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Announcement of appeal case

Published on	9 August 2021
Case number	EACLI EU-ERABA-2021-002
Appellant	SIEMENS MOBILITY GmbH
Appeal received on	23 June 2021
Subject matter	Vehicle authorisation
Keywords	ETCS Baseline 2, extension of area of use, clarification note ERA1219-119, conformity to type authorisation, TSI CCS, upgraded software
Contested Decision	Decision of the European Union Agency for Railways V-20210120-009
Language of the case	English
Background and remedy sought by the appellant	<i>Siemens Mobility GmbH (Appellant) applied to European Union Agency for Railways (Agency) for a conformity-to-type authorisation on 20 January 2021 with application number V-20210120-009. The application concerned an existing vehicle equipped with ETCS Baseline 2 that was upgraded from version E1.03 to E1.11 so that it could be used in Belgium. On 25 February 2021 the Agency issued negative decision and refused to grant authorisation.</i> <i>On 9 March 2021, the Appellant applied to Agency for a review of this decision. On 3 May 2021, Agency upheld the decision in its entirety.</i> <i>Siemens Mobility GmbH, in an appeal received on 23 June 2021, requests that the authorisation be issued</i>

	<i>and that the clarification note ERA1219-119 be revised.</i>
Pleas in law and main arguments	<i>The Appellant states that the Agency's interpretation of the provisions contained in Technical Specification for Interoperability Control Command and Signalling (TSI CCS) is incorrect. In particular, the Appellant disagrees with the Agency's statement that the Table A.2.1 in the Annex A of the TSI CCS cannot be used after 1 January 2021 to changes to on-board subsystem. In the Appellant's view, the requirements indicated in Table A.2.1 could be still applied, as the transition phase according to the points 7.4.2.1 and 7.4.2.3 of the TSI CCS concerns only on-board subsystems on new vehicles. Whereas, in order to make the vehicle conform to authorised type, the Appellant only equipped an existing vehicle with an upgraded software.</i> <i>Furthermore, the Appellant rejects the Agency's interpretation that in light of paragraph 7 of point 7.2.1a.1 of the TSI CCS in case of changes to an existing CCS subsystem, all changes must be compliant to the applicable TSI. The Appellant states that the changes have been made to the CCS subsystem type prior to 1 January 2021 and have been fully assessed in conformity to the TSI CCS in the application for the authorised vehicle type.</i> <i>The appellant also stresses in its appeal that the Agency's reasoning in the decision following the request for the review contradicted the reasoning in the original decision.</i> <i>In addition, in support of its arguments, the Appellant submits a legal opinion from which it concludes that "Authorised vehicles that are equipped with ETCS baseline 2 do not have to be upgraded to ETCS baseline 3 if a further conformity</i>

	<i>to type authorisation is applied for, in particular if the application is due to achieve extension of the area of use for these vehicles. This also applies if the further conformity to type authorisation is applied for after December 31, 2020.”</i>
Further information	<i>Related to case EACLI EU-ERABA-2021-001</i>