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Delegations will find attached document D031393/02.

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Brussels, **XXX**
INF TSI
[...] (2014) **XXX** draft

COMMISSION REGULATION (EU) No .../..

of **XXX**

**on the technical specifications for interoperability relating to the ‘infrastructure’
subsystem of the rail system in the European Union**

(Text with EEA relevance)

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of XXX

**on the technical specifications for interoperability relating to the ‘infrastructure’
subsystem of the rail system in the European Union**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community¹, and in particular Article 6(1) thereof,

Whereas:

- (1) Article 12 of Regulation (EC) No 881/2004 of the European Parliament and of the Council² requires the European Railway Agency (‘the Agency’) to ensure that the technical specifications for interoperability (‘the TSIs’) are adapted to technical progress, market trends and social requirements and to propose to the Commission the amendments to the TSIs which it considers necessary.
- (2) By Decision C(2010) 2576 of 29 April 2010, the Commission gave the Agency a mandate to develop and review the TSIs with a view to extending their scope to the whole rail system in the Union. Under the terms of that mandate, the Agency was requested to extend the scope of the TSI relating to the subsystem ‘infrastructure’, to the whole rail system in the Union.
- (3) On 21 December 2012, the Agency issued a recommendation on amendments to the TSI relating to the subsystem ‘infrastructure’. (ERA/REC/10-2012/INT).
- (4) In order to keep pace with technological progress and encourage modernisation, innovative solutions should be promoted and their implementation should, under certain conditions, be allowed. Where an innovative solution is proposed, the manufacturer or his authorised representative should state how it deviates from or how it complements to the relevant section of the TSI, and the innovative solution should be assessed by the Commission. If this assessment is positive, the Agency should devise the appropriate functional and interface specifications of the innovative solution and develop the relevant assessment methods.

¹ OJ L191, 18.7.2008, p. 1

² Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (OJ L 164, 30.4.2004, p. 1)

- (5) The TSI infrastructure established by this Regulation does not deal with all essential requirements. In accordance with Article 5(6) of Directive 2008/57/EC, technical aspects which are not covered by it should be identified as "open points" governed by national rules applicable in each Member State.
- (6) In accordance with Article 17(3) of Directive 2008/57/EC, Member States are to notify to the Commission and other Member States the conformity assessment and verification procedures to be used for the specific cases as well as the bodies responsible for carrying out these procedures. The same obligation should be provided as regards to open points.
- (7) Rail traffic currently operates under existing national, bilateral, multinational or international agreements. It is important that these agreements do not hinder current and future progress towards interoperability. The Member States should therefore notify such agreements to the Commission.
- (8) In accordance with Article 11(5) of Directive 2008/57/EC, the TSI on infrastructure should allow, for a limited period of time, for interoperability constituents to be incorporated into subsystems without certification if certain conditions are met.
- (9) Commission Decisions 2008/217/EC³ and 2011/275/EU⁴ should therefore be repealed.
- (10) In order to prevent unnecessary additional costs and administrative burden, Decisions 2008/217/EC and 2011/275/EU should continue to apply after their repeal to the subsystems and projects referred to in Article 9(1)(a) of Directive 2008/57/EC.
- (11) The measures provided for in this Regulation are in conformity with the opinion of the Committee established in accordance with Article 29(1) of Directive 2008/57/EC.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

The technical specification for interoperability (TSI) relating to the 'infrastructure' subsystem of the rail system in the entire European Union, as set out in the Annex, is hereby adopted.

Article 2

Scope

1. The TSI shall apply to all new, upgraded or renewed 'infrastructure' of the rail system in the European Union as defined in point 2.1 of Annex I to Directive 2008/57/EC.

³ Commission Decision 2008/217/EC of 20 December 2007 concerning a TSI relating to the infrastructure sub-system of the trans-European high-speed rail system (OJ L 77, 19.03.2008, p. 1)

⁴ Commission Decision 2011/275/EU of 26 April 2011 concerning a TSI relating to the infrastructure sub-system of the trans-European conventional rail system (OJ L 126, 14.5.2011, p.53)

2. Without prejudice to Articles 7 and 8 and point 7.2 of the Annex, the TSI shall apply to new railway lines in the European Union, which are placed in service from [same date as SRT and ENE TSIs].
3. The TSI shall not apply to existing infrastructure of the rail system in the European Union, which is already placed in service on all or part of the network of any Member State on [same date as above], except when it is subject to renewal or upgrading in accordance with Article 20 of Directive 2008/57/EC and Section 7.3 of the Annex.
4. The TSI shall apply to the following networks:
 - (a) the trans-European conventional rail system network as defined in Annex I, point 1.1 of Directive 2008/57/EC;
 - (b) the trans-European high-speed rail system network (TEN) as defined in Annex I, point 2.1 of Directive 2008/57/EC;
 - (c) other parts of the network of the rail system in the Union;and excludes the cases referred to in Article 1(3) of Directive 2008/57/EC.
5. The TSI shall apply to networks with the following nominal track gauges: 1435 mm, 1520 mm, 1524 mm, 1600 mm and 1668 mm.
6. Metric gauge is excluded from the technical scope of this TSI.
7. The technical and geographical scope of this Regulation is set out in Sections 1.1 and 1.2 of the Annex.

Article 3

Open points

1. With regard to the issues classified as 'open points' set out in Appendix R of the TSI, the conditions to be complied with for verifying the interoperability pursuant to Article 17(2) of Directive 2008/57/EC shall be the national rules applicable in the Member State which authorises the placing in service of the subsystem covered by this Regulation.
2. Within six months of the entry into force of this Regulation, each Member State shall send to the other Member States and the Commission of the following information, unless such information has already been sent to them under Commission Decisions 2008/217/EC or 2011/275/EU:
 - (a) the national rules referred to in paragraph 1;
 - (b) the conformity assessment and verification procedures to be carried out to apply the national rules referred to in paragraph 1;

- (c) the bodies designated in accordance with Article 17(3) of Directive 2008/57/EC to carry out the conformity assessment and verification procedures with respect to the open points.

Article 4

Specific cases

1. With regard to specific cases referred to in point 7.7 of the Annex to this Regulation, the conditions to be met for the verification of interoperability pursuant to Article 17(2) of Directive 2008/57/EC shall be the national rules applicable in the Member State which authorises the placing in service of the subsystem covered by this Regulation.
2. Within six months of the entry into force of this Regulation, each Member State shall notify to the other Member States and the Commission the following information:
 - (a) the national rules referred to in paragraph 1;
 - (b) the conformity assessment and verification procedures to be carried out to apply the national rules referred to in paragraph 1;
 - (c) the bodies designated in accordance with Article 17(3) of Directive 2008/57/EC to carry out the conformity assessment and verification procedures in the specific cases set out in point 7.7 of the Annex.

Article 5

Notification of bilateral agreements

1. Member States shall notify the Commission, not later than [six months of the entry into force of this Regulation], any existing national, bilateral, multilateral or international agreements between Member States and railway undertaking(s), infrastructure managers or non-member countries which are required by the very specific or local nature of the intended rail service or which deliver significant levels of local or regional interoperability.
2. That obligation does not apply to agreements which have already been notified under Commission Decision 2008/217/EC.
3. Member States shall forthwith notify to the Commission of any future agreements or amendments to existing agreements.

Article 6

Projects at an advanced stage of development

In accordance with Article 9(3) of Directive 2008/57/EC, each Member State shall communicate to the Commission within one year of the entry into force of this Regulation the

list of projects being implemented within its territory and are at an advanced stage of development.

Article 7

‘EC’ certificate of verification

1. An ‘EC’ certificate of verification for a subsystem that contains interoperability constituents which do not have an ‘EC’ declaration of conformity or suitability for use, may be issued during a transitional period ending on 31 May 2021 provided that the requirements laid down in point 6.5 of the Annex are met.
2. The production, upgrade or renewal of the subsystem with use of the non-certified interoperability constituents shall be completed within the transitional period set out in paragraph 1, including its placing in service.
3. During the transitional period set out in paragraph 1:
 - (a) the reasons for non-certification of any interoperability constituents shall be properly identified by the notified body before granting the ‘EC’ certificate pursuant to Article 18 of Directive 2008/57/EC;
 - (b) the national safety authorities, pursuant to Article 16(2)(c) of Directive 2004/49/EC of the European Parliament and of the Council⁵, shall report on the use of non-certified interoperability constituents in the context of authorisation procedures in their annual report referred to in Article 18 of Directive 2004/49/EC.
4. From [one year from the entry into force of this Regulation], newly produced interoperability constituents shall be covered by the EC declaration of conformity or suitability for use.

Article 8

Conformity assessment

1. The procedures for assessment of conformity, suitability for use and ‘EC’ verification set out in section 6 of the Annex shall be based on the modules established in Commission Decision 2010/713/EU.
2. The type or design examination certificate of interoperability constituents shall be valid for a seven year period. During that period, new constituents of the same type are permitted to be placed into service without a new conformity assessment.

⁵ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44)

3. Certificates referred to in paragraph 2 which have been issued according to the requirements of Commission Decision 2011/275/EU [TSI INF CR] or Commission Decision 2008/217/CE [TSI INF HS] remain valid, without a need for a new conformity assessment, until the expiry date originally established. In order to renew a certificate the design or type shall be re-assessed only against new or modified requirements set out in the Annex to this Regulation.

Article 9

Implementation

1. Section 7 of the Annex sets out the steps to be followed for the implementation of a fully interoperable infrastructure subsystem.

Without prejudice to Article 20 of Directive 2008/57/EC, Member States shall prepare a national implementation plan, describing their actions to comply with this TSI, in accordance with section 7 of the Annex. Member States shall send their national implementation plan to the other Member States and the Commission by 31 December 2015. Member States that have already sent their implementation plan do not have to send it again.

2. Pursuant to Article 20 of Directive 2008/57/EC, when a new authorisation is required and if the TSI is not fully applied, Member States shall notify the following information to the Commission:

- (a) The reason why the TSI is not fully applied
- (b) The technical characteristics applicable instead of the TSI
- (c) The bodies responsible for applying the verification procedure referred to in Article 18 of the Directive 2008/57/CE.

3. Member States shall send to the Commission a report on the implementation of Article 20 of Directive 2008/57/EC three years after [the entry into force of this Regulation]. This report shall be discussed in the Committee set up by Article 29 of Directive 2008/57/EC and, where appropriate, the TSI in the Annex shall be adapted.

Article 10

Innovative solutions

1. In order to keep pace with technological progress, innovative solutions may be required, which do not comply with the specifications set out in the Annex or for which the assessment methods set out in the Annex cannot be applied.
2. Innovative solutions may relate to the infrastructure subsystem, its parts and its interoperability constituents.
3. If an innovative solution is proposed, the manufacturer or his authorised representative established within the Union shall declare how it deviates from or

complements to the relevant provisions of this TSI and submit the deviations to the Commission for analysis. The Commission may request the opinion of the Agency on the proposed innovative solution.

4. The Commission shall deliver an opinion on the proposed innovative solution. If this opinion is positive, the appropriate functional and interface specifications and the assessment method, which need to be included in the TSI in order to allow the use of this innovative solution, shall be developed and subsequently integrated in the TSI during the revision process pursuant to Article 6 of Directive 2008/57/EC. If the opinion is negative, the innovative solution proposed cannot be used.
5. Pending the review of the TSI, the positive opinion delivered by the Commission shall be considered as an acceptable means of compliance with the essential requirements of Directive 2008/57/EC and may be used for the assessment of the subsystem.

Article 11

Repeal

Decisions 2008/217/EC and 2011/275/EU are repealed with effect from 1 January 2015.

They shall however continue to apply to:

- (a) subsystems authorised in accordance with those Decisions;
- (b) projects for new, renewed or upgraded subsystems which, at the date of publication of this Regulation, are at an advanced stage of development or are the subject of an on-going contract.

Article 12

Entry into force

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

It shall apply from 1 January 2015. However, an authorisation for placing in service may be granted in accordance with the TSI as set out in the Annex to this Regulation before 1 January 2015.

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

Done at Brussels,

*For the Commission
The President
José Manuel Barroso*