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Clarification note

Recognition of vehicle authorisations issued by the Federal Office of Transport of Switzerland

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Document History

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1.0	17/10/2019	Initial version
1.1	30/03/2021	Updated version after publication of Decisions No 2/2019, No 1/2020 and No 2/2020 of Community/Switzerland Inland Transport Committee and amendment of Directive (EU) 2016/797
1.2	17/05/2022	Updated version after publication of Decision No 2/2021 of Community/Switzerland Inland Transport Committee and transposition of Directive (EU) 2016/797 in all EU MSs
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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 *Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road* (hereinafter – LTA), as amended by Decision 1/2013 of the Community/Switzerland Inland Transport Committee¹ (hereinafter – ITC), currently provides for mutual recognition of authorisations for placing in service of sub-systems and vehicles issued in accordance to Directive 2008/57/EC.

Issuing of authorisations pursuant to Directive 2008/57/EC remained valid until 16 June 2020 or 31st October 2020 in the relations between Switzerland and the EU Member States (hereinafter – MSs) transposing Directive (EU) 2016/797², as amended by Directive (EU) 2020/700³. Whether the date to be considered was 16 June 2020 or 31 October 2020 depends on the choice of each MS with regards to the possibilities to select the date of transposition according to Directive (EU) 2020/700. Authorisations issued until such dates remain valid after, under the conditions subject to which they were issued.

Switzerland has started to apply substantive provisions of Directive (EU) 2016/797 since 1 December 2019 (under the Swiss Railways Ordinance). In addition, the LTA framework has been complemented by the Decision No 2/2019⁴ of the ITC, as amended by the Decisions No 1/2020⁵, 2/2020⁶, 2/2021⁷, 1/2022⁸ and 1/2023⁹ of the ICT. These Decisions establish transitory measures which apply from 13 December 2019 to 31 December 2023, and include Regulation (EU) 2018/545 in the Annex I of the LTA framework, together with the list of substantive provisions of Directive (EU) 2016/797 applicable in Switzerland:

- the compliance with the requirements necessary for authorisation on the Swiss rail network may be established by means of:
 - an authorisation issued by the Agency (in accordance with Articles 21 and 24 of Directive (EU) 2016/797), and
 - a decision by Federal Office of Transport of Switzerland (hereinafter – FOT) verifying compliance with the Swiss national rules.
- the Agency, when issuing an authorisation covering EU MSs, shall take into account the assessments carried out by Switzerland, for the purpose of issuing a vehicle authorisation for the Swiss rail network, for the requirements of the European Union legislation that are equivalent to the requirements of Swiss legislation.

¹ 2013/804/EU: Decision No 1/2013 of the Community/Switzerland Inland Transport Committee of 6 December 2013 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road (OJ L 352, 24.12.2013, p.79-87)

² 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 (OJEU L138, 26.5.2016, p.44-101)

³ Directive (EU) 2020/700 of the European Parliament and of the Council of 25 May 2020 amending Directives (EU) 2016/797 and (EU) 2016/798, as regards the extension of their transposition periods (OJ L 165, 27.5.2020, p.27–30)

⁴ Decision No 2/2019 of the Community/Switzerland Inland Transport Committee of 13 December 2019 on transitory measures to maintain smooth rail traffic between Switzerland and the European Union [2020/40] (OJ L 13, 17.1.2020, p.43-57).

⁵ Decision No 1/2020 of the Community/Switzerland Inland Transport Committee of 19 June 2020 aligning Decision No 2/2019 with the dates of transposition, postponed due to the COVID-19 pandemic, of Directives (EU) 2016/797 and (EU) 2016/798 of the European Parliament and of the Council [2020/896] (OJ L 206, 30.6.2020, p.65-66)

⁶ Decision No 2/2020 of the Community/Switzerland Inland Transport Committee of 11 December 2020 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road and Decision No 2/2019 of the Committee on transitory measures to maintain smooth rail traffic between Switzerland and the European Union [2021/35] (OJ L 13, 17.1.2021, p.43-57)

⁷ Decision No 2/2021 of the Community/Switzerland Inland Transport Committee of 17 December 2021 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road and Decision No 2/2019 of the Committee on transitory measures to maintain smooth rail traffic between Switzerland and the European Union [2022/38] (OJ L 46, 25.2.2022, p.125-127)

⁸ Decision No 1/2022 of the Community/Switzerland Inland Transport Committee of 21 December 2022 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road and Decision No 2/2019 of the Committee [2023/143] (OJ L 19, 20.1.2023, p.144-149)

⁹ Decision No 1/2023 of the Community/Switzerland Inland Transport Committee of 21 December 2022 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road and Decision No 2/2019 of the Committee [2024/1182] (OJ L, 19.4.2024)

This way, the Decision No 2/2019 does not include a provision identical to that of Article 3(1)(d) of Decision 1/2013 related to recognition of authorisations for placing in service of sub-systems and vehicles. Hence it could be interpreted that authorisations issued by FOT under Directive 2016/797 cannot be recognised by the Agency.

As a consequence, there are still some aspects that raise doubts regarding the:

- possibilities and conditions for the Agency to accept type authorisations issued by FOT to issue:
 - new authorisations following changes;
 - authorisations for an extension of the area of use, and
 - authorisations for placing on the market of vehicles in conformity to an already authorised type
- management of applications for authorisation submitted to the Agency with an area of use covering Switzerland when FOT has already performed assessments but has not issued an authorisation;
- management of applications for authorisation to be processed simultaneously by FOT (for Switzerland) and by the Agency (for EU MSSs) following an application for authorisation with an area of use covering EU MSs and Switzerland.

2. Line to take

Pending further amendments of the LTA, the Agency is not in a position to deliver authorisations with an area of use covering Switzerland. However the Agency can issue authorisations (new authorisation, extension of the area of use, placing on the market in conformity to an already authorised type) building upon type authorisations delivered by FOT under Directive 2008/57/EC.

The Agency cannot directly recognize authorisations issued by FOT under Directive (EU) 2016/797 in order to issue a new authorisation, an authorisation for an extension of the area of use or an authorisation for placing on the market of a vehicle in conformity to an authorised type. However, the Agency shall take into account the assessments performed by FOT for issuing the type authorisation in order to issue a first authorisation covering EU MS(s).

Note: For vehicles that must be authorised both in Switzerland and in at least one EU MS, Directive (EU) 2016/797 and Regulation (EU) 2018/545 have been applied since 1 December 2019 in Switzerland by means of an amendment of the Railways Ordinance.

2.1. Applications submitted to the Agency through the OSS relying on authorisations issued by FOT under Directive 2008/57/EC

A type authorisation issued by FOT in accordance with the Swiss national legislation implementing Directive 2008/57/EC will be **recognized by the Agency** in the same way as the authorisations delivered by an EU MS under Directive 2008/57/EC **in order to issue authorisations** for the following cases:

- an **extension of area of use** (to one/more EU MSs pursuant to Article 14(1)(c) of Regulation (EU) 2018/545;
- a **new authorisation** (covering an area of use of one/more EU MSs pursuant to Article 14(1)(d) of Regulation (EU) 2018/545, or
- an **authorisation in conformity to an already authorised wagon type** not limited to particular national networks (wagon type conforming to point 7.1.2 of Annex to Regulation (EU) 321/2013) pursuant to Article 14(1)(e) of Regulation (EU) 2018/545 (i.e. area of use – the whole EU).

2.2. Applications submitted to the Agency with an area of use covering Switzerland without a previous authorisation issued by FOT (simultaneous application)

Until 31 December 2023, the Agency, when issuing authorisations for cases where FOT did not issue a previous authorisation, will **take into account the assessments already performed by FOT** for requirements of Swiss legislation corresponding to the relevant EU legislation for the aspects to be verified by the Authorising Entity pursuant to Annex II of Regulation (EU) 2018/545.

An applicant seeking an authorisation with an area of use covering Switzerland and at least 1 EU MS may apply in the the one-stop shop (hereinafter - OSS) to the Agency, including the concerned networks of EU MS(s) and Switzerland in the area of use. In such case:

- The Agency, together with the concerned NSAs for the area of use, will assess the application and deliver an authorisation (where applicable) covering the area of use of EU MSs.
- In parallel, FOT will assess the application and deliver an authorisation (where applicable) covering only Switzerland. FOT will register a copy of the issued authorisation within the OSS.
- The Agency and FOT will cooperate to ensure that that the legal timeframe in Article 34 of Regulation (EU) 2018/545 is respected, and to minimize the duplication of work (e.g. results of the assessments regarding TSIs performed by the Agency can be used by FOT for the authorisation in Switzerland, which should also cover TSI assessment).
- Where possible, the authorisation issued by the Agency will make reference to the authorisation issued by FOT and to the Swiss networks covered by such authorisation (where applicable, e.g. the authorisation issued by the Agency may be delivered before the authorisation is issued by FOT, or FOT may have a negative decision for the Swiss network while the Agency could still deliver an authorisation for EU MSs; in such cases, there will be no authorisation to which the Agency could make reference).

2.3. Applications submitted to the Agency through the OSS relying on authorisations issued by FOT under Directive (EU) 2016/797

The Agency **cannot directly recognize** authorisations issued by FOT under Directive (EU) 2016/797 in order to issue a new authorisation, an authorisation for an extension of the area of use or an authorisation for placing on the market of a vehicle in conformity to an authorised type.

However, until 31 December 2023, the Agency shall take into account the assessments performed by FOT for requirements of Swiss legislation corresponding to the relevant EU legislation when delivering a first authorisation (e.g. results of the assessments regarding TSIs performed by FOT for the authorisation in Switzerland shall be taken into account by the Agency for the issuing of the authorisation in EU MSs).

2.4. Examples

2.4.1. Type authorisations issued by FOT under Directive 2008/57/EC

1. **Authorisation in conformity to a wagon type compliant with clause 7.1.2** of Annex to Regulation (EU) 321/2013: the applicant should apply to the Agency through the OSS for the authorisation case “**authorisation in conformity with an authorised type**” with an area of use covering the whole EU.
2. **New authorisation covering EU MSs following changes to a vehicle type first authorised by FOT where the area of use is not changed**: the applicant should apply to the Agency through the OSS, including Switzerland and the EU MSs in the area of use, for the authorisation case “**new authorisation**”.

FOT will take a decision delivering a new authorisation covering Switzerland. The Agency, together with the concerned NSAs for the area of use, will deliver a new authorisation covering the EU MSs, building upon the first authorisation delivered by FOT under Directive 2008/57/EC.

The Agency and FOT will cooperate to respect legal timeframes and minimize the duplication of work. In particular, where the requirements are the same, the Agency, for the purposes of issuing the new authorisation covering EU MSs, will take into account the assessments performed by FOT when issuing the new authorisation covering Switzerland.

3. **Extension of the area of use to EU MSs of a vehicle type first authorised by FOT that does not require any change** in order to be compatible with the extended area of use: the applicant should apply to the Agency through the OSS, including only EU MSs in the area of use, for the authorisation case “**extension of the area of use**”.

The Agency, together with the concerned NSAs for the area of use, will deliver a new authorisation covering the EU MSs, building upon the first authorisation delivered by FOT under Directive 2008/57/EC.

There is no formal involvement of FOT. However, the authorisation will make reference to the Swiss networks covered by the existing authorisation delivered by FOT.

4. **Extension of the area of use to EU MSs where the vehicle type needs to be changed** in order to be compatible with the extended area of use: the applicant should apply to the Agency through the OSS, including Switzerland and the EU MSs in the area of use, for a combined authorisation case “**new authorisation**” + “**extension of the area of use**”.

FOT will take care of delivering a new authorisation covering Switzerland. The Agency, together with the concerned NSAs for the area of use, will deliver a new authorisation covering the EU MSs, building upon the first authorisation delivered by FOT under Directive 2008/57/EC.

The Agency and FOT will cooperate to respect legal timeframes and minimize the duplication of work. In particular, where the requirements are the same, the Agency, for the purposes of delivering the authorisation for the extended area of use of the modified vehicle type, will take into account the assessments performed by FOT in the framework of delivering the new authorisation for Switzerland.

2.4.2. Type authorisations issued by FOT under Directive (EU) 2016/797

1. **Authorisation in conformity to an already authorised vehicle type:** the applicant should apply to FOT. The authorisation to be delivered by FOT would not be valid in EU MSs.
2. **New authorisation covering EU MSs following changes to the vehicle type first authorised by FOT where the area of use is not changed:** the applicant should simultaneously apply to the Agency through the OSS, including Switzerland and the EU MSs in the area of use, for the authorisation case “**first authorisation**”.

FOT will take care of delivering the new authorisation covering Switzerland. The Agency, together with the concerned NSAs for the area of use, will deliver a first authorisation covering the EU MSs.

The Agency and FOT will cooperate to respect legal timeframes and minimize the duplication of work. In particular, where the requirements are the same, the Agency, for the purpose of issuing the first authorisation covering EU MSs, will take into account the assessments performed by FOT regarding:

- Initial first authorisation in Switzerland
- New authorisation in Switzerland following the changes.

3. **Extension of the area of use to EU MSs of a vehicle type first authorised by FOT that does not require any change** in order to be compatible with the extended area of use: the applicant should apply to the Agency through the OSS for the authorisation case “**first authorisation**” including the concerned EU MSs in the area of use.

The Agency, together with the concerned NSAs for the area of use, will deliver a first authorisation covering the EU MSs. There is no formal involvement of FOT.

Where the requirements are the same, the Agency will take into account the assessments performed by FOT when the first authorisation was delivered for the purposes of issuing the authorisation for the extended area of use.

4. **Extension of the area of use to EU MSs where the vehicle type needs to be changed** in order to be compatible with the extended area of use: the applicant should apply to the Agency through the OSS, including Switzerland and the EU MSs in the area of use, for the authorisation case “**first authorisation**”.

FOT will take care of delivering a new authorisation covering Switzerland. The Agency, together with the concerned NSAs for the area of use, will deliver a first authorisation covering the EU MSs.

The Agency and FOT will cooperate to respect legal timeframes and minimize the duplication of work. In particular, where the requirements are the same, the Agency, for the purpose of issuing the first authorisation, will take into account the assessments performed by FOT with regards to:

- Initial authorisation in Switzerland
- New authorisation in Switzerland following the changes.

3. Legal background

3.1. Article 24(1) of LTA (as amended by Decisions No 2/ 2019, No.1/2020, No.2/2020, No.1/2021 and No.1/2022)

The article provides that “*railway undertakings and international groupings shall have the access and/or transit rights defined in the Community legislation referred to in Annex 1, section 4*” (on the basis of reciprocity as required under Article 1(2) of LTA). Annex 1, section 4 (“ACCESS AND TRANSIT RIGHTS WITH REGARD TO RAILWAYS”) to the LTA lists in particular:

- Directive 2008/57/EC and substantive provisions of Directive (EU) 2016/797
- Regulation (EU) 2018/545
- Regulation (EU) 2019/250
- Regulations (EU) 1302/2014 (as amended by Regulation (EU) 2019/776) LOC&PAS TSI
- Regulation (EU) 321/2013 (as amended by Regulation (EU) 2019/776) WAG TSI
- Regulation (EU) 2016/919 (as amended by Regulation (EU) 2019/776) CCS TSI

It should be noticed that the amended Annex 1 of LTA does not list:

- Regulation (EU) 2020/387, amending Regulations (EU) 1302/2014, 321/2013 and 2016/919
- Directive (EU) 2020/700, amending Directives (EU) 2016/797 and 2016/798
- Regulation (EU) 2020/698, concerning temporary measures in transport legislation
- Regulation (EU) 2020/779, amending Regulation (EU) 2019/250
- Regulation (EU) 2020/781, amending Regulation (EU) 2018/545

This means that in accordance with the LTA Switzerland applies national legislation equivalent to Directive 2008/57/EC and to the substantive provisions of Directive (EU) 2016/797.

Article 3(1(d)) of the Decision No 1/2013 of the ITC provides that for the purposes of Directive 2008/57/EC authorisations for placing in service of sub-systems and vehicles, including authorisations delivered before 19 July 2008, in particular according to RIC and RIV, as well as authorisations by type of vehicle delivered by a national safety authority according to Chapter V of Directive 2008/57/EC are recognised on the basis of reciprocity. This continues to apply only until 16 June 2020 or 31 October 2020 as regards the MSs transposing Directive (EU) 2016/797 by such date.

3.2. Article 3 of Decision 2/2019 of the ITC

“1. Compliance with the requirements for authorisations for the use of a vehicle on the Swiss rail network may be established by means of:

- *an EU vehicle authorisation issued by the Agency in accordance with Articles 21 and 24 of Directive (EU) 2016/797, and*
- *a decision by Switzerland verifying compliance with the Swiss national rules referred to in Article 6(1).*

For the purposes of the first subparagraph, Switzerland shall recognise the EU vehicle authorisations issued by the Agency in accordance with Articles 21 and 24 of Directive (EU) 2016/797.

Verification by Switzerland of compliance with the national rules shall be carried out within the time periods laid down in Article 34 of Regulation (EU) 2018/545 (8).

2. When issuing an EU vehicle authorisation for using a vehicle on the European Union’s rail network, the Agency shall take into account as evidence the assessment carried out by Switzerland, for the purpose of issuing a vehicle authorisation for the Swiss rail network, of the requirements of Swiss legislation corresponding to the relevant European Union legislation.

3. An applicant may apply at the same time for an EU vehicle authorisation and a decision to verify compliance with Swiss national rules. In that case, the Agency and Switzerland shall cooperate to ensure that decisions on the application for an EU vehicle authorisation and on verification of compliance with Swiss national rules are taken within the time periods laid down in Article 34 of Regulation (EU) 2018/545, in accordance with the third subparagraph of paragraph 1.”

3.3. Article 7 of Decision No 2/2019 of the ITC, as amended by Decision No 1/2020

“1. Decision No 1/2013 of the Joint Committee is repealed with effect from the date of entry into force of this Decision.

2. Articles 2(1) and 3(1) of Decision No 1/2013 of the Joint Committee shall continue to apply until 16 June 2020 as regards the Member States which have notified the Agency and the Commission pursuant to Article 57(2) of Directive (EU) 2016/797 or Article 33(2) of Directive (EU) 2016/798.

2a. Article 2(1) and/or Article 3(1) of Joint Committee Decision No 1/2013 shall continue to apply until 31 October 2020 for Member States that have notified the Agency and the Commission pursuant to Article 57(2a) of Directive (EU) 2016/797 or Article 33(2a) of Directive (EU) 2016/798

3. ‘EC’ declarations of conformity or of suitability for use, ‘EC’ certificates of verification and ‘EC’ declarations of verification recognised pursuant to Decision No 1/2013 of the Joint Committee shall continue to be recognised under the conditions subject to which they were issued.

4. The safety certificates and the authorisations for placing in service of subsystems and vehicles and type authorisations recognised in accordance with Decision No 1/2013 of the Joint Committee shall continue to be recognised under the conditions subject to which they were issued.”

3.4. Article 8 of Decision No 2/2019 of the ITC, as amended by Decisions No 1/2020, 2/2020, 2/2021 and 1/2022

“This Decision shall enter into force on the day of its adoption.

Articles 2, 3, 4 and 5 shall apply until 31 December 2023.”

3.5. Article 3(1) of Decision No 1/2013 of the ITC

“1. For the purposes of Directive 2008/57/EC of the European Parliament and of the Council (2) are recognised, on the basis of reciprocity

[...]

(d) authorisations for placing in service of sub-systems and vehicles, including authorisations delivered before 19 July 2008, in particular according to RIC and RIV, as well as authorisations by type of vehicle delivered by a national safety authority according to Chapter V;

[...]”