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Clarification note

Transitional arrangements for Member States transposing in 2020

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<i>Date</i>	15/06/2020	15/06/2020	15/06/2020
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Document History

<i>Version</i>	<i>Date</i>	<i>Comments</i>
1.0	15/06/2020	First version

The purpose of this document is to foster an harmonised EU approach to the safety certification process. Those 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

As one of the measures to mitigate the effects of the Coronavirus pandemic, the European Commission has modified the transposition arrangements for the Safety and Interoperability Directives, respectively Directive (EU) 2016/798 and Directive (EU) 2016/797. Member States may decide to extend the transposition period either to 16 June 2020 or 31 October 2020.

The effects of this decision will be that for Member States that delay the transposition period the existing safety regulatory regime will continue to apply until the new date. For Member States that have already transposed on 16 June 2019 and for those who decides to transpose by 16 June 2020, the new safety regulatory regime will apply. Member States that transposed Directive (EU) 2016/798 on 16 June 2020 will apply the new regime from that date but will also have the option at the request of the applicant to manage assessments under the previous regime, however, any such applications must be completed by 30 October 2020. These changes will create some issues for applicants as Member States will have different safety regulatory regimes in place.

These changes designed to ease the situation for applicants and safety authorities in the light of the COVID-19 epidemic create a number of different scenarios that applicants need to consider when making applications to either the European Union Agency for Railways (the Agency) or the National Safety Authorities (NSAs).

2. Clarification

A number of possible alternative scenarios for applicants exist. It is important that applicants understand which one relates to them to ensure a smooth application and assessment for a safety certificate. The different scenarios are as follows:

1. Where applicants want to apply for a safety certificate covering solely operations in a Member State which delays transposition until 31 October 2020, the existing regime with Part A and Part B safety certificates will continue to apply until the day before the new transposition date. If a Member State cannot complete the assessment of such an application before this date then the applicant will have to update its application file to meet the requirements of the 4th Railway Package (if not done already) and to submit an application for a single safety certificate in the one-stop shop from 31 October 2020.
2. Where applicants wish to operate solely in a Member State which transposed Directive (EU) 2016/798 on 16 June 2019, the new safety regulatory framework applies and they will have to apply for a single safety certificate in the one-stop shop. However, if the applicant is intending to operate in a Member State for which Directive (EU) 2016/798 applies from 16 June 2020 and has submitted its application for a Part A/Part B safety certificate before that date, it may request that the NSA of that Member State continues to carry out the assessment of its application for a Part A/Part B safety certificate in accordance with Directive 2004/49/EC. In such a case, the NSA shall accept this request provided that the assessment can be completed before 30 October 2020. If a Member State cannot complete the assessment of such an application before this date then the applicant will have to update its application file to meet the requirements of the 4th Railway Package (if not done already) and to submit an application for a single safety certificate in the one-stop shop from 31 October 2020.
3. If an applicant wishing to operate solely in a Member State which transposes Directive (EU) 2016/798 on 16 June 2020 wishes to apply to the Agency for a single safety certificate then it should apply via the one-stop shop from 16 June 2020. The Agency will liaise with the relevant NSA for their input on compliance with national rules and to receive their reports on any relevant supervision which has been carried out by the NSA.

4. Where an applicant wishes to operate within Member State(s) which have already transposed Directive (EU) 2016/798 on 16 June 2019 and within Member State(s) which have delayed transposition then it should submit an application to the Agency via the one-stop shop for the operation(s) in the Member State(s) which have transposed Directive (EU) 2016/798 and an application for Part A/Part B safety certificates as appropriate in the Member State(s) which have delayed the transposition of Directive (EU) 2016/798. If successful in their application they will receive a single safety certificate covering the area of operation within Member State(s) which have transposed, and Part A/Part B safety certificates as appropriate in the Member State(s) which have not. The Agency will liaise through the one-stop shop with the relevant NSA(s) for their input on compliance with national rules and to receive their reports on any relevant supervision which has been carried out by the NSA(s). However, if the applicant is intending to operate in a Member State for which Directive (EU) 2016/798 applies from 16 June 2020 and has submitted its application for a Part A/Part B safety certificate before that date, it may request that the NSA of that Member State continues to carry out the assessment of its application for a Part A/Part B safety certificate in accordance with Directive 2004/49/EC. In such a case, the NSA shall accept this request provided that the assessment can be completed before 30 October 2020. If a Member State cannot complete the assessment of such an application before this date then the applicant will have to update its application file to meet the requirements of the 4th Railway Package (if not done already) and to submit an application to the Agency via the one-stop shop from 31 October 2020.
5. Where an applicant intends to operate in more than one Member State which have delayed transposition, then the applicants should continue to apply for Part A/Part B safety certificates in the Member States involved until 30 October 2020.

Notwithstanding the above different scenarios, applicants are advised to align their safety management systems with the requirements set out in the Common Safety Methods on Safety Management System Requirements (Delegated Regulation (EU) 2018/762) even where they are likely to be granted a safety certificate under the previous safety regime. This is because Directive (EU) 2016/798 will be the regulatory regime going forwards and applicants will need to take steps to align with this over the next few years.

Where applicants make an application that reflects the requirements set out in Delegated Regulation (EU) 2018/762, the NSA of the Member State that decides to extend the transposition period to 31 October 2020 should treat that application for a safety certificate for the purposes of Directive 2004/49/EC and assess it using the criteria set out in Regulation (EU) 1158/2010. To facilitate their assessment, the NSA can use the correlation table provided for in Annex to the [ERA guide on the safety management system requirements](#).

Further clarification on managing applications for single safety certificates during the COVID 19 pandemic can be found in [the clarification note Temporary measures adopted by the European Union Agency for delivering single safety certificates in the framework of the restrictions related to the COVID-19 pandemic](#), and in [the package of measures adopted by the European Commission to support rail related businesses in the light of the COVID 19 pandemic](#).

Given the different possible scenarios involved, potential applicants for safety certificates between 16 June 2020 and 31 October 2020 are advised to contact in the first instance the relevant NSA(s) to find out when they intend to transpose the Directive and secondly the Agency as appropriate.

Applicants should note that all applications for a first single safety certificate even where an applicant has previously held a safety certificate should be entered into the one-stop shop as a new application.

3. Legal background

a) Directive (EU) 2016/768 as amended by Directive (EU) 2020/700

- [Article 31](#). Transitional provisions

[...]

3. At the latest from 16 June 2019 the Agency shall carry out the certification tasks pursuant to Article 10 in respect of areas of operation in the Member States that have not notified the Agency or the Commission in accordance with Article 33(2). By way of derogation from Article 10, national safety authorities of the Member States which have notified the Agency and the Commission pursuant to Article 33(2) may continue to issue certificates in accordance with Directive 2004/49/EC until 16 June 2020. By way of derogation from Article 10, national safety authorities of the Member States which have notified the Agency and the Commission pursuant to Article 33(2a) may continue to issue certificates in accordance with Directive 2004/49/EC until 31 October 2020.”

- Article 33. Transposition

[...]

2. Member States may extend the transposition period referred to in paragraph 1 by 1 year. For that purpose, by 16 December 2018, Member States which do not bring into force the laws, regulations and administrative provisions within the transposition period referred to in paragraph 1 shall notify the Agency and the Commission thereof and present the reasons for such an extension.

2a. Member States that have extended the transposition period in accordance with paragraph 2 may further extend it until 31 October 2020. Their transposition measures shall apply from that date. Those Member States shall notify the Agency and the Commission thereof by 29 May 2020.

[...]”

b) Regulation (EU) 2018/763 as amended by Regulation (EU) 2020/777

- Article 15. Transitional provisions

[...]

4a. Notwithstanding paragraphs 1 to 4, in those Member States that have notified the Agency and the Commission in accordance with 33(2) of Directive (EU) 2016/798 and where Directive (EU) 2016/798 shall apply from 16 June 2020, the NSA shall, at the request of the applicant, continue to carry out the assessment of the applications for a safety certificate in accordance with Directive 2004/49/EC, beyond 16 June 2020, provided that it shall issue the safety certificate before 30 October 2020.

Where a NSA recognises that it will not be able to issue a safety certificate before 30 October 2020, it shall inform the applicant and the Agency immediately and paragraphs 2 to 4 shall apply.

[...]

6a. Where the area of intended operation is not limited to one Member State, a single safety certificate issued by the Agency between 16 June 2020 and 31 October 2020 shall exclude the network or networks in any of the Member States that have notified the Agency and the Commission in accordance with Article 33(2a) of Directive (EU) 2016/798. The national safety authorities of the Member States that have made such a notification shall:

(a) treat a single safety certificate issued by the Agency as equivalent to the part of the safety certificate issued in accordance with point (a) of Article 10(2) of Directive 2004/49/EC;

(b) issue, from 16 June 2020, safety certificates in accordance with point (b) of Article 10(2) of Directive 2004/49/EC with a validity period not extending beyond that of the single safety certificate.

[...]

8. Between 16 June 2020 and 31 October 2020, in Member States that have notified the Agency and the Commission in accordance with Article 33(2a) of Directive (EU) 2016/798, applicants for a safety certificate for the purposes of Directive 2004/49/EC may submit to the national safety authorities a file prepared in accordance with Annex I.

Applications prepared in accordance with this Regulation shall be accepted by the national safety authorities referred to in the first subparagraph for safety certificates for the purposes of Directive 2004/49/EC.”

- c) [Regulation \(EU\) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation](#)