

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 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

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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.