COMMISSION IMPLEMENTING REGULATION (EU) 2021/1903

of 29 October 2021

amending Implementing Regulation (EU) 2018/764 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 ([1]), and in particular Article 80(1) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) 2018/764 ([2]) sets out the fees and charges payable to the European Union Agency for Railways ('the Agency') for the performance of certain activities and the provision of other services referred to in Regulation (EU) 2016/796.

(2) While the larger part of costs generated by the activities of the Agency is covered by the EU budget, Article 80(2), first subparagraph of Regulation (EU) 2016/796 requires the Agency to levy fees and charges for the issuing of vehicle (type) authorisations, single safety certificates and European rail traffic management system ('ERTMS') approvals, as well as the provision of other services. Pursuant to Article 80(3) of Regulation (EU) 2016/796, the amount of the fees and charges is to be fixed at such a level as to ensure that the revenue in respect thereof is sufficient to cover the full cost of the tasks performed and services provided by the Agency.

(3) Pursuant to Article 10 of Implementing Regulation (EU) 2018/764, the Commission is to assess the regime for fees and charges once every financial year. This assessment is to be based on the Agency's previous financial results assessment and its estimate of future expenditure and revenue. Based on the assessment of financial results and forecasts of the Agency, the Commission is to revise fees and charges, if necessary. The Commission is to review the Regulation with a view to the progressive introduction of fixed fees by 16 June 2022 at the latest.

(4) In 2018, when Implementing Regulation (EU) 2018/764 was adopted, there was a lack of reliable financial data since Agency had not yet started to process applications. Since 2019, the Agency's annual reports referred to in Article 51(1), point (a) of Regulation (EU) 2016/796 establish that, in exercising its role as the Union authority responsible for the certification and authorisation tasks referred to in Articles 14, 20, 21 and 22 of Regulation (EU) 2016/796, the Agency experiences a significant and recurrent negative imbalance in its budget. This imbalance results from the insufficient level of fees and charges levied in accordance with Article 80(2) of Regulation (EU) 2016/796 to compensate the costs linked to the processing of applications and the provision of services.

(5) In order for the Agency to cover costs for processing applications, the Union budget had to partly cover these costs. Moreover, in order to balance its budget, the Agency had to severely reduce the activities other than those that are financed by fees and charges. According to the Agency's yearly single programming documents, forecasting for 2021 and 2022 implies a similar financial situation in the future. A revision of the Agency's fees and charges regime is therefore necessary.

([1]) OJ L 138, 26.5.2016, p. 1.

([2]) Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJ L 129, 25.5.2018, p. 68).

(6) It appears necessary to increase the hourly rate, which is currently lower than the hourly cost incurred by the Agency in delivering decisions to applicants for authorisations, certificates and approvals. The rates defined in Implementing Regulation (EU) 2018/764 should be therefore revised to cover the annual cost incurred by the Agency for processing application and for rendering available the one-stop shop ('OSS') to all applicants addressing the Agency for European vehicle authorisations, single safety certificates and ERTMS project approvals.

(7) The Agency has been levying fees and charges exclusively at an hourly rate calculated on the basis of the time dedicated to deliver its decisions and provide its services. A fixed fees regime should be introduced to further reduce the administrative burden and to enhance the predictability of the envisaged cost per application for the benefit of all parties involved. Moreover, since 2019, the Agency has gained experience and established a sufficiently robust methodology for calculating average cost for processing individual applications. Fixed fees should therefore apply to the processing of applications concerning a vehicle or a series of vehicles considered to be in conformity with a previously authorised vehicle type pursuant to Article 25(1) of Directive (EU) 2016/797 of the European Parliament and of the Council ([3]).

(8) The free of charge OSS generates considerable maintenance and development costs. Fees should therefore also be paid for the use of OSS when the addressee of applications submitted to the OSS is the Agency. Fees should be paid by applicants on fixed rates, depending on the impact of applications on the OSS's facility in terms of documents uploaded and stored, functionalities exploited and exchanges held as well as in proportion to the overall estimated cost of the relevant decision. Moreover, where the application for a conformity to vehicle type is submitted to the Agency, the fee for using the OSS should become an integral part of the overall fee for delivering vehicle authorisations subject to fixed fees.

(9) Fees and charges should reflect the specific situation of micro, small and medium-sized enterprises. A specific reduction should be therefore applied.

(10) All criteria and methodology for defining the level of fees and charges are based on the principle that the revenue in respect thereof should cover the full cost of the services provided, avoiding a deficit or a significant accumulation of surplus, in accordance with Article 80(3), first subparagraph of Regulation (EU) 2016/796.

(11) Experience in applying Implementing Regulation (EU) 2018/764 has shown that the conditions of payment of fees and charges should be modernised and adjusted to mitigate the risk of failure to pay by applicants whose financial ability is at risk and applicants established in third countries, against whom the Agency lacks adequate legal enforcement safeguards. It is appropriate that the Agency should invoice the payable amounts early in the application process, in order to reduce the risk of late payment or failure to pay. It shall grant online payment options.

(12) Since fees and charges largely reflect the Agency's expenditure for staff and associated direct expenditure related to the activities referred to in Article 80(2) of Regulation (EU) 2016/796, the relevant amounts should be indexed by the Agency once every financial year to take into account the inflation rate and the annual update of the remuneration of the Agency's staff, based on reliable data.

(13) The Agency's should fully embrace cost efficiency and therefore, continuously attempt to improve processes applied to deliver the tasks imposed on it under Regulation (EU) 2016/796, and in particular match the scope of tasks and resources available. In doing so it should realise a truly Single European Rail Area and should take account of the EU rail policy goals for more sustainable and smart mobility as well as an innovative, safe, strong and fully interoperable rail sector.

(14) Implementing Regulation (EU) 2018/764 should therefore be amended accordingly.

(15) The measures provided for in this Regulation are in accordance with the opinion of the committee established by Article 51 of Directive (EU) 2016/797,

([3]) Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2018/764 is amended as follows:

(1) in Article 1, paragraph 1 is replaced by the following:

'1. This Regulation lays down the fees and charges payable to the European Union Agency for Railways ('the Agency') for the processing of applications pursuant to Articles 14, 20, 21, and 22 of Regulation (EU) 2016/796, including for the use by an applicant of the one-stop shop ('OSS') provided for in Article 12 of that Regulation for the submission of applications to the Agency), and for the provision of other services in accordance with the objectives for which the Agency has been established. It also specifies the method to be used for calculating those fees and charges and conditions for payment.';

(2) Article 2 is replaced by the following:

'Article 2

Types of fees and charges levied by the Agency

1. The Agency shall levy fees:

(a) for the submission of applications through the OSS to the Agency, if those are not included in the fixed fees for the processing of applications;

(b) for the processing of applications submitted to the Agency, including for the issuing of estimates referred to in Article 4 or where an application is subsequently withdrawn by the applicant;

(c) where the Agency renews, restricts, amends or reviews a decision issued in accordance with Directive (EU) 2016/798 or Directive (EU) 2016/797.

The Agency may levy fees where it revokes an authorisation for placing on the market due to a subsequently established non-compliance with essential requirements of a vehicle in use or a vehicle type in accordance with Article 26 of Directive (EU) 2016/797, or because a holder of a single safety certificate no longer satisfies the conditions for the certification in accordance with Article 17(5) and (6) of Directive 2016/798.

2. The applications referred to in paragraph 1, first subparagraph, points (a) and (b), shall cover:

(a) authorisations for the placing on the market of vehicles and of vehicle types in accordance with Article 20 and 21 of Regulation (EU) 2016/796 other than those specified in point (b) of this paragraph;

(b) authorisations for the placing on the market of a vehicle or a series of vehicles which is in conformity with an authorised vehicle type pursuant to Article 25(1) of Directive (EU) 2016/797;

(c) single safety certificates in accordance with Article 14 of Regulation (EU) 2016/796;

(d) decisions for approval of the interoperability compliance of an ERTMS track-side equipment solution with the relevant TSI in accordance with Article 22 of Regulation (EU) 2016/796;

(e) pre-engagement applications in accordance with Article 22 of Commission Implementing Regulation (EU) 2018/545 and Articles 2(3) and 4(5) of Commission Implementing Regulation 2018/763;

(f) appeals referred to in Article 58 of Regulation (EU) 2016/796 in accordance with Article 7 of this Regulation.

3. The Agency shall levy charges for the provision of services other than those referred to in paragraph 1, requested by an applicant or any other person or entity.

4. The Agency shall publish a list of services on its website.';

(3) Article 3 is replaced by the following:

'Article 3

Calculation of fees, charges and fixed fees levied by the Agency

1. The amount of fees for the use of the OSS for submitting to the Agency applications referred to in Article 2(2), points (a), (c), (d) and (e) shall be a fixed amount specified in table A of point 2 of the Annex. That fixed fee shall be due for payment at the time of the submission of the application.

2. The amount of fees for processing applications referred to in Article 2(2), points (a), (c), (d) and (e), including for performing the activities referred to in Article 2(1), first subparagraph, point (c) and second subparagraph, shall be the total of the following:

(a) the number of hours spent by Agency staff and external experts, on the processing of the application multiplied by the hourly rate of the Agency specified in point 1 of the Annex;

(b) the amount of fees levied by the Agency shall be supplemented by the relevant amount submitted by the national safety authorities ('NSAs') resulting from the cost for processing of the national part of the application.

3. The amount of fees for the submission and processing of respective applications and the issuing of authorisations referred to in Article 2(2), point (b) shall be a fixed amount specified in table B of point 3 of the Annex and includes the fee for using the OSS fee referred to in paragraph 1. That fixed fee shall be due for payment at the time of the submission of the application.

4. The amount of charges for services referred to in Article 2(3) shall be the number of hours spent by Agency staff and external experts multiplied by the hourly rate of the Agency specified in point 1 of the Annex.

5. At the request of the applicant, a 20 % reduction of the amount levied by the Agency for an application shall apply in case of micro, small or medium-sized enterprise. Such a request shall be made at application when fixed fees apply, and at the latest before the Agency issues an invoice in all other cases.

For the purposes of this Regulation, micro, small or medium-sized enterprise means an autonomous railway undertaking, infrastructure manager or manufacturer, established or having its seat in a member country of the European Economic Area and meeting the conditions laid down in Commission Recommendation 2003/361/EC ([4]).

The applicant shall provide evidence through the OSS proving that it qualifies as a micro, small or medium-sized enterprise. The Agency shall assess the evidence provided and decide to refuse the request for the status as micro, small or medium-sized enterprise in case of doubt or lack of justification.';

(4) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Agency shall issue an invoice for the fees and charges due, within 30 calendar days of the date:

(a) of its decision, except in case of decisions covered by the fixed fee regime or subject to Article 6(3);

(b) of the decision of Board of Appeal;

(c) when the service rendered ended;

(d) of withdrawal of an application;

(e) of any other event leading to cessation of processing of an application;

([4]) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

With regard to fixed fees that become due for payment at the time of the submission of the application as referred to in Article 3(1) and (3) prior to the Agency's processing the application, the Agency may agree a different due date with individual applicants, as well as enter into a special arrangement for invoicing.';

(b) paragraph 2 is replaced by the following:

'2. The invoice shall provide the following elements, where applicable:

(a) differentiation between fees or charges;

(b) amounts subject to fixed fees;

(c) where no fixed fees apply, the number of hours spent under the Agency's responsibility and the hourly rate applied;

(d) where relevant, the costs charged by the NSA responsible. These shall be specified in relation to tasks and time spent or in form of fixed rates applied by the NSA to the processing of the national part of the application.';

(c) the following paragraph 4a is inserted:

'4a. Where Article 6(3) applies to applicants, the Agency shall have the right to issue payment notices requiring partial payment for the parts of the application already processed. In the absence of the requested payment within a timeframe set by the Agency but not less than 10 calendar days, the Agency may suspend the processing of the application and inform the applicant thereof. The Agency shall resume the processing of the application in case the requested payment is made within 20 calendar days following the notification of the suspension. In the absence of the payment within 20 calendar days following the notification of the suspension, the Agency has the right to reject the application.';

(d) paragraph 9 is replaced by the following:

'9. Where the applicant is a micro, small or medium-sized enterprise, the Agency shall take into account requests for a reasonable extension of the time limit for payment and payment by instalments.';

(5) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the absence of payment of the amounts due, the Agency may charge interest for each additional calendar day for which payment is delayed and shall apply the rules on recovery provided for in Part one, Title IV, Chapter 6, Section 5 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, as applied to European agencies, in particular its Article 101, and in the financial rules of the Agency adopted in accordance with Article 66 of Regulation (EU) 2016/796.';

(b) paragraph 3 is replaced by the following:

'3. Where the Agency has evidence that the applicant's financial ability is at risk or where the applicant is not established or does not have its seat in a member country of the European Economic Area it may require the applicant to provide a bank guarantee or secured deposit within 15 days following receipt of the application. Where the applicant fails to do so, the Agency may reject its application.';

(c) paragraph 4 is replaced by the following:

'4. Without prejudice to paragraph 1, the Agency may reject a new application or suspend the processing of an ongoing application, where the applicant or its legal successor has not fulfilled its payment obligations arising out of previous authorisation, certification or approval tasks or services performed by the Agency, unless the applicant pays all amounts due. In case an ongoing application is to be suspended the procedure referred to in Article 5, paragraph 4a shall apply accordingly.';

(6) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Agency shall publish the hourly rate and fixed rates referred to in Article 3 on its website.';

(b) paragraph 2 is replaced by the following:

'2. The NSA shall publish on its website the rates relevant for establishing the costs charged to the Agency referred to in Article 3(2), point (b). Where the NSA applies a fixed rate it shall specify to which authorisation and certification case the fixed rate will apply. The NSA shall provide the Agency with a link to its website containing information on its fees and charges.';

(7) Article 10 is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. Amounts referred to in the Annex shall be indexed by the Agency, for the first time in 2023 and once every financial year thereafter, with effect from 1 January, based on

(a) the annual update of the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto as published in the *Official Journal of the European Union*, in accordance with a calculation method to be agreed by the Agency's Management Board, and based on the relevant annual financial data used in the Agency's Single Programming Document and its Consolidated Annual Activity reports; and/or

(b) the inflation rate in the Union, in accordance with the method set out in point 4 of the Annex.';

(b) paragraph 3 is replaced by the following:

'3. In light of the information provided by the Agency in its annual reports this Regulation shall be reviewed at the latest by 16 June 2024 with a view to the progressive introduction of further fixed fees.'.

Article 2

The text set out in the Annex to this Regulation is added as an Annex to Implementing Regulation (EU) 2018/764.

Article 3

In respect of applications submitted before the entry into force of this Regulation, Article 1, point (3) shall not apply.

Article 4

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, 29 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

1. The Agency shall apply an hourly rate of EUR 239.

2. The fixed fees to be paid to the Agency for the use of the one-stop shop (OSS) shall be as follows:

Table A

	OSS Cost group	**Amount** *(EUR)*
Submission of an application to the Agency for:		
1.	A single safety certificate	400
2.	A vehicle type authorisation	400
3.	A vehicle authorisation other than an authorisation in conformity to type	400
4.	An ERTMS trackside approval	400
5.	A pre-engagement process	400

3. The fixed fees for the submission and processing of applications for the placing on the market of a vehicle, or a series of vehicles, which are in conformity with an authorised vehicle type shall be as follows:

Table B

	Cost group	**Amount** *(EUR)*
Submission to and processing by the Agency of an application for a decision authorising vehicles in conformity to type:		
1.	freight wagons and all vehicles referred to in point 2 of the Annex to Commission Regulation (EU) No 321/2013 ([1])	775
2.	(a) thermal or electric traction units; (b) passenger carriages; (c) mobile railway infrastructure construction and maintenance equipment	970
3.	self-propelling thermal or electric trains	1 115

([1]) Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock – freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC (OJ L 104, 12.4.2013, p. 1).

4. The annual inflation rate referred to in Article 10(1a) is established as follows:

Annual inflation rate to be used:	'Eurostat HICP (All items) – European Union all countries' (2015 = 100) Percentage change/12 months average
Value of the rate to be taken into account:	Value of the rate 3 months prior to the implementation of the indexation