

## **Update: new German authorisation regulation for rail vehicles and rail infrastructure**

**By Philipp Reusch and Sebastian Giera**

On 6 July 2018 the Bundesrat approved the [13th Regulation on the Enactment and Amendment of Regulations in Railway Law](#). The main content of this regulation is the draft of the new German authorisation regulation for rail vehicles and rail infrastructure, now to be expected in the autumn of 2018.

### The new Railway Commissioning Authorisation Regulation

As part of the existing proposed legislation, the previous 'Trans-European Railway Interoperability Regulation' has been subjected to a revision in terms of its structure and content and renamed, now being known as the [Railway Commissioning Authorisation Regulation](#). The new version pursues the aim of drawing up a comprehensive, uniform standard, which both implements the requirements of EU law regarding vehicle authorisation and covers the national regulations in the area of infrastructure. For years now, various different rules of procedure have been applicable in the railway industry in the areas of rail vehicles and rail infrastructure. The new authorisation regulation for rail vehicles and rail infrastructure thus aims to standardise the regulations for both areas and fully implement the European specifications of the so-called Railway Interoperability Directive. However, the European specifications being implemented here are those of the old Interoperability Directive [2008/57/EC](#). The new Interoperability Directive [\(EU\) 2016/797](#) is not due to be implemented until later, i.e. after the new European authorisation regulation [\(EU\) 2018/545](#) has come into force on 16 June 2019. As a consequence, the German railway industry must prepare itself for more than one new authorisation regulation and also for more proposed legislation in the months and years ahead.

### The authorisation regulation for rail vehicles and rail infrastructure and new EU authorisation regulation from the 4th railway package

The amendments, which are now likely to come into force with the authorisation regulation for rail vehicles and rail infrastructure after the summer recess, are intended to speed up the authorisation procedures and ensure clear responsibilities and legal compliance for the large number of actors involved in the areas of infrastructure and vehicles. However, since April of this year the European authorisation regulation for rail vehicles referred to above – [\(EU\) 2018/545](#) – has also been on the table, and it is due to come into force in all member states of the EU in June 2019. Against this backdrop, one might ask why the BMVI is once again aiming to carry out proposed legislation of its own shortly before the planned coming into force of the European regulation, in order to change the national provisions in the very same area. It is also questionable how users will benefit from this change on the bottom line, with the European procedure beginning to take effect only a short while later.

On the one hand it will quite simply not be possible to realise the new European authorisation standard in Germany without amending the Trans-European Railway Interoperability Regulation to become the Railway Commissioning Authorisation Regulation. Until now, the member state of Germany has failed to implement the Interoperability Directive 2008/57/EC fully, so that some of the essential prerequisites for the new Regulation (EU) 2018/545 have not been fulfilled. Moreover, at this point in time it is not even clear whether Germany will have introduced the European authorisation regulation by June 2019. According to Article 57 of the Interoperability Directive (EU) 2016/797, member states have the possibility to postpone the introduction of the regulation by up to a year. On the one hand, the word from the BMVI is that efforts are still being made to achieve implementation by 19 June 2019. On the other hand, due to various circumstances, it has not been possible to press ahead with the proposed legislation required for that as planned, so that Germany's final decision as regards the time chosen for implementation is yet to be made.

### Important for manufacturers and users

This means that for applicants, a year before the scheduled coming into force of the European regulation, there is no certainty in terms of planning or legal compliance as to what will actually be applicable in Germany next year. The only thing that is certain is that now, first of all, the Railway Commissioning Authorisation Regulation is coming. In order not to be exposed in this scenario to a stoppage or enormous extra costs, applicants need detailed knowledge of the individual authorisation procedures, a robust plan for authorisation and solid contractual provisions.



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