



POSITION PAPER

Future role of ERA

29 November 2011 by CER and UNIFE, joined by UIP and ERFA in 2012

EXECUTIVE SUMMARY

One of the key targets of European transport policy is to achieve a Single European Railway Area. For this purpose four key objectives shall be pursued:

- Promoting the development of effective rail infrastructure;
- Establishing an attractive and genuinely open rail market;
- Removing administrative and technical barriers and developing easy and common (Member States neutral) procedures on European level;
- And ensuring a level playing field with other transport modes.¹

In this context, CER and UNIFE call for setting the strategic target of aiming at achieving the single European railway area by incrementally establishing a single European railway vehicle authorisation. The Regulation establishing a European Railway Agency [(EC) No 881/2004] should be correspondingly amended. This is perfectly in line with the Commission objective of removing administrative and technical barriers, whilst contributing to establishing an attractive and open rail market.

In the first place however there is a strong need for the European Commission to push Member States to effectively transpose the Safety & Interoperability directives.

Two decades after the decision to revitalise European rail transport, and more than a decade after the publication of the first Directive on the Interoperability of the European railway system, the legal framework of the European railways has been deeply transformed.

In spite of this, we still face problems based on the gap between theory (the legal framework) and practice (diverging application by Member States).

Thus, in spite of the implementation of a basic legislative framework for the interoperability and safety of the European railway system, interoperability is still far from being achieved and measures have to be taken to reach this objective sooner, with all actors acting in a harmonised way.

It can be expected that a harmonised system will be reached step-by-step together with an increase in the quality and quantity of specifications as well as of the scope of application - while nevertheless taking into consideration economic realities. Interoperability is - to a large extent - “cross acceptance” and a “single process for placing into service of vehicles”. When looking at existing and long-lasting infrastructure subsystem/constituents, they will not meet the specifications for interoperability for another decade or even more - until they are renewed or upgraded.

A single European railway area cannot therefore be achieved without developing ERA's role and without accelerated application of the TSIs through the extension of their geographic scope and the consequent reduction in national rules, coupled with more effective ERA engagement with the National Safety Authorities and the Member States.

¹ Communication from the commission concerning the development of a Single European Railway Area (COM(2010)474 final)

1. MARKET OPENING OF RAILWAY TRANSPORT SERVICES DEMANDS SEAMLESS CIRCULATION OF TRAINS AND THUS EUROPEAN VEHICLE AUTHORISATION AND RU SAFETY CERTIFICATION

To create a single European rail market, in addition to opening the market, not only a transition to uniform technology and safety standards is necessary, but also a transition to uniform administrative procedures. The Community rulings from the so-called technical railway package have not yet been transposed in many Member States into national law; it is already becoming apparent that further modification of the legal framework will be necessary to further dismantle market access barriers in the context of vehicle authorisation and to make the authorisation of vehicles faster, less expensive and more transparent.

Five years after being set up, the ERA has earned the respect of the railway sector and today offers considerable European railway expertise. Today the ERA only fulfils preparatory and advisory functions. One essential element for improving the European process for the authorisation of vehicles would be to further enhance the competency of the ERA.

A. In the target vision - a scenario is desirable where, by 2022, the ERA becomes the single issuing authority for safety certification/authorisation and authorisation for placing in service of all vehicles.

Under this scenario the ERA will, in parallel, check conformity with TSIs (using 'EC' declaration of verification delivered by the applicant) and, through its relevant regional department(s), conformity with national rules (except for "go-everywhere" vehicles), using the certificate signed by a designated body in the relevant MS: the ERA will give the green light for the authorisation.

ERA should evolve towards having a central directorate supported by national or multinational offices, as has been provided for in the EMSA (European Maritime Safety Agency) regulation, it would be possible to maximise the benefits of single processes for authorisation and single interpretations of the directives, whilst retaining the competence, the local knowledge and the influence of the individuals in the regions. It is to be noted that such an organisation can work in a largely decentralised way: all the technical work would be done at the level of the national or multinational departments, except possibly in the case of particularly complex major international projects.

ERA becomes the only entity in charge of "permissioning enforcement" for all: safety certificates for RUs, safety authorisations for IMs, authorisations of putting into service all subsystems and vehicles.

ERA should become, in parallel, in charge of proposing the evolution of former "national" rules to the EC and RISC: thanks to its dedication to European processes, ERA would prevent further unnecessary and inappropriate divergence between such rules and will increase their harmonisation.

Such a target system should already be embedded with its implementation date in the 4th railway package through the revision of the ERA Regulation, safety and interoperability directives.

B. With the long term objective in mind, the following functions should be added to today's competences of ERA through the revision of the ERA Regulation and of the safety and interoperability directives in the context of the 4th railway package, with immediate effect:

1. The ERA should be able to exercise the function of a one-stop shop when the authorisation for placing in service of vehicles is requested for operations in more than one Member State.
2. The ERA should act as a one-stop shop for the granting of new or renewed safety certificates to RUs intending to operate in more than one Member State. The ERA should be directly in charge of the part A certificate and, through its supervisory role over the NSAs, oversee the part B certification process carried out by NSAs, as long as "regional" rules have not converged enough. It shall also be noted that the safety certificates specific to corridors cannot be supported since RUs do not operate trains only on a corridor.
3. The ERA should have decision-making powers in the event of disputes about vehicle authorisation processes and/or safety certificates based on claimed breaches of European law (control of abuse) and in the event of deviating decisions between the NSAs on identical test items.

Consequently the monitoring and control will have to be closely linked to the issuing of safety certificates/authorisation in order to avoid safety risk in splitting the tasks.

The competences of the NSAs for the authorisations of placing in service of vehicles would be retained in the first step (i.e. under the provisions of the 4th railway package especially for vehicles to be operated in a single Member State).

The unique competence of the NSA should however be retained in the long-term in those Member States that are separated as a result of special geographical conditions from the rail network of the rest of the Community, namely Finland, Estonia, Latvia and Lithuania. The same applies for vehicles coming from or going to third countries, the track gauge of which is different from that of the main rail network within the Community.

C. The current regulatory framework shall be adequately applied to the activity of Notified Bodies; the Commission and the ERA should reinforce their market surveillance actions:

The work of Notified Bodies (NoBos) should be enhanced. Replies should be provided much faster to their questions in case of interpretation difficulties with the EU legislation and TSIs. The EC already has the necessary powers through Article 28 of

Directive 2008/57/EC, especially §5 second paragraph. All the possibilities shall be used to formalise necessary measures (technical opinions, omnibus procedure).

The work quality of some NoBos is questioned by some of the National Safety Authorities, which do not recognise the validity of their certificates and as a consequence the EC declarations of verification based on them, and call for repeat verifications, contrary to Articles 11 and 16 of 2008/57/EC. Where appropriate, according to articles 13.5, 28.4 and 28.5 of 2008/57/EC, the Member States and ERA should collaborate to remove doubts and incorrect verifications. Costly and lengthy duplication must be eliminated while ensuring good quality NoBos are available to use. The ERA already has the opportunity to do so at the request of the EC, under the ERA Regulation, Article 13.

There is no doubt that the modus operandi of certain Notified Bodies gives rise to doubts about the viability of their verification. To solve this problem, Article 13 of the Agency Regulation states that the ERA monitors the work of the Notified Bodies; to date this option has not been exercised. The Commission and the ERA should make use of these powers. When necessary, The ERA should draw up binding European instruction to the Notified Bodies/NB Rail for the interpretation of provisions in the TSIs.

A true European authorisation under the control of the ERA for vehicles for which authorisation is sought in more than one Member State should become the reality with almost immediate effect. Strengthening the role of the ERA should allow for a one-stop shop to be offered to the applicants.

The ERA should become the only entity in charge of “permissioning enforcement” for all: safety certificates for RUs, safety authorisations for IMs, authorisations of putting into service all subsystems and vehicles, as the ultimate target, benefiting from local competence.

2. NATIONAL TECHNICAL AND SAFETY RULES HAVE TO BE ELIMINATED AND HARMONISED APPLICATION OF EUROPEAN INTEROPERABILITY AND SAFETY REGULATIONS SHOULD BE MONITORED

Opening of the European rail market necessitates a harmonised application of safety regulations for the assessment of railway companies' ability to ensure safety in operation, as well as for the risk assessment of sub-systems. The ERA should be responsible for proposing the evolution of national technical and safety rules. We recognise that such rules will remain necessary for a long time, even if their number and their importance will diminish regularly, as many lines do not yet conform to TSIs. But the objective should be that they only remain valid for duly identified specific cases.

The migration could start by 2014. The EC should check immediately after the limit date of 1 August 2012 that all the national technical rules for vehicle authorisation are fully published in the national reference document and really notified in NOTIF-IT, as stipulated by decision 2011/155/EU, and act accordingly if it is not the case.

As the first stage in the process to the above target the ERA should be in possession of a right of audit on the way in which the National Safety Authorities manage the safety of their national railway systems.

To achieve the targets of economical cross-border operation of railway vehicles and of full opening of the procurement market for railway products and services, the ERA should be empowered to identify the unnecessary and superfluous national rules and be able to request their removal.

ERA should be in a position of monitoring/auditing the processes of National safety authorities in order to foster their progressive harmonisation.

3. THE COORDINATION OF TECHNICAL, RESEARCH AND ENVIRONMENTAL ASPECTS IS NEEDED TO ENHANCE THE RAIL CONTRIBUTION TO THE SUSTAINABLE TRANSPORT

The railway system does play a significant role in reaching environment targets for transport sector. The coordinated approach allowing benefiting from the low impact of railways and its growth potential demands ERA contribution in the processes of ensuring the coherence between environmental directives (e.g.NRMM) and technical requirements oriented on the system interoperability and safety.

The single European railway area can only be achieved when the resources are concentrated and used accordingly. A contribution of the ERA in the strategic planning and budgeting of European Commission funded research for better interoperability of the system is therefore also essential.

4. OTHER FUNCTIONS

It is very important that a conflict of interest is avoided. The responsibility for the various roles under the Interoperability and Safety Directives must reside amongst separate and appropriate parties: the proposer of rules (the ERA) must remain separate from the body that endorses those rules coming into force (the EC after a vote of the RISC).

It is for this reason that CER does not support the idea of the ERA also acting as the European regulatory body (in the sense of economic/market regulation).

Similarly CER considers as inappropriate, for reasons of competence, that the Agency might take other roles, as outlined in “The European Railway Agency - Future Roles A discussion paper prepared by the Agency”:

Security², distribution systems for passengers³, infrastructure fees⁴, certification of ERTMS components⁵

² Page 7

³ Pages 10 & 11

⁴ Page 11

⁵ Page 13

For its part, UNIFE would like to take more time to build its own political and economic opinion on these complex issues, but at least recognises with CER that developing now a competence in the Agency for all these functions would be taking the risk of distracting the ERA from its present technical mission, which is essential to the creation of an economically sound and open European railway system.

Therefore both organisations are in an agreement that the urgent measure to be taken, as far as the ERA is concerned, is the enlargement of the present scope of competences as outlined in the previous paragraphs of this paper.

5. FINAL REMARKS

A. Committee on the Interoperability and Safety of the European Rail System

Under the supervision of the Rail Interoperability and Safety Committee (RISC), error-free and reliable EU railway regulations should always be made available with appropriate yearly revisions, if necessary. Therefore:

- a system feedback loop should be established between the ERA, NSAs and market actors to identify and quickly resolve, (during the first years of application of a TSI), all the technical issues that might lead to the blockage of authorisations.
- the Network of Representative Bodies (NRB) with its team of coordinators and technical experts should be directly involved in revision process for the EU railway regulations and recommendations under the responsibility of the ERA. This should also include the NRB representation at RISC meetings in a consultative role, as proposed by several member states, as the RISC is the very last instance for the sector.

There is also a need for the Network of Representative Bodies (NRB) to be more involved in the planning process of the annual ERA work plans.

B. The Agency performance

Considering the above proposals there will be a need for better project and quality management and better stakeholder management. The ERA's style of engagement with the sector should be revised, since the more centralised the authorisation process becomes, the more important it is that ERA behaves as a customer-friendly organisation.

ERA should cooperate more closely with member states to facilitate the adaptation of national laws to European legislation.