



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 March 2014  
(OR. en)**

7321/14

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**Interinstitutional File:  
2013/0014 (COD)**

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**TRANS 118  
CODEC 655**

## **REPORT**

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From: General Secretariat of the Council

To: Council

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No. prev. doc.: 6760/14 TRANS 77 CODEC 502

No. Cion doc.: 6012/13 TRANS 38 CODEC 225 + ADD 1 + ADD 2

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

- General approach

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## **I. INTRODUCTION**

On 30 January 2013, the Commission submitted to the Council the Fourth Railway Package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area. The package contains three groups of measures, with a view to:

- renewing rules on governance structure in relation to infrastructure management and transport operations (governance pillar);

- ensuring further opening of the market for domestic passenger transport services by rail (market opening pillar); and
- enhancing the quality and efficiency of rail services by removing the remaining market obstacles and reinforcing the harmonisation of interoperability and safety requirements to ensure a higher level of harmonisation of the EU railway network (technical pillar).

The three legislative proposals composing the technical pillar are: a recast of Directive 2008/57/EC on the interoperability of the rail system within the European Union, a recast of Directive 2004/49/EC on railway safety and a new Regulation on the European Union Agency for Railways (hereafter "Agency Regulation"), repealing Regulation (EC) N° 881/2004. Their objective is to increase economies of scale for railway undertakings across the EU, reduce administrative costs and accelerate administrative procedures, as well as avoiding disguised discrimination, through new tasks conferred to the Agency for Railways.

The purpose of the new Agency Regulation is, therefore, to define the new tasks in the field of interoperability and safety resulting from the issuing of safety certificates and vehicle authorisations by the Agency. In addition, it is proposed to clarify existing provisions, as well as update and strengthen the provisions on the governance aspects of the Agency, in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.

The opinion of the Economic and Social Committee was issued on 11 July 2013. The opinion of the Committee of the Regions was issued on 7 October 2013. The European Parliament's Committee on Transport and Tourism appointed Mr Roberts ZĪLE (LV/ECR) as rapporteur and voted on a draft report on 26 November 2013. The EP vote in plenary took place on 26 February 2014.

## II. WORK WITHIN THE COUNCIL BODIES

The detailed examination of the proposal by the Council preparatory bodies started under the Lithuanian Presidency on 22 October 2013. The discussion has been pursued under the Greek Presidency. Following in-depth discussions held at various meetings of the Working Party on Land Transport, the Presidency has amended several provisions of the Commission proposal to take account of delegations' requests.

On 7 March 2014, the Presidency compromise text was submitted to the Permanent Representatives Committee in order to settle the remaining outstanding issues and prepare the draft general approach for the TTE Council on 14 March 2014. During this meeting, a very large majority of Member States expressed strong support for the Presidency text, while a few Member States reiterated some concerns and presented new draft suggestions. The Presidency took note of the delegations' comments and, in order to solve some outstanding issues and to facilitate reaching a general approach, the Presidency accepted several proposals tabled by delegations.

The changes in Annex I to this report compared to the report to Coreper are indicated in **bold** and ~~striketrough~~.

UK indicated a parliamentary scrutiny reservation.

The recitals will be examined and adapted at a later stage to reflect the agreement reached on the articles.

The Commission supports reaching a general approach at the forthcoming Council meeting. Nevertheless, it maintains its general reservation on the entire compromise proposal at this stage of the inter-institutional procedure.

### **III. MAIN OUTSTANDING ISSUES**

Despite the overall positive spirit of compromise and the hard work carried out in order to reach an agreed text, some issues still remain outstanding:

#### ***Examination of national rules (Articles 21 and 22, paragraph 3 and 4)***

A significant number of Member States was opposed to the procedure envisaged by the Commission in its initial proposal for the examination of national rules. First of all, they contested the role granted to the Agency in this procedure and insisted to replace the proposed recommendation to be issued by the Agency to the Member State concerned by a mere non-binding opinion. In addition, several delegations considered that too much power was given to the Commission in the proposed mechanism, in particular for national rules which were not yet adopted (draft national rules). Therefore, delegations insisted on including additional safeguards in the procedure, in particular in the case of a negative assessment by the Agency.

Against this background, the revised Presidency compromise proposal offers additional guarantees to delegations, through the introduction of several new safeguards in the procedure in the case of a negative assessment by the Agency.

First of all, the Agency would only issue an opinion and would in any case be obliged to carry out consultations with the Member State concerned and to obtain information on its position.

Secondly, following the issuing of the opinion by the Agency, the Member State concerned shall be given the chance to inform the Commission of its position on the opinion.

Only where the reasons provided by the Member State are insufficient or absent, the Commission may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the national rule at stake, once adopted, following the involvement of the relevant committee in accordance with the advisory procedure.

Finally, the Presidency made clear in its compromise proposal that only national rules which have been already adopted at national level may be the subject of a Commission decision, while draft national rules can only be subject to an opinion by the Agency.

***Monitoring of the performance and decision-making of national safety authorities by the Agency (Article 29)***

Several delegations expressed difficulties concerning some of the modalities proposed by the Commission for the monitoring of the performance and decision-making of national safety authorities through audits and inspections by the Agency. In particular, those delegations stressed that it is not appropriate that the Agency's recommendation could lead to a Commission decision in the case where the answers provided by the Member State concerned are considered insufficient. They insisted on replacing the proposed recommendation by a non-binding opinion.

Therefore, the Presidency proposes, in its revised compromise, to remove any reference to a Commission decision and to indicate, that the Commission may take appropriate measures concerning the actions to be implemented as a result of the audit. The Commission has a reservation on the replacement of "decision" by "measures".

***New governance rules (Articles 43&62 of the Regulation, footnotes 15, 28, 29 and 30)***

DE would like to limit the renewal period of the Executive Director to a period shorter than five years (see Article 62(4), footnote 29) to ensure that the Executive Director does not acquire EU pension entitlements after two mandates at the Agency. Several delegations support the request presented by DE, while the majority of Member States and the Commission insist on keeping a renewal period of five years.

In this context, the Presidency proposes to maintain a duration of five years for the renewal of the Executive Director.

Finally, the Commission has a number of reservations on various governance issues. It objects to the decision to appoint two representatives of the Commission within the Management Board instead of the four it proposed, in line with the existing arrangements (Article 43(1), footnote 15). It also has a reservation on the obligation imposed on the Commission to propose a list of at least three candidates for the appointment of the Executive Director (Article 62(2), footnote 28).

In addition, the Commission has a reservation on the fact that the power to propose the dismissal of the Executive Director has been also granted to one third of the Members of the Administrative Board (Article 62(7), footnote 30), while in the Common Approach on decentralised Agencies this power is foreseen only for the Commission.

### **Other issues**

Other concerns and reservations expressed by delegations appear in the footnotes of the Annex.

## **IV. CONCLUSIONS**

The Council is invited to examine the text as set out in the Annex to this report, to resolve the outstanding issues and to adopt a general approach at its meeting on 14 March 2014.

2013/0014 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on the European Union Agency for Railways  
and repealing Regulation (EC) No 881/2004**

(Text with EEA relevance)

**CHAPTER 1  
PRINCIPLES**

*Article 1*

**Subject matter and scope**

1. This Regulation establishes a European Union Agency for Railways (the “Agency”).
2. This Regulation provides for:
  - (a) the establishment and tasks of the Agency;
  - (b) the tasks of the Member States in the context of this Regulation.
3. This Regulation supports the establishment of the Single European Railway Area, and in particular the objectives related to:
  - (a) interoperability within the Union rail system provided for in Directive ../../EU [Interoperability Directive];
  - (b) safety of the rail system within the Union provided for in Directive ../../EU [Railway safety Directive];

- (c) certification of train drivers provided for in Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community [Train Drivers Directive].

*Article 1a*

**Objectives of the Agency**

The objective of the Agency shall be to contribute to the creation and effective functioning of a Single European railway area without frontiers, by guaranteeing a high level of safety and interoperability, while improving the competitive position of the railway sector. In particular, the Agency shall contribute, on technical matters, to the implementation of European Union legislation by enhancing the level of interoperability of railway systems and by developing a common approach to safety on the European railway system.

The objective of the Agency shall also be to follow the development of national railway rules and support the performance of national authorities acting in the railway interoperability and safety fields.

Where provided for by the safety and interoperability Directives, the Agency shall perform the role of European authority responsible for issuing authorisations for placing on the market of railway vehicles and of vehicle types and for issuing safety certificates for railway undertakings.

In pursuing these objectives, the Agency shall take full account of the process of enlargement of the Union and of the specific constraints relating to rail links with third countries.



## *Article 2*

### **Legal status**

1. The Agency shall be a body of the Union with legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
- 3a. The Agency shall have sole responsibility for the functions and powers assigned to it.

## *Article 3*

### **Types of acts of the Agency**

The Agency may:

- (a) address recommendations to the Commission concerning the application of Articles 11, 13, 14, 15, 30, 31, 32 and 33;
- (b) address recommendations to Member States concerning the application of Articles 21, 22 and 30;
- (c) issue opinions to the Commission pursuant to Articles 9(2), 21, 22 and 38, and to the authorities concerned in the Member States pursuant to Article 9;
- (ca) address recommendations to national safety authorities pursuant to Article 29(4).
- (d) issue decisions pursuant to Article 12, 16, and 17<sup>1</sup>;
- (e) issue opinions constituting acceptable means of compliance pursuant to Article 15;
- (f) issue technical documents pursuant to Article 15;
- (fa) issue opinions to national safety authorities pursuant to Article 18;
- (g) issue audit reports pursuant to Articles 29 and 30;
- (h) issue guidelines and other non-binding documents facilitating application of railway interoperability and safety legislation pursuant to Articles 11, 15 and 24.

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<sup>1</sup> Commission reservation on the deletion of Article 18.

## **CHAPTER 2**

### **WORKING METHODS**

#### *Article 4*

#### **Creation and composition of the working parties and other groups**

1. The Agency shall set up a limited number of working parties for drawing up recommendations and, where relevant, guidelines, in particular related to technical specifications for interoperability (TSIs), common safety targets (CSTs), common safety methods (CSMs) and for the use of common safety indicators (CSIs).  
The Agency may set up working parties in other duly justified cases at the request of the Commission or the Committee established by Article 75 or on its own initiative, after having consulted the Commission.  
The working parties shall be chaired by a representative of the Agency.
  
2. The Agency shall set up the working parties composed of :
  - representatives nominated by the competent national authorities for the working parties in which they wish to participate.
  - professionals from the railway sector selected by the Agency from the list referred to in paragraph 3. It shall ensure adequate representation of those sectors of the industry and of those users which could be affected by measures the Commission may propose on the basis of the recommendations addressed to it by the Agency.

The Agency may, if necessary, appoint to the working parties independent experts and representatives of international organisations recognised as competent in the field concerned. Staff of the Agency may not be appointed to the working parties.

3. Each representative body referred to in Article 34(2) shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party and update this list regularly.
4. Whenever the work of such working parties has a direct impact on the working conditions, health and safety of workers in the industry, representatives from the workers' organisations shall participate in the relevant working parties as full members.
5. Travel and subsistence expenses of the members of the working parties, based on rules and scales adopted by the Management Board, shall be met by the Agency.
6. *[Deleted, moved to paragraph 1, third subparagraph]*
7. *[paragraph deleted and moved to the end of the Article, see new paragraph 7d]*
- 7a. The Agency shall take due account of the outcome of the working parties when drawing up recommendations and guidelines referred to in paragraph 1.
- 7b. The Agency shall set up other groups for the purpose of Articles 20, 25 and 34.
- 7c. In addition, the Agency may set up other groups in duly justified cases at the request of the Commission or the Committee established by Article 75 or on its own initiative.
- 7d. The work of the working parties and the other groups shall be transparent. The Management Board shall adopt their rules of procedure.

## *Article 5*

### **Consultation of the social partners**

Whenever the work provided for in Articles 11, 13, 15, and 32 has a direct impact on the social environment or working conditions of workers in the industry, the Agency shall consult the social partners within the framework of the sectoral dialogue committee set up pursuant to Decision 98/500/EC<sup>2</sup>. The social partners may react if they so wish within three months.

These consultations shall be held before the Agency submits its recommendations to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its recommendations. The opinions expressed by the sectoral dialogue committee shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 75.

## *Article 6*

### **Consultation of rail freight customers and passengers**

Whenever the work provided for in Articles 11 and 15 has a direct impact on rail freight customers and passengers, the Agency shall consult the organisations representing them. The rail freight customers and passengers may react if they so wish within three months.

The list of organisations to be consulted shall be drawn up by the Commission with the assistance of the committee referred to in Article 75.

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<sup>2</sup> Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level (OJ L 225, 12.8.1998, p. 27).

These consultations shall be held before the Agency submits its proposals to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its proposals. The opinions expressed by the organisations concerned shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 75.

#### *Article 7*

### **Impact assessment**

1. The Agency shall conduct an impact assessment of its recommendations and opinions. The Management Board shall adopt impact assessment methodology based on the methodology of the Commission. The Agency shall liaise with the Commission to ensure that relevant work at the Commission is duly taken into account.
2. Before including an activity in the programming document adopted by the Management Board, in accordance with Article 48(1), the Agency shall conduct an early assessment in relation to it which shall state:
  - (a) the issue to be solved and likely solutions;
  - (b) the extent to which a specific action, including issuing a recommendation or an opinion of the Agency, would be required;
  - (c) the expected Agency contribution to the solution of the problem;Moreover, each activity and project to be included in the programming document shall be previously subject to an efficiency analysis individually and in conjunction with each other, to make best use of the budget and resources of the Agency.
3. The Agency may conduct an ex post assessment of the legislation resulting from its recommendations.
4. Member States shall provide the Agency with the data necessary for the impact assessment, where available.

## *Article 8*

### **Studies**

Where required for the implementation of its tasks, the Agency shall order studies, involving, where appropriate, the working parties and other groups referred to in Article 4, and finance them from its budget.

## *Article 9*

### **Opinions**

1. The Agency shall issue opinions at request of the national regulatory bodies referred to in Article 55 of Directive 2012/34/EU [Directive establishing a Single European Rail Area (recast)] in particular concerning safety and interoperability-related aspects of matters drawn to their attention.
2. The Agency shall issue opinions at request of the Commission on amendments to any act adopted on the basis of Directive ... [Interoperability Directive] or ... [Railway Safety Directives], especially where any alleged deficiency is signalled.
3. With regard to opinions referred to in previous paragraphs and in other articles of this Regulation, the Agency shall give its opinions as soon as possible and at the latest within two months from the receipt of the request, unless otherwise agreed with the requesting parties. The opinions shall be made public by the Agency within one month after they are issued, in a version from which all commercially confidential material has been removed.

*Article 10*

**Visits to Member States**

1. In order to perform the tasks entrusted to it, in particular those referred to in Articles 12, 16, 17, 21, 22, 27, 28, 29, 30, 31 and 38 and to assist the Commission in fulfilling its duties under the TFEU, and notably the assessment of the effective implementation of relevant Union law, the Agency may carry out visits to the Member States, in accordance with the policy, working methods and procedures adopted by the Management Board.
2. Following consultation with the Member State concerned, the Agency shall inform the latter in good time of the planned visit, the names of the delegated Agency officials, and the date on which the visit is to start and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing by the Executive Director specifying the purpose and the aims of their visit.
3. The national authorities of the Member States shall facilitate the work of the Agency's staff.
4. The Agency shall draw up a report on each visit and send it to the Commission and to the Member State concerned.
5. The preceding paragraphs are without prejudice to inspections referred to in Articles 29 (6) and 30(6).
- 5a. Travel, accommodation, subsistence and other expenses incurred by the Agency staff shall be met by the Agency.

# **CHAPTER 3**

## **TASKS RELATING TO RAILWAY SAFETY**

### *Article 11*

#### **Technical support - recommendations on railway safety**

1. The Agency shall issue recommendations to the Commission on the Common Safety Indicators (CSIs), Common Safety Methods (CSMs) and the Common Safety Targets (CSTs) provided for in Articles 5, 6 and 7 of Directive ... [the Railway Safety Directive]. The Agency shall also issue recommendations on periodic revision of CSIs, CSMs and CSTs to the Commission.
  
2. The Agency shall issue recommendations to the Commission, at the request of the Commission or on its own initiative, on other measures in the field of safety, taking into account the experience gained.
  - 2a. The Agency shall develop guidelines in order to assist national safety authorities with regard to supervision of railway undertakings, infrastructure managers and other actors in accordance with Article 16a of Directive...[Railway Safety Directive].
  
  - 2b. The Agency may issue recommendations on the CSMs covering elements of the safety management system which needs to be harmonised at Union level, in accordance with Article 9(5) of Directive...[Railway Safety Directive].
  
3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway safety legislation, including assistance to Member States in identifying national rules that can be removed further to the adoption and/or revision of CSMs.



## *Article 12*

### **Safety certificates**

The Agency shall issue, renew, suspend and amend single safety certificates and cooperate with national safety authorities in that respect in accordance with Articles 10(1d), 11 and 17 of Directive ... [Railway Safety Directive].

The Agency shall restrict or revoke single safety certificates and cooperate with national safety authorities in that respect in accordance with Article 16a of Directive... [Railway Safety Directive].

## *Article 13*

### **Maintenance of vehicles**

1. The Agency shall assist the Commission with regard to the system of certification of the entities in charge of maintenance in accordance with Article 14 (6) of Directive ... [Railway Safety Directive].
2. The Agency shall issue recommendation to the Commission with a view of Article 14 (7) of Directive ... [Railway Safety Directive].
3. The Agency shall analyse any alternative measures decided in accordance with Article 15 of Directive... [Railway Safety Directive] in the report referred to in Article 31(4) of this Regulation.
- 3a. The Agency shall support and, upon request, coordinate the national safety authorities in the supervision activities of the entities in charge of maintenance referred to in Article 16a (1)(c) of Directive...[Railway Safety Directive].

*Article 13a*

**Cooperation with national investigation bodies**

The Agency shall cooperate with national investigation bodies in accordance with Articles 20(2a), 21(1), 21(2), 21(5), 21(7) and 25 of Directive...[Railway Safety Directive].

*Article 14*

**Transport of dangerous goods by rail**

The Agency shall follow developments in the legislation dealing with the transport of dangerous goods by rail within the meaning of Directive 2008/68/EC of the European Parliament and of the Council<sup>3</sup> and, together with the Commission, ensure that such developments are consistent with the legislation dealing with rail interoperability and safety, in particular the essential requirements. To this end the Agency shall assist the Commission and may issue recommendations at the Commission's request or on its own initiative.

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<sup>3</sup> OJ L 260, 30.9.2008, p. 13.

## **CHAPTER 4**

### **TASKS RELATING TO INTEROPERABILITY**

#### *Article 15*

#### **Technical support in the field of railway interoperability**

1. The Agency shall:
  - (a) issue recommendations to the Commission on the TSIs, and their revision, in accordance with Article 5 of Directive ... [Interoperability Directive];
  - (b) issue recommendations to the Commission on the templates for the 'EU' declaration of verification and for documents of the technical file that has to accompany it, in accordance with Article 15(7) of Directive ... [Interoperability Directive];
  - (c) issue recommendations to the Commission on specifications for registers, and their revision, in accordance with Articles 43, 44 and 45 of Directive ... [Interoperability Directive];
  - (d) issue opinions which constitute acceptable means of compliance concerning TSI deficiencies, in accordance with Article 6(3) of Directive ... [Interoperability Directive], and provide it to the Commission;
  - (e) At the request of the Commission, issue opinions to it regarding requests for non-application of TSIs by Member States, in accordance with Article 7 of Directive ... [Interoperability Directive];
  - (f) issue technical documents in accordance with Article 4(9) of Directive ... [Interoperability Directive];

- (fa) issue opinions to national safety authorities in order to ensure a coherent development of ERTMS in the Union pursuant to Article 18(2a) and (2b) of Directive ...[Interoperability Directive];
  - (g) issue recommendations to the Commission relating to the working conditions of all staff carrying out safety-critical tasks.
  - (ga) issue recommendations to the Commission in relation to harmonised standards to be developed by European standardisation bodies. This may include standards related to interchangeable spare parts which may improve the level of interoperability and safety of the EU railway system, as well as safety critical components.
2. For drafting recommendations referred to in paragraph 1, points (a), (b), (c) and (ga), the Agency shall:
- (a) ensure that the TSIs and the specifications for registers are adapted to technical progress and market trends and to social requirements;
  - (b) ensure that the development and updating of the TSIs on the one hand and the development of any European standards which prove necessary for interoperability on the other, are coordinated and maintain the relevant contacts with European standardisation bodies.
3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway interoperability legislation, including assistance to Member States in identifying national rules that can be removed further to the adoption and/or revision of TSIs.
4. In case of non-compliance of interoperability constituents with essential requirements, the Agency shall assist the Commission in accordance with Article 11 of Directive...[Interoperability Directive].

*Article 16*

**Authorisations for placing on the market for vehicles**

The Agency shall issue, renew, amend, suspend and revoke<sup>4</sup> authorisations it has issued for placing on the market for railway vehicles and cooperate with national safety authorities to that purpose in accordance with Article 20 of Directive ... [the Interoperability Directive].

*Article 17*

**Authorisations for placing on the market of vehicle types**

The Agency shall issue, renew, amend, suspend and revoke<sup>5</sup> authorisations it has issued for placing on the market of vehicle types in accordance with Article 22 of Directive ... [the Interoperability Directive].

*Article 18*

**Placing in service of trackside control-command and signalling sub-systems<sup>6</sup>**

The Agency shall issue opinions to national safety authorities regarding installation of the trackside control-command and signalling subsystems involving ECTS and/or GSMR equipment in accordance with Article 18 (2a) and (2b) of Directive ... [the Interoperability Directive].

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<sup>4</sup> This Article and the interoperability Directive should be made consistent with regard to the suspension and revocation of vehicle authorisations.

<sup>5</sup> See previous footnote.

<sup>6</sup> Commission reservation on the removal of the proposed ERA competence related to ERTMS.

## Article 19

### Telematics applications

1. The Agency shall act as the system authority<sup>7</sup> to ensure the coordinated development of the telematics applications in the Union, in accordance with relevant TSIs. To this end, the Agency shall maintain, monitor and manage the corresponding subsystems requirements.
2. The Agency shall define, publish and apply the procedure for managing requests for changes to those specifications. To this end, the Agency shall set up, maintain and update a register of requests for changes to telematics applications specifications and their status, with the relevant justifications.
3. The Agency shall develop and maintain the technical tools for managing the different versions of the telematics applications' specifications.
4. The Agency shall assist the Commission in the monitoring of deployment of telematics applications in accordance with relevant TSIs.

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<sup>7</sup> Recital 12 will be amended to clarify the concept of system authority along the following lines:  
In order to further pursue the development of the Single European rail area, in particular with relation to providing appropriate information to freight customers and passengers, and taking into account the fragmented development of such applications to date, it is necessary to give the Agency a strengthened role in the field of telematics applications. The Agency, as the most competent Union body, should be given a prominent role to ensure consistent development and deployment of all telematics applications. To this end, the Agency should be empowered with the function of System Authority for telematics applications, and, in that quality, the Agency should maintain, monitor and manage all corresponding system requirements at EU level.

*Article 20*

**Support for the notified conformity assessment bodies**

1. The Agency shall support the activities of notified conformity assessment bodies referred to in Article 27 of Directive ... [Interoperability Directive]. That support shall in particular include drafting guidelines for assessing the conformity or suitability for use of an interoperability constituent referred to in Article 9 of Directive ... [Interoperability Directive] and guidelines for the EC verification procedure referred to in Articles 10 and 15 of Directive ... [Interoperability Directive].
2. The Agency may facilitate cooperation of notified conformity assessment bodies, in accordance with Article 41 of Directive...[Interoperability Directive] **and** in particular act as the technical secretariat for their coordination group.

## **CHAPTER 5**

### **TASKS RELATING TO NATIONAL RULES**

#### *Article 21*

#### **Examination of draft national rules**

1. The Agency shall, within two months of their receipt, examine the draft national rules submitted to it in accordance with:
  - (a) Article 8(4) of Directive ... [Railway Safety Directive],
  - (b) Article 14(4) of Directive ... [Interoperability Directive].

Within this period, the Agency shall exchange relevant information with the Member State concerned, consult, where appropriate, the relevant stakeholders, and subsequently inform it on the outcome of the examination.

2. Where after the examination referred to paragraph 1 the Agency considers that national rules enable the essential requirements for interoperability to be fulfilled, CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operation between Member States, the Agency shall inform the Commission and the Member State concerned about its positive assessment. The Commission may validate the rule in the IT system referred to in Article 23. Where the Agency does not inform the Commission and the Member State concerned within two months of the receipt of the draft national rules, its assessment shall be considered as positive, unless a longer period was agreed with the Member State concerned.



3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask for its position regarding this assessment. Following this exchange of views with the Member State concerned within a maximum period of one month, the Agency shall:
- (a) issue **an opinion recommendation** addressed to the Member State concerned stating the reasons why the rule in question should not enter into force and/or be applied;
  - (b) inform the Commission about its negative assessment, stating the reasons why the rule in question should not enter into force and/or be applied.

This does not prejudice the right of a Member State to adopt a new national rule in accordance with Article 8(3)(b) of the Railway Safety Directive and Article 14(3)(b) of the interoperability Directive.

4. The Member State concerned shall inform the Commission about its position on the above **opinion recommendation** within two months, including its reasons in case of disagreement.
- 4a. Where the reasons provided are deemed not sufficient or in the absence of such information, and if the Member State adopts the ~~draft~~ rule in question without ~~any~~ **sufficient** consideration for the ~~recommendation~~ **opinion** referred to in paragraph 3, the Commission may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the rule in question in accordance with the advisory procedure referred to in Article 75(2).

*Article 22*

**Examination of national rules in force**

1. The Agency shall, within two months of their receipt, examine the national rules notified in accordance with Article 14(5) of Directive ... [Interoperability Directive] and Article 8(6) of Directive...[Railway Safety Directive].

Within this period, the Agency shall exchange relevant information with the Member State concerned and subsequently inform it on the outcome of the examination.

2. Where after examination referred to in paragraph 1 the Agency considers that national rules enable the essential requirements for interoperability to be fulfilled, CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operation between Member States, the Agency shall inform the Commission and the Member State concerned about its positive assessment. In that case, the Commission shall validate the rule in the IT system referred to in Article 23. Where the Agency does not inform the Commission and the Member State concerned within two months of the receipt of the ~~draft~~ national rules, its assessment shall be considered as positive, unless a longer period was agreed with the Member State concerned.

3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask for its position regarding this assessment. Following this exchange of views with the Member State concerned within a maximum period of one month, the Agency shall:
  - (a) issue **an opinion recommendation** addressed to the Member State concerned stating the reasons why the rule in question should be modified or repealed;
  - (b) inform the Commission about its negative assessment, stating the reasons why the rule in question should be modified or repealed.
4. The Member State concerned shall inform the Commission about its position on the above **opinion recommendation** within two months, including its reasons in case of disagreement. Where the reasons provided are deemed not sufficient or in the absence of such information, the Commission may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the rule in question in accordance with the advisory procedure referred to in Article 75(2).
5. The procedure described in paragraphs 2 and 3 shall apply, mutatis mutandis, in cases where the Agency becomes aware of any national rule, notified or not, being redundant or in conflict with the CSMs, CSTs, TSIs or any other Union legislation in the railway field.

### *Article 23*

#### **IT system to be used for notification purposes and classification of national rules**

1. The Agency shall manage a dedicated IT system containing national rules referred to in Articles 21 and 22 and make them accessible to stakeholders for the purpose of consultation, where appropriate.

2. Member States shall notify national rules referred to in Articles 21(1) and 22(1) to the Agency and to the Commission through the IT system referred to in paragraph 1. The Agency shall publish the rules in this system, including the status of their examination and use it for informing the Commission in accordance with Articles 21 and 22.
3. The Agency shall classify notified national rules in accordance with Article 14(8) of Directive .... [Interoperability Directive]. To this end, it shall use the system referred to in the first paragraph of this Article.
4. The Agency shall classify national rules notified in accordance with Article 8 and Annex IA of Directive ... [Railway Safety Directive], taking into account development of EU legislation. To this end, the Agency shall develop a Rule Management Tool to be used by Member States for simplifying their systems of national rules. The Agency shall use the system referred to in the first paragraph of this Article to publish the Rule Management Tool.

## CHAPTER 6

### TASKS RELATING TO EUROPEAN RAIL TRAFFIC MANAGEMENT SYSTEM (ERTMS)

#### *Article 24*

#### **System authority for the ERTMS**

1. The Agency shall act as the system authority to ensure the coordinated development of ERTMS in the Union, in accordance with relevant TSIs. To this end, the Agency shall maintain, monitor and manage the corresponding subsystem requirements, including the technical specifications for ETCS and GSM-R.
2. The Agency shall define, publish and apply the procedure for managing requests for changes to the ERTMS specifications. To this end, the Agency shall set up, maintain and update on its own a register of requests for changes to ERTMS specifications and their status, with the relevant justifications.
3. The development of new versions of ERTMS technical specifications shall not be detrimental to the rate of deployment of the ERTMS, the stability of the specifications which is needed to optimise the production of ERTMS equipment, the return on investment for railway undertakings, infrastructure managers and keepers and efficient planning of the deployment of the ERTMS.
4. The Agency shall develop and maintain the technical tools for managing the different versions of the ERTMS with the aim of ensuring technical and operational compatibility between networks and vehicles fitted with different versions and of providing incentives for the swift and coordinated implementation of the versions in force.

5. In accordance with Article 5(9) of Directive ... [Railway Interoperability Directive], the Agency shall ensure that successive versions of ERTMS equipment are technically compatible with earlier versions.
6. The Agency shall prepare and disseminate relevant application guidelines for stakeholders and explanatory documentation related to the technical specifications for the ERTMS.

#### *Article 25*

#### **ERTMS working group of notified conformity assessment bodies**

1. The Agency shall set up and chair an ERTMS working group of notified conformity assessment bodies referred to in Article 27(7) of Directive ... [Interoperability Directive].<sup>8</sup> The working group shall check the consistency of application of the procedure for assessing the conformity or suitability for use of an interoperability constituent referred to in Article 9 of Directive ... [Interoperability Directive] and of the 'EC' procedures for verification referred to in Article 10 of Directive ... [Interoperability Directive] and carried out by notified conformity assessment bodies.
2. The Agency shall report every year to the Commission on the activities of the working group referred to in paragraph 1, including statistics on attendance of notified conformity assessment bodies' representatives in the working group.
3. The Agency shall evaluate the application of the procedure for conformity assessment of interoperability constituents and of the 'EC' verification procedure for ERTMS equipment and every two years shall submit a report proposing to the Commission, where appropriate, improvements to be made.

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<sup>8</sup> A recital will be added to clarify that the participation of the notified conformity assessment bodies should be encouraged as much as possible.

**Compatibility between ERTMS on-board and trackside subsystems**

1.
  - (a) Without prejudice to Article 20 (1d) of the Interoperability Directive, the Agency may assist applicants before issuing the authorisation of placing on the market of a vehicle equipped with ERTMS on-board subsystem, at their request, by checking the technical compatibility between ERTMS on-board and trackside subsystems.
  - (b) Without prejudice to Article 16a of the Railway Safety Directive, and after having delivered an authorisation of placing on the market of a vehicle equipped with an ERTMS on-board subsystem, the Agency may assist railway undertakings before using a vehicle equipped with an ERTMS on-board subsystem, at their request, by checking the operational compatibility between ERTMS on-board and track-side subsystems.

To this end, the Agency shall cooperate with the relevant national safety authorities.

2. Where the Agency finds that there is a risk of a lack of technical and operational compatibility between networks and vehicles fitted with ERTMS equipment in the context of specific ERTMS projects, it may request the appropriate actors, in particular manufacturers, notified conformity assessment bodies, railway undertakings, infrastructure managers, keepers and national safety authorities, to provide any information relevant to the procedures applied for 'EC' verification and placing in service, and to operational conditions. The Agency shall inform the Commission about such a risk and, if necessary, recommend appropriate measures to the Commission.

*Article 27*

**Supporting ERTMS deployment and ERTMS projects<sup>9</sup>**

1. The Agency shall assist the Commission in monitoring the deployment of the ERTMS in accordance with the EU deployment plan in force. At the Commission's request, it shall facilitate the coordination of ERTMS deployment along the Trans-European Transport Corridors and Rail Freight Corridors as provided for in Regulation (EU) No 913/2010<sup>10</sup>.
2. The Agency shall ensure technical follow up of Union-funded projects for the deployment of the ERTMS, including, where applicable without undue delay to the process, analysis of tendering documents at the time of the call for tenders. The Agency shall also assist, if necessary, the beneficiaries of the Union funds to ensure that the technical solutions implemented within projects are fully compliant with the TSIs relating to control-command and signalling and are therefore fully interoperable.

*Article 28*

**Accreditation of laboratories**

1. The Agency shall support, in particular by giving appropriate guidelines to the accreditation bodies, harmonised accreditation of ERTMS laboratories in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>11</sup>.
- 1a. The Agency shall inform Member States and the Commission in case of non-conformities with the requirements of Regulation (EC) No 765/2008 of the European Parliament and of the Council in relation with the accreditation of ERTMS laboratories.
2. The Agency may participate as an observer in the peer reviews required by Regulation (EC) No 765/2008.

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<sup>9</sup> A recital will be added to clarify the meaning of this Article: the Agency's role is to help the applicant implement a project which is compliant with the TSI on control-command and signalling and not to intervene in the authorisation procedure.

<sup>10</sup> OJ L 276, 20.10.2010, p. 22.

<sup>11</sup> OJ L 218, 13.8.2008, p. 30.



# **CHAPTER 7**

## **TASKS RELATING TO MONITORING THE SINGLE EUROPEAN RAILWAY AREA**

### *Article 29*

#### **Monitoring of the performance and decision-making of national safety authorities**

1. In order to perform the tasks entrusted to it and to assist the Commission in fulfilling its duties under the TFEU, the Agency shall monitor the performance and decision-making of national safety authorities through audit and inspections, on behalf of the Commission.
  
2. The Agency shall be entitled to audit:
  - (a) the capacity of national safety authorities to execute tasks related to railway safety and interoperability;
  - (b) the effectiveness of national safety authorities' monitoring of safety management systems of actors as referred to in Article 16a in Directive [...] [Railway Safety Directive].

The Management Board shall adopt the policy, working methods and procedure and practical arrangements for the application of this paragraph, including, where appropriate, arrangements regarding consultation with Member States before the publication of information.<sup>12</sup>

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<sup>12</sup> SI would like to replace the decision by the Management Board through a committee decision.

The Agency shall promote the inclusion of qualified auditors from national safety authorities that are not subject to the actual audit in the audit team. For that purpose, the Agency shall establish a list of qualified auditors and provide them with training when needed.

3. The Agency shall issue audit reports and send them to the national safety authority concerned, to the Member State concerned and to the Commission. Each audit report shall include, in particular, a list of any deficiencies identified by the Agency as well as recommendations for improvement.
4. If the Agency considers that the deficiencies referred to in paragraph 3 prevent the national safety authority concerned from effectively performing its tasks in relation to railway safety and interoperability, the Agency shall recommend to the national safety authority to take appropriate steps within a time limit to be defined taking into account the importance of the deficiency. The Member State concerned shall be kept informed by the Agency on such recommendation.
5. Where a national safety authority disagrees with the Agency's recommendation referred to in paragraph 4, or do not take the appropriate steps referred to in paragraph 4, where no answer is given by a national safety authority as a result of the Agency's recommendation within 3 months from its receipt, the Agency shall inform the Commission.
- 5a. The Commission shall inform the Member State concerned about the issue and ask for its position regarding the above recommendation. Where the answers provided are deemed not sufficient or where no answer is given by the Member State within 3 months from the Commission's request, the Commission may take **appropriate measures** ~~a decision~~ concerning the actions<sup>13</sup> to be implemented as a result of the audit within six months, in accordance with the advisory procedure referred to in Article 75(2) **where relevant**.

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<sup>13</sup> Commission reservation on the replacement of "decision" by "measures".

6. The Agency shall be also entitled to conduct announced inspections in national safety authorities, to verify specific areas of their activities and operation, in particular review documents, processes and records related to their tasks referred to in Article 16 and 16a of Directive ... [Railway Safety Directive]. The inspections may be conducted on an ad-hoc basis or in accordance with a plan developed by the Agency. The duration of an inspection shall not exceed two days. The national authorities of the Member States shall facilitate the work of the Agency's staff. The Agency shall provide the Commission, the Member State and national safety authority concerned with a report on each inspection.

The policy, working methods and procedure for performing the inspections shall be adopted by the Management Board.

6a. *[Deleted]*

### *Article 30*

#### **Monitoring of notified conformity assessment bodies**

1. For the purpose of Article 37 of the Interoperability Directive, the Agency shall support the Commission in monitoring the notified conformity assessment bodies through assistance to accreditation bodies and to the relevant national authorities, audits and inspections, as provided for in paragraphs 2-6.
2. The Agency shall support harmonised accreditation of notified conformity assessment bodies, in particular by giving appropriate guidance on evaluation criteria and procedures to assess whether notified bodies meet the requirements referred to in Chapter VI of Directive ... [Interoperability Directive] to the accreditation bodies, via the European Accreditation infrastructure recognised by Art. 14 of Regulation (EC) No. 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93

3. In case of notified conformity assessment bodies which are not accredited according to Article 23 of Directive... [Interoperability Directive], the Agency may audit their capacities to meet the requirements referred to in Article 27 of that Directive. The procedure for performing audits shall be adopted by the Management Board.
4. The Agency shall issue audit reports covering the activities referred to in paragraph 3 and send them to the notified conformity assessment body concerned, to the Member State concerned and to the Commission. Each audit report shall include, in particular, a list of any deficiencies identified by the Agency as well as recommendations for improvement. If the Agency considers that these deficiencies prevent the notified conformity assessment body concerned from effectively performing its tasks in relation to railway interoperability, the Agency shall adopt a recommendation requesting the Member State in which that notified body is established to take appropriate steps within a time limit to be defined taking into account the importance of the deficiency.
5. Where a Member State disagrees with the recommendation referred to in paragraph 4, or do not take the appropriate steps referred to in paragraph 4 or where no answer is given by a notified body as a result of the Agency's recommendation within 3 months from its receipt, the Agency shall inform the Commission. The Commission shall inform the concerned Member State about the issue and ask for its position regarding the above recommendation. Where the answers provided are deemed not sufficient or where no answer is given by the Member State within 3 months from the Commission's request, the Commission may adopt an opinion within a period of six months in accordance with the advisory procedure referred to in Article 75(2).

6. The Agency may conduct announced or unannounced inspections of notified conformity assessment bodies to verify specific areas of their activities and operation, in particular review documents, certificates and records related to their tasks referred to in Article 38 of Directive [...] [Interoperability Directive]. In the case of accredited bodies, the Agency shall cooperate with the relevant national accreditation bodies. In the case of conformity assessment bodies which are not accredited, the Agency shall cooperate with the relevant national authorities that recognised the notified bodies. The inspections may be conducted on an ad-hoc basis or in accordance with a policy, working methods and procedures developed by the Agency. The duration of an inspection shall not exceed two days. The notified conformity assessment bodies shall facilitate the work of the Agency's staff. The Agency shall provide the Commission and the Member State concerned with a report on each inspection.

### *Article 31*

#### **Monitoring progress of interoperability and safety**

1. The Agency, together with the national investigation bodies, shall collect relevant data on accidents and incidents taking into account the contribution of the national investigation bodies to the safety of the railway system as a whole.
2. The Agency shall monitor the overall safety performance of the railway system. The Agency may in particular seek the assistance of the bodies referred to in Article 34, including collection of data. The Agency shall also draw on the data collected by Eurostat and shall cooperate with Eurostat to prevent any duplication of work and to ensure methodological consistency between the common safety indicators and the indicators used in other modes of transport.
3. At the Commission's request, the Agency shall issue recommendations on how to improve the interoperability of the railway systems, in particular by facilitating coordination between railway undertakings and infrastructure managers, or between infrastructure managers.

4. The Agency shall monitor progress on the interoperability and safety of the railway systems. Every two years it shall present to the Commission and publish a report on progress on interoperability and safety in the Single European Railway Area.
5. The Agency shall, at the Commission's request, provide reports on the state of implementation and application of the Union legislation on safety and interoperability in a given Member State.
- 5a. The Agency shall, at the request of a Member State or the Commission, provide an overview of the interoperability and safety level of the rail system in the Union and establish a dedicated tool to that purpose, in accordance with Article 50(2) of Directive...[Interoperability Directive].

## **CHAPTER 8**

### **OTHER TASKS**

#### *Article 32*

#### **Railway staff**

1. The Agency shall perform the appropriate tasks relating to railway staff set out in Articles 4, 20, 22, 23, 25, 28, 33, 34, 35 and 37 of Directive 2007/59/EC of the European Parliament and of the Council<sup>14</sup>.
2. The Agency may be requested by the Commission to perform other tasks relating to railway staff in accordance with Directive 2007/59/EC.
3. The Agency shall consult the national authorities competent on railway staff issues on the tasks referred to in paragraphs 1 and 2. The Agency may promote cooperation between those authorities, including by organising appropriate meetings with their representatives.

#### *Article 33*

#### **Registers and their accessibility**

1. The Agency shall act as the system authority for all registers and databases referred to in the Safety, Interoperability and Train Drivers Directives. This shall include, in particular:
  - (a) developing and maintaining specifications of the registers;
  - (b) coordinating of developments in the Member States in relation to the registers;

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<sup>14</sup> OJ L 315, 3.12.2007, p. 51.

- (c) providing guidance on the registers to relevant stakeholders;
  - (d) making recommendations to the Commission regarding improvements to the specification of existing registers, where necessary including simplification and deletion of redundant information, and any need to set up new ones, subject to a cost-benefits analysis;
  - (da) registers related to entities in charge of maintenance and ECM certification bodies.
2. The Agency shall make the following documents and registers provided for by Directive ... [Interoperability Directive] and Directive ... [Railway Safety Directive] publicly available:
- (a) the EC declarations of verification of subsystems;
  - (b) the EC declarations of conformity of interoperability constituents and EC declarations of suitability of use of interoperability constituents;
  - (c) the licences issued in accordance with Article 24(8) of Directive 2012/34/EU;
  - (d) the safety certificates issued in accordance with Article 10(4d) of Directive ... [Railway Safety Directive];
  - (e) the investigation reports sent to the Agency in accordance with Article 24 of Directive ... [Railway Safety Directive];
  - (f) the national rules notified to the Commission in accordance with Article 8 of Directive ... [Railway Safety Directive] and Articles 14 of Directive ... [Interoperability Directive];
  - (g) the vehicle registers, including via links to relevant national registers;
  - (h) the infrastructure registers, including via links to relevant national registers;
  - (i) the European register of authorised types of vehicles in accordance with Article 44 of Directive ... [Interoperability Directive];
  - (j) the register of requests for changes and planned changes to the ERTMS specifications, in accordance with Article 24(2);
  - (k) the register of requests for changes and planned changes to the Telematics Applications for Passengers (TAP) TSI/Telematics Applications for Freight (TAF) TSI specifications, in accordance with Article 19(2);



- (l) the register of vehicle keeper markings kept by the Agency in accordance with the TSI on operation and traffic management;
- (m) quality reports issued in accordance with Article 28(2) of Regulation (EC) No 1371/2007.

3. The practical arrangements for sending the documents referred to in paragraph 2 shall be discussed and agreed by the Commission and the Member States on the basis of a draft prepared by the Agency.
4. When sending the documents referred to in paragraph 2, the bodies concerned may indicate which documents are not to be disclosed to the public for reasons of security.
5. The national authorities responsible for issuing the licences referred to in points (c) of paragraph 2 shall notify the Agency of each individual decision to issue, renew, amend or revoke those licenses, in accordance with Directive 2012/34/EU.  
The national safety authorities responsible for issuing the certificates referred to in point (d) of paragraph 2 shall notify the Agency, in accordance with Article 10(7) of the Railway Safety Directive of each individual decision to issue, renew, amend or revoke those certificates.
6. The Agency may include any public document or link relevant to the objectives of this Regulation in the public database, taking into account applicable Union legislation on data protection.

**Networks of national safety authorities, investigating bodies and representative bodies**

1. The Agency shall establish a network of the national safety authorities referred to in Article 16 of Directive .../... [Railway Safety Directive] and shall support the investigating bodies in accordance with Article 21(7) of Directive.../... [Railway Safety Directive]. The Agency shall provide the above network with a secretariat. If provided by the Agency, the secretariat **for the cooperation** of investigating bodies shall be organised separately from the functions within the Agency in charge of safety certification of railway undertakings and authorisations to place vehicles on the market. The objective of the cooperation of such bodies shall, in particular, be:
  - (a) exchange of information related to railway safety and interoperability;
  - (b) promotion of good practices and dissemination of relevant knowledge;
  - (c) provision of data on railway safety to the Agency, in particular data relating to common safety indicators.

The Agency shall facilitate cooperation between the national safety authorities and national investigation bodies, in particular by holding joint meetings.

2. The Agency may establish a network of representative bodies from the railway sector acting at the Union level. The list of these bodies shall be defined by the Commission. The Agency may provide the network with a secretariat. The tasks of the network shall, in particular, be:
  - (a) exchange of information related to railway safety and interoperability;
  - (b) promotion of good practices and dissemination of relevant knowledge;
  - (c) provision of data on railway safety and interoperability to the Agency.
3. The networks **and bodies** referred to in paragraphs 1 and 2 may comment on draft opinions referred to in Article 9(2).

4. The Agency may establish other networks with bodies or authorities with responsibility for a part of the railway system.
5. The Commission may participate in meetings of networks referred to in this Article.

#### *Article 35*

### **Communication and dissemination**

The Agency shall communicate and disseminate to relevant stakeholders information related to the European framework of railway legislation, development of standards and guidance, in accordance with relevant communication and dissemination plans adopted by the Management Board, on the basis of a draft prepared by the Agency. Those plans, based on an analysis of needs, shall be regularly updated by the Management Board.

#### *Article 36*

### **Research and promotion of innovation**

1. The Agency shall contribute, upon request of the Commission or upon its own decision subject to the procedure referred to in Article 48(4), to railway research activities at Union level, including through support to relevant Commission services and representative bodies. This contribution shall be without prejudice to other research activities at the Union level.
2. The Commission may entrust the Agency with the task of promoting innovation aimed at improving railway interoperability and safety, particularly the use of new information technologies and tracking and tracing systems.

*Article 37*

**Assistance to the Commission**

1. The Agency shall, at the Commission's request, assist the Commission with the implementation of Union legislation aimed at enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system.
2. This assistance may include:
  - (a) providing technical advice in matters requiring specific know-how;
  - (b) collecting information through the networks referred to in Article 34.

*Article 38*

**Assistance with the assessment of rail projects**

Without prejudice to the derogations provided for by Article 7 of Directive [...] [Railway Interoperability Directive], the Agency shall, at the Commission's request, examine, from the point of view of interoperability and safety, any project involving the design, construction, renewal or upgrading of the subsystem for which an application for Union financial support has been submitted.

Within a period to be agreed with the Commission according to the importance of the project and the resources available and which may not exceed two months, the Agency shall give an opinion on whether the project complies with the relevant railway interoperability and safety legislation.

### *Article 39*

#### **Assistance to Member States, candidate countries and stakeholders**

1. At the request of the Commission, Member States, candidate countries or the networks referred to in Article 34, the Agency shall engage in training and other appropriate activities concerning the application and explanation of railway interoperability and safety legislation and related Agency's products such as registers, implementation guides or recommendations.
2. The nature and extent of the activities referred to in paragraph 1, including the possible impact on resources shall be decided by the Management Board and included in the programming document. The costs of such assistance shall be borne by the requesting parties unless otherwise agreed.

### *Article 40*

#### **International relations**

1. In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may strengthen coordination with international organizations on the basis of concluded agreements and develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries competent in matters covered by Agency activities in order to keep up with scientific and technical developments and to ensure promotion of the European Union railways legislation and standards.
2. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries. Those arrangements and cooperation shall be subject to prior discussion with the Commission and regular reporting to it. The Management Board shall be duly informed of those arrangements.

3. The Management Board shall adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent. This strategy shall be included in the programming document of the Agency, with a specification of associated resources.

*Article 41*

**Interchangeable spare parts** *[Deleted]*

# CHAPTER 9

## ORGANISATION OF THE AGENCY

### *Article 42*

#### **Administrative and management structure**

The Agency's administrative and management structure shall comprise:

- (a) A Management Board, which shall exercise the functions set out in Article 47;
- (b) An Executive Board which shall exercise the functions set out in Article 49;
- (c) An Executive Director who shall exercise the responsibilities set out in Article 50;
- (d) One or more Boards of Appeal which shall exercise the responsibilities set out in Articles 54 to 56.

### *Article 43*

#### **Composition of the Management Board**

1. The Management Board shall be composed of one representative from each Member State and two<sup>15</sup> representatives of the Commission, all with a right to vote.

The Management Board shall also include six representatives, without the right to vote representing at European level the following groups:

- (a) railway undertakings;
- (b) infrastructure managers;
- (c) the railway industry;
- (d) trade unions;
- (e) passengers;
- (f) freight customers.

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<sup>15</sup> The Commission has a reservation on the reduction from four to two of its representatives in the Management Board. The Commission stresses that, under the current Regulation, the Board is composed of four Commission representatives and that the Joint Statement of the EP, Council and Commission on decentralised agencies of 19.07.12 provides that the relevant existing arrangements for existing agencies can be maintained as regards the number of Commission representatives in the Management Board.

For each of these groups, the Commission shall appoint a representative and an alternate from a shortlist of four names submitted by their respective European organisations.

2. Board members and their alternates shall be appointed in light of their knowledge of the agency's core business, taking into account relevant managerial, administrative and budgetary skills. All parties shall make efforts to limit turnover of their representatives in the Board, in order to ensure continuity of the Board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.
3. Member States and the Commission shall appoint their members of the Management Board and an alternate who will represent the member in his/her absence.
4. The term of office of the members shall be four years and may be renewed.
5. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 68.

#### *Article 44*

#### **Chairperson of the Management Board**

1. The Management Board shall elect, by a two-thirds majority of its members entitled to vote, a Chairperson from among the representatives of the Member States and a Deputy Chairperson from among its members.

The Deputy Chairperson shall replace the Chairperson in the event of the Chairperson being unable to attend to his/her duties.



2. The term of office of the Chairperson and Deputy Chairperson shall be four years and may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date also.

#### *Article 45*

#### **Meetings**

1. Meetings of the Management Board shall be conducted according to the rules of procedure referred to in Article 47(1f) and convened by its Chairperson. The Executive Director of the Agency shall normally participate in the meetings, except when his/her participation may lead to a conflict of interests, subject to a decision of the Chairperson.

The Management Board may invite any person whose opinion can be of interest to attend specific agenda items of its meetings as an observer.

2. The Management Board shall meet at least twice a year. It shall also meet on the initiative of the Chairperson, at the request of the Commission, at the request of the majority of its members or of one-third of the Member States' representatives on the Board.
- 2a. When there is a matter of confidentiality or conflict of interest, the Management Board may decide to examine specific items of its agenda without the presence of the members concerned. This does not affect the right of the Member States and the Commission to be represented by an alternate or any other person. Detailed rules for the application of this provision shall be laid down in the rules of procedure.

*Article 46*

**Voting**

Unless stated otherwise in this Regulation, the Management Board shall take its decisions by an absolute majority of its members entitled to vote. Each member entitled to vote shall have one vote.

*Article 47*

**Functions of the Management Board**

1. In order to ensure that the Agency carries out its tasks, the Management Board shall<sup>16</sup>:
  - (a) adopt the Annual Report on the Agency's activities for the previous year, send it, by 1 July, to the European Parliament, the Council, the Commission and the Court of Auditors and make it public;
  - (b) adopt each year, by a two-thirds majority of its members entitled to vote, after having received the opinion of the Commission and in accordance with Article 48, the programming document of the Agency;<sup>17</sup>
  - (c) adopt, by a two-thirds majority of its members entitled to vote, the annual budget of the Agency and exercise other functions in relation to the Agency's budget, in accordance with Chapter 10;
  - (d) establish procedures for decision-making by the Executive Director;
  - (e) adopt a policy, working methods and procedures on visits, audits and inspections pursuant to Article 10, 29 and 30;

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<sup>16</sup> DE would like to add for points (d), (f) and (i) "by a two-thirds majority of its members entitled to vote."

<sup>17</sup> A recital referring to the changes resulting from the new Framework Financial Regulation will be included in relation to the programming document.

- (f) establish its rules of procedure;
- (g) adopt and update the communication and dissemination plans referred to in Article 35;
- (h) *[deleted]*
- (i) subject to paragraph 2, exercise, with respect to the staff of the Agency, the appointing authority powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment ("the appointing authority powers");
- (ii) take motivated decisions in relation to immunity waiver in accordance with Article 17 of the Protocol on the Privileges and Immunities of the European Union.<sup>18</sup>
- (j) submit to the Commission for its agreement implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants if they are different from those adopted by the Commission, in accordance with the procedure provided for in Article 110 of the Staff Regulations;
- (k) appoint the Executive Director and may extend his term of office or remove him from the office, by a two-thirds majority of its members entitled to vote, in accordance with Article 62;
- (ka) appoint the members of the Executive Board, by a two-third majority of its members entitled to vote, in accordance with Article 49;
- (kaa) adopt a mandate for the tasks of the Executive Board referred to in Article 49;
- (kb) adopt the decisions related to the arrangements referred to in Article 68(2);

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<sup>18</sup> To be read in conjunction with recital 11b.

- (kc) appoint and remove the members of the Boards of Appeal, by a two-thirds majority of its members entitled to vote, in accordance with Article 51 and Article 52(3);
- (ke) adopt a decision laying down rules on the secondment to the Agency of national experts, in accordance with Article 63.
- (l) adopt an anti-fraud strategy, which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented;
- (m) ensure adequate follow-up to the findings and recommendations stemming from investigations of the European Anti-fraud Office (OLAF) and the various internal or external audit reports and evaluations, verifying that appropriate actions are taken by the Executive Director;
- (n) adopt rules for the prevention and management of conflicts of interest in respect of members of the Management Board and of the Board of Appeal;
- (na) adopt guidelines and the list of the main elements to be included in the cooperation agreements between the Agency and the national safety authorities, taking into account the provisions of Article 69.
- (nb) adopt a framework model for the financial apportioning of the fees paid by the applicant referred to in Article 69(2) for the purposes of Articles 12, 16 and 17;<sup>19</sup>
- (nc) establish procedures for cooperation of the Agency and its staff in national judicial proceedings;

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<sup>19</sup> PT is concerned that the framework model for the financial apportioning of the fees may not be adequate and has a scrutiny reservation at this stage.

- (nd) adopt rules of procedure of working parties **and other groups** and scales relating to travel and subsistence expenses of its members as referred to in Article 4(5) and (7d).
- (ne) appoint an observer from amongst its members to follow the selection procedure by the Commission for the appointment of the Executive Director.
- (nf) adopt appropriate implementing rules to Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>20</sup>, in accordance with the voting rules defined in Article 67(1).**

2. The Management Board shall adopt, in accordance with the procedure provided for in Article 110 of the Staff Regulations, a decision in application of Article 2(1) of the Staff Regulations and of Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate these powers.

In application of the previous subparagraph, where exceptional circumstances so require, the Management Board may, by way of a decision, suspend temporarily the delegation of appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

#### *Article 48*

### **Programming document**

1. The Management Board of the Agency shall adopt the programming document containing annual and multi-annual programmes by 30 November each year, taking into account the opinion of the Commission, and forward it to the Member States, the European Parliament, the Council, the Commission and to the networks referred to in Article 34. The annual work programme shall lay down the actions that the Agency shall perform during the coming year.

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<sup>20</sup> OJ 17, 6.10.1958, p. 385.

The Management Board shall establish appropriate procedures to be applied for the adoption of the programming document, including for the consultation of relevant stakeholders as referred to in Article 47(1f).

2. The programming document shall become definitive after final adoption of the EU general budget and, if necessary, shall be adjusted accordingly.  
If, within 15 days of the date of adoption of the programming document, the Commission expresses its disagreement with such document, the Management Board shall re-examine the programme and adopt it, as amended if necessary, within a period of two months, in second reading either by a two-thirds majority of its members entitled to vote, including by all Commission representatives, or by unanimity of the representatives of the Member States.
3. The Agency's annual work programme shall identify the objectives of each activity. As a general rule, each activity shall be clearly linked with the budgetary and human resources required to carry it out, in accordance with the principles of activity-based budgeting and management and the early assessment procedure provided for in Article 7(2).
4. The Management Board shall, if necessary, amend the adopted programming document when a new task is given to the Agency<sup>21</sup>. Inclusion of such a new task shall be subject to an analysis of the human and budgetary resources implications in accordance with Article 7(2), and may be subject to a decision to postpone other tasks.
5. This multi-annual work programme shall set out overall strategic programming, including objectives, expected results and performance indicators. It shall also set out resource programming, including multi-annual budget and staff.  
The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation and review referred to in Article 76.
- 5a. The transitional provisions referred to in Articles 115 and 116 of Regulation (EU) N° 1271/2013 shall apply.

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<sup>21</sup> Issue to be clarified in a recital if necessary.

*Article 49*

**Executive Board**

1. The Management Board shall be assisted by an Executive Board.
2. The Executive Board shall prepare decisions to be adopted by the Management Board. Where necessary, because of urgency, it shall take certain provisional decisions on behalf of the Management Board, in particular on administrative and budgetary matters, subject to a mandate received from the Management Board.<sup>22</sup>

Together with the Management Board, it shall ensure adequate follow-up to the findings and recommendations stemming from investigations of OLAF and the various internal or external audit reports and evaluations, including by appropriate actions of the Executive Director.

Without prejudice to the responsibilities of the Executive Director, as set out in Article 50, it shall assist and advise him/her in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

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<sup>22</sup> Recitals 29 and 31 will be amended to clarify the role of the Executive Board, on the basis of the following text:

In order to streamline the decision-making process in the Agency and contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. In addition to the Management Board, which should give general orientations for the Agency's activities, a small-sized Executive Board should be set-up and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters. The delineation of competences of the Executive Board should be defined in a mandate to be adopted by the Management Board and may include opinions and provisional decisions subject to their final endorsement by the Management Board.



3. The Chairperson of the Management Board shall be the Chairperson of the Executive Board. It shall also be composed of one representative of the Commission and four other Members' States representatives of the Management Board, on the grounds of relevant competence and experience. The Management Board shall appoint members and their alternates of the Executive Board, and shall strive for a balanced representation between men and women.
4. The term of office of members of the Executive Board shall be the same as that of members of the Management Board unless the Management Board decides on a shorter term.
5. The Executive Board shall meet at least once every three months, and where possible, no less than two weeks prior to the Management Board. The chairperson of the Executive Board shall convene additional meetings at the request of its members, or of the Management Board.
6. The Management Board shall lay down the rules of procedures of the Executive Board<sup>23</sup>. Members of the Management Board shall be regularly informed on the work of the Executive Board and shall have access to its documents.

#### *Article 50*

#### **Duties of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. The Executive Director shall be accountable to the Management Board for his/her activities.
2. Without prejudice to the powers of the Commission, the Management Board, or the Executive Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.

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<sup>23</sup> DE would like to add "by a two-thirds majority of its members entitled to vote".

3. When invited, the Executive Director shall report on the performance of his/her duties to the European Parliament and to the Council.
4. The Executive Director shall be the legal representative of the Agency. He/she shall adopt decisions, recommendations, opinions and other formal acts of the Agency.
5. The Executive Director shall be responsible for the administrative management of the Agency and for the implementation of the tasks assigned to it by this Regulation. In particular, the Executive Director shall be responsible for:
  - (a) the day-to-day administration of the Agency;
  - (b) implementing the decisions adopted by the Management Board;
  - (c) preparing the programming document and submitting it to the Management Board after consultation of the Commission;
  - (d) implementing the programming document and as far as possible, responding to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation;
  - (da) preparing the annual report on the Agency's activities and presenting it to the Management Board for approval;
  - (g) taking the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation;
  - (h) establishing an effective monitoring system in order to compare the Agency's results with its operational objectives and establishing a regular assessment system corresponding to recognised professional standards;
  - (i) preparing each year a draft general report on the basis of the monitoring and assessment systems referred to in point (g), and submitting it to the Management Board;
  - (j) preparing the Agency's draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 58 and implementing the budget pursuant to Article 59;

- (ka) taking the necessary steps to follow the work of the networks of national safety authorities, investigating bodies and representative bodies pursuant to Article 34;
- (l) preparing an action plan following-up on the conclusions of the internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress bi-annually to the Commission and regularly to the Management Board;
- (m) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties;
- (n) preparing an anti-fraud strategy of the Agency and presenting it to the Management Board for approval;
- (o) preparing the Agency's draft financial regulation for adoption by the Management Board under Article 60, and its implementing rules;
- (oa) concluding, on behalf of the Agency, cooperation agreements with national safety authorities in accordance with Article 69 of this Regulation.

#### *Article 51*

#### **Establishment and composition of the Boards of Appeal**

1. Upon decision of the Management Board, the Agency shall establish one or more Boards of Appeal which shall be in charge of the appeals and arbitration procedures referred to in Articles 54 and 55b.
2. Each Board of Appeal shall be composed of a Chairperson and two other members. They shall have alternates to represent them in their absence, or in case of conflict of interests.

- 2a. The establishment and composition of each Board of Appeal shall be decided on a case-by-case basis or as a permanent body for a period of maximum four years, in accordance with the following procedure:
  - (a) The Commission shall establish a list of qualified experts on the grounds of relevant competence and experience, and following an open selection procedure;
  - (b) The Management Board shall appoint the Chairperson, the other members and their alternates from the list referred to above. Where it is not a permanent body, the Management Board shall take into account the nature and content of the appeal or arbitration, and avoid any conflict of interests in accordance with Article 53.
3. [Deleted]
4. Where the Board of Appeal considers that the nature of the appeal so requires, it may request the Management Board to appoint two additional members and their alternates from the list referred to in paragraph 2a(a).
5. On the proposal of the Agency, the Commission shall establish the rules of procedure of the Board of Appeal, including the procedures for filing an appeal and the conditions for reimbursement of expenses of its members, after having consulted the Management Board and in accordance with the examination procedure referred to in Article 75(3).
- 5a. The Board of Appeal may request the opinion of experts from the Member States concerned, in particular with a view to clarifying the national legislation concerned, in the initial examination phase of the procedure.

*Article 52*

**Members of the Board of Appeal**

1. In the case of a permanent Board of Appeal, the term of office of the members and alternates of a Board of Appeal shall be limited to a maximum period of four years and may be renewed once. In other cases, the term of office shall be limited to the duration of the appeal or arbitration.
2. The members of a Board of Appeal shall be independent and may not perform any other duties within the Agency. In making their decisions they shall not be bound by any instructions and shall be free of any conflict of interests.
  - 2a. The members of the Board of Appeal shall not be part of the Agency's staff and shall be remunerated for their actual involvement in a given appeal or arbitration.
3. The members of a Board of Appeal may not be removed from office during their term of office, unless there are serious grounds for such removal and the Management Board takes a decision to that effect.
4. The members of a Board of Appeal may not be removed from the list of qualified experts during their term of office, unless there are serious grounds for such removal and the Commission takes a decision to that effect.

*Article 53*

**Exclusion and objection**

1. In case of an established Board of Appeal, its members may not take part in any appeal or arbitration proceedings if they have any personal interest in the proceedings, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. Any member of the Board of Appeal who considers that himself or any other member should not take part in any appeal or arbitration proceeding, for one of the reasons referred to in paragraph 1 or for any other reason, shall inform the Board of Appeal which decides on the exclusion ~~accordingly~~ **on the basis of the rules adopted by the Management Board as defined in Article 47(1)(n). The Management Board shall be informed accordingly.**
3. Any party to the appeal or arbitration proceedings may object, in accordance with the rules of procedures defined in Article 51(5), to any member of the Board of Appeal on any of the grounds given in paragraph 1, or if the member is suspected of partiality. No objections may be based on the nationality of the members.
4. The Board(s) of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate. The Management Board shall be informed of the decisions taken by the Board of Appeal.

*Article 54*

**Decisions and failure to act subject to appeal**

1. An appeal may be brought before the Board of Appeal against decisions taken by the Agency pursuant to Articles 12, 16, and 17, or if the Agency fails to act within the defined time limits, and following the completion of the interlocutory revision referred to in Article 55a.
2. An appeal lodged pursuant to paragraph 1 shall not have a suspensory effect. However, upon request of the parties involved, the Board of Appeal may decide that the appeal lodged pursuant to paragraph 1 shall have a suspensory effect, if it considers that circumstances so permit. In such a case, the Board of Appeal shall justify its decision.

*Article 55*

**Persons entitled to appeal, time limit and form**

1. Any natural or legal person may appeal against a decision addressed to that person, or of direct and individual concern to that person, by the Agency pursuant to Articles 12, 16 and 17, or if the Agency fails to act within the defined time limits.
2. The appeal, together with the statement of grounds thereof, shall be filed in writing in accordance with the rules of procedure referred to in Article 51(5) within two months of the notification of the measure to the person concerned, or, if the person is not notified of the measure, within two months of the day on which it came to their knowledge.

### *Article 55a*

#### **Interlocutory revision**

1. If the Agency considers the appeal to be admissible and well founded, it shall rectify the decision or failure to act referred to in Article 54(1). This shall not apply where the appealed decision affects another party involved in the appeal proceedings.
2. If the decision is not rectified within one month after receipt of the appeal, the Agency shall forthwith decide whether or not to suspend the application of its decision and shall remit the appeal to the Board of Appeal.

### *Article 55b*

#### **Arbitration procedure**

In the event of a disagreement between the Agency and a national safety authority or authorities pursuant to Articles 20(1f) and 22 of Directive ... [Interoperability Directive] and Articles 10(1f) and 16a(4 and 4a) of Directive ... [Railway Safety Directive], the Board of Appeal shall act as an arbitrator upon request of the national safety authority concerned. In such case, the Board of Appeal shall decide whether to agree with the Agency's position.



*Article 56*

**Examination and decisions on appeals and arbitration**

1. When examining the appeal or acting as arbitrator, the Board of Appeal shall act within the deadlines set out in the rules of procedure. It shall, as often as necessary, invite the parties to the appeal proceedings to file, within specified time limits, observations on its notifications or on communications from other parties to the appeal proceedings. Parties to the appeal proceedings shall be entitled to make oral presentations.
2. As regards the arbitration, the Agency takes its final decision in accordance with the procedures referred to in Article 20(1f) of the the interoperability Directive and Article 10(1f) of the safety Directive.
3. As regards the case of a successful appeal, the Agency shall review its position in the light of the findings of the Board of Appeal and decide whether or not to confirm its original decision.  
**The Agency shall justify its final decision and inform the parties to the appeal proceedings accordingly.**

*Article 57*

**Actions before the Court of Justice**<sup>24</sup>

1. Actions for the annulment of Agency decisions taken for the purposes of Articles 12, 16 and 17, or for the failure to act within the time limits may be brought before the Court of Justice of the European Union only after the appeal procedure within the Agency in accordance with Article 54 has been exhausted.
2. The Agency shall take all necessary measures to comply with the judgment of the Court of Justice of the European Union.

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<sup>24</sup> DE would like that the decisions of the Board of Appeal can be brought to the Court of Justice of the European Union.

# CHAPTER 10

## FINANCIAL PROVISIONS

### *Article 58*

#### **Budget**

1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be set out in the budget of the Agency.
2. Without prejudice to other resources, the revenue of the Agency shall consist of, :
  - (a) a contribution from the Union and grants from Union bodies,
  - (b) any contribution from third countries participating in the work of the Agency, as provided for by Article 68,
  - (c) the fees paid by applicants for, and holders of, certificates and authorisations issued by the Agency in accordance with Articles 12, 16 and 17;
  - (d) charges for publications, training<sup>25</sup> and any other services provided by the Agency;
  - (e) any voluntary financial contribution from Member States, third countries or other entities, provided such a contribution is transparent, is clearly identified in the budget and does not compromise the independence and impartiality of the Agency;
3. The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.
4. Revenue and expenditure shall be in balance.

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<sup>25</sup> The following recital will be included: 'Taking into account the transfer of competences to the Agency in relation to the issuing of vehicle authorisations and safety certificates, there will be an important need for training and publication activities. When the national safety authorities are involved in those activities, the latter should be proposed free of charge, whenever possible.'

5. Each year, the Management Board, on the basis of a draft drawn up by the Executive Director on the basis of activity-based budgeting, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 January at the latest.
6. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the Union.
7. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty, together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.
8. The budgetary authority shall authorise the appropriations for the contribution to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.
9. The budget shall be adopted by the Management Board, by a two-thirds majority of its members entitled to vote. The Budget of the Agency shall become final following final adoption of the general budget of the Union. Where appropriate, it shall be adjusted accordingly.
10. For any property-related project likely to have significant implications for the budget of the Agency, the provisions of Article 203 of Regulation 966/2012 (EU, Euratom) shall apply.

**Implementation and control of the budget**

1. The Executive Director shall implement the budget of the Agency.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EU, Euratom) No 966/2012 (the general Financial Regulation).
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.  
The Court of Auditors shall examine these accounts in accordance with Article 287 of the Treaty. It shall publish a report on the Agency's activities every year.
4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, under Article 148 of the general Financial Regulation, the accounting officer shall draw up the Agency's final accounts. The Executive Director shall ~~and~~ submit them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. The accounting officer shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
7. The final accounts shall be published.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest following each financial year. He shall also send this reply to the Management Board and to the Commission.
9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of the general Financial Regulation.
10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2 give a discharge to the Executive Director in respect of the implementation of the budget for year N.

#### *Article 60*

#### **Financial Regulation**

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Regulation (EC, Euratom) No 2343/2002<sup>26</sup> [*reference to be changed at a later stage*] unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

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<sup>26</sup> Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 72).

# CHAPTER 11

## STAFF

### *Article 61*

#### **General Provisions**

1. The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations shall apply to the staff of the Agency.<sup>27</sup>
2. *[Deleted]*
- 2a. Without prejudice to Article 47(1j), implementing rules adopted by the Commission to give effect to the Staff Regulations and the conditions of Employment of Other Servants of the European Union, including the general implementing provisions, shall apply by analogy to the Agency, in accordance with Article 110 of the Staff Regulations.
3. The Agency shall take appropriate administrative measures to organise its services in order to avoid any conflict of interest.

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<sup>27</sup> DE would like to add the following new paragraph: "The staff shall consist of temporary staff and/or contract staff. The Management Board shall give its consent on a yearly basis in so far as the Director intends to grant contracts of indefinite duration. The Management Board shall decide which temporary posts provided for in the establishment plan can be filled only by staff engaged from the competent authorities of the Member States. Staff recruited to occupy such posts shall be temporary agents under Article 2(f) of the Conditions of employment and may be awarded only fixed-term contracts renewable once for a fixed period."

## Article 62

### Executive Director

1. The Executive Director shall be engaged as a temporary agent of the agency under Article 2(a) of the Conditions of Employment of Other servants.
2. The Executive Director shall be appointed by the Management Board on the grounds of merit, documented administrative and managerial skills, as well as relevant knowledge and experience of the transport sector, from a list of at least three candidates<sup>28</sup> proposed by the Commission, after an open and transparent selection procedure, following publication of the vacancy notice in the Official Journal of the European Union, and elsewhere, as appropriate. Before the decision of the Management Board is taken, the observer referred to in Article 47(1)(ne) shall report on the procedure.

For the purpose of concluding the contract of the Executive Director, the Agency shall be represented by the Chair of the Management Board.

Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions by its members.

3. The term of office of the Executive Director shall be five years. By the end of this period, the Commission shall undertake an assessment which takes into account the evaluation of the performance of the Executive Director and the Agency's future tasks and challenges.
4. The Management Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years.<sup>29</sup>

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<sup>28</sup> The Commission has a reservation on the minimum number for the candidates.

<sup>29</sup> DE would like to limit the extension of the term of office to a period shorter than 5 years so that the Executive Director does not acquire EU pension entitlements. Therefore, DE proposes to limit the possible extension to a maximum period of 4 years. DE is supported by BG, PL, PT, SI and SK.

5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within the month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.
6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post following the extension of the term of office.
7. The Executive Director may be removed from the office only upon a decision of the Management Board acting on a request from the Commission or from one third of its members.<sup>30</sup>

### *Article 63*

#### **Seconded national experts and other staff**

The Agency may also make use of Seconded National Experts or other staff which are not employed by the Agency under the Staff Regulations and the Conditions of Employment of Other Servants.

Without prejudice to the rules of the relevant Commission Decision on the secondment of national experts, which apply to the Agency, the Management Board shall adopt a decision laying down rules on the secondment to the Agency of national experts.

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<sup>30</sup> Commission reservation on this addition.



## **CHAPTER 12**

### **GENERAL PROVISIONS**

#### *Article 64*

#### **Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Union shall apply to the agency and its staff.

#### *Article 65*

#### **Headquarters agreement and operating conditions**

1. Where the necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the Agency's host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families are not yet in place or not yet provided in a written agreement, an agreement between the Agency and the host Member State shall be concluded, in accordance with the legal order of the host Member State, and after the approval of the Management Board and no later than one year after the entry into force of this Regulation. This agreement may take the form of a headquarters agreement.<sup>31</sup>
2. The host Member State shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

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<sup>31</sup> The Commission has a reservation on this Article and considers that the conclusion of a headquarters agreement is obligatory for all Agencies, including the existing ones.

### **Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the event of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the course of performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage as referred to in paragraph 3.
- 4a. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

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<sup>32</sup>

To be complemented with recitals 11b and 11c as below:

(11b) With regard to liability of the staff of the Agency when carrying out the tasks conferred to the Agency, the Protocol on the Privileges and Immunities of the European Union should apply. The application of the Protocol on the Privileges and Immunities of the European Union should not lead to undue delays or unfounded restrictions to the conduct of national judicial proceedings. In the event of judicial proceedings involving the staff of the Agency, in which a member of the staff is requested to appear in a national court, the Management Board should decide without undue delay to waive his/her immunity, provided that such waiver would not compromise the interests of the Union. Such decision should be duly justified and should be amenable to the European Court of Justice for judicial review.

(11c) The Agency should cooperate loyally with the national judicial authorities, in particular in cases in which the involvement of the Agency is necessary on the grounds that the Agency has exercised its tasks related to vehicle authorisations and safety certificates issued by the Agency. In the event that the Agency or a member of its staff is requested to provide information in the context of relevant national proceedings, the Agency should ensure that such request for information or, if necessary, participation in proceedings, is treated with due diligence and within a reasonable time period. To that end, the Management Board should adopt appropriate procedures to be used in such situations.

*Article 66a*

**Cooperation with the national judicial authorities**

In case of national judicial proceedings involving the Agency on the grounds that the Agency has exercised its tasks in accordance with Articles 20(1e) of the interoperability Directive and 10(1e) of the safety Directive, the Agency and its staff shall cooperate without undue delay with the competent national judicial authorities. Appropriate procedures to be applied in such situations shall be established by the Management Board in accordance with Article 47 (1nc).

*Article 67*

**Language arrangements<sup>33</sup>**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>34</sup> shall apply to the Agency. If necessary, the Management Board shall adopt appropriate implementing rules to Regulation No 1. At the request of a Member of the Management Board, this decision shall be taken by unanimity.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

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<sup>33</sup> A relevant recital may be added.

<sup>34</sup> OJ 17, 6.10.1958, p. 385.

## *Article 68*

### **Participation by third countries in the work of the Agency**

1. Without prejudice to Article 40, the Agency shall be open to participation by third countries, in particular by countries within the scope of the European Neighbourhood Policy, the Enlargement policy countries and EFTA countries which have concluded agreements with the Union under which the countries concerned have adopted and are applying Union legislation, or its equivalent national measures, in the field covered by this Regulation, in accordance with the procedure laid down in Article 218 of the TFEU.
2. In accordance with the relevant provisions of the agreements referred to in paragraph 1, arrangements between the Agency and the third countries shall be made to set out detailed rules for participation by these countries in the work of the Agency, in particular the nature and extent of such participation. These arrangements shall include provisions on financial contributions and staff. They may provide for representation, without the right to vote, on the Management Board.  
The Agency shall sign the arrangements after having received an agreement of the Commission and of the Management Board.

## *Article 69*

### **Cooperation with national authorities and bodies**

1. The Agency and the national safety authorities shall conclude cooperation agreements in relation to the implementation of Articles 12, 16, and 17, taking into account Article 47(na).

2. These cooperation agreements may be specific or framework agreements, and involve one or more national safety authorities. These agreements shall contain a specified description of tasks and conditions for deliverables, the time-limits applying to their delivery, and the apportioning of the fees paid by the applicant between the Agency and the national safety authorities. Such apportioning shall take into account the framework model referred to in Article 47(1nb).
3. The agreements may also include specific cooperation arrangements in the case of networks requiring specific expertise due to geographical or historical reasons, with a view to reducing administrative burden and costs to the applicant. Where such networks are isolated from the rest of the Union's rail system, such specific cooperation arrangements may include the possibility for contracting tasks to the relevant national safety authorities when it is necessary in order to ensure efficient and proportionate allocation of resources.
  - 3a. These agreements shall be in place before the Agency is entitled to receive applications in accordance with Articles 12, 16 and 17 of this Regulation, and in any case no later than three years following the date of entry into force of this Regulation.
  - 3b. The Agency may conclude agreements with other national authorities and competent bodies in relation to the implementation of Articles 12, 16, and 17.
4. The agreements described in paragraphs above are without prejudice to the overall responsibility of the Agency for performing its tasks as provided for in Articles 12, 16 and 17.

## Article 70

### Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>35</sup> shall apply to documents held by the Agency.

The Management Board shall adopt practical measures for the implementation of Regulation (EC) No 1049/2001 by [...].

Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty respectively.

1a. The Agency shall publish its recommendations, opinions, studies, reports and outcome of impact assessments on its website, without prejudice to paragraph 1 and after all confidential information has been removed.

The processing of data of a personal nature by Agency shall be subject to the Regulation (EC) No 45/2001.

## Article 71

### Security rules for protecting classified or sensitive information

The Agency shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, *inter alia*, provision for exchanging, processing and storing such information.

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<sup>35</sup> OJ L 145, 31.5.2001, p. 43.

*Article 71a*

**Conflict of interest [Deleted]**

*Article 72*

**Combating fraud**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 1073/1999, within six months from the day of entry into force of this Regulation, the Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt the appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council <sup>36</sup>and Council Regulation (Euratom, EC) No 2185/96<sup>37</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency.

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<sup>36</sup> OJ L 136, 31.5.1999, p. 1.

<sup>37</sup> OJ L 292, 15.11.1996, p. 2.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.



# CHAPTER 13

## FINAL PROVISIONS

### *Article 73*

#### **Implementing acts relating to fees and charges**<sup>38</sup>

1. The Commission shall establish, by means of implementing acts, measures concerning fees and charges, in particular in application of Articles 12, 16 and 17. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 75(2).
2. The measures referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Articles 12, 16 and 17 are due, the amount of the fees and charges and the way in which they are to be paid.
3. Fees and charges shall be levied for:
  - a) the issuing and renewal of authorisations for placing on the market for vehicles and for types of vehicles;
  - (b) the issuing and renewal of safety certificates;
  - (c) the provision of services; they shall reflect the actual cost of each individual provision;

Fees and charges may be levied for:

- (d) the processing of appeals.

All fees and charges shall be expressed, and payable, in euro.

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<sup>38</sup> Commission reservation on the replacement of delegated acts by implementing acts.

Fees and charges shall be set in a transparent, fair and uniform manner, taking into account the competitiveness of the European railway sector. They shall not lead to unnecessary financial burden on companies. The apportioning of the fees shall be clearly identified in the accounts.

4. The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient to cover the full cost of the services delivered, including the relevant costs resulting from the tasks assigned to the national safety authorities in accordance with Article 69(2) and (3). All expenditures of the Agency attributed to staff involved in activities referred to in paragraph 3, including the employer's pro-rata contribution to the pension scheme, shall be in particular reflected in this cost. Should a significant imbalance resulting from the provision of the services covered by fees and charges become recurrent, the revision of the level of the fees and charges shall become mandatory. These fees and charges shall be assigned revenues for the Agency.

#### *Article 74*

#### **Exercise of the delegation *[Deleted]***

#### *Article 75*

#### **Committee procedure**

1. The Commission shall be assisted by the committee established by Article 48 of Directive [XX] on interoperability of the rail system. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third paragraph of Article 5(4) of Regulation (EU) 182/2011 shall apply<sup>39</sup>.

#### *Article 76*

#### **Evaluation and review**

1. No later than five years after the entry into force of this Regulation and every five years thereafter, the Commission shall commission an evaluation to assess, in particular, the impact, effectiveness and efficiency of the Agency and its working practices, taking into account the views and recommendations of the relevant stakeholders, including national safety authorities. The evaluation shall address, in particular, any need to amend the mandate of the Agency, and the financial implications of any such amendment.
2. The Commission shall forward the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.
3. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks.

#### *Article 77*

#### **Transitional provisions**

1. The Agency replaces and succeeds the European Railway Agency established by Regulation (EC) No 881/2004 as regards all ownership, agreements, legal obligations, employments contracts, financial commitments and liabilities.

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<sup>39</sup> Commission reservation on the no-opinion clause.

2. By way of derogation from Article 43, the Members of the Administrative Board appointed under Regulation (EC) No 881/2004 before the date of entry into force of this Regulation, shall remain in office until the expiry date of their term as Members of the Management Board, without prejudice to the right of each Member State to appoint a new representative.

By way of derogation from Article 50, the Executive Director which has been appointed in accordance with Regulation (EC) No 881/2004 shall remain in office until the expiry date of his term.

3. By way of derogation from Article 61, all employment contracts in force on the date of entry into force of this Regulation, shall be honoured until their expiry date.

#### *Article 78*

#### **Repeal**

Regulation (EC) No 881/2004 is repealed.

#### *Article 79*

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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