Control-Command and Signalling On-board or Track-side Subsystem, if the missing functions, interfaces, or performances do not allow to assess whether the subsystem fully complies with the requirements of this TSI, only an Intermediate Statement of Verification may be issued. It shall indicate which requirements have been assessed and shall state the corresponding restrictions on the use of the subsystem and its compatibility with other subsystems.

6 *OJ L 164, 21.6.2004, p. 1.*

ANNEX 3

Agency advice for modifying section 6.4 of the CCS TSI

6.4. Provisions in case of partial conformity with TSI requirements

6.4.1. Assessment of parts of Control-Command and Signalling Subsystems

Pursuant to Article 18(5) of the Railway Interoperability Directive, the Notified Body may issue certificates of verification for certain parts of a subsystem, if allowed by the relevant TSI.

As pointed out in section 2.2 (Scope) of this TSI, the track-side Control-Command and Signalling Subsystem includes three parts, the on-board Control-Command and Signalling Subsystem includes two parts, which are specified in section 4.1 (Introduction).

For each part specified in this TSI a certificate of verification may be issued; the Notified Body checks only whether that particular part complies with the TSI requirements.

Regardless of which module is chosen, the Notified Body shall verify that:

1. the TSI requirements for the part in question have been respected,
2. the TSI requirements already assessed for other parts of the same subsystem are still respected.

6.4.2. Partial conformity of Control-Command and Signalling Subsystems due to limited application of the TSI.

Under the conditions specified in the Railway Interoperability Directive and the Commission Decision 2010/713/EU, a certificate of verification may be issued for a subsystem that has not been assessed for full conformity with all relevant TSIs, provided the certificate gives precise reference to the TSIs or their parts whose conformity has been assessed and those whose conformity has not been assessed.

This corresponds to the situation where some function, interface or performance has not been implemented in an interoperability constituent the use of which is therefore restricted to some specific conditions: a certificate of conformity for such an interoperability constituent may be issued only if:

1. the non implemented function, interface or performance is not required for integrating the interoperability constituent into a subsystem because of specific conditions of use, for example[7],
    a) the on-board ERTMS/ETCS interface to STM if the interoperability constituent is intended for installation on vehicles where no external STM is needed,
    b) the RBC interface to other RBCs, if the RBC is intended for use in an application where no neighbouring RBCs are planned,
2. the certificate indicates which functions, interfaces or performance are not implemented providing sufficient information to make possible the identification of the conditions under which the interoperability constituent can be used and the conditions and limits of use that will apply to the interoperability of a subsystem incorporating it.

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[7] The procedures described in this Chapter do not prejudice the possibility of grouping constituents together.

When the interoperability constituent is integrated into a Control-Command and Signalling On-board or Track-side Subsystem and the relevant Member State confirms that limited extent of application of this TSI is allowed, according to the provisions in the Railway Interoperability Directive, a certificate of verification may be issued. It shall indicate which requirements have been assessed and shall state the corresponding conditions and limits of use of the subsystem and its compatibility with other subsystems.

In any event, the way in which conditions and limits of use of interoperability constituent and subsystems are managed in the relevant certificates and technical files shall be coordinated between the Notified Bodies and the Agency in a working group set up under Article 21a (5) of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation)[8].

6.4.3. Intermediate Statement of Verification.

In cases where conformity is assessed for parts of subsystems specified by the applicant and different from the parts allowed by section 4.1 (Introduction) of this TSI, or in cases where only certain stages of the verification procedure have been performed, then only an Intermediate Statement of Verification may be issued.

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8 *OJ L 164, 21.6.2004, p. 1.*

ANNEX 4

Information used to prepare this advice has been collected and discussed in meetings of the ad hoc group of NoBos and of the NSA Focus group on ERTMS, on the basis of a "discussion paper" prepared by the Agency.

The discussion paper and the minutes of the most important meetings are attached:

Agency advice.zip

Discussion paper:

- ERA/ERTMS/040050

Ad hoc group of NoBos:

- Minutes of meeting 17; see section 6

Minutes of NSA Focus group on ERTMS:

- Minutes of meeting 36; see section 5 and presentation "Restrictions-1"
- Minutes of meeting 37; see section 5
- Minutes of meeting 38; see section 5
- Minutes of meeting 39 (not yet approved at the moment this advice has been prepared); see section 6 and presentation "certificates".