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Clarification on
Authorisation of freight wagons
with an area of use not limited to particular national networks
in conformity with section 7.1.2. of the TSI WAG 321/2013
between the 16th of June 2019 and the 16th of June 2020.

1. Issue

- a. The section 7.1.2. of the TSI WAG 321/2013 makes mandatory that the first authorisation of freight wagons in conformity with 7.1.2. specifications is mutually recognised by all MS. By that way any “additional authorisation” (according to 2008/57) is superfluous and legally forbidden.
- b. The concerned wagons represent around 90% of the EU freight wagons.
- c. A European common position must be found for the implementation of the 4th Railway package between 16 June 2019 and 16 June 2020 when two legal frameworks will apply.

2. Key principles

Those principles must be respected

- a. Continuity: No step back in interoperability of the railway system:
When entering into application on 16 June 2019 after at least one MS has transposed, the 4th railway package cannot have any step back impact on interoperability of the railway system meaning that this should not hinder the application of the section 7.1.2. of TSI WAG 321/2013.
- b. As from 16 of June 2019, ERA is entitled to deliver vehicle authorisation.
- c. According to the IOD 2016/797, as soon as the applicant applies for an (single) authorisation for an intended area of use covering more than one MS, this authorisation must be delivered by ERA.
- d. If an applicant requests an authorisation for wagons under section 7.1.2. of TSI WAG 321/2013, the area of use covers de facto all MS.
- e. According to regulation 2018/545, all MS have to accept a vehicle authorisation issued by the Agency as equivalent to the first authorisation.

3. LTT

Three cases were identified related to different possibilities of application for authorising freight wagons in conformity with the section 7.1.2. of the TSI WAG 321/2013 (‘GE wagons’) for the period 16 June 2019-16 June 2020:

- Case 1: Application addressed to ERA.
- Case 2: Application addressed to a NSA of a MS transposing IOD 2016/797 by 16 June 2019.
- Case 3: Application addressed to a NSA of a MS transposing IOD 2016/797 by 16 June 2020.

- a. *Case 1: Application addressed between June 2019 and June 2020 to ERA for wagons in conformity with section 7.1.2. of TSI WAG 321/2013*

Proposed LTT:

The VA delivered by ERA is valid for MS that transpose in June 2019 and for MS that transpose in June 2020 to prevent any step-back in interoperability.

Reasoning:

- 1) *After 16 June 2019, ERA is authorising entity.*
- 2) *After 16 June 2019, VAs issued by ERA shall apply to the area of use in MS transposing IOD by such date but "shall exclude the network or networks in any of the Member States" transposing IOD by June 2020 (art 55(5) of Regulation 2018/545).*

But the latter "(the MS that transpose IOD by June 2020) shall ... (b) accept a vehicle authorisation issued by the Agency as equivalent to the first authorisation issued in accordance with Article 22 or 24 of Directive 2008/57/EC and issue an additional authorisation in accordance with Article 23 or 25 of Directive 2008/57/EC".

Therefore VA for freight wagons in conformity with 7.1.2 TSI WAG 321/2013 delivered by ERA has to be accepted as equivalent to a first authorisation (as per 2008/57 for those MS transposing in 2020).

The application of section 7.1.2. of TSI WAG 321/2013 imposes that the first authorisation is mutually recognised by ALL MS. It means that no additional authorisation is required, this authorisation delivered by ERA covers then an area of use equivalent to ALL MS.

This is confirmed by the provisions of the art 55(7) of Regulation 2018/545.

- b. *Case 2: Application addressed between June 2019 and June 2020 to an NSA of a MS that transpose in June 2019 for wagons in conformity with section 7.1.2. of TSI WAG 321/2013.*

Proposed LTT:

This NSA cannot deliver any authorisation related to such application and must transfer the application to ERA.

Reasoning:

As a freight wagon in conformity with the section 7.1.2. of the TSI WAG 321/2013 has an intended area of use covering all MS, the 4th railway package impose that a VA is delivered only by ERA.

- c. *Case 3: Application addressed between June 2019 and June 2020 to a NSA of a MS that transposes in June 2020 for wagons in conformity with section 7.1.2. of TSI WAG 321/2013.*

Proposed LTT:

The NSA will transfer the file to ERA. ERA will issue a VA valid for all MS (If MS issues a VA, this VA is not necessarily recognised in MS that transpose in June 2019)

Reasoning:

After 16 June 2019, the two IOD remain in force until June 2020 as IOD 2008/57/EC will be repealed only with effect from 16 June 2020 according to the art 58 IOD 2016/797.

Some legal uncertainties exist for this case:

The Directive 2008/57/EC would allow the applicant to submit its application for a wagon in conformity with section 7.1.2 of TSI WAG 321/2013 to a NSA of a MS transposing in 2020 but

at the same time this application covers, by definition, an intended area of use of more than one MS and should then be addressed to ERA

The Article 55(5) allows a NSA from a MS transposing in 2020 to consider a VA issued by ERA as equivalent to a first authorisation issued in accordance with Directive 2008/57. The same transitional provision considering a VA issued by a NSA of a MS transposing in 2019 as equivalent to consider as a first authorisation issued in accordance with Directive 2008/57/EC does not exist as transitional provision. Therefore there is no guarantee that MS transposing in 2019 will accept this authorisation. The actual Area of Use may thus be limited to the MS transposing in 2020, which is not the intended purpose.

Consequently, the only guarantee for the applicant that the actual Area of Use will indeed include all MS is to address its application for authorisation to ERA.

For mitigating those risks, it is recommended, in the spirit of the 4th RP, that application for a wagon in conformity with section 7.1.2 of TSI WAG 321/2013 are only addressed to ERA for authorising those wagons.

Conclusion of the three cases:

Between 16 June 2019 and 16 June 2020, one regime should apply.

In the spirit of the 4th RP, the area of use for an authorisation for freight wagon in conformity with the section 7.1.2. of the TSI WAG 321/2013 being, by definition, more than one MS and in order to mitigate the risks described in the case 3, the Agency advises the applicants to submit, from the 16th of June 2019, the application files for these wagons to the Agency.

Such VA is valid for all MS.