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 (recast) (Text with EEA relevance)

CHAPTER II

TECHNICAL SPECIFICATIONS FOR INTEROPERABILITY

Article 4

Content of TSIs

1 Each of the subsystems defined in Annex II shall be covered by one TSI. Where necessary, a subsystem may be covered by several TSIs and one TSI may cover several subsystems.

2 Fixed subsystems shall comply with the TSIs and national rules in force at the time of the request for authorisation of placing in service in accordance with this Directive and without prejudice to point (f) of paragraph 3.

Vehicles shall comply with TSIs and national rules in force at the time of the request for authorisation of placing on the market in accordance with this Directive and without prejudice to point (f) of paragraph 3.

The conformity and compliance of fixed subsystems and vehicles shall be permanently maintained while they are in use.

3 To the extent necessary to achieve the objectives of this Directive referred to in Article 1, each TSI shall:

a indicate its intended scope (part of network or vehicles referred to in Annex I; subsystem or part of subsystem referred to in Annex II);

b lay down essential requirements for each subsystem concerned and its interfaces in relation to other subsystems;

c establish the functional and technical specifications to be met by the subsystem and its interfaces in relation to other subsystems. If necessary, these specifications may vary according to the use of the subsystem, for example according to the categories of line, hub and/or vehicles provided for in Annex I;

d determine the interoperability constituents and interfaces which must be covered by European specifications, including European standards, which are necessary to achieve interoperability within the Union rail system;

e state, in each case under consideration, which procedures are to be used in order to assess the conformity or the suitability for use of the interoperability constituents, on the one hand, or the 'EC' verification of the subsystems, on the other. Those procedures shall be based on the modules defined in Commission Decision 2010/713/EU[(1)];

f indicate the strategy for the application of the TSI. In particular, it is necessary to specify the stages to be completed, taking into account the estimated costs and benefits and the expected repercussions for the stakeholders affected in order to make a gradual transition from the existing situation to the final situation in which compliance with the TSI shall be the norm. Where coordinated implementation of the TSI is necessary, such

as along a corridor or between infrastructure managers and railway undertakings, the strategy may include proposals for staged completion;

g indicate, for the staff concerned, the professional qualifications and health and safety conditions at work required for the operation and maintenance of the above subsystem, as well as for the application of the TSIs;

h indicate the provisions applicable to the existing subsystems and vehicles, in particular in the event of upgrading and renewal and, in such cases, the modification work which requires an application for a new authorisation;

i indicate the parameters of the vehicles and fixed subsystems to be checked by the railway undertaking and the procedures to be applied to check those parameters after the delivery of the vehicle authorisation for placing on the market and before the first use of the vehicle to ensure compatibility between vehicles and the routes on which they are to be operated.

4 Each TSI shall be drawn up on the basis of an examination of an existing subsystem and indicate a target subsystem that may be obtained gradually within a reasonable timescale. Accordingly, the adoption of the TSIs and compliance with them shall gradually facilitate achievement of the interoperability of the Union rail system.

5 TSIs shall retain, in an appropriate manner, the compatibility of the existing rail system of each Member State. For that purpose, specific cases for each TSI may be provided for, with regard to both network and vehicles, and in particular for the loading gauge, the track gauge or space between the tracks and vehicles originating from or destined for third countries. For each specific case, the TSIs shall stipulate the implementing rules of the elements of the TSIs provided for in points (c) to (g) of paragraph 3.

6 If certain technical aspects corresponding to the essential requirements cannot be explicitly covered in a TSI, they shall be clearly identified in an annex to the TSI as open points.

7 TSIs shall not prevent the Member States from deciding on the use of infrastructures for the movement of vehicles not covered by the TSIs.

8 TSIs may make an explicit, clearly identified reference to European or international standards or specifications or technical documents published by the Agency where this is strictly necessary in order to achieve the objectives of this Directive. In such a case, these standards or specifications (or their relevant parts) or technical documents shall be regarded as annexes to the TSI concerned and shall become mandatory from the moment the TSI is applicable. In the absence of such standards or specifications or technical documents, and pending their development, reference may be made to other clearly identified normative documents that are easily accessible and in the public domain.

Article 5

Drafting, adoption and review of TSIs

1 In order to set out the specific objectives of each TSI, the Commission shall be empowered to adopt delegated acts in accordance with Article 50 concerning, in particular and where appropriate:

a the geographical and technical scope of the TSIs;

b the applicable essential requirements;

c the list of regulatory, technical and operational conditions to be harmonised at the level of subsystems and at the level of the interfaces between subsystems and their expected level of harmonisation;

d the railway-specific procedures for assessment of conformity and suitability for use of the interoperability constituents;

e the railway-specific procedures to assess the 'EC' verification of the subsystems;

f the categories of staff involved in the operation and maintenance of the subsystems concerned and the general objectives for setting the minimum requirements for professional qualifications and health and safety conditions for the staff concerned;

g any other necessary element to be taken into account to ensure interoperability pursuant to Article 1(1) and (2) within the Union rail system, such as alignment of TSI with European and international standards or specifications.

When adopting those delegated acts, the Commission shall justify the need for a new or substantially amended TSI, including its impact on existing rules and technical specifications.

2 In order to ensure uniform implementation of the delegated acts referred to in paragraph 1, the Commission shall request that the Agency draft TSIs and amendments thereto and make the relevant recommendations to the Commission.

Each draft TSI shall be drawn up in the following stages:

a the Agency shall identify the basic parameters for the TSI as well as the interfaces with the other subsystems and any other specific cases that may be necessary;

b the Agency shall draw up the draft TSI on the basis of the basic parameters referred to in point (a). Where appropriate, the Agency shall take account of technical progress, of standardisation work already carried out, of working parties already in place and of acknowledged research work.

3 When drafting or reviewing each TSI, including the basic parameters, the Agency shall take account of the estimated costs and benefits of all the technical solutions considered, together with the interfaces between them, so as to establish and implement the most viable solutions. That assessment shall indicate the likely impact on all the operators and economic actors involved and shall take due account of the requirements of Directive (EU) 2016/798. Member States shall participate in this assessment by providing, where appropriate, the requisite data.

4 The Agency shall draft the TSIs and amendments thereto in accordance with Articles 5 and 19 of Regulation (EU) 2016/796 while fulfilling the criteria of openness, consensus and transparency as defined in Annex II to Regulation (EU) No 1025/2012.

5 The committee referred to in Article 51 ('the committee') shall be kept periodically informed of the preparatory work on the TSIs. During that work, to comply with the delegated acts referred to in paragraph 1 of this Article, the Commission may formulate any terms of reference or useful recommendations concerning the design of the TSIs and a cost-benefit analysis. In particular, the Commission may require that alternative solutions be examined and that the assessment of the cost and benefits of those alternative solutions be set out in the report annexed to the draft TSI.

6 Where different subsystems have to be placed in service simultaneously for reasons of technical compatibility, the dates of application of the relevant TSIs shall be the same.

7 When drafting, adopting or reviewing the TSIs, the Agency shall take account of the opinion of users as regards the characteristics which have a direct impact on the conditions in which they use the subsystems. To that end, the Agency shall consult associations and bodies representing users during the drafting and review phases of the TSIs. It shall enclose with the draft TSI a report on the results of that consultation.

8 In accordance with Article 7 of Regulation (EU) 2016/796, the Commission, with the assistance of the committee, shall draw up and periodically update the list of passengers' associations and bodies to be consulted. That list may be re-examined and updated at the request of a Member State or upon the initiative of the Commission.

9 When drafting or reviewing the TSIs, the Agency shall take account of the opinion of the social partners as regards the professional qualifications and health and safety conditions at work referred to in point (g) of Article 4(3). To that end, the Agency shall consult the social partners before submitting to the Commission recommendations on TSIs and their amendments. The social partners shall be consulted within the Sectoral Dialogue Committee set up in accordance with Commission Decision 98/500/EC[(2)]. The social partners shall issue their opinion within three months of the consultation.

10 When the revision of a TSI leads to a change of requirements, the new TSI version shall ensure compatibility with subsystems placed in service in accordance with former TSI versions.

11 The Commission shall establish, by means of implementing acts, TSIs to implement the specific objectives set out in the delegated acts referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(3). They shall include all the elements listed in Article 4(3) and meet all the requirements set out in Article 4(4) to (6) and (8).

Article 6

Deficiencies in TSIs

1 If, after its adoption, it appears that a TSI has a deficiency, that TSI shall be amended in accordance with Article 5(11). If appropriate, the Commission shall apply this procedure without delay. Such deficiencies shall include cases which could result in unsafe operations within a Member State.

2 Pending the review of a TSI, the Commission may request an opinion from the Agency. The Commission shall analyse the Agency's opinion and inform the committee of its conclusions.

3 At the request of the Commission, the Agency's opinion referred to in paragraph 2 shall constitute acceptable means of compliance and may therefore be used for the assessment of projects, pending the adoption of a revised TSI.

4 Any member of the network of representative bodies referred to in Article 38(4) of Regulation (EU) 2016/796 may make the Commission aware of possible TSI deficiencies.

Article 7

Non-application of TSIs

1 Member States may allow the applicant not to apply one or more TSIs or parts of them in the following cases:

a for a proposed new subsystem or part of it, for the renewal or upgrading of an existing subsystem or part of it, or for any element referred to in Article 1(1) which is at an advanced stage of development or which is the subject of a contract in the course of performance on the date of application of the TSI(s) concerned;

b where, following an accident or a natural disaster, the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of the relevant TSIs, in which case the non-application of the TSIs shall be limited to the period before the restoration of the network;

c for any proposed renewal, extension or upgrading of an existing subsystem or part of it, when the application of the TSI(s) concerned would compromise the economic viability of the project and/or the compatibility of the rail system in the Member State concerned, for example in relation to the loading gauge, track gauge, space between tracks or electrification voltage;

d for vehicles arriving from or going to third countries the track gauge of which is different from that of the main rail network within the Union;

e for a proposed new subsystem or for the proposed renewal or upgrading of an existing subsystem in the territory of the Member State concerned when its rail network is separated or isolated by the sea or separated as a result of special geographical conditions from the rail network of the rest of the Union.

2 In the case referred to in point (a) of paragraph 1, the Member State concerned shall communicate to the Commission, within one year of entry into force of each TSI, a list of projects that are taking place within its territory and which, in the view of the Member State concerned, are at an advanced stage of development.

3 In the cases referred to in points (a) and (b) of paragraph 1, the Member State concerned shall communicate to the Commission its decision not to apply one or more TSIs or parts of them.

4 In the cases referred to in points (a), (c), (d) and (e) of paragraph 1 of this Article, the Member State concerned shall submit to the Commission the request for non-application of the TSIs or parts of them, accompanied by a file containing the justification for the request, and specifying the alternative provisions that that Member State intends to apply instead of the TSIs. In the case referred to in point (e) of paragraph 1 of this Article, the Commission shall analyse the request and decide whether or not to accept it on the basis of the completeness and coherence of the information contained in the file. In the cases referred to in points (c) and (d) of paragraph 1 of this Article, the Commission shall adopt its decision by means of implementing acts on the basis of such analysis. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51(3).

In the cases referred to in the third subparagraph of Article 21(6), the applicant shall submit the file to the Agency. The Agency shall consult the relevant safety authorities and give its final opinion to the Commission.

5 The Commission shall, by means of an implementing act, establish the information to be included in the file referred to in paragraph 4, the required format of that file and the method to be used for its transmission. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 51(3).

6 Pending the decision of the Commission, the Member State may apply the alternative provisions referred to in paragraph 4 without delay.

7 The Commission shall give its decision within four months of submission of the request supported by the complete file. In the absence of such a decision, the request shall be deemed to have been accepted.

8 Member States shall be informed of the results of the analyses and of the outcome of the procedure set out in paragraph 4.

(**1**) Commission Decision 2010/713/EU of 9 November 2010 on modules for the procedures for assessment of conformity, suitability for use and 'EC' verification to be used in the technical specifications for interoperability adopted under Directive 2008/57/EC of the European Parliament and of the Council (OJ L 319, 4.12.2010, p. 1).

(**2**) Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (OJ L 225, 12.8.1998, p. 27).