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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

amending Commission Regulations (EU) No 321/2013, No 1299/2014, No 1301/2014, No 1302/2014, No 1303/2014 and No 1304/2014, Regulation (EU) 2016/919 and Commission Implementing Decision 2011/665/EU as regards the alignment with Directive (EU) 2016/797 of the European Parliament and of the Council and the implementation of specific objectives set out in Commission Delegated Decision (EU) 2017/1474

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Union¹, and in particular Articles 5(11) and 48(2) thereof,

Whereas:

- (1) In accordance with Article 19 of Regulation (EU) No 2016/796 of the European Parliament and of the Council² the European Union Agency for Railways (the 'Agency') is required to address recommendations to the Commission on the technical specifications for interoperability (TSIs) and their revision and to ensure that TSIs are adapted to technical progress, market trends and social requirements.
- (2) TSIs should be amended in order to indicate provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal as well as to indicate the parameters of the vehicles and fixed subsystems to be checked by the railway undertaking to ensure compatibility between vehicles and the routes on which they are to be operated and the procedures to be applied to check those parameters.
- (3) Commission Delegated Decision (EU) 2017/1474³ sets out specific objectives for the drafting, adoption and review of TSIs. On 22 September 2017, the Commission asked the Agency to prepare recommendations implementing a number of those objectives.
- (4) Under Decision (EU) 2017/1474, TSIs should be reviewed in order to take into account developments of the Union railway system relating to research and innovation activities, and update references to standards.

¹ OJ L 138, 26.5.2016, p. 44

² Regulation (EU) No 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

³ Commission Delegated Decision (EU) 2017/1474 of 8 June 2017 supplementing Directive (EU) 2016/797 of the European Parliament and of the Council with regard to specific objectives for the drafting, adoption and review of technical specifications for interoperability (OJ L 210, 15.8.2017, p. 5).

- (5) Furthermore TSIs should be reviewed in order to close the remaining open points. In particular, open points as regards specifications on the design of track to be compatible with the use of eddy current brake and the minimum factor for traffic codes should be closed in Commission Regulation (EU) No 1299/2014⁴. Open points as regards specifications on aerodynamic effects, passive safety and variable gauge systems and braking systems should be closed in Commission Regulation (EU) No 1302/2014⁵. Open points as regards specifications on test conditions for on-track tests and variable gauge systems should be closed in Commission Regulation (EU) No 321/2013⁶.
- (6) Decision (EU) 2017/1474 also sets out specific objectives applicable to the TSI relating to the subsystem ‘rolling stock — locomotives and passenger rolling stock’ and the TSI relating to the subsystem ‘rolling stock — freight wagons’. In particular the provisions on automatic variable gauge systems should be reviewed and access to passenger coaches, the authorisation of passenger vehicles in large areas of use and the composition of passenger trains should be facilitated.
- (7) Certain components for which a single failure has potential to lead directly to a serious accident are critical for the safety of the rail system and should be labelled as ‘safety-critical’ on a case-by-case basis. The manufacturer should identify safety-critical components in the vehicle maintenance file.
- (8) Trackside and on-board investments should be protected by guaranteeing backward compatibility and stability of the specifications of the European rail traffic management system (ERTMS). In order to keep pace with technological progress and encourage modernisation such as ERTMS game changers, as specified in the Agency’s report on *ERTMS longer-term perspective* (ERA-REP-150), their implementation should, under certain conditions, be allowed. Where the Agency issues draft release specifications of ERTMS game changers before the planned legal release in 2022, suppliers and early implementers should use the specifications in their pilot phase.
- (9) Not even a successful certification process can always exclude the risk, when on-board and trackside control-command and signalling subsystems interact, of one of them repeatedly failing to function or perform as intended under certain conditions. This may be due to variance in national control-command and signalling equipment (e.g. interlockings), engineering and operational rules, deficiencies in the specifications, different interpretations, design errors or equipment being installed incorrectly. Therefore, checks might need to be carried out to demonstrate the technical compatibility of the control-command and signalling subsystems in the area of use for a vehicle. The necessity of these checks should be considered as a temporary measure to increase the confidence on the technical compatibility between the subsystems. In

⁴ Commission Regulation (EU) No 1299/2014 of 18 November 2014 on the technical specifications for interoperability relating to the ‘infrastructure’ subsystem of the rail system in the European Union (OJ L 356, 12.12.2014, p. 1).

⁵ Commission Regulation (EU) No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability relating to the ‘rolling stock — locomotives and passenger rolling stock’ subsystem of the rail system in the European Union (OJ L 356, 12.12.2014, p. 228).

⁶ Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability of the rail system in the European Union and repealing Decision 2006/861/EC (OJ L 104, 12.4.2013, p. 1).

addition, Commission Regulation (EU) 2016/919⁷ should specify the procedure for those checks. In particular, the principles applicable to those checks should be transparent and prepare the ground for further harmonisation. The possibility of executing those checks in a laboratory representing the trackside configuration to be made available by the Infrastructure Manager should be prioritised.

- (10) To limit to a minimum the checks each Member State should promote harmonisation amongst its infrastructures. Following this principle, only one single set of compatibility checks for radio (one for voice transmission and another one for data transmission), if at all needed, should be requested per Member State.
- (11) Consideration should be given on the necessary steps in the shortest possible time to increase the confidence on the technical compatibility and to reduce and eliminate the tests or checks to prove technical compatibility of on-board units with different European rail traffic management system trackside implementations. Therefore, the Agency should assess the underlying technical divergences and define the necessary steps to eliminate the tests or checks to prove technical compatibility of on-board units with different trackside implementations.
- (12) Directive (EU) 2016/797 and Commission Implementing Regulation (EU) 2018/545⁸ set out the Agency's role as authorising entity. In addition, Regulation (EU) 2018/545 sets out the procedure applicable in the event of a change to existing vehicle types, in particular for the creation of versions of a vehicle type and versions of a vehicle type variant. The Agency's role in registering data in the European register of authorised types of railway vehicles (ERATV) and the tasks of authorising entities as regards versions of a vehicle type and versions of a vehicle type variant should be adapted accordingly.
- (13) Regulations (EU) No 321/2013, (EU) No 1302/2014, and (EU) 2016/919 should take into account changes in the procedure for placing mobile subsystems on the market, as provided for in Articles 20 to 26 of Directive (EU) 2016/797. Those TSIs should therefore list the basic design characteristics used to identify the vehicle type and set out requirements regarding changes that impact them. The list of ERATV parameters should be amended accordingly.
- (14) Under Decision (EU) 2017/1474, TSIs should indicate whether it is necessary to re-notify the conformity assessment bodies that were notified on the basis of a previous version of the TSI and whether a simplified notification process should be applied. This Regulation brings about limited changes and it should not be necessary to re-notify bodies notified on the basis of a previous version of the TSIs.
- (15) This Regulation amends TSIs so as to further achieve interoperability within the Union rail system, improve and develop international rail transport, contribute to the progressive creation of the internal market and complement TSIs in view of covering essential requirements. It enables to achieve the objectives and to meet the essential requirements of both Directives 2008/57/EC and (EU) 2016/797. Therefore this Regulation should be directly applicable in all Member States including Member

⁷ Commission Regulation (EU) 2016/919 of 27 May 2016 on the technical specification for interoperability relating to the 'control-command and signalling' subsystems of the rail system in the European Union (OJ L 158, 15.6.2016, p. 1).

⁸ Commission Implementing Regulation (EU) 2018/545 of 4 April 2018 establishing practical arrangements for the railway vehicle authorisation and railway vehicle type authorisation process pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council (OJ L 90, 6.4.2018, p. 66).

States which have notified the Agency and the Commission under Article 57(2) of Directive (EU) 2016/797 that they have extended the transposition period and thus continue to apply Directive 2008/57/EC until 15 June 2020 at the latest. Notified Bodies exercising under Directive 2008/57/EC in the Member States that have extended the transposition period should be able to issue 'EC' certificate in accordance with this Regulation as long as Directive 2008/57/EC applies in the Member State where they are established.

- (16) On 17 December 2015, 6 January 2016 and 14 November 2017, the Agency issued three recommendations to amend Regulation (EU) No 1302/2014 covering the conditions for having an authorisation for placing on the market not limited to particular national networks, the closing of open-points, requirements regarding safety critical components and the revision of provisions on automatic variable gauge systems.
- (17) On 11 April 2016, the Agency issued a recommendation on the amendment to Regulation (EU) No 321/2013 covering the closing of open-points.
- (18) On 4 October 2017, the Agency issued a recommendation on the amendment to Regulation (EU) No 1299/2014 covering the closing of open-points.
- (19) On 19 July 2018, the Agency issued a recommendation on the amendment to Regulations (EU) No 321/2013 and (EU) No 1302/2014 and Commission Implementing Decision 2011/665/EU⁹ covering the changes in the procedure for placing mobile subsystems on the market, including the checking of vehicle-route compatibility before the first use of authorised vehicles and provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal.
- (20) On 19 October 2018, the Agency issued a recommendation on the amendment to Regulation (EU) 2016/919 covering the changes in the procedure for placing mobile subsystems on the market, including the checking of vehicle-route compatibility before the first use of authorised vehicles and provisions applicable to existing subsystems and vehicles, in particular in the event of their upgrading and renewal.
- (21) On XXX November 2018, the Agency issued a recommendation on the amendment to Regulation (EU) No 1303/2014 covering the changes to align this Regulation with Directive (EU) 2016/797.
- (22) On XXX November 2018, the Agency issued a recommendation on the amendment to Regulations (EU) No 1299/2014, (EU) No 1301/2014 and (EU) No 1304/2014 covering the changes to align those Regulations with Directive (EU) 2016/797.
- (23) Regulation (EU) No 1299/2014, Regulation (EU) No 1301/2014, Regulation (EU) No 1302/2014, Regulation (EU) No 1303/2014, Regulation (EU) No 1304/2014, Regulation (EU) No 321/2013, Regulation (EU) 2016/919 and Implementing Decision 2011/665/EU should therefore be amended accordingly.
- (24) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 51(1) of Directive (EU) 2016/797,

⁹ Commission Implementing Decision 2011/665/EU of 4 October 2011 on the European register of authorised types of railway vehicles (OJ L 264, 8.10.2011, p. 32)

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 321/2013 is amended as follows:

- (1) in Article 2(1) , the reference to ‘point 2.7 of Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘point 2.7 of Annex II to Directive (EU) 2016/797’;
- (2) in Article 3, the second subparagraph, is amended as follows:
 - (a) point (a) is replaced by the following:

‘ (a) when it is renewed and upgraded in accordance with section 7.2.2 of the Annex to Regulation (EU) No 321/2013’;
 - (b) point (c) is replaced by the following:

‘ (c) with regards to the marking ‘GE’ as depicted in point 5 of Appendix C of the Annex, wagons of the existing fleet which have been authorised in accordance with Commission Decision 2006/861/EC as amended by Decision 2009/107/EC or with Decision 2006/861/EC as amended by Decisions 2009/107/EC and 2012/464/EU and meeting the conditions set out in point 7.6.4 of Decision 2009/107/EC may receive this marking ‘GE’ without any additional third party assessment or new authorisation for placing on the market. The use of this marking in wagons in operation remains under the responsibility of the railway undertakings. ’;
- (3) Article 4 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to “open points” set out in Appendix A, the conditions to be complied with for the verification of the essential requirements of Directive (EU) 2016/797 shall be those laid down by national rules in force in the Member State which is part of the area of use of the vehicles covered by this Regulation’;
 - (b) point (c) of paragraph 2 is replaced as follows:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures with respect to the open points’;
- (4) Article 5 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to specific cases set out in Section 7.3 of the Annex, the conditions to be met for the verification of the essential requirements of Directive (EU) 2016/797 shall be those laid down in Section 7.3 of the Annex or by national rules in force in the Member State which is part of the area of use of the vehicles covered by this Regulation’;
 - (b) point (c) of paragraph 2 is replaced as follows:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.3 of the Annex’;
- (5) Article 8 is amended as follows:
 - (a) paragraph 2 is replaced by the following:

‘2. The production or upgrade/renewal of the subsystem using non-certified interoperability constituents shall be completed within the transition period set out in paragraph 1, including placing on the market.’;

- (b) in point (b) of paragraph 3, the reference to ‘Article 18 of Directive 2004/49/EC’ is replaced by a reference to ‘Article 19 of Directive (EU) 2016/798’;
- (6) Article 8a is amended as follows:
 - (a) point (b) of paragraph 1 is replaced by the following:

‘(b) the interoperability constituent has been used in a subsystem that had been approved and placed on the market in at least one Member State before the date of application of this Regulation.’;
 - (b) paragraph 2 is replaced by the following:

‘2. The production, upgrade or renewal of any subsystem using non-certified interoperability constituents shall be completed, including granting authorisation for placing on the market, before the transition period set out in paragraph 1 expires.’;
 - (c) in point (b) of paragraph 3, the reference to ‘Article 18 of Directive 2004/49/EC’ is replaced by a reference to ‘Article 19 of Directive (EU) 2016/798’;
- (7) Article 8 c is amended as follows:
 - (a) point (b) of paragraph 1 is replaced by the following:

‘(b) the interoperability constituent has been used in a subsystem that had been approved and placed on the market in at least one Member State before the expiry of its approval period.’;
 - (b) paragraph 2 is replaced by the following:

‘2. The production, upgrade or renewal of any subsystem using non-certified interoperability constituents shall be completed, including granting authorisation for placing on the market, before the transition period set out in paragraph 1 expires.’;
 - (c) in point (b) of paragraph 3, the reference to ‘Article 18 of Directive 2004/49/EC’ is replaced by a reference to ‘Article 19 of Directive (EU) 2016/798’;
- (8) Article 10a is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;
 - (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (9) the Annex is amended in accordance with Annex I to this Regulation.

Article 2

Regulation (EU) No 1299/2014 is amended as follows:

- (1) Article 2 is amended as follows:
 - (a) in paragraph 1, the reference to ‘point 2.1 of Annex I to Directive 2008/57/EC’ is replaced by a reference to ‘point 2.1 of Annex II to Directive (EU) 2016/797’;
 - (b) in paragraph 3, the reference to ‘Article 20 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 18 of Directive (EU) 2016/797’;

- (c) paragraph 4 is deleted;
- (2) Article 3 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to the aspects listed as “open points” in Appendix R to the Annex to this Regulation, the conditions to be complied with for verifying the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down by national rules in force in the Member State which authorise the placing in service of the subsystem covered by this Regulation.’;
 - (b) point (c) of paragraph 2 is replaced as follows:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures with respect to the open points’;
- (3) Article 4 is amended as follows:
 - (a) paragraph 1 of is replaced by the following:

‘1. With regard to specific cases listed in Section 7.7 of the Annex, the conditions to be met for the verification of the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in Section 7.7 of the Annex or by national rules in force in the Member State which authorises the placing in service of the subsystem covered by this Regulation’;
 - (4) point (c) of paragraph 2 of Article 4 is replaced by the following:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.7 of the Annex’;
- (5) Article 7(3) is amended as follows:
 - (a) in point (a), the reference to ‘Article 18 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 15 of Directive (EU) 2016/797’;
 - (b) in point (b), the references to ‘Article 16(2)(c) of Directive 2004/49/EC’ and ‘Article 18 of Directive 2004/49/EC’ are replaced by references to ‘Article 16(2)(d) of Directive (EU) 2016/798’ and ‘Article 19 of Directive (EU) 2016/798’ respectively;
- (6) in Article 9, paragraph 2 is deleted;
- (7) Article 10 is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;
 - (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (8) the Annex is amended in accordance with Annex II to this Regulation.

Article 3

Regulation (EU) No 1301/2014 is amended as follows:

- (1) Article 2 is amended as follows:
 - (a) in paragraph 1., the reference to ‘point 2.2 of Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘point 2.2 of Annex II to Directive (EU) 2016/797’;

- (b) in paragraph 3, the reference to ‘Article 20 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 18 of Directive (EU) 2016/797’;
- (c) paragraph 4 is deleted;
- (2) Article 3 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to the aspects listed as “open points” in Appendix R of the Annex, the conditions to be complied with for verifying the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down by national rules in force in the Member State which authorises the placing in service of the subsystem covered by this Regulation.’;
 - (b) point (c) of paragraph 2 is replaced as follows:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures with respect to the open points’;
- (3) Article 4 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to specific cases listed in Section 7.4.2 of the Annex, the conditions to be met for the verification of compliance with the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in Section 7.4.2 of the Annex or by national rules in force in the Member State which authorises the placing in service of the subsystem covered by this Regulation.’;
 - (b) point (c) of paragraph 2 is replaced by the following:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.4.2 of the Annex’;
- (4) Article 7(3) is amended as follows:
 - (a) in point (a), the reference to ‘Article 18 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 15 of Directive (EU) 2016/797’;
 - (b) in point (b), the references to ‘Article 16(2)(c) of Directive 2004/49/EC’ and ‘Article 18 of Directive 2004/49/EC’ are replaced by references to ‘Article 16(2)(d) of Directive (EU) 2016/798’ and Article 19 of Directive (EU) 2016/798’ respectively;
- (5) in Article 9, paragraph 2 is deleted;
- (6) Article 10 is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;
 - (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (7) the Annex is amended in accordance with Annex III to this Regulation.

Article 4

Regulation (EU) No 1302/2014 is amended as follows:

- (1) in Article 2(1), the reference to ‘point 2.7 of Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘point 2.7 of Annex II to Directive (EU) 2016/797’;
- (2) in Article 3, paragraph 2 is replaced by the following:
 - ‘2. The TSI shall not apply to existing rolling stock of the rail system in the Union which is already placed in service on all or part of the network of any Member State on 1 January 2015, except when it is subject to renewal or upgrading in accordance with Section 7.1.2 of the Annex.’;
- (3) Article 4 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
 - ‘1. With regard to the aspects listed as “open points” in Appendix I of the Annex, the conditions to be complied with for verifying the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down by national rules in force in the Member States which are part of the area of use of the vehicles covered by this Regulation.’;
 - (b) point (c) of paragraph 2 is replaced as follows:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures with respect to the open points’;
- (4) Article 5 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
 - ‘1. With regard to specific cases listed in Section 7.3 of the Annex, the conditions to be met for the verification of the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in Section 7.3 of the Annex or by national rules in force in the Member States which are part of the area of use of the vehicles covered by this Regulation’;
 - (5) point (c) of paragraph 2 of Article 5 is replaced by the following:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.3 of the Annex’;
- (6) Article 8(3) is amended as follows:
 - (a) in point (a), the references to ‘Article 18 of Directive 2008/57/EC’ and ‘Article 16(2)(c) of Directive 2004/49/EC’ are replaced by a reference to ‘Article 15 of Directive (EU) 2016/797’;
 - (b) in point (b) the references to ‘Article 16(2)(c) of Directive 2004/49/EC’ and ‘Article 18 of Directive 2004/49/EC’ are replaced by references to ‘Article 16(2)(d) of Directive (EU) 2016/798’ and ‘Article 19 of Directive (EU) 2016/798’ respectively;
- (7) in Article 9, the references to ‘Articles 16 to 18 of Directive 2008/57/EC’ and ‘Article 26 of Directive 2008/57/EC’ are replaced by references to ‘Articles 13 to 15 of Directive (EU) 2016/797’ and ‘Article 24 of Directive (EU) 2016/797’ respectively;
- (8) Article 10 is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;

- (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (9) the Annex is amended in accordance with Annex IV to this Regulation.

Article 5

Regulation (EU) No 1303/2014 is amended as follows:

- (1) in Article 2, the reference to ‘Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘Annex II to Directive (EU) 2016/797’;
- (2) Article 4 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to specific cases listed in Section 7.3 of the Annex, the conditions to be met for the verification of the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in Section 7.3 of the Annex or by national rules in force in the Member State which authorises the placing in service of the fixed subsystems or which is part of the area of use of the vehicles covered by this Regulation.’;
 - (3) point (c) of paragraph 2 of Article 4 is replaced by the following:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.3 of the Annex’;
- (4) Article 8 is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;
 - (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (5) the Annex is amended in accordance with Annex V to this Regulation.

Article 6

Regulation (EU) No 1304/2014 is amended as follows:

- (1) Article 5 is amended as follows:
 - (a) paragraph 1 is replaced by the following:

‘1. With regard to specific cases listed in Section 7.3.2 of the Annex, the conditions to be met for the verification of the essential requirements set out in Annex III to Directive (EU) 2016/797 shall be those laid down in Section 7.3.2 of the Annex or by national rules in force in the Member State which is part of the area of use of the vehicles covered by this Regulation’;
 - (2) point (c) of paragraph 2 of Article 4 is replaced by the following:

‘(c) the bodies designated to carry out the conformity assessment and verification procedures for the national rules relating to the specific cases set out in point 7.3.2 of the Annex’;
- (3) Article 7 is amended as follows:

- (a) in paragraph 4, the reference to ‘Article 6 of Directive 2008/57/EC’ is replaced by a reference to ‘Article 5 of Directive (EU) 2016/797’;
- (b) in paragraph 5, the reference to ‘Directive 2008/57/EC’ is replaced by a reference to ‘Directive (EU) 2016/797’;
- (4) the Annex is amended in accordance with Annex VI to this Regulation.

Article 7

Regulation (EU) 2016/919 is amended as follows:

- (1) Article 2 is amended as follows:
 - (a) in paragraph 1, the reference to ‘points 2.3 and 2.4 of Annex II to Directive 2008/57/EC’ is replaced by a reference to ‘points 2.3 and 2.4 of Annex II to Directive (EU) 2016/797’;
 - (b) in paragraph 2, the words ‘Article 20 of Directive 2008/57/EC and’ are deleted;
 - (c) paragraph 3 is deleted;
- (2) in Article 3(1), the reference to ‘Article 17(3) of Directive 2008/57/EC’ is replaced by a reference to ‘Article 14 of Directive (EU) 2016/797’;
- (3) Article 5 is deleted;
- (4) Article 6 is amended as follows:
 - (a) in paragraph 2, the reference to ‘Articles 13 and 18 of Directive 2008/57/EC’ is replaced by the reference to ‘Articles 10 and 15 of Directive (EU) 2016/797’;
 - (b) in paragraph 3, the reference to ‘Article 16 of Directive 2004/49/EC’ is replaced by a reference to ‘Article 16 of Directive (EU) 2016/798’;
- (5) Article 9 is amended as follows:
 - (a) in paragraph 4, the reference to ‘Article 29(1) of Directive 2008/57/EC’ is replaced by a reference to ‘Article 51(1) of Directive (EU) 2016/797’;
 - (b) in paragraph 5, the reference to ‘points 7.3.2.1, 7.3.2.2 and 7.3.2.3 of Decision 2012/88/EU’ is replaced by a reference to ‘Article 2(1) of Commission Implementing Regulation (EU) 2017/6¹⁰ and point 7.4.1.1 of the Annex to this Regulation.’;
- (6) Articles 10 and 11 are replaced by the following:

‘Article 10

Error corrections

If errors that do not allow the system to provide a normal service are detected, the Agency shall of its own motion or at the request of the Commission identify as soon as possible solutions to correct them and an evaluation of their impact on the compatibility and stability of the existing ERTMS deployment. In such cases, the Agency shall send to the Commission an opinion on such solutions and the

¹⁰ Commission Implementing Regulation (EU) 2017/6 of 5 January 2017 on the European Rail Traffic Management System European deployment plan (OJ L 3, 6.1.2017, p. 6.)

evaluation. The Commission shall analyse the Agency's opinion, assisted by the committee referred to in Article 51(1) of Directive (EU) 2016/797, and may recommend that the solutions specified in the Agency's opinion apply until the next revision of the TSI.

Article 11

ERTMS game changers

1. By June 2021, taking into consideration the input from Shift2Rail, the Agency shall send a report to the Commission on the definition of the next generation communication system. The report shall include the conditions and possible strategies for the migration to that system with due considerations for the coexistence of the system and spectrum requirements.
2. Where the Agency has issued an opinion with the draft release specifications relating to an ERTMS game changer as identified within ERA-REP-150, suppliers and early implementers shall use those specifications in their pilots and shall inform the Agency. ';

(7) the following Article 11a is inserted:

Article 11a

ERTMS compatibility and future revision

1. By 1 June 2020, the Agency shall send a report to the Commission on the implementation of ETCS system compatibility (ESC) and radio system compatibility (RSC). The report shall include an assessment of the differing types of ESC and RSC, and the potential for reducing the underlying technical divergences of ESC and RSC types. Member States shall provide the Agency with the necessary information to complete the analysis.
2. By 1 December 2021, the Agency shall send a report to the Commission to define the necessary steps to eliminate the tests or checks to prove technical compatibility of on-board units with different ERTMS trackside implementations, in particular to achieve harmonisation of engineering and operational rules at Member State level and between Member States. Member States shall provide the Agency with the necessary information to complete the analysis.
3. By 1 December 2020, the Agency shall send a report to the Commission on the potential for including further elements of trackside and vehicle control-command and signalling system architecture, in particular to achieve a future proof design, facilitating the use of state of the art technology and ensuring backward compatibility. ';

(8) the Annex is amended in accordance with Annex VII to this Regulation. '.

Article 8

Implementing Decision 2011/665/EU is amended as follows:

(1) the following Article 2a is inserted:

Article 2a

Information to be inserted by the Agency

The Agency shall insert in the European register of authorised types of vehicles information on the vehicle type authorisations or vehicle type variants it has granted and on new versions of a vehicle type or of a vehicle type variant in accordance with Article 50 of Regulation (EU) 2018/545, as set out in Annex II to this Decision.’;

(2) in Article 3, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the national safety authorities provide the information on the vehicle type authorisations or vehicle type variants they have granted and on the new version of a vehicle type or of a vehicle type variant in accordance with Article 50 of Regulation (EU) 2018/545, as set out in Annex II to this Decision.’;

(3) Article 4 is replaced by the following:

Article 4

Restriction codes

Harmonised restriction codes shall be applicable in all Member States.

The list of harmonised restriction codes shall be the list referred to in [of Implementing Decision (EU) 2018/1614¹¹.’;

(4) Annex I is amended in accordance with Annex VIII to this Regulation.

(5) Annex II is replaced by Annex IX to this Regulation.

Article 9

In accordance with Regulations (EU) No 1299/2014, (EU) No 1301/2014 and (EU) No 1303/2014, each Member State shall update its national implementation plan for the INF TSI, ENE TSI and SRT TSI. Each Member State shall forward its updated implementation plan to the other Member States and the Commission by 1 January 2020.

Article 10

1. Notifications of conformity assessment bodies for the purposes of Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1301/2014, (EU) No 1302/2014, 1303/2014, and No 1304/2014 and Regulation (EU) 2016/919 shall remain valid on the basis of those Regulations, as amended by the present Regulation.
2. Conformity assessment bodies notified in accordance with Directive 2008/57/EC may issue ‘EC’ certificate of verification and ‘EC’ certificate of conformity or suitability for use of interoperability constituents in accordance with this Regulation as long as Directive 2008/57/EC applies in the Member State where they are established in accordance with Article 57(2) of Directive (EU) 2016/797 and until 15 June 2020 at the latest.

¹¹ Commission Implementing Decision (EU) 2018/1614 of 25 October 2018 laying down specifications for the vehicle registers referred to in Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council and amending and repealing Commission Decision 2007/756/EC (OJ L 268, 26.10.2018, p. 53).

Article 11

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 16 June 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER