

Plan for

Rules cleaning-up - Overview

1. Purpose and Scope

1.1. Purpose

In the context of interoperability, for the management of the shared railway system that forms the single European Railway Area, rules in the form of TSIs are an essential tool for the safe and cost-effective management of the railway system. Rules in the form of national rules are also an essential tool for the management of shared national legacy systems (e.g. the CCS class B systems): the presence and enforcement of national rules preserves the benefits of national interoperability and prevents further national system diversity beyond the minimum needed during the transition to the target system.

Furthermore, the absence or non-transparency of appropriate rules leads to unnecessary uncertainty, costs and safety risks. However, a situation with too many, and sometimes contradictory or unjustified rules is not acceptable. In the process of making rules consistent and thereby reducing the number of rules, the fundamental principle to be followed is that European rules (TSIs) will prevail over national rules.

The “cleaning-up” of unnecessary national rules is a fundamental and urgent short-term action to remove technical regulatory barriers to open market, international operation and interoperability. For the stakeholder to get benefits from this programme, MSs have eventually to align their national legislation with consideration of European rules.

1.2. Scope

The rules cleaning-up programme deals with the following types of rules:

- National technical rules (NTR) notified under Article 17 of Directive 2008/56/EC.
- National safety rules (NSR) notified under Article 8 of Directive 2004/49/EC, in particular rules of type 4 and 6.
- Other rules imposed “de facto” e.g. by MS and constituting a potential technical, administrative or regulatory barrier for the Single European Railway Area.

The above mentioned rules also include rules for systems not intended to be covered by TSIs (e.g. some metric gauge subsystems), and rules describing legacy systems¹ (e.g. CCS class B).

The methodology and the concrete actions to clean-up national rules take into account:

- The effects of TSI scope extension (with effect on 1 January 2015);
- The findings of the National Safety Rules Task Force;
- The findings of the study on on-board staff;
- The Commission recommendation on matters related to the placing in service and use of structural subsystems and vehicles under Directives 2008/57/EC and 2004/49/EC;

¹ Legacy system is a system that cannot be upgraded to become TSI compliant, therefore supposed to be scraped and replaced by another system compliant to TSIs.

- The urgent need of simplification under the 4th Railway Package;
- The need to clarify how the requirements in respect of national rules within the interoperability and safety directives fit together in order to avoid duplications, contradictions, overlaps and gaps.

2. Objectives

2.1. Background and state of play

There are two categories of national rules: National Technical Rules and National Safety Rules. National technical rules (including those covering operations and maintenance) are replaced by TSIs. National safety rules (including those covering operations and staff competencies) are replaced by TSIs, CSMs, CSTs and safety management systems.

Notification of national rules is a long-standing obligation dating back to the first interoperability directive of 1996. Member States have, in the past, fulfilled this obligation with varying degrees of rigour and with different approaches. The Agency report presented to RISC in 2008/2009 illustrated the issues arising from a diversity of approaches and the lack of a structure for notification. This led to the Commission setting up of the NOTIF-IT database to ensure a harmonised approach to notification of both safety and technical national rules. A task force on national safety rules was also set up and issued its final report² in 2012.

As required by Article 27 of Directive 2008/57/EC, in order to make the rules for additional authorisation of non-TSI conform vehicles transparent, ERA developed a harmonised set of parameters to be checked for vehicle authorisation³. In addition, to facilitate the classification of equivalence of National rules for each of these parameters, ERA, in 2011, set up the Reference Document Database (RDD). To avoid that MS have to notify their national technical rules twice (in RDD and in NOTIF-IT), an automatic mechanism has been designed to push RDD notifications into NOTIF-IT.

In parallel, according to the interoperability directive, TSIs were drafted with the objective of covering the interfaces between subsystems (particularly between vehicles and fixed installations, including specific cases) and of defining an optimum level of technical harmonization. From 1 January 2015, these TSIs are applicable to the whole EU railway system (before, their scope was limited to the TEN).

At the time of writing all national technical rules for vehicle authorisation in case TSIs are not applicable (e.g. for off-TEN before scope extension or for systems not covered by TSIs) are published in National Reference Documents hosted by the Agency. Most are in the RDD so that they can continuously be updated by the MS. A small number remain as PDF documents whilst the MS checks and signs off the RDD entry.

Throughout this evolution, ERA supported MS in the comparison of equivalence of national rules with their neighbouring states in form of Geographic Interest Groups and developed guidance such as the report in 2011 on the relationship of these parameters with fixed installations and infrastructure (technical compatibility); however, this relationship needs to be reviewed considering the TSIs with extended scope and their specific cases.

On the basis of RDD entries for national rules in case TSIs are not applicable (total number of 14000), ERA estimates that the number of national rules for new vehicles made redundant by TSIs scope extension is over 9000, considering only rules not linked to interfaces with fixed installations; it is expected a much higher

² Final Report of the Task Force on National Safety Rules version 1.0 dated 13/12/2012.
(<http://www.era.europa.eu/Document-Register/Pages/Report-NSR-TF.aspx>)

³ Commission implementing decision (EU) 2015/2299 of 17 November 2015 amending decision 2009/965/EC as regards an updated list of parameters to be used for classifying national rules.

reduction after analysis with the MS identifying the remaining national rules in the RDD without any overlap with TSIs (also for interfaces with fixed installations).

In respect of national safety rules, Member States submitted to EC and ERA through NOTIF-IT around 1400 National Safety rules for the seven different rule types defined by Annex 2 of the Safety Directive 2004/49/EC. The taskforce on National Safety Rules analysed the relationship of these rules to the CSMs and TSIs published by EC. The conclusion of this taskforce showed that most of the types (and therefore the rules) specified in Annex 2 of Directive 2004/49/EC are now covered by European rules in the form of Common Safety Methods and TSIs. The only type of safety rules remaining /not covered are operational rules (type 4) and rules on competencies (type 6). These rules, together with other technical rules concerning operation, are now screened.

By further developing Appendix B of OPE TSI, which will be the basis for an harmonized “EU rule book” for railway operation, type 4 NSR should become redundant as far as possible and be withdrawn by the Member States; about 500 rules of this type have been submitted by MSs. In the meantime, national rules for railway operation can only exist and be notified to cover open points and omissions of the OPE TSI or legacy systems.

Regarding type 6 NSR, about 200 rules of this type have been submitted by MSs; a screening, clustering and evaluation of these rules will be necessary to determine the appropriate way forward: provisions related to aspects covered by the SMS/CSM or the Train Driver Directive, provisions related to aspects that should be managed by adequate risk assessment at RU level and provisions related to aspects for which a harmonisation would be necessary. Indeed the study on on-board staff has already revealed that several national rules may be incompatible with EU legislation.

Once the OPE TSI working party has finished its analysis of the operational parameters for which common rules are required, and common requirements for staff competencies have been comprehensively reviewed, there should be no need for national safety rules, excepted when explicitly identified in the relevant EU legislation. All safety requirements will be covered at EU level by safety management systems, maintenance requirements, CSMs or TSIs or by national technical and operational rules for legacy systems.

2.2. Objective 1: cleaning up of national technical rules notified and classified under Articles 17 and 27 of Directive 2008/57/EC

The cleaning up of these national rules will be carried out on the basis of a structured plan drafted by each Member State regarding their rules, both for vehicles and for fixed installations. This will include the following steps:

Vehicles

Stage 1: MS to make rules transparent by publishing them in the national reference document (a first cleaning up being performed before publication in the NRD).

Stage 2: MS to remove the redundant rules replaced by TSIs for new vehicle authorisation, and define remaining rules in addition to the TSIs.

Stage 3: The Agency to support MS in the cleaning up of the remaining rules, by ensuring:

- Allocation to an open point, specific case, legacy system or rule duly justified for compatibility with existing fixed installation (i.e. a specific case not declared up to now).
- Consistency / no redundancy with the global EU framework, including register of infrastructure (RINF) and responsibilities of actors as defined in the Safety Directive and TSI OPE.
- That the rule is transparent and not discriminatory.

Stage 4 – Assessment by the Agency together with the MS of the relevance of remaining rules, using RDD as support.

Stage 5 – MS to notify to EC in NOTIF-IT (simplified procedure using transfer from RDD to NOTIF-IT) the acceptable remaining rules.

Stage 6 - EC to accept notification if agreement following ERA positive advice.

Fixed installations

Stage 1: MS to remove the redundant rules replaced by TSIs

Stage 2: The Agency to support MS in the cleaning up the remaining rules, by “repackaging” ensuring:

- Allocation to an open point, specific case or legacy system.
- Identification of other national rules that may export constraints to vehicles and therefore need to be harmonized at EU level (objective of interoperability).
- That the rule is transparent and not discriminatory.
- Consistency with the description of Infrastructure, as defined in the register of infrastructure (RINF).
- Identification of other national rules, outside the railway system, nevertheless still applicable to the railway installation (EMC, environmental and fire protection, building law etc.) – these rules are outside the scope of the Interoperability Directive, therefore do not need to be notified unless otherwise required by other European legislation.

Stage 3 – Assessment by the Agency of the relevance of remaining rules.

Stage 4 – MS to notify to EC in NOTIF-IT (ERA will prepare bulk upload into NOTIFIT for MS Infrastructure Rules) the acceptable remaining rules.

Stage 5 – EC to accept notification if agreement following ERA positive advice.

Note: MS have to ensure that the national legislation and the latest notified rules are consistent.

Outputs:

- Remaining applicable national rules in addition to TSIs available in the relevant database (RDD or NOTIF-IT).
- Report on the completeness of the register of infrastructure (RINF).

2.3. Objective 2 : cleaning-up of national safety rules - development of Appendix B of OPE TSI taking into account safety rules notified under Article 8 of Directive 2004/49/EC.

Stage 1: MS to withdraw in NOTIF-IT redundant safety rules according to the conclusions of the taskforce on National Safety Rules: type 1 (national safety rules for safety targets and methods), type 2 (national rules for safety certification) and type 7 (national safety rules on accident investigation).

Stage 2: The Agency to undertake a series of bilateral meetings with MSs to discuss type 4 and 5 rules to see what can be withdrawn and what should be considered for harmonisation.

Stage 3: MS to communicate their National Implementation Plans, as required by the TSI OPE (parallel to stage 4).

Stage 4: The Agency and Working Party to review all type 4 and 5 national safety rules in relation to the development of operational harmonisation (where appropriate) under the TSI OPE, and to agree on the scope of remaining national rules.

Stage 5- EC to adopt the revision of the TSI OPE.

Stage 6 – MS to notify to EC in NOTIF-IT the acceptable remaining rules.

Stage 7 – EC to accept notification in the case of ERA positive advice.

Note: MS have to ensure that the national legislation and the latest notified rules are consistent.

Outputs:

- Revision of TSI OPE.
- Remaining applicable national rules in addition to OPE TSI available in the relevant database.

2.4. Objective 3: cleaning up of type 6 national safety rules (staff competence rules) notified under Article 8 of Directive 2004/49/EC

Stage 1: The Agency to review with the support of the sector and MSs the type 6 rules and cluster the requirements.

Stage 2: The Agency to develop a draft policy which will be discussed with the Commission. In particular analysing the question as to the extent to which further EU harmonisation is needed on the issue of competence and fitness of safety critical staff.

Stage 3: The Agency to develop the corresponding project with the sector and NSAs.

Stage 4: EC to adopt the corresponding policy.

Outputs:

- Draft policy to be taken over by the Commission.
- For rules to be harmonised: proposal for relevant documents (in accordance with the agreed legal form).

2.5. Objective 4: Transition from the Reference Rule Database (RDD) and NOTIF-IT to the Single Rules Database (SRD)

ERA will continue to use RDD during the process of cleaning up rules for vehicles authorisation and beyond until the transition to the single rules database.

For safety rules and rules related to fixed installations, NOTIF-IT will be used, together with a tool based on the already available bulk upload tool. This will encourage MSs to submit “cleaned” rules to NOTIF-IT.

Once all the rules are fully cleaned up (target end 2016 for rules for vehicle authorisation) ERA will proceed with the development of the single rules database and migration from RDD and NOTIF-IT as envisaged by the 4th Railway Package.

Outputs:

- Description of the scope of SRD (e.g. different types of rules).
- Design (e.g. detailed structure, access for users) and implementation of the SRD (including migration from RDD and NOTIF-IT)

2.6. Supporting tools related to the objectives

Tool 1: *setting up a service to notify the Agency of “dubious” or problematic rules and get guidance for cleaning up of national rules.*

A dedicated system is now in place on ERA website for anybody to question a rule or report a hidden rule. Link to ERA website: <http://www.era.europa.eu/Core-Activities/Pages/Request-on-National-Rules.aspx>

ERA will follow up each rule with NSA and MS, in order to meet objectives 1 and 2 defined above in points 3.2.2 and 3.2.3.

In case no common view is reached between a MS and ERA on a rule then ERA will forward the issue to the EC to follow up more formally with the MS;

Outputs:

Report to the Commission on rules dealt with by the system, and list of rules for which no common view was reached.

Tool 2: *identification by Representative Organisations of top 10 barriers for a European Single Railway Area.*

ERA has required to the Representative Bodies to identify from an economical point of view the Top 10 barriers in terms of national rules.

This action has been on the agenda of each Network of RBs meeting since the 4th quarter of 2015.

First inputs were provided, which require an analysis by ERA to allocate them as:

- Real economical barriers (e.g. national class B CCS systems),
- Dubious or problematic rules

In the first case, an economical analysis (including financial data) should be carried out with the help of the stakeholders.

In the later case, the rules should be subject of a record in the tool 1 described above.

Outputs:

Report on Top 10 barriers validated with the sector (Representative Bodies).

Tool 3: Indicators

For each type of national rule: evolution of the number of rules (raw number of rules + number of technical requirements) ; % of reduction.

For fixed installations (in addition): monitoring of the EU railway network coverage by the register of infrastructure (RINF) ensuring the transparency of the characteristics of railway lines.

For operational rules: monitoring of the availability of national implementation plans as required by TSI OPE.

3. Customer

The customers of this programme are:

- Member States: they will get guidance and advice from ERA for the cleaning-up of their national rules;
- Stakeholders: they will be able to consult the cleaned-up rules in a transparent and open database;
- The Agency and the NSAs: while issuing vehicle authorisations and safety certificates, ERA and NSAs will be able to refer to a set of transparent and cleaned-up national rules remaining in addition to TSIs;
- The European Commission services: this exercise is in line with the new Better Regulation principles of the Commission and with the EU objective of establishing a Single European Rail Area.

4. Deliverables

The following table provides the main deliverables and their expected delivery date. More details are provided in the detailed planning of each single project belonging to this programme.

Table 1 : Programme deliverables

<i>Item/Project</i>	<i>Milestone/Deliverable</i>	<i>Description</i>	<i>Time plan</i>
Objective 1: cleaning up of national technical rules			
Project 1.1 National technical rules in addition to TSIs for vehicle (RST part) authorisation	Kick-off meeting with MSs	Meetings with MS to trigger national programmes for cleaning up, involving stakeholders where required	March 2016
	Remaining rules in RDD	Analysis and validation of rules by MS and ERA	December 2016
Project 1.2 National technical rules applicable to ERTMS and GSM-R in addition to TSIs (on-board)		Analysis and validation of rules by MS and ERA	December 2016
	Remaining rules in database	Up-load in RDD or NOTIF-IT	2016 – 2017
Project 1.3 National rules applicable to fixed installations	Remaining rules in database	Analysis and validation of rules by MS and ERA	2018
	RINF	% network described / MS	2016 - 2019

Table 2 : Programme deliverables

Item/Project	Milestone/Deliverable	Description	Time plan
Objective 2 : cleaning-up of types 4 and 5 national safety rules			
Project 2.1 Revision of OPE TSI	Development of Appendix B	Analysis of types 4 and 5 national rules, prioritisation and possible harmonisation	July 2017
	National implementation plans from MSs	According to requirement in current TSI OPE	July 2017
Project 2.2 Remaining national rules	Removal of redundant national safety rules after eif of revised OPE TSI	De-notification or re-notification of national rules in the SRD	December 2018
Objective 3 : cleaning up of type 6 national safety rules			
Project 3.1	Analysis of rules	Common work with NSAs and sector	September 2016
Project 3.2 Revise relevant legislation	Agency report	Development with NSAs and sector	2017
	Adoption by Commission	Depends on results of previous action	
Objective 4 : Transition from the Reference Rule Database (RDD) and NOTIF-IT to the SRD			
Project 4.1: transition from RDD to SRD			
From RDD to SRD	Scope of SRD; SRD Database; SRD UI tools; SRD batch upload tools; Implemented migration.	Analysis documents; Specifications; Design documents; Testing plan and implementation; Migration plans from RRD to SRD, and from NOTIF-IT to SRD;	By 2019
From Notif-IT to SRD			