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NB-Rail Association

RECOMMENDATION FOR USE

NB-RAIL COORDINATION GROUP

Administrative Decision according to Interoperability Directive
(EU) 2016/797 art. 30.6



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RFU-STR-702

Issue 03

Date 23/06/2020

TITLE

APPLICATION OF RFUs, Q&Cs, TOS AND TAs

ORIGINATOR

ORIGINATOR NoBo(s): STRATEGY GROUP,
ARSENAL RACE

SUBJECT RELATED TO

IOD 2008/57 and IOD 2016/797
ALL APPLICABLE TSIs
AGENCY REGULATION 2016/796/EU (AR)

AMENDMENT RECORD: ISSUE 03, IOD REFERENCES UPDATE

DESCRIPTION AND BACKGROUND EXPLANATION

1 DESCRIPTION

NB-Rail issues Recommendations For Use (RFU) and Questions and Clarifications (Q&Cs). The application of these documents is defined in chapter 5 of document "DV08EN01 NB-Rail Coordination Group Rules of Operations V12.0", as endorsed at RISC 77, whereas the description of these documents is given in chapter 6.1 resp. 6.2 of the same document. The development process of RFUs and Q&Cs is described in WKD-STR-002 of NB-Rail.

The ERA issues by order of the European Commission Technical Opinions (TO) and Technical Advice (TA). TOs in this regard are opinions as defined in article 10 (2) or article 19 (1) (d) of Agency Regulation 2016/796/EU (AR) and opinions as described by the TSIs to adopt innovative solutions or to correct errors in TSIs. Opinions according to article 10 (1), article 19 (1) (e), article 25, article 26 and article 42 of AR 2016/796/EU are not part of this RFU. TAs in this regard are advice as defined in article 41 of the AR.

The exact application of these kinds of documents (RFUs and Q&Cs) from NB-Rail and from ERA resp. European Commission (TOs and TAs) have to be defined for sake of clarity in ongoing projects.

The term "ongoing projects" in the context of this RFU means: projects for new, renewed or upgraded subsystems which, at the date of publication of the document (RFU, Q&Cs, TO, TA), are at an advanced stage of development, are of an existing design or are the subject of a contract which is being carried out. This is the same definition as given in the various TSIs for transition phases.

For all other projects the term "new projects" is used.

2 REFERENCES FROM LEGAL TEXT

2008/57/EC states in Article 7 (2): *"the Commission may recommend that the technical opinion is used pending the review of the TSI in accordance with Article 6(1). In that*



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case, the Agency shall publish the technical opinion.”

The new IOD 2016/797/EU states in article 2 (33):

“ ‘acceptable means of compliance’ means non-binding opinions issued by the Agency to define ways of establishing compliance with the essential requirements”

And in article 6 (2) and (3):

2. Pending the review of a TSI, the Commission may request an opinion from the Agency. The Commission shall analyse the Agency's opinion and inform the committee of its conclusions.

3. At the request of the Commission, the Agency's opinion referred to in paragraph 2 shall constitute acceptable means of compliance and may therefore be used for the assessment of projects, pending the adoption of a revised TSI.

The “ERA-Regulation 2016/796/EU states in article 10 (2)

“The Agency shall issue opinions at the request of the Commission on amendments to any act adopted on the basis of Directive (EU) 2016/797 or Directive (EU) 2016/798, especially where any alleged deficiency is signalled.”

And in article 19 (1) (d):

“issue opinions which constitute acceptable means of compliance concerning deficiencies in TSIs, in accordance with Article 6(4) of Directive (EU) 2016/797, and provide those opinions to the Commission;”

3 LEGAL BASIS FOR QC AND RFU APPLICATION BY NOBOS

QCs and RFUs have not the same legal status as the acts published on the Official Journal of the European Union (OJEU). Nevertheless, the fact that a NoBo shall apply RFUs and QCs relies on a robust legal basis, taking into consideration the following elements.

New IOD 2016/797, in art. 30.6, confirms the NoBos shall apply « as general guidance the administrative decisions and documents produced as a result of the work of that group ». Moreover, art. 30.7 deals specifically with CCO-CCT subsystems (ERTMS-adhoc group), and it confirms again that NoBos « shall follow the guidelines produced as a result of the work of that group ».

Moreover, RISC77 endorsed NB-Rail Rules of Operation, where there is clearly stated that NoBos shall apply RFUs and QCs;

Finally, ERA Assessment Scheme (MNB - Assessment scheme – 000MRA1044 ver 1.1) deals with this issue in several points within “PART 2.B: REQUIREMENTS”:

a. in section “4. General requirements”, it is stated that “The CAB shall commit



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itself in writing to follow the activities and apply the documents of the coordination group of notified bodies NB Rail”

- b. in section “7.4.ISP.A Inspection methods, procedures and requirements”, it is stated that “The specific methods, procedures and requirements for inspection shall be derived at least from the items of the following list: [...] NB-Rail coordination group documents (e.g. RFUs, Q/Cs, and FAQs).

in section “7.4.QMS.G – Determining audit objectives, scope, criteria and topics”, the NB-Rail coordination group documents (e.g. RFUs, Q/Cs, FAQs). RFUs are listed as “audit criteria”.

RFU PROPOSAL

The four kind of documents are treated separately:

1 RFU

An RFU is mandatory for all NoBos to apply in all ongoing and new projects as stated in the Rules of Operation (endorsed by RISC 77). Each RFU defines the following dates:

- This RFU was agreed on: *Number of the Plenary Meeting*
- This RFU enters into force on: *Date of publication in CIRCABC*
From this date on the RFU can be applied.
- RFU Application is mandatory starting from: *Date from which the application is mandatory*
Depending on the impact of the RFU, the Plenary Meeting chooses a reasonable date. As an RFU is not changing any legal text, the application of RFUs should have no big impact on any projects.

Note: For all existing RFUs published before entering into force of this RFU, the transition period has already expired and all of these RFUs are fully applicable.

2 Q&C

A Q&C, once approved at Plenary Meeting, only contains a question and a proposal for an answer. Once the answer is given by the Commission or by ERA (through Technical Opinion or Technical Advice), this answer is attached to the Q&C and the Plenary Meeting discusses the updated Q&C. Once approved by the Plenary Meeting, the Q&C with the relevant answer is published and becomes applicable.

3 TECHNICAL OPINION

A Technical Opinion is a document drafted by ERA, coordinated with European Commission and adopted by Executive Director of ERA. In ongoing and new projects a



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TO may be used after it has been published by ERA on their webpage. The TO constitutes an acceptable means of compliance concerning the deficiency in a TSI, pending the adoption of a revised TSI. As it is the only solution to resolve the deficiency, it is highly recommended to apply the TO.

4 TECHNICAL ADVICE

The process is the same as for the TO.

The NoBo shall state in the technical file, which RFUs (including the Issue number) and TOs and TAs have been applied in the project.

Note: Technical Document as referred to in various TSIs (e.g. TSI Loc&Pas, TSI CCS) shall not be misunderstood as technical opinions. Technical documents that are directly referred to from a TSI, form a part of the TSI and are therefore mandatory for application. In this regard the note 13 below Table A 2.3 in TSI CCS 2016/919/EU shall be read as follows: *Specifications to be set out in a technical document of the Agency.*

THIS RFU WAS AGREED ON

PLENARY MEETING 059

THIS RFU ENTERS INTO FORCE ON

23/06/2020 (DATE OF PUBLICATION)

FROM THIS DATE ON THIS RFU CAN BE APPLIED INSTEAD OF THE PREVIOUS MANDATORY VERSION.

RFU APPLICATION IS MANDATORY STARTING FROM

23/06/2020

AT THIS DATE ANY PREVIOUS VERSIONS OF THIS RFU WILL BE WITHDRAWN.

RFUS SHALL BE APPLIED BY ALL NOBOS. PLEASE REFER TO RFU-STR-702, CHAPTER 3 OF THE SECTION "DESCRIPTION AND BACKGROUND EXPLANATION", FOR THE LEGAL BASIS SUPPORTING THIS OBLIGATION.

ERA COMMENTS

PM 059 – 17/06/2020: No COMMENTS