

COMMISSION IMPLEMENTING DECISION (EU) 2023/696**of 27 March 2023****accepting a request submitted by the Italian Republic pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council for non-application until 30 June 2024 of point 7.4.2.1 of the Annex to Commission Regulation (EU) 2016/919 for ten ETR675 vehicles***(notified under document C(2023) 1916)***(Only the Italian text is authentic)**

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 Union ⁽¹⁾, and in particular Article 7(4) thereof,

Whereas:

- (1) On 23 September 2022, Italy submitted to the Commission a request for temporary non-application until 30 June 2024 of point 7.4.2.1 of the Annex to Commission Regulation (EU) 2016/919 ⁽²⁾, which requires new vehicles to be equipped with on-board European Train Control System (ETCS) Baseline 3 by 1 July 2023 at the latest. The request concerns ten new ETR675 vehicles with consecutive identification numbers ETR675.17 to ETR675.26, supplied by Alstom Ferroviaria S.p.A. The ten vehicles complete an existing fleet of 26 ETR675 vehicles owned by Italo-Nuovo Trasporto Viaggiatori S.p.A (Italo-NTV S.p.A).
- (2) The information provided by the Italian authorities in support of the request enabled the Commission to carry out its analysis.
- (3) In accordance with point 7.4.2.1 of the Annex to Regulation (EU) 2016/919, new vehicles authorised after 16 June 2019 are to comply with the sets of specifications #2 or #3 (ETCS Baseline 3) referred to in Table A 2 of Annex A to that Regulation ⁽³⁾.
- (4) Point 7.4.2.3 of the Annex to Regulation (EU) 2016/919 aims at facilitating the transition from ETCS Baseline 2 towards ETCS Baseline 3 with extended deadlines. In accordance with subpoint 3(b) of that point, certain vehicles equipped with ETCS Baseline 2 and authorised before 31 December 2020 in conformity to a vehicle type authorisation issued before 1 January 2019 may benefit from an extended deadline to 1 July 2023 to comply with ETCS Baseline 3.
- (5) The ten vehicles referred to in the request were ordered in different batches as purchase options after the initial contract was signed on 28 October 2015 between Italo-NTV S.p.A and Alstom Ferroviaria S.p.A for the supply and maintenance of 26 vehicles ETR675 (also known as Pendolino EVO).
- (6) The six vehicles ETR675.17 to ETR675.22 were ordered before 16 June 2019, equipped with ETCS Baseline 2 and authorised to be placed on the market before 31 December 2020. In accordance with point 7.4.2.3 of the Annex to Regulation (EU) 2016/919, those vehicles are required to comply with ETCS Baseline 3 by 1 July 2023.
- (7) The two vehicles ETR675.23 and ETR675.24 were ordered after 16 June 2020, namely on 31 July 2020, equipped with ETCS Baseline 2 and authorised to be placed on the market before 31 December 2020. In accordance with point 7.4.2.3 of the Annex to Regulation (EU) 2016/919, those vehicles are required to comply with ETCS Baseline 3 by 1 July 2023.

⁽¹⁾ OJ L 138, 26.5.2016, p. 44.

⁽²⁾ 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).

⁽³⁾ Set of Specifications #1 corresponds to ETCS Baseline 2, GSM-R Baseline 1

Set of Specifications #2 corresponds to ETCS Baseline 3, Maintenance release 1, GSM-R Baseline 1

Set of Specifications #3 corresponds to ETCS Baseline 3, Release 1, GSM-R Baseline 1

- (8) The two vehicles ETR675.25 and ETR675.26, ordered on 31 July 2019, were scheduled for delivery after 31 December 2020. They fell therefore out of the scope of the transitional provision of point 7.4.2.3 of the Annex to Regulation (EU) 2016/919 and should have been equipped with ETCS Baseline 3 in accordance with point 7.4.2.1. of that Annex. Commission Decision C(2021)3233final ⁽⁴⁾ granted a temporary non-application until 30 June 2023. As a result, all ten trains referred to in the request are currently equipped with ETCS Baseline 2 only.
- (9) The migration from ETCS Baseline 2 to ETCS Baseline 3 of the ten vehicles which form the object of this Decision was scheduled over a period ending on 1 July 2023, in accordance with the deadline set under point 7.4.2.3. of the Annex to Regulation (EU) 2016/919.
- (10) However, the safe migration from on-board ETCS Baseline 2 to ETCS Baseline 3 depends on the availability of the upgrade of the Milano-Bologna line to trackside ETCS Baseline 3 for the test that ensures the compatibility of the on-board and track side ETCS Baseline 3. The availability of the line for testing was delayed, due to the late installation of trackside ETCS Baseline 3. Testing will only become possible during the second quarter of 2023, which will delay the first vehicle re-authorisations to November 2023.
- (11) The temporary non-application of point 7.4.2.1 of the Annex to Regulation (EU) 2016/919 for one more year to the ten ETR675 vehicles equipped with ETCS Baseline 2, until their retrofit to ETCS Baseline 3, in the course of regular maintenance, during the period from November 2023 until 30 June 2024, would allow the continuation of services in the absence of any alternatives under commercially and operationally viable conditions.
- (12) A delay in migration would not affect interoperability as the ten vehicles concerned are already equipped with ETCS Baseline 2, and the trackside is also equipped with ETCS Baseline 2 and will gradually migrate to ETCS Baseline 3 until 2025, according to Italy's ERTMS national implementation plan, without affecting the interoperability with both ETCS Baseline 2 and ETCS Baseline 3 equipped vehicles.
- (13) According to the information provided by the Italian authorities, the manufacturer of the vehicles identified with numbers ETR675.17 to ETR675.26, Alstom Ferroviaria S.p.A, and their owner, Italo-NTV S.p.A, have committed to an engineering and installation plan to upgrade those vehicles and the remaining fleet with on-board equipment complying with ETCS Baseline 3. According to that plan, the upgrade should be completed by 30 June 2024.
- (14) The request is based on Article 7(1) point (c) of Directive (EU) 2016/797, which allows a non-application of one or more technical specifications for interoperability (TSI) where the application of the TSI would compromise the economic viability of the project and/or the compatibility of the rail system in the Member States concerned.
- (15) The information provided by the Italian authorities shows that if the request for non-application of point 7.4.2.1 of the Annex to Regulation (EU) 2016/919 were not accepted, the operator would be obliged to install ETCS Baseline 3 in the ten vehicles, temporarily retiring them from service beyond the normal scheduled maintenance. This would have a significant negative economic impact on the operator in the revenue lost due to the lack of commercial service, in the missed invoices, and in the costs necessary for parking the ten vehicles. The alternative provision applied, namely the continued use of ETCS Baseline 2 until the upgrade to ETCS Baseline 3 can be performed in a viable manner, is acceptable as it would not affect interoperability and ensure the continuation of the services.
- (16) For those reasons, the conditions laid down in Article 7(1), point (c), of Directive (EU) 2016/797 should be considered fulfilled, and the differed migration from ETCS Baseline 2 to ETCS Baseline 3 of the ten vehicles with identification numbers ETR675.17 to ETR675.26 should be authorised until 30 June 2024.

⁽⁴⁾ Commission Implementing Decision C(2021) 3233 final of 11 May 2021 accepting a request for non-application of part of the technical specification for interoperability relating to the 'control-command and signalling' subsystems of the rail system in the European Union laid down in Regulation (EU) 2016/919, submitted by the Italian Republic to the Commission in accordance with Article 7(4) of Directive (EU) 2016/797 of the European Parliament and of the Council.

- (17) Therefore, the request submitted by Italy not to apply point 7.4.2.1 of the Annex to Regulation (EU) 2016/919 to those vehicles until 30 June 2024 should be accepted.
- (18) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 51(1) of Directive (EU) 2016/797,

HAS ADOPTED THIS DECISION:

Article 1

The request of the Italian Republic not to apply point 7.4.2.1 of the Annex to Regulation (EU) 2016/919 to ten ETR675 vehicles with consecutive identification numbers ETR675.17 to ETR675.26 until 30 June 2024 is accepted.

Article 2

This Decision shall apply within the geographic limits of the Italian railway network.

Article 3

This Decision is addressed to the Italian Republic.

It shall apply until 30 June 2024.

Done at Brussels, 27 March 2023.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission
