

Position Paper

Brussels, 04 February 2018

Revision of 445/2011 regulation

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General views on the revision of the regulation on the certification of the entity in charge of maintenance

CER acknowledge the draft recommendation for the revision of 445/2011 regulation but would like to share four principle concerns:

1. ECM should be covered by a mandatory certification scheme applicable for all vehicle but exemption/derogation should remain possible for vehicle out of the scope of interoperability/safety directive and rail road vehicles.
2. The scope of any mandatory certification should be limited to function I (management of maintenance)
3. Provisions on safety critical component as proposed in the draft will only increase administrative burden and should therefore be deleted or deeply changed
4. The impact assessment does not provide an extensive report on the evaluation of current certification schemes and benefit/expenditure resulting of the extension.

Reference document

ERA consultation

Reference: 007REC1004

Publication Date: 22/12/2017

Draft implementing act

Draft COMMISSION IMPLEMENTING REGULATION (EU) on a system of certification of entities in charge of maintenance for vehicles and amending Regulation (EU) No 445/2011

Date: 22/12/2017

Report on Safety critical components

SSC report 2017

Date: 18/12/2017

Full Impact Assessment

Revision of the Commission Regulation (EU) No 445/2011 of 10 May on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007

Date: 21/12/2017

Main CER concerns on current draft recommendation

1. CER supports a scheme mandated for all vehicles but with possible derogation

In principle, CER supports ECM certification for all vehicles. Moreover, CER acknowledges that some Member States have already extended mandatory ECM certification for all vehicles.

In line with Article 2.2 of Directive (EU) 2016/798, certain types of vehicle may be excluded from certification (i.e. vehicles operated on separated networks, light rail vehicle, road rail vehicles). Derogation should be possible on a national basis but clear criteria should be set in order to simplify process, provide certainty for requestor and minimize justification burden. The definition of concerned "rail network" should be clarified in the context of CECM obligations.

In order to avoid duplication of costs and additional burdens, it should be possible for a RU or an IM to cover the requirements set out in Annex III of ECM regulation in the certified SMS (i.e. as part of safety certification/authorisation) as alternative to a separated certification of the ECM.

2. CER proposes to define explicitly that only function I is mandated for concerned vehicle

The current draft regulation can lead to the interpretation that if functions II, III and/or IV are not outsourced, certification of the ECM will be mandatory for these functions as well. This should not be the case.

Being outsourced or not, the choice to certify function II, III or IV should remain business driven (i.e. depending on cost, organization, volume of work).

Function I ensures that maintenance risks are appropriately managed by keepers for RU operation. Mandating function 1 should be sufficient to reduce scope of RU safety certificate (and conversely, a safety certificate should be sufficient to grant conformity on function 1).

3. CER is very concerned about safety critical component provisions

- Draft regulation

Defining a list of safety critical components (SCC) without maintenance criteria does not contribute to an improvement of maintenance. As such the annex VIII will not provide value for the railway system, it will only create administrative burden.

The draft regulation proposes a process. Appropriateness is not demonstrated (i.e. what is the added value?) and even questioned by ERA's own report conclusion ("**need for a system approach and not component based approach**"). Also, the process approach would result in a different extent of SCC's possibly for each ECM in Europe. This means divergence across member states – which is incompatible with the notion of a 'Single European Railway Area'. In practical: Railway Undertakings operating in various countries would possibly face a different safety-related maintenance regime from each of their ECM service providers. This means un-manageable complexity! In addition, this approach would lead to different safety-criticalities for the same component.

If something must be done, CER considers that a harmonized short list of SCC, complemented by maintenance and traceability criteria would be preferable as that would serve some maintenance improvement.

The Agency proposes a SCC definition based on a single failure and a catastrophic event. Considering this definition, SCC identification is supposed to consider few components only for railway vehicles. However the proposed definition could deal with a long list of SCC for infrastructure components,. Moreover the definition can be questioned as it should also consider the probability of occurrence (regarding to EN 50126, maintenance is a way to decrease risk level).

The relevance of the proposed text can also be challenged. The process for identification is misleading and defines duties for actors theoretically not covered by the regulation. The definition for SCC is not in line with the CSM (catastrophic), EN15380 (component) and regulation 2016/796 (serious accident). The proposed provision could also interfere with Intellectual Property Rights.

If the objective is only safety, safety critical components could be handled through a single generic provision "Keepers, ECMs, RUs and suppliers shall cooperate to mitigate/minimize the risk of component failure directly leading to catastrophic consequence."

■ Safety critical component report:

A harmonized list is declared in the report as not feasible, but CER believe a short list can still be decided on and is preferable as compared to an unpredictable process. A common short list would facilitate harmonization and interoperability.

CER would support that the Joined Network Secretariat will contribute in the frame of an ERA working party to the definition of a short list of SCC and related common maintenance and traceability principles. The harmonized short list of safety critical component should be established depending on their criticality, maintained by the Agency and updated on a unanimous basis.

4. Main comments on Impact assessment report:

The Impact Assessment does not address DIRECTIVE (EU) 2016/798 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on railway safety (recast) Article 14 (7)

Option 4 is promoted as the best when the costs and benefits of doing so are not CLEARLY defined and exhaustively investigated. In general the report is impenetrable... There would be a need to explain better what are assumptions and values used for quantitative assessment.

The Impact Assessment needs to be further developed to fulfill the mandate set out in the safety directive: "...the Agency will carry out an assessment of the economic, social and environmental impacts of the new measures using the best available evidence".

About CER

The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 73% of the rail network length, 77% of the rail freight business and about 93% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policymakers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit www.cer.be or follow us on Twitter @CER_railways.

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