



EUROPEAN  
COMMISSION

Brussels, 30.1.2013  
COM(2013) 27 final

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)

{SWD(2013) 8 final}

{SWD(2013) 9 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Recent EU policy developments in the railway field

In its White Paper ‘Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system’, adopted on 28 March 2011 (‘the 2011 White Paper’), the Commission set out its vision of a Single European Railway Area, i.e. an internal railway market in which European railway undertakings could provide services without unnecessary technical and administrative barriers.

The European Council conclusions of January 2012 also highlight the importance of releasing the growth-creating potential of a fully integrated Single Market, for network industries as well as others<sup>1</sup>. Furthermore, the Commission Communication on Action for Stability, Growth and Jobs adopted on 30 May 2012<sup>2</sup> stresses the importance of reducing further the regulatory burden and barriers to entry in the rail sector, making country-specific recommendations for this purpose. And on 6 June 2012, the Commission adopted the Communication on strengthening the governance of the single market, which likewise stresses the importance of the transport sector<sup>3</sup>.

In the last decade, the EU railway market has seen massive changes, gradually introduced by three legislative ‘railway packages’ (and some accompanying acts) intended to open up the national markets and make railways more competitive and interoperable at EU level, while maintaining a high level of safety. However, despite the considerable development of EU laws and other measures (the ‘EU *acquis*’) establishing an internal market for rail transport services, the railways’ share of intra-EU transport has remained modest. The Commission has therefore come forward with a Fourth Railway Package to enhance the quality and efficiency of rail services by removing the remaining market obstacles.

The present Regulation is a component of the Fourth Railway Package focusing on the removal of remaining administrative and technical barriers, in particular by establishing a common approach to safety and interoperability rules to increase economies of scale for railway undertakings active across the EU, decreasing administrative costs and accelerating administrative procedures, as well as avoiding disguised discrimination, through a European Union Agency for Railways. It is intended to replace the original founding Regulation, and add new important tasks to the Agency making it a truly European Railway Authority in the field of interoperability and safety.

#### 1.2. Why to replace existing Regulation 881/2004 (as amended) with a new act?

Since 2004, when the original founding Regulation was drafted, a number of developments have taken place in relation to the European railways and the Agency. There has been mounting evidence on the functioning of the EU railway internal market, also in relation to its interoperability and safety aspects. New legislation emerged which resulted in amending the Agency Regulation (2008) or which developed the existing tasks of ERA without changing its Regulation (e.g. Decision 2011/155/EU).

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/127599.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/127599.pdf).

<sup>2</sup> COM(2012) 299 final.

<sup>3</sup> COM(2012) 259 final.

The impact assessment report accompanying this proposal has identified a number of measures which would give new powers to the Agency and streamline existing processes.

Moreover, a number of changes have to be introduced to improve the functioning of the Agency in result of the evaluation of ERA founding Regulation and of the Agency (2009-2010) as well as the recommendations of the Joint Statement of the Commission, the European Parliament and the Council on decentralised agencies (2012), and the Position paper of the Administrative Board on the future of the Agency (2012). This concerns particularly improvements to internal structure, governance and decision-making of the Agency, and its relations with stakeholders.

A new Regulation will also help to clarify the structure of the legal act (e.g. by removing and renumbering the Articles) and make it more logical (e.g. by moving some Articles to more relevant Chapters, creating new Chapters and deleting the obsolete ones). Finally, the Interoperability and Safety Directives are also being amended within this legislative package and they are closely related to the tasks of ERA, therefore this Regulation has to properly take this into account.

On the basis above, and taking into account the advice of the Legal Service, the Commission intends to propose a new ERA Regulation replacing original Regulation 881/2004. There is a number of changes in relation to Regulation 881/2004, which can be grouped in three different categories:

- *New provisions*: new tasks of the Agency (issuing vehicle authorisations for placing on the market, authorisations for placing in service of trackside control-command and signalling sub-systems and safety certificates), reinforced control over national authorities, more powers in relation to national rules, new source of ERA's budget (fees and charges), the Board of Appeal; some new provisions – especially in the internal organisation part – result from the Common Approach on the EU agencies.
- *Clarification/simplification of existing provisions*: especially in relation to working methods, the ERTMS, railway staff, registers, other tasks.
- *Updates* due to the evolution of the legislative and political framework: provisions concerning internal structure and operation, as well as references to comitology procedures and delegated acts.
- *Editorial changes* in relation to the original Regulation.

### **1.3. Links between this Regulation and the Interoperability and Safety Directives**

Directive 2008/57/EC (Railway Interoperability Directive) and Directive 2004/49/EC (Railway Safety Directive) are closely linked with original Regulation 881/2004. In the 4<sup>th</sup> railway package, these Directives are proposed to be recast; they will, nevertheless, remain closely linked with the present Regulation. This predominantly stems from the fact that the Agency acts in the fields of railway interoperability and safety for which those directives provide the legal basis.

In the present Regulation, the links concern in particular:

- technical specifications for interoperability (TSIs; Interoperability Directive), common safety targets (CSTs; Safety Directive) and common safety methods (CSMs; Safety Directive): the Agency is responsible for drawing up recommendations for them to be adopted by the Commission, and for issuing opinions to the Commission regarding non-application of TSIs;

- safety certificates: the Agency is responsible for issuing them, while the full procedure is provided in the Safety Directive;
- registers: the Agency is responsible for issuing recommendations to the Commission regarding specification for registers (referred to in the Interoperability Directive) and their revision, and ensuring there are accessible to the public;
- authorisations for placing on the market for railway vehicles and types of vehicles and authorisation for placing in service of trackside control-command and signalling sub-systems: the Agency is responsible for issuing them, while the full procedure for applying for them is provided in the Interoperability Directive;
- telematics applications and European Rail Traffic Management System (ERTMS): these are specific areas governed by relevant TSIs adopted under the Interoperability Directive where the Agency has an important role to play being a system authority;
- notified conformity assessment bodies: the Agency is responsible for supporting and monitoring their activities while they are created and given tasks by the Interoperability Directive;
- national safety authorities: the Agency is responsible for supporting and monitoring their activities while they are created and given tasks by the Safety Directive;
- national railway rules: the Agency is responsible for their examination with a view to their reduction while the procedure for their notification is provided for in the Safety and Interoperability Directives.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The Commission services have discussed the developments of the Single European Railway Area with sector representatives on an on-going basis. In 2010-2011 it conducted an ex post evaluation of Regulation 881/2004 and the functioning of the European Union Agency for Railways<sup>4</sup>. This evaluation, together with the general evaluation of the EU Agencies in 2009, showed the added value provided by the Agency and in general a positive opinion of stakeholders in relation to ERA and its outputs. The results of the evaluation have been used as an important input and preparatory work to the subsequent process of impact assessment linked with the revision of the Regulation.

The European Commission carried out a thorough impact assessment to support legislative proposals on improving the efficiency and competitiveness of the Single European Railway Area in the field of interoperability and safety. An Impact Assessment Steering Group (IASG) was created in June 2011 to which all DGs were invited by DG MOVE to participate.

An external consultant drafted an impact assessment support study and conducted a targeted consultation of stakeholders. The targeted consultation started on 18 November 2011 with an internet survey that finished on 30 December 2011. It was followed by interviews with the most significant stakeholders and a stakeholder workshop at the end of February 2012.

Since then, DG MOVE has engaged in bilateral meetings with the sector to gauge their views on what should be done in the Fourth Package in the area of interoperability and safety.

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<sup>4</sup> [http://ec.europa.eu/transport/evaluations/doc/2011\\_era-evaluation-881-2004.pdf](http://ec.europa.eu/transport/evaluations/doc/2011_era-evaluation-881-2004.pdf).

Given the technical nature of the initiative, no public consultation was carried out. However, the Commission took care that all interested parties were consulted in due time and discussions covered all the key elements of the initiative.

### **Impact Assessment Board:**

On 5 September 2012 the Impact Assessment Board met and subsequently gave a positive opinion. The Board's main recommendations were incorporated in the impact assessment report:

- more statistics and information on stakeholders' consultation were added;
- expected synergies with other elements of the Fourth Railway Package were added and indirect impacts clarified;
- the core measures common to options 2-5 were described in more detail and clarified regarding their differentiation;
- the methods used to assess impact were clarified and better explained; the logic was brought out by better cross-referencing;
- administrative costs for economic actors (railway operators) and the cost to public administrations (national authorities, ERA and the Commission) were distinguished more clearly.

### **Options identified:**

Based on the screening of individual measures, the Commission has identified five policy options (options 2-6), besides the baseline scenario. By construction, options 2-5 concern primarily the level of interaction between the European Union Agency for Railways (ERA or the Agency) and national authorities and are all capable of tackling the three operational objectives. Option 6 is a set of horizontal measures which are mostly independent of the interactions between ERA and national authorities and can be applied on top of any of the option 2-5, with expected reinforcement of the overall final impact.

Option 1: Baseline scenario (do nothing) — continuing on the path that is currently set out for the sector

Option 2: Greater coordination role for the Agency in ensuring a consistent approach to certification of railway undertakings and vehicle authorisation

Option 3: ERA as a one-stop-shop, where the final decision on certification and authorisation remains with the NSAs but ERA performs entry and exit checks of applications and of the decisions

Option 4: ERA and NSAs share competencies, where the final decision on certification and authorisation is taken by the Agency

Option 5: ERA takes over activities of NSAs in relation to certification of railway undertakings and vehicle authorisation

Option 6: Horizontal measures, includes other legislative and soft measures (beyond sharing the responsibilities between national authorities and ERA) that could be implemented to improve the competitiveness of the rail sector, like enhancing the role of ERA in the dissemination of railway-related information and training or migrating from national technical and safety rules to a system of EU rules (through the identification of unnecessary rules by ERA and NSAs and then the requirement for national authorities to remove those rules, as well as limiting the possibility of adopting new rules).

Impacts of the options: The environmental impact of all the options was assessed as positive, though low. The social impact of all the options was assessed as low/marginal.

The table below presents the economic benefits (efficiency) and number of objectives met (effectiveness) for combined options:

Option	Efficiency (Total Net Benefit €m)	Effectiveness (number of operational objectives met)
Option 2+6: Further ERA 'Coordination' + horizontal measures	411	1
Option 3+6: ERA as One-Stop-Shop+ horizontal measures	461	2
Option 4+6: ERA and NSAs share competencies + horizontal measures	497	3
Option 5+6: ERA takes over activities of NSAs regarding authorisation & certification+ horizontal measures	476	3

It was concluded that Option 4 (combined with option 6) was the preferred option as it provides the best balance of outcomes in relation to:

- the industry, in terms of reduced costs and timescales for safety certification and vehicle and other sub-system authorisation;
- cost implications for the EU budget;
- the cost impacts on national institutions;
- accordance with the subsidiarity and proportionality principles;
- addressing the problems identified, and
- meeting the objectives.

More information on the impact assessment and the results of the stakeholder consultation is provided in the Commission staff working document accompanying legislative proposals to eliminate remaining administrative and technical barriers in the field of interoperability and safety on the EU railway market. It will be published on the website of the Secretariat-General of the Commission following the adoption of this legal act.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

This section comments on and explains the main provisions of the new ERA Regulation, when necessary in relation to amendments to the original text of Regulation 881/2004.

#### **CHAPTER 1 PRINCIPLES:**

Article 1: the objectives have been revised to reflect new tasks of the Agency and moved to the recitals; instead, a "subject matter and scope" is given, for clarity.

Article 2: legal status moved here as more appropriate (previously original Article 22).

Article 3: amended to properly reflect new types of acts of the Agency.

## CHAPTER 2 WORKING METHODS:

New chapter added to cover issues which were originally in other chapters but which in fact relate to the methods by which ERA attains its objectives.

Article 4: "working parties" article rewritten for legal clarity, in particular: the reference to AEIF is obsolete now and can be deleted; original Article 24(4) was moved here instead of the article on ERA staff; rules of procedure to be adopted by the Board.

Article 7: "impact assessment"; the original text limited cost-benefit analysis to safety only (Article 6(4)); this task should not be part of any particular Agency activity, hence the need to move the paragraphs into a general section, make it generally applicable and provide clear tasks; this is in accordance with the Position paper of the Board on the future of ERA and the principles of activity-based budgeting and management.

Article 8: "studies"; previously Article 20 — moved as studies are means of achieving the objectives and not tasks as such.

Article 9: "opinions"; formerly Article 10 on Technical Opinions; the word 'technical' is deleted, in line with the directives; paragraph 2a(b) removed as obsolete; paragraph 3 (original paragraph 2b) amended to broaden its scope (previously limited to TSIs only, without a clear rationale).

Article 10: "visits to Member States"; previously Article 33 — moved to this section as the visits are means of achieving the Agency's objectives.

## CHAPTER 3 TASKS RELATING TO RAILWAY SAFETY:

Article 11: "technical support – safety"; minor changes clarifying the Agency's tasks.

Article 12: "safety certificates"; new role of ERA (issuing of safety certificates), as proposed in the IA report, in line with the revised Safety Directive.

Article 13: "maintenance of vehicles"; new article — left over from original Chapter 3a, simplified and moved to the safety part as being the most relevant.

Article 14: "transport of dangerous goods by rail"; new article, formalising what ERA is actually doing already in the field of transport of dangerous goods by rail.

## CHAPTER 4 TASKS RELATING TO INTEROPERABILITY:

Article 15: "technical support – interoperability"; amended slightly to reflect changes in the Interoperability Directive (points b and c) and to clarify the existing tasks of ERA.

Article 16: "vehicle authorisations"; new article — covering ERA's new role in issuing vehicle authorisations for placing on the market, as proposed in the IA report, in line with the amended Interoperability Directive.

Article 17: "authorisations for type of vehicles"; new article — covering ERA's new role in issuing authorisations for placing on the market for types of vehicles, in line with the amended Interoperability Directive.

Article 18: "authorisation for placing in service of trackside control-command and signalling sub-systems"; new article — covering ERA's new role regarding authorisation of track-side control-command and signalling equipment; linked with ERA's role as the system authority and the consequences of the new task of issuing of vehicle authorisations for placing on the market for the ERTMS (in order to ensure that the authorisations for placing on the market issued for vehicles with ERTMS equipment on board are consistent with track-side systems).

Article 19: "telematics applications"; new article added to formalise the existing role ERA plays already, according to TAP/TAF TSI, and in line with the IA report.

Article 20: "support for the notified conformity assessment bodies"; amended — provisions on Commission monitoring of notified bodies have been moved to the new section on monitoring; the remainder is support for notified bodies (the Commission assigned tasks relating to the Technical Secretariat of the NB Rail to the Agency as of 20 April 2011 and this activity is already on-going; this needs to be properly reflected in the legislation).

CHAPTER 5 TASKS RELATING TO NATIONAL RULES (moved after the chapter on interoperability):

Articles 21, 22 and 23: "national rules"; new articles which incorporate original Articles 9a and 9b, amended to align procedures with the Interoperability and Safety Directives and take into account the extended powers of ERA in relation to national rules resulting from the IA report and draft report of the Task Force on National Safety Rules; management of the IT database given clearly to ERA, in order to clarify previous mixed responsibilities (Commission and ERA) and to overcome current technical, coordination and ownership problems.

CHAPTER 6 TASKS RELATING TO ERTMS: the ERTMS section deserves a separate new chapter.

Articles 24-28: "ERTMS tasks" these incorporate the original Article 21a, amended to clarify the responsibilities of the Agency and other actors in relation to the ERTMS, to improve ERTMS deployment, and to reflect what ERA is already currently doing in this field; Article 13e amended in line with preliminary Commission evaluation of four years of technical follow-up.

CHAPTER 7 TASKS RELATING TO MONITORING SINGLE EUROPEAN RAILWAY AREA: new chapter — various tasks related to monitoring are now combined together in one chapter for better visibility and clarity.

Article 29: "monitoring of national safety authorities"; new article — new ERA task: control over NSAs, as proposed in the IA report (and in the evaluation of the ERA Regulation).

Article 30: "monitoring of notified bodies"; new article — new ERA task: control over notified bodies, as proposed in the IA report.

Article 31: "monitoring progress of interoperability and safety"; partly based on original Article 9 (new paragraphs 1 and 2, with ERA's tasks in relation to safety monitoring now clarified), on original Article 14 (new paragraphs 3 and 4, with two separate reports on interoperability and safety now merged into one); paragraph 5 — based on Article 21b (2a), in accordance with the IA report and the evaluation of the ERA Regulation.

CHAPTER 8 OTHER TASKS – new chapter combining previous chapters on registers, railway staff and other tasks:

Article 32: "railway staff"; combines original Articles 16b, 16c and 17 to simplify: some tasks are obsolete, others are described in Directive 2007/59; amended to avoid legal ambiguity and repetition.

Article 33: "registers"; this article combines original Articles 18 and 19, updated and aligned with legislation.

Article 34: "networks of national safety authorities, investigating bodies and representative bodies"; previously partly in original Article 6(5) and Article 9; the network of representative bodies has been added (paragraph 2) to improve and structure coordination of stakeholders at



Agency level; paragraph 3 has been added to improve and structure consultation of all stakeholders, and ultimately to obtain higher quality outputs from the Agency (in line with the evaluation of ERA Regulation and Position paper on the future of ERA).

Article 35: "communication and dissemination"; new article, formalising partly the existing activities of ERA and stemming from IA report, the evaluation of the ERA Regulation and the Position paper on the future of the Agency.

Article 36: "research and promotion of innovation"; original article with research added, formalising what ERA is already doing to a large extent; in line with the Position paper of the Board on the Future of ERA.

Article 37: "assistance to the Commission"; amended slightly.

Article 38: "assistance with the assessment of rail projects"; originally Article 15, scope was extended to cover safety.

Article 39: "assistance to MS and stakeholders"; new article, following the IA report (measure from Option 6) and the results of the evaluation of the ERA Regulation.

Article 40: "international relations"; new article formalising what ERA is already doing to a large extent; in line with the IA report and the Position paper of the Board on the Future of ERA.

Article 41: "spare parts"; new article — new task in line with the IA report.

CHAPTER 9 ORGANISATION OF THE AGENCY: drafted largely to follow the Joint Statement of the Commission, the European Parliament and the Council on decentralised agencies and the Common Approach (2012), in particular in relation to: extended competences of the Management Board (previously Administrative); creation of Executive Board; multi-annual work programme; other standard provisions regarding HR and budgetary issues.

Other important changes:

Article 48: "annual and multi-annual work programmes"; new, separate article on work programmes deemed useful for clarity; in accordance with the Joint Statement and recommendations of the CoA, EP, the evaluation of the ERA Regulation and the Position paper of the ERA Board on the Future of the Agency (multi-annual perspective, ABB and ABM, relations with stakeholders).

Articles 51-57: "Board of Appeal"; new articles — Board of Appeal necessary following extension of ERA competences (issuing of vehicle authorisations for placing on the market and safety certificates); IA report provides for the creation of an independent Appeal Body outside the Agency, however, it seems that the solution already in place at the EASA is more appropriate; based on the relevant provisions of the EASA Regulation.

CHAPTER 10 FINANCIAL PROVISIONS:

Article 58(2): new point (c) — new sources of ERA income added (external fees and charges for issuing vehicle authorisations for placing on the market and safety certificates (new tasks)); new point (e) — to bring it into line with the EASA regulation

CHAPTER 11 STAFF: new chapter, following largely standard provisions resulting from the Common Approach on agencies (Articles 62 and 63).

Article 61: "staff – general provisions"; originally Article 24, amended in accordance with the Joint Statement on agencies, the evaluation of the ERA Regulation and the Position paper of

the ERA Board on the Future of the Agency; previous limitations of maximum contract deleted.

#### CHAPTER 12 GENERAL PROVISIONS:

Articles 64, 66-68, 70-72: moved from other parts of the original Regulation, amended if necessary following Joint Statement on agencies.

Article 65: "headquarters agreement and operating conditions"; new article, following the Joint Statement on decentralised agencies (2012).

Article 69: "cooperation with national authorities and bodies"; new articles resulting from new powers of ERA to issue certificates and authorisations; cooperation with national bodies and authorities in some cases deemed necessary due to their expertise; possibility of (sub)contract part of ERA's tasks.

#### CHAPTER 13 FINAL PROVISIONS: new chapter

Article 73 and 74: "delegated acts"; new articles — following ERA's new powers (to issue safety certificates and vehicle authorisations for placing on the market, own resources) there is a need to adopt delegated measures; this is similar to the case of EASA.

Article 75: "committee procedure"; new article, made in order not to refer to other acts (Interoperability Directive).

Article 76: "evaluation and review"; original article amended in accordance with the Joint Statement on agencies.

ARTICLES WHICH STAYED THE SAME AS IN REGULATION 881/2004: 5, 6, 58, 59, 60.

## 4. BUDGETARY IMPLICATION

This new Regulation provides a legislative basis for budgetary and staff commitments in relation to the European Union Agency for Railways. The detailed calculations are provided in the Annex, in the Legislative Financial Statement.

It is important to point out that, as far as ERA staffing is concerned, the present act incorporates:

1. resources calculations from two previous Financial Legislative Statements attached to the original Regulation 881/2004 and the 2008 amendment to it (Regulation 1335/2008), which provided for 104 temporary staff for ERA;
2. budgetary procedures for 2005-2013 by which the Budgetary Authority granted ERA an extra 39 posts to cover additional tasks not reflected in the founding Regulation, resulting in total 143 temporary staff posts in 2013;
3. the estimated resources implications of the new tasks and enhanced powers of ERA envisaged in the current new Regulation, set at 43 persons.

Regarding **point 2**, note that the number of posts has gradually increased since ERA was set up in 2005. This change has been subject to detailed annual scrutiny and has been adopted by the budgetary authority every year in accordance with the number of posts proposed by the Commission. The main explanation for the difference between point 1 and 2 is that a number of functions and activities such as legal affairs, Data Protection Officer, Secretariat for the Administrative Board, internal audit, quality and business planning, economic evaluation (impact assessment), procurement, facilities management, and a Head of Administration were not provided for in the founding Regulation — or at least not planned to be carried out by

dedicated staff. For some areas of activity, including HR, IT and Finance, resource needs were considerably underestimated.

Concerning economic evaluation, this activity follows from the fact that ERA was set up to contribute to an integrated and competitive railway area. It has been an integral part of the Agency's activities from the beginning — even if no dedicated staff were provided for in the financial statement. The need for this activity is unquestionable and has recently grown in line with the Activity-Based Budgeting approach; this is reflected in the fact that a new Article is proposed for inclusion in the new Agency Regulation.

In addition to these developments, various Commission acts have given the Agency additional tasks with resource implications, without being properly reflected in the financial statement. For example, Commission Decision 2011/155/EU on the publication and management of the reference document referred to in Article 27(4) of Directive 2008/57/EC put additional tasks on the Agency in relation to making transparent and simplifying the processes and rules used for authorising railway vehicles and subsystems. More specifically, ERA's role concerns documentation of authorisation processes in Member States, documentation of national rules applied to the authorisation of railway vehicles and checking of data consistencies, support to National Safety Authorities and management and maintenance of data.

Regarding **point 3**, the budgetary and staff implications of new and extended tasks stem principally from the impact assessment calculations, implementation of the recommendations in the Joint Statement by the Commission, the European Parliament and the Council on decentralised agencies, Court of Auditors and Internal Audit Service recommendations, and the evaluation of the ERA Regulation. All the changes in legislation are substantially explained in part 3 of this Memorandum. The total of 70 persons is estimated to be needed to deal with these new and extended tasks, with 43 additional staff in relation to the current level of staffing of the Agency. These 43 new persons will be dealing with issuing authorisations and certificates and will be covered by external fees and charges while the remaining needs of 27 persons will be covered by internal redeployment of existing staff of the Agency. Therefore, there will be no additional impact on the EU budget (except for years 2015 and 2016, when external fees and charges will not be available yet).

The planned additional personnel of 43 would cover the following categories:

- Technical experts (41 persons), to deal with issuing of authorisations for placing on the market of vehicles and vehicles types (30), authorisations for placing in service of trackside control-command and signalling sub-systems (6) and safety certificates (5);
- Linked administrative staff (2), including an accountant to deal with management of a planned system of external fees and charges, including cooperation with national authorities.

The external fees and charges would also cover linked overhead costs, mainly:

- Translation of decisions issued by ERA into national languages;
- IT system needed for accountancy purposes (external fees and charges).

The remaining 27 persons, to be covered by internal redeployment of existing staff of the Agency, would deal with:

- Monitoring of national safety authorities and notified bodies, and implementation of national safety and interoperability legislation ;
- Reduction of number of national rules ;

- Advice and support to Member States and stakeholders, dissemination of railway-related information and training and coordination of potential spare parts to be standardised .

The overall budgetary implication of ERA for the EU budget in 2015-2020 is estimated at € 157.113 M. The cost to the EU budget of new tasks amounts to €0.4113 M as from 2017 onwards they will be covered by fees and charges paid by the industry.

There is also impact on Commission resources (in the DG MOVE). With regard to this, the present Regulation incorporates:

1. resources calculations from two previous Legislative Financial Statements attached to the original Regulation 881/2004 and the 2008 amendment to it (Regulation 1335/2008), which provided for two officials/temporary staff for the Commission;
2. changes for 2005-2013, with three extra Commission staff dealing with ERA-related issues, to cover additional tasks not reflected in the founding Regulation;

The overall total for the Commission linked to the current initiative will be 5 persons, with no new staff requested.

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The progressive establishment of a European railway area without frontiers requires Union action in the field of the technical regulations applicable to railways with regard to the technical aspects (interoperability) and the safety aspects, the two being inextricably linked and both requiring higher level of harmonisation at the Union level. Relevant railway legislation, in particular three railway packages, was adopted in the last two decades, with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community being the most relevant.
- (2) Simultaneous pursuit of the goals of railway safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it was necessary, as part of the Second Railway Package in 2004, to create within the existing institutional framework, and with respect for the balance of power in the Union, a European agency responsible for railway safety and interoperability (hereinafter referred to as the Agency).
- (3) The European Railway Agency was originally established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004<sup>3</sup>, in order to promote the establishment of a European railway area without borders and to help

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<sup>1</sup> OJ C ... p ....

<sup>2</sup> OJ C ... p ....

<sup>3</sup> OJ L 164, 30.4.2004, p. 1.

revitalise the railway sector while reinforcing its essential advantages in terms of safety. Regulation 881/2004 has to be replaced by a new act due to substantial amount of changes to the tasks of the Agency and its internal organisation.

- (4) The Fourth Railway Package proposes important changes to improve the functioning of the Single European railway area through amendments by way of recast to Directive 2004/49/EC and Directive 2008/57/EC, both directly linked to the tasks of the Agency. Those Directives, together with this Regulation, provide in particular for performing tasks related to issuing vehicle authorisations and safety certificates at the Union level. It implies a greater role of the Agency.
- (5) The Agency should contribute to the creation and effective functioning of a Single European railway area without frontiers and guaranteeing a high level of safety while improving the competitive position of the railway sector. That should be attained by contributing, on technical matters, to the implementation of European Union legislation by enhancing the level of interoperability of railway systems and to developing a common approach to safety on the European railway system. The Agency should also perform the role of European authority responsible for issuing authorisations for placing on the market for railway vehicles and for types of vehicles, safety certificates for railway undertakings and authorisations for placing in service of trackside control-command and signalling sub-systems. Moreover, it should monitor national railway rules and the performance of national authorities acting in the railway interoperability and safety fields.
- (6) In pursuing its objectives, the Agency should take full account of the process of enlargement of the Union and of the specific constraints relating to rail links with third countries. The Agency should have sole responsibility for the functions and powers assigned to it.
- (7) The Agency, while performing its tasks, and particularly in relation to drafting recommendations, should take utmost account of external railway expertise. This expertise should predominantly consist of professionals from the railway sector and the relevant national authorities. They should form competent and representative working parties of the Agency.
- (8) In order to provide insight into the economic effects on the railway sector and its impact on society, to allow others to make informed decisions, and to manage the work priorities and resource allocation more effectively within the Agency, the Agency should further develop its engagement in the impact assessment activity.
- (9) The Agency should provide independent and objective technical support, predominantly to the Commission. Directive .... [Railway Interoperability] provides the basis for drafting and revising Technical Specifications for Interoperability (TSIs) while Directive ... [Railway Safety] provides the basis for drafting and revising Common Safety Methods (CSMs) and Common Safety Targets (CSTs). The continuity of the work and the development of the TSIs, CSMs and CSTs over time require a permanent technical framework and a dedicated staff of a specialised body. To this end, the Agency should be responsible for providing the Commission with recommendations in relation to drafting and revising the TSIs, CSMs and CSTs. The national safety organisations and regulatory bodies should be equally able to request an independent technical opinion from the Agency.
- (10) Railway undertakings have been faced with various problems when applying for safety certificates to competent national authorities, ranging from protracting

procedures and excessive costs to unfair treatment, especially of new entrants. The certificates issued in one Member State have not been unconditionally recognised in other Member States, with a detriment to the Single European rail area. In order to make the procedures for issuing safety certificates to railway undertakings more efficient and impartial, it is essential to migrate towards a single safety certificate valid throughout the Union and issued by the Agency. The revised Directive ... [Railway Safety Directive] provides a basis for this.

- (11) Currently Directive 2008/57/EC provides, in the case of rail vehicles, an authorisation of placing in service in each Member State, except in specific cases. The Task Force on vehicle authorisation set up by the Commission in 2011 discussed several cases where manufacturers and railway undertakings have suffered from excessive duration and cost of the authorisation process and proposed a number of improvements. As some problems are due to the complexity of the current vehicle authorisation process, it should be simplified. Each rail vehicle should only receive one authorisation and this authorisation for placing on the market for vehicles and for types of vehicles should be issued by the Agency. This would bring tangible benefits for the sector by reducing the costs and time of the procedure, and would diminish the risk of potential discrimination, especially of new companies wishing to enter a railway market. The revised Directive ... [Railway Interoperability] provides a basis for this.
- (12) In order to further pursue the development of Single European rail area, in particular with relation to providing appropriate information to freight customers and passengers, and taking into account current involvement of the Agency, it is necessary to give it a strengthened role in the field of telematics applications. This would ensure their consistent development and swift deployment.
- (13) Given the importance of the European Rail Traffic Management System (ERTMS) for the smooth development of the Single European railway area and its safety, and taking into account its fragmented development to date, it is necessary to strengthen its overall coordination at the Union level. Therefore the Agency, as the most competent Union body, should be given a more prominent role in this field to ensure consistent development of the ERTMS, to contribute to ensuring that ERTMS equipment complies with the specifications in force and to ensure that ERTMS-related European research programmes are coordinated with the development of ERTMS technical specifications. Moreover, in order to make the procedures for issuing authorisations for placing in service of trackside control-command and signalling sub-systems more efficient and impartial, it is essential to migrate towards a single authorisation valid in the Union and issued by the Agency. The revised Directive ... [Railway Interoperability Directive] provides a basis for this.
- (14) Competent national authorities have been normally charging for issuing vehicle authorisations and safety certificates. With the transfer competence to the Union level, the Agency should be entitled to charge the applicants for issuing the certificates and authorisations mentioned in the preceding recitals. The level of those charges should be equal to or lower than the current average in the Union and should be determined in a delegated act to be adopted by the Commission.
- (15) It is a general objective that the transfer of functions and tasks from the Member States to the Agency should be done efficiently, without any reduction in the current high levels of safety. The Agency should have sufficient resources for its new tasks, and the timing of the allocation of these resources should be based on clearly defined needs. Taking into account the know-how of national authorities, in particular the National

Safety Authorities, the Agency should be allowed to make appropriate use of that expertise when granting the relevant authorisations and certificates. To this end, secondment of national experts to the Agency should be encouraged.

- (16) Directive ... [Railway Safety] and Directive ... [Railway Interoperability] provide for examination of national measures from the point of view of safety and interoperability, and compatibility with competition rules. They also limit the possibility for Member States to adopt new national rules. The current system in which a large number of national rules continue to exist leads to possible conflicts with Union rules and creates a risk of insufficient transparency and disguised discrimination of foreign operators, especially the smaller and new ones. In order to migrate towards a system of truly, transparent and impartial railway rules at Union level, gradual reduction of national rules needs to be reinforced. An opinion based on independent and neutral expertise is essential at Union level. To this end, the role of the Agency needs to be strengthened.
- (17) Performance, organisation and decision-making procedures in the field of railway interoperability and safety vary substantially among the national safety authorities and notified conformity assessment bodies, with a detrimental effect to smooth operation of the Single European rail area. In particular, small and medium companies wishing to enter the railway market in another Member State can be negatively affected. Therefore, a strengthened coordination with a view to greater harmonisation at the Union level is essential. To this end, the Agency should monitor the national safety authorities and notified conformity assessment bodies through audits and inspections.
- (18) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performance, based on common indicators and linking all parties in the sector, is important and should be carried out. As regards statistics, close collaboration with Eurostat is necessary.
- (19) In order to monitor progress with the railway interoperability and safety, the Agency should be responsible for publishing a relevant report every two years. Given its technical expertise and impartiality, the Agency should also assist the Commission with monitoring the implementation of Union railway safety and interoperability legislation.
- (20) The interoperability of the Trans-European network should be enhanced and the new investment projects chosen for support by the Union should be in line with the objective of interoperability set in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the Trans-European transport network<sup>4</sup>. The Agency is the right institution to contribute to these objectives.
- (21) Rolling stock maintenance is an important part of the safety system. There has been no genuine European market for the maintenance of rail equipment owing to the lack of a system for certification of maintenance workshops. This situation has been adding to the costs for the sector and results in journeys without loads. A European certification system for maintenance workshops should therefore gradually be developed and updated, with the Agency being the most appropriate body to propose adequate solutions to the Commission.
- (22) The vocational qualifications required for train drivers are a major factor in both safety and interoperability in the Union. They are also a precondition for the free movement

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<sup>4</sup> OJ L 228, 9.9.1996, p. 1.



of workers in the railway industry. This question should be tackled with respect to the existing framework for social dialogue. The Agency should provide the technical support necessary in order to take account of this aspect at Union level.

- (23) The Agency should organise and facilitate cooperation between the national safety authorities, the national investigating bodies and representative bodies from the railway sector acting on at European level, in order to promote good practices, exchange of relevant information, collection of railway-related data and monitor the overall safety performance of the railway system.
- (24) In order to ensure the greatest possible transparency and equal access for all parties to relevant information, the documents envisaged for the railway interoperability and safety processes should be accessible to the public. The same applies to licences, safety certificates and other relevant railway documents. The Agency should provide an efficient means of exchanging and publishing this information.
- (25) Promotion of innovation and research in the railway field is an important task which the Agency should encourage, given its reputation and position. Any financial assistance provided within the framework of the Agency's activities in this respect should not lead to any distortion in the relevant market.
- (26) In order to increase the efficiency of the Union financial support, its quality and compatibility with relevant technical regulations, the Agency, as the only Union body with reputable competence in the railway field, should play an active role in the assessment of rail projects.
- (27) Railway interoperability and safety legislation, implementation guides or recommendations of the Agency may sometimes pose interpretation and other problems to the stakeholders. Proper and uniform understanding of those acts is a precondition for effective implementation of the railway acquis and the functioning of the railway market. Therefore, the Agency should actively engage in training and explanatory activities in that regard.
- (28) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through fees and charges paid by applicants. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent, the Executive Director should have full responsibility. The Agency's staff should be independent and should represent an appropriate balance of short-term and long-term contracts, in order to maintain its organisational knowledge and business continuity while keeping necessary and on-going exchange of expertise with the railway sector.
- (29) In order to ensure effectively the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including to establish the budget and approve the annual and multi-annual work programmes.
- (30) In order to guarantee the transparency of the Management Board's decisions, representatives of the sectors concerned should attend its meetings, but without the right to vote, that right being reserved for the representatives of public authorities who are accountable to the democratic control authorities. The representatives of the sector should be appointed by the Commission on the basis of their representativeness at Union level of railway undertakings, infrastructure managers, railway industry, workers unions, passengers and freight customers.

- (31) In order to properly prepare the meetings of the Management Board and to advise it in relation to the decisions to be taken, an advisory Executive Board should be created.
- (32) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in an independent and impartial manner. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised Board of Appeal, whose decisions are, in turn, open to action before the Court of Justice.
- (33) A broader strategic perspective in relation to the activities of the Agency would help to plan and manage its resources more effectively and would contribute to higher quality of its outputs. Therefore, a multi-annual work programme should be adopted and updated regularly by the Management Board, after proper consultation of the relevant stakeholders.
- (34) The Agency's work should be transparent. Effective control by the European Parliament should be ensured and, to this end, the European Parliament should have the possibility of hearing the Executive Director of the Agency and being consulted on the multi-annual work programme. The Agency should also apply the relevant Union legislation concerning public access to documents.
- (35) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Union funding allocated to them, in particular concerning the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>5</sup> should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office<sup>6</sup>.
- (36) Since the objectives of the action proposed, namely to establish a specialised body to formulate common solutions on matters concerning railway safety and interoperability, cannot be sufficiently achieved by the Member States by reason of the joint nature of the work to be done, and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,
- (37) In order to properly determine the level of fees and charges which the Agency is entitled to levy, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of articles dealing with issuing and renewal of authorisations for placing in service of trackside control-command and signalling subsystems, authorisations for placing on the market for vehicles and for types of vehicles, and safety certificates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

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<sup>5</sup> OJ L 136, 31.5.1999, p. 1.

<sup>6</sup> OJ L 136, 31.5.1999, p. 15.

The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

- (38) In order to ensure the implementation of Articles 21 and 22 of this Regulation concerning examination of draft national rules and rules in force, implementing powers should be conferred on the Commission.
- (39) In order to ensure uniform conditions for the implementation of Articles 29, 30, 31, and 51 of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.
- (40) It is necessary to implement certain principles regarding the governance of the Agency in order to comply with the Joint Statement and Common Approach agreed by the Inter-Institutional Working Group on EU decentralised agencies in July 2012, the purpose of which is to streamline the activities of agencies and increase their performance.
- (41) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

## **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.
- 3. This Regulation shall apply 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 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 Director.

## *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, 23, 24, 26, 30, 32, 31, 33 and 41;
- (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, 21, 22 and 38, and to the authorities concerned in the Member States pursuant to Article 9;
- (d) issue decisions pursuant to Article 12, 16, 17, 18;
- (e) issue opinions constituting acceptable means of compliance pursuant to Article 15;
- (f) issue technical documents pursuant to Article 15;
- (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.

## **CHAPTER 2**

### **WORKING METHODS**

## *Article 4*

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

1. The Agency shall set up a limited number of working parties for drawing up recommendations, in particular related to technical specifications for interoperability (TSIs), common safety targets (CSTs) and common safety methods (CSMs).  
The Agency may set up working parties in other duly justified cases at the request of the Commission or on its own initiative, after having consulted the Commission.
2. The Agency shall appoint experts to the working parties.  
The Agency shall appoint to the working parties representatives nominated by the competent national authorities for the working parties in which they wish to participate.

The Agency shall appoint to the working parties professionals from the railway sector 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 shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party.
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. The working parties shall be chaired by a representative of the Agency.
7. The work of the working parties shall be transparent. The Management Board shall lay down rules of procedure of the working parties.

#### *Article 5*

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

Whenever the work provided for in Articles 11, 12, 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>7</sup>.

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

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

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<sup>7</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).

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 launching an activity included in the work programme, the Agency shall conduct an early impact 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 in the work programme shall be 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.

#### *Article 8*

##### **Studies**

Where required for the implementation of its tasks, the Agency shall order studies 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)] concerning safety-related 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 within two months, unless otherwise agreed. The opinions shall be made public by the Agency within two

months in a version from which all commercially confidential material has been removed.

#### *Article 10*

##### **Visits to Member States**

1. The Agency may carry out visits to the Member States in order to perform its tasks, in particular those referred to in Articles 12, 21, 22, 16, 17, 27, 29, 30, 31 and 38, in accordance with the policy defined by the Management Board.
2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated Agency officials, and the date on which the visit is to start. The Agency officials delegated to carry out such visits shall do so on presentation of a decision 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) which shall be pursued in accordance with the procedure described therein.

### **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 Methods (CSMs) and the Common Safety Targets (CSTs) provided for in Articles 6 and 7 of Directive ... [the Railway Safety Directive]. The Agency shall also issue recommendations on periodic revision of 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
3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway safety legislation.

#### *Article 12*

##### **Safety certificates**

The Agency shall issue single safety certificates in accordance with Articles 10 and 11 of Directive ... [the 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 30 (2) of this Regulation.

#### *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>8</sup> and compare them 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.

## **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 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(2) of Directive ... [Interoperability Directive], and provide it to the Commission;
  - (e) issue opinions to the Commission 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];

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<sup>8</sup> OJ L 260, 30.9.2008, p. 13



- (g) issue recommendations to the Commission relating to the working conditions of all staff carrying out safety-critical tasks.
2. For drafting recommendations referred to in paragraph 1, points (a) and (b), 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.

#### *Article 16*

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

The Agency shall issue authorisations for placing on the market for railway vehicles in accordance with Article 20 of Directive ... [the Interoperability Directive].

#### *Article 17*

##### **Authorisations for placing on the market for types of vehicles**

The Agency shall issue authorisations for placing on the market for types of vehicles in accordance with Article 22 of Directive ... [the Interoperability Directive].

#### *Article 18*

##### **Authorisations for placing in service of trackside control-command and signalling sub-systems**

The Agency shall issue authorisations for placing in service of the trackside control-command and signalling subsystems located or operated in the entire Union in accordance with Article 18 of Directive ... [the Interoperability Directive].

#### *Article 19*

##### **Telematics applications**

1. The Agency shall act as the system authority, being responsible for maintaining the technical specifications for the telematics applications, in accordance with relevant TSIs.
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 and maintain a register of requests for changes to telematics applications specifications and their status.
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.

## *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 Article 10 of Directive ... [Interoperability Directive].
2. The Agency shall facilitate cooperation of notified conformity assessment bodies, 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 reception, examine the draft national rules submitted to it in accordance with:
  - (a) Article 8(2) of Directive ... [Railway Safety Directive],
  - (b) Article 14 of Directive ... [Interoperability Directive].
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 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.
3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall:
  - (a) issue a recommendation addressed to the Member State concerned stating the reasons why the rule in question should not entry into force and/or be applied;
  - (b) inform the Commission about its negative assessment.
4. Where no action was taken by the Member State within 2 months after receiving the recommendation of the Agency referred to in point (a) of paragraph 3, the Commission, after receiving information referred to in point (b) of paragraph 3 and after having heard the reasons of the Member State concerned, may adopt a decision addressed to the Member State concerned requesting it to modify the draft rule in question, suspend its adoption, entry into force or implementation.

## Article 22

### Examination of national rules in force

1. The Agency shall, within two months of their reception, examine national rules submitted to it in accordance with Article 14(3) of Directive ... [Interoperability Directive].
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 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.
3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall:
  - (a) issue a 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.
4. Where no action was taken by the Member State within 2 months after receiving the recommendation of the Agency referred to in point (a) of paragraph 3, the Commission, after receiving information referred to in point (b) of paragraph 3 and after having heard the reasons of the Member State concerned, may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the rule in question.
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 set up and manage a dedicated IT system containing national rules referred to in Articles 21(1) and 22(1) and make it accessible to stakeholders and the public.
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 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(2) 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, being responsible for maintaining the technical specifications for the ERTMS.
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 and maintain a register of requests for changes to ERTMS specifications and their status.
3. The Agency shall recommend the adoption of a new version of ERTMS Technical specifications. However, it shall only do so when the previous version has been deployed at a sufficient rate. The development of new versions 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 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 a view to ensuring technical and operational compatibility between networks and vehicles fitted with different versions and to providing incentives for the swift implementation of the versions in force.
5. In accordance with Article 5(10) 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 Ad hoc working group of notified conformity assessment bodies**

1. The Agency shall set up and chair an ERTMS ad hoc working group of notified conformity assessment bodies referred to in Article 27 of Directive ... [Interoperability Directive].

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 two years 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.

#### *Article 26*

#### **Supporting technical and operational compatibility between ERTMS on-board and trackside subsystems**

1. The Agency may assist the railway undertakings, at their request, in checking the technical and operational compatibility between ERTMS on-board and trackside subsystems before placing a vehicle in service.
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 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**

1. The Agency shall monitor the deployment of the ERTMS in accordance with the deployment plan set out in Decision 2012/88/EU<sup>9</sup> and shall monitor coordination of ERTMS installation 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, 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.

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<sup>9</sup> OJ L 51, 23.2.2012, p. 1

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

*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>.
2. The Agency may participate as an observer in the peer reviews required by Regulation (EC) No 765/2008.

**CHAPTER 7**

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

*Article 29*

**Monitoring of national safety authorities**

1. The Agency shall monitor the performance and decision-making of national safety authorities through audit and inspections.
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 16 in Directive [...] [Railway Safety Directive].

The procedure for performing the audits shall be adopted by the Management Board.

3. The Agency shall issue audit reports and send them to the national safety authority 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.
5. Where a national safety authority disagrees with the Agency's recommendation referred to in paragraph 4, or where no action is taken by a national safety authority as a result of the Agency's recommendation within 3 months from its reception, the Commission may take a decision within six months in accordance with the advisory procedure referred to in Article 75.
6. The Agency shall be also entitled to conduct announced or unannounced 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

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

to in Article 16 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 with a report on each inspection.

### *Article 30*

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

1. The Agency shall monitor the notified conformity assessment bodies through assistance to accreditation bodies, audit and inspections, as provided for in paragraphs 2-5.
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 Art. 27 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 24 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 and to the Commission. Each audit report shall include, in particular, any deficiencies identified by the Agency and recommendations for improvement. If the Agency considers that these deficiencies prevent the notified body concerned from effectively performing its tasks in relation to railway safety and 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.
5. Where a Member State disagrees with the recommendation referred to in paragraph 4, or where no action is taken by a notified body as a result of the Agency's recommendation within 3 months from its reception, the Commission may adopt an opinion within a period of six months in accordance with advisory procedure referred to in Article 75.
6. The Agency may, including in cooperation with the relevant national accreditation bodies, 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 27 of Directive [...] [Interoperability 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 notified conformity assessment bodies shall facilitate the work of the Agency's staff. The Agency shall provide the Commission with a report on each inspection.

### *Article 31*

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

1. The Agency, together with the network of national investigation bodies, shall collect relevant data on accidents and incidents and monitor 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 networks 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.

## **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>12</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 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 set up and keep European registers provided for in Article 43, 44 and 45 of Directive ... [Interoperability Directive]. The Agency shall act as the

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<sup>12</sup> OJ L 315, 3.12.2007, p. 51.



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;
- (c) providing guidance on the registers to relevant stakeholders;
- (d) making recommendations to the Commission regarding improvements to the specification of existing registers and any need to set up new ones.

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 Directive ... [Directive on the establishment of the Single European Rail Area (recast)];
- (d) the safety certificates issued in accordance with Article 10 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;
- (j) the register of requests for changes and planned changes to the ERTMS specifications;
- (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;
- (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 and certificates referred to in points (c) and (d) of paragraph 2 shall notify the Agency within one month of each individual decision to issue, renew, amend or revoke those licenses and 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.

#### *Article 34*

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

1. The Agency shall establish a network of the national safety authorities and a network of the investigating bodies referred to in Article 21 of Directive.../... [Railway Safety Directive]. The Agency shall provide them with a secretariat. The tasks of the networks shall, in particular, be:
  - (a) exchange of information related to railway safety and interoperability;
  - (b) promotion of good practices;
  - (c) provision of data on railway safety to the Agency, in particular data relating to common safety indicators.

The Agency shall facilitate cooperation between those networks, in particular it may decide to hold joint meetings of both networks.
2. The Agency shall establish a network of representative bodies from the railway sector acting at the Union level. The list of these bodies shall be defined in an implementing act adopted by the Commission, in accordance with advisory procedure referred to in Article 75. The Agency shall 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;
  - (c) provision of data on railway safety and interoperability to the Agency.
3. The networks referred to in paragraphs 1 and 2 may issue non-binding opinions on draft recommendations 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 the European framework of railway legislation, standards and guidance, in accordance with relevant communication and dissemination plans adopted by the Management Board. 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, 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 9 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. On its own initiative or 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 shall be decided by the Board and included in the work programme.

#### *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 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.
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 annual and multi-annual work programme of the Agency, with a specification of associated resources.

#### *Article 41*

##### **Coordination regarding spare parts**

The Agency shall contribute to identifying potential railway spare parts to be standardised. To this end, the Agency may establish a working party in order to coordinate the stakeholders' activities and may establish contacts with the European standardisation bodies. The Agency shall present the Commission with appropriate recommendations.

## **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) A Board of Appeal who 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 four 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.

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. 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 convened by its Chairperson. The Executive Director of the Agency shall participate in the meetings.
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.

## *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:
  - (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 annual work programme of the Agency for the coming year and a strategic multi-annual work programme;
  - (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 on visits pursuant to Article 10;
  - (f) establish its rules of procedure;
  - (g) adopt and update the communication and dissemination plans referred to in Article 35;
  - (h) adopt procedures for performing the audits referred to in Articles 29 and 30;
  - (i) in accordance with 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");
  - (j) adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants 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;
  - (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;
  - (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.
2. The Management Board shall adopt, in accordance with the procedure provided for in Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on 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 is 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*

##### **Annual and multi-annual work programmes**

1. The Board of the Agency shall adopt the work programme 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.
2. The work programme shall be adopted without prejudice to the Union's annual budgetary procedure. If, within 15 days of the date of adoption of the work programme, the Commission expresses its disagreement with the programme, 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 work programme shall identify the objectives of each activity. As a general rule, each activity and project shall be clearly linked with the resources required to carry it out, in accordance with the principles of activity-based budgeting and management and the early impact assessment procedure provided for in paragraph 2 of Article 7.
4. The Management Board shall, if necessary, amend the adopted work programme when a new task is given to the Agency. Inclusion of such a new task shall be subject to an analysis of the human and budgetary resources implications and may be subject to a decision to postpone other tasks.

5. The Management Board shall also adopt and update a strategic multi-annual work programme by 30 November each year. The opinion of the Commission shall be taken into account. The European Parliament and the networks referred to in Article 34 shall be consulted on the draft. The adopted multi-annual work programme shall be forwarded to the Member States, the European Parliament, the Council, the Commission and to the networks referred to in Article 34.

#### *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.

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.

Without prejudice to the responsibilities of the Executive Director, as set out in Article 30, 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.

3. The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission and [four] other members of the Management Board. The Management Board shall appoint members of the Executive Board and its chairperson.
4. The term of office of members of the Executive Board shall be the same as that of members of the Management Board.
5. The Executive Board shall meet at least once every three months. The chairperson of the Executive Board shall convene additional meetings at the request of its members.
6. The Management Board shall lay down the rules of procedures of the Executive Board.

#### *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.
3. The Executive Director shall report to the European Parliament on the performance of his/her duties when invited. The Council may invite the Executive Director to report on the performance of his/her duties.



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 annual work programme and strategic multi-annual work programme and, submit them to the Management Board after consultation of the Commission;
  - (d) implementing the annual work programme and the strategic multi-annual work programme 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;
  - (e) reporting to the Management Board on the implementation of the strategic multi-annual work programme;
  - (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) 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;
  - (j) preparing the annual report on the Agency's activities and presenting it to the Management Board for assessment;
  - (k) preparing an action plan following-up on the conclusions of the retrospective evaluations and reporting on progress bi-annually to the Commission;
  - (l) 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;
  - (m) preparing an anti-fraud strategy of the Agency and presenting it to the Management Board for approval;
  - (n) preparing the Agency's draft financial regulation for adoption by the Management Board under Article 60, and its implementing rules.

#### *Article 51*

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

1. The Agency shall establish one or more Boards of Appeal.
2. A Board of Appeal shall be composed of a Chairperson and two other members. They shall have alternates to represent them in their absence.
3. The Management Board shall appoint the Chairperson, the other members and their alternates from a list of qualified candidates established by the Commission.
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 3.
5. On the proposal of the Agency, the Commission shall establish the rules of procedure of the Board of Appeal, after having consulted the Management Board and in accordance with the advisory procedure referred to in Article 75.

#### *Article 52*

##### **Members of the Board of Appeal**

1. The term of office of the members and alternates of a Board of Appeal shall be four years and may be renewed.
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.
3. The members of a Board of Appeal may not be removed from office or from the list of qualified candidates during their term of office, unless there are serious grounds for such removal and the Commission, after obtaining the opinion of the Management Board takes a decision to that effect.

#### *Article 53*

##### **Exclusion and objection**

1. The members of the Board of Appeal may not take part in any appeal 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. Members of the Board of Appeal who consider that they should not take part in any appeal 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.

#### *Article 54*

##### **Decisions 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, 17 and 18.

2. An appeal lodged pursuant to paragraph 1 shall not have a suspensory effect. The Agency may, however, suspend the application of the decision appealed against, if it considers that circumstances so permit.

#### *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 by the Agency pursuant to Articles 12, 16, 17 and 18.
2. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Agency 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 56*

#### **Examination and decisions on appeals**

1. When examining the appeal, the Board of Appeal shall act expeditiously. 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. The Board of Appeal may exercise appropriate power which lies within the competence of the Agency or may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

#### *Article 57*

#### **Actions before the Court of Justice**

1. Actions for the annulment of Agency decisions taken pursuant to Articles 12, 16, 17 and 18 may be brought before the Court of Justice of the European Union only after all appeal procedures within the Agency have been exhausted.
2. The Agency shall take all necessary measures to comply with the judgment of 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. Revenue and expenditure shall be in balance.
2. The revenue of the Agency shall consist of:
  - (a) a contribution from the Union,

- (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, 17 and 18;
  - (d) charges for publications, training 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 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.
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 subsidy 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 subsidy 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. The Management Board shall notify the budgetary authority as soon as possible of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. Where a branch of the budgetary authority has notified its intention to deliver an opinion on the project, it shall forward its opinion to the Management Board within six weeks after the date of notification of the project.

#### *Article 59*

#### **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 Executive Director shall draw up the Agency's final accounts under his own responsibility 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 Executive Director 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.
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>13</sup> 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>13</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.
2. In the interest of the service, the Agency shall recruit:
  - (a) staff who are eligible for a contract of indefinite duration, and
  - (b) staff who are not eligible for a contract of indefinite duration.Appropriate implementing rules to this paragraph shall be adopted in accordance with the procedure provided for in 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.

### *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, from a list of candidates proposed by the Commission, following an open and transparent selection 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.
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 at the end of the overall period.
7. The Executive Director may be removed from the office only upon a decision of the Management Board acting on a proposal from the Commission.

*Article 63*

**Seconded national experts and other staff**

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

The Management Board shall adopt a decision laying down rules on the secondment to the Agency of national experts.

## 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. 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 shall be laid down in a headquarters agreement between the Agency and the host Member State concluded once the Management Board's approval is obtained and no later than 2015.
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.

*Article 66*

**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.

#### *Article 67*

##### **Language arrangements**

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>14</sup> shall apply to the Agency.
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.

#### *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.
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 after consulting the Management Board.

#### *Article 69*

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

1. The Agency may enter into agreements with relevant national authorities, in particular the National Safety Authorities, and other competent bodies, in relation to the implementation of Articles 12, 16, 17 and 18.
2. The agreements may include contracting of some of the tasks of the Agency to the national authorities, such as checking and preparing files, verifying technical compatibility, performing visits and drafting technical studies.
3. The Agency shall ensure that the agreements include at least specified description of tasks and conditions for deliverables, the time-limits applying to their delivery and the level and schedule of payments.

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<sup>14</sup> OJ 17, 6.10.1958, p. 385



4. The agreements described in paragraphs 1, 2 and 3 are without prejudice to the overall responsibility of the Agency for performing its tasks as provided for in Articles 12, 16, 17 and 18.

#### *Article 70*

### **Transparency**

Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>15</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.

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 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.

#### *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>16</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>17</sup> with a view to establishing whether there has been

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<sup>15</sup> OJ L 145, 31.5.2001, p. 43.

<sup>16</sup> OJ L 136, 31.5.1999, p. 1

<sup>17</sup> OJ L 292, 15.11.1996, p. 2

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.

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*

##### **Delegated acts relating to Articles 12, 16, 17 and 18**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 74 concerning fees and charges in application of Articles 12, 16, 17 and 18.
2. The measures referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Articles 12, 16, 17 and 18 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 in service of trackside control-command and signalling subsystems, authorisations for placing on the market for vehicles and for types of vehicles, including possible indication of compatibility with the networks or lines;
  - (b) the issuing and renewal of safety certificates;
  - (c) the provision of services; they shall reflect the actual cost of each individual provision;
  - (d) the processing of appeals.

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

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. 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.

#### *Article 74*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 73 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of power referred to in Article 73 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 73 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [2 months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [2 months] at the initiative of the European Parliament or the Council.

#### *Article 75*

#### **Committee procedure**

The Commission shall be assisted by the committee established by Article 21 of Directive 96/48/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### *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. 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.
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.  
  
By way of derogation from Article 49, 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*  
*The President*

*For the Council*  
*The President*

**ANNEX**  
**LEGISLATIVE FINANCIAL STATEMENT**

**1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

**1.1. Title of the proposal/initiative**

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

**1.2. Policy area(s) concerned in the ABM/ABB structure<sup>18</sup>**

06: Mobility and Transport  
0602: Inland, air and maritime transport policy  
060208: European Railway Agency  
06020801: European Railway Agency — Contribution to Titles 1 and 2  
06020802: European Railway Agency — Contribution to Title 3

**1.3. Nature of the proposal/initiative**

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action<sup>19</sup>**
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

**1.4. Objectives**

*1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Objectives/EU added value in line with Europe 2020:

The Agency contributes to interoperable, safe and sustainable railway transport for the EU economy and for the EU citizens. This is fully in line with the three priorities of Europe 2020:

- Smart growth: developing an economy based on knowledge and innovation. The Agency contributes to the development of the highest possible technical standards for railway vehicles and infrastructure, thus promoting knowledge and innovation.
- Sustainable growth: promoting a more resource efficient, greener and more competitive economy. The Agency contributes to making the EU transport sector more sustainable and environmentally-friendly, limiting the overall level of emissions and energy consumption. Rail transport will contribute to the '20/20/20' climate/energy targets and the flagship initiative 'Resource efficient Europe'. The Agency will play its role in the sector implementation.
- Inclusive growth: fostering a high-employment economy delivering social and territorial cohesion. With regard to peripheral regions and their connection with the

<sup>18</sup> ABM: Activity-Based Management — ABB: Activity-Based Budgeting.

<sup>19</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

core, railway transport is an essential element for ensuring territorial cohesion. It provides affordable and sustainable means of transportation for large parts of population, thus contributing to increased social mobility and increased employment opportunities, and helps to close the gap between poorer and richer regions and countries in the EU.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Budget area: 06 02

ABM/ABB activity concerned: 060208 European Railway Agency:

- Budget heading 06 02 08 01 — European Railway Agency — Subsidy under Titles I and II (administrative expenditure)

- Budget heading 06 02 08 02 — European Railway Agency — Subsidy under Title III (operational expenditure)

Specific objectives:

Specific objective 1: Increase the efficiency of railway safety certification and authorisation procedures by issuing single safety certificates, vehicle authorisations for placing on the market and authorisations for placing in service of trackside control-command and signalling subsystems valid throughout the EU, and ensure non-discrimination.

Specific objective 2: Increase the coherence of the EU railway framework by monitoring national railway authorities and reducing the number of national railway rules.

Specific objective 3: Improve implementation and application of EU railway legislation through increased assistance to the Commission, Member States and stakeholders.

Specific objective 4: Assist the Commission with creating and updating secondary railway interoperability and safety legislation, including developing a common approach to safety.

Specific objective 5: Ensure coherent development of the ERTMS in the EU and promote the ERTMS outside the EU.

Specific objective 6: Ensure proper certification of train drivers and other related tasks, in accordance with Directive 2007/59/EC.

Specific objective 7: Maintain and update public registers and databases relating to railway safety and interoperability.

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Results linked with the specific objectives:

Result of specific objective 1: reduced costs for applicants and shorter duration of issuing of safety certificates, vehicle authorisations for placing on the market and authorisations for placing in service of trackside control-command and signalling subsystems; identical conditions for all applicants in the EU; ensured non-discrimination for operators.

Result of specific objective 2: harmonisation of the application of EU railway legislation and practices of national authorities; increased clarity and transparency of legal requirements and operating conditions in the EU by reducing unnecessary rules, both limiting possibilities for discriminatory practices against operators.

Result of specific objective 3: increased understanding of railway legislation by stakeholders and Member States leading to smoother operation of the Single European Railway Area; making the work of different Commission services more effective and efficient.

Result of specific objective 4: Single European Railway Area made more interoperable with a high level of safety, with benefits for railway undertakings, customers and passengers.

Result of specific objective 5: the ERTMS is implemented consistently in the EU with its equipment compliant with specifications in force; ERTMS standards promoted outside the EU.

Result of specific objective 6: train drivers are treated in a consistent manner in the EU.

Result of specific objective 7: transparency for railway stakeholders, Member States and general public in relation to important railway interoperability and safety data.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Indicators of specific objective 1:

- number of safety certificates issued;
- number of vehicle authorisations for placing on the market issued;
- number of authorisations for placing in service of trackside control-command and signalling subsystems issued.

Indicators of specific objective 2:

- number of audit reports of national authorities issued;
- number of national rules withdrawn;
- number of national rules declared cross-accepted;
- other outcomes relating to control and monitoring.

Indicators of specific objective 3:

- number of reports evaluating implementation of railway legislation;
- number of railway projects evaluated;

- number of information and training events (workshops, conferences) organised;
- number of interpretative documents issued;
- number of assistance visits performed
- other outcomes relating to increased assistance.

Indicators of specific objective 4:

- number of recommendations for new Technical Specifications of Interoperability (TSIs) sent to the Commission;
- number of recommendations for revision of Technical Specifications of Interoperability (TSIs) sent to the Commission;
- number of recommendations for new Common Safety Methods (CSMs) sent to the Commission;
- number of recommendations for revision of Common Safety Methods (CSMs) sent to the Commission;
- number of opinions provided to the Commission, Member States and other stakeholders;
- number of impact assessments and cost-benefit analyses issued;
- other outcomes relating to increasing interoperability and safety.

Indicators of specific objective 5:

- number of recommendations relating to changes and new versions of the ERTMS issued;
- number of reports provided to the Commission evaluating the implementation of the conformity assessment and the EC verification procedure of ERTMS equipment;
- number of recommendations relating to technical incompatibilities of ERTMS projects sent to the Commission
- other outcomes relating to ensuring coherent development and deployment of the ERTMS.

Indicators of specific objective 6:

- number of train drivers certified in accordance with the Directive on train drivers;
- other outcomes relating to harmonisation of train drivers conditions.

Indicators of specific objective 7:

- number of public databases and registers established and managed;
- other outcomes relating to transparency of railway-related data.

## **1.5. Grounds for the proposal/initiative**

### *1.5.1. Requirement(s) to be met in the short or long term*

Allow ERA to engage in new activities and continue to sufficiently cover existing tasks which are necessary to achieve fully interoperable and safe internal railway market (Single European Railway Area).



### 1.5.2. *Added value of EU involvement*

Current EU involvement (tasks of the European Railway Agency) is laid down in ERA Founding Regulation 881/2004. Moreover, Directive 2004/49/EC, Directive 2008/57/EC and Directive 2007/59/EC have directly and indirectly given other tasks to the Agency. In a similar manner, numerous secondary legislation adopted by the Commission under the above-mentioned directives, in particular the TSIs, CSMs and CSTs, have had an impact of the activities and work of ERA. The current Regulation aims to combine all existing tasks of the Agency in one legal act, and extend the role of ERA to areas where it is justified.

In line with the Transport White Paper of 2011 (Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system) and the results of the impact assessment accompanying current initiative, this proposal will provide further EU added value by eliminating existing technical and administrative barriers in the railway sector, notably by:

- making railway vehicle authorisation and safety certification of railway undertakings more efficient (cheaper and faster) and impartial, by moving them to the EU level;
- increasing the coherence and application of EU railway *acquis* by allowing the Agency to monitor the functioning of national authorities active in railway interoperability and safety fields;
- facilitating faster progress towards truly common EU railway standards by increasing ERA's action in reducing national railway rules;
- improving spending of EU funds for the railways (TEN, Cohesion Fund, Structural Funds, research programmes, etc.).

EU involvement through ERA allows for high added value thanks to:

- the use of a dedicated structure and qualified staff, some of whom are already available;
- positive experience with tried and tested methods (for example, using the established and operational network of national safety authorities);
- its objectivity and impartiality, highly appreciated by stakeholders.

### 1.5.3. *Lessons learned from similar experiences in the past*

Evaluation of the ERA Regulation and functioning of the Agency (2009-2010) and the general evaluation of the EU Agencies in 2009 both showed the added value provided by the Agency.

This initiative seeks to apply (by revising the ERA Regulation) the recommendations from the ERA evaluation exercise, of the Court of Auditors, Internal Audit Service and the Joint Statement of the Commission, the European Parliament and the Council on decentralised agencies, particularly with regard to internal structure, governance and functioning.

#### 1.5.4. *Coherence and possible synergy with other relevant instruments*

The proposal is in line with the Transport White Paper of 2011, in particular with its initiatives 1 and 19:

- "Achieve a single vehicle type authorisation and a single railway undertaking safety certification by reinforcing the role of the European Railway Agency (ERA)";
- "Enhance the role of ERA in the field of rail safety, in particular its supervision on national safety measures taken by National Safety Authorities and their progressive harmonisation".

The proposal is consistent with the EU railway interoperability and safety policy and legislation, in particular Directives 2004/49 (Railway Safety Directive) and 2008/57 (Railway Interoperability Directive) which will also be amended as part of this initiative. All three revised acts are interlinked and aim at removing remaining administrative and technical barriers, in particular by establishing a common approach to safety and interoperability rules to increase economies of scale for railway undertakings active across the EU, decreasing administrative costs and accelerating administrative procedures, as well as to avoiding disguised discrimination.

Moreover, this initiative is a part of a broader Fourth Railway Package which will aim — besides the objective described above — to open up the domestic rail passenger market and optimise the governance of infrastructure management; synergies are expected especially with regard to reducing discrimination in relation to access to infrastructure, thus lowering the access barriers for new entrants.

There is also an important synergy between the revised tasks of ERA and the TEN-T Executive Agency in relation to the evaluation of railway projects, in relation to increased value for money and efficiency of projects funded from the EU funds.

Besides, this initiative is consistent with and implements recommendations of the Court of Auditors, Internal Audit Service and the Joint Statement of the Commission, the European Parliament and the Council on decentralised agencies, as well as with the evaluation of ERA.

Finally, this initiative seeks to include in the ERA Regulation a number of tasks and activities that were assigned to the Agency by other acts, particularly Directive 2007/59/EC, Commission Decisions on Technical Specifications on Interoperability (TSIs) and Common Safety Methods (CSMs).

## 1.6. Duration and financial impact

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2015 to 2020,
- followed by full-scale operation.

## 1.7. Management mode(s) envisaged<sup>20</sup>

**Centralised direct management** by the Commission

**Centralised indirect management** with the delegation of implementation tasks to:

- executive agencies
- bodies set up by the Communities<sup>21</sup>
- national public-sector bodies/bodies with public-service mission
- persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

**Shared management** with the Member States

**Decentralised management** with third countries

**Joint management** with international organisations (*to be specified*)

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<sup>20</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html).

<sup>21</sup> As referred to in Article 185 of the Financial Regulation.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

All EU agencies work under a strict monitoring system involving internal audit capability, the Internal Audit Service of the Commission, the Administrative Board, the Commission, the Court of Auditors and the Budgetary Authority. This system as laid down in the ERA founding Regulation will continue to apply.

### **2.2. Management and control system**

#### **2.2.1. Risk(s) identified**

None

#### **2.2.2. Control method(s) envisaged**

Not applicable

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

Anti-fraud measures are included in the ERA founding Regulation under Article 41 and will continue to apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description]	Diff./non-diff. <sup>(1)</sup>	from EFTA <sup>2</sup> countries	from candidate countries <sup>3</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1.1	06.02.08 [ERA budget line]	Non-diff.	YES	NO	NO	NO

<sup>1</sup> Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations.

<sup>2</sup> EFTA: European Free Trade Association. .

<sup>3</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

Before going into the details of the estimated impact of the present proposal, it is important to highlight that this estimated impact is provisional at this stage as it is subject to the adoption of the new Multiannual Financial Framework 2014-2020 by the Budgetary Authority.

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (current prices, to 3 decimal places)

<b>Heading of multiannual financial framework:</b>	1	Smart and Inclusive Growth
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DG: MOVE			2015	2016	2017	2018	2019	2020	<b>TOTAL 2015-2020</b>
• Administrative appropriations									
Number of budget line 06.02.08 [ERA budget line] Basis: - Starting point - DB 2013 at €25M, - 2% taxation applied to staff in 2014-2017, - 1% increase of yearly budget due to annual adjustment. From 2017 onwards external revenues from fees and charges kick in so no call on the EU budget in relation to new staff.	Commitments	(1)	25.613 (including 0.113 for new tasks)	26 (incl. 0.3 for new tasks)	26 (0 for new tasks)	26.25 (0 for new tasks)	26.5 (0 for new tasks)	26.75 (0 for new tasks)	<b>157.113</b>  (out of which 0.413 to cover new tasks in 2015-2016)
	Payments	(2)	25.613	26	26	26.25	26.5	26.75	<b>157.113</b>
<b>TOTAL appropriations for DG MOVE</b>	Commitments	(5)=1+ 3	25.613	26	26	26.25	26.5	26.75	<b>157.113</b>  (out of which 0.413 to cover new tasks in 2015-2016)

	Payments	(6)=2+ 4	25.613	26	26	26.25	26.5	26.75	<b>157.113</b>
<b>TOTAL appropriations under HEADING 1</b> of the multiannual financial framework	Commitments	=5	25.613	26	26	26.25	26.5	26.75	<b>157.113</b>  (out of which 0.413 to cover new tasks in 2015-2016)
	Payments	=6	25.613	26	26	26.25	26.5	26.75	<b>157.113</b>

<b>Heading of multiannual financial framework:</b>	<b>5</b>	' Administrative expenditure '
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EUR million (current prices, to 3 decimal places)

		2015	2016	2017	2018	2019	2020	<b>TOTAL 2015-2020</b>
<b>DG: MOVE</b>								
<ul style="list-style-type: none"> <li>• Human resources Basis: current level of budget for staff at DG MOVE dealing with ERA-related issues (0.655 €M – 5 staff) applied each year + 1% annual adjustment</li> </ul>		0.655	0.66	0.665	0.67	0.675	0.68	<b>4.005</b>
<ul style="list-style-type: none"> <li>• Other administrative expenditure</li> </ul>		0	0	0	0	0	0	0
<b>TOTAL DG MOVE</b>	Appropriations	0.655	0.66	0.665	0.67	0.675	0.68	<b>4.005</b>
<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	0.655	0.66	0.665	0.67	0.675	0.68	<b>4.005</b>

EUR million (to 3 decimal places)

		2015	2016	2017	2018	2019	2020	<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	26.268	26.66	26.665	26.92	27.175	27.43	<b>161.118</b>
	Payments	26.268	26.66	26.665	26.92	27.175	27.43	<b>161.118</b>

### 3.2.2. Proposed draft establishment plan for ERA 2015-2020

ALL NEW STAFF IS FINANCED WITH EXTERNAL FEES AND CHARGES FROM 2017:



<b>Proposed staffing for ERA 2015-2020 [Basis: 143 establishment plan staff in 2013 and 2 % taxation by 2017 (-2-3 person per year)]</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
AD Grades	101	100	99	99	99	99
New AD Grades	0	0	12	14	14	14
Total AD	101	100	111	113	113	113
AST Grades	37	36	34	34	34	34
New AST Grades	0	0	4	4	4	4
Total AST	37	36	38	38	38	38
<b>Subtotal Establishment Plan Posts</b>	<b>138</b>	<b>136</b>	<b>149</b>	<b>151</b>	<b>151</b>	<b>151</b>
SNEs	6	6	6	6	6	6
New SNEs	2	5	12	13	13	13
Total SNEs	8	11	18	19	19	19
Contract Agents	15	15	15	15	15	15
New Contract agents	1	3	7	9	10	12
Total Contract agents	16	18	22	24	25	27
<b>Cumulative new posts</b>	<b>5</b>	<b>10</b>	<b>35</b>	<b>40</b>	<b>41</b>	<b>43</b>
<i>Impact on EPP</i>	<i>0</i>	<i>0</i>	<i>16</i>	<i>18</i>	<i>18</i>	<i>18</i>
<b>GENERAL TOTAL</b>	<b>162</b>	<b>165</b>	<b>189</b>	<b>194</b>	<b>195</b>	<b>197</b>

3.2.3. *Estimated impact on administrative and operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational and administrative appropriations, as explained below:
  - Please note that the outputs given below relate to the total budget of ERA (Titles 1+2+3).
  - Please note that the cost of the outputs in Specific Objective no 1 will constitute an income for ERA: the Agency will charge external applicants for issuing these documents. Therefore, they are marked in brackets and are not added to the total sum of costs of all the outputs.

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓			2015		2016		2017		2018		2019		2020		TOTAL	
	Type of output <sup>1</sup>	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost

<sup>1</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<p><b>SPECIFIC OBJECTIVE No 1<sup>2</sup>:</b>  Increase the efficiency of railway safety certification and authorisation procedures by issuing single safety certificates, vehicle authorisations for placing on the market and authorisations for placing in service of trackside control-command and signalling subsystems valid throughout the EU, and ensure non-discrimination.</p>														
Single Safety Certificates	Number of safety certificates issued	(0.01) - will be covered by fees and charges	0	0	110	(1.1)	110	(1.1)	110	(1.1)	110	(1.1)	<b>440</b>	<b>(4.4)</b> will be covered by fees and charges
Vehicle authorisations for placing on the market	Number of vehicle authorisations for placing on the market issued	(0.017) - will be covered by fees and charges	0	0	456	(7.752)	452	(7.684)	449	(7.632)	447	(7.598)	<b>1804</b>	<b>(30.67)</b> will be covered by fees and charges

<sup>2</sup> As described in Section 1.4.2. "Specific objective(s)...".

System Authority for the ERTMS	Number of authorisations for placing in service of trackside control-command and signalling sub-systems issued	(0.05) will be covered by fees and charges	0		0		30	(1.5)	32	(1.6)	35	(1.75)	40	(2)	137	(6.85) will be covered by fees and charges
Sub-total for specific objective No 1								(10.352)		(10.384)		(10.482)		(10.698)		(41.92)
SPECIFIC OBJECTIVE No 2: Increase the coherence of the EU railway framework by monitoring national railway authorities and reducing the number of national railway rules			Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
Monitoring national authorities	Number of audit reports issued	0.2	2	0.4	3	0.6	5	1	5	1	5	1	5	1	25	5
Reduction of diverging national rules and increasing cross-acceptance	Number of national rules withdrawn	0.015	1000	1.5	1500	2.25	1500	2.25	2000	3	1500	2.25	1500	2.25	9000	13.5
	Number of national rules declared cross-accepted	0.01	1000	1.0	1000	1.0	1000	1.0	1000	1.0	1000	1.0	1000	1.0	8000	6.0
Other	Other outcomes relating to control and monitoring	0.01	100	0.1	100	0.1	125	0.125	125	0.125	150	0.15	150	0.15	750	0.75
Sub-total for specific objective No 2																25.25

SPECIFIC OBJECTIVE No 3: Improve implementation and application of EU railway legislation by increased assistance to the Commission, Member States and stakeholders, and other tasks																
Assistance to the Commission	Number of reports evaluating implementation of railway legislation	0.1	3	0.3	5	0.5	7	0.7	10	1	14	1	18	1	57	5.7
	Number of railway projects evaluated	0.05	5	0.25	7	0.35	10	0.5	15	0.75	20	1	25	1.25	82	4.1
Assistance to Member States and other stakeholders	Number of information and training events (workshops, conferences) organised	0.1	5	0.5	7	0.7	10	1	12	1.2	14	1.4	16	1.6	64	6.4
	Number of interpretative documents issued	0.1	2	0.2	2	0.2	4	0.4	8	0.8	10	1	10	1	36	3.6
	Number of assistance visits performed	0.1	2	0.2	4	0.4	8	0.8	10	1	10	1	12	1.2	46	4.6
Other tasks	Other outcomes relating to increased assistance	0.001	100	0.1	100	0.1	100	0.1	100	0.1	100	0.1	100	0.1	600	0.6
Sub-total for specific objective No 3																25

SPECIFIC OBJECTIVE No 4: Assist the Commission in creating and updating secondary railway interoperability and safety legislation, including developing a common approach to safety			Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
Increasing interoperability	Number of new TSIs sent to the Commission	1	0	0	0	0	1	1	1	1	1	1	1	1	4	4
	Number of revised TSIs sent to the Commission	0.6	4	2.4	4	2.4	4	2.4	4	2.4	4	2.4	4	2.4	24	14.4
Increasing level of safety	Number of new CSMS sent to the Commission	1	0	0	0	0	1	1	1	1	1	1	1	1	4	4
	Number of revised CSMS sent to the Commission	0.6	4	2.4	4	2.4	4	2.4	4	2.4	4	2.4	4	2.4	24	14.4
Facilitating operation of Single European Railway Area	Number of opinions provided to the Commission, MS and stakeholders	0.2	6	1.2	6	1.2	8	1.6	8	1.6	8	1.6	8	1.6	44	8.8
	Number of impact assessments and cost-benefit analyses issued	0.06	20	1.2	20	1.2	25	1.5	27	1.62	29	1.74	30	1.8	151	9.06
Other	Other outcomes relating to increasing interoperability and safety	0.06	50	0.3	80	0.48	80	0.48	80	0.48	80	0.48	80	0.48	450	2.7
Sub-total for specific objective No 4																57.36

SPECIFIC OBJECTIVE No 5: Ensure a coherent development of the ERTMS in the EU and promote the ERTMS outside the EU																
System Authority for the ERTMS	Number of recommendations for changes and new versions of the ERTMS issued	0.7	2	1.4	2	1.4	4	2.8	5	3.5	6	4.2	8	5.6	27	18.9
Verification of implementation of the ERTMS	Number of reports evaluating the implementation of the conformity assessment and the EC verification procedure of ERTMS equipment issued	0.04	8	0.32	12	0.48	20	0.8	25	1	30	1.2	30	1.2	125	5
	Number of recommendations relating to technical incompatibilities of ERTMS projects issued	0.1	3	0.3	3	0.3	5	0.5	8	0.8	10	1	12	1.2	41	4.1
Other tasks	Other outcomes relating to ensuring coherent development and deployment of the ERTMS	0.001	100	0.1	100	0.1	100	0.1	100	0.1	100	0.1	100	0.1	600	0.6
Sub-total for specific objective No 5																28.6

SPECIFIC OBJECTIVE No 6: Ensure proper certification of train drivers and other related tasks, in accordance with Directive 2007/59/EC			Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
Harmonisation of criteria for train drivers	Number of measures harmonising the train drivers conditions issued in accordance with the Directive on train drivers	0.6	2	1.2	2	1.2	2	1.2	2	1.2	2	1.2	2	1.2	12	7.2
	Other outcomes	0.001	10	0.01	10	0.01	10	0.01	10	0.01	10	0.01	10	0.01	60	0.6
Sub-total for specific objective No 6																7.8



SPECIFIC OBJECTIVE No 7: Maintain and update public registers and databases relating to railway safety and interoperability																
Transparency for stakeholders and the public regarding railway interoperability and safety data	Number of public databases and registers established and managed	0.1	15	1.5	17	1.7	20	2	20	2	25	2.5	25	2.5	122	12.2
	Other outcomes	0.001	10	0.01	10	0.01	15	0.015	15	0.015	15	0.015	15	0.015	80	0.8
Sub-total for specific objective No 7																13
<b>TOTAL COST</b>																<b>157.01</b>

### 3.2.4. Estimated impact on appropriations of an administrative nature

#### 3.2.4.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- The proposal/initiative requires the use of administrative appropriations, as explained below:

Basis for calculations: current staff at DG MOVE dealing with ERA-related issues (5 persons, 0.131€M per person/year and 1% annual adjustment) applied to each year; no increase due to enhanced powers of ERA

EUR million (to 3 decimal places)

	2015	2016	2017	2018	2019	2020	<b>TOTAL 2015- 2020</b>
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<b>Officials (AD Grades)</b>	0.655	0.66	0.665	0.67	0.675	0.68	<b>4.005</b>
<b>Officials (AST grades)</b>	0	0	0	0	0	0	0
<b>Contractual agent</b>							
<b>Temporary agents</b>	0	0	0	0	0	0	0
<b>Seconded National Experts</b>	0	0	0	0	0	0	0
<b>TOTAL</b>	0.655	0.66	0.665	0.67	0.675	0.68	<b>4.005</b>

### 3.2.4.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

Basis for calculations: current staff at DG MOVE dealing with ERA-related issues (5 persons, 0.131€ M per person/year) applied to each year; no increase due to enhanced powers of ERA

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	2015	2016	2017	2018	2019	2020
<b>• Establishment plan posts (officials and temporary agents)</b>						
XX 01 01 01 (Headquarters and Commission's Representation Offices)	5	5	5	5	5	5
XX 01 01 02 (Delegations)	0	0	0	0	0	0
XX 01 05 01 (Indirect research)	0	0	0	0	0	0
10 01 05 01 (Direct research)	0	0	0	0	0	0
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>1</sup></b>						
XX 01 02 01 (CA, INT, SNE from the 'global envelope')	0	0	0	0	0	0
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)	0	0	0	0	0	0
<b>XX 01 04 yy</b> <sup>2</sup>	- at Headquarters <sup>3</sup>	0	0	0	0	0
	- in delegations	0	0	0	0	0
<b>XX 01 05 02</b> (CA, INT, SNE — Indirect research)	0	0	0	0	0	0
10 01 05 02 (CA, INT, SNE — Direct research)	0	0	0	0	0	0
Other budget lines (specify)	0	0	0	0	0	0
<b>TOTAL</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>1</sup> CA= Contract Agent; INT= agency staff ("('Intérimaire');"); JED= "'Jeune Expert en Délégation' (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert; .

<sup>2</sup> Under the ceiling for external personnel from operational appropriations (former "'BA' lines).

<sup>3</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

Description of tasks to be carried out:

Officials and temporary agents	Existing staff of DG MOVE deals with ERA-related issues, including: <ul style="list-style-type: none"> <li>- managing implementing measures adopted in result of Agency's recommendations (Commission Decisions and Regulations) in the field of railway safety and interoperability;</li> <li>- administrative coordination and control over ERA: work programmes, multi-annual staff policy plans, meetings of Management Board and its sub-committee;</li> <li>- policy coordination: participation in working parties of ERA, content of work programme, mandates from Commission to ERA, working-level meetings;</li> <li>- managing ERA's opinions;</li> <li>- financial and accounting responsibilities regarding ERA at the side of the Commission (budget, discharge etc.).</li> </ul>
External personnel	

3.2.5. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

The ERA budget line (06.02.08) will have to be adjusted to the amount specified in this financial statement (total of €157.113 M for the period 2015-2020).

For the time being, only indicative amounts for the agencies are included in the financial framework. The indicative amount for ERA was estimated before the results of the impact assessment and other calculations linked with this initiative were known.

For the period 2015-2020 the status of ERA will change from 'cruising speed agency' to 'new tasks agency'.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>4</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.6. *Third-party contributions*

- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	2015	2016	2017	2018	2019	2020	Total

<sup>4</sup> See points 19 and 24 of the Inter-institutional Agreement.

<i>EFTA Contribution from Norway and Iceland calculated at 2% of the budget</i>	0.5	0.5	0.5	0.5	0.5	0.5	<b>3</b>
TOTAL appropriations co-financed	0.5	0.5	0.5	0.5	0.5	0.5	<b>3</b>

### 3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget year	Impact of the proposal/initiative <sup>5</sup>					
		2015	2016	2017	2018	2019	2020
ERA budget line 06.02.08				10.352	10.384	10.482	10.698

Specify the method for calculating the impact on revenue.

Some of the new tasks envisaged for ERA (safety certificates, vehicle authorisations for placing on the market and authorisations for placing in service of trackside control-command and signalling sub-systems) will allow for charging the external applicants for issuing them.

According to the impact assessment, these new tasks will start in 2017 and the revenue for ERA was calculated in the following way:

- cost of issuing a safety certificate: €0.01m
- cost of issuing a vehicle authorisation: €0.017m
- cost of issuing an authorisations for placing in service of trackside control-command and signalling sub-system: €0.05m
- respective numbers of all types of decisions issued each year are provided in table 3.2.3.

Summary of method of calculation:

The fees set out in the impact assessment report have been calculated by taking the average of the current fees paid by operators wishing to obtain a safety certificate or gain vehicle authorisation in the EU; a similar approach was used in case of authorisations for placing in service of trackside control-command and signalling sub-system. There was a large variation in the fees paid, and also a substantial difference between the fees paid in EU15 Member States (about €20,000 for safety certificates and €28,000 for authorisations) and the fees paid in EU12 Member States

<sup>5</sup>

As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

(about €3,000 for safety certificates and €17,000 for authorisations). In determining the future value of these fees it was assumed that, given: the cost of staff in the Agency, the more streamlined processes of dealing with the applications, a value close to the mid-point of the low average and the high average would be the most appropriate going forward.

It is important to note that the calculations set out for the fees are average across all types of safety certificates and vehicle authorisations; 4 types of safety certificates and 20 types of vehicle authorisations were identified in the IA support study. Although the “centralisation” process with ERA will lead to the number of types of certificates and authorisations falling, there will still be multiple categories. For example, there will still be a different process for the authorisation of a locomotive and a wagon. As such the fees will need to be differentiated for these two categories. In particular, the fees for wagon authorisation will be lower than the average and the fees for locomotives and multiple units will be higher.

The number (price per authorisation/certificate) that was calculated in the impact assessment report is meant to be an average, it would be up to the Agency to define the exact fees for the different categories with the aim of ensuring that the average of the fees collected was equal, or greater than this average. However, the aim of the calculation is to provide a realistic but conservative estimation of revenues for the Agency, and it is not excluded that the fees to be charged can actually lead to a higher average value, if necessary and justified.

In terms of the number of authorisations and certificates, these were calculated starting from the current level of authorisations and certifications. For future years, in relation to safety certificates, it was assumed that the number of new entrants into the market would lead to an increase in the number of safety certificates issued over time while the fact that there may be a change in the types of safety certificates could decrease that number. Therefore, as a conservative estimate it was assumed that there is no change in the total annual number of safety certificates.

For vehicle authorisations the approach was slightly different: the model starts from existing authorisation levels as provided by stakeholders and various studies. However, while there are likely to be more new entrants and therefore in absolute terms more vehicles to authorise, new entrants are more likely to stick with proven technology and as such with the rolling stock that has already been certified. Furthermore, as the industry standardises, in future there are likely to be fewer types of vehicles to authorise, leading to a slight fall in the number of authorisations. Once again, the model divided the assessment into EU15 and EU12 Member States.

DG MOVE considers that the calculations are robust and properly based on existing and verifiable data obtained from stakeholders and the European Railway Agency. More information on methodology is provided in the impact assessment report accompanying this proposal, in particular its Annex VII.