EUROPEAN
UNION
AGENCY
FOR RAILWAYS

Making the railway system
work better for society.

4RP-SG: Subgroup RoE

Proposals of recommendations – Version 2

In this document 6 proposals for recommendations may be found for endorsement by the ERA Management Board meeting on 19/01/2022.

They have been elaborated by the 4th RP Steering group on the base of the received inputs and discussions of the subgroup RoE, which met on 19/10/2021, 09/11/2021 and 22/11/2021. They were discussed during two meetings of the Steering group on 22/11/2021 and 8/12/2022 and were agreed upon by Steering group members through written procedure on 20/12/2021.

Proposals for recommendations:

1) Recommendation addressed to the Agency to establish two Advisory Groups for vehicle authorisation (VA) and Operations/single safety certification (SSC) and test their functioning
2) Recommendation addressed to the Agency on a short-list of subjects for testing the Advisory Groups
3) Recommendation addressed to the Agency a list of other subjects for discussing in the Advisory Groups
4) Recommendation addressed to the European Commission regarding cross-border agreements
5) Recommendation addressed to the Agency on the cooperation between ERA and NSA's in the PoE mandatory part
6) Recommendation addressed to the VA Advisory Group for short and mid-term solutions for reducing standstill for CTT in case of upgrading (ex. ERTMS upgrading)

Description of proposals

1) Recommendation addressed to the Agency to establish two Advisory Groups for vehicle authorisation (VA) and Operations/single safety certification (SSC) and test their functioning

Findings and problem statement

The Steering groups reminds that, with the entry into force of the 4th RP, the Agency has been charged with new responsibilities that clearly belong to its own competence. In this regard, the Agency is fully responsible for its decisions. However, the Agency has also always shown to be attentive to the advice it receives, and there are experts in the rail sector, in NSA's and Representative Bodies especially, who could certainly provide useful input to the Agency regarding decisions taken within its competences.

The Steering group therefore considers that it could be useful for the Agency to receive the best advice possible from competent experts, especially before taking its final decision within the legally applicable deadlines. One example mentioned in this regard was the establishment of clarification notes[1], which are the Agency's sole responsibility and must be adopted in very short time-frame, but which also impact NSA's and

---

[1] A clarification note is a document describing how ERA acts in specified circumstances, which is not legally binding for stakeholders or NSAs. However, once published, the clarification notes may impact the stakeholders and the NSAS. In general, a clarification note is delivered at the initiative of and by ERA to answer to a specific problem met in a particular request for VA or SSC.

applicants and which would therefore gain to be discussed in all their impact before their adoption by the Agency. It is understood that the final decision will be taken by the Agency.

The Steering group is of the opinion that currently existing fora and bodies do not permit such flexibility and rapidity in delivering advice, and neither can they intervene in the exercise of the Agency's own competence. Bearing in mind that a balance must be struck between ensuring large participation on the one hand, and efficiency on the other, the Steering group believes that there is room for creating new informal Advisory Bodies who could answer the need for external advice, without prejudice to the competences of the existing bodies.

Recommendation

It is recommended to the Agency to set up two Advisory Groups on VA and SSC/Operations and to test their usefulness during a trial period.

- **Role**: Provide a priori advice to ERA on draft decisions belonging to its own competence, for instance regarding clarification notes, guidance documents, or questions raised by stakeholders and NSAs.
- **Legal framework**: It is recommended that the Agency constitutes strictly informal Advisory Groups, which would not be considered as "working parties" in the sense of Article 5 of the ERA Regulation.
- **Inputs:** Requests for advice addressed to the Advisory Groups can be submitted by stakeholders, Representative Bodies, NSA's or by the Agency. The Agency is free to organise appropriate follow up to such requests by the Advisory Groups or by another more appropriate forum.
- **Outcomes**: non-binding advice.
- **Composition**: it is recommended to ensure representation by competent experts from NSA's, from the rail sector and from the Agency. These experts should have in-depth technical expertise in VA or railway operations/SSC.
  These experts should be in a position to provide direct input to the discussions, without referring to external parties. They should also be ready to actively contribute to the discussions by volunteering as rapporteur for a specific item.
  It is recommended that the Agency would launch an informal **call for interest** to all NSA's, sector representatives and experts, clarifying the expected level of expertise and expected amount of human resources[2] for the 5 subjects proposed for the test runs, as well as the subjects for discussions on which the respondents are expected to actively participate.
  On the basis of the responses received, the Agency is invited to decide whether all respondents or only some of them, chosen on the basis of their merits, would be invited to participate in the advisory groups.
  A flexible system allowing the participation from experts placed on a reserve list to vary depending on the subject discussed could also be envisaged.
- **Process** (inspired by JNS): two processes could be applied for issuing advice:
  o **Quick process**: an advice on urgent requests should be provided in 2 to 3 weeks.
  o **Normal process** : an advice should be provided in a timeframe around 3 months.

  Based on the assumption that most of the subjects discussed by the Advisory Groups have been, are currently, or could be in the future discussed in other competent bodies/fora, it should be understood that the Advisory Groups added value resides mainly in the rapid delivery of advice to the Agency, to allow it to take its own positions in a timely manner. It is to be expected that in

---

[2] which it is proposed that the Agency could estimate on the basis of its experience in setting up working parties.

some urgent cases, the Agency may need to provide preliminary guidance pending input from the Group.

Therefore, the Advisory Groups should be in a position to provide the Agency with **interim advice** within a 3 weeks-period, at the end of which it should indicate to the Agency whether:

- o Discussions should be continued in another forum which the Advisory Body points out,
- o Discussions should rather continue within the Advisory Body itself, which should then issue a final piece of advice within a timeframe of about 3 months,
- o A final piece of advice can be provided to the Agency by the Advisory Body.

- **Methodology:** discussions/exchanges within the Advisory Groups can primarily be done by means of digital meetings or e-mails.
    - o Physical or hybrid meetings may also be organised.
    - o Bilateral meetings may be organised for exchanging confidential information

The Advisory Groups should appoint **rapporteurs**, who would analyse and provide advice and proposals on a specific item, or manage the analysis and solution finding in small groups. The outputs from the rapporteurs would then be discussed in an Advisory Group or in smaller groups.

- **Budget and resources**: no reimbursement should be offered to the experts participating in the Advisory Groups, as they would be expected to contribute voluntarily and with the support of their organisation. The Agency is to provide human resources to the Advisory Groups in the form of Chairs and secretariat.
- **Chairmanship**: it is recommended that the Advisory Groups be chaired by a representative from the Agency.
- **Decision-making**

The Advisory Groups take decisions and adopt positions on the basis of consensus sought by the members of the group. The Advisory Groups should adopt their advisory papers by a collaborative approach with ERA.

- **Governance**
    - o The Advisory Groups would work informally under the umbrella of the Agency
    - o The Agency should ensure that the Advisory Groups do not duplicate other working groups, in particular the task-forces and topical groups related to TSIs (including TSI OPE), RISC and its Experts Group.
    - o The positions freely taken by the experts participating in the Advisory Groups on draft ERA decisions are not in any way binding for the organisation they belong to, which these experts do not represent when participating in the Advisory Groups. Therefore, when asked for its opinion on the decision taken, any NSA or sector organisation should remain free to take a different view from those expressed by the Advisory Groups.
    - o The Advisory Groups' activities are to be regularly reported to the NSA Network, by the Agency or by one of the NSA participants in the Advisory Groups and it could become a permanent item on the agenda of its meetings. Advice from the Advisory Groups should then be shared with the NSA Network to ensure that all can benefit from the solutions recommended or express dissenting opinions. Feed-back and recommendations from the NSA Network will be provided via the same channel.
    - o The Advisory Groups' activities are to be regularly reported to the Networks of Representative Bodies.
    - o The Executive Director is to report on the work of the advisory groups to the Management Board in the context of his Report under part B of the agenda.
    - o If the Advisory Groups provide advice that can have an impact on the Agency's internal processes, on efficiency gains or on budget and resources, it should be submitted to the Agency Executive Board at its next session for consideration.
    - o The Agency is to set up the Terms of Reference of the Advisory Groups, or delegate this decision to the Advisory Groups themselves.

- **Timeline:** following endorsement by the ERA MB January 2022, Permanent Advisory Groups to be established February 2022. The trial period is to run for period up to one year. After this, the Agency is to decide whether to maintain such Advisory Groups, or to end them.

2) Recommendation addressed to the Agency on a short-list of subjects for testing the function of the Advisory Groups

1. Subjects proposed for testing the Operations/SSC Advisory Group:
   a. Maintenance of assets (2018/762: 5.2.4 and 5.2.5) including other assets than vehicles
      o Harmonise which assets must be covered
      o Define a set of documents to be provided by the applicant and a mapping table
      o Find common ground between ERA and NSA's on the number of billable hours expected for the review of the documents
   b. Human and Organisation Factors + safety culture (this item is to be linked to the UIC-managed project subsidised by the EC – the Advisory Group would look for solutions in the short-term)
   c. Language agreements for cross-border operations, including the possibility to have derogations from the train driver directive on the language requirements
2. Subjects proposed for testing the VA Advisory Group:
   a. Reduction of standstill for CTT (see also recommendation nb. 5)
   b. VA: Level of detail of documents
      The Advisory Group is invited to consider verifications for notifications, type authorization and pre-engagement. Simplifying the VA process by using a list of TSI IOCs, certificates and declaration with reference to ERADIS, using a list of restrictions / conditions for use, using tailored assessment report template.

It is clarified that all the subjects identified in recommendations 2 and 3 are aimed at addressing issues that are felt as challenges for both the Agency and the NSA's in their daily practice. Solutions for these challenges could well be found and implemented at bilateral level between ERA and NSA's. The Steering group however feels that all NSA's and also the applicants could profit from streamlining the inputs to be received and analysed by the Agency in order to come up with harmonised solutions, and that there are currently no fora/bodies that deal with these problems in a way that can ensure coherent solutions to be rapidly implemented both by the Agency and the NSA's, while such coherent solutions can be critical especially when issuing VA or SSC.

3) Recommendation addressed to the Agency a list of other priority subjects for discussing in the Advisory Groups

The 4RP Steering group recommends the following indicative list of additional subjects for the Advisory Groups to consider, if the Agency decides to maintain these groups after the trial period.

- Operations/SSC: Assessment of TSI OPE. The assessment of TSI OPE related also to national rules/national sector rules/AMOCs. Clarify ERA/PoE assessment from NSA assessment.
- Operations/SSC: Type 4 issues and resolving by reducing the validity of the SSC.
- VA: Clarification about vehicles modifications requiring a new authorization (Art 15 - regulation n° 2018/545). Guidance to update
- VA: requirements capture and ASBO inputs
  o Revise guidance documents for clarity on applicants' obligations
  o Place of ASBO RFU 001
  o Working plan for ASBO cooperation
- Operations/SSC: RCC checks. Support to RUs (if applicable in addition to running activities)
- VA: Different requirements for vehicle authorization between 4RP and 3RP. How to proceed for modification of vehicles authorized under the 3 RP? Update of guidance
- VA: Adaptation of IT tools: OSS, ERATV, ERADIS and processes related.

- VA: ECM certification – QMS approval (module SD/SH): Redundancy
  VA and SSC: Criteria for independence of external experts in PoE
- VA and SSC: working in the OSS: recommendations to be addressed to the OSS users group.
- Investigate the possibility to automate the link between the OSS authorisation delivery function and the EVR.

4) Recommendation addressed to the European Commission regarding cross-border agreements

Findings and problem statement

Some NSA's are currently faced with difficulties or are having discussions on how to implement cross-border agreements under the 4th Railway Package, even when there already were similar agreements existing at IM or RU level under previous legal frameworks.

The main problems identified are:

- Need for clarifying the current legal value of existing ("old") agreements between IM's or RU's that are not yet covered by an NSA agreement, despite the absence of transition provisions in the 4th RP;
- Need for clarifying the difference of wording between the IOD and Safety Directives, and the VA and SSC Regulations regarding cross-border agreements;
- Need for clarifying the scope of the agreements to be signed by NSA's, and agree on the aspects that should rather be covered by IM's or RU's. In particular, the Directives should be implemented in a way that allows sufficient flexibility for RU's and IM's to agree on the operational and maintenance aspects of cross-border traffic bilaterally in the framework of their safety management systems, without a need for NSA's to be directly involved;
- Need for establishing language agreements for cross-border operations;
- Need for common definitions of « similar characteristics »/ "similar networks" and "border stations" . There is therefore a need for clarification and update of guidance.

Existing initiatives

- Based on assessment of SSC cases and directly from stakeholders, ERA has collected a number of issues related to the border agreements.
- ERA has also collected the situation related to several border stations and sections and keeps it updated in an informative-list-border-stations on the ERA website. However, this list does not cover all the border stations and sections.
- UIC started the development of guidelines for better defining the meaning of 'similarities'.
- The current Train Drivers Directive offers some flexibility to Infrastructure Managers, which they seem however reluctant to use.

Recommendation

It is proposed that the European Commission launches a consultation of all interested parties to identify all the challenges related to the implementation of the legal framework on cross-border traffic, and to invite these parties to take part in an ad hoc working party to find possible solutions. It is expected a short-term solution clarifying how to deal with the transition period until cooperation agreements between NSA's are fully in force especially regarding validity of existing agreement between IMs or Rus. This could be afterwards discussed in the framework of the consultant's work on the return of experience of implementing the IOD and Safety Directives, in the RISC Experts Group regarding the interoperability issues, in SERAC regarding market issues, in the framework of the issues log, or in the impact assessment of the implementation of the Train Drivers Directive.**5) Recommendation addressed to the Agency on cooperation between ERA and NSA's in SSC/VA mandatory part**

Findings and problem statement

The Steering group has been informed that the Agency is facing a very difficult situation when some NSA's are not responding to its requests for cooperation in the framework of requests for VA or SSC whose area of use or operation cover the territory of these NSA's, which normally entail making use of the mandatory part of the cooperation agreements.

In such a situation, the Agency is dependent on the NSA's, as the only sanction possible is the exclusion of the territory of the non-responding NSA from the area of use or area of operation, which in the end only penalizes the applicant.

Recommendation

The Agency is invited to explore all legal options possible, including the possibility to address this problem in the framework of the Agency's monitoring of NSA's.

It is recommended to bring this problem to the attention of the NSA Network, where all NSA's should be represented.

If this is not successful it is in a next step recommended to forward this problem to the Commission to consider following-up on ensuring that obligations for NSA's to cooperated with the Agency is obeyed, and, if necessary, envisage an amendment of the 4thRP legal framework regarding the obligation for NSA's to cooperate with the Agency on the mandatory part of delivering SSC/APOM (SD art. 16).

6) Recommendations addressed to the VA Advisory Group for short and mid-term solutions for reducing standstill for CTT in case of upgrading (e.g. ERTMS upgrading)

Findings and problem statement

Although the Agency has the opinion from the experience from more than 2200 CTT decisions taken by the Agency that it demonstrates that the process itself and the processing time of applications by the authority are not an issue up to now, the Steering group has taken note of the request coming from the sector and from some NSAs regarding the reducing of railway rolling stock fleet standstill times.

One reason for this request is that the industry has for example to consider the 4 weeks according to Art. 34 Par. 3 of the IA VA 2018/545 when planning the project. Delivery time of authorisations in CTT by the authorising entities depends on the resources available to manage the additional number of applications. Resource limitations at the authorising entity should not become the limiting factor in the deployment of innovative solutions.

It has also been underlined that the problem will most probably become bigger with the accelerated ERTMS deployment & ETCS/FRMCS retrofitting and the DAC roll-out.

The Agency reported that, when the documentation is correct and the application arrives on the planned date, the decision can be taken the same day. It was also underlined that the current process applied by ERA is strictly in line with the applicable legal framework.

According to the Implementing Regulation 545/2018, the purpose of vehicle authorisation in conformity to type (CTT) is to ensure conformity of the vehicle with the authorised type, so that the vehicle may be used safely in the area of use. At the time being, the Agency has not been made aware of any actual case in which a delay of a CTT issued by the Agency has caused significant standstill times. However, processing time in the authorising entity depends on the balance of the number of applications with the number of available resources. Therefore, for upcoming large-scale vehicle modifications (ERTMS upgrades, DAC, etc), mid-term process improvements may be considered so that the objective of the Implementing Regulation 545/2018 can be achieved without the authority checking each individual request by the applicant.

Furthermore, the Agency has also stated that the majority of CTT applications to the Agency have quality issues.

Indeed, from the VA production reports covering the year 2021, it appears that **25%** of CTT applications include at least one issue type 4. This ratio of 25% takes into account the 'first' CTT and the subsequent CTT. A more detailed analysis also shows that, at this date, 50% of the first applications for CTT have type 4 issues. For subsequent ones, 20% have type 4 issues.

The main type 4 issues met are:

Applications with lack of info and/or not updated in ERATV:
- Type is not recorded/ updated
- Type examination certificate referenced in ERATV is different than the one available in OSS
- Conditions for use are not consistent with OSS/certificates/declarations info

Lack of relevant documents in OSS request:
- Certificates/declarations for ICs and/or subsystems
- Other relevant EU law certificates/declarations not available

Inconsistent info in OSS request:
- Different (versions/editions of) certificates/declarations in OSS than in ERADIS
- Expired declarations/certificates in OSS (without any additional explanations)

Wrongly info introduced in the OSS request:
- EVNs wrongly introduced in the OSS request or different EVNs than the ones in DoC2T

Type ID wrongly introduced in the request in OSS.

Recommendations

a) *Recommendation for short-term solutions to be developed in the VA Advisory Group*
- As a general rule, it is recommended that any solution for improvement should be based on facts, without looking at attributing blame, and that, as an output, efficiency gains should be identified that should be both realistic and concrete.
- Addressing the maturity of applicants (evaluate the maturity of applicants for alerting them of risks of standstill): based on the Agency's findings, the focus initially needs to be on drastically reducing the number of issues, particularly type 4, found in VA applications.
- Agreements between authorising entity (ERA/NSAs) and applicants on pre-production process based on pre-engagement process and on prior information provided by applicants on their intentions. The applicants enter in their production planning a pre-engagement leading to agree on a baseline describing which list of documents will be provided. It can be assimilated as an CTT assessment 'à blanc'. This should reduce 'the type 4' issues.
- Agreement between ERA and NSA's on the level of detail to be checked in a request for CTT.
- Information campaign to applicants on quality findings of authorising entities (ERA/NSAs).
- Address an information to all applicants of commonly met type 4 'issues' to alert them on the need that they control the accuracy of their applications.
- Identify root causes behind the issue type 4 still met in CTT and examine whether the root causes can be removed or mitigated within the process itself.
- Find practicable procedures (within the actual legal framework) for soon coming implementations in vehicle in operation like ETCS and DAC
- Look at process improvements regarding the update of registers (link between OSS and vehicle register…), the possibility for applications to launch upgrades in parallel to the application process.

b) *Recommendation for a mid-term solution to be developed in the VA Advisory Group*

The proposal to be addressed is the implementation of series authorisations, if necessary accompanied by a competence recognition regime of the applicants inspired by their equivalent in aviation. This would help the applicants but also the authorising entities to manage the process for placing on the market especially in case of upgrading of fleets.

The concept of series authorisation is that the 1st vehicle of a type (new or upgrade) receives a type authorisation and the vehicle type authorisation holder should have the competence to bring further vehicles of the same type on the market after he has registered it in the EVR with the declaration of conformity to the type authorisation without a further decision by the authorising entity. Time limits (i. E. 7 years) and further conditions (i. E. new legal framework like TSIs, occurrences like accidents/incidents) need to be defined.

In this regard, the precondition is that the vehicle type authorisation holder ensures and can prove, through a mature and reliable quality system, the compatibility of every vehicle that is brought into service with the type and a comprehensive documentation acc. to Annex I, 18 of the IA VA. In particular, consistency of documentation and traceability of changes need to be ensured by the quality management system of the applicant. Taking into account the actual experiences of the Agency with CTT, a prequalification regime and appropriate supervision of vehicle type authorisation holders should be considered if necessary. In analogy to the requirements for conformity checking bodies or to the requirements for certification of entities in charge of maintenance, the authorising entities should carry out such prequalification and supervision. The role of the NSA's in this regard should also be considered, while ensuring a balanced proposal.

This approach would therefore fulfil the objective of the implementing Regulation 545/2018 to ensure conformity of the vehicle with the authorised type, so that the vehicle can be used safely in the area of use.

The series authorisation will be a further authorisation case beyond type authorisation and CTT and not replace it.

In this context, it is recommended that the VA Advisory Group could also evaluate if the Agency should become the registration entity for those vehicles for which it provides the APOM/which will be placed on the market on the basis of a series authorisation it has delivered.

Process:

The Advisory Group VA is invited to create a subgroup to define the necessary legal changes in the IOD and the IA VA in short term. The subgroup should be composed by ERA, NSAs, and railway sector representatives.

This proposal should be addressed via the Steering Group to the Management Board for an initial discussion and then forwarded to the Commission for perusal and appropriate follow-up (possible amendments to the IOP or RS directives). Experts that were involved in issuing the recommendation should participate in the appropriate evaluation discussion that the Commission has launched by appointing a consultant tasked with the evaluation and review under Article 82 ERA Regulation

It will then be up to the Commission to decide on the changes to the IOD and the IA VA to be submitted for further discussion within RISC(legal process to be checked : "piggyback – procedure").

The MB should be kept informed permanently about the state of play by the Executive director in his usual report.

Error! Reference source not found.

Matrix visualisation of the recommendations

Recommendation subject	Body to which it is addressed	Timeframe	Other competent fora/bodies
Establish two Advisory Groups for vehicle authorisation (VA) and Operations/single safety certification (SSC) and test their functioning	ERA	1 month after MB decision	NSA Network, NRB and sector representatives Management Board Executive Board
Short-list of subjects for testing the Advisory Groups	ERA and Advisory Groups	2-3 weeks to 3 months or more, depending on urgency of the subject	NSA Network, NRB and sector representatives Management Board Executive Board
Other subjects for discussion in, and recommendation and advice by the Advisory Groups	ERA and Advisory Groups	Undefined – to be decided by ERA and the Advisory Groups depending on the urgency	NSA Network, NRB and sector representatives Management Board Executive Board
Cross-border	European Commission	Undefined – to be decided by Commission	NSA Network, NRB and sector representatives, EC consultant, RISC Experts Group, SERAC, issues log working groups, Council Working Party Land Transport
Cooperation between ERA and NSA's in SSC/VA mandatory part	ERA	Undefined – to be decided by ERA	NSA Network European Commission Management Board
Short-term solutions for reducing standstill for CTT in case of upgrading (e.g. ERTMS upgrading)	VA Advisory Group	"normal process": after 3 weeks, the Advisory Group is to decide whether to continue deliberations and issue final advice in approximately 3 months, or to forward the question to other competent bodies	NSA Network, NRB and sector representatives
Mid-term solutions for reducing standstill for CTT in case of upgrading (e.g. ERTMS upgrading)	VA Advisory Group	Implementation of the series authorisation within the next three years to be ready when the ETCS on-board programs in the MS will increase significantly.	NSA Network, NRB and sector representatives, Management Board, Executive Board, EC consultant, RISC, Council Working Party Land Transport