Commission Implementing Regulation (EU) 2019/774 of 16 May 2019 amending Regulation (EU) No 1304/2014 as regards application of the technical specification for interoperability relating to the subsystem 'rolling stock — noise' to the existing freight wagons (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/774

of 16 May 2019

amending Regulation (EU) No 1304/2014 as regards application of the technical specification for interoperability relating to the subsystem 'rolling stock — noise' to the existing freight wagons

(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) Directive 2002/49/EC of the European Parliament and of the Council[(2)] (Environmental Noise Directive) provides a basis for developing and completing the existing set of Community measures concerning noise emitted by, inter alia, rail vehicles.

(2) Environmental noise and in particular noise from railways remains a serious threat to human health, as results from the evaluation of the Environmental Noise Directive[(3)] and the implementation report of the Environmental Noise Directive[(4)].

(3) While Environmental Noise Directive generally applies to routes having more than 30 000 trains, both freight and passenger, in developing the concept of 'quieter routes' it has been necessary to take into account those routes where there is a significant freight traffic during the night-time.

(4) There is a risk that excessive levels of railway noise could lead to uncoordinated unilateral action by some Member States. Such measures could have adverse effects on European economies and result in a reverse modal shift from rail to road. Furthermore, such actions might undermine Union rail interoperability. As the majority of rail freight in the Union is international, a European-level solution to the problem is needed.

(5) The application of the technical specification for interoperability relating to the 'rolling stock — noise' subsystem of the rail system in the Union ('NOI TSI') as set out in Commission Regulation (EU) No 1304/2014[(5)] to existing wagons should therefore significantly reduce maximum noise emission levels. One of the most effective ways to mitigate rail noise is by retrofitting existing freight wagons with composite brake

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blocks. This technical solution reduces rail noise by up to 10 dB, which represents a 50 % reduction in audible noise for humans.

(6) On 22 September 2017, the Commission requested the European Union Agency for Railways ('the Agency') to issue a recommendation, pursuant to Article 5(2) of Directive (EU) 2016/797, for a revision of the NOI TSI with a view to specifying the application of the NOI TSI to the existing freight wagons in the framework of the 'quieter routes' strategy and in order to align the NOI TSI with Directive (EU) 2016/797.

(7) The issue of rail freight noise should be tackled where it is a serious nuisance and a health threat. For this reason and as freight trains operating in night are of particular nuisance, a definition of a quieter route should be formulated with reference to rail freight traffic intensity during night-time.

(8) The date of application of the introduction of the quieter routes should be set taking into account several parameters, including the progress of retrofitting in different Member States, the rate of renewal of the rail freight fleet, the freight wagons maintenance cycle, the production capacity of manufacturers of composite brake blocks and workshop availability. The date should also be aligned with the recurrent change of working timetable in accordance with Annex VII to Directive 2012/34/EU of the European Parliament and of the Council[(6)].

(9) As traffic intensity may be subject to fluctuations, the list of quieter routes should be updated at regular intervals to take into account such changes and, at the same time, guarantee a stable framework over a period of several years. Therefore, it would be appropriate that the Member States update the list of quieter routes at least every five years after 8 December 2024. Furthermore, before the first update, the Commission should evaluate the progress of retrofitting and the impact of the introduction of quieter routes on the rail freight industry.

(10) Given the concerns raised by some stakeholders related to the operations of wagons equipped with composite brake blocks in Nordic winter conditions, the Commission, assisted by the Agency, should continue to analyse the issues and possible solutions. It should assess by June 2020 whether an amendment to this TSI is necessary, possibly in form of an exemption allowing the continued operation of limited numbers of wagons with cast iron brake blocks on quieter routes, to preserve cross border rail freight traffic to and from affected Nordic regions. According to the estimates of the Swedish authorities the number of wagons used in such a traffic does in total not exceed 17 500.

(11) The introduction of quieter routes should complement other actions at Union level aimed at reducing rail freight noise, including the financing of retrofitting under the Connecting Europe Facility,[(7)] ESIF funds[(8)], noise-differentiated track access charges schemes[(9)] and the development of new technical solutions under the Shift2Rail initiative[(10)].

(12) In order to ensure an efficient implementation of quieter routes the respective national competent authorities should closely cooperate.

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(13) As the amendments have a direct impact on the social environment of workers in the sector and on rail freight customers, the social partners and rail freight customers have been consulted, as required by Articles 6 and 7 of Regulation (EU) 2016/796 of the European Parliament and of the Council[(11)].

(14) An impact assessment in accordance with Article 5 of Directive (EU) 2016/797 was conducted during the revision of this TSI by the Agency.

(15) On 29 May 2018, the Agency issued a recommendation on the amendments to the NOI TSI regarding the application of its provisions to the existing wagons.

(16) Furthermore, on 29 November 2018, the Agency issued a recommendation on the amendment to the NOI TSI in order to align this Regulation with Directive (EU) 2016/797.

(17) Under Commission Delegated Decision (EU) 2017/1474[(12)], TSI 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 TSI.

(18) This Regulation amends the NOI TSI 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 the NOI TSI in view of covering essential requirements. It enables to achieve the objectives and to meet the essential requirements of both Directives 2008/57/EC of the European Parliament and of the Council[(13)] and (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 of verification in accordance with this Regulation as long as Directive 2008/57/EC applies in the Member State where they are established.

(19) Regulation (EU) No 1304/2014 should therefore be amended in order to align this Regulation with Directive (EU) 2016/797 and to apply it to existing freight wagons in the framework of the quieter routes strategy and to provide for a procedure for the assessment of acoustic performance of composite brake blocks. This procedure should become as set out by this amendment an open point within the meaning of Article 4(6) of Directive (EU) 2016/797.

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

HAS ADOPTED THIS REGULATION:

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Article 1

Regulation (EU) No 1304/2014 is amended as follows:

(1) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. With regard to specific cases listed in point 7.3.2 of the Annex, the conditions to be met for the verification of the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in point 7.3.2 of the Annex or by national rules in force in the Member State which is part of the area of use of the vehicles covered by this Regulation;

(b) point (c) of paragraph 2 is replaced by the following:

(c) the bodies designated to carry out the conformity assessment and verification procedures with respect to the national rules relating to the specific cases set out in point 7.3.2 of the Annex;

(2) Article 7 is amended as follows:

(a) in paragraph 4, the reference to 'Article 6 of Directive 2008/57/EC' is replaced by a reference to 'Article 5 of Directive (EU) 2016/797';

(b) in paragraph 5, the reference to 'Directive 2008/57/EC' is replaced by a reference to 'Directive (EU) 2016/797';

(3) The following Articles 5a, 5b, 5c, 5d, 5e are inserted:

Article 5a

From 8 December 2024, wagons within the scope of Regulation (EU) No 321/2013 which are not covered by point 7.2.2.2 of the Annex to this Regulation shall not be operated on the quieter routes.

Article 5b

A 'quieter route' means a part of the railway infrastructure with a minimum length of 20 km on which the average number of daily operated freight trains during the night-time as defined in national legislation transposing Directive 2002/49/EC of the European Parliament and of the Council[(14)] was higher than 12. The freight traffic in the years 2015, 2016 and 2017 shall be the basis for the calculation of that average number. In case the freight traffic due to exceptional circumstances diverges in a given year from that average number by more than 25 %, the Member State concerned can calculate the average number on the basis of the remaining two years.

Article 5c

1 Member States shall designate quieter routes in accordance with Article 5b and the procedure set out in Appendix D.1 of the Annex. They shall provide the European Union Agency for Railways ('the Agency') with a list of quieter routes six months after the date of publication of this Regulation at the latest. The Agency shall publish those lists on its website.

2 Member States shall update the list of quieter routes at least every five years after 8 December 2024, following the procedure set out in Appendix D.2 of the Annex.

Article 5d

By 31 December 2028, the Commission shall evaluate the implementation of the quieter routes, in particular regarding the progress of retrofitting of wagons and the

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impact of the introduction of quieter routes on the overall noise exposure of the population and competitiveness of the rail freight sector.

Article 5e

By 30 June 2020, the Commission shall issue a report regarding operations with wagons equipped with composite brake blocks in Nordic winter conditions, based on evidence gathered by the Agency, national safety authorities and rail companies. In particular, this report shall contain an assessment of the safety and braking performance of such wagons and existing or potential operational and technical measures applicable in Nordic winter conditions. The report shall be made public.

If the report provides evidence that the use of such wagons in Nordic winter conditions poses safety issues that cannot be addressed by operational and technical measures without severe adverse impact on rail freight operations, the Commission shall propose amendments to this TSI to address those issues while preserving cross border freight traffic to and from affected Nordic regions. In particular, the proposal may if necessary include an exemption permitting the continued operation on quieter routes throughout the Union of a limited number of wagons used frequently in such cross border freight traffic, and any operational restrictions appropriate to limit the impact of the use of such wagons on quieter routes, which are compatible with the purpose of preserving the above-mentioned cross-border freight traffic.

If the revision set out in the paragraph above takes place, the Commission shall report annually thereafter on the progress on technical and operational solutions for the operation of freight wagons in winter conditions. It shall provide an estimation of the number of wagons equipped with cast iron brake blocks necessary to ensure continued cross border traffic to and from such Nordic regions, with a view to ending the exemption in 2028 at the latest.

(4) The Annex to Regulation (EU) No 1304/2014 is amended in accordance with the Annex to this Implementing Regulation.

Article 2

1 Notifications of conformity assessment bodies for the purposes of Regulation (EU) No 1304/2014 shall remain valid on the basis of that Regulation, as amended by the present Regulation.

2 Conformity assessment bodies notified in accordance with Directive 2008/57/EC may issue ‘EC’ certificate of verification 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 3

This Regulation shall enter into force on the twentieth 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.