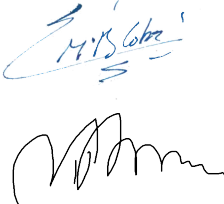




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Clarification note

Application of Article 18(6) of Directive (EU) 2016/797

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Document History

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The purpose of this document is to foster a harmonised EU approach to the ERTMS trackside approval process with the aim to fulfil the objectives of the 4th Railway Package. The actors 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

The objective of this document is to clarify application of Article 18(6) of Directive (EU) 2016/797¹, specifically whether the applicant needs to obtain the approval of the European Union Agency for Railways (the Agency) regarding renewal or upgrade of existing trackside control-command and signalling (CCS) subsystems in cases where national safety authority (NSA) decides there is no need to request on authorisation.

2. Line to take

The applicant shall send a file describing the project to the relevant national safety authority which shall decide if the project on renewal or upgrading of existing control-command and signalling (CCS) subsystems requires an authorisation.

Where the NSA decides that the authorisation is not needed, such projects do not require ERTMS trackside approval by the Agency.

3. Legal background

1. Article 18(2) of Directive (EU) 2016/797 defines exclusive competence of NSAs to authorise placing in service of trackside CCS subsystems located or operated in its Member State:

“2. Each national safety authority shall authorise the placing in service of the energy, infrastructure and trackside control-command and signalling subsystems which are located or operated in the territory of its Member State.”

2. Article 18(6) of Directive 2016/797 provides for the specific framework in case of renewal or upgrade of existing subsystems. The decision regarding the need of a new authorisation to be taken by the concerned NSA depends on information submitted by the applicant and the criteria identified in that article. In this stage the trackside approval by the Agency is not needed, yet the Agency shall be involved in cooperation with the NSA to facilitate decision-making process.

That would mean, that if the NSA decides (in cooperation with the Agency) that the renewal/upgrade does not require new authorisation, the mechanism described in Article 18(4) of Directive (EU) 2016/797 is not triggered, therefore there is no need to obtain Agency's trackside approval.

Article 18(6) of Directive (EU) 2016/797:

“6. In the event of renewal or upgrading of existing subsystems, the applicant shall send a file describing the project to the national safety authority. Within one month of receipt of the applicant's request, the national safety authority shall inform the applicant that the file is complete or ask for relevant supplementary information, setting a reasonable deadline for the provision thereof. The national safety authority, in close cooperation with the Agency in the case of trackside ERTMS projects, shall examine the file and shall decide whether a new authorisation for placing in service is needed, on the basis of the following criteria:

¹ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union

(a) the overall safety level of the subsystem concerned may be adversely affected by the works envisaged;

(b) it is required by the relevant TSIs;

(c) it is required by the national implementation plans established by the Member States; or

(d) changes are made to the values of the parameters on the basis of which the authorisation was already granted.

The national safety authority shall take its decision within a predetermined, reasonable time, and, in any case, within four months of receipt of all relevant information.”