

**OPINION**

*ERA/OPI/2015-2*

**OF THE EUROPEAN RAILWAY AGENCY**

FOR

*EUROPEAN COMMISSION*

REGARDING

*OPINION CONCERNING THE ISSUE OF INTEROPERABILITY CONSTITUENTS AND SPECIFIC CASES RAISED BY  
UK*

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## **1 General context**

Request: letter MOVE B2/AA/fz of 2.02.2015 from Mr Olivier Onidi to Mr Josef Doppelbauer, Executive Director of ERA.

Subject: technical opinion regarding the request from the Department for Transport of the UK concerning the issue of interoperability constituents (ICs) and specific cases.

The background to the problem is that there are potential difficulties if a notified body is unable to certify rail components as an IC where the TSI contains a specific case (either described in the TSI itself or in a national rule). The Agency is requested to issue a technical opinion on how should the interoperability constituents be certified when they need to meet the requirements resulting from the specific case.

The two main issues have been identified by the UK:

(1) Whether the constituent built to the requirements of specific case, therefore not necessarily fully compliant with the main part of the TSI (chapter 4 and 5), may be considered as an ‘interoperability constituent’, as the latter is meant to have an EU wide application, and not only in the given member state.

(2) How the assessment and authorisation might be carried out in case where the specific case requirements are fully described in the TSI, and in case where specific case refers to the notified national technical rules.

## **2 Legal background**

1. 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<sup>1</sup> (“Interoperability Directive”), art 7 (1) states that in case of deficiency in the TSI, *‘the Commission may request a technical opinion from the Agency’*.

2. The Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency<sup>2</sup> (“Agency Regulation”), art. 10 2b states that:

*‘The Agency may be called upon by the Commission to provide technical opinions on urgent modifications to TSIs, in accordance with Article 7(1) of the Railway Interoperability Directive’*.

3. The Interoperability Directive provides in art. 5 (5) for ‘specific cases’ that may be identified in the TSI in order to maintain compatibility with the existing rail system:

*‘TSIs shall retain, in an appropriate manner, the compatibility of the existing rail system of each Member State. With this objective, provision may be made for specific cases for each TSI, with regard to both network and vehicles.... For each specific case, the TSIs shall stipulate the implementing rules of the elements of the TSIs indicated in paragraph 3(c) to (g)’*.

4. According to art. 17 (3) of the Interoperability Directive:

*‘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:*

...

*— a specific case requires the application of technical rules not included in the relevant TSI.*

...

*On that occasion, Member States shall also designate the bodies responsible for carrying out, in the case of these technical regulations, the verification procedure referred to in Article 18’*.

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<sup>1</sup> OJ L 191, 18.7.2008, p. 1–45, as last amended by Commission Directive 2014/106/EU of 5 December 2014 (OJ L 355 12.12.2014, p. 42).

<sup>2</sup> OJ L 164, 30.04.2004, p. 1, as last amended by Regulation (EC) No 1335/2008 (OJ L 354, 31.12.2008, p. 51)



5. The annex VI of the Interoperability Directive provides in section 3 for verification of the subsystem by a designated body against notified national technical rules. However, the Interoperability Directive, in particular in its Annex IV, does not contain any provisions for assessment of interoperability constituents against national technical rules.

### **3 Analysis**

1. The components of a subsystem which are identified as ICs are listed in chapter 5 of each TSI. If they bear the 'EC' Declaration of conformity, ICs may be placed on the market in the conditions set forth in article 10 of the Interoperability Directive.

It is not entirely clear, whether such a component is still legally an 'IC' if it is also covered by a specific case in chapter 7 of a TSI. If assessed under chapter 7 of a TSI, such 'IC'/component' might be not interoperable with the entire EU railway system but only with the railway system (or part thereof) of the Member State concerned by the specific case. Therefore, a component whose parameters are affected by the specific case requirements, may, or may not be considered as an 'IC', depending on how its parameters fit to the requirements specified in chapter 5 of the relevant TSI.

It seems reasonable that the component, identified as an 'IC' in the TSI, impacted by the specific case requirements, should not need to be considered as an 'IC' according to art. 10 to 14 of the Interoperability Directive and in particular it should not require full conformity assessment according to art. 13 and Annex VI to the Interoperability Directive. Such component could be assessed at the level of the subsystem into which it is being integrated. The assessment procedures should be agreed between the applicant (manufacturer or entity placing the subsystem in service) and the Member State concerned. The Member State may define a procedure that allows not repeating all the tests each time when the same component is used in the subsequent projects. The component assessed in such a way can only be used within the Member State where the specific case applies.

2. If the component also meets (in addition to specific case) all the requirements as specified for an IC in chapter 4 and 5 of the relevant TSI, and the applicant (manufacturer) intends to offer this component for the entire EU rail system, full assessment by NoBo would be necessary. The component would become an 'IC' that could be placed on the market in all Member States.

In such a case, alternatively to the assessment of the component at the level of subsystem, two cases are possible:

2.1. The specific case requirements are fully described in the TSI (or EN referred to in the TSI), no reference is made to notified national technical rules (NNTR).

The NoBo assesses conformity with TSI including specific case requirements, and issues the EC certificate of conformity stating that the IC may also be used within the specific case area.

The applicant issues the EC Declaration of conformity covering also the specific case.

The Member State concerned by the specific case shall accept that certificate without further checks.

2.2. The specific case requirements are not fully described in the TSI (or EN), reference is made to NNTR.

The NoBo assesses conformity with TSI **excluding** those requirements that refer to NNTR, and issues an EC certificate of conformity, clearly stating that the requirements where NNTR apply were not checked.

The assessment against the NNTR is performed within the assessment of the subsystem. The Member State defines the relevant procedure and designates the body (DeBo). The Member State shall accept the EC certificate of conformity issued by the NoBo (related to verification against TSI requirements).



When the NoBo has issued an EC certificate of conformity (see above), the applicant may issue the EC declaration of conformity.

3. When the specific case requirements are replacing one or more basic parameters as described in chapter 4 and 5 of the relevant TSI, the component is no longer fully compliant with chapter 4 and 5 of the relevant TSI. In this case the components may only be assessed at the level of subsystem. The Member State where a specific case applies defines the procedure to be followed. In particular, where applicable, the Member State defines the procedure of verification of the subsystem against NNTR and designates the DeBo. The Member State may define a procedure that allows not repeating all the tests each time when the same component is used in the subsequent projects. No EC certificate of conformity and EC declaration of conformity are being issued for the components assessed in such a way.

#### **4 The opinion**

The Agency is of the opinion that when an IC is impacted by a specific case:

1. A component identified as IC in a TSI, and also covered by a specific case in chapter 7 of a TSI, may still be legally considered as an 'IC' if it meets all the requirements as specified in chapter 4 and 5 of the relevant TSI. Otherwise the component should no longer be considered as an IC.

2. Member State should define the procedure for the assessment of the component at the level of subsystem. This procedure may allow not repeating all the tests each time when the same component is used in the subsequent projects. In particular if the requirements refer to NNTR, the MS should designate the body responsible for verification (DeBo). No EC certificate of conformity and EC declaration of conformity may be issued for the component assessed in such a way, and the component may only be used in the Member State where the specific case applies.

3. If the component meets also (in addition to specific case) all the requirements as specified for an IC in chapter 4 and 5 of the relevant TSI, the component may be assessed as an IC by NoBo. A NoBo may issue an EC certificate of conformity, and an applicant may issue an EC declaration. Such a component being an IC may be used in the entire EU rail system.

If an EC Declaration covers the specific case related requirements (see p. 2.1 of the analysis above), the component should be accepted without further checks. Otherwise (see p. 2.2. above), verification of conformity with requirements relevant to the specific case should be performed at the level of subsystem according to the procedure defined by the Member State concerned for this purpose.

4. As the wording of the TSIs is not always clear regarding use of IC impacted by specific case, the Agency will take this issue into account during the next revision of the TSIs. The Agency recommends that the principles described in this Technical Opinion are used until the completion of the TSI revision process.

Valenciennes, 17.4.2015

  
Josef DOPPELBAUER  
Executive Director