Commission Implementing Regulation (EU) 2020/424 of 19 March 2020 on submitting information to the Commission as regards non-application of technical specifications for interoperability in accordance with Directive (EU) 2016/797

COMMISSION IMPLEMENTING REGULATION (EU) 2020/424

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on submitting information to the Commission as regards non-application of technical specifications for interoperability in accordance with Directive (EU) 2016/797

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union[(1)], and in particular Article 7(5) thereof,

Whereas:

(1) Article 7(1) of the Directive (EU) 2016/797 provides that Member States may allow an applicant not to apply one or more technical specifications for interoperability ('TSIs') or part of them, in cases, which are listed exhaustively in points (a) to (e) of the Article.

(2) Member States' communication of their decision in cases referred to in point (a) of Article 7(1), or Member States' request for non-application in the cases referred to in points (c), (d) and (e), should contain information justifying the non-application and specifying the alternative provisions to be applied instead of the TSIs.

(3) The request should include the reference to the non-applied TSI provisions, describe the project concerned, its scope and timelines as well as provide any other relevant information to assist the Commission in assessing the compliance of the non-application with the requirements set out in Article 7(1).

(4) Once transitional measures provided by a TSI expire, Member States should permit applicants not to apply the TSI or parts of them pursuant to Article 7(1)(a) of the Directive only in duly justified case. In that event, the communication to the Commission should include all necessary information and justifications.

(5) In order to facilitate communication with the Commission, Member States should use a template when they submit their non-application decision for a project at an advanced stage of development pursuant to point (a) of Article 7(1). This template could also be used for the notification of a list of projects at an advanced stage of development pursuant to Article 7(2) of the Directive.

(6) The request for non-application of one or more TSIs or parts of them should be sent to the Commission by electronic means in order to ensure a paperless administration. The date by which Member States are delivering a request or supplement information

to the Commission's mailbox should be the submission date for the purpose of Article 7(7) of the Directive.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Rail Interoperability and Safety Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation establishes the information to be included in, and the format and the method to be used for the transmission of a request for non-application of one or more technical specifications for interoperability ('TSIs') or parts of them within the meaning of Article 7(4) of Directive (EU) 2016/797 (hereafter 'request for non-application'), in accordance to which Member States shall either, communicate to the Commission a decision of non-application under point (a), or submit to the Commission a request for non-application under points (c), (d) or (e) of Article 7(1) of the Directive.

Article 2

Information contained in the request for non-application

1 A request for non-application shall contain the following information:

a a reference to the case referred to in Article 7(1) of Directive (EU) 2016/797 under which the non-application is considered to be justified;

b the reference to the title(s) of the TSI or TSIs covered by the request for non-application and to the provision(s) not applied. Each reference shall include, where relevant for assessing compliance, the time period or an estimate thereof, during which the non-application will continue;

c the essential details of the project concerned, consisting of the technical, operational and geographical elements of the project, including a detailed description of the subsystem, vehicle or infrastructure requested to benefit from the non-application, and relevant key dates, or any other details distinguishing it from other projects;

d a reference to and details of the alternative provisions that the Member State intends to apply to compensate each non-application in the light of relevant essential requirements, including the measures to be taken to monitor their implementation and, where operational alternatives were agreed, their continuous application;

e where more than one Member State is concerned, information on coordination taking place in accordance with the final sentence in Article 7(4) of Directive (EU) 2016/797 and/or Article 17(2) of Commission Implementing Regulation (EU) 2018/545[(2)], when requests for non-application are linked to vehicle authorisations; the same information shall be provided for cross border infrastructure projects;

f an economic or technical analysis or both, ensuring that the non-application is justified and limited to the extent necessary under the particular circumstances.

2 The request for non-application shall also provide the following specific information:

a for requests made pursuant to point (a) of Article 7(1) of Directive (EU) 2016/797, the justification shall include:

(i) the details of the project concerned, using the template established in the Annex. If the project is already on a list of advanced stage of development drawn up according to the same template, Member States may refer to it without having to re-submit the information already provided. The information shall be updated where relevant;

(ii) evidence that the project is at an advanced stage of development or subject to a contract in course of performance, with documentation providing the evidence for relevant dates and scope of the project;

(iii) evidence that the planning or construction stage of a project at an advanced stage of development has reached a point where a change in the technical specifications may compromise the viability of the project as planned, in accordance with the definition of 'project at advanced stage of development' in Article 2(23) of Directive (EU) 2016/797;

b for requests made pursuant to point (c) of Article 7(1) of Directive (EU) 2016/797, the justification shall include, depending on the nature of the non-application requested:

(i) evidence that the application of one or more TSIs or part of them compromises the economic viability of the project. This evidence shall include a thorough economic analysis establishing unavoidable costs of compliance with the TSI, and providing evidence that such cost would render the project unviable. The analysis shall take into account exploitation revenue if the non-application allows earlier deployment and the longer term economic viability of the project within the national and European rail system; and/or

(ii) evidence of the technical details justifying the negative impact of the application of one or more TSIs or part of them, on the project's technical compatibility with the national rail system;

c for requests made pursuant to point (d) of Article 7(1) of Directive (EU) 2016/797, the justification shall include a list of the Member States and third countries concerned and the railway lines where the vehicles covered by the request are circulating;

d for requests made pursuant to point (e) Article 7(1), the justification shall identify the network or network area(s) relevant for the request and justify its separation from the rail network of the rest of the Union, and/or its isolation.

Article 3

Format and method of transmission

1 The request for non-application shall be limited to 10 pages maximum. Supplementing information may be added through annexes to the request.

2 A communication or request for non-application and any subsequent information to complete the file shall be submitted by electronic means only, to the dedicated mail address of the Commission:

MOVE-RAIL-DEROGATIONS@ec.europa.eu

3 The date for the purpose of Article 7(7) of Directive (EU) 2016/797 is the date when the request or subsequent information to complete the file was submitted by mail according to paragraph 2.