

COMMISSION IMPLEMENTING DECISION (EU) 2022/2277**of 15 November 2022****accepting a request submitted by the Italian Republic pursuant to Article 7(4) of Directive (EU) 2016/797 of the European Parliament and of the Council not to apply point 4.2.1.5.2, (b)(1) of the Annex to Commission Regulation (EU) No 1303/2014***(notified under document C(2022) 8068)***(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 28 July 2022, Italy submitted to the Commission a request for non-application of point 4.2.1.5.2, (b)(1) of the Annex to Commission Regulation (EU) No 1303/2014 ⁽²⁾ to the Miglionico tunnel belonging to the railway line Ferrandina – Matera La Martella. The Commission's request for further information of 8 August 2022 was answered on 16 August 2022, thereby completing the request. That request was submitted on the basis of Article 7(1), point (c), of Directive (EU) 2016/797.
- (2) The tunnel, single track, is 6,6 km long and already exists. The construction works on the Ferrandina – Matera La Martella line were partially carried out, but not completed, between 1984 and 2000 based on national standards. The line never entered into service as construction works were not finalised because of lack of funds. The tender procedure for the finalisation, upgrade and opening of the Ferrandina – Matera La Martella line, after having suffered significant delays, has been launched and it is planned to be finalised by the end of 2022 ('the project'). The finalisation, upgrade and opening of the Miglionico tunnel foresees to implement all relevant provisions of the technical specification for interoperability (TSI) set out in Regulation (EU) No 1303/2014, except for point 4.2.1.5.2, (b)(1) of its Annex which requires side and/or vertical emergency exits to the surface to be provided at least every 1 000 metres; the alternative point 4.2.1.5.2, (b)(2) cannot apply because it is a single tube tunnel.
- (3) As an alternative measure, the project foresees to create an access to a safe area through a vertical emergency exit to the surface after 3,895 km of the entrance of the Miglionico tunnel, with the purpose of evacuating passengers and allowing access for rescue vehicles. The proposed measure corresponds to the requirement set under the Italian Ministerial Decree of 28 October 2005 'safety in railway tunnel' ⁽³⁾, which provides for the construction of an emergency exit approximately every 4 km for tunnels above 5 km. A specific and detailed risk analysis was carried

⁽¹⁾ OJ L 138, 26.5.2016, p. 44.

⁽²⁾ Commission Regulation (EU) No 1303/2014 of 18 November 2014 concerning the technical specification for interoperability relating to 'safety in railway tunnels' of the rail system of the European Union (OJ L 356, 12.12.2014, p. 394).

⁽³⁾ The Italian Ministerial Decree of 28 October 2005 'safety in railway tunnel' is under review following a negative assessment carried out in accordance with the procedure set out in Article 26 of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

out by the Italian infrastructure manager in accordance with Commission Implementing Regulation (EU) No 402/2013 ⁽⁴⁾, demonstrating that in this case all identified risks are below the level of unacceptability, and therefore concluding that the safety of the tunnel is considered acceptable and that with the mitigating measure in place, the non-application of point 4.2.1.5.2, (b)(1) of the Annex to Regulation (EU) No 1303/2014 would not compromise the safety of the tunnel.

- (4) Failure to accept the request submitted by the Italian Republic would jeopardise the economic viability of the project. According to the information provided by the Italian infrastructure Manager, the total cost of the current project is EUR 315,49 million; the cost of the extra works to ensure compliance with point 4.2.1.5.2 (b)(1) of the Annex to Regulation (EU) No 1303/2014 has been quantified at EUR 165 million, of which EUR 137 million for the execution of the works and the rest for study and support. That would increase above 50 % the investment cost of the project, amounting to EUR 500 million. In accordance with Article 2(2), point (b)(i) of Commission Implementing Regulation (EU) 2020/424 ⁽⁵⁾, the economic viability analysis, carried out by the Italian infrastructure manager and submitted to the Commission, took into account exploitation revenue of the non-application allowing earlier deployment and the longer term economic viability of the project within the national and European rail system. Based on the information provided, the line would not be part of comprehensive TEN-T network and would mainly serve local transport functions of connecting the town of Matera to the main Italian railway network. If the request for non-application of point 4.2.1.5.2 (b)(1) of the Annex to Regulation (EU) No 1303/2014 is accepted, the project is expected to produce benefits for the community that are greater than the use of resources. On the contrary, it is expected that, if the request is rejected, the project will not produce benefits exceeding the costs.
- (5) For those reasons, the conditions set out in Article 7(1), point (c) and Article 7(4) of Directive (EU) 2016/797 can be considered satisfied.
- (6) The non-application of point 4.2.1.5.2, (b)(1) of the Annex to Regulation (EU) No 1303/2014 should be allowed until the next upgrade or renewal of the tunnel.
- (7) Pending the application of the derogation, the underlying assumptions or considerations on which the risk analysis referred to in recital (3) is based may change. Therefore, in such case, it is appropriate to request the Italian Republic to inform the Commission promptly about such changes and about any other possible mitigating measure to be put in place.
- (8) 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 4.2.1.5.2, (b)(1) of the Annex to Regulation (EU) No 1303/2014 to the Miglionico tunnel is accepted until the next upgrade or renewal of the tunnel on condition that the alternative measure proposed by the Italian Republic is applied.

The Italian Republic shall promptly inform the Commission in case it has information that may reasonably put into question the finding that the non-application of point 4.2.1.5.2, (b)(1) of the Annex to Regulation (EU) No 1303/2014 does not compromise the safety of the Miglionico tunnel.

⁽⁴⁾ Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (OJ L 121, 3.5.2013, p. 8).

⁽⁵⁾ Commission Implementing Regulation (EU) 2020/424 of 19 March 2020 on submitting information to the Commission as regards non-application of technical specifications for interoperability in accordance with Directive (EU) 2016/797 (OJ L 84, 20.3.2020, p. 20).

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 November 2022.

For the Commission
Adina VĂLEAN
Member of the Commission
