Commission Implementing Regulation (EU) 2020/387 of 9 March 2020 amending Regulations (EU) No 321/2013, (EU) No 1302/2014 and (EU) 2016/919 as regards the extension of the area of use and transition phases (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/387

of 9 March 2020

amending Regulations (EU) No 321/2013, (EU) No 1302/2014 and (EU) 2016/919 as regards the extension of the area of use and transition phases

(Text with EEA relevance)

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 5(11) thereof,

Whereas:

(1) Pursuant to Article 54(2) and (3) of Directive (EU) 2016/797, vehicles authorised for placing in service prior to 15 June 2016 are to receive a new authorization for placing on the market in accordance with Article 21 of that Directive before they can be operated on one or more networks which are not already covered by their initial authorisation. Such vehicles are thus required either to conform to the technical specifications for interoperability (TSIs) in force or be entitled not to apply those TSIs pursuant to Article 7(1) of that Directive. At the same time, one of the objectives of Directive (EU) 2016/797 is the streamlining and harmonisation of authorisation procedures at Union level to facilitate the free movement of vehicles. To this end, clause 7.6.1 of the Annex to Commission Regulation (EU) No 321/2013[(2)] and clause 7.5.2.3 of the Annex to Commission Regulation (EU) No 1302/2014[(3)] call for the development of flexibility provisions with regards to compliance with the TSI requirements. Those provisions are to set out which level of flexibility could be granted in case of extension of the area of use of vehicles placed in service before 15 June 2016, while fulfilling the essential requirements, maintaining the appropriate safety level, and where reasonably practicable, improving it. Those Regulations should therefore be amended accordingly. The provision related to ‘extension of area of use’ also covers the case of vehicles needing modifications to ensure technical compatibility with the new network(s); in such case, the unchanged parts of the vehicle remain validated under the previous authorisation. Restrictions and limitations of previous authorisation continue to apply. For the same reasons, such clarification should also be provided for Commission Regulation (EU) 2016/919[(4)].

(2) There are divergent approaches amongst notified bodies and authorising entities in the rail sector with regards to the application of the different transitional provisions

set out in clauses 7.1.1.2 to 7.1.1.8 and clause 7.1.3.1 of the Annex to Regulation (EU) No 1302/2014. Similarly, there are divergent approaches in the rail sector with regards to the validity period of EC type or design examination certificates in case of changes to an existing rolling stock type, as set out in clause 7.2.2.2 of the Annex to Regulation (EU) No 321/2013 and clause 7.1.2.2 of the Annex to Regulation (EU) No 1302/2014. In addition to this, further harmonisation reducing the divergences from the target system are essential to reduce the cost of railways and ensure their interoperability and competitiveness. The provisions listed above should thus be amended to avoid divergent application of those transition provisions and validity periods of certificates, while future transition periods should focus on specific requirements with high impact on ongoing projects instead of providing generic exemptions, in a way that will lead to timely reduction of the divergences from the target system while providing the predictability and legal certainty necessary to the sector. This should be achieved in the framework of the Digital rail and Green freight TSI revision package (2022 revision) for which the Commission sent a request to the European Union Agency for Railways on 24 January 2020.

(3) Furthermore, Member States and the sector have identified some technical and editorial errors in some of these regulations, and the Slovak Republic has identified that the general specific case set out in section 7.3.2.1 of the Annex to Commission Regulations (EU) No 321/2013 (WAG TSI) should also apply to its 1 520 mm track gauge network. These errors should be corrected.

(4) Under Decision (EU) 2017/1474, TSIs should indicate whether it is necessary to re-notify the conformity assessment bodies that were notified on the basis of a previous version of the TSI and whether a simplified notification process should be applied. This Regulation brings about limited changes and it should not be necessary to re-notify bodies notified on the basis of a previous version of the TSIs.

(5) This Regulation amends TSIs so as to further achieve interoperability within the Union rail system, improve and develop international rail transport, contribute to the progressive creation of the internal market and complement TSIs in view of covering essential requirements. It enables to achieve the objectives and to meet the essential requirements of Directive 2008/57/EC of the European Parliament and of the Council[(5)] and Directive (EU) 2016/797. Therefore this Regulation should be directly applicable in all Member States including Member States which have notified the Agency and the Commission under Article 57(2) of Directive (EU) 2016/797 that they have extended the transposition period and thus continue to apply Directive 2008/57/EC until 15 June 2020 at the latest. Notified Bodies exercising under Directive 2008/57/EC in the Member States that have extended the transposition period should be able to issue ‘EC’ certificate in accordance with this Regulation as long as Directive 2008/57/EC applies in the Member State where they are established.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 51(1) of Directive (EU) 2016/797,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to WAG TSI

Regulation (EU) No 321/2013 is amended as follows:

(1) in Article 3, point (d) is added as follows:

(d) when the area of use is extended in accordance with art. 54(3) of Directive (EU) 2016/797, provisions in Section 7.2.2.4 of the Annex to this Regulation shall apply;

(2) the Annex is amended in accordance with Annex I to this Regulation.

Article 2

Amendments to LOC&PAS TSI

Regulation (EU) No 1302/2014 is amended as follows:

(1) in Article 3, paragraph 2 is replaced as follows:

2. The TSI shall not apply to existing rolling stock of the rail system in the Union which is already placed in service on all or part of the network of any Member State on 1 January 2015, except when

a it is subject to renewal or upgrading in accordance with Section 7.1.2 of the Annex to this Regulation; or

b the area of use is extended in accordance with Article 54(3) of Directive (EU) 2016/797, in which case the provisions in Section 7.1.4 of the Annex to this Regulation shall apply.;

(2) in the second subparagraph of Article 11(1), the introductory phrase is replaced by the following:

They shall however continue to apply, without prejudice to clauses 7.1.1.4 to 7.1.1.8 of the Annex, to:;

(3) the Annex is amended in accordance with Annex II to this Regulation.

Article 3

Amendments to CCS TSI

Regulation (EU) 2016/919 is amended as follows:

(1) in Article 2, paragraph 2 is replaced as follows:

2. The TSI shall not apply to existing “trackside control-command and signalling” and “on-board control-command and signalling” subsystems of the rail system already placed in service on all or part of any Member State’s railway network on the day this Regulation enters into force, except when

a the subsystem is subject to renewal or upgrading in accordance with Section 7 of the Annex to this Regulation; or

b the area of use is extended in accordance with Article 54(3) of Directive (EU) 2016/797, in which case the provisions of Section 7.4.2.4 of the Annex to this Regulation shall apply.

(2) the Annex is amended in accordance with Annex III to this Regulation.

Article 4

Conformity assessment bodies

1 Notifications of conformity assessment bodies for the purposes of Regulations (EU) No 321/2013, (EU) No 1302/2014 and (EU) 2016/919 shall remain valid on the basis of those Regulations, as amended by the present Regulation.

2 Conformity assessment bodies notified in accordance with Directive 2008/57/EC may issue 'EC' certificate of verification and 'EC' certificate of conformity or suitability for use of interoperability constituents in accordance with this Regulation as long as Directive 2008/57/EC applies in the Member State where they are established in accordance with Article 57(2) of Directive (EU) 2016/797 and until 15 June 2020 at the latest.

Article 5

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 March 2020.

For the Commission

The President

Ursula VON DER LEYEN

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/387. (See end of Document for details)*

ANNEX I

The Annex to Regulation (EU) No 321/2013 is amended as follows:

(1) in clause 4.2.2.2, the title ‘Strength of unit’ is added;

(2) in clause 6.1.2.2, the following paragraph is added between the first and the second paragraphs:

Alternative demonstration of conformity is allowed in accordance with point 6.1.2.4a.;

(3) in clause 6.1.2.3, the following paragraph is added before point (b):

Alternative demonstration of conformity is allowed in accordance with point 6.1.2.4a.;

(4) in clause 6.1.2.4, the following paragraph is added at the end of the clause:

Alternative demonstration of conformity is allowed in accordance with point 6.1.2.4a.;

(5) the following clause 6.1.2.4a is added between clause 6.1.2.4 and clause 6.1.2.5:

Where the EN standards referred to in points 6.1.2.2, 6.1.2.3 and 6.1.2.4 do not cover the proposed technical solution, it is permitted to use other standards to demonstrate conformity of the mechanical behaviour of the wheelset assembly, the mechanical characteristics of the wheels and the mechanical resistance and fatigue characteristics of the axle respectively; in that case the notified body shall verify that the alternative standards form part of a technically consistent set of standards applicable to the design, construction and testing of the wheelsets, containing specific requirements for wheelset, wheels and axles covering:

— wheelset assembly,
— mechanical resistance,
— fatigue characteristics,
— permissible stress limits,
— thermomechanical characteristics.

Only standards that are publicly available can be referred to in the demonstration required above. The verification carried out by the notified body shall ensure the consistency between the methodology of the alternative standards, the assumptions taken by the applicant, the intended technical solution and the intended area of use.;

(6) in clause 7.2.2.2, the three paragraphs directly following Table 11a are replaced by the following:

In order to establish the EC type or design examination certificate, the notified body selected by the entity managing the change may refer to:

— the original EC type or design examination certificate for parts of the design that are unchanged or those that are changed but do not affect the conformity of the subsystem, as far as it is still valid (during 10 years phase B period),
— additional EC type or design examination certificate (amending the original certificate) for modified parts of the design that affect the conformity of the subsystem with the latest revision of this TSI in force at that time.