



European Railway Agency
Att: Mr. M. Verslype
BP 20392
F-59307 Valenciennes Cedex
France

Berkel en Rodenrijs, 28 December 2009

Subject: clarification of the application of TSI's

Dear Mr Verslype,

We represent two non-profit foundations representing citizens living nearby the Dutch high-speed line between Hoofddorp (near Amsterdam) and Rotterdam. A 45 kilometre track in a densely populated region. At the moment the trains run at a speed of 160 km/h, and will likely increase to 250 to 300 km/h in the near future. We are in the process to give a halt to the noise problems of that train line.

As the official authority we are seeking your advice in the matter concerned, to prepare for possible legal actions against the Dutch government.

The case-study is as follows: the Dutch government finalised their plan for this high speed track in 2001, after going through lengthy legal procedures. The Dutch government ordered high-speed trains (AnsaldoBreda V250) in 2004. Currently these trains are not being delivered, and the most recent forecasts are that the first official train will only arrive at the beginning of 2011, which is still doubtful at present. Meanwhile the Danish railways ordered their trains in 2003, and delivery will only start in the course of 2010 and will probably last til 2012.

Interesting is that the TSI High-speed 2002/735/EG plays an important role, since AnsaldoBreda claimed they could not start construction until the finalisation of the ERTMS specifications which is fully in the hands of the Dutch authorities. As you commented on the Dutch television this does not hold as valid argument.

The current status is that the Dutch authorities leased Bombardier TRAXX F140 MS2 trains, which are in accordance with the TSI Noise 2008/232/EG. For vehicles they chose old ICR carriages, built between 1986 and 1987. These vehicles were revised, renovated and upgraded several times since 2000, and now are called "HST-Prio". HST refers to High Speed Train, and Prio is the internal name given by the railroad organisation to upgraded Benelux-vehicles. Here we see the first reference for transnational interoperability: the vehicles were operated on Benelux train lines. The Traxx-HST-Prio combinations are now the only conventional material permitted for the high-speed line, they are painted in the intended design of the future AnsaldoBreda trains to make it a lookalike.

These vehicles went through a national technical assessment in 2007 in order to see if they would be appropriate on the high-speed line. The authorities did not test for noise levels since, as they said they did not expect the vehicles to make more noise on the high speed line. This is strange, since the speed was increased from 140 km/h (and lower) in the past to 160 km/h nowadays on a new build track.

From 8 September 2008 until the official start of the train services on 7 September 2009 there were multiple test runs with the trains. During that time the Dutch authorities already received hundreds of noise complaints but just mentioned to the public to get used to it. Complaints now have risen into the thousands after the regular train operation started officially.

The Dutch Minister of Transport acknowledged the noise level problems, and ordered TNO (the Netherlands Organization for Applied Scientific Research) to investigate if the complaints about the noise were factual. This survey shows very high noise levels, up to 14 dB(A) higher than expected in the original plan, this in highly populated areas. Noise levels are far over the aggregated maximum under TSI Noise at 160 km/h, and even higher than the maximum under TSI High-speed at 250 km/h. TNO refers to the sound measures along the track are inadequate, which is plausible since the Dutch General Court of Auditors reported that the authorities economised on these measures in the later stages of planning, because of budget reasons. TNO also states that the problems are caused by running trains of a type not calculated nor expected during planning and construction of the high-speed line. The faulty sound measures predict sound issues with the Thalys and AnsaldoBreda V250 trains too.

The Dutch Minister promised certain measures for the track and the trains to be taken, which may or may not bring noise down by 7 dB(A). He states that only full measures on noise will be taken within an undetermined future, when the data for the real AnsaldoBreda V250 trains are available. So far he stated, the average noise output per day of the trains, measured over the period of 1 year, will remain under the maximum value of Lden, which is in accordance with the Environmental Noise directive 2002/49/EC, as implemented as per Dutch law. We doubt that decision too, since the +14 dB(A) noise levels measured by TNO indicate the noise pressure levels on lots of houses has gone far over the legal values, affecting the inside climate of the houses and in outside areas, causing all sorts of health issues.

Furthermore the Minister does not want to bring down the frequency of the service and/or speed of the trains, on this mere track of 45 km, which will solve the noise problems immediately. The high noise values found by TNO were solely based on Traxx-HST-Prio trains, but again the Minister still did not see any objection to add the Thalys train on 13 December 2009.

The Minister builds his case on the TSI Noise, which is not applicable for material older than the TSI Noise. The multiple revision work on these vehicles does not count, he states. A representative of the Ministry of Transport told us during a meeting on 7 December 2009 that if the TSI Noise would have applicable to these trains, they would not have run the trains in this fashion.

Ironic is that ERTMS and the TSI's will affect the Dutch neighbours of the high-speed line twice. Once to give the argument of postponing the services with the AnsaldoBreda V250 trains, because the whole train supposedly needs ERTMS-compliant design. This postponement has repercussions for the exploitation of the line, in Dutch parliament referred to as "the TSI-claim". The second time ERTMS hurts when presumably the old vehicles can be operated on the high-speed line without any ERTMS built-in, thus not passing the threshold for a real "renewal", and being subject to the TSI Noise..

In our opinion part of the problem is the Dutch government not confirming the full length of Directive 96/48/EG. This directive says in Annex I, article 3: *"High-speed train services presuppose excellent compatibility between the characteristics of the infrastructure and those of the rolling stock. Performance levels, safety, quality of service and cost depend upon that compatibility."* This intention has been preserved in the subsequent revision through directive 2004/50/EC and the forthcoming directive 2008/57/EG. However, the necessity of compatibility of train and infrastructure has not been applied in Dutch law regarding noise emissions. Although ProRail, the Dutch government task organisation for the national railway network infrastructure, uses noise emissions in contracts with a "quality of service" consideration.

We see a European directive demanding the performance, spawning two systems of TSI's (high-speed and conventional rail) that provide certain forms and methods, but a Member State failing to echo the goals of the performance. Which now gives a Minister of Transport in a EU Member State the opportunity to operate non-TSI vehicles for several years, pulled by a TSI Noise locomotive over high-speed lines, and if they are too noisy compared to European standards, which already exist (including

draft versions) for 10 years, he tells his citizens: “sorry, if the TSI Noise would apply the trains would not run like they do”.

The Traxx-HST-Prio-combinations ran also on lines crossing the Dutch-Belgian border, and they may continue to do so in the future, since there are calls for regional shuttle services between Essen (B) and Breda (NL) to replace the former Benelux service after the launch of the Thalys high-speed connections.

Given your role in the TSI's, we seek your advice in this matter. We read: “the development of technical specifications for interoperability (TSIs) has shown the need to clarify the relationship between the essential requirements and the TSIs on one hand, and the European standards and other documents of a normative nature on the other” in Directive 2008/57/EG.

Can you give us a recommendation for our legal case and clarify the matter? If so, do you see a case against our Minister?

Could you also show some light on a new issue. The old vehicles are currently equipped with block brakes and disc brakes. Supposedly removing the block brakes can prevent some of the noise. The government is testing that now, and also investigates the safety of trains with only disc brakes. We were wondering, if such a modification in a train carriage goes further than a simple maintenance, and further places the vehicles immediately under TSI Noise?

Attached to this letter you will find a CD-ROM containing all reference material.

Sincerely yours,

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From Annex C of the TNO report, 15 October 2009

Table C 2.1: A-weighted level L_{Ax} in dB(A), measured at 7,5 and 20 meters in Schiebroek (Rotterdam)

Pass	1	2	3	4	5
Direction Rotterdam					
7,5 meter	107	107	108	107	107
20 meter	104	104	105	104	104
Direction Amsterdam					
7,5 meter	111	111	111	111	110
20 meter	106	105	105	105	105

Table C 2.2: A-weighted level L_{Ax} in dB(A), measured at 7,5 and 25 meters in Berkel en Rodenrijs, position A

Passage	1	2	3	4	5
Richting Rotterdam					
7,5 meter	96	95	95	96	94
25 meter	98	98	97	97	95
Richting Amsterdam					
7,5 meter	96	96	96	96	96
25 meter	94	94	94	93	94

Table C 2.3: A-weighted level L_{Ax} in dB(A), measured at 25 meters in Berkel en Rodenrijs, position B

Passage	1	2	3	4	5
Richting Rotterdam					
25 meter	99	99	98	98	
Richting Amsterdam					
25 meter	94	93	94	93	

Table C 2.4: A-weighted level L_{Ax} in dB(A), measured at 7,5 and 20 meters in Hoogmade

Passage	1	2	3	4	5
Richting Rotterdam					
7,5 meter	90	91	90	90	88
25 meter	88	88	88	88	86
Richting Amsterdam					
7,5 meter	95	95	95	94	95
25 meter	92	92	92	90	92

Table C 2.5: A-weighted level L_{Ax} in dB(A), measured at 45 and 215 meters in Roelofarendsveen

Passage	1	2	3	4	5	6
Richting Rotterdam						
45 meter	91	91	91	88	91	92
215 meter	-	87	89	86	87	88
Richting Amsterdam						
45 meter	94	92	93	93	91	91
215 meter	91	88	90	88	88	88