

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 V

PLACING ON THE MARKET AND PLACING IN SERVICE

Article 26

Non-compliance of vehicles or vehicle types with essential requirements

1 When a railway undertaking finds, during operation, that a vehicle it is using does not meet one of the applicable essential requirements, it shall take the necessary corrective measures in order to bring the vehicle into conformity. Furthermore, it may inform the Agency and any national safety authorities concerned of the measures taken. If the railway undertaking has evidence that the non-compliance existed already at the time when the authorisation for placing on the market was issued, it shall inform the Agency and any other national safety authorities concerned.

2 When a national safety authority becomes aware, for instance within the process of supervision provided for in Article 17 of Directive (EU) 2016/798, that a vehicle or a vehicle type to which an authorisation for placing on the market was granted either by the Agency, in accordance with Article 21(5) or Article 24, or by the national safety authority, in accordance with Article 21(8) or Article 24, when used as intended, does not meet one of the applicable essential requirements, it shall inform the railway undertaking using the vehicle or the vehicle type and ask it to take the necessary corrective measures in order to bring the vehicle(s) into conformity. The national safety authority shall inform the Agency and any other national safety authorities concerned, including those in a territory where application for authorisation for placing on the market for a vehicle of the same type is ongoing.

3 When, in the cases set out in paragraphs 1 or 2 of this Article, the corrective measures applied by the railway undertaking do not ensure conformity with the applicable essential requirements and that non-conformity leads to a serious safety risk, the national safety authority concerned may apply temporary safety measures under its supervision tasks, in accordance with Article 17(6) of Directive (EU) 2016/798. Temporary safety measures in the form of a suspension of type authorisation of a vehicle may be applied in parallel by the national safety authority or by the Agency and shall be subject to judicial review and the arbitration procedure laid down in Article 21(7).

4 In the cases referred to in paragraph 3, the Agency or the national safety authority which issued the authorisation, following a review of the effectiveness of any measures taken to address the serious safety risk, may decide to revoke or amend the authorisation when it is proven that an essential requirement was not met at the time of authorisation. To that end, they shall notify their decision to the holder of the authorisation for placing on the market or of the vehicle type authorisation, giving the reasons for their decisions. The holder may, within a period of one month from receipt of the decision of the Agency or the national safety authority, request them to review the decision. In that case, the decision to revoke shall be temporarily suspended. The Agency or the national safety authority shall have one month from the date of receipt of the request for review in which to confirm or reverse their decision.

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Where relevant, in the event of disagreement between the Agency and the national safety authority concerning the need to restrict or revoke the authorisation, the arbitration procedure provided for in Article 21(7) shall be followed. If the result of that procedure is that the vehicle authorisation is neither to be restricted nor revoked, the temporary safety measures referred to in paragraph 3 of this Article shall be suspended.

5 If the decision of the Agency is confirmed, the holder of the vehicle authorisation may bring an appeal before the Board of Appeal designated under Article 55 of Regulation (EU) 2016/796 within the time limit referred to in Article 59 of that Regulation. If the decision of a national safety authority is confirmed, the holder of the vehicle authorisation may bring an appeal, within two months of the notification of that decision, under the national judicial review referred to in Article 18(3) of Directive (EU) 2016/798. Member States may designate the regulatory body set out in Article 56 of Directive 2012/34/EU for the purpose of this appeal procedure.

6 When the Agency decides to revoke or amend an authorisation for placing on the market which it has granted, it shall directly inform all national safety authorities, giving the reasons for its decision.

When a national safety authority decides to revoke an authorisation for placing on the market which it has granted, it shall forthwith inform the Agency thereof and give the reasons for its decision. The Agency shall then inform the other national safety authorities.

7 The decision of the Agency or the national safety authority to revoke the authorisation shall be reflected in the appropriate vehicle register, in accordance with Article 22 or, in the case of an authorisation of a vehicle type, in the European register of authorised vehicle types in accordance with Article 24(7). The Agency and the national safety authorities shall ensure that railway undertakings using vehicles of the same type as the vehicle or type subject to the revocation are properly informed. Such railway undertakings shall first check whether the same problem of non-compliance applies. In that event, the procedure provided for in this Article shall apply.

8 When an authorisation for placing on the market is revoked, the vehicle concerned shall no longer be used and its area of use shall not be extended. When a vehicle type authorisation is revoked, vehicles built on the basis of it shall not be placed on the market or, if they had already been placed on the market, they shall be withdrawn. A new authorisation may be requested on the basis of the procedure provided for in Article 21 in the case of individual vehicles or Article 24 in the case of a vehicle type.

9 When, in the cases provided for in paragraphs 1 or 2, the non-compliance with the essential requirements is limited to part of the area of use of the vehicle concerned and such non-compliance already existed at the time when the authorisation for placing on the market was issued, the latter shall be amended to exclude the parts of the area of use concerned.