Commission Implementing Regulation (EU) 2019/776 of 16 May 2019 amending Commission Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1301/2014, (EU) No 1302/2014, (EU) No 1303/2014 and (EU) 2016/919 and Commission Implementing Decision 2011/665/EU as regards the alignment with Directive (EU) 2016/797 of the European Parliament and of the Council and the implementation of specific objectives set out in Commission Delegated Decision (EU) 2017/1474 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/776

of 16 May 2019

amending Commission Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1301/2014, (EU) No 1302/2014, (EU) No 1303/2014 and (EU) 2016/919 and Commission Implementing Decision 2011/665/EU as regards the alignment with Directive (EU) 2016/797 of the European Parliament and of the Council and the implementation of specific objectives set out in Commission Delegated Decision (EU) 2017/1474

(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 Articles 5(11) and 48(2) thereof,

Whereas:

(1) In accordance with Article 19 of Regulation (EU) 2016/796 of the European Parliament and of the Council[(2)] the European Union Agency for Railways (the 'Agency') is required to address recommendations to the Commission on the technical specifications for interoperability (TSIs) and their revision and to ensure that TSIs are adapted to technical progress, market trends and social requirements.

(2) TSIs should be amended in order to indicate provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal as well as to indicate the parameters of the vehicles and fixed subsystems to be checked by the railway undertaking to ensure compatibility between vehicles and the routes on which they are to be operated and the procedures to be applied to check those parameters after the vehicle authorisation for placing on the market and before the first use of the vehicle.

(3) Commission Delegated Decision (EU) 2017/1474[(3)] sets out specific objectives for the drafting, adoption and review of TSIs. On 22 September 2017, the Commission asked the Agency to prepare recommendations implementing a number of those objectives.

Changes to legislation: *Commission Implementing Regulation (EU) 2019/776 is up to date with all changes known to be in force on or before 14 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Under Decision (EU) 2017/1474, TSIs should be reviewed in order to take into account developments of the Union railway system relating to research and innovation activities, and update references to standards.

(5) Furthermore TSIs should be reviewed in order to close the remaining open points. In particular, open points as regards specifications on the design of track to be compatible with the use of eddy current brake and the minimum factor for traffic codes should be closed in Commission Regulation (EU) No 1299/2014[(4)]. Open points as regards specifications on aerodynamic effects, passive safety and variable gauge systems and braking systems should be closed in Commission Regulation (EU) No 1302/2014[(5)]. Open points as regards specifications on test conditions for on-track tests and variable gauge systems should be closed in Commission Regulation (EU) No 321/2013[(6)].

(6) Decision (EU) 2017/1474 also sets out specific objectives applicable to the TSI relating to the subsystem 'rolling stock — locomotives and passenger rolling stock' and the TSI relating to the subsystem 'rolling stock — freight wagons'. In particular the provisions on automatic variable gauge systems should be reviewed and access to passenger coaches, the authorisation of passenger vehicles in large areas of use and the composition of passenger trains should be facilitated.

(7) Certain components for which a single failure has potential to lead directly to a serious accident are critical for the safety of the rail system and should be labelled as 'safety-critical' on a case-by-case basis. The manufacturer should identify safety-critical components in the vehicle maintenance file.

(8) Trackside and on-board investments should be protected by guaranteeing compatibility and stability of the specifications of the European rail traffic management system (ERTMS), giving legal and technical certainty that a compliant Baseline 3 ERTMS on-board unit can safely run on compliant ERTMS line with an acceptable level of performance. In order to keep pace with technological progress and encourage modernisation such as ERTMS game changers, as specified in the Agency's report on *ERTMS longer-term perspective* (ERA-REP-150), their implementation should, under certain conditions, be allowed. Where the Agency issues draft released specifications of ERTMS game changers before the planned legal release in 2022, suppliers and early implementers should use the specifications in their pilot phase, provided that any Baseline 3 on-board unit can safely run on any infrastructure implementing a game changer.

(9) On the basis of the system architecture research and innovation work of the Shift2Rail Joint Undertaking, the Agency work on the game changer related to the evolution of the radio communication system aims at proposing solutions that would allow independent life cycle management for the radio communication system and the train protection system, while facilitating the integration of the new radio communication system with the European Train Control system (ETCS) on-boards that follow the set#3 of specifications listed in Table 2.3 of Annex A to Commission Regulation (EU) 2016/919[(7)].

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(10) Even a successful certification process cannot always exclude that, when an on-board CCS subsystem interacts with a trackside CCS subsystem, one of the subsystems repeatedly fails to function or perform as intended under certain conditions. This may be due to variance in national control-command and signalling equipment (e.g. interlockings), engineering and operational rules, deficiencies in the specifications, different interpretations, design errors or equipment being installed incorrectly. Therefore, checks might need to be carried out to demonstrate the technical compatibility of the control-command and signalling subsystems in the area of use for a vehicle. The necessity of these checks should be considered as a temporary measure to increase the confidence on the technical compatibility between the subsystems. In addition, Regulation (EU) 2016/919 should specify the procedure for those checks. In particular, the principles applicable to those checks should be transparent and prepare the ground for further harmonisation. The possibility of executing those checks in a laboratory representing the trackside configuration to be made available by the Infrastructure Manager should be prioritised.

(11) To limit to a minimum the checks each Member State should promote harmonisation within its infrastructure. Following this principle, only one single set of compatibility checks for radio (one for voice transmission and another one for data transmission), if at all needed, should be requested per Member State.

(12) Consideration should be given on the necessary steps in the shortest possible time to increase the confidence on the technical compatibility and to reduce and eliminate the tests or checks to prove technical compatibility of on-board units with different European rail traffic management system trackside implementations. Therefore, the Agency should assess the underlying technical divergences and define the necessary steps to eliminate the tests or checks to prove technical compatibility of on-board units with different trackside implementations.

(13) Certain TSIs may provide transitional measures in order to keep the railway sector competitive and to prevent undue costs triggered by too frequent changes in the legal framework. Such transitional measures apply to contracts in course of performance and to projects at an advanced stage of development on the date of application of the relevant TSI. As long as these transitional measures apply, requests for application of Article 7(1) of Directive 2016/797/EC should not be needed. Once these transitional measures expire, applicants requesting non-application of TSIs or part of them should do so pursuant to Article 7(1) of Directive (EU) 2016/797. Such requests should however only in duly justified cases be based on Article 7(1)(a) of Directive 2016/797/EC.

(14) Directive (EU) 2016/797 and Commission Implementing Regulation (EU) 2018/545[8] set out the Agency's role as authorising entity. In addition, Implementing Regulation (EU) 2018/545 sets out the procedure applicable in the event of a change to existing vehicle types, in particular for the creation of versions of a vehicle type and versions of a vehicle type variant. The Agency's role in registering data in the European register of authorised types of railway vehicles (ERATV) and the tasks of authorising entities as regards versions of a vehicle type and versions of a vehicle type variant should be adapted accordingly.

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(15) Regulations (EU) No 321/2013, (EU) No 1302/2014, and (EU) 2016/919 should take into account changes in the procedure for placing mobile subsystems on the market, as provided for in Articles 20 to 26 of Directive (EU) 2016/797. Those TSIs should therefore list the basic design characteristics used to identify the vehicle type and set out requirements regarding changes that impact them. The list of ERATV parameters should be amended accordingly.

(16) 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.

(17) 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[(9)] 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.

(18) On 17 December 2015, 6 January 2016 and 14 November 2017, the Agency issued three recommendations to amend Regulation (EU) No 1302/2014 covering the conditions for having an authorisation for placing on the market not limited to particular national networks, the closing of open-points, requirements regarding safety critical components and the revision of provisions on automatic variable gauge systems.

(19) On 11 April 2016, the Agency issued a recommendation on the amendment to Regulation (EU) No 321/2013 covering the closing of open-points.

(20) On 4 October 2017, the Agency issued a recommendation on the amendment to Regulation (EU) No 1299/2014 covering the closing of open-points.

(21) On 19 July 2018, the Agency issued a recommendation on the amendment to Regulations (EU) No 321/2013 and (EU) No 1302/2014 and Commission Implementing Decision 2011/665/EU[(10)] covering the changes in the procedure for placing mobile subsystems on the market, including the checking of vehicle-route compatibility after the vehicle authorisation and before the first use of authorised vehicles and provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal.

(22) On 19 October 2018, the Agency issued a recommendation on the amendment to Regulation (EU) 2016/919 covering the changes in the procedure for placing mobile

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subsystems on the market, including the checking of vehicle-route compatibility before the first use of authorised vehicles and provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal.

(23) On 15 November 2018, the Agency issued a recommendation on the amendment to Regulation (EU) No 1303/2014 covering the changes to align that Regulation with Directive (EU) 2016/797.

(24) On 29 November 2018, the Agency issued a recommendation on the amendment to Regulations (EU) No 1299/2014 and (EU) No 1301/2014 covering the changes to align those Regulations with Directive (EU) 2016/797.

(25) Regulation (EU) No 321/2013, Regulation (EU) No 1299/2014, Regulation (EU) No 1301/2014, Regulation (EU) No 1302/2014, Regulation (EU) No 1303/2014, Regulation (EU) 2016/919 and Implementing Decision 2011/665/EU should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 2(1), the reference to ‘point 2.7 of Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘point 2.7 of Annex II to Directive (EU) 2016/797 of the European Parliament and of the Council (*)

(*) 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 (OJ L 138, 26.5.2016, p. 44).’;

(2) in Article 3, the second subparagraph is amended as follows:

(a) point (a) is replaced by the following:

(a) when it is renewed and upgraded in accordance with section 7.2.2 of the Annex to this Regulation;

(b) point (c) is replaced by the following:

(c) with regards to the marking “GE” as depicted in point 5 of Appendix C of the Annex, wagons of the existing fleet which have been authorised in accordance with Commission Decision 2006/861/EC as amended by Decision 2009/107/EC or with Decision 2006/861/EC as amended by Decisions 2009/107/EC and 2012/464/EU and meeting the conditions set out in point 7.6.4 of Decision 2009/107/EC may receive this marking “GE” without any additional third party assessment or new authorisation for placing on the market. The use of this marking in wagons in operation remains under the responsibility of the railway undertakings.;

(3) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following: