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(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN COMMISSION

COMMISSION RECOMMENDATION

of 18 July 2018

**on guidance for the harmonised implementation of the European Rail Traffic Management System
in the Union**

(Text with EEA relevance)

(2018/C 253/01)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council⁽¹⁾ the European Union Agency for Railways ('the Agency') ensures the harmonised implementation and interoperability of the European Rail Traffic Management System ('ERTMS') in the Union. To that end, the Agency checks for compliance of the technical solutions envisaged with the relevant technical specifications for interoperability (TSIs) and gives its approval by means of a decision.
- (2) However, the approval process to be followed by the Agency and the applicants is not fully described.
- (3) In order to strengthen the legitimate expectations of the applicant in the approval process laid down in Article 19 of Directive (EU) 2016/797 and to facilitate the harmonised implementation of ERTMS in the Union, the applicant and the Agency should follow the guidance set out in this Recommendation.
- (4) In order to anticipate technical problems and facilitate the process for granting the authorisation for the placing in service of fixed installations established in Article 18 of Directive (EU) 2016/797, the National Safety Authorities ('NSAs') should be involved from the start of the approval process and should have access to the documents provided by the applicant.
- (5) Owing to the variety of contracts and tender types in ERTMS trackside subsystem, the Agency and the applicants should follow a process that covers all those contract types and at the same time ensures that the technical solutions envisaged are fully compliant with the relevant TSIs and are therefore fully interoperable.
- (6) An issue log established by the Agency should be used by the Agency and the applicant as a monitoring tool to identify and track at the earliest possible stage any potential issues impacting interoperability. The applicant should provide evidence of the resolution of the issues affecting interoperability.
- (7) The Agency should also use an anonymised issues list, as a tool for sharing experience and facilitating harmonised implementation in the field of ERTMS.

⁽¹⁾ 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).

- (8) The guidance on the approval process set out in this Recommendation should not overlap with the conformity assessment performed by the assessment bodies described in Directive (EU) 2016/797 and in the relevant TSIs. The Agency should ensure that the information on the verification of trackside European Train Control System ('ETCS') equipment and Global System for Mobile Communications-Railway ('GSM-R') equipment set out in Article 5 and point 6.1.2.3 to the Annex of Commission Regulation (EU) 2016/919 ⁽¹⁾ is made available in accordance with those provisions. That information should be assessed by the Agency as early as possible in order to anticipate any issues, minimise costs and reduce the duration of the approval process and ensure that the technical solution envisaged is interoperable.
- (9) In order to facilitate the approval process, the applicant should initiate a dialogue with the Agency before the formal submission of the application. During this 'initial engagement stage' the applicant and the Agency should reach an agreement on the schedule for the approval process including the respective deadlines taking into account the type of procurement and the authorisation process. The NSAs can collaborate and provide an opinion on the possible outcomes of the initial engagement.
- (10) The fees payable to the Agency after the initial engagement stage of the process should be laid down in Commission Implementing Regulation (EU) 2018/764 ⁽²⁾.
- (11) The rules of procedure of the Boards of Appeal should be laid down in Commission Implementing Regulation (EU) 2018/867 ⁽³⁾.
- (12) The guidance provided for in this Recommendation has been presented for an exchange of views to the Committee referred to in Article 51 of Directive (EU) 2016/797,

RECOMMENDS:

Section A: General provisions

1. That the applicant contact the Agency as soon as they plan a call for tender relating to ERTMS trackside equipment for which an Agency approval is needed;
2. That the applicant submit sufficiently detailed technical documents to enable the Agency to verify that the technical solutions foreseen to be implemented are fully interoperable;
3. That the Agency and the relevant NSA cooperate and share information in order to anticipate and address any technical concerns and therefore facilitate the task of the NSA regarding the authorisation for the placing in service of the subsystem. The NSA may give opinions through the one-stop shop referred to in Article 12 of Regulation (EU) 2016/796 (hereafter 'the one-stop shop') at any point in the process, including during the initial engagement stage, on the technical matters and on the planning;
4. That the information provided during the approval process be made available to the NSA;
5. That the applicant and the Agency follow the approval process composed of 3 stages:
 - (a) initial engagement;
 - (b) submission and verification of completeness of the file;
 - (c) assessment and decision;
6. That the applicant submit at the earliest stage possible, via the one-stop shop, the following application file necessary for the approval, including the description of the technical envisaged solution and the documentary evidence of the compliance of the technical envisaged solution with the relevant control-command and signalling TSI, as listed in Article 19 of Directive (EU) 2016/797:
 - (a) The draft tender specifications or the description of the envisaged technical solution
 - Project description, including the details of the line, group of lines, or network that are covered by the project or combination of projects: geographical location, number of kilometres in single and double track, ERTMS level, baseline and version, interoperability constituents and stations;

⁽¹⁾ Commission Regulation (EU) 2016/919 of 27 May 2016 on the technical specification for interoperability relating to the control-command and signalling subsystems of the rail system in the European Union (OJ L 158, 15.6.2016, p. 1).

⁽²⁾ Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJ L 129, 25.5.2018, p. 68).

⁽³⁾ Commission Implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways (OJ L 149, 14.6.2018, p. 3).

- Evidence that the tender or contract or both include the relevant control-command and signalling TSI, the baseline and the version;
 - Project plan indicating deliverables, milestones and deadlines;
 - List of ERTMS functions to implement;
 - Engineering rules and operational tests scenarios, as referred to in Article 5 of Regulation (EU) 2016/919 and point 6.1.2.3 of the Annex to that Regulation;
 - Test strategy and test plans;
- (b) Documentary evidence of the conditions necessary for technical and operational compatibility of the subsystem with the vehicles intended to operate on the relevant network
- (c) Documentary evidence of the compliance of the envisaged technical solution with the relevant control-command and signalling TSI, and any other relevant documents, such as national safety authority opinions, declarations of verification or conformity certificates
- If available, a previous ERTMS trackside authorisation by an NSA relevant for the envisaged technical solutions submitted by the applicant;
 - If available, EC Certificates of conformity of the interoperability constituents and EC declaration of conformity of the interoperability constituents, including the Agency template for certification and deviations defined in the Agency guideline;
 - If available, Certificates of verification of the subsystem and, if applicable, intermediate statements of verification of design and EC declaration of verification of the subsystem, including the template for certification and deviations defined in the relevant Agency guideline;
 - Demonstration of how the risks impacting interoperability of each issue of the issue log have been addressed;
 - National rules related to ERTMS that are applicable to the project;
 - In case the applicant has an exemption from the application of one or more TSIs or parts of them, a document provided by the Member State granting the derogation, according to Article 7 of Directive (EU) 2016/797;
7. That each of the issues listed in the issue log, is classified in one of the following categories:
- (a) query;
 - (b) issue closed;
 - (c) issue closed with conditions;
 - (d) issue closed but it is unacceptable;
8. That the Agency suggest, through the one-stop shop, a list of issues in the issue log with the status 'query';
9. That the applicant provides evidence according to the agreed schedule referred to in point 17(b) and prior to the decision stage, showing that each of the issues identified in the issue log have been addressed;
10. That the Agency update the status of the issues in the issue log to the evidence submitted by the applicant to 'Issue closed', 'Issue closed with conditions' or 'Issue closed but it is unacceptable';

11. That the applicant and the NSA should be able to suggest additional issues to be included in the issue log;
12. That the Agency provide the applicant with guidance on how to prove evidence that the issues have been addressed in order to speed up the process and to avoid an unnecessary administrative work;
13. That the Agency publish an anonymised issue list, as a tool to share return of experience and facilitate the harmonised implementation of ERTMS trackside projects;

Section B: stage 1 — Initial Engagement

14. That the applicant, prior to formal submission of the application, engage in a dialogue with the Agency to facilitate the approval process;
15. That the initial engagement stage start before any call for tender relating to ERTMS trackside equipment and when the applicant informs the Agency of its intention to submit a request for approval;
16. That the initial engagement be confined to a limited number of discussions in which the applicant presents the intended project and the details of the technical solutions envisaged including, if available, the documents listed in point 6;
17. That the initial engagement stage be concluded with the signature of an arrangement between the Agency and the applicant which includes:
 - (a) the scope of the application;
 - (b) schedule, including the dates of:
 - (i) submission of each document listed in point 6;
 - (ii) updates of the issue log;
 - (iii) deadline for decision;
 - (c) the issue log;
18. That the NSA participate in the initial engagement stage and provide an opinion on the proposal for arrangements referred to in point 17;
19. That the applicant use the one-stop shop to register the documents listed in point 6;

Section C: stage 2 — Submission and verification of completeness

20. That the submission and verification of completeness stage follow the initial engagement stage when the applicant submits, through the one-stop shop, the request for a decision on approval;
21. That the applicant submit all the documents listed in point 6. If any of those documents was previously submitted through the one-stop shop, the applicant may identify these documents and confirm that those documents remain applicable to the project without any modification or addition. In the event of any modifications or additions to those documents the applicant must submit the updated documents;
22. That the Agency assess the completeness of the file submitted and verify that the file submitted has been uploaded in the one-stop shop, that it includes all the documents listed in point 6 and that none of the issues listed in the issue log has the status 'query';
23. That the Agency assess the relevance and consistency of the file submitted in relation to the documents listed in point 6 and to the arrangements agreed in the initial engagement and referred to in point 17;

24. That the Agency inform the applicant through the one-stop shop within a month of receipt of the formal submission in case the information provided is not complete, providing the relevant evidence and specifying the relevant additional documents to be submitted within the deadline agreed in the schedule during the initial engagement;
25. That when the Agency considers that the file is complete, relevant and consistent it informs the applicant accordingly through the one-stop shop;

Section D: stage 3 — Assessment and decision

26. That the assessment and decision stage follow the conclusion of the submission and verification of completeness stage;
27. That the Agency issue either a positive or negative decision within two months from the start of the assessment and decision stage on that part of the technical solutions that have not been previously covered by a positive decision for approval by the Agency;
28. That the Agency consider any opinion made by the national safety authority on the request for approval;
29. That the Agency issue a positive decision if stage 2 is successfully completed and all the issues listed in the issue log have the status 'issue closed';
30. That the Agency issue a negative decision if one or more issues listed in the Issue Log have the status 'issue closed but unacceptable' or if the assessment of stage 2 is finished but the file is not considered complete, relevant and/or consistent;
31. That the Agency issue a positive decision with conditions in the following cases:
 - (a) one or more issues listed in the issue log have the status 'closed with conditions'; and
 - (b) no issue has the status 'closed but it is not acceptable';
32. That the Agency provide an explanation of the conditions that need to be fulfilled by the applicant at a later stage and considered by the NSA and a summary of the final issues as recorded in the issue;
33. That, in case a condition set out in the positive decision of the Agency cannot be met by the applicant, the NSA recommend the applicant:
 - (a) to re-submit a request for the Agency's approval. In this case, the applicant identifies the documents from a previous request for the Agency's approval that are still valid and the Agency does not repeat the assessment of those documents;
 - (b) to apply Article 30(2) of Regulation (EU) 2016/796. In this case, the Agency offers that it will update the issue log in the one-stop shop.
34. That where the Agency issues a negative decision the applicant be entitled to rectify the project design, submit a new application, indicate the parts of the project that remain unchanged and the documents and evidence that still apply;
35. That, where the applicant submits a reasoned request to the Agency to review its decision pursuant to Article 19(5) of Directive (EU) 2016/797, that request be made through the one-stop shop and be accompanied by a detailed justification of the issues which the applicant considers not to have been properly assessed by the Agency. The Agency should confirm or review its decision focusing on the issues highlighted in that justification. The findings of the review should be communicated to the applicant, through the one-stop shop, within two months from the date of the applicant's request;
36. That the Agency provide the applicant with an appropriate justification where it confirms its initial negative decision;

37. That the applicant be entitled to bring an appeal before the Board of Appeal established under Article 55 of Regulation (EU) 2016/796 when the Agency confirms its initial negative decision.

Done at Brussels, 18 July 2018.

For the Commission
Violeta BULC
Member of the Commission
