

OPINION

ERA/OPI/2015-9

OF THE EUROPEAN RAILWAY AGENCY

FOR

EUROPEAN COMMISSION

REGARDING

*REQUEST FOR AN OPINION ON ERTMS ON-BOARD EQUIPMENT FOR REGIONAL LINES
UNDER CCS TSI 2012/88/EU*

Disclaimer:

The present document is a non-legally binding opinion of the European Railway Agency. It does not represent the view of other EU institutions and bodies, and 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 General Context

1. In its letter MOVE B2/AA/ct of 17.11.2015 addressed to the European Railway Agency (“ERA”), the European Commission – DG MOVE B2 requested ERA to prepare a technical opinion regarding the NB-rail Question/Clarification n° QC-STR-008 related to Decision 2012/88/EU¹ (CCS TSI) as amended by Decision 2015/14/EU².
2. The background of the problem is related to the amendments of the ERTMS on-board implementation in particular in case of projects in an advanced stage of development.

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 Community³ (“Interoperability Directive”) provides in particular the following:
 - art 8 (paragraph 2) on Extension of scope of TSIs states that
“The first such mandate shall indicate a first group of new TSIs and/or amendments to TSIs to be adopted by January 2012, without prejudice to Article 5(5) as regards the possibility of providing for specific cases and without prejudice to Article 9 allowing for derogations in particular circumstances. This first mandate shall be drawn up on the basis of a recommendation from the Agency with a view to determining new TSIs to be developed and/or existing TSIs to be amended in the light of the expected cost-effectiveness of each proposed measure and on the basis of the principle of proportionality of measures to be taken at Community level. To this end, appropriate consideration shall be given to Annex I, point 4 and the necessary balance between, on the one hand, the objectives of uninterrupted movement of trains and of technical harmonisation, and, on the other hand, the trans-European, national, regional or local level of traffic concerned.”
 - art 8 (paragraph 4) states that
“A Member State need not apply the new or revised TSIs adopted in accordance with paragraph 2 in the case of projects at an advanced stage of development or subject to a contract in the course of performance when the relevant group of TSIs is published”
 - art 9 (paragraph 1) states that
“In the absence of relevant specific cases, a Member State need not apply one or more TSIs in accordance with this Article in the following cases:

1 Commission Decision 2012/88/EU of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems (OJ L 51, 23.2.2012, p. 1).

2 Commission Decision (EU) 2015/14 of 5 January 2015 amending Decision 2012/88/EU on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system (OJ L 3, 7.1.2015, p. 44).

3 OJ L 191, 18.7.2008, p. 1.



(a) for a proposed new subsystem, for the renewal or upgrading of an existing subsystem, or for any element referred to in Article 1 (1) at an advanced stage of development or the subject of a contract in the course of performance when these TSIs are published;

...

(d) for any proposed renewal, extension or upgrading of an existing subsystem, when the application of these TSIs would compromise the economic viability of the project and/or the compatibility of the rail system in that Member State;

...“

- art 9 (paragraph 3) states that

“ In the case referred to in paragraph 1(a), within one year of entry into force of each TSI each Member State shall communicate to the Commission a list of projects that are taking place within its territory and are at an advanced stage of development.”

2. Decision 2012/88/EU

The geographical scope of this CCS TSI is the high-speed and conventional railway (Trans European Network). Paragraph 7.3.3 of the (2012) CCS TSI related to ‘ERTMS On-board Implementation’ states that

“New locomotives, new railcars and other new railway vehicles able to run without traction equipped with a driving cab, ordered after 1 January 2012 or put into service after 1 January 2015, shall be equipped with ERTMS.

...

This requirement does not apply to new shunting locomotives or to other new locomotives, new railcars and other new railway vehicles equipped with a driving cab, if they are designed exclusively for national service or regional border crossing service. ... “

3. Decision 2012/88/EU has been amended by the Commission Decision (EU) 2015/14 of 5 January 2015.

Article 3 states that the decision (EU) 2015/14 shall apply from 1 July 2015. In particular, this amendment extends the geographical scope according to article 8 of Interoperability Directive 2008/57/EC (including the off-TEN network).

In this amendment, paragraph 7.3.3.1 related to ERTMS on-board implementation for new vehicles states that

“New vehicles authorised to be placed in service for the first time shall be equipped with ERTMS

...

The requirement to be equipped with ERTMS does not apply to new mobile railway infrastructure construction and maintenance equipment, new shunting locomotives or other new vehicles not intended for high speed service, if they are intended exclusively for national service operated outside the corridors defined in section 7.3.4 and outside the lines ensuring the connections to the main European ports, marshalling yards, freight terminals and freight transport areas defined in section 7.3.5, or if they are intended for off-TEN cross-border service, i.e. service until the first station in the neighbouring country or to the first station where there are connections further in the neighbouring country“.



3 Analysis

- ERTMS on-board implementation for projects in advanced stage of development:
 - According to article 8 (paragraph 4) of the Interoperability Directive, a Member State need not to apply the new or revised TSIs for projects in advanced stage or subject to a contract in the course of performance.
 - According to article 9 (paragraph 3) of the Interoperability Directive, a Member State shall communicate to the Commission within one year of entry into force of each TSI a list of projects that are taking place within its territory and are at an advanced stage of development.
 - According to article 3 of the Commission Decision 2015/14/EU, the decision shall apply from 01th July 2015.

Therefore, Member States shall communicate to the Commission before 01th July 2016 projects in advanced stage related to additional requirements within Commission Decision 2015/14/EU which were not yet included in Commission Decision 2012/88/EU. A derogation should be granted in conformity with Article 8(4) and 9 of the Interoperability Directive so that additional requirements within Commission Decision 2015/14/EU would not apply to projects at an advanced stage of development concerning vehicles that were already exempt according to the criteria defined at paragraph 7.3.3 of (2012) TSI CCS.

In its Question/Clarification n° QC-STR-008, NB-Rail made the following "Suggested resolution/interpretation":

"The sentence 'which was out of the scope of the previous TSI' contained in the Whereas (2) of Decision 2015/14/EU is intended not to exclude from the exemption of mandatory installation of on-board ERTMS the vehicles that were already exempt according to the application criteria defined at paragraph 7.3.3 of TSI CCS 2012/88/EU.

However such interpretation of whereas (2) in Decision 2015/14/EU refers to the Article 8 (4) of the Interoperability Directive. The proposed suggestion for interpretation of such 'whereas' has no legal impact on the applicable requirements for a derogation for projects in advanced stage of development in conformity with Article 8(4) and 9 of the Interoperability Directive.



- Economic viability of ERTMS on-board implementation for projects not in advanced stage of development:

(a) In its Question/Clarification n° QC-STR-008, NB-Rail made the following comment on installation of on-board ERTMS for lines not equipped with ERTMS.

“The installation of on-board ERTMS might be requested also in vehicles designed, awarded and sometimes ready for Authorisation for Placing into Service to be used exclusively for national/regional services in lines not equipped with ERTMS, with huge negative impacts on these projects.”

It is useful to remind the background of the requirement for ERTMS on-board implementation on new vehicles: The ERTMS on-board installation requirements in CCS TSI (version of 2015/14/EU) are not applicable for all vehicles, but mainly for vehicles running on the Corridors (defined in section 7.3.4 CCS TSI) and vehicles running on the high-speed network for which currently specific trackside ETCS implementation requirements are existing. These vehicles are expected to use ETCS within their lifetime. In general it is evaluated that ERTMS on-board installation has no significant cost impact in case of new vehicles compared to the case of upgrading/retrofitting of existing vehicles with ETCS (retrofitting is not mandated by the CCS TSI). Therefore, the requirement is aiming to avoid in a later stage the more expensive retrofitting of vehicles to be equipped with ETCS and/or to allow the decommissioning of legacy systems at trackside.

According to article 9 (1.d) of the Interoperability Directive, a derogation request can be submitted to the Commission in the case the application of CCS TSI (version of 2015/14/EU) would compromise the economic viability of a project. This derogation request shall be processed according to article 9 (5) in which the Commission shall decide in accordance with the regulatory procedure referred to in article 29 (3), whether to accept the request for a derogation.

(b) In its Question/Clarification n° QC-STR-008, NB-Rail made also the following the comment on the ongoing revision of the CCS TSI:

“It is interesting to note that the recent draft revision of this TSI issued by ERA (document “Changes in CCS TSI – chapter 7, v0.5 dated 27/04/2015) clears unambiguously the issue, proposing following text...”

However the proposed changes of the current ongoing revision in chapter 7 CCS TSI are not yet applicable and these potential future changes have no impact on the clarification of the current legal text. Currently, the trackside requirements within the ERTMS European Deployment Plan (EDP) –in particular for Corridors- are under revision which could have an impact on the ERTMS on-board requirements. The ERA has proposed to delete the requirements for national vehicles running on Corridors mainly due to the uncertainty of the content on the revised EDP.



4 The opinion

1. According to article 8 of the Interoperability Directive, projects in advanced stage can be exempted from the additional requirements in the amended Decision 2015/14/EU which were not yet applicable in Decision 2012/88/EU. According to article 9 (3) of the Interoperability Directive, the Member State shall communicate to the Commission the list of these projects in advanced stage before 01th July 2016. In that way, additional requirements within Commission Decision 2015/14/EU would not apply to projects at an advanced stage of development concerning vehicles that were already exempt according to the criteria defined at paragraph 7.3.3 of (2012) TSI CCS.
2. In case projects are not in advanced stage and Member States want to be exempted from specific requirements in the CCS TSI 2015/14/EU which would compromise the economic viability of a project, a derogation request can be submitted to the Commission according to article 9 (1.d) of the Interoperability Directive.

Valenciennes, 11.1.2016


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