

# Position Paper

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## 4<sup>th</sup> Railway Package

### Proposal on the interoperability of the rail system within the EU

COM(2013) 30 final

## Introduction

*EIM welcomes the initiative of the European Commission to complete a 'Single European Railway Area' by removing the remaining technical, regulatory and economic barriers with the aim to improve the performance and competitiveness of the railway sector.*

*In this position paper, EIM would like to comment on one of the six Directives of the 4th Railway Package, i.e. the Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union - COM(2013) 30 final.*

*EIM understands that the objective of the proposal on interoperability is to improve the competitive position of the rail sector through harmonised standards and the approval processes for rail vehicles and infrastructure by eliminating the existing barriers preventing this objective to be reached.*

*Whilst EIM fully supports the proposal and its underlying objectives, it is essential to draw the attention on those elements which EIM deems critical. In particular, risks which are not sufficiently analysed and assured shall always be held as a fundamental concern for stakeholders, and shall also be impossible to get accepted by all stakeholders (Member States, Parliament, safety authorities, industry) whenever safety is in question.*

*Therefore, to make the proposal a successful and implementable one, this paper does not only outline the main critical elements identified by the infrastructure manager as the system integrator and guardian but also provides for potential solutions.*

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# Contents

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- **Vehicle Authorisation**
- **Non – Application of Technical Specification for Interoperability**
- **Scope of the authorisation for Command Control and Signalling**
- **Impact of the exclusion of the text ‘major’ for IMs**
- **Delegated Acts**
- **National Rules**

## Vehicle Authorisation

*Articles 19, 20, 21 and 22*

EIM supports the objective of the Directive and acknowledges the important first step towards formalising the role of Infrastructure Managers (IMs) and improving the process of vehicle authorisation. The overarching position of EIM is to ensure above all else, that the role of the IM as the duty holder is respected throughout the future vehicle authorisation process.

The involvement of the European Railway Agency (ERA), National Safety Authorities (NSA), Infrastructure Managers and Railway Undertakings (RU) in the authorisation process is stated in the Directive but the boundaries of the roles and responsibilities of each party is not clearly defined, especially during incidences of disagreements and legal liability. EIM believes that to enable the successful and safe implementation of this Directive shall require a complete and clear description of all interfaces and available tools to understand the responsibilities between them. Further clarification of the proposed process as described in 4<sup>th</sup> Railway Package (4RP), including reviews and impacts, would be a response to this.

The Register of Infrastructure (RINF) is a tool in the early stages of development to aid RUs in the future with conducting basic route compatibility verification when making the decisions to use vehicles. EIM believes that the delivery of the RINF is correctly specified and should not be expanded, however the list of parameters would require amendments to be fully comprehensive and take into account all national scenarios. EIM restates that the applicable RINF shall only be proficient in providing an overview of the infrastructure characteristics for route compatibility, which may fall short of some EC and RU expectations. The RINF alone shall not provide real-time, dynamic and detailed technical requirements (such as electromagnetic compatibility issues) essential for comprehensive vehicle authorisation. The RU has the option to conduct further studies or tests in cooperation with the IM in cases where the RINF does not provide sufficient information in order to achieve route compatibility.

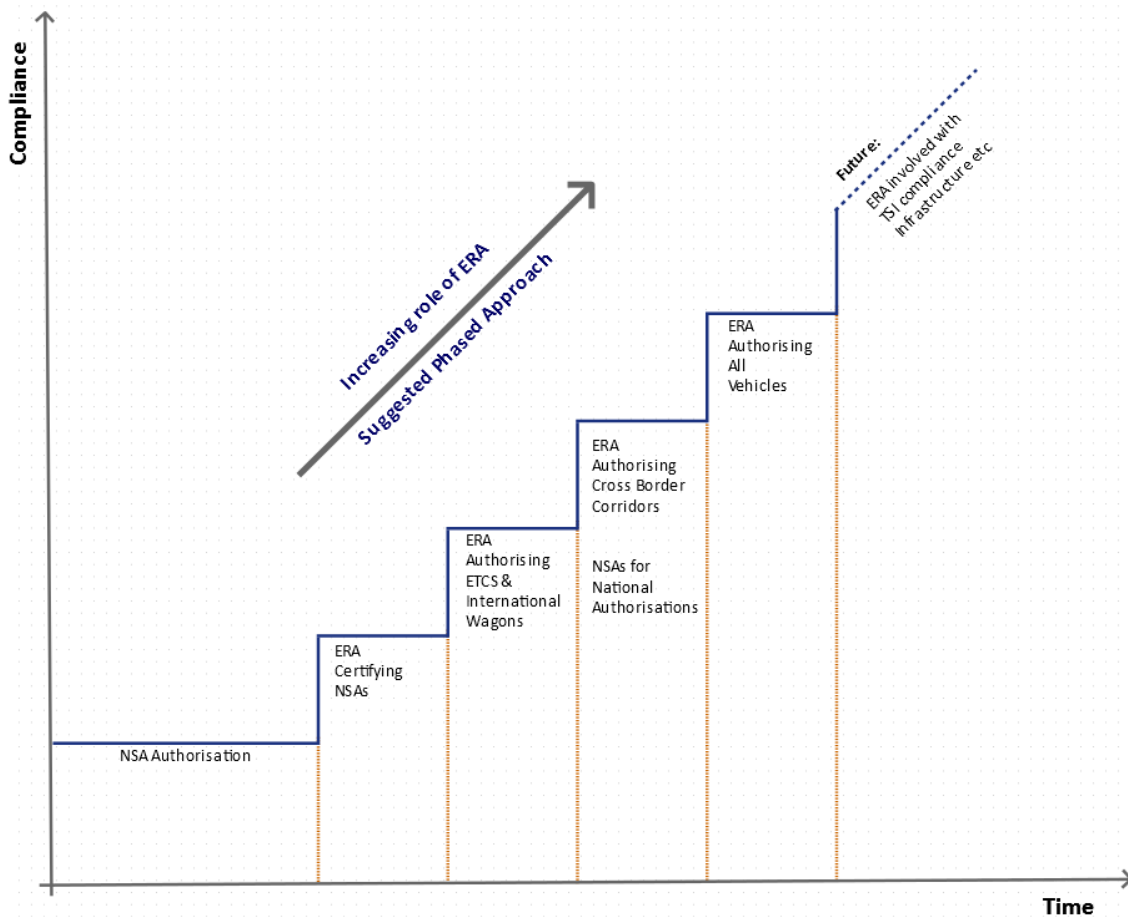
EIM supports an increased role of ERA towards the objective of establishing a single European rail area. Yet this is only considered to be achievable with the clear understanding of the proposed vehicle authorisation process, and the availability of resources of ERA to satisfactorily manage this task. The Directive also does not recognise the activity of re-authorisation of vehicles which as a result will fall additionally under the responsibility of ERA.

The proposal of EIM is to recommend a phased approach in collaboration with the IM to work towards achieving the objectives of the EC, which in turn shall also address the previously mentioned critical elements regarding vehicle authorisation. EIM believes that this approach will enable the proposal to effectively reduce barriers (including financial) for entry to the market and address the potential demands placed upon ERA.

Most critical to the proposal of EIM demonstrated in the following Diagram 1 is the essential requirement of defining evaluation checkpoints at the end and beginning of each phase between with the IM. Clear roles, responsibilities objectives and guiding principles (i.e. economic evaluations) will be criteria in the next steps.

The diagram illustrates the principle behind a phased approach, and does not advise upon the actual elements or order of each stage. EIM wishes to work with other parties to establish this process whilst working towards the final common goal.

**Diagram 1:**  
**EIM supported requirement of 'phased' approach and clear evaluation points with IM to reach goal.**



EIM supports a phased stepped approach with clearly defined targets and valuations points in consultation with the IM. A review at each stage gate to assess progress and define future criteria is crucial for each step of the process.

## Non-application of Technical Specifications for Interoperability

### *Article 7*

As the scope of Technical Specifications for Interoperability (TSI) application expands outside of Trans-European Network for Transport (TEN-T), instances where there will be non-application of TSIs are expected to rise in number.

Article 7(4) of the proposed Interoperability Directive states that whilst the requested derogations are pending for a decision ‘the Member State may apply the alternative provisions as referred to in paragraph 3 without delay.’ The resulting consequences and procedures for a derogation which is not approved are not clear. EIM highlights the risk that TSIs could be enforced retrospectively creating significant impacts to a project. Additionally the resources and capabilities of those assigned to assess the derogation requests are also a significant consideration towards this proposal.

The Interoperability Directive proposal also reduces the allowed cases where a MS does not need to apply TSIs.

It is important to take account of national specificities, such as geographical conditions and cases where the rail network is separated from the common EU network. Moreover, it is essential to take into account vehicle traffic between third countries where the track gauge is different from that of the main rail network within the Union.

Furthermore, it is unclear in the proposed legislation as to when a TSI may not be applied. The test is reduced to just one of economic viability (Article 7). For each item of infrastructure upgrade and renewal work the IM may, where it is not applying TSI standards, have to prove that it would not be economically viable so to do. For a discrete upgrade or renewal it may always be economically possible to apply a TSI standard, however cumulatively over a route this may not be the best value option.

### ***EIM Proposal:***

EIM proposes that the decision of TSI compliance should be measured against a network deployment plan created by the MS. This would not only provide clarity of the TSI deployment strategy, but also reduced the number of approvals required from the NSA. Aligning this would also promote more proactive economic assessments to be conducted by MSs of lines to understand the viability of future upgrades to TSI compliance.

## Scope of Command Control and Signalling Systems Authorisation Responsibility

### *Article 18*

The EC proposal states that ERA would become the system-authority for command and control signalling subsystems including ERTMS. This scope would include authorising all new, upgraded or renewed trackside signalling infrastructure for placing into service for all MSs as part of the responsibility of ERA. (Article 18(2)).

#### ***EIM Proposal:***

Currently the NSA holds the authorisation responsibility, which also includes on board vehicle CCS systems, and should continue to do so. MSs hold the local knowledge not only of the CCS works, but also the interfaces with the other structural sub-systems such as energy and infrastructure.

The proposal should allow for the NSAs to grant authorisation for trackside CCS, and ERA to approve signalling subsystems being introduced as part of ERTMS deployment.

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## Impact of the exclusion of the term ‘major’ for Infrastructure Managers

### *Article 2(12)*

The removal of the term 'major' in proposed Article 2(12) potentially widens the scope of TSI compliance significantly beyond what is currently applicable for all MSs.

Clear implications of this single change of wording would result in significant costs and bureaucracy impacts making it necessary to incur the consideration of appointing a third-party body to verify all designs. All built works would require assessment in order to verify that they are compliant to the relevant TSIs and National Technical Rules. The omission would also require for all scales of work to become TSI compliant resulting in large financial implications and the risk of questioning the validity of smaller works.

#### ***EIM Proposal:***

EIM does not support this proposed text change and continues to recommend the current method of self authorisation under the relevant IM safety management system (SMS) with ERA maintaining an overview position for ‘major’ works to ensure interoperability compliance.

## Delegated Acts

*Articles 4 and 46, Annex II*

In Article 4(2) of the Interoperability Directive it is stated that “The Commission shall be empowered to adopt delegated acts in accordance with Article 46 concerning adaptation to technical progress of Annex II regarding the breakdown of the rail system into subsystems and to the description of these subsystems.”

Annex II addresses subsystems, i.e. it lists the subsystems and descriptions of the subsystems. These subsystems are key components of interoperability. EIM states that it is essential for the Committee Procedure (the Railway Interoperability and Safety Committee - RISC) to be included when addressing any aspects of the subsystems in Annex II, and this would no longer be the case as a result of the proposal introducing delegated acts.

### ***EIM Proposal:***

EIM recommends that the Directive, when referencing to delegated acts, would be readdressed as implementing acts. The breakdown of the rail system into subsystems and their descriptions are considered by EIM as essential elements of the proposed legislative act (Interoperability Directive), and delegated acts should only be used on non-essential elements of the legislative act.

Furthermore, In Article 46(2) of the Interoperability Directive the period of time for the Commission to adopt delegated acts is not defined. In the Treaty on the Functioning of the European Union (TFEU) Article 290 however clearly states that the ‘objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts.’ For this reason EIM considers that the proposal of the EC should be in line with the Treaty ensuring legal certainty, and should make reference to specific timescale constraints.



## National Rules

EIM supports in principle the reduction of national rules towards promoting a single European rail area. Clear governance and sufficient resources would be essential to insure that this objective shall still be able to uphold the standard provided by current national rules and the local systems they are applied in.

National rules, both technical and operational, are a consequence from the existence of national systems. Those systems will have an economical life span for many decades to come. During that life span those systems must be managed and therefore existing national rules updated, for example if safety risk is identified. Therefore the process of managing existing national rules is important and should be described.

### *EIM Proposal:*

A European-wide operation system would not be achieved if new or modified national rules are not successfully introduced. The Directive must demonstrate the path to progressively harmonise the operational framework. IMs hold the current and historic knowledge which have formed the fundamentals of many national rules and EIM would state the involvement of IMs, during a clear and phased reduction process, to be essential in ensuring the integrity of the overall system is upheld.

EIM also supports the development of harmonised operational rules and the removal of national rules shall depend on the MS implementation plans of TSIs subject to economically verification within defined timescales.

## Way Forward

*EIM emphasises the importance for further clarification and reasoning behind many elements of the proposed Interoperability Directive, including those not explicitly identified in this position paper. This would aid in the understanding of the consideration taken by the Commission towards explaining the anticipated impacts and results as a consequence of achieving the objectives of the Directive.*

*In general, the position of EIM is to highlight throughout this position paper the importance of clear definitions, scopes and reasoning required as part of the Directive's objectives. Without this, the aims and successful delivery of the Directive will continue to be held in uncertainty by all actors.*

*EIM would be pleased to provide discussions at EU and Sector level, and support the work of the ERA, EC and Parliament to achieve the clarity required to deliver the ambitions of the current proposals. IMs are the duty holder, and therefore can provide the most effective platform for communication and information exchange as the system integrator.*

- ▶ *Therefore EIM wishes to work with all stakeholders towards in particular, defining the supporting role of the IM as part of a feasible solution to ensure the proposals of the EC are successful for all actors involved.*