




Making the railway system
work better for society.

Clarification note

Border stations in single safety certificates issued by ERA

	<i>Drafted by</i>	<i>Validated by</i>	<i>Approved by</i>
<i>Name</i>	M. SCHITTEKATTE	I. MENDEZ	J. DOPPELBAUER
<i>Position</i>	Team Leader	Head of Unit	Executive Director
<i>Date</i>	29/03/2021	29/03/2021	29/03/2021
<i>Signature</i>			

Document History

<i>Version</i>	<i>Date</i>	<i>Comments</i>
1.0	29/03/2021	First version (incl. MOVE consultation)

The purpose of this document is to foster harmonised EU approach to the safety certification process. Those concerned with this clarification note are encouraged to voluntarily apply it.

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

In accordance with Article 10(8) of Directive (EU) 2016/798 and Article 3(11) of Regulation (EU) 2018/763, where the applicant indicates in its application for a single safety certificate that it intends to operate to stations in neighbouring Member States with similar network characteristics and similar operating rules, when those stations are close to the border, the single safety certificate shall also be valid to such stations without requesting an extension of the area of operation, following consultation of the national safety authorities of the neighbouring Member States by the safety certification body.

In the case where the European Union Agency for Railways (ERA) is the safety certification body, it can be questioned how the consultation procedure should work (i.e. who is to be consulted and for what purpose).

The EU legislation provides no harmonised definition of the term border station although the abovementioned provisions reserve concrete legal consequences to *“a station close to the border with similar network characteristics and similar operational rules”*. Different interpretation of the meaning of border station might become an obstacle to apply the legal provisions in practice.

Moreover, there might be international or bilateral agreements of any level (e.g. Member States, national safety authorities, infrastructure managers) to regulate the status of operation in such stations, which do not touch safety certification matters (e.g. the roles and responsibilities of the national safety authorities and the concept of national safety rules) dealt with in Directive (EU) 2016/798. The variety of approaches across the EU creates misperception and a lack of transparency for all the actors concerned, impeding the functioning of the Single European Railway Area.

There is also no harmonised approach on what specific information the railway undertakings operating or intending to operate to border stations are requested to provide to the safety certification body in their application for a single safety certificate. This may create additional burden and costs for the applicant in a Single European Railway Area. In such circumstances, further coordination is needed between national safety authorities which may not be compatible with the legal timeframe available to the safety certification body and the national safety authorities for the assessment. In addition, the scope of the assessment may not be proportionate to the requirements relevant for a border section and as a consequence, the national rules applicable to the whole network may apply irrespective of the network characteristics and operating rules specific to that border section. Furthermore, considering that national safety authorities concerned with the border stations located in their Member States are not part of the area of operation specified in the application submitted in the one-stop shop, it can also be questioned the way to collect relevant information about the operational rules and the network characteristics of the border stations and the related responsibilities as far as it concerns applications for which the ERA is safety certification body.

In the absence of cross-border agreements or case-by-case consultations enabling application of provisions of Article 10(8) Directive (EU) 2016/798, the concerned railway undertakings have no other option than to extend their area of operation to those Member States in which the border stations are located or to conclude partnership arrangements with other railway undertakings holding valid safety certificates (unless they take the business decision not to operate to these stations). This is in clear breach of a principle that the single safety certificate is valid without an extension of the area of operations for railway undertakings travelling to the stations close to the border in neighbouring Member States.

2. Clarification

a) Meaning of border station

The cross-border operations or cross-border rail services relate to border crossing of railways and the procedures required in border stations or on the border section of railway lines to enable railways to perform rail traffic across borders. Cross-border agreements covered by the definition of Article 3(13) of Directive

2012/34/EU are therefore agreements containing provisions that facilitate the border crossing of railways on the border sections of railway lines and at the border/changeover stations.

For the purposes of the safety certification process under Directive (EU) 2016/798, and as set out in its Article 10(8), border stations are stations which fulfil the following criteria:

- a) stations in neighbouring Member States, and
- b) with similar network characteristics, and
- c) regulated by similar operating rules, and
- d) when those stations are close to the border of an EU Member State.

The term 'similar' does not necessarily mean the same/identical.

Traditionally the term 'border section' has been used to describe a section between two stations where the interfaces are located within these stations or on the open line in between. It might also be the case that a border section does not include any station in the neighbouring Member State (e.g. section of line starting from a station in Member State A, crossing Member State B and ending in a station in Member State A or C).

In general, and in the interface area, the technical characteristics of a line (including stations) and the train are the binding parameters that determine if a train is compatible with the line on which it is intended to be operated. The following technical aspects may be used to determine whether network characteristics are similar:

- a) Loading gauge;
- b) Power supply;
- c) Design of overhead electrification;
- d) ATP system;
- e) Radio communication system;
- f) Track gauge.

Depending on the types of interface, different solutions may exist (e.g. duplication of infrastructure, multi-system rolling stock) to resolve technical variations in the railway infrastructure between Member States.

In the same way, on the border section, the operational rules should in principle be valid up to the border station of the neighbouring Member State. The following operational aspects may be used to determine whether operational rules are similar:

- a) Relevant information on the border section (e.g. schematic track line diagram with signal positions, facility locations and any particularities of the route), including local operational rules;
- b) Management of staff competencies (route knowledge, training and evaluation);
- c) Operational language(s) (communication with the infrastructure manager);
- d) Emergency response (contact information in case of incident/accident);
- e) Type/registration of locomotives/vehicles;
- f) Train composition and train preparation as appropriate.

In any case, the acceptance of operations to border stations in the meaning of Directive (EU) 2016/798 is left to a discussion between either the Member States, the national safety authorities or the infrastructure managers as appropriate.

b) Application file and consultation procedure

Before the submission of its application for a single safety certificate to ERA, the railway undertaking (i.e. the future applicant) should contact the relevant national safety authority to confirm whether:

- the station or stations in its territory are border stations according to the above criteria pursuant to Directive (EU) 2016/798,

- existing cross-border agreement(s) or case-by-case arrangements apply on the border station(s) it intends to operate.

When preparing its application file, in accordance with Article 6(2) of Regulation (EU) 2018/763, the railway undertaking should already provide evidence demonstrating compliance with the relevant requirements pertaining to the cross-border operations and, if relevant, taking into account any cross-border agreements.

If the national safety authority has published information as to what these requirements are in its application guide the applicant should take this into account when submitting its application. If not, the applicant should promptly liaise with the national safety authority to enquire about the applicable requirements.

In the cases where ERA acts as safety certification body, it has the legal responsibility to consult the national safety authority of the Member State where the border station(s) are located according to Article 3(11) of Regulation (EU) 2018/763.

Consultation is a process which does not imply that there must be a formal agreement between neighbouring Member States or their respective national safety authorities. Following the consultation, the national safety authority of the Member State where the border station(s) are located shall confirm to ERA that the applicable requirements pertaining to the relevant cross-border sections and stations are met.

International agreements concluded between neighbouring Member States to facilitate cross-border operations may also apply without prejudice to the obligations for a railway undertaking to hold a valid (single) safety certificate to operate on the rail network(s), the responsibilities of the national safety authorities as set out in Article 3(11) of Commission Implementing Regulation (EU) 2018/763 and the rules on extension of area of operation of a valid single safety certificate.

In absence of such agreements, a case-by-case consultation may also take place in accordance with Article 10(8) of Directive (EU) 2016/798. Likewise, the national safety authority of the Member State where the border station(s) are located shall provide ERA with their opinion on the fulfilment of relevant requirements by the applicant.

This consultation can take place with a communication via email or directly through the one-stop shop. The outcome of this consultation shall be communicated by the national safety authority of the Member State where the border station(s) are located to ERA that in turn records it in the one-stop shop, including where appropriate a reference to (without being substituted for) a published application guide of the national safety authority, or a cross-border agreement, which makes reference to the operating rules and network characteristics of border stations in its territory.

In any case, it is recommended that:

- Following the consultation, the assessment carried out by the national safety authority is proportionate to the operational and technical specificities of the border section, including competence issues and communication arrangements;
- The national safety authorities establish and maintain in their application guides the list of border stations and the applicable operational and network requirements.

3. Legal background

a) Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast)

- Article 10. Single Safety Certificate

8. Where the area of operation is limited to one Member State, the national safety authority of that Member State may, under its own responsibility and when the applicant so requests, issue a single safety certificate. In order to issue such certificates, the national safety authority shall

assess the file in relation to all the elements specified in paragraph 3 and shall apply the practical arrangements to be established in the implementing acts referred to in paragraph 10. As part of the above assessments, the national safety authority shall be authorised to undertake visits and inspections on the sites of the railway undertaking and audits. Within 1 month of receipt of the application, the national safety authority shall inform the applicant that the file is complete or ask for relevant supplementary information. The single safety certificate shall also be valid without an extension of the area of operations for railway undertakings travelling to stations in neighbouring Member States with similar network characteristics and similar operating rules, when those stations are close to the border, following consultation of the competent national safety authorities. This consultation may be carried out on a case-by-case basis or set out in a cross-border agreement between Member States or national safety authorities.

b) Commission Implementing Regulation (EU) 2018/763 of 9 April 2018 establishing practical arrangements for issuing single safety certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007

- Article 3. Responsibilities of the Agency and the national safety authorities

11. Where the applicant indicates in its application that it intends to operate to stations in neighbouring Member States with similar network characteristics and similar operating rules, when those stations are close to the border, the single safety certificate shall also be valid to such stations without requesting an extension of the area of operation, following consultation of the national safety authorities of the neighbouring Member States by the safety certification body. The national safety authorities of the Member States concerned shall confirm to the safety certification body that the relevant notified national rules and the obligations pertaining to the relevant cross-border agreements are met before it issues the single safety certificate.