



The Group of Representative Bodies (GRB)

Position Paper on the EC Expert Group on the Technical Pillar of the 4th Railway Package Topics

Brussels, 15.03.2017



Scope of this GRB position paper

This position paper aims to consolidate the GRB position regarding the topics addressed at the European Commission's Expert Group on the Technical Pillar of the 4th Railway Package.

As stakeholders of the European railway system, GRB members take part of the EC Expert Group in order to provide sector expertise in several key topics for the implementation of the technical pillar of the 4th Railway Package as described in the Interoperability and Safety Directives (respectively Directive (EU) 2016/797 and Directive (EU) 2016/798) and in the Regulation on the European Union Agency for Railways (Regulation (EU) 2016/796).

This paper reacts to the information given so far by the European Commission, outlining the European Railway sector's position on the critical topics for a successful implementation of technical pillar.

GRB calls for the adoption of a simpler and leaner procedures for Vehicle Authorisation, Single Safety Certification and ERTMS trackside approval in the respective Implementing acts and practical arrangements so to achieve the fundamental objective of the Fourth Railway Package to reduce complexity, time-length and cost for the European railway system.

Executive Summary

The fundamental objective of the Technical Pillar is to reduce complexity, length and cost of the authorisation and certification procedures of the European railway system.

To succeed in this the implementation relies on several key interlinked components and legal acts.

As raised in this paper, **GRB calls for:**

- 1. Comprehensive transitional provisions, which would allow a smooth and effective transition without creating extra costs and burdens to the sector**
- 2. Sound language policy for VA and ERTMS trackside approval**
- 3. Reasonable and predictable Fees and Charges**
- 4. Remove all uncertainty for the appealing party in the Board of Appeal process**

The Group of Representative Bodies acknowledges the steps taken to prepare a sound and timely implementation of the 4th Railway Package's Technical Pillar. Nevertheless, GRB sees a risk in a delayed transposition of the Interoperability Directive and Rail Safety Directive into the respective national law by the Member States. GRB calls all responsible bodies to enforce the aforesaid transposition.



1. Transitional provisions

The GRB identified a big risk on the new position taken by the European Commission on the Transition period, following the advice of the EC legal service stating that no authorisation or certification based on the 2008/57 and 2008/49 regimes can be ISSUED after the June 2019 transition deadline.

Four transition options have previously been discussed in European Commission meetings and were subject to a light impact assessment by the European Union Agency for Railways (ERA) seen in Annex 1. In the case of the latest position taken by the EC (ruling out options 2 and 3), only option 1 is remaining. Option 4 is simply not acceptable; it would create at least a 4-month gap in all European business which is simply not viable for private business.

However, option 1 implies to review all 4th Railway Package Technical Pillar projects milestones, as ERA, Member States and NSAs would need to be ready with the complete set of new regulations (transposition, Implementing Acts, OSS tool, Fees and charges, Board of appeals, pool of experts, cooperation agreements, etc.) at least 5 months before June 2019, or there will be no possibility of applications for authorisation or safety certification during several months.

In addition, it is not clear yet to the rail sector how to manage the pre-engagement phase, which is currently on going for some projects expected to be authorised mid-2019.

This will go against the primary objective of the Fourth Railway Package which is to have both quicker and cheaper procedures for authorisation of railway vehicles and safety certificates. Finally, this will slow down the setting up of the Single European Rail Area.

Additionally, in GRB's view, option 1 will imply critical delays and huge administrative burdens in the cases where the authorisation file and single safety certification dossier, because of some unexpected delay, will need to be resubmitted. This will result in a very high risk for the applicant.

For all the above-mentioned reasons, GRB advocates for the following:

- **GRB strongly calls for option 2 and 3 to be retained**, based on 'Submission date' of the authorisation and safety certification file rather than the 'Issuing date' of the authorisation and safety certification, if the EC Legal Services opinion is confirmed as being a recommendation and not binding decision as suggested at the last RISC committee on January 26. Option 2 and 3 are a necessity for the European rail sector to ensure the predictability of the transition. The rail sector cannot support the administrative burden involved with the double application, especially if due to another party's delay: this will lead to huge costs and economic and business impacts, without even mentioning the catastrophic impact on services for passengers and freight.
- Option 2 is a special case of Option 3 with the transition phase shrinking to a single date rather than a period of time. It allows the authorization regime to be switched over at a distinct date, but also ensures continuity and stability for authorisation and safety certification projects, which were previously started, i.e. project application was sent before that date (and requirements frozen).
- Option 3 allows for a real transition period of the authorisation and safety certification regime, meaning for an intermediate period of time the applicant has the choice between two authorisation and safety certification regimes. This would also allow the organisations involved (ERA and NSAs) to adapt their capacities smoothly.



In addition, **GRB suggests the EC to introduce in the Implementing Acts for Vehicle Authorisation and Single Safety Certification a clause for preconditions according to which the transition date should be linked.** In order to allow the applicant to submit a request for authorisation or safety certification under the new regime, it is strictly necessary that all the new framework is adopted at European level and that the interoperability and safety directives have been transposed at national level by the member states.

Pre-conditions should include: adoption of TSIs and coherent set of national rules, conformity assessment procedures, modules, templates and all the necessary documentation to build an authorisation file and single safety certification dossiers to be available at least 12 months in advance. The overall authorisation process, in particular for new vehicles, can last several years, as it is linked to a new development and long lasting conformity assessment procedures. Therefore, if one of the above-mentioned parts is not available, this should delay the start of transition date, which should be moving forward accordingly, or at least the impact of the missing building block shall be taken into account.

In any case, **GRB suggests the EC to introduce in the Implementing Acts for Vehicle Authorisation and Single Safety Certification a clause for ‘Projects at advanced stage of authorisation/certification’ and ‘Authorisation/Certification in course of performance’,** in analogy to the one already existing in the Loc&Pas TSI chapter ‘7.1.1.2. Transition phase’ that defines possibility of exemption to the new regime for ‘Projects at advanced stage of development, Contracts in course of performance, and Rolling stock of an existing design’ and thus ensures stability for the projects in terms of the vehicle authorisation and safety certification process.

As already mentioned, the authorisation and safety certification process is time-consuming, if a project is at an advanced stage of authorisation/certification or in course of authorisation/certification during this transition period, the applicant should be given the choice to apply under the 2008/57 or 2008/49 regime. By the date of application for authorisation/certification, the project is already mature and therefore needs stable rules and requirements including the authorisation/certification process itself. GRB proposes to have this possibility for a transition period of 12 months; this would allow also to consider 1 year delay in the transposition that the new interoperability and safety directive itself allows for.

In conclusion, GRB suggests the ERA and the EC conduct a cost-benefit-analysis for the above-mentioned options and to work with the sector in order to find a solution for this crucial point as soon as possible, as an appropriate and smooth transition is essential to the early success of the new authorisation and single safety certification regimes.

The fundamental objective of the Technical Pillar is to reduce complexity, length and cost of the authorisation and certification procedures of the European railway system.

To succeed in its implementation GRB calls for a comprehensive transitional provision, which would allow a smooth and effective transition without creating extra costs and burdens to the sector.



2. Use of languages for the 4th Railway Package authorisation and approval processes.

Use of language remains a key hurdle in simplifying the processes of the 4th Railway Package. As a result, the topic remains subject of wide discussion within the EC Expert Group and ERA Management Board meetings.

The Group of Representative Bodies (GRB) has previously issued a position paper in November 2016 regarding the linguistic arrangements at the European Union Agency for Railways in respect to the language regime at Agency level. The GRB underlined the strong need for cost reduction, efficiency and clarity within the sector and therefore requested English as the one reference working language to be used in relation to all technical matters at the Agency. The GRB cannot accept escalated costs of translations being passed on to the sector or the tax payer, especially when all players are capable of properly understanding English. However, that document did not cover the linguistic arrangements for vehicle authorisation, safety certification and ERTMS trackside approval or the board of appeal.

GRB appreciates the efforts currently being made by the European Union Agency for Railways in trying to find a solution given the different Regulations in force, as presented at the EC Expert Group meeting on January 25th.

GRB would like to take this opportunity to state the sector's position regarding use of language for the vehicle authorisation and ERTMS Trackside approval process:

- GRB has a clear preference for all documentation in an application to be in a single common language agreed between the parties involved in the authorisation, to increase the efficiency of the process and the sector.
- In the event that all parties agree, the preferred commonly used language should be English, aiming to have English as the long-term target single common language for the sector.
- GRB highlight the risks of increased delay and costs for translation should an efficient language policy not be found.
- Delays due to translation must not impact the 4-month timeframe for authorisations.
- GRB ask the EC and Member States to support ERA in finding a solution which will benefit the whole railway sector and promote a competitive and effective process.
- GRB finally wants to underline the need for developing in the cooperation agreement between ERA and NSAs a solid framework to allow mutual trust between the different authorisation and certification entities which result in no further needs of translations and double checking



3. Fees and Charges

GRB calls for a fixed F&C structure to be established; to allow predictability, the applicant should know the costs of authorisation before applying so to include those costs in the tendering and project planning. For Vehicle Authorisation and Single Safety certification, GRB proposes the F&C structure to be based on a matrix of the types of vehicle and types of authorisation and safety certification files, similar to models currently used in different Member States (e.g. Italy, Czech Republic). Similarly, GRB proposes the fixed F&C structure for ERTMS trackside approval should be based upon on the ‘learning cases’ which shall be used to further refine the ERTMS trackside approval itself.

If a fixed F&C structure is not possible to be established for the three aforementioned processes, because of the current large variation amongst the Member States systems, GRB could agree to start with an hourly rate system in order to gain experience, only if the following 2 points are respected:

- a maximum amount is defined: adopting an hourly rate system without including an expected cap could lead to unpredictable costs for the applicant, which must be avoided;
- the implementing act will include a provision for revision of Fees & Charges to aim for and include a fixed fee structure within the first 2 years

The sector is not willing to pay for the learning curve of the Agency. During the learning period each party has to bear its own costs.

Additionally, GRB believes the Agency hourly rate should be unique and not vary depending on the pool of expert hourly rate. The applicant cannot accept to pay different amounts in different projects due to a variation in the amount of ERA staff or experts involved: how the agency organises itself in the different Vehicle or Trackside or safety certification authorisation projects should be completely transparent from an applicant point of view.

GRB also requests the indirect costs being charged within the fixed fee be transparent and including only those tasks necessary for the authorisation. Non-billable costs should not lead to an explosion of the costs, e.g. training of staff. GRB calls for a transparent cost break-down which should only include the necessary tasks and should not include elements such as one-off and recurring cost for training etc.

Furthermore, with regards to ERTMS trackside approval being a new process, GRB foresee serious problems in resourcing the competent experts required for checking an ERTMS technical solution, given the finite resource available in this field. Thus, GRB reiterate the need for a maximum cap to ensure that any hourly rate model does not lead to excessive charging to compensate for resourcing from a finite and potentially expensive pool of experts.

How the payment is incorporated within the application needs to be assessed in order to not delay the release of the authorisation. However, GRB do not support a prior payment and do not see how a fixed rate cannot be set now due to lack of data and experience, yet a quote to be paid in advance can be defined. Finally, in case of non-payment, GRB cannot accept that Safety Certification or Authorisation to be suspended: the administrative process to obtain the certification/authorisation and the payment procedure should be kept separate.



Finally GRB strongly underlines the need for an overall cost reduction and strongly objects to any increase of fees and charges. An additional and more detailed document has been prepared in parallel.



4. Board of Appeal

Prior to the last EC Expert Group meeting the Group of Representative Bodies raised a concern over the wording of the draft Board of Appeal Implementing Act that the decisions taken by the Board of Appeal are finally not binding according to Article 93(2). Even though the Board of Appeal states that the appeal is justified, the Executive Director may decide not to follow the findings. This leads to uncertainty for the appealing party from the very beginning of the appeal process and undermines the principle of separation of powers.

GRB disagree with the interpretation of the Agency regulation which has been taken in forming Art 93 of the BoA IA and cannot see how the Executive Director being able to decide not to follow the BoA findings is in compliance with article 62 of the ERA regulation. GRB calls for the need for a revised test in line with the regulations and expectations of the railway sector to be included in the IA.

GRB requests an assessment from the EC legal services.



Annex 1 – Transition Options

Option 1 – EoT* is the cut-off date for issuing the decision

....	EoT-5m	EoT-4m	EoT-3m	EoT-2m	EoT-1m	EoT	...
Submit file to NSA							
Submit file to ERA							

Option 2 – EoT* is the cut-off date for the submission of applications

....	EoT-5m	EoT-4m	EoT-3m	EoT-2m	EoT-1m	EoT	...
Submit file to NSA							
						Submit file to ERA	

Option 3 - Smooth transition

....	EoT-5m	EoT-4m	EoT-3m	EoT-2m	EoT-1m	EoT	...
Submit file to NSA							
						Submit file to ERA	

Option 4 - Waiting period for all applications (4 months)

....	EoT-5m	EoT-4m	EoT-3m	EoT-2m	EoT-1m	EoT	...
Submit file to NSA							
						Submit file to ERA	

* EoT = end of transition period (eif + 3 years assuming there are no derogations)

Annex 2 – Board of Appeal Texts

ERA Regulation Art.62

3. Where the Board of Appeal finds that the grounds for appeal are founded, it shall remit the case to the Agency. The Agency shall take its final decision in compliance with the findings of the Board of Appeal and shall provide a statement of reasons for that decision. The Agency shall inform the parties to the appeal proceedings accordingly.

BoA IA Draft Article 93 – Decision of the Executive Director on the appeal

1. The Executive Director shall make his decision on the appeal in compliance with the finding of the Board of Appeal.
2. Where the Executive Director decides not to follow, entirely or partially, the findings of the Board of Appeal, he shall specifically justify his decision.