



создания требований для оценки соответствия инновационной продукции нужна, чтобы повысить ответственность на всех уровнях производства инновационного продукта и снизить сертификационные барьеры со стороны компетентных инженерных служб. Практикой давно доказана эффективность такого взаимодействия производителей и государства.

Важно определить и апелляционный орган в Таможенном союзе, установить области аккредитации по видам производимой в союзных странах продукции при оценке соответствия, что поможет поднять уровень компетенции и ответственность органов по сертификации, а также уменьшит какую-либо возможность коррупционных проявлений в новой системе технического регулирования.

Не исключены, конечно, спорность и неоднозначность изложенных выводов и предложений, но это лишь доказывает чрезмерную закрытость происходящих процессов, недостаточность гласности в работе причастных к недостаткам органов, ведающих решением насущных проблем производителей продукции, отсутствие должного общественного

обсуждения и игнорирование рисков, касающихся объединений производителей.

Без решения совокупности возникающих переходных проблем весьма проблематично рассчитывать на успешность внедрения новой системы технического регулирования в области железнодорожного транспорта в рамках Таможенного союза. И естественно, при всех сопутствующих этому обстоятельствах главной целью заинтересованных сторон остается обеспечить требуемую безопасность, снизить сертификационные барьеры, облегчить продвижение инновационных продуктов, повысить конкурентоспособность, не допустить прекращения производства продукции, которая до августа 2014 года демонстрировала свою надежность и состоятельность.

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PRESUMPTION OF CONFORMITY WITH TECHNICAL REGULATIONS

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ABSTRACT

Adopted in the framework of the Customs Union technical regulation system, according to the authors of the article contains a number of provisions, which, together with the existing technical regulations in the field of railway transport complicate the assessment of their compliance with the requirements received from the producers. This also applies to standards, supporting regulations, and certification processes, and preferred ensuring of the security settings of the transport equipment. Conclusions and recommendations of analysts, made in this context, do not claim indisputability and offer discussion.

ENGLISH SUMMARY

Background. *Analysis of the system of technical regulation (hereinafter-TR) in the framework of the Customs Union leads to the need to change the existing conditions in the evaluation of compliance with safety requirements.*

Customs Union with its decision of 15 July 2011 № 710 adopted technical regulations relating to the scope of railway transport, as well as lists of standards containing requirements for products and test methods to verify compliance with established regulations.

In the introduction of standards it is clearly stated that their use in the manufacture of products is a good reason for its test for conformity with the criteria of

reliability, quality, safety etc. It is accepted among the experts to perceive enlisted standards as supporting technical regulations.

Objective. *The objective of the authors is to analyze the current technical regulation system in the Customs Union.*

Methods. *The authors use analysis, comparison and descriptive method.*

Results.

Weak points are big risks

Adopted approaches to technical regulation system reflect a number of positions that are contrary to recognized in international practice purposes and principles of standardization. The principles, which are well known to all, are the basis not only of the Russian legislation and national standards, but also interstate standardization, requirements of which must be guidelines for members of the Customs Union.

1. The use on a voluntary basis of standards for conformity assessment of complex technical products, to which refer most of its samples used in the course of transportation by rail, in fact, is a voluntary- compulsory process. After all, if a manufacturer applies for manufacturing products standards from the approved list, then methods and tests themselves of such products for conformity assessment can also be performed on the templates of the same list.

And if a manufacturer deviates from the requirements set forth in supporting standards, he is obliged to submit his own evidence of consistency of such products to the requirements of technical regulations. In this case, these regulations only declare that the manufacture of products according to other standards is not a basis for the recognition of its nonconformity. A manufacturer needs only to provide proof of compliance with safety requirements.

In practice, compliance is proved, as a rule, by the results of direct testing of products on verified methods and techniques. The system of technical regulation of the Customs Union does not provide for an institute of expert organizations and their evaluation of compliance with the standards on the basis of calculations, analysis and modeling.

2. Technical regulations do not define form, volume, or adequacy criteria of any evidence. A manufacturer is proposed to conduct his choice and a process of forming the evidence base. But the sufficiency of the evidence will be determined solely by a certification body.

This approach is effective only in the competitive environment, including in the area of conformity assessment, and high good conscience of certification bodies. Neither of these two points, in our opinion, has not been created for the period since 1998, when a mandatory certification of railway transport was introduced.

3. The uncertainty of requirements for evidence of conformity of products made with deviations from the supporting standards, and the predominance of the subjective factor in deciding the adequacy forms of correlative conditions. A convincing proving would require not only enormous resources for possible research, but also time that in creation of a new product limits the payback period of innovation processes.

4. Understanding of their ultimate responsibility for the safety of products will result in application of only supporting standards by a majority of honest producers. It will be completed by appropriate organizational-administrative documents, implementation of which will convert a voluntariness of a standard in a hard obligatoriness. And that, in turn, will result in obligatoriness of a system of reference standards, which are referred to in the supporting standards. The analysis shows that almost all interstate standards will become mandatory for manufacturers of products. After all, only in this care it ensures minimal certification barriers when starting sales on the market of the Customs Union.

It follows that the fundamental principle of voluntary application of standards is transformed into a simple and not applied in practice declaration.

Historically a period of economic development has been known; when in a mandatory application of standards it finished not only with a systemic stagnation for the country, but also a fall of the former system of technical regulation. Therefore, a system of supporting standards for TR that ensure the «presumption of conformity» can be a key disadvantage of technical regulation of the Customs Union.

5. If the requirements of supporting standards for the most part will become mandatory, the majority of industrial enterprises will seek to meet them to form high consumer confidence in the safety of the products. And here an apparent contradiction appears which concerns competition on domestic and foreign markets. In fact, the supporting standards contain requirements for security, declared as minimal, which means that the industry will operate at the minimum requirements level that will be the same for similarly-named products everywhere. But if the products are available on the market with the same properties, then what kind of competition is all about?

6. The lack of a competitive environment and obligatoriness of requirements of supporting standards for TR not only contradict the very principles of standardization, but also significantly reduce the motivation to improve production in the countries of the Customs Union. If the requirements of supporting standards are minimal, the production, which has received confirmation of compliance by applying the principle of «presumption of conformity», will not be particularly competitive on foreign markets. In essence, the system of interstate supporting standards, objectively widespread, will restrict the competitiveness of the economies of the Customs Union beyond it.

7. So, we emphasize once again that all the requirements set forth in the standards refer to safety and are binding. As a result, this approach is contrary to the main purpose of the standard, which consists in setting the most advanced requirements for the most actual range of features and characteristics of products. Safety, including environmental, is just one of generalizing properties in a number of other, equally important to the consumer. Take, for example, reliability, operability, maintainability, and so on. That is obligatoriness of all requirements of a standard, not only counteracts the process of improving other properties of products, and hence its innovative development, but also slows down the scientific and technical progress in the industry as a whole.

8. Presumption of conformity as an only effective way to reduce certification barriers motivates a producer to an extremely accurate conservation of production and technological conditions, denial of innovation and creation of new products. Uncertainty of the criteria and mechanisms for proving compliance with safety requirements, excessive subjectivity in assessing the sufficiency of evidence of a manufacturer does not only prevent the modernization of production, but also contain the prerequisites for correlative relations.

9. The lack of differentiation of areas of accreditation of conformity assessment bodies by product types, insufficient demand of a method of collective assessment of sufficiency of safety evidence, reducing the role of government agencies responsible for the state of security in the industry discredits the rationality of the system of technical regulation of the Customs Union.

Commission of the Eurasian Economic Union amended the earlier decision of the Commission of the Customs Union № 710 on the adoption of technical regulations in the field of railway transport. In this case, to August 2016 the application of the conformity certificates, received until August 2014, is limited although their validity is three years. That is there is a real threat to remain without recertification, create a deficit for many types of products, daily necessary for the railway transportation.

10. A significant obstacle in the accreditation is to ensure independence. It is known that in the existing system of railway transport the majority of testing laboratories is created on the basis of the existing production, as there are no others. It is very difficult in the remaining short time to get the owners of enterprises and organizations to carry out structural reforms to ensure the principle of independence. Sometimes it is even impossible. However, there are still no interstate decisions on this issue.

11. Accreditation of competent authorities is only a small part of the conformity assessment system. The procedure for handling documents (document flow) is here of a great importance. In general, it is systematically prescribed in technical regulations, but without sufficient depth and specificity. Applicants to assess the conformity of the product do not know application forms, a degree of completeness of the information required, form of acts, test reports and other official documents. And natural questions arise: where, what address, with what set of documents





should we apply for conformity assessment? How much will it cost in the new environment? And the answers to August of 2014 are clearly too late.

12. A weak point of transition to new terms of technical regulation is a complete absence of any transitional provisions, in addition to limitation of action of «old» certificates (see p.9). But there is also a nuance, for example: what should be done with cases of product certification according to the certification basis with controlled operation, which ends after the officially established restrictive term. In this case a special procedure for accounting of such options, as well as decision-making on the fate of the certificate on the basis of the results of the controlled operation is required.

13. A significant gap lies in the fact that the technical regulation does not contain any supporting standards, which would determine the procedure for the development and launching into manufacture of new products. But such an interstate system of standards has not been developed. But this is exactly the case when their obligatoriness is able to provide all set of procedures that guarantee not only high quality of products, but also its compliance with safety requirements.

Safety comes first

The impression is that attitude to the decisions of the Customs Union is no more than formal. Indeed, technical regulations are authorized, safety requirements are set forth in the new elaborated supporting standards, and the accreditation process is also organized in some way. Only now try for example to assess the conformity of production – even in the business game at the current rules you will not manage it. And you will need to realize it really, and not in the game.

It turns out that all agencies have formally done everything, and we cannot make claims, and in reality there are no system and conformity assessment of products cannot be performed! Mess with regulatory bodies, incoordination of accreditation agency and branch departments trigger concern of manufacturers.

It is the manufacturer, because the user in each of the countries of the Customs Union is only one – rail transport. And nothing will happen, if railway a year or two will not be able to buy locomotives, cars or rails because of the lack of conformity certificates. Carriers will continue to transport goods, even some time more efficiently – because of lower costs for the purchase. But the industry can disappear, because a manufacturer will not be able to take with annual downtime and lack of sales.

Conclusions. Ensuring of safety is a direct obligation of the state. And independence of conformity assessment system of requirements of technical regulations must be reasonable and providing an appropriate control and opportunity of regulating impacts.

Keywords: Customs Union, rail transport, technical regulation, standards, regulations, certification, presumption of conformity, appellate body.

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The exclusion of a mandatory application of an entire set of requirements supporting technical regulation of standards and selection of only that part which determines the conditions for safety performance may contribute, in our opinion, to overcome mentioned disadvantages. Adoption of a specific document with requirements for safety – similar to the way it once was with the well-established safety standards, for sure will ensure the implementation of this approach. And they should be, of course, minimal to maintain opportunities for innovative development of transport technology.

For innovative products it is advisable to define a system for development and approval of certification bases, known by many years of experience and real practice. A system of so-called «pre-standards», which is proposed now, is very cumbersome in procedures for consideration and adoption. This not only complicates the innovative development, but also makes it difficult to improve the simplest properties of the serial products.

A leading role of sectoral authorities (responsible for railway safety) during the establishment of requirements for conformity assessment of innovative products is necessary to increase the responsibility at all levels of production of innovative products and reduce certification barriers by competent engineering services. Practice has long proved the effectiveness of this interaction of manufacturers and the state.

It is important to identify an appellate body in the Customs Union, to establish the scope of accreditation by types of manufactured products in allied countries for conformity assessment, which will help to raise the level of competence and responsibility of certification bodies, as well as to reduce any possibility of corruption in the new system of technical regulation.

We cannot exclude, of course, controversial and ambiguous nature of stated conclusions and recommendations, but it just proves the excessive secrecy of processes, lack of transparency in the work of bodies involved in the shortcomings responsible for solution of vital issues of manufacturers, lack of proper public discussion and disregard of risks relating to manufacturers' organizations.

Without a solution of occurring transitional problems it is very problematic to rely on the success of the new system of technical regulation in the field of railway transport in the framework of the Customs Union. And of course, with all the concomitant circumstances, the main purpose of the interested parties is to provide a required safety, to reduce certification barriers, to facilitate the promotion of innovative products, to increase competitiveness, to prevent the termination of manufacturing products, which until August 2014 demonstrated their reliability and consistency.

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